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TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION AND TAX INFORMATION EXCHANGE AGREEMENTS

New DTC in Force. On January 1, 2011 DTCs and/or their corresponding Protocols executed between Mexico and the following countries entered into force:

- | | |
|---------------------|-------------------|
| (i) India. | (iv) Uruguay. |
| (ii) Panama. | (v) Austria. |
| (iii) South Africa. | (vi) Switzerland. |

New TIEA in Force. Also, in 2011 the following TIEAs signed between Mexico and the following countries entered into force:

- (i) Bermuda (September 9, 2010 / January 1, 2011).
- (ii) Bahamas (January 1, 2011).
- (iii) The Netherlands Antilles (February 4, 2011).

Reporting Requirements. Taxpayers generating income of any kind in Bahamas, Bermuda, Panama and Uruguay from January 1, 2011 are not obliged to file the information return regarding income from a "black listed" jurisdiction (Rule II.3.10.7., MTR published on December 28, 2010).

However, taxpayers should file the information return regarding income subject to preferential tax regimes when applicable. Therefore, this rule will mainly help investors **(i)** holding investments directly in such jurisdictions or **(ii)** holding investments through compliant structures generating income in such jurisdictions.

There are various DTCs (Bahrain and Kuwait) and TIEAs (Cayman, Jersey and Cook Islands) that have been executed with black listed jurisdictions. Others are being negotiated (Aruba, Guernsey, Costa Rica, Gibraltar, Isle of Man, Marshall Islands, British Virgin Islands, Liechtenstein, Monaco, Samoa, Turks and Caicos and Vanuatu). If these agreements qualify as "broad agreements" to exchange tax information, it is reasonable to believe that in the future there should be no obligation to file the information tax return for income generated in such jurisdictions.

Some of the most salient features of the above listed treaties and agreements are herein after referred.

TAX TREATIES

DTC BETWEEN MEXICO AND INDIA

Definition of interest¹. No reference to the domestic legislation of the contracting States to define interest; this is to say, a "short definition" of interest is provided for.

The Protocol establishes that commissions related to the amounts given as loans, the payments for opening or securing credits, income derived from the alienation of credits and financial instruments referred to an underlying debt, among others, will be deemed as interest.

¹ Article 11, DTC and Paragraph IV, Protocol to the DTC.

Limit of benefits². In addition to the residence criterion, it establishes that the benefits provided will not apply for legal entities, unless they comply with certain requirements, which are, among others, the following:

- (i) They are incorporated in any of the contracting States and their main class of shares is listed in a recognized stock market and are regularly negotiated in the same;
- (ii) At least 50% of the voting shares are owned (directly or indirectly) by individuals residing in any of the contracting States and/or any company incorporated into any of the contracting States in which at least 50% of the voting shares are owned by individuals residing in any of such States; and,
- (iii) In the case of a partnership, at least 50% of the participation on the benefits of the same is property of individuals residing in any of the contracting States and/or of any company incorporated into any of the contracting States in which at least 50% of the voting shares are owned by individuals residing in any of such States.

Additionally, the above described companies will not have the right to the benefits of the DTC when more than 50% of the gross income of the same in a tax year is directly or indirectly paid through deductible payments to individuals and/or companies that are not tax residents of any of the contracting States.

DTC BETWEEN MEXICO AND PANAMA

Exchange of information³. An exchange of information clause is provided for, which in general terms is coincident with that of the OECD Model Convention and will be applied only when all and every domestic sources of information have been exhausted.

Limit of benefits⁴. In general terms, legal entities will not have the right to the benefits of the DTC, unless said entities are one of the following:

- (i) A governmental entity;
- (ii) A company incorporated in any of the contracting States, when at least 50% of the voting shares are owned (directly or indirectly) by individuals residing in any of the contracting States and/or any company incorporated into any of the contracting States in which at least 50% of the voting shares or of the participation in the benefits of the same are owned by individuals residing in any of such States;
- (iii) A company incorporated in any of the contracting States if its main class of shares is listed in a recognized stock market and they are regularly negotiated in the same; and,
- (iv) A partnership in which at least 50% of the participation on the benefits of the same is property of individuals residing in any of the contracting States and/or of any company incorporated into any of the contracting States in which at least 50% of the voting shares or the participation of the benefits of the same are owned by individuals residing in any of such States.

However, the above described companies will not have the right to the benefits of the DTC when more than 50% of the gross income of the same in a tax year is directly or indirectly paid through deductible payments to individuals and/or companies that are not tax residents of any of the contracting States.

Additionally, the DTC will not be applicable (with the exception of the Article regarding the Exchange of Information) with respect to:

- (i) Income that is tax exempt in a State of which the effective beneficiary of said income is a tax resident, or income taxed in such State that is obtained for the tax resident at a lower rate to that applicable to

² Article 28, DTC.

³ Article 25, DTC, and Paragraph 9, Protocol to the DTC.

⁴ Paragraph 10, Protocol to the DTC.

the same income obtained by other residents in such State that are not benefited from the exemption or reduced rate;

- (ii) Income obtained by an effective beneficiary residing in a contracting State that is entitled to the deduction, return or any other benefit established in connection with said income, different from the accreditation of the tax paid abroad and which is not granted to other residents of such State; and,
- (iii) Dividends from shares in favor of the holder of the same.

DTC BETWEEN MEXICO AND SOUTH AFRICA

Definition of interest⁵. Interest concepts established by domestic legislations of the contracting States are incorporated by reference in the DTC (i.e. long interest definition).

Limit of benefits⁶. It is provided that the Treaty's benefits will not apply to legal entities, unless more than 50% of the participation in the benefits of the same (or more than 50% of the shares of any class) is property of any or of several of the following:

- (i) Individuals residing in any of the contracting States;
- (ii) Companies which main class of shares is substantially and regularly negotiated in a recognized stock market; and,
- (iii) A governmental entity.

In the case of dividends, interest and royalties, in addition to the abovementioned requirement, no more than 50% of the gross income of the entity should be used to make payments for such concepts to individuals or entities different from those listed in indexes (i), (ii) and (iii) above.

As well, the benefits of the DTC will be applied to legal entities which main class of shares is substantially and regularly negotiated in a recognized stock market and if the establishment, acquisition or maintenance of such entity and their operations did not have as main purpose to obtain the benefits of the DTC.

Exchange of information⁷. A clause for the exchange of information is included in the DTC. This clause is coincident, in general terms, to that of the OECD Model Convention.

DTC BETWEEN MEXICO AND URUGUAY

Exchange of information⁸. The authorities of both States will exchange information that it is relevant under the terms of the DTC. As well, the contracting States will assist each other with the collection of the corresponding taxes.

PROTOCOL TO THE DTC BETWEEN MEXICO AND AUSTRIA

Exchange of information⁹. The competent authorities of the contracting States will exchange relevant information for the application of the DTC, or for the administration or compliance of the domestic legislation of such States.

The exchange of information will not oblige a contracting state to:

⁵ Article 11, DTC.

⁶ Article 21, DTC.

⁷ Articles 25 and 26, DTC.

⁸ Articles 26 and 27, DTC.

⁹ Paragraph 1, Protocol to the DTC.

- (i) Adopt measures or administrative practices that are contrary to the domestic legislation of any of the contracting States;
- (ii) Disclose information that may not be obtained in accordance to the domestic legislation; or,
- (iii) Disclose information that reveals a commercial, business, industrial or professional secret or a commercial procedure, or information that is contrary to the public order.

PROTOCOL TO THE DTC BETWEEN MEXICO AND SWITZERLAND

Capital gains¹⁰. Formerly, the DTC allowed taxation only in the case of transfer of shares of stock related with real estate properties. Now, gains derived from the alienation of shares of stock (in general) of a company residing in any of the contracting States will be taxed in the State of residence of the issuing company. The tax should not exceed 10% of the taxable gains.

However, the capital gains will be taxed only in the State of residence of the transferor (and not in the State of residence of the issuing company) in the following cases:

- (i) When the shares are regularly negotiated and obtained in a recognized stock market;
- (ii) When the shares are transferred by banks, insurance and reinsurance companies; and,
- (iii) When the shares are alienated by pension funds.

Under certain circumstances, relief is granted to transfer of shares within corporate reorganizations.

Exchange of information¹¹. The article regarding the exchange of information is substituted. Under the new provision, competent authorities of the contracting States will exchange information for the application of the DTC or for the administration or enforcement of the domestic legislation regarding taxes covered by the DTC.

The exchange of information will not oblige a contracting State to:

- (i) Adopt measures or administrative practices that are contrary to the domestic legislation of any of the contracting States;
- (ii) Disclose information that may not be obtained in accordance to the domestic legislation; or,
- (iii) Disclose information that reveals a commercial, business, industrial or professional secret or a commercial procedure, or information that is contrary to the public order.

Limit of benefits¹². The benefits regarding dividends, interest and royalties will not be applied when these are paid under or as a part of a denominated conduit arrangement.

TAX INFORMATION EXCHANGE AGREEMENTS

TIEA BETWEEN MEXICO AND BERMUDA

Purpose and scope¹³. The contracting States will assist each other through the exchange of relevant information for the determination, liquidation and collection of taxes, for the collection and execution of tax assessments or the investigation or prosecution in tax matters.

¹⁰ Paragraph V, Protocol to the DTC.

¹¹ Paragraph VII, Protocol to the DTC.

¹² Paragraph X, Protocol to the DTC.

¹³ Article 1, TIEA.

Exchange of information upon request¹⁴. The information should be requested by the competent authority upon specific petition in which information regarding the taxpayer, the type and nature of the requested information, among other data, should be provided.

Possibility of denying a request of information¹⁵. The exchange of information may be denied when:

- (i) The information request is not made in accordance with the provisions of the TIEA;
- (ii) The disclosure of information is contrary to the public order; and,
- (iii) The requiring authority has not been able to obtain the information under its domestic legislation or in response of a valid request by the required authority.

TIEA BETWEEN MEXICO AND BAHAMAS

Purpose and scope¹⁶. The contracting States will assist each other through the exchange of relevant information for the determination, liquidation and collection of taxes, for the collection and execution of tax assessments or the investigation or prosecution in tax matters.

Exchange of information upon request¹⁷. The information should be required by the competent authority upon specific petition, regardless of whether the required party needs the information for its own tax purposes or the investigated conduct constitutes a crime.

Tax inspections abroad¹⁸. The representatives of the competent authority of any of the contracting States may enter into the territory of the other contracting State, under the limits provided by the domestic legislation of such State, with the purpose of interviewing individuals and to inspect documents, previous written consent of said individuals.

Possibility of denying a request of information¹⁹. The exchange of information may be denied when:

- (i) The information request is not made in accordance with the provisions of the TIEA;
- (ii) The requiring State had not used every available means in its territory to obtain the information;
- (iii) The disclosure of information is contrary to national security or the public order; and,
- (iv) The administration or compliance with the tax legislation discriminates against a citizen of the required State when compared to a citizen of the requiring State.

TIEA BETWEEN MEXICO AND THE NETHERLANDS ANTILLES

Purpose and scope²⁰. The parties will assist each other through the exchange of relevant information for the determination, liquidation and collection of the taxes comprehended within the TIEA; and for the execution of the tax assessments or the investigation and prosecution in tax matters.

Exchange of information by previous request²¹. The information should be required by the competent authority through a written request in which information regarding the taxpayer, the type and nature of the

¹⁴ Article 6, TIEA.

¹⁵ Article 7, TIEA.

¹⁶ Article 1, TIEA.

¹⁷ Article 4, TIEA.

¹⁸ Article 5, TIEA.

¹⁹ Article 6, TIEA.

²⁰ Article 1, TIEA.

²¹ Article 6, TIEA.

requested information, among other data, is provided in order to demonstrate the relevance of the requested information.

Possibility of denying a request of information²². The assistance through the exchange of information may be denied when:

- (i) The information request is not made in accordance with the provisions of the TIEA;
- (ii) The disclosure of information is contrary to the public order;
- (iii) The requested information cannot be obtained by the requesting State in accordance to its own legislation; and,
- (iv) The information is requested for administrative purposes or in order to enforce the compliance of a tax provision that discriminates against a citizen of the required State.

DTC AND TIEA IN FORCE SINCE JANUARY 1, 2011

State	In force since
Germany	15/X/2009 1/I/2010
Netherlands Antilles*	4/II/2011
Australia	1/I/2004 1/VII/2004
Austria	1/I/2006
	1/I/2011
Argentina ²³	1/I/2005
Bahamas*	1/I/2011
Barbados	1/I/2010
Bermuda*	9/IX/2010
Belgium	1/I/1998
Brazil	1/I/2007
Canada	1/I/2008
Canada*	1/I/1993
Korea	1/I/1996
Chile	1/I/2000

* TIEA

State	In force since
China	1/I/2007
Denmark	1/I/1998
Ecuador	1/I/2001
Spain	1/I/1995
United States	1/I/1994 26/X/1995 3/VII/2003
	18/I/1990 26/X/1995
United States*	18/I/1990 26/X/1995
Finland	1/I/1999
France	1/I/1993
Greece	1/I/2006
India	1/I/2011
Indonesia	1/I/2005
Ireland	1/I/1999
Island	1/I/2009
Israel	1/I/2000
Italia	1/I/1996
Japan	1/I/1997
Luxemburg	1/I/2002

State	In force since
Norway	1/I/1997
New Zealand	1/VIII/2007 1/I/2008
	1/I/1995 1/I/2010
Panama	1/I/2011
Poland	1/I/2003
Portugal	1/I/2002
United Kingdom	1/IV/1994
Czech Republic	1/I/2003
Slovak Republic	1/I/2008
Rumania	1/I/2002
Russia	1/I/2009
Singapore	1/I/1996
South Africa	1/I/2011
Sweden	1/I/1993
Switzerland	1/I/1995 1/I/2011
	1/I/2011
Uruguay	1/I/2011

DTC THAT HAVE NOT ENTERED INTO FORCE

State	Signature date	Status
Bahrain	October 10, 2010	Signed
Colombia	August 13, 2009	Approved by the Senate
Kuwait	October 27, 2009	Signed
Venezuela	February 6, 1997	Approved by Venezuela

²² Article 7, TIEA.

²³ DTC on International Transport.

PROTOCOLS THAT HAVE NOT ENTERED INTO FORCE

State	Signature date	Status
Luxemburg	October 7, 2009	Signed
United Kingdom	April 23, 2009	Approved by the Senate
Singapore	February 19, 2009	Signed

TIEA THAT HAVE NOT ENTERED INTO FORCE

State	Signature date	Status
Cayman Islands	August 17, 2010 August 28, 2010	Signed
Cook Islands	November 8, 2010	Cook Islands signature missing
Jersey Islands	November 8, 2010 November 12, 2010	Signed
Kuwait	October 27, 2009	Signed

DTC BEING NEGOTIATED

Aruba	Lithuania	Pakistan
Slovenia	Lebanon	Thailand
Hungary	Malaysia	Ukraine
Guernsey Islands	Morocco	
Leetonia	Nicaragua	

TIEA BEING NEGOTIATED

Costa Rica	British Virgin Islands	Turks and Caicos
Gibraltar	Liechtenstein	Vanuatu
Isle of Man	Monaco	
Marshall Islands	Samoa	

Should you have any comment or doubt related with the content of this preliminary analysis, please contact at info@turanzas.com.mx

Sincerely,

TURANZAS, BRAVO & AMBROSI
Abogados Tributarios

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