



Servicio de Administración Tributaria

**ACUERDO AMISTOSO ENTRE
MÉXICO Y LA REPÚBLICA DE
AUSTRIA SOBRE EL PÁRRAFO 16
DEL PROTOCOLO, EN RELACIÓN
CON EL ARTÍCULO 25 DEL TEDT**

MEMORANDUM OF UNDERSTANDING IN RELATION TO ARTICLE 24 OF THE CONVENTION BETWEEN THE UNITED MEXICAN STATES AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

In accordance with article 24 paragraph 3 of the Convention between the United Mexican States and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed in Mexico City on April 13th, 2004, the undersigned States agree to celebrate a Memorandum of Understanding in respect of article 25 of the Convention amended by the Protocol, as follows:

I. Introduction

Article 25 of the Convention between the United Mexican States and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, signed in Mexico City on April 13th, 2004 (hereinafter the Convention), sets the applicable rules for Exchange of Information for tax purposes between both States.

On September 18th, 2009, the original Protocol of the Convention was amended by a second Protocol (hereinafter the Protocol) which incorporates to paragraph 16 of the original Protocol the following:

“1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e) the name and address of any person believed to be in possession of the requested information;

- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.”

II. Issue

The competent Authorities have identified that interpretation on section e) of subparagraph 1 of the paragraph 16 of the Protocol, should be made, in order to construe whether the said section allows a requested Country to decline to provide the information whenever the applicant Party did not provide the name and address of the person believed to be in possession of the requested information.

III. Analysis

The OECD Model of Agreement on Exchange of Information on Tax Matters (the Model) establishes in its article 5 the information that the competent authority of the applicant Party shall provide to the requested Party when making a request of information to demonstrate the foreseeable relevance of the requested information.

Specifically, subparagraph (e) of paragraph 5 requires that “*to the extent known, the names and address of any person believed to be in possession of the requested information*”, shall be provided.

According to the latter, the Model sets the name and address of the person believed to be in possession of the requested information shall be provided by the applicant Party *to the extent known* by the said applicant Party.

To read subparagraph e) of subparagraph 1 of paragraph 16 of the Protocol as a necessary requirement in order to provide the requested information might lead to a conclusion which is not in accordance with article 5, paragraph 5, subparagraph (e) of the Model. Therefore, declining a request of information because foreseeable relevance was not proven on that ground, is clearly a position contrary to the object and purpose pursued by the Protocol.

Hence, the Competent Authorities have concluded that in order to prove the foreseeable relevance under paragraph 16, with regard to the requirement set forth in its subparagraph 1, section e) of the Protocol, only obliges to the applicant Party to provide the name and address of the person believed to be in possession of the requested information only *to the extent it is known* by the said applicant Party.

IV. Agreement

The undersigning Competent Authorities hereby understand that with regard to any exchange of information solicitude, the subparagraph e) of subparagraph 1 of

paragraph 16 of the Protocol shall be construed as requiring the applicant Party to provide the names and address of any person believed to be in possession of the requested information only to the extent it is known by the said applicant Party.

The Competent Authorities assent that the agreement contained herein shall be public.

In witness whereof the undersigned, been duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding.

Done in duplicate at Mexico February 10th, 2012, in English language.

For the
Republic of Austria

Heinz Jirousek
Director for International Tax
Affairs
Federal Ministry of Finance

Signed in Paris the February 20th,
2012

For the
Mexican United States

Juan Carlos Rizo León
General Administrator for Large
Taxpayers
Tax Administration Service

Signed in Mexico City the February 10th,
2012