No. 27159

MEXICO
and
UNITED STATES OF AMERICA

Agreement for the exchange of information with respect to taxes. Signed at Washington on 9 November 1989

Authentic texts: Spanish and English.

Registered by Mexico on 15 March 1990.

MEXIQUE
et
ÉTATS-UNIS D'AMÉRIQUE

Accord relatif à l'échange de renseignements en matière fiscale. Signé à Washington le 9 novembre 1989

Textes authentiques : espagnol et anglais.

Enregistré par le Mexique le 15 mars 1990.

AGREEMENT[1] BETWEEN THE UNITED MEXICAN STATES AND THE UNITED STATES OF AMERICA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The United Mexican States and the United States of America, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the "Agreement"), have agreed as follows:

Article 1

Object and scope

1. The objective of this Agreement is to facilitate the exchange of information between the Contracting States on the assessment and collection of taxes, with a view to better enable them to prevent, within their respective jurisdictions, fiscal evasion and fraud, and develop improved information sources for tax matters.

2. The Contracting States shall cooperate with each other to carry out the objective of this Agreement, in conformity with and subject to the limitations of their respective national laws and regulations.

3. Pursuant to the provisions of paragraph 2 of this Article, requests for assistance under this Agreement will be executed, except to the extent that:

a) Execution of the request would require the requested State to exceed its legal authority or would otherwise be prohibited by legal provisions in force in that State, or when the information requested is not obtainable under the laws or in the normal course of the administration of the requested State or of the other Contracting State, in which case the competent authorities of both Contracting States shall consult with each other to agree upon alternative lawful means for securing assistance;

b) Execution of the request would in the judgment of the requested State be contrary to its national security or public policy;

c) To supply information would disclose any trade, business, industrial, commercial, or professional secret or trade process;

d) To supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, would discriminate against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to such taxation. The provision of this subparagraph shall not be construed to prevent the exchange of information with respect to the taxes imposed by the United States or Mexico on branch profits or the excess interest of a branch or on the premium income of foreign insurers;

[1] Came into force on 18 January 1990 by an exchange of notes confirming the completion of their constitutional and statutory requirements, in accordance with article 7.

e) The request does not comply with the provisions of this Agreement.

4. The Contracting States shall provide assistance through exchange of information authorized pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

5. Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of Contracting State.

Article 2

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:

a) In the case of Mexico,

(i) Federal income taxes,

(ii) Federal taxes on employment income,

(iii) Federal taxes on business assets,

(iv) Federal value added taxes, and

(v) Federal excise taxes; and

b) In the case of the United States of America,

(i) Federal income taxes,

(ii) Federal taxes on employment income,

(iii) Federal taxes on transfers to avoid income tax,

(iv) Federal estate and gift taxes,

(v) Federal excise taxes.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State's statute of limitations.

4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Contracting State.

Article 3

DEFINITIONS

1. In this Agreement, unless otherwise defined:

a) The term "competent authority" means:

(i) In the case of Mexico, the Secretary of Finance and Public Credit or his delegate, and

(ii) In the case of the United States of America, the Secretary of the Treasury or his delegate.

b) The term "national" means:

(i) In the case of Mexico, any Mexican citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in Mexico; and

(ii) In the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States.

c) The term "person" includes an individual and any legal person, including a partnership, corporation, trust, estate, or association.

d) The term "tax" means any tax to which the Agreement applies.

e) The term "information" means any fact or statement, in any form whatever, that may be relevant or material to tax administration and enforcement, including (but not limited to):

(i) Testimony of an individual, and

(ii) Documents, records or other personal property of a person or Contracting State.

f) The terms "applicant State" and "requested State" mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information.

g) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "Mexico" means the United Mexican States.

h) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the United States of America.

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

Article 4

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.

2. The competent authorities of the Contracting States shall automatically transmit information to each other for the purposes referred to in paragraph 1. The competent authorities shall determine the items of information to be exchanged pursuant to this paragraph and the procedures to be used to exchange such items of information.