

# Private Client

*Contributing editors*

**Anthony Thompson and Sara Walter**



2018

GETTING THE  
DEAL THROUGH 

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DEAL THROUGH 

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*Contributing editors*

**Anthony Thompson and Sara Walter**

**Forsters LLP**

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## CONTENTS

<b>Overview</b>	<b>5</b>	<b>Gibraltar</b>	<b>64</b>
Anthony Thompson Forsters LLP		Vikram Nagrani and David Montegriffo Hassans, International Law Firm	
<b>Argentina</b>	<b>7</b>	<b>Guernsey</b>	<b>69</b>
Javier Canosa Canosa Abogados		Matthew Guthrie, Mark Torode and Catherine Moore Mourant Ozannes	
<b>Austria</b>	<b>12</b>	<b>India</b>	<b>73</b>
Paul Doralt, Katharina Binder, Elmar Drabek and Siegfried Prewett Dorda Rechtsanwälte		Rajesh Narain Gupta and Anju Gandhi SNG & Partners, Advocates & Solicitors	
<b>Belgium</b>	<b>16</b>	Ashok Natwarlal Shah N A Shah Associates LLP	
Saskia Lust, Barbara Albrecht and Jan Jorissen Loyens & Loeff		<b>Italy</b>	<b>79</b>
<b>Bermuda</b>	<b>21</b>	Marco Cerrato and Alessandro Bavila Maisto e Associati	
Jane Collis and Louise Charleson MJM Limited		<b>Japan</b>	<b>84</b>
<b>British Virgin Islands</b>	<b>26</b>	Kenichi Sadaka and Akira Tanaka Anderson Mōri & Tomotsune	
Robert Lindley Conyers Dill & Pearman		<b>Jersey</b>	<b>91</b>
<b>Cayman Islands</b>	<b>30</b>	Edward Devenport and Giles Corbin Mourant Ozannes	
Robert Lindley and Bernadette Carey Conyers Dill & Pearman		<b>Liechtenstein</b>	<b>96</b>
<b>Cyprus</b>	<b>34</b>	Thomas Nigg Gasser Partner Attorneys at Law	
Despina Sofokleous and Lorenzo Toffoloni Andreas Th Sofokleous LLC		<b>Malta</b>	<b>100</b>
<b>Dominican Republic</b>	<b>40</b>	Ramona Azzopardi, Marlene Cini, Nadia Calleja and Joselyn Teuma WH Partners	
Maria Arthur Arthur & Castillo (AC Law)		<b>Monaco</b>	<b>105</b>
<b>England and Wales</b>	<b>44</b>	Christine Pasquier-Ciulla and Regina Griciu CMS Pasquier Ciulla & Marquet	
Anthony Thompson, Sara Walter, Katie Coles and Alfred Liu Forsters LLP		<b>Poland</b>	<b>110</b>
<b>France</b>	<b>53</b>	Sławomir Łuczak and Karolina Gotfryd Sołtysiński Kawecki & Szlęzak	
Maryse Naudin Tirard, Naudin – Société d'Avocats		<b>Switzerland</b>	<b>116</b>
<b>Germany</b>	<b>59</b>	Natalie Peter and Claude Blum Blum & Grob Attorneys at Law Ltd	
Andreas Richter and Katharina Hemmen P+P Pöllath + Partners		<b>United States</b>	<b>122</b>
		Stephen K Vetter and Eric Dorsch Kozusko Harris Duncan	

# Dominican Republic

**Maria Arthur**

Arthur & Castillo (AC Law)

## Tax

### 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 shall be subject to income tax for their Dominican sourced income. In this sense, payments abroad and credits on account of DR source income to non-residents should be collected through withholding taxes, as a sole and definite payment.

Individuals who are domiciled or residents in the DR shall also be taxed on their foreign sourced income derived from investments and financial gains. The foregoing would apply to individuals who become DR residents after the third year in which they became residents.

Individuals become tax residents if their stay in the DR is of at least 183 days during the calendar year.

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

Income tax for individuals domiciled or resident in the DR is levied at a progressive scale and tax rates ranging from 15 per cent 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 source income to non-residents or not domiciled in the DR should be subject to withholding taxes at a 27 per cent as a sole and definite payment; except those related to interest and dividends where a 10 per cent withholding tax applies.

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

Capital gains derived by individuals are subject to the same progressive tax rate as for ordinary income mentioned above in question 2. Capital gains may be credited with ordinary losses.

In order to determine an individual's capital gain or loss, the cost of the capital asset adjusted by local inflationary rules shall be 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.

### 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 tax rate as the one applicable to corporate income tax when the transfer occurs (now 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 the gift tax. Gifts to charities recognised by the DR state are also exempt.

### 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 decedent had his last domicile in the DR, moveable assets located abroad shall also form part of the taxable basis.

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

### 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 such value exceeds the total exemption amount of DR\$7,019,383 for 2017 (approximately US\$147,700), adjusted by 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 the single piece of property for more than fifteen years; and
- owning property acquired through the Tourism Incentive Regime Law No. 158-01.

Finally, any gain derived from the sale or transfer of real property may be subject to income tax.

### 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 are subject the application of ITBIS (which works like a VAT) at an 18 per cent rate and to the application of duties according to their customs classification. Some specific assets are also subject to the application of a selective consumption tax at variable rates (mostly 20 per cent).

Imports of personal effects through private couriers, of no more than US\$200, 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 be definitely residing in the DR are exempt from duties and not subject to taxes. Likewise, Dominicans who will be definitely residing 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.

### 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 Tax on the Transfer of Industrialised Goods and Services (ITBIS) (which works like VAT), at rates that vary from 8 per cent to 18 per cent, while specific goods and services are exempt. Exports of goods are zero taxed, as well as services rendered to non-domiciled entities that do not affect Dominican income and are consumed outside DR territory. 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.

### 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, applicable transfer taxes should apply. With respect to real estate assets and motor vehicles, taxes should be paid within the six months following the date of the trust agreement.

On the other hand, the potential ITBIS should be filed and paid by the trustee (on behalf of the trust) in the period wherein the trust is registered before the Tax Administration.

With regards to trust beneficiaries, the same shall file annual income tax returns to reflect any gains or losses.

### 10 How are charities taxed in your jurisdiction?

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

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

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

Trusts are recognised in the DR since the year 2011, being most widely used for construction projects as a way to offer real estate purchasers more warranties as to 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.

### 12 Does your jurisdiction recognise private foundations?

Private foundations are not recognised in the DR.

Private foundations governed by the laws of other jurisdictions may be recognised in the DR as foreign private companies.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

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

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

Yes. Since the year 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 these types of relationships but the Supreme Court of Justice established certain minimum formation requirements:

- an obvious, public and monogamous relationship between a man and a woman;
- no married union between them or with third parties; or
- a stable, lasting and affectionate family life.

The latest precedent regarding partition of assets considered that the parties to the relationship are not subject to demonstrating the measurement of their contributions to their community of assets 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

### 15 What property constitutes an individual's estate for succession purposes?

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

### 16 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, the free disposition of the estate is of one half part, decreasing to one third part if having two children and to one quarter when having three children or more.

In the case that the individual does not have children but has one or several ascendants on the mother's and father's side, gifts can be made up to one half of the individual's assets, increasing up to three quarters of the assets if there are only ascendants on one side of the family.

In the event that the gifts exceed the above-mentioned 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 such 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 decedent (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 community of assets regime and any furniture therein can only be given as gifts for accommodating the children of their marriage.

### 17 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 having two children and to one quarter when having three children or more.

In the case that 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 the individual's assets; and of three-quarters of the decedent's 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.

### 18 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 as follows:

- the estate may be inherited by the individual's children and descendants, its ascendants and collaterals, as follows (each category excludes the next and is divided equally at the closest generation):
  - the individual's children or their descendants (per stirpes) will inherit in equal shares;
  - ascendants (father and mother) and collaterals (siblings): will have two equal shares (one for the relatives of the father's side and the other for the mother's side). Siblings from the same parents inherit in both sides in equal shares. Absent of any descendants of the individual, each parent receives one quarter-share and the rest one half-share;
  - if there is only one surviving parent: one quarter-share and the rest one half-share;
  - if there is no surviving parent, the siblings or their descendants (per stirpes) will inherit;

**Update and trends**

There is a bill amending the Civil Code that is pending approval by Congress.

- ascendants: if there are no siblings or descendants from them (per stirpes), the estate is divided in one half-share between the ascendants of the decedent's mother and father's sides. Therefore, the relative from the closest generation has right to the corresponding one half-share, excluding the rest. Ascendants of the same generation will inherit per capita;
- collaterals (cousins, uncles, etc): if there are no surviving ascendants on one side, the inheritance pertains one-half share to the surviving ascendants of the other side and the other one half-share to the ordinary collaterals. If no surviving ascendants on either side, ordinary collaterals inherit up to the 12th generation. If there are no qualified collaterals on one side, qualified collaterals of the other side will inherit; and
- the surviving spouse or civil union partner, 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 these types of relationships, but the Supreme Court of Justice established certain minimum formation requirements:
    - an obvious, public and monogamous relationship between a man and a woman;
    - no married union between them or with third parties; or
    - a stable, lasting and affectionate family life; and
    - the State.

**19 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.

**20 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 two or more domiciles. 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.

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

There are three types of wills from which an individual may choose from:

- handwritten;
- a notary will; and
- mystic.

The handwritten or holographic will's sole requirement is that the individual must have handwritten the will from start to finish including the date and signature.

The notary will can 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.

If the contents of the will want to be kept a 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.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

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

**23 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. When an heir is a person under age, then the father or the mother may administer their assets, but they may not sell any real estate.

**24 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 heirs' process before the tax authorities and then the Land Court in the case of real estate property. Complementary processes additional to the above are required for transferring to heirs and successors moveable assets, such as motor vehicles, aircraft or vessels, contracts, as well as 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 successors, and its personal assets may be attached only where 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.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Yes. A determination of heirs' claim in cases involving real estate property rights may be brought before the Land Court of the place where the real estate property is located and in other cases involving moveable assets and personal property, the civil courts may have jurisdiction to make a claim against an estate.

**Capacity and power of attorney**

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

A father and mother are always obliged to manage the assets of their children and must represent their children in the management of their property rights. In case there is only a surviving father or mother, the surviving father or mother will manage their assets, but real estate property transactions will require the authorisation of the family board.

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

At age 18.

**28 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, would be appointed guardian. The guardian would then take control of all his or her assets within and outside the Dominican Republic 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**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

Generally, foreign nationals are not required a visa to visit the DR and are only required to purchase a tourist card upon arrival at a DR airport.



**30 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.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

Foreign nationals, such as a business investors, retirees or a person 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 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.

**32 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 this programme. For retirees and rentiers, and additional income amount per relative is required.

**33 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, 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.

**34 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 category.



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