CIAT MODEL AGREEMENT TAX INFORMATION EXCHANGE

CIAT MODEL AGREEMENT ON THE EXCHANGE OF TAX INFORMATION

P R E A M B L E

The Inter-American Center of Tax Administrators - CIAT

WHEREAS:

Cooperation between countries is an essential element in the struggle against tax fraud, evasion and avoidance, within the framework of close collaboration required for the development of international economic relations.

2. This cooperation should be manifested in the common willingness to avoid and control tax fraud, evasion and avoidance, in providing mutual assistance and support, to facilitate compliance with national fiscal objectives, by observing the basic principles of equity, respect and mutual benefit for the contracting states.

3. Exchange of information, in all its forms, is one of the main instruments to be used for controlling and preventing tax fraud, evasion and avoidance and an Agreement between countries for such purpose is a first step toward mutual assistance between tax administrations.

Bilateral or multilateral agreements on exchange of information should yield real mutual benefits, taking into account:

the type of economic relations existing between the contracting countries;

the nature of practices relating to tax fraud, evasion and avoidance arising in these countries;

the development of the tax administrations and practical possibilities of use of the Agreement; and

the economic and social effects thereof.

HAS APPROVED THE FOLLOWING
MODEL AGREEMENT FOR THE EXCHANGE OF TAX INFORMATION

ARTICLE 1
OBJECT AND SCOPE OF APPLICATION OF THE AGREEMENT

1. OBJECT

The Contracting States shall assist each other to facilitate the exchange of information in all forms, including general information on lines of economic activity, simultaneous examinations and the holding of examinations abroad, for assuring the accurate determination, assessment and collection of taxes covered by the Agreement, with a view to prevent and combat tax fraud, evasion and avoidance within their respective jurisdictions and develop improved information sources for tax matters.

The contracting States shall assist each other to carry out the objective of this Agreement. Such assistance shall be provided through exchange of information simultaneous examinations and examinations abroad authorized pursuant to Articles 4, 5 and 6.

2. SCOPE OF APPLICATION

Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of the contracting States.

ARTICLE 2
TAXES COVERED BY THE AGREEMENT

1. TAXES COVERED

This Agreement shall apply to the following taxes:

a) In the case of State A:
In the case of State B:
In the case of State C:

2. IDENTICAL, SIMILAR, SUBSTITUTIVE OR ADDITIONAL TAXES

This Agreement shall also apply to any identical or similar tax imposed after the date of signature of the Agreement or taxes in addition to, or in place of, the existing taxes. The competent authorities of the contracting States shall notify each other, in a timely manner, of any change in their legislation, as well as judicial decisions, which may affect their obligations pursuant to this Agreement.

ARTICLE 3
DEFINITIONS

1. DEFINITIONS

For purposes of this Agreement:

a) The term competent authority means:

in the case of State A:

in the case of State B:

in the case of State C:

b) The term national means any citizen and any legal entity or any other collective entity, deriving its status from the laws in force in each of the contracting States.

c) The term person means any individual, legal entity, or any other collective entity according to the laws of the contracting State.

d) The term tax means any tax to which the Agreement applies.

e) The term information means any fact or statement, in any form whatever, that may be relevant or material to the administration and enforcement of taxes covered by this Agreement, including among others:

i) the testimony of individuals,

ii) the documents, records or personal property of a person or contracting State, and

iii) expert opinions, technical concepts, valuations and certifications

The term Applicant State means the Contracting State applying for or receiving information; and the term Requested State means the contracting State providing or requested to provide information.

2. UNDEFINED TERMS

Any term not defined in this Agreement shall have the meaning which it has under the laws of the contracting States concerning taxes covered by this Agreement, unless the context otherwise requires another interpretation or the competent authorities agree to a common meaning pursuant to the provisions of Article 7.

ARTICLE 4
EXCHANGE OF INFORMATION

1. OBJECT OF THE EXCHANGE

The competent authorities of the contracting States shall exchange information to administer and enforce their domestic laws concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of such taxes, the recovery and enforcement of tax claims, the investigation or prosecution of alleged tax crimes and violations involving the contravention of tax laws and regulations.

2. REGULATIONS PERTAINING TO DISCLOSURE OF INFORMATION

Laws or practices of the requested State pertaining to securing and disclosing the types of information referred to in this Agreement shall not prevent or affect the powers of the competent authority of the requested State to secure and disclose information:

a) by financial entities, nominees or persons acting in an agency or fiduciary capacity;

b) with respect to the identification of stockholders or partners of a corporation or other collective entity, or

c) held by the Tax Administration.

3. REGULAR OR AUTOMATIC INFORMATION

The competent authorities of the contracting States shall regularly or automatically transmit information to each other on:

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and any other type of information on which they may agree. The competent authorities shall determine the form, language, and procedures to be used to exchange such information.

4. SPONTANEOUS INFORMATION

The competent authorities of the contracting States shall spontaneously transmit information to each other, when during the course of their own activities, information which may be relevant to, and bear significantly on, accomplishment of the purposes referred to in paragraph 1 of this Article, may have come to the attention of one of the contracting States. The competent authorities shall determine the information to be exchanged, by establishing the form and language in which it will be transmitted.

5. SPECIFIC INFORMATION

The competent authority of the requested State shall provide information upon specific request by the competent authority of the applicant State for the purposes referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all measures, allowed by its legislation, including compulsory measures, to provide the applicant State with the information requested, such as:

a) examine any books, papers, records, or other personal property which may be relevant or material to such inquiry;

b) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry; and

c) compel, pursuant to its own legislation, any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry, to appear at a stated time and place and testify under oath and produce books, papers, records, or other personal property.

6. ACTIONS OF THE REQUESTED STATE FOR RESPONDING TO A SPECIFIC REQUEST

If information is requested by a contracting State pursuant to the foregoing paragraph, the requested State shall obtain and provide the information in the same form, as if the tax of the applicant State were the tax of the requested State and were being imposed by the latter.

However, if specifically requested by the competent authority of the applicant State, the requested State shall follow these procedures and forms to provide the requested information:

In the case of information requested by State A:

a) specify the time and place for the taking of testimony or the production of books, papers, records, and other personal property;

b) place the individual giving testimony or producing books, papers, records, and other personal property under oath;

permit the presence of individuals designated by the competent authority of the applicant State as being involved in or affected by execution of the request. Such individuals may be accompanied by their counsel;

d) provide individuals permitted to be present with an opportunity to question, through the executing authority, the individual giving testimony or producing books, papers, records, and other personal property;

e) secure for their examination, without editing them, the original books, papers, records, and other personal property;

f) secure or produce true copies of originals (including books, papers, testimony and records);

g) determine the authenticity of books, papers, records, and other personal property produced;

h) examine the individual producing books, papers, records and other personal property regarding the purpose for which the item produced is or was maintained and the manner in which the maintenance is or was carried out;

i) permit the competent authority of the applicant State, to provide written questions to be answered by the individual testifying or producing books, papers, records, and other personal property;

perform any other act not in violation of the laws, or at variance with, the administrative practices of the requested State; and

certify either that procedures requested by the competent authority of the applicant State were followed or that the procedures requested could not be followed, with an explanation of the reasons therefor.

l) ……
In the case of information requested by State B:

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In the case of information requested by State C:

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7. LIMITATIONS TO THE TRANSMISSION OF INFORMATION

The exchange of information referred to in this Agreement does not compel the contracting States:

a) to supply information, the disclosure of which would be contrary to public policy;

b) to carry out administrative measures at variance with their respective laws or regulations, in keeping with that provided in paragraph 2 of this article;

c) to supply particular items of information which are not obtainable under their respective laws or regulations, in keeping with that provided in paragraph 2 of this article; and

d) to supply information requested by the applicant State to administer or enforce a

provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances.

8. REGULATIONS FOR EXECUTING A REQUEST

Except as provided in paragraph 7 of this Article, provisions of the preceding paragraphs shall be construed so as to impose on a contracting State the obligation to use all legal means and its best efforts to execute a request. The requested State shall act with due diligence, not exceeding the term of .....days as of the date of receipt of the request for its answer. In case of inability to comply with the term for responding, of difficulty for obtaining the information or objecting to provide it, the competent authority of the requested State must inform the competent authority of the applicant State, indicating the probable date on which the answer could be sent, the nature of the obstacles or the reasons for objecting to provide the information requested, as appropriate.

9. USE OF THE INFORMATION RECEIVED

Any information received by a contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State, or according to the conditions of confidentiality applicable in the jurisdiction of the State providing it, if such conditions are more restrictive and shall be disclosed only to persons or authorities of the applicant State, including judicial and administrative bodies involved in the determination, assessment, collection, and administration of taxes under this Agreement, the recovery of fiscal claims derived from such taxes, the enforcement of the tax laws, the prosecution of fiscal violations or the determination of administrative appeals in relation to such taxes, and the oversight of the above. Such persons or authorities may use the information only for tax purposes and may disclose it in public court proceedings or in judicial decisions of the applicant State, in relation to such matters.

10. LEGAL VALIDITY OF THE EVIDENCE

The information obtained through this Agreement constitutes legal evidence, simply by the fact of being received by the applicant State, except for proof to the contrary by the interested party.

ARTICLE 5
SIMULTANEOUS EXAMINATION

OBJECT OF THE SIMULTANEOUS EXAMINATION

For purposes of this Agreement, a simultaneous examination of taxes means an arrangement between two or more contracting States to examine, each in its own territory, the tax situation of a person or persons in which they have a common or related interest,

with a view to exchanging any relevant information which they obtain.

SELECTION OF CASES AND EXAMINATION PROCEDURES

The competent authority of a Contracting State may consult the other Contracting State in order to determine the cases and procedures for simultaneous tax examinations. The consulted contracting State(s) shall decide whether or not it(they) wish(es) to participate in a specific simultaneous examination. Nevertheless, none of the countries is obliged to cooperate with all the simultaneous examinations proposed by another country.

SELECTION OF THE SECTOR AND PERIOD TO BE EXAMINED

The representatives appointed by the countries in compliance with the provisions of paragraph 4 of this article, by common agreement, shall determine the sector and period to be examined for the specific case selected.

ACCEPTANCE OF EXAMINATION

Once the Competent Authority of a contracting State receives from another contracting State a proposal for undertaking a simultaneous examination and decides to accept it, it shall provide its acceptance in writing, appointing a representative from his country for conducting the examination. After receiving the acceptance from the accepting competent authorities, the proposing competent authority shall also designate a representative, in writing.

INTERRUPTION OF A SIMULTANEOUS EXAMINATION

If one of the two States concludes that a simultaneous examination cannot be carried out, it may withdraw from the examination by notifying its withdrawal to the other participating State(s).

ARTICLE 6

EXAMINATIONS ABROAD

At the request of the Competent Authority of the applicant State, the Competent Authority of the requested State may allow representatives of the Competent Authority of the applicant State, to be present in the pertinent part of a tax examination in the requested State.

If the request is accepted, the Competent Authority of the requested State shall notify, as soon as possible, the Competent Authority of the applicant State, the time and place of the examination, the authority or official appointed to conduct the examination and the procedures and conditions demanded by the requested State to conduct the examination.

ARTICLE 7

MUTUAL AGREEMENT PROCEDURE

1. INTERPRETATION AND APPLICATION OF THE AGREEMENT

The competent authorities of the contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular, the competent authorities may agree to a common meaning of a term.

2. DIRECT COMMUNICATION OF THE COMPETENT AUTHORITIES

The competent authorities of the contracting States may communicate with each other directly in order to carry out the provisions of this Agreement.

ARTICLE 8
COSTS

1. ORDINARY AND EXTRAORDINARY COSTS

Unless the competent authorities of the contracting States otherwise agree, ordinary costs incurred for the execution of this Agreement shall be borne by the requested State and extraordinary costs shall be borne by the requesting State.

2. DETERMINATION OF EXTRAORDINARY COSTS

The competent authorities of the contracting States shall determine by mutual agreement when a cost is extraordinary.

ARTICLE 9
ENTRY INTO FORCE

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ARTICLE 10
DENUNCIATION

Any of the contracting States may, at any time, denounce this Agreement through notice addressed to the other contracting State(s).

Such denunciation shall enter into force on the first day of the month following the expiration of a three-month period, after the date of receipt of the notice by the other contracting State(s).

COMMENTS ON THE CIAT MODEL AGREEMENT ON THE EXCHANGE OF TAX INFORMATIONS (VERSION APPROVED BY THE GENERAL ASSEMBLY OF CIAT ON 03-04-2001)

INTRODUCTION

The struggle against fiscal fraud, evasion and avoidance practices has always been one of the most complex issues faced by national tax administrations. Of even greater importance is the need for continued reliance on the resources required to face, with stronger levels of current knowledge and training, the rapid changes of the internal and external economic activity, as a consequence of the progress of information technology.

In that regard, the relatively most economically developed countries, even though the tax administration may be behind in the unceasing modifications that take place in the respective socioeconomic contexts, have been concerned about providing tax administrations the necessary means for maintaining an adequate proportion to the aforementioned modifications. On the other hand, in the case of the developing countries, the administrations are not satisfactorily following on the modifications observed in the international economy.

The strength of the bilateral and multilateral economic relationships between the developed countries has contributed to strong working tax relationships, meaning the treasuries of those countries have an important and increasing level of communication and cooperation allowing them to adequately ensure taxpayers carry out activities in various national tax jurisdictions. On the other hand, the treasuries of the developing countries, in general, have not followed the same guidelines, notwithstanding the growth of direct investments, of their participation in international trade and in the payment for external technological and financial services, that have taken place in those countries.

The increasing interdependence of nations, as a result of economic globalization, affords a new opportunity for treasuries in both categories of countries, within the framework of resolute governmental cooperation, to agree on support and administrative assistance programs that may allow developing countries to achieve greater efficiency in their tax administration compliance objectives, as well as to exchange necessary information for combating, as effectively as possible, internal and international tax fraud, evasion and/or avoidance.

Finally it must be concluded that through the tax information exchange agreements, tax administrations may obtain multiple benefits such as, for example in addition to those already indicated improved collection originating from the greater examination capability afforded by these agreements, either directly or through better voluntary compliance promoted by such greater capability, as well as knowledge and experience on the tax systems of other States and the mechanisms internationally used by taxpayers to avoid correct and timely compliance with tax obligations.

COMMENTS ON ARTICLE 1

1. This article describes the kind of obligations of the Contracting States when signing and ratifying, in accordance with the respective constitutional or administrative procedures, a bilateral or multilateral agreement for the exchange of tax information.

Section 1

1. Section 1 provides that each signatory Contracting State(s) shall render mutual assistance to ensure a proper and accurate determination and assessment of taxes which are the subject of the Agreement. Mutual assistance means that the competent authorities, provided in article 3 of the Agreement, shall provide each other the necessary reciprocal support in order to carry out the exchange of information between Contracting States in a timely and precise manner. The issue of administrative assistance for the recovery of taxes is not proposed in the terms of the Agreement, implying that it may be the subject matter of a different bilateral or multilateral agreement between the Contracting States.

2. Contracting States may exchange information in all forms, including routine or automatic, spontaneous or specific exchanges of information. The article also provides for the possibility that the Contracting States may perform simultaneous examinations; that is, that the competent authorities, in a concomitant manner and each in its own national jurisdiction, may initiate the examination in relation to a taxpayer, of economic or financial activities, of records related thereto and/or evidence of net worth, whether they refer to its own acts or properties or to acts carried out with third parties or properties in the hands of third parties with whom it is assumed that there is a certain collusion.

3. The section provides that the Contracting States may consider carrying out tax examinations abroad, that is, that tax officials under the competent authority of a Contracting State may carry out certain examination activities in the other Contracting State. Although, some countries may have internal limitations in participating in tax examinations abroad, the working group considered it appropriate to provide for a form of assistance for those Contracting States that may wish to undertake examinations abroad.

4. The issues discussed in the Agreement are not meant to limit or exhaust all the possibilities which the Contracting States negotiating such an agreement may decide to consider.

5. On the other hand, it is emphasized that the objective of the Agreement is for the Contracting States to ensure the precise determination, assessment and collection of the taxes specified. That is, that the Contracting States assume the commitment and responsibility of exchanging information between them, to enable the competent authorities to prevent and combat tax fraud, evasion and/or avoidance, within their

jurisdictions, by establishing an adequate base for the correct application of their respective internal laws.

6. There is no doubt that the correct determination and collection of tax on actual income or real or market values of properties, as appropriate, and the prevention of tax fraud, evasion and/or avoidance require the specific knowledge of documentary bases or reports originating from adequate information sources and, such exchange between the competent authorities of the Contracting States involved contribute to rendering more effective the corresponding controls, as well as having the administrations perform adjustments on certain bases, whenever it may be warranted.

Section 2

1. The correct determination and collection of tax in a national tax jurisdiction, as well as its goal to prevent and combat fiscal fraud, evasion and/or avoidance require that the Contracting States party to an Agreement exchange information dealing with the national or person which the competent authorities may examine for determining compliance with its own tax obligations. Also they may exchange information obtained from those examinations or which may be in their power and which may in some way imply a necessary evidence or documentary base for controlling obligations by third parties and, which could be of interest to or requested by the other Contracting State.

2. Under such circumstance, it is possible that the information, whether held personally or by another individual, will not be exclusively limited to the residents or nationals of the contracting States.

CHILE, reserves the right of not applying the clauses dealing with examinations abroad (paragraph 1 of Article 1 and Article 6), since this may imply the exercise of powers by foreign examiners in that country, beyond those currently provided by the Chilean law.

COMMENTS ON ARTICLE 2

Section 1

1. The taxes covered by the Agreement must be expressly indicated by the Contracting States for logical reasons dealing with the obligations assumed by each of the national competent authorities in accordance therewith. In general, the specific listing referring to the taxes traditionally classified as direct taxes, includes taxes applied to the income of individuals and corporations, as well as to taxes, as appropriate, applied to global manifestations of net worth of one or both types of persons, regardless of the fact that reference may also be made to some other type of tax when the parties deem it appropriate.

Section 2

1. Consideration of the application of the Agreement, after it is signed, to every identical or similar tax applied in any of the Contracting States is an adequate formula for granting full and continuous effect to the bilateral or multilateral treaty, beyond the changes that could occur in the internal tax legislation, whether the new taxes replace or not those expressly indicated in the Agreement.

3. The agreement shall provide that each Contracting State is obligated to notify the other Contracting State of changes in its tax legislation or rulings that could change or adversely affect the terms of the negotiated agreement.

4. Communication, with the frequency agreed by the parties, of every change occurring in the internal legislation of each of the Contracting States is broad, regardless of the fact that the parties may agree to restrict it, by anticipating, for example, that the aforementioned communication refers exclusively to important changes occurring in the legislation of each of the Contracting States and which may affect the terms of such agreements. Identical criterion could be applied with respect not only to the pertinent judicial decisions, but also changes in interpretation by the competent authorities, with respect to matters that could affect the obligations of the Contracting States.

COMMENTS ON ARTICLE 3

1. This article groups a series of provisions, the purpose of which, is to specify the scope of the expressions or terms used in the Agreement. As an aggregate to those comprised therein, the Contracting States may expand the definitions whenever they may deem it appropriate.

Section 1

1. The definition of the term "competent authority", shown in subsection a), aims to specify the organization, the position or person having the legal authority to carry out the provisions of this Agreement. The administrative law of countries varies, therefore the concept of competent authority no longer has to be applied to a specific organization but to its officials or those who carry out tasks in the field of examination of the taxes comprised in the agreement.

2. The term "national" has the scope provided in the comments of the Organization for Economic Cooperation and Development (OECD) model, in accordance with the condensed version of September 1996. The definition of the term "national" provides that the term is applied to individuals having the nationality of a Contracting State. It has been deemed unnecessary to include in the text of the Agreement a more precise definition of nationality, since it has been understood that it is not essential to make a special comment on the meaning and application of the word in question. It is obvious that in the determination of the scope of the phrase "national of a Contracting State" in the case of individuals, one must use as reference the meaning or scope with which such phrase is generally used, as well as the rules which each Contracting State

provides with respect to the acquisition or loss of the condition of national by such persons.

3. The issue is more specific with respect to corporations, partnerships or associations. To say that a corporation, partnership or association is a national of a Contracting State, it is believed that this follows from the laws in force therein, assuming the difficulties that are frequently found.

4. The definition of the term "person", referred to in subsection c), is similar to that of the OECD's Model Convention for Avoiding International Double Taxation, noting that it is not exhaustive and may be interpreted as if the term person were used in a broad sense. The definition explicitly refers to individuals, corporations and other associations of persons. According to the meaning given to the term corporation by the definition provided in the aforementioned Model, it is considered that the term "person" includes any entity that is treated as a corporation for tax purposes.

5. On the other hand, in subsection d), it is provided that references to the term "tax" shall only comprise those expressly indicated in the Agreement or those which may turn out to be identical or similar and which may be established on some date after its signature, either through addition or replacement, with respect to those that are expressly provided in Article 2, section 1.

6. Subsection e) indicates the information which Contracting States must provide to each other in accordance with the terms provided in the Agreement. The information includes all types of data or returns, regardless of their form, including those found in data bases or electronic files, which a Contracting State(s) may consider necessary or important for the correct application of the taxes that are the subject of the Agreement. In that regard, beginning on the date of entry into force of the Agreement, competent authorities designated in the agreement may establish the official contacts to carry out all exchange of information provisions of the agreement.

7. The aspects indicated in subsection e) are merely declarative, since the Contracting States signing the Agreement have the authorization to bilaterally exchange all information deemed necessary to fulfill the purposes of the agreement, including statistical data, economic-tax studies and other information of a general nature.

8.. The testimony of individuals is an important aspect in the process of preventing and combatting fiscal evasion, fraud, and/or avoidance, whether the individuals are directly or indirectly involved in the events that have generated or may generate cases of fraud, evasion and/or avoidance or may have some circumstantial knowledge of such events, activities or manipulation of facts or records aimed at configurating them.

9. On the other hand, the documentation, records and other types of material elements generally serve as the basis for auditing tasks, including fiscal ones, since

they comprise the main structures of the accounting control and, if appropriate, taxation tasks. All transactions involving all persons and entities in a specific national tax jurisdiction which do not adequately reflect the type of operation being carried out or the real price thereof, may be verified through exchange of information pursuant to the Agreement.

10. The possibility that the competent authorities may, in addition, count on expert opinions, technical reports, valuations and certifications issued by the other Contracting States, also facilitates control and production of evidence by the tax administration.

Section 2

1. In this section, following the technique of the aforementioned OECD Model, a general rule is established for interpreting the terms used in the Agreement but not defined therein. The adoption of a similar technique to that of the aforementioned Model is positive since, implicitly, criteria are harmonized facilitating the application of Agreements involving several national jurisdictions. However, there is some difficulty with respect to the legislation that must be considered for purposes of determining the meaning of the term not defined in the Agreement, in the manner of choosing the applicable law in force, since it may refer to the law in force at the time of signing the Agreement or the one in force when the interpretative issue arises.

2. The OECD's Committee on Fiscal Affairs concluded that the interpretation prevailing is that of the rule in force at the time of raising the specific issue which originates the pronouncement, noting that in 1995 it proceeded to modify the aforementioned Model in order to explicitly state it. On its part, the Special Drafting Committee appointed by the United Nations Group of Experts on International Fiscal Cooperation, at the meeting held in New York, in December 1998, adopted the OECD's Model wording in the draft United Nations Model Double Taxation Convention Between Developed and Developing.

3. This section specifies this will be applicable only if the context does not require or demand a different interpretation. The context, as is noted in the pertinent item of the comments of the OECD Model, is determined in particular, by the intention of the Contracting States when signing the Agreement, as well as the meaning given to the respective expression in the legislation of the other Contracting State. In addition, its wording allows each of the competent authorities certain flexibility.

5. The final part of the section provides that the competent authorities, regardless of the fact that the context may require an interpretation different from the meaning which an expression may have, according to the legislation in force in the Contracting States, may agree on a common meaning, based on the mutual agreement procedure provided in article 7 of the Agreement.

COMMENTS ON ARTICLE 4

Section 1

1. The article has similar characteristics to those of article 26, section 1 of the OECD Model. The OECD comments indicate that the main rule of the exchange of information is included in the first part of the article.
2. In particular, in the aforementioned comments some examples are given that attempt to clarify the concept included in the provisions of the article mentioned in the foregoing section.

3. Implementation of the domestic laws

a) A resident company of State A supplies goods to an independent resident company of State B. State A wishes to find out from State B the price that has been paid for such goods in State B for the purpose of correctly applying the provisions of its domestic law.

b) A resident company from State A sells goods through a resident company in State C to a resident company in State B. The companies may or may not be associated. There is no agreement between States A and C, nor between States B and C. Under the agreement between States A and B, State A, for the purpose of ensuring the correct application of the provisions of its domestic law on benefits obtained by the resident company in its territory, requests State B to provide it the price paid for the goods by the resident company in country B.

c) State A, for purposes of applying its tax to a company established in its territory, requests State B to inform it, under the agreement between A and B, about the prices determined by the resident company in State B, or a group of company that are resident or established in State B, with which the company established in State A has no commercial contacts, for purposes of checking the prices determined by the company established in State A through direct comparison, e.g.: prices determined by a company or group of companies having a dominant position.

4. This section also considers the exchange of information to facilitate collection and the application of tax credits, but not assistance for doing so. It is noted that this type of information is directly related to the need to be aware of the taxpayer's economic-financial situation, for purposes of collecting previously determined taxes. It may be that a Contracting State may have difficulties in certain cases, to collect a tax provided in the Agreement, given the fact that the taxpayer's net wealth is not sufficient to cover the tax owed. Under the suspicion that the aforementioned taxpayer holds properties that are located in the other Contracting State, the Creditor State may request this type of information.

6. General data on economic sectors, lines of activity or type of taxpayers, which may be of interest to compare the tax performance of those sectors, lines or type of taxpayers in a country, with respect to that observed in the other contracting countries may also be considered as information to be exchanged. Generally, this type of

information is exchanged on the basis of an industrywide exchange of information program and does not involve specific taxpayers.

Section 2

1. This section provides that the laws or practices of the Requested State cannot hinder or affect the actions which that Contracting State may carry out to provide information to the other Contracting State. The Contracting States negotiating the Agreement must undertake a careful analysis of the implications of this clause and the convenience of adopting it, considering the objective of preventing tax fraud, evasion and/or avoidance.

Section 3

1. This specifies that Contracting States may provide certain types of information on a routine or automatic basis, without having to request it. In accordance with the provisions of the Agreement, the Contracting States will determine the specifics upon which the exchange will be based. This provision does not prevent a Contracting State from specifically requesting this type of information if it does not receive it in an automatic or routine manner.

2. The possibility exists that countries may be of very different levels of development. Consequently, the exchange of information may have a clear unidirectional bias, since the income flows from the country receiving investments, credits and technology to the country of greater relative economic development. This implies that, in the case of the ordinary sources of income, the investing country may obtain information, while the country where the investment is made, since it does not export capitals through the formal media, it may only receive information from a very reduced group of local residents who may have paid income tax in the other Contracting State.

3. In a considerable number of cases, however, some residents of the smaller Contracting State generally obtain passive income as a result of the placement of savings, not always formalized, in the financial or stock exchange sector of more highly developed Contracting States.

4. Some countries do not provide routine or automatic information when the income paid to residents of the other Contracting State are not subject to taxation, whether it is a question of exempt benefits or, if appropriate, they are excluded from the sphere of taxation. Precisely, the aforementioned passive income, interest or dividends, are generally not taxed. The Contracting States may include in this type of routine or automatic information, this latter type of income not subject to taxation, in order to comply with the basic objectives of the Agreement.

5. In addition, there are some types of activities or transactions that justify the routine transmission of information. In this regard, information is generally provided when opening branches or establishments of a permanent nature, offices, as well as with respect to the incorporation or liquidation of a business or a trust and the closing or opening of bank accounts by the companies. Likewise, it is also possible that information be provided in the case of properties received as inheritance, legacy or donation or in the assumption of existence of probate proceedings.

6. The administrative capability, the effectiveness of the internal procedures, the expenses involved in obtaining information and the sources thereof are aspects that must be adequately considered when determining the extent to which routine or automatic information may be exchanged.

7. The final part of the section provides that the Contracting States will determine the formal aspects including, the language and procedures that will be applicable for exchanging information. The standardization of forms, routines and procedures are of an operational nature which can only be determined by the entities applying the Agreement.

Section 4

1. The transmission of this type of information, refers to that which the Contracting States wish to provide spontaneously and is obtained by one of the Contracting States during the course of its examination or compliance activities, which may be relevant to the correct tax liability in the other Contracting State. The information may consist of details dealing with the particular situation of a resident, or operations or relations having to do with their tax obligations in the receiving country or other types of transactions or activities which directly or indirectly may be related to individuals or corporations that are residents in these latter countries.

2. The authorities themselves are the ones that must determine whether this type of exchange must respond or not to the conventional guidelines that regulate it or, if, on the contrary, it is the transmitting country itself the one to define when and how to transmit the information obtained by it. This is one of the important aspects in the relationship between developing-developed countries, since it allows the less advanced countries to obtain information they could not obtain through their own means. This information must be assumed as one of the most important obligations of the Agreement and should not be left to the discretionality or convenience of the Contracting State that becomes aware of the previously described situations.

Section 5

1. The Requesting State may make a specific request to the other state for information which it assumes may be obtained by the competent authorities of the Requested State. In this case, the request shall include concrete or specific details as to the relevancy to the specific taxpayer under examination or investigation. Prior to

making the request, the Requesting State shall resort to the internal procedures provided in the domestic rules in force and in its own administrative practices until exhausting them, endeavoring to fulfill all the steps required by its own legislation for obtaining the desired information.

2. If the information does not originate from the background available to the competent authority of the Requested State or it is not sufficient, the latter is obligated, in accordance with its internal rules in force, including those of a compulsory nature, to use other means for facilitating the information.

3. Thus, the Requested State must, among other things, proceed to examine the records, documents, registries and every type of material element or support considered important for the investigation being carried out. In addition, there is the obligation, if appropriate, of questioning every person who is aware of the issues under control or who may have in its power relevant elements or information, or obligate it to appear at the site and date determined for making a statement or presenting the required records or documents. It must be noted that, regardless of the clear objectives anticipated in the Model, the Contracting States must, when undertaking negotiations, analyze their actual possibilities of complying with the aforementioned obligations or adjust, in a first phase, the provisions of the Agreement so that it may actually be fulfilled by the parties.

Section 6

1. One of the relevant aspects of an information exchange agreement is the commitment of each the Contracting State(s) to act in a manner with the same diligence to provide information as it would do in the case of verifying its own taxes. This is a fundamental principle of exchange of information wherein mutual cooperation becomes a determining condition. The Contracting States, in an ever more interrelated world, must act jointly in order that they may verify their taxpayers who carry out activities or obtain income in more than one national jurisdiction, with a view to collecting the taxes provided in their local legislations.

2. In this section, an illustration of the procedures and forms which each of the Requested States must fulfill is provided, as appropriate. A model agreement, by definition, must stipulate the aspects considered basic and fundamental, leaving aside for negotiations those issues which the parties consider, better adapted to their usual and administrative realities. The Contracting States which negotiate this type of agreement may use the scheme of the Model, by adopting some partial aspects or simply redrafting it, to give it a broader sense that may be more in keeping with the characteristics of the respective countries. In summary, it must be reiterated that the procedures and forms shown in the Model are of an illustrative nature.

Section 7

1. This section includes certain limitations to the primary rule which promotes a broad exchange of information between the contracting parties.

It is deemed necessary to establish a limitation with respect to the information dealing with the vital interests of the Contracting State itself. Thus, this section provides that Contracting States are not obligated to provide information that may be contrary to public policy.

2. The Agreement deviates from the OECD Model, inasmuch as it has reduced the limitation generally imposed by the Contracting States and which are related to the administrative practices or internal laws in force, as provided in section 2. Identical nature has been anticipated with respect to that type of information that cannot be obtained according to the laws or regulations in force in a Contracting State, since it stipulates the exception to what has been provided in section 2. Finally, the limitation to information dealing with industrial, commercial or professional secrecy or a commercial process has been eliminated.

3. The objective of preventing and combating fiscal fraud, evasion and/or avoidance and ensuring the correct determination and collection of taxes, is a fundamental aspect in the development of the Contracting State's activity originating from the logical demands of each of the national communities. However, as indicated, when negotiating this type of agreement, they must take into consideration whether the reduced limitations referred to in the previous item are viable in keeping with the restrictions imposed by the administrative practices, laws and standards dealing with commercial or professional secrets.

4. As an additional aspect, since the aforementioned OECD Model imposes an express limitation to the provision of information, when it says that a Contracting State is not obligated to facilitate it, in cases when business, commercial, industrial or professional secrets or commercial procedures are disclosed, it is worth taking into account the analysis made in the comments in relation to this issue. In this sense, it is said that the secrets referred to in paragraph c) of the section in article 26 should not be considered in a very broad sense. Before resorting to such provision, a Contracting State must carefully examine whether the interests of the taxpayer justify its application. Otherwise, it is clear that too broad an interpretation may, in many cases, render the exchange of information provided in the Convention ineffective. The observations made in item 26 are applicable in this case. The Requested State, regarding the protection of the interests of its taxpayers, has a certain discretional margin so as not to provide the required information, but if it decides to provide it to the taxpayer, it cannot argue that it has violated the rules of secrecy. It is up to the Contracting States to add broader exceptions to the obligation of providing information on the items indicated in the aforementioned paragraph c) in this section, for example, information protected by provisions dealing with bank confidentiality.

5. Finally, also included as limitation is a clause of nondiscrimination, which releases from the obligation to provide information to a Contracting State, when it is used to administer or apply discriminatory provisions against a national from that state.

Section 8

1. Except for the limitations included in the previous section, it must be considered that the previous provisions are an imposition on the Requested State that obligate it to commit its efforts and use the necessary legal means to comply with a request from another Contracting State. In this manner, it has been said, in previous comments, that the Requested State must act in the same manner as if it were a question of assessing and collecting its own taxes.

2. The Model Agreement provides for the determination of a deadline, to be agreed between the parties in the negotiation, for answering the request sent by the requesting state, it being noted that, in the case of noncompliance with the stipulated term, due to inability or difficulty in obtaining the information, or in case of refusal or objection to provide it, the requested competent authority must inform its counterpart in the requesting Contracting State, giving the reasons and, if appropriate, the tentative date on which it will provide such information. The purpose of the procedure provided in this section is that the Requesting State may be aware within a reasonable term of the inability to obtain the information requested, or that it will in fact be provided but within an excessive and untimely term, and therefore it may have the opportunity within a reasonable time frame to initiate other substitutive actions in response to the requested information.

Section 9

1. This section follows the guidelines indicated in the OECD Model, for which reason the comments thereon are adopted. The information obtained can only be disclosed to individuals and authorities involved in the assessment or collection of, in the execution or claim with respect to and in the decisions on appeals relative to the taxes that are the subject of this Agreement. This implies that the information may also be provided to the taxpayer, his representative or the witnesses. The information received by a Contracting State may only be used by the individuals or authorities receiving it, for the purposes stipulated in the Agreement. If the Contracting State receiving the information considers it of interest for purposes other than those indicated in the Agreement, such Contracting State cannot use the information for such other purposes, but rather will have to resort to other appropriate means.

2. Under these provisions, the information cannot be disclosed to the authorities supervising the general administration of the Government of a Contracting State, which is not specifically involved in fiscal affairs. During negotiations, however, the Contracting States may agree on the possibility of disclosing the information to such supervisory governmental areas. This aspect is linked to the particular governmental organization of one or some countries and, if appropriate, should be the subject of special attention since the supervisory authorities do not carry out functions within the sphere of the Executive Body.

3. As stated, the information obtained may be transmitted to the aforementioned persons and authorities, but this does not infer that the latter may disclose it in public judicial actions or in decisions that may include the name of the taxpayer. However, the last sentence of the paragraph provides for such possibility. When the information is used in the course of public judicial actions or in judicial decisions, thus becoming public, it is evident that, as of that moment, such information may be quoted, on the basis of the files or judicial decisions as such, for different purposes and even as possible elements of proof. However, this does not imply that the aforementioned individuals and authorities are allowed to provide, following request, other information received. If one or both Contracting States object to making the information public through the judicial process, it should be expressly stated in the Agreement.

4. Article nine restricts the possibility of transmitting to third parties, the information received by virtue of the agreement; nevertheless, if the Contracting States negotiating the agreement wish to expand said possibility by following, for example, the solution adopted by the Convention of the Council of Europe, they may allow that the information received, following authorization from the competent authority of the Contracting State that provided it, be transmitted to another entity of the Requesting State and/or, even to a third State signatory of the agreement, in the case of multilateral conventions.

Section 10

1. Section 10 considers the information which a Contracting State receives from another Contracting State, whether it originates from procedures involving automated, spontaneous or specific requests for information. In this respect, it is provided that such information will be considered true, or in other terms "will be valid", unless the interested party or, that is, the individual subject to investigation or examination by the Receiving State, shows or proves otherwise.

2. Not all legislation allows that the burden of proof to revert to the taxpayer, for which reason it is deemed wise that the parties, in the negotiation of this type of specific agreement, analyze in depth the implications which may arise from the adoption of the clause referred to in the foregoing item.

RESERVATION S TO THE ARTICLE 4

BARBADOS, in relation to Section 7 of this Article, Barbados reserves the right not to provide information that would disclose any trade, business, industrial, commercial or professional secret or commercial process.

In relation to Section 2 & 7 of this Article, Barbados reserves the right of not applying the aforementioned clauses, when the provision of information may involve adopting administrative measures or providing information that is contrary to its legislation or administrative practice, or of the other Contracting State; and, also, in relation to section 6, paragraphs c) and d) of this Article, it

reserves the right of admitting only officials from the tax administration of the Requesting State, following authorization form the competent authority thereof, for participating in the activities provided in the aforementioned paragraphs.

BRAZIL, in relation to paragraph a) of section 2, of this article, wishes to specify that, even though the Executive Body may have obtained authorization from Congress for doing away with bank secrecy, without the intervention of the Judicial Body, several cases have been brought before the courts, alleging the unconstitutionality of such authorization, for which reason Brazil reserves the right of not applying such clause. In relation to section 9 of this article, it reserves the right to provide information for legal purposes when there may be specific agreements, such as that of assistance in criminal issues.

CANADA, MEXICO, AND THE UNITED STATES in relation to section 7 of this article, reserve the right not to provide information that would disclose any trade, business, industrial, commercial or professional secret or commercial process.

CHILE, in relation to sections 2 and 7 of this article, reserves the right of not applying the aforementioned clauses, when the provision of information may involve adopting administrative measures or providing information that is contrary to its legislation or administrative practice, or of the other Contracting State; and, also, in relation to section 6, paragraphs c) and d) of this article, it reserves the right of admitting only officials from the tax administration of the Requesting State, following authorization from the competent authority thereof, for participating in the activities provided in the aforementioned paragraphs.

COSTA RICA, with respect to section 2 of this article, reserves the right of not applying the aforementioned section, when the information to be provided may be contrary to its internal legislation and may have a constitutional basis.

EL SALVADOR, in relation to paragraphs a) and c) of section 2 of this article, reserves the right, when the provision of information may affect bank secrecy.

VENEZUELA, with respect to section 2 of this article reserves the right of not applying the aforementioned section, when the information to be provided may be contrary to its internal legislation. In relation to section 6 of this article, reserves the right of only providing information contained in documents to which the legal provisions attribute the nature of a sworn return. In relation to section 5, paragraphs b) and c) of this article reserves the right of not applying the aforementioned clause, whenever its internal legislation prevents it from requesting certain individuals for information related to specific cases. Finally, in relation to section 7 of this article, reserve the right not to provide information that would disclose any trade, business, industrial, commercial or professional secret or commercial process.

TRINIDAD Y TOBAGO with respect to this article reserves the right of not applying the aforementioned section, when the information to be provided may be contrary to its internal legislation

COMMENTS ON ARTICLE 5

Section 1

1. It is considered, in general, that this type of compliance activity is particularly useful in the analysis of transfer prices and in the cases where it has been detected or there is presumption that are activities being carried out with countries considered as tax havens, since it allows for coordinating the evaluation and control efforts of both competent authorities.

2. In some sense, other than that considered in the previous paragraph, it may also be useful for the person or persons subject to tax examination or the assessment of taxes that are the subject of this Agreement, by virtue of the fact that this type of examination avoids or reduces administrative costs or the duplication of tasks that require, at different times, the attention of each of the competent authorities involved.

3. It is noted that half of the OECD member countries or, 29 countries, have entered into agreements among themselves that anticipated the holding of simultaneous examinations. This circumstance promoted the development of a model agreement of such organization for carrying out such examinations within the framework of mutual assistance for the application and collection of taxes. Such Model Agreement was recommended by the OECD Council on July 23, 1992.

4. On its part, the cooperation regime between the tax authorities of the European Union was established through Directive 77/779/EEC. Such Directive, in principle, only considered income and net worth taxes of individuals and corporations and was made applicable starting in 1981, to value added tax and on a subsequent date to harmonized excise taxes.

5. This type of examination, due to its form as well as its relative flexibility, has become a routine or frequent methodology for the member countries of the European Union.

6. One of the aspects considered in this section is the fact that simultaneous examination requires that both Contracting States have a common or related interest so that they may exchange is relevant information. It must be noted that, even though one of the parties does not have a particular interest in a specific case, and therefore a simultaneous examination is not appropriate, the foundation of cooperation on which this type of Agreement is based, along with its main objective which endeavours to ensure the correct assessment and collection of taxes and to prevent or detect tax

fraud, evasion and/or avoidance are important reasons for providing, in general, collaboration in other forms provided in the agreement.

Section 2

1. The competent authorities, within the framework of close cooperation and in accordance with the text of the Agreement, must establish direct contacts between the highest level officials appointed to act in accordance therewith. As soon as appropriate, it will be necessary to agree on the necessary means in order that the aforementioned authorities may determine the basic procedural aspects which should be fulfilled in order to submit a request for simultaneous examination of any or all of the taxes that are the subject of the Agreement.

2. This section provides that the consulted state is free to decide whether or not to participate in a simultaneous examination, it being noted, in addition, that the authorities are not obligated, with respect to the other, to participate in all such examinations that may be requested. It is possible that for reasons of timeliness and for some other reason worth notifying in writing, one of the parties may not wish to participate.

Section 3

1. The officials appointed by the competent authorities must then determine the sector or sectors and the respective periods to be examined in accordance with the provisions of this section. It is merely an operational aspect requiring, in each case, that by common agreement, through such persons, the authorities determine the scope and dates on which they plan to investigate in a simultaneous manner.

Section 4

1. At the time one State decides to accept the other States proposal for undertaking a simultaneous examination, it is deemed adequate that it provide its acceptance in writing, and appoint an official who will be in charge thereof so that he will come in immediate contact with the office to be appointed in writing by the Requesting State. These officials, based on the provisions in the final part of the foregoing section, must determine the manner, scope, dates and all the other matters involved in verification.

2. Upon the conclusion of the simultaneous examination, the persons appointed will determine the necessary means so that the results may be sent within the shortest term possible, according to the specific characteristics of the task performed and taking into consideration the aspects that would have been provided in the examination request. Whenever there may be operational or interpretative difficulties after the date of examination, it is deemed convenient that such difficulties be made known, also within the shortest terms, in order that both authorities may try to solve them by common agreement.

Section 5

1. In section 1 it is said that simultaneous examination implies the existence of a common or related interest meaning that it is possible, that while carrying out the simultaneous examination, one of the authorities may determine that it will not bring about any positive result and decides to interrupt it. In such case, the Model Agreement allows, for such reason and through notice, that the respective authority may abandon simultaneous examination. However, it must be mentioned that if any of the authorities do not detect information that may contribute to the purposes of collection of its own taxes, but becomes aware through it, of matters that may affect the application of the taxes of the other Contracting State it is believed that it would be convenient to make known such circumstances to the latter in order to, as appropriate, agree on the continuation of the investigation carried out.

COMMENTS ON ARTICLE 6

Section 1

1. Examinations abroad means the presence of tax officials from the other Contracting State in the examination carried out by the tax authorities of the other State in its territory.

2. One must take into account that the presence of foreign tax officials may respond to an invitation dealing with the analysis of the scope of a request for information or also, to participate in an interview with a local taxpayer who is linked to the requested information. On the other hand, their visit could respond to the desires of the taxpayer himself, since he prefers to be visited by the examiners, instead of having to send his files. They could also participate in examinations carried out in the other State.

Section 2

1. The procedure of acceptance and notification of examination within the shortest possible terms, indicating the time and place where it will be carried out, does not differ from those generally used in these matters. It is important to point out that the Receiving State of the foreign official must be notified, in advance, regarding the identity of the person appointed for carrying out the examination in question. On its part, it must also inform the other Contracting State(s) of the procedures and requirements of the respective examination task, in order that the foreign official may conform to the governing conditions in force in the Receiving State.

2. The parties negotiating an Agreement for accepting examinations abroad, must make this clause more accurate. Thus, given the common characteristics of foreign participation in the territory of one of the States, the competent authorities should draft a memorandum of understanding with respect to the aforementioned participation, by

taking into account the rules in force in each of the States involved, with a view towards establishing clear and precise limits.

RESERVATIONS TO ARTICLE 6

BARBADOS, in relation to Section 1 of this article, Barbados reserves the right of allowing the participation of officials designated by the competent authority in examinations carried out in its national territory, when their participation is limited to being present as observers.

CHILE, reserves the right of not applying the clauses dealing with examinations abroad (paragraph 1 of Article 1 and Article 6), since this may imply the exercise of powers by foreign examiners in that country, beyond those currently provided by the Chilean law.

EL SALVADOR and MEXICO, in relation to section 1 of this article, reserves the right of not accepting the presence of officials from another State in an examination being held in its national territory.

VENEZUELA, in relation to section 1 of this article, reserves the right of allowing the participation of officials designated by the competent authority in examinations carried out in its national territory, when their participation is limited to being present as observers.

COMMENTS ON ARTICLE 7

Section 1

1. This section provides for the establishment of a mutual agreement procedure in order that the competent authorities of the Contracting States may resolve issues that may arise in the interpretation and application of the Agreement in the broadest sense of the term. In these situations, the competent authorities should endeavor to devote their best effort to solve this type of problem. The mutual agreement procedure is a special method for the resolution of issues on such matters.

2. On the other hand, the authorities of both States are empowered to agree on or grant a common meaning to any term or expression not defined in the Agreement. In this respect, it is deemed convenient that the parties when carrying out negotiations in relation to the agreement, as indicated in the comments on section 2 of article 3, should take into consideration the interpretative powers originating from the internal laws in force, as well as those which they assign to the organizations on which their competent authorities or tax administrations are functionally or hierarchically dependent.

Section 2

1. In this section, as a matter of practical or operational application, the Competent authorities of the Contracting States are authorized to establish direct contacts, that is, without the intervention of the corresponding diplomatic channels.

2. The competent authorities may consult among themselves, in order to solve, through mutual agreement, a specific or individual problem, doubt or difficulty relative to the application or interpretation of the Agreement. The competent authorities may communicate via letter, fax, telephone, or direct meetings, or through any means they may deem convenient. Moreover, they could provide, if they thus wish so, in the text of the Agreement, for the establishment of a joint commission for such purposes.

COMMENTS ON ARTICLE 8

Section 1

1. As provided in this section, the ordinary costs resulting from the execution of the Agreement will be borne by the Requested State, while the extraordinary ones will be borne by the Requesting State.

2. Until determining that there are no reasons to justify a special analysis, given that there is a reasonable balance between the offer and demand for information, the ordinary costs will involve all those aspects of the routine dealing with the information exchange, such as automated, spontaneous information, and those cases relative to exchanges arising from simultaneous examinations where a reciprocal equivalent interest may be observed. Ordinary costs, as the term indicates, refers to sums or amounts which the administrations or competent authorities actually incur in carrying out the tasks stipulated in the provisions of the Agreement.

3. It is important that the parties consider, during the negotiations of this type of Agreement, their actual availability of human and material resources for responding in time and form to the request for the exchange of information and other obligations imposed by the provisions included therein. The ordinary costs may be revised periodically by the parties, whether it is provided in the body of the Agreement or as a written issue in a memorandum of understanding.

Section 2

1. The extraordinary costs, which are to be determined through mutual agreement by the competent authorities, would primarily involve those cases dealing with requirements based on a specific request, cases of simultaneous examinations wherein the Requesting State may have a particular interest, as well as issues dealing with

examinations wherein officials from one of the parties to the Agreement participate in the territory of the other State.

2. It is possible that the parties may agree that ordinary costs, under an agreement where a significant imbalance is observed, will be for a State, those costs arising from compliance with a certain type of minimum obligation on its part, and implying that those exceeding such obligation or arising from special requests or requirements will be governed by the system of extraordinary costs.

COMMENTS ON ARTICLE 9

1. Some Contracting States must include a special provision indicating that the appropriate authorities must give their approval for the ratification. Other Contracting States may agree that the entry into force will take place after the exchange of ratification instruments confirming that each party has complied with the procedures required therewith.

2. According to the OECD Model, it is open to the Contracting States to concur that the Agreement will enter into force after a certain time period has elapsed, following the exchange of the ratification instruments or following the granting of confirmation that each State has fulfilled the requirements provided therefore

3. An aspect that should be given special attention during the negotiation of the Agreement, is the possibility of its retroactive application pertaining information to be exchanged and the limitations to which that retroactivity may be subject to in each Contracting State.

COMMENTS ON ARTICLE 10

1. There is no provision with respect to the date on which the effects of the Agreement should terminate, since it primarily depends on the internal laws in force in each of the respective Contracting States. An alternative may be to establish a minimum period of duration, that implies only after such time has elapsed, any of the Contracting States may, in compliance with certain formalities and terms, proceed to denounce and terminate the Agreement.

2. Article 10 provides for denunciation of the Agreement through a written notice which the Denouncing State must send to the other Contracting State(s), specifying that the agreement will cease to be in effect, after a period of three months has elapsed between the formal receipt of the respective denunciation notice and the first day of the month following such period.