



**THE HISTORY OF DOUBLE TAX  
CONVENTIONS  
(The DTC-Policy over the years)  
Mexico Report**

by  
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## Background

Mexico is the only Latin-American country member of the OECD. As such, it has been the “face” of the OECD before other countries of the region, especially as regards the OECD work on Harmful Tax Practices. Economically speaking, Mexico’s 50 Million poor people indicate that our country should not be a party to the OECD. Nevertheless, the fact is that we are indeed a party to this international organization and that our government has eagerly followed the OECD’s policies, recommendations and practices.

Regarding tax conventions, Mexico’s negotiators have achieved a very important number of them. Even though we only started negotiating tax conventions 17 years ago, an average of 2 treaties per year have entered into force. Still today, a number of negotiations are being carried out (sometimes with countries with which Mexico has little or no commercial relationship, such as Iceland, South Africa and Ukraine). At the very beginning, Mexico’s inexperienced negotiators were easy to deal with but nowadays a very professional team is in charge of looking after Mexico’s interests.

### I. The National Experience

#### 1. Early Tax Treaties

1. Mexico’s first tax convention was signed in 1991 with Canada<sup>1</sup>. Nevertheless, during 1991 Mexico also signed tax treaties with Italy<sup>2</sup> and France<sup>3</sup> and during

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<sup>1</sup> This treaty is no longer in force. It was renegotiated on September 12, 2006 and entered into force on January 1<sup>st</sup>, 2008. Naturally, this new treaty terminated the former double tax treaty signed April 8, 1991, and the Exchange of Information Agreement signed on March 16, 1990.

<sup>2</sup> July 8.

<sup>3</sup> November 7.



1992 with the first Latin-American treaty partner, Ecuador<sup>4</sup>, Spain<sup>5</sup>, the United States<sup>6</sup>, Sweden<sup>7</sup> and Belgium<sup>8</sup>. With the exception of Ecuador, Mexico's intentions were rather clear: enter into tax conventions with OECD Member Countries in order to fulfill the organization's minimum standards required to become a party to the club. Although the reasons behind this negotiation are not completely clear, it seems like President Carlos Salinas aimed at giving Mexico a much more international focus. Moreover, the North American Free Trade Agreement (NAFTA) was being negotiated precisely with Canada and the US. In addition to this, Mexico's negotiations to become a party to the OECD were also an important reason for the negotiation of as many tax conventions as possible. Finally, due to geographical and economic reasons, Canada and the US were natural candidates for Mexico's first negotiations. No indication as to who made the first approach could be found.

The tax convention entered into by and Between Mexico and Canada pretty much followed the OECD Model Tax Convention. From a Mexican perspective, treaty negotiators tried to negotiate high withholding tax rates and, generally speaking, preserve taxing rights over as many items of income as the Canadian negotiators would allow. No trade-related provisions<sup>9</sup> were included in this convention<sup>9</sup> and the Mexican taxes covered by it were the Income Tax and the Asset Tax<sup>10</sup>.

Concerning the treaties with Italy, Ecuador, Spain, Sweden, France and Belgium, they also followed the basic structure of the OECD Model Tax Convention. However, some deviations from it were included regarding the remission to domestic law in order to extend the definition of "Interest" (former treaty with Canada, Italy, Ecuador and Sweden), tax at source while dealing with capital gains

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<sup>4</sup> July 30.

<sup>5</sup> July 24.

<sup>6</sup> September 18.

<sup>7</sup> September 21.

<sup>8</sup> November 24.

<sup>9</sup> It was only year later that the so-called GATS clause, aimed to preventing "forum shopping" from, was included in some treaties.

<sup>10</sup> Since the Asset Tax was repealed at the very same time that the new Mexico-Canada tax treaty entered into force, such tax was not included therein.



(only the former treaty with Canada, Italy and France followed the OECD's principle of taxation in the country where the alienator of the shares is a resident) and "Other Income" (the treaty with France does not include such provision). As to the Asset Tax, it was included as "Tax Covered" in the treaties with Spain, Sweden, France and Belgium.

The treaty negotiated with the US was a completely different story. It was negotiated under the 1981 US Tax Model which, although based on the OECD Model Tax Convention, included some special clauses such as the Branch Profits Tax, Charitable Institutions and LOB provisions. Moreover, a special 4.9% withholding tax on interest paid to financial institutions was also included<sup>11</sup>. It is worth noting that, due to the enormous importance of the US investments in Mexico, the treaty took more than 8 rounds of negotiations.

Much of the information regarding the negotiation of the abovementioned treaties is considered confidential, therefore, is not publicly available. Furthermore, Mexico's lack of experience in negotiating tax conventions derived in very poor negotiation minutes which would have not been of any assistance anyway.

As regards the influence of economic groups or sector in the negotiation of this convention, even though it is not absolutely clear, it seems like nobody but the Mexican government itself pushed towards its conclusion. This was natural, since most of the Mexican business and entrepreneurial community ignored the benefits derived from a tax convention.

## **2. Periods/Stages and Goals of Tax Treaty Policies**

Most tax treaties entered into by Mexico were concluded between 1991 (Canada) and 2000 (Rumania). In between, the treaties with Ecuador, France, Belgium, Italy, Spain, the United States, Switzerland, the Netherlands, Singapore, United

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<sup>11</sup> It seems like, due to some restrictions established in the US Internal Revenue Code regarding the credit granted to interest which were taxed at a 5% withholding tax or higher, Citibank approached the US negotiators in order to request a special withholding tax of 4.9%.



Kingdom, Germany, Norway, Finland, Japan, Ireland, Denmark, Korea, Chile, Israel, Poland, Portugal<sup>12</sup>.

It is worth noting that, with the exception of Chile, Israel, Rumania and Singapore, the remaining 19 treaties mentioned above were entered into with OECD Member Countries. The reason is obvious: for those treaties entered into before 1994, Mexico was trying to meet the requirements for its acceptance as a Member of the OECD. For those treaties signed after 1994, Mexico followed the basic principle of having a tax convention entered into with all other Member Countries.

Notwithstanding these clear intentions, content wise there is no way to establish a difference within Mexico's first stage of negotiations. This, however, changed later on, when negotiators gained experience, and started including reservations and observations to the OECD Model Tax Convention and, more emphatically, when Mexico started negotiating treaties with tax havens that had committed to the OECD in order eliminate its harmful tax practices.

For the negotiation of most of the Mexican tax treaties, a so-called "Mexican Model" started to be designed somewhere in the mid 90's and amended over the years dependant on a number of factors, such as changes to the OECD Model Tax Convention, the finding of new tax planning strategies, loopholes detected in former treaties and so on. Moreover, the inclusion of thin capitalization and back-to-back provisions, along with the inclusion of the black list (followed by CFC rules based on a transactional approach) obliged Mexican negotiators to deal with treaty override by means of including a provision which allows the application of domestic thin capitalization and CFC rules in some treaties like Mexico-China and the recently signed Mexico-Barbados. Additionally, clauses restricting treaty benefits to certain specific tax regimes were included in the tax treaties with Canada, Luxembourg, Czech Republic and Slovak Republic. Finally, typical LOB clauses

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<sup>12</sup> The tax treaty between Mexico and Venezuela was signed on February 6, 1997. Nevertheless, even though this treaty it has been approved by Venezuela, is not likely to ever enter into force, since an important dispute regarding changes made to the draft by the Venezuelan negotiators without notifying the Mexican negotiators occurred, therefore, neither the Mexican tax authorities nor the Senate are willing to approve it.



designed to avoid treaty shopping were including in the treaties with the United States, Israel, Portugal and China. More general anti-abuse clauses have been included in the treaties with Austria, Brazil, Chile, France, United Kingdom and Singapore.

In any event, the “Mexican Model” has been kept as confidential by the Mexican tax authorities, without any reasonable explanation to such fact. Large discussions on the publication of the Model or at least public access to it have taken place in Mexico, without any positive outcome. Furthermore, some practitioners have even suggested that the “Mexican Model” should also include its own Commentaries, which, once published in the official gazette would put an end to the long-lasting discussion of the status of the OECD Commentaries while interpreting tax treaties.

### **3. The Background: Economic Implications**

Pursuant to article 133 of the Political Constitution of the United Mexican States, treaties entered by Mexico according with its Constitution, shall be observed in all Mexican territory.

The limitations imposed by a treaty to avoid double taxation are applicable at federal, state and local levels because they are mandatory in all national territory.

Mexico is a constitutional democracy under a federal system of government with separation of powers between the executive, legislative and judicial branches. The national territory is divided into 31 states and the Federal District. Each state and the Federal District has its own constitution, governor and legislative chamber.

The chief executive of the Federal Government is the President who is elected for a six-year term. Under Mexican Constitution, the President may not run for reelection.



The federal legislative branch comprises two chambers: the Chamber of Representatives and the Senate. The Representatives are elected for 3-year terms coinciding with the Presidential election and the other half also at his mid-term.

Mexico's legal system is based on civil law, originating in Roman Law, as further developed and evolved in continental Europe, and more recently by Anglo Saxon law. The civil law system is based on written law, that is, the codes or statutes that present the general principles governing broad areas of law. The judiciaries in civil law countries such as Mexico do not play a central role in the interpretation and making the law as they do in common law jurisdictions.

All laws regulating commerce, investment and trade in Mexico are federal in nature and apply throughout the country to entities operating therein. The most relevant statutes or codes for firms doing business in Mexico are the Companies Law, the Civil Code, the Banking Law, the Competition Law, the Foreign Investment Law, the Labor Law, the Commercial Code and tax laws particularly the Income Tax Law, the Value Added Tax Law and the Business Flat Tax Law.

Article 89, paragraph X of the Federal Mexican Constitution, empowers the President as holder of the Executive Power, to direct the diplomatic negotiations and enter international treaties, submitting such international treaties to ratification by the Senate. In the case of ratifications of international treaties, it is the exclusive power of the Mexican Senate to carry out the ratification of the international treaties entered into by the President.

Notwithstanding the fact that there is a legal division of powers in Mexico, according to which the economic policies must be prepared in a collaboration system between the Federal Congress and the President, there is a long politic history that has centered a considerable amount of power in the President who takes the most important part in the political-economic decisions.



The Mexican Constitution governs many aspects of the country's regulatory regime for economic development and foreign investment. Constitutional authority for the enactment and implementation of economic policy is shared between the Congress and the President. Article 73 of the Constitution authorizes the Congress to enact laws to encourage the promotion of Mexican investment and the regulation of foreign investment. Under article 89, the President must ensure that the laws passed by Congress are faithfully executed.

The Mexican Government has established new economic policy initiatives that have resulted in the elimination of trade barriers, reduction of tariff levels, massive privatization of government-owned entities, new rules governing foreign investment, accession in 1986 to GATT, followed by the World Trade Organization as of January 1, 1995, the ratification and implementation of NAFTA and membership to the OECD.

As of 2000 a political party (PAN) different from the one governing the country for more than 70 years (PRI), won the presidential elections and in such election, the existence of factual economic forces essentially derived from the existing monopolies in electronic media, communication and construction areas, was evidenced. Such forces have played a decisive role in the last years.

The Ministry of Finance in Mexico is in charge of directing the economic policies of the country as well as the federal tax policies. Therefore, the Ministry of Finance and Public Credit, through its Undersecretary of Income is in charge and legally empowered to negotiate the treaties to avoid double taxation.

In the 80's, the Tax Administration System was created in Mexico with the purpose of applying the tax laws. The Ministry of Finance and Public Credit outlines the federal tax policies and the Tax Administration Service (SAT) is in charge of applying the tax laws. For such reasons, the SAT is in charge of carrying out the



mutual agreement procedures and the Ministry of Finance and Public Credit is in charge of the negotiation of the DTCs.

There is plain coordination and communication between those in charge of negotiating the tax treaties and those applying them, to such extent that during a certain period, the same person worked as the chief of negotiations and the chief of the SAT.

DTCs have only been negotiated on federal taxes, specifically Income Tax and in some cases they have included the Asset Tax. In this regard and there being no local taxes involved in the negotiation of the Treaties, there is no coordination between the local tax authorities and those negotiating the DTCs.

International tax matters, notwithstanding its importance and transcendence, have been subject to technical but not to political discussions. Therefore, the influence that politics has had in these matters is not relevant.

The determining contents and elements of DTCs are exclusively negotiated by the officers of the Ministry of Finance and Public Credit and once the negotiation is concluded and the corresponding Treaty is executed by the President, it is submitted to the Senate's ratification.

During the year 2000 an important political change occurred in Mexico when for the first time in 70 years a President from the PAN political party won the Presidential election. Commercial associations, chambers of commerce, commercial unions, etc., increased their influence and pushed towards the insertion of Mexico in the globalization and total opening of its economy. In this context, they were paramount to the promotion promoting free investment and along with that, the execution of DTCs.



One of the objectives of the OCDE is the increase in the flow of investment among the participating countries. That being said, the different business associations have actively participated along with the Mexican government who has undoubtedly considered the opinions of the national industry without being obliged to do so.

The influence that the business associations have in the negotiation policies of DTCs is relevant because it has impelled the Mexican State to expand its network of tax treaties with Mexico's main commercial partners.

Mexico is a member to the OCDE and as such it has fixed its priorities and positions in the negotiation of international tax treaties. As part of the commercial treaties of North America and treaties with the European Community, Mexico has fixed its priorities in the negotiation with Member States.

As discussed in above, associations and commercial unions represent an important factual power for governmental decisions and this is the reason why there is an informal coordination among such associations and the authorities negotiating DTCs.

Once the Mexican government has determined the convenience of initiating negotiations for the execution of a DTC, the participation of the business associations is very limited. We may say that in the case of Mexico, there is no coordination as such between the business sector and the Mexican government in the negotiation rounds of the DTCs.

As aforementioned, there is no legally established coordination between the negotiators of DTCs and the business associations or commercial unions. The lack of an established coordination procedure results in business associations and commercial unions having no relevant impact in the execution of DTCs.



In Mexico, it is the exclusive capacity of the President to direct the international policy, including the execution of International Treaties. Therefore, the Federal Congress or its Committees are not empowered to negotiate DTCs. Only the Senate is empowered to ratify or reject all or part of the DTC executed by the President.

Because it is legally impossible, there have been no cases in which the Congress or any Committee has negotiated or executed a DTC.

Throughout Mexican history, no DTC has caused a special discussion in the government or from the political or economic perspective. For reasons of commercial importance, the treaty executed with the United States of America is the most relevant one.

Mexico has executed DTCs with its main commercial partners, exhausting most of them. Nowadays Mexico is negotiating treaties with jurisdictions formerly known as tax havens, such as Panama and the Netherlands Antilles. Also, the Mexican tax authorities are willing to initiate negotiations with countries that wish to enter into the DTC.

The fact that today Mexico has DTCs in force with its main commercial partners or with States that keep important investments in Mexico or vice versa, is the reason for Mexico not to currently carry out any important international activity in search of the execution of new DTCs.

Mexico's policies for the application or execution of new DTCs are influenced by the business conditions existing in our country,

The impact of business conditions is relevant not only in the execution of DTCs but also in the contents of domestic norms. The United States of America is Mexico's neighbor and principal commercial partner. It is clear that the direct investment of



such country in Mexico is fundamental and of great importance, having an effect in our legislation. Therefore, under the frame of the DTCs, both countries have entered Mutual Agreement Procedures in which various concessions are made that would normally not be established with other countries. The business conditions have constantly changed because of the globalization in the economy and this has been reflected in the Mexican legislation and its treaties.

Through a Mutual Agreement Procedure entered into with the United States of America, Mexico has granted preferential treatment to the North American companies that create their intensive labor cost centers in our country. This program to promote employment is known as “maquiladora” and regardless of the fact that it could be considered as a Permanent Establishment of the North American company in Mexico, “safe harbor” laws have been dictated in order to avoid this problem<sup>13</sup>.

Mexico has very recent history in the entering and application of DTCs. The first one of them entered in force in 1992 and was executed with Canada. As a result of changes in the business conditions as well as for the experience Mexico acquired in the negotiation and application of DTCs, Mexico initiated in 2005 a new negotiation with Canada, which concluded with a new DTC between Canada and Mexico that is in force as of 2008.

Mexico considers that its network of DTCs is sufficiently broad and covers its principal commercial partners and therefore it focuses in keeping them updated through renegotiations of its current DTCs instead of celebrating new DTCs with other countries. However, as mentioned earlier, some treaties are actually being negotiated.

#### **4. Unilateral Measures for the Avoidance of Double Taxation**

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<sup>13</sup> The “maquiladora” program was replaced by the IMMEX Decree on November 1<sup>st</sup>, 2006.



Mexico has incorporated measures to avoid double taxation into its legislation, which can be applied independently from the benefits granted by the treaties to avoid double taxation.

Article 6 of the Income Tax Law provides that Mexican tax residents may apply such Income Tax as they have paid abroad on revenues proceeding from sources located abroad, of this credit to the tax payable by them hereunder, provided, that such revenues be of the nature on which there is obligation to pay tax hereunder. The application as credit shall only be in order when Income Tax paid abroad is included in the revenue obtained or earned and accrued as taxable.

In cases of dividend income or profits distributed by nonresident corporations to entities resident in Mexico for tax purposes, the Income Tax paid by the former corporations might also be applied as credit in the proportional amount of the dividend or profit obtained by the Mexican resident. The person applying the credit shall consider as taxable income, in addition to the dividends or profits so obtained, the amount of income tax paid by the corporation as corresponding to the dividend or profit obtained by the Mexican resident. Application of this credit shall only be allowed when the Mexican tax resident has held at least ten percent of the capital stock of the nonresident corporation for at least the six months prior the date in which the dividend or profit was paid.

The income tax paid by a nonresident corporation and distributing dividends to another corporation may also be applied as a credit if the latter in return distributes said dividends to an Mexican entity for tax purposes. Said application shall be made in proportion to the dividend or profit so received indirectly, which shall be determined by multiplying the proportion of the Mexican resident's direct participation in the nonresident corporation times the proportion of the latter corporation's direct participation in the corporation in which the Mexican resident has such indirect participation. For such application of the credit, the direct participation of the Mexican resident in the capital stock of the nonresident



corporation in which the Mexican resident has an indirect participation shall require to be a resident of a country with which a broad agreement of exchange of information has been executed by Mexico.

Application of the mentioned credit shall require the nonresident corporation in the capital stock in which the Mexican resident has a direct participation to be holder of at least ten percent of the capital stock of the nonresident corporation in which the Mexican resident has an indirect participation, which latter is to be at least five percent of the capital stock thereof. The referred percentages of shareholding shall require to have been maintained during at least the six months next preceding the date of payment of the dividend or the profit concerned. The entity Mexican entity and applying the credit shall consider as taxable revenue, in addition to the dividend or profit so obtained indirectly, the amount of the tax on the dividend or profit so obtained indirectly in respect of which the credit is to be applied.

The amount of tax which may be applied as credit shall not exceed that resulting from the application of the 28% income tax rate to the taxable profit resulting from the revenue obtained in the tax year from a source of wealth located abroad.

The minimum requirements in Mexico to credit the Income Tax paid abroad, are derived from two fundamental criteria: the objective and the subjective ones. The subjective limitations derive from the nature and legal condition of the persons that can be taxed. The objective limitations essentially refer to the fact according to which the global income or rent is taxed.

Summarizing, we may say that the basic requirement is being a tax resident in Mexico obtaining taxable income for Income Tax purposes.

Mexico follows the OCDE Model Tax Convention in the execution of its DTCs to avoid double taxation. In all the DTCs executed by Mexico, the “imputation method” has been selected as the system to reduce double taxation. For such



reason, it is common to find in the clause to eliminate double taxation, provisions stating that the limitations of domestic law in each of the contracting States will be complied with and that there is only a guarantee that the double taxation will be eliminated.

In this regard, the existing relationship between the domestic legislation and the clause in the DTCs that relates to the elimination of double taxation, is very clear.

The purpose of Mexico while celebrating DTCs is to avoid double taxation through the limitation of taxable sources and the reduction of withholding rates when taxing rights are shared with a treaty partner. The clause for the elimination of double taxation has as a special purpose: guaranteeing the existence of a proper mechanism to eliminate such double taxation.

Mexico incorporated the possibility to credit the income tax paid abroad in its domestic legislation. Throughout the years two essential elements have been modified: The first, the acknowledgment of the income tax paid at a second level and the percentage and time of shareholding necessary for the acknowledgment of the indirect income tax. From 1997 to date, Mexico has made changes in its legislation relative to the credit of taxes paid abroad and this essentially responds to the adjustments made to the law in relation with income obtained for investments made abroad, because anti-deferral rules (CFC rules) were incorporated and with them, rules for crediting the tax paid abroad.

The fact that Mexico has entered DTCs that guarantee the elimination of the double taxation through the credit in Mexico of the tax paid abroad, has granted security to foreign investment, since regardless of recent changes in domestic legislation on the subject, Mexico has allowed the credit of the income tax paid in the States that have entered DTCs with Mexico.

## II. Inter-Country Influence



Mexico is a net capital import country. As such, its position is weak compared to capital export counterparties. That being said, Mexico's tax treaty policy is contingent to the relevant counterparty. Should the country with which Mexico is negotiating a treaty be a very important investor (the United States for instance), it is likely that the treaty will reflect more the other country's interests. Nonetheless, since Mexico has nearly exhausted its negotiations with OECD Member Countries (Turkey is the only Member Country with which no formal contact seems to have been established for the initiation of negotiations with Mexico and Hungary is currently being negotiated) it has started negotiations with Latin-American countries (some of which still are in the Mexican black list), where Mexico is more likely to impose its tax policy.

The main clauses in which Mexico's negotiators are not willing to give up its position are the following:

- ✓ **Exchange of information:** Wide exchange of information is a must. It shall be referred to the three types of exchange (spontaneous, automatic and upon request), not be restricted to taxes covered by the relevant convention and shall not be dependant upon the opening of a tax audit in the requesting State. Should a country not accept this clause, it is likely that negotiations will stop and the treaty would never be signed. In the past, some OECD countries did not accept Mexico's conditions (Switzerland and Austria are good examples).
- ✓ **Royalties:** A deviation from the OECD Model Tax Convention is always proposed by Mexico: 10% withholding tax on royalty payments, as opposed to taxation in the residence country of the beneficial owner of such payment.



- ✓ **Tie-breaker rule (persons other than individuals):** Deviating from the OECD Model Tax Convention, Mexico proposed Mutual Agreement Procedure to settle dual-residence situations.
- ✓ **Permanent establishment for services:** Should the treaty not include article 14 (Independent Personal Services), the 183-day rule is proposed as a criterion for the constitution of permanent establishment in the case of services. This proposal derives from a reservation made by Mexico to article 5 of the OECD Model Tax Convention.<sup>14</sup>
- ✓ **Shipping, inland waterways transport and air transport:** Following its reservation to article 8 of the OECD Model Tax Convention<sup>15</sup>, Mexico excludes inland transportation from the scope of this provision.
- ✓ **Definition of “interest”:** Reference to domestic law is made while dealing with the definition of “interest”. To date, only the treaties with Belgium, Switzerland, the Netherlands and France do not include. The OECD Commentary does not share this type of subsidiary reference to domestic law.<sup>16</sup>
- ✓ **Definition of “royalties”:** Derived from a reservation made to article 12 of the OECD Model Tax Convention<sup>17</sup>, Mexico follows the 1977 definition of “royalties”, which includes the leasing of industrial, commercial and scientific equipment. The only treaty without this definition is the Mexico-Chile tax treaty. It is worth mentioning that these definition has caused a number of problems while dealing with leasing of aircraft to which article 8 does not apply since they are not operated in international traffic.

<sup>14</sup> Paragraph 64 of the Commentary on Article 5.

<sup>15</sup> Paragraph 32 of the Commentary on Article 8.

<sup>16</sup> Paragraph 21 of the Commentary on Article 11.

<sup>17</sup> Paragraph 41 of the Commentary on Article 12.



- ✓ **Alienation of shares:** Different from the OECD Model Tax Convention and derived from a reservation to article 13 of the OECD Model Tax Convention<sup>18</sup>, Mexico proposes taxation in the State in which the company whose shares or participations are being alienated.
- ✓ **“Other Income”:** Taxation at source is always proposed during Mexico’s negotiations<sup>19</sup>.
- ✓ **Miscellaneous provisions:** LOB clause is usually negotiated with counterparties.
- ✓ **Non discrimination:** As regards non-discrimination, Mexico’s policy is the inclusion of all taxes, not only those considered as “Taxes Covered”.
- ✓ **Mutual agreement procedure:** Contrary to the new OECD’s approach, Mexico dislikes the inclusion of arbitration as a means of settling disputes, the reason being that it is considered that tax collection shall not be left to third parties.

Generally speaking, Mexico makes no distinction with its treaty partners while negotiating tax conventions. This may not be true in the new process of negotiating treaties with Latin-American countries. Where Mexico’s position may be somehow stronger, hence, some differences may apply, notably as regards withholding tax rates.

Mexico has not adopted any tax policies or influence from other countries but from mostly from the OECD. The only provision that may have been taken from another country’s treaty policy, is the LOB clause used in the US Tax Model.

### III. Impact on and of International Institutions and Organizations

<sup>18</sup> Paragraph 49 of the Commentary on Article 13.

<sup>19</sup> Paragraph 13 of the Commentary on Article 21.



## 1. The Influence of Bilateral Tax Treaties on Model Tax Conventions

Mexico has had no influence on any model tax conventions other than a large number of reservations made to the OECD Model Tax Convention, which in all cases aim at preserving or extending taxation at source<sup>20</sup>.

## 2. The Influence of Model Tax Conventions on Bilateral Tax Treaties

Mexico has eagerly followed the OECD Model Tax Convention. Most of the Model used to negotiate Mexican tax treaties is based on such Model Tax Convention. Nevertheless, Mexico has incorporated a couple of clauses derived from the UN Model Tax Convention. Good examples of these clauses are the “force of attraction” rule provided for similar merchandise sold by the head office instead of the PE of an enterprise in the other Contracting State<sup>21</sup>, the 183-day rule for the constitution of the so-called “services PE” and the inclusion of taxation at source in the “Other Income” article.

As mentioned above, Mexico has mostly followed the OECD Model Tax Convention and its amendments and updates. Therefore, even though some clauses are not faithfully followed (arbitrage is notably one of them), the Mexican tax authorities try to stick to the OECD Model Tax Convention.

Some of the clauses that used to be included in Mexico’s tax treaties which are no longer negotiated are: no reference to the domestic tax law while dealing with the definition of “interest”, more than six months for the constitution of PE for building activities, limited exchange of information and corporate reorganizations.

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<sup>20</sup> Please see footnotes 11, 12 and 14 to 16.

<sup>21</sup> Even though the Mexican tax authorities still argue that it is not a “force of attraction” rule but an “anti-abuse” one.

