

## **TREATY USA - MEXICO**

*CONVENTION BETWEEN THE GOVERNMENT OF 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, TOGETHER WITH A RELATED PROTOCOL, SIGNED AT WASHINGTON ON SEPTEMBER 18, 1992*

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1994

### **ARTICLE 17 Limitation on Benefits**

- 1) A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if such person is:
  - a) an individual;
  - b) a Contracting State, or a political subdivision or local authority thereof;
  - c) engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company) and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;
  - d) either
    - i) a company in whose principal class of shares there is substantial and regular trading on a recognized securities exchange located in either of the States;
    - ii) a company which is wholly owned, directly or indirectly, by a resident of that Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange located in either of the States; or
    - iii) a company which is
      - A) wholly owned, directly or indirectly, by residents of any state that is a party to the North American Free Trade Agreement ("NAFTA") in whose, principal class of shares there is such substantial and regular trading on a recognized securities exchange; and
      - B) more than 50 percent owned, directly or indirectly, by residents of either Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange located in such a State;

- e) an entity that is a not-for-profit organization (including a pension fund or private foundation) and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention;
- f) a person that satisfies both of the following conditions:
  - i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs (a), (b), (d) or (e); and
  - ii) less than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs (a), (b), (d) or (e); or
- g) a person claiming benefits under Articles 10 (Dividends), 11 (Interest), 11A (Branch Tax), or 12 (Royalties) that satisfies the following conditions:
  - i) more than 30 percent of the beneficial interest in such person (or, in the case of a company, more than 30 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons resident in a Contracting State and entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e);
  - ii) more than 60 percent of the beneficial interest in such person (or, in the case of a company, more than 60 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons resident in a state that is a party to NAFTA; and
  - iii)
    - A) less than 70 percent of the gross income of such person is used directly or indirectly to meet liabilities (including liabilities for interest or royalties) to persons that are not entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e); and
    - B) less than 40 percent of the gross income of such person is used directly or indirectly to meet liabilities (including liabilities for interest or royalties) to persons that are neither entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e) nor residents of a state that is a party to NAFTA. A resident of a state that is a party to NAFTA shall only be considered as owning a beneficial interest (or share) under subparagraph (g)(ii) if that state has a comprehensive income tax Convention with the Contracting State from which the income is derived and if the particular dividend, profit or income subject to the branch tax, interest, or

royalty payment, in respect of which benefits under this Convention are claimed, would be subject to a rate of tax under that Convention that is no less favorable than the rate of tax applicable to such resident under Articles 10 (Dividends), 11 (Interest), 11A (Branch Tax), or 12 (Royalties) of this Convention.

- 2) A person which is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, demonstrate to the competent authority of the State in which the income arises that such person should be granted the benefits of the Convention. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

## **PROTOCOL 1**

15. With reference to paragraph 2 of Article 11 (Interest), paragraph 2 of Article 11A (Branch Tax), and paragraph 1 of Article 17 (Limitation on Benefits),

- a) For purposes of subparagraph (c) of paragraph 1 of Article 17 and paragraph 2 of Article 11A, the term “trade or business” means, in the case of Mexico, activities carried on through a permanent establishment as defined in the Income Tax Law of Mexico.
- b) For purposes of subparagraph (a)(ii) of paragraph 2 of Article 11 and subparagraph(d) of paragraph 1 of Article 17, the term "recognized securities exchange" means:
- (i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;
  - (ii) stock exchanges duly authorized under the terms of the Stock Market (“Mercado de Valores”) Law of January 2, 1975; and
  - (iii) any other stock exchange agreed upon by the competent authorities of the Contracting States.
- c) For purposes of subparagraph (f)(ii) of paragraph 1 of Article 17, the term “gross income” means gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts

reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

- d) the provisions of subparagraphs (d)(iii) and (g) of paragraph 1 of Article 17 shall only take effect when NAFTA enters into force.