

Mexico

Contacts

Mexico City

Mancera, S.C.

Av. Ejército Nacional No. 843-A
Col Granada C.P.
Delegación Miguel Hidalgo
Mexico City
Mexico

German Vega

german.vega@mx.ey.com
+52 55 5283 8636

Fabiola Díaz

fabiola.diaz@mx.ey.com
+52 55 5283 1478

Paulo Espindula

paulo.espindula@ey.com
+52 55 5283 1487

María Guadalupe Ávila

maria.avila@mx.ey.com
+52 55 1101 7326

Monterrey and Querétaro

EY LLP

Av. Lázaro Cárdenas 2321 Pte. Piso 4 Edificio
Alestra,
Col. Residencial San Agustín
San Pedro Garza García, Nuevo León
Mexico

Alejandro Banderas

alejandro.banderas@mx.ey.com
+52 81 8152 1806

EY LLP

Av. Prolongación Tecnológico No. 950-B
Interior 70 PH2, 76130,
Querétaro, Querétaro
Mexico



1. Taxation

1.1 Inheritance

Mexico's legislation does not recognize inheritance tax. Under Mexican law, succession is the legal means through which a person substitutes another on his or her rights and obligations due to the latter's absence. For Mexican tax purposes, a process must also be observed that goes in hand with the civil process, i.e., at the beginning of the testamentary succession to distribute the assets or wealth for which a notice must be filed with the Mexican tax authority (SAT).

According to the Civil Code of the Federal District (CCDF), a succession starts at the time of the decedent's death, or when the death is presumed in the case of absences or disappearances. A testamentary succession or intestate is formed when an executor is named.

Succession is integrated in the four stages shown in the table below.

| Stages | Activities |
|----------------|---|
| Succession | <ul style="list-style-type: none">▶ The preparation of the testament (will) must be made by a notary public▶ Only the heirs who are listed in the will have the right to an inheritance▶ Appointment and/or removal of executor and inspector, and recognition of hereditary rights, must be made▶ The validity of the will, capacity to inherit and preference of rights must be resolved |
| Inventory | <ul style="list-style-type: none">▶ Inventory of the estate's assets and debts must be prepared by the executor▶ If there is a trial regarding an individual's claim that he or she should be included in the will, the inventory must be updated to reflect the rulings and inclusion of new heirs (if necessary) |
| Administration | <ul style="list-style-type: none">▶ While the succession process is being carried out and the heirs agree on the manner in which the assets will be distributed, an administrator must be named▶ The administrator must ensure that all income produced by investments, rents and shares is properly accounted for and that the taxes are paid |



| Stages | Activities |
|--------------|---|
| Distribution | <ul style="list-style-type: none"> ▶ A provisional distribution plan is prepared ▶ If there are new heirs appointed as a result of a trial, a new inventory must be prepared and the new heirs included in the distribution plan ▶ The assets are distributed ▶ Resolutions must be made regarding the application of the goods that form the inheritance |

The executor is the representative of the succession against third parties, and he or she will have the following obligations:

The executor or the legal representative of an estate will pay income tax each year for the accounts of the heirs or legatees. In doing so, the representative will consider the joint income, until the settlement of the estate is deemed to have concluded. Such payments will be considered definitive, unless the heirs or legatees elect to include, in their gross income, the income corresponding to them, in which case they may credit their pro-rata share of tax paid.

Under the Mexican Income Tax Law (MITL), donations are tax-exempt in the following cases:

The MITL states that Mexican resident individuals are to report in their annual tax return loans, donations and prizes that, when valued separately or jointly, exceed MXN600,000. Loans and donations not declared or reported to the tax authorities will be taxable income. Therefore, tax residents in Mexico must include the amount of donation as tax-exempt income. If this is not declared and the authorities detect the omission, the taxpayer loses the exemption.



1.3 Real estate transfer tax – ISAI (tax on acquisition of real estate property)

Individuals and companies must pay a real estate transfer tax (ISAI) on the acquisition of real estate property (this includes any type of real estate, either land or buildings) in Mexico City, as well as in other states. Acquisition means all acts by which the property is transmitted, including the donation or the contribution to any sort of associations or corporation occurring because of death.

In cases of acquisitions due to death, a rate of 0% of ISAI will be applied if the value from the real estate property at the date of the award does not exceed the sum equivalent to 12,073 times the minimum general wage in force in the Federal District (MXN911,380 for 2017). This is the amount of the exemption.

The payment of the tax must be made via an official form within 15 days following the adjudication of the decedent's estate or, in cases when the estate is disposed of or sold to a third party, at the time of succession. In the latter case, tax is collected immediately after the estate is formally bequeathed to the third party. In cases when the legatee or heir passes away before formalizing a contract to sell off his or her inheritance, the tax burden due from the legatee/heir, as well as the tax due because of the sale of the estate, rests on the third party who is purchasing or acquiring the estate.

For acquisitions that are made in public writing, the notaries that by legal disposition have notarial functions will calculate the tax under their responsibility and will declare in the offices authorized within the 15 working days following the date the acquisition becomes formalized in public deed.

If the acquisitions are listed in the documents, it is the purchaser's responsibility to calculate the tax and pay for it. The tax is calculated by applying the total value of the building based on tariffs, as shown in the table below.

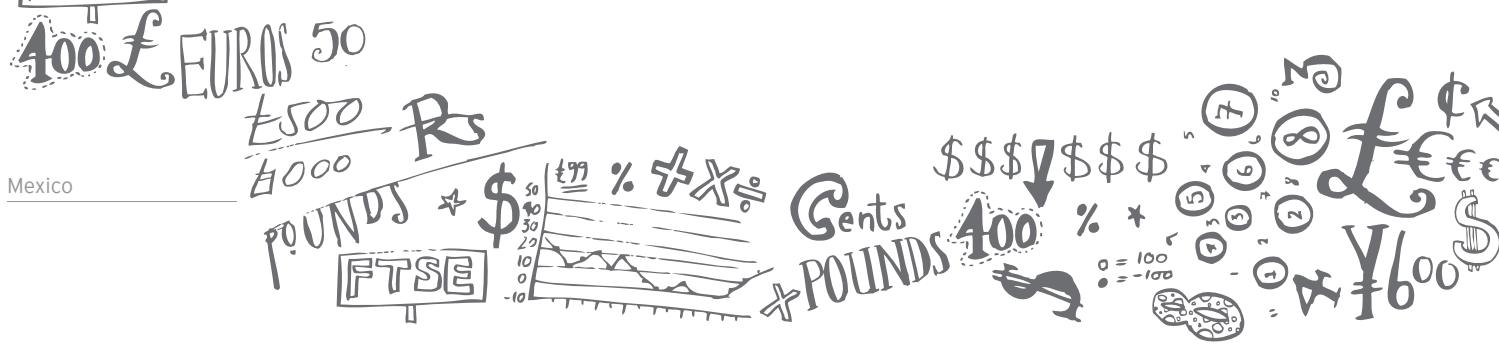
| Rank | Lower limit (MXN) | Upper limit (MXN) | Fixed amount (MXN) | Percentage to be applied on the excess above the lower limit |
|------|-------------------|-------------------|--------------------|--|
| A | 0.12 | 94,072.57 | 216.22 | 0.01149 |
| B | 94,072.58 | 150,516.06 | 1,297.19 | 0.02447 |
| C | 150,516.07 | 225,773.88 | 2,678.63 | 0.03197 |
| D | 225,773.89 | 451,547.89 | 5,085.23 | 0.03730 |
| E | 451,547.90 | 1,128,869.71 | 13,507.06 | 0.04143 |
| F | 1,128,869.72 | 2,257,739.43 | 41,569.50 | 0.04526 |
| G | 2,257,739.44 | 4,349,334.30 | 92,670.93 | 0.04910 |
| H | 4,349,334.31 | 11,326,391.96 | 195,376.77 | 0.05106 |
| I | 11,326,391.97 | 20,887,467.14 | 551,662.03 | 0.05151 |
| J | 20,887,467.15 | 41,774,934.31 | 1,044,196.34 | 0.05196 |
| K | 41,774,934.32 | And above | 2,129,588.57 | 0.05646 |

1.4 Endowment tax

There is no endowment tax in Mexico.

1.5 Transfer duty

There is no specific transfer duty in Mexico.



1.6 Net wealth tax

2. Who is liable?

The executor is responsible for filing the estate's tax returns until the assets are transferred to the beneficiaries.

2.1 Residency

- ▶ More than 50% of the individual's income in a calendar year is derived from Mexican sources.
- Or
- ▶ The center of the individual's professional activities is located in Mexico.

In the succession, the legal representative in Mexico must fulfill the fiscal obligations of the deceased according to his tax residence status.

A trust is in charge of fulfilling the fiscal obligations of its own organization.

3. Rates

These transfers are considered tax-exempt income if the taxpayer declares them in the annual tax return.

Transfers on death

Heirs and legatees may elect to include income corresponding to them from the estate in their gross income for the year. Likewise, they may credit the tax paid by the estate's legal representative in the same ratio of the estate's income that corresponds to them.



Once the estate is liquidated, the legal representative, the heirs or legatees that did not make the election referred to in the preceding paragraph may file an amended return for the five years preceding the year in which the liquidation took place, when applicable, in order to include in gross income the portion of the estate's income that corresponded to them on those years, and credit the portion of the tax paid each year by the estate's legal representative. Payment carried out in this form will be definitive, unless the heirs or legatees choose to accumulate the respective income that corresponds to them, in which case they will be able to credit the proportional part of the paid tax.

The income tax for fiscal year 2017 shall be calculated in accordance with the following schedule:

| Tax rate schedule | | | |
|-------------------|-------------------|--------------------|--|
| Lower limit (MXN) | Upper limit (MXN) | Fixed amount (MXN) | Amount to be applied on the excess above the lower limit (%) |
| 0.01 | 5,952.84 | 0.00 | 1.92 |
| 5,952.85 | 50,524.92 | 114.24 | 6.40 |
| 50,524.93 | 88,793.04 | 2,966.76 | 10.88 |
| 88,793.05 | 103,218.00 | 7,130.88 | 16.00 |
| 103,218.01 | 123,580.20 | 9,438.60 | 17.92 |
| 123,580.21 | 249,243.48 | 13,087.44 | 21.36 |
| 249,243.49 | 392,841.96 | 39,929.04 | 23.52 |
| 392,841.97 | 750,000.00 | 73,703.40 | 30.00 |
| 750,000.01 | 1,000,000.00 | 180,850.82 | 32.00 |
| 1,000,000.01 | 3,000,000.00 | 260,850.81 | 34.00 |
| 3,000,000.01 | And above | 940,850.81 | 35.00 |

Date for payment of tax

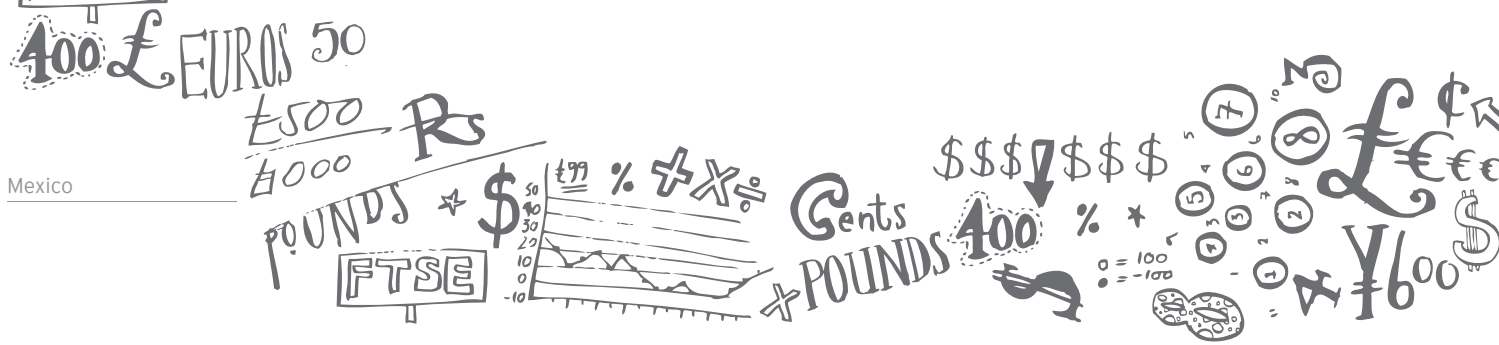
Lifetime transfers

Taxpayers should include transfers in their annual tax returns, which must be filed on 30 April.

Transfers on death

The representative should file a return, including income earned by the deceased from 1 January of the year of death up to the moment of his or her death, within 90 days after the designation.

When income accrued up to the moment of the person's death was not effectively received in life, it should be declared in the following year's annual tax return on 30 April.



4. Exemptions and reliefs

The following exemptions may be applied for each income received after the liquidation of the succession.

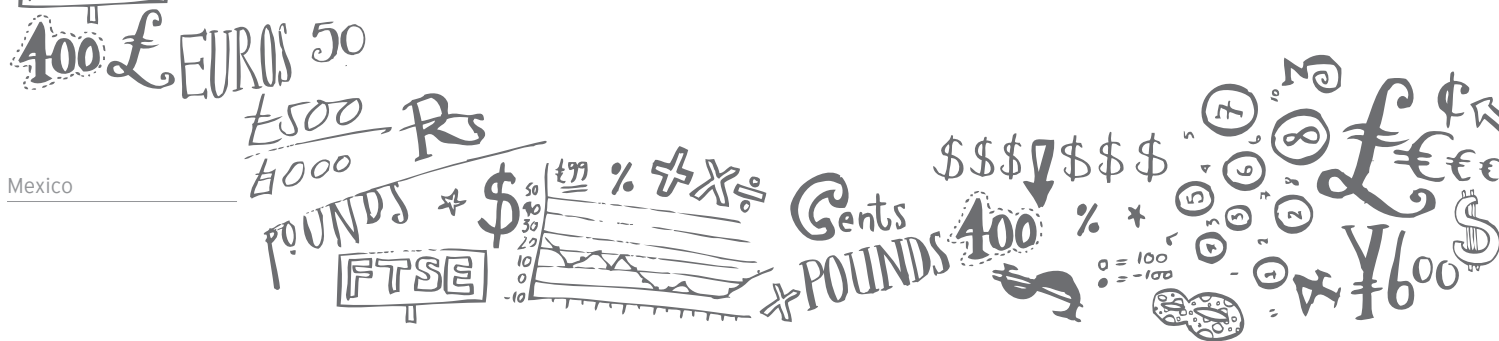
The MITL establishes that there is no tax due for retirement, pensions, retirement benefits (as annuities or other forms of retirement from the retirement insurance subaccount); the retirement, early retirement and old-age subaccount set forth in the Social Security Law; or the individual account of the Retirement Savings System set forth in the Law of the Government Workers' Social Security and Services Institute (*Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*), in cases of disability, early retirement, old age, retirement or death, if the daily amount does not exceed 15 times the annual general minimum wage (MXN413,307.75 in 2017) in effect in the taxpayer's geographic area. Income tax shall be paid on the excess amount. The transfer of these accounts to the heirs should also be considered as exempt income for income tax purposes.

The sale of a home is tax-free when the transferor demonstrates that he or she has not sold another home for which the exemption has been claimed during the three years immediately preceding the date of transfer, provided that the amount of the consideration received does not exceed 700,000 investment units (approximately MXN4,011,000 in 2017) and the transfer is executed before a person with notarial functions. Gains shall be determined on the basis of the excess. The annual tax and estimated payment shall be calculated upon such gain and considering the deductions in proportion to the ratio obtained by dividing the excess proceeds by the excess on the exemption. The person with notarial functions shall calculate and make payment of the estimated tax, in accordance with the regulations.

The tax exemption on gains derived from the sales of shares on Mexico's stock exchange has been repealed. Such exemption was granted to shareholders that held, either directly or through a group of related parties, less than 10% of the shares of the listed company, or even when they held greater amounts of stock or exercised control over the company and did not sell the related shares within a period of 24 months.



- 209



6. Assessments and valuations

For Mexican tax purposes, assets are valued at the price that they would be reasonably expected to fetch if sold in the open market.

For valuations to be considered effective (aside from a determination by the tax authority), they can only be authorized by the following:

1. Experts properly registered before the tax authority
2. Credit institutions
3. Civil or mercantile societies whose specific object is the accomplishment of valuations
4. Main directorate of real estate patrimony
5. Public broker

Experts properly registered before the tax authority will be independent. The main directorate of real estate patrimony and the public broker are the only ones who can conduct the evaluations under the direction of the civil or mercantile societies.

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used when making lifetime gifts so that the donor can place constraints on the donee. The trust can be constituted by means of the testament, i.e., the goods will be contributed until the death of the testator, or can be contributed before his or her death so that he or she can begin to regulate all aspects of protection, guarantee and administration of the affected goods.

Types of Mexico trusts

Revocable trust

A revocable trust is one in which the trustee reserves the right to revoke it, and therefore to reacquire the assets of the fiduciary.

Irrevocable trust

An irrevocable trust is one in which the assets are transferred to the trust without the possibility of reacquiring them.

Creation of trusts and transfers of assets in a trust

The creation of an interest-in-possession trust or a discretionary trust, or the transfer of property into such a trust, is, generally speaking, a chargeable lifetime transfer. Following are key benefits of the testamentary trust:

- ▶ It guarantees that the dispositions of the testator will be met.
- ▶ It protects assets from unjust claims by a third party.



- ▶ It can be formalized while the testator is still living.
- ▶ It can ensure that the assets are safe until the established term ends.
- ▶ It avoids conflicts between the heirs by stipulating to whom the inheritance belongs.
- ▶ It grants legal security to legatees and executors.

The administrator will determine the tax consequences of these activities and fulfill all tax obligations on behalf of the trustees. Cash or assets from the trust delivered by the trustee to the trust beneficiaries will be considered reimbursements of capital contributed until said capital has been recovered. In addition, these deliveries will decrease the balance of each of the individual capital contribution accounts maintained by the trustee for each beneficiary until the balance of each account has been exhausted.

Non-Mexican settlements

Trusts incorporated under Mexican legislation are subject to Mexican law regardless of the residence of the settlor or the time of their creation or the *situs* of the assets held.

When a trust beneficiary is an individual who is a Mexican resident, the portion of the taxable income or tax profit stemming from the entrepreneurial activities conducted through the trust and corresponding to the individual in accordance with the agreement will be considered income from entrepreneurial activities.

Foreign resident trust beneficiaries are considered to have a permanent establishment in Mexico because of the entrepreneurial activities conducted in the country through the trust. These permanent establishments must file annual income tax returns for the portion of the taxable income or tax profit derived from said activities corresponding to them for the fiscal year.

8. Grants

With regard to estate taxes, there are no specific rules in Mexico.

9. Life insurance

Income tax will not be due on amounts paid by insurance companies to the insured or beneficiaries for life insurance contracts when the premium was paid directly by the employer on behalf of its employees, and the benefits of the policy are paid only in the event of death, disablement, organ loss or disability of the employee, preventing him or her from performing a dependent service, in accordance with the social security laws. When a policy covers the death of the policyholder, the beneficiaries must be the spouse, the common-law spouse, or his or her lineal ascendants or descendants in order for the payments to be tax-exempt. No exemption will apply to amounts paid by insurance companies as dividends derived from the insurance policy.



10. Civil law on succession

10.1 Successions

"Succession" is generally restricted to the transfer of goods and property caused by death of the testator and is therefore considered the equivalent of inheritance. From an objective perspective, we can identify inheritance as the aggregate of goods that are transferred to another person due to death and, from a legal perspective, the transfer of rights and obligations from one person to another due to death.

Succession includes all the rights and obligations of the *deujus* (the deceased) that were not extinguished with his or her death, as per the Federal Civil Code of Mexico.

Therefore, there are three types of succession:

1. Testamentary: Determined by the personal will of the person behind the inheritance, the testator.
2. Legitimate: The civil authority's application of the will that is presumed to be that of the person behind the inheritance.
3. Mixed: This includes a combination of both types described above (i.e., part testamentary and part legitimate, or intestate), due to the person not disposing of all the rights and obligations within his legal sphere.

10.2 Testamentary succession

A testament (or will) is defined as a personal, revocable and free legal act, through which a person with full legal capacity transmits his goods and rights and declares the fulfillment of obligations for after his or her death. Three basic elements must exist in a testamentary succession:

1. The right of the testator to dispose of his or her goods while alive
2. The duty of the testator to fulfill the obligations and duties owed to his or her family members
3. The obligation to fulfill any and all obligations that the testator might have with third parties and that are considered legal

Interpretation of the will is a special aspect of legal interpretation in general, which implies that the testament is never to be considered in isolated wording or terms, but as a single act of the author's will.

Any and all persons not precluded by law can become a testator; those precluded by law are persons younger than 16 years old, persons without full legal capacity or those who generally or incidentally are not in his or her full judgment capacity.



Any person of any age, individual or collective, can be designated as an heir, unless their legal capacity is lost by any of the causes mentioned in the law: lack of legal personality, having been sentenced for the commission of a crime, presuming alterations or influence on the free will of the testator, among others.

The testator can dispose of his or her goods in full (universal disposal) or in part (particular disposal). People who inherit the total rights and obligations of the testator are designated inheritor. Inheritors or heirs are expected to respond to any credits that the inheritance has due. For example, if the inheritor succeeds the testator by becoming the legal owner of all the properties of the latter but one of them is under a mortgage, the inheritor must pay for such obligation using the rest of the properties until the debt is covered, or until the value of the received properties can cover.

Legatees may inherit parts of the testator's rights and obligations. For example, the legatee can inherit a set of paintings or works of art and nothing else.

Testaments can be classified as ordinary and special. Ordinary testaments are granted under normal circumstances and are divided into open or public testament, simplified testament or handwritten.

Special testaments are granted in times and places where it is unusual or extraordinary to do so. They include private testament, military testament and maritime testament that can be granted in another country.

Each case's applicable conditions are subject to the local valid legislation of the state where the testament is executed.

10.3 Legitimate or intestate succession

In the event an individual dies without leaving will, or if there are assets that were not referred to in the will, the Civil Codes of each state contain the rules under which such assets shall be distributed. However, there are some general rules to follow:

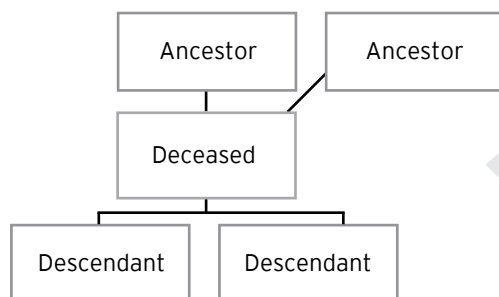
The following persons possess the right to inherit:

- ▶ Descendants, spouses or domestic partners
- ▶ Ancestors, in the absence of descendants, spouses or domestic partners
- ▶ In absence of all of the aforementioned, collateral relatives up to fourth degree, with preference placed on brothers or, in the absence of these, relatives in increasing degree
- ▶ In absence of these, public welfare

The specific rules bound by the criteria applicable to succession are noted in the charts below:

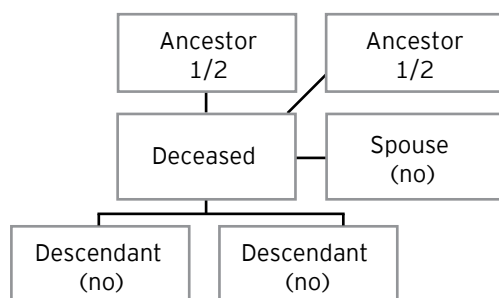


4. If first-degree descendants concur with ancestors

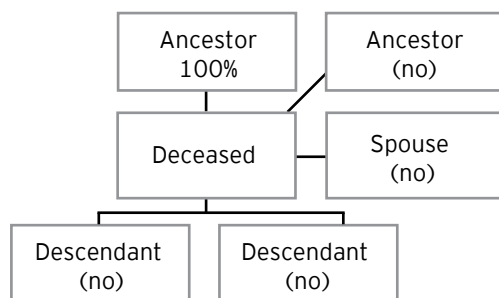


If ancestors and descendants concur, the ancestors are entitled to a fraction of the compensation not larger than one of the descendants.

5. If only ancestors

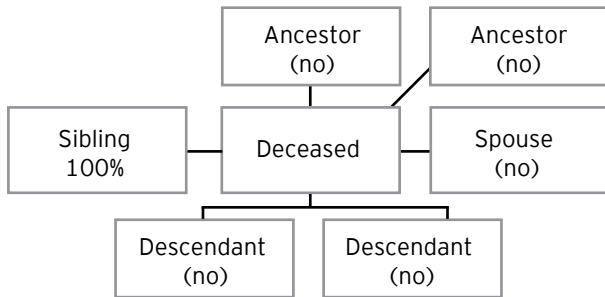


6. If only ancestor





10. If only siblings



11. Estate tax treaties

11.1 Unilateral rules

Mexico does not have specific rules on tax credits or transfer of properties abroad.

11.2 Double-taxation treaties

Mexico has not signed any gift and inheritance tax treaties.