

# Mexico

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## 1. Taxation

### 1.1 Inheritance

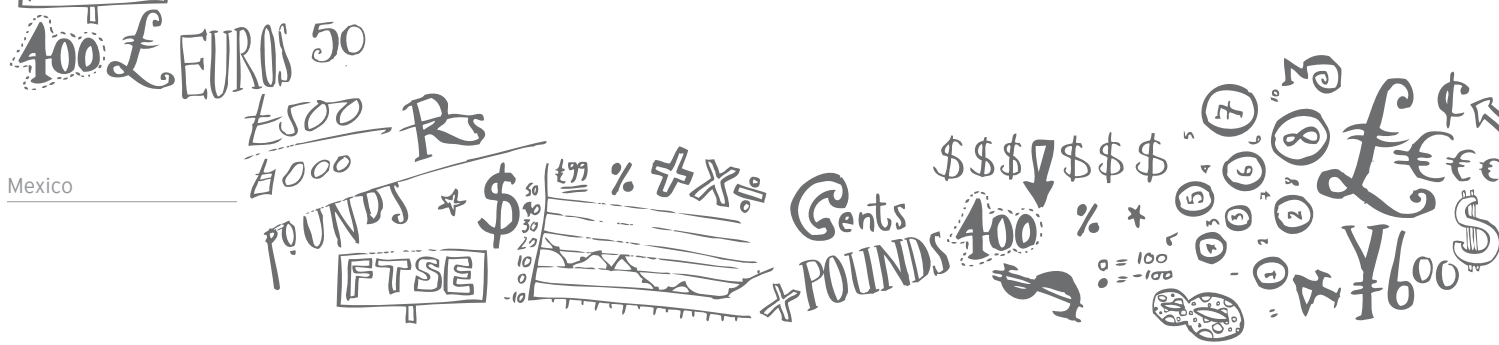
Mexico's legislation does not recognize inheritance tax. Under Mexican law, succession is the legal means through which a person substitutes another on his or her rights and obligations due to the latter's absence. For Mexican tax purposes, a process must also be observed that goes in hand with the civil 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"> <li>▸ The preparation of the testament (will) must be made by a notary public</li> <li>▸ Only the heirs who are listed in the will have the right to an inheritance</li> <li>▸ Appointment and/or removal of executor and inspector, and recognition of hereditary rights, must be made</li> <li>▸ The validity of the will, capacity to inherit and preference of rights must be resolved</li> </ul>
Inventory	<ul style="list-style-type: none"> <li>▸ Inventory of the estate's assets and debts must be prepared by the executor</li> <li>▸ 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)</li> </ul>
Administration	<ul style="list-style-type: none"> <li>▸ 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</li> <li>▸ The administrator must ensure that all income produced by investments, rents and shares is properly accounted for and that the taxes are paid</li> </ul>
Distribution	<ul style="list-style-type: none"> <li>▸ A provisional distribution plan is prepared</li> <li>▸ 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</li> <li>▸ The assets are distributed</li> <li>▸ Resolutions must be made regarding the application of the goods that form the inheritance</li> </ul>



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 nor 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.

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 (MXN881,811 for 2016). 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	207.92	0.01105
B	94,072.58	150,516.06	1,247.52	0.03315
C	150,516.07	225,773.88	3,118.80	0.05526
D	225,773.89	451,547.89	7,277.20	0.03684
E	451,547.90	1,128,869.71	15,594.00	0.0353
F	1,128,869.72	2,257,739.43	39,504.80	0.04328
G	2,257,739.44	4,349,334.30	88,366.00	0.04722
H	4,349,334.31	11,326,391.96	187,128.00	0.04768
I	11,326,391.97	20,887,467.14	519,800.00	0.04812
J	20,887,467.15	and over	981,000.00	0.04997

#### 1.4 Endowment tax

There is no endowment tax in Mexico.



Mexico

## 1.5 Transfer duty

There is no specific transfer duty in Mexico.

## 1.6 Net wealth tax

There is no net wealth tax in Mexico.

# 2. Who is liable?

According to the Civil Code, a testamentary or intestamentary succession occurs when the deceased has goods in his or her name for which an executor must be named. The executor will manage and divide the property of the deceased's estate and carry out the distribution of such property to the heirs. To facilitate the local procedures (such as payment of taxes and notifications to the local authorities), the executor should have a Federal Taxpayer Identification Number in Mexico and electronic signature in force.

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

## 2.1 Residency

In Mexico, residents are considered to be those who have established their home in Mexico. If individuals keep a home in another country, they are considered resident in Mexico if their center of vital interest is located in Mexico. An individual's center of vital interest is considered to be located in Mexico if at least one of the following circumstances is true:

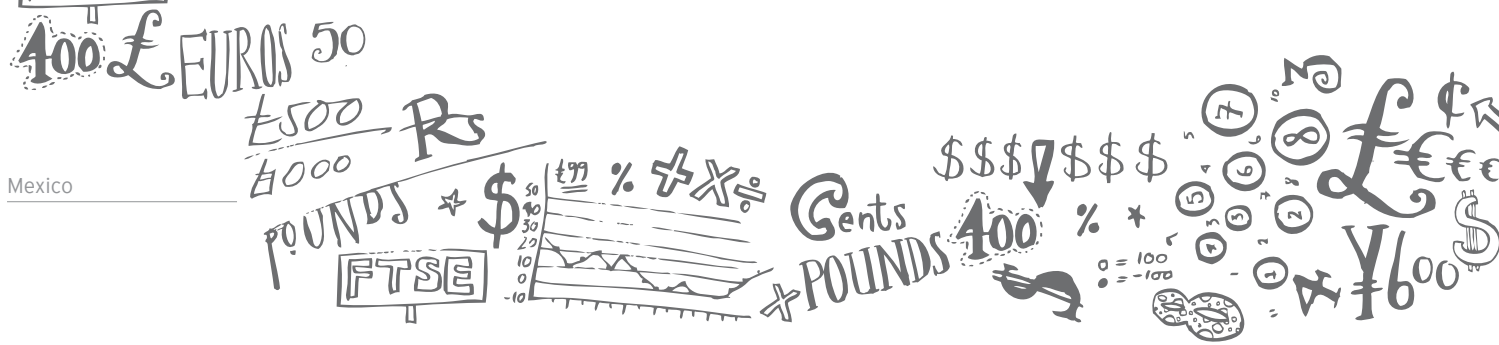
- ▶ More than 50% of the individual's income in a calendar year is derived from Mexican sources
- Or
- ▶ The center of the individual's professional activities is located in Mexico

Legal entities are considered to be residents of Mexico when the principal administration of the business 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.



**Date for payment of tax**

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

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.





### Shares sold or listed on a stock exchange

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.

From 2014 and onward, a 10% tax is payable on the net gains derived from the sale of shares through Mexico's stock exchange. This tax is not creditable against the taxpayer's final tax liability determined in the annual income tax return. This new tax is applicable on (i) shares or securities that represent shares issued by Mexican companies sold through Mexico's stock exchange, (ii) securities traded on the Mexican Derivatives Exchange, and (iii) shares or securities that represent shares of foreign entities traded through Mexico's Stock Exchange or the Mexican Derivatives Exchange.

- ▶ The gain or loss will be determined by the broker by comparing the sales price (reduced by the commissions paid for the sale) with the average purchase price (added with the commissions paid for the purchase).
- ▶ The average purchase price and the losses incurred will be updated to reflect the inflation effects during the holding period.
- ▶ The 10% tax will be determined each tax year, adding the gains and subtracting the losses derived from the trading of each company's stock.
- ▶ In order to determine the purchase price of shares acquired before 1 January 2014, a transitional rule established that the taxpayer may opt to determine such price using the 22 closing prices listed during December 2013, or closing prices quoted during the previous six months in cases when the shares are not regularly traded.

## 5. Filing procedures

Once the process of succession ends, a notice of cancelation of Federal Taxpayer Identification Number or RFC (*Registro Federal de Contribuyentes*) by liquidation of the succession must be filed by the executor.

Regarding the decedent's obligation to file an annual tax return, the following shall apply:

1. Within 90 days following the date when the executor is appointed, he or she shall file a return for income earned by the deceased from 1 January of the year of death up to the moment of his death, in order to pay the relevant tax.
2. Income accrued up to the moment of the person's death that was not effectively received in life shall be subject to the following rules:
  - a. Salary income and entrepreneurial income, as well as income from the provision of professional services, shall be exempt from payment of tax for the heirs or legatees, since such income is considered tax-exempt.  
Taxpayers who in the fiscal year have obtained total income in excess of MXN500,000, including income on which income tax is not required to be paid and on which the definitive tax was paid, must declare all of their income in their annual tax return. Inheritance should be reported in the Mexican annual tax return for informative purposes only.
  - b. Additional income (sale of goods, interest income, dividends, as well as income from entrepreneurial activities, except income prizes) may be considered income received by the deceased person and declared under the preceding section, or when the heirs or legatees elect to include such income in their income tax return and pay the corresponding tax.





## 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 trust

#### 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





## 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

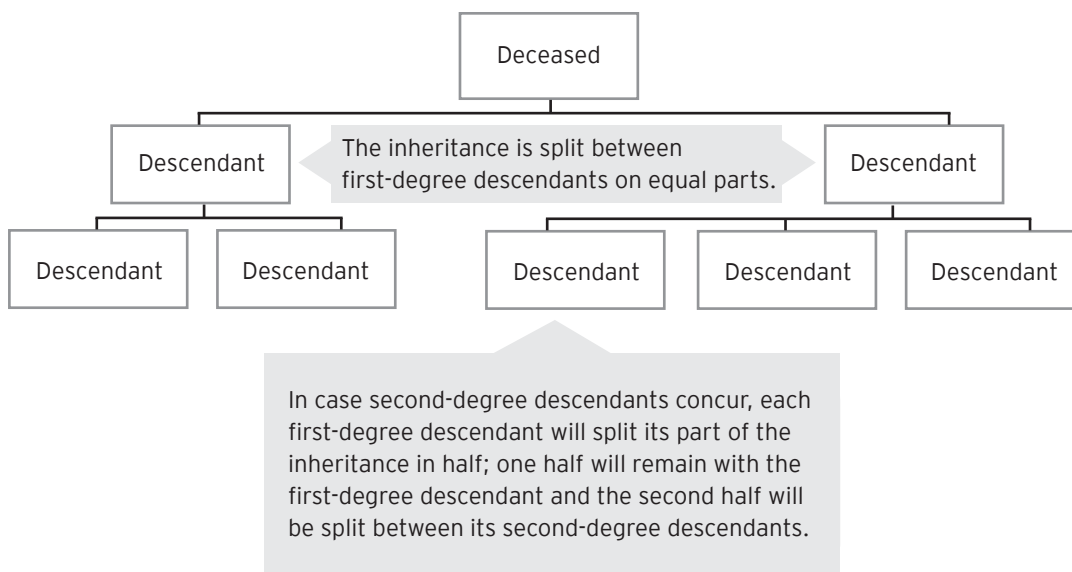
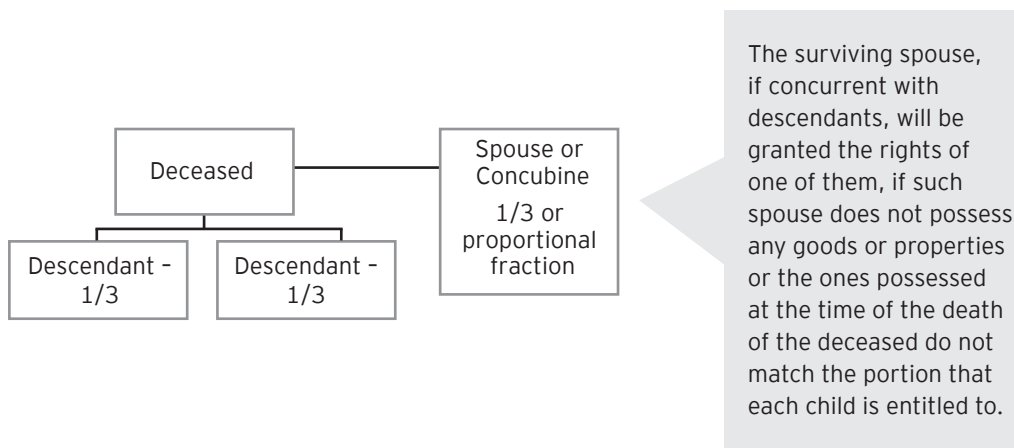
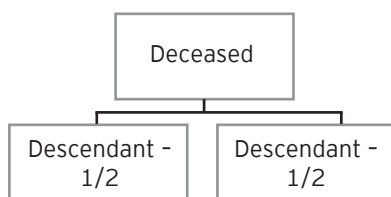
The testament (or will) is an individual and personal legal act, subject to revocation and free through which a person with full legal capacity transmits his goods and rights and declares the fulfillment of obligations for after his or her death. Three basic elements must exist in a testamentary succession:

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.

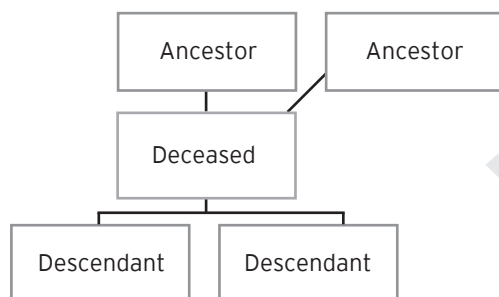
Any and all persons not precluded by law can become a testator; those precluded by law are persons younger than 16 years old, persons without full legal capacity or those who generally or incidentally are not in his or her full judgment capacity.





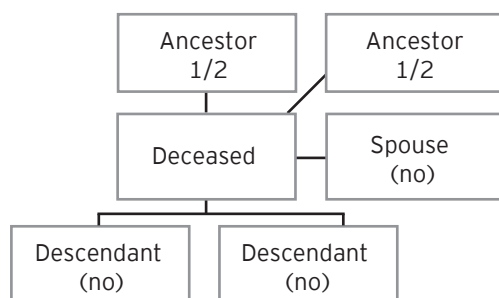


#### 4. If first-degree descendants concur with ancestors

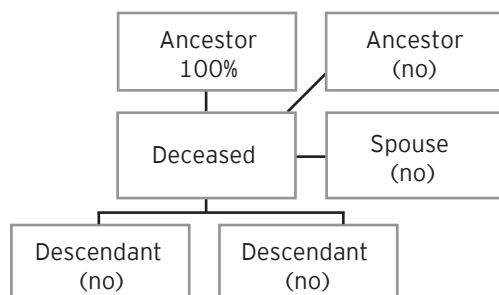


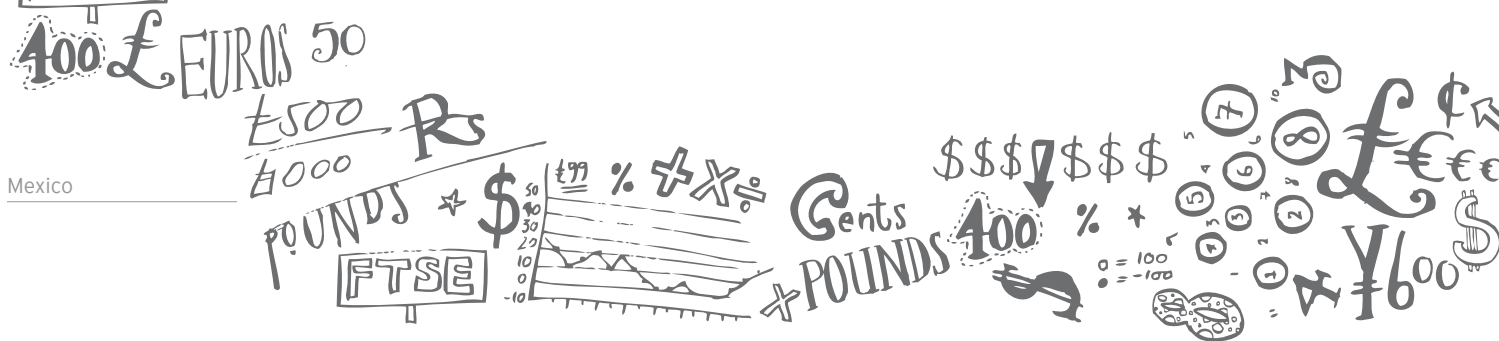
If ancestors and descendants concur, the ancestors are entitled to a fraction of the compensation not larger than one of the descendants.

#### 5. If only ancestors



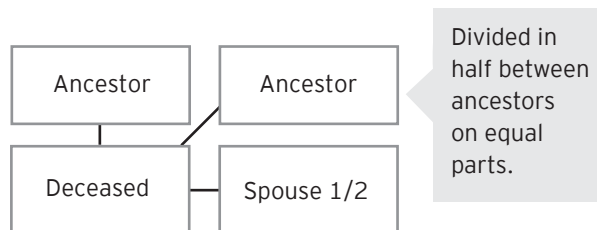
#### 6. If only ancestor



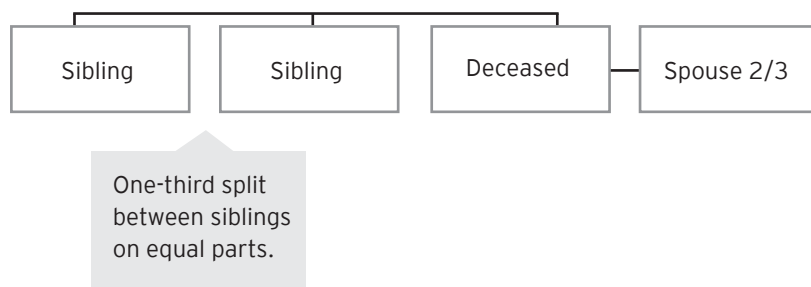


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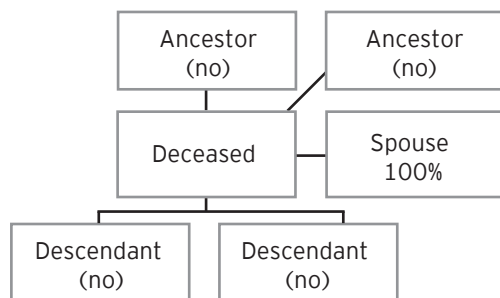
## 7. If ancestors concur with spouse



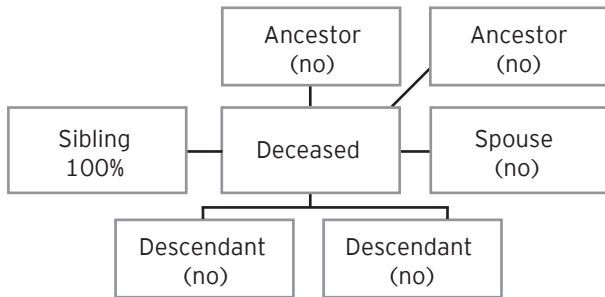
## 8. If spouse concur with siblings



## 9. If only spouse







## 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.