

Real Estate Investment Trusts in Mexico

Sergio Guerrero Rosas

CONTENTS

1. Real Estate Investment Trusts (REITs)
in Mexico Overview
2. REITs Legal Framework in Mexico
3. Tax Incentive Summary
4. Pension Fund Advantages
5. REIT Schemes
6. Conclusions.

REITS OVERVIEW IN MEXICO

Investors have complained for years that Mexican REITs were impossible to structure due to murky tax rules and other costly regulation.

President Felipe Calderon has tried to start investment in infrastructure by cutting red tape and pushing pension funds to invest in roads, bridges, and other construction projects.

To achieve this goal, regulators have recently cleared the way for some of the MX\$114 billion of pension funds to be placed into a new security in a move that should reassure outside investors.

The initial public offering of this Mexican Real Estate Investment Trust (“FIBRA” after its acronym in Spanish) was on March 18, 2011. Registered as FUNO in the Mexican Stock Exchange (MSE), it has offered exciting new sources of returns while providing developers with a rich source of financing.

After eleven months, the value of FUNO had increased 33%; paying a dividend equivalent to 7.51% on an annualized basis at the IPO price of MX\$19.50 per security. This compares with the index’s increase of the MSE at only 2.06%.

REITS LEGAL FRAMEWORK IN MEXICO

REITs are regulated by articles 223 and 224 of the Mexican Income Tax Law.

They are Mexican trusts (fideicomisos) whose sole activities are:

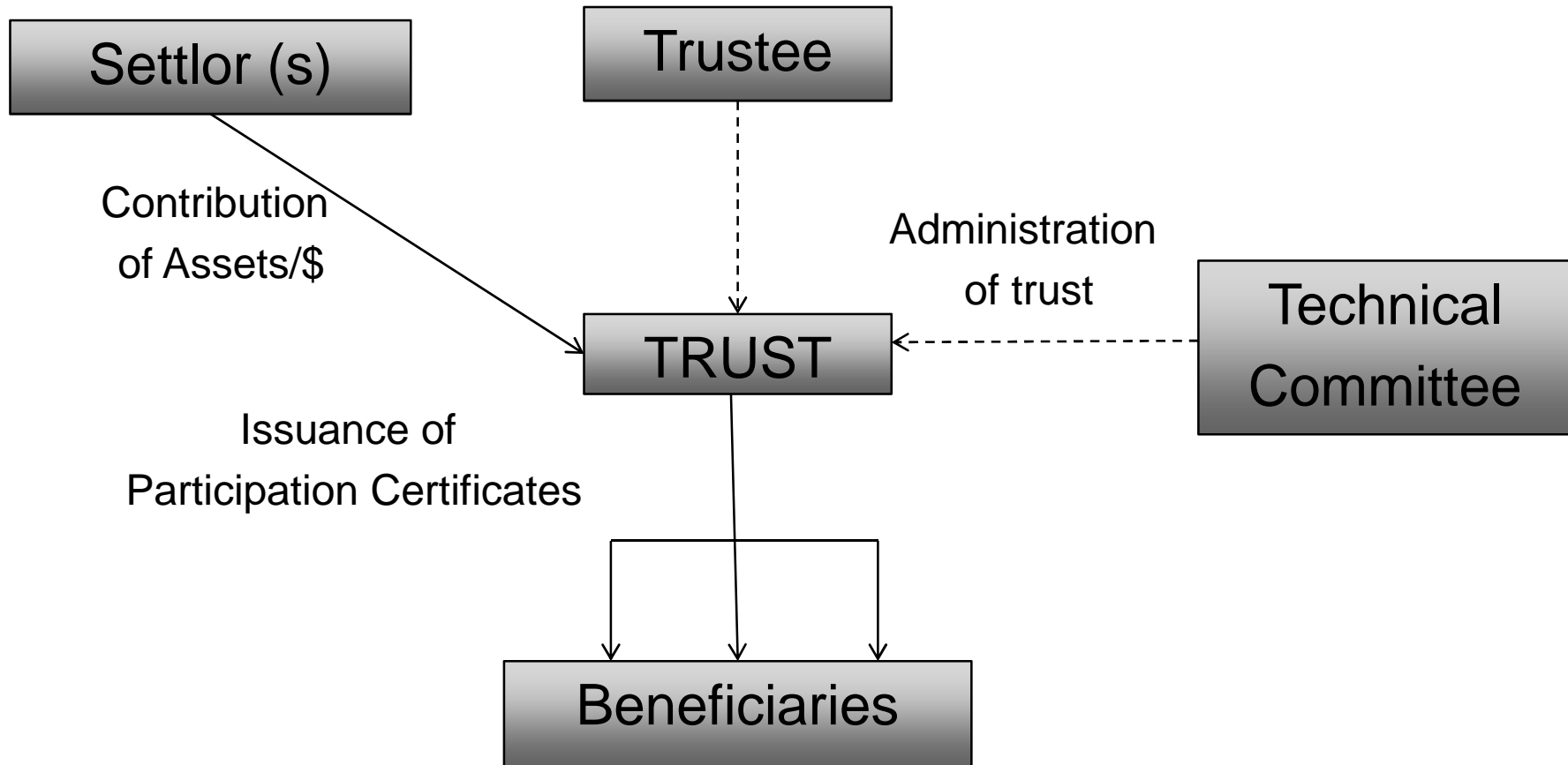
- i. The construction and/or acquisition of real estate assets to be sold or leased
- ii. The acquisition of rights to receive income derived from the leasing of real estate.

To qualify as a Mexican REIT the following conditions, among others, must be met:

- i. The trust needs to be set up in accordance with Mexican law.
- ii. At least 70% of the equity of the trust needs to be invested in:
 - a) the construction or acquisition of real estate assets to be sold or leased
and/or:
 - b) the acquisition of rights to receive the income of the lease

Any remaining equity shall be invested in securities issued by the federal government or in shares issued by special purpose entities.

The trustee will distribute annually at least 95% of the tax results of the previous fiscal year to Ordinary Participation Certificates (OPC) holders.



TAX INCENTIVES SUMMARY

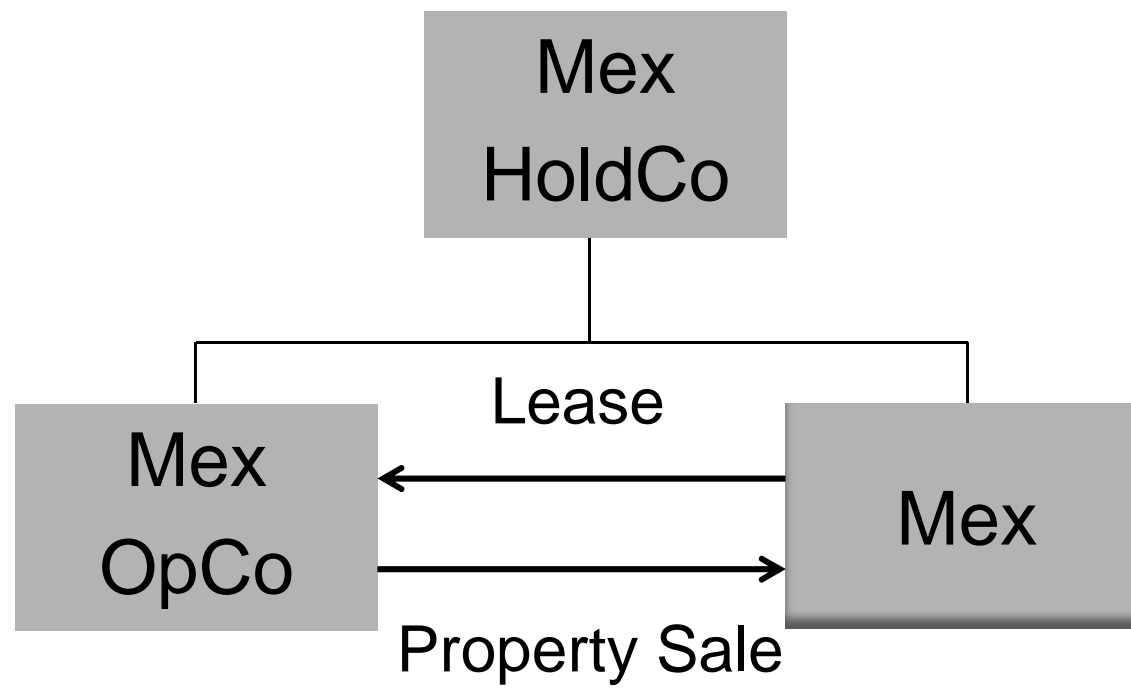
INCOME TAX

Deferment of income tax of profits gained through contributions to the trust.

Beneficiaries that receive Ordinary Participation Certificates (OPCs) will be able to defer income tax until the sale of their OPCs, or once the trust sells its property.

No advance payment of income tax.

“Sale & Lease Back” is permitted.



BUSINESS FLAT TAX (IETU)

No advance payment of IETU.

OPC holders are not subject to IETU on tax result calculations provided that the OPCs are registered and realized through the MSE or other recognized markets, no IETU is paid on income gained through OPC sales.

Foreign pension funds are not subject to IETU.

PENSION FUNDS ADVANTAGES

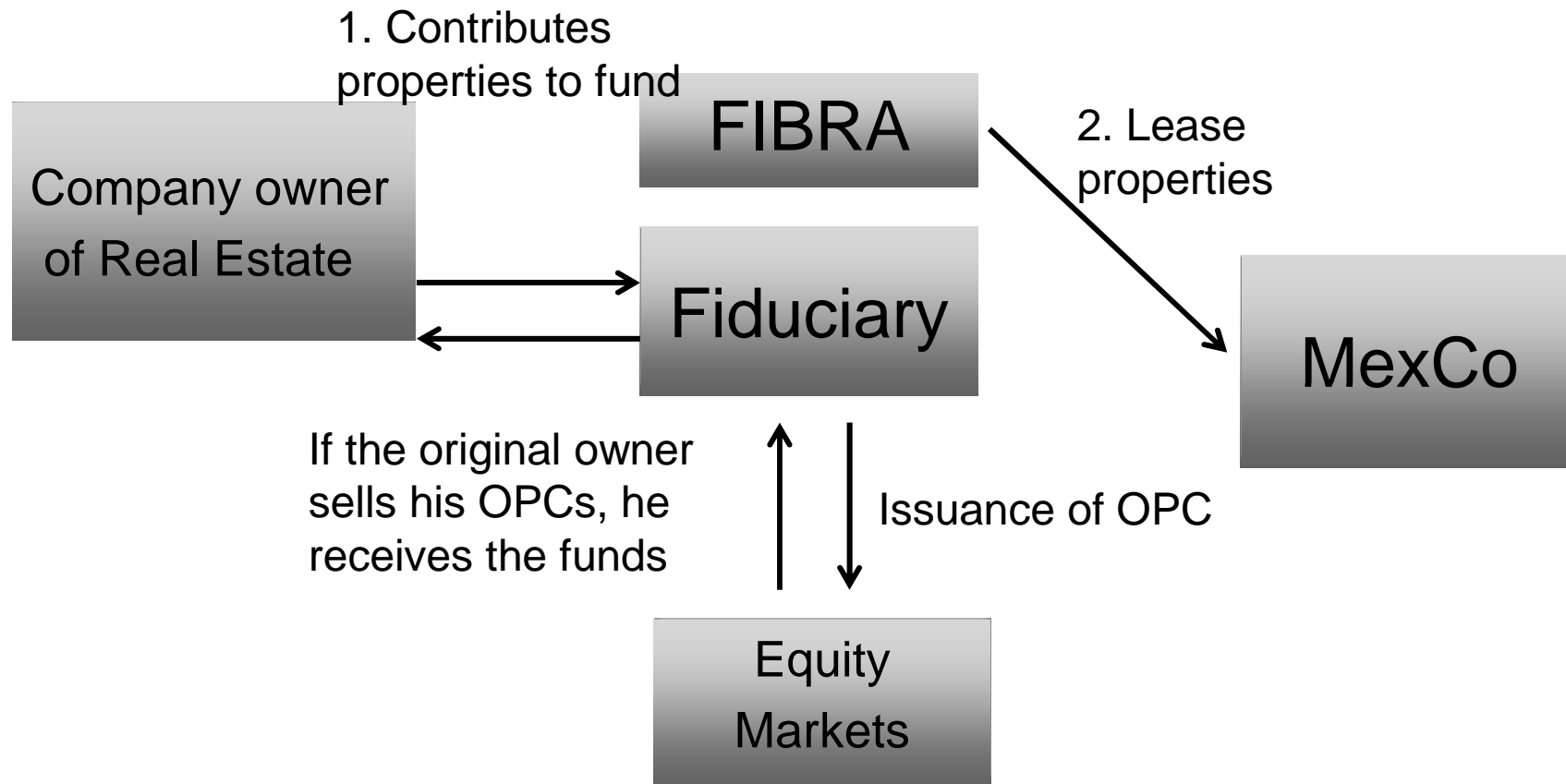
Article 179 of Income Tax Law contains a foreign pension and retirement fund exemption, establishing the following:

There is under the terms of this title NO obligation to pay income tax on income from interest, capital gains, nor for the granting of use or enjoyment of land or buildings within national territory which arise from investment by pension and retirement funds, as constituted in the terms of the legislation of the country in question, provided that such funds are the beneficiaries of such income and meet the following requirements:

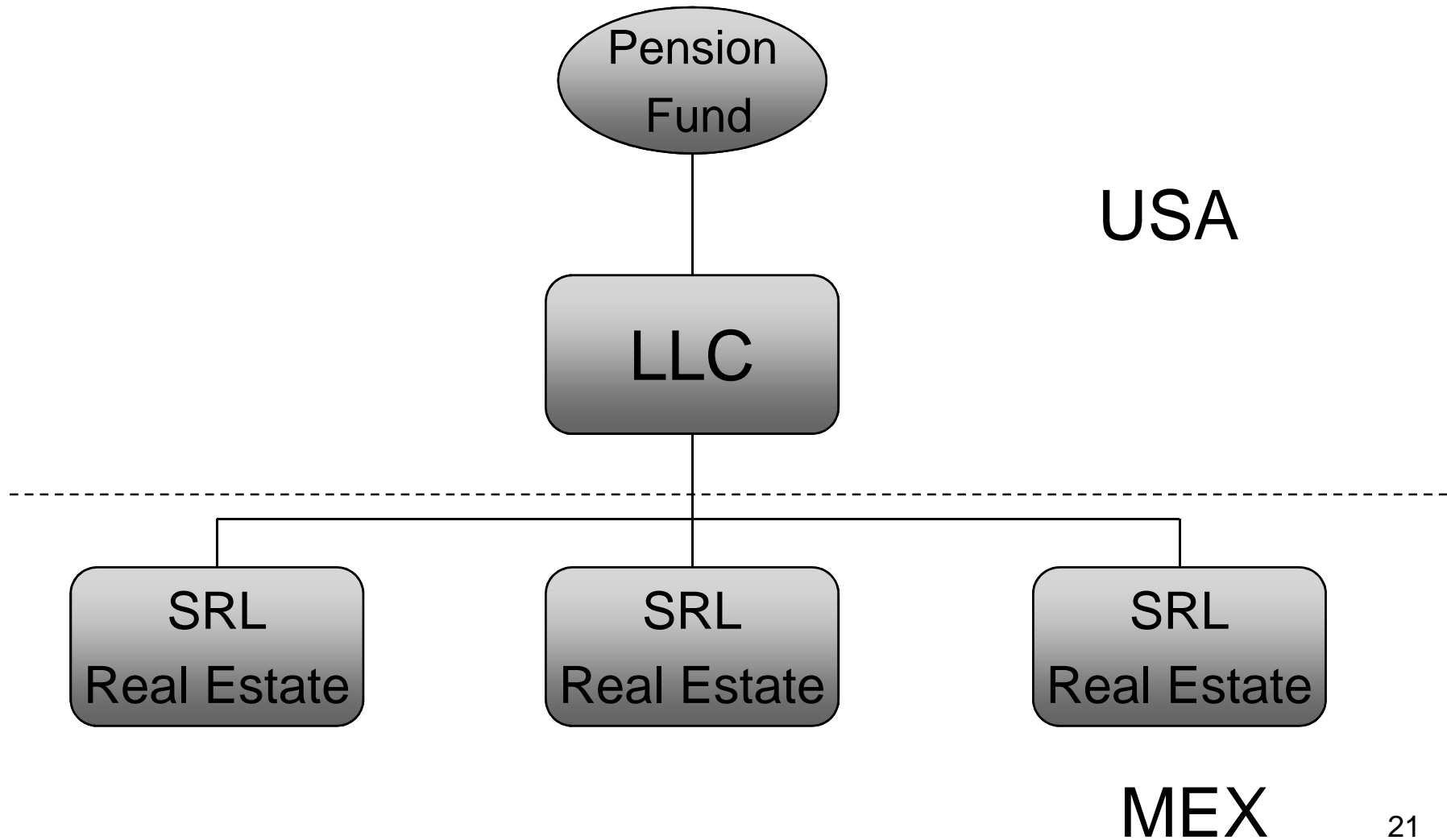
- i. Such income is exempt from income tax in that country.

- ii. Such income must be registered for that purpose in the Register of Banks, finance companies, pension funds or retirement and foreign investment funds in accordance with the regulations that govern those administrative services.

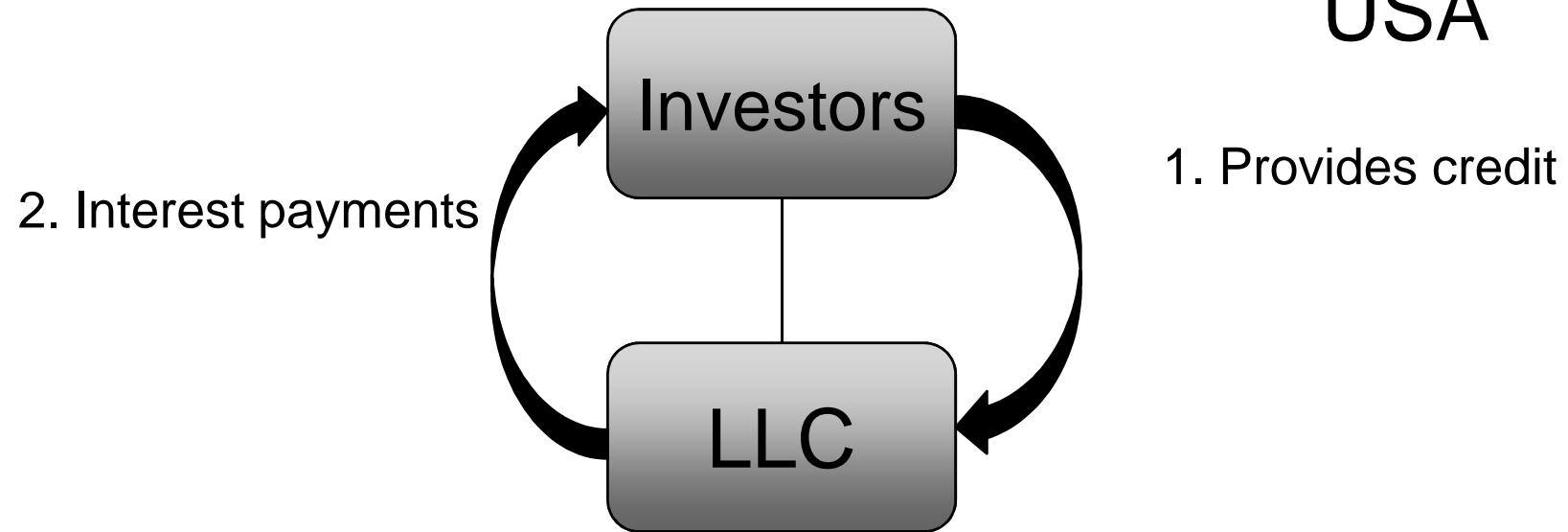
Furthermore, foreign pension funds shall not be considered to have a permanent establishment for tax purposes in Mexico from their investment in Mexican REITs.



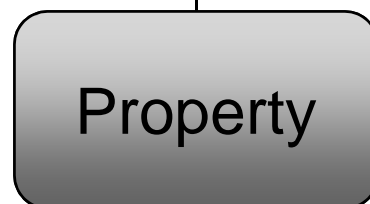
REITS SCHEMES



USA



3. Acquires properties



MEX

TYPICAL REIT STRUCTURE

REITS

INVESTORS

TAX TREATMENT

At the time of contribution of the real estate, the trust does not pay taxes, nor make any withholdings.

Real Property →
← Cash or CPO

REIT

OPCs

- Individuals
- Entities
- Foreign Residents
- Individuals

The beneficiaries of the trust are exempt from making provisional payments. They only file an income tax return at the end of the fiscal year.

Net income will be accumulated

Income will be accumulated

Payment of any withholding is made and compensated according to international treaties

Domestic: do not pay taxes

Foreign: pay taxes according to their local tax regime

Investors receive dividends from leasing and sales of the real estate.

For tax purposes, earnings are determined based on the average acquisition cost of the OPCs.

Income taxes shall be paid by the settlor (owner) upon the sale of the real property or of the OPCs

CONCLUSIONS

Good steps have been taken but these need to be developed.

Alternative mechanisms need to be implemented under current tax laws to allow for the tax-free sale of such OPCs, thus facilitating and making attractive the flow of investor funds to Mexican REITs.

Permanent establishment exemptions need to be properly addressed to cover all types of foreign entities seeking to invest in REITs, and not only the foreign pension funds which are exempt today.

Specific rules regulating the placement of OPCs of Mexican REITs on the Mexican Stock Market need to be established.

THANK YOU