
Mexico

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and Disability Planning Documents

A. Will Formalities and Enforceability of Foreign Wills

Mexican Law recognizes two ways to inherit a patrimony: (i) by means of a Will or, in the absence of a Will, (ii) by order of a competent court with jurisdiction.

Wills are defined as personal, revocable and free legal acts, pursuant to which a testator determines how such testator's patrimony is to be inherited upon his death. Wills stipulate if the inheritance is granted to one or more heirs, in what ratios or percentages to be distributed, or if specific assets are granted to one or more individuals known as legatees.

1. General Formalities Applicable to Wills

a. Continuity of the Act

The Will shall be granted in one uninterrupted act. The writing of the Will itself may be done by the testator in a series of acts, but the reading of the Will by a Notary Public or the deposit of the Will with the General Archives of Notaries (*Archivo General de Notarías*) must be carried out in one act.

b. Witnesses

Witnesses must comply with the following requirements: (i) be at least sixteen (16) years old, (ii) be mentally sane, (iii) know the testator personally, (iv) know the language of the testator, (v) not be blind, mute or deaf, (vi) not be the delegate of the Notary Public who wrote the Will, (vii) not be convicted for the felony of perjury, and (viii) not be an heir or legatee of the testator. In this last case, the Will is enforceable, but the provision that benefits the heir or legatee that acted as a witness is not.

There are two kinds of Witnesses: Identity Witnesses and Instrumental Witnesses. Identity Witnesses acknowledge before the Notary Public that they know the testator and that they are not aware of any signs of insanity or any other kind of diminished capacity. Instrumental Witnesses are the witnesses present at the act of granting of the Will.

c. No Blank Pages

The Notary Public or the person who writes the Will shall not leave any blank space or page, or use abbreviations or numbers upon writing the Will.

d. Notification of the Existence of the Will

The Notary Public or the person who has custody of a Will must notify the interested parties of its existence upon the death of the testator.

e. Capacity to Grant a Will

In order to grant a Will, a testator must be at least sixteen (16) years old and mentally sane.

Insane individuals may grant Wills during a period of lucidity in the event their family or tutor filed a petition in writing before a judge with jurisdiction. The judge must appoint two (2) doctors, preferably specialists, to examine the mental state of the testator. Such judge has the obligation to be present at the exam and may ask questions to assess the mental capacity of the testator.

The results of the exam must be recorded in a formal document. If the result of the exam is favorable to the testator, the testator may grant a Will before a Notary Public following the rules required for Public

Open Wills. Wills must be signed by a Notary Public, witnesses, a judge and doctors who examined the testator, declaring that the testator was sane at all times during the granting of the Will.

2. Classification of Wills

Wills are classified as Ordinary or Special.

a. Ordinary Wills

Ordinary wills are granted in normal circumstances. They have an indefinite term and are enforceable until and unless they are revoked. There are four (4) kinds of Ordinary Wills: Public Open Will (*Testamento Público Abierto*), Public Closed Will (*Testamento Público Cerrado*), Holographic Will (*Testamento Ológrafo*), and Public Simplified Will (*Testamento Público Simplificado*).

i. Public Open Will (*Testamento Público Abierto*)

Public Open Wills are granted before Notaries Public, whereby the will of the testator is expressed to the Notary Public, who writes the Will and reads it aloud for the benefit of the testator. If the testator agrees with the contents of the Will, the testator, the Notary Public, two (2) witnesses and, if necessary, a translator, must sign the corresponding Public Instrument stating the place, date and time of execution.

There are special circumstances that require different formalities upon the granting of Public Open Wills, that is: (i) if the testator is unable to sign the Will, one of the witnesses must sign on behalf of the testator and the testator must be fingerprinted; (ii) if the testator is deaf, but can read, he must read the Will aloud; (iii) if the testator is blind or can't read, in addition to the reading of the Notary Public, a third party must read the Will aloud, (iv) if the testator does not know the Spanish language, the Will may be written in his native language and translated into Spanish by a certified expert translator.

ii. Public Closed Will (*Testamento Público Cerrado*)

Public Closed Wills are dictated or previously prepared in writing by the testator or by someone else on the testator's behalf. The testator must initial each page and sign the Will at the end of its text, then the Will must be placed in a sealed envelope and delivered to a Notary Public by the testator accompanied by three (3) witnesses, all of whom must sign the envelope containing the Will.

The testator expressly declares to the Notary Public that the Will expresses his last will. The Notary Public must state on the cover of the Will that the applicable legal formalities have been met, must stamp the envelope and sign the cover jointly with the testator and the three (3) witnesses.

The Notary Public must record the place, date and time where the Will was granted and return same to the testator, to keep the Will under custody or deliver it to a third party or deposit same at the Judicial Archive. If the Will is deposited at the Judicial Archive, the competent judge with jurisdiction will request the Notary Public and the witnesses to acknowledge their signatures.

Illiterate persons cannot grant Public Closed Wills. Deaf-mutes may grant Public Closed Wills provided they write, date and sign the Will themselves and take it to the Notary Public accompanied by five (5) witnesses.

iii. Holographic Will (*Testamento Olográfico*)

Holographic Wills must be handwritten by the testator. Holographic Wills may only be granted by individuals of legal age.

Holographic Wills must be handwritten in two (2) copies, signed, dated and must include the testator's fingerprint. The testator personally must take said two copies of the Holographic Will to the General

Archives of Notaries to be sealed and signed by an Official thereof. One copy of the Holographic Will must be deposited at the Notarial General Archive and the second copy remains with the testator.

iv. Public Simplified Will (*Testamento Público Simplificado*)

The Public Simplified Will is granted before a Notary Public for the acquisition of real estate to be used as a personal residence of the testator. The Public Instrument evidencing the acquisition of the real estate must include a provision appointing one or more legatees to inherit the real estate upon the testator's death. The price of the real estate may not exceed 25 times de General Daily Minimum Wage in the Federal District (*Salario Mínimo General Vigente en el Distrito Federal*).¹

b. Special Wills

Special wills are granted under extraordinary circumstances. Except for the Will Granted in a Foreign Country, Special Wills may be granted in emergency situations and have a duration of one (1) month.

There are four (4) kinds of Special Wills: Private Will (*Testamento Privado*), Military Will (*Testamento Militar*), Maritime Will (*Testamento Marítimo*), and Will Granted in a Foreign Country (*Testamento Otorgado en País Extranjero*).

1. Private Will (*Testamento Privado*)

Private Wills may be granted in the event that: (i) the testator has a violent and grave illness that prevents the testator to appear before a Notary Public to grant the Will; (ii) there is no Notary Public or judge where the testator is located; (iii) there is a Notary Public or judge where the testator is located, but it is impossible or extremely difficult for same to witness the granting of the Will; or (iv) a person of the military is involved in active campaign or is taken as a prisoner of war. In such circumstances the Private Will may be granted verbally before five (5) witnesses.

The Private Will is applicable only if the testator dies of the illness or peril in which he was upon the granting of the Private Will. The five (5) witnesses must be interviewed by a competent judge and must declare: (i) the place, date, time, month and year where the Private Will was granted, (ii) that they knew, saw and clearly heard the testator, (iii) the intention of the testator upon granting the Will, (iv) the state of the testator (*i.e.* mentally sane and free of coercion), (v) the purpose of the granting of the Private Will, and (vi) they are aware the testator died as a consequence of the disease or peril at the time of the communication of the Private Will.

In extremely urgent cases the presence of three (3) witnesses shall suffice. If any of the witnesses died or is absent, the declaration of the remaining witnesses will suffice so long the witnesses exceed three (3).

2. Military Will (*Testamento Militar*)

Military Wills are granted only by military personnel when they are engaged in active action or hurt during such action. The testator shall communicate the Military Will before two (2) witnesses or hand such witnesses a closed envelope containing the Military Will.

Upon becoming aware of the death of the testator, the person who has custody of the Military Will must deliver it to the person in charge of the battalion in which the testator served, to be sent to the Secretary of Defense. The Military Will must then be delivered by such Secretary to the competent judicial authorities, who must probate the Military Will as though it was a Private Will.

¹ Currently, the General Daily Minimum Wage in the Federal District is MX\$59.82 Pesos, equal to US\$4.41 Dollars, at an exchange rate of 13.54 Pesos per Dollar.

In the event the testator did not die during the month following the granting of the Military Will, the Military Will will cease to have effect.

3. Maritime Will (*Testamento Marítimo*)

Maritime Wills are granted aboard any kind of National vessels. The Maritime Will must be in writing, with two (2) copies granted before two (2) witnesses and the Captain of the vessel. If the Captain of the vessel is granting the Maritime Will, the next person in command will act as Captain thereof. The Maritime Will must be recorded in the vessel's log.

In the event the vessel arrives at a port where there are Mexican diplomatic agents, such as a consul or vice-consul, the Captain of the vessel in concern must deposit one of the copies of the Maritime Will with any of such agents. When the vessel enters Mexican territory, the Captain must deliver one or both copies of the Maritime Will, as the case may be, to a maritime authority with jurisdiction and must record such fact in the log of the vessel. The maritime authority who received the Maritime Will must deliver it to the Secretary of Foreign Relations, who must give notice in a newspaper of ample circulation of the decease of the testator.

The Maritime Will will be only effective if the testator dies at sea or during the month following the granting of the Maritime Will.

4. Wills Made in Foreign Countries (*Testamento Hecho en País Extranjero*)

Mexican diplomatic agents such as consuls and vice-consuls may act as Notaries Public for the purpose of granting Wills by Mexican Nationals in foreign countries. The diplomatic agents must deliver a copy of the Will to the Secretary of Foreign Relations and the Secretary must deliver the Will to the General Archives of Notaries.

The same rules that apply to Public Open Wills will apply to Wills granted by Mexican Nationals in foreign countries. Wills granted in foreign countries are to be effective in Mexico, provided they are in writing and executed pursuant to the applicable regulations of the country where the Will was granted.

B. Will Substitutes (Revocable Trusts or Entities)

Trusts are contracts by means of which property is placed in the trust subject to the purposes set forth in same. Trustees may only be regulated financial entities duly authorized to act as trustees.

Testamentary Trusts are generally used to assure that the property in the corpus of the Testamentary Trust is managed and disposed of as intended by the Settlor. Testamentary Trusts may be established as follows: (i) pursuant to a Trust established by the Settlor and holding the entire property of the Settlor; (ii) pursuant to a Trust established by the Settlor and holding certain property of the Settlor; or (iii) pursuant to the terms of a Will mandating the establishment of a Testamentary Trust. Testamentary Trusts become effective upon the death of the Settlor.

Testamentary Trusts must establish rules regarding the property conveyed to a Testamentary Trust, such as management of assets in the corpus of the Trust, distributions to beneficiaries, and similar provisions. Testamentary Trusts must be granted following the same solemnities of Wills and the Settlor retains the ability to revoke the Testamentary Trust at any time.

The ownership of the corpus of the Testamentary Trust is conveyed to the Trustee, who may only act under the specific purposes of the Testamentary Trust. Acts taken by the Trustee in contravention of the purposes of the Testamentary Trust are null and void. Financial institutions duly authorized to act as Trustees are supervised by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*). The regulated financial institution duly authorized to act as Trustee may be appointed as Executor (*Albacea*) of the estate of the Settlor of the Testamentary Trust.

Testamentary Trusts may also be used to manage life insurance payments. The Settlor may appoint the Trustee as the beneficiary of a life insurance policy, and upon the Settlor's decease, the Trustee will manage and distribute the amount received from the payment of such policy as specified in the Testamentary Trust.

C. Powers of Attorney, Directives, and Similar Disability Documents

Individuals may grant special or general powers of attorney for acts of ownership to third parties to dispose of property on their behalf before a Notary Public.

II. Estate Administration

A. Overview of Administration Procedures

The administration of an estate is carried out by one or more Executors (*Albaceas*). Executors are mandatory in an estate. Executors are either appointed by the testator in the Will or appointed by the majority of heirs in an intestate succession. If the majority of heirs of an intestate estate do not agree on the appointment of the Executor, a competent judge with jurisdiction will appoint one from those proposed by the heirs. In the event only one heir is designated in a Will, the sole heir will act as the Executor of the estate.

Executors may be individuals, Notaries Public, legal entities and credit institutions. Executors must have free disposal of assets owned by the decedent. Executors are obligated to manage, protect and divide the property of the estate and carry out distribution of such property to the heirs. Executors are accountable for the management of the estate. Executors must guarantee their performance by means of a bond, mortgage or pledge on their property, within three (3) months after accepting their appointment. The heirs may excuse Executors from granting such guarantee.

Executors must make an inventory of the property of the estate, and conclude the inventory within the sixty (60) days following their appointment. Such inventory must list the assets and debts of the estate. Inventories of an estate are the norm. If the heirs are minors or the estate is to go to public charity, the inventory must be carried out by a court-designated individual or a Notary Public appointed by the majority of the heirs. The property in the inventory must be appraised by an expert appraiser appointed by the majority of the heirs.

Upon approval of the inventory by a competent judge with jurisdiction, the Executor must first pay the mortuary, hereditary and testamentary debts, and then split, adjudicate and distribute the property of the estate as appropriate.

The Executor is the legal representative of the testator, and thus, must defend the estate, in and out of court, including the validity of the Will. Executors must represent the estate for which they are appointed in all legal proceedings. The position of Executor is voluntary and may be resigned; such position must be performed directly by the individual or entity appointed. Executors may grant powers of attorney to third parties. Executors are responsible for the actions of the third parties holding powers of attorney.

Executors removed from their position by court order or individuals convicted of a felony or not making an honest living may not act as Executors. Public Officials, soldiers in active service, individuals with scarce economic means or poor health, and individuals who are 60 years old or more or are currently acting as Executors in another estate may excuse themselves from acting as Executors. Executors may be excused from their position during the six (6) days following the date of their appointment. Executors who are excused after such six (6) day period will be liable for any damages caused.

Executors are entitled to receive compensation for the performance of their duties. Executors may choose the compensation, as follows: (i) the amount that a testator fixes in the Will, or (ii) an amount equal to 2% (two percent) of the liquid assets of the estate and 5% (five percent) of the proceeds received

from the assets of the estate. In the event there are several Executors acting jointly, compensation must be distributed evenly among them. In the event Executors act severally, the compensation must be paid pursuant to the time and work incurred by each Executor. Executors act jointly whenever acts are taken jointly or by the majority. Executors act severally when each Executor acts solely in the order of appointment.

Heirs disapproving the appointment of Executors may appoint Interventors to supervise the management of the estate and the acts of the Executor. In the event heirs do not agree with the appointments of Interventors, a competent judge with jurisdiction must appoint an Interventor from the Interventors proposed by the heirs. Interventors do not have possession of the assets of the estate. Interventors must be appointed if: (i) the heir is absent or unknown; (ii) the portion of the estate to be distributed as bequests exceeds or is equal to the portion of a sole heir acting as Executor; or (iii) there are bequests in favor of public charitable institutions.

The duties of Executors end pursuant to: (i) the fulfillment of their obligations, (ii) the death of the Executor, (iii) a formal declaration of legal inability to perform the duties of an Executor issued by a competent judge with jurisdiction, (iv) an excuse from acting as Executor, (v) the expiration of the legal term and extensions of the position of Executor, (vi) the revocation of the appointment of Executor by the heirs, or (vii) the removal of the Executor by a competent judge with jurisdiction.

Preferred legacies are those whose payment has priority pursuant to the order of precedence provided for by the applicable Law.

The testator may acknowledge a debt in a Will whether such debt is documented elsewhere or not. Debts acknowledged in Wills are binding and treated as preferred bequests in favor of their respective creditors.

An inheritance may be rejected by the corresponding heirs or legatees.

B. Intestate Succession and Forced Heirship

Intestate successions must be implemented when there is no Will or the Will is not enforceable. Intestate successions may also occur in the event a testator did not dispose of all of the testator's property or regarding the portion of the property of the estate not disposed of in the Will. In the event a Will imposes a condition that heirs cannot fulfill or the sole heir dies before the testator, rejects the inheritance or is legally unable to inherit, and no substitute heir was appointed, an intestate succession may be necessary.

Intestate successions have the following characteristics:

- they are universal, namely they involve all the assets of the deceased;
- they only occur in the event a valid Will may not be enforced;
- the rules that define who may be a legitimate heir are the same rules that apply in testamentary successions, therefore heirs in intestate and testamentary successions share the same characteristics;
- heirs are not subject to conditions and there are no legatees; and
- heirs are responsible for the appointment of an Executor, and, if appropriate, an Interventor.

Descendants, spouses, ascendants, collateral relatives to the 4th degree and common-law spouses have the right to inherit through intestate successions. If none of the relatives described above exist, the assets of the deceased must be distributed to public charity. In-law kinship does not grant the right to inherit.

Closer relatives have preferential right over more distant relatives to inherit. Relatives of the same degree have rights to equal portions of the inheritance.

The general rules for distributing the inheritance in an intestate succession are as follows:

- in the event children are the only survivors upon the death of the parents, the estate will be distributed equally among them;
- upon the death of one parent, the estate will be distributed between the surviving parent and the children in equal shares;
- in the event there are children and grandchildren, the estate will be distributed among the children. Grandchildren of the same lineage will have the right to inherit an equal portion;
- in the event there are both descendants and ascendants, the ascendants will have the right to inherit only the amount necessary for the ascendant's support and maintenance and such portion must not exceed the descendants' portion;
- in the event there are no children and the decedent's parents are still living, the estate will be distributed equally among them;
- in the event there are no children and no parents, but the decedent's grandparents survive, the estate will be distributed equally among them;
- in the event there are only siblings, the estate will be distributed equally among them;
- in the event there are both siblings and half-siblings, half siblings will be only entitled to half the portion distributed to siblings;
- in the event there are no siblings and only nieces and nephews, the portion corresponding to each sibling will be distributed to the sibling's descendants.

C. Marital Property

If the spouses were married under the jointly-owned assets legal regime, the surviving spouse will enjoy the possession and administration of the marital property, supervised by the Executor, until the partition of the estate is carried out as necessary. The surviving spouse will also be the owner of half of the assets that the deceased and surviving spouse acquired after marrying.

If the spouses were married under the separation of property legal regime, the following rules apply:

- when there are no descendants, ascendants or siblings of the deceased, the surviving spouse will be the sole heir;
- if there are children, the surviving spouse will be entitled to a portion equal to the children's portion if the surviving spouse has no assets. If the surviving spouse has assets but their value is not equal to the portion inherited by the children, the surviving spouse is entitled to receive an amount equal to the difference;
- if there are ascendants of the deceased, the estate will be divided in two (2) portions, one will be distributed to the surviving spouse and the other will be distributed equally among the ascendants; and,

- if there are siblings of the deceased, two thirds (2/3) of the estate will be distributed to the surviving spouse and one third (1/3) will be distributed equally between the siblings.

D. Tenancies, Survivorship Accounts, and Payable on Death Accounts

Tenancies are governed by their corresponding agreements. The death of the landlord or the tenant do not rescind their tenancy agreements unless otherwise provided for in the agreement.

Survivorship accounts are enforceable only when a survivorship clause is expressly included in the document. If there is no express clause indicating the survivorship characteristics of the account, upon the death of its owner the assets will be included in the estate.

III. Trusts, Foundations, and Other Planning Structures

A. Common Techniques

Trusts are established by the Settlers, individuals or entities with legal capacity to dispose of the assets to be entrusted to the Trustee. The creation of a Trust must be documented in writing. Trusts involving real estate must be recorded with the Public Registry of Property with jurisdiction in the location where the real estate is located. A Trust need not have appointed beneficiaries upon its settlement.

Trustees are regulated financial institutions duly authorized to act as same that manage the property in the corpus of a Trust. As described below, a Trust may have a Technical Committee that instructs the trustee on the management of the corpus of the Trust.

Foundations in Mexico are generally organized as Civil Associations. Civil Associations must: (i) have at least two (2) Associates (*Asociados*), individuals and/or entities, (ii) have their name approved by the Mexican Ministry of Foreign Relations, (iii) be exclusively involved in not-for-profit activities, (iv) be organized before a Mexican Notary Public, and (v) be registered in the appropriate Public Registry with jurisdiction over its domicile.

B. Fiduciary Duties (Trustees, Board Members, Directors, etc.)

The Trustee is obliged to comply with the purpose of the Trust described in the Trust Agreement. The Trustee is obliged to protect the property in the corpus of the Trust and is responsible for the losses it causes. The Trustee may not be excused from its duties or resign its position unless such resignation is approved by a competent judge with jurisdiction.

The Settlor may include in the Trust Agreement a provision creating a Technical Committee for the management of the corpus of the Trust and the fulfillment of its purpose. The Trust Agreement must list the guidelines for the operation of the Technical Committee and establish its authority. The Trustee is not liable for its actions when acting upon the instructions of the Technical Committee.

The Technical Committee is generally formed by the individuals appointed by the Settlor, who may either be parties to the Trust or third parties. The number of members of the Technical Committee is established by the Settlor, however the Technical Committee is generally comprised of at least 3 (three) members. The members of the Technical Committee may or may not receive compensation for the services rendered for their position. The guidelines that establish the integration and operation of the Technical Committee should take into account the needs of the Settlor, the purpose of the Trust, the type of Trust, and any other limitations, if any, to the Technical Committee's abilities.

The Technical Committee will meet as provided in the Trust Agreement and as necessary for the fulfillment of the purposes of the Trust. The resolutions of the Technical Committee must be taken by the number of members set in the Trust Agreement, generally by a majority, and in some cases, unanimously. Resolutions of the Technical Committee are evidenced by the Minutes, including

instructions to the Trustee. The instructions by the Technical Committee will be complied with by the Trustee only if they are communicated in writing. Under no circumstance should the instructions of the Technical Committee be contrary or beyond the scope of the Trust's purposes or the instructions by the Settlor.

C. Treatment of Foreign Trusts and Foundations

The Federal Civil Code acknowledges the existence, ability to be entitled to rights and obligations, operation, transformation, dissolution, liquidation and merger of foreign entities of a private nature governed by the applicable Law of their country of organization. The country of organization of a foreign entity is the country where the proper formalities and requirements for its organization are satisfied.

The acknowledgement of the legal authority of a foreign legal entity shall not exceed the authority granted by the applicable Law of its place of organization. In the event a foreign entity of a private nature acts through a representative, such representative is deemed to be its agent and is authorized to respond to complaints and lawsuits brought against the foreign entity.

IV. Taxation

A. Domicile and Residency

Residency will subject a person to taxation on worldwide income in the country of residence. Pursuant to the Mexican Federal Fiscal Code (*Código Fiscal Federal*), an individual is a Mexican tax resident if they have a dwelling in Mexico. If an individual has a dwelling in Mexico and in another country, the residency would be determined based on where they have the center of their vital economic interests. If an individual has the center of vital interests in Mexico and in another country, the residency would be determined where the source of wealth is more than 50% of the total income obtained in the calendar year, or where the center of their professional activities is located. Legal entities that have established the central administration of their business or the headquarters of their material management in Mexico are considered Mexican tax residents.

The tax domicile should be distinguished from the tax residency. In general, the Mexican Federal Fiscal Code establishes as the tax domicile the place where an individual or a legal entity carries out their business. The tax domicile is the address registered by the taxpayer where the accounting books must be kept and where tax authorities may carry out their tax reviews.

B. Gift, Estate, and Inheritance Taxes

The Real Estate Transfer Tax is currently the only tax that imposes a levy on hereditary transfers. The Real Estate Transfer Tax is the tax imposed for the acquisition of real estate, including by donation or inheritance. The Real Estate Transfer Tax is also triggered by the assignment of rights by heirs or legatees. Payment of the Real Estate Transfer Tax must be done during the fifteen (15) business days following the acquisition of the real estate.

The Real Estate Transfer Tax rate is established pursuant to the value of the real estate and the applicable duty. The Fiscal Code of the Federal District provides that the tax rate for real estate acquisitions caused by death is 0% (zero percent) of the value of the real estate if it does not exceed the amount equal to 12,073 times the applicable Minimum General Wage (*Salario Mínimo General*) in the Federal District at the time of acquisition.² The value of the real estate is the highest of (i) the value set by an expert appraiser or (ii) the cadastral property value.

² Approximately US\$52,000.

C. Taxes on Income and Capital

The Income Tax Law (*Ley del Impuesto Sobre la Renta*) establishes that income tax shall not be imposed on income obtained by inheritance or bequests.

When the distribution of the inheritance is not yet made, the Executor shall pay annually on behalf of the heirs and legatees the applicable tax on the income derived from the estate, considering the estate in aggregate.

The Value Added Tax Law (*Ley del Impuesto al Valor Agregado*) provides that the transfer of property caused by death is not considered an alienation of property for tax purposes. Therefore, the Value Added Tax does not apply.

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