



May 25, 2021.

Messrs. Stewart Brandt / Lee Harley.
Heads of the Transfer Pricing and Tax Treaties Units.
OECD Centre for Tax Policy and Administration.
2, rue André Pascal,
75775 Paris Cedex 16, France.

Dear Messrs. Brandt and Harley:

Reference is made to your communication dated March 29, 2021, in which you requested comments on the *“proposed changes to Commentaries in the OECD Model Tax Convention on Article 9 and on related articles”*.

The Mexican Institute of Public Accountants (hereinafter referred to as “IMCP”) is the most important professional organization with more than 22,000 Mexican Public Accountants as members across the country, and represents the professional interests of Public Accountants in Mexico. In order to fulfill its professional objectives, the IMCP is organized in several Vice-Presidencies and one of them is headed by the undersigned acting as the Vice President of Tax Affairs of the IMCP. Several professional working Commissions report to me in all areas associated to taxation-related issues. The National Transfer Pricing Commission (*Comisión de Precios de Transferencia del Instituto Mexicano de Contadores Públicos de México, A.C.*)¹, was formed 17 years ago by recognized professionals with transfer pricing experience and is part of the Vice-Presidency of Tax Affairs. This Commission has monthly national meetings for the analysis and discussion on the taxation implications of transfer pricing legislation or doctrine.

In this respect, as part of our April 2021 national meeting, the Commission organized a roundtable for the discussion of the information requested by the OECD, taking into account the recent release of the communication requesting public comments on the *“changes to Commentaries in the OECD Model Tax Convention on Article 9 and on related articles”*.

In this regard, the National Transfer Pricing Commission of the IMCP agreed to provide our comments which are regarded as necessary taking into account the existing need in Mexico for technical principles and additional guidance in this area, for valid and reliable interpretation purposes. Bearing this in mind, we recommend to modify the highlighted language in the following paragraph by using the holistic terms “and/or” instead of just “or”. Our rationale supporting our modification request is that the existing language is more restrictive (one interpretation may be solely based on local law, and another interpretation may be based on the OECD Transfer Pricing Guidelines, excluding the possibility to have a holistic interpretation based on both sets of rules, technical principles and doctrine). Our proposed change to the existing proposal is highlighted in bold as follows:

¹ The current members of the Transfer Pricing Commission of the IMCP are the following entities: Deloitte México; EY México; Calderón, González y Asociados; Oliver Consulting; Baker Tilly México; PwC México; Corporación Interamericana de Entretenimiento; Chévez Ruiz Zamarripa y Cía; Salles, Sainz Grant Thornton México; Teléfonos de México; Sánchez Salgado and Natera Consultores.





*3. In considering whether an interest payment can be regarded as an arm's length amount, a State will typically examine the terms and conditions of the loan such as the rate of interest. It may also need to examine, based on the facts and circumstances, whether a purported loan should be regarded as a loan or as another kind of transaction, in particular a contribution to equity capital. The State making a determination as to the extent to which the purported loan is regarded as a loan will do so taking into account factors discussed in its domestic laws (including judicial doctrine), **and / or** in the OECD Transfer Pricing Guidelines.*

Based on our experience in this area, and the limited legal precedents available, we believe that facilitating more flexible and holistic interpretations in this complex area of taxation, shall increase the legal certainty for taxpayers, tax practitioners and tax administrations, while more restrictive language will necessarily limit the possibilities for comprehensive or reasonable interpretations, increasing the unnecessary risks of double taxation.

We sincerely hope you find the previous comments useful in your analysis. Please do not hesitate to contact me in case you have additional comments or questions.

Best regards.

MONICA CERDA AYALA

Ms. Monica Cerda, CPA.
President of the National Transfer Pricing Committee of IMCP.
Instituto Mexicano de Contadores Públicos, A.C.

C.c.: Ms. Diamantina Perales, CPA. President of IMCP.
Mr. Hector Amaya, CPA. Vice-president Tax Affairs, 2020-2021.

