International Wealth Planners

Mexico Update: Key Tax Issues for Mexican Families and their Advisors

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Abogados Tributarios

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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)

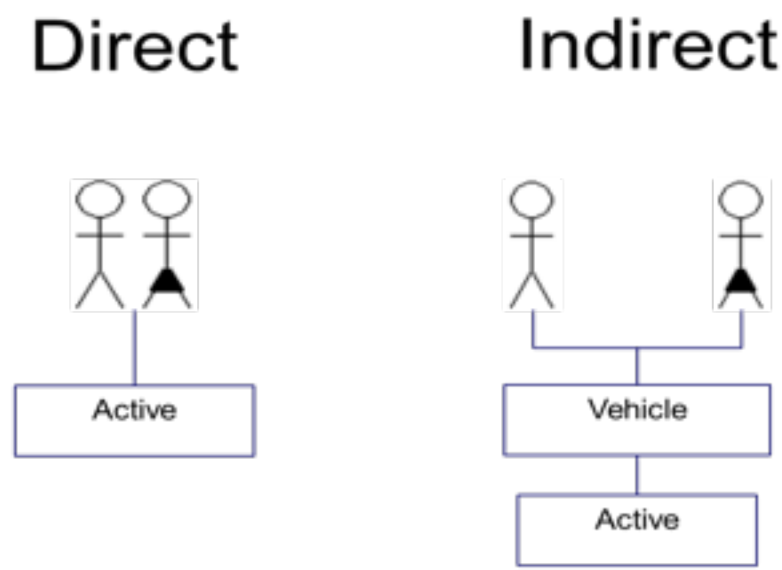
If more than one dwelling house, if center of vital interest in Mexico:

- 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



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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.

CFC: When to be concerned of its consequences?

- When does CFC’s world kicks in? Generally speaking, in case of indirect holdings of income producing assets.
- Consequences of CFC: (1) Tax due (not accruable income), i.e. anticipation of taxation and (2) Tax reporting.
- Anticipation of Taxation:

• Taxed at the moment of generation.

• 30% rate.

• Deductions and carry forward losses for 5 year period is allowed to taxpayers meeting certain requirements.

- Tax Reporting (cases):

1. Income subject to PTR, directly or indirectly, generated in the previous tax year,

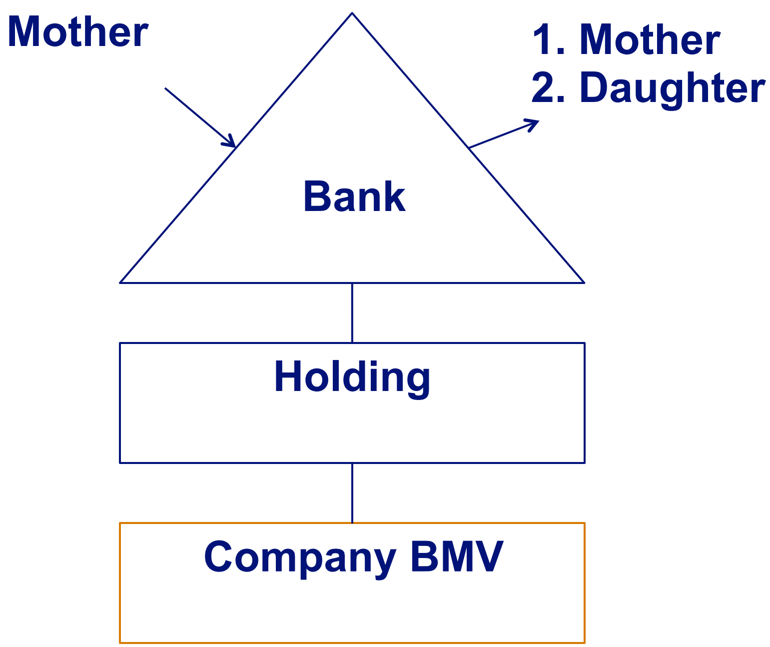
2. Income generated in "black listed" countries (Barbados, Bahamas, Bermudas, Panama and Uruguay not anymore), and

3. Transactions carried out through tax transparent foreign legal entities or figures (even if no income?).

CFC / Sundry (but relevant) issues

1. Supreme Court of Justice validation of the regime.
2. Simulation declaration empowerment of the tax authorities.
3. Exchange of tax information agreements.
4. Tax authorities knowledge.
5. Anonymous payment facility / January 26, 2005 Presidential Decree.
6. Use of investment structures. (1) Legal. Freedom contracting principle. (3) Foreign legal situations recognized in Mexico. (4) Confidentiality (5) Planning tool for life (wealth) and after death (estate) purposes. (6) Undue use: tax evasion.
7. The difference between good and back "luck" is planning.

Current Situation



Mexican Taxation

Bank:

- Trustee

Mother:

- Settler
- Beneficiary
- Owner for tax purposes of Holding's stock

Taxwise, is deemed that the dividends are directly obtained from the Holding, and not as a trust distribution

- The dividend tax nature is kept, so the Mother may credit the corporate income tax

Daughter:

- Substitute beneficiary
- No tax (no income)

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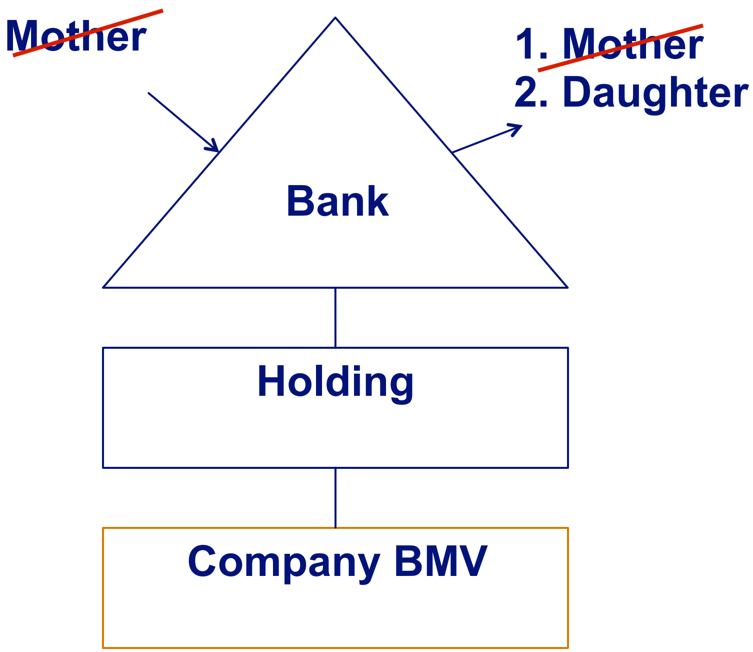
Mother’s Demise	Mexican taxation



Mother:

•~~Settler~~
•~~Beneficiary~~
•Right of recovery
•No longer owner of stock

Daughter:

•Beneficiary
•Owner for tax purposes of Holding’s stock
•Acquired shares of stock freely = 25% income tax upon gross shares’ value

Bank:

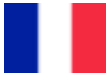
•Trustee
•May withhold income tax

Income Tax Law
Free acquisition of Mexican stock

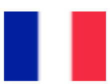
"In free acquistions, the tax shall be determined by applying the 25% tax rate upon the value of the shares of stock, without deductions…"

Art. 190, 16 para. ITL

Tax burden with no wealth / estate planning

	Mother's demise	Revenues	Daughter's demise	Sum
	25% of income tax upon gross value	No tax	25% income tax	43.75% income tax
	No income tax No estate tax	Income tax of 39.6% on income distributions (> $7,500)	Estate tax 40%	Income tax of 39.6% upon income distributions (creditable French income tax) Estate tax 40%
	Upon goods corresponding to Daughter: - Inheritance tax de 40% (> €1,722,100) - Yearly wealth tax yearly up to aprox. 1.80%	40% income tax (since €69,000) upon income distributions	Upon goods distributed: Inheritance tax de 40% (since €1,722,100) Yearly wealth tax up to aprox. 1.80%	40% income tax on income distributions Upon goods corresponding to Daughter or her off-spring: - 64% inheritance tax (asumiendo aplicación de tasa de 40%) - Yearly wealth tax up to 1.80%

Tax burden with wealth and estate tax planning

	Mother's demise	Distributions to Daughter	Daughter's demise	Sum
	No income tax	No income tax	No income tax	No income tax (vs. 43.75%)
	No income tax No estate tax	39.6% income tax of upon income distributions > $7,500	No estate tax	39.6% income tax on income distributions (French tax is creditable) No estate tax (vs. 40%)
	Inheritance tax of 5% up to 40% (in excess of €1,722,100) for revocable portion Possible yearly wealth tax upon the revocable portion (up to 1.80% aprox. tax rate)	5% up to 40% income tax (> €69,000) upon distributions Inheritance tax from 5% to 40% (> €1,722,100) on capital distributions	No inheritance tax No wealth tax	Income tax from 5% to 40% (>€69,000) on income distributions Inheritance tax from 5% to 40% (> €1,722,100) for the revocable part or capital distributions received (vs. Two times on the total amount) Possible yearly wealth tax (up to 1.80%) on the value subject to revocation (vs. yearly on the aggregate value of the patrimony)

Specific Structures in the Marketplace

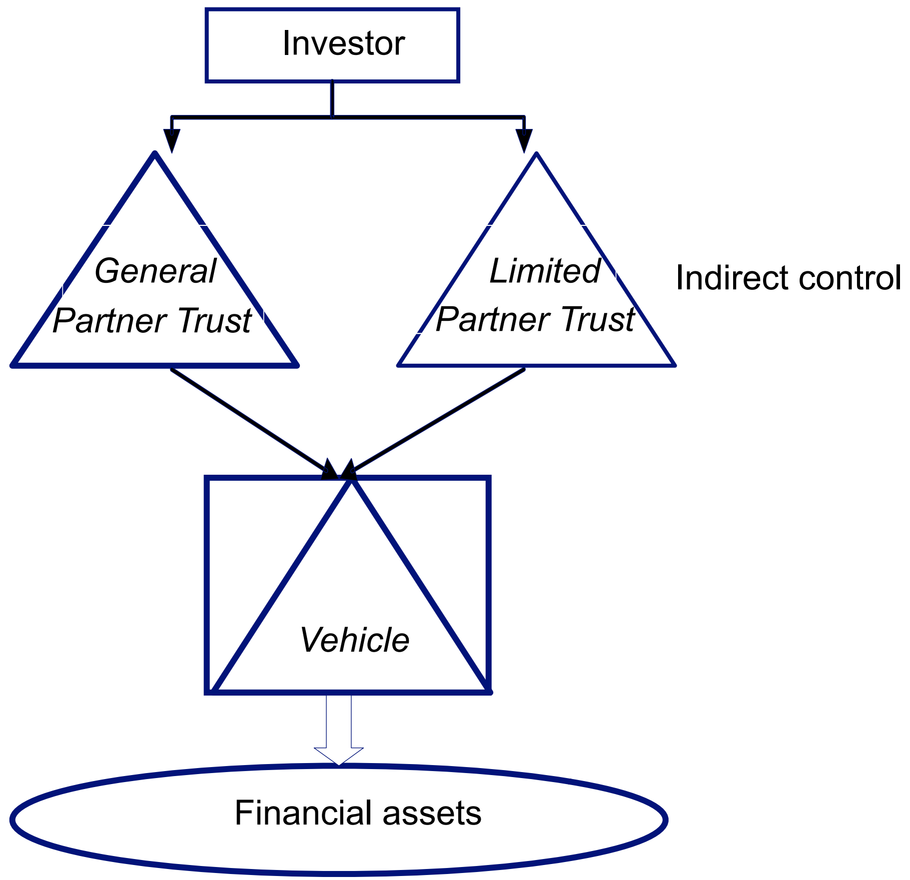
1. Foreword: Every person / family has a specific circumstances. More than in other services' lines, (we should) "know your client". Ex. Mid forty "Sillicon Valley" character? Retiring / retired business person? More than "one" family? Tax residence of the off-spring?

2. Guiding principle: Congruency of the client's principle with the investment investments structure's nature.

3. Core of off-shore investment structuring: Confluence of different legal systems.

4. Commercial (or marketing) names. Several labels, but what is their legal content? Implications? Functionallity? Usually, their transaltion into legal language is needed.

Capital and Income Seggregation
Guiding Principle: No income



Dividing Capital and Income

1. Capital recovery is not taxed. Revenues are attributed to an irrevocable portion.

2. Some points to ponder:

- Actual recovery of the irrevocable portion should not possible for the investor.

- The recovery of the irrevocable portion will trigger Mexican taxation.

- “Capital” is measured in Mx pesos and may be subject to (Mexican) inflationary factor.

- “Loaning” from the irrevocable portion to the investor and/or related parties not advisable.

- Keeping a good administration of the structure. Ex capital retrievals’ documentary language

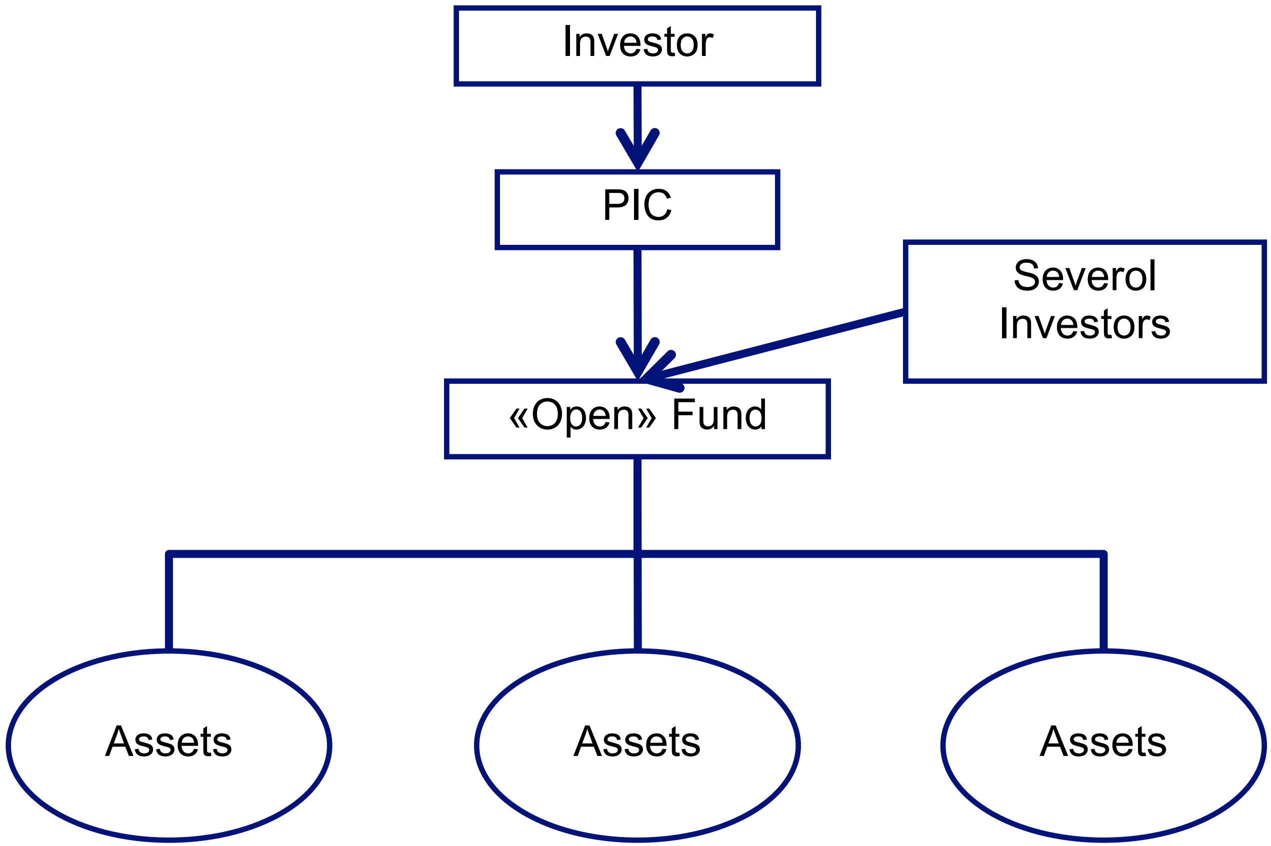
“Umbrella Funds”
Guiding Principle: No effective control

1. Investor (and related parties to him/her/ it) has/ve no “effective control” (for Mexican tax purposes) of the structure, i.e. power to define the timing of distributions.

2. Investor might have other types of controls upon the structure.

3. Typically: Open investment vehicles.

4. Taxation upon actual income obtained.


Investor
PIC
Severol
Investors
«Open» Fund
Assets
Assets
Assets

Insurance Revenues

1. Income tax exemption for income obtained by individuals from Mexican insurance companies.

2. Premiums need to be received by the structure, i.e. not by the Investor.

3. “Key officer” insurance.- Retained by the company which also is the beneficiary. Deductibility for the company for the policy, whilst the premium is taxable.

Trends on Exchange of Information

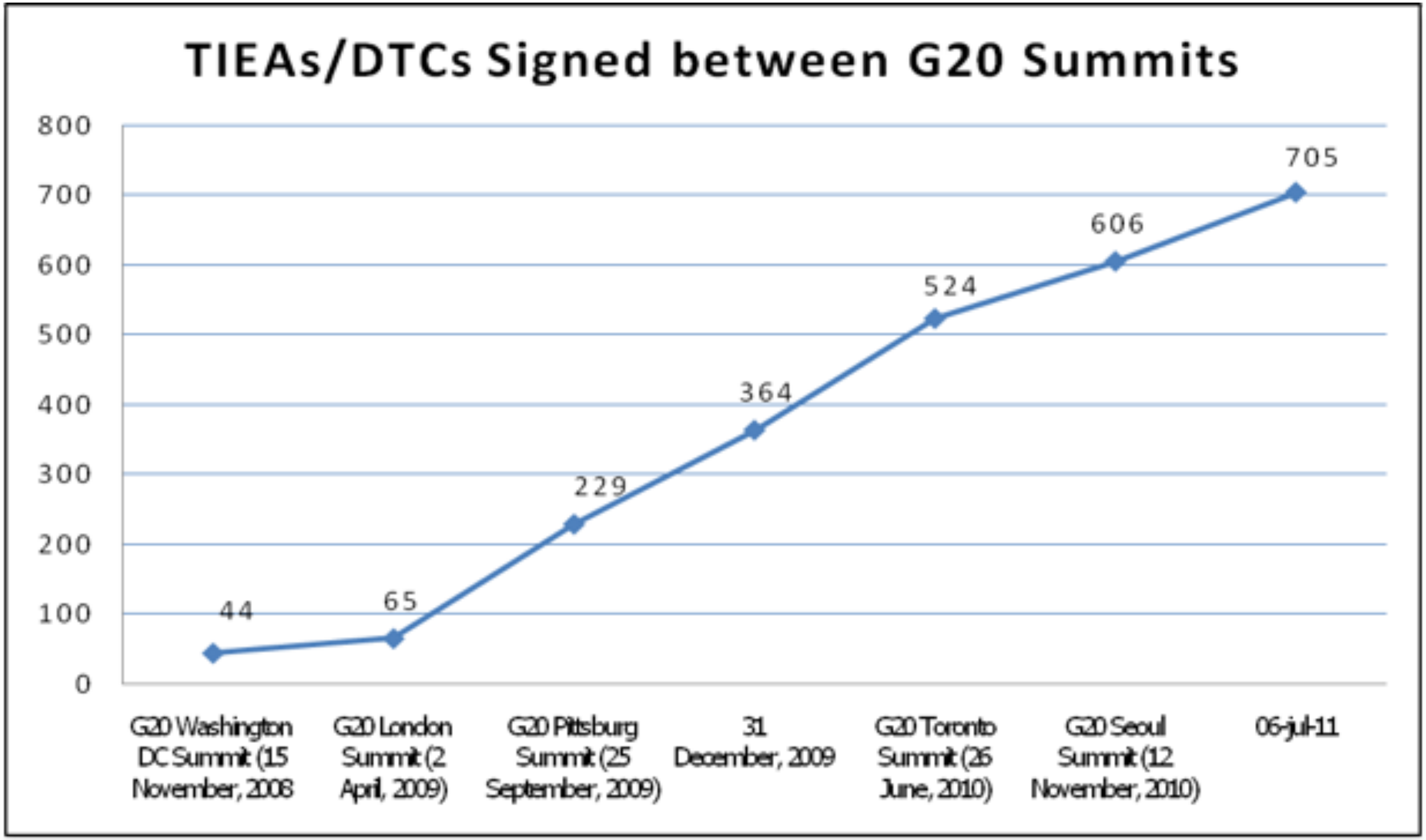
Trends on Exchange of Information
Background

- Economic crisis
  - Tackling tax evasion / increase collection of taxes

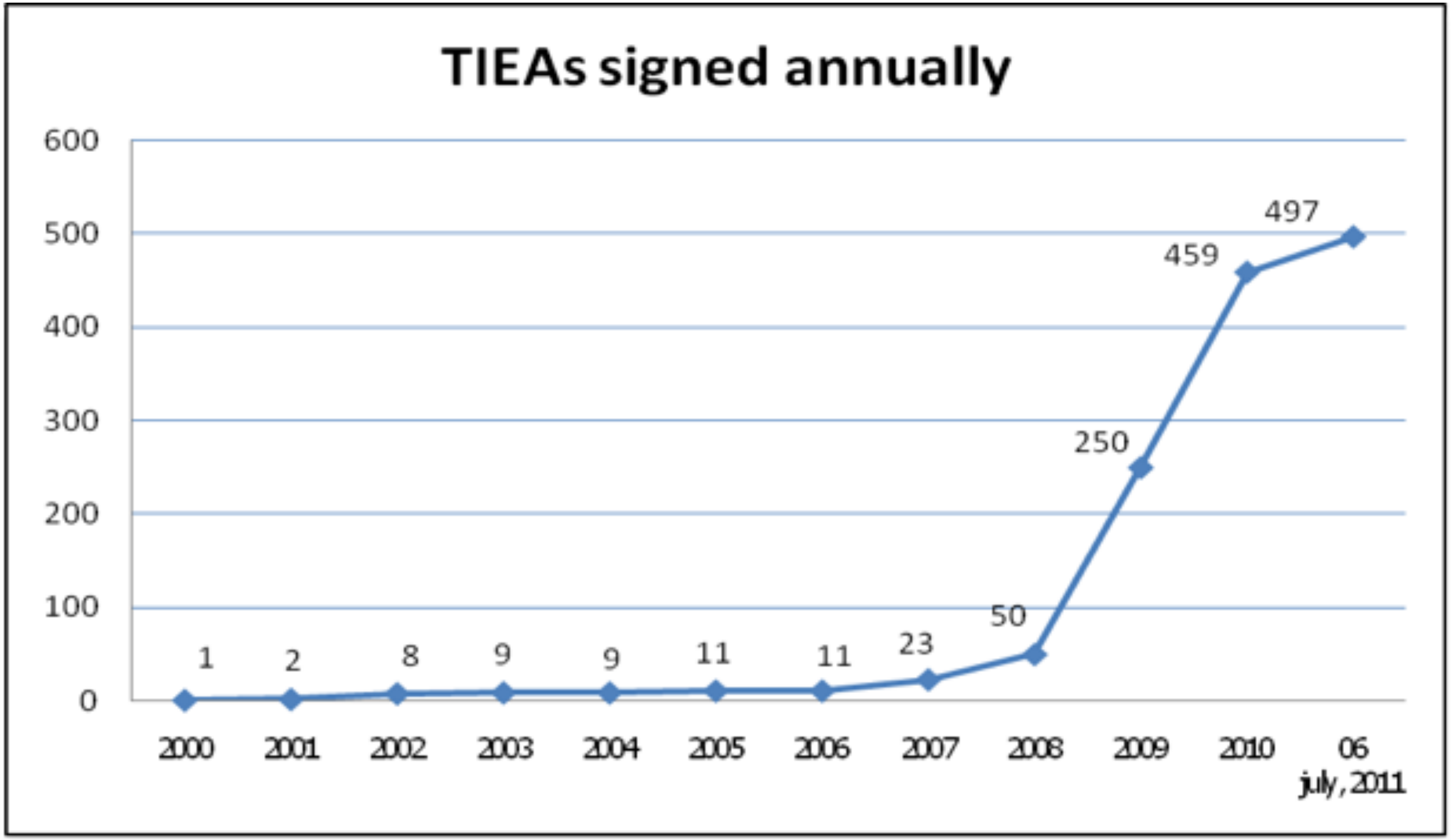
- OECD work on promoting standards for transparency and exchange of information.
  - G20 Summit / Global Forum.
  - European Union effort.
  - UN proposal / “Code of Conduct”.

- During 2009-2010 exchange of information agreements have increased considerable, particularly in offshore jurisdictions.

Trends on Exchange of Information



Trends on Exchange of Information



Trends on Exchange of Information
OECD

- Harmful Tax Competition: An emerging global issue (1998)

- Global Forum Working Group on Effective Exchange of Information, an institution formed in 2001 as a result of the OECD's Harmful Tax Practices Project.

- OECD Model Agreement (2002).

- 2009- Global Forum on Transparency and Exchange of Information for Tax Purposes

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).

Trends on Exchange of Information
Types

On request

Common | Spontaneous exchange

Automatic exchange (USA, Canada, Denmark, Australia, Chile, Korea)

Uncommon | By Sector

Trends on Exchange of Information
Frequency

1) USA
2) Canada
3) Colombia
4) Spain
5) France
6) Germany
7) Korea
8) Japan
9) Hong Kong
10) Guatemala
11) Netherlands

Trends on Exchange of Information
Mexico / TIEAs

- Recently in force: Bahamas, Bermudas, Netherlands Antilles.
- Pending approval: Cayman Islands, Isle of Man, Cook Islands, Costa Rica and Jersey, Guernsey. DTC: Bahrain.
- Under negotiation: Aruba, Belize, BVI, Gibraltar, Liechtenstein, Marshall Islands, Malta, Monaco, Qatar, Samoa, Saint Lucia, Turks and Caicos, Vanuatu. DTC: Hong Kong.

Trends on Exchange of Information
Mexico / DTCs

Recent DTC´s including Article 26 in accordance with 2005 OECD additions (2010: Barbados and Germany. 2011: Switzerland, Denmark, Austria, India, Panama, Poland, South Africa, Greece and Uruguay).

- Request of “foreseeably relevant information”.
- Information not needed for domestic interest.
- No declination of exchange solely because the information is held by a financial institutions.

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 (when?).

There are countries listed in the administrative rule.

Trends on Exchange of Information
Mexico / Benefits

Certain tax bennefits obtained from the "Broad exchange of information".

- Some Mexican sourced payments between related parties not subject to a 40% withholding (Administrative rule December 2010).
- 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.

THANKS!