

The Tax on Profits from the Sale of Mexican Real Estate

by Linda Neil

There is a lot of misinformation on this subject, such as:

"If you become a Mexican citizen you have no tax to pay when you sell real estate".....

or "With a FM-3 and some receipts, you will be exempt from paying capital gains on the sale of your vacation house in Mexico"

Neither scenario is completely correct!

Mexican citizens must pay exactly the same tax on the sale of a lot or a rental property as any foreigner.

No exemption is permitted for the sale of a vacation home, no matter what immigration status the seller has.

As of January 1, 2007 an exemption is granted on the sale of a primary residence. This exemption applies to Mexican citizens and any foreigner whose TAX RESIDENCE is Mexico.

The Law of Tax on Rents (*Impuesto Sobre La Renta*), Article 109, Fraction XV provides for exemption for the sale of a personal residence. An exemption of 1,500,000 UDIS is permitted, provided other requirements are met.

UDIS.....And what is a UDI???

A UDI (*Unidad de Inversion*) is, in English, an investment unit. This is based upon a price-level adjustment established by the Bank of Mexico in 1995 to assure that loans denominated in UDIs maintain their purchasing power and provide a real rate of return in the local currency of pesos. Because the peso has been quite stable over the past years, the UDI value does not change significantly now. The rate is published daily by the Bank of Mexico. In 2007 the rate went from 3.789867 in January to 3.926066 in December, a change of less than 1%

In other words the deduction of 1,500,000. UDIS in December, 2007 is 5,889,099 pesos, or about \$ 555,000. US dollars.

Full Exemption: per Article 109, Fracc. XV (Art. 129 RL ISR)

When the sales price of the property does not exceed 555,000. USD dollars, the property can be exempt from the capital gain, or income tax, provided all conditions are met.

Partial Exemption: (example when the sale price exceeds the deduction)

A house sells for 700,000. USD
less 1,500,000 UDIS 555,000 USD

Taxable 145,000. USD , less any permitted deductions such as capital improvements. The tax rate is based upon a sliding scale ranging from 3% to 28%.

In order to qualify for the deduction, the seller must prove this is his/her principal residence with utility bills, bank account and credit card accounts with the same address, electoral card or immigration document showing permanent residence in the country. Title must be in seller's name or in spouse's name.

Seller must also sign an affidavit that this is his/her principal residence and the transfer must be made before a notary public.

Only the house, not the adjacent land is exempt.

A small house on a large piece of land will take into consideration only the construction (supported by building permits) and the adjoining outbuildings, not the excess of the land.

Only one property per annum will be exempt and seller must manifest that this is the first transfer of a personal residence in the calendar year.

Please remember, and don't be misled: an exemption allowing exclusion of capital gains is provided to residents who have lived in a home in Mexico as a primary residence. This exclusion is intended to benefit residents, whether nationals or foreigners, of Mexico, not those who own second homes in the country.

In Mexico, the owner's basis in a property is the value declared in the deed. In the past it was common to declare the appraisal value which could be much lower than the amount actually paid. This is the very important reason to have the price you paid for the property declared in the deed. Be sure, however, that this is a condition of your offer to purchase and is accepted by the seller when you make the offer..

By law the amount declared in the deed must be written in Mexican pesos. It should also be declared in US dollars, if that is the currency used in the transaction, at the rate of exchange on the date payment is made.

If this important point is overlooked when the property is sold, the capital gain tax can be enormous!

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