

**Buying process Real Estate in the Dominican Republic.**

Real estate transactions in the Dominican Republic are governed by Property Registry Law No. 108-05 and its Regulations, in force since April 4, 2007. Ownership of property is documented by "Certificates of Title" issued by Title Registry Offices.

**Steps Involved in a Real Estate Transaction**

• **Preliminary Steps:** Real estate purchases in the Dominican Republic do not usually follow the North American pattern of a written offer tendered by the buyer to the seller, followed by the seller's written acceptance. Instead, after verbal agreement is reached by the buyer and seller on the price, a binding Promise of Sale is prepared by an attorney (solicitor) or notary public which is signed by both parties. (Notaries in the Dominican Republic are required to have a law degree.)

Because of certain peculiarities of Dominican Real Estate Law, it is recommended that the prospective buyer retain a real estate attorney (solicitor) before signing any documents or making a deposit. Depending on the wishes of the parties, the attorney (solicitor) may proceed with the due diligence first, before preparing the Promise of Sale, or alternatively, prepare the Promise of Sale first, conditioning the purchase to the results of the due diligence to be done in a specified term.

• **Promise of Sale:** This is a formal document, binding on both parties, and signed by them in the presence of a Notary Public. From a practical point of view, it is more important than the Deed of Sale, since it generally contains a complete and detailed description of the entire transaction up to the time when the purchase price has been paid in full and the property is ready to be conveyed to the buyer. A well-drafted Promise of Sale should contain at least the following provisions:

- (a) Full name and particulars of the parties. If the seller is married, the spouse must also sign.
- (b) Legal description of the property to be purchased.
- (c) Purchase price and payment terms.
- (d) Default clause.
- (e) Date of delivery of the property.
- (f) Due diligence required or done.
- (g) Representations by the seller and remedies in case of misrepresentation.
- (h) Obligation by seller of signing the Deed of Sale upon receipt of final payment.

Many attorneys (solicitors) and notaries in the Dominican Republic do not protect the buyer adequately in the Promise of Sale. Among the most common deficiencies are the following:

(a) The buyer is allowed to pay a large percentage of the price of sale without any security or direct interest over the property. In case of misuse of these funds, the buyer's remedies may be limited to suing the seller personally. Many condo buyers in Santo Domingo have suffered through this experience in the last few years. Generally, the developer uses the buyers' funds, along with a bank loan, to finance the construction. The bank collateralizes the loan with a mortgage on the property. If the developer runs into financial difficulties or misappropriates the funds, the bank forecloses and the buyers lose both their money and their property.

(b) Payments are not conditioned on the availability of clear title or the adequate progress of construction. Sellers, therefore, may demand payment or place the buyer in default without performing their own basic obligations.

(c) Escrow agents are rarely used. The seller, therefore, has control over the funds as they are paid.

• **Deed of Sale (A Contrato de Venta@):** This is also a formal document binding on both parties, and signed by them in the presence of a Notary Public. It is used primarily for the purpose of conveying the property from the seller to the buyer.

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In case of a cash purchase, it is simpler and cheaper to go directly from verbal negotiations to the signing of a AContrato de Venta@, instead of taking the preliminary step of signing a Promise of Sale.

- **Determination and Payment of Transfer and Registry Taxes:** The authenticated Deed of Sale is taken to the nearest Internal Revenue Office where a request is made for the appraisal of the property. The Internal Revenue Office checks if the seller is in compliance with his tax obligations and selects an inspector to do the appraisal. The determination of the amount of taxes to be paid may take a few days or weeks, depending on the availability of the property inspector.
- **Filing at the Registry of Title:** Once the property has been appraised and taxes paid, the Deed of Sale and the Certificate of Title of the seller are deposited, along with the documentation provided by Internal Revenue, at the Title Registry Office for the jurisdiction where the property is located.
- **Certificate of Title:** At the Title Registry Office, the sale is recorded and a new Certificate of Title is issued in the name of the buyer. The property belongs to the buyer from the time the sale is recorded at the Registry. The time for the issuance of the new Certificate of Title may vary from a few days to a few months depending on the Title Registry Office where the sale was recorded.

### **Due Diligence**

Many attorneys (solicitors) in the Dominican Republic do not perform the required due diligence on real estate transactions, limiting themselves in many cases to obtaining a certification on the status of the property from the Title Registry Office. It often happens that the real estate agent and/or the seller pressure the buyer into a hurried closing despite the advice of legal counsel.

To start the due diligence, the seller should provide the buyer or the attorney with the following documents:

- Copy of the Certificate of Title to the property.
- Copy of the official survey to the property or plat plan. Under the new Property Registry Law, the sale of properties without a government-approved plot (Adeslinde@) cannot be recorded at the Registry, except in the following cases: (1) Sales executed before April 4, 2007, which may be recorded during a two-year period ending on April 4, 2009, and (2) Sales of the entire property executed after April 4, 2007 (sales of portions are not allowed), for just one time.
- Copy of his or her identification card (ACédula@) or Passport and that of the spouse, if married.
- Copy of the receipt showing the last property tax payment (IPI) or copy of the certificate stating that the property is exempt from property tax, and certification from the Internal Revenue Office showing the seller is current with his or her tax obligations.

### **If the seller is a corporation:**

- Copy of the corporate documentation, including bylaws, up-to-date registration at the Mercantile Registry and resolution authorizing the sale.
- Certification from the Internal Revenue Office showing the corporation is current with its tax obligations, specially Income Tax and Tax on Assets.

### **If the property is part of a condominium:**

- Copy of the condominium declaration.
- Copy of the condominium regulations.
- Copy of the approved construction plans.
- Certification from the condominium administration showing the seller is current with his or her condo dues.
- Copies of the minutes of the last three condominium meetings.

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**If the property is a house:**

- Copy of the approved construction plans.
- Inventory of furniture, etc.
- Copies of the utilities contracts and receipts showing that the seller is current.

Once the documentation listed above is obtained, the attorney should address every item on the following checklist:

- **Title Search:** A certification should be obtained from the appropriate Title Registry Office regarding the status of the property, stating who the owner is and whether any mortgages, liens or encumbrances affect it. The buyer should insist that his or her attorney confirm the results of the Registrar=s search by investigating the pertinent files at the Title Registry Office.
- **Survey:** An independent surveyor should verify that the property to be sold coincides with the one shown on the survey presented by the seller except when the property is located in a previously inspected subdivision. Cases have occurred in which a buyer acquires title over a property some distance away from the one he or she believes to be purchasing due to careless work by a previous surveyor or to fraud by the seller. The survey should be checked even when the seller provides a government-approved plat.
- **Inspection of Improvements:** A qualified builder or architect should examine any improvements to be sold (house, condo) to confirm that the plans presented are correct and that the improvements are in good condition.
- **Permits:** The attorney should confirm that the property to be purchased may be used for the purposes sought by the buyer. There are many legal restrictions which should be taken into account before purchasing. For example, Law 305 of 1968 establishes a 60-meter Maritime zone@ along the entire Dominican coastline, measured from the high tide mark inland, which in effect converts all beaches into public property. No building is allowed within the maritime zone without a special permit from the Executive Branch. Also, in tourist areas, there are building restrictions administered by the Ministry of Tourism.
- **Possession:** The attorney should check that the seller is in possession of the property. It should be ensured that no squatters= rights of any kind exist. Special precautions should be taken with unfenced properties outside known subdivisions. Fencing them before closing is advisable. If there are tenants on the property, the buyer should be informed that Dominican law is protective of a tenant=s rights and that evicting a recalcitrant tenant is time-consuming and expensive.
- **Employees:** The seller should pay any employees working on the property their legal severance, otherwise the buyer may find himself liable for the payment later.
- **Utilities:** The attorney or buyer should check that the seller does not have any utility bills pending by enquiring at the appropriate power distributor, water, cable and telephone companies.

**Taxes and Expenses on Property Transfers**

Taxes must be paid before filing the purchase at the Title Registry Office. Taxes and expenses on the conveyance of real estate are approximately 3.5% of the government-appraised value of the property, as follows:

- 3% Transfer Tax (Law # 288-04)
- Minor expenses such as cost of certified check required to pay taxes to Internal Revenue, sundry stamps and tips at the Registry.

Taxes are paid based on the market value of the property as determined by the tax authorities, not on the price of purchase stated in the deed of sale.

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Buyers wishing to lessen the impact of transfer taxes have the option of using a loophole in the law which allows the contribution in kind of property into corporations without paying transfer taxes. For this, cooperation from the seller is essential.

### **Property Taxes**

Properties held in the name of an individual are subject to an annual property tax ("IPI") of 1% of government-appraised value in excess of RD\$5,000,000 pesos except for unbuilt lots or farms outside city limits and properties whose owner is 65 years old or older, who has registered it in his or her name for more than 15 years and has no other property.

If the property is held by a corporation, no property tax is due. Instead, the corporation must pay a 1% tax on corporate assets. However, any income tax paid by the corporation will constitute a credit toward the tax on assets, so that if corporate income taxes paid are equal to or higher than the taxes on assets due, the corporation will have no obligation to pay taxes on its assets.

### **Title Insurance**

In the Dominican Republic, as in many Latin American and European countries, the government provides title insurance. The old Land Registry Law established an indemnity fund with which to pay claimants who due, for example, to an error of the Registrar, were deprived of their property. Unfortunately, the funds collected were used by the government for other purposes.

The Property Registry Law in effect since April 4, 2007, has created a new 2% tax on all conveyances in order to establish an indemnity fund. It is also possible to obtain title insurance from private insurers.

### **Purchase of Real Estate by Foreigners**

There are no restrictions on foreigners purchasing real property in the Dominican Republic. Formerly, Decree 2543 of March 22, 1945 and its amendments required that foreigners obtain prior Presidential approval except in certain cases. Decree 21-98 of January 8, 1998 abolished this regulation and established as the only requirement that the Title Registry Offices keep a record, for statistical purposes, of all purchases made by foreigners.

### **Inheritance of Real Estate by Foreigners**

There are no restrictions on foreigners inheriting title to real property in the Dominican Republic. Inheritance taxes have been recently lowered to 3% of the appraised value of the estate. If the beneficiary resides outside the Dominican Republic, inheritance taxes are subject to a 50% surcharge, raising the tax rate to 4.5%.

Inheritance of real estate is governed by Dominican law which provides for Aforced heirship@: part of the inheritance must go to certain heirs by law. For example, a foreigner with a child must reserve 50% of the estate to that child despite the existence of a will or of the law of his country of residence. To avoid the application of Dominican rules of inheritance to the estate, it is advisable for foreigners to hold real estate indirectly through a holding company.

### **Real Estate Agents**

Real estate agents in the Dominican Republic are not licensed or regulated by the government. There is presently a bill in Congress which may regulate the practice in the near future.

(Article "Buying Real Estate in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drllawyer.com](http://www.drllawyer.com)).

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*lawyer. For specific technical or legal advice on the information provided and related topics, please contact the author.*

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## **Capital Gain Tax Dominican Republic**

### Introduction

Taxation in the Dominican Republic is governed by Law No. 11-92 of May 31, 1992, commonly known as the Tax Code (“Código Tributario”), its amendments and regulations (“Reglamentos”). This overview is a brief summary of the Tax Code’s most relevant provisions. All references in parentheses refer to articles in the Tax Code unless otherwise specified.

Taxes are collected by the Bureau of Internal Revenue (“Dirección General de Impuestos Internos” or DGII), an autonomous government entity which may also issue its own regulations (“Normas”).

Dominican income tax law is primarily territorial. All income derived from work or business activities in the Dominican Republic is taxable, no matter if the person is a Dominican, a resident foreigner or a nonresident foreigner (Articles 269 and 270).

Income derived from work done outside of the Dominican Republic, by Dominicans or resident foreigners, is not taxable in the Dominican Republic. The exception to the principle of territoriality is income from financial sources abroad (Articles 269 and 271). A Dominican or a resident foreigner receiving income from financial investments (stocks and bonds, certificates of deposits, etc.) must pay taxes in the Dominican Republic on their income from those investments (Art. 269). Pensions and Social Security benefits are exempt (Art. 2 of Reglamento #139-98). For the resident foreigner, this obligation only starts three years after obtaining residency (Art. 271).

For tax purposes, any person residing in the Dominican Republic for more than 182 days in a year is considered a resident (Art. 12).

The Tax Code includes a general anti-avoidance provision whereby the tax authorities may ignore the existence of legal entities or certain transactions when used to secure a tax advantage (Art. 2).

Law #53 of 1970 makes it mandatory for all taxpayers to register with the tax authorities and obtain a tax or RNC (“Registro Nacional de Contribuyentes”) number.

A summary of the most important taxes in the Dominican Republic is found below.

## **Capital Gains Tax Dominican Republic**

Capital gains are defined as the difference between the sale price of an asset and the acquisition or production price adjusted for inflation (Art. 289). Capital gains are taxed as regular income.

An example: if an individual with an annual income higher than RD\$604,672.01 purchases a house for RD\$4 million pesos and sells it two years later for \$6 million pesos, while inflation during the two-year period is a cumulative 15%, the tax due on capital gains is calculated as follows:

RD\$6 million pesos - \$4.6 million pesos (\$4 million pesos x 15%) x 25% tax = \$350,000 pesos.

Taxes are levied based on the capital gains calculated in Dominican pesos.

(Article "Capital Gain Tax in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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**Condominium Law Dominican Republic 5038 from 1958**

(Translated from Spanish)

**Article 1.- (Amended by Law #108-05).**- The different parts of a property with functional independence and with a direct or indirect exit to a public road may be the exclusive property of one or more persons, who the same time are undivided owners of common parts, in accordance with the provisions established by this law.

**Article 2.- (Amended by Law #108-05).**- In order to enjoy the condo status established by this law, the parts into which buildings are divided should have a direct exit to a public way, or to a common path which would make them independently useful.

**Article 3.- (Amended by Law #108-05).**- Each owner is the proprietor of his or her exclusive unit and co-proprietor of the common areas and the land. The owners may extend or restrict the number of the common areas and facilities, and even limit the joint ownership of some of them to the owners of the units

**Article 4.-** Unless otherwise provided, each unit owner, for the enjoyment of his/her exclusive property, may use freely the common areas and facilities in accordance with their intended purpose, without hindering or encroaching upon the lawful rights of the other unit owners. He or she shall be obligated to contribute proportionately to the expenses of conservation, maintenance, repair and administration of the common areas and facilities.

Except if otherwise agreed, such contribution shall be proportionate to the value of the divisible fractions of the building, taking into account their extension and situation. The percentage fixed in the bylaws, which should be registered upon submitting the property to the provisions of this law, may be modified only by unanimous agreement of all those concerned.

**Article 5.-** The rights of unit owners to the common areas and facilities are inseparable from the ownership of their respective floors, apartments or commercial units. With no need of special mention, such rights inure to the acquirer of a real, principal or accessory right to the divided portion of the property.

**Article 6.-** A unit owner may dispose of, mortgage, or otherwise affect or lease the floor, apartment, dwelling or commercial unit owned by him/her, without the consent of the other unit owners.

**Article 7.-** Each owner, at his/her own expense, shall see to the conservation and repair of his/her own floor, apartment, dwelling, or commercial unit.

No unit owner may carry out in his/her unit improvements or alterations which may affect the safety or esthetic appearance of the building or the common facilities, nor may he/she use his/her unit for any purpose other than those stipulated in the building bylaws, and in case of doubt, to those which are presumable by the nature and location of the building; nor may he/she disturb the neighbors' peace, or carry out activities contrary to morals and propriety, or which may threaten the safety of the building.

**Article 8.-** The consent of all unit owners shall be required to build new floors or to carry out construction or new facilities affecting the building or its appurtenances, unless otherwise provided in the bylaws.

The consent of all unit owners shall be required in order to modify the agreements declaring, extending or restricting the number of the common areas and facilities, or limiting the joint ownership.

**Article 9.-** For the purposes of good management and enjoyment of the common areas and facilities, and solely by the fact of the property being organized in such manner as established by law, all the owners of the floors, apartments, dwellings and commercial units in the building form, obligatorily and as a matter of law, constitute a condominium association having legal status, which shall act as legal

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representative of all the unit owners, with respect to third parties and the unit owners themselves, through a manager.

The powers of the condominium association, even when drafting or amending the bylaws, are limited to actions of collective application concerning exclusively the enjoyment and management of the common areas and facilities.

**Article 10.- (Amended by Law #108-05).**- The condominium association may replace the existing bylaws, or make additions or amendments thereto which shall be binding on all unit owners and their assigns.

However, the bylaws or the amendments thereto, as well as the exceptional covenants referred to in articles 3, 4 and 8, shall not be binding on assigns nor shall they be binding to third parties until a copy thereof and of the condo regulation shall have been filed with the appropriate Recorder of Deeds.

**Article 11.-** All unit owners are obligated to contribute to the payment of group insurance on the risks threatening the building or the unit owners as a whole, whenever so decided by the condominium association or by the bylaws.

**Article 12.-** The resolutions of the condominium association shall be binding on all unit owners, provided that such resolutions shall have been passed by majority of votes of all those concerned, in duly convened meetings.

Each unit owner shall be entitled to a number of votes in proportion to the importance of his/her rights in the property, which shall be conventionally fixed upon registering the property as provided by this law.

These voting rights may be modified only by the unanimous consent of all unit owners.

A three-fourths majority of the votes of the unit owners, and an ordinary majority of them shall be required in order to enact, amend or substitute any provision contained in the bylaws for which this law or the original bylaws do not require the unanimous consent of all unit owners.

**Article 13.-** If no manager is appointed by the condominium association, any owner may submit the matter to the Justice of the Peace of the jurisdiction where the building is located, so that a judicial administrator is appointed upon notice to all those concerned.

**Article 14.-** Unless otherwise provided in the bylaws, the manager, whether appointed by the condominium association or by the Justice of the Peace, shall be in charge of enforcing the resolutions of the meetings of the condominium association and, if necessary, shall of his/her own accord see to the protection of the common areas and facilities, and to their conservation and maintenance in good state of repair, and shall have the faculty to demand that all those concerned fulfill their obligations.

The manager's powers shall be revoked in the same manner as they were granted, either by the condominium association or by the Justice of the Peace, upon proper notice by any diligent interested party to the other interested parties, who may express their opinions. The appointment of a manager by the condominium association will result automatically in the removal of the judicial administrator.

The judicial administrator's remuneration shall be determined by the same order designating him/her, and such compensation shall conform to the bases established in the bylaws.

**Article 15.-** The manager, regardless of the manner of his designation, represents the condominium association, both as plaintiff or as defendant, and even against the unit owners themselves, individually. The manager shall be required to obtain the previous authorization of the condominium association in order to act as plaintiff or as appellant.

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The manager shall act in the name of the condominium association, with no need of mentioning the name of each one of the owners.

**Article 16.-** Any unit owner may, in the manager's absence and if not contested by the other owners, who shall be previously advised of such matter, incur all such expenses as are necessary for the conservation or repair of the common areas and facilities, and expect to be reimbursed therefor.

**Article 17.-** Any difference arising among the unit owners in relation to the management and enjoyment of the building's common areas and facilities, or regarding the construction of or compliance with the bylaws, are within the realm of competence of the Land Court.

Likewise, the Land Court has competence to judge all other actions which may arise from the application of this law.

**Article 18.-** The contribution to be made by each unit owner toward the common expenses pursuant to article 4 is guaranteed by a lien on the unit of any owner for whose account the condominium association shall have made such payment.

This lien shall be paramount to all others and shall extend to the undivided quota part of the building's common areas and facilities, under the principle established in article 5.

**Article 19.- (Amended by Law #108-05).-** The person or persons who wish to divide the ownership of an existing property, must have their property rights registered pursuant to the Law of Land Registry.

**Article 20.-** The request for registration shall contain a description, as comprehensive as possible, of the building and the independent stories, apartments, dwellings or commercial units into which such building is divided, and the architectural, structural and installation plans shall be attached thereto.

**Article 21.-** No building shall be registered under this law unless the proprietors register the bylaws, which shall contain at least the following:

1. A specification of each one of the exclusive ownership parts into which the building is divided, indicating the number or letter or any other designation used to identify them.
2. The number of votes that the owner of each part of the building subjected to exclusive ownership shall be entitled to in the meetings of the condominium association.
3. The percentage that every unit owner should contribute to the common fees and expenses;
4. The bases for the manager's remuneration;
5. The use to be given to the various parts of the building.

**Article 22.-** Ownership of the independent stories, apartments, dwellings or commercial units into which a building is divided may be registered in the name of one natural person or body corporate, or even in the name of an undivided estate, and the sole fact that all the parts subject to exclusive property belong to just one person shall not entail the loss of the condominium status of the building.

**Article 23.-** The proprietary rights to independent stories, apartments, dwellings or commercial units may be registered before the building is constructed, provided that the plans have been approved by such administrative authorities as are required by law to begin the construction work.

The Title Deed shall have an inscription to that effect, as well as of the obligation assumed by all owners to participate and promptly justify to the Registry of Deeds the habilitation of the building for occupancy.

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**Paragraph:** If the construction is not carried out for whatever reason, the owners, by means of an instrument signed by all of them and with their signatures authenticated by a notary public, shall order the Recorder of Deeds to cancel the Title Deed and to replace it according to law.

**Article 24.- (Amended by Law #108-05)-** A Certificate of Title Deed shall be issued for each condominium unit in which the property has been divided.

**Article 25.-** Failing an expressed provision in the bylaws or when such matter is not established in the same, the meetings or the condominium association may be called upon three-day notice by any of the owners, by means of a notice in a newspaper with nationwide circulation and by registered letter addressed to each unit owner at his/her actual or elected domicile. The object of the meeting shall be briefly stated in the notice.

The meeting shall be held in the place established by the regulations, and if such place has not been determined, at the domicile of the person calling the meeting or of his/her representative, provided that such domicile is in the same location as the building, or at the Office of the Justice of the Peace of that jurisdiction, and this shall be stated in the notice.

**Article 26.-** Notwithstanding anything to the contrary in the bylaws, any unit owner may be represented at the meetings by another unit owner or by a third party.

**Article 27.-** In the case of a unit jointly owned by several persons, only one representative may be appointed.

**Article 28.-** A unit owner shall elect as his/her registered domicile the place where the building is situated, if his/her actual domicile is not there.

This domiciliation shall be stated in all deeds to be submitted to the Recorder of Deeds or in the minutes of the general meeting of the condominium association, failing which, all summons and notices shall be validly served on the Clerk of the Office of the Justice of the Peace, who shall promptly inform the party concerned by registered mail.

**Article 29.-** The manager shall be in charge of directing the tasks to be carried out in the condominium. He/she shall select and revoke the building superintendent and shall give him/her all such orders as deemed appropriate, subject to the authority of the general meeting and abiding by the resolutions thereof.

The manager may order minor repairs without the prior authorization of the general meeting, but no other repairs may be begun except in case of emergency and with the immediate notice thereof to all unit owners.

The manager shall be in charge of the minute book of the meetings of the condominium association, as well as the account books and the documents and receipts for expenses.

**Article 30.-** The manager shall call the meetings of the unit owners by means of circulars, certified letters, or a notice published in a newspaper of nationwide circulation, not less than three days before the date of the meeting, as often as necessary. At every meeting, a person shall be designated to preside over it, and the manager shall perform the duties of Secretary, unless otherwise provided in the bylaws. The copies and certifications signed by the manager, except if otherwise stated in the bylaws, shall be valid with respect to the unit owners and third parties, provided that they are signed by the person who presided at the meeting, or failing this, by one of the owners present.

**Article 31.-** In the event of sale of a unit of the building, the owner shall previously make his/her intention known to the manager and shall pay his/her portion of the common expenses before the sale, without prejudice to any rights against the purchaser.

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**Article 32.-** Ordinary expenses shall be made according to the budget approved annually by the unit owners.

The contribution to be made by each owner toward such and other expenses shall be stated in the minutes of the meeting where such expenses were authorized or approved.

**Article 33.- (Amended by Law #108-05).-** The owners in general meeting shall verify all such sums advanced as are guaranteed by the lien established in article 18, and shall determine the fees remaining unpaid, based on a statement prepared by the manager containing all appropriate details and receipts. The manager shall serve notice of this by bailiff to the delinquent owner(s).

A copy of the minutes of such meeting, certified by the manager and authenticated by a notary, shall be sufficient evidence for the purpose of registering the lien at the Registry of Deeds.

**Article 34.-** The lien established in article 18 shall be registered within three months after the date of the meeting of unit owners referred to in article 33, and each such registration shall retain a lien only on the sums advanced for covering expenses caused within a year from such date.

Any registration made after such period of time or for sums advanced with respect to expenses incurred before the last year shall become effective only from the date of such registration.

**Article 35.-** A unit owner may request at any time that his contribution to the common expenses be liquidated.

If the manager does not call a meeting within forty-eight hours from such request, such unit owner may call the meeting in such manner as established in article 25.

**Article 36.-** Any mortgage agreed to by the owner or owners before the construction of the building to guarantee loans intended to be invested in such construction shall automatically be governed by this law if the creditor agrees to it in the mortgage deed or later, and both the credit and the mortgage will be automatically divided into the independent apartments as soon as the construction is finished, in the same proportion that the owners shall contribute to the common expenses and maintenance fees, according to the bylaws, unless otherwise agreed to in writing, which should be annotated in the Title Deed.

**Article 37.-** The owners of a property registered pursuant to this law may waive their benefits, by executing a document bearing the signatures of all the unit owners authenticated by a notary, provided that all the apartments are free of liens and that the condominium association is free of debts of whatever nature.

The sole owner of the property wishing to renounce to the benefit of this law shall proceed in like manner.

Such documents shall be submitted to the Recorder of Deeds so that he/she may proceed to cancel the Title Deed and replace it according to law.

**Article 38.-** In the case of partial or total destruction of the building by fire or for any other reason, any of the unit owners may request the distribution of the land and the materials, subject to the general provisions on undivided property. Such request shall be registered pursuant to article 208 of the Law of Land Registry.

The insurance proceeds may only be paid to such person as shall be designated by unanimous agreement of the unit owners or according to the results of the distribution.

The condominium status of the property may only be maintained by the unanimous agreement of the unit owners, determining the conditions for reconstruction.

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**Article 39.-** In the event of the building's ruin or old age, the reconstruction thereof may only be made by unanimous agreement of the unit owners.

**Article 40.-** In all cases of reconstruction, the documents and plans appertaining thereto shall be submitted to the Superior Land Court so that said court orders the Recorder of Deeds to make all appropriate registrations and annotations.

**Article 41.-** Companies organized with the purpose of constructing or acquiring buildings divided by stories or into independent apartments, dwellings or commercial units intended to be distributed among the members, whether in property or enjoyment, or for the conservation, maintenance and administration of the property such divided, may be validly formed in such manners as are approved by law, even if their object is not the distribution of benefits.

**Article 42.-** No member may ask to be given exclusively, by distribution in kind, a part of the building that he/she may be entitled to, or to be kept in possession of such parcel of property, if he/she has not fulfilled his/her obligations and subscribed to his/her participation in the supplementary funds needed for the effective realization of the common funds.

If such member does not contribute his/her share of such funds in proportion to his/her commitment, or if he/she does not fulfill his/her obligations, all his/her rights to the company's assets, including those regarding the enjoyment of his/her unit in the building, may be sold in a public auction before a notary, at the request of the company's representatives, upon decision of members representing the regular majority of the capital stock.

Such sale shall be published in a newspaper of nationwide circulation, one month after a demand of payment or foreclosure made to the delinquent member if such demand has not been satisfied.

There should be a term of not less than fifteen days between the date of publication and the sale.

**Article 43.-** Upon the dissolution of the company, the members in general meeting may designate one or several liquidators who shall proceed to the division in kind and distribution of the independent apartment or apartments belonging to each member under the bylaws or according to their rights.

The proposed division and distribution agreement prepared by the liquidator or liquidators, when the bylaws have not provided a special manner of distribution, shall be approved by the members in general meeting, with the majority vote of more than 50 percent of the members representing two-thirds of the capital stock.

This decision shall be binding on those members not present or not represented at the general meeting, whether they are members or beneficiaries or assigns of a promise of distribution.

The rights and obligations of a deceased member whose estate has not been liquidated shall be distributed undivided in the name of his/her estate, without prejudice to the rights of the heirs or assigns, and without their presence in the proceedings implying acceptance of the estate on their part.

Within a month from the approval at the general meeting of the division and distribution proposal, the liquidator or one of them shall have notice served on the members who have not signed the minutes of the meeting, requesting them to do so within a period of one month.

If the minutes are not signed by all the members within this last period of time, the liquidator or one of them shall request from the Superior Land Court the homologation of the division and distribution, and such court shall render judgment in a sole instance and shall communicate its decision to the Recorder of Deeds for the execution thereof.

**Article 44.-** The provisions contained in article 664 of the Civil Code shall continue governing the property not registered in the cadastre, and the property that although registered in the cadastre is not subjected to the system established by this law.

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(Article "Condominium Law in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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**Deslinde Law Dominican Republic (NEW)**

The new Property Registry Law (Law #108-05) that has been in effect since April 4, 2007, and its enabling regulations, have drastically changed Dominican real estate law. One essential element of this modernization has been the requirement of a "deslinde" for all real estate transactions: purchases, sales, mortgages, condominium formation, etc.

A "deslinde" ("segregation" in English) is the legal procedure by which a portion of land within a parcel is segregated from all the other portions within the same parcel. In other words, the deslinde procedure converts a provisional title that guarantees the property right of ownership for a portion of land within a bigger parcel into a definite title that guarantees the ownership of an individual parcel. The result of the procedure is that the segregated portion will become its own parcel with its individual cadastral designation, guaranteed by a definite title. The majority of jurisdictions around the world only recognize and register segregated portions of land and do not allow any transactions of portions of land that are not segregated. The purpose of the new Property Registry Law is to reach exactly the same level of sophistication and security as these modern jurisdictions have had for a long time: no recorded property rights without a deslinde.

The deslinde requirement introduces such a profound change to the Dominican land registry system that the law establishes a transitional period – from April 4, 2007 until April 4, 2009– during which real estate transactions of properties without a "deslinde" are still possible, although severely restricted. Beginning April 4, 2009, however, real estate transactions without a deslinde will be prohibited. This means that from that date forward, the Registrar of Titles will not record any real estate transaction of a property without a "deslinde".

Although this itself is a small revolution –in the past most property transactions took place without a deslinde– the modernization of the Dominican Property Registry Law goes much further. The procedure itself has been significantly modified. Under the new law, the surveyor has to use G.P.S. coordinates to segregate the property. In addition, it is now mandatory that the deslinde go through a judicial phase at the First Instance Land Court, requiring assistance by an attorney, as opposed to the old system, when the vast majority of the deslindes were handled administratively without contradiction, giving rise to widespread fraud. The current procedure is divided into three phases:

1. The "survey phase". A certified surveyor measures the property using G.P.S. coordinates, after having given notice to all the owners of the neighboring properties. Once finished, the survey is submitted to the Regional Survey Office (a dependency of the Superior Land Court) for review. If approved, the Office provides the new parcel with a new cadastral designation and allows the procedure to continue to the second phase.
2. The "judicial phase". The deslinde goes to the First Instance Land Court where neighbors or any interested third party may object to the deslinde. Parties must be represented by attorneys in this phase. After debate, the Judge rules on the deslinde petition. This ruling is subject to appeals. If the deslinde is approved, the Judge authorizes the Registrar of Title to cancel the old provisional title and to issue the new definite title with the new cadastral designation.
3. The "registration phase". The Judge's ruling is executed by the Registrar of Titles cancelling the old provisional title and issuing the new definite title.

As mentioned, beginning April 4, 2009, real estate transaction of non-"deslinded" properties will be prohibited. Our recommendation, therefore, is for you to check if you own any property without a deslinde, and if you do, or are not sure if you do or not, please contact us at Guzmán Ariza in order to assist you in this matter.

(Article "Deslinde Law in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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*lawyer. For specific technical or legal advice on the information provided and related topics, please contact the author.*

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## **Income Tax Regulations/law Dominican Republic**

### Introduction

Taxation in the Dominican Republic is governed by Law No. 11-92 of May 31, 1992, commonly known as the Tax Code (“Código Tributario”), its amendments and regulations (“Reglamentos”). This overview is a brief summary of the Tax Code’s most relevant provisions. All references in parentheses refer to articles in the Tax Code unless otherwise specified.

Taxes are collected by the Bureau of Internal Revenue (“Dirección General de Impuestos Internos” or DGII), an autonomous government entity which may also issue its own regulations (“Normas”).

Dominican income tax law is primarily territorial. All income derived from work or business activities in the Dominican Republic is taxable, no matter if the person is a Dominican, a resident foreigner or a nonresident foreigner (Articles 269 and 270).

Income derived from work done outside of the Dominican Republic, by Dominicans or resident foreigners, is not taxable in the Dominican Republic. The exception to the principle of territoriality is income from financial sources abroad (Articles 269 and 271). A Dominican or a resident foreigner receiving income from financial investments (stocks and bonds, certificates of deposits, etc.) must pay taxes in the Dominican Republic on their income from those investments (Art. 269). Pensions and Social Security benefits are exempt (Art. 2 of Reglamento #139-98). For the resident foreigner, this obligation only starts three years after obtaining residency (Art. 271).

For tax purposes, any person residing in the Dominican Republic for more than 182 days in a year is considered a resident (Art. 12).

The Tax Code includes a general anti-avoidance provision whereby the tax authorities may ignore the existence of legal entities or certain transactions when used to secure a tax advantage (Art. 2).

Law #53 of 1970 makes it mandatory for all taxpayers to register with the tax authorities and obtain a tax or RNC (“Registro Nacional de Contribuyentes”) number.

A summary of the most important taxes in the Dominican Republic is found below.

## **Income Tax regulations Dominican Republic**

### **For Individuals**

Individuals obtaining income from a Dominican source or from financial investments abroad shall pay taxes as per the following scale (Art. 296), in Dominican pesos (RD\$):

Income up to RD\$290,243.00	annually exempt
RD\$290,243.01-RD\$ 435,364.00	15%
RD\$435,364.01-RD\$604,672.00	RD\$21,769 plus 20% of income above RD\$435,364.0
Income above RD\$604,672.01	RD\$55,630 plus 25% of income above RD\$604,672.01

This scale is adjusted for inflation every January based on the rate of inflation calculated by the Central Bank of the Dominican Republic. There are very few deductions.

Employers must retain and pay to the DGII, within the first ten days of each month, any income tax due on the salaries paid to their employees the previous month (Art. 307). Individuals who receive

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incomes from non-wage sources must file a tax declaration every year, on or before March 31 (Art. 110 of Regulation #139-98).

#### **For Corporations and Other Entities**

Corporations and any other for-profit organizations pay a flat 25% income tax on net taxable income (Art. 297). Unlike in the United States and other countries, in the Dominican Republic the tax treatment for corporations, partnerships and limited liability companies is exactly the same.

Net taxable income is determined after deducting from gross income those deductions, credits and advance payments admitted by law (Articles 284 to 287).

All corporation and for-profit entities must file a tax declaration every year, on or before April 30, if their business year coincides with the calendar year. Otherwise, the filing must be done within 120 days after the end of the business year (Art. 112 of Regulation #139-98).

(Article "Income Tax Regulations Law in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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### **Inheritance and Gift Taxes Dominican Republic**

The estate of any person, Dominican or foreign, whose last domicile was in the Dominican Republic is subject to Dominican inheritance taxes. The inheritance of property located in the Dominican Republic is subject to Dominican inheritance taxes, irrespective of the nationality or domicile of the deceased (Art. 1 of Law #2569 of 1950).

Law #288-04 lowered inheritance taxes to 3% of the value of the estate, after deductions, as determined by the tax authorities. Medical and funeral expenses, as well as outstanding debts and mortgages, are some of the allowed deductions. The rate is increased to 4.5% for beneficiaries who do not reside in the Dominican Republic (Art. 7 of Law #2569).

Beneficiaries must file a declaration with the tax authorities within 90 days of the death of the decedent. An extension of an additional three and a half months is possible in complex cases (Art. 26 of Law #2569). Delays in filing are subject to a 2% per month penalty, up to a maximum of 50% of the tax owed (Art. 9 of Law #2569).

Gifts are taxed at a 25% rate (Art. 6 of Law #2569) except the following, which are exempt;

- \* Gifts for less than RD\$500
- \* Gifts to government institutions or recognized nonprofit organizations
- \* Gifts to the family homestead (“bien de familia”).

#### Withholding or Retentions at the Source

The Tax Code establishes the following retentions:

\* Payments abroad to persons or entities not domiciled or resident in the Dominican Republic are subject to a 25% retention on the amount paid (Art. 305). This retention is considered as final and definitive payment of the taxes owed for the operation. No deductions are allowed. The only exceptions to this provision are interest payments to financial institutions abroad which are subject to a 10% retention instead (Art. 306).

\* Payments to workers. Employers must retain income taxes as per the table published by the DGII (Art. 307)

\* Dividends. Corporations must retain 25% of the dividends paid to shareholders (Art. 308). The amount retained becomes a credit against the income tax of said corporations.

\* Rentals. Payments to individuals (not corporations) are subject to a 10% retention (Art. 309).

\* Fees for services and commissions. Payments to individuals (not corporations) are subject to a 10% retention (Art. 309).

\* Prizes. All payments are subject to a 15% retention.

\* Government payments to suppliers are subject to a 5% retention.

Dividends and interests paid by financial institutions regulated by the government are not subject to retentions (Art. 309).

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## **ITBIS-Tax Regulations/law Dominican Republic**

### Introduction

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For tax purposes, any person residing in the Dominican Republic for more than 182 days in a year is considered a resident (Art. 12).

The Tax Code includes a general anti-avoidance provision whereby the tax authorities may ignore the existence of legal entities or certain transactions when used to secure a tax advantage (Art. 2).

Law #53 of 1970 makes it mandatory for all taxpayers to register with the tax authorities and obtain a tax or RNC (“Registro Nacional de Contribuyentes”) number.

A summary of the most important taxes in the Dominican Republic is found below.

### **Tax on the Transfer of Industrialized Goods and Services (ITBIS) Dominican Republic**

The ITBIS is a value-added tax applicable to the transfer and importation of most goods, and to most services (Art. 335). The rate of the ITBIS is 16% (Art. 341). For imports, the ITBIS is charged on the CIF value of the goods plus applicable duty (Art. 339). There are many exemptions to the ITBIS tax (Arts. 342 and 343), among them, the following:

- \* exported goods
- \* basic foodstuffs
- \* medicines
- \* fuels
- \* fertilizers
- \* books and magazines
- \* educational materials
- \* financial services
- \* transportation services
- \* home rentals
- \* utilities
- \* educational and cultural services

The 16% ITBIS must be added to every bill for goods and services that are not exempt. The individual or entity receiving the ITBIS must disburse it to the DGII within the first 20 days of the following month (Art. 353). Noncompliance is subject to a 10% surcharge for the first month and 4% for each

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month thereafter, in addition to 2.58% interest for each month or fraction of a month (Art. 252). From the total ITBIS received, the individual or entity is allowed to deduct any ITBIS paid to suppliers, customs, etc. (Art. 346).

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### **Health-Medical Insurance Plans in the Dominican Republic**

Get affordable health insurance quotes in the Dominican Republic and compare individual medical insurance plans side by side. We'll help you find affordable individual health plans, family medical insurance, group health insurance or business health insurance we will present you with a number of medical insurance plans that best suit your needs and budget.

When living and/or working in Dominican Republic, people may not have the same level of access to the healthcare system as to the local population. Consequently, it is crucial to have some professional advice on how to choose the right expatriate health insurance in Dominican Republic.

Knowing that the chosen insurance provider will have the expertise to ensure the best treatment in the best facilities in Dominican Republic is priceless.

Our partner is an independent insurance broker offering free quotes and advice to the expat community in Dominican Republic.

The DR is not far behind its better-developed counterparts when it comes to medical care. Foreign medical practitioners have given the country very good ratings in providing care for tourists who have suffered major catastrophic events while on holiday.

In the area of surgery the DR is ahead of many Latin American countries in laparoscopic laser surgery. A good volume of patients come from the Virgin Islands, the Lesser Antilles and other parts of the Caribbean who make the most of the good care and lower fees in this country.

Dental services also offer value for money, with very good treatment and reasonable prices, factors which also attract patients from other countries.

The vast majority of your medical needs can be met on the island. However, interventions requiring high-tech equipment or a long period of rehabilitation may not be available.

It is recommended that you obtain medical insurance as a first priority. Particularly advantageous is a dual policy which covers medical expenses abroad.

True medical insurance plans come in various types. One type will reimburse your medical expenses, possibly including your medications. This type of plan provides broad coverage, but you need to have the cash to pay your bills at the time services are provided.

A second type of insurance pays a certain portion of each bill. For example, you might be responsible for RD\$50-RD\$100 of any doctor's fee of RD\$600. This type of plan often has a restricted list of physicians or clinics, and the list will change from time to time.

Foreign insurance companies based here (primarily from the US) offer insurance which includes coverage abroad. The best idea is to purchase a policy with a very high deductible (excess) for overseas care to reduce the cost, as this is essentially only for major disasters.

Many medical insurance policies are available to individuals for virtually the same price as they are offered through employers. The prices of these policies will depend on the age of the applicant, and the company he/she is applying to. The monthly costs can vary, though an individual, however, might have to pay for six months to a year in advance rather than benefiting from a monthly payment schedule.

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## **Obtaining Residency Status in the Dominican Republic**

Foreigners wishing to live or work permanently in the Dominican Republic are required to obtain residency status. Obtaining permanent residency in the Dominican Republic is a three-step process:

1. First, the foreign national must apply for a residence visa at the Ministry of Foreign Affairs ("Secretaría de Estado de Relaciones Exteriores").
2. Once the residence visa is obtained, the applicant must file within the next two months for his provisional residency at the Immigration Department ("Dirección General de Migración"). The procedure at Immigration usually takes approximately four months before provisional residency is granted for one year.
3. Finally, after the expiration of the provisional residency, the applicant may file for his permanent residency at the Immigration Department.

### **Residency Visa**

#### **The required documents for a residency visa application are:**

- \* Birth certificate (a true copy translated into Spanish by a Dominican official translator);
- \* Marriage certificate (if spouses are applying jointly);
- \* Passport (two complete photocopies);
- \* Tourist card or business visa with evidence of the applicant's last date of entry into the Dominican Republic;
- \* Evidence of solvency such as bank deposits, property titles, vehicle registrations or a work contract;
- \* Notarized letter of guarantee from a Dominican person or corporation or a permanent resident;
- \* A certificate of good behavior from the Dominican authorities;
- \* Medical exam performed in the Dominican Republic ((blood test and chest x-rays);
- \* 4 photos 2 x 2 (front);
- \* 4 photos 2 x 2 (profile);
- \* Completed application forms.

The foreign national may submit his or her application to the Ministry of Foreign Affairs while visiting the country on a tourist card, tourist visa or business visa.

### **Provisional Residency**

#### **The required documents for a provisional residency application are:**

- \* Two copies of the residency visa or the tourist card;
- \* Birth certificate (a true copy translated into Spanish by a Dominican official translator);
- \* Marriage certificate (if spouses are applying jointly);
- \* Notarized letter of guarantee from a Dominican person or corporation or a permanent resident;
- \* Affidavit regarding the solvency of the guarantor backed by evidence of solvency such as bank deposits, property titles, etc.;
- \* Work contract (if the applicant works in the country);
- \* A certificate of good behavior from the Dominican authorities;
- \* Medical exam performed in the Dominican Republic ((blood test and chest x-rays);
- \* 4 photos 2 x 2 (front);
- \* 2 photos 2 x 2 (profile);
- \* Completed application forms.

Once the application is approved, the applicant receives a Provisional Residency Card and an Identity Card ("Cédula de Identidad").

For many years now, the Immigration Department has waived the requirement of a residency visa to apply for residency for those applicants who have entered the country with a tourist card or visa.

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### **Permanent Residency**

#### **The required documents for a permanent residency application are:**

- \* Three photocopies of the provisional residency card;
- \* Affidavit by two residents of the Dominican Republic regarding the good morals and good behavior of the applicant;
- \* Notarized letter of guarantee from a Dominican person or corporation or a permanent resident;
- \* A certificate of good behavior from the Dominican authorities;
- \* Medical exam performed in the Dominican Republic ((blood test and chest x-rays);
- \* 4 photos 2 x 2 (front);
- \* 2 photos 2 x 2 (profile);
- \* Completed application forms.

After approval of the petition, the applicant receives a Permanent Resident Card valid for a two-year period, renewable for additional two year periods.

### **New Immigration Law**

Immigration Law #285-04 which changes much of the present system was enacted in 2004 but is not yet in force.

(Article "Obtain Residence in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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### **Real Estate Property Tax Dominican Republic**

A 1% annual tax is assessed on any real property owned by individuals, based on the value of the property as appraised by the government authorities. (Articles 1 to 3 of Law #18-88). Properties are valued without taking into account any furniture or equipment to be found in them. For built lots, the 1% is calculated only for values exceeding RD\$5 million pesos. For unbuilt lots, the 1% tax is calculated on the actual appraised value without the RD\$5 million pesos exemption. Individuals must pay this tax every year on or before March 11, or in two equal installments: 50% on or before March 11, and the remaining 50%, on or before September 11.

The RD\$5 million pesos threshold is adjusted annually for inflation.

The following properties are exempt from this tax:

- (1) Built properties valued at RD\$5,000,000 or below.
- (2) Farm properties.
- (3) Properties whose owners are 65 years old or older, who have owned it for more than 15 years and have no other property in their name.
- (4) Properties subject to the Tax on Assets.

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**Real Estate Property Transfer Tax Dominican Republic**

A 3% tax is assessed on any transfer of ownership of real estate (Art. 20 of Law #288-04). The transfer tax is paid based on the market value of the property as determined by the appraisal done by the DGII, not on the price of purchase stated in the deed of sale. The deed of sale cannot be filed at the Title Registry Office without paying this tax. The transfer tax must be paid within six months of the date of the deed of sale (Art. 7 of Law #173-07). Noncompliance is subject to fines.

Properties worth less than RD\$1 million pesos acquired through a bank loan are exempt from the transfer tax (Art. 20 of Law #288-04). The RD\$1 million pesos exemption is adjusted annually for inflation.

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**Renewable Energy Law 57-07 Dominican Republic active.**

While there is a lot of debate about a national renewable energy standard and more than half of the states have some kind of RPS, where does the rest of the world stand on renewable energy targets? As a Hispanic, I'm very interested in what Latin America and the Caribbean do about global warming, not just because we need to show leadership to northerners, but also because this is our future. Most countries in Latin America depend on oil imports, and most of them are also already being and will be impacted by global warming. So, not surprisingly, we are seriously trying to be on top of this.

Everybody knows about what Brazil is doing with ethanol, but what about other countries in Latin America? And what does the future hold for renewable energy in this region. I'm from the Caribbean, specifically the Dominican Republic, and I'm very involved in what's happening in that country and elsewhere around the region. Since 2005, I've been visiting the country quite often, helping found an organization that promotes sustainable development and now looking into renewable energy ventures in that country. So, what is the Dominican Republic doing about global warming? In short, its emissions are going up, but it has a renewable energy standard that says 25% renewables by 2025. Let's take a closer look at the details.

Last April 2007, the President of that country, Dr. Leonel Fernandez, signed a renewable energy law passed by the Congress. After 6 years of meetings and drafts and building support, it finally passed. Within a year of the idea that the law was going to definitely pass under Fernandez' administration, a Spanish company invested E\$100 million in solar cell production, wind companies announced over 400MW of planned installations, the Brazilian company Infinity Bio-Energy announced an investment of \$200 million in a large ethanol plant (since the country has a lot of sugarcane), and lots of small solar and wind energy subsidiaries have been set up in the country. With over 25,000MW of wind potential in less than 3% of the land (over 60,000MW in 9% of the land) and an infinite supply of sunlight (sunny Caribbean), the potential is there for the country to meet all its energy needs from renewables.

Before specifying what the law does, it's important to mention the fact that the government is committing to paying for what the incentives described below on top of all the problems the country has. Among them are an unemployment rate of 15%, a per capita GDP of just over \$8,000 (though growing at 10%), some 25% of the population in poverty, a relatively high crime rate, congestion in large cities, high energy costs and power blackouts, many urban areas without potable water or paved roads, and an education system that is not near the best it can be. Of course, high energy costs justify taking this action because it will create large energy savings in the future, but the investments required to incentivize renewable energies are coming out of the pockets of citizens of the Dominican Republic.

So, what does this law do exactly? First of all, it removes all taxes from all equipment, sales, and income for at least 10 years. Clearly not the case in the United States or elsewhere. Second, it pays up to 75% of the cost of installing solar or wind in homes or community co-ops. Again, higher than the incentives in the United States or elsewhere. And third, but most important, it places a feed-in tariff! That's right, utility producers receive a premium equal to the estimated externalities of fossil fuels for the renewable energy they produce. Essentially, they're putting the incentives that make solar work in Germany. But, of course, this country is sunnier, so the potential for higher installations is clearly there.

On the fuels side, they have lots of incentives for ethanol and bio-diesel production, including the 100% tax exemptions. Brazil and Chile are therefore very interested in producing ethanol in the country. The law mandates that all gasoline sold in the country are blended with a 10% mix, with higher blends to come. While there may be transformations coming to the mobility sector of that country that will make ethanol unnecessary (and thus solely for tax-free exports to the U.S.; yes, CAFTA works for this), this is pretty impressive. There are several experimental plots that will be producing bio-diesel from *Jatropha* and other plants. And the President joined investors last week at the Clinton Global Initiative to announce plans for bio-diesel production in Haiti (to promote growth, create jobs, etc.).

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Now, isn't this enough to justify the U.S. hopping on board? "No," the administration will say, "it doesn't matter what others do, as long as India and China are not in..." But, then again, India is on track to cutting emissions 25% by 2020 anyways and China just announced investments of up to \$280 billion over the next several years, and has a renewable energy standard of 15% by 2025. Well, if we go past the tipping point, the city where I grew up will be under water, and so will most of the major cities in the Dominican Republic and many other countries all over Latin America. Anyways, this is all really impressive, but don't think we're stopping there...

President Fernández recently signed into law the incentive for renewable energy bill. This new law provides tax and duties incentives on alternative energy imports and facilities for research and application of renewable energy technologies. Law 57-07 eliminates former law 2071, opening the Dominican Republic for the development of alternate energy sources. The new law's incentives, in effect under the regulation of the National Energy Commission, include the following:

- (a) 100% exemption over import duties for equipment, machinery and accessories required for renewable energy production.
- (b) 100% exemption over sales tax (ITBIS), for all previously mentioned equipments.
- (c) 100% 10-year exemption over income tax, for companies or individuals benefited by this law until year 2020.
- (d) Reduction to a fixed 5% on the tax over foreign financed interest payments, modifying Art. 306 of the Dominican Tax Code for the beneficiaries of this new law.
- (e) Up to a 75% credit on capital cost of equipment required by owners or renters of family homes and commercial or industrial establishments who shift entirely to renewable energy systems or increase their energy consumption share in these. This tax credit will be deferred to the consumer's income tax for the next 3 years, discounted at a proportion of 33.33% per year.

This new bill also calls for the creation of a CO2 emission's bond market under the platform of the Kyoto Protocol, regulated by the Ministry of Natural Resource's Mechanism of Clean Development.

(Article "Renewable Energy Law 57-07 Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drllawyer.com](http://www.drllawyer.com)).

*Note: While every effort has been made to ensure the accuracy of this publication, it is not intended to provide legal advice as individual situations will differ and should be discussed with an expert and/or lawyer. For specific technical or legal advice on the information provided and related topics, please contact the author.*

## **Tax on Assets Dominican Republic**

### Introduction

Taxation in the Dominican Republic is governed by Law No. 11-92 of May 31, 1992, commonly known as the Tax Code (“Código Tributario”), its amendments and regulations (“Reglamentos”). This overview is a brief summary of the Tax Code’s most relevant provisions. All references in parentheses refer to articles in the Tax Code unless otherwise specified.

Taxes are collected by the Bureau of Internal Revenue (“Dirección General de Impuestos Internos” or DGII), an autonomous government entity which may also issue its own regulations (“Normas”).

Dominican income tax law is primarily territorial. All income derived from work or business activities in the Dominican Republic is taxable, no matter if the person is a Dominican, a resident foreigner or a nonresident foreigner (Articles 269 and 270).

Income derived from work done outside of the Dominican Republic, by Dominicans or resident foreigners, is not taxable in the Dominican Republic. The exception to the principle of territoriality is income from financial sources abroad (Articles 269 and 271). A Dominican or a resident foreigner receiving income from financial investments (stocks and bonds, certificates of deposits, etc.) must pay taxes in the Dominican Republic on their income from those investments (Art. 269). Pensions and Social Security benefits are exempt (Art. 2 of Reglamento #139-98). For the resident foreigner, this obligation only starts three years after obtaining residency (Art. 271).

For tax purposes, any person residing in the Dominican Republic for more than 182 days in a year is considered a resident (Art. 12).

The Tax Code includes a general anti-avoidance provision whereby the tax authorities may ignore the existence of legal entities or certain transactions when used to secure a tax advantage (Art. 2).

Law #53 of 1970 makes it mandatory for all taxpayers to register with the tax authorities and obtain a tax or RNC (“Registro Nacional de Contribuyentes”) number.

A summary of the most important taxes in the Dominican Republic is found below.

Businesses and corporations must pay a 1% annual tax on assets (Arts. 401 and 404) in two installments due on April 30 and October 30 (Art. 405). For the purposes of this tax, all assets are taken into account, minus depreciation and amortization, except: a) stock holdings in other corporations, b) real estate in rural areas, c) real estate used for agriculture or animal husbandry, d) tax advances and e) provisions for bad debts (Art. 402).

The tax on assets operates as a kind of minimum income tax. If the income tax paid by the business or corporation is equal or higher than the amount of the tax on assets, then the business will have no obligation to pay the tax on assets (Art. 407). If the income tax paid is less than the amount of tax on assets due, the business must pay the difference.

(Article "Tax on Assets in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drlawyer.com](http://www.drlawyer.com)).

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### **Title Insurance Dominican Republic**

Title insurance is part of every major real estate transaction in the United States and Canada. For a one-time premium, an insurance company assumes the obligation to indemnify the real estate buyer in case title to the property is defective. In effect, the buyer relies on a policy of title insurance to guarantee that he or she will actually own the property to be purchased. In the event of a lawsuit disputing the title, the title insurance company will defend the buyer in court and if the lawsuit is lost will pay or cure all valid claims or losses up to the amount of the policy. Title insurance may be obtained during or after the purchase of real estate.

In the Dominican Republic, as in many Latin American and European countries, the government provides title insurance. The Land Registry Law establishes an indemnity fund with which to pay claimants who due, for example, to an error of the Registrar, are deprived of their property. Unfortunately, the indemnity fund never collected sufficient funds to become operative and property owners remain unprotected. Recently, however, two American title insurance companies have begun to offer their services to buyers of Dominican real estate: **First American Title Insurance Company** and **Stewart Title**.

Among the risks covered are: title vested on another person; title defect, lien, charge, privilege, mortgage or encumbrance; forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation in the conveyance; lack of right of access to and from the property; easement or right of way on the title; invalidity of any document upon which the title is based because it was not properly executed, sealed, acknowledged, notarized, delivered or recorded; invalidity of any document upon which the title is based because it was executed under a falsified, expired or otherwise invalid power of attorney; erroneous or inadequate legal description of the land.

(Article "Title Insurance in the Dominican Republic" by Fabio J. Guzman Ariza from Attorneys at Law at [www.drllawyer.com](http://www.drllawyer.com)). *Note: While every effort has been made to ensure the accuracy of this publication, it is not intended to provide legal advice as individual situations will differ and should be discussed with an expert and/or lawyer. For specific technical or legal advice on the information provided and related topics, please contact the author.*

**Tourism Incentive Law Dominican Republic 158-01**

**Article 1.-** The Law for Promoting Tourism Development is hereby established for scarcely developed tourist destinations and new destinations in provinces and locations having great potential; as well as the Official Fund for Tourism Promotion.

**Paragraph I.-** The purpose of this law is to increase the pace of a rational process of development of the tourist industry in regions with great potential or with excellent natural conditions for tourism exploitation throughout the country, which, whether or not declared as tourist destinations, have not reached to this date the expected degree of development, and which are listed below:

1. Tourist Destination No. 4, Jarabacoa and Constanza, (Decrees N°1157, of July 31, 1975; and N° 2729, of September 2, 1977);
2. Tourist Destination IV, expanded: Barahona, Bahoruco, Independencia and Pedernales (Decree No.322-91, dated August 21, 1991);
3. Tourist Destination V, expanded: Montecristi, Dajabon, Santiago Rodríguez and Valverde (Decree No.16-93, of January 22, 1993);
4. Tourist Destination VIII, expanded, comprising the province of San Cristobal and the municipality of Palenque, as well as the provinces of Peravia and Azua de Compostela;
5. Tourist Destination comprising the municipalities of Nagua and Cabrera (Decree 199-99);
6. Tourist Destination of Samana Province (Decree No.91-94, dated March 31, 1994);
7. The province of Hato Mayor and its municipalities; El Seybo Province and its municipalities; the province of San Pedro de Macorís and its municipalities; Espaillat Province and its municipalities Higüerito, Jose Contreras, Villa Trina and Jamao al Norte; the provinces of Sanchez Ramirez and Monseñor Nouel; the municipality of San Jose de Las Matas; the province of Monte Plata; and Guaigui, La Vega.

**Paragraph II.-** For this purpose, this law and its regulations establish the incentives to be given as stimulus to projects and investments pursuing the aforementioned goals and objectives.

**Paragraph III.-** The tourist destinations of Puerto Plata or Costa de Ambar, Santo Domingo, and others that may have benefited from incentives in hotel installations, shall only benefit presently from the complementary offers established in article 3, excepting numeral 1 regarding hotel installations, resorts and/or hotel complexes.

**PURPOSE OF INCENTIVES:**

**Article 2.-** All persons or entities domiciled in the country undertaking, promoting or investing capitals in any of the activities set forth in article 3 and in the tourist destinations and/or provinces and/or municipalities mentioned in the preceding article may benefit from the incentives and benefits granted by this law.

**Article 3.-** The establishment in our national territory of businesses engaged in the tourist activities listed below are hereby declared of special interest to the Dominican Republic:

1. Hotel facilities, resorts and/or hotel complexes;
2. Building facilities for conventions, fairs, international conventions, festivals, shows and concerts;

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3. Businesses engaged in the promotion of cruises establishing any of the ports specified in this law as their mother port for the origin and final destination of their ships;
4. Construction and operation of amusement parks and/or ecological parks, and/or theme parks;
5. Construction and/or operation of port and maritime infrastructure for tourism, such as recreational ports and seaports;
6. Construction and/or operation of tourist infrastructures, such as aquariums, restaurants, golf courses, sports facilities, and any other that may qualify as a tourist activity.
7. Small- and medium-sized businesses whose market is fundamentally related to tourism (handcrafts, ornamental plants, tropical fish, endemic reptiles farms and the like);
8. Utility-infrastructure companies for the tourist industry, such as aqueducts, treatment plants, environmental cleaning, and garbage and solid waste removal.

#### **INCENTIVES AND BENEFITS GRANTED BY THIS LAW**

**Article 4.-** Businesses domiciled in the country and qualifying for the incentives and benefits established in this law are exempted one hundred percent (100%) from paying the taxes listed below:

1. The income tax subject to incentives under article 2 hereof;
2. National and municipal taxes levied on the use and issuance of construction permits, including land purchase documents, provided that such land is used for one of the purposes described in article 3 hereof;
3. Import duties and other taxes, such as tariffs, fees, late charges, including the Tax on Transfer of Industrial Goods and Services (ITBIS) that are applicable to the equipments, materials and furnishings needed for initially equipping and putting into operation the tourist resort concerned.

**Paragraph I.-** National and international funding given to such companies as are the subject of these incentives, as well as any interest thereon, are exempted from all taxes and withholdings;

**Paragraph II.** Natural persons or bodies corporate may deduct up to twenty percent (20%) of their annual profits, provided that the same are invested in a tourist resort within the scope of this law;

**Paragraph III.-** Full and absolute tax exemption shall be granted in connection with the machinery and equipment needed to achieve a high quality profile of products (including kilns, incubators, production control treatment plants, and laboratories), at the time of establishing the tourist project.

**Article 5.-** No new taxes, tariffs, fees, etc. shall be established during the tax-exemption period.

**Article 6.-** The incentives and benefits referred to herein shall be strictly limited to new projects whose construction is started after the enactment of this law.

#### **EXEMPTION PERIOD**

**Article 7.-** The tax-exemption period for every tourist resort, business or company shall be ten (10) years from the date of completion of the construction work and the furnishing of the project subject of these incentives. A term not exceeding three (3) years shall be provided to begin the sustained and uninterrupted operation of the resort approved, the nonobservance of which shall result in the immediate loss of the exemption rights acquired.

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**Article 8.-** A Council on Tourism Development (Consejo de Fomento Turístico-CONFOTUR) shall be in charge of applying this law. Such council shall be presided by the Secretary of State of Tourism, and shall include:

1. A representative from the Ministry of Finance;
  2. A representative of the National Association of Hotels and Restaurants, Inc. (Asociación Nacional de Hoteles y Restaurantes, Inc. [ASONAHORES]);
  3. A representative of Tourist Operators (OPERTUR);
  4. A representative of the Technical Undersecretariat of Tourism, who shall act as Secretary; and
  5. A renowned environmentalist (ecologist), chosen by the Ministry of the Environment.
6. A representative of the Ministry of Culture.

**Article 9.-** All applications for qualification under this law shall be filed at the Ministry of Tourism, which shall keep a record of such applications in such manner as established by CONFOTUR regulations.

**Article 10.-** All applications submitted to the Council for Tourism Development should be either approved or rejected, giving reasonable arguments therefor, within a period of time not exceeding sixty (60) days in all.

**Article 11.-** The qualification applications approved by CONFOTUR shall be the subject of a resolution containing a statement of the technical and financial characteristics on which such decision was based.

**Article 12.** The Ministry of Tourism shall see to the faithful observation of the provisions herein established, by means of inspectors, who, duly authorized, may conduct inspections in the entire area in the zone and, in the event of an infraction of the law, of its regulations or of all regulations in this respect, shall write a statement in connection thereto, the contents of which shall be considered as evidence until proven otherwise.

**Paragraph.-** The Ministry of Tourism shall submit such statements of infractions to the [Attorney General](#) of the Republic, who shall in turn send them to the appropriate District Attorney.

**Article 13.-** Any violation of this law by individuals or bodies corporate, shall result automatically in the loss of the incentives, and in the obligation to pay all monies not paid under this law.

## **REQUIREMENTS FOR SUBMITTING APPLICATIONS**

**Article 14.-** All new projects applying for the incentives and benefits created hereby should be drawn up and submitted together with the following documents:

1. An environmental impact study considering the type of project, the infrastructures required, the impact zone and the sensitivity of the area. Projects requiring minor tourist infrastructures shall be exempted from submitting an environmental impact study;
2. An architectural proposal, as well as the preliminary engineering details for such project, prepared by a professional or a renowned professional firm of capable Dominican professionals licensed to practice their profession. Any consultancy, advice or participation by foreign specialists in the development of the preliminary architectural or engineering studies, or in subsequent stages of project development, shall be in all cases made through a local professional firm or a firm duly authorized to practice such profession, which shall be in charge of and legally responsible for such development;

3. Those projects that anticipate handling large volumes of fuel and/or involve an intensive traffic of vessels should be accompanied by a contingency plan to prevent and control oil spills.

**Paragraph.-** All projects should have a preliminary approval of the appropriate urban and municipal planning agencies of the jurisdiction where the projects are to be situated.

**Article 15.-** Before starting construction, and upon obtaining the required authorizations therefor, all infrastructure projects should submit a bank guarantee to cover all environmental recovery expenses if any damage has been caused to the environment due to negligence of the promoter,

**Article 16.-** The Ministry of Tourism shall be responsible for guaranteeing that no infrastructure project is approved within protected areas intended for national parks, unless it is proven by means of studies that such project shall not endanger the preservation of the natural resources or the fauna and flora.

## **SANCTIONS**

**Article 17.-** All businesses established under the incentives and benefits of this law shall guarantee the preservation of all natural resources and the protection of the environment.

**Paragraph.-** The Ministry of Tourism shall be responsible for guaranteeing that, during the construction and operation of any business established under the benefits of this law, all surrounding natural resources are respected and preserved.

**Article 18.-** Failure to maintain the level of quality and quantity of services in the category stated during the tax-exemption period, upon notice by the Ministry of Tourism and after expiration of the term given for such purpose, as established by regulations, shall determine the suspension of the incentives and benefits granted.

## **SPECIALIZATION OF FUNDS FOR TOURISM PROMOTION**

**Article 19.-** With the objective of promoting the Dominican Republic more effectively in the international tourist market, and by virtue of the creation under this law of new tourist destinations, the Official Tourist Promotion Fund is hereby established, to be administrated by the Ministry of Tourism with the advice of the private sector, mainly the National Association of Hotels and Restaurants (Asociación Nacional de Hoteles y Restaurantes, Inc. (ASONAHORES), and other institutions from that sector. Such fund shall be managed according to the following provisions:

1. Fifty percent (50%) of all proceeds from the application of the aeronautics tax per passenger transported, at entry and departure, in non-scheduled international or chartered flights, collected by the Department of Civil Aeronautics, shall be applied to the Official Tourism Promotion fund managed by the Ministry of Tourism;
2. The remaining fifty per cent (50%) shall be allotted to the operations fund of the Department of Civil Aeronautics, to be used in specific programs of said office, in order to improve the security of civil aviation in the Dominican Republic;
3. All proceeds from tourist cards in all airports and seaports in this country may be deposited directly, in such percentage as has been established, in the respective accounts of the institutions mentioned in 1 and 2 above.

## **OTHER PROVISIONS**

**Article 20.-** The Executive Power is given a term of one hundred and twenty (120) days after the enactment of this law, to prepare and publish the regulations pertaining to the same.

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**Article 21.-** The statements herein contained shall prevail over any provision established in previous laws or in administrative measures previously established by the Executive Power.

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