TAX TREATY ISSUES RELATED TO EMISSIONS PERMITS/CREDITS
Revised public discussion draft
19 October 2012 to January 2013
Response by IFA Grupo Mexicano, A.C.

Attention: Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

Dear Sirs:

Below are the comments prepared by IFA Mexican branch (IFA Grupo Mexicano, A.C.) in connection with the abovementioned public discussion draft. For such purposes, we have divided this document into the following sections:

The issuance of CERs and ERUs

Paragraph 25. According to the draft, a State could conceivable seek to recognize income at the time the CERs or ERUs are issued to project participants in CDM or JI projects. Since there is a possibility that some States could adopt this criterion, it is necessary to include comments regarding this issue.

However, the adoption of such criterion would hinder emissions trading programs and thus, would be contrary to the intention of the Kyoto Protocol, which is to seek to establish efficient mechanisms, from the economic standpoint, that help reduce emissions of greenhouse gases.

In this sense, we believe that it would be convenient to unify and standardize the criteria regarding the time in which income deriving from emissions permits should be recognized (in our opinion income should be recognized at the time of alienation of the permits).

Position relative to the treatment of the trading of emissions permits/credits

The draft analyzes how income from the trading of emissions permits/credits may fall within the scope of Article 6 (Income from immovable property), Article 7 (Business Profits), Article 13 (Capital Gains), Article 8 (Shipping, Inland Waterways Transport and Air Transport) in connection with paragraph 3 of Article 13 and Article 12 (Royalties).

Even though the draft recognizes that under certain scenarios double taxation issues may arise, it does not commit to a final position in this regard. In this sense, the draft allows contracting States to determine how income from these activities should be taxed. Moreover, the draft in paragraphs 35, 47 and 55 recognizes situations in which a potential double taxation should be addressed under a mutual agreement procedure, using arbitration if necessary.

This may be contrary to the intention of the MTCIC, described in paragraph 2 of the introduction, which establishes that:

> It has been recognized among the member countries of the Organization for Economic Co-operation and Development that it is desirable to clarify, standardize, and confirm the fiscal situation of taxpayers who are engaged in commercial, industrial, financial, or any other activity in other countries through the application by all countries of common solutions to identical cases of double taxation. [Emphasis added]

Based on the foregoing, and as mentioned in our previous comments, we suggest that a position must be defined, to be included in the Comments on the Articles of the MTCIC, for purposes of standardizing the tax treatment of income from the trading of emissions permits.

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Should you have any question or comment in connection with the foregoing, please do not hesitate to contact us.

Sincerely,