

**No. 27159**

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**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.*

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**MEXIQUE  
et  
ÉTATS-UNIS D'AMÉRIQUE**

**Accord relatif à l'échange de renseignements en matière fis-  
cale. Signé à Washington le 9 novembre 1989**

*Textes authentiques : espagnol et anglais.*

*Enregistré par le Mexique le 15 mars 1990.*

## AGREEMENT<sup>1</sup> 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;

<sup>1</sup> 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.

3. The competent authority of a Contracting State shall spontaneously transmit to the competent authority of the other State information which has come to the attention of the first-mentioned State and which is likely to be relevant to, and bear significantly on, accomplishment of the purposes referred to in paragraph 1. The competent authorities shall determine the information to be exchanged pursuant to this paragraph and take such measures and implement such procedures as are necessary to ensure that the information is forwarded to the competent authority of the other State.

4. The competent authority of the requested State shall provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested.

*a)* The requested State shall have or has the authority to:

- (i) Examine any books, papers, records, or other tangible property which may be relevant or material to such inquiry;
- (ii) Question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry;
- (iii) Compel any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry to appear at a stated time and place and testify under oath and produce books, papers, records, or other tangible property;
- (iv) Take such testimony of any individual under oath.

*b)* If Mexico is requested to obtain the types of information covered by Article 93 of the Regulatory Law of Banking and Credit Public Service as in effect at the time of signing this Agreement, it shall obtain the requested information pursuant to that provision.

If the United States is requested to obtain the types of information covered by section 3402 of the Right of Financial Privacy Act of 1978 (12 USCA 3402) as in effect at the time of signing this Agreement, it shall obtain the requested information pursuant to that provision.

Laws or practices of the requested State do not prevent or otherwise affect the authority of the competent authority of the requested State to obtain and provide the types of information covered by the above-cited provisions pursuant to the Agreement.

*c)* Privileges under the laws or practices of the applicant State shall not apply in the requested State in the execution of a request. Claims of privilege under the laws or practices of the applicant State shall be determined exclusively by the courts of that State, and claims of privilege under the laws or practices of the requested State shall be determined exclusively by the courts of that State.

5. If information is requested by a Contracting State pursuant to paragraph 4, the requested State shall obtain the information requested in the same manner, and provide it in the same form, as if the tax of the applicant State were the tax of the requested State and were being imposed by the requested State. However, if specifi-

cally requested by the competent authority of the applicant State, the requested State shall:

*a*) Specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;

*b*) Place the individual giving testimony or producing books, papers, records and other tangible property under oath;

*c*) Permit the presence of individuals designated by the competent authority of the applicant State as being involved in or affected by execution of the request. The individual giving testimony or the accused may be accompanied by his counsel;

*d*) Provide such individuals described in subparagraph *c*) with an opportunity to question the individual giving testimony or producing books, papers, records and other tangible property:

(i) If Mexico is the applicant State, directly or through the executing authority; and

(ii) If the United States is the applicant State, through the executing authority;

*e*) Secure original and unedited books, papers, and records, and other tangible property;

*f*) Secure or produce true and correct copies of original and unedited books, papers and records;

*g*) Determine the authenticity of books, papers, records and other tangible property produced;

*h*) Examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;

*i*) Permit the competent authority of the applicant State to provide written questions through the executing authorities of the requested State to which the individual producing books, papers, records and other tangible property is to respond regarding the item produced;

*j*) Perform any other act not in violation of the laws or at variance with the administrative practice of the requested State;

*k*) Certify either that procedures requested by the competent authority of the applicant State were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

6. The provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 3 of Article 1, it has no obligation to transmit.

7. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These

individuals or authorities may disclose the information in public court proceedings or in judicial decisions.

### *Article 5*

#### MUTUAL AGREEMENT PROCEDURE

1. The competent authorities of the Contracting States shall agree to implement a program to carry out the purposes of this Agreement. This program may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques (including simultaneous examinations and simultaneous criminal investigations in their respective jurisdictions and by their respective competent authorities), identification of new areas of non-compliance, and joint studies of non-compliance areas.

2. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of Article 6.

3. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement under this Article.

### *Article 6*

#### COSTS

Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

### *Article 7*

#### ENTRY INTO FORCE

This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

### *Article 8*

#### TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 3 months prior notice of termination has been given through diplomatic channels.

DONE at Washington, D.C. in duplicate, in the English and Spanish languages, the two texts having equal authenticity, this [9th] day of November, 1989.

For the United Mexican States:

[Signed — Signé]<sup>1</sup>

For the United States of America:

[Signed — Signé]<sup>2</sup>

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<sup>1</sup> Signed by Dr. Pedro Aspe Armella — Signé par Pedro Aspe Armella.

<sup>2</sup> Signed by Nicholas Brady — Signé par Nicholas Brady.