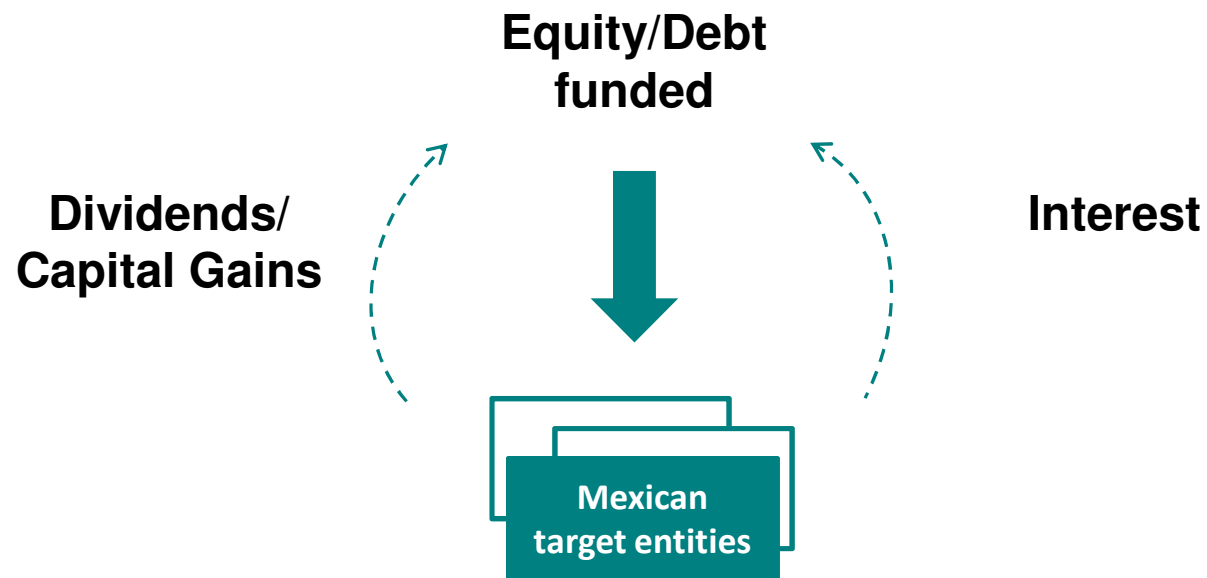


Private Equity Investments in Mexico

Alejandro Santoyo

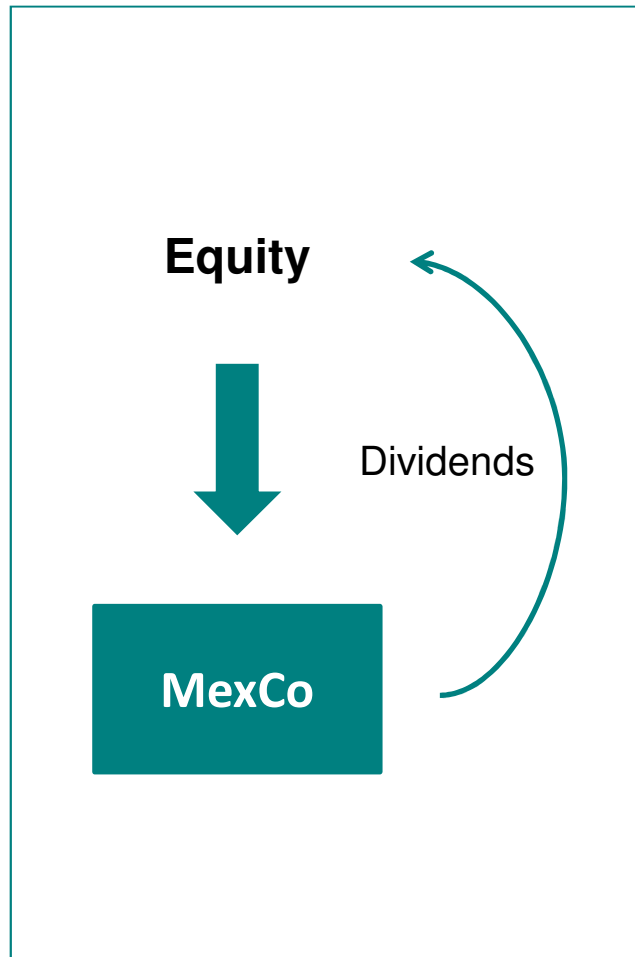
May 17th, 2010

New York



Equity Funding

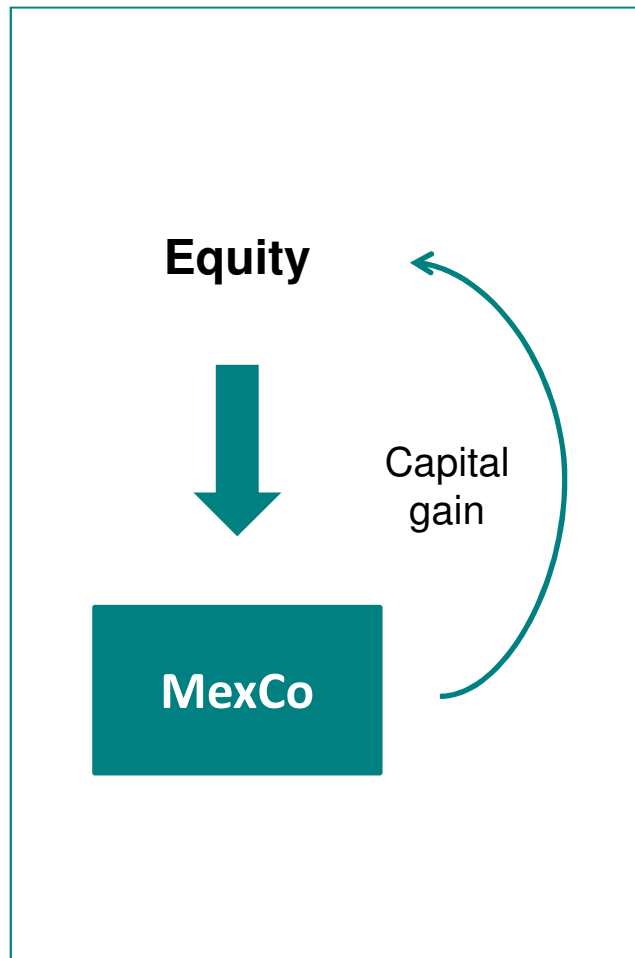
Dividends



- Mexico does not impose WHT on dividends
- MexCo has to pay corporate income tax for the distribution of dividends if they exceed retained tax earnings (CUFIN)
- Dividends paid in excess of CUFIN generate a 3 year corporate carry-forward tax credit (including year of distribution)

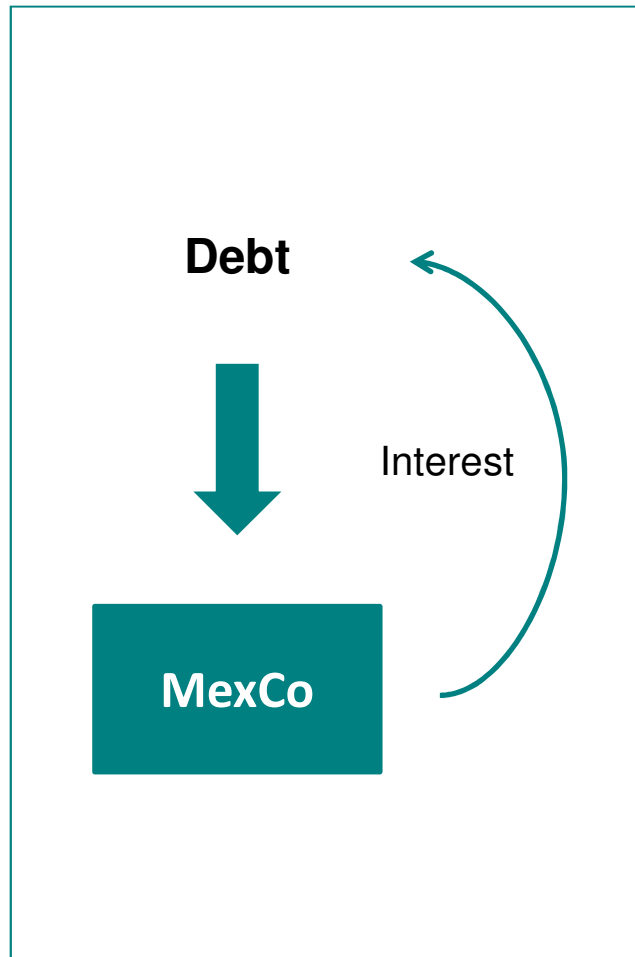
Equity Funding

Capital Gains



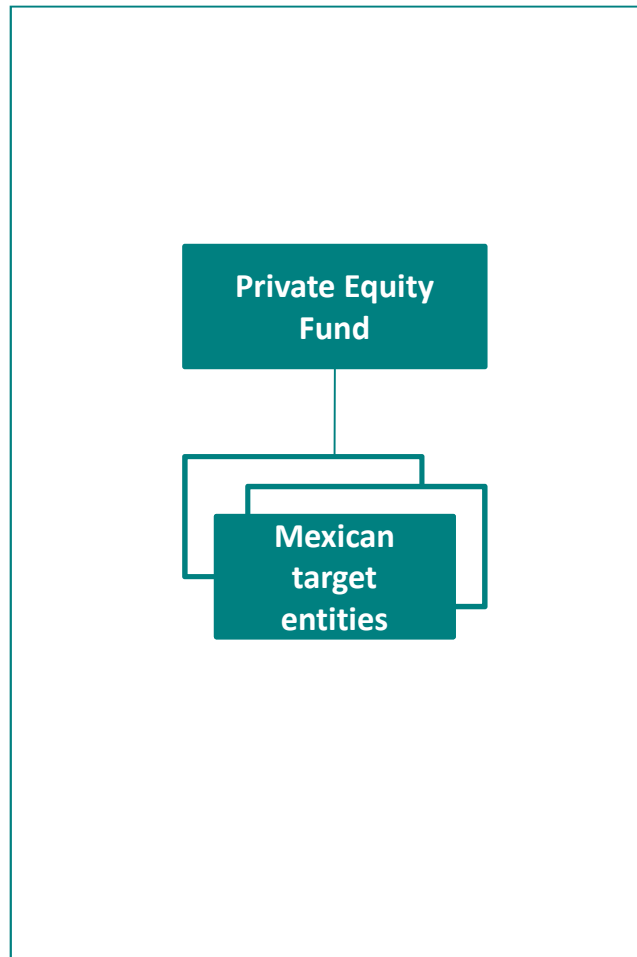
- Income tax computation:
 - **25%** on gross proceeds – withholding;
 - **30%** on the gain – legal rep
- Capital gain **exemption**
 - Shares listed and sold through stock exchange
 - 10% and control threshold limitation
- Mexican DTC - **relief** from taxation if during the 12-month period preceding the sale, seller DIDN'T hold more than 25% of MexCo
 - Regardless if sale is for a lower %
 - 25% threshold is computed individually

Debt Funding



- Withholding rates from **4.9%** up to **40%**:
 - 4.9% paid to registered foreign banks residents of tax treaty countries
 - 4.9% derived from tradable securities
 - 40% paid to low tax jurisdictions
 - 30% others
- DTCs are commonly used to reduced the 30% or 40% rates (as long as LOB don't apply)
 - B2B, FMV, treaty shopping, thin cap
 - e.g. 10% in LUX, IRE, CAN

Private Equity concerns

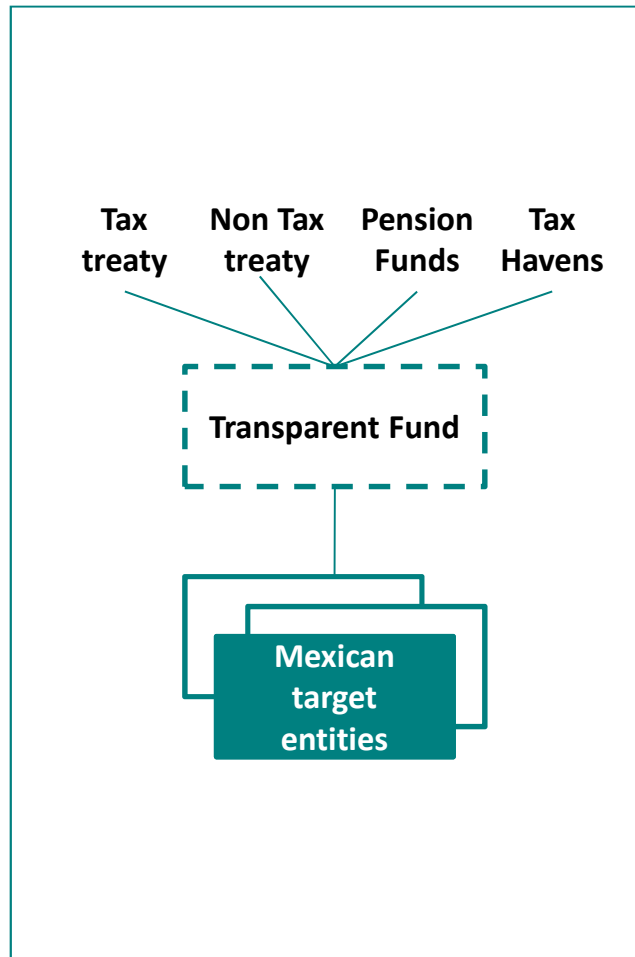


- Private Equity Funds cannot claim treaty relief for capital gains
 - More than 25% stake / LOB
- Pension funds lose their tax exempt status
- Mexican investors are subject to double taxation

Solution: Fund considered as a “pass-through” vehicle

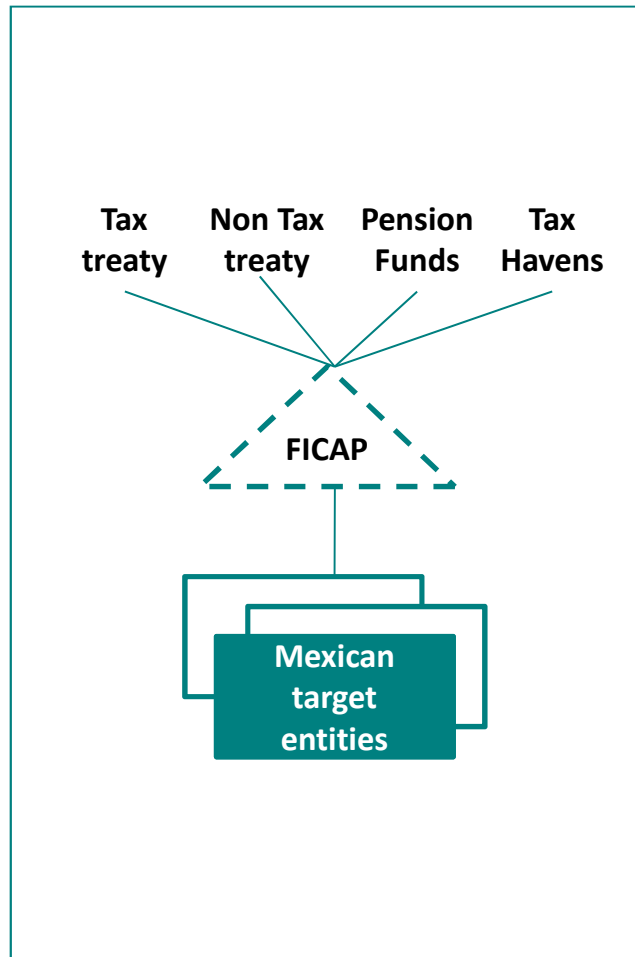
- Mexico views each Limited Partner as having its own holding interest in Mexican target entities

Requirements for pass-through



- a) Income is received by a “foreign figure”;
 - Trusts, partnerships and other figures without legal capacity of its own
 - b) Foreign figure shall be “transparent”; and,
 - Not considered as taxpayers in its country and its income is attributable to its members, partners, stockholders or beneficiaries
 - c) Incorporated in countries with broad exchange of information treaty
 - e.g. USA, NL, CAN, UK, BEL
- Provisions contained in an administrative general ruling or private letter ruling

FICAPs



- Pass-through treatment is granted in the Law when structured through Fideicomisos and certain requirements are complied with:
 - At least 80% of the funds invested in target companies, remaining funds in Mexican sovereign debt
 - Targets cannot be sold before two years
 - Fideicomiso cannot last more than 10 years
 - At least 80% of the income earned has to be distributed two months after year-end
- PE exposure is eliminated
- FICAPs may issue CKDs in the market (e.g. Macquarie)
- Mexican pension funds are authorized to invest in CKDs not in foreign vehicles

CHEVEZ,
RUIZ,
ZAMARRIPA
Y CIA., S.C.