

ACUERDO AMISTOSO ENTRE MÉXICO Y BERMUDAS SOBRE LA APLICACIÓN Y LA INTERPRETACIÓN DEL AII

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF FINANCE AND PUBLIC CREDIT OF THE UNITED MEXICAN STATES AND THE MINISTER OF FINANCE OF BERMUDA CONCERNING THE INTERPRETATION OR APPLICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF BERMUDA ON THE EXCHANGE OF TAX INFORMATION (“THE TIEA”) AND THE ACKNOWLEDGEMENT OF OTHER UNDERTAKINGS MADE BETWEEN THE COMPETENT AUTHORITIES.

The Ministry of Finance and Public Credit of the United Mexican States and the Minister of Finance of Bermuda (“the competent authorities”), desiring to facilitate the exchange of information with respect to taxes, have reached the following understandings:

1. Interpretation

(1) Senior Official

In relation to paragraph 7 of Article 6 for the Government of the United Mexican States the competent authority which is authorized to make the certification is the Ministry of Finance and Public Credit. For the Government of Bermuda the competent authority which is authorized to make the certification is the Minister of Finance or an authorised representative of the Minister.

In relation to paragraphs 6, 7 and 8 (d) of Article 6 the term “necessary” shall not be interpreted to restrict the general objectives as set out in Article 1. Certification by a senior official shall be sufficient to meet the requirements of those provisions.

(2) Costs for obtaining and providing information in response to a request

- (i) Pursuant to Article 10 of the TIEA it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers.
- (ii) All reasonable costs incurred by third parties in complying with the request of exchange of information are considered extraordinary costs and will be borne by the Applicant Party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) reasonable fees charged for staff employed by third parties in assisting with the request;
 - (b) reasonable fees charged by third parties for carrying out research;
 - (c) reasonable fees charged by third parties for copying documents;
 - (d) reasonable costs of engaging experts, interpreters, or translators;
 - (e) reasonable costs of conveying documents to the Applicant Party;
 - (f) reasonable litigation cost of the Requested Party in relation to a specific request of information.
- (iii) The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed five hundred United States dollars (\$US 500) to determine whether the Applicant Party will continue to pursue the request and bear the cost.
- (iv) In the event that the Requested Party finds it difficult or impossible to comply with a single or multiple request/s for information from the Applicant Party because of limited staff or financial resources the competent authorities will consult, and if mutually decided, the Applicant Party will bear the costs associated with complying with a request or multiple requests.

(3) Article 6

With respect to subparagraph (i) of paragraph 8 of Article 6 of the TIEA, the competent authorities understand that the term “pursued all means” includes the use of any exchange of information mechanisms the Applicant Party has in force with the Party in which the information is located.

(4) Article 11

With respect to Article 11 Mutual Agreement Procedure of the TIEA, in the event that a Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party, either Contracting Party may immediately initiate competent authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that any one or more of the following applies:

- (a) the other Contracting Party does not engage in effective exchange of information;
- (b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or
- (c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

2. Future Arrangements

Notwithstanding the foregoing paragraph, the competent authorities understand that if the Government of the United Mexican States, at any time, enters into arrangements with another offshore centre for the provision of information with respect to taxes that is less burdensome in any material respect than the provisions of the TIEA the Government of Bermuda intends to request the Government of the United Mexican States to consult with it concerning appropriate modifications to the TIEA to have similar effect. In the event that such consultation does not take place with a reasonable period of time or the parties are unable to mutually consent to such modifications, the Government of Bermuda may exercise its right to terminate the TIEA. If the Government of Bermuda agrees in the future to conditions that are less burdensome than the provisions of the TIEA, then the Government of the United Mexican States would consult to the Government of Bermuda concerning appropriate modifications to the TIEA to have similar effect.

3. Acknowledgement

[Reserved information, under article 13, section II of the Mexican Federal Transparency and Access to Public Information Law].

4. Entry into Effect

This Memorandum of Understanding will come into effect on the entry into force of the TIEA.

5. Amendment

The competent authorities may jointly decide, in writing, to amend this Memorandum of Understanding at any time. Amendments to the Memorandum of Understanding will come into effect on the date of the final letter confirming the amendment.

6. Termination

This Memorandum of Understanding will remain in effect until terminated at any time in writing, by either competent authority.

Done in Mexico City, on this fifteenth day of October of two thousand and nine, in duplicate, in the Spanish and English languages, both texts being equally authentic.

FOR THE MINISTRY OF FINANCE AND
PUBLIC CREDIT OF THE UNITED
MEXICAN STATES

Agustín Guillermo Carstens Carstens
Minister

FOR THE MINISTER OF FINANCE
OF BERMUDA

Paula A. Cox, J.P.,
M.P., Minister of Finance