# Mexico: Refund of social security contributions granted to departing foreign individuals by appeal court

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## In brief

A recent appeal court decision in Mexico City opens the possibility for foreign individuals leaving Mexico to seek a refund a part of their social security contributions which relate to pension and workers housing.

The appeal court decision is a binding precedent only within the Mexico City area, although appeal courts in other jurisdictions within Mexico and the relevant authorities may follow the same criteria.

## In detail

### Background

Foreign individuals working in Mexico and their employers are subject to social security contributions and housing fund contributions in respect of employment income, except where exemption is available under the terms of a social security totalization agreement.

Currently, Mexico only has totalization agreements in force with Canada and Spain. Historically, contributions made under the Mexico social security system to the state pension funds (AFOREs) and the worker´s housing fund (INFONAVIT) have only been refundable to foreign individuals when they reach retirement age (currently 65 years old).

Although there have been some lower court decisions in the past indicating that the social security authorities should refund pension and housing fund contributions to foreign individuals who are departing Mexico on a permanent basis, these decisions were not consistent and did not represent a binding precedent.

### The decision

At an appeal heard recently by the First Circuit Employment Appeal Court *(Pleno en Materia del Trabajo del Primer Circuito*), which covers the Mexico City area, the court ruled that state pension and housing funds should be returned to foreign nationals when they depart Mexico on a permanent basis. The decision represents a binding precedent covering the Mexico City area.

Based on this legal precedent, it should be possible for foreign individuals who worked in Mexico City to seek refunds of their pensions and housing fund contributions on leaving Mexico.

Several practical issues remain still unclear, such as:

- How foreign individuals, who have already left Mexico and no longer have a Mexican bank account, can in practice receive a refund of contributions?
- Can international employers, who paid social security on behalf of tax equalized employees in Mexico, obtain refunds on behalf of employees?

In addition, it is not clear whether the social security and housing fund authorities will apply the same criteria in areas where this decision does not represent a binding precedent.

It is possible that applications will be made in the jurisdictions of other courts which will lead to a decision by the Mexico Supreme Court on this issue in the future, which would be binding across the whole of Mexico.

## The takeaway

Foreign nationals, who have paid pension and housing fund contributions in Mexico and are leaving or have left Mexico and returned to their home countries, may have an opportunity to recover these contributions.

## Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:


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