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## **MEXICO'S HIDDEN SUCCESSION TAX**

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# Agenda

- Mexican Succession Basics (Non-tax Aspects)
  - Last will and testament
  - Forced heirship
  - Probate in Mexico
  - Non-probate assets
  - Fideicomiso
  - Minors, special needs, and guardianship issues
  - Offshore considerations



# Agenda

- Tax Aspects
  - Foreign Estate/Succession Taxes
  - Domestic Succession Taxes

# Last Will and Testament

- Regulated at a local (State) level
- Important to determine appropriate jurisdiction
- Testament is a very formal act
  - Notary or Consulate
  - Disposes of entire estate
  - Inheritance and bequests
  - Appoint *Albacea* (Executor)



# Intestate

- Children (and grandchildren per stirpes), equal parts
- Spouse, one part
- Parents (and grandparents)
- Siblings
- Relatives up to the 4<sup>th</sup> degree
- Charity



# Forced Heirship

- Obligation to provide “Alimentos” (HEMS)
- Food, clothing, housing, and health
- Education for minors
- Rehabilitation for special needs
  
- Minor descendants
- Incapacitated descendants
- Nonworking spouse
- Ascendants
- Concubine (Common law spouse)
- Siblings and relatives up to the 4<sup>th</sup> degree (incapacitated or minors)



# Probate in Mexico

- Judicial or Notary
- Acceptance of Appointment by Executor
- Inventory and Partition
- Distribution





# Non-probate Assets

- Most assets are disposed off in probate
- Mexican bank accounts with beneficiary subject to special rules
- Up to 75% of account distributed to beneficiaries
- Balance distributed according to the will



# Fideicomiso

- Created inter-vivos or by will
- Trustee must be a financial institution
- Effectively transfers property out of the estate



# Guardianship

- Tutor and Curator appointed in will
- Courts simply ratify that appointment
- In case of intestate courts generally appoint close family members



# International Issues

- Property in different jurisdictions: domicile?
- Competing venues, parallel wills
- Conflict of laws rules
- Pour over wills

# Tax Considerations

- No succession/estate taxes
- No estate tax treaties
- Income Tax Law deals with successions as income



# Income Tax: Succession

- Inheritances and bequests generally considered income for income tax purposes
- Tax exempt income if correctly reported on annual return
- Carryover basis (no step up)
- Life insurance distributions generally tax free if from a Mexican insurer



# Income Tax: Gifts

- Generally taxable to the recipient as income
- Tax exempt income if:
  - Among spouses
  - To descendants
  - To ascendants (with limitations)
  - Correctly reported on annual return
- Carryover basis (no step up) if exempt
- Step up basis if taxable (at FMV)



# Foreign Heirs: Hidden Tax

- If heirs are not resident in Mexico:  
Source of Income Rules
- Mexican Shares and Mexican Real Property
- 25% Withholding Tax on FMV
- Transfers of these assets inter-vivos are expressly exempt
- Generally no credit available in recipient's country







**iGRACIAS!**

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