Model Tax Convention On Income And On Capita

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CURSO INTENSIVO DE DERECHO INTERNACIONAL TRIBUTARIO

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23 [A] [B], 24, 25 and 28.

Article 2

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) (in State A): ……..

b) (in State B): ……..

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws

CHAPTER II

DEFINITIONS

Article 3

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, a company and any other body of persons;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

c) the term "enterprise" applies to the carrying on of any business;

d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

e) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;

f) the term "competent authority" means:

(i) (in State A): ……..

(ii) (in State B): ……..

g) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

h) the term "business" includes the performance of professional services and of other activities of an independent character.

i) the term "recognized pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State

Article 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognized pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

Article 5

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

a) in the name of the enterprise, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

c) for the provision of services by that enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first- mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

8. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

1. Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

2. For the purposes of this Article and Article [23 A] [23 B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend);

b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

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ARTICLE 15

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 16

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

1. Notwithstanding the provisions of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 18

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii)did not become a resident of that State solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

CHAPTER IV

TAXATION OF CAPITAL

ARTICLE 22

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS OF ELIMINATION OF DOUBLE TAXATION

ARTICLE 23-A

1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first- mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.

2. Where a resident of a Contracting State derives items of income which may be taxed in the other Contracting State in accordance with the provisions of Articles 10 and 11 (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State), the first- mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.

3. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such income.

ARTICLE 23-B

1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first-mentioned State shall allow:

a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;

b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

CHAPTER VI

SPECIAL PROVISIONS

ARTICLE 24

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

ARTICLE 26

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (order public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 27

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first- mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

ARTICLE 28

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

1. [Provision that, subject to paragraphs 3 to 5, restricts treaty benefits to a resident of a Contracting State who is a "qualified person" as defined in paragraph 2].

2. [Definition of situations where a resident is a qualified person, which covers

— an individual;

— a Contracting State, its political subdivisions and their agencies and instrumentalities;

— certain publicly-traded companies and entities;

— certain affiliates of publicly-listed companies and entities;

— certain non-profit organizations and recognized pension funds;

— other entities that meet certain ownership and base erosion requirements;

— certain collective investment vehicles.]

3. [Provision that provides treaty benefits to certain income derived by a person that is not a qualified person if the person is engaged in the active conduct of a business in its State of residence and the income emanates from, or is incidental to, that business].

4. [Provision that provides treaty benefits to a person that is not a qualified person if at least more than an agreed proportion of that entity is owned by certain persons entitled to equivalent benefits].

5. [Provision that provides treaty benefits to a person that qualifies as a "headquarters company"].

6. [Provision that allows the competent authority of a Contracting State to grant certain treaty benefits to a person where benefits would otherwise be denied under paragraph 1].

7. [Definitions applicable for the purposes of paragraphs 1 to 7].

8. a) Where

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and

(ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State,

the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of [rate to be determined bilaterally] of the amount of that item of income and 60 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other State, notwithstanding any other provisions of the Convention.

b) The preceding provisions of this paragraph shall not apply if the income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively)

c) If benefits under this Convention are denied pursuant to the preceding provisions of this paragraph with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request

9. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention

ARTICLE 30

1. This Convention may be extended, either in its entirety or with any necessary modifications [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or], to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 32 shall also terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

CHAPTER VII

FINAL PROVISIONS

ARTICLE 31

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at……as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) (in State A):…….

b) (in State B):……..

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year……..In such event, the Convention shall cease to have effect:

a) (in State A): ……

b) (in State B):…….

Código Fiscal De La Federación

ARTÍCULO 9

Se consideran residentes en territorio nacional:

I. A las siguientes personas físicas:

a) Las que hayan establecido su casa habitación en México. Cuando las personas físicas de que se trate también tengan casa habitación en otro país, se considerarán residentes en México, si en territorio nacional se encuentra su centro de intereses vitales. Para estos efectos, se considerará que el centro de intereses vitales está en territorio nacional cuando, entre otros casos, se ubiquen en cualquiera de los siguientes supuestos:

1. Cuando más del 50% de los ingresos totales que obtenga la persona física en el año de calendario tengan fuente de riqueza en México.
2. 2. Cuando en el país tengan el centro principal de sus actividades profesionales.

b) Las de nacionalidad mexicana que sean funcionarios del Estado o trabajadores del mismo, aun cuando su centro de intereses vitales se encuentre en el extranjero.

No perderán la condición de residentes en México, las personas físicas de nacionalidad mexicana que acrediten su nueva residencia fiscal en un país o territorio en donde sus ingresos se encuentren sujetos a un régimen fiscal preferente en los términos de la Ley del Impuesto sobre la Renta. Lo dispuesto en este párrafo se aplicará en el ejercicio fiscal en el que se presente el aviso a que se refiere el último párrafo de este artículo y durante los tres ejercicios fiscales siguientes.

No se aplicará lo previsto en el párrafo anterior, cuando el país en el que se acredite la nueva residencia fiscal, tenga celebrado un acuerdo amplio de intercambio de información tributaria con México.

II. Las personas morales que hayan establecido en México la administración principal del negocio o su sede de dirección efectiva.

Salvo prueba en contrario, se presume que las personas físicas de nacionalidad mexicana, son residentes en territorio nacional.

Las personas físicas o morales que dejen de ser residentes en México de conformidad con este Código, deberán presentar un aviso ante las autoridades fiscales, a más tardar dentro de los 15 días inmediatos anteriores a aquél en el que suceda el cambio de residencia fiscal.

Ley Del Impuesto Sobre La Renta

TÍTULO I

DISPOSICIONES GENERALES

ARTÍCULO 1

Las personas físicas y las morales están obligadas al pago del impuesto sobre la renta en los siguientes casos:

I. Las residentes en México, respecto de todos sus ingresos, cualquiera que sea la ubicación de la fuente de riqueza de donde procedan.

II. Los residentes en el extranjero que tengan un establecimiento permanente en el país, respecto de los ingresos atribuibles a dicho establecimiento permanente.

III. Los residentes en el extranjero, respecto de los ingresos procedentes de fuentes de riqueza situadas en territorio nacional, cuando no tengan un establecimiento permanente en el país, o cuando teniéndolo, dichos ingresos no sean atribuibles a éste.

ARTÍCULO 2

Para los efectos de esta Ley, se considera establecimiento permanente cualquier lugar de negocios en el que se desarrollen, parcial o totalmente, actividades empresariales o se presten servicios personales independientes. Se entenderá como establecimiento permanente, entre otros, las sucursales, agencias, oficinas, fábricas, talleres, instalaciones, minas, canteras o cualquier lugar de exploración, extracción o explotación de recursos naturales.

No obstante lo dispuesto en el párrafo anterior, cuando un residente en el extranjero actúe en el país a través de una persona física o moral, distinta de un agente independiente, se considerará que el residente en el extranjero tiene un establecimiento permanente en el país, en relación con todas las actividades que dicha persona física o moral realice para el residente en el extranjero, aun cuando no tenga en territorio nacional un lugar de negocios o para la prestación de servicios, si dicha persona ejerce poderes para celebrar contratos a nombre o por cuenta del residente en el extranjero tendientes a la realización de las actividades de éste en el país, que no sean de las mencionadas en el artículo 3 de esta Ley.

En caso de que un residente en el extranjero realice actividades empresariales en el país, a través de un fideicomiso, se considerará como lugar de negocios de dicho residente, el lugar en que el fiduciario realice tales actividades y cumpla por cuenta del residente en el extranjero con las obligaciones fiscales derivadas de estas actividades.

Se considerará que existe establecimiento permanente de una empresa aseguradora residente en el extranjero, cuando ésta perciba ingresos por el cobro de primas dentro del territorio nacional u otorgue seguros contra riesgos situados en él, por medio de una persona distinta de un agente independiente, excepto en el caso del reaseguro.

De igual forma, se considerará que un residente en el extranjero tiene un establecimiento permanente en el país, cuando actúe en el territorio nacional a través de una persona física o moral que sea un agente independiente, si éste no actúa en el marco ordinario de su actividad. Para estos efectos, se considera que un agente independiente no actúa en el marco ordinario de sus actividades cuando se ubique en cualquiera de los siguientes supuestos:

I. Tenga existencias de bienes o mercancías, con las que efectúe entregas por cuenta del residente en el extranjero.

II. Asuma riesgos del residente en el extranjero.

III. Actúe sujeto a instrucciones detalladas o al control general del residente en el extranjero.

IV. Ejerza actividades que económicamente corresponden al residente en el extranjero y no a sus propias actividades.

V. Perciba sus remuneraciones independientemente del resultado de sus actividades.

VI. Efectúe operaciones con el residente en el extranjero utilizando precios o montos de contraprestaciones distintos de los que hubieran usado partes no relacionadas en operaciones comparables.

Tratándose de servicios de construcción de obra, demolición, instalación, mantenimiento o montaje en bienes inmuebles, o por actividades de proyección, inspección o supervisión relacionadas con ellos, se considerará que existe establecimiento permanente solamente cuando los mismos tengan una duración de más de 183 días naturales, consecutivos o no, en un periodo de doce meses.

Para los efectos del párrafo anterior, cuando el residente en el extranjero subcontrate con otras empresas los servicios relacionados con construcción de obras, demolición, instalaciones, mantenimiento o montajes en bienes inmuebles, o por actividades de proyección, inspección o supervisión relacionadas con ellos, los días utilizados por los subcontratistas en el desarrollo de estas actividades se adicionarán, en su caso, para el cómputo del plazo mencionado.

Se considerarán ingresos atribuibles a un establecimiento permanente en el país, los provenientes de la actividad empresarial que desarrolle o los ingresos por honorarios y, en general, por la prestación de un servicio personal independiente, así como los que deriven de enajenaciones de mercancías o de bienes inmuebles en territorio nacional, efectuados por la oficina central de la persona, por otro establecimiento de ésta o directamente por el residente en el extranjero, según sea el caso. Sobre dichos ingresos se deberá pagar el impuesto en los términos de los Títulos II o IV de esta Ley, según corresponda.

También se consideran ingresos atribuibles a un establecimiento permanente en el país, los que obtenga la oficina central de la sociedad o cualquiera de sus establecimientos en el extranjero, en la proporción en que dicho establecimiento permanente haya participado en las erogaciones incurridas para su obtención.

ARTÍCULO 3

No se considerará que constituye establecimiento permanente:

I. La utilización o el mantenimiento de instalaciones con el único fin de almacenar o exhibir bienes o mercancías pertenecientes al residente en el extranjero.

II. La conservación de existencias de bienes o de mercancías pertenecientes al residente en el extranjero con el único fin de almacenar o exhibir dichos bienes o mercancías o de que sean transformados por otra persona.

III. La utilización de un lugar de negocios con el único fin de comprar bienes o mercancías para el residente en el extranjero.

IV. La utilización de un lugar de negocios con el único fin de desarrollar actividades de naturaleza previa o auxiliar para las actividades del residente en el extranjero, ya sean de propaganda, de suministro de información, de investigación científica, de preparación para la colocación de préstamos, o de otras actividades similares.

V. El depósito fiscal de bienes o de mercancías de un residente en el extranjero en un almacén general de depósito ni la entrega de los mismos para su importación al país.

ARTÍCULO 4

Los beneficios de los tratados para evitar la doble tributación sólo serán aplicables a los contribuyentes que acrediten ser residentes en el país de que se trate y cumplan con las disposiciones del propio tratado y de las demás disposiciones de procedimiento contenidas en esta Ley, incluyendo la de presentar la declaración informativa sobre su situación fiscal en los términos del artículo 32-H del Código Fiscal de la Federación o bien, la de presentar el dictamen de estados financieros cuando se haya ejercido la opción a que se refiere el artículo 32-A del citado Código, y de designar representante legal.

Además de lo previsto en el párrafo anterior, tratándose de operaciones entre partes relacionadas, las autoridades fiscales podrán solicitar al contribuyente residente en el extranjero que acredite la existencia de una doble tributación jurídica, a través de una manifestación bajo protesta de decir verdad firmada por su representante legal, en la que expresamente señale que los ingresos sujetos a imposición en México y respecto de los cuales se pretendan aplicar los beneficios del tratado para evitar la doble tributación, también se encuentran gravados en su país de residencia, para lo cual deberá indicar las disposiciones jurídicas aplicables, así como aquella documentación que el contribuyente considere necesaria para tales efectos.

En los casos en que los tratados para evitar la doble tributación establezcan tasas de retención inferiores a las señaladas en esta Ley, las tasas establecidas en dichos tratados se podrán aplicar directamente por el retenedor; en el caso de que el retenedor aplique tasas mayores a las señaladas en los tratados, el residente en el extranjero tendrá derecho a solicitar la devolución por la diferencia que corresponda.

Las constancias que expidan las autoridades extranjeras para acreditar la residencia surtirán efectos sin necesidad de legalización y solamente será necesario exhibir traducción autorizada cuando las autoridades fiscales así lo requieran.

ARTÍCULO 5

Los residentes en México podrán acreditar, contra el impuesto que conforme a esta Ley les corresponda pagar, el impuesto sobre la renta que hayan pagado en el extranjero por los ingresos procedentes de fuente ubicada en el extranjero, siempre que se trate de ingresos por los que se esté obligado al pago del impuesto en los términos de la presente Ley. El acreditamiento a que se refiere este párrafo sólo procederá siempre que el ingreso acumulado, percibido o devengado, incluya el impuesto sobre la renta pagado en el extranjero.

- Tratándose de ingresos por dividendos o utilidades distribuidos por sociedades residentes en el extranjero a personas morales residentes en México, también se podrá acreditar el monto proporcional del impuesto sobre la renta pagado por dichas sociedades que corresponda al dividendo o utilidad percibido por el residente en México. Quien efectúe el acreditamiento a que se refiere este párrafo considerará como ingreso acumulable, además del dividendo o utilidad percibido, sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por su distribución, el monto proporcional del impuesto sobre la renta corporativo pagado por la sociedad, correspondiente al dividendo o utilidad percibido por el residente en México, aun cuando el acreditamiento del monto proporcional del impuesto se limite en términos del párrafo séptimo de este artículo. El acreditamiento a que se refiere este párrafo sólo procederá cuando la persona moral residente en México sea propietaria de cuando menos el diez por ciento del capital social de la sociedad residente en el extranjero, al menos durante los seis meses anteriores a la fecha en que se pague el dividendo o utilidad de que se trate

Para los efectos del párrafo anterior, el monto proporcional del impuesto sobre la renta pagado en el extranjero por la sociedad residente en otro país correspondiente al dividendo o utilidad percibido por la persona moral residente en México, se obtendrá aplicando la siguiente fórmula:

$$MPI = \left(\frac{D}{U}\right)(IC)$$

Donde:

MPI: Monto proporcional del impuesto sobre la renta pagado en el extranjero por la sociedad residente en el extranjero en primer nivel corporativo que distribuye dividendos o utilidades de manera directa a la persona moral residente en México.

D: Dividendo o utilidad distribuido por la sociedad residente en el extranjero a la persona moral residente en México sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por su distribución.

U: Utilidad que sirvió de base para repartir los dividendos, después del pago del impuesto sobre la renta en primer nivel corporativo, obtenida por la sociedad residente en el extranjero que distribuye dividendos a la persona moral residente en México.

IC: Impuesto sobre la renta corporativo pagado en el extranjero por la sociedad residente en el extranjero que distribuyó dividendos a la persona moral residente en México.

- Adicionalmente a lo previsto en los párrafos anteriores, se podrá acreditar el monto proporcional del impuesto sobre la renta pagado por la sociedad residente en el extranjero que distribuya dividendos a otra sociedad residente en el extranjero, si esta última, a su vez, distribuye dichos dividendos a la persona moral residente en México. Quien efectúe el acreditamiento conforme a este párrafo, deberá considerar como ingreso acumulable, además del dividendo o utilidad percibido en forma directa por la persona moral residente en México, sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por su distribución, el monto proporcional del impuesto sobre la renta corporativo que corresponda al dividendo o utilidad percibido en forma indirecta por el que se vaya a efectuar el acreditamiento, aun cuando el acreditamiento del monto proporcional del impuesto se limite en términos del párrafo séptimo de este artículo. Este monto proporcional del impuesto sobre la renta pagado en un segundo nivel corporativo se determinará de conformidad con la siguiente fórmula:

$$MPI_2 = \left(\frac{D}{U}\right)\left(\frac{D_2}{U_2}\right)(IC_2)$$

Donde:

MPI2: Monto proporcional del impuesto sobre la renta pagado en el extranjero por la sociedad residente en el extranjero en segundo nivel corporativo, que distribuye dividendos o utilidades a la otra sociedad extranjera en primer nivel corporativo, que a su vez distribuye dividendos o utilidades a la persona moral residente en México.

D: Dividendo o utilidad distribuido por la sociedad residente en el extranjero a la persona moral residente en México sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por su distribución.

U: Utilidad que sirvió de base para repartir los dividendos, después del pago del impuesto sobre la renta en primer nivel corporativo, obtenida por la sociedad residente en el extranjero que distribuye dividendos a la persona moral residente en México.

D2: Dividendo o utilidad distribuida por la sociedad residente en el extranjero a la sociedad residente en el extranjero que distribuye dividendos a la persona moral residente en México, sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por la primera distribución.

U2: Utilidad que sirvió de base para repartir los dividendos después del pago del impuesto sobre la renta en segundo nivel corporativo, obtenida por la sociedad residente en el extranjero que distribuye dividendos a la otra sociedad residente en el extranjero que distribuye dividendos a la persona moral residente en México.

IC2: Impuesto sobre la renta corporativo pagado en el extranjero por la sociedad residente en el extranjero que distribuyó dividendos a la otra sociedad residente en el extranjero que distribuye dividendos a la persona moral residente en México.

- El acreditamiento a que se refiere el párrafo anterior, sólo procederá siempre que la sociedad residente en el extranjero que haya pagado el impuesto sobre la renta que se pretende acreditar se encuentre en un segundo nivel corporativo. Para efectuar dicho acreditamiento la persona moral residente en México deberá tener una participación directa en el capital social de la sociedad residente en el extranjero que le distribuye dividendos de cuando menos un diez por ciento. Esta última sociedad deberá ser propietaria de cuando menos el diez por ciento del capital social de la sociedad residente en el extranjero en la que el residente en México tenga participación indirecta, debiendo ser esta última participación de cuando menos el cinco por ciento de su capital social. Los porcentajes de tenencia accionaria señalados en este párrafo, deberán haberse mantenido al menos durante los seis meses anteriores a la fecha en que se pague el dividendo o utilidad de que se trate. Adicionalmente, para efectuar el acreditamiento referido en el párrafo anterior, la sociedad residente en el extranjero en la que la persona moral residente en México tenga participación indirecta, deberá ser residente en un país con el que México tenga un acuerdo amplio de intercambio de información.

- Tratándose de personas morales, el monto del impuesto acreditable a que se refiere el primer párrafo de este artículo no excederá de la cantidad que resulte de aplicar la tasa a que se refiere el artículo 9 de esta Ley, a la utilidad fiscal que resulte conforme a las disposiciones aplicables de la presente Ley por los ingresos percibidos en el ejercicio de fuente de riqueza ubicada en el extranjero. Para estos efectos, las deducciones que sean atribuibles exclusivamente a los ingresos de fuente de riqueza ubicada en el extranjero se considerarán al cien por ciento; las deducciones que sean atribuibles exclusivamente a los ingresos de fuente de riqueza ubicada en territorio nacional no deberán ser consideradas y, las deducciones que sean atribuibles parcialmente a ingresos de fuente de riqueza en territorio nacional y parcialmente a ingresos de fuente de riqueza en el extranjero, se considerarán en la misma proporción que represente el ingreso proveniente del extranjero de que se trate, respecto del ingreso total del contribuyente en el ejercicio. El cálculo del límite de acreditamiento a que se refiere este párrafo se realizará por cada país o territorio de que se trate.

Adicionalmente, tratándose de personas morales, la suma de los montos proporcionales de los impuestos pagados en el extranjero que se tiene derecho a acreditar conforme al segundo y cuarto párrafos de este artículo, no excederá del límite de acreditamiento. El límite de acreditamiento se determinará aplicando la siguiente fórmula:

$$LA = [(D+MPI+MPI_2)(T)] - ID$$

Donde:

LA: Límite de acreditamiento por los impuestos sobre la renta corporativos pagados en el extranjero en primer y segundo nivel corporativo.

D: Dividendo o utilidad distribuido por la sociedad residente en el extranjero a la persona moral residente en México sin disminuir la retención o pago del impuesto sobre la renta que en su caso se haya efectuado por su distribución.

MPl: Monto proporcional del impuesto sobre la renta corporativo pagado en el extranjero a que se refiere el tercer párrafo de este artículo.

MPl2: Monto proporcional del impuesto sobre la renta corporativo pagado en el extranjero a que se refiere el cuarto párrafo de este artículo.

T: Tasa a que se refiere el artículo 9 de esta Ley.

ID: Impuesto acreditable a que se refiere el primer y sexto párrafos de este artículo que corresponda al dividendo o utilidad percibido por la persona moral residente en México.

Cuando la persona moral que en los términos de los párrafos anteriores tenga derecho a acreditar el impuesto sobre la renta pagado en el extranjero se escinda, el derecho al acreditamiento le corresponderá exclusivamente a la sociedad escindente. Cuando esta última desaparezca lo podrá transmitir a las sociedades escindidas en la proporción en que se divida el capital social con motivo de la escisión.

En el caso de las personas físicas, el monto del impuesto acreditable a que se refiere el primer párrafo de este artículo, no excederá de la cantidad que resulte de aplicar lo previsto en el Capítulo XI del Título IV de esta Ley a los ingresos percibidos en el ejercicio de fuente de riqueza ubicada en el extranjero, una vez efectuadas las deducciones autorizadas para dichos ingresos de conformidad con el capítulo que corresponda del Título IV antes citado. Para estos efectos, las deducciones que no sean atribuibles exclusivamente a los ingresos de fuente de riqueza ubicada en el extranjero deberán ser consideradas en la proporción antes mencionada.

En el caso de las personas físicas que determinen el impuesto correspondiente a sus ingresos por actividades empresariales en los términos del Capítulo II del Título IV de esta Ley, el monto del impuesto acreditable a que se refiere el primer párrafo de este artículo no excederá de la cantidad que resulte de aplicar al total de los ingresos del extranjero la tarifa establecida en el artículo 152 de esta Ley. Para estos efectos, las deducciones que no sean atribuibles exclusivamente a los ingresos de fuente de riqueza ubicada en el extranjero deberán ser consideradas en la proporción antes mencionada. Para fines de este párrafo y del anterior, el cálculo de los límites de acreditamiento se realizará por cada país o territorio de que se trate.

Las personas físicas residentes en México que estén sujetas al pago del impuesto en el extranjero en virtud de su nacionalidad o ciudadanía, podrán efectuar el acreditamiento a que se refiere este artículo hasta por una cantidad equivalente al impuesto que hubieran pagado en el extranjero de no haber tenido dicha condición.

Cuando el impuesto acreditable se encuentre dentro de los límites a que se refieren los párrafos que anteceden y no pueda acreditarse total o parcialmente, el acreditamiento podrá efectuarse en los diez ejercicios siguientes, hasta agotarlo. Para los efectos de este acreditamiento, se aplicarán, en lo conducente, las disposiciones sobre pérdidas del Capítulo V del Título II de esta Ley.

La parte del impuesto pagado en el extranjero que no sea acreditable de conformidad con este artículo, no será deducible para efectos de la presente Ley.

Para determinar el monto del impuesto pagado en el extranjero que pueda acreditarse en los términos del segundo y cuarto párrafos de este artículo, se deberá efectuar la conversión cambiaria respectiva, considerando el último tipo de cambio publicado en el Diario Oficial de la Federación, con anterioridad al último día del ejercicio al que corresponda la utilidad con cargo a la cual se pague el dividendo o utilidad percibido por el residente en México. En los demás casos a que se refiere este artículo, para efectos de determinar el monto del impuesto pagado en el extranjero que pueda acreditarse, la conversión cambiaria se efectuará considerando el promedio mensual de los tipos de cambio diarios publicados en el Diario Oficial de la Federación en el mes de calendario en el que se pague el impuesto en el extranjero mediante retención o entero.

Los contribuyentes que hayan pagado en el extranjero el impuesto sobre la renta en un monto que exceda al previsto en el tratado para evitar la doble tributación que, en su caso, sea aplicable al ingreso de que se trate, sólo podrán acreditar el excedente en los términos de este artículo una vez agotado el procedimiento de resolución de controversias contenido en ese mismo tratado.

No se tendrá derecho al acreditamiento del impuesto pagado en el extranjero, cuando su retención o pago esté condicionado a su acreditamiento en los términos de esta Ley.

Los contribuyentes deberán contar con la documentación comprobatoria del pago del impuesto en todos los casos. Cuando se trate de impuestos retenidos en países con los que México tenga celebrados acuerdos amplios de intercambio de información, bastará con una constancia de retención.

Las personas morales residentes en México que obtengan ingresos por dividendos o utilidades distribuidos por sociedades residentes en el extranjero, deberán calcular los montos proporcionales de los impuestos y el límite a que se refiere el párrafo séptimo de este artículo, por cada ejercicio fiscal del cual provengan los dividendos distribuidos. Para efectos de lo anterior, las personas morales residentes en México estarán obligadas a llevar un registro que permita identificar el ejercicio al cual corresponden los dividendos o utilidades distribuidas por la sociedad residente en el extranjero. En el caso de que la persona moral residente en México no tenga elementos para identificar el ejercicio fiscal al que correspondan los dividendos o utilidades distribuidas, en el registro a que se refiere este párrafo se considerará que las primeras utilidades generadas por dicha sociedad son las primeras que se distribuyen. Los contribuyentes deberán mantener toda la documentación que compruebe la información señalada en el registro a que se refiere este párrafo. Los residentes en México que no mantengan el registro o la documentación mencionados, o que no realicen el cálculo de la manera señalada anteriormente, no tendrán derecho a acreditar el impuesto al que se refieren los párrafos segundo y cuarto de este artículo. El registro mencionado en este párrafo deberá llevarse a partir de la adquisición de la tenencia accionaria, pero deberá contener la información relativa a las utilidades respecto de las cuales se distribuyan dividendos o utilidades, aunque correspondan a ejercicios anteriores.

Cuando un residente en el extranjero tenga un establecimiento permanente en México y sean atribuibles a dicho establecimiento ingresos de fuente ubicada en el extranjero, se podrá efectuar el acreditamiento en los términos señalados en este artículo, únicamente por aquellos ingresos atribuibles que hayan sido sujetos a retención.

Se considerará que un impuesto pagado en el extranjero tiene la naturaleza de un impuesto sobre la renta cuando cumpla con lo establecido en las reglas generales que expida el Servicio de Administración Tributaria. Se considerará que un impuesto pagado en el extranjero tiene naturaleza de impuesto sobre la renta cuando se encuentre expresamente señalado como un impuesto comprendido en un tratado para evitar la doble imposición en vigor de los que México sea parte.

TÍTULO V

DE LOS RESIDENTES EN EL EXTRANJERO CON INGRESOS PROVENIENTES DE FUENTE DE RIQUEZA UBICADA EN TERRITORIO NACIONAL

ARTÍCULO 153

Están obligados al pago del impuesto sobre la renta conforme a este Título, los residentes en el extranjero que obtengan ingresos en efectivo, en bienes, en servicios o en crédito, aun cuando hayan sido determinados presuntivamente por las autoridades fiscales, en los términos de los artículos 58-A del Código Fiscal de la Federación, 11, 179 y 180 de esta Ley, provenientes de fuentes de riqueza situadas en territorio nacional, cuando no tengan un establecimiento permanente en el país o cuando teniéndolo, los ingresos no sean atribuibles a éste. Se considera que forman parte de los ingresos mencionados en este párrafo, los pagos efectuados con motivo de los actos o actividades a que se refiere este Título, que beneficien al residente en el extranjero, inclusive cuando le eviten una erogación, pagos a los cuales les resultarán aplicables las mismas disposiciones que a los ingresos que los originaron.

Cuando los residentes en el extranjero obtengan los ingresos a que se refiere el párrafo anterior a través de un fideicomiso constituido de conformidad con las leyes mexicanas, en el que sean fideicomisarios o fideicomitentes, la fiduciaria determinará el monto gravable de dichos ingresos de cada residente en el extranjero en los términos de este Título y deberá efectuar las retenciones del impuesto que hubiesen procedido de haber obtenido ellos directamente dichos ingresos. Tratándose de fideicomisos emisores de títulos colocados entre el gran público inversionista, serán los depositarios de valores quienes deberán retener el impuesto por los ingresos que deriven de dichos títulos.

Cuando la persona que haga alguno de los pagos a que se refiere este Título cubra por cuenta del contribuyente el impuesto que a éste corresponda, el importe de dicho impuesto se considerará ingreso de los comprendidos en este Título y se aplicarán las disposiciones que correspondan con el tipo de ingreso por el cual se pagó el impuesto.

Cuando en los términos del presente Título esté previsto que el impuesto se pague mediante retención, el retenedor estará obligado a enterar una cantidad equivalente a la que debió haber retenido en la fecha de la exigibilidad o al momento en que efectúe el pago, lo que suceda primero. Tratándose de contraprestaciones efectuadas en moneda extranjera, el impuesto se enterará haciendo la conversión a moneda nacional en el momento en que sea exigible la contraprestación o se pague. Para los efectos de este Título, tendrá el mismo efecto que el pago, cualquier otro acto jurídico por virtud del cual el deudor extingue la obligación de que se trate.

El impuesto que corresponda pagar en los términos de este Título se considerará como definitivo y se enterará mediante declaración que se presentará ante las oficinas autorizadas.

No se estará obligado a efectuar el pago del impuesto en los términos de este Título, cuando se trate de ingresos por concepto de intereses, ganancias de capital, así como por el otorgamiento del uso o goce temporal de terrenos o construcciones adheridas al suelo ubicados en territorio nacional, que deriven de las inversiones efectuadas por fondos de pensiones y jubilaciones, constituidos en los términos de la legislación del país de que se trate, siempre que dichos fondos sean los beneficiarios efectivos de tales ingresos y que estos últimos se encuentren exentos del impuesto sobre la renta en ese país.

Para los efectos de este artículo, se entenderá por ganancias de capital, los ingresos provenientes de la enajenación de acciones cuyo valor provenga en más de un 50% de terrenos y construcciones adheridas al suelo, ubicados en el país, así como los provenientes de la enajenación de dichos bienes.

Lo dispuesto en el párrafo anterior, se aplicará a los terrenos y construcciones adheridas al suelo, siempre que dichos bienes hayan sido otorgados en uso o goce temporal por los fondos de pensiones y jubilaciones citados, durante un periodo no menor de cuatro años antes de su enajenación.

Cuando los fondos de pensiones y jubilaciones participen como accionistas en personas morales, cuyos ingresos totales provengan al menos en un 90% exclusivamente de la enajenación o del otorgamiento del uso o goce temporal de terrenos y construcciones adheridas al suelo, ubicados en el país, y de la enajenación de acciones cuyo valor provenga en más de un 50% de terrenos y construcciones adheridas al suelo, ubicados en el país, dichas personas morales estarán exentas, en la proporción de la tenencia accionaria o de la participación, de dichos fondos en la persona moral, siempre que se cumplan las condiciones previstas en los párrafos anteriores. Lo dispuesto en este párrafo también será aplicable cuando dichos fondos participen como asociados en una asociación en participación.

Para efectos del cálculo del 90% referido en el párrafo anterior, las personas morales que tengan como accionistas a fondos de pensiones y jubilaciones del extranjero, que cumplan con los requisitos establecidos en este artículo, podrán excluir de los ingresos totales, el ajuste anual por inflación acumulable y la ganancia cambiaria que deriven exclusivamente de las deudas contratadas para la adquisición o para obtener ingresos por el otorgamiento del uso o goce temporal de terrenos o de construcciones adheridas al suelo, ubicados en el país.

No será aplicable la exención prevista en el párrafo sexto de este artículo, cuando la contraprestación pactada por el otorgamiento del uso o goce de bienes inmuebles esté determinada en función de los ingresos del arrendatario.

No obstante lo dispuesto en este artículo, los fondos de pensiones o jubilaciones del extranjero y las personas morales en las que éstos participen como accionistas estarán obligados al pago del impuesto sobre la renta en términos de la presente Ley, cuando obtengan ingresos por la enajenación o adquisición de terrenos y construcciones adheridas al suelo que tengan registrados como inventario.