



ISSUES RELATING TO COMMERCIAL LEASING

DOMINICAN REPUBLIC

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

The taxes payable on the creation of a lease are the following:

- a. **Income tax:** If the landlord is a commercial entity, the landlord must pay at the end of the year an income tax to the Internal Revenue Department of the Dominican Republic (DGII), which amounts to 25% of the revenue arising from the rent fee.

If the landlord and the tenant are both individuals, the landlord must pay income tax at the end of the year on the revenue arising from the rent fee to the DGII. If the landlord is an individual and the tenant is a legal entity, the tenant must withhold 10% of the amount of the rent fee and pay it to the DGII. However, in this case, at the end of the year, the landlord will be able to offset the amount retained by the tenant with the applicable tax rate to be paid on income tax, according to the following withholding schedule:

Yearly income in Dominican Pesos			Tax Range
Lower Limit	Upper Limit	Accrued	[Surplus rate]
	330,301.00	-	Exempted
330,301.01	495,450.00	-	15%
495,450.01	688,125.00	24,772.00	20%
688,125.01	-	63,307.00	25%

- a. **Value Added Tax (ITBIS):** In the event that the landlord is a company, and the tenant is a commercial entity or an individual, the tenant must pay the ITBIS (which amounts to 16% of the rent fee) to the landlord, who will pay the funds to the DGII.

If the landlord is an individual and the tenant is a company, the company will pay the ITBIS directly to the DGII. If both parties are individuals, the tenant will pay the ITBIS directly to the DGII.

It is important to take into account that the Tax Code provides that the payment to the DGII cannot exceed 3 months, regardless of the provisions of the lease agreement.

2. **Describe any legal restrictions limiting the maximum term of a lease (including renewals).**

There are no legal restrictions on a maximum term for said agreement.

3. **Describe any laws requiring landlords to allow a tenant to renew its lease.**

According to the Decree No. 4807 for the Control of Leases and Evictions, issued on May 29, 1950, the landlord is required to allow a tenant to renew its lease. The Decree sets forth the reasons by which a landlord may terminate a Lease Agreement, the expiration of the term or the unilateral will of the landlord are not included as causes of termination. This Decree is considered a public order disposition, thus deemed applicable over any law or private agreement regarding this matter.

However, on December 3, 1998, the Supreme Court of Justice declared such exclusion illegal and unconstitutional. Since then, the parties must respect the expiration of the term of the Lease Agreement and the landlord must consent to renew the lease with the tenant, pursuant to the general provisions of the Civil Code.

4. **Describe any restrictions on rent that may be charged for to a tenant.**

There are certain restrictions on rent that may be charged for to a tenant.

Decree No. 4807 provides that the landlord must request an authorization to raise the rent to a tenant from the Bureau for the Control of Leases and Evictions, explaining the reasons for such raise. If the Bureau deems the reasons adequate, the Bureau will authorize the landlord to raise the rent.

If the raise comes as a result of repairs or improvements to the property, the landlord may adjust the rent accordingly without the intervention of the Bureau of Control. However, if the new rent exceeds 1% of the total appraised value of the property, the tenant may file a claim.

For this purpose, the Bureau will take into account the appraisal made by the General Department of the Cadastre. Nevertheless, it is important to take into account that the Bureau does not change the rent before six months from the start of the lease.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

In principle, our Civil Code enables tenants to terminate a lease prior to its stated expiration date, although such termination will entail the payment of a penalty for such purposes, unless the agreement states otherwise.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

The Civil Code allows tenants to assign the Lease Agreement or sublease the property if it is not expressly forbidden in said agreement.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

The Civil Code allows landlord to restrict assignments or subleases by tenants, by providing such restrictions expressly in the Lease Agreement.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

The eviction proceeding will depend on the cause by which the tenant is being evicted:

- a. If the reason is that the property will be repaired or rebuilt by the landlord, and the tenant refuses to leave the property, the landlord must request a conciliation session in the Bureau of Control of Leases and Evictions. If the parties do not reach an agreement, then the Bureau will make a decision, which may be appealed before the Commission of Appeals of Leases and Evictions. The decision of the Commission may be contested in the Ordinary First Instance Civil Court. This judicial procedure, if a remedy is filed in the Supreme Court of Justice, could take from 3 to 5 years.

In case the landlord wishes to live in the property or use it to set his own business, and the tenant refuses to leave, the landlord may follow the same procedure before the Bureau of Control of Leases and Evictions and the Ordinary Courts.

- b. In case that the landlord wishes to evict the tenant for failure to pay the rent, then the landlord must file a claim in the Peace Court. This procedure may last between 3 and 5 months, and the decision will be applied notwithstanding if a remedy of appeal or a remedy to the Supreme Court of Justice is filed.
- c. If the lease has been agreed verbally, the landlord must notify the tenant 180 days before the eviction, in case the property is occupied by a commercial establishment. If there is an expiration term in a written agreement, the tenant must leave the property by the end of such term. If the tenant does not proceed to do so, the landlord must file a claim in the Peace Court. This procedure may take between 3 and 5 months, and the decision will be applied notwithstanding if a remedy of appeal or a remedy to the Supreme Court of Justice is filed.

9. **Are there any legal restrictions on pledging a leasehold interest as security for a financing?**

There are no legal restrictions on pledging a leasehold interest as security for a financing.

10. **Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.**

Law 4314, which Rules the Provision and Application of Funds in the Lease, issued on October 22, 1955, modified by Law 17-88 on February 5 1988 (hereinafter Law 4314), establishes that the landlord must place the security deposits in a separate account in the Agricultural Bank of the Dominican Republic within 15 days of the execution of the Lease Agreement.

There is a minimum amount that must be deposited in the Agricultural Bank according to the duration of the Lease Agreement, as shown in the following schedule:

Duration of the Agreement	Amount of the Deposit
1 year	1 month of rent
2 years	2 months of rent
3 or more years	3 months of rent

However, it is important to outline that in case the landlord requests an amount higher than the one stated in the schedule above, the whole amount must be deposited in the Agricultural Bank.

If the landlord fails to place the security deposits in the Agricultural Bank within the term provided, the landlord must pay 10 % of the amount of the deposit for each month of delay. This penalty will never surpass 50% of the amount of the deposit.

In addition, claims before the Bureau for the Control of Leases and Evictions and the Ordinary Courts will not move forward if the deposit has not yet been performed.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no required statutory or other legal disclosures to be made to all tenants.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

Whether the tenant is a commercial entity or an individual, if the landlord is a company, the tenant must render the ITBIS (which arises to 16% of the rent fee) to the landlord, who will deposit the funds in the Internal Revenue Office.

13. Describe any limitations on the ability of landlords to exercise self-help.

The Decree expressly forbid the landlord the possibility of self help, by stating that the landlord must not try any maneuver to pressure the tenant to abandon the property, such as cutting the electricity, the water, suppression of roof or walls, among others.

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

Under the principle of “the free will of the parties” granted in the Civil Code, remedies such as acceleration of rent must be expressly stated in the Lease Agreement in order to be enforced.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

There are no expedited remedies for tenant default.

16. Describe any formal requirements for the execution of a lease.

According to the Law 4314, the Lease Agreement must be registered in the Agricultural Bank of the Dominican Republic within 15 days of the execution of the Lease Agreement, in order to have certain date (enforceable against third parties), so that the tenant is protected against eviction from a third party purchaser. In addition, it is highly recommended to sign this agreement before a notary, and in certain circumstances, record it in the Registry of Titles.