

IRS News Release

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U.S., Mexico Reach Mutual Agreement Regarding Eligibility of Fiscally Transparent Entities to Benefits

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WASHINGTON—On Aug. 26, 2005, the Competent Authorities of the United States and Mexico entered into a mutual agreement (“the Agreement”) regarding the eligibility of entities that are treated as fiscally transparent under the laws of either Contracting State to benefits under the Convention Between the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, along with a Protocol, signed on Sept. 18, 1992, and as amended by the Additional Protocol signed on Sept. 8, 1994, and the Second Additional Protocol signed on Nov. 26, 2002. The Agreement specifies the cases where fiscally transparent entities are entitled to treaty benefits and clarifies the procedure for claiming treaty benefits from Mexico.

The text of the agreement is attached.

COMPETENT AUTHORITY MUTUAL AGREEMENT

The Competent Authorities of the United States and Mexico hereby enter into the following mutual agreement (“the Agreement”) regarding the eligibility of entities that are treated as fiscally transparent under the laws of either Contracting State to benefits under the Convention Between the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, along with a Protocol, signed on September 18, 1992, and as amended by the Additional Protocol signed on September 8, 1994, and the Second Additional Protocol signed on November 26, 2002. The Agreement specifies the cases where fiscally transparent entities are entitled to treaty benefits and clarifies the procedure for claiming treaty benefits from Mexico. The Agreement is entered into under paragraph 3 of Article 26 (Mutual Agreement Procedure).

1) Eligibility of fiscally transparent entities for treaty benefits

Paragraph 2(b) of the Protocol provides:

For purposes of paragraph 1 of Article 4 it is understood that:

* * * * *

b) a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident, either in the hands of the partnership, estate or trust, or in the hands of its partners or beneficiaries;

The Competent Authorities agree that in applying paragraph 2(b) of the Protocol, it is understood that income from sources within one of the Contracting States received by an entity that is treated as fiscally transparent under the laws of either Contracting State, will be treated as income derived by a resident of the other Contracting State to the extent that such income is subject to tax as the income of a resident of the other Contracting State.

For example, if a resident of the United States is a member of a limited liability company (“LLC”) organized in the United States, and the LLC is treated for U.S. federal tax purposes as a partnership, the resident of the United States would be afforded benefits of the Treaty on the income that the resident derives from Mexico through the LLC to the extent of the resident’s share of that income. Similar rules would apply to a resident of the United States that is a shareholder of a U.S. subchapter S Corporation, an LLC that is disregarded as an entity separate from its owner, or a U.S. grantor trust.

It is understood that Mexican law currently does not provide for any fiscally transparent entities. However, if Mexico were to introduce legislation that provided for the creation of fiscally transparent entities, then it is intended that income received by such entity will be treated as income derived by a resident of Mexico to the extent that such income is subject to tax as the income of a resident of Mexico.

Additionally, Mexico agrees to apply this Agreement with respect to amounts paid to an entity created and subject to the laws of a third state or jurisdiction only where such third state or jurisdiction has in force a comprehensive exchange of information agreement as provided in Mexican tax provisions and such information is effectively exchanged. The following is the current list of countries that Mexico has a comprehensive exchange of information in force. Such a list is published under Mexican administrative regulations and may be amended from time to time.

- Belgium
- Canada
- Korea
- Israel
- Spain
- France
- Italy
- Norway
- Netherlands
- Singapore
- Sweden
- Finland
- Chile
- Ecuador
- Romania
- Czech Republic

2.) Appropriate procedures for claiming treaty benefits from Mexico

A LLC or other entity organized within or without the United States that is treated as a partnership for U.S. tax purposes may claim treaty benefits by obtaining a certificate of residence on Form 6166 in the same manner as a partnership. A Form 6166 confirms the filing of Form 1065, U.S. Return of Partnership Income, by the LLC and includes a list of members of the LLC that are residents of the United States for purposes of U.S. taxation. The Form 6166 will inform the withholding agent to contact the LLC directly to provide information regarding the allocation of a particular payment to a specific member.

A U.S. resident deriving income through a LLC or other entity organized within or without the United States that is disregarded as an entity separate from its owner for U.S. tax purposes may claim benefits by obtaining a Form 6166 that provides that the LLC is a branch, division, or business unit of its single member owner and that such single member owner is a resident of the United States.

A U.S. resident deriving income through a U.S. corporation that has made an election to be treated as an S Corporation for U.S. tax purposes may claim treaty benefits by obtaining a Form 6166 certificate of residence in a manner similar to that of a partnership. A Form 6166 confirms the filing of an information return, Form 1120S, U.S. Income Tax Return for an S Corporation, as required for a domestic S Corporation, and includes a list of shareholders that are residents of United States for purposes of U.S. taxation.

3) Effective dates

Upon signature by both competent authorities, this Agreement is effective with respect to Mexican source payments made to Mexican or U.S. entities to the extent the Mexican statute of limitations is open for such payments. This Agreement is effective with respect to Mexican source payments made to entities organized in third countries or jurisdictions identified in the Agreement as of January 1, 2006.

Agreed to by the undersigned Competent Authorities:

Robert H. Green
U.S. Competent Authority

Ana Bertha Thierry
Mexican Competent Authority

Date

Date