

Mexico City, 31 March 2016

Via email

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Tax Treaties, Transfer Pricing and

Financial Transactions Division

OECD/CTPA

Dear Secretariat,

On behalf of IFA Grupo Mexicano, A.C. (Mexican branch of the International Fiscal Association), below you will find our comments on the Public Discussion Draft “Treaty Residence of Pension Funds” (the “Discussion Draft”). Comments appear in *italics* following the questions of paragraph 2 of the Discussion Draft.

- a) **As regards the phrase “that is treated as a separate person under the taxation laws of that State” included in the definition of “recognised pension fund” in proposed Art. 3(1) j):** Does that phrase deal adequately with pension funds established in your State? *No*. If not, what other formulation would ensure that pension funds, the income of which is not otherwise attributed to another person for tax purposes, are treated as residents? *The following: “that is treated as a separate person or estate under the taxation laws of that State”.*
- b) **As regards the phrase “that is constituted and operated exclusively to administer or provide retirement or similar benefits” included in subdivision i) of the definition of “recognised pension fund” in proposed Art. 3(1) j):** Is the word “exclusively” too restrictive given the normal operations of a pension fund? *No*. If yes, please describe the operations that might not be covered, taking into account the fact that the subparagraph refers not only to “retirement benefits” but also to “similar benefits”? *N/A*.
- c) **As regards the phrase “similar benefits” included in subdivision i) of the definition of “recognised pension fund” in proposed Art. 3(1) j):** Are there examples of “benefits” that are typically granted by pension funds that would not be covered by the phrase “similar benefits”? *No, because invalidity and death benefits are included in paragraph 10.5 of*

*the Commentary on Article 3. If yes, please describe these benefits?  
N/A.*

d) **As regards the phrase “that is constituted and operated exclusively to invest funds for the benefit of entities or arrangements” included in subdivision ii) of the definition of “recognised pension fund” in proposed Art. 3(1) j):** Is the word “exclusively” too restrictive given the normal operations of an intermediary that invests on behalf of pension funds and, in particular, the possibility that these operations would include activities that are not related to the investment of funds and the possibility that non-resident pension funds would be investing through such an intermediary? *No.* If yes, please describe the operations that might not be covered? *N/A.*

e) **Additional comment:** *We suggest to amend the phrases in Article 3(1) j) subdivisions i) and ii): “that is constituted and operated exclusively to administer or provide retirement or similar benefits” and “that is constituted and operated exclusively to invest funds for the benefit of entities or arrangements” with “that is—constituted **established** and operated exclusively to administer or provide retirement or similar benefits” and “that is—constituted **established** and operated exclusively to invest funds for the benefit of entities or arrangements”, respectively, to align them with the chapeau of Article 3(1) j), which provides that a “recognised pension fund” may take the form of an entity (or a legal person), which is incorporated or established with legal personality, or an arrangement, which is established or organized without legal personality.*

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The participation of IFA Grupo Mexicano, A.C. is made on its own behalf exclusively as an IFA branch and in no case in the name, or on behalf, of Central IFA or IFA as a whole.

We hope you find these comments interesting and useful. We remain yours for any questions of comments you may have.

Sincerely,

IFA Grupo Mexicano, A.C.