

Private Client 2020

Contributing editors
Anthony Thompson and Nicole Aubin-Parvu



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

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Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

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Private Client 2020

Contributing editors**Anthony Thompson and Nicole Aubin-Parvu****Forsters LLP**

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Guernsey and Jersey.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.



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For further information please contact editorial@gettingthedealthrough.com

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Dominican Republic

Maria Arthur

Arthur & Castillo (AC Law)

TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

The Dominican Republic (DR) imposes a tax on income. The tax system is based on a territoriality principle whereby income from DR sources is subject to income tax. Consequently, non-residents are subject to income tax for their Dominican-sourced income. In this sense, payments abroad and credits on account of DR-sourced income to non-residents are collected through withholding taxes as a sole and definite payment.

An individual who is domiciled or resident in the DR will also be taxed on his or her foreign-sourced income derived from investments and financial gains. The foregoing applies to an individual after the third year in which he or she became resident.

An individual will become tax resident if he or she stays in the DR for at least 183 days during the calendar year.

Income

2 | What, if any, taxes apply to an individual's income?

Income tax for individuals domiciled or resident in the DR is levied on a progressive scale at tax rates ranging from zero to 25 per cent, after applying the annual income tax exemption amount.

As mentioned in question 1, payments abroad and credits on account of DR-sourced income to non-residents or individuals not domiciled in the DR should be subject to a withholding tax of 27 per cent as a sole and definite payment; however, those related to interest and dividends are subject to a 10 per cent withholding tax.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

An individual's capital gains are subject to the same progressive tax rate as for ordinary income (see question 2). Capital gains may be credited with ordinary losses and capital losses of the same fiscal year.

To determine an individual's capital gain or loss, the cost of the capital asset adjusted by local inflationary rules is deducted from the sales price or transfer value. The taxable basis may be decreased by depreciation adjustments or other reduction concepts, and increased by improvements.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

Lifetime gifts are subject to a gift tax based on the value of the assets donated in the DR at the same rate as the one applicable to corporate income tax when the transfer occurs (at present, 27 per cent), payable by the beneficiary.

Donations made to create or develop a family asset, such as a house or apartment for a family, are exempt from gift tax. Gifts to charities recognised by the DR state are also exempt.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

A 3 per cent estate tax applies to an individual's transfers on death of property located in the DR, minus allowable deductions. If the deceased had his or her last domicile in the DR, movable assets located abroad also form part of the taxable basis. Following the death of an individual, the heirs should pay real estate property tax at a 1 per cent rate, if applicable.

Transfers at death of marital community assets to the surviving spouse are not subject to estate taxes and are exempt of transfer taxes.

Real property

6 | What, if any, taxes apply to an individual's real property?

Transfer of Dominican real property is subject to the payment of transfer taxes, payable by the purchaser within a period of six months at a 3 per cent rate over the value of the property.

Ownership of real property by individuals is subject to an annual real estate property tax levied at a 1 per cent rate of the value of the property as established by the Dominican Cadastral Office, provided that the value exceeds the total exemption amount of DR\$7,438,197 for 2019. This amount is adjusted for inflation every year.

There are several scenarios in which owners are exempt from the real estate property tax, including:

- when the owner is at least 65 years old and has owned a single piece of property for more than 15 years; and
- when the property was acquired through the Tourism Incentive Regime Law No. 158-01.

A series of tax incentives may apply for pensioners and rentiers that have the intention of permanently residing in the DR, including the tax on the transfer of the first real estate purchased, and partial exemptions on annual real estate property tax, registration of a mortgage and the potential capital gains tax derived from the sale of the real estate.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Export of assets for personal use and enjoyment are not subject to the payment of taxes and duties.

In general, import of assets is subject to the application of tax on the transfer of industrialised goods and services (ITBIS), which functions in a similar way to value added tax, at an 18 per cent rate and to the application of duties according to customs classification. Some specific assets are also subject to the application of a selective consumption tax at variable rates (generally 20 per cent).

Qualified pensioners or rentiers may benefit from the exemption of customs duties on the import of personal effects, home furniture and equipment used in professional activities, as well as from partial or total tax exemption on the importation of a vehicle or first local purchase, respectively.

Imports of personal effects of no more than US\$200 through private couriers from a United States, DR and Central America Free Trade Agreement (DR-CAFTA) country, are exempt from import taxes and customs tariff duties.

Import of personal effects and household appliances by foreigners who will definitely reside in the DR are exempt from duties and not subject to taxes. Likewise, Dominicans who will definitely reside in the DR after living abroad for at least two years will also benefit from this treatment. In both scenarios, the importation of a vehicle may be subject to a partial deduction on all applicable import duties.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

Within the framework of business activity, the import and supply of goods and services in DR territory give rise to the ITBIS at rates that vary from 8 per cent to 18 per cent. Specific goods and services are exempt. Exports of goods and services rendered to non-domiciled entities that do not affect Dominican income and are consumed outside DR territory are zero-rated. The ITBIS paid at import and to local providers in the acquisition of goods and services may be compensated with a gross ITBIS of the same monthly fiscal period, and the excess may be carried forward to the following monthly fiscal periods.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

When transferring assets to the trust, the corresponding transfer taxes should apply. With respect to real estate assets and motor vehicles, taxes should be paid within six months of the date of the trust agreement. However, the transfer of the assets to the trust should be exempt from capital gains tax.

The potential ITBIS should be filed and paid by the trustee on behalf of the trust in the period in which the trust is registered before the Tax Administration.

With regard to trust beneficiaries, they shall file annual income tax returns to reflect any gains or losses.

Charities

10 | How are charities taxed in your jurisdiction?

Charities registered in the DR of good legal and tax standing benefit from a total tax exemption from national taxation, including those applicable to gifts and bequests.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

There are no anti-avoidance and anti-abuse tax provisions in the context of private client wealth management, but some tax provisions exist to prevent avoidance of taxes and abuse by taxpayers. For instance, a provision that reinforces the taxation of unjustifiable increases in wealth was enacted in 2012.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

A DR trust is constituted by an act through which one or several settlers transfer property or other rights to one or several entities named trustees to constitute a separate patrimony that shall be managed in favour of one or several beneficiaries and be restored to the designated person when such act expires, pursuant to the instructions of the settler or settlers.

Trusts have been recognised in the DR since 2011, being most widely used for construction projects as a way to offer real estate purchasers more warranties regarding the use of their funds in their investment whereby the trustee (in most cases a financial institution) would manage disbursements to the constructor.

The Law on Trust foresees the inability of creditors to seize the assets in trust. Nevertheless, there are a series of exceptions whereby the trust assets may be subject to query.

Trusts governed by the laws of other jurisdictions are not recognised in the DR.

Private foundations

13 | Does your jurisdiction recognise private foundations?

Private foundations are not recognised; however, those governed by the laws of other jurisdictions may be recognised in the DR as foreign private companies.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

No. The DR Constitution only recognises the union or marriage between a man and a woman.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Yes. Since 2010, the DR Constitution established that rights and duties derive from a de facto union between a man and a woman, both unmarried, that form a household. There is not yet a law setting forth the specific rules governing this type of relationship, but the Supreme Court of Justice established certain minimum requirements, as follows: there must be no marriage union between the man and the woman or with a third party; and the man and woman must be in a monogamous relationship and, if applicable, must have a stable family life.

The latest precedent regarding the partition of assets considers that the parties in the relationship are not obliged to demonstrate the measurement of their assets in terms of contributions to their

community, given that contributions are not necessarily constituted by material assets (eg, domestic work). Therefore, partition of the assets shall be made in equal shares.

For tax and succession purposes, relationships meeting minimum formation requirements should have the same rights and duties as those existing for civil law marriages.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

An individual's estate for succession purposes is constituted by his or her worldwide assets, provided that his or her last domicile was in the DR.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals can dispose of their total assets during their lifetime if they do not have ascendants or descendants.

If the individual has one child, half of the estate may be freely disposed. This decreases to one-third if he or she has two children, and to one-quarter if he or she has three or more children.

If the individual does not have children but has one or more ascendants on the mother's and father's side, gifts can be made of up to one-half of the individual's assets, increasing to three-quarters of the assets if there are only ascendants on one side of the family. If the gifts exceed the aforementioned limits, clawback rules may be claimed, upon the death of the donor, by the individuals who benefit from the reserved portion of the estate, whereby the excess in gifts may be reduced. In general terms, a reduction of the gifts will apply beginning from the last donation made, successively after obtaining the net amount of the assets and liabilities left by the deceased (donor), including the current value of the assets donated, thereby calculating the amount of free disposition available, while considering the status of the heirs to the succession.

Spousal consent is required for an individual to make gifts of community property. Real estate assets from such a community of assets regime and any furniture therein can only be given as gifts for accommodating the children of their marriage.

18 | To what extent do individuals have freedom of disposition over their estate on death?

Forced heirship rules apply with the same restrictions as for the disposition of the estate in lifetime gifts.

Individuals can dispose of their total assets in a will if they do not have ascendants or descendants. However, if the individual has one child, the free disposition of the estate constitutes one-half, decreasing to one-third if he or she has two children and to one-quarter if he or she has three or more children.

If the individual does not have children but has one or several ascendants on the mother's and father's side, the disposition of the estate cannot exceed one-half of his or her assets or three-quarters of his or her assets if there are only ascendants on one side of the family.

When the free disposition of assets in the will exceeds the forced heirship limits, the reduction will apply in all cases proportionately.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If there is no valid will, the disposition of the estate shall be governed by the intestate succession rules.

The estate may be inherited by the individual's children and descendants, ascendants and collaterals, as follows (each category excludes the next and is divided equally at the closest generation):

- if the individual has children, they or their descendants will inherit per stirpes;
- if there are ascendants (father and mother) and collaterals (siblings), there will be two equal shares: one for the relatives on the father's side and the other for those on the mother's side. Siblings from the same parents will inherit from both sides in equal shares. If the individual has no descendants, each parent will receive a one-quarter share and the rest a one-half share;
- if there is only one surviving parent, then the parent will receive a one-quarter share and the rest a one-half share; and
- if there is no surviving parent, then the siblings or their descendants will inherit per stirpes.

If there are no siblings or descendants of the deceased, the estate is divided such that the ascendants on the deceased's mother's and father's sides will each receive a one-half share. A relative from the closest generation has the right to the corresponding one-half share to the exclusion of the rest. Ascendants of the same generation will inherit per capita.

In the absence of ascendants, collaterals (cousins, uncles, etc) will be considered. If there are no surviving ascendants on one side, a one-half share of the inheritance will be given to the surviving ascendants on the other side and the other one half-share to the ordinary collaterals. If there are no surviving ascendants on either side, ordinary collaterals will inherit up to the 12th generation. If there are no qualified collaterals on one side, qualified collaterals on the other side will inherit.

The surviving spouse or civil union partner may inherit under certain conditions. Since 2010, the DR Constitution established that rights and duties derive from a de facto union between a man and a woman, both unmarried, who form a household. There is not yet a law setting forth the specific rules governing this type of relationship, but the Supreme Court of Justice established certain minimum requirements, as follows: there must be no marriage union between the man and the woman or with a third party; and the man and woman must be in a monogamous relationship and, if applicable, must have a stable family life.

Finally, if there are no existing family members, as listed above, the estate will pass to the state.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Yes. Adopted or illegitimate children are treated the same as natural legitimate children.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Successions are governed by the law of the individual's domicile at the time of death (lex domicilii). Domicile is defined as the place of habitual

abode. Individuals cannot have more than one domicile. The place of the last domicile shall determine the competent court if litigation between the heirs arises.

In succession matters, DR courts may have jurisdiction when the individual owns real estate assets in the DR or when the last domicile was in the DR.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

An individual may choose one of the following types of will:

- handwritten or holographic will: the sole requirement for this will is that the individual must have handwritten it from start to finish, including the date and signature;
- notary will: this will may be given orally in the presence of two qualified witnesses before a notary public, who shall include the testator's wishes in an authentic document that must be signed by the individual, the two witnesses and the notary public; and
- mystic will: if the contents of the will is desired to be kept secret, the individual may dictate or handwrite a mystic will in a paper that must be closed and sealed, before or during the delivery of the same to a notary public, in the presence of at least six witnesses, among other basic requirements.

In all cases, the testator must be of sound mind and at least 18 years old.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

Yes. Foreign wills are recognised provided that the document is duly legalised or apostilled if it is a notary will, and translated by a judicial interpreter if it is in a language other than Spanish. However, the provisions of the will shall be subject to DR succession rules if the individual's last domicile was in the DR.

Administration

24 | Who has the right to administer an estate?

The beneficiary heir has the right to administer the assets of the estate, and only in the case of litigation over a determination of heirs may the court grant the appointment of a judicial administrator. If an heir is a minor, then his or her mother or father may administer his or her assets, but may not sell any real estate.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Title to a deceased's assets are transferred after concluding a determination of the heirs' process before the Land Court in the case of real estate property, and after the inheritance tax return has been filed and the corresponding taxes paid before the tax authorities. Additional processes are required for transferring movable assets to heirs and successors, such as motor vehicles, aircraft or vessels, rights, money, certificates of deposit or company shares.

While administering the estate assets, the beneficiary heir must render an accounting of its administration to creditors and legatees, and his or her personal assets may be attached only if the beneficiary heir administering the assets has been placed in arrears for the presentation of an accounting and for lack of complying with such obligation.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Yes. A claim may be brought before the civil court of the place where the succession was opened.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

Mothers and fathers are always obliged to manage the assets of their children and must represent their children in the management of their property rights. If there is only one surviving mother or father, he or she will manage the assets, but real estate property transactions will require the authorisation of the family board.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

At 18 years old.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

Any family member or other interested party may file a claim alleging incapacity. If a Dominican court agrees, the closest relative or spouse will be appointed guardian. The guardian will then take control of all the individual's assets within and outside the DR and manage all property and business affairs. The guardian, as a fiduciary, must avoid self-dealing and must obtain the consent of the family board before entering into any guarded property transactions.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

Generally, foreign nationals do not require a visa and are only required to purchase a tourist card, which is included in the plane or ship ticket price.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

The visitor's visa covers a period of 60 days, which is renewable for an equal period upon the foreign national's request.

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

Foreign nationals, such as business investors, retirees or individuals receiving monthly rents from outside the DR, may be granted a residence visa, followed by permanent residence upon completing their immigration process.

Regarding the investor programme, business investments must be valued as at least US\$200,000.

Rentiers must have a monthly passive income of at least US\$2,000 for a period of at least five years, and retirees must have a monthly pension of at least US\$1,500.

Qualifying under the above programmes entails the granting of certain facilities and tax advantages within the DR.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

Spouses and unmarried children of the investor may also obtain a residence visa and permanent residency under the investor programme. For retirees and rentiers, an additional income amount per relative is required.

34 | Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

The investor programme grants permanent residence for one year, which is renewable. Subsequent renewals shall be valid for a period of four years. For retirees and rentiers, subsequent renewals shall be valid for two-year periods.

35 | Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

DR citizenship may be requested after two years of fulfilling the permanent residence requirements.

UPDATE AND TRENDS

New legislation and current developments

36 | Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

On 10 September 2019, Law No. 340-19 establishing the Regime for Incentives and Promotion of Cultural Patronage was enacted. It is aimed at encouraging projects of 'cultural interest', which means any artistic or cultural project that meets Dominican cultural development needs and fits within the areas and categories indicated therein. Programmes, projects, and cultural and artistic activities certified to be of cultural interest shall be exempt from income tax. Furthermore, those who donate or sponsor such projects and proposals may apply a deduction of up to 2.5 per cent from net taxable income at the end of the fiscal year.

Projects of the following categories and areas are evaluated and certified as being of cultural interest:

- construction of physical infrastructure for non-profit cultural institutions, regardless of the genre, or artistic or cultural activity;
- conservation, restoration and enhancement of goods and real estate that are qualified and registered within the category of national cultural patrimony;
- public art proposals and visual art exhibitions in all genres, techniques and style variations, including possible representations outside the Dominican Republic;
- presentation of visual art projects, such as theatre, classical and popular music concerts, folkloric dance, and classical and contemporary ballet;



Maria Arthur
marthur@aclaw.com

Avenue Abraham Lincoln 1009
Torre Profesional EFA, Fourth Floor,
Piantini, Santo Domingo
Dominican Republic
Tel: +1 809 472 2222
Fax: +1 809 472 2220
www.aclaw.com

- sociocultural investigation in the arts, history, anthropology, archaeology, ethnography, sociology and museology and cultural economics;
- planning, organisation and presentation of classical and popular musical spectacles;
- creation and development of cultural and creative industries;
- development and improvement of Dominican artisanship; and
- formation and technical and professional training for the artistic and cultural sector.

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