

TRUST & ESTATE PLANNING

Taxation of trusts and estates in Mexico

By Sergio Guerrero Rosas

There have been various changes to tax planning and the use of offshore entities over the last few years in Mexico following a wave of new rules and regulations. Nonetheless, there are a number of benefits to a carefully implemented trusts strategy.

By understanding a few of the key principles at work in Mexican estate planning and fideicomisos (trusts), families can successfully protect their wealth as they pass assets on from one generation to the next, helping them to properly achieve tax efficiency, compliance and confidentiality.

Taxation of trusts – Trusts in Mexico may be considered taxpayers or non-taxpayers according to whether or not they are created for business purposes.



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For example, if a property in a restricted zone (areas close to borders and coastlines around Mexico where

direct foreign ownership of real property is prohibited and where a Mexican trust is therefore established as a way for foreigners to make property investments in that region) is rented out and generates an income, it would be taxable. However, where a trust is set up to maintain the assets of approved funds, there is no recognised income, and therefore no tax obligation.

Taxation of the fideicomisario (beneficiary) – Crucially, trust income will not be taxed twice, so where income tax is paid on a trust established for business purposes (i.e. one set up for leasing or for a quick sale), the beneficiary will not be subject to tax on the income that they receive.

Conversely, any income generated from assets held in a trust that has not been set up for business purposes will

be considered as taxable to the beneficiaries.

Nevertheless, any losses accrued from a Mexican trust cannot be passed over to the beneficiaries until liquidation of that trust occurs.

The fiduciario (trustee) and comité técnico (technical committee) – In the case of trusts set up for business purposes, the fiduciario (trustee) will be responsible for filing tax returns, advance payments of income tax for those income-generating activities three times each year, in May, September and January, set at 10% of the gross rental income collected during the preceding four months, and determining the utilidad fiscal (annual adjusted taxable income), which is done in line with the methods required of corporations.

Furthermore, Mexican legislation allows for a technical committee, which can consist of just the fideicomitente (grantor), and whose specific duties are stipulated in and only limited to what is written in the trust agreement.

This affords the option to transfer some of the trustee responsibilities to the grantor, and while the grantor cannot replace the trustee, they can nevertheless attain a greater degree of the decision-making powers as a result of this addition of a fourth party to the trust structure.

Irrevocable trusts and the grantor – For property that is rented out, income belongs to the grantor unless the transfer of title is irrevocable (where the grantor has no right to reacquire the property), in which case the income will belong to the beneficiaries.

The transfer of assets to an irrevocable trust is generally recognised as a sale and therefore taxable to the grantor unless the trustee maintains the right to reacquire the assets. Tax from rent on a property in an irrevocable trust is also attributed to the grantor.

But in all cases, the trustee is responsible for making those three advance



payments of income tax over the course of the year.

Tax incentives for Mexican Real Estate Investment Trusts (REITs) – There are also a number of tax incentives to Mexican trusts set up for business purposes. For example, trustees and beneficiaries are exempt from advance payments of income tax on the income generated from Mexican REITs, their tax contributions being deferred until the sale of their REIT certificates.

Additionally, if the grantor is also a trust beneficiary or if the trust is revocable (where the grantor retains the right to reacquire the property), the transfer of real estate is not viewed as a sale by the authorities and is therefore tax-free.

Confidentiality – Besides the tax incentives, another potentially attractive feature of Mexican trusts is the very strict secrecy laws that protect the anonymity of trust parties.

Receipts of tax payment are not traceable and, in the past, courts have even proved unsuccessful in their attempts to reveal the identities of trust members.

Furthermore, in cases where beneficiaries have sued a trustee, only the courts have been able to view the individuals' identities, the court proceed-

ings not being subject to public review.

The benefits and uses of a Mexican trust – Trusts may be formed for a number of reasons, mostly being done so in Mexico for family and estate planning.

Mexican trusts are fiercely protective of individuals' confidentiality and, where established with careful observation of Mexican legislation and the incentives it offers, represent excellent potential to the foreign investor, guaranteeing a number of tax advantages while enabling the safeguarding of assets in financially beneficial conditions.

Moreover, they allow for a controlled and tax-conscious probate, removing property from the reach of creditors, and safely into the possession of the desired heirs.

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