

Global REIT Survey 2016

AMERICAS



Mexico – FIBRAS



1 General introduction

	Enacted year	Citation	REIT type	REIT market
FIBRAS	2004 Last amended in 2014.	Mexican Income Tax Law.	Trust	Currently, there are ten FIBRAS listed in the Mexican Stock Exchange.

"FIBRAS" (*Fideicomisos de Inversión de Bienes Raíces*) were introduced in Mexico in 2004 to encourage real-estate investment following the same model of the U.S. REITs (Real Estate Investment Trust). Basically, FIBRAS afford a special tax treatment to trusts, whose purpose is to acquire or construct real properties to be leased, or those whose purpose is to acquire the right to receive income from leasing such properties, as well as those whose purpose is to grant financing for such objectives.

During its first stage (2004-2006) tax incentives were not sufficient to attract investors so additional amendments were introduced in 2007 to attract small and institutional investors to a portfolio of real properties in a diversified array of real property products, such as shopping centers, industrial facilities, office buildings, apartment complexes and hotels, through the issuance of publicly traded securities or real property participation certificates. A New MITL was enacted in December 2013 and became effective on January 1, 2014, pursuant to which some minor aspects are to be considered in FIBRAS.

Recently the FIBRAS have become much more attractive as investment real estate vehicles for both Mexican and non-Mexican investors.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Mexico	13	5	€ 14.261	0.65%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Fibra Uno Administracion S.A. de C.V.	€ 6.016	-1.11%	517%	0.46%
Administradora Fibra Danhos S.A. de C.V.	€ 2.464	-5.00%	5.44%	0.04%
Macquarie Mexico Real Estate Management S.A. de C.V.	€ 938	-2.96%	7.45%	0.09%
Prologis Property Mexico	€ 896	N/A	6.55%	0.04%
Concentradora Fibra Hotelera Mexicana	€ 342	N/A	5.08%	0.03%



*All market caps and returns are rebased in EUR and are correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. EPRA, August 2016.

2 Formation of FIBRAS

2.1 Formalities

Key requirements
Incorporation under Mexican Law. Mexican trustee. FIBRAS: Listed and Private.

First, the trust must be created or established in accordance with Mexican law and the trustee must be a Mexican banking institution authorized to act as such in Mexico.

The primary objective of the trust must be to acquire or construct real properties in order to lease them, or to acquire the right to receive income from leasing such properties, or to grant financing for such purposes backed by a mortgage security on the leased assets.

Although in theory there could be Listed FIBRAS and Private FIBRAS, in practice only listed FIBRAS have been incorporated:

- a. Listed FIBRAS whose trust certificates for the assets that make up trust property are placed in Mexico among the general investing public; and
- b. Private FIBRAS are those formed with at least ten non-related investors, who individually may not own more than 20% of all of the investment certificates issued. Mexican law provides that two or more individuals are considered to be related parties when one of them participates, directly or indirectly, in the administration, control or equity of the other, or when an individual or group of persons participates, directly or indirectly, in the administration, control, or equity of said persons. Members of partnerships are considered to be related, as are the persons who in accordance with this paragraph are considered related parties of said members.

2.2 Legal form / Minimum Initial Capital

Legal Form	Minimum Initial Capital
Trust	No

Legal form

The legal form to establish a FIBRA is through a trust.

Trusts in Mexico are governed by the Mexican General Law of Negotiable Instruments and Credit Operations, and are entered into with an authorized Mexican financial institution, which acts as trustee. The settlor in the trust is the investor who contributes real property, funds, or both to the trust and the beneficiaries are the parties that are entitled to receive the benefits from the gains or income of the trust.

According to the Mexican Income Tax Law ("MITL"), real property trusts are considered as FIBRAS provided they meet the following requirements:

- a. The purpose of the trust must be: (i) the acquisition or the construction of real estate property intended for lease; or (ii) the acquisition of the right to receive income from the leasing of such assets; in addition to (iii) grant financing for such purposes backed by a mortgage security on the leased assets.
- b. At least 70% of the funds of the trusts are invested in real estate properties, or in the rights or credits referred to above, and the remainder is invested in Federal Government Securities registered in the National Securities Registry, or in shares of debt-instrument mutual funds.

- c. The real estate properties that are constructed or acquired must be leased and not be sold for at least four years as of the conclusion of their construction or their acquisition. Real properties that are sold before said term has ended will not receive the preferential tax treatment at hand.
- d. Trust shall be enrolled at the Registry of Trusts engaged in the acquisition and construction of real estate, pursuant to the general rules, issued by the Mexican Tax Administration Service. This requirement is deemed to be met when the relevant trust obtains a favorable ruling issued by the Mexican Tax Authorities, concerning the tax treatment applicable to such Trust, among others requirements.

Minimum Initial Capital

Mexican legal and tax provisions do not establish any limits relating to the initial capital of FIBRAS but it is natural that a substantial amount of capital will be required for its operation. It is also important to note that Mexico has enacted thin capitalization rules which will be explained hereinafter.

2.3 Certificate Holder Requirements / Listing Requirement

Certificate Holder Requirements	Listing Requirement
Solely for Private FIBRAS. At least ten investors who are unrelated parties. Each investor may not hold more than 20% of the certificates.	None

Certificate Holder requirements

The trustee in a FIBRA is required to issue certificates to the investors for the assets in the trust which must be placed in Mexico either among general investing public; or in the alternative be acquired by at least ten non-related investors, none of which may individually own more than 20% of all of the investment certificates issued.

Listing requirement

Listed FIBRAS certificates required to be listed in the Stock Exchange in order to receive the preferential tax treatment as well as incorporated in accordance with Mexican Law.

2.4 Patrimony of FIBRAS

Restrictions on Activities / Investments
70% : 30% ratio

At least 70% of the patrimony of FIBRAS must be invested in real estate property or rights to receive income from leasing or acquisition of real estate properties and the remainder must be invested in securities issued by the Federal Government registered at the National Registry of Securities or in shares of debt-instrument mutual funds.

In general, there are no restrictions regarding real property developments. Please take into consideration that only in case of lodging properties is required by Mexican tax regulations to meet some additional requirements.

2.5 Leverage

Leverage
Thin Capitalization Rules.

Interest payments made to foreign-related parties are subject to thin capitalisation regulations, which provide that interest payments made to foreign-related parties arising from foreign related debt exceeding three times the average equity of the company ("3-to-1 debt/equity ratio") will not be deductible. Nevertheless, in certain cases, taxpayers may seek a ruling from Mexican tax authorities in order to exceed the 3-to-1 debt/equity ratio mentioned above.

2.6 Taxable Income Distribution / Obligations of Trustee

Taxable Income Distribution	Timing
95% of taxable income.	Annually

Taxable income

At least once a year, no later than March 15, the trustee must distribute, to the holders of the investment certificates, at least 95% of the taxable income of the immediately preceding fiscal year generated by the assets that make up the trust property.

2.7 Sanctions

Penalties / Loss of Status Rules
Tax incentives do not apply. May lose status as FIBRA.

In the event of non-compliance with organizational and asset rules, the trust may lose its status as a FIBRA. The sale of real property prior to the four-year holding period does not constitute "non-compliance". In this case, the tax benefit is lost only for the property that is sold.

3 Tax treatment at the Level of FIBRAS

3.1 Corporate Taxes / Tax withholding

In general terms, Income tax is levied at a rate of 30% on taxable income (taxable revenues minus authorized deductions) calculated on an accrual basis.

Operating income

Mexican tax regulations provide that a trustee of a FIBRA is required to determine, on behalf of the beneficiaries, the Income Tax arising from the activities of the FIBRA as any corporation or company would, i.e. it will be entitled to deduct any expense that complies with Mexican tax requirements. Once the net gain or taxable income is determined, upon distribution, trustee will be required to make a tax withholding, unless the beneficiary of the income is exempt from paying such tax (i.e. registered pension or retirement funds). Any distribution made by trustee to the beneficiaries during the tax year will be creditable against the annual tax liability of the beneficiary.

Mexican tax residents are required to add any distribution made by FIBRAS to other income they receive during the tax year and they will be entitled to credit the tax withholding made by the FIBRAS.

FIBRAS have no obligation to make estimated payments of Income Tax. This allows the trust to allocate cash to project financing rather than paying estimated taxes. However, the trust has the obligation to file and pay Income Tax, as applicable, on an annual basis.

Mexican tax provisions establish that the net operating losses for Income Tax purposes (NOL's) may be carried forward ten years and that the trust may use its losses sustained in prior taxable years to offset taxable income for the year.

Capital gains

Upon disposition of any portion to the estate of the FIBRAS, Income Tax will apply. Please note that the tax must be updated for inflation from the month when the real property was contributed into the trust, and up to the month in which the transfer takes place.

Other taxes

Local land taxes (property tax and transfer tax) will apply to the real property owned by the FIBRAS.

Accounting rules

In Mexico, the Federal Fiscal Code (FFC) lists the requirements with which the books and records must comply among which we find the following:

- a. The accounting systems and records must comply with the requirements listed in the Regulations of the Federal Fiscal Code (RFFC) (i.e. preparing financial statements, linking the financial statements with accounts, identifying transactions, and preparing transaction vouchers as evidence of transactions);
- b. The accounting records must be analytical and must be registered within two months following the date on which the respective transactions were performed;
- c. The accounting books must be kept at the tax domicile of the taxpayer;
- d. The books and records must follow the Mexican Financial Information Norms and be kept in Mexican Pesos.

3.2 Transition regulations

Conversion into FIBRA Status
Deferred Taxation of Contributions to the Trust.

A contribution of real property is deemed a taxable event. Nevertheless, persons who, in their capacity as settlors, contribute real properties to the trust and receive investment certificates for the total or partial value of said properties may defer the payment of the income tax liability on the gain obtained on the sale of such properties until they sell each such certificate. The tax liability corresponding to each certificate sold for the period from the month of the contribution of the real properties to the trust until the month in which the certificates are sold will be updated by inflation.

The tax will be calculated by applying the 30% rate to the amount of the gain obtained in the sale of the real properties and must be paid within fifteen days following the sale of the corresponding investment certificates.

The gain will be calculated in accordance with this MITL. For this purpose, the sale price of said properties will be considered to be the value assigned to them in the indenture of the aforementioned certificates, and the resulting gain will be divided by the number of investment certificates, which is determined by dividing the aforementioned value by the par value of the individual investment certificate.

The deferral of the tax payment will end when the trustee sells the real properties. The settlor who has contributed said properties must pay this tax within fifteen days after the day on which said properties are sold.

3.3 Other fees

Other Fees
Local Property Transfer Tax. Public Registry fees. Notary Public fees. Trustee fees. Other local fees.

In Mexico, the transfer of real property is subject to a real property transfer tax at a local level. Generally, property transfer tax is triggered when the trustee receives the certificates, but if dealing with a FIBRA, the property transfer tax may be deferred up to the moment the certificate is sold or when the real property is sold by the trust depending on local Laws. The transfer tax rate varies depending on the State where the real property is located.

With regard to the fees of the Public Registry, the Notary Public, the Trustee, and any other local fees that may apply depending on local Laws, please note that the amount to be paid for same vary depending on the State where the FIBRA is formed, but it is important to take such fees into consideration since such can amount to a considerable sum.

4 Tax treatment at the Certificate Holder level

4.1 Domestic Holder

Corporate Certificate Holder	Individual Certificate Holder	Tax Withholding
30% income tax on the taxable income resulting from the sale of the certificates. Sale of certificates through an authorized Stock Exchange are tax-exempt for income tax, in some cases.	30% income tax on the taxable income resulting from the sale of the certificates. Sale of certificates through an authorized Stock Exchange are tax-exempt for income tax.	Trust must withhold income tax on the taxable income distributed to the holders of the investment certificates, by applying the 30% rate to the distributed amount of said taxable income, unless the holders that receive the income are exempt from paying income tax on such amounts. The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a legal entity residing in Mexico for tax purposes or is income tax exempt for the item of income earned from the goods, rights credits or securities that compose the trust estate

Corporate Certificate Holder

The distributions paid by the trust to Mexican entities are considered taxable income and are subject to Income Tax at a rate of 30%. The income that derives from the sale of certificates is considered to be taxable income for Income Tax purposes, and is taxed at a 30% tax rate. Please take into consideration that the Trust will carry out a withholding tax at the rate of 30%.

Individual Certificate Holder

The distributions paid by the trust as well as income earned for the disposition of the certificates by Mexican individuals are considered taxable income and is subject to Income Tax at variable rates depends on the amount of the income. The top rate for individuals in Mexico pursuant to MITL is 35% rate. Please take into consideration that the Trust will carry out a withholding tax at the rate of 30%.

Finally, the income from the sale of participant certificates through an authorized Stock Exchange, received by Mexican individuals' resident in Mexico, is exempt for Income Tax.

Tax Withholding

The distributions paid by the trust to Mexican entities and individuals is subject to a tax withholding made by the trustee or by the financial broker who has the certificates in deposit unless such entities or individuals are exempt from such payment. Further, the tax so withheld is a tax credit for Mexican entities or individuals.

The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a Mexican resident individual and the transaction is undertaken in the stock exchange.

4.2 Foreign Certificate Holder

Corporate Certificate Holder	Individual Certificate Holder	Tax Withholding
Final Income Tax withholding.	Final Income Tax withholding.	10% tax withholding made by the purchaser of the certificates, unless the transaction is undertaken in a recognized the stock exchange. Tax withholding of 30% on distribution of profits.

Corporate Certificate Holder

Amounts withheld from corporate holders of certificates who are foreign residents are deemed as a final tax payment.

If the owner of the certificate is a foreign pension and retirement fund, Trust distributions and the transfer of certificates is exempt for Income Tax purposes. Certain requirements must be met in order to be considered a foreign pension and retirement fund for Mexican tax purposes.

Individual Certificate Holder

Amounts withheld from individual holders of certificates who are foreign residents shall be deemed in Mexico as a final tax payment.

Tax withholding

Distributions paid by the trust to foreign entities and individuals is subject to a tax withholding made by trustee or by the financial broker who has the certificates in deposit at a rate of 30%, unless such entities or individuals are exempt from such payment, and is considered a final tax payment.

The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a foreign resident and the transaction is undertaken in the stock market.

Finally, it is important to point out, that the foreign shareholders may take advantage of the benefits afforded by the Tax Treaties entered by Mexico.

5 Treatment of Foreign trust

Foreign Trust
Income Tax if the foreign trust is considered a resident in Mexico. Otherwise -taxation depends on tax treaty.

Foreign Trusts

The benefit of the special tax regime applicable to FIBRAS will not be applicable to a foreign trust because in order to obtain the special tax regime granted to FIBRAS, the trust must be incorporated under Mexican Law. In this case the activities of the foreign trust in Mexico will determine the applicable tax regime. It is possible that the foreign trust would be treated in Mexico as a permanent establishment. In this case, it would be subject to Income Tax.

It is possible that it would be treated as a foreign resident with revenues from a source of wealth located in Mexico; accordingly, the Income Tax treatment will depend on the type of Mexican source income obtained by the non-resident, and whether the non-resident resides in a country with which Mexico has a tax treaty.

SIBRAS

Until 2014, investors could also incorporate Mexican entities commonly referred to as SIBRAS (Sociedades Inmobiliarias de Bienes Raices. However, as we mentioned before, a new MITL was enacted in December 2013 and became effective on January 1, 2014, pursuant to which such possibility is now repealed.

Please take into consideration that pursuant to the New MITL commercial corporations that took the tax incentive for SIBRAS, shall abide by the following:

1. Shareholders that contributed real estate to the corporation shall include in gross income the gain from the disposition of the goods so contributed, when any of the following situations takes place:
 - a. They dispose of the shares of such corporation, in the proportion that such shares represent with regard to all the shares received by the shareholder for the contribution of the real property to the corporation, provided that such gain was not included in gross income previously; and
 - b. The corporation disposes of the contributed goods, in the proportion that the part being transferred represents of such goods, provided that such gain was not included in gross income previously.

If any of the situations described in the two preceding subsections has not taken place through December 31 2016, the shareholders of the SIBRAS shall include in gross income the full amount of the gains from the disposition of the contributed goods that were not included in gross income previously.

2. The gains that are included in gross income described shall be updated from the month in which they were earned through the month in which they are included in gross income.

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