

# International Wealth Planners 2013

## Mexico Update

**Turanzas, Bravo & Ambrosi /  
Mauricio Bravo**

# Mexican Residents:

## Who are They?

1. **Legal entities:** The main business administration or effective management located in Mexican territory.
2. **Individuals:** Dwelling house (“casa habitación”) established in Mexico. No timing rule (ex. 180 / 183 days rule)

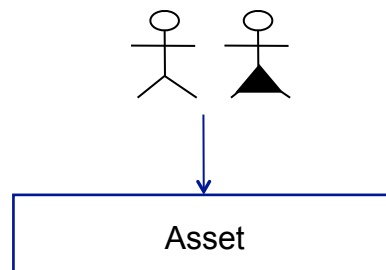
If more than one dwelling house, if center of vital interest in Mexico:

- More than 50% of the revenues are located in Mexico, or
- The principal center of their professional activities in Mexican territory.

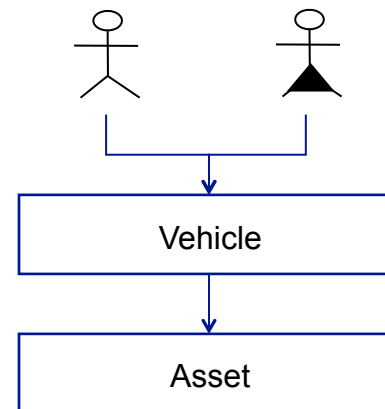
# Taxation for Mexican Residents

1. **Income Tax:** Worldwide criterion, regardless where the source of wealth is located. Income of all type: cash, credit, services, or any other nature (ex. Inflationary gains).
2. **Foreign sourced income:** Directly and indirectly obtained

## Direct

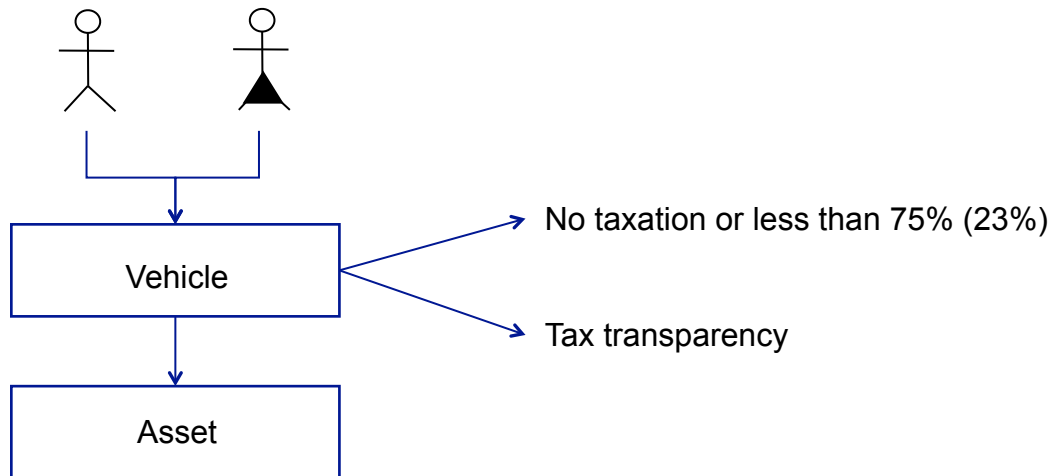


## Indirect



# CFC Taxation for Mexican Residents

## Indirect



# Brief CFC History

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### **1. Until 1996**

Taxed until actual distribution (income, dividends, capital redemption, liquidation).

### **2. 1997-2004**

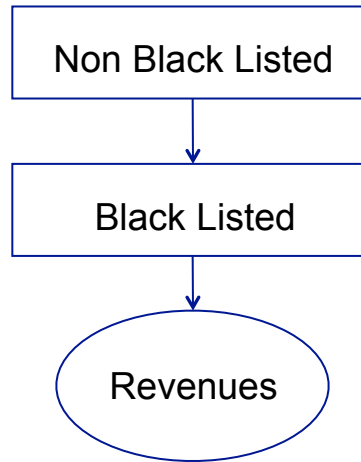
“Black list” (territorial systems).

### **3. 2005 – Present (2008 adjustments)**

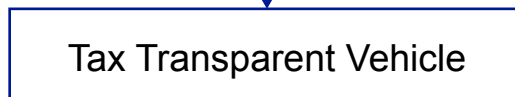
The 75% test and tax transparency.

# No Informative Tax Return:

Rule  
II.3.10.4.

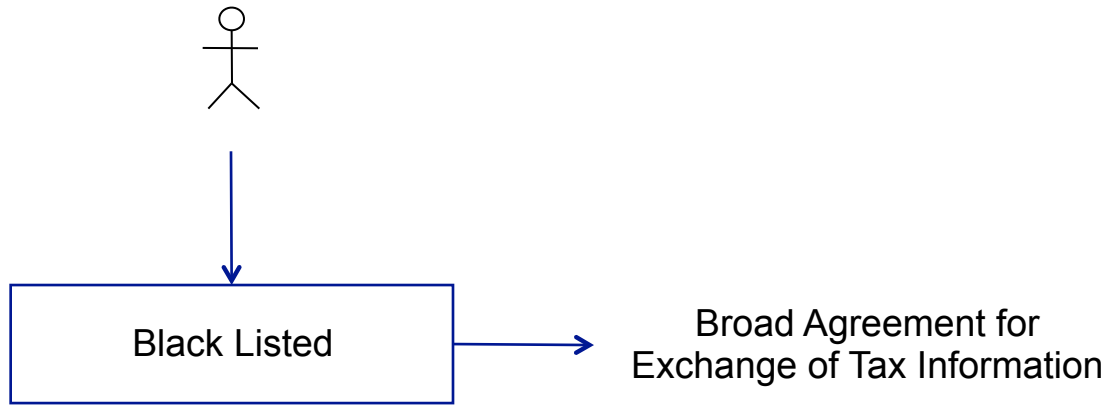


- Lack of Effective Control
- Broad Agreement for Exchange of Tax Information



# No Informative Tax Return:

Rule  
II.3.10.6.



# Broad Tax Information Exchange Agreement

Pursuant to Rule 1.2.1.1 of the Administrative Tax Regulations, the following criteria are considered in order to determine which country is deemed to have a “Broad Tax Information Exchange Agreement” with Mexico:

a)The country has concluded a Tax Information Exchange Agreement with Mexico (“TIEA”) pursuant to OECD standards, and the country effectively exchanges information with Mexico.

The following countries have concluded a TIEA with Mexico:

- United States of America
- Canada
- Bermuda
- Bahamas
- Netherlands Antilles
- Cook Islands
- Isle of Man
- Cayman Islands
- Jersey
- Guernsey
- Samoa
- Belize
- Costa Rica.



# Broad Tax Information Exchange Agreement

- b) The country has in force a Double Tax Convention with Mexico which includes or has a similar exchange of information clause as stated in Article 26 of the OECD Model Tax Convention.

The following countries fall within the above criterion:

- Canada
- Sweden
- France
- United States of America
- United Kingdom
- Ireland
- Spain
- Netherlands
- Korea
- Singapore
- Italy
- Japan
- Norway
- Belgium
- Finland
- Chile
- Israel
- Ecuador
- Portugal
- Romania
- Czech Republic
- Brazil
- China
- New Zealand
- Slovakia
- Australia
- Russia
- Iceland
- Barbados
- Germany
- Switzerland
- Denmark
- Austria
- India
- Panama
- Poland
- South Africa
- Greece
- Uruguay
- Hungary
- Luxembourg
- Bahrain
- Lithuania
- Ukraine

# Broad Tax Information Exchange Agreement

- c) The country signed the Convention on Mutual Administrative Assistance in Tax Matters and its Protocol and it effectively exchanges information with Mexico.

The following countries have signed the above mentioned Convention:

- Korea
- Kingdom of Denmark
- Slovenia
- Finland
- France
- Georgia
- India
- Iceland
- Italy
- Moldova
- Norway
- Poland
- Sweden
- United Kingdom
- Ireland

# Income Tax Law

## Free acquisition of Mexican stock

“In free acquisitions, the tax shall be determined by applying the 25% tax rate upon the value of the shares of stock, without deductions...”

Art. 190, 16 para. ITL



# Trends on Exchange of Information



# Trends on Exchange of Information

## Background

- Economic crisis
  - Tackling tax evasion / increase collection of taxes
- OECD work on promoting standards for transparency and exchange of information.
  - G20 Summit / Global Forum.
  - European Union effort.
  - UN proposal / “Code of Conduct”.
- During 2009-2012 exchange of information agreements have increased considerable, particularly in offshore jurisdictions.

# Trends on Exchange of Information Instruments

- Tax Information Exchange Agreements (“TIEAs”) agreements under which territories agree to cooperate in tax matters through exchange of information.
- Double Tax Agreements (“DTAs”)
  - Provisions for exchange of information are also contained in DTAs (Article 26).
- Mutual Assistance Convention in Tax Matters (Strasbourg Convention)

# Trends on Exchange of Information

## Mexico “Broad Agreements”

- Countries with a “broad exchange of information agreement”:
  - Countries with a TIEA following the OECD Model,
  - Countries with a DTC including Article 26 of the OECD Model Tax Convention, or
  - Countries part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
  - In any of the three cases, the relevant country must effectively exchange information with Mexico.
  - There are countries listed in the administrative rule.

# US – Mexico FATCA Agreement

- 3 agreements regulate exchange of tax information between US and Mexico: (1) Tax convention (2) Exchange of information agreement, (3) Multilateral Convention.
- FATCA legal nature: treaty that implements the before mentioned 3 agreements.
- Mexico (and the USA) must obtain and exchange information regarding reportable accounts.
- Broad definitions of core concepts, such as: financial institutions, financial accounts.
- Non compliance by Mexican financial institutions may give rise to fines and even criminal consequences.



# Banking Secret: Disappears?

- Prior to FATCA agreement, the exchange of tax information was done by specific requirements.
- Since FATCA, the financial institution provides the information to the tax authorities, and the latter to their counterparts.
- Strictly speaking, FATCA simplifies and facilitates the exchange of information given it is conducted automatically.
- Pending Mutual Agreement
- Mutual agreement with procedural matters for FATCA observance.

# Trends on Exchange of Information

## Mexico / Benefits

Certain tax benefits obtained from the “Broad exchange of information”.

- Some Mexican sourced payments between related parties not subject to a 40% withholding
- Authorization to differ taxes in corporate reorganizations.
- Individuals can move to low tax jurisdictions without a “3 year penalty rule” of Mexican residence.
- Foreign Tax Credit on dividends received from a second tier.

# Trends on Exchange of Information

## What to Expect in the Future

- Continue to add TIEA's with "tax havens".
- FATCA agreements with countries (other than the USA)
- Tax audits

**“The difference between good and bad luck is  
planning”**

**Thanks!**