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# The Legal 500 Country Comparative Guides

## Dominican Republic

# PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Dominican Republic.

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## DOMINICAN REPUBLIC PRIVATE CLIENT



### 1. Which factors bring an individual within the scope of tax on income and capital gains?

Taxes in the Dominican Republic are territorial. This means that any activity performed by any individual within the country is subject to taxes, regardless of their residence, habitual residence, domicile, nationality or citizenship.

Foreign individuals are subject to these taxes on their income from Dominican sources. Non-resident individuals who receive income in Dominican territory by means of a permanent establishment, will be taxed for the total income attributable to such establishment. Said permanent establishment is defined by the Tax Code as the fixed business location where an individual undertakes all or part of its activities, such as: headquarters, offices, commercial agencies, branches, factories, workshops, mines, oil or gas wells, or any other natural resource extraction site, assembly projects including their supervision activities, construction activities or supervision resulting from the sales of machinery or equipment when their value exceeds 10% of the sales price of such goods, business consulting services, provided that they exceed six (6) 6 months within a fiscal period.

Forms of income subject to income tax<sup>1</sup> include the following:

1. Salary: retribution received from the employer, as well as any other benefit obtained for performing the job as an employee.
2. Professional fees received by self-employed individuals.
3. Financial investments: local or foreign income received from investment and financial gains.
4. Funds or material assets received by means of donations: considering that the donation increases the wealth, the individual is subject to this tax.
5. In general, any other income, gain, benefit

received by the individual.

On the other hand, the factor that bring an individual within the capital gains tax<sup>2</sup> scope is an event of sale, swap or any other act of disposition or transfer of capital assets such as:

1. Real estate.
2. Financial assets, including bonds and shares.
3. Intangible assets: trademarks, rights, patents, license, intellectual property, among others.

<sup>1</sup> See articles 267 - 288 of the Tax Code.

<sup>2</sup> See article 289 of the Tax Code.

### 2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

Income tax for individuals is payable based on the following income scale:

Annual Scale	Rate
Income up to RD\$416,220.00 (US\$7,300 approximately)	Exempt
Income from RD\$416,220.01 (US\$7,301 approximately) to RD\$624,329.00 (US\$10,953.00 approximately)	15% of the surplus of RD\$416,220.01 (US\$7,301 approximately)
Income from RD\$624,329.01 (US\$10,953.01 approximately) to RD\$867,123.00 (US\$15,212.00 approximately)	20% of the surplus of RD\$624,329.01 (US\$10,953.01 approximately)
Income from RD\$867,123.01 onward (US\$15,212.01 approximately)	RD\$79,776.00 (US\$1,400.00 approximately) plus 25% of the surplus of RD\$867,123.01 (US\$15,212.01 approximately)

An individual's fiscal year income tax ends on December 31<sup>st</sup> each year. By March 31<sup>st</sup> each year, all individuals with an income of more than RD\$416,220.01 (US\$7,300.01 approximately) per year must have submitted the tax return (IR-1) and paid their taxes. After such date, on the first month or fraction of a month, a 10% surcharge shall be paid, and a 4% surcharge shall be paid per subsequent month or

fraction of a month until the due payment is completed. It is important to mention that employees with no other source of income are not required to file tax returns, as their employers would act as withholding agents before the Tax Authority.

The capital gains tax is charged at rate of 27% on the capital gain. Upon capital loss, the Tax Authority acknowledges such loss and in the event of capital gain, the capital loss amount would be deducted from such gain.

There are no municipal taxes on income or gains.

### 3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Withholding taxes are relevant to individuals. Below we list the circumstances they apply and at what rates, payable on gross income:

Withholding	Rate
Salary	Social security: 3.04% Pension fund administration (AFP): 2.87% Salary: 15%, 20% and 25%, subject to the applicable tax brackets
Self-employed professionals	10% on fees, commissions and other remunerations and payments for rendered services
Interest payments abroad <sup>3</sup>	10% on interests of Dominican source to non-resident individuals
Interest payments in Dominican Republic	10% on interests of Dominican source to resident individuals
Dividends paid or credited locally <sup>4</sup>	10% on profits of Dominican source
Prizes or profits obtained from lotteries, electronics prizes originated from gambling and prizes offered through promotional or publicity campaigns or any other unspecified bet or draw <sup>5</sup>	25%
Prizes from Sport's Betting or Lottery Agencies <sup>6</sup>	Prizes from RD\$100,001.00 (US\$1,754.00 approximately) to RD\$500,000.00 (US\$8,772.00 approximately): 10%
	Prizes from RD\$500,001.00 (US\$8,772.01 approximately) to RD\$1,000,000.00 (US\$17,544.00 approximately): 15%
	Prizes of more than RD\$1,000,001.00 (US\$17,545.00 approximately): 25%
Any other income not specified herein which constitutes a payment on account <sup>7</sup>	10%

<sup>3</sup> See articles 305 and 306 of the Tax Code.

<sup>4</sup> See article 308 of the Tax Code.

<sup>5</sup> See paragraph of article 309 of the Tax Code.

<sup>6</sup> Op. Cit.

<sup>7</sup> Op. Cit.

### 4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

The Dominican Republic is signatory of the following conventions: (i) Convention with Spain to Avoid Double Taxation and prevent Tax Evasion related to Income Tax Matters; (ii) Convention with Canada to Avoid Double Taxation and prevent Tax Evasion related to Income Tax and Estate Matters; (iii) Inclusive Framework on Base Erosion and Profit Shifting (BEPS); and (iv) Agreement for Information Exchange with the United States of America.

The first two conventions reflect Dominican Republic's commitment to comply with the highest international standards on tax transparency matters, as well as to prevent evasion and tax avoidance. These conventions delimit the form of taxation of the Income Tax when the generating event occurs within the contracting States. They also specify where and how, the taxes corresponding to the income generated by people or companies who are nationals of any of the contracting States, provided that these revenues originate from business profits, real estate, air or sea transport, dividends, interest, capital gains, services rendered, remuneration, bonuses, and pensions. They also regulate the exchange of information that may possibly be of interest to enforce the provisions of said conventions.

With the execution of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) the Dominican Republic confirms its compromise to continue to implement measures and develop future best practice standards to prevent tax avoidance. To date the country is not yet signatory of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

### 5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is no wealth tax in the Dominican Republic.

### 6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return

### be submitted, and at what rate, by whom and when must the tax be paid?

Yes, there is a tax charged on death and gifts by individuals.

The inheritance tax is charged at a rate of 3% levied on all the inherited assets in the Dominican Republic (moveable and real estate), regardless of the existence of a testament or not, payable by the heirs or beneficiaries within 90 days as of the individual's death. Regarding moveable assets, it would apply also if located abroad, to the extent that the deceased was Dominican or had his or her last domicile in the Dominican Republic.

Before the tax is charged, certain deductions from the total inherited asset value may be applied: **(i)** debts of the deceased contained in public or private deeds, **(ii)** expenses of the last disease pending payment upon the individual's death, **(iii)** taxes or rights pending payment upon the individual's death, **(iv)** mortuary charges and funeral expenses, **(v)** pending employment benefits, **(vi)** mortgage loans, when property in the Dominican Republic is the loan collateral. However, the deduction in this case cannot be greater than the property value.

Regarding the gift tax, it is payable by the recipient of the donation at a rate of 27% on the total value of the donated asset. This tax applies to the free transfer of moveable and immovable property.

The deed of gift must be presented before the Tax Authority within 30 days from the reception of the donation. Once the tax is assessed and notified, the due payment must be made within 30 days.

### 7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

Regarding the inheritance tax upon an individual's death, under Dominican law a spouse is not considered an heir. A spouse is co-owner of all property as explained in question 13.

There is no tax relief available on gifts for a spouse. There is a presumption of donation among spouses.

The sole tax reliefs available for the gift tax are the following:

1. Donations made to charitable or welfare institutions or establishments, or public institutions recognized by the State.
2. Donations made to create or promote family property.
3. Donations for RD\$500.00 (US\$9.00 approximately) or less.

### 8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Yes. Gifts made to charities, welfare institutions or of public utility recognized by the State are exempt from paying the gift tax.

Despite the high rate of gift taxes, which is a disincentive, individuals or institutions that make gifts to institutions dedicated to social welfare, charities, of religious, literary, artistic, education or scientific nature, may deduct up to 5% of the annual net taxable income, after compensating the loss deriving from previous years. Gifts are deductible to the donor provided they are underpinned by solid evidence, at the discretion of the Tax Administration.

### 9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

The property tax is payable semi-annually, charged at a rate of 1% levied on the surplus of the total property value owned by an individual in the Dominican Republic, provided that such property is not benefited with an exemption pursuant to special provisions of a specific legal regime. Residence, domicile, and citizenship is irrelevant for purposes of this tax.

An individual is brought within the scope of the property tax when their total real estate value exceeds the amount of RD\$8,138,353.26, that is US\$142,750 approximately. Such real estate shall be conformed of immovable property used for housing or commercial, professional, and industrial activities and/or constructed of non-constructed urban land.

Any individual owning real estate for a total value less than RD\$8,138,353.26 (US\$142,750 approximately) shall not be subject to property tax. Other exemptions for 2021 include: (i) property owned by an individual of 65

years old or more, provided that such property is the owner's sole real estate, (ii) property located in rural areas, used for farming works, and (iii) property under Law 158-01 on the Promotion of Tourism, belonging to first purchasers.

### 10. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Yes, several.

- A. The VAT (ITBIS) is levied on the transfer of industrialized goods, new or used, the import of industrialized goods and the provision of services, at an 18% rate. The tax return must be submitted and paid by the 20<sup>th</sup> day of each month. For example, January must be submitted and paid within the first 20 days of February. For imports, it is paid together with the tariffs or customs duties. This tax is not paid directly by the individual to the Tax Administration. It is withheld to the individual by the company to whom an individual renders services to as a self-employed professional or at the commercial establishment where such individual acquires a good or service.
- B. The excise tax levied on the transfer, use or import of specific goods and services, such as alcohol, gasoline, telecommunication services, insurances, check issuance and electronic transfers, at the following rates:
  - Alcohol and beers: 10%, plus RD\$633.85 (US\$11.12 approximately) regardless of the alcohol content.
  - i. Tobacco: 20% plus RD\$53.62 (US\$0.95 approximately) for the 20-cigarette pack and RD\$26.81 (US\$0.47 approximately) for the 10-cigarette pack.
  - ii. Telecommunication services: 10%
  - iii. Insurance services: 16%
  - iv. Check issuance and electronic transfers: 0.0015% on the value of every paid check, as well as on the payments made through electronic transfers.
- C. Property transfer tax levied on the total acquisition price at a 3% rate.
- D. Vehicle circulation tax levied annually at a fixed rate, depending on the vehicle's year:
  - (i) vehicles fabricated until 2014, pay RD\$1,500.00 (US\$26.32 approximately) and
  - (ii) vehicles fabricated from 2015 onwards,

pay RD\$3,000.00 (US\$52.63).

### 11. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

Any individual that is partially connected with the Dominican Republic and comes within the scope of either of the taxes abovementioned, necessarily needs to comply with the applicable tax regulation.

On the other hand, Law No. 171-07 on special incentives to pensioners and foreign source rentiers, provides benefits and exemptions to certain individuals:<sup>9</sup>

- a. Pensioners or Retirees: Foreign individuals, beneficiaries of a monthly income of at least US\$1,500.00, from a pension or retirement of a government, official body or private company of foreign origin, who have expressed their intention to transfer their final residence to the country and receive the benefits of their pension in the Dominican Republic.
- b. Rentiers: individuals who enjoy stable, permanent rents, whose principal is generated or originated abroad for any of the following reasons, and for the monthly sum of at least US\$2,000.00:
  - i. Deposits and/or investments in banks established abroad;
  - ii. Remittances from banking or financial institutions abroad;
  - iii. Investments in companies established abroad;
  - iv. Remittances originating from real estate;
  - v. Interest received from foreign currency-issued securities generated abroad, which are in financial institutions legally authorized to operate in the Dominican Republic;
  - vi. Profits obtained from investments in securities issued in foreign and/or domestic currency, with the State or its institutions, provided that the capital has been generated abroad and the currency exchange is made in any of the country's financial institutions.
  - vii. Interest, income or dividends of investments in real estate or investments made in the

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Individuals that come within the scope of Law 171-07 will also benefit from:<sup>9</sup>

- a. Exemption of real estate transfer taxes, for the first property acquired;
- b. Exemption of 50% of mortgage taxes, where creditors are financial institutions duly regulated by the Monetary and Financial Act;
- c. Exemption of 50% of Property Tax;
- d. Exemption of taxes levied on the payment of dividends and interest, generated at the country or abroad;
- e. Exemption of 50% of the Capital Gain Tax, provided that the rentier is the majority shareholder of the company that is subject to the payment of this tax and that the company is not engaged in commercial or industrial activities.

<sup>8</sup> See article 1 of Law No. 171-07.

<sup>9</sup> See article 2 of Law 171-01.

## 12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

- a. An individual interested in establishing residence in the Dominican Republic must be aware that as an employee, self-employed professional or retiree, he or she may be subject to taxes, either directly (income tax) or indirectly (VAT, Excise tax).
- b. It is possible that such individual may qualify for one or more of the several tax incentives available to attract foreign investors, as have been analyzed above.
- c. The individual may establish residence in the

country as an employee, investor, homeowner, pensioner, retiree, or rentier. Each process would require different set of documents and may be subject to special processes.

## 13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

The main rules of succession in the Dominican Republic are the following:

1. There are three orders to inherit:<sup>10</sup>
  - a. Sons and daughters, and their descendants;
  - b. Ascendants; and
  - c. Privileged and ordinary collateral relatives.
2. The estate of the deceased is divided in 2: **(i)** a part that can be freely disposed of; and **(ii)** another part that cannot be gifted or bequeathed, which is referred to as reserved portion.
3. Only descendants and ascendants have a right to the reserved portion of the deceased estate. The descendants, however, exclude the ascendants.
4. The absence of ascendants and descendants is an exception to the reserved portion rule. This means that the total estate can be gifted.<sup>11</sup>
5. No one is obliged to inherit. Heirs can either accept or decline the inheritance.<sup>12</sup>

Regarding the forced heirship, an individual cannot dispose of his or her estate to the detriment of the reserved portion provided by law, which favors the descendants and ascendants. Any donation made by means of a contract or testament, complying with the reserved portion rule, cannot exceed: **(i)** half of the deceased's estate, if, upon death, the individual has one (1) child; **(ii)** a third of the deceased's estate if, upon death, there are two (2) children; **(iii)** a quarter of the deceased's estate if, upon death, there were three (3) or more children.<sup>13</sup>

On the other hand, regarding ascendants, any donation made by means of a contract or testament, complying with the reserved portion rule, cannot exceed: **(i)** half of the deceased's estate, if, upon death, the individual has one (1) or more ascendants in each of his or her parents lines of succession; **(ii)** a quarter of the deceased's estate if, upon death, the individual has one (1) or more ascendants in just one of his or her parents lines of

succession.<sup>14</sup>

<sup>10</sup> See article 731 of the Civil Code.

<sup>11</sup> See article 916 of the Civil Code.

<sup>12</sup> See articles 744 and 775 of the Civil Code.

<sup>13</sup> See article 913 of the Civil Code.

<sup>14</sup> See article 915 of the Civil Code.

#### **14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?**

Pursuant to Dominican law, spouses are allowed to enter into prenuptial agreements in order to allocate any future assets and debts belonging to each of them. However, to the extent that no prenuptial agreement is formalized among the spouses, the matrimonial property would be subject to the marital community property regime.

Under the marital community property regime, all the moveable or real estate property, as well as income and debts acquired by the spouses during the marriage is considered marital property and is owned equally by both. This includes any debts, moveable property, acquired prior to the marriage, except real estate property. Any real estate acquired by one of the spouses prior to the marriage is considered of such spouse solely.

Regarding the effects of the community property on the succession, and except any prenuptial agreement, in the Dominican Republic a spouse is considered as co-owner of 50% of all the moveable and real estate property, as well as any debt contracted by either spouse. This means that the estate is divided 50% in favor of the spouse as co-owner and the remaining 50% in favor of the deceased's heirs.

#### **15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?**

Any individual's estate within the Dominican Republic is subject to the succession law, regardless of the residence, domicile, and citizenship. The location of assets is the relevant factor that brings an individual within the scope of succession legislation in the Dominican Republic.<sup>15</sup> Further, nationality and residence are relevant factors, as moveable, whether located in the Dominican Republic or abroad, shall be subject to

Dominican law when the deceased was a Dominican citizen or last place of residence was the Dominican Republic.<sup>16</sup>

<sup>15</sup> See articles 3, 726 and 1000 of the Civil Code.

<sup>16</sup> See article 1 of Law No. 2569.

#### **16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?**

In accordance with Law No. 544-14 of Private International Law, succession is governed by the law of the domicile of the deceased at the time of death<sup>17</sup>. Likewise, said regulation establishes that the testator may submit, by express declaration, in testamentary form, his succession to the law of the State of his habitual residence<sup>18</sup>.

In addition, this law provides that the inheritance partition is governed by the law applicable to the succession, unless those called to inherit have designated, by common agreement, the law of the place of opening of the succession or of the place in which one or more hereditary assets are found<sup>19</sup>.

Finally, please note that this regulation grants jurisdiction to the Dominican courts in matters of inheritance, when the deceased has had his last domicile in Dominican territory or is the owner of real estate in the Dominican Republic<sup>20</sup>.

<sup>17</sup> See article 54 of Law No. 544-14 of Private International Law.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> See article 16.7 of Law No. 544-14 of Private International Law.

#### **17. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

The Will is defined in the Civil Code as the act by which the testator disposes, all or part of his/her assets, but which he/she can revoke. It is a written act, subject to

certain formalities determined by law, by means of which a person disposes of all or part of his/her property or a specific and individual asset, for the time after his/her death.

Our laws recognize three types of Wills:

1. **Authentic or Public Will.** The Will by public act is the one executed before two notaries and in the presence of two witnesses, or by a notary in the presence of two witnesses, or by a notary in the presence of four witnesses<sup>21</sup>
2. **Mystical or Secret Will.** If the testator wants to make a mystical or secret Will, he must sign its provisions, either write or dictate them. The paper containing those or their cover will be closed and sealed. The testator will present it closed and sealed to the notary and at least six witnesses<sup>22</sup>
3. **Holographic Will.** Pursuant article 970 of the Civil Code, the holographic testament must be written in full, dated and signed by the testator. It is not subject to any other formality.

Kindly be advised that if the person dies without making a Will, the general rules of succession will apply, taking into consideration the heirs. All heirs shall the same inheritance rights. It is important to bear in mind, as indicated above, that donations made by contract between the living or by testament, are subject to the forced heirship rules<sup>23</sup>.

<sup>20</sup> See article 971 of the Civil Code.

<sup>22</sup> See article 976 of the Civil Code.

<sup>23</sup> See article 913 of the Civil Code.

### **18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?**

The estate of a deceased person is administered by the heirs who are in the first line of succession. These are the ones that are subrogated in the rights of the deceased, in order to collect assets, pay debts and distribute to the beneficiaries, after carrying out the process of liquidation of the corresponding taxes before the Tax Administration and the process of determining heirs before the courts.

### **19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?**

Yes, in the Dominican Republic a person may create a succession planning trust as established in Law No. 189-11. We do not have a regulation for private foundations.

### **20. How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?**

The succession planning trust is created by contract between the settlor and a professional trustee.<sup>24</sup> This contract must contain, under penalty of invalidity, the following elements<sup>25</sup>:

- i. Express declaration of the will of the settlor to establish a trust.
- ii. A sworn statement from the trustor or settlors that the transferred assets have legitimate origin and an indication of the legal status of said assets, with express mention of the charges and encumbrances that may be affecting them; also, that the act that creates the trust does not have an illicit cause or purpose and that it is not constituted with the intention of defrauding the rights of creditors of the settlor or settlors or third parties.
- iii. The names, profession, occupation, nationality, marital status, name of the spouse or common-law partner and their generals as they appear in the identity card or passport of the latter, and the matrimonial regime, if applicable; address and residence and other data related to the identity card or passport of the settlor, also the general ones of their representatives or legal guardians, in cases where the settlor is a natural person; and in those cases in which the settlor is a legal person, company name, as registered in the Mercantile Registry, National Taxpayer Registry number (RNC), if applicable, address, names and surnames and other general names of their legal representative and

- reference to the act by virtue of which they exercise said power, as provided by the bylaws.
- iv. The designation of the trustee or trustees, including their company name, as registered in the Mercantile Registry, number of the National Taxpayer Registry (RNC), address, names and surnames and other general names of their legal representative and reference to the act by virtue of which they exercise said power, as provided by the bylaws.
  - v. The appointment of the beneficiaries of the trust. In the event that said beneficiaries are not appointed at the time of the constitution of the trust, the rules that allow their future identification.
  - vi. Individualization of the assets that are the object of the trust. In the event that such identification is not possible on the date of constitution of the trust, the act must express the form and necessary requirements that said assets must meet, in order to be identified in the future.
  - vii. Term or condition to which the trust is subject.
  - viii. Inclusion of the requirement to notify the creditors who have recorded liens on the assets in question for their transfer to the trust, in the event that the same assets are affected by seizures, charges or encumbrances.
  - ix. Indication of the irrevocability of the trust, when applicable or the possibility of revocation by the settlor, a right that must be expressly stated.

Kindly be advised that the trust agreement and its modifications must be registered in the Civil Registry as well as in the Mercantile Registry Office corresponding to the domiciles of the trustees<sup>26</sup>. After that, the trust must be registered before the Tax Administration in order to obtain the National Taxpayer Registry. The requirements are as follows:

- i. Affidavit Form for the Registration and Update of Separate Estate Data (RC-03), signed and sealed by the trustee on behalf of the trust, with the corresponding annexes duly completed.
- ii. Copy of the trust constitutive act registered with the corresponding Mercantile Registry Office.
- iii. Report of the assets subject to valuation updated on the date of the contribution.
- iv. Copy of the certificates of titles or registrations, in the cases that real estate or

vehicle contributions are made.

- v. Authorization of the trustee, according to the corresponding supervisory entity.

<sup>24</sup> Dominican Law does not allow for personal or unprofessional trustees to manage trusts. All trustees are corporations whose sole purpose is to manage trusts, and they are regulated entities.

<sup>25</sup> See article 13 of Law No. 189-11.

<sup>26</sup> See article 17 of Law 189-11.

## **21. What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?**

The trust agreement and its modifications, even if it is a succession planning trust, must be registered in the Mercantile Registry Office corresponding to the domicile of the trustee. However, the law allows the settlor to instrument an Additional Memorandum of Will (*Memoranda Adicional de Voluntad*), that is not subject to publicity of any kind. This document is meant to provide guidance to the trustee for the administration of the trust, and there is no limitation to the scope of said document as long as it does not enter into conflict with the trust agreement.

Also, depending on the type of asset that is being transferred to the succession planning trust, it may be necessary to register both the trust agreement and the document evidencing the transfer of the asset at other public registries. For example, if the asset being transferred is a real estate property, then a filing before the title registry would be mandatory. On the other hand, the transfer of money or financial assets such as bonds, would not be subject to any formalities or public filings.

In connection with the identification of the ultimate beneficial owners of the trust, there is no requirement for a public filing. However, for compliance reasons, upon registration of the trust it is necessary to disclose said information to the Tax Administration. Any changes in the ultimate beneficial ownership of the trust also need to be notified to the Tax Administration. Also, it is important to bear in mind that the trust needs to file yearly tax returns before said administration, which are only informative because trusts are exempt of income taxes in Dominican Republic.

## 22. What is the jurisdiction's approach to information sharing with other jurisdictions?

That will depend on the jurisdiction with which information will be shared, and if that collaboration is within an agreement between both jurisdictions. However, when it comes to information recorded in public records, the Dominican authorities usually collaborate with other jurisdictions that request it, mainly in the framework of investigations into money laundering and other crimes.

## 23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

### **Incorporation of the Succession Planning Trust:**

The incorporation, modification, revocation or extinction of the trust, or the substitution of the trustee or trustees, as well as the transcription or registration thereof will be exempt from all taxes, duties, rates, charges, municipal fees or any contribution. However, the fees required by the Mercantile Registry must be paid at the time of its registration. These registration fees must be fixed, and not in proportion to the amounts involved in the document in question. Since the succession planning trust needs to be instrumented by notary, payment of the rates that the law provides for the registry of contracts before the corresponding Civil Registry Office<sup>27</sup> also apply, which are also a fixed rate.

### **Transfer of Assets to the Trust:**

Depending on the nature of the assets being transferred, their transfer will be subject to transfer taxes. The trust agreement, or whatever document sustains the transfer of the asset, must contain the value for which said asset is being contributed to the trust, so that the tax to be paid is determined.

Different or no rates will apply depending on the assets. For example, the transfer of a real estate property will be taxed with a 3% tax, while the transfer of a motor vehicle is taxed with a 2% rate. The transfer of industrialized goods is taxed with a 18% tax, but the transfer of shares, money and bonds are not subject to transfer taxes.

### **Transfer of assets to another trustee or back to the settlor:**

Once the trust property has been established and the assets and rights that comprise it have been transferred

to the trust, the subsequent transfer of these as a consequence of a replacement of the trustee or trustees, or by returning the trust assets to the settlors, or the transfer to the trustees as applicable, will be exempt from all types of taxes, including taxes on income, on capital gains, on the transfer of industrialized goods, on value added and any other transfer tax or register<sup>28</sup>

### **Transfer of the assets to the beneficiaries of the trust:**

When under the instructions given by the settlor in a succession planning trust, the trust assets are transferred in favor of the settlor's successors and legatees after his/her death, or provided that, after the termination of the trust, the trust assets must be returned to the beneficiaries of the settlor upon the death of the settlor, the transmission of said assets or income will be subject to the payment of a 3% tax rate, which is the current rate established by law for successions<sup>29</sup>. It should be noted, however, that in every other type of trust, meaning any trust that is not for succession planning purposes, the transfer of the assets to the beneficiaries of the trust is not subject to any transfer taxes.

### **Income taxes on the trust:**

In the Dominican Republic trusts are exempt from income taxes. All income resulting from the administration of the trust assets, including the income and profits derived from the sale of said assets, are exempt from all taxes or direct charges, including any income tax and any tax on assets established in the Dominican Tax Code, with the exception of (i) real estate property taxes, which is currently 1% on the value of the property, and (ii) taxes on capital gains resulting from the sale of capital assets.<sup>30</sup>

### **Income taxes on the beneficiaries of the trust:**

Beneficiaries of the trust are subject to income taxes when they receive profits resulting from the trust, unless the beneficiary is subject to a special tax regime. Profits paid to the beneficiaries, whether in cash or in other type of assets, will be subject to this income tax. Under the current regulations, the applicable rate is 10% of the profits paid to the beneficiaries, which is withheld by the trustee upon payment of said profits and consists in a definitive income tax.

As a general rule, trustees must pay all accumulated earnings to the beneficiaries upon closing of the fiscal year, and make the corresponding withholding of the income tax. However, in the particular cases of succession planning trusts and public offering trusts, there is no obligation to perform any such distribution on

a yearly basis.

#### Tax filings:

While Dominican trusts have no legal personality, they do have a tax ID number and are subject to tax filings in a way very similar to corporations. A few of the most relevant tax filings trustees are obligated to make on behalf of the trusts they manage are the following:

1. Yearly income tax returns. Considering that trusts are exempt of income taxes this filing is merely informative, but mandatory.
2. Monthly, Tax Declaration on Transfers of Industrialized Goods and Services (ITBIS).
3. Yearly payment of the Real Estate Property Tax (IPI).
4. Monthly submission of all data submission formats concerning income and expenses, and employment if applicable.

<sup>27</sup> See article 45 of Law 189-11.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> See article 47 of Law 189-11.

#### 24. Are foreign trusts, private foundations, etc recognised?

Dominican Republic signed The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, but has not yet ratified the treaty, so the rules established there are not binding. Therefore, Dominican authorities have no obligation to recognize the existence of a foreign trust, but there should not be any limitations to allowing the foreign trustee to own property in the country. In this event, some key aspects of the foreign trust will most likely not be recognized, such as:

1. Separation of the trustee's own estate from the assets of the trust. The trust assets may be seen as sole property of the trustee, discarding any distinction made by the foreign law between the trustee's legal ownership and the beneficiaries' equity ownership over the assets.

As a result, creditors of the trustee could eventually have recourse over the trust assets in Dominican Republic, if said assets are registered to the trustee. The same could occur upon any event of insolvency or bankruptcy of the trustee.

2. Trustee's limited managerial rights. Disregarding whether the foreign trust agreement imposes any particular fiduciary duties or provides any limitations on the trustee's ability to dispose of the entrusted assets, the trustee will most likely be seen as the legal and only owner of the assets with no limitations in its capacity to dispose of said assets.
3. Applicable law. Although for purposes of the involved parties a trust will be governed by the laws chosen by the settlor, Dominican authorities will most likely treat the trust, or the trustee, as a legal person in general, making no distinctions in its treatment from corporations or other entities alike.

#### 25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

The tax regime applicable to Dominican trusts, including the tax incentives mentioned above, would not be applicable to foreign trusts, which will most likely be taxed with the same tax rules that may apply to the trustee as a natural or legal person.

#### 26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Dominican incorporated trusts and foreign private foundations can be a very effective way to shelter assets from creditors of the settlor or beneficiaries of the structure.

As the case of trusts, the law specifically provides that its assets are not subject to foreclosure by creditors of the trustee, the settlor or the beneficiaries. There are only three exceptions to this rule:

1. Assets that are transferred to the trust with an already recorded lien, such as a mortgage.
2. Trusts constituted in fraud of creditors or of the Tax Administration, which may be challenged in the terms authorized by law<sup>31</sup>.
3. While creditors of the beneficiaries may not reach the assets in trust, they could foreclose the profits of the trust being paid to the beneficiary in question.

In all cases, however, the law forces any creditor to seek approval from a court before any preemptive liens are

placed on the trust assets. In terms of protection, this a *priori* court validation is very useful because it mitigates the risk of baseless actions being launched against the trust assets. It should be noted that this requisite is required exclusively for trusts, which represents an interesting advantage in terms of asset protection versus other entities such as Dominican or foreign legal entities.

In connection with private foundations, although they do not exist in Dominican law, it is perfectly possible for them to own property in the country or serve as a holding company of a corporate structure involving Dominican entities. Therefore, beneficiaries of the foundation can benefit from the same degree of protection from creditors provided by the jurisdiction of incorporation of said entity.

<sup>31</sup> See article 51.D of Law 189-11.

## 27. What provision can be made to hold and manage assets for minor children and grandchildren?

Succession planning trusts are a very useful way to hold and manage assets for minors, including grandchildren, as they can serve as a long term managerial structure even after the passing of the settlor.

Other than this, as a general rule, in accordance with the Minor's Code the minor's father, mother, or guardian will have the responsibility of managing the minor's assets<sup>32</sup>. If the minor is without a father or mother, the family council will appoint a tutor or guardian, who will be able to administer the minor's assets<sup>33</sup>.

<sup>32</sup> See article 68 (f) of Minor's Code.

<sup>33</sup> See article 550 of the Civil Code.

## 28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

In accordance with our regulations, it is possible for a person to plan the management of his/her assets in the event of a possible mental disability. For instance, this person could create a succession planning trust, and in this way, instruct the trustee on the acts of administration and disposition of his/her assets prior to mental incapacity. Also, in the event that the person is a majority shareholder in a particular company, a

corporate succession plan is advisable, which would be implemented as soon as the person becomes incapacitated.

Matters concerning medical treatment, housing or nursing homes can also be addressed within the succession planning trust or at a corporate level, assuming that the company is family owned.

Additionally, in the Dominican Republic there is a process of declaration of interdiction when a person of legal age is in an habitual state of imbecility or mental derangement<sup>34</sup>. Any relative can request the interdiction. The interdiction claim will be presented before the corresponding court of first instance. The facts of imbecility or mental derangement must be established in writing, also witnesses and evidence documents must be presented.

After the evidences, the court will order the family council to report on the person's condition. Upon receipt of the report of the family council, the court will question the person on whom the interdiction is requested; If he/she cannot appear, he/she will receive a statement in his/her own home, in which one of the judges commissioned for that purpose, will appear with the secretary.

After the first questioning, the court, if appropriate, will appoint a temporary administrator to care for the person and property of the defendant. The sentence given on the occasion of a demand for interdiction will be pronounced in a public hearing. According to the law<sup>34</sup>, the income of the person who is the object of the interdiction, must mainly be used to mitigate and accelerate his/her healing.

<sup>34</sup> See articles 489-512 of the Civil Code.

<sup>35</sup> See article 510 of the Civil Code.

## 29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

In the Dominican Republic there is the possibility of creating cultural, philanthropic and educational trusts<sup>36</sup>. It refers to those non-profit trusts whose purpose is the maintenance and preservation of cultural heritage, such as museums, or the promotion of education, or the execution of philanthropic work of any kind, among others. These trusts will have the same tax treatment as non-profit associations. The trust corresponding to this modality may be exercised by the legal persons referred to in Article 25 of Law 189-11<sup>37</sup>, and will be regulated

and supervised by the instances determined for each case.

Also, In the Dominican Republic you can create a non-profit association pursuant to Law 122-05. This association is carried out with the agreement between five or more natural or legal persons, in order to develop or carry out activities of social good or public interest for lawful purposes and that do not have the purpose or object of obtaining pecuniary or appreciable benefits in money to distribute among its associates<sup>38</sup>. To obtain the registration of the incorporation of a non-profit association, you must submit to the Attorney General's Office of Santo Domingo, or to the Attorney General's Office of the Court of Appeal of the corresponding department, through a request made by the president of said association, the following documentation<sup>39</sup>:

- i. Minutes of the Constitutive Assembly;
- ii. Statutes;
- iii. Membership and their general data (names, nationality, profession, marital status, number of the identity and electoral card or passport, and domicile);
- iv. Mission and objectives of the association;
- v. Geographic area where they will carry out their work;
- vi. Main address of the institution;
- vii. A certification from the Ministry for Industry and Commerce, Department of Trade Names and Trademarks, authorizing the use of the name.

<sup>36</sup> See article 56 of Law 189-11.

<sup>37</sup> Only legal persons constituted in accordance with the laws of the Dominican Republic may act as trustees and carry out the trust business.

<sup>38</sup> See article 2 of Law 122-05 for the Regulation and Promotion of Non-Profit Associations.

<sup>39</sup> See article 3 of Law 122-05 for the Regulation and Promotion of Non-Profit Associations.

### **30. Have any specific tax policies or approaches been implemented, on a temporary or permanent basis, to take account of the Covid 19 pandemic?**

Yes. The Tax Administration issued several temporary measures to cope with the Covid-19 pandemic. Among these measures, the following stand out:

1. Splitting the 2020 annual income tax liquidation into four payments.

2. Extension of filing and liquidation of income tax for legal entities and individuals, with closing on December 31, 2020, until May 29, 2021.
3. Payment agreements of up to four instalments for value added tax corresponding to February 2020, without any interest rate.
4. Extension of payment of the first instalment of the tax on assets of individuals and of legal entities with closing on December 31, 2020, until May 29, 2020.
5. Exemption of Advances of Income Tax, corresponding to the periods August to December 2020, for legal persons or single-owner businesses that are micro and small companies.
6. Exemption of Advances of Income Tax, corresponding to the periods January to April 2021, for legal persons or single-owner businesses that are micro and small companies.
7. Exemption of Advances of Income Tax, corresponding to the periods August to December 2020, for some specific taxpayers of the hotel sector.
8. Exemption of Advances of Income Tax, corresponding to the periods January to April 2021, for some specific taxpayers of the hotel sector.

### **31. What important legislative changes do you anticipate so far as they affect your advice to private clients?**

We expected a tax reform during 2021. However, during the fourth quarter of 2021, the President of the Dominican Republic announced that he would not submit a tax reform to the National Congress in the short term, in order to support the economic recovery. Nonetheless, this decision could change at any time given the financial circumstances of the country caused by the Covid-19 pandemic. There is currently no clear indication as to what may change, although it is believed that any such reform would reduce many tax exemptions currently in place. This reform has been considered necessary for a while, both by businessmen and politicians alike. In addition, there is major discussion regarding an amendment to Law 189-11. Other than that, we do not anticipate major changes in our current legislation that may affect private clients. Similarly, we do not anticipate changes in the near future to the laws that regulate succession and wills, as these are long-established rules that have not been subject to questionings. No laws in the Dominican Republic can have retroactive effect.

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