TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Chile

by

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TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Chile

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Chile*, No. 7060-2nd, discusses the significant features of Chilean tax law applying to foreign investors conducting business in Chile, either directly or through some form of presence in Chile. In addition to a detailed discussion of the taxation of domestic and foreign legal entities and individuals, the Portfolio includes an analysis of the legal and regulatory provisions governing the conduct of business operations within the country.

The Detailed Analysis addresses the principal business entities, as well as the significant areas of investment and commercial regulations. It also discusses the most important immigration and labor issues. Finally, the Detailed Analysis contains an in-depth analysis of the Chilean tax system. A guide to the Detailed Analysis is provided by a Table of Contents.

The Worksheets supplement the information contained in the Detailed Analysis with important economic and tax information, the text of the Chile-U.S. tax treaty, and additional resources.

This Portfolio may be cited as Campos and Mullerat, 7060-2nd T.M., *Business Operations in Chile*.

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DETAILED ANALYSIS

I. Chile — General Background

A. *Political Organization*

Chile is a Republic with a presidential system of government. The Constitution establishes the basic political organization of the country and follows the principle of separation of powers.[1] Individual guarantees are well defined and protected, including guarantees with respect to private property.

The executive power lies with the President and his or her Cabinet (*Gabinete*).[2] The President is elected by direct universal suffrage for a single four-year term without the possibility of immediate re-election, and he or she appoints and removes Ministers at will.[3] Every Chilean national over the age of 18 years and every foreigner residing in Chile for more than five years has the right to vote.

The Constitution grants broad powers to the President, including the initiative to submit bills to the Congress, to enact legislation on matters that the Constitution does not specifically reserve to be approved under law, and to issue regulations so that a law can be better interpreted and implemented.[4]

The legislative power lies with a bicameral Congress (*Congreso Nacional*), consisting of the Chamber of Deputies (*Cámara de Diputados*) and the Senate (*Senado*).[5] The Chamber of Deputies has 155 members who are elected directly by electoral districts for a period of four years.[6] One of the Chamber of Deputies' main tasks is to supervise the actions of the Government. The Senate presents a more heterogeneous constituency.[7] Most of its members are elected directly by senatorial districts (*circunscripciones*), which conform to the 15 regions, except for the most densely populated regions, which are divided into two for these purposes. The Chilean Constitution entitles each district to elect two senators (*senadores*). The Senate has 50 members, who are elected for a period of eight years. Both deputies and senators may be re-elected upon the expiration of their term.[8]

Chile is divided into regions, which are subdivided into provinces. The provinces are, in turn, subdivided into municipalities (*comunas*). Currently, the country has 15 regions, 56 provinces, and 346 municipalities. Each region is governed by a Governor (*Gobernador*), who is elected by direct universal suffrage for a period of four years and may be re-elected only for the immediately following term. The 56 provinces have very little autonomy and they are governed by a Provincial Delegate who is appointed by the President of Chile. The municipalities are governed by a Mayor and the Council, who are elected by direct universal suffrage for four-year terms.

B. *Sources of Law*

1. Legislation

The supreme and fundamental source of Chilean law is the Constitution, which is the highest-ranking norm. Any norm issued by the National Congress, the President, the Ministries or the Administration that is contrary to the Constitution is invalid. Each type of norm has a different hierarchy depending on the quorum needed for its approval, amendment or revocation.[9] Thus, for instance, a constitutional amendment generally requires the approval of 2/3 of both Chambers of Congress, while laws interpreting the Constitution require the approval of 3/5 of Congress. The following are the different types of norms of the Chilean legal system:

(i) A Law (*Ley*): a law is an act of the Congress. A law may be initiated by the President (known as *mensaje*), or by one or more Deputies or Senators (known as *moción*). There are certain subject-matters, such as taxation, that can only be initiated by the President. Furthermore, as a rule, bills (*proyectos de ley*) may be submitted to any of the two Chambers; however, bills on certain subject-matters must be submitted to a specific Chamber; for instance, bills on tax matters must necessarily be submitted to the Chamber of Deputies. Every bill is subject to a discussion process in both Chambers, both at plenary sessions, as well as at the level of congressional committees in each of the Chambers, where the bill may be subject to amendments. The Constitution lays out specific rules on how bills are remitted from one Chamber to another when one of them approves, modifies or rejects them. Every bill

[1] The Constitution was sanctioned by Decree Law No. 3,464, dated August 11, 1980, and published in the *Diario Oficial* (Official Gazette) on the same date, while Chile was ruled by a military dictatorship under General Augusto Pinochet (1973–88). The Constitution was submitted for approval to a national referendum pursuant to Decree Law No. 3,465, dated August 12, 1980. The referendum took place on September 11, 1980, and was approved by a majority of Chilean citizens. The Constitution was promulgated under Decree No. 1,150, dated October 21, 1980, and was published in the *Diario Oficial* on October 24, 1980. It has been amended on numerous occasions since its promulgation and was rewritten into a consolidated text under Decree No. 100, dated September 17, 2005, and published in the *Diario Oficial* on September 22, 2005. After significant social unrest in the winter of 2019, where a new constitution was demanded, in October 2020, a national plebiscite, with an overwhelming 78% of the votes, agreed to change the Constitution. In May 2021, Chile held elections to choose the so-called Constituent Convention, which was in charge of drafting the new constitutional text. A national referendum took place on September 4, 2022, when 62% of the voters rejected the new constitution. In December 2022, the various political parties decided to initiate a new constituent process aimed, again, at changing the Constitution. The Commission of Experts, whose members were elected by Congress in January 2023, drew up a Draft Bill of the proposed Constitution. On October 30, 2023, the Draft Bill was approved by the Constitutional Council, whose members were elected in a national election. The proposed Constitution was voted on in a national referendum on December 17, 2023, which rejected the text with 55.76% of the votes. After the referendum, the government announced it would not continue its attempts to change the Constitution.

[2] Constitution, Arts. 24 and 25.

[3] Constitution, Art. 32(7).

[4] Constitution, Art. 32(6).

[5] Constitution, Art. 46.

[6] Constitution, Art. 47.

[7] Constitution, Art. 49.

[8] Constitution, Art. 51.

[9] Constitution, Art. 66.

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must be approved by both Chambers. Once approved, it is then remitted to the President for its promulgation. The presidential approval can be express or tacit, i.e., if the President does not return the bill to the originating Chamber within 30 days. Therefore, the President may veto a bill by returning it to Congress. Every law must be published in the *Diario Oficial* (Official Gazette), at which point the law is deemed to be known by all persons;[10]

(ii) An Organic Law (*Ley Orgánica*): this is a law that the Constitution mandates to be enacted to regulate specific matters. As such, it ranks higher than an ordinary law and its passage is subject to a higher quorum (4/7 of Deputies and Senators) and to prior review by the Constitutional Court;[11]

(iii) International Treaties: they are ranked as ordinary laws once they are approved and become part of the Chilean legal system following the same procedures as a law, i.e., they must be ratified by Congress and promulgated by the President. International treaties, however, can only be negotiated and signed by the President, who must remit them to the Congress for their ratification;

(iv) A Decree with Force of Law: this type of legislation is ranked as an ordinary law passed by the Congress but is enacted by the President of Chile pursuant to a specific delegation of powers from the Congress through the enactment of a law. The delegation made by the Congress may not be extended over one year and there are certain matters that cannot be delegated;

(v) A Decree Law (*Decreto Ley*): this is a legal text passed by the President of Chile without prior delegation from the Congress. It is seldom used and, in any case, it ranks is lower than an ordinary law and, as such, may be amended by an existing or future law providing for a different rule;

(vi) A Decree (*Decreto*): this is a legal text issued by either a Ministry or the President, in which case it is known as Supreme Decree (*Decreto Supremo*). A decree can affect a specific number of people or circumstances, in which case it is known as a Simple Decree (*Simple Decreto*), or can have a general scope in its application, in which case it is known as Regulation (*Reglamento*). The latter is habitually used by the Ministries to regulate laws within their jurisdiction;

(vii) Resolution (*Resolución*): this a legal text of an administrative nature issued by a ministerial department, such as the Servicios de Impuestos Internos (SII);

(viii) Instructions (*Instrucciones*): these are internal communications used by senior civil servants addressed to their staff laying out instructions on how to apply a law, a regulation or another legal provision in particular cases. When an instruction is addressed to a large number of civil servants it is known as a *Circular*, while when it is addressed to a reduced number of civil servants it is known as an *Oficio*. Both *Circulares* and *Oficios* are intended to be interpretative and are not a normative source of law; and

(ix) Ordinance (*Ordenanza*): this is a legal text generally containing a set of regulations on a specific subject-matter that can apply throughout the country, such as the Customs Duties Ordinance, or to a specific area, such as municipal ordinances. Ordinances generally contain penalties when they are breached.

When a law is unclear, one may seek to consult the congressional records documenting the debate that took place when the bill was discussed by members of the Congress in plenary sessions or in committees.

2. Case Law (Jurisprudence)

The Chilean legal system is based on the civil law system. Accordingly, as a general rule, the concept of judicial precedent or case law does not apply in Chilean courts.[12] However, the concept of "uniform jurisprudence" applies in judicial decisions, whereby when the courts rule on a specific matter in a uniform manner, particularly if the decisions emanate from the Supreme Court, jurisprudence on that matter is created and the lower courts, by reason of subordination, are bound to follow it even though they are not under an obligation to do so.

3. Court System

The Chilean court system can be divided into two categories: ordinary courts and special courts. Ordinary courts are governed by the Organic Court Code (OCC), and they hear civil and criminal cases when a special court does not have jurisdiction. Ordinary courts are the Supreme Court, the Courts of Appeal, Criminal Courts, Civil Courts, and Courts of Guarantees. Special courts, on the other hand, are governed by specific legislation and hear cases on the following subject-matters: family, labor, labor and benefits collection courts, and military courts. Chile also has tribunals that, although they are not part of the judicial system *per se*, they are supervised by the Courts of Appeals; there are tribunals that hear cases on taxation and customs, local matters, free competition, public contracts, industrial property, and environment.[13] Chile also has regulated arbitration tribunals which, although they are not part of the court system *per se,* they are also governed by the OCC.

Aside from ordinary and special courts, there is also the Constitutional Court, which only hears cases concerning the constitutionality of laws or proposed legislation, as well as on constitutionality issues arising from judgements ruled by the Court of Appeals and the Supreme Court.[14]

The jurisdiction of the ordinary courts are as follows:

(i) Supreme Court (*Corte Suprema*): as the highest court of the country, it is in charge of supervising all ordinary and special courts from an administrative, disciplinary and economic perspective, except the Constitutional Court (*Tribunal Constitucional*),[15] the Elections Qualifying Tribunal (*Tribunal Calificador de Elecciones*), the regional

[10] CC, Art. 8.
[11] Constitution, Arts. 63(1) and 93(1).
[12] CC, Art. 3(2).
[13] Organic Court Code (*Código Orgánico de Tribunales*), Art. 5.
[14] Constitution, Art. 93.
[15] Constitution, Arts. 92–94.

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electoral tribunals, and the military courts in times of war.[16] The Supreme Court also acts as the last instance for purposes of interpreting laws and, exceptionally, also acts as an appeal court for cases decided by the Courts of Appeal when the latter has acted as a court of first instance. The Supreme Court is divided into four chambers, each of which specialises in different legal areas;

(ii) Courts of Appeal (*Cortes de Apelaciones*): these courts act as courts of second instance to hear appeals from the lower ordinary and special courts. In some cases, based on the importance or nature of the case, these courts may also act as courts of first or single instance. There are 17 Courts of Appeal distributed in each of the country's regions. They are divided into Chambers specialized in different areas of the law;

(iii) Civil Courts (*Juzgados de Letras*): these courts hear civil and commercial cases as a court of first instance or as a final court, depending on the amount involved in the case. It also acts as a court of first instance for matters involving mining law, non-contentious cases, family and labor (unless the special Family or Labor Courts have jurisdiction on the case), and all other matters of a civil nature not assigned to other courts. When these tribunals act as courts of first instance, their decisions can be appealed to the Courts of Appeal;

(iv) Criminal Courts (*Tribunales de Juicio Oral en lo Penal*): these courts hold criminal oral trials; and

(v) Courts of Guarantees (*Juzgados de Garantías*): these courts intervene to execute criminal sentences, order security measures, and ensure that the rights of those charged with a criminal offense are preserved. They also hear in cases involving debt claims and minor criminal offenses.

Procedures must be in writing, except for oral criminal procedures and oral arguments before the Supreme Court and the Courts of Appeal.[17] A court decision is valid only for the specific case for which it is delivered.[18]

The jurisdiction of special courts is as follows:

(i) Family Courts (*Juzgados de Familia*): these courts have jurisdiction over matters involving families, such as rights and obligations of parents over their child, legitimation, adoption, separations, divorces and alimony;

(ii) Labor Courts: labor courts hear in cases involving employer-employee disputes, trade unions, collective bargaining agreements, work accidents and illnesses;

(iii) Labor and Benefits Collection Courts (*Juzgados de Cobranza Laboral y Previsional*): these courts deal with collections of contributions due and fines in relation to social security contributions; and

(iv) Military Courts (*Tribunales Militares*).

There are also special courts that are not part of the judicial system and that have jurisdiction to hear claims against administrative decisions in specific areas. These special courts include the Local Courts (*Juzgados de Policía Local*), which hear in a wide range of local matters, ranging from traffic fines to compliance with municipal ordinances; Environmental Tribunals (*Tribunales Ambientales*); an Industrial Property Tribunal (*Tribunal de Propiedad Industrial*); a Public Contracting Tribunal (*Tribunal de Contratación Pública*), which hears in claims against public contracts awarded by the Chilean State which are allegedly illegal or arbitrary; and Free Competition Tribunals (*Tribunal de Defensa de la Libre Competencia*).

There are also special courts that handle tax and custom duty cases, known as Tax and Customs Courts (*Tribunales Tributarios y Aduaneros*) that were created in 2009.[19] The Tax and Customs Courts have jurisdiction over all claims against an administrative decision taken either by the SII or the customs authorities. Although these Courts are technically independent, most of the judges originate from the SII and are financially dependent of the Ministry of Finance. Their impartiality, therefore, has been put into question. In that regard, approximately 70% of the cases heard by the Tax and Customs Courts are ruled in favor of the SII.

Each region has one Tax and Customs Court, except for the Metropolitan region of Santiago which has four Courts.[20] The Tax and Customs Courts are specialized, meaning that the judges must be lawyers with prior experience in tax and customs matters. Furthermore, cases are resolved relatively fast since, on average, it takes around one year to have a case resolved from the moment it is lodged. Judgments issued by the Tax and Customs Courts may be appealed directly to the Court of Appeals.

4. Arbitration

Arbitration in Chile may take the form of forced arbitration or voluntary arbitration. In this regard, the OCC provides that, due to their potential complexity, the following disputes must be resolved by arbitration regardless of the parties' intentions:[21] (i) dissolving marital or community property, joint ownerships, and general and limited partnerships; (ii) partition of property; (iii) disputes between corporate management and company liquidators; (iv) disputes involving a company's accounts; and (v) disputes between shareholders. Forced arbitration procedures are supervised by the Courts of Appeals of each region and arbitrators are selected based on their professional merits.

Conflicts between consumers and suppliers that are covered under the consumer protection legislation are also subject to mediation, conciliation and arbitration.[22] Suppliers must send a report every six months to the National Consumer Service (SERNAC), listing the number of cases that are subject to mediation, conciliation or arbitration mechanism, as well as the result of those proceedings and whether or not the decision has been executed.

Voluntary arbitration is often used in contracts of an international or domestic nature involving corporations. Domestic

[16] Constitution, Art. 82.
[17] OCC, Arts. 17–21.
[18] Civil Code (CC), Art. 3.
[19] Law No. 20,322, dated January 13, 2009, published in the *Diario Oficial* on January 27, 2009, as amended.
[20] Law No. 20,322, Art. 3.
[21] OCC, Art. 227.
[22] Supreme Decree No. 84, dated December 13, 2022. The Supreme Decree was issued under Law No. 19,496 on Consumer Protection Rights.

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disputes are generally handled by the Arbitration Centre of the Santiago Chamber of Commerce, while international disputes are generally handled by the traditional international arbitration courts. Choosing arbitration as a means to solving disputes between corporations is common as first instance, and ordinary courts generally take two years to resolve them. Voluntary arbitration on international commercial transactions is governed by Law No. 19,971, which is inspired by the United Nations Commission on International Trade Law (UNCITRAL).[23]

[23] Law No. 19,971, dated September 10, 2004.

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II. Operating a Business in Chile

A. Foreign Investment Regulations

1. In General

The Chilean government's policy is to seek foreign investment to provide capital and technology for economic development. For decades, Chilean governments have adopted incentives to provide foreign investors with the opportunity to take advantage of the country's rich natural resources within a stable legal framework and a reasonable tax regime that does not discriminate between local and foreign investors. A number of tax concessions, regional incentives and industry incentives are generally available to investors and practically all forms of business activity are permitted for foreign investors.[24]

Chile offers a climate of free enterprise, free trade and simplified bureaucratic procedures. The labor force is regarded as competent. Current trends include innovation in products for the export market, the application of new technology to industrial processes, free competition in local industries, the development of joint private sector ventures, foreign participation in technologically-oriented industries, and the expansion of service-oriented industries.

Over the years, Chilean governments have adopted special statutes regulating foreign investment. Foreign investment into Chile made prior to January 21, 2006, could be effected pursuant to Decree Law No. 600, as amended by subsequent legislation (known as the Foreign Investment Statute),[25] or pursuant to Chapter XIV of the Summary of Foreign Exchange Regulations of the Central Bank of Chile.[26] Foreign investments made from January 21, 2016, are subject to the Foreign Investment Law pursuant to Law No. 20,848.[27]

Some minor regional investment incentives are available that grant special benefits to certain regions of the country. In addition, activities that are viewed as fundamental to the country's development, such as transport and forestry, attract special incentives. Capital and technology are also sought for the development of new sources of copper, nitrates, iron, coal and petroleum, as well as for manufacturing, forestry, agriculture and fishing.

Both the profits and the capital of foreign investors can be repatriated. A guarantee against inconvertibility is also granted by law.[28]

2. Incentives

Chile's policy of promoting foreign investment is reflected in the legal and tax systems as well as in the specific regulations of Decree Law No. 600, as amended, and Law No. 20,848 (see 3.a., below, for comments on the revocation of Decree Law No. 600 and on the rules applicable to foreign investments made as of January 21, 2016, under Law No. 20,848). Regional and industry incentives are also available. The policy of promoting exports offers opportunities to companies that can provide access to foreign markets. There are no tax holidays in Chile, but a number of tax reductions and partial tax exemptions are provided for, as described in a. to c., below.

a. Corporate Tax Incentives

The Income Tax Law (ITL) favors capital investment and the reinvestment of profits. The principal tax incentives available under the ITL (see generally at V.B., below) are as follows:

(i) Accelerated depreciation is available for new fixed assets acquired locally, or new or used fixed assets that are imported. It is implemented by reducing to one-third the normal useful life assigned to the assets, although it is not applicable to assets the normal useful life of which is less than three years. Depreciation is on a straight-line basis.[29] Accelerated depreciation may be used only for the first category tax and must be added back for purposes of determining the additional tax or the surtax.

(ii) The first category tax is generally paid on accrued income. However, the Chilean entity has the option to be subject to a tax regime whereby the surtax and the additional tax (which are the taxes that are levied at the shareholder level) may be due when profits are distributed. Thus, under this option, retained earnings are subject only to the first category tax.

(iii) For foreign investments made through January 21, 2020, foreign investors may elect to enter into a foreign investment stability contract with the Chilean State and include a clause providing for taxation at a fixed overall effective income tax rate of 44.45% on net taxable income guaranteed to apply without change for a period of 10 years as from the commencement of the company's operations or for a period of 20 years in the case of investments in excess of US$50 million for the development of industrial or extractive projects, including mining projects. For these purposes, a company's operations are deemed to commence, in the case of new projects, as soon as the company begins to generate revenue or, in the case of on-going activities, in the calendar month following the month in which any part of the foreign investment is made in Chile (see 3.a., below).[30] The overall rate comprises the

[24] Recognizing the importance of foreign investment for the future growth of the economy, Chile withdrew from the Andean Common Market (ANCOM) so that, among other things, it could be free from ANCOM's restrictions regarding foreign investment.

[25] The Foreign Investment Statute was enacted in 1974 under Decree Law No. 600. The amended version of the Foreign Investment Statute is contained in Decree Law 523 of September 3, 1993, published in the *Diario Oficial* on December 16, 1993. As discussed below, the Foreign Investment Statute was revoked under Law No. 20,780, but is still applicable with respect to foreign investments made prior to January 21, 2016.

[26] Agreement No. 961-04-020117 — Circular No. 768, dated Jan. 23, 2002.

[27] Law No. 20,848, dated June 16, 2015, and published in the *Diario Oficial* on June 25, 2015. Law No. 20,848 came into effect on January 21, 2016, upon the enactment of Decree with the Force of Law No. 1, dated November 27, 2015, and published in the *Diario Oficial* on January 21, 2016.

[28] Foreign Investment Statute, Art. 7, and Law No. 20,848, Art. 5.

[29] Income Tax Law (*Ley Sobre Impuesto a la Renta*, ITL), Art. 31(5). For a detailed discussion of these rules, see V.B.6.a.(7).

[30] Foreign Investment Statute, Arts. 7 and 11 *bis*. See 3.a., below, for comments on the revocation of Decree Law No. 600. The 42% tax rate increased to 44.45% for a period of four years as of January 1, 2016, for foreign investment contracts entered into under Decree Law No. 600 prior to that date. Law No. 20,848, Transitory Provisions, Art. 2.

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corporate tax on profits (i.e., the first category tax) and the withholding tax on dividend or branch profit distributions. The tax rate on dividend or profit distributions is the difference between 44.45% and the underlying tax paid at the corporate level. The mining activity tax is not taken into account for purposes of determining the effective income tax rate of 44.45%.

Note: The option to be subject to an overall effective tax rate of 44.45% without change for 10 or 20 years is usually not exercised by foreign investors because the current combined effective tax rate on profits and dividend distributions is generally 35% under the general tax regime.

(iv) Foreign investors making investments of US$50 million or more in mining projects through January 21, 2020, may elect to claim the following additional rights for a period of 15 years with respect to those projects:[31]

- The provisions in the ITL dealing with the mining activity tax in place at the time the contract with the Chilean State is executed are to be maintained unchanged. Thus, any subsequent increase in the tax rate, widening of the scope of the taxable base, or any other change that makes this tax more burdensome to mining enterprises will not apply.[32]

- Any tax (including mining royalties and similar charges that are specific to mining activities) that is established after the date the agreement with the Chilean State is executed will not apply to the mining enterprise, provided the new tax or charge is computed or based on mining income, mining investments, or property or rights that are used in mining activities.

- Any changes that are introduced with respect to the amount of exploitation and exploration patents or the manner in which such patents are calculated under the Mining Code do not apply if they are introduced after the mining company executes the foreign investment contract with the Chilean State.

The 15-year period is determined on a calendar basis and starts to run on the date the company commences operations. The above rights are incompatible with any other rights granted under Article 7 of the Foreign Investment Statute. Moreover, those rights are also incompatible with the possibility of extending the fixed income tax rate for up to 20 years as discussed above in subparagraph (iii), as well as with the rights referred to below in subparagraph (vi). If any of the rights that are incompatible with the special rights conferred on mining projects are claimed, then both the investor and the Chilean affiliate will be prevented from claiming the latter.[33]

Subject to the above exception, a foreign entity may request the rights under the 15-year regime if it acquires the shares of a Chilean company that is already entitled to it. In that event, the foreign entity is entitled to claim those rights, but only for the period remaining to the initial investor under the original contract.

To claim the rights discussed in this section, the foreign investor and the Chilean affiliate (if incorporated) must describe the mining project in detail in their application form. In that regard, the applicant may utilize the description in the environmental impact study under Law No. 19,300. However, the Chilean affiliate is entitled to claim the rights only if at least one of its shareholders is also a party to the foreign investment contract with the Chilean State. The Chilean affiliate of a foreign firm is required to have its financial statements audited by an external auditor. Furthermore, the Chilean entity is required to submit its quarterly and annual individual and consolidated financial statements and its annual report to the Superintendence of Securities and Insurance. The Chilean affiliate and the foreign investor(s) are prohibited from claiming any of the rights conferred under the foreign investment contract if the Chilean affiliate fails to comply with these filing requirements on a timely basis.

(v) In the foreign investment contract entered into with the Foreign Investment Committee under the Foreign Investment Statute, a foreign investor may petition for tax stability with respect to the value added tax (*Impuesto al Valor Agregado*, VAT) and customs duty regimes. With respect to customs duties, however, stability is granted only for the importation of certain machinery and equipment not available in Chile.[34] Furthermore, the import of capital assets worth at least US$5 million that are used by the investee to develop, explore or exploit mining, industrial, forestry, energy, infrastructure, telecommunications, or research or development of a technical, medical or scientific nature, are exempt from VAT (for a detailed description of the requirements, see XII.C.2., below).[35]

(vi) The foreign investment contract may also provide that tax provisions as well as rulings and circulars issued by the Chilean tax authorities (*Servicios de Impuestos Internos*, SII) that are in effect as of the date of approval of the contract and relating to the depreciation of assets, net operating loss (NOL) carryforwards, and organizational and pre-operational expenses, continue to apply without changes throughout the stability period granted with respect to the income tax regime.[36] The foreign investor may renounce the application of this clause with respect to specific tax provisions or rules regarding either the depreciation of assets, NOL carryforwards, or organizational and pre-opera-

[31] Foreign Investment Statute, Art. 11 *ter.*

[32] For a discussion of the mining activity tax, see V.C.6., below.

[33] Chilean affiliates and their shareholders that have already signed a foreign investment contract with the Chilean State generally may not request to be subject to the 15-year regime unless the following additional conditions are met: (i) if, at the time the application is filed with the Foreign Investment Committee, any of the foreign investors or the Chilean affiliate were parties to a foreign investment contract with the Chilean State, the application must contain a waiver of all the rights conferred under that contract, but subjecting the waiver to the granting of new rights under the 15-year regime; (ii) the tax stability period is for 12 years for the new regime (as opposed to 15 years) as of the date on which the amended foreign investment contract is executed or as of the date on which the Chilean affiliate's operations commence; and (iii) the mining activity tax is levied at a rate of 4%, as opposed to 5%, while the amended foreign investment contract is in force.

[34] Foreign Investment Statute, Art. 8.

[35] Law No. 20,848, Art. 20.

[36] Foreign Investment Statute, Art. 11 *bis.*

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tional expenses.[37] For instance, if more beneficial tax rules regarding the depreciation of assets are enacted subsequent to the approval of the foreign investment contract, the foreign investor is allowed selectively to opt out of the stability clause regarding the previous depreciation rules, without renouncing his or her right to maintain the stability of the other tax provisions and rules on NOL carryforwards, and organizational and pre-operational expenses. Once a specific stability right regarding these tax provisions and rules is renounced, however, it may not be reinstated.

Foreign investors may renounce the income tax stability clause relating to the effective 44.45% tax rate at any time, in which case they will become subject to the general income tax regime and any changes enacted subsequently. Once the income tax stability clause relating to the effective 44.45% tax rate is renounced, however, it may not be reinstated. Moreover, renouncing the income tax stability clause relating to the effective 44.45% tax rate automatically cancels all other stability rights regarding VAT, customs duties and other income tax provisions.[38]

If an investment into Chile is made by a number of foreign investors who have opted for the tax stability clause, the renunciation of the stability clause by one of them is deemed to constitute a renunciation by all of them, as well as by the company that received the Chilean investment, unless otherwise agreed to in the contract.[39]

b. Regional Incentives

Regional incentives are generally set by autonomous corporations or agencies that are part of the regional government. The incentives available generally depend on the industry that each region seeks to promote.

There is also national legislation that provides special incentives to promote investments in the Northern and Southern most extreme regions of the country. For instance, incentives may be claimed for investments made in the First, Eleventh, Twelfth and Fifteenth Regions as well as in the Chiloé and Palena provinces.[40] Depending on the enterprise, the industry and the region where the investment is made, the incentive may take the form of a subsidy or a tax incentive, such as investment tax credits against income taxes as well as income tax, VAT, and customs exemptions. These incentives are generally available until 2025.

There is also an allowance for employers that hire workers with a permanent domicile in the qualifying Regions. The allowance is equal to 17% of the taxable remuneration paid to each employee, capped at P$182,000 per employee.[41] This incentive is also available until 2025.

c. Industry Incentives

Government incentives to encourage innovative production activities in Chile are channeled through the Chilean Corporation for the Promotion of Production (*Corporación de Fomento de la Producción* or CORFO). CORFO is divided into four main areas: management and competitiveness, investment and financing, entrepreneurship, and innovation. CORFO also partners with industrial associations to establish industrial policies. CORFO offers a wide range of programs and subsidies for a number of sectors, particularly in technology and renewable energy.

d. Export Incentives

For a description of the incentives available to exporters, see C.2., below.

e. Books in Foreign Currency

The foreign investment contract entered into between the Foreign Investment Committee and the foreign investor may include a resolution from the SII authorizing the foreign investor or the company receiving the foreign investment to maintain its books in foreign currency.[42]

3. Principal Foreign Investment Instruments

Three principal instruments govern foreign investment in Chile: the Foreign Investment Statute under Decree Law No. 600, Law 20,848 and Chapter XIV of the Summary of Foreign Exchange Regulations of the Central Bank. Authorities interpret these regulations to attract investors.

Decree Law No. 600 was revoked by Law No. 20,780 in 2014 but remained in effect through January 21, 2016. Foreign investments made after January 21, 2016, are governed by Law No. 20,848.[43] However, foreign investors and investees who have signed contracts with the Chilean government under the Foreign Investment Statute prior to January 21, 2016, continue to have the rights and obligations arising from those contracts until they expire.[44] In addition, Law No. 20,848 contains a transitory rule for foreign investments made within four years after January 21, 2016, i.e., January 21, 2020, whereby foreign investors may request such investments to be subject to the tax stability clause.[45]

Neither the Foreign Investment Statute, Law No. 20,848, nor the Summary of Foreign Exchange Regulations establishes legal requirements with regard to national co-partnership in foreign investment. Therefore, Chilean enterprises may be wholly-owned by foreign investors, unless foreign investment is explicitly restricted for a particular activity.

[37] Foreign Investment Statute, Art. 11 *bis.*

[38] Foreign Investment Statute, Art. 11 *bis.*

[39] Foreign Investment Statute, Art. 11 *bis.*

[40] Law No. 20,655, dated Jan. 22, 2013, and published in the *Diario Oficial* on Feb. 1, 2013.

[41] Law No. 20,655, Art. 1. This allowance was initially introduced in 1975 under Decree Law No. 889 and was renewed in 2003 under Law No. 19,853.

[42] Foreign Investment Statute, Art. 11 *bis.*

[43] Law No. 20,780, Art. 9 and Transitory Provision, Art. 23; Law No. 20,848, Transitory Provisions, Art. 3.

[44] Law No. 20,848, Transitory Provisions, Art. 1.

[45] Law No. 20,848, Transitory Provisions, Art. 2. Foreign investment contracts entered into within the four-year transitory period may only be signed for the 10- or 20-year period established under Decree Law No. 600. For contracts entered during this four-year period, the combined corporate income tax and tax on dividend or profit distribution rate is increased from 42% to 44.45% if the foreign investor opts to have a tax stability clause.

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a. Foreign Investments Made Under the Foreign Investment Statute

Until January 21, 2016, foreign investments into Chile had generally been made via the Foreign Investment Statute and, even though this Statute has been revoked, investments made pursuant to it continue to be governed by its provisions until the rights and obligations stemming therefrom expire.

Foreign investments that were made under the Foreign Investment Statute required the approval of the Foreign Investment Committee.[46] The Executive Vice-President of the Committee gave the approval, generally within a 30-day period. After approval was obtained, the Chilean State signed a contract, in a public deed, with the foreign investor. The contract established the rights and obligations of the foreign investor and the government could not modify it without the consent of the foreign investor.[47]

The contract established the time period during which the entire investment had to be brought into the country. This time period could not exceed eight years in the case of investments in mining, or three years in the case of all other foreign investment. An extension of the investment period of up to 12 years could be granted with the unanimous approval of the Foreign Investment Committee for mining projects that required previous exploration work. An eight-year investment period could also be granted by the Foreign Investment Committee for industrial or non-mining extractive projects in excess of US$50 million.[48] For a discussion of a different regime applicable to mining investments, see 2.a., above at (iv).

The capital invested may be repatriated after one year from its entry into Chile, unless the capital arose as a result of a profit capitalization, in which case such capitalization may be repatriated at any time.[49] Profits may be repatriated at any time. The foreign exchange required for the repatriation of capital or profits may be obtained through the formal exchange market, provided that a certificate of authorization is obtained from the Foreign Investment Promotion Agency. Once a petition is submitted by a foreign investor to obtain such a certificate, a final response must be issued by the Foreign Investment Promotion Agency within a period of 10 days from the date the petition was made.[50] Capital invested in Chile may be repatriated only in foreign currency with the proceeds obtained from the sale of the investment or its liquidation.[51]

Foreign investors have the same rights and obligations as Chileans.[52] However, as an exception to this principle, the Foreign Investment Statute provides that access to local credit may be restricted vis-à-vis foreign investors at some future date.[53] Currently, no such restriction is in force.

Foreign investment is subject to the same legislation as local investment and no discrimination is allowed. Furthermore, if any law is enacted that discriminates against foreign investors or against companies receiving foreign investments, a foreign investor or company may file a claim before the Foreign Investment Committee seeking the elimination of any such discrimination, provided the claim is made within one year from the time the discrimination came into effect. The Foreign Investment Promotion Agency has 60 days from the date the claim is filed to take action to prevent such discrimination. The foreign investor or company that has received foreign investment may take the case to court if the Foreign Investment Promotion Agency fails to act within the 60-day period.[54] Currently, no discriminatory provisions are in force.

Under the Foreign Investment Statute, foreign investors are guaranteed income tax stability for a period of 10 years, which may be extended to 20 years in the case of investments in excess of US$50 million in the manufacturing and extractive industries. However, in exchange for the guaranteed protection from future changes in the Income Tax Law, foreign investors are required to pay a combined corporate income tax and tax on dividend or profit distributions at a rate of 42% (but see 2.a., above).[55] Foreign investors may also petition for tax stability with respect to the VAT and customs tax regime. With respect to customs, however, stability is granted only for the importation of certain machinery and equipment not available in Chile.[56] It is also possible for the foreign investment contract to provide that tax provisions and rulings issued by the SII that are in effect as of the date of approval of the contract relating to the depreciation of assets, NOL carryforwards, and organizational and pre-operational expenses be maintained without change throughout the stability period granted with respect to the income tax regime.[57] Foreign investors may renounce the income tax stability clause at any time, in which case they will become subject to the general income tax regime and any changes enacted thereafter. Once the income tax stability clause is renounced, however, it may not be reinstated. At the time the income tax stability clause is renounced, all other stability rights regarding VAT, customs, legal provisions and rules are automatically cancelled. For a detailed discussion of these options, see 2.a., above.

Investments in export projects exceeding US$50 million qualify for additional benefits, such as the use of offshore accounts to maintain export proceeds for, among other items, the payment of principal and interest on loans, supplies, technical assistance, and profits. Further, in addition to the tax stability referred to above, regulations on exports and rules on depreciation, loss carryforwards and the tax treatment of start-up expenses, may be maintained without change for up to 20 years.

An amount equal to or exceeding US$5 million must be invested to qualify for benefits under the Foreign Investment Statute, except in the case of contributions of machinery and equipment and technology, where the minimum investment is set at US$250,000.

[46] Foreign Investment Statute, Art. 14. The Foreign Investment Committee was the institution authorized on behalf of the Chilean State to accept the inflow of foreign capital and to stipulate the terms and conditions of the contract between the State and the foreign investor.

[47] Foreign Investment Statute, Art. 3.

[48] Foreign Investment Statute, Art. 3.

[49] Foreign Investment Statute, Art. 4.

[50] Foreign Investment Statute, Art. 4.

[51] Foreign Investment Statute, Art. 5.

[52] Foreign Investment Statute, Art. 9.

[53] Foreign Investment Statute, Art. 11.

[54] Foreign Investment Statute, Art. 10.

[55] Foreign Investment Statute, Art. 7.

[56] Foreign Investment Statute, Art. 8.

[57] Foreign Investment Statute, Art. 11 *bis.*

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b. Foreign Investments Made Under Law 20,848

As stated above, foreign investments made as of January 21, 2016, are governed by Law No. 20,848. However, as stated above, a foreign investor has the option of entering into a foreign investment contract with the Chilean State and benefit from a tax stability clause, provided that the investment is made prior to January 21, 2020. After that date, Law No. 20,848 no longer allows the foreign investor to obtain a tax stability clause.

Law No. 20,848 replaces the Foreign Investment Committee with the Foreign Investment Promotion Agency.

Under Law No. 20,848, a direct foreign investment is the transfer to Chile of foreign capital or assets owned or controlled by a foreign investor with a value equal to or in excess of US$5 million or its equivalent in another foreign currency.[58] The investment must consist of freely convertible foreign currency or tangible assets as well as the reinvestment of profits and loan capitalizations. A direct foreign investment may also consist of contributions of technology to the capital of the Chilean investee as well as contributions of receivables.[59] Direct foreign investments that are governed by Law No. 20,848 may also consist of contributions to the capital of Chilean entities or the purchase of shares from other shareholders, provided that the contribution or purchase allows the foreign investor to control at least 10% of the voting rights of the Chilean entity.

A foreign investor may be any person, whether an individual or a legal entity, that either resides or is domiciled abroad, or is incorporated in a foreign jurisdiction, who transfers capital to Chile and that capital constitutes a direct foreign investment, as defined above.[60]

An investor who qualifies as a foreign investor may request from the Foreign Investment Promotion Agency a foreign investment certificate.[61] The request must evidence that the foreign investment has been made and provide a detailed description, including the amount invested, its nature and the purpose of the investment. The Foreign Investment Promotion Agency must issue the foreign investment certificate within 15 days from the date the request was made.

A foreign investor has the right to access the formal exchange market to exchange into Chilean Pesos the amount of foreign currency it is investing into Chile.[62] A foreign investor has the right to remit abroad the capital it has invested as well as the profits it has generated from the investment.[63] To do that, it also has the right to access the formal exchange market.[64] The exchange rate to sell or buy foreign currency is the one that is freely agreed to between the investor and the bank.

As in the case of investments made under Decree Law No. 600, foreign investors are subject to the general tax regime in the same manner as local investors and they, together with the investee, may not be discriminated against.[65]

[58] Law No. 20,848, Art. 2.
[59] *Id.*
[60] Law No. 20,848, Art. 3.
[61] Law No. 20,848, Art. 4.
[62] Law No. 20,848, Art. 6.
[63] Law No. 20,848, Art. 5.
[64] Law No. 20,848, Art. 6.
[65] Law No. 20,848, Art. 9.

c. Chapter XIV of the Summary of Foreign Exchange Regulations

A foreign investment into Chile consisting of a contribution to the capital of a Chilean company, a loan, or amounts placed temporarily on deposit with a Chilean resident may also be made under Chapter XIV of the Foreign Exchange Regulations of the Central Bank of Chile, provided the investment exceeds US$10,000 or its equivalent in another foreign currency.[66] The foreign currency must enter Chile through the formal exchange market.[67] The funds must be transferred through a duly authorized commercial bank, which will, in turn, inform the Central Bank of Chile of the transfer.[68] The Central Bank will register the investment and will issue a certificate to the investor.

A remittance abroad in foreign currency arising from the investment and consisting of capital, interest, profits or other benefits must also be reported to the Central Bank directly by the commercial bank through which the remittance is made.[69] There are no restrictions as to the timing and amount of such remittances. This rule is important if the remittance in foreign currency consists of a return of capital, because there is no holding period for obtaining the foreign currency to make a return of capital to the foreign investor if the investment was made under Chapter XIV, while there is a one-year holding period for the remittance of capital if the investment was made under the Foreign Investment Statute.[70]

A loan granted by a foreign lender and invested through the Chapter XIV mechanism does not require prior authorization from the Central Bank. The Central Bank, however, must be informed of the loan as well as of interest payments made thereunder and of the repayment of the principal.[71]

4. Restrictions on Foreign Investment

There are no provisions requiring foreign investors to sell part or all of their investment to Chilean nationals or to phase out their investment. Foreign currency for profit and capital remittances is available subject to the same conditions as apply to Chilean nationals purchasing foreign currency to cover general imports. Generally, there is no time limit on how long a foreign investment may remain in Chile. However, foreign capital invested in Chile under Decree Law 600 may not be remitted abroad before one year after the investment is made.

[66] Summary of Foreign Exchange Regulations of the Central Bank, Ch. XIV, para. 1.
[67] Summary of Foreign Exchange Regulations of the Central Bank, Ch. XIV, para. 3.
[68] Summary of Foreign Exchange Regulations of the Central Bank, Ch. XIV, para. 3.
[69] Summary of Foreign Exchange Regulations of the Central Bank, Ch. XIV, para. 4(a).
[70] Prior to 2000, there was a mandatory one-year term for the repatriation of capital brought into the country under Chapter XIV, so that capital had to remain in Chile for one year before being remitted. This is still the case for capital invested in Chile under the Foreign Investment Statute.
[71] Prior to 1998, the Central Bank imposed a mandatory deposit requirement with the Central Bank for all funds entering the country. The deposit had to be made in U.S. dollars in an amount equal to 30% of the foreign currency brought into the country. The deposit was non-interest bearing and had to be maintained for one year.

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a. Fully Restricted Investments

Any activities related to exploration for or the exploitation of hydrocarbons may be undertaken only by the Chilean State. However, the State has the right to assign risk contracts to private investors, including foreign investors, for the exploration and exploitation of designated areas.[72] Such investors may be paid a percentage of the sales or in-kind. Uranium is subject to similar regulations.

b. Partially Restricted Investments

There are no percentage restrictions on foreign holdings nor are there any restrictions on foreign ownership of buildings and land, with the sole exception of land located along the borders, which may not be owned by nationals of border countries, or by legal entities with their head offices in such countries or at least 20% of the capital of which is owned by nationals of such countries, or is otherwise controlled by such nationals, unless prior authorization is obtained from the President of Chile. Also, there are no restrictions on the foreign ownership of local enterprises and joint ventures, unless their activities may be undertaken only by the Chilean State.

c. Other Restrictions

As a general rule, coastal trade is restricted to Chilean vessels. However, foreign vessels may bid for cargoes exceeding 900 tons. Their offers are adjusted incrementally by the prevailing general customs rate. Exceptionally, when Chilean vessels are not available, foreign vessels may be authorized to transport cargoes under 900 tons as well as passengers.

5. Registration of Foreign Investment

The Foreign Investment Committee is responsible for the registration and control of foreign investment in Chile under the Foreign Investment Statute (for example, foreign capital, loans and technology). The following foreign investments require prior authorization from the Foreign Investment Committee:

(i) Investments in excess of US$5 million;

(ii) All investments to be made in sectors or activities normally undertaken by the State and investments made in the public services sector (i.e., transportation and public utilities);

(iii) Investments made in the communications sector; and

(iv) Investments made by a foreign country or by an entity owned by a foreign country.[73]

Unless it is otherwise established by the President of the Foreign Investment Committee, foreign investments not listed above do not require the prior approval of the Foreign Investment Committee; the authorization of the Executive Vice-President of the Committee with the consent of the Minister of Economy (i.e., the Committee's President) is sufficient.[74] In the case of loans granted by foreign lenders, the terms, interest, commissions, and other charges must be authorized in advance by the Central Bank of Chile.[75]

Individuals and companies, whether foreign or national, investing under Chapter XIV of the Summary of the Foreign Exchange Regulations of the Chilean Central Bank, may bring capital in foreign currency into Chile, the minimum amount being US$10,000. Such capital remittances no longer require Central Bank approval but must be reported to the Bank.

B. Exchange Controls

Exchange controls are very limited in Chile. There are basically two foreign exchange markets, the "formal" market and the "informal" market.[76] Some transactions, such as purchases of foreign currency and remittances of profits under Decree Law 600, must be made on the formal market. Other transactions may be freely made on the informal market. Repatriations made under Chapter XIV of the Summary of the Foreign Exchange Regulations of the Chilean Central Bank no longer require authorization and need only be reported to the Central Bank. The difference in the exchange rates between the formal and informal markets is not significant.

Foreign exchange operations on the formal market must be effected through authorized banks and financial institutions. Exchange rates on the formal market are not fixed. The Central Bank publishes daily the previous day's rate on the formal market, which is used to determine taxes and customs duties, when expressed in foreign currency. There are no special exchange rates for specific transactions.

Residents and nonresidents may maintain accounts in U.S. dollars in Chile or abroad. Offshore accounts may be kept in certain cases under Decree Law 600. Blocked accounts are not used in Chile.

C. Trade and Commerce Regulations

1. Imports

a. In General

In general, Chile has a very open economy and there are no significant barriers to foreign trade. Local industries are not protected by customs barriers. Payments for the import of goods may be made as agreed to by the parties.

Any person may import, freely and in any quantity, any goods into Chile except those that are expressly prohibited, such as used cars and motorcycles, used tires, asbestos, pornography, industrial toxic waste and any merchandise that may be considered dangerous for animals, agriculture or human health. Also, there are products that, because of their nature and pursuant to specific legislation, require authorization from, or are subject to special controls by, either the Chilean Customs Authorities or other Government agencies prior to their import into the country. These products include firearms and explosives, food and alcoholic beverages, animals, fertilizers, pharmaceutical products, and cement.

[72] Constitution, Art. 19(24).
[73] Foreign Investment Statute, Art. 16.
[74] Foreign Investment Statute, Art. 17.
[75] Foreign Investment Statute, Art. 2.
[76] Summary of Foreign Exchange Regulations of the Central Bank of Chile, Ch. I.

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There are two mechanism available to import goods into Chile, depending on their value. On the one hand, for merchandise of a non-commercial nature with a value of up to US$3,000 Free on Board (FOB) and for commercial merchandise with a value of up to US$1,000 FOB, travelers may import the goods themselves in a simplified manner. In that regard, the importer may be requested to provide the commercial invoice of the products.

If, on the other hand, the value of the commercial merchandise exceed US$1,000 FOB, the importer must hire a customs agent, who will handle the importation and deal with the Customs Authorities. There are numerous relatively large and well financed customs agents in Chile, who may import on their own account or represent an exporter on a commission basis. The commission agent is the most common type of representation. Commissions are negotiable. State enterprises, commercial airlines, public utilities and government agencies frequently place their orders directly. A local subsidiary or branch is usually established when the importing firm has to provide local service facilities or keep stock on hand. Customs and storage facilities in Chile are modern. In the case of valuable items, it may be advisable to use airport storage facilities. The choice of port of entry is strictly governed by the nearest destination although, since the Chilean railway system is not highly developed, most merchandise is imported at Chilean harbors and is then distributed by road throughout the country.

b. Import Duties

There is a general system of moderate import tariffs and taxes. Exceptionally, to avoid dumping, when subsidies outside Chile are proven for a given product, the government may impose additional duties (see below).

Chile is a member of the World Trade Organization (WTO). Goods are classified in accordance with the Customs Cooperation Council Nomenclature (formerly known as the Brussels Tariff Nomenclature).

Customs duties are levied at a rate of 6% on all goods, unless they are otherwise exempt.[77] Pursuant to Chilean antidumping provisions, when the Central Bank receives confirmation of a subsidy from abroad, a surcharge may be imposed to eliminate the unfair advantage of the foreign subsidy. In the case of used goods, the normal duties can be increased by 50%. This generally does not apply to foreign used capital goods, such as machinery and equipment.

Chile has signed more free trade agreements on a bilateral basis and with trading blocs than any other country. Its trade agreements are in force with countries representing around 90% of the world's population, giving Chile preferential treatment with respect to the export of goods and services. Likewise, these free trade agreements provide lower customs duties on the importation into Chile of certain goods from such countries or trade blocks. The most significant free trade agreements signed by Chile are the following:

(i) Mercosur: Chile is not a full member of Mercosur but has been an associate member since 1996.[78] Under the associate membership, there is a progressive reduction of customs duties with Mercosur member countries (Argentina, Brazil, Paraguay and Uruguay) with respect to products originating in those countries. This agreement establishes preference margins.

(ii) Mexico: A free trade agreement with Mexico was signed in 1998 and has been in force since August 1, 1999. The agreement establishes a common general customs duties rate of 0% for practically all products originating in Mexico.[79]

(iii) Canada: The Canada-Chile free trade agreement entered into force in July 1997. It establishes a bilateral duty-free treatment for most products, with the exception of certain categories of goods for each country.[80]

(iv) Other South American countries: Agreements for economic cooperation (*Acuerdos de Complementatión Económica*) with Bolivia, Cuba, Ecuador, and Venezuela are currently in force and provide for various reductions in customs duty rates.

(v) The European Union (EU): In 2002, a free trade agreement was signed with the EU, which came into force in February 2003. A 0% general customs duty rate applies to approximately 85% of products.[81] The remaining products are subject to the progressive reduction of customs duties. There are also a number of products that are not entitled to duty-free or lower customs duty rates.

(vi) United States: After 10 years of negotiations, in 2003 Chile concluded a free trade agreement with the U.S. government. The Chilean Congress approved the text of the treaty in October 2003[82] and the agreement has been in force since January 1, 2004.[83] Following a progressive reduction and/or elimination of customs duties on most imports, as of January 1, 2015, all trade between the two countries is no longer subject to customs duties.

(vii) Republic of Korea: After five years of negotiations, Chile and Korea subscribed a free trade agreement in February 2003. The Chilean Congress approved the text of the treaty in March 2004. The treaty has been in force since April 1, 2004.[84] The free trade agreement with Korea provides a progressive reduction of customs duties for both countries as well as some exclusions for certain products.

(viii) Central American countries: The free-trade agreement with Central America (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) was signed in 1999. The agreement includes a bilateral protocol between Chile

[77] Decree No. 513, dated Dec. 1, 2016 and published in the *Diario Oficial* on Dec. 28, 2016.

[78] Decree No. 1,411, dated Sept. 30, 1996, published in the *Diario Oficial* on Oct. 4, 1996.

[79] Decree No. 1,101, dated July 7, 1999, published in the *Diario Oficial* on July 31, 1999.

[80] Decree No. 1,020, dated July 3, 1997, published in the *Diario Oficial* on July 5, 1997.

[81] Decree No. 28, dated Jan. 28, 2003, published in the *Diario Oficial* on Feb. 1, 2003.

[82] *Oficio* No. 4,599 dated Oct. 23, 2003.

[83] Decree No. 312, dated Dec. 1, 2003, published in the *Diario Oficial* on Dec. 31, 2003; North American Free Trade Agreement (NAFTA), Art. 24.4(2).

[84] Decree No. 48, dated March 3, 2004, published in the *Diario Oficial* on April 1, 2004.

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and each of the Central American countries which governs the terms of the agreement between Chile and each country on an individual basis. Each protocol contains the list of products that are subject to a progressive customs duty reduction. The protocol between Chile and Costa Rica was approved in January 2002 and came into force in February 2002.[85] The protocol between Chile and El Salvador came into force in June 2002.[86] The protocol between Chile and Honduras came into force in July 2008.[87] The protocol between Chile and Guatemala came into force in March 2010.[88] The protocol with Nicaragua came into force in October 2012.[89] All protocols contain a different list of products that are subject to custom duty reductions in various stages progressively as well as a list of products that are excluded from the free trade agreement.

(ix) Peoples Republic of China: The free trade agreement with China was signed in 2005 and came into force in 2006.[90] As of that date, 92% of Chilean exports to China are zero rated. Customs duties for the rest of the products are subject to a progressive reduction while other products are excluded.

(x) The European Free Trade Association (EFTA): In 2003, Chile signed a free-trade agreement with the EFTA counties (Iceland, Liechtenstein, Norway and Switzerland). The free trade agreement came into force in December 2004.[91] The free trade agreement with the EFTA provides a progressive reduction of customs duties as well as some exclusions for certain products.

Chile has signed other bilateral free-trade agreements with Australia (2009), Colombia (2009), Hong Kong (2014), Japan (2007), Malaysia (2012), Panama (2008), Peru (2009), Thailand (2015), Turkey (2011), and Vietnam (2014).[92]

In addition to those listed above, Chile has signed free trade agreements with the Pacific Four or P-4 trading block, which includes Brunei, New Zealand and Singapore. Chile was also a founding member of the Andean Community in 1969 but withdrew in 1976 when General Pinochet became President of Chile; in 2006, Chile became an associate member of the Andean Community. Chile is also a founding member of the Pacific Alliance with Colombia, Mexico and Peru (Costa Rica and Panama are in the process of becoming full members), which seeks to integrate these countries in a number of fields. In 2016, Chile signed the Trans-Pacific Partnership (TPP) as a founding member. The TPP entered into force on December 30, 2018. A bilateral free trade agreement with Uruguay was also signed in 2016 but is not yet in force. A free trade agreement with Indonesia is under negotiation.

Chile has also signed agreements of economic co-operation with Bolivia (1993), Cuba (2008), Ecuador (2010) and Venezuela (1993), and is a member of the Asian-Pacific Economic Co-operation Council (APEC).

Customs duties are imposed on the Cost, Insurance, Freight (CIF) price, without a deduction for special discounts. In other words, the price of goods for customs duties purposes is their arm's length price.[93]

c. Anti-Dumping

The President of Chile is empowered to issue a Supreme Decree and impose an import tariff on an *ad valorem* basis on the importation of goods into Chile in the event the exporter is found to be dumping the product, as defined in the GAAT and in the WTO's Safeguard Agreement.[94] Prior to imposing the import tariff, the Executive is required to obtain a report from the National Commission in Charge of Investigating the Existence of Price Distortions in Imported Products. The National Commission consists of civil servants from various Ministries as well as from the Attorney General Office and the Central Bank.

The National Commission is empowered to process claims and to conduct the necessary investigations in order to determine whether price distortions exist.[95] It can also act *ex officio*. Those investigations must start within five working days after the claim has been filed. Notice of the starting and ending dates of the investigation must be published in the *Diario Oficial*. The National Commission has 30 days from the date the notice is published to receive the documentation from, and/or meet with, interested parties and request the reports it deems appropriate. The claim filed with the National Commission must indicate the distortion and the actual or imminent damage that it will cause to national production, which must be significant in order for the National Commission to act. During the investigation, the National Commission may recommend to the Executive to impose import tariffs on the product on a temporary basis until the case is resolved.[96] In this regard, the National Commission has 90 days from the date the notice is published to resolve the case. If the National Commission finds that there is such distortion, it must recommend to the Executive the import tariff that should be levied on the importation of the goods in question. The National Commission may also make a recommendation before the report referred to above is issued.

All import tariffs must be levied on an *ad valorem* basis. Furthermore, import tariffs cannot be in place for more than

[85] Decree No. 14, dated Jan. 18, 2002, published in the *Diario Oficial* on Feb. 14, 2002.

[86] Decree No. 127, dated May 3, 2002, published in the *Diario Oficial* on June 1, 2002.

[87] Decree No. 180, dated July 9, 2008, published in the *Diario Oficial* on Aug. 28, 2008.

[88] Decree No. 87, dated March 17, 2010, published in the *Diario Oficial* on August 5, 2010.

[89] Decree No. 109, dated Sept. 25, 2012, published in the *Diario Oficial* on March 19, 2013.

[90] Decree No. 317, dated Aug. 21, 2006, published in the *Diario Oficial* on Sept. 23, 2006.

[91] Decree No. 262, dated Nov. 24, 2004, published in the *Diario Oficial* on Dec. 1, 2004.

[92] In parenthesis is the year in which the free trade agreement came into force.

[93] Decree with the Force of Law No. 31, dated Oct. 18, 2004, that combines the rules on the importation of goods into the country, published in the *Diario Oficial* on April 22, 2005, Art. 6.

[94] Decree with the Force of Law No. 31, Art. 7.

[95] Decree with the Force of Law No. 31, Art. 9.

[96] If an importer pays import tariffs that are imposed on a temporary basis as a result of an anti-dumping investigation and the National Commission later resolves that there is either no price distortion or that the price distortion that is found to exist does not have a significant impact on national production, then the importer may claim a refund for the import tariff that was paid plus interest. A refund may also be claimed if the import tariff paid exceeds what should have been paid pursuant to the Supreme Decree that is eventually enacted.

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two years, although the measures can be renewed if the circumstances have not changed, in which case the Executive will obtain a new resolution from the National Commission. Thus, import tariffs cannot be in place for more than four years. In any event, the National Commission must review all measures on an annual basis. If there is conflict between domestic legislation and an international treaty on the type or period of application of an import tariff, the latter must prevail.

d. Other Taxes

VAT must be paid on imports at the general rate of 19%. Certain luxury products, such as jewelry and liqueurs, are subject to VAT at an increased rate.[97] VAT is assessed on the customs value of the goods according to the General Agreement on Tariffs and Trade (GATT) 1994; if this value is not available, VAT may be assessed on the Cost, Insurance and Freight (CIF) value of the goods, plus customs duties.[98] However, VAT paid on importation is recovered by the importer against the VAT it levies on its sales. Likewise, VAT may be recovered in the case of imports of goods intended for export-oriented industries. (For a detailed discussion of the VAT rules, see XII., below). Depending on the nature of the product, the importation of used products may be subject to an additional charge of 3% over the CIF value of the product plus customs duties thereon.

e. Free Trade Zones

To promote export industries, the Chilean government has authorized free trade zones (*zonas francas*) in Iquique (in the far north of Chile) and Punta Arenas (in the far south).[99] There is also a limited free trade zone in Arica (near the border with Peru)[100] and in Tocopilla for mining activities.[101] The free zone established in Iquique has been particularly active. Concessions to operate are granted by an independent administrative body. Transport and storage facilities are on hand.

Goods imported into a free trade zone may be assembled, finished or subjected to other processes for export to Chile or other countries. Furthermore, the sale of goods from Chile into the free trade zones is considered an export of the seller for VAT purposes. Although a single 1.7% customs duty is assessed on imports into a free trade zone, its application has been suspended since 1976.

The principal tax incentives of free trade zones are the following:

(i) Local as well as foreign companies installed in a free trade zone are exempt from the first category tax;

(ii) A shareholder of a company established in free trade zones is generally subject to the surtax (in the case of resident individuals) or the additional tax (in the case of nonresidents) for the dividends they receive from that company without a tax credit for the underlying first category tax as the company is exempt from it. However, if the free trade zone company has opted to be subject to the Pro-Pyme regime, then the shareholder is entitled to claim a tax credit equal to 50% of the tax credit the shareholder would have been entitled to claim as if the company had been subject to the first category tax;

(iii) Transactions completed within a free trade zone are exempt from VAT; and

(iv) Goods imported into a free trade zone may be re-exported without triggering customs duties. A percentage of local content is permitted.

Some additional nontax incentives are available in the extension zones (*zonas francas de extensión*) of the Iquique and Punta Arenas duty-free zones. The benefits are basically that duties are reduced to a certain extent and no VAT is levied on the importation of goods from the free trade zone.

f. Documentation

Documents generally required for the importation of commercial goods into Chile include the commercial invoice and a bill of lading or airway bill. Except in special cases, the certification or legalization of bills of lading, airway bills or commercial invoices is not required. The importer must present the documents at the port of entry.

The commercial invoice is required with respect to all freight, air cargo or parcel post shipments to Chile. The invoice must show clearly the FOB or Free alongside (FAS) value, the CIF value, the unit price of each item, the import license number, and the insurance covering the shipment. The importer must also submit a certificate of insurance if the insurance premium is not consigned in the commercial invoice. FOB or FAS values must be equal to those on the import license. The customs agent must also attach an affidavit on the value of the merchandise being imported.

The original bill of lading or a copy thereof must show the total metric weights and total charges, which must agree with those on the import registration certificate. Corrections, additions or erasures are not allowed on the bill of lading and any such alteration must be made by way of a letter of correction. A packing list must also be attached if they are transported in containers.

A certificate of origin is not required, unless the importer invokes the application of a free trade agreement that requires it. The declaration on the commercial invoice is sufficient. The original or a copy of the letter of credit, debit note or collection note is required. The importer must also submit a special permit, approvals, authorization or certificate if the importation of the product requires it.

2. Exports

Chilean governments have generally pursued a very clear policy of promoting exports. A semi-official agency (*ProChile*) provides information to potential exporters and assists in discussions with foreign governments or agencies with a view to removing the barriers restricting exports. This policy has been successful, considering the continued increase in exports.

The principal export incentives are as follows:

[97] For a description of the increased VAT rates, see XII.G., below.

[98] Decree Law No. 1,606, Art. 16(a).

[99] Decree Law No. 1,055, dated June 5, 1975, published in the *Diario Oficial* on the same date, as amended by Decree with the Force of Law No. 341, dated June 1977, and further amended by Decree with the Force of Law No. 2, dated April 18, 2001, published in the *Diario Oficial* on Aug. 10, 2001, as amended.

[100] Law No. 19,420, dated Oct. 12, 1995, published in the *Diario Oficial* on Oct. 23, 1995, as amended.

[101] Law No. 19,709, published in the *Diario Oficial* on Jan. 31, 2001.

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(i) A government subsidy is granted for certain non-traditional exports. The amount of the subsidy is equal to 3% over the net value of the exports, provided they do not exceed US$18 million per year.

(ii) Exports are exempt from customs duties and VAT.

(iii) VAT incurred on the purchase of goods and services necessary for exporting may be refunded.

(iv) Investments in export projects exceeding US$50 million enjoy benefits in addition to those granted for foreign investment in non-export projects. These additional benefits include the use of offshore accounts to maintain export proceeds for, among other items, the payment of principal and interest on loans, supplies, technical assistance, and profits. Further, in addition to the tax stability discussed in A.2.a., above, regulations on exports and rules on depreciation, NOL carryforwards and the tax treatment of start-up expenses may be maintained without change for up to 20 years.

In addition, a realistic exchange rate operates as a general and permanent incentive to this sector, as do simple and straightforward administrative procedures for exportation.

Only a few products may not be exported from Chile, such as narcotics and illegal medicines. The exportation of copper is also subject to a special authorization. The exportation of certain agricultural products may be restricted depending on the season of the year. Exports of certain products may require certifications from the relevant Government authorities before the export takes place. For instance, the export of wood, wine, grapes and fish requires a phytosanitary certificate; the exportation of firearms and other products that may have a military use requires a special export license and the authorization from the Chilean Ministry of Defense.

All exports out of Chile must be made through a customs office. The exporter must submit an export declaration to the Customs Authorities and, if the FOB value of the merchandise exceeds US$1,000, the exporter must also submit a Single Export Document or the bill of lading.

3. General Business Regulations

a. In General

The Chilean government's policy is to reduce the regulation of business and industry. Market forces generally prevail and the authorities are empowered to prevent abuses. During recent years, public administration has been modernized and made more efficient.

There is a policy of promoting free competition as the best way to protect the consumer and encourage economic development. The macroeconomic variables are controlled through the issuance of money and the interest rate on credits granted by the Central Bank to the banking system. An important part of the budget is assigned to finance plans for the poorest portion of the population.

The principal regulatory agency supervising corporations and the stock market is the Superintendence of Securities and Insurance (*Superintendencia de Valores y Seguros* or SVS).[102] Its principal tasks are to supervise insurance and reinsurance companies, stock exchanges and the transactions traded therein, stockbrokers and the transactions that are traded by them, open stock corporations (*sociedades anónimas* or SAs) and limited partnerships with shares (*sociedades en comandita por acciones* or SCAs) (see e., below), and mutual funds and their administrators.[103] In practice, unless there is reason to suspect some irregularity, the SVS limits its intervention. Annual financial statements and the directors' report of an open SA must be submitted to this agency, and its financial statements published in the local press and on the company's web site.

Banks, financial institutions and pension fund administrators are not supervised by the SVS but by the Superintendence of Banks and Financial Institutions (*Superintendencia de Bancos e Instituciones Financieras* or SBIF). The Central Bank plays a governing role with respect to business regulation and controls foreign exchange transactions, imports and exports.

The Ministry of Economy is empowered to determine price policies, plan the development of economic activities in the country and, in general, issue regulations in relation to business in Chile.

Historically, a significant number of transactions have required the involvement of a notary public, which increases the transaction cost. In an effort to reduce that burden, the government has enacted legislation to "de-notarize" the life of citizens.[104] To that end, the legislation prohibits the State from requiring notarized signatures on paper or electronic documents to be filed before State organizations, unless the notarization is expressly required under a law or a regulation.

Since a specific law requires their notarization, the following documents must still be executed before a notary public:

(i) Transfers of domain rights;

(ii) Purchases of easements;

(iii) Transfers of real estate, including by way of *inter vivos* gift, and the setting up of mortgages with respect to real estate;

(iv) Transfers under an inheritance;

(v) Lifetime annuity contracts; and

(vi) Company incorporations.

As a result of the enactment of Law No. 21,582, the SII has indicated that certain transactions and filings by taxpayers with the SII no longer require the intervention of a notary public.[105] These transactions include:

(i) A contract for the purchase of foreign currency between a non-habitual buyer and seller;

(ii) The granting of a power of attorney by a taxpayer in favor of a person who is to appear before the SII to obtain the taxpayer's PIN number or to amend an income tax return; and

(iii) The filing by a nonresident of private documents to apply for a RUT number.

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[102] The SVS was created in 1980 under Decree Law No. 3,538 on the Organic Law on the Superintendence of Securities and Insurance, dated December 9, 1980, and published in the *Diario Oficial* on December 23, 1980.

[103] Decree Law No. 3,538, Art. 3.

[104] Law No. 21,582, published in the *Diario Oficial* on July 7, 2023.

[105] SII Circular No. 24, dated May 23, 2024.

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b. Invoicing and Payments

Regardless of the type of purchaser they are selling to, all persons that are considered taxpayers for VAT purposes are required to issue invoices on their sales. However, businesses that sell directly to consumers are allowed to issue purchase tickets instead of invoices.[106] Furthermore, sellers of second-hand goods must issue receipts to their purchasers, indicating the supplier and the goods being acquired.[107]

Copies of invoices can be kept electronically.[108]

The purchase of a product or service in excess of 135 development units (or its equivalent in foreign currency) may be paid using any payment method, provided it is supported in a document identifying the payor, such as an invoice. If the purchase is paid in cash it must be reflected in the document. Unless otherwise exempt from this requirement, all purchases must be paid electronically or any other method that allows to know the payor's identity.[109]

c. Price Controls

In general, there are no price controls in Chile.

d. Monopolies and Antitrust

There are no monopolies in Chile. However, because of their structural costs, certain public services act as natural monopolies in the sense that there is only one enterprise providing that service to the public. For instance, water distribution companies are natural monopolies. However, natural monopolies are regulated and supervised by a government agency.

Chile has had antitrust legislation since 1973.[75] The National Prosecution Office for Economic Matters, a government agency, is in charge of investigating all matters that may affect free competition in Chile,[110] and the Competition Tribunal has jurisdiction over cases involving attempts to prevent free competition.[111]

Any act or agreement that tends to prevent or restrict free competition within the country is illegal.[112] Such acts include:

(i) Agreements or arrangements among competitors that tend to fix purchase or sales prices, introduce production quotas, assign markets or quotas, or affect the results of a bidding process, as well as agreements or arrangements that, even if they confer market quotas to competitors, they nevertheless determine distribution terms and conditions or exclude actual or potential competitors;

(ii) An abusive use by one or several enterprises of a dominant market position through fixing sales prices, forcing the sale of other goods or services on the sale of a product or service, assigning markets or quotas, or imposing such abuses to others;

(iii) Undertaking unfair competition practices to obtain, maintain or increase a dominant position;

(iv) Having one individual act as an officer or director simultaneously in two or more competing enterprises, provided that the annual revenues of each enterprise exceed 100,000 development units;

(v) Failure by an enterprise to notify a transaction leading to a market concentration in Chile to the National Prosecution Office or providing false information in the information that is attached to the notice.[113] In this regard, a market concentration is deemed to exist if both of the following two conditions are met at the end of the year prior to the one in which the notice must be filed: (a) the sum of the Chilean sales revenues of all the enterprises that are included in the concentration reached at least 1.8 million development units, and (b) the Chilean sales revenues of at least two of the enterprises that are included in the concentration reached at least 290,000 development units;[114]

(vi) Executing a transaction that leads to a market concentration that has been notified to the National Prosecution Office before such Office has issued a final resolution.[115] In this regard, the National Prosecution Office has 30 working days to decide on a market concentration notice; the resolution may either simply approve the transaction, approve the transaction as well as the measures that have been proposed by the party that has filed the notice, or extend the investigation for an additional 90 working days if it has reason to believe that the transaction may hinder competition.[116] In the latter case, within that 90-day period the National Prosecution Office may prohibit the transaction.[117] In any case, the resolution will be deemed to have been approved as presented in the notice if the National Prosecution Office fails to respond within the above timeframes.[118] The party that has filed the notice may also appeal a negative resolution passed by the National Prosecution Office to the Competition Tribunal;

(vii) An enterprise fails to comply with the measures that are contained in a resolution issued by the National Prosecution Office approving a market concentration; and

(viii) An enterprise executes a transaction that has been prohibited by either the National Prosecution Office or by the Competition Tribunal.

Generally, for conduct of a criminal nature, the statute of limitation is three years from the date the act that hindered competition is executed, except for conduct described in (i), above, which have a statute of limitations period of five years.

[106] TC, Art. 88.
[107] TC, Art. 88 *bis.*
[108] TC, Art. 92 *bis.*
[109] TC, Art. 92 *ter.* This provision will come into force upon the issuance of a regulation by the Ministry of Finance.
[110] Decree Law No. 211, Art. 33.
[111] Decree Law No. 211, Art. 5.
[112] Decree Law No. 211, Art.3.
[113] Decree Law No. 211, Arts. 3 *bis* (a) and 48. A concentration between unrelated parties may take the form of a merger between them, an acquisition either of shares that result in one company having a decisive influence over the management of another company or of a company's assets that lead the purchaser to have control over them, or a joint venture. Decree Law No. 211, Art. 47.
[114] National Prosecution Office Resolution No. 667, dated Nov. 24, 2016.
[115] Decree Law No. 211, Arts. 3 *bis* (b) and 49.
[116] Decree Law No. 211, Art. 54.
[117] Decree Law No. 211, Art. 57.
[118] Decree Law No. 211, Arts. 54 and 57.

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Civil actions on antitrust matters have a statute of limitations period of four years.

There is also an obligation to inform the National Prosecution Office if a member of a corporate group purchases, directly or indirectly, 10% or more of the capital of a competing company.[119] This obligation only applies to transactions where both the corporate group that purchases the shares and the target each generated sales revenues in excess of 100,000 development units at the end of the year prior to the one in which the purchase takes place. The information must be provided within 60 days after the acquisition has taken place. The National Prosecution Office is entitled to open an investigation.

The National Prosecution Office may initiate investigations on the basis of either complaints filed by any person or *ex officio*.[120] Investigations on antitrust matters are conducted by the police at the National Prosecution Office's request.[121] The National Prosecution Office has broad powers to request information from individuals and company representatives in connection with investigations or complaints it has received. Failure to disclose all the information that has been requested, providing false information, or interfering with the investigation constitutes a crime that may be punished with fines and imprisonment. The National Prosecution Office may also request the police to break into private premises, seize property, and intercept communications. Investigations may be conducted secretly and the National Prosecution Office is not required to so inform the parties that may be affected by them. The National Prosecution Office may also act as a party in proceedings before the Competition Tribunal or before the Supreme Court in cases involving appeals of decisions rendered by the Competition Tribunal in order to defend the general interest, and may also settle cases. For all antitrust investigations or litigations, the National Prosecution Office and the Competition Tribunal may serve notices to the Chilean affiliate of a foreign entity even if it is that entity that is being investigated or sued.

In its judgement, the Competition Tribunal may decide to either:[122]

(i) Modify or prohibit the agreements or arrangements made by the enterprises that are in breach of antitrust legislation;

(ii) Order the dissolution of enterprises that had acted contrary to antitrust legislation;

(iii) Impose a fine equal to either 30% of the revenues generated by the enterprise from the sale of the product line that was in breach of antitrust legislation during the period of that breach, or 50% of the profit made by such enterprise from those sales. These fines may be imposed upon the enterprise or its officers and directors. In the latter case, the fine may not be shifted to the enterprise for whom they worked, to another group company, or to the enterprise's shareholders; or

(iv) If the conduct is of the type described in (i), above, at the beginning of this section, the enterprise may also be prohibited from contracting with State-owned companies or bid on any concession for a period of five years as of the date the judgement was rendered.

In addition to the above fines, the Competition Tribunal may also resolve to impose an indemnity against the enterprise for the damages its conduct has caused. The Competition Tribunal may also decide to impose criminal sanctions to the person or persons that agree or cause others to agree or execute agreements between two or more competitors to either fix prices in one or more market areas, limit production, divide or assign market quotas or areas, or who have an effect on bids called by public enterprises or private enterprises that provide public services. These sanctions may lead to imprisonment.[123] Those persons may also be temporarily barred from acting as officers and directors in any entity or organization, whether public or private.

Persons that intervene in conduct described in (i), above, at the beginning of this section may, nevertheless, be exempt from fines or subject to reduced fines if that person provides specific, accurate and verifiable evidence to the National Prosecution Office that is sufficient to identify an illegal conduct as well as the responsible parties.[124] To be entitled to these benefits, the person in question may not disclose them until the National Prosecution Office has made a decision as to whether it should intervene. That person must also immediately desist from taking part in the illegal conduct. A second party to an illegal arrangement may also be entitled to these benefits if he or she provides additional evidence to that provided by the first party. In those cases, however, the second party may only be entitled to a 50% reduction of the fine. Benefits may not be extended to damages that may be imposed by the Competition Tribunal.

e. Securities Regulations

Chilean stock exchanges are local corporations that are under the supervision of the SVS and are subject to the Securities Exchange Law.[125] There are three securities exchanges in Chile: the Santiago Commercial Exchange, the Chile Electronic Exchange, and the Valparaiso Stockbrokers Exchange. Two exchanges operate in Santiago. The securities that are traded on a stock exchange are shares in open SAs and bonds. Most trades are conducted on the Santiago Stock Exchange. There are only a few publicly-traded companies whose shares are widely held. The principal indexes are the IPSA, which measures the price variation of the 40 companies the shares of which are more widely traded; the IGPA, which measures the price variation of the shares of most publicly-traded companies; the INTER-10, which groups the 10 principal IPSA companies that have American Depository Receipts (ADRs) traded in international exchanges; and the ADRián, which measures the price variation of all the Chilean shares that are traded in international markets through ADRs.

All transactions conducted in a Chilean securities exchange must be made through a stockbroker, who acts as an in-

[119] Decree Law No. 211, Art. 4 *bis*.
[120] Decree Law No. 211, Art. 41.
[121] Decree Law No. 211, Art. 39(a).
[122] Decree Law No. 211, Art. 26.
[123] Decree Law No. 211, Art. 62.
[124] Decree Law No. 211, Arts. 39 *bis* and 63.
[125] Law No. 18,045, dated Oct. 22, 1981, and published in the *Diario Oficial* on Oct. 31, 1981.

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termediary. All stockbrokers must be shareholders of the stock exchange in which they operate.

A corporation is required to register on a Chilean securities exchange if that corporation either has more than 500 shareholders or if at least 10% of its subscribed capital is held by at least 100 shareholders, excluding those shareholders who own more than that percentage.[126] Such a corporation is known as an "open corporation" and may only take the form of an SA. An open SA requires audited financial statements, as do banks, financial entities, insurance companies and social security pension funds. For a discussion of SAs, see III.B., below.

Shares traded on a stock exchange or shares of corporations not registered on a stock exchange can be acquired freely on the stock exchange or directly from their owners, as the case may be.

f. The Banking and Insurance Sectors

(1) The Banking Sector

The Chilean banking system was designed in the 1920's. Rather than having one single monetary and banking institution that supervises both the stability of the local currency as well as local financial institutions, Chile follows the banking system of the United States with a central bank which, among others, has the function of regulating the circulation of cash and credit, and a supervisory institution, the Superintendency of Banks and Financial Institutions (*Superintendencia de Bancos e Instituciones Financieras* or SBIF), which has the function of ensuring that banks comply with banking laws.

The Central Bank of Chile was created in 1925 and both the State as well as private investors had stakes in its capital. Since 1989, the Central Bank has been a fully autonomous institution. It is governed by a Council of five members that are designated by the President of Chile and confirmed by the Chilean Senate. In addition to issuing currency, the Central Bank's main functions are to secure the stability of the Chilean currency by seeking to maintain a low and stable inflation rate by means of regulating the amount of money in circulation and the amount of credit available in the Chilean economy, including setting interest rates. The Central Bank also has the task of promoting the stability and efficiency of the financial system and ensuring that both internal and external payments function correctly. The Central Bank is in charge of acting as an arbitrator in international financial issues and regulate foreign exchange transactions.

In the early 1970's and as a result of the political and economic crises, most Chilean banks were nationalized. In 1974, nationalized banks were rapidly privatized and State-owned organizations were prohibited from owning shares in banks. The banking system underwent a liberalization process and new private banks and financial institutions proliferated. A recession in the early 1980s created a crisis in the financial market that led the State to intervene and wind-up many banks, and the Central Bank of Chile to buy practically all of their high-risk portfolio at nominal value with a commitment to resell it to them with future cash-flow. In 1986, Chile introduced banking regulations to correct the inefficiencies of the past and eliminate loopholes, such as prohibiting banks from lending to their shareholders or management. It also introduced objective capital and solvency requirements, as well as bank and State guarantees for deposits. The bad debt portfolio has been substantially settled and the capitalization of banks was partially accomplished through popular capitalism, whereby shares were sold to many small shareholders. The 1990's followed with additional legislation to liberalize banking regulations, including an ease of the rules where foreign parties can wholly-own a local bank or set up Chilean branches of foreign banks, provided that the foreign bank was established in a country either with an adequate autonomous supervisory organization, similar to the SBIF, or that is subject to the Basel Committee on Banking Supervision rules.

Over the last decade, there has been a general feeling that the number of financial institutions operating in Chile is excessive. For this reason, the approval of new banking licenses has been difficult to obtain and the SBIF has encouraged mergers. As a result, the total number of banks has been significantly reduced — from 42 in 1994 to 20 in 2017. Specifically, today there are 20 financial entities operating in Chile; of the 20 banks, one is a State-owned bank, 14 are private banks, mostly foreign-owned, and five are branches of foreign banks. These entities are subject to the General Banking Law and are supervised by the SBIF.[127]

To establish a Chilean bank, the entity must be set up and operate as an open *Sociedad Anónima* (SA). Prior to the bank's incorporation, the founding shareholders of a bank must deposit with the SBIF a guarantee equal to 10% of the proposed capital of the bank. These shareholders must also deposit with another bank the funds they receive for the shares that are subscribed of the bank in formation until that bank is formed and the Board of Directors has been established. Also, these shareholders may not be remunerated for the services rendered in setting up the bank.[128] The SBIF must approve the bank's by-laws and ensure that it has the necessary capital to conduct its business. That approval must be registered with the Commercial Registry together with the bank's deed of incorporation and by-laws and published in the *Diario Oficial*. The SBIF must also ensure that the bank has the necessary human and technological resources and control systems to be able to undertake its functions.[129] A bank may only be capitalized with cash, in Chilean pesos, unless the capitalization is made as a result of either a merger or an acquisition of assets and liabilities from one bank to another, or from a loan capitalization.[130] A bank may only issue ordinary shares, although it may issue different series, but the issuance of preferred stock is not allowed. Also, no shares can be issued in exchange of services.[131] Nei-

[126] Law No. 18,045, Art. 5(c).

[127] Decree with Force of Law No. 3, dated Nov. 26, 1997, published in the *Diario Oficial* on Dec. 19, 1997, as amended. For years, the Chilean financial market has operated with two types of institutions: commercial banks, which offer a full range of banking services, and financial companies, the operations of which were restricted when compared to those of commercial banks, as they could not operate current accounts or carry out import and export operations or underwriting. In 2007, financial companies were abolished and transformed into banks. Law No. 20,190, published in the *Diario Oficial* on June 5, 2007, Art. 3(14).

[128] General Banking Law, Art. 27.

[129] General Banking Law, Art. 31.

[130] General Banking Law, Art. 49(1).

[131] General Banking Law, Art. 49(2).

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ther State-owned organizations nor private companies in which such organizations have a majority equity interest may own shares in a Chilean bank.[132]

As stated above, a foreign financial institution may also create a local bank in Chile, acquire a significant equity stake therein, or set up a Chilean branch. However, these investments require prior authorization from the SBIF, which can only be granted if in the foreign financial institution's country of incorporation there is a board, similar to the SBIF, that adequately supervises the financial market and that exchanges relevant information with the SBIF. The investment also requires the prior authorization from that foreign board. These requirements can also be met if the country of incorporation of the foreign financial institution is a member of the Basel Committee.[133]

A foreign bank may also operate in Chile through a branch. The branch can operate in Chile just like a local bank. To do so, it must obtain a preliminary authorization from the SBIF and comply with the corporate rules governing setting-up a Chilean branch. The SBIF will examine the head office's by-laws to ensure that nothing contrary to the Chilean legislation is contained therein. SBIF's authorization and an extract of the head office's by-laws, as well as important changes thereof, must be registered in the Commercial Registry and published in the *Diario Oficial.* The head office must allocate a portion of its capital to the branch.[134] That capital must be remitted to Chile and converted into Chilean pesos pursuant to the regulations governing foreign investments.[135] Even though a branch does not have legal personality, all transactions between a branch and its office are treated as if the branch were an independent party, except for the fact that the head office is jointly liable with respect to the obligations assumed by its branch in Chile. In this regard, Chilean creditors of those obligations have a preference over the assets that the foreign bank has in Chile. A branch's after-tax profits may be remitted to the head office with the authorization from the SBIF.[136]

A foreign bank may also operate in Chile through a representative office, which acts as an agent for its head office.[137] Representative offices also require a prior authorization from the SBIF. They are not allowed to conduct banking business within the country, but they may publicize credit products that are offered by the head office.

Foreign banks operating in Chile through a branch or a representative office have the same rights as Chilean banks and are subject to the same legislation.[138] In this regard, these banks may not invoke rights arising from their nationality in connection with their Chilean operations and all disputes must be resolved in Chilean courts.

Banks may not own shares in another bank, unless it is for purposes of merging with the latter.[139] Mergers between banks and the purchase of most or all the assets and liabilities of a bank by another bank also require prior authorization from the SBIF. That authorization is also required when a person acquires a majority of the shares of two or more banks or increases that majority to two-thirds of the shares.[140] Furthermore, no person can own, directly or indirectly, shares in a bank that represent more than 10% of its capital unless that person has obtained prior authorization from the SBIF.[141]

The appointment of a member of the Board of Directors of a bank must be published in a local newspaper and the SBIF must be notified of that appointment. The same requirement applies to the appointment of the Managing Director and his or her Deputy. The Board of Directors must meet at least once a month. Foreign banks operating in Chile through a branch are not required to have a Board of Directors in Chile but are required to appoint a legal representative with broad powers to represent the home office. The number of Directors may range from five to 11. Directors can serve for up to three-year terms, although they can be renewed.[142] The appointment of a Director may not be restricted by reason of his or her profession or nationality.[143] Directors may not be employees of a bank.[144]

A bank's paid-in capital and reserves may not be less than 800,000 development units. The bank is required to restore its capital and reserves within one year if that sum falls below the minimum amount.[145] At the time of its incorporation, however, 50% of a bank's (or a branch of a foreign bank) minimum capital must be paid-in. There is no time limit to pay the other 50%, but the bank must have an effective net worth of at least 12% of the value of its assets until the 800,000-development unit threshold is reached.[146] Chilean banks must have an effective net worth of not less than 8% of the cash and cash-equivalent assets at risk, net of provisions. Furthermore, a bank's basic capital may not be less than 3% of its total assets, net of provisions.[147] In this regard, a bank's effective net worth includes its paid-in capital and reserves, the value of its subordinated bonds that it has placed in the market, and voluntary provisions. Increases and reductions of a bank's capital require the authorization from the SBIF.[148] To ensure that banks maintain a minimum liquidity to satisfy their customers' cash needs, the law authorizes the Central Bank to prohibit banks from lending a certain percentage of their deposits, i.e., a technical reserve. The actual percentage depends on the type of the deposit that has been made and the currency. The SBIF classifies banks in five different categories on the basis of their solvency and management control levels.

Most lending transactions in Chile are conducted by banks. Financing may also be provided by *Corporación de Fomento de la Producción* (CORFO), a State-owned entity that provides long-term financing for industrial and other activities. Leasing may also be obtained from leasing companies that operate in the country for both real estate and machinery and equipment. Factoring companies are also present in Chile. Fi-

[132] General Banking Law, Art. 49(10).
[133] General Banking Law, Art. 29.
[134] General Banking Law, Art. 32.
[135] General Banking Law, Art. 34.
[136] General Banking Law, Art. 47.
[137] General Banking Law, Art. 33.
[138] General Banking Law, Art. 34.
[139] General Banking Law, Art. 49(11).
[140] General Banking Law, Art. 35 *bis.*
[141] General Banking Law, Art. 36.
[142] General Banking Law, Art. 49(4).
[143] General Banking Law, Art. 49(6).
[144] General Banking Law, Art. 49(8).
[145] General Banking Law, Art. 50.
[146] General Banking Law, Art. 51.
[147] General Banking Law, Art. 66.
[148] General Banking Law, Arts. 52 and 53.

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nancing for low-cost housing may be obtained from the Housing Ministry. Most local financing is in the form of short-term bank loans, with the exception of loans granted by CORFO and housing loans. To prevent the flight of capital and to try to achieve a low inflation rate, the Central Bank tries to keep local interest rates slightly higher than the rates prevailing internationally. Thus, local financing tends to be more expensive than foreign loans. Local loans for up to 30 days are normally made on the basis of a fixed rate. Loans in excess of 30 days are made based on a cost-of-living increase plus interest. Currently there are no restrictions on local borrowing by foreign investors.

A bank cannot grant a loan to any person that exceeds 10% of the bank's effective net worth, unless the amount in excess of that threshold is to be used for public works operated under concession, in which case the limit is set at 15% of the effective net worth. The threshold may also be increased to 30% of the bank's net worth if the amount in excess of the 10% threshold is guaranteed with movable property, real estate, bills of exchange or promissory notes.[149] Likewise, a bank may not grant loans to its shareholders owning more than 1% of the bank's shares or its management in more favorable terms than those granted to third parties in similar transactions in terms of periods, interest rates or guarantees. In any case, the overall amount of loans granted to a shareholder or a member of its management team and their related parties may not exceed 5% of the bank's effective net worth; that threshold may be increased to 25% of the bank's effective net worth if the loans are guaranteed provided that those loans do not exceed the bank's net worth. Loans of less than 3,000 development units are excluded when computing the above thresholds.[150] A bank may not grant loans to a director, his or her spouse, and their children if they are minors, or companies in which any of them have an equity stake.[151]

To reduce the inflow of short-term foreign loans, the Central Bank may establish a mandatory deposit of a certain percentage of the foreign loan principal, although the rate is currently 0%.

Chilean banks and credit card companies, which must also be incorporated as open SAs, are supervised by the SBIF, which is an autonomous organization and financed by the banks and credit card companies that is supervises.[152] The SBIF is also in charge of issuing the accounting rules pursuant to which banks must prepare their financial statements.[153] Banks are required to publish a statement of their financial position at March 31st, June 30th and September 30th of each year in a national newspaper. Furthermore, a bank's annual financial statement must be audited by an independent auditor, whose report must be sent to the SBIF.[154] Any person that controls a bank and owns more than 10% of its shares is also required to send to the SBIF information as to its financial position.[155]

As a general rule, banks must observe secrecy with respect to deposits made by their customers. Other transactions may be disclosed but only to those persons who can prove that they have a legitimate interest and as long as it is not foreseeable that that disclosure may cause harm to the customer. However, courts and prosecutors may order a bank to provide confidential information on specific transactions that are relevant to the proceedings.[156] Generally, banks are required to keep their books, records and documentation relating to their customers for a period of six years.[157]

It should be noted that private pension fund companies may invest their funds only in certain investments, particularly debt instruments and the stock exchange, and within the limits and percentages permitted by law. A percentage of their funds may also be invested abroad. These limitations seek to ensure appropriate security and profitability.

In an effort to provide security and legal certainty to users of services and products offered by fintech companies, Chile has introduced specific rules governing such companies.[158] To this end fintech companies are defined as those that design, offer and provide financial products and services through the use and application of innovation and technological developments. Specifically, the following are governed by the Fintech Law:[159]

(i) Collective financing or crowdfunding platforms: physical or virtual places by means of which owners of investment projects with financial needs promote their projects and contact potential investors;

(ii) Alternative transaction systems: physical or virtual places that are not permitted to act as stock exchanges but that allow their participants to publicly trade, offer or transact in financial instruments or securities;

(iii) Credit advice: services involving evaluations or recommendations in connection with an individual's or a company's capacity to repay or likelihood of repaying for purposes of obtaining, modifying or renegotiating loans or other types of financing;

(iv) Investment advice: services involving evaluations or recommendations as to the desirability of making investments in publicly offered securities, financial instruments or investment projects;

(v) Custody of financial instruments: maintaining financial instruments, money arising from cash flows and from the sale of financial instruments in one's name and on behalf, or in the name of, third parties, to the extent the financial instruments are held in custody, or money transferred by those third parties to acquire financial instruments or to guarantee transactions with such instruments;

(vi) Routing orders: this service involves channeling orders received from third parties to purchase and sell publicly-offered securities or financial instruments to either alternative transaction systems, securities intermediaries or product brokers; and

[149] General Banking Law, Art. 84(1).
[150] General Banking Law, Art. 84(2).
[151] General Banking Law, Art. 84(4).
[152] General Banking Law, Arts. 2 and 8.
[153] General Banking Law, Art. 15.
[154] General Banking Law, Art. 16.
[155] General Banking Law, Art, 16 *bis.*
[156] General Banking Law, Art. 154.
[157] General Banking Law, Art. 155.
[158] Law No. 21,521, dated December 22, 2022, published in the *Diario Oficial* on January 4, 2023, which came into force on February 3, 2023 ("Fintech Law").
[159] Fintech Law, Arts. 2 and 3.

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(vii) Intermediation of financial instruments: this service involves any activity aimed at buying or selling financial instruments for third parties through either the purchase or sale on its own behalf with a view to subsequently buying or selling the same instruments to the third parties, or buying or selling financial instruments in the name of or for such third parties.

For purposes of the Fintech Law, a financial instrument consists of any title used or structured to generate revenue, or representing debt or a virtual financial asset, including cryptoassets and securities that are not registered with Securities Registry and derivative contracts, irrespective of whether the instrument is physically or electronically supported. On the other hand, a financial instrument does not include a publicly-traded security or money (including foreign currency) regardless of whether it is physically supported or digitally supported.

The National Financial Commission is in charge of supervising fintech companies and their compliance with their obligations laid out in the Fintech Law.

Fintech services may only be provided by companies registered in the Financial Services Providers Registry, which is managed by the Financial Markets Commission. Multinational enterprises rendering fintech services in Chile must domicile an entity in Chile in order to do so.[160] Registration must be filed following the instructions issued by the Financial Markets Commission, including submitting the information listed below:[161]

(i) The company's name, its principal shareholders and its legal representative;

(ii) The company's deed of incorporation and bylaws and their publication by the Companies Registry;

(iii) The URL of the company's website, which must comply with risk management and user information standards, as well as personal data protection procedures;

(iv) A sworn statement that, during the 10 years prior to the filing, neither the company, nor its principal shareholders, nor its officers or directors have committed an offense;

(v) A sworn statement that the company is not a debtor in a bankruptcy proceeding;

(vi) A statement of the fintech services that the company seeks to provide;

(vii) A sworn statement that the information submitted is true and correct; and

(viii) Confirmation that the company is entitled to operate as a SEIL (*Sistema de Envío de Información en Línea* or Online Information Remittance System) user before the Financial Markets Commission.[162]

Unless they are not required to register, Fintech applicants may render only one or more fintech services, i.e., unless otherwise excepted, applicants can only be engaged in rendering Fintech services; they cannot perform other types of activities. Applicants must meet different requirements depending on the type of fintech activity they are seeking to perform. The Financial Markets Commission must authorize the registration within a period of six months after the filing was made.[163]

The Fintech Law sets out a number of obligations with which fintech companies must comply. Specifically, fintech companies must:

(i) Meet certain information requirements *vis-à-vis* the public and companies rendering custodial and intermediary services are also required to provide certain information to the SII on an annual basis.[164]

(ii) Meet risk management and corporate governance standards, including placing guarantees when they obtain a certain (large) number of customers or conduct a significant number of transactions, as defined by the Financial Markets Commission. The Fintech Law allows two or more small fintech companies to group themselves to cofinance their guarantees.

(iii) Have a minimum net equity equal to the higher of at least 5,000 development units or 3% of their weighted assets based on their financial and operational risks if they meet the requirements for being treated as risk enterprises in view of the number of their customers or the number of their transactions, as defined by the Financial Markets Commission, and render intermediation or custodial services with respect to financial instruments. The minimum net equity requirement may increase to 6% of weighted assets for fintech companies found to have risk management deficiencies.

(iv) Register in the Registry of Companies Supervised by the Financial Analysis Unit of the Financial Markets Commission and appoint a compliance officer who must report potentially suspicious transactions on a quarterly basis.

Chile has a Consolidated Debt Registry that is run by the Financial Markets Commission and seeks to provide the financial market with detailed financial information on a person's debt obligations.[165] Collecting and centralizing a person's entire debt obligations under a single registry allows and enables financial institutions to conduct credit evaluations and assess commercial and credit risks. The Consolidated Debt Registry, which covers both individuals and companies, allows debtors to access their information, including payment status and details on the institutions that have accessed their information over the past 12 months.

Although the financial institutions are required to provide the information, including updates, rectifications and cancella-

[160] Fintech Law, Art. 5. However, certain companies are not required to register with the Financial Services Provider Registry if they are governed by certain legislation. For instance, securities intermediaries subject to the Law No. 18,045 and product brokers subject to Law No. 19,220 may render crowdfunding platform services and alternative transaction systems without having to register. Banks and security intermediaries subject to Law No. 18,045 may also render routing orders and services involving the intermediation of financial instruments.

[161] Fintech Law, Art. 6; Financial Markets Commission General Norm No. 493, dated February 3, 2023. The registration must be filed within 12 months after the entry into force of General Norm No. 493, i.e., prior to February 2, 2023.

[162] See Financial Markets Commission General Norm No. 314.

[163] Fintech Law, Arts. 6 and 7.

[164] Fintech Law, Art. 8.

[165] Law No. 21,680, dated June 25, 2024 and published in the *Diario Oficial* on July 3, 2024. This Law will come into effect on April 1, 2026.

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tions, debtors can also request updates, changes and cancellations to their information. Also, debts that have been overdue for more than five years cannot be included in the Consolidated Debt Registry unless the debtor has expressly consented. Law No. 21,680 imposes penalties, ranging from 100 to 10,000 monthly tax units as well as imprisonment on financial institutions and their representatives for a wide range of acts and omissions, including failure to report information and knowingly reporting false information.

(2) The Insurance Sector

Insurance business may only be undertaken by corporations that are incorporated in Chile with the exclusive purpose of operating in the insurance business.[166] There is no limitation on foreign ownership of Chilean insurance companies. However, foreign insurance companies without a legal presence in Chile may insure international maritime transportation, international commercial aviation, international transit of merchandise, satellites, and their cargo. Insurance may also be taken abroad, except for insurance that is compulsory by law as well as insurance for disability and survivorship annuities, which may only be contracted locally. Chilean insurance companies are permitted to insure risks that are located abroad.

At the time of its incorporation, the capital of an insurance company may not be less than 90,000 development units, which must be fully subscribed and paid.[167] To operate in the insurance business, a corporation must obtain authorization from the Superintendence of Securities and Insurance (*Superintendencia de Valores y Seguros* or SVG), which is the autonomous State organization that supervises insurance companies.[168] The founding members of an insurance company must inform the SVS of any shareholder owning 10% or more of the capital or with the power to appoint at least one member of the Board of Directors. Furthermore, the shareholders must have a net worth equal to at least the amount contributed to capital of the insurance company.[169]

Foreign insurance companies may also operate in Chile through agencies by establishing a local branch. Like insurance companies, branches must obtain authorization to operate from the SVS.[170][179] The foreign head office must comply with the requirements laid out in Chilean legislation for insurance companies. A branch of a foreign corporation has the same rights and obligations as a national insurance company and it may not invoke rights or privileges by reason of its nationality. The net equity allocated to an insurance branch must actually be remitted to Chile and converted into Chilean pesos pursuant to the legislation on foreign investments. All claims pertaining to an insurance branch's activities are to be heard and resolved by Chilean courts pursuant to Chilean laws, regardless of the nature of the claim. Moreover, the transactions between a Chilean insurance branch and its foreign head office and other related parties are deemed to be made between separate parties, although the head office is liable with respect to the branch's liabilities as the branch does not have separate legal personality. An insurance branch is not required to have a board of directors, but must have an agent with broad powers to legally represent it. Branch profit remittances may be made to the foreign head office, but they must be authorized in advance by the SVS, which must ensure that the branch maintains the necessary solvency ratios.[171]

Insurance companies are divided into two groups: companies that insure risk of loss and deterioration of property (known as the first group) and companies that cover risks with respect to persons (known as the second group).[172] An insurance company in one group cannot cover the risks of the other group, with the exception of personal accidents and health, which can be offered by companies in both groups.[173] Credit risks can only be insured by companies in the first group and only to the extent that they are exclusively engaged in providing this type of insurance. Except for export credit insurance policies, insurance companies cannot insure or reinsure credit risks if the party to be insured is related. The debt-to-equity ratio for insurance companies in the same group cannot exceed 5:1, while the ratio for companies in the second group cannot exceed 15:1, although the SVS can increase the ratio up to 20:1. For companies in both groups, the total indebtedness with third parties that do not generate technical insurance reserves may not exceed their equity.[174]

Reinsurance in Chile may be contracted with reinsurance companies that have reinsurance as their exclusive purpose. Reinsurance companies can operate in both insurance groups, provided that they set up specific capital for each one of those groups, keep separate books,[175] and maintain a net equity of at least 120,000 development units for each insurance group. Reinsurance may also be provided by insurance companies, but they may only reinsure risks of the group in which they operate. Foreign reinsurance companies may also reinsure in Chile provided that they obtain at least a BBB risk rating by prestigious international rating firms. Foreign reinsurance companies must appoint a legal representative in Chile, unless the reinsurance is contracted through a reinsurance broker that is registered with the SVS in the Foreign Reinsurance Brokers Registry, who must be duly insured.

Insurance and reinsurance companies that are established in Chile are required to set up technical reserves based on actuarial principles, mortality rates, interest rates and other technical parameters as well as on rules established by the SVS.[176] These technical reserves must be invested in a broad range of assets, such as Chilean and foreign government bonds, Chilean and foreign bonds and time deposits, syndicated loans, shares

[166] Decree with the Force of Law No. 251 (DFL No. 251), dated May 20, 1931, published in the *Diario Oficial* on May 22, 1931, as amended, Art. 4.

[167] DFL No. 251, Art. 7.

[168] DFL No. 251, Art. 3.

[169] DFL No. 251, Art. 37.

[170] DFL No. 251, Art. 4 *bis.*

[171] DFL No. 251, Art. 4 *bis.*

[172] DFL No. 251, Art. 8. Only the second group of insurance companies may own affiliates that operate as General Administrators of Funds, which are special SAs that have the exclusive purpose of managing third party resources, such as mutual funds, redeemable and non-redeemable investment funds, and investment portfolios. On the other hand, insurance companies in both groups may set up affiliates to operate as Pension Fund Administrators, which are supervised by the Superintendence of Pensions. These affiliates are prohibited from offering any product other than pensions, even for free.

[173] DFL No. 251, Art. 11.

[174] DFL No. 251, Art. 15.

[175] DFL No. 251, Art. 16.

[176] DFL No. 251, Art. 20.

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in open SAs and foreign companies, Chilean concessionaires of public infrastructures, Chilean and foreign mutual and investment funds, and commercial real estate. The investments must be diversified based on maximum percentages as provided by the regulations.[177]

g. Pollution Control

The Health Code and other special legislation set forth the basic regulations concerning pollution control. They aim specifically to keep water and air uncontaminated and to maintain basic conditions of health and security in industries. Certain projects or activities that may have an environmental impact, such as ports, mining projects, and the metallurgic and paper industries, must obtain prior approval from the Ministry of the Environment upon submitting an environmental impact study.[178] There are rules concerning environmental quality, the emission of polluting substances and environmental damage responsibility. For a discussion on the taxation of emissions, see V.C.7., below.

4. Licensing

a. Industrial Property

Legislation on patents, trademarks, rights to industrial models, drawings and designs, and designations of origin, is contained in the Industrial Property Law.[179]

Any person, whether Chilean or foreign, can obtain industrial property protection in Chile, provided it is duly registered. A foreign owner of industrial property must appoint a Chilean representative to register its industrial property in Chile.[180]

All applications for registration must be made to the Industrial Property Department of the Ministry of Economy.[181] A summary of the content of the applications must be published in the *Diario Oficial*.[182] Any person may oppose an application for registration within 30 days or 45 days from the date the summary is published in the *Diario Oficial*, depending on the type of industrial property that is applied for registration.[183] The applicant must be given notice of any opposition to his application.[184] The registration of an industrial property right is subject to a non-refundable fee of either two or three monthly tax units, depending on the type of industrial property, for each five years for which the right is granted. The fee increases for applications exceeding 80 pages. The fee must be paid within 30 days after the application is filed.[185] The applicant must also bear the costs of an expert that is appointed by the Industrial Property Department, who has to issue a report verifying whether the requirements for registration of an industrial property are met.[186] Registration renewals, transfers, licenses and name changes with respect to certain industrial property rights are also subject to a fee, payable at the time the application is filed.[187]

Industrial property rights may be transferred via a public deed. These transfers must be registered with the Industrial Property Department.[188] Registered trademarks, however, may not be divided and cannot be separately transferred in part, except as regards their geographical coverage.

Any person with an interest may file a claim for nullity with respect to a registered industrial property right.[189] The parties may agree to appoint an expert to issue a report to verify the facts contained in the claim and in its response. If the parties do not agree on the appointment, the expert must be appointed by the Industrial Property Department, which the parties may challenge for cause.[190] The Chief of the Industrial Property Department decides in first instance. If the registration is declared null, it is deemed to be so from the date it was registered.[191]

The owner of an industrial property right may bring an action when this right is breached. The action can involve a request for cessation of the acts that breach the owner's rights, damages, and the adoption of measures to prevent the wrongdoer from continuing breaching those rights.[192] When asking for damages, the owner may quantify them based on either the profits that he or she has failed to generate because of the breach, the profits the wrongdoer has generated because of the breach, or the royalties the wrongdoer would have paid to the owner had a license been granted, taking into account the market value of the intangible and other consideration for other licenses that the owner may have granted with respect to those rights. To the extent the breach has been proven, the owner has the option of requesting that the damages be paid in a lump sum, as determined by the court, but which may not exceed 2,000 monthly tax units per breach.[193]

However, damages may only be claimed if the wrongdoer has either manufactured the product or distributed it with knowledge that he or she was infringing an industrial property right.[194] The judge is also authorized to order injunctive relief in litigation involving industrial property rights, such as a cessation of the acts that give rise to the alleged breach and confiscation of goods as well as their packages, labels and advertisements.[195]

(1) Patents

Chilean law defines a patent as the exclusive right that is granted by the State to protect an invention. In this regard, an invention is understood to be a solution to a technical problem that leads to an industrial work. The invention may consist of a product or a process.[196] To be patentable, the invention must be novel, it must have an inventive nature and it must be suscepti-

[177] DFL No. 251, Art. 23.

[178] Law No. 19,300, dated March 1, 1994, published in the *Diario Oficial* on March 9, 1994, as amended.

[179] Law No. 19,039, dated January 24, 1991, published in the *Diario Oficial* on January 25, 1991, as amended. Law No, 19,039 was consolidated into a new text under Decree with the Force of Law No. 3, dated March 9, 2006 and published in the *Diario Oficial* on June 20, 2006.

[180] Law No. 19,039, Art. 2.

[181] Law No. 19,039, Arts. 3 and 21.

[182] Law No. 19,039, Art. 4.

[183] Law No. 19,039, Art. 5.

[184] Law No. 19,039, Art. 9.

[185] Law No. 19,039, Arts. 8, 18 and 18 *bis* (B).

[186] Law No. 19,039, Art. 6.

[187] Law No. 19,039, Art. 18 *bis* (D).

[188] Law No. 19,039, Art. 14.

[189] Law No. 19,039, Art. 18 *bis* (G).

[190] Law No. 19,030, Arts. 18 *bis* (J) and (K).

[191] Law No. 19,039, Art. 18 *bis* (N).

[192] Law No. 19,039, Art. 106.

[193] Law No. 19,039, Art. 108.

[194] Law No. 19,039, Art. 109.

[195] Law No. 19,039, Art. 112.

[196] Law No. 19,039, Art. 31.

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ble of having an industrial application.[197] To this end, an invention is deemed to be a novelty if it has not been disclosed or made available to the public anywhere in the world by means of a publication or through the sale or use of a product.[198] Also, an invention has an inventive nature if, for a person with knowledge in the technical area in question, it is neither obvious nor evident.[199] Furthermore, an invention is susceptible of having an industrial application when its purpose may be produced or used in any industrial sector.[200]

When an action is brought to defend a patented process, the defendant must prove that he or she has used a different process from the one that is patented. In this regard, unless the defendant can prove otherwise, the law deems that an identical product has been obtained by means of the process that is patented. On the other hand, a product can be regarded as new and, therefore, patentable, if it meets the novelty requirements described above.[201]

Industrial patents are granted the exclusive right to produce and sell the product that is produced from the patent for a period of 20 years, which may not be renewed.[202] The protection is enforceable throughout the country. A patent for an invention already patented abroad is granted only for the equivalent of the term remaining in the country in which it was first granted and has a one-year priority for registration in Chile, as from the date of application in that country. All patented products must have their patent registration number printed on them together with the words "Invention Patent" or the initials "I.P."[203]

A person that has an invention but cannot meet all the requirements needed to register it may nevertheless file a provisional patent application. A provisional application confers on the applicant a priority period of 12 months for registering the patent.[204]

In certain instances, particularly when there is an anti-trust issue, the Industrial Property Department, the Anti-trust Tribunal or a civil court, depending on the case, may grant a party a license to use a patent without the consent of its owner.[205]

The following inventions may not be patented:[206]

(i) Scientific theories and mathematical methods;

(ii) Plants, animal breeds (except microorganisms), and processes that are essentially biological for the production of plants and animals, except certain microbiological processes and certain vegetable varieties;

(iii) Economic, financial or commercial systems, methods, principles or plans or a mere verification and control thereof, as well as those relating to purely mental or intellectual activities or on gambling;

(iv) Methods for surgical or therapeutic treatment for humans or animals, as well as diagnostic methods, with the exception of products designed to perform such methods;

(v) New applications for articles, objects or elements already known and employed for certain purposes, and changes or variations in the form, dimensions or content of such items, unless such changes or variations lead to a new use of the item concerned that resolves a technical problem and require a modification to the dimensions, proportions or materials of the item concerned in order to obtain the solution to the technical problem; the new reinvented use must be proven with experimental evidence in the application for the patent;

(vi) Foreign inventions already known to the public in any country in the world, even though unknown in Chile;

(vii) Inventions that are unethical, or contrary to Chilean law, public order or national security; and

(viii) Living beings, natural biological processes, other biological materials and genomes; however, processes that use one or more of those biological materials and the products that are obtained out of them may be registered as patents provided the biological material and its industrial application are properly described in the application for the patent.

A patent does not give the owner the right to prevent third parties from selling patented products that they have purchased legitimately in any country once that product has been introduced in the market by the owner of the patent or by a third party with the owner's consent. Likewise, a patent does not confer on its owner the right to prevent third parties from importing, exporting, manufacturing or using the material that is protected by the patent in order to register a pharmaceutical or agricultural-chemical product; however, this does not entitle the seller to sell the patented products without the authorization of the owner of the patent. Furthermore, the rights conferred by a patent do not extend to private acts conducted with no business objectives, to acts carried out purely for experimental purposes or to the preparation of medicines in accordance with a medical prescription.[207]

Persons that import, produce, use or sell a patented product or use a patented process without a license may be fined 25,000 monthly units. Those persons may also be required to pay damages to the owner of the patent. All products produced without a license may be confiscated.[208]

(2) Trademarks

Under Chilean law, a trademark comprises any sign that is capable of distinguishing products or services in the market. The sign may consist of words, including the name of a person, letters, numbers and figurative elements, such as images,

[197] Law No. 19,039, Art. 32.

[198] Law No. 19,039, Art. 33. A public disclosure made within 12 months prior to the filing of a patent application will not be taken into account for purposes of determining the novelty of the invention if the disclosure was either authorized by the applicant or was made based on unfair practices against the applicant. Law No. 19,039, Art. 42. If a patent has been applied for abroad, the applicant has a priority period of one year to apply for its registration in Chile. Law No. 19,039, Art. 34.

[199] Law No. 19,039, Art. 35.

[200] Law No. 19,039, Arts. 36 and 37.

[201] Law No. 19,039, Art. 31 *bis.*

[202] Law No. 19,039, Arts. 39 and 49.

[203] Law No. 19,039, Art. 52.

[204] Law No. 19,039, Art. 40.

[205] Law No. 19,039, Art. 51.

[206] Law No. 19,039, Arts. 37 and 38.

[207] Law No. 19,039, Art. 49.

[208] Law No. 19,039, Art. 52.

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graphics, symbols, color combinations, sounds, scents or tridimensional forms, or a combination thereof. If a sign is not distinctive, it may nevertheless be registered if it has acquired distinctiveness in the market through its use. Advertising phrases may also be registered provided they are linked to a registered product or service trademark.[209] However, such phrases may not be transferred unless the principal trademark to which the phrase is linked is also transferred.[210] A registered trademark grants its owner the exclusive and excluding right to use it in the commercial sphere in order to distinguish the owner's products or services. Thus, the owner of a registered trademark may prevent a third party from using the same or a similar trademark in the course of that party's business without the owner's consent, if such use by the third party may create error or confusion. In this regard, confusion is deemed to exist if the use made by the third party relates to an identical trademark for the same products or services.[211] On the other hand, the owner of a trademark registered in Chile is not entitled to prohibit the use of the trademark by third parties with respect to products that are legitimately traded in any country with that trademark by the owner himself or with his or her express consent. Furthermore, the owner of a registered trademark cannot prevent the use by a person of his or her name or the name of his or her predecessor in his or her business activities, unless the use of that name can create consumer error or confusion. Likewise, owners of registered trademarks that include geographical terms, terms indicating the gender, nature variety, origin, nationality, weight, value or quality of their products or other terms describing their products or services may not prevent the use of such terms when they are used to indicate their precise meaning, unless such use may create consumer error or confusion.[212]

A trademark may only be requested for a specific product or service and the application must make reference to the class or classes to which that product or service belongs pursuant to the International Classification under the Nice Agreement of 1957, as amended. Signs to distinguish advertisement slogans related to trademarks that are already registered may also be registered as trademarks.[213] Members of an association with legal personality are also entitled to register a collective trademark but cannot assign it to third parties.[214] Certification trademarks, i.e., signs or combinations of signs that are capable of distinguishing in the market products or services belonging to third parties, guaranteeing that these products and services meet common requirements, can also be registered. Manufacturers or distributors of products or services that are identical or similar to those to which a given certification trademark is applicable may not own a certification trademark. The owner of a certification trademark must authorize its use by anyone whose product or service fulfils the conditions laid out in the regulation for the use of the trademark.[215] To that end, applications to register a collective trademark or a certification trademark must include a regulation for users that must: indicate the owner's identity; individualize the products or services that the collective trademark distinguishes or the products or services that are covered by the certification; indicate the requirements for the use of the trademark; and specify the reasons why a member of an association or a person that was previously authorized to use a certification trademark may be prohibited from using a collective trademark.[216]

Certain signs may not be registered as trademarks. Thus, expressions or signs used for purposes of indicating the gender, nature, origin, nationality, destination, weight, value or quality of products or services as well as those with a general commercial use to designate certain types of products or services may not be registered; nor may those that describe the product or service they apply to but that do not have a distinctive nature. Also, signs that engender error or deceit with respect to the origin, quality or type of product or service to which they relate may not be registered.[217]

An action to declare a trademark registration null has a statute of limitations of five years from the date on which the trademark is registered, although the period may be unlimited if the registration has been obtained in bad faith.[218] In any event, anyone with a legitimate interest may request that a trademark registration be declared fully or partially null in either of the following two circumstances:[219]

> (i) If after five years after its registration the trademark has not been the subject of real and effective use in Chile either by the owner or by a third party with the former's consent; or
>
> (ii) If the owner has provoked or tolerated a transformation in the usual designation of a product or service, such that the trademark has lost its force or capacity to distinguish the product or service in the course of the business activities concerned and in its general use by the public.

Trademarks that are the same or are graphically or phonetically similar to other trademarks that are registered in a foreign jurisdiction and that relate to the same product or service may not be registered in Chile if their registration would lead to confusion, but only to the extent that, in that foreign jurisdiction, the trademark enjoys fame and notoriety among the public that habitually consumes that product or demands that service. In this event, the owner of the foreign-registered trademark has 90 days within which to register the trademark in Chile. If he or she does not do so, the person whose application to register the trademark in Chile was rejected has priority to do so within the

[209] Law No. 19,039, Art. 19.
[210] Law No. 19,039, Art. 19 *bis* (B).
[211] Law No. 19,039, Art. 19 *bis* (D).
[212] Law No. 19,039, Art. 19 *bis* (E).
[213] Law No. 19,039, Art. 23.
[214] Law No. 19,039, Art. 23 *bis* (A).
[215] Law No. 19,039, Art. 23 *bis* (B).
[216] Law No. 19,039, Art. 23 *bis* (C).
[217] Law No. 19,039, Art. 20. Coats of arms, flags and other emblems, State acronyms and those of international organizations or public services, as well as signs used by the State may not be registered as trademarks. Technical or scientific names and common names recommended by the World Health Organization may also not be registered. The name of an individual may not be registered unless that individual or his or her heirs consent to it. But the names of historical celebrities may be registered if at least 50 years have elapsed from that celebrity's death and his or her honor is not hindered. A product's shape or color may not be registered. Also, a sign may not be registered if it contains the origin or attributes of a product that seeks to distinguish in Chile a geographical location or a certificate of origin and this induces the public to an error or confusion.
[218] Law No. 19,039, Art. 27.
[219] Law No. 19,039, Art. 27 *bis* (A).

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following 90 days. Likewise, owners of famous or well-known trademarks registered in Chile may prevent registration of identical or similar signs even if they distinguish different and unrelated products or services, provided that, on the one hand, the latter have some type of connection with the products or services that are famous or well-known registered trademarks and, on the other hand, it is probable that the protection that the registration would afford to the applicant would cause damage to the interests of the owner of the registered trademark. In this regard, fame and notoriety must be determined based on the industry in question and the public that habitually consumes the products or demands the services concerned.[220] The same prohibition applies with respect to: (i) trademarks that are the same or that are graphically or phonetically similar to trademarks that are already registered in Chile with respect to the same or a similar class of products or services; and (ii) trademarks that are not registered but that are effectively being used in Chile. In either of those scenarios, the user of the trademark must request its registration within 90 days from the date on which the other party had its application for registration rejected or its registration annulled. If the user fails to do this, the other party has a period of 90 days within which to apply for registration.[221]

If registration of a trademark has been applied for abroad, the applicant has priority to apply for registration in Chile for a period of six months from the date the registration was applied for in the foreign jurisdiction.[222]

Registration of a trademark (whether national or foreign) grants ownership for a period of 10 years from the date of registration. Registration may be renewed for further 10-year periods during the six months prior to, or the six months after, its expiration.[223] All registered trademarks used in the market place must carry the words "Registered Trademark" (*Marca Registrada*) or the initials "M.R." or the symbol ®. Failure to provide this indication does not affect the validity of the registration but prevents the holder of the trademark from bringing criminal actions against wrongdoers.[224]

The territorial scope of coverage for the registration of a trademark with respect to a product or service is national. In contrast, the registration of a trademark for a commercial establishment only covers the region in which the establishment is located, but the holder may extend coverage to other regions by indicating this in the application form. However, coverage may not be expanded to another region if in that other region there is already the same or a similar registered trademark that applies in the same line of business.[225]

Chilean intellectual property law imposes a fine on a person that uses, for commercial purposes and with respect to the same products or services, a tradename that is the same as or similar to a registered trademark. The fine ranges from 25 to 1,000 monthly tax units. A fine may also be imposed for the use of a trademark that is not registered or is expired or annulled, if it is represented as a registered trademark.[226] Wrongful users of registered tradenames are also required to pay damages to the registered tradename's owner. Criminal charges can also be brought against persons that counterfeit a registered trademark, irrespective of whether the product or service is manufactured, imported or distributed by the counterfeiter.[227] Counterfeits are confiscated and destroyed in Chile.[228]

(3) Industrial Models

Industrial models are generally subject to the same rules as invention patents.[229] However, the registration of an industrial model grants absolute ownership for a 10-year period.[230] The protection of industrial models is only granted for new products that are susceptible to industrial use, i.e., they must provide a benefit, an advantage or a technical effect that the product did not previously have.[231] Minor differences to prior inventions or patented models may not be protected. All industrial models must carry the expression "Industrial Model" (*Modelo de Utilidad*) or the initials "M.U.", and their registration number must be visible; however, they may be placed on the packaging if the product is sold sealed to customers.

(4) Industrial Designs

Industrial designs and drawings are also subject to the invention patent rules.[232] The protection of industrial designs is granted for a 15-year period that may not be renewed.[233] Only new and original forms may be registered, including packing cases. Clothing may not be protected.[234] Industrial designs and drawings must carry the expression "Industrial Design" (*Diseño Industrial*") or the initials "D.I." on it in a visible manner. These indications may also be placed on the packaging if it is sold sealed to the customer.[235] There is a special abbreviated procedure for registering industrial designs.[236]

(5) Other Industrial Property

Service inventions may also be protected. It is the employer or whoever contracted the service who has the right to apply for and own the industrial property right if the nature of the services rendered under the agreement between the employer or contractor and the individual who came up with the invention is creative, unless the agreement provides otherwise.[237] If, on the other hand, the services rendered by the individual are not of a creative nature, then the individual who came up with the invention has the right to apply for and own the intellectual property on an exclusive basis, unless the individual had benefited from the knowledge acquired at work and used resources provided by the employer, in which case it will be the latter that will have the right to own the intellectual property.[238] These

[220] Law No. 19,039, Art. 20(g).
[221] Law No. 19,039, Art. 20(h).
[222] Law No. 19,039, Art. 20 *bis.*
[223] Law No. 19,039, Art. 24.
[224] Law No. 19,039, Art. 25.
[225] Law No. 19,039, Art. 23 *bis* (E).
[226] Law No. 19,039, Art. 28.
[227] Law No. 19,039, Art. 28 *bis.*
[228] Law No. 19,039, Art. 29.
[229] Law No. 19,039, Art. 55.
[230] Law No. 19,039, Art. 57.
[231] Law No. 19,039, Arts. 54 and 56.
[232] Law No. 19,039, Art. 63.
[233] Law No. 19,039, Art. 65.
[234] Law No. 19,039, Art. 62 *ter.*
[235] Law No. 19,039, Art. 66.
[236] Law No. 19,039, Art. 67 *bis.*
[237] Law No. 19,039, Art. 68.
[238] Law No. 19,039, Art. 69.

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rights may not be waived before the industrial property right is granted.

Electronic closed circuits may also be protected as long as they are original. In this regard, an electronic closed circuit is deemed to be original if it is the result of an intellectual effort of its creator and it is not commonly known among creators of closed circuits and their manufacturers.[239] Industrial property protection for electronic closed circuits is granted for a period of 10 years, which may not be renewed.[240] All registered closed circuits must carry the letter "T" in capital letters and inside a circle, in a visible manner; the sign may be placed on the packaging if the circuit is sold sealed to the customer.[241]

A trade secret is any undisclosed information held by a person that may be used in a production, industrial or commercial activity, provided the information is secret, in the sense that: (i) the information is not generally known by or easily accessible to persons in the circles in which this type of information is normally used; (ii) the information has a trade value as a result of its being secret; its secrecy; and (iii) the legitimate holder of the information has taken reasonable measures to keep it secret.[242] Although trade secrets may not be registered, the holder of a trade secret may bring an action against anyone that has either illegitimately come to know the trade secret or has divulged or exploited it without the holder's consent. An action can also be brought against someone that has come to know the trade secret legitimately but subject to confidentiality and divulges it.[243]

Chilean industrial property legislation recognizes and protects designations of origin, i.e., a name that identifies a product as originating from either Chile or a Chilean region or area, where the quality, reputation or another characteristic of the product is mainly attributable to that geographic location.[244] All Chilean designations of origin are listed in a special registry that is administered by the Industrial Property Department; in this regard, any person can create and register a designation of origin provided that person represents a significant number of producers, manufacturers or artisans and their establishments are confined within the area that is intended to be registered.[245] Registrations of designations of origin have an indefinite life, provided the conditions that gave rise to their recognition are maintained. In this regard, any person can bring an action at any time to cancel the registration on the basis that either the product is no longer being produced within the protected area or the conditions that justified its recognition are no longer fulfilled.[246] Once a designation of origin is registered, any person who produces within the geographical area in question a product that is covered by the registration may use the designation of origin even if he or she was not part of the registration process. These persons can identify or label their products with the words "Designation of Origin" (*Denominación de Origen*) or the initials "D.O."[247] Foreign designations of origin may also be registered and, therefore, protected in Chile, but they may lose the protection if they are not used in their country of origin.[248] Wrongful use of a designation of origin is subject to fines ranging from 25 to 1,000 monthly tax units and the perpetrator may be forced to pay damages to its legitimate users.[249]

b. Intellectual Property

Legislation on copyrights is contained in the Intellectual Property Law.[250] Protection is offered to the rights that authors acquire by the mere fact of having created a work. The work can be of a literary, artistic or scientific nature and the protection extends to the authorship, the use and the integrity of the work.[251] In this regard, the author is deemed to be the person that appears as such when the work is made public. The author of software is the person for whom those who had created it work for, unless the employment agreements provide otherwise.[252] The Intellectual Property Law protects copyrights of Chilean and foreign authors that are domiciled in the country. Foreigners that are not domiciled in Chile are favored by all international conventions subscribed to and ratified by Chile.[253]

Copyright protection can be granted with respect to books, articles, newspapers, magazines, and other written materials; written and oral speeches; dramatic and other theatrical works; musical compositions; radio and television productions; films and other audiovisual works; photographs, paintings, drawings and other illustrations, including patterns on textiles; sculptures and other figurative artistic work; videos; computer software and its user manuals; and data and other compilation of information material which, by reason of its selection or content layout, constitute intellectual creations.[254] Copyright protection is granted for the duration of the life of an author and extends for

[239] Law No. 19,039, Art. 75.
[240] Law No. 19,039, Art. 78.
[241] Law No. 19,039, Art. 84.
[242] Law No. 19,039, Art. 86.
[243] Law No. 19,039, Art. 87.
[244] Law No. 19,039, Art. 92.
[245] Law No. 19,039, Art. 94.
[246] Law No. 19,039, Art. 100.
[247] Law No. 19,039, Art. 103.
[248] Law No. 19,039, Art. 96. In particular, foreign appellations of origin that identify wines and spirits cannot be offered protection in Chile if they have continuously been used by Chilean residents to identify those or similar products in Chile in good faith prior to 1994.
[249] Law No. 19,039, Art. 105.
[250] Law No. 17,336, dated Aug. 28, 1970, published in the *Diario Oficial* on Oct. 2, 1970, as amended.
[251] Law No. 17,336, Art. 1.
[252] Law No. 17,336, Art. 8. If the software that is produced is commissioned by a third party, the authorship is deemed to have been assigned to that party, unless the agreement provides otherwise.
[253] Law No. 17,336, Art. 2. Chile has ratified the following international copyright conventions: (i) the Inter-American Copyright Convention on Literary, Scientific and Artistic Works (1945), which was ratified by Chile in 1954; (ii) the Berne Convention for the Protection of Literary and Artistic Works (1886), as amended in 1948, which was ratified by Chile in 1973, and as further amended in 1971, which was ratified by Chile in 1975; (iii) the Universal Copyright Convention (1952), which was ratified by Chile in 1955; (iv) the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), which was ratified by Chile in 1974; (v) the International Covenant on Economic, Social and Cultural Rights (1966), which was ratified by Chile in 1989; (vi) the United Nations World Intellectual Property Organization (WIPO) (1967), which was ratified by Chile in 1975; (vii) the Convention for the Protection of Producers of Phonograms (1971), which was ratified by Chile in 1977; (viii) the Treaty on International Registration of Audiovisual Works (the "Film Register Treaty") (1989), which was ratified by Chile in 1994; (ix) Annex 1C of the Marrakesh Agreement (1994), which established the World Trade Organization was ratified by Chile in 1995; and (x) the World Intellectual Property Organization Treaties on Copyrights (WCT) and on Performances and Phonograms (WPPT), which was ratified by Chile in 2003.
[254] Law No. 17,336, Art. 3.

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70 years after the author's death on behalf of the author's heirs. In the case of computer software owned by a legal entity, the copyright protection has a duration of 70 years from the time it is published.[255] A copyright becomes common cultural heritage and, as such, it can be used by anyone, once the 70-year protection period has elapsed or if the author is a foreigner that is not domiciled in Chile, unless otherwise protected by an international convention signed by Chile.[256]

The owner of a copyright is entitled to transfer it or to license it to others to use it.[257] The license must indicate the period during which the licensee can use the copyright, the consideration the licensee must pay for that use, the manner of payment, any limitations as to the use, and the territory of application.[258] Unless the license agreement provides otherwise, copyrights on literary and musical works do not confer exclusivity as to their use.[259] The price paid for the rental of a foreign film, which is generally borne by the local distributor, is deemed to include the royalty for the use of the copyright.[260]

The Chilean law on copyrights establishes a minimum compensation resident authors must receive in connection with their work, as follows:

(i) Resident painters, sculptors, and draftspersons are entitled to receive at least 5% of the gain realized by the seller each time their works are sold; this right, however, is only applicable to the author, not to his or her heirs or assignees;[261]

(ii) Resident book authors are entitled to receive royalties of at least 10% from their editors of the sales value of their books. These royalties must be paid at least once a year;[262]

(iii) Under a representation contract, whereby an entrepreneur agrees to perform a play or work of any kind to the public, the author of the play or work is entitled to receive from the entrepreneur at least 10% of the ticket sales at each performance and at least 15% of the premiere.[263] If the work is also broadcast on TV or radio, the author is also entitled to receive 5% of the advertisement fees received by the broadcasting station while the work is broadcasted or, if none, 10% of the fee received by the entrepreneur from the broadcasting station;[264] and

(iv) Artists, interpreters and producers of phonograms are entitled to receive royalties when the phonograms are broadcast on radio and television. The royalty must be determined by the managing companies and must be split 50/50 between the artists and interpreters on the one hand, and the producer on the other.[265]

The owner of a copyright is entitled to use the "©" symbol on his or her works and place it before the year of publication and his or her name. If the work involves a phonogram, the symbol to be used is a "p."[266] All copyrights must be registered with the Intellectual Property Registry.[267] Furthermore, all transfers of copyrights must be executed in a notarial deed and registered with the Intellectual Property Registry within 60 days from the date the deed is executed.[268] The Registry charges a nominal fee for each registration that ranges from 10% to 40% of a monthly tax unit, depending on the nature of the work.[269]

The wrongful use of copyright material is subject to fines as follows:

(i) The use of copyright material without an express authorization or license from the owner is subject to a fine ranging from five to 100 monthly tax units when the damage caused is less than four monthly tax units and from 50 to 1,000 monthly tax units when the damage caused exceeds 40 monthly tax units. Short-term prison sentences may also be imposed on wrongdoers;[270]

(ii) Forgery of copyrighted material is subject to penalties, which may include a fine ranging from 10 to 10,000 monthly tax units as well as a short-term prison sentence;[271] and

(iii) Whoever sells or leases directly to the public copies of art works and phonograms that are reproduced against the copyright legislation may be subject to short-term imprisonment as well as to a fine ranging from 50 to 800 monthly tax units. The same penalties apply to whoever produces, imports or purchases for sale the above products, except that the prison term may be longer and the fine ranges from 100 to 1,000 monthly tax units.[272] The owner of the copyright is also entitled to request a cessation of the wrongful activity, claim damages from the wrongdoer, and request the wrongdoer to publish a summary of the judgment in a regional newspaper.[273] The judge may also order the destruction of the copies.[274]

If the copyright breach occurs through Internet systems or networks, the Internet service provider, i.e., the data transmitter, the router and/or the supplier of the connection, cannot be held responsible for the damage caused to the owner of the copyright provided that such provider does not modify or select the content of the transmission, does not initiate the transmission, and does not select the recipient of the transmission.[275] Generally, companies that store data automatically or that conduct Internet search services are not held responsible for the data they store provided that they comply with certain requirements.[276] Furthermore, these Internet service providers are not

[255] Law No. 17,336, Art. 10.
[256] Law No. 17,336, Art. 11.
[257] Law No. 17,336, Art. 17.
[258] Law No. 17,336, Art. 20.
[259] Law No. 17,336, Art. 22.
[260] Law No. 17,336, Art. 29.
[261] Law No. 17,336, Art. 36.
[262] Law No. 17,336, Art. 50.
[263] Law No. 17,336, Arts. 56 and 61.
[264] Law No. 17,336, Art. 62.
[265] Law No. 17,336, Arts. 67 and 100.
[266] Law No. 17,336, Art. 72 *bis.*
[267] Law No. 17,336, Art. 72.
[268] Law No. 17,336, Art. 73.
[269] Law No. 17,336, Art. 76.
[270] Law No. 17,336, Art. 79.
[271] Law No. 17,336, Art. 79 *bis.*
[272] Law No. 17,336, Art. 81.
[273] Law No. 17,336, Art. 85(B).
[274] Law No. 17,336, Art. 85(C).
[275] Law No. 17,336, Art. 85(L) and (M).
[276] Law No. 17,336, Art. 85(N) and (Ñ).

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required to supervise the data they transmit or store or to conduct active searches of potential illegal acts.

D. Labor Relations

1. In General

The Chilean Constitution enshrines several labor rights, subject to statutory rules. These include the right to associate freely with trade unions, to work, to choose a profession freely and to participate in collective bargaining.[277] The Constitution expressly prohibits strikes for workers in both the national and municipal governments and in corporations or enterprises engaged in public services or that, if their activities were interrupted, could cause serious damage to the country's health, economy, supplies or national security.[278] Although the Constitution does not establish a right to a minimum wage, the Labor Code does establish such a right.[279]

Besides establishing a minimum wage, the Labor Code defines the rights and obligations of both employers and employees, mandates the content of labor contracts and establishes the procedures for employee dismissal and collective bargaining. The Labor Code also embodies the rules governing trade unions, including their creation, internal organization and functioning, relations with the employer, government control, termination, rights, and relations with other unions.

Aside from the Constitution and the Labor Code, collective agreements and arbitration awards in collective bargaining procedures represent an important source of labor law in Chile. Collective agreements may have as parties one or more employers and one or more trade unions or individual workers united for negotiation purposes.[280] Collective agreements settle common working conditions for the negotiating parties.

Labor law in Chile seeks to protect workers. For example, workers cannot be made to renounce their rights for as long as their contracts exist, and rules concerning employees' compensation for accidents while at work follow the theory of risk rather than the theory of fault.[281] In addition, when there is doubt as to which one of two or more legal provisions governs a case, the rule that most favors the worker applies. The Labor Code also grants rights to the employer but these are subject to the constitutional guarantees of employees, particularly as regards their intimacy, private life and honor.

Special legislation encourages the training of workers within an enterprise or through specialized training programs. Expenses up to a certain limit incurred on such training can be taken as a tax credit against income taxes (see V.B.10.d., below). Managerial, skilled and semi-skilled labor is available and is of good quality. Special sectors, such as mining, agriculture and fishing, employ highly skilled workers. The labor organizations were somewhat restricted until the 1990s, and are now playing a traditionally more active role. Fringe benefits depend on the type of industry.

The unemployment rate has been below 10% of Chile's workforce over the last decade.

2. Employment Contracts

a. In General

Chilean law deems a labor contract to exist whenever a subordinated personal service is performed in exchange for a fixed remuneration between an employer and an employee.[282] Exceptions apply with respect to services rendered directly to the general public, services delivered discontinuously or sporadically at the payer's home, and professional services habitually rendered at the service provider's home or chosen place without the payer's oversight or control.

An employment contract may be signed individually or on a collective basis. The former is a contract signed between the employer and the employee while the latter exists when one or more employers agree with one or more trade unions or with a group of employees that negotiate collectively common working and salary conditions for a specific time period.[283]

All labor and personal services contracts must be in writing no later than 15 days after the employee has started working.[284] The employer's version must be kept in its premises. Fixed-term contracts may not exceed one year (two years in the case of managers and professionals), and are automatically renewed by law for an indefinite length of time if the person continues working after the contract expires and after its second renewal.

Employers with more than 100 employees are required to employ individuals with a handicap. These individuals must amount to at least 1% of the total workforce.[285] If the employer cannot reasonably meet this requirement, it must either contract the provision of services with companies that meet the requirement or make monetary gifts to nonprofit associations or foundations that seek to protect people with handicaps. Those fees or gifts must amount to 24 monthly minimum salaries per year for each worker that it is required to hire.[286]

b. Special Contracts

Special rules apply with respect to contracts of apprenticeship[287] and contracts in the following fields:

(i) Agriculture;[288]

(ii) Navigation;[289]

(iii) Stevedores;[290]

[277] Constitution, Art. 19(16) and (19).

[278] Constitution, Art. 19(16).

[279] Decree with Force of Law No. 1, dated July 31, 2002, as amended, (the "Labor Code"), published in the *Diario Oficial* on Jan. 23, 2003, Art. 44.

[280] Labor Code, Art. 344.

[281] Labor Code, Art. 5.

[282] Labor Code, Art. 8.

[283] Labor Code, Art. 6.

[284] Labor Code, Art. 9.

[285] Labor Code, Art. 157 *bis*.

[286] Labor Code, Art. 157 *ter*.

[287] Labor Code, Arts. 78–86. These contracts only apply to individuals who are under 21 years of age. Their length cannot exceed two years. The remuneration for apprenticeship is not subject to special conditions and must be agreed between the parties. Apprenticeships cannot exceed 10% of the employer's workforce that work on a full-time basis.

[288] Labor Code, Arts. 87–95. Salaries to laborers may be paid in cash and *in species*, but the latter may not exceed 50% of the overall remuneration. There are special rules for seasonal laborers.

[289] Labor Code, Arts. 96–132.

[290] Labor Code, Arts. 133–145.

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(iv) The arts and show business;[291]

(v) Domestic work;[292]

(vi) Sports and related work;[293]

(vii) Firefighting;[294] and

(viii) Passenger and cargo airfreight.[295]

Special rules also apply with respect to work contracts with the government and contracts with enterprises or institutions wholly or partly owned by the government. Education professionals are also subject to a set of special rules.

c. Employment of Minors

Minors older than 15 years old may be contracted provided that they have parental authorization, the work does not affect their attendance at school, and the nature of the service to be provided does not affect the minor's health and growth. The work may not exceed 30 hours per week or daily shifts in excess of eight hours.[296]

d. Digital Platform Workers

There are special rules dealing with the labor relationship between digital platforms and their workers, both dependent and self-employed.[297] The distinction between the two statuses is important because a dependent digital platform worker has a subordinate relationship with the digital platform employer, while an individual is be regarded as self-employed if he or she is free to choose his or her time-table and has the right to work for other digital platforms.

The contract between the digital platform and the individual must be in writing and must include:

(i) A description of the tasks;

(ii) The rates and payment method;

(iii) The manner in which the individual is entitled to be disconnected from the platform; and

(iv) A clear process when the contract is terminated.

In addition, the digital platform must include both dependent workers and self-employed in the Social Security system and insure them for work accidents. The contract must also be clear as to the rates and commissions applied, including the percentage the digital platform retains for each service and the manner in which it will pay the individual.

3. Employment Conditions

The minimum wage is generally adjusted twice a year, in January and July, in accordance with statutory provisions. The current minimum wage in Chile is P$500,000 (approximately US$550) per month.[298]

Salary includes remuneration for overtime, commissions, profit sharing and bonuses, but does not include expenses incurred on behalf of the employer that are reimbursed to the employee, transportation allowances and family allowances.[299] The employer is required to provide to the employee a salary payment slip showing the gross amount of the salary, bonuses and commissions, the manner in which the salary and the extra compensation was determined, and the deductions taken from the overall compensation paid, such as withholding taxes, social security contributions, and contributions to pension funds.[300] Employer and employee may also agree in writing that the former deduct from his or her salary amounts for the acquisition of a dwelling, amounts to be deposited in a home savings account, and amounts to be used for the employee's education or that of his or her spouse or children. The employer may also make interest-free loans to the employee provided that the repayment of the principal does not exceed 30% of the employee's monthly salary. Overall, the deductions taken against the employee's salary may not exceed 45% thereof. No deductions may be taken for the use of a dwelling, electricity, water, tools, or medicines or for losses incurred as a result of a theft or destruction of the employer's property. Remuneration and indemnities owed to employees must be adjusted for inflation and bear interest charges.[301]

The employment contract must establish the frequency in which salaries must be paid, but that frequency may not exceed one month. If the compensation includes commissions, these must generally be paid in the month they accrue, i.e., in the month in which the services that gave rise to those commissions were rendered. Salaries for seasonal jobs must be paid every fortnight.[302]

Tips at restaurants and bars are generally 10% of the bill. All tips may only be distributed among the employees in the manner established by them and regardless of the way the customer used to pay them.[303]

Employers with five employees or more must maintain a book on salaries, which must be stamped by the SII. Only the amounts reflected in that book may be considered as deductible expenses for accounting and tax purposes.[304]

The Labor Code allows a maximum ordinary working week of 40 hours and a daily maximum of 10 hours.[305] The employer must allocate the weekly maximum working hours to between four and six days, except in the case of certain activities.[306] With the employee's consent, the employer may allocate

[291] Labor Code, Arts. 145 A to L.
[292] Labor Code, Arts. 146–152.
[293] Labor Code, Arts. 152 *bis* A to L.
[294] Labor Code, Arts. 152 *bis.*
[295] Labor Code, Arts. 152 *ter* to 152 *ter* M.
[296] Labor Code, Art. 13.
[297] Labor Code, Title II, Chapter X.
[298] This wage applies as of July 1, 2024.

[299] Labor Code, Arts. 41 and 42.
[300] Labor Code, Arts. 54, 54 *bis* and 58.
[301] Labor Code, Art. 63.
[302] Labor Code, Art. 55.
[303] Labor Code, Art. 64.
[304] Labor Code, Art. 62.
[305] Labor Code, Art. 22. The 40-hour maximum weekly hours was introduced under Law No. 21,561, which came into force on April 26, 2023. Prior to the enactment of this Law, the maximum weekly working hours were set at 45. The reduction in working hours is to be implemented gradually, as follows: in April 2024, the maximum weekly schedule is set to be reduced to 44 hours, in April 2026 to 42 hours and in April 2028 to 40 hours.
[306] Labor Code, Arts. 28 and 38. In special cases, the Labor Authorities may authorize different working schedules, although the weekly hours in the cycle may not exceed 42 hours on average. In these special cases, the excess can be compensated either with additional vacation time or with cash. This rule will become effective in April 2028.

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the 40 hours either on a weekly basis or based on a weekly average over a four-week period. In the latter case, the maximum weekly schedule cannot exceed 45 hours per week (52 hours in the case of an employee who is a member of a trade union) and that 45-hour weekly limit cannot apply to more than two consecutive weeks during the four-week cycle. The employer is required to notify the employee one week in advance of the allocation alternative that is to apply in the following cycle. The consent of the trade union concerned is also required if the employee is a trade union member.[307]

The weekly working-hour limit does not apply to personnel entrusted with certain supervisory, administrative or confidential matters or to workers who are not subject to immediate superior supervision because of the nature of the work they perform.[308]

The employer has the obligation to register entry and exit times at the working premises to control employee attendance at work as well employees' ordinary working hours and overtime. To this end, all employers must have either an attendance book, a control clock or an electronic registration system.[309]

Parents of children up to 12 years of age may delay or advance the beginning of the daily schedule for up to one hour. Exercising that right will advance or postpone the end of the employee's daily schedule.[310]

Any time worked in excess of these limits generates overtime, which the employer must compensate with an extra 50% of the agreed salary, payable together with the salary due when the overtime was incurred.[311] Alternatively, the employer and the employee may agree in writing to compensate overtime with additional vacation time of up to five working days per year. The employee must take that vacation within six months following the cycle that gave rise to the overtime. The calculation of in-kind compensation follows the same rule as the calculation of monetary compensation, i.e., each hour of overtime is equivalent to 1.5 hours of holiday. The maximum amount of overtime per day is set at two hours and may only be requested to deal with temporary needs.[312] However, if the employee's weekly schedule is determined based on the four-week cycle, the sum of ordinary working hours and overtime cannot exceed 52 per week. Overtime must be agreed to in writing, can only be performed to address temporary circumstances and can only be worked for a period not exceeding three months, although this period can be renewed.[313] Employees may also be hired on a part-time basis, i.e., for less than 30 working hours per week. Part-time employment contracts can provide for overtime.[314]

Employees must be treated with dignity. In this regard, sexual and labor harassment as well as discrimination are explicitly forbidden in the Labor Code.[315] The Labor Code contains the principle of equality as regards remuneration between men and women for the same work performed, although objective distinctions in remuneration by reason of capacity, qualifications, responsibility, and productivity may be made.[316]

Employers who regularly employ 10 or more employees on a full-time basis, even if the work is rendered in different locations, are required to have internal regulations to order, hygiene and safety in the employer's premises. Among other matters, the regulations must govern the start and finishing times, breaks, pay day, the employee obligations and prohibitions, the person or person in charge of the establishment, and instructions on hygiene and safety.[317]

4. Holidays and Vacation

Statutorily provided time-off in Chile includes only one half-hour resting period within a working day (except in the case of continuous process activities), Sunday and legal holidays, except in the case of certain activities, which extend from 9 p.m. of the previous day to 6 a.m. of the following day.[318] The half an hour break cannot be taken into account for purposes of determining the duration of the daily shift.[319] Workers earning a daily salary are entitled to be paid for Sundays and holidays, provided they complete a full shift during every work day of the week.[320] Work performed on Sundays or legal holidays is treated as overtime.[321] Furthermore, employer and employee can agree to treat a working day between two holidays or between a holiday and a week-end as a day of rest. The time off taken during that day may be worked before or after that day, except on Sundays, and is not treated as overtime.[322] Some transport workers enjoy special treatment regarding minimum rest periods within work days.[323]

Workers who have worked for more than one year have the right to annual paid vacation of 15 work days.[324] For these purposes, Saturdays are not considered to be work days.[325] The vacation period is extended by one work day for every three years of service for a worker who has worked for 10 years or more, whether continuously or not, for the current as well as for previous employers.[326] Vacation is usually taken during the summer (January and February) or the spring.[327] The employee has the right to accumulate vacation but only up to two years.[328] Vacation time cannot be compensated with money, unless the

[307] Labor Code, Art. 22 *bis.*
[308] Labor Code, Arts. 28 and 38.
[309] Labor Code, Art. 33.
[310] Labor Code, Art. 27.
[311] Labor Code, Art. 32.
[312] Labor Code, Art. 32.
[313] Labor Code, Art. 32.
[314] Labor Code, Art. 40 *bis* and 40 *bis* A.
[315] Labor Code, Art. 2.
[316] Labor Code, Art. 62 *bis.*
[317] Labor Code, Art. 157.
[318] Labor Code, Arts. 35–38. Legal holidays include May 1, which is Labor Day, and September 18 and 19, which commemorate Chile's independence from Spain. If these two days fall on a Tuesday and Wednesday or on a Wednesday and Thursday, then the Monday and Friday of that week, as the case may be, are also holidays. Treating Sundays and legal holidays as days of rest do not have to be observed for certain jobs, such as repair works in cases of *force majeure*; processes that, due to technical reasons, require continuity; seasonal jobs; shipping and stevedore services; and professional sports. However, working on a Sunday or during a public holiday must be compensated as overtime.
[319] Labor Code, Art. 34.
[320] Labor Code, Art. 45.
[321] Labor Code, Arts. 37 and 38.
[322] Labor Code, Art. 35 *bis.*
[323] Labor Code, Arts. 23–26.
[324] Labor Code, Art. 67.
[325] Labor Code, Art. 69.
[326] Labor Code, Art. 68.
[327] Labor Code, Art. 67.
[328] Labor Code, Art. 70.

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employment is terminated and there are vacation days pending to be taken.[329]

Female employees are entitled to six weeks' leave before and 12 weeks' leave after the birth of a child, with full salary to be paid by the medical fund.[330] After those 12 weeks, female employees have the right to an additional 12-week leave; however, if they decide to work on a part-time basis, the additional leave can be extended to 18 weeks. During the additional 12 weeks, the employee is entitled to receive a subsidy, which is reduced by 50% if the employee decides to extend it to 18 weeks.[331] Male employees are entitled to five calendar days of leave within the first month of their child's birth or adoption. Parents in parental leave cannot be laid off during that leave plus one year thereafter in the case of the mother and three months in the case of the father.[332] Employers with 20 or more employees have the option of either providing a nursery room within their premises where the mother can breastfeed her child until he or she is two years old, or pay for a nursery school where the mother can leave her child until that age.[333]

Employees are entitled to a five-day leave when they marry. The employee is required to give 30-day notice to the employer.[334]

An employer is entitled to take up to seven days off upon the death of his or her spouse or child irrespective of the length of time he or she has worked with the employer. The leave of absence is limited to three days if the death is of the employee's parents or of an unborn child. These absences are remunerated, but may not be compensated with money.[335] Women who are over 40 years of age and men who are over 50 years of age are entitled to take half a day off per year to visit their doctor for preventive medical reasons. The employee must give seven-day notice to the employer and provide proof that the visit has occurred.[336]

5. Changes in Labor Conditions

Both individual and collective employment contracts may be modified with the mutual consent of the parties.[337] Such modifications must be made in writing and signed by the parties on the back of the relevant document or on an annexed document. Pay increases do not require a contract to be modified, but a contract must be updated to include raises at least once a year.[338]

An employer may change the nature of an employee's services to services of a similar nature.[339] The employer may also change the site or room in which the services are to be performed within the same place or city. In no case may the change substantially impair the worker. The employer may also alter the distribution of the agreed working hours by up to one hour for reasons affecting the functioning of the entire enterprise or one of its units. In such a case, the employer is required to inform the worker at least 30 days in advance. Within 30 days of a change made by an employer, a worker may request the appropriate work inspector to decide if the conditions allowing for the change were satisfied. The work inspector's decision may be appealed before the appropriate judge, who decides as a court of last resort.[340]

Changes in the shareholding of the employer cannot alter the rights and obligations of the employee arising from his or her contract or collective agreements with the employer.[341]

6. Termination of Employment

A contract terminated due to one of the following reasons gives rise to an indemnity for the employee:

(i) By mutual agreement between the employer and the employee;

(ii) On completion of the agreed term;

(iii) On conclusion of the work or service covered by the contract;

(iv) As a result of *force majeure*;[342]

(v) At the sole will of the employer in the case of employees who have general powers to manage the company or who enjoy the sole trust of the employer; or

(vi) As a result of the business needs of the enterprise, such as the rationalization or modernization of the business, a reduction on productivity, changes in market conditions or the economy. In this case, the employer is required to give a 30-day notice to the employee unless it indemnifies the employee with a one-month salary. In this scenario as well as in the one described in (v) above, an indemnity must be paid equal to at least one month's salary per year of service, with a maximum indemnity of 330 days' salary, unless the parties, either individually or collectively, had agreed to a higher indemnity and the employee had worked for more than one year.[343] These rules also apply in the event that the company liquidates.[344]

Dismissals described in (ii) to (iv), above, give rise to indemnity equal to one month salary.

After six years of service, employer and employee may also agree in writing to substitute the future indemnity from the seventh through the eleventh years of service with a monthly contribution of at least 4.11% of the monthly salary, capped at 90 development units, to the employee's pension fund administrator.[345]

Contracts may expire without a worker having any right to an indemnity in cases involving (i) undue conduct, such as lack of integrity, immoral conduct, sexual or workplace harassment, and slander against the employer; (ii) the employee negotiating contracts on behalf of the employer that are expressly prohibited in the employment agreement; (iii) unjustified absence

[329] Labor Code, Art. 73.
[330] Labor Code, Art. 195.
[331] Labor Code, Art. 197 *bis.*
[332] Labor Code, Art. 201.
[333] Labor Code, Art. 203.
[334] Labor Code, Art. 207 *bis.*
[335] Labor Code, Art. 66.
[336] Labor Code, Art. 66 *bis.*
[337] Labor Code, Art. 5.
[338] Labor Code, Art. 11.
[339] Labor Code, Art. 12.
[340] Labor Code, Art. 12.
[341] Labor Code, Art. 4.
[342] Labor Code, Art. 159.
[343] Labor Code, Arts. 161 to 163.
[344] Labor Code, Art. 163 *bis.*
[345] Labor Code, Arts. 164 and 165.

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consisting of either two days in a row, two Mondays within a month, three days within a month, or when an employee is in charge of an activity and his or her absence causes a serious disruption to that activity; (iv) an abandonment from work involving either an untimely and unjustified departure from work without the employer's permission or a refusal to perform the tasks contained in the employment agreement; (v) acts or omissions that affect the safety in the workplace or the health of the other workers; (vi) a material damage intentionally caused to the premises, machinery, tools or merchandise; or (vii) a serious noncompliance with the employee's obligations.[346] The employer, however, is required to give a three-day notice to the employee of his or her dismissal.

If upon a contract termination the employee claims that the dismissal is unjustified or that the causes alleged by the employer do not have merit, that employee may bring an action in court within 60 days from the date of his or her dismissal. Should the employee's claim be upheld, the judge may order the employer to pay the relevant indemnity, as described above, plus a surcharge of 30% to 80%, depending on the cause that the employer alleged to justify the dismissal.[347]

The termination of contracts affecting labor union leaders, personnel representatives and female employees during their maternal protection period (from pregnancy to one year after the birth of the child) requires prior authorization from the labor court, unless such termination is caused by certain kinds of gross misbehavior.

In addition to the severance payment provisions explained above, there is an unemployment insurance system based on individual accounts and a solidarity fund. The system is financed by the employer (2.4% of the employee's salary), the employee (0.6% of the employee's salary), and the State. Workers may draw from this fund when they are unemployed. The solidarity fund is established for those unemployed workers who have not accumulated enough funds to cover the minimum unemployment compensation determined by law. However, for an unemployed worker to be eligible to draw from the solidarity fund, the working relationship must not have been terminated for a reason attributable to the employee or to his or her will, whether this is expressed in the working contract or through the employee's own resignation. Nor may a worker draw from the solidarity fund more than twice in a five-year period.

Employers are required to pay all the remuneration that is owed to the employee in one lump sum upon the termination of the employment.[348]

7. *Unions and Collective Bargaining*

Unions are regulated by the Labor Code. The right to set up labor organizations — such as unions, federations or confederations — without prior authorization is acknowledged.[349] Membership is personal, voluntary and cannot be delegated.[350] Workers may belong to only one union for each employment they hold.

Unions are highly regulated and, for decades, they have had little power in comparison to the power they have in other South American countries. Unions were somewhat restricted in their activities while Chile was a dictatorship, but they have since then operated in the traditional manner. For many years, however, there has been a significant gap between the percentage of the Chilean workforce that is unionized and the average percentage in the OECD countries. Thus, while historically the former has been around 10%, the OECD average has been around 17%. However, as a result of a number of reforms to the Labor Code, Chilean trade unions have become stronger and have been vested with more powers of representation, particularly in the area of collective bargaining. These wider powers have led to a significant increase of unionized workers in Chile, exceeding the OECD average and reaching around 20%. Nevertheless, the percentage of unionized workers varies significantly based on the size of the enterprise and industry. Thus, in companies with a small workforce (around eight workers) the percentage of workers that are unionized is around 2.4%; the percentage increases to 9.5% in companies with between 50 and 100 workers and to 18% in companies with between 100 and 500 workers, while the percentage of unionized workers in companies with a workforce of over 1,000 is 28.7%; in very large companies with more than 10,000 workers, such as in the State-owned copper industry, more than 48% of workers are unionized.

The purpose of unions, as stated in the Labor Code, is to represent workers in collective bargaining, in exercising their rights arising from individual labor contracts, including appearing in court on their behalf, in integrating the employer and the workers, in monitoring compliance with social security and labor legislation, in helping their members, in promoting education and improvement of safety in the workplace, and in providing nonprofit services for their members.[351]

Unions in companies with 50 or fewer workers may be formed with a minimum of eight workers, representing at least 50% of all the staff; in companies with over 50 and fewer than 250 workers, a minimum of 25 workers representing at least 10% of all the staff is required; and 250 workers of a company may form a union regardless of the percentage of the staff they represent.[352] Workers serving as directors of a trade union cannot be removed from their work, unless a specific cause arises (i.e., a court authorization based on the misbehavior of the worker concerned).[353] The number of directors is limited from three to nine based on the number of members.[354] The workers that have formed a trade union may not be dismissed during the 10 days before the union is set up and 30 days thereafter.[355] The employer must allow each director of a trade union time off to handle its affairs; this time off must be remunerated and cannot be less than six to eight hours a week, depending on the size of the union.[356] The trade union assembly can also decide for the directors not to render services to the employer while they hold that office and the employer is required to preserve the job for

[346] Labor Code, Art. 116.
[347] Labor Code, Art. 168.
[348] Labor Code, Art. 63 *bis.*
[349] Labor Code, Art. 212.
[350] Labor Code, Art. 214.
[351] Labor Code, Art. 220.
[352] Labor Code, Art. 227.
[353] Labor Code, Arts. 224 and 243.
[354] Labor Code, Art. 235.
[355] Labor Code, Art. 221.
[356] Labor Code, Art. 249.

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those directors; however, in these cases and unless it is otherwise agreed to by the parties, it is the trade union that must pay for the directors' salaries and social security contributions.

Collective bargaining between an employer and its employees has been promoted with recent changes to the Labor Code. The areas that collective bargaining can cover are broad as long as they are of common interest to the parties. These areas generally include salary adjustments, conciliation between work and family obligations, parental leave, equal opportunity plans, actions to avoid discrimination, employee training, and mechanism for conflict resolutions. However, collective bargaining cannot cover areas that restrict or limit the employer's power to manage the company.[357] Negotiations for a collective bargaining agreement can start at any time between one or more employer and one or more trade union. They are not subject to any procedural rule.[358] Collective bargaining agreements must have a duration of at least two years but may not exceed three years.[359] Collective bargaining agreements with trade unions representing at least 30% of the workforce may contain special work conditions, for example, conditions providing for a work-life balance for workers with family obligations.[360] These special conditions have a duration of three years.[361]

The parties may, at any time during the negotiations of a collective bargaining agreement, voluntarily submit those negotiations to an arbitration panel.[362] The arbitration panel must award the issue to one of the parties within 30 days as of the date the panel is established. The award is final and cannot be appealed to the courts.[363]

An employee may not have his or her salary reduced or his or her benefits and rights diminished as a result of the application of a collective bargaining agreement if his or her employment agreement is more favorable. However, the provisions of the collective bargaining agreement replace a worker's employment agreement if the former are more favorable to the worker than the latter.[364] Once a collective agreement expires, its provisions continue to apply to the workers that benefit from it, except those provisions dealing with monetary adjustment, with rights and obligations that may only be exercised collectively, and with special working conditions.[365]

A collective bargaining agreement may apply only to those workers who are members of the trade union or to all the workers. However, a worker that is not a member of the trade union must pay the union fees that the collective bargaining agreement provides for to have that collective bargaining agreement apply to him or her.[366]

As a general rule, all workers have the right to go on strike and the employer is not allowed to replace them.[367] However, the trade union is required to provide sufficient personnel to cover the provision of services that are strictly necessary to ensure that the employer's premises are protected and that public services are guaranteed, such as those supplying electricity or water and, in general, those that cover the population's basic needs.[368] Workers of companies that provide certain public services the stoppage of which may cause a serious damage to public health, to the country's economy or supply, or to national defense may not go on strike. It is for the government to decide which of those companies falls under this provision.[369] In these cases, mandatory arbitration applies.

Any of the parties may request mandatory mediation from the Department of Labor within four days from the date in which a strike has been called.[370] The employer is entitled to temporarily lock out its premises for a maximum period of 30 days if the mediation is unsuccessful and the strike takes place, provided that the strike has an effect on either more than 50% of the workforce or on tasks that are necessary for the proper functioning of the business.[371] The employer is not required to pay the salaries and social security contributions with respect to those workers that are on strike.[372]

8. Foreign Personnel

a. Work Permits

Work permits must be obtained by foreign personnel before they can perform remunerated labor within Chile. In the case of foreign personnel who are to be hired by a local employer, a contract visa is obligatory for both short- and long-term contracts. A visa requires certain special procedures to be complied with and documentation to be provided, including a valid passport, a notarized work contract, a health certificate issued by a doctor stating that the applicant enjoys good health and has no contagious diseases, and a certificate issued by the local police.

A local employer interested in obtaining a contract visa for a foreign worker should apply to the Foreign Affairs Ministry of Chile. Once the visa is granted, the worker must go to the Chilean consulate in his or her own country to have the visa stamped. This kind of visa can also be obtained in Chile by a foreign worker who has entered the country with no work permit. The visa is granted to a foreigner and his or her family for up to a two-year period (renewable in Chile). The employer must be domiciled in Chile. The contract must contain a special clause whereby the employer undertakes to pay the return fares for the foreigner and the foreigner's family.

A temporary residence visa may also be obtained for a period of up to one year (renewable), in those circumstances where there is no local employer supporting the visa application (i.e., in the case of a foreign company with no local presence that sends its own employee to perform work in Chile or a foreign investor who will perform personal activities in Chile).

[357] Labor Code, Art. 306.
[358] Labor Code, Art. 314.
[359] Labor Code, Art. 324.
[360] Labor Code, Arts. 374–376.
[361] Labor Code, Art. 374.
[362] Labor Code, Art. 386.
[363] Labor Code, Art. 391.
[364] Labor Code, Art. 311.
[365] Labor Code, Art. 325.
[366] Labor Code, Art. 323.
[367] Labor Code, Art. 345.
[368] Labor Code, Art. 360.
[369] Labor Code, Art. 362.
[370] Labor Code, Art. 351.
[371] Labor Code, Arts. 353 and 354.
[372] Labor Code, Art. 355.

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b. Special Arrangements and Concessions

In general, both an employer and his or her foreign personnel must pay social security contributions when such personnel work under a work contract. However, there is an exemption from making social security contributions for a foreign technician and the company that hires him if the following two conditions are met:

(i) The individual has social security outside Chile covering, at least, illness, pension, disability and death; and

(ii) The individual expressly declares in his or her individual work contract that he or she will remain affiliated with the foreign social security system.[373]

To obtain local health coverage, foreign personnel may make voluntary contributions to the public health system or may contract with a private insurance company for health coverage.

c. Restrictions on Employment

The Labor Code provides that at least 85% of a local company's overall workforce must be of Chilean nationality. For purposes of calculating this percentage, technicians who cannot be replaced by Chilean personnel, foreigners resident in Chile for more than five years, parents of Chilean children and foreigners married to Chileans are not counted as non-Chileans.[374] Employers with fewer than 25 employees are not subject to this rule.

9. Profit Sharing

Profit sharing is mandated by law. The parties may agree on the terms of profit sharing in the employment agreement, but it may not be lower than one of the two systems provided under the Labor Code, as follows:

(a) 30% of the employer's pre-tax profits, if any.[375] The basis used to determine the percentage is the company's taxable income less 10% of its net tax equity and without taking into account any prior year losses.[376] Furthermore, when computing the company's taxable income for profit sharing purposes, the company may only use the straight-line method of depreciation. Therefore, if the company has depreciated property on an accelerated basis, it is required to adjust its taxable income by using the straight-line method of depreciation. In addition, a company's net tax equity cannot be adjusted for inflation for purposes of determining its profit sharing obligations.

(b) 25% of the annual gross salary paid to the employee, up to a maximum of 4.75 monthly minimum wages (approximately US$2,143), irrespective of the profits it has generated during the year.[377] This is the system that most Chilean companies use to comply with their profit sharing obligations.

10. Social Security

a. In General

Decree Law No. 3,500 created a private social security system in Chile.[378] Under this system, social security is managed by private entities known as Administrators of Pension Funds (*Administradoras de Fondos de Pensiones* or AFPs).

Pensions are financed exclusively by workers through their social security contributions, which are accumulated in individual accounts with the AFP. The accounts may only invest in certain qualified investments, such as government securities or fixed-term deposits in banks.

Once they have reached pension age or achieved a certain level of capital,[379] members of a pension fund can either draw on the capital in phased withdrawals or purchase an annuity indexed for inflation from an insurance company to guarantee a lifetime pension.[380] In the latter case, the price of the insurance is the amount of accumulated funds, whereby the insurance company agrees to pay a certain amount per month during the life of the pensioner (i.e., a special kind of insurance rather than an annuity paying interest). Furthermore, whereas the first option provides a pensioner the right to bequest any remaining funds to one's heirs, the second option does not.

b. Coverage

The social security system covers all workers, including their dependents (for foreign personnel, see 8.b., above). Independent workers are also required to participate in the pension system.

c. Contributions

Workers must contribute 10% of their taxable monthly salary, up to a maximum of 60 development units.[381] In addition, workers must contribute 7% of their remuneration for medical care, which may be paid either to the National Health Fund (*Fonasa*) or to private health institutions (*Isapres*). The total social security deduction from gross salary is thus about 19.7% for employees. The percentage of an employee's payroll cost attributable to social security contributions is withheld monthly from the employee's pay. Independent workers are subject to the same contribution obligations as workers subject to a relationship of dependency.[382] The contribution is based on the monthly remuneration reported by the independent worker to the AFP, which may not be less than the monthly minimum salary or exceed 60 development units.[383]

Employers and employees are required to make a matching contribution to the employee's AFP account equal to the one made by an employee to the extent that the work is strenuous. In that regard, strenuous work is defined as work that accelerates the physical, intellectual or psychological erosion that

[373] Law No. 18,156, Art. 1. This exemption does not cover contributions to the Labor Accident Fund.
[374] Labor Code, Arts. 19 and 20.
[375] Labor Code, Art. 47.
[376] Labor Code, Art. 48.
[377] Labor Code, Art. 50.
[378] Decree Law No. 3,500, dated Nov. 4, 1980, published in the *Diario Oficial* on Nov. 13, 1980, as amended.
[379] Decree Law No. 3,500, Art. 3.
[380] Decree Law No. 3,500, Art. 61.
[381] Decree Law No. 3,500, Arts. 16 and 17. For the Chilean peso equivalent of a development unit, see the Worksheets.
[382] Decree Law No. 3,500, Art. 92.
[383] Decree Law No. 3,500, Art. 90.

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causes premature aging. This additional contribution is equal to 2% of the employee's salary and it is equally split between the employer and the employee.

Employers contribute a basic 0.9% of an employee's salary for labor accidents resulting in injury, sickness or death plus an additional percentage at a maximum rate of 3.4%. The latter percentage rate varies according to the risk inherent in the job concerned.[384] However, this additional contribution can be reduced or eliminated if the employer has introduced preventive measures that substantially reduce risks for labor accidents. On the other hand, employers that fail to introduce such measures as required by the authorities and their workplaces do not offer satisfactory health and safety conditions, are required to pay the additional contribution plus a surcharge of 100% of that contribution.[385] Indemnities received for labor accidents are incompatible with the disability and survivorship pensions.[386]

In addition to the above, employers and employees are also required to make contributions for unemployment benefits. The amount of the contribution is set at 3% of the employee's salary. In that regard, if the employee is hired on a fixed-term basis, the contribution must be fully made by the employer; on the other hand, if the employee is hired on an indefinite basis, the contribution is split 2.4% for the employer and 0.6% for the employee.

d. Benefits

(1) Family Allowances

Monthly family allowances are paid for a dependent spouse, a widow or a widower, and for children under 18 years of age, and children between 18 and 24 years of age, inclusive, who are studying at a university or technical school. This allowance is paid for each individual in a family who qualifies for it. Each family allowance has a net value of P$20,328 in the case of salaries of up to P$515,879 per month; in the case of salaries of more than P$515,879 but no more than P$753,496 the family allowance is P$12,475; and in the case of salaries of more than P$753,496 but no more than P$1,175,196, the allowance is P$3,942. No family allowance is available if the taxpayer's monthly salary exceeds P$1,175,196.

The family allowance is paid to the employee together with his or her salary and is deducted from the payment made by the employer to the social security institution.[387] As such, this benefit is financed by State funds that are pooled in a special fund created for this purpose.

(2) Unemployment Compensation

An employee whose work contract is terminated for reasons other than his or her fault or resignation may claim unemployment compensation on a day-to-day basis for 90 days, which may be extended to a maximum of 360 days.

(3) Old-Age Pension

Normally, men have the right to a pension at the age of 65 and women at the age of 60.[388] However, both men and women may choose to retire before their respective pensionable ages if they have adequate funds in their AFP accounts, representing an amount at least equal to a minimum pension that is determined based on the average salary received by the worker concerned (approximately 70% of that average).

Given that old-age pensions paid by the AFP are low (72% of these pensions are below the minimum salary), residents of Chile are also entitled to receive a Guaranteed Universal Pension (*Pensión Garantizada Universal* or PGU), an old-age pension from the State-owned Social Pension Institute. The pension amounts to P$206,173 (approximately US$247) per month (as adjusted for inflation in February of each year) if the basic pension is P$702,101 or less per month; the PGU is gradually reduced for basic pensions ranging from P$702,101 to P$1,114,446 per month based on the difference between the amount of the basic pension amount and P$1,114,446. In this regard, the basic pension amount is the result of an estimated financial calculation based on a person's capacity to finance a contributory pension when that person reaches the legal age for becoming a pensioner (65 years old in the case of men and 60 years old in the case of women).

Men and women over 65 years of age are entitled to the PGU, irrespective of whether they already receive a pension from an AFP and whether they are actually retired, but may not belong to the wealthiest 10% of family units in Chile. Moreover, to be entitled to the PGU, an individual, including a foreigner, must prove he or she has resided in Chile; (i) for a period of at least 20 years (whether continuous or discontinuous) since the age of 20 years; (ii) or during at least four years over the past five years immediately before the request for the PGU is made.

Note: In light of the fact that the average AFP pension is currently approximately P$64,200 (approximately US$74) per month and that one out of four pensioners receives a pension that is below the poverty line, the government has submitted a bill to Congress proposing an overhaul of the Chilean Social Security system. The proposed reform seeks to establish a combined public and private system, with the primary aim of substantially increasing the monthly pension payable to current and future pensioners, with an emphasis on women, whose pensions are significantly lower than those paid to men. This primary objective would be achieved by: (i) increasing the amount of the PGU and broadening its coverage, which would be financed via a proposed tax reform that would increase tax revenue collections; (ii) a new employer-based contribution of 6% of the employee's salary; and (iii) amending the existing AFP regime by reducing the commissions AFPs currently charge and improving the existing yields.

The proposed Social Security reform provides that the Social Security authorities would manage the Integrated Pension Fund, which would be financed by employer contributions, while the State-owned Public Pension Investor, which would be created under the new Social Security system, would com-

[384] Law No. 16,744, dated Jan. 23, 1968 and published in the *Diario Oficial* on Feb. 1, 1968, as amended, Art. 15; Labor Code, Art. 211.

[385] Law No. 16,744, Art. 16.

[386] Decree Law No. 3,500, Art. 12.

[387] Decree with Force of Law No. 150, Arts. 2 and 3.

[388] Decree Law No. 3,500, Art. 3.

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pete with private pension investors to manage the contributions made by employees.

(4) Disability and Survivorship Pensions

Workers who suffer a disease that causes a permanent impairment to their capacity to work are entitled to receive a disability pension. The impairment can be full (where the worker loses two-thirds of his or her capacity) or partial (where the worker loses between half and two-thirds of his or her capacity). Impairments that are treated as full by a medical commission are considered to be final, while partial impairments need to be reviewed every three years by the medical commission.[389]

The spouse and children of a deceased worker have the right to receive a survivorship pension.[390] To be entitled to a survivorship pension, the children must be under 18 years of age, between 18 and 24 years of age, inclusive, who are studying at a university or technical school, or children of any age who are handicapped.[391]

e. Totalization Agreements

Chile has reciprocal social security agreements with Argentina, Australia, Austria, Belgium, Brazil, Canada, the Czech Republic, Denmark, France, Germany, Luxembourg, The Netherlands, Norway, Peru, Portugal, Spain, Sweden, Switzerland, the United States, Uruguay and Venezuela.

11. Health and Safety

The preventive medical system of Chile provides for certain periodic health examinations, in both public and private health organizations. An employee who is found to suffer from a specific illness is granted sick leave. During sick leave, an employer must keep an employee's job open, but the medical fund pays the employee's salary.

Employers must protect the health and safety of their employees and have the obligation to take precautions to prevent labor accidents and work-related diseases.[392] Certain kinds of activities that are considered more dangerous by the authorities are subject to special control regarding the health and safety of workers. Fines may be imposed in the case of noncompliance with health and safety rules.[393]

12. Outsourcing

Over 35% of the Chilean labor force is considered to render services under an outsourcing or personnel supply arrangement and, therefore, is not hired directly by the principal enterprise.

The principal company is jointly and severally liable with the outsourcing company for all labor and social security rights of the employee, including indemnities upon termination of employment, unless the former ensures that the latter is in compliance with all of its labor and social security obligations with respect to its employees. In that case, the liability of the principal company becomes subsidiary.[394]

Supply of personnel arrangements by temporary agencies is limited to extraordinary circumstances, such as maternity or medical leave or holidays; to temporary activities, such as congresses and fairs; to new projects, such as the construction of new premises or expansion into new markets; to companies in start-up phases or facing extraordinary and temporary increases of a company's activities; and to handle unforeseen events, such as repair works.[395] The supply of services may not be requested to perform management functions, to replace workers that are on strike, or to supply personnel to other temporary agencies.[396] Temporary agencies are required to place a permanent guarantee in favor of the Department of Labor to secure the agency's contractual obligations vis-à-vis its employees. The guarantee is of 250 development units per 100 employees plus one additional development unit for each employee in excess of 100, 0.7 development units for each additional employee in excess of 150, and 0.3 development units for each additional employee in excess of 200.[397] The contract for the supply of personnel with temporary agencies may range from 90 to 180 days, depending on the reason why the supply of personnel was required.[398] Simulations of supply personnel contracts with third parties, where the employee receives direct orders from the principal company, are considered to be fraudulent and are subject to penalties. Furthermore, the individual rendering the service is considered to be an employee of the temporary agency's client.[399]

13. Labor Courts

A number of legislative initiatives were undertaken to make the judicial and procedural systems on labor and social security matters more efficient. In this regard, there are labor courts in each of the Chilean Regions and four social security courts in the principal Regions with specific procedural rules and with specialized judges hearing only cases involving these matters.[400]

[389] Decree Law No. 3,500, Art. 4.
[390] Decree Law No. 3,500, Art. 5.
[391] Decree Law No. 3,500, Art. 8.
[392] Labor Code, Art. 184.
[393] Labor Code, Art. 191.
[394] Labor Code, Art. 183-B to D.
[395] Labor Code, Art. 139-Ñ.
[396] Labor Code, Art. 139-P.
[397] Labor Code, Art. 139-J.
[398] Labor Code, Art. 138-O.
[399] Labor Code, Art. 183-U.
[400] Law No. 20,022, dated May 16, 2005, published in the *Diario Oficial* on May, 30, 2005; Law No. 20,023, dated May 16, 2005, published in the *Diario Oficial* on May 31, 2005; Law No. 20,087, dated Dec. 15, 2005, published in the *Diario Oficial* on Jan. 3, 2006; and Law No. 20,252, dated Feb. 1, 2008, published in the *Diario Oficial* on Feb. 15, 2008. Labor Code, Arts. 415 and 416.

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III. Forms of Doing Business in Chile

A. Principal Business Entities

Since Chile has no minimum local participation requirement, the decision to include a local partner in an investment should be guided strictly by commercial considerations. However, a local legal entity is absolutely necessary for carrying out any business in Chile, other than exporting to the country. At least two shareholders are required in the case of a *sociedad anónima* (SA) or a *sociedad de responsabilidad limitada* (SRL).[401] However, a single shareholder is permitted for a *sociedad por acciones* (SpA) and is the only option for an *empresa individual de responsabilidad limitada* (EIRL).[402]

The different legal forms are basically neutral from a Chilean tax point of view as the effective combined tax rate on dividends or profits distributed to a foreign investor is 35%. On a comparative basis, however, Chile is probably the Latin American country in which the income taxation of SAs, as opposed to that on other legal forms, differs the most. Therefore, even though in all cases the ultimate shareholder will bear an effective combined rate of 35%, choosing between an SA and other legal forms when planning an investment in Chile is an important factor that all foreign investors should weigh.

As discussed in VIII., below, Chilean partnerships are taxed as separate taxpayers and partners are generally taxed only insofar as they withdraw profits from the partnership. In certain activities, especially in mining, where there can be substantial differences between tax and financial income, an SA can have certain disadvantages compared to other legal forms.

The set-up costs are very similar for branches and companies, although the incorporation of an SRL is generally the simplest. The liability of shareholders in SAs, SRLs and SpAs is generally limited to their capital contributions. From a U.S. Federal income tax viewpoint, however, SRLs and SpAs are eligible entities under the check-the-box regulations issued under the U.S. Internal Revenue Code, while SAs are regarded as *per se* corporations.

The incorporation of an entity in Chile can be implemented in approximately three weeks. Minimum capital requirements are only imposed in the event that the entity is to perform certain regulated activities, such as banking and other financial activities. However, as foreign investments must be registered with the Central Bank, if the entity is being set up by foreigners, the minimum investment that may be registered under Chapter XIV of the Summary of Foreign Exchange Regulations of the Central Bank is US$10,000, and the minimum investment that may be registered under the Foreign Investment Statute is US$5 million. For a discussion of the foreign investment rules on capital contributions to Chilean entities, see II.A., above.

The Civil Code (CC), the Commercial Code (ComC) and supplementary laws, decrees and regulations regulate business entities in Chile. The principal legal forms of business in Chile are:

(i) The SA (stock corporation);

(ii) The SRL (limited liability company);

(iii) The SpA (company by shares);

(iv) The EIRL (limited liability enterprise);

(v) The *sociedad colectiva* or SC (general partnership);

(vi) The *sociedad en comandita* or SenC (limited partnership), which may be either a s*ociedad en comandita simple* (SenCS) or a s*ociedad en comandita por acciones* (SenCA);

(vii) The *asociación o cuenta en participación* or CenP (silent partnership);

(viii) The *agencia* or branch of a foreign corporation;

(ix) The joint venture contract; and

(x) The *empresario individual* or sole proprietorship.

Foreign investors have traditionally done business in Chile in the form of SAs, SRLs, and branches. The SpA, introduced in 2007, is also being used by both locals and foreigners, particularly since an SpA requires only a single shareholder. These three type of entities limit a shareholder's liability. SAs are generally used by medium and large-size enterprises as well as businesses that intend to bring in other investors in the future. This is because the sale of shares in SAs, unlike those of SRLs, does not require the express consent of the other shareholders and can be performed relatively easy, either before a notary public or simply in front of two witnesses or a stockbroker.

B. Stock Corporation

1. In General

A *sociedad anónima* (SA) or stock corporation can be "open," "special" or "closed."[403]

An SA is considered to be an open SA when its shares are publicly traded on a stock exchange, either voluntarily or by legal obligation.[404] An SA is considered to be special if it requires a resolution from the Financial Markets Commission (Comisión para el Mercado Financiero (CMF)) approving its existence, such as in the case of insurance and reinsurance companies, management companies of mutual funds, and stock exchanges.[405] A closed SA is an SA that is neither an open SA nor a special SA.

Only open and special SAs are subject to the supervision and control of the CMF, unless they are subject to the supervision and control of another governmental Superintendence. Nevertheless, an SA that is subject to the supervision of another Superintendence is also subject to the supervision of the CMF if its shares are publicly traded.[406]

[401] CC, Art. 2,053.

[402] Commercial Code (ComC), Art. 424. The ComC was enacted under Decree No. 459, dated May 12, 1995.

[403] Law No. 18,046, as amended, enacted on Oct. 21, 1981, and published in the *Diario Oficial* on Oct. 22, 1981, Art. 2.

[404] Law No. 18,046, Art. 2.

[405] Law No. 18,046, Arts. 2 and 126.

[406] Law No. 18,046, Art. 2.

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2. Formation

Any two or more legal entities or individuals may form a corporation; there is no maximum number of shareholders. The name of an SA must include the words *Sociedad Anónima* or the initials "S.A."[407]

The deed of incorporation of an SA and its by-laws, as well as amendments thereto, must be executed in a notarial public deed. No evidence can be admitted that is contrary to the notarial deed of incorporation and by-laws, even if it is intended to prove the existence of a shareholders' agreement. The deed of incorporation and the by-laws must contain the following specific information:[408]

(i) The names, professions and addresses of the shareholders incorporating the SA and their Taxpayer Identification Registration (*Rol Único Tributario*, RUT) or Tax ID;

(ii) The name and corporate address of the corporation;

(iii) The corporate purpose or purposes, which may be any, provided they are not contrary to the law, morals, the public order or the security of the State;[409]

(iv) The corporation's duration, which may be indefinite if so stated or if no specific duration is provided;

(v) The corporation's capital, the number of shares into which the capital is divided, and whether the shares have a nominal value; if different series of shares or preference shares are issued, a description of the rights under each series or preference; the form and term of payment of such shares by the shareholders; and, if there are in-kind contributions, a valuation of those contributions;

(vi) The form in which the corporation will be managed and the manner in which the shareholders will control such management; a provisional board of directors must be appointed;

(vii) The corporation's financial year and the date on which the general shareholders' meeting will take place; if the deed is silent, the financial year is deemed to end on December 31 and the general shareholders' meeting must take place during the first quarter of each year;

(viii) The way in which profits will be distributed;

(ix) The procedures to be followed upon liquidation;

(x) An arbitration clause for any disputes arising among shareholders or between the shareholders and the corporation or its board of directors, whether during the existence of the corporation or at the time of its liquidation; if the deed is silent, those disputes will be resolved by a single arbitrator;

(xi) The appointment of external auditors in the case of open SAs; and

(xii) Other resolutions adopted by the shareholders.

Within 60 days following the execution of the deed of incorporation, a summary of the corporation's deed of incorporation and by-laws must be registered with the relevant Commercial Registry and published once in the *Diario Oficial*.[410] The summary must contain the information listed above at (i) through (v). Any formal errors contained in the deed of incorporation and by-laws or in subsequent deeds amending their provisions may be corrected.[411] An SA that is duly and timely registered with the Commercial Registry and whose summary deed of incorporation and by-laws is duly and timely published in the *Diario Oficial* is deemed to be formed and in existence as of the date on which the deed of incorporation was executed.[412] An SA is deemed to be null and void if any of the information listed above at (i) through (v) that the deed of incorporation is required to contain is missing or if the registration and publication of the summary is made after the due date, unless otherwise remedied.[413] In that event, the shareholders are jointly liable with respect to the obligations assumed by the corporation.

The formation of an SA takes approximately three weeks. No stamp duties are levied. The incorporation costs are generally limited to notarial fees (which may be as much as 0.1% of the company's capital), Commercial Registry fees (approximately P$5,500 plus P$300 per page plus 0.2% of the initial capital, subject to a cap of up to P$380,000), and fees for the publication of the summary of the deed of incorporation and by-laws in the *Diario Oficial* (generally, 1 monthly tax unit).

Open and special SAs are required to publish their financial statements. Closed stock corporations are not subject to this requirement.

3. Corporate Capital

a. Capitalization

The capital of an SA must be established in the company's by-laws and may only be increased or reduced by means of an amendment of those by-laws. There are no minimum capital requirements on the incorporation of an SA, except in the case of a bank or financial institution. An SA's capital must be fully subscribed and paid within three years from the date on which the corporation is formed, although there is no requirement to pay a portion of such capital on the corporation's formation.[414] If the capital is not fully subscribed and paid at the end of the three-year period, the corporation must undertake a reduction of capital to an amount equal to the capital that is subscribed and paid on that date. Unless the by-laws provide otherwise, subscribed but unpaid shares carry the same rights as shares that have been fully paid, except in relation to dividend distri-

[407] Law No. 18,046, Art. 8. If the corporate name is identical or similar to another already in existence, the holder of the latter is entitled to file a claim in court requiring the holder of the former to change it.

[408] Law No. 18,046, Arts. 3 and 4. An updated copy of the company's by-laws must be made available for the shareholders in its principal place of business as well as in other offices the company may have. Furthermore, in the case of open SAs, the by-laws must also be posted in the company's internet site. The company must also maintain an updated list of its shareholders, their addresses and the number of shares they own. The Board of Directors is responsible for keeping the company's books and records. Law No. 18,046, Art. 7.

[409] Law No. 18,046, Arts. 4 and 9.

[410] Law No. 18,046, Art. 5.

[411] Law No. 19,499 of May 1997.

[412] Law No. 18,046, Art. 3.

[413] Law No. 18,046, Art. 6.

[414] Law No. 18,046, Art. 11.

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butions and returns of capital.[415] In the case of a transfer of unpaid shares, both the transferor and the transferee are jointly liable to pay the unpaid amount.[416]

An SA's shares may be paid with either cash or property, but may only be paid with property if the corporation's by-laws make specific provision to that effect. The board members who approve an in-kind contribution are jointly responsible for the value of the shares issued in exchange for the in-kind contribution.[417] Unless all the shareholders approve otherwise, all in-kind contributions must be valued by an appraiser and, in cases where the in-kind contribution has been made in a subsequent increase of capital, approved in a Shareholders Meeting. An SA is not allowed to issue shares in compensation for personal work or in consideration for the formation of the corporation.[418] The mutual holding of shares between SAs is not allowed.

Increases of capital must be subscribed and paid within three years from the date of the shareholders' meeting at which they are adopted.[419] The price of the shares in an increase of capital must be determined at a shareholders' meeting. The amounts paid in the subscription over and above the company's capital can only be used to increase that capital and may not be distributed as a dividend.[420] A reduction of capital must be approved in a shareholders' meeting by two-thirds of the voting shares. The capital may only be returned to the shareholders after 30 days from the date on which the reduction is published in the *Diario Oficial.* Moreover, within 10 days following publication, the SA is required to announce the reduction of capital and the amount thereof in a newspaper with national circulation and, in the case of an open SA, on the corporation's web site.[421]

The liability of shareholders is limited to the amounts contributed to the company's capital and, in this regard, they are not required to return any dividends they may have received.[422]

The capital and the value of the shares are deemed to be modified when the general meeting of shareholders approves the annual financial statements. In this regard, the board of directors, when submitting the financial statements for the shareholders' approval, is required to distribute the corporation's revaluation proportionally among paid-in capital, retained earnings and other accounts representing shareholders' equity.[423]

b. Shares and Share Transfers

An SA's share capital must be divided into shares of equal value. If an SA issues series of shares, the shares within each series must have an equal value.[424] SAs can issue only registered shares.[425] Persons that hold shares in SAs in their own name but on behalf of others must, in March of each year, notify to the CMF the identity of those others, including their name, their ID, their last known address, the issuing company and the number of shares held in such manner. If those shares are held by banks, the notification must be made to the CMF. If the identity of the owners is not known by the holder of the shares, in May of each year the latter must publish a notice in the *Diario Oficial* and in a national newspaper informing interested parties of the name of the holder, the issuing company, the number of shares and the period during which such shares have been held in such manner. Interested parties have five years to file a claim as to the ownership of the shares from the date the last notice was published. After the five-year period without having received a valid claim, the holder of the shares is required to sell them at an auction and, after 12 months without having received a claim, the sales proceeds plus any dividends that may have accrued during the five years prior to the sale will be transferred to the Chilean Fire Brigade, a non-profit organization.[426]

Shares in an SA may be common of preferred. The preferential rights must be expressed in the SA's by-laws, which must also indicate the period during which the preferential rights will apply. A preferential right cannot require the SA to make dividend distributions that are not paid out of the annual profits, out of its retained earnings or as a result of a revaluation. However, the by-laws of an open SA may grant preferential rights to a series of shares with respect to the control of the corporation. Such preferential rights may not be granted for periods in excess of five years, although a special meeting of shareholders may extend this period.[427]

Each shareholder has the right to one vote for each share it owns or represents. The by-laws may also allow the issuance of preferred shares carrying no right or a limited right to vote. However, holders of nonvoting preferred shares have the right to vote if the corporation has not complied with its obligations in the execution of these preferential rights. An SA may not issue a series of shares conferring multiple voting rights.[428] Nonvoting shares or with limited rights to vote are not taken into account for purposes of determining quorum in shareholders meetings.

The by-laws of an open SA may not restrict the transfer of shares in any way. In this regard, an SA is required to enter in its shareholders' book all transfers of its shares. However, agreements among two or more shareholders may be entered into but they will only be enforceable to the extent they are registered with the issuing corporation, are made available to other shareholders and interested third parties, and are mentioned in the corporation's Shareholders' Registry.[429] In any case, as stated, those agreements may not restrict the right to transfer shares.

Although shareholders in an SA may sell their shares without the consent of the other shareholders unless a shareholders' agreement prevents them from doing so, an option to subscribe for shares in the corporation on an increase of capital, convert-

[415] Law No. 18,046, Art. 16.
[416] Law No. 18,046, Art. 19.
[417] Law No. 18,046, Art. 15.
[418] Law No. 18,046, Art. 13.
[419] Law No. 18,046, Art. 24. An SA can allocate up to 10% of the shares issued in an increase of capital to stock bonuses for its employees and the employees of the SA's affiliates. Employees have five years from the date of the shareholders' meeting that approved the increase of capital to subscribe and pay for the shares.
[420] Law No. 18,046, Art. 26.
[421] Law No. 18,046, Art. 28.
[422] Law No. 18,046, Art. 19.
[423] Law No. 18,046, Art. 10.
[424] Law No. 18,046, Art. 11.
[425] Law No. 18,046, Art. 12.
[426] Law No. 18,046, Art. 18 *bis.*
[427] Law No. 18,046, Art. 20.
[428] Law No. 18,046, Art. 21.
[429] Law No. 18,046, Art. 14.

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ible bonds, and any other instrument conferring future rights over shares must first be offered to existing shareholders, who must either exercise it or transfer it within a 30-day period from the time the option is made public by the corporation. This preemption right may be waived by shareholders.[430]

In general, an SA may own treasury stock if:[431]

(i) It is acquired as a result of a full redemption by a shareholder;

(ii) It results from a merger with another corporation that is the shareholder of the surviving entity;

(iii) It allows the corporation to comply with an amendment of the by-laws and the market value of the shares is below the rescue value that would be payable by the shareholders; or

(iv) It is in compliance with a resolution adopted by a special meeting of shareholders.

Treasury stock acquired under this mechanism must be disposed of by the corporation within a period of one year counted from the date of purchase; otherwise, the company must reduce its capital by the value of the treasury stock. The existing shareholders have a preemption right thereon.

If the stock of the SA is publicly-traded, then the ownership of treasury stock is subject to the following additional rules:

(i) It is so agreed by two-thirds of the outstanding voting shares at a special meeting of shareholders;

(ii) The purchase is made with the corporation's retained earnings; and

(iii) The offer is made in proportion to the number of shares in each series, if any, that are publicly traded.[432]

Treasury stock of an SA whose shares are publicly traded may not exceed 5% of its subscribed and paid-in capital. In general, an SA must sell its treasury stock within two years and, if it does not do so, its share capital is reduced by the value of that stock. Existing shareholders have preemption rights on the sale of treasury stock, unless the amount of treasury stock sold within a 12-month period does not exceed 1% of the corporation's capital. Except for stock purchased by existing shareholders when exercising their preemption rights, all treasury stock must be sold in a stock exchange. If the stock was purchased by the SA pursuant to an employee compensation program that was approved in a shareholders' meeting, then the corporation may hold it for a period of up to five years and the existing shareholders do not have preemption rights when it is sold.[433] Treasury stock purchased by a corporation in excess of the 5% limit must be sold by the corporation within 90 days from the date the excess was acquired.[434] The purchase and maintenance of treasury stock by banks is subject to special rules, including that, from a legal and regulatory point of view, the value of the treasury stock must reduce the bank's basic capital and that the share purchase is treated as a dividend.[435]

The subsidiaries or affiliates of an SA may not hold shares in the latter, whether directly or indirectly. If, however, such reciprocal ownership exists as a result of a merger, de-merger or acquisition, it must be reflected in the annual report and terminated within one year from the date the reciprocal ownership arose. This prohibition also applies where the head office or shareholder is not an SA but the subsidiary or the affiliate is.[436] Transactions between head offices, subsidiaries and affiliates, where one of the corporations is an SA, must be at arm's length and the officers of those entities are personally liable for any losses or damages that the entities they serve suffer if this rule is not observed.[437]

4. Corporate Management

An SA is managed by a board of directors. The board is elected by the shareholders. A minimum of three board members is required in the case of a closed SA and five in the case of an open SA, unless the open SA is required to have at least one independent director and committee of directors, in which case the minimum number of board members is seven.[438] An open SA is so required if its market capitalization is equal to or exceeds 1.5 million development units and at least 12.5% of its voting stock is held by shareholders who, on an individual basis, own or control less than 10% of such stock. The actual number of board members must be established in the by-laws. The board must serve for a specific period to be provided in the by-laws. This period may not exceed three years and, if the by-laws are silent in this respect, the period is deemed to be one year. The term of office of a director may be renewed indefinitely.[439] There is no requirement that a minimum of the SA's directors must be Chilean nationals or residents.

The by-laws must specify whether the board members will be remunerated for their services. If the board members are to be so remunerated, their remuneration must be determined on an annual basis by the general meeting of shareholders. In the case of an open SA, the total annual remuneration, whether in cash or in-kind, received by the board members, including any compensation paid for other functions undertaken for the corporation as well as expense reimbursements, royalties and any other disbursement, must be stated in its annual report to be submitted to the general meeting of shareholders.[440]

Board members have the right to be fully informed by the corporation's officers, at any time, of any matter related to the corporation's operations.[441] Moreover, the board is empowered to perform any act on behalf of the corporation in pursuance of its corporate purpose, provided the act is not reserved either by law or the by-laws for the shareholders. In that regard, it is not necessary to grant a special power of attorney in favor of a board member to allow him or her to carry out an act that

[430] Law No. 18,046, Art. 25.
[431] Law No. 18,046, Art. 27.
[432] Law No. 18,046, Art. 27(A).
[433] Law No. 18,046, Art. 27(C).
[434] Law No. 18,046, Art. 27(A).
[435] Law No. 18,046, Art. 27(D).
[436] Law No. 18,046, Art. 88.
[437] Law No. 18,046, Art. 89.
[438] Law No. 18,046, Art. 50 *bis.* A candidate for independent director must be proposed by shareholders representing at least 1% of the shares of the corporation. Furthermore, a board member of a controlling company may seat and speak at the board of directors of a company that is controlled by it, even if the board member is not a director of the latter's board. Law No. 18,046, Art. 92.
[439] Law No. 18,046, Art. 31.
[440] Law No. 18,046, Art. 33.
[441] Law No. 18,046, Art. 39.

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by law or by application of the by-laws the member is empowered to undertake. The board may delegate its powers to a board member, to a committee of the board, to the corporation's officers or their deputies, or to the attorneys of the company.[442]

When exercising their functions as board members, they must use the type of care that business persons ordinarily use in their own businesses. Board members are jointly liable for damages caused to the SA or to its shareholders, if the damages were caused by fraud or negligence on the part of the board members. Any provision in the by-laws or in a shareholders' resolution limiting this liability is null and void.[443] Furthermore, the approval by the shareholders of the annual report submitted by the board of directors does not relieve the board from their liability.

There are certain acts that board members may not perform, such as:

(i) Propose amendments to the by-laws or decide on matters that do not pursue the corporation's purpose;

(ii) Prevent or obstruct investigations of their acts or those of the corporation's management;

(iii) Induce the corporation's management, its external auditors, or credit rating agencies to prepare inaccurate accounts, provide them false information, or conceal information, or submit to the shareholders such accounts or information; and

(iv) Borrowing from the corporation or taking advantage of commercial opportunities they have when exercising their functions as board members, either for their own benefit or for the benefit of a related person, unless these are otherwise approved by the board and made known to the shareholders. Aside from the indemnities that the corporation may claim from the board, the corporation is also entitled to receive the profits obtained by the board member from those opportunities.[444] In the case of closed SAs and unless the by-laws provide otherwise, they may only enter into a contract involving a significant amount in which one or more board members have a personal interest, either directly or as a representative of another person, in that contract, when that contract has been previously approved by the board of directors and is entered into at arm's length.[445] Nevertheless, a subsequent special shareholders' meeting may ratify a contract entered into by a board member in which he or she has a personal interest, if the meeting had a quorum of two-thirds of the shareholders with the right to vote.

The board is deemed to be at fault and, as such, its members are jointly liable, for damages caused to the corporation, its shareholders, or third parties when:

(i) The corporation does not keep its books and records;

(ii) The corporation distributes interim dividends when it has accumulated net operating losses (NOLs);

(iii) The corporation conceals property, recognizes nonexistent debts, or simulates disposals; or

(iv) A director or a related party unduly benefits from a contract that causes a damage to the corporation.[446]

Although the by-laws may provide for higher quorums, an absolute majority of the board members must be present to have a quorum and board resolutions must be approved by an absolute majority of those members with the right to vote present at the meeting. Members can be present either physically or by technological means and that technological presence must be reflected in the board minutes.[447] The board minutes must be signed by each of the directors that were present at the meeting. The board minutes must also reflect if a director dissented from a board resolution; that dissent relieves the director from the liabilities that may arise from the execution of that resolution.[448] Unless there is unanimous consent to the contrary, board meetings of open SAs must be recorded.

The officers of a stock corporation must be appointed by the board of directors and it is the board of directors that must determine the officers' rights and obligations.[449]

Open SAs must also appoint a committee of directors if they have a market capitalization of 1.5 million development units or more and at least 12.5% of their voting shares are held by shareholders that, on an individual basis, control less than 10% of such shares.[450] The committee of directors has the following functions:

(i) Examining the external auditor's annual report and the financial statements submitted by the company's board and commenting thereon prior to their submission to the shareholders for their approval.

(ii) Proposing to the board of directors names for the company's external auditors as well as informing the board of directors whether it is appropriate to engage the external auditors to provide non-audit services, particularly if the nature of those services may give rise to a risk of loss of independence.

(iii) Examining the background relating to transactions entered into by the open SA and its affiliates with related parties and issuing a report in connection with such transactions. A copy of the report must be provided to the board of directors, which must either approve or reject the transactions.

(iv) Reviewing the remuneration and compensation plans for the management, executives and employees of the company.

(v) Preparing an annual report of the company's management to include recommendations to the shareholders.

[442] Law No. 18,046, Art. 40.
[443] Law No. 18,046, Art. 41.
[444] Law No. 18,046, Arts. 42 and 43.
[445] Law No. 18,046, Art. 44. For purposes of this rule, an amount is significant if it exceeds 1% of the corporation's net worth and the contract exceeds 2,000 development units. A board member is deemed to have a direct interest in a contract if a related party has that direct interest and, in this regard, a related party includes a company in which the board member or a relative is a director or owns, directly or indirectly, at least 10% of its capital.
[446] Law No. 18,046, Art. 45.
[447] Law No. 18,046, Art. 47.
[448] Law No. 18,046, Art. 48.
[449] Law No. 18,046, Art. 49.
[450] Law No. 18,046, Art. 50 *bis.*

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The committee of directors must have three members, two of which must be independent, and must be elected at a shareholders meeting from the members of the board of directors. The governing rules are the same as those applying to the board of directors. The office of the committee of directors must be remunerated, the remuneration being determined by the general meeting of shareholders on an annual basis. The members of the committee of directors are jointly liable with respect to any damages caused to the shareholders and the company in the performance of their duties.

5. Shareholders' Meetings

a. In General

Shareholders' meetings may be general or special[451] and must be called by the board of directors.[452] The board must also call a general or special meeting of shareholders, as the case may be, if this is requested by at least 10% of the shareholders with the right to vote. In that event, the shareholders' meeting must be held within 30 days from the date on which the shareholders made the request. Any shareholders' meeting must be called by means of a notice that must be published at least three times on different days in the newspaper that has been selected by the shareholders at a previous meeting. Moreover, if the corporation is an open SA, the notice must also be mailed to each shareholder at least 15 days prior to the meeting.[453]

Unless the by-laws require a higher quorum, shareholders owning or representing an absolute majority of the voting shares must be present at the meeting to constitute a quorum. If a quorum is not achieved in the first instance, a quorum will be achieved in the second instance with merely the shareholders owning or representing voting shares that are present at that meeting, irrespective of their number. Notices for the second call may only be published once the meeting under the first call is cancelled for lack of a quorum. The meeting under the second call must be held within 45 days following the date established for the initial meeting. Shareholder resolutions are adopted if approved by shareholders owning or representing an absolute majority of the voting shares present at the meeting.[454] In the case of open SAs, only those shareholders that are registered in the corporation's Shareholders' Registry five days prior to the meeting day may exercise their right to vote, while in the case of closed SAs any shareholder registered in the Shareholders' Registry at the time the meeting starts has the right to attend. Holders of nonvoting shares as well as the corporation's directors and officers may attend the shareholders' meetings and have the right to speak. Shareholders may also be represented at the meetings by proxy, which must be in writing.[455]

All the shareholders' resolutions must be in writing and must be kept in a minute book, which must be maintained by the secretary of the corporation. The entry must be made within 10 days following the date of the meeting. Open SAs are also required to post the most recent resolution on their website.[456]

Shareholders have the right to examine the corporation's annual report, financial statements, inventory, resolutions, books and auditor's report, which must be maintained at the corporation's offices and be made available only during the 15 days prior to a shareholders' meeting. Open SAs must also post their annual report, audited financial statements and the auditor's report on their website.[457] If the SA owns subsidiaries, the financial statements must be prepared on a consolidated basis.[458]

b. General Meetings

General meetings of shareholders must be held at least once a year during the period that the by-laws establish.[459] The general meeting must be held within six months following the end of the taxable year. Certain matters of importance require the approval of a general shareholders' meeting, including:

(i) Approval of the annual report, the financial statements, and the auditor's or certified book inspectors' report.[460] These documents must reflect with clarity the corporation's financial position at the end of the taxable year and the profits or losses that have been generated during that year. In the case of open SAs, the annual report must have as an attachment any comments or proposals made by the committee of directors as well as shareholders owning or representing 10% or more of the voting shares.[461]

(ii) The election or removal of board members and their substitutes, as well as liquidators.[462]

(iii) In the case of a closed SA and unless the by-laws provide otherwise, the appointment on an annual basis of two certified financial inspectors or an external independent auditor, who must examine the corporation's accounting, inventory and financial statements and provide information, in writing, at the next general meeting of shareholders on the corporation's compliance performance;[463] in the case of an open SA, the general meeting of shareholders only has to appoint external independent auditors to perform the same duties as are performed by the auditors in the case of a closed SA, unless the by-laws also require the appointment of certified financial inspectors on a temporary or permanent basis.[464]

(iv) Determination of the amount to be distributed as dividends. In this regard, dividends must be distributed only out of current earnings or retained earnings, as approved

[451] Law No. 18,046, Art. 55.

[452] Law No. 18,046, Art. 58.

[453] Law No. 18,046, Art. 59. A shareholders' meeting is also valid if the shareholders owning all the voting shares are present even if the above formalities are not complied with. Law No. 18,046, Art. 60.

[454] Law No. 18,046, Arts. 61 and 64. In the case of an open SA, notice of a shareholders' meeting must also be sent to the Superintendence of Securities and Insurance at least 15 days prior to the meeting. Law No. 18,046, Art. 63.

[455] Law No. 18,046, Art. 64. If the shares are pledged, it is the debtor that has the right to vote. If, on the other hand, there is a usufruct on the shares, both the holder of the usufruct and the bare owner have the right to vote jointly. Law No. 18,046, Art. 65.

[456] Law No. 18,046, Art. 72.

[457] Law No. 18,046, Art. 54.

[458] Law No. 18,046, Art. 90.

[459] Law No. 18,046, Art. 55.

[460] Law No. 18,046, Art. 56.

[461] Law No. 18,046, Art. 74.

[462] Law No. 18,046, Art. 56.

[463] Law No. 18,046, Art. 51.

[464] Law No. 18,046, Art. 52. The external independent auditors of open SAs must be selected among those registered with the Superintendence of Securities and Insurance. Law No. 18,046, Art. 53.

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in the financial statements and in the manner established in the by-laws. However, if a corporation has accumulated NOLs, current earnings must first be used to offset such NOLs; on the other hand, if a corporation has current NOLs, these must be offset with any retained earnings.[465] In the case of open SAs that have no accumulated NOLs, at least 30% of the annual net profits must be distributed in cash to the shareholders, unless there is a unanimous agreement to the contrary by the shareholders.[466] Closed SAs are also subject to this requirement unless their by-laws provide otherwise. Payment of the minimum mandatory dividend must be made within the 30 days following the date on which the shareholders' meeting approved the dividend distribution.[467] Additional dividends are payable within the taxable year in which the resolution was adopted and on the date agreed to at the shareholders' meeting. Undistributed profits may be capitalized through the issuance of paid-up shares or through the increase of their nominal value; in both instances, the capitalization must be formalized by way of an amendment of the by-laws.[468] The board of directors is authorized to distribute interim dividends, provided there are no accumulated NOLs. Generally, dividends are paid in cash. However, shareholders of open SAs have the right to request to be paid the dividend that is in excess of the minimum mandatory dividend with shares of the corporation itself or of other open SAs in which the corporation is a shareholder.[469]

(v) Any other matter of interest to the corporation, provided such matter does not have to be addressed in a special meeting of shareholders.[470]

c. Special Meetings

Special meetings may be called at any time, whenever there is an issue that either the law or the by-laws require the shareholders to be aware of or vote on.[471] Subject to a few exceptions, most resolutions of special meetings of shareholders require the approval of at least two-thirds of the voting shares.[472] In particular, the law provides for the following matters to be addressed at a special meeting of shareholders:

(i) The dissolution, transformation, merger or spin-off of the corporation, and amendments to the by-laws;

(ii) Reductions of capital, in-kind contributions and the issuance of bonds or convertible debentures;

(iii) The sale of 50% or more of the corporation's assets and/or liabilities, or a proposal or change of business plan that involves such a sale; the sale of 50% or more of the assets of an affiliate provided the value of such affiliate represents at least 20% of the value of the assets of the SA; and the sale of shares in an affiliate if such sale results in a loss of a controlling interest in such affiliate;

(iv) The provision of guaranties that exceed 50% of the corporation's asset value to secure obligations with third parties, unless such parties are affiliates, in which case the board's approval is sufficient;

(v) The purchase of treasury stock; and

(vi) Any other matter that, under either the law or the by-laws, must be addressed at a shareholders' meeting.[473]

6. Corporate Reorganizations

The Chilean corporate law on SAs allows SAs to de-merge, provided the new entity resulting from the de-merger is also an SA.[474] The split-off must be approved by a special meeting of shareholders, which must decide on the amount of capital to be reduced in the existing corporation and the equity that is to be transferred to the one or more new SAs that are created as a result of the de-merger as well as the new by-laws, which are not required to be the same as those of the SA that de-merges.[475]

An SA may also be transformed into another legal form and an entity with another legal form may be transformed into an SA. The legal personality of a corporation survives upon a transformation.[476] Therefore, a corporate transformation is not treated as a deemed liquidation. The transformation is achieved by means of amending the entity's by-laws to adapt them to those of the new legal form. Partners in an SC or SenC that is transformed into an SA continue to remain liable for the debts that the partnership incurred prior to its transformation, unless the creditors have consented to the transformation.[477]

Corporate mergers may be by way of creation, where all the assets and liabilities of two or more corporations that dissolve are contributed to a new corporation, or by way of incorporation, where one or more corporations that are dissolved are absorbed by an existing corporation that receives all of their assets and liabilities. In a corporate merger, the surviving corporation inherits all the rights and liabilities of the merged or absorbed entities. These entities are not deemed to have been liquidated.[478]

7. Dissolution and Liquidation

An SA must be dissolved upon the occurrence of one of the following events:

(i) Its term, if any, has been completed;

(ii) Its shares are held by a single person for an uninterrupted period in excess of 10 days;

(iii) The dissolution is agreed to by a special meeting of shareholders;

[465] Law No. 18,046, Art. 78.

[466] Law No. 18,046, Art. 79. If the SA owns subsidiaries, the minimum mandatory dividend must include the annual profits generated by those subsidiaries. Law No. 18,046, Art. 90.

[467] Law No. 18,046, Art. 81.

[468] Law No. 18,046, Art. 80. The corporation may also retain those profits for future dividend distributions.

[469] Law No. 18,046, Art. 82.

[470] Law No. 18,046, Art. 56.

[471] Law No. 18,046, Art. 55.

[472] Law No. 18,046, Art. 67.

[473] Law No. 18,046, Art. 57.

[474] Law No. 18,046, Art. 94.

[475] Law No. 18,046, Art. 95.

[476] Law No. 18,046, Art. 96.

[477] Law No. 18,046, Art. 98.

[478] Law No. 18,046, Art. 99.

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(iv) Its legal existence is revoked by the authorities or the courts;[479] or

(v) Other events occur as provided for in the corporation's by-laws.[480]

When an SA does not pay one or more of its obligations when due or has been declared bankrupt, the board of directors must call a shareholders' meeting within 30 days following the date on which the corporation failed to meet its obligations or was declared bankrupt. However, if an open SA fails to meet its obligations or a creditor seeks to declare it bankrupt, its officers must notify the Superintendence of Securities and Insurance of this event on the working day following the event.[481]

A corporation that is dissolved continues to have legal personality during the liquidation process. However, the words "in liquidation" must be added to its corporate name. During the liquidation process, the corporation may only execute acts or contracts that are conducive to its liquidation.[482] Once a corporation is dissolved, the liquidation must be carried out by a commission that is elected at a shareholders' meeting.[483] This commission normally has three members, unless the shareholders with the right to vote unanimously agree otherwise.[484]

The liquidation proceeds must be paid in cash to the shareholders, unless all the shareholders unanimously agree otherwise.[485] These payments may be made only once the corporation's liabilities are paid or secured for the creditors.[486] The liquidators are jointly liable for any damages caused to the creditors of the corporation in connection with the distribution of the liquidation proceeds.[487]

8. Books and Records

An SA is required to keep at its corporate domicile and offices, and make available to its shareholders, updated copies of its deed of incorporation and by-laws, and amendments thereto, and an updated list of shareholders, their addresses and the number of shares they own. In the case of an open SA, financial statements and annual reports must be posted on the SA's web site and sent to the shareholders that are registered in the corporation's shareholders' book and both the annual report and the financial statements must be audited. The directors and officers are jointly liable towards the shareholders and third parties for any damages that may be caused as a result of not keeping these documents or not having them duly updated.[488]

SAs are required to keep, in Spanish, the following bound books, which must be stamped by the Chilean tax authorities (*Servicios de Impuestos Internos*, SII):

(i) A journal;

(ii) A general ledger;

(iii) An inventory and balance sheet book;

(iv) A ledger for salaries and withholding taxes on salaries;

(v) Ledgers for purchases and sales;

(vi) A registry of goods in stock; and

(vii) A registry of retained taxable earnings.

The SII authorize the use of computerized accounting systems, loose-leaf journals (including computer printouts), a general ledger and various other records.

C. Limited Liability Company

1. In General

The limited liability company (*sociedad de responsabilidad limitada*, SRL) form is probably the most commonly used legal vehicle in Chile for purposes of conducting business activities. SRLs are governed by Law No. 3,918,[489] the Commercial Code (ComC), and their deeds of incorporation. An SRL shares characteristics with both an SA and a partnership since, on the one hand, the liability of each quota-holder is limited to the amount specified in the deed of incorporation, which may not be less than each quota-holder's contribution to the SRL's capital,[490] while, on the other hand, its equity interests are not represented by shares or other negotiable instruments. In fact, Law 3,918 provides that, unless otherwise provided in that law, the rules in the ComC on SCs or general partnerships are also applicable to SRLs.[491]

An SRL is an entity with legal personality and, as such, it is a separate taxpayer, not a transparent entity. The affairs of an SRL are not subject to government control (except in the case of bankruptcy), and it has no obligation to publish accounts or to file these with any government department. SRLs must have at least two quota-holders and may not have more than 50.[492] Foreign entities may own quotas in an SRL. An SRL may operate under the name of one or more of its quota-holders or under a name indicative of its corporate purpose. Moreover, the corporate name must end with the words "*Limitada*" or its abbreviation "*Ltda*," otherwise all of its quota-holders will become jointly liable with respect to the SRL's obligations.[493]

Annual financial statements must be held in the SRL's office for inspection at the request of the *Servicios de Impuestos Internos* (SII). However, there is no obligation to publish annual financial statements. The quota-holders in an SRL are not required to hold regular annual meetings.

[479] A court may dissolve an SA if it is not supervised by the Superintendence of Securities and Insurance and the dissolution is requested by shareholders owning or representing at least 20% of the share capital. Law No. 18,046, Art. 105. If a court dissolves a corporation, its directors and officers are jointly liable for the damages they eventually cause to the shareholders, unless the directors and/or officers are able to prove that they did not participate in, or were opposed to, the acts that led the court to order the corporation's dissolution. Law No. 18,046, Art. 106.

[480] Law No. 18,046, Art. 103.

[481] Law No. 18,046, Art. 101.

[482] Law No. 18,046, Art. 109.

[483] Law No. 18,046, Art. 110.

[484] Law No. 18,046, Art. 111.

[485] Law No. 18,046, Art. 116.

[486] Law No. 18,046, Art. 117.

[487] Law No. 18,046, Art. 118.

[488] Law No. 18,046, Art. 7.

[489] Law No. 3,918, as amended, also known as the SRL Law, was enacted on March 7, 1923, and was published in the *Diario Oficial* on March 14, 1923.

[490] Law No. 3,918, Art. 2.

[491] Law No. 3,918, Art. 4.

[492] Law No. 3,918, Art. 2.

[493] Law No. 3,918, Art. 4.

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2. Formation

The deed of incorporation of an SRL must be executed in a public deed, which must contain the following information:[494]

(i) The names and addresses of the quota-holders;

(ii) The name and domicile of the SRL;

(iii) The names of the quota-holders who will be in charge of managing the SRL and of using the SRL's name. If the deed is silent on this matter, each quota-holder is deemed to confer the power to manage the SRL on the other quota-holders. Quota-holders may also delegate the power to manage the SRL to non-quotaholders;[495]

(iv) The SRL's corporate purpose, which may not include banking activities;

(v) The date on which the SRL will commence its operations and the date on which it will be dissolved;

(vi) The contributions to be made by each quota-holder, which may consist of cash, loans, any other type of property, and future services. If there are in-kind contributions, a valuation of those contributions must be included;

(vii) A statement indicating that the liability of the quota-holders is limited to the amount of their contributions to the SRL's capital, or a greater sum if so agreed by the quota-holders in the deed of incorporation;[496]

(viii) How the SRL's profits and losses will be allocated among the quota-holders;

(ix) The amount, if any, that each quota-holder may withdraw from the SRL for his or her personal needs;

(x) The procedures to be followed upon dissolution;

(xi) Whether any dispute among the quota-holders has to be resolved by arbitration; and

(xii) Other agreements made by the quota-holders.

A summary of the public deed must be registered with the Commercial Registry within 60 days following the execution of the deed,[497] and be published once in the *Diario Oficial* within the same time period.[498] Failure to execute the public deed, to register it with the Commercial Registry, or to publish it in the *Diario Oficial* will render the incorporation of the SRL null and void.[499] Once these formalities are complied with, the SRL is deemed to exist as of the date on which the deed of incorporation was executed.[500]

The time involved in setting up an SRL is about 20 days. Formation expenses are not significant. Moreover, SRLs do not pay annual license fees and are not subject to the control of the Superintendence of Securities and Insurance.

3. Corporate Capital and Transfer of Interests

There are no minimum or maximum capital requirements for SRLs. While increases of capital are freely decided by the quota-holders, reductions of capital in SRLs must be authorized by the SII.

A quota-holder may transfer his or her interests in an SRL provided all the other quota-holders consent to the transfer.[501] Moreover, quota-holders may not be personally engaged in the same business activity as the SRL, otherwise the profits personally generated by the quota-holder will be attributed to the SRL.[502]

4. Management

The deed of incorporation must establish the names of the quota-holders that will be engaged in managing the SRL and will be authorized to use the SRL's name and signature.[503] The deed of incorporation may include other special provisions, such as the need for unanimous approval in contracting bank loans and selling real estate.

5. Dissolution and Liquidation

Unless otherwise agreed to by the quota-holders, an SRL is required to be dissolved if:

(i) Its duration, as established in the deed of incorporation, has concluded;

(ii) The business for which it was formed has been concluded;

(iii) The SRL enters into bankruptcy;

(iv) One of the quotaholders dies; or

(v) It is agreed to by all the quota-holders.[504]

The liquidation of an SRL that has dissolved must be carried out by the person appointed in the SRL's by-laws. If the by-laws are silent on this issue, then the quota-holders are required to appoint a liquidator. In this regard, one or more quota-holders, if so appointed, may act as liquidator. During the liquidation process, the liquidators are deemed to be the legal representatives of the SRL. Basically, the liquidators collect all the receivables, pay outstanding liabilities, sell the assets, and distribute any net proceeds among the quota-holders.

D. Limited Company by Shares (SpA)

1. In General

An SpA (*sociedad por acciones*) is a type of legal entity created in 2007. One of its most prominent features is that it can be incorporated by a single shareholder, whether an individual or a legal entity.[505] Its capital is represented by shares.

[494] Law No. 3,918, Art. 2; ComC, Art. 352. For a model deed of incorporation for a limited liability company, see the Worksheets.
[495] ComC, Art. 385.
[496] Law No. 3,918, Art. 4.
[497] ComC, Art. 354.
[498] Law No. 3,918, Art. 3.
[499] ComC, Art. 357.
[500] Law No. 3,918, Art. 3.
[501] ComC, Art. 404.
[502] ComC, Art. 404.
[503] CC, Art. 2071.
[504] CC, Arts. 2098–2103 and 2106–2108.
[505] ComC, Art. 444.

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2. Formation

The formation of an SpA must be made by means of a deed of incorporation and its by-laws, which must be executed in a notarial public deed. Alternatively, the deed of incorporation can be executed in a private deed duly signed by the party or parties setting it up, but his, her or their signatures must be duly authorized by a notary.[506] A summary of the deed of incorporation and by-laws must be registered with the Commercial Registry of the place where the company is domiciled within one month from the date the deed of incorporation was executed or the signatures were authorized before a notary; the summary must also be published in the *Diario Oficial*, but only once. The summary must contain the following information:

(i) The name of the company;

(ii) The name of the shareholders appearing in the deed of incorporation;

(iii) The corporate purpose;

(iv) The amount of the capital that is subscribed and paid; and

(v) The date the deed was executed, and the name and domicile of the notary that authorized the deed or the private document.[507] It is also recommended that the deed of incorporation provide for the corporate domicile, otherwise the company will be deemed to be domiciled in the place where the deed of incorporation is executed.[508]

The SpA is deemed to exist on the day the deed was executed or the signatures were authorized by the notary, even though the registration and publication of such deed or the notarial authorization of the private agreement in the *Diario Oficial* occur at a later date.[509] An SpA is deemed to be null and void if any of the information that the deed of incorporation is required to contain is missing or if the registration and publication of the summary is made after the due date. In that event, the shareholders are jointly liable with respect to the obligations assumed by the company. They are also free to liquidate the de facto corporation themselves or appoint one or more liquidators to do so.[510]

The company's by-laws must govern the rights and duties of the shareholders, the manner in which the company will be managed, and any agreements of the shareholders, provided they are not contrary to the Law. If both the by-laws and the ComC provisions covering the SpA are silent on an issue, the company will be subject to the rules applicable to closed SAs (for a discussion of SAs, see III.B., above).[511] In any event, the by-laws of an SpA must deal with the following matters:

(i) The company's name, which must necessarily end with the words "SpA";

(ii) The corporate purpose;

(iii) The company's capital and the number of shares into which such capital is divided;

(iv) The manner in which the company's management will be exercised as well as the names of the directors; and

(v) The company's duration. If the by-laws are silent on this matter, the company will be deemed to have an indefinite life.[512]

The by-laws may only be amended by a shareholders' meeting and the shareholders' resolution must be notarized. However, a meeting will not be necessary if all the company's shareholders amend the by-laws in a public deed or in a private document that is subsequently authorized by a notary. A notice of the amendment must be registered with the Commercial Registry and published in the *Diario Oficial* within 30 days of the execution of the public deed or notarial authorization. The nature of the amendment must be described in the publication if it changes any of the matters that have been previously published.[513]

3. Corporate Capital

a. In General

An SpA's shareholders are only liable for the SpA's debts up to the capital they have contributed to it.[514] As noted in 2., above, the company's capital must be indicated both in the deed of incorporation and by-laws. It must be divided into a specific number of shares. All shares must be registered; however, the by-laws may provide that the company is not required to issue shares on physical vouchers.[515]

Increases of capital must be agreed to in a shareholders' meeting. However, the by-laws may authorize the company's management, with general or limited powers and on a temporary or permanent basis, to increase the company's capital to finance the day-to-day management of the company or for specific purposes. The share capital and all future increases must be fully subscribed and paid within the period contemplated in the by-laws. If the by-laws are silent on this point, the maximum period for paying for the subscribed shares is five years as of the date of the company's incorporation or the date on which the company resolves to increase its capital. If the capitalization does not occur within the specified period, the company's share capital must be reduced to reflect only those shares that have been subscribed to and paid. Unless otherwise indicated in the by-laws, no rights whatsoever are to be attached to shares that have not been fully paid up.[516]

An SpA that issues convertible bonds must ensure there is a sufficient margin of unsubscribed capital to accommodate those convertible bondholders that decide to exercise their option to convert the bonds into stock.[517]

All reductions of capital must be approved by the shareholders' meeting with the majority established in the by-laws. If the by-laws are silent on this matter, the vote must be unan-

[506] ComC, Art. 425.
[507] ComC, Art. 426.
[508] ComC, Art. 433.
[509] ComC, Art. 425.
[510] ComC, Art. 428; Law No. 18,046, Art. 6.
[511] ComC, Art. 424.
[512] ComC, Art. 425.
[513] ComC, Art. 427.
[514] ComC, Art. 428.
[515] ComC, Art. 434.
[516] ComC, Art. 434.
[517] ComC, Art. 439.

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imous. An SpA cannot proceed to repay capital or to purchase its own shares through a reduction of capital unless and until the by-laws are amended accordingly.[518]

b. Shares and Share Transfers

As noted in a., above, shares issued by SpAs must be registered. Moreover, shares may also be common or preferred. In any event, the by-laws must clearly specify the obligations, privileges and other special rights affecting or enjoyed by each class of shares. It is not in the nature of preference shares to be subject to limitations on rights otherwise enjoyed by other classes of stock.[519] If the by-laws allow the issuance of preferred stock and also provide for the possibility of paying a fixed dividend, whether predetermined or determinable, then such dividends must have preference over those payable on other classes of stock. If the company's earnings are insufficient to pay the fixed dividend, the holder of the preferred stock may, unless the by-laws provide differently, either: (i) have the company enter the amount due in a special account in which the unpaid dividends are to be recorded; the company is not allowed to distribute dividends to holders of other classes of stock until the special account has been fully paid off; or (ii) force the company to redeem the preferred shareholder's shares.[520] The company is also allowed to distribute dividends based on separate business units or specific assets, as opposed to on the basis of the overall accounting profits of the company. In that event, the company is required to run separate accounts for such business units or specific assets as well as tracking the profits generated by those assets.[521]

The company may also issue stock at a price that can be freely established by the shareholders. This stock does not have to be offered to the shareholders on a preferential basis. However, the by-laws may require that options to subscribe increases of capital, convertible bonds, or any other type of instrument that confers future rights on shares, be offered at least once to the shareholders on a preferential basis pro rata to the shares they already own.[522] Each shareholder has the right to one vote per share it owns or represents. However, the by-laws can provide for the issuance of non-voting stock, limited voting stock, or multiple voting stock. In that event, the by-laws must specify how these shares are to be taken into account for purposes of calculating the existence of a quorum.[523]

The by-laws may provide the minimum and maximum share capital that can be, directly or indirectly, controlled by one or more shareholders. In that event, the by-laws must also provide rules that govern the effects for shareholders that breach those thresholds, as well as the obligations and limitations on those shareholders. The by-laws may also provide for the circumstances in which a shareholder must be forced to sell his or her shares, whether it is in favor of the other shareholders, the company itself or a third party. In the event the by-laws include such a clause, it must also contain rules that govern the rights and obligations of the shareholders.[524]

An SpA can own treasury stock, unless the by-laws provide otherwise. Treasury stock cannot be taken into account for purposes of calculating the quorum in shareholders' meetings or to approve amendments of the company's by-laws. Moreover, treasury stock does not have the right to vote dividends or subscription preferences in the event of an increase of capital. Treasury stock must be disposed of by the company within the period prescribed in the by-laws. If the by-laws are silent, the sale must occur within one year from the date on which the treasury stock was acquired by the company. If the sale does not occur, the share capital must be reduced accordingly and the shares must be written off from the shareholders' registry.[525]

SpAs are required to keep a shareholders' registry in which they must enter, at a minimum, the name, domicile and tax identification number of each shareholder, the number of shares each shareholder owns, the date on which shares are registered in the name of the shareholder and, in the event of subscribed but unpaid shares, the manner in which such shares are to be paid. The company must also enter any pledges on the shares. The transfer of shares must also be recorded in the registry. The registry can be supported by any means, provided it is secure and allows for an immediate entry of data. The registry must be available at all times to any shareholder or officer that requests it. Both directors and the managing director are jointly liable for any damage caused to the shareholders and third parties as a result of any failure to keep the registry information accurate and up to date.[526] When shares in an SpA are transferred, the transferee must make representation in the transfer agreement to the effect that he or she is familiar with the rules governing the SpA and the company's by-laws, and in particular with any protection that such by-laws may confer on transferees. Failure to make such representation in the agreement does not render the transfer null and void, but makes the transferor liable for any damages that such omission may cause.[527]

The by-laws may specify the manner in which the company and the shareholders may communicate with each other. If the by-laws are silent on this point, communication must be by way of certified mail. If communication fails, the notice concerned is not deemed to be invalid, but the company's management will be responsible for any damages caused to the shareholders.[528]

4. Corporate Reorganizations and Transformations

An SpA must, by application of law, transform itself into an open SA if, for a period of more than 90 days, either: (i) it has at least 500 shareholders; or (ii) at least 10% of its subscribed capital is owned by at least 100 shareholders, excluding those shareholders that own at least such percentage. In that event, all the legal provisions governing open SAs will also govern the transformed SpA, and those provisions will prevail over the entity's by-laws. In the event of such transformation, the next meeting of shareholders must adapt the structure of the

[518] ComC, Art. 440.
[519] ComC, Art. 436.
[520] ComC, Art. 442.
[521] ComC, Art. 443.
[522] ComC, Art. 439.
[523] ComC, Art. 437.
[524] ComC, Art. 435.
[525] ComC, Art. 438.
[526] ComC, Art. 425.
[527] ComC, Art. 431.
[528] ComC, Art. 446.

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SpA to that of an open SA and must also select the members of the board of directors that will continue to manage the entity.[529]

5. Corporate Disputes

All disputes between shareholders, between shareholders and the company or its management or liquidators, and between the company and its management or liquidators, must be resolved by arbitration. In that regard, the by-laws must provide for the type of arbitration and the number of arbitrators in the panel; if the by-laws are silent, the arbitrator must consist of a single arbitrator who must resolve the disputes according to the law. The by-laws must also state either the arbitrator's name or the manner in which he or she will be designated; if the by-laws are silent, the arbitrator will be designated by the court of justice where the company's corporate domicile is located.[530]

E. Limited Liability Enterprise

An *empresa individual de responsabilidad limitada* (EIRL) or limited liability enterprise is, like an SpA, an entity that may be held by one shareholder. However, unlike in the case of an SpA, the shareholder in an EIRL may only be an individual, both at the time of its incorporation as well as on a going-forward basis.[531] Even though an EIRL may only have one shareholder, it is treated as a legal person separate from its owner. It is allowed to conduct any business other than those that are reserved to SAs.[532] The EIRL is liable with respect to its obligations to the extent of all of its assets, while the individual shareholder's liability is generally limited to the amounts he or she has committed to contribute to the enterprise's capital, as reflected in the deed of incorporation.[533] However, the shareholder is personally liable in the following instances:[534]

(i) For any acts taken outside of the scope of the enterprise's corporate purpose;

(ii) For any contracts executed in which the name of the enterprise does not appear;

(iii) For any simulated acts or contracts entered into by the enterprise or if the enterprise is found to have committed a fraudulent bankruptcy; and

(iv) If the shareholder receives income from the enterprise that is disproportionate, taking into account the enterprise's turnover, or the enterprise makes remittances to the shareholder that do not come out of distributable reserves.

Except in the above instances, the shareholder's creditors do not have a claim against the enterprise. If the enterprise is liquidated, the shareholder's creditors have a claim against the enterprise but only with respect to its distributable reserves and after the enterprise's creditors have been discharged.[535]

The incorporation of an EIRL must be effected in a notarial deed.[536] The deed must contain, at a minimum, the following information:

(i) The full name, nationality, civil status, age and address of the individual setting up the EIRL;

(ii) The corporate name of the EIRL, which must contain the name of the person incorporating it and may include also a made up name, and must end with the words "*empresa individual de responsabilidad limitada*" or its abbreviation "EIRL";

(iii) The EIRL's corporate purpose;

(iv) The enterprise's capital and whether it is contributed in cash or in-kind and, in the latter case, the value of the property being contributed;

(v) The enterprise's domicile; and

(vi) The enterprise's duration; if the deed is silent on this point, the enterprise is deemed to be incorporated for an indefinite period.[537]

An excerpt of the notarial deed of incorporation, duly authorized by the Notary Public, must be registered with the Commercial Registry and published once in the *Diario Oficial* within 60 days following the date of the deed's execution.[538] Failure to comply with any of the above requirements renders the incorporation of the enterprise null and void and the shareholder will be personally liable for the enterprise's obligations if the failure is not remedied.[539]

The EIRL must be managed by the shareholder, although he or she may delegate powers to a managing director. The delegation of powers must be made through a notarial deed, which must be registered with the Commercial Registry.[540] In any event, all the acts undertaken by the enterprise are only valid if they are in writing, are protocolized before a Notary Public, and registered with the Commercial Registry within 60 days from the date of their execution.[541]

If all the shares or quotas in a Chilean company end up being owned by a single individual, that company may transform itself into an EIRL. The transformation must be executed in a notarial deed within 30 days from the date in which the single individual acquired all of the shares and registered with the Commercial Registry within 60 days from its execution. Likewise, an EIRL may also be transformed into another company if its shares become owned by more than one individual shareholder or by one or more corporate shareholders.[542] In the latter case, the transformed company will be liable with respect to all the obligations of the EIRL, unless the individual shareholder decides to assume them.[543]

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[529] ComC, Art. 430; Law No. 18,046, Art. 2.
[530] ComC, Art. 441.
[531] Law No. 19,857, dated Jan. 23, 2003, published in the *Diario Oficial* on Feb. 11, 2003, Art.1.
[532] Law No. 19,857, Art. 2.
[533] Law No. 19,857, Art. 8.
[534] Law No. 19,857, Art. 12.
[535] Law No. 19,857, Art. 13.
[536] Law No. 19,857, Art. 3.
[537] Law No. 19,857, Art. 4.
[538] Law No. 19,857, Art. 5.
[539] Law No. 19,857, Art. 7.
[540] Law No. 19,857, Art. 9.
[541] Law No. 19,857, Art. 10.
[542] Law No. 19,857, Art. 14.
[543] Law No. 19,857, Art. 16.

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The EIRL is subject to the rules applicable to SRLs if Law No. 19,857 is silent on the matter.[544]

F. General Partnership

The SC (*sociedad colectiva*) or general partnership is seldom used in Chile. While this type of business organization is a separate legal entity, each partner is jointly liable for all the partnership's debts and obligations; therefore, the partners' liability is not limited to their equity contributions. Moreover, the joint liability of the partners may not be waived by means of a partners' agreement.[545]

An SC must be set up in a public deed, which must contain the following information:[546]

(i) The names and addresses of the partners.

(ii) The name and domicile of the SC. In this regard, the SC name must have the name of one or more of its general partners, followed by the words "and company."[547]

(iii) The names of the partners that will be in charge of managing the SC and of using the SC's name. If the deed is silent on this matter, each partner is deemed to confer the power to manage the SC on the others and to assume joint responsibility without his or her notice or consent.[548] Partners may also delegate the power to manage the SC to non-partners.[549]

(iv) The SC's purpose.

(v) The date on which the SC will commence its operations and the date on which it will be dissolved.

(vi) The contributions to be made by each partner, which may consist of cash, loans, any other type of property, and future services. If there are in-kind contributions, a valuation of those contributions must be included.

(vii) How the SC's profits and losses will be allocated among the partners.

(viii) The amount, if any, that each partner may withdraw from the SC for his or her personal needs.

(ix) The procedures to be followed upon dissolution.

(x) Whether any disputes among the partners have to be resolved by arbitration.

(xi) Other agreements made by the partners.

A summary of the public deed must be registered with the Commercial Registry within 60 days following the execution of the deed.[550] Thus, an SC may not be set up by a mere private agreement among the shareholders, because failure to execute the public deed and register it with the Commercial Registry will render the SC null and void.[551]

Partners may not transfer their partnership interests unless this is otherwise consented to by all the other partners.[552] Moreover, partners may not be personally engaged in the same business activity as the SC. Otherwise, the profits generated by the partner will be attributed to the SC.[553]

G. Limited Partnership

1. In General

There are two types of SenCs or limited partnerships: the *Sociedad en Comandita Simple* (SenCS) and the *Sociedad en Comandita por Acciones* (SenCA).[554] Both limited partnerships have two types of partners: the general partner (*socio gestor*) and the limited partner (*socio comanditario*).[555] The liability of general partners is joint and several, while the liability of limited partners is limited to their contributions.[556] A limited partner may not manage a limited partnership, even as a representative of the general partner;[557] in fact, a limited partner loses his or her limited liability and becomes jointly liable as a general partner if he or she becomes involved in the SenC's management.[558]

The basic difference between an SenCS and an SenCA is that, in the case of the latter, the partnership interests are divided into shares and the contribution to the partnership is made by partners whose names do not appear in the public deed that sets up the SenC, while in the case of the former, the partnership's interests are not represented by shares and both the limited and the general partners may make contributions to the SenC.[559]

Both SenCSs and SenCAs are taxed under the same tax regime as applies to SAs. SenCSs and SenCAs must also register as taxpayers and file all appropriate tax returns with respect to value added tax (*Impuesto al Valor Agregado,* VAT) and social security taxes.

2. Simple Limited Partnership

SenCSs are set up following the same procedures as for SCs.[560] The name of an SenCS must contain the name of one or more of its general partners; the names of the limited partners may not be included in the name.[561] The words "and Company" must be included in an SenCS' name. A limited partner loses his or her limited liability and becomes jointly liable as a general partner if he or she allows his or her name to be included in an SenCS's name.[562]

Cash, property and services may be contributed to an SenCS' capital. However, partners that contribute services may not obtain a partnership interest and partnership losses may not be allocated to a partner as a result of a service contribution. However, such partners may participate in the income of the SenCS based on the value of the services they have contributed.

[544] Law No. 19,857, Art. 18.
[545] ComC, Art. 370.
[546] ComC, Art. 352.
[547] ComC, Arts. 365 and 366.
[548] ComC, Art. 386.
[549] ComC, Art. 385.
[550] ComC, Art. 354.
[551] ComC, Art. 357.
[552] ComC, Art. 404.
[553] ComC, Art. 404.
[554] ComC, Art. 471.
[555] ComC, Art. 470.
[556] ComC, Arts. 480 and 483.
[557] ComC, Art. 484.
[558] ComC, Art. 485.
[559] ComC, Arts. 472 and 473.
[560] ComC, Art. 474.
[561] ComC, Art. 476.
[562] ComC, Art. 477.

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3. Limited Partnership by Shares

SenCAs are set up in the same way as SCs.[563] However, the capital of an SenCA must be fully subscribed and at least 25% paid-up at the time of incorporation.[564] The shares issued by an SenCA may only be registered shares; they may not be in bearer form.[565] Services and property may, in addition to cash, be contributed to an SenCA's capital, in which case the SenCA will not be duly incorporated until the general assembly has verified the value of the contribution and approved it.[566]

General partners become members of an SenCA via contributions of cash, property or services. However, shareholders only become members of an SenCA via the purchase of shares in the SenCA. Members of an SenCA that contribute services to the SenCA may not obtain an interest in the SenCA's capital and losses incurred by an SenCA may not be attributed to such members; however, they are entitled to have income of the SenCA allocated to them based on the value of the services they have contributed.

Shares in an SenCA may only be transferred when the shareholder has paid in two-fifths of their value.[567] Shareholders of an SenCA have limited liability up to the value of their shares in the SenCA, provided they do not participate in the SenCA's management.[568] General partners, however, have unlimited liability.

H. Silent Partnership

A CenP (*asociación o cuenta en participación*) or silent partnership is a contract whereby two or more parties undertake to carry out one or more simultaneous or successive commercial activities. These activities must be performed by one of the parties (*gestor*) under its own name and responsibility. The contract must establish how the profits and losses derived under the CenP will be allocated among the parties.[569]

As the CenP is merely a private contractual arrangement, it is not a legal entity, it does not have a corporate name or address, and it does not have equity.[570] Its existence is not usually revealed to third parties and, therefore, silent partners (*asociados*) are generally not known to third parties — except to the SII, as the silent partners are generally taxed on the profits allocated to them under the contract. Therefore, the managing partner is deemed to be the owner of the business with respect to third parties. Third parties and silent partners may not make claims against each other.[571]

I. Branch of a Foreign Corporation

A foreign corporation may do business in Chile through a branch (*agencia*). Any corporation that is legally incorporated abroad may set up a branch in Chile under its own name.

1. Formation

Law No. 18,046 sets forth the requirements for the formation of branches of foreign corporations. The following documents must be "protocolized" with a Chilean notary:

> (i) A certificate showing that the foreign corporation is duly incorporated in accordance with the law of its country of origin and that it is legally in existence;
>
> (ii) A genuine copy of its by-laws; and
>
> (iii) A general power of attorney in favor of an agent who will represent the corporation in Chile. The power of attorney must clearly indicate that the agent will act in Chile under the direct responsibility of the corporation and must confer on the agent broad powers to carry out transactions on the corporation's behalf.[572]

The original documents submitted to the notary must be issued in the official language of the country of the head office, translated into Spanish if the official language is not Spanish, and duly legalized.[573] On the same date on which the above documents are protocolized by the notary, the agent must execute, on behalf of the foreign corporation, a public deed with the same notary, containing the following information:

> (i) The name under which the foreign corporation will operate in Chile, its Chilean domicile, and its purpose;
>
> (ii) A statement to the effect that the corporation recognizes Chilean law and regulations and that the branch and its assets will be subject to such law and regulations with respect to meeting any obligations in Chile;
>
> (iii) A statement to the effect that the branch agrees to maintain liquid assets to meet any obligations in the country; and
>
> (iv) The amount of cash that the branch will maintain in Chile for its operations and the manner in which such capital will be brought into the country.[574]

A summary of the protocolization and the public deed must be registered with the Commercial Registry and published in the *Diario Oficial* within 60 days following the date on which the protocolization was made. The summary, which must be certified by the notary, must include the date and the notary's protocol numbers for the protocolization and the public deed, the foreign corporation's name and the name under which it will operate in Chile, its Chilean domicile, its allocated capital, and the name of the agent in Chile.[575]

The branch must publish its annual balance sheet in a local newspaper within the four months following the end of the taxable year.[576]

2. Capital

Although there is no minimum capital requirement for a branch, the public deed that has to be executed to set up a branch must state the amount of cash that the branch will main-

[563] ComC, Art. 491.
[564] ComC, Art. 493.
[565] ComC, Art. 494.
[566] ComC, Art. 496.
[567] ComC, Art. 495.
[568] ComC, Art. 495.
[569] ComC, Art. 507.
[570] ComC, Art. 509.
[571] ComC, Art. 510.

[572] Law No. 18,046, Art. 121.
[573] Law No. 18,046, Art. 121.
[574] Law No. 18,046, Art. 122.
[575] Law No. 18,046, Art. 123.
[576] Law No. 18,046, Art. 124.

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tain in Chile for its operations and the manner in which such capital will be brought into the country.[577]

3. Business Activities of the Branch

As noted in 1., above, the foreign corporation must execute a general power of attorney in favor of the agent who will be in charge of representing the corporation in Chile through the branch. The power of attorney must confer broad powers allowing the branch to carry out transactions on the corporation's behalf.[578] To facilitate the agent's tasks, the power of attorney should permit the agent to delegate certain powers to other individuals who will work at the branch.

[577] Law No. 18,046, Art. 122.
[578] Law No. 18,046, Art. 121.

J. Joint Venture

Chilean laws do not specifically regulate unincorporated joint ventures. However, the SII has recognized the existence of unincorporated joint ventures in certain cases. The basic concept is that the joint venturers agree to contribute up to a certain percentage of the expenses arising in a particular project, to distribute the proceeds of the venture, and to offset their revenue against their share of expenditures. The practical operation of an unincorporated joint venture is complicated as the tax authorities require very detailed monthly reporting.

K. Sole Proprietorship

Individuals, both nationals and foreigners who are permitted to work in Chile, may engage in business activities in Chile as sole proprietors (*empresario individual*), as long as the law governing the business concerned does not require it to be carried on in corporate form.

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IV. General Principles and Principal Taxes

A. Legal Framework

1. Legislative

The Chilean Constitution guarantees an equal distribution of taxes in proportion to either revenues or based on progression, as determined by the applicable legislation. The law cannot impose taxes that are clearly disproportionate or unfair.[579]

Tax legislation must be introduced in Congress by the President of Chile and requires the approval of both the Chambers of Deputies and the Senate to become law.[580] With Congressional delegation, the President of Chile is also authorized to enact tax legislation by means of Decrees with the force of law. The President is also empowered to negotiate and sign international tax treaties, which must be submitted to Congress for enactment into law.[581] Treaties for the avoidance of double taxation entered into by Chile with other foreign countries govern the Chilean tax treatment of income and capital gains of persons that qualify for treaty benefits. However, Chilean domestic rules may also apply to a particular transaction carried out by a person otherwise entitled to treaty benefits to the extent the Chilean rules are more beneficial to the taxpayer than the provisions contained in the applicable treaty. In addition to tax laws and decrees, the Minister of Economy is entitled to issue regulations pursuant to a law and the Chilean tax authorities (*Servicios de Impuestos Internos*, SII) are empowered to issue resolutions (*circulares*) that interpret existing legislation. Tax rulings are issued to taxpayers in the form of *oficios.*

In Chile, it has become general practice to introduce changes to tax legislation at the end of each calendar year, when the Annual Budget is discussed by Congress. As a general rule, any changes to an existing tax norm, the introduction of a new tax, or the abolition of an existing tax may only come into effect on the first day of the month following the publication of the relevant amendment in the *Diario Oficial.* Therefore, only those events that occur on or after that date will be subject to the new legal provision. However, if the change in the tax legislation relates to an annual tax rate or to a rule on the determination of a taxpayer's taxable base, it may only enter into force on January 1 of the year following the publication of the new rule in the *Diario Oficial.* In this regard, taxes that are payable as of that date are to be governed by the new law.[582] No retroactive legislation is permitted, unless it involves tax infringements or penalties, in which case it may have retroactive effect only to the extent that the new rule either eliminates penalties or imposes lower penalties with respect to events that occurred prior to its entry into force.[583]

The SII has no power whatsoever to make any changes to Chilean tax legislation. However, it is empowered to interpret tax legislation at the administrative level. These interpretations are issued in the form of *circulares.* The SII is required to make draft *circulares* public to allow taxpayers to opine on their content, effects and make proposals before they become final, both in cases where the SII interprets a norm for the first time or when it changes an interpretation made in previous *circulares.*

Before a draft circular is made public, the SII must remit it to, and receive a written opinion from, its Tax Council to ensure its content is compliant with the law. That opinion must be received within 10 days.[584] All the comments made by taxpayers must be made publicly available and must be sent to the SII electronically at its website.[585] The SII is not required to respond to comments made by the taxpayer but, in the event the SII decides to respond, that response will not be binding. In the event of a dispute between a taxpayer and the SII, the case must be heard and decided by the judiciary.

2. Case Law

The letter of the law should govern its interpretation. It is possible, however, to refer to records of legislative discussions to clarify a difficult expression in the text of the law. In addition, the context of the law may serve to interpret its provisions. If, after applying these rules, there are still doubts as to the actual meaning of a rule, it is possible to refer to the general purpose of the legislation and to natural law. Thus, the letter of the law prevails as a source of legal interpretation, the other means being secondary and applicable only if the text is not clear.

A court decision is only applicable to the specific case for which it was delivered. Therefore, judicial decisions are not binding *vis-à-vis* third parties. However, as a matter of practice, judgments issued by higher courts, in particular the Supreme Court, are persuasive and have great influence over lower courts facing similar fact patterns.

3. Tax Rulings

Rulings issued by the SII are binding on the SII. In this regard, the SII may not make an assessment against a taxpayer that has relied in good faith on an official interpretation of the SII in a ruling, circular or other document used either to provide instructions for tax inspectors or to inform the public generally, or one or more taxpayers in particular.[586] If an interpretation issued by the SII is subsequently changed, a taxpayer is deemed to be aware of this change only if the change has been published in the *Diario Oficial.*

Only the Director of the SII has the power to interpret tax legislation and to issue norms and rulings at the administrative level, although the Director may delegate this power to Deputy Directors and to Regional Directors, provided they act on behalf of the Director.[587] A taxpayer may file ruling requests. It may do so either to the Regional Director having jurisdiction over the taxpayer's corporate domicile or directly to the SII Director.[588] For both options, the SII is to issue a resolution indicating the manner in which the ruling request must be filed and the period the SII may take to respond to the ruling request. In

[579] Constitution, Art. 19(20).

[580] Constitution, Arts. 32 and 62(1); Tax Code (*Código Tributario*, TC), Art. 5.

[581] Constitution, Art. 50.

[582] TC, Art. 3. The TC was enacted under Decree Law No. 830 on December 27, 1974, and was published in the *Diario Oficial* on December 31, 1974. Since that date, the TC has been amended by subsequent legislation.

[583] TC, Art. 6(A)(1).

[584] TC, Art. 6 *bis* (1).

[585] TC, Art. 6(A)(1).

[586] TC, Art. 26.

[587] TC, Art. 6(A)(1)–(3).

[588] TC, Art. 6(A)(2) and (B)(1).

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that resolution, the SII must also describe the procedure it will follow, which must include the possibility for the taxpayer that filed the ruling request to learn about its status through the SII's website.[589] Rulings are issued in the form of *oficios.* Unless they are treated as "Reserved" or "Secret," rulings issued by the Director of the SII are made public and posted on the SII's website.

Clearance is not required from the SII prior to carrying out a significant transaction. However, if after a transaction is analyzed, its tax treatment is not clear and seems to involve risks, requesting a ruling from the SII is advisable. In this regard, a ruling may be requested with respect to an actual, factual scenario; the SII, however, also entertains ruling requests dealing with prospective investments. The SII does not entertain ruling requests that do not affect a particular taxpayer, but that deal with abstract issues in the context of generic scenarios.[590] For some transactions, such as capital reductions or a cessation of activities, prior clearance from the SII must be obtained.

In a tax ruling or audit, certain transactions require the SII to obtain prior authorization from the SII's Executive Committee before continuing with the ruling process or tax audit proceedings. These are transactions that, irrespective of the amount involved, qualify as having institutional interest.

Whether a particular transaction has institutional interest must be determined on the basis of the qualitative nature of the transaction or the taxpayer or the breadth of the impact of the subject matter at a national level. The TC orders the SII to establish the criteria for purposes of determining whether a case is relevant or of institutional interest.[591]

To determine whether a case is of such interest, the SII has established that a case is relevant or of institutional interest if it meets at least two the following four criteria:[592]

(i) Related party transactions with tax implications in more than one taxable year;

(ii) Cross-border transactions with tax implications in more than one taxable year;

(iii) Transactions that result in a dilution of a taxpayer's net worth or a cross-generational transfer of net worth; and

(iv) Transactions dealing with matters having a broad impact at a national level, taking into account factors such as:

a. The number of persons involved;

b. Whether the transaction takes place in more than one region; and

c. The exemplary effect that the SII's decision may have for taxpayers that are non-compliant.

A taxpayer is entitled to claim a tax refund once he or she becomes aware he or she has paid excess taxes as a result of a change in criteria issued by the SII in tax rulings, circulars and other resolutions. These refunds, however, are only due for excess taxes paid in as of the taxable year in which the SII document is issued.[593]

[589] TC, Art. 6(A)(2).

[590] Tax Ruling No. 3,971, dated Oct. 31, 2002.

[591] TC, Art. 6(C)(5).

[592] SII Resolution No. 120, dated December 18, 2024.

[593] TC, Art. 26.

4. Anti-Avoidance

a. Domestic Measures

Over the years, the Chilean government has sought to perfect tax laws by introducing rules to fight potential tax avoidance and evasion. Until 2014, Chilean legislation did not contain specific rules on substance versus form. In 2001, legislation was introduced to curtail tax evasion and avoidance, giving certain audit powers to the SII and increasing penalties for taxpayers that were found to be involved in tax evasion. However, in the absence of tax fraud, the SII was not empowered to disregard the legal form of a transaction or to impose a substance over form requirement or a step transaction doctrine.[594]

In 2014, the Chilean Congress amended the Tax Code (TC), to introduce the concepts of tax evasion, tax abuse or abuse of law and simulation, concepts which were novel in the Chilean tax system.[595]

The general anti-avoidance principle laid out in the TC is the principle of substance versus form, whereby a taxpayer's tax obligations arise on the basis of the legal nature of his or her acts or transactions he or she undertakes, irrespective of the form given to those acts or transactions and regardless of any defects or errors that could affect those acts or transactions. In principle, the SII is required to assume that taxpayers act in good faith, meaning that it has to accept the tax effects that arise from acts or transactions undertaken by them based on the legal form that has been used. On the other hand, good faith is not deemed to exist and tax avoidance is deemed to have been committed when a taxpayer, through an act or a transaction, or a series of acts or transactions, avoids a taxable event through fraud or simulation.[596]

The SII is required to prove the existence of tax fraud or simulation pursuant to the general tax general avoidance rules discussed below.[597] The statute of limitations is six years from

[594] Law No. 19,738, published in the *Diario Oficial* on June 19, 2001.

[595] Law No. 20,780, dated Sept. 26, 2014, and published in the *Diario Oficial* on Sept. 29, 2014, partially amending the TC. Law No. 20,780 provides that the amendments to the TC are to apply one year after the Law is published, i.e., September 30, 2015, and, in the case of the anti-avoidance rules, it specifically states that they are to apply to facts, acts or transactions that occur or conclude after these provisions come into force, i.e., September 30, 2015. Law No. 20,780, Transitory Provisions, Art. 15. Initially, the SII took the position it could apply the anti-abuse provisions to acts or transactions, or a series of them, which were initiated prior to September 30, 2015, if the legal or tax effects of such the acts or transactions occur after that date. For instance, a taxpayer could have executed a contract prior to September 30, 2015, containing suspension clauses or conditions that may occur after that date. Due to the controversy that this position created, the Chilean government included a provision in Law 20,899 of February 8, 2016, establishing that acts or transactions, or a series of them, must be understood to have been carried out or concluded prior to September 30, 2015, when the elements that determine their legal effects for tax purposes have been stipulated prior to that date, even if the effects of those stipulations continue after that date. The SII, however, is entitled to apply these anti-abuse provisions if the elements that determine the legal effects for tax purposes are amended after September 30, 2015, but only with respect to those effects that arise after that date and only to the extent those amendments and their effects constitute abuse or simulation.

[596] TC, Art. 4 *bis.*

[597] TC, Art. 4 *bis.* The Tax and Customs Court must be the one having jurisdiction over the taxpayer based on the latter's domicile. In the case of a corporate group, it is the domicile of the holding company that determines which Tax and Customs Court has jurisdiction over the case. TC, Art. 119.

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the date the taxpayer should have been the tax payment in the absence of fraud or simulation.

Tax abuse or fraud is deemed to exist if:

(i) A taxable event is avoided;

(ii) The taxable basis or the tax liability is reduced;

(iii) The tax liability is deferred;

(iv) A tax refund is obtained; or

(v) A tax benefit or special tax regime is obtained, by means of acts or transactions which, when considered on a stand-alone basis or as a whole, do not give rise to legal or economic effects or results of relevance for the taxpayer or a third party, other than those tax effects or results.

On the other hand, a reasonable use of options or alternatives by the taxpayer is legitimate, provided that they are contemplated in the tax legislation. Therefore, a taxpayer should not be committing tax fraud if he or she can achieve the same legal or economic result through the use of other act or acts that do not constitute a taxable event or that reduce or defer his or her tax liability, provided that these tax effects are a direct consequence of the application of a tax rule.[598]

Tax avoidance can also exist when acts or transactions conducted by the taxpayer constitute a simulation. In this regard, simulation is deemed to occur for tax purposes when acts or transactions or a set of acts or transactions conducted by the taxpayer seek to conceal, disguise or dissimulate the creation of a taxable event, the nature of a tax obligation, their true amount or date, or seek to obtain a tax benefit or access a special tax regime.[599]

If there is a special or specific tax avoidance rule which applies to a particular set of acts or transactions, the legal implications must be determined on the basis of that rule, as opposed to the general tax avoidance rules discussed above. However, the general tax avoidance rules must be applied when a taxpayer avoids a special or specific tax avoidance rule with fraud or simulation, in which case the administrative proceedings discussed below will apply.

The general tax avoidance rules discussed above are also applicable in those cases where the tax avoidance is comprised of a set of acts or transactions, even if a specific or special tax avoidance rule applies to one or more of those acts or transactions when considered on a stand-alone basis.

The existence of tax fraud can only be declared by the Tax and Customs Court upon request by the Director of the SII. The SII, during the proceedings conducted for purposes of determining the existence of tax fraud or simulation, can summon the taxpayer and request to submit all the documents it deems necessary in connection with the acts or transactions that are under review. In the summons, the SII must indicate that the proceedings are being conducted under either the general rules dealing with tax avoidance or other more specific anti-avoidance rules, if applicable. If the potential of the existence of tax fraud or simulation arises from an ordinary tax audit dealing with matters other than tax avoidance, the taxpayer must still be summoned pursuant to the rules dealing with tax avoidance. Within the SII, the proceedings must be conducted by the General Anti-avoidance Rules Department in coordination with the Regional Office or the Directorate for Large Taxpayers, depending on the taxpayer's nature.

Upon the conclusion of the tax audit, the General Anti-avoidance Rules Department must issue a report containing the factual background that has been analyzed, the arguments put forward by the taxpayer, and the legal reasoning on whether or not the act or transaction, or a series of them, under review qualify as tax avoidance.

Specifically, the report must either:

(i) Confirm the existence of tax avoidance and whether the acts or transactions under review have resulted in either a reduction in the taxable base of 1,000 monthly tax units or more, obtaining a tax benefit, or accessing a special tax regime.

- In this scenario, the report must be submitted to the SII's Executive Committee.
- Within 15 days after receiving the report, the Executive Committee must either confirm the existence of tax avoidance, in which case it must recommend to the SII Director to file a claim before the Tax and Customs Court, recommend the application of a special anti-avoidance rule, or resolve that the inexistence of tax avoidance, in which case it must proceed as detailed in (ii) or (iii) below.
- The six-year statute of limitations period is suspended for the period that elapses between the time the claim is filed with the Tax and Customs Court and the date the Court issues its decision;

(ii) Recommend the application of a special tax avoidance rule, in which case the factual background must be remitted to the relevant Regional Office or to a specialized office of the SII's National Directorate, so that the latter may determine whether the special tax avoidance rule is applicable and, if so, issue the relevant resolutions after the taxpayer has been summoned pursuant to the above rules; or

(iii) Confirm that the taxpayer has not committed tax fraud or simulation, in which case the tax audit proceedings will be deemed concluded.

If the Tax and Customs Court rules in favor of the SII, the decision must establish the tax due plus interest charges or the amount by which the taxpayer's NOLs are reduced, as well as the penalties. Any of the parties can appeal the decision before the Court of Appeals, but it must do so within 20 days from the date the decision from the Tax and Customs Court was notified. An appeal for cassation may be field against the decision taken by the Court of Appeals.[600]

In addition to finding for the SII and request the taxpayer to pay the tax due, interest charges and penalties, the SII may also bring an action before the Tax and Customs Court against the person that designed or planned the actions or transactions that allegedly constitute tax fraud or simulation. If the Court decides in favor of the SII, the advisor may be imposed a penalty equal to the tax that the taxpayer should have paid had he or

[598] TC, Art. 4 *ter.*

[599] TC, Art. 4 *quarter.*

[600] TC, Art. 160 *bis.*

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she not committed tax fraud or simulation. However, the penalty on the advisor cannot exceed 100 annual tax units. If the advisor is a legal entity, the penalty will be imposed against its directors and legal representatives if they are found to be in breach of their management and supervisory duties. The statute of limitations to bring an action against the advisor is of six years from the date in which the taxes due by the taxpayer had to be reported and paid.[601]

A taxpayer may file a ruling request to the SII to determine whether acts or transactions in which he or she has a personal and direct interest could be viewed as tax fraud, simulation or not in accordance with other special anti-tax avoidance rules.[602] If the request relates to a special anti-avoidance rule, the taxpayer must indicate specifically which rule he or she is requesting the SII to rule on and the response from the SII will be limited to that rule. The request must be filed electronically on the SII's website and it must be expressly indicated that the taxpayer is seeking a binding ruling under Article 26 bis.[603]

The SII must issue the ruling within a period of 90 days. If the SII fails to respond, the ruling request will be deemed to be rejected, unless within the 10 days prior to the expiration of the 90-day period, the taxpayer notifies the SII that the 90-day period is about to expire; in that event, the SII is required to issue the ruling within 30 days following the end of the original 90-day period and, if the SII does not do so, the anti-avoidance rules will not be deemed to apply to the facts presented in the ruling request. If, on the other hand, the SII issues the ruling, it will be binding on it and on the taxpayer that filed the ruling request, unless the actual facts differ from those laid out in the ruling request or the law on which the ruling is based subsequently changes. The ruling must specifically establish and reason whether the acts or transactions laid out in the ruling request submitted by the taxpayer constitute tax fraud or simulation or whether they are covered under any other specific anti-abuse rule.[604]

A taxpayer may also file a ruling request on a matter potentially involving anti-avoidance after it has been notified that the SII has initiated a tax audit. The ruling request, however, must be filed with the SII prior to the expiration of the period to respond to the tax audit. Filing this type of ruling request suspends the statute of limitations period until the SII issues the ruling. A ruling request and the ruling itself on matters dealing with anti-avoidance rules are reserved in the sense that the SII may not publish the identity of the taxpayer filing the request. However, the SII must publish in its website a summary of the facts (without disclosing the identity of the taxpayer), specifics (such as contracts, financial information and corporate structures) and of the response, so that the public may have a general understanding of the matter at hand.

b. International Measures

Chile is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters (MAAT), which was developed jointly by the OECD and the Council of Europe. MAAT is the most comprehensive multilateral instrument available for all forms of tax co-operation by tax administrations to tackle tax evasion and avoidance. With the approval of a Protocol in 2010, MAAT is aligned with the international standard on exchange of information on request. Specifically, as stated by the OECD, MAAT facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers, and it provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.[605] See XIV., below, for a discussion of Chile's signing onto the MLI and CRS.

c. Catalog of Tax Schemes

In an effort to provide legal certainty to taxpayers and enhance their compliance with tax rules, the SII publishes a Catalog of Tax Schemes which, as a preventive measure, describes a number of cases and their tax implications. The Catalog lays out the criteria SII follows in tax audits when determining whether cases have the potential of giving rise to tax avoidance, whether in the form of tax fraud or simulation.[606] The Catalog covers various taxes, such as the first category tax, the additional tax, the surtax, VAT, and the EGT. It deals with a wide variety of issues, such as treaty shopping, transfer pricing, artificial losses in related-party transactions, and disguised dividend distributions with loans granted to nonresident related parties.

d. Penalties

A person, whether an individual or an entity, other than the taxpayer, who has designed or planned acts or contracts that have led a taxpayer to commit tax fraud or simulation is subject to penalties equal to 100 annual tax units. The penalty can be increased to 250 annual tax units if that person is found to have planned or designed that tax design or plan on a repeated basis or has charged fees in excess of 100 annual tax units. If the person is an entity, anyone having exercised as an officer, director or representative will be jointly liable, provided he or she has breached his or her duties of care.

If a third party has not been involved in designing or planning the tax scheme (or the taxpayer has not identified them during the tax audit process), the taxpayer will be subject to penalties equal to 100% of the tax liability that has been assessed, up to a maximum of 250 annual tax units. The taxpayer's officers, directors or administrators, if applicable, at the time the fraud or simulation was committed are jointly liable, provided they breached their duty of care. This penalty does not apply if the taxpayer is taxed as a small or medium sized company (see V.B.4.c., below).

[601] TC, Art. 100 *bis.*

[602] SII Circular No. 44, dated June. 26, 2020.

[603] https://www.sii.cl/pags_intermedias/peticiones_adm/index.htm. SII Resolution No. 112, dated Oct. 4, 2021.

[604] TC, Art. 26 *bis.*

[605] Chile signed the MAAT on October 24, 2013. The convention was subsequently ratified by the Chilean Congress on November 5, 2015, and signed into law by the President under Decree No. 104 on July 20, 2016. MAAT came into effect in Chile on November 1, 2016.

[606] The Catalog of Tax Schemes can be accessed at https://www.sii.cl/destacados/catalogo_esquemas/catalogo_esquemas_sii.pdf — The SII updates the Catalog on an annual basis.

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The statute of limitations to impose this penalty is six years as of the date the SII issued the resolution declaring the existence of the tax fraud or simulation.

Mitigating circumstances occurring during a tax audit in a potential criminal case can lead the SII to decide to impose only monetary penalties against a taxpayer if he or she effectively cooperates with the SII and that cooperation allows the SII to build the case and to identify other parties that are also responsible for the actions taken. An effective cooperation is deemed to have been rendered if the taxpayer supplies substantial, precise, truthful and verifiable information that is unknown to the SII and without which it could not concluded on the existence of tax fraud or simulation. If the effective cooperation takes place while the criminal proceedings have been initiated by the Attorney General, the criminal sentence can be reduced up to two degrees.[607] These measures cannot be granted if the tax crime has only been committed by the taxpayer.

A taxpayer who becomes aware that it owes taxes and the tax owed may be the result of having committed tax fraud, is entitled to self-report it to the SII. If the procedure is approved by the Executive Committee of the SII, the SII, upon a tax audit, may not file criminal charges against the taxpayer, although interest charges and penalties may be levied on the tax due.[608] The taxpayer must meet the following conditions:

(i) File proposed amended tax returns but only up the three years immediately prior to the one in which the request is made. The taxpayer must also explain why it thinks the actions it took are capable of constituting tax fraud;

(ii) At the time the request is filed, it is not subject to a tax audit concerning the same taxes it wishes to rectify;

(iii) It has not been found guilty of a tax crime; and

(iv) A prior request has not been denied by the SII. Although the rule is not clear as to whether the previous case must refer to the same facts and/or taxable year, the SII has clarified that a new request cannot be submitted if the taxpayer previously submitted and the SII accepted another request even it is covered other facts or taxable year.[609]

If the Executive Committee of the SII approves the request, the SII will issue a final tax assessment no later than the last business days of the month following the one in which the Executive Committee approved the request. The final tax assessment may not be challenged by the taxpayer, unless the taxpayer made an error in the calculating the amount payable, in which case it may file an administrative petition before the SII.

A taxpayer that has self-denounced itself may also file amended returns on other taxes or taxable years, provided the amended returns are not based facts that may amount to tax fraud.

Provisions for whistleblowers are also included in the TC.[610] Thus, individuals who voluntarily cooperate with the SII in investigations involving tax crimes can be compensated. The compensation is equal to 10% of the monetary penalty imposed by the court against the wrongdoer, provided that penalty exceeds 100 annual tax units. However, whistleblowers are only entitled to compensation if they provide substantial, precise, truthful and verifiable information that is unknown to the SII and that allows the latter to detect or determine the existence of, or the identity of those responsible for, those crimes. A whistleblower cannot be the following persons:

(i) Whoever has committed or participated in the tax crime being investigated;

(ii) Whoever, during the three years prior to the complaint being made, has been an officer or director of the entity that has been reported, or of an entity has rendered legal advice to the reported entity; or

(iii) Whoever has been accused or charged with a tax crime, including those taxpayers who have provided effective cooperation to the SII.

Only the SII can confirm the qualification of a person as a whistleblower through a reasoned resolution, which must be emailed to the whistleblower. The identity of the whistleblower and the facts that can be used to identify him or her must be treated as classified information, unless the whistleblower has either waived anonymity or made the denouncement public, even if the information provided is insufficient to indict the person that has been denounced. The police are also required to provide all the necessary protection to the whistleblower. Whoever breaches the duty of secrecy can be subject to a fine ranging from 10 to 30 monthly tax units. The penalty for that breach of duty can also entail imprisonment if it has been committed by a public servant, including SII employees.

Aside from a lawsuit for damages that the individual or entity that has been denounced can take against him or her, a person that has the status of whistleblower can be sentenced to imprisonment, levied a monetary fine of 15 monthly tax units, and lose the status as a whistleblower, if that he or she delivers false or fraudulent information. On the other hand, a whistleblower cannot, neither from a criminal or a civil law point of view, be held liable for collaborating with the SII.

The compensation whistleblowers are entitled to receive for their cooperation is equal to 10% of the monetary penalty imposed by the court against the wrongdoer, provided that penalty exceeds 100 annual tax units.[611] If there are more than one whistleblower in one particular case, the SII will decide how to split that amount among them. The compensation is exempt from income tax and the bank transfer made by the Treasury must remain secret. A whistleblower who has waived anonymity or has made the complaint public are not entitled to be compensated.

B. Administration and Procedure

1. The Tax Unit and the Development Unit

Both the tax unit and the development unit are monetary amounts that are adjusted by reference to the Consumer Price Index (CPI). Both measurements are important for tax and social contribution purposes, as the manner in which Chilean tax liabilities and social contributions, tax credits, tax deductions,

[607] TC, Art. 100 *ter.*
[608] TC, Art. 100 *sexies.*
[609] SII Cicular No. 13, dated February 7, 2025.
[610] TC, Art. 100 *quáter.*
[611] TC, Art. 100 *quinquies.*

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etc., are determined is often based on or limited by the value of these units.

The tax unit is adjusted by reference to the CPI on a monthly basis and is used as a tax reference or measure to determine a taxpayer's tax liability, penalties and other monetary obligations of a taxpayer vis-à-vis the SII.[612] Some obligations are measured by reference to the monthly tax unit, while other obligations are determined by reference to the annual tax unit. The latter is generally determined by multiplying the monthly tax unit in effect during the last month of the taxable year by 12. However, for purposes of determining tax penalties that are measured in tax units, the annual tax unit is determined by multiplying by 12 the monthly tax unit in effect during the month in which the penalty is imposed.[613]

The development unit (*unidad de fomento*) is another reference unit that reflects price readjustments resulting from changes in the CPI. Since 1990, the development unit has been determined on a daily basis by the Chilean Central Bank.[614]

2. Tax Registration and Electronic Communications

a. In General

Every person, whether an individual or an entity with or without legal personality, domestic or foreign, including nonprofit organizations, that by reason of his/its activity or condition has or may be caused to have either a tax liability or a withholding tax obligation, is required to register with the SII to obtain a tax ID number. The registry is known as the *Rol Ùinico Tributario* (RUT).[615] Having a RUT is necessary for identification purposes when dealing with the SII, other government institutions, banks and other financial institutions, notaries when executing public deeds, etc. In fact, a person without a RUT that carries out transactions that are subject to VAT is viewed as being engaged in clandestine activities, which is subject to fines.[616] A buyer or seller of Chilean publicly-traded stock is also required to show its RUT to the stock broker.[617]

In addition to the RUT, all taxpayers have a personal electronic site in the SII's website which allows them to communicate with the SII electronically.[618] The personal site also allows a taxpayer to carry out administrative procedures on-line as well as to learn about actions taken by the SII on the taxpayer. In this regard, each personal site contains an electronic tax folder, which is run by the SII, with tax information about the taxpayer. In the personal site, the SII must also place in successive order in an electronic file all the documents relating to all the administrative proceedings that are issued in in connection with tax audits on the taxpayer. The SII cannot request information from the taxpayer that is already contained in an electronic file.

Failure to register with the SII or to update a taxpayer's information, as discussed below, is subject to penalties ranging from one monthly tax unit to one annual tax unit.[619] Furthermore, that failure also extends the statute of limitations period by 12 months, but only to the extent the SII can demonstrate that the failure was driven by the taxpayer's intent to avoid paying taxes, conceal the taxpayer's existence, or avoid the application of the general or special anti-avoidance rule. Thus, taxpayers who either do not declare a tax, declare a lower tax liability other than the one it would have been due had the taxpayer provided a reportable change, or omit to report a change that is essential to categorize a transaction as tax-avoidance can see their statue of limitation period extend by 12 months.

The following entities are required to demand proof of registration of the start of activities with the SII:

(i) Government institutions with respect to any person requesting an authorization to conduct a business activity;

(ii) Electronic payment operators with respect to any person hiring their services to conduct a business activity;

(iii) Digital agent platforms with respect to entities that offer their products through these platforms.

b. Resident Taxpayers

Taxpayers who start a business or begin to work and are to generate income that is subject to either the first or the second category tax must, within two months following the start of the taxpayer's activity or work, submit a sworn statement to the SII notifying it of the start of his, her or its activity.[620] A business is also deemed to start if, within any 12-month period, a person also imports products at a value of at least 3,000 US dollars, either on a stand-alone or an aggregated basis, unless that person can establish that the imported product are for his or personal use.

The sworn statement must be made in an electronic tax file provided by the SII which consists of a form containing all the fields in which the taxpayer, (depending on his, her or its business) must be registered for tax purposes. Generally, a corporate taxpayer must apply for a RUT by attaching a copy of its incorporation deed, or an amendment thereof, or its registration with the Registry of Commerce together with a certificate, indicating its current corporate name. However, a *sociedad anoìnima* (SA) must file its RUT application form with a certificate issued by the Superintendence of Insurance Companies, SAs and stock exchanges, or the Superintendence of Banks, as the case may be, indicating its corporate name, address and registration number.[621] An individual must submit a copy of his or her National Identity Card together with the application form.

A RUT is first issued on a temporary basis with a validity of six months; unless the temporary RUT is renewed for an additional six-month period, the SII will issue a final RUT before the end of the initial six-month period.[622] On the dissolution of a corporation, the corporation's RUT must be returned to the SII within 60 days following the date on which the corporation

[612] TC, Art. 8(10) and Transitional Provision, Art. 4.

[613] See the Worksheets for the monetary value of a tax unit.

[614] Organic Law on the Constitution of the Central Bank of Chile, Art. 35(9). This Organic Law was published in the *Diario Oficial* on October 10, 1989. See Worksheets for the monetary value of a development unit.

[615] TC, Art. 66; Decree Law. No. 3, published in the *Diario Oficial* No. 27,271 on Feb. 15, 1969, Art. 3.

[616] Decree Law No. 3, Art. 16.

[617] SII Resolution No. 17, dated Jan. 30, 1979.

[618] TC, Art. 8(16).

[619] TC, Art. 68.

[620] TC, Art. 68.

[621] Decree Law No. 3, Art. 6.

[622] Decree Law No. 3, Art. 5. See the Worksheets for *Rol Único Tributario* (RUT) application form.

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ceased to be a taxpayer or a withholding tax agent. In the event of the death of an individual, the decedent's estate may continue to use his or her RUT until such time as the estate taxes are paid. In any event, the RUT of a deceased person must be returned to the SII within 60 days following the third year after the estate is opened.[623]

Taxpayers are required to inform the SII of any changes contained in the initial form through their electronic tax file within two months from the date in which the change occurs. These changes include changes in connection with:

(i) The legal representative;

(ii) The capital;

(iii) Profit distribution agreements that differ from a company's share capital ownership as well as classes or shares granting their holders preferential rights to dividends;

(iv) Shareholders (except in the case of open SAs); and

(v) Mergers, de-mergers, and conversions of individual entrepreneurs into corporate form.[624]

A taxpayer must give notice to the SII when he, she or it ceases his, her or its business activity within two months following the close of that activity and pay the relevant tax at that point in time. That notice must be made through the taxpayer's electronic tax file. The SII has six months from the date the notice is made to make any tax assessment and to certify the taxpayer's termination of his, her or its business.[625]

No certificate will be issued by the SII if the taxpayer has tax liabilities pending to be paid.[626] The six-month deadline can be extended for an additional three months if the SII becomes aware of new facts that change the self-assessed return filed by the taxpayer upon its liquidation, if the taxpayer files an amended liquidation return, or if the SII finds that the liquidation return filed by the taxpayer is false. The SII is precluded from auditing the taxpayer once it has issued the certificate.

c. Nonresident Taxpayers

As a general rule, nonresident individuals and entities, including those without legal personality, are required to register for tax purposes and obtain a RUT if their activities cause or may cause Chilean taxation. A person may only have one RUT. Also, depending on the nature of the investment or activity undertaken in Chile, nonresidents may, in addition, be required to notify to the SII of the start of their activities. The SII has provided guidance as to which nonresidents are required only to register in the RUT and which nonresidents also need to send the notification to the SII.[627]

The following nonresidents are required to register in the RUT but not to send a notification to the SII on the commencement of their activities:

(i) Nonresident individuals and entities that make investments in certain Chilean assets, such as shares in open SAs (whether or not they are publicly traded), fixed income instruments that are registered in the Securities Registry, and financial intermediation instruments. The RUT registration of these nonresidents may be made by their Chilean agents, provided that they are duly authorized to deal with the SII on behalf of their clients.[628]

(ii) Nonresidents that generate capital gains on an indirect sale of Chilean shares through the sale of shares in nonresident companies (see VI.A. and VI.B.5.a., below).

Foreign tourists and diplomats are not required to register in the RUT, unless they make investments in Chile. Likewise, nonresident sports persons, artists and lecturers who travel to Chile to render their services are not required to register in the RUT since it is the Chilean payor of those services who must comply with the nonresident's tax obligations in Chile. These nonresidents only need their passports or national identity cards issued in the foreign country to be able to render their services.

Nonresidents who undertake a business or render services in Chile must, like residents, notify the SII of the start of their activities. These persons must also be registered in the RUT if they are not already registered. For example, establishing a permanent establishment in Chile requires the establishment to comply with both requirements.

Nonresidents are also required to appoint a tax representative in Chile, who must be an individual with tax residence in Chile. If the individual is a foreigner, he or she must have a residence permit. Tax registration is generally done by the Chilean tax representative of the nonresident in the tax office having jurisdiction over the domicile of the tax representative, although nonresident individuals may register personally. Registration is made by filling in a form provided by the SII on its website. The domicile of the tax representative will be the Chilean address of the nonresident, although it may also be notified by e-mail by the SII. All documents submitted to the SII must be originals and, if necessary, translated into Spanish. If documents are executed abroad, they must be endorsed by the Chilean Consul and legalized before the Chilean Ministry of Foreign Affairs.

When applying for RUT registration, a nonresident entity must indicate its corporate name, entity type, its country and date of incorporation, corporate address, the country of its tax residence, the nature of its business, and the foreign tax identification number. If the nonresident entity is transparent for tax purposes, it is still required to provide its foreign tax identification number, if any, or of the country which subjects it to its legal rules, if different. The form must also identify the name of the entity's shareholders.[629] Permanent establishments (PEs) must, when applying for the RUT registration, provide the name of its foreign head office, the deed pursuant to which the PE was created, and the number and date in which the PE

[623] Decree Law No. 3, Arts. 5 and 6.
[624] TC, Art. 68.
[625] TC, Art. 69.
[626] TC, Art. 70.
[627] SII Circular No. 31, dated June 1, 2007, as amended on May 19, 2014.

[628] This procedure is not applicable to nonresidents who make investments in Chile aimed at obtaining control or manage Chilean companies. Likewise, this procedure is also inapplicable to investors with tax residence in tax havens or preferential tax regimes. In these situations, the nonresident must pursue the procedure that is established for resident individuals and companies.

[629] If the nonresident entity is publicly traded and the stock exchange is a member of the International Organization of Securities Commissions (IOSCO), it is not required to provide information about its shareholders. This waiver is also applicable to certain investment funds, pension funds, and international organizations.

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was registered in the Commercial Registry. The PE's Chilean domicile must coincide with its principal place of business.

A simplified registration procedure applies with respect to nonresidents that invest in shares in open SAs through a Chilean stock exchange. For this type of foreign investor, the RUT may be obtained by its Chilean custodian, which is generally a bank operating in Chile and designated by the investor to carry out its orders through a stockbroker. The RUT may also be obtained by a stockbroker through whom the foreign investor operates directly. Foreign investors in a Chilean stock exchange only need one RUT even if they operate in Chile through several custodians or stockbrokers. This simplified mechanism is not available to a foreign investor that intends to take a controlling interest in the equity or management of a Chilean publicly-traded company.[630]

d. Digital Agents Platform

The SII has created a Digital Agents Platform where taxpayers, whether individuals, companies or entities without legal personality, can authorize their representatives (digital agents) to undertake electronic procedures with the SII and other government institutions on their behalf.[631]

The digital agent must be an individual, who can be appointed as either:

(i) A general digital agent, who can perform all tasks on the taxpayer's behalf before all the government institutions that are included in the Platform as well as delegating powers to a third party; or

(ii) A specific digital agent who can only perform tasks before government institutions that have been designated by the taxpayer. The authorization is valid for 12 months and can be renewed.

3. The Taxable Year

As a general rule, the taxable year must correspond to the calendar year. However, the Regional Director of the SII is entitled to authorize a taxpayer to have a June 30 taxable year-end.[632]

4. Statute of Limitations

The SII has three years in which to review and make an assessment with respect to both taxes and penalties. The period begins to run from the date of expiration of the period in which the tax payment was due from the taxpayer. The period for a tax audit increases to six years with respect to taxes that are subject to the self-assessment method where, if a tax return was due, the taxpayer either did not file it or the information contained therein was intentionally inaccurate.[633] Technically, the SII has an additional four-month period within which to start a tax audit since it is authorized to request that a taxpayer file a return or amend, clarify, confirm or provide additional information with respect to a return that the taxpayer has already filed.[634] The taxpayer is required to respond within one month from the date the request is made and the Tax Code increases the response time to an additional three months. Therefore, the maximum statute of limitations period for taxes and penalties is either three years and four months or six years and four months, as the case may be.

In certain cases and only for income tax purposes, the three- or six-year period may be extended an additional six months. In this regard, the ITL establishes that, if a taxpayer cannot prove the origin of funds used by him for his or her expenditures or investments, it is then presumed that these expenditures or investments are made out of profits generated by the taxpayer which must be subject to income tax. To this end, the six-month extension only applies when the taxpayer, upon a tax audit, is able to demonstrate the origins of the funds but has failed to report them for income tax purposes. Furthermore, the extension can only be used to allow the SII, during the tax audit, to make an assessment on the taxpayer to pay the income tax on the income it failed to report. This six-month period begins to run as of the date the SII sent the taxpayer an audit notice.[635]

With respect to income taxes on a resident individual, the statute of limitations is suspended for the period during which such an individual is absent from Chile, unless the absence from Chile extends beyond 10 years, in which case the suspension is not taken into account.[636]

5. Taxpayer's Rights

Any person with a tax liability in Chile has the following rights:

(i) To be informed of his or her rights, to facilitate his or her compliance obligations, and to obtain clear information of the reason and scope of all the procedures in which the person is an interested party;

(ii) To be treated courteously, diligently, timely, and with due respect and consideration by the SII;

(iii) To receive, within the time-frame established by the relevant law, a full refund for any taxes overpaid, duly adjusted for inflation, provided the taxpayer is entitled to those refunds;

(iv) In any proceeding conducted by the SII, irrespective of whether it is a tax audits, the SII is required to provide sufficient detail as to the reasons for it. Specifically, any action taken by the SII must establish the grounds on which it is based, i.e., it must state the facts, the applicable legislation, and the logical and legal reasoning supporting the conclusion. The SII must also indicate, in a clear manner, the date the proceeding must conclude; in this regard, the SII must apply the time period provided by the law on that particular proceeding or, if none, the Director of the SII must establish the time period it can last. In the case of a tax audit, the taxpayer also has the right to receive clear information on its nature, scope and subject-matter, the period he or she has to make allegations or appeals, and the statute of limitations. The taxpayer also has the right to know, at any time, his or her tax status and the status of

[630] SII Resolution No. 5,412, dated December 11, 2000.
[631] SII Resolution No. 2, dated January 4, 2024.
[632] TC, Art. 16.
[633] TC, Art. 200.
[634] TC, Art. 63.
[635] ITL, Art. 70.
[636] ITL, Art. 103.

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the tax audit to which he or she is a party. In tax audit proceedings, the taxpayer has the right to submit evidence of acts, contracts or transactions executed in Chile or abroad and he or she may not be required to have complied with formalities that are not required by law; however, the SII may require written evidence to be translated into Spanish and apostilled;

(v) The SII is precluded from initiating a new tax audit in the current or subsequent taxable years with respect to issues or facts that have already been subject to a previous tax audit. This right, however, does not extend to a new tax audit if it refers to facts or taxes different from the ones that were reviewed in the prior tax audit. New tax audits on taxable years that have already been audited may also be initiated if they involve new facts that either give rise to the application of the anti-tax avoidance rules (see A.4., above), the CFC rules (see V.B.5.c.(2), below), or are obtained as a result of a request for information from a foreign tax authority;

(vi) To know the identities and titles of the tax auditors in charge of his or her tax audit, unless the matter under audit involves penalties involving criminal sanctions, as well as to be informed if the taxpayer has been the object of an exchange of information proceeding, unless it involves a potential breach of the taxpayer's tax obligations;

(vii) The right to be informed by SII if his or her tax information has been requested by another tax authority (or otherwise) under an exchange of information procedure, as long as this notification itself does not breach any other confidentiality obligations or requirements of SII under the process;

(viii) To receive electronic copies or minutes of the actions taken during the tax audit proceedings and of any documents submitted in those proceedings. The taxpayer also has the right to object to submitting documents that are either not relevant to the tax audit or that are already in the hands of the SII, as well as to receive, at the end of the tax audit proceedings, the original documents he or she submitted during those proceedings;

(ix) To be sure that the tax returns he/she files with the SII are kept confidential;

(x) To be sure that any action, including tax audits, undertaken by the SII is taken without delays or unnecessary requirements;

(xi) To be sure that he or she may file allegations and submit evidence and that such evidence is taken into account during the tax audit proceedings;

(xii) To make suggestions or file complaints with respect to actions taken by the SII. These complaints are heard by the Tax and Customs Court; and

(xiii) To have certainty of the tax effects on the activities the taxpayer takes. To that end, the SII is required to publish tax rulings and resolutions on its website.

In 2020, Chile created the Taxpayer's Ombudsman (*Defensoría del Contribuyente* or DEDECON). The DEDEDCON, which started functioning in 2022,[637] is an autonomous body that is part of the Ministry of Finance. Its main tasks are to provide guidance to taxpayers, particularly small and mid-size businesses, and to protect their rights when dealing with the tax authorities, particularly the SII. The DEDECON can also represent taxpayers before the SII on administrative claims and even act as a mediator between the taxpayer and the SII. The DEDECON can issue both non-binding recommendations on acts performed by the SII that may be in breach of a taxpayer's rights or against the law, as well as technical papers at the request of the SII.

A taxpayer can be treated as tax sustainable, meaning that it has implemented measures to enhance mutual cooperation with the SII and transparency as regards its tax obligations. To that end, a taxpayer may obtain, on an annual basis, a certificate indicating that its operations and tax strategies comply with tax sustainability.

The certificate may only be issued by independent firms that are registered for those purposes with the SII. The SII can also sign cooperation agreements with taxpayers to enhance tax sustainability, which have the same effects as independent certificates. The SII maintains a registry of tax transparency with the name and RUT of taxpayers that have either tax sustainability certificates or cooperation agreements with the SII.[638]

6. Tax Filings and Payments

Tax returns may be filed on paper at an SII office or electronically, unless the law governing the relevant tax requires the taxpayer only to do so electronically. Today, most tax returns are filed electronically. However, if a tax payment is due, the tax return is generally filed with, and the tax paid through, a financial institution.[639] Taxes must be paid by their due date.

For income tax purposes, together with the final income tax return, corporate taxpayers and individual entrepreneurs that are required to keep books and records must also file a copy of their balance sheet, inventory, and profit and loss accounts. All the information filed by taxpayers with the SII is confidential.[640]

If the filing due date is a holiday or a Saturday, the due date is postponed to the following working day.[641] A taxpayer may request a filing extension to the SII which, if granted, cannot exceed four months, unless the taxpayer is abroad and the filing extension is for income taxes.[642] Taxes paid within the extension period are subject to interest charges and inflation adjustments.

For a discussion of the ability of taxpayers to keep their books in foreign currency, see C.1., below. In addition to authorizing taxpayers to maintain their books in foreign currency, the SII is entitled to authorize or request taxpayers to report and pay all or some of their taxes in the foreign currency in which their books are maintained.[643] Such authorization or request is

[637] Law 21,210, Art. 23.
[638] TC, Art.8(18).
[639] TC, Art. 30.
[640] TC, Art. 35.
[641] TC, Art. 36.
[642] TC, Art. 31.
[643] TC, Art. 18(3)(a).

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also applicable to tax audits, tax adjustments, interest charges and penalties.[644]

The obligation to adjust for inflation tax liabilities that are overdue does not apply to taxpayers that are authorized to report and pay their taxes in foreign currency, but only with respect to those taxes. Moreover, if a taxpayer pays its taxes in foreign currency, it is also entitled specifically to claim refunds of such taxes in the foreign currency in which the taxes were paid; otherwise the tax refund will be paid in Chilean pesos. However, tax refunds paid in foreign currency are not to be adjusted for inflation.[645]

Taxpayers are also entitled to utilize taxes and levies that are due to them to offset taxes and levies they owe in Chile. This procedure is pending regulations to be issued by the SII.[646]

Taxpayers may file amended returns after the filing due date if the first return contained errors that led to an underpayment of taxes.

The amended return must be paid before the SII initiates a tax audit. In any case, the tax due in the amended return is subject to interest charges and a penalty ranging from 5% to 20%.[647]

Tax refunds as well as the return to the taxpayer of interest charges and penalties paid by him or her are also subject to inflation adjustments which are calculated in the same manner as late payment of taxes. The SII must also apply interest charges on those refunds. The interest rate is 0.5% per month for each full month from the date the tax overpayment, interest or penalty was remitted to the SII.[648]

As regards transfers of real property, Land Registrars cannot register any real property transfer, mortgage, usufruct, rental or any other transaction affecting real property until all the taxes in connection with that property have been paid. Once verified, they must include a statement to that effect in the Land Registry certificate they must issue. Notaries must also evidence the payment of taxes arising in connection with the sale, exchange, mortgage or transfer of real property in the notarial deed where the relevant transaction is executed.[649] They can only hand the authentic and other copies of the notarial deed to the parties once all taxes arising from the relevant transaction have been paid. Furthermore, notaries have the obligation to disclose to the SII by March 1 of each year all the notarial deeds executed before them in the previous year in connection with the transfer of property, mortgages and other transactions that are susceptible of generating income or gains to one or more parties. Land Registrars have the same reporting obligations as notaries.[650] As regards the payment of stamp duties, notaries also have the obligation to ensure that such duties are paid with respect to deeds and other contracts that are executed before them. In fact, notaries are jointly liable together with the taxpayer for the payment of stamp duties and must also sign the relevant tax duty form.[651]

[644] TC, Art. 18(3)(b).
[645] TC, Art. 18(4).
[646] TC, Art. 6(B)(8).
[647] TC, Arts. 36 *bis* and 97(3).
[648] TC, Art. 57.
[649] TC, Arts. 74 and 75.
[650] TC, Art. 76.
[651] TC, Art. 78.

7. *Tax Audits*

a. *In General*

It is for the taxpayer to prove the accuracy and truthfulness of its accounting records and other documentation as well as the facts and circumstances for purposes of determining the taxpayer's tax liability. The SII cannot make its own determination of the taxpayer's tax liability and assess another tax liability without taking those records, documentation, facts and circumstances into account, unless these are not accurate or true.[652]

If, however, the taxpayer does not file a tax return despite being legally required to do so, the SII may then assess the taxpayer's tax liability with whatever information it has available.[653]

b. *Preventive Measures*

As a preventive measure and in order to enhance tax compliance, before a tax audit is initiated, the SII may take the following actions:

(i) Provide taxpayers with proposed tax returns with the information it has available, which the taxpayer may either accept, complement or reject;

(ii) Send an informational letter to the taxpayer stating that, based on the SII's records, there are differences between what the taxpayer has reported and those records or in the manner in which the tax liability has been computed; and

(iii) Request additional information from the taxpayer whether generally or in connection with a specific transaction. Prior to sending the request, the SII must send the taxpayer a notice via email and posted in the taxpayer's personal site indicating the tax auditor in charge of the request, that the request is being made for information purposes only, that they do not amount to a tax audit, and that the taxpayer is not required to respond. If the taxpayer decides to respond to the request and an additional tax is due, that payment is not subject to interest charges for late payment or penalties. If, on the other hand, the taxpayer fails to respond, the SII is entitled to initiate a tax audit if it considers that there is a tax due.[654]

All corporate groups must designate at least one representative who will be in charge of communicating and coordinating with the SII on behalf of the group in connection with the above preventive measure.[655] For these purposes, a corporate group is defined as those companies that are linked by reason of their ownership, management, or loan obligations such that their business and financial activities are deemed to be guided by the common interests of the group or subordinated thereto, or that there are common financial risks in the loans granted to them or in the stock issued by them.[656]

Thus, a corporate group may consist of any of the following:

[652] TC, Art. 21.
[653] TC, Art. 22.
[654] TC, Art. 33.
[655] TC, Art. 8(14).
[656] Law No. 18,045 on the Securities Exchange Market, Art. 96.

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(i) A company and the person controlling it;

(ii) Where companies are under common control exercised by a given person, the group will consist of all such companies as well as the person who exercises such control;

(iii) Where there is no direct ownership or formal controlling power, a company may still be considered part of a group due as determined by the SVS due to the influence arising in the following circumstances giving effective control:

(a) A significant percentage of the company's assets is attributable to a member or member(s) of the corporate group either in the form of shares, rights, loans or guarantees;

(b) The company has a significant amount of indebtedness and the corporate group has a significant stake in that indebtedness either as a creditor or as a guarantor; or

(c) The company is a member of a controlling company of any of the entities mentioned in (a) or (b) above, provided the controlling company is answerable to a group of persons and there are compelling reasons to include the company in the corporate group; or

(iv) The company is controlled by one or more members of the controlling company of any of the entities comprising the corporate group, provided the controlling company is comprised by more than one person and there are compelling reasons to include the company in the corporate group.

The representative of the corporate group must be an individual of full age and with tax residence in Chile. The representative's contact information (email address and telephone number) must be provided to the SII. The controlling company must submit to the SII's website the document evidencing the appointment as well as fill and file in an application form.[657] Failure to appoint the representative prevents the group from undertaking preventive measures with the SII.

Another preventive measure the SII has available, and which does not amount to a tax audit, is to summon the taxpayer to appear before the SII when the taxpayer is found to be in one of the following circumstances:[658]

(i) There are tax inconsistencies with information held by the SII on the taxpayer or provided by third parties and those inconsistencies exceed 2,000 monthly tax units over the past 36 months;

(ii) It does not maintain, or provide when requested, accounting records;

(iii) It does not have sufficient installations to conduct its business activity;

(iv) The street address, email address or telephone number the taxpayer provided to the SII when requesting its RUT or the commencement of its business activities is either false or inexistent; or

(v) It is charged or condemned to have committed a tax crime.

In those circumstances, the SII can summon the taxpayer with a notice specifying the reasons why it is being summoned, the period to appear before the SII, the name of the civil servant in charge of the case.

c. Initial Tax Audit Proceedings

The SII may initiate a tax audit on the taxpayer at any time within the statute of limitations. However, the SII cannot initiate a tax audit on a taxpayer on the same taxable year with respect to taxes or facts that were part of an existing or previous tax audit, unless:[659]

(i) The new tax audit involves taxes other than the one that was analyzed in the previous audit; or

(ii) The SII becomes aware of a new set of facts that either:

a. May lead to a criminal procedure;

b. Involve the anti-avoidance rules (see IV.A.4., above), the CFC rules (see V.B.5.c., below), or tax havens; or

c. Are obtained from an exchange of information request from a foreign tax authority.

In general, notices issued by the SII to the taxpayer commencing a tax audit must be sent via electronic mail to the address the taxpayer has notified to the SII and appearing in its personal site, which the taxpayer must keep updated. An update is deemed received by the SII on the business day following the one in which it is made. The SII must use an alternative method if the taxpayer has not informed the SII of its email address or when a legal provision mandates a different method of communication. An alternative method of communication must also be used if the taxpayer has informed the SII to use such alternative method because he or she does not have technological means, or access to such means or only use them seldomly. The SII has 30 days to decide whether or not to accept the request.

Thus, the SII must send the notice either in person or via certified mail to the taxpayer's domicile if the taxpayer has not provided an email address, is found in one of the above circumstances, or is domiciled in an area with low or no connectivity. When a notice has been sent via certified mail, the time periods start to run three days after the mail has been sent. If a legal provision requires the notice to be sent via an alternative method, the SII must still send the notice via email.[660] The SII notice must also be placed in the taxpayer's personal site.

Generally, all notices from the SII must be delivered during working days and hours, while notices sent to the taxpayer's email address may be mailed outside working days and hours.[661] A notice sent via email is deemed received, unless the taxpayer can allege *force majeure*. The SII must also post the notice in the taxpayer's personal site.[662]

[657] The application form can be obtained in Annex 2 of SII Resolution No. 21, dated February 21, 2025.

[658] TC, Art. 59 *bis*.

[659] TC, Art. 59.

[660] TC, Art. 11.

[661] TC, Arts. 10 and 11 *bis*.

[662] TC, Art. 11 *ter*.

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If in a given tax proceeding the SII has attempted twice to notify the taxpayer without success, it may then do so through the taxpayer's personal site, provided that at least 15 days have elapsed between the two notices; the SII must publish an extract of its resolution in a national newspaper.[663] In the event of legal entities, only its chairperson, director or manager is authorized to receive notices from the SII, regardless of any limitation contained in the entity's deed of incorporation or by-laws, provided however the SII has been notified of that authorization.[664]

The taxpayer can decide to be represented by another person or firm during tax audit proceedings by providing a written mandate to its representative. Representatives are entitled to receive notices from the SII, unless and until the taxpayer decides to revoke the mandate and inform the SII.[665]

The SII can also decide to conduct a unified tax audit if it involves transactions conducted in Chile by taxpayers forming a corporate group.[666] In that event, only the entities involved in the transactions under investigation will be subject to the tax audit and, to that end, the notice communicating the start of the tax audit proceedings is only sent to those entities. If one of the entities is already subject to a separate audit, the notice of a unified tax audit does not interrupt the period the SII has to conclude the separate audit.

d. Tax Audit Proceedings

(1) Tax Audit Periods

The SII has nine months to conclude a tax audit if that audit has required the taxpayer to provide information to the SII. The nine months begin to count as from the date the SII certifies it has received all the information it has requested from the taxpayer. That certificate must be issued within ten days following the receipt of the information from the taxpayer. The information is deemed received and the nine-month period begins to run if the SII does not state within that ten-day period that the information received is incomplete.

Within the nine-month period, the SII may either:

(i) Request the taxpayer to, within one month, file a tax return or amend or confirm the return that was filed;

(ii) Issue a tax assessment; or

(iii) Certify that the taxpayer is in compliance with his or her tax obligations.

The nine-month period may be extended to 12 months in the following cases:[667]

(i) The tax audit involves an examination of the taxpayer's transfer pricing;

(ii) The tax audit involves the determination of the taxpayer's net taxable income and its average monthly revenues at the end of the previous taxable year exceeded 5,000 monthly tax units;

(iii) The tax audit involves a review of the tax implications of a business reorganization; or

(iv) The tax audit involves a review of the accounting implications in related-party transactions.

Tax audits, however, can be extended up to 18 months when the tax audit involves:

(i) The indirect sale of shares in Chilean companies (see VI.A.2., below);

(ii) Non-deductibility of interest expenses when the Chilean debtor is deemed thinly capitalized (see VI.B.3., below);

(iii) The application of the CFC rules (see V.B.5.c.2., below);

(iv) Transactions with jurisdictions viewed as having preferential tax regimes;

(v) The application of anti-avoidance (see IV.A.4., above);

(vi) Deemed gifts under the Inheritance and Gift Tax (see XI., below);

(vii) Gathering facts to bring criminal charges against the taxpayer; or

(viii) An exchange of information made to a foreign tax authority.

Both the 12-month and 18-month periods may be extended only once for an additional six months if the SII can reasonably justify it. The SII's resolution issued on the extension must be notified to the taxpayer no later than the last day the SII had to conclude the tax audit. The taxpayer is not entitled to challenge the resolution.

If the tax audit leads to a potential case of anti-avoidance, the SII must also notify to the taxpayer before the conclusion of the nine or 12-month period, plus the possible extension, that the audit becomes subject to the special tax audit proceedings (see A.4., above), at which point the tax audit proceedings can be extended up to 18 months.

(2) Bank Records

Given the Chilean bank secrecy rules, access by the SII to bank records is permitted in the following cases:[668]

(i) When the tax deficiencies found by the SII can lead to the imposition of penalties;

(ii) When it is necessary to verify the veracity and integrity of tax returns filed by taxpayers; or

(iii) When the bank records are requested by a foreign tax authority pursuant to an exchange of information agreement or a treaty for the avoidance of double taxation.

During the course of the tax audit proceedings, the SII may request bank records to the taxpayer, specifying the transactions or products being sought and the time period in question. The taxpayer must, within 10 days after receiving the notice requesting the bank records, indicate whether it is willing to provide those records and, if so, provide them within 20 days.

[663] TC, Art. 13.
[664] TC, Art. 14.
[665] TC, Art. 9.
[666] TC, Art. 59 *ter*. For a definition of corporate group, see B.7.b., above.
[667] TC, Art. 59.
[668] TC, Arts. 62 and 62 *bis*.

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The taxpayer may, instead, authorize the SII to obtain its banking records directly from the bank; the authorization must be made in writing, specifying the products, accounts and banks from which the SII can obtain the information. In these cases, the SII must send a request to the bank or banks, and furnish a copy to the taxpayer, indicating the following:

(i) The taxpayer's name;

(ii) The banking transactions and/or products;

(iii) The covered period;

(iv) A copy of the authorization the taxpayer remitted to the SII; and

(v) The period the bank has to provide the information, which may not be less than 10 days or greater than 20 days.

If the taxpayer does not voluntarily submit the banking records or does not authorize the SII to obtain them from the bank, the SII may only obtain those records with an order from the Tax and Customs Tribunal with jurisdiction over the taxpayer's domicile.[669] The SII's petition must contain a reasoned justification that those records are indispensable to be able to determine the taxpayer's tax obligations, indicating the tax returns (or the lack thereof) the SII intends to verify. The judge must summon the parties to a hearing, which must take place within 15 days from the date of the summons. The judge must resolve the case within 15 days from the date of the hearing, or within five days from the hearing if the parties have already provided all the evidence at the time of the hearing. The Tribunal resolution may be appealed to the Court of Appeals, which must be filed within five days from the date the resolution is notified to the parties and must be processed with urgency, unless one of the parties intends to file allegations. The decision by the Court of Appeals is final.

If the Tax and Customs Tribunal or the Court of Appeals has resolved in the SII's favor, the bank or banks are required to provide the bank records within 10 days from the date they received the Tribunal or Court's resolution.

A different procedure must be followed if the bank records are sought either in a procedure involving criminal sanctions against the taxpayer, the SII finds tax inconsistencies in excess of 2,000 monthly tax units over the past 36 months, or when the taxpayer does not maintain or fails to provide accounting records. Under this procedure, the SII is required to file a request with the Tax and Customs Tribunal indicating the reasons why it is important to obtain the bank records. The judge must issue a resolution within five days. If the Tribunal finds for the SII, the latter must send the request filed and the Tribunal's decision to the bank, which must deliver the records within 20 days. Once delivered, the bank must inform the taxpayer. The bank will be fined with 50 monthly tax units if it either fails to provide the records or delivers them after the 20-day deadline. If, on the other hand, the Tribunal finds against the SII, the bank records can only be obtained with an order from the Tribunal following the regular procedure discussed above. The procedures before the Tribunal are secret.

(3) Tax Audits Involving Transfer Pricing Issues

The SII can challenge the price, value or margin used by the taxpayer (or establish them when the taxpayer has not done so) in situations involving cross-border transactions between related parties when that price, value or margin is not arm's length.

A cross-border transaction between related parties should be interpreted broadly. A transaction includes not only purchases and sales of property but also corporate and business reorganizations involving either the transfer from Chile and vice versa of functions, risks, assets, property or activities that are susceptible of generating Chilean source income, or terminating or substantially amending existing agreements, and that transfer or contractual amendment has not been made at arm's length.[670]

During a tax audit, the SII is entitled to make its own valuation if the value used by the taxpayer is notoriously lower than the market value. For these purposes, the market value is what normally unrelated parties would have charged in similar transactions and circumstances, after taking into account the industry or sector, the functions, assets or risks assumed by the parties, specific circumstances, key components of the goods, services, and any other transaction under analysis, as well as any other relevant circumstance.

In tax audits involving transfer pricing issues, the SII can request the taxpayer to provide, within one month (with the possibility of extending one additional month) all the information necessary to verify whether the transactions entered into by the taxpayer are at arm's length. To that end, the taxpayer can provide valuation reports to prove that the transactions it has entered into are at arm's length.

If the taxpayer is unable to prove that the transactions it has entered into are arm's length, the SII can make that determination using the evidence provided by the taxpayer, if any, as well as any other evidence it may have, including information obtained from foreign authorities on the transactions entered into by the taxpayer.

Once the SII has made that determination, it will issue a tax assessment with the relevant price adjustment. That adjustment may consist of a single amount, which can be a comparable price or profit margin, and that amount will constitute the reference for purposes of establishing whether a transaction is at arm's length. If there is more than one comparable price, value or profit margin, the SII must use the interquartile range.

Therefore, if the price, value or profit margin used by the taxpayer falls outside the interquartile range (the interquartile range being between the first and third quartile boundaries), the SII will determine that the transaction is not at arm's length. If the taxpayer accepts the transfer pricing analysis conducted by the SII, the latter can determine the tax adjustment by using either the single amount or the median within the interquartile range.

If the transaction involves the transfer of real property, the SII may determine the value and immediately issue a tax assessment if the value used by the taxpayer is notoriously different from the market value. The taxpayer, however, can challenge the tax assessment.

[669] TC, Art. 62 *bis.*

[670] SII Circular No. 10, dated January 30, 2025.

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The difference between the price, value or profit margin used by the taxpayer and the one determined by the SII is subject to a punitive tax at a punitive rate of 40% in the taxable year in which the transaction took place. Therefore, the transfer pricing adjustment will not be included as part of the taxpayer's taxable income that is subject to the first category tax and, as such, should not be included in the taxpayer's RAI registry (see V.B.5.d., below). The 40% tax rate, however, will not apply and the general corporate income tax rate will apply on the difference between the price or value used by the taxpayer in its original tax return and a different value reported in an amended tax return, provided the amended return was filed before the start of a tax audit and the amount reflected in the amended tax return gives rise to a higher tax liability.

A transfer pricing adjustment does not have any incidence on any other tax. Therefore, if an adjustment is made with respect to an import made by the taxpayer, that adjustment will not have an impact on customs duties.

A tax assessment issued as a result of a transfer pricing assessment is subject to interest charges and penalties. In addition, such tax assessment also gives rise to a fine of 5% on the difference in the price, value or profit margin that has been determined, unless during the tax audit proceedings the taxpayer has provided the SII at least the transfer pricing information return, the information that justifies the amounts reported in that return (see XIII.E.1., below), and any other information requested by the SII. A taxpayer is deemed compliant with the information requests if it submits that information on a timely basis.

(4) Tax Assessments

The SII is entitled to make its own determination of a taxpayer's taxable sales revenues in cases involving tax audits on tax returns where the taxpayer has willfully failed to provide all the information. In these cases, the SII can presume that the taxpayer's sales revenues cannot be lower than the amount of its purchases, its initial inventory plus a profit margin to be determined by the SII. Furthermore, if the taxpayer has failed to produce its accounting books and records during a tax audit involving income taxes, the SII can determine the taxpayer's taxable income by applying a maximum profit percentage obtained by similar companies, as determined by the SII, over the taxpayer's annual sales revenues.[671]

SII assessments on taxpayers who have either failed to file a return or due to differences between the taxpayer and the SII's calculations must indicate the items that are missing in the return, the tax due and, if applicable, the penalties. Unless otherwise contested, a 90-day period must elapse between the tax assessment notice and the payment order.[672] If, however, the taxpayer contests the tax assessment, the payment order can only be issued by the SII if and to the extent the Tax and Customs Tribunal issues a judgement in favor of the SII. If the judgment is in the taxpayer's favor, the payment order can only be issued if the SII has appealed the judgement to a higher court and that court revokes the judgement issued by the Tax and Customs Tribunal.

As stated in A.3., above, the SII cannot make an assessment against a taxpayer that has relied in good faith on an official interpretation of the SII through a ruling, circular or other official documents used either to provide instructions for tax inspectors or to inform either the public generally or one or more taxpayers in particular.[673] If an interpretation issued by the SII is subsequently changed, a taxpayer is deemed to be aware of this change only if the change has been published in the *Diario Oficial*.

e. Interest Charges and Penalties

The late payment of taxes either as a result of late filing or a tax audit is subject to readjustments, interest charges and penalties.[674]

In this regard, unpaid tax is subject to an adjustment for inflation between the last day of the second month preceding the due date through the last day of the second month preceding the date of payment.

Punitive daily interest charges are also imposed on late payment of taxes. The interest charge, which is levied after the tax due has been adjusted for inflation, is based on the current market interest rate applicable to transactions of 2,000 development units or less for terms of one year or more, readjusted to pesos, as published by the Financial Market Commission, increased by 3.5%. The interest charge is levied on the tax due as adjusted for inflation and must be calculated on a daily basis.[675]

The punitive interest rate must be determined by taking into account the six-monthly interest rate applicable for the period between the day the tax payment was due and its actual payment. The resulting rate must then be divided by 360 and multiplied by the days of delay in each semester.[676] The taxpayer can request from the SII to determine the punitive interest payable, which shall be valid for five days.

Interest charges may be fully or partially waived by the Regional Director of the SII if the taxpayer can prove a conduct that makes the tax payment omission justifiable.[677] Interest charges can also be waived in cases of self-assessments if the taxpayer voluntarily files the missing return or an amended return showing a greater tax liability, provided also the taxpayer can prove that his or her omission is justifiable. The waiv-

[671] TC, Art. 65.

[672] TC, Art. 24.

[673] TC, Art. 26.

[674] Taxpayers having on-going tax disputes in a Chilean court on October 28, 2024, had the option of settling the dispute with the SII if they filed a request with the SII between November 1 and December 31, 2024. Only disputes that arose prior to January 1, 2024 were entitled to this procedure. Under the settlement, the taxpayer was required to acknowledge that the tax amount claimed by the SII was due and the SII, in exchange, had to abstain from charging late interest charges and imposing penalties. After filing the request with the SII and place a bond equal to the tax claimed by the SII, the taxpayer had to a request with the court to suspend the judicial proceedings. The SII had three months from the date the taxpayer filed the request with the SII to issue a resolution requesting the court to dismiss the case. If the dispute was on appeal and the lower court partially ruled in the taxpayer's favor, the tax due that the taxpayer had to acknowledge is only the portion of tax liability the court ruled against the taxpayer. However, the SII may decide to continue with the case only as regards the decision that was previously ruled in the taxpayer's favor. The possibility to settle tax disputes did not cover cases where the SII decided to bring criminal charges. Law No. 21,713, Transitory Provision No. 12.

[675] TC, Art. 53.

[676] The SII's website provides in June and December of each year the applicable interest rate for the two semesters of that year.

[677] TC, Art. 56.

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er, however, is not applicable if the taxpayer has been charged with bribery of SII civil servants.

Payments owed by the SII to the taxpayer after their due date also bear interest charges, but at a rate of 0.5% per month on the due amount duly adjusted for inflation.[678]

If a tax return is filed within the five months after its due date and tax is due, the taxpayer is subject to a penalty equal to 10% of the tax due. If the return is filed after the five-month period, the penalty is increased by 2% per month up to 30%.[679]

If the taxpayer does not file a return and no tax is due, the penalty ranges from one to 12 monthly tax units. Thus, it is advisable to file a return on time even if the tax due is not paid at the time of the filing in order to avoid the imposition of a penalty. In such a case, the tax return must be filed directly with the SII, as a bank will not accept it.[680]

8. Tax Amnesty

a. The 2015 Tax Amnesty

The 2015 tax amnesty was particularly aimed at regularizing a taxpayer's position for income tax and estate and gift tax purposes. Only individuals with tax residence in Chile and companies incorporated prior to 2014 were entitled to benefit from it. Property and income that benefited from the 2015 tax amnesty had to be either located or generated abroad and held by the taxpayer either directly or indirectly through foreign trusts or foreign agents, provided that the taxpayer was the beneficiary of that property or income.

The tax amnesty also included income and property that was located in Chile but which was held indirectly by the taxpayer through foreign trusts, foreign agents as well as foreign companies, provided also that the taxpayer was the beneficiary of that property or income prior to January 1, 2014.[681]

The value of the property and income that was reported by the taxpayer was subject to a tax of 8%. This tax substituted any other Chilean tax that should have been paid in Chile on that income or property had they been previously reported. The SII had 12 months to verify any difference in value with respect to the property or income that had been declared by the taxpayer. After the 12-month period, the SII was prohibited from auditing the taxpayer in relation to the property and/or income that had been reported and the taxpayer may not later be imposed civil, criminal or administrative charges for not complying with obligations contained in tax and corporate legislation or in legislation dealing with exchange controls and market securities in connection with property and income generated from that property. The tax paid under the tax amnesty could not be utilized as a credit or used as a deductible expense for purposes of determining the tax liability under the tax amnesty or for any other tax.

If a taxpayer declared property and/or income and had paid the 8% tax on its value, but that property or income was owned by intermediary companies or trusts, he or she was entitled to request any relevant authority in Chile to treat that property and/or income as part of his or her net wealth in Chile for all legal purposes. However, the taxpayer had to commit to liquidate these intermediary companies or dissolve the trusts and register the property in his or her name. In those cases, and only for purposes of the tax amnesty, the transfer of the property to the taxpayer arising from the corporate liquidation or dissolution of the trust is to be regarded as a reorganization of the taxpayer's net wealth, not as a taxable transfer of the property to the taxpayer.

Civil servants that had been involved with the tax amnesty claimed by the taxpayer could disclose any information contained in the taxpayer's statement and its attachments. Severe penalties would be imposed if they were to disclose any of this information.

b. The 2024 Tax Amnesty

A tax amnesty was available from November 1 through December 31, 2024 to allow taxpayers to report property and income not previously reported.[682] The tax amnesty was available to taxpayers, whether individuals or entities, with tax residence or incorporated in Chile prior to January 1, 2023.

The tax amnesty covered property or income as well as property or income located in Chile and held through foreign trusts or agents. Taxpayers are not required to bring into Chile property or income reported under the tax amnesty. Furthermore, to be covered, the property must have been acquired by the taxpayer prior to January 1, 2023, while the income must have been generated from that property through December 31, 2023. Property or income located in jurisdictions that are listed as high risk or non-cooperative on global money laundering and terrorist financing under the Financial Action Task Force cannot be reported. Moreover, taxpayers who maliciously included in the tax amnesty return property or income that was not owned by them are subject to a fine of 300% of the value of such property or income and may also be imprisoned.

The taxpayer was required to report in Chilean pesos the fair market value of the property included in the tax amnesty return, pursuant to the following rules:

(i) Stock and financial instruments publicly traded in foreign markets: the average trading value over the six months prior to the date on which the tax amnesty return was filed, as certified by the foreign authority regulating the trading house or by a stockbroker duly authorized stock to operate in that market;

(ii) Other financial instruments: the combined account or portfolio balance at December 31, 2023 as certified by the foreign financial institution; and

(iii) If the property is none of the above, the reporting value is the fair market value, as certified by a valuation report issued by an independent auditor.

Upon filing the tax amnesty return, the SII issued, within five business days, a payment notice to the taxpayer reflecting a tax due equal to 12% of the value of the property and/or in-

[678] TC, Art. 57.

[679] TC, Art. 97(2).

[680] Except in this case, it is common practice to file the return through a bank, although the taxpayer always has the option of doing so directly at an SII office.

[681] The 2015 tax amnesty was approved under Law No. 20,780, Transitory Provision No. 24 and was available throughout 2015.

[682] Law 21,713, dated October 21, 2024 and published in the *Diario Oficial* on October 24, 2024. Transitory Provision No. 11.

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come reported by the taxpayer. The taxpayer had 10 business days from the date it received the payment notice to pay the tax. Moreover, the SII has 12 months from the date the payment was made to review the valuations reported in the return and to ensure the taxpayer complied with all the other requirements to benefit from the tax amnesty. If there is a discrepancy between what the taxpayer has reported and the review conducted by the SII, the latter may issue an additional payment notice requiring the taxpayer to pay an additional tax. If the discrepancy has to do with the requirements to benefit from the tax amnesty, the taxpayer can lose the tax paid and the tax implications arising from the tax amnesty to the extent a judicial court confirms the taxpayer's non-compliance. On the other hand, the following are the implications if the taxpayer complied with all the requirements and the SII has not challenged the return during that 12-month period:

(i) The values reported in the tax amnesty return constitute the taxpayer's tax basis in the property for Chilean tax purposes;

(ii) The tax paid under the tax amnesty is treated as a substitute tax in lieu of other Chilean taxes that could have been levied on that property or income. But that tax cannot be treated as a creditable tax against any other Chilean tax nor does it constitute a deductible expense for tax purposes; and

(iii) The taxpayer is viewed as having acted in good faith as regards his or her prior filing obligations in relation to that property and/or income. Accordingly, the taxpayer cannot be held responsible from a civil, criminal or administrative point of view vis-à-vis his or her exchange controls, tax, corporate obligations in connection with the property and/or income reported in the return.

c. Pre-2014 Tax Claims

In an effort to reduce the administrative burdens in the Chilean Treasury and the courts, all claims related to tax collections (other than the real estate tax), interest charges and penalties from taxpayers are deemed time-barred, provided those claims were made prior to 2014. In this regard, any suspension or interruption to the statute of limitations to collect the tax due is not taken into account for purposes of determining the 2014 deadline. [683]

C. Accounting

1. In General

Chilean companies are required to keep a number of books, which must be bound and stamped by the SII. Consolidated financial statements are mandatory in accordance with Chilean Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS).

The SII authorizes the use of computerized accounting systems and of loose-leaf journals (including computer printouts) for the general ledger and other records, provided that they clearly reflect the transactions entered into by the taxpayer in a manner that allows the SII to determine the taxpayer's tax liabilities. Loose-leaf sheets must be numbered and registered with the SII before use. An entity's books must be kept in the Spanish language. As a general rule, books and records must be kept while the statute of limitations is open (See B.4., above).[684] If an entity's tax return is not supported by duly kept financial books and records, the SII may assess income based either on a percentage of the capital invested in the business or on sales.

As discussed at III.B.8., above, and IV.B.5., above, as a general rule all taxpayers must keep their books, file their tax returns, and pay their taxes in Chilean pesos.[685] However, a taxpayer may request authorization from the SII to keep its books in foreign currency if it meets one of the following requirements:

(i) When the nature, volume and number of its foreign trade transactions justify it;

(ii) When its capital has been contributed from abroad or when most of its loans are denominated in foreign currency;

(iii) When a specific foreign currency has a fundamental influence in the taxpayer's pricing of goods sold or services provided, or when the foreign currency has a significant influence over the taxpayer's share capital composition or revenues; or

(iv) When the taxpayer is an affiliate or a permanent establishment (PE) of a foreign company or head office that determines its annual taxable income in a foreign currency, provided, however, that the activities of the Chilean taxpayer are undertaken either without a sufficient degree of autonomy or as an extension of the activities of the foreign parent company or head office.[686]

In addition to the above requirements having to be met, authorization may be granted only if the taxpayer's taxable base is not reduced as a result of the change.

The effective date of the authorization granted by the SII depends on whether the Chilean entity is newly incorporated. If it is newly incorporated, the authorization is effective as of the beginning of the first taxable year, as the request for authorization must be submitted together with the RUT registration; if it is not newly incorporated, the authorization is effective as of the beginning of the taxable year following that in which the taxpayer filed the authorization request. If the authorization is granted, the taxpayer is required to keep its books in the chosen foreign currency for at least two consecutive taxable years. The taxpayer may exclude itself from maintaining its books in foreign currency but only once the two-year period has elapsed. In those cases, the taxpayer must request the exclusion before the last working day of October of the last taxable year in which it wishes to maintain books in foreign currency. The authorization will apply as of the taxable year following that in which the request was filed and with respect to the taxes that are payable during that taxable year and subsequent years. The SII is also entitled to revoke the authorization to maintain the books in foreign currency if it finds that the taxpayer no longer meets one of the above four requirements. In the event that an authorization

[683] Law No. 21,713, Temporary Provision No. 14.

[684] TC, Art. 17.

[685] TC, Art. 18(1).

[686] TC, Art. 18(2).

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is revoked, the revocation will apply as of the following taxable year, at which time the taxpayer will be required to maintain its books and pay its taxes in Chilean pesos.

As a general rule and unless the taxpayer is authorized to maintain its books and records in foreign currency, capital contributions made to Chilean companies in foreign currency must be converted into Chilean pesos at the rate in effect on the day of the conversion.[687] If the monetary contribution is not exchanged into Chilean pesos, then the conversion must be made at the average exchange rate during the month prior to the contribution. If the contribution consists of non-monetary assets, the conversion must be made based on the value of the asset taking into account the wholesale price at the point of entry into Chile.

2. Simplified Accounting

The following taxpayers are entitled to do their accounting in a simplified manner, i.e., they are not required to maintain full accounting records other than daily journals:[688]

(i) Enterprises run by individuals with a capital of up to two annual tax units and with revenues of up to one tax unit. For these cases, the tax must be determined on the basis of the taxpayer's tax return prepared based on a simple statement of his or her revenues and expenses;

(ii) Enterprises specifically authorized by the SII, provided they have little movement or a small capitalization. These enterprises can do their accounting with merely a chronological detail of their entries and just a minimum description of their expenses;

(iii) Individuals engaged in liberal professions, such as doctors, lawyers and accountants. These are entitled to do their accounting in one single book evidencing their income and expenses as well as an annual summary. However, the simplified version of accounting is not allowed for professionals who undertake their activity in corporate form or for professionals who determined their net taxable income on a presumptive basis (see IX.C.3.b., below);

(iv) SMEs that qualify under the Pro-Pyme system (see V.B.4.c., below); and

(v) Non-profit foundations and corporations that only receive donations that are exclusively destined to fulfill their purpose, provided they do not conduct activities that are subject to the first category tax. These entities are only required to carry a statement of sources and uses in chronological order, identifying the name of the persons making donations and the amounts contributed.

3. Financial Statements

Pursuant to the instructions issued by the Superintendence of Securities and Insurance (*Superintendencia de Valores y Seguros*, SVS), all SAs that are listed on a Chilean stock exchange are required to adopt IFRS as of taxable years ending on or after December 31, 2009, when preparing their financial statements.[689] In addition, the Chilean Institute of Accountants (*Colegio de Contadores de Chile, A.G.*) has indicated that unlisted companies are subject to the same requirements as open SAs.[690]

Financial statements under IFRS are prepared with comparative figures but no price-level restatements apply. Basic financial statements include the following:

(i) Balance sheet;

(ii) Statement of income;

(iii) Statement of cash flows;

(iv) Statement of changes in equity; and

(v) Notes to the financial statements.

Consolidation of subsidiaries is mandatory. However, as required by the SVS and as is common practice in the case of nonregulated companies, the parent company also prepares stand-alone financial statements, showing the equity value of subsidiaries in one line. For these purposes, an affiliated entity is a subsidiary of a parent if the parent company owns, directly or indirectly, more than 50% of the affiliate's share capital or if it has effective control over the affiliate. However, when a subsidiary's operations differ significantly from those of its parent company, or when the subsidiary is in the development stage, consolidation is not required by the SVS, which can give rise to discrepancies with Chilean GAAP. Under IFRS, consolidation of subsidiaries is also mandatory and there are no exceptions. Stand-alone financial statements are no longer required, but when they are drawn up, must follow the principles contained in International Accounting Standard (IAS) 27. There are no significant differences between the concept of a subsidiary under IFRS and that under Chilean GAAP.

Resolutions issued by the Board of Directors of companies that are subject to the supervision of the SVS must indicate whether they have been subject to a tax audit by the SII. The notes to the financial statements of these companies must also describe in detail the tax controversies that could reasonably have a material impact on the items contained in those statements.[691]

4. Audited Financial Statements

The SII does not normally require audited financial statements. However, the following entities are required to present audited financial statements on an annual basis:

(i) Publicly listed stock corporations (see III.B., above);[692]

(ii) Banks and financial institutions;

[687] TC, Art. 19.

[688] ITL, Art. 68. Nonresidents who only generate Chilean-sourced portfolio income are not required to maintain accounting records in Chile, even if they have appointed a representative in Chile to supervise their investments.

[689] SVS, *Oficio* No. 368 of 2006. Subsequent to *Oficio* No. 368, the SVS relaxed this obligation by allowing listed companies the option of either (i) filing their 2009 financial statements in IFRS with financial year 2008 comparatives under IFRS as well, or (ii) continue to adopt Chilean GAAP in 2009 and 2008, but filing a separate pro-forma document in IFRS for 2009 only. SVS, *Oficio Circular* No. 485 of Nov. 2008.

[690] The Chilean Institute of Accountants is an independent body created in 1958 that governs the accounting profession. Its members must have obtained an accounting degree granted by the Ministry of Education or by one of the Chilean universities. Membership in the Institute is not mandatory. The object of the Institute is to protect the profession's prestige, control the development of the profession, maintain discipline and a correct practice, and support its members.

[691] Decree Law No. 3,538, Art. 3 *bis.*

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(iii) Insurance companies;

(iv) Cooperatives;

(v) Private pension funds and health care entities;

(vi) State-owned corporations; and

(vii) Stock brokerage firms and mutual funds.

In addition, it is common to have financial statements submitted to audit examination at the request of shareholders, banks or other creditors.

There are various levels of assurance, as an entity may request a full audit, a limited audit review, or a special purpose report of its financial information. A full audit is required where a statutory audit is mandatory. Statutory audits must be performed by independent accountants and, in that regard, no person who is related to the entity being audited, such as a director, a manager or a member of the staff, may act as either an independent accountant or as an inspector of accounts.

5. Accounting Principles and Practices

a. Chilean Generally Accepted Accounting Principles

As the entity responsible for formulating professional ethical rules, the Chilean Institute of Accountants has issued a Professional Code of Ethics and technical bulletins on accounting principles and auditing standards, including the form and content of the auditor's report. These principles and standards are similar to those adopted by the American Institute of Certified Public Accountants.

The accounting principles issued by the Institute of Accountants must be adhered to. If an accounting issue is not addressed in these principles, the International Accounting Standards Committee (IASC) pronouncements must be followed, and alternatively, those issued by other international professional bodies, such as the U.S. Financial Accounting Standards Board (FASB). Other Chilean regulatory bodies, such as the SVS and the Superintendence of Banks and Financial Institutions, which regulate listed companies as well as banks and insurance companies, respectively, also issue accounting norms that are mandatory for companies under their supervision. These accounting norms generally coincide with Chilean GAAP and tend to complement the latter, especially on matters under the supervision of their issuing body (for example, in relation to banking and insurance). However, in certain matters, the SVS has issued more restrictive standards. Also, the Superintendence of Banks and Financial Institutions has defined strict parameters for setting up allowances for doubtful loans and for assets received in payment, based on a risk assessment methodology. These allowances are more conservative than those that would otherwise be required under Chilean GAAP or IFRS. They also contemplate the possibility of recording additional voluntary allowances to cover possible future losses, which is not acceptable under Chilean GAAP and IFRS.

There are also specific accounting instructions in the case of insurance companies. Instructions applicable to banks are included in a compendium that is periodically updated by the Superintendence of Banks and Financial Institutions. Similar instructions are issued by the Superintendencies that regulate private pension plans and private health funds.

The accounting instructions issued by the SVS are established through General Norms (*Normas de Carácter General*, NCG), Circulars and Official Circulars (*Oficio Circular*). The basic instructions are included in:

NCG 30	Requirements for public offerings
Circular 1901	Presentation of financial statements under Chilean GAAP (Circular 1901 of 2008 and additional required information to be presented under IFRS. In addition, filing forms to submit financial information under IFRS has increased significantly the required disclosures according to the presentation requirements of those standards)
Circular 368	Valuation of investments
Circular 981	Deferred expenses

In accordance with the technical bulletins, nonmonetary assets and liabilities, and shareholders' equity must be restated in accordance with the local CPI by a debit or credit to income. Income statement accounts are restated to year-end values. The underlying objective of the Chilean price-level restatement mechanism is to reflect in the statement of income the net gain or loss resulting from carrying nonmonetary items throughout the year. In this regard, assets are valued as follows:

(i) Marketable securities are restated by reference to the fluctuation in the CPI or based on fixed conditions (normally development units). They also have to be written down to market value if lower, although certain exceptions exist in the case of banks and insurance companies.

(ii) Inventories are valued at restated cost or replacement cost based on the latest purchase price or manufacturing cost. In some cases cost excludes overheads.

(iii) Property, plant and equipment are valued at cost plus price-level restatements. Depreciation is normally calculated on a straight-line basis on the price-level restated amounts over the remaining years of the useful life of the assets. Assets acquired under capital lease contracts are included in the balance sheet and the related liability is shown net of non-accrued interest. Depletion of mining properties is tax-deductible as part of the cost of extracted minerals.

(iv) Investments representing 10% or more of the investee's equity are valued using the equity method, while investments in excess of 50% must be consolidated on a line-by-line basis. Separate stand-alone and consolidated statements are required for open stock corporations. Investments in foreign companies must be accounted for in either: (a) Chilean pesos if the foreign entity constitutes an extension of the investor's operations; (b) the local foreign currency, if the investment is in a country with a stable economy; or (c) U.S. dollars if the investment is in a

[692] A publicly listed *sociedad anónima* (SA) is also required to subject its semi-annual financial statements to a limited review to be performed by its independent accountants.

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country whose economy is considered unstable. In the latter case, the recorded investment is first restated by reference to the variation in the CPI and the resulting translation difference is booked in a reserve included under equity. Companies are able to hedge certain liabilities in U.S. dollars and the related exchange effect is recorded against the same reserve.

(v) Other nonmonetary assets are restated in accordance with the CPI.

It is important to understand that the price-level methodology requirements are not intended to affect the basic cost principles of accounting; their purpose is only to reflect all amounts in the financial statements in pesos of constant purchasing power. In fact, there are no current cost accounting requirements except in the case of derivatives and, in the case of insurance companies only, the valuation of certain investments.

Accounting principles have been established for purposes of accounting for acquisitions and business reorganizations at fair market value. In this regard, the acquisition of a business or other permanent investment must be appraised taking into account the economic nature of the assets being acquired, the nature of the transaction, the purpose of the investor and the valuation made by the investor. Pooling of interest occurs in Chile only in very limited circumstances, mainly involving mergers and transactions carried out by entities under common control. Purchases of businesses may be accomplished through either purchases of assets or purchases of shares.

Income tax is calculated on accrued taxable income and deferred income taxes are recognized on timing differences that arise between taxable and financial income.

Contingency provisions are recorded in accordance with a technical bulletin and are similar to those that would be recorded under IAS and U.S. GAAP. The provisions that are recorded as either short and/or long-term liabilities are those that are both probable and quantifiable.

Reserves are accounts classified under the Shareholders' Equity caption and originate solely from paid-in capital surplus, the appraisal of assets, accumulated exchange effects on foreign investments, special reserves instituted by a specific law or regulation, deficit accumulated by subsidiaries in the development stage and retained earnings representing appropriated net income. In the case of financial institutions, insurance companies and other regulated entities, the requirement to set up a legal reserve has been eliminated.

A reserve for the price-level restatement of equity is recorded periodically as part of the comprehensive basis of restating historical cost financial statements, which recognizes the impact of inflation on the opening balance and subsequent movements of shareholders' equity. The reserve is set up by a charge to income, which is allowed as a deduction for income tax purposes. In the case of stock corporations, this reserve must be allocated to the respective equity account balances on which the restatement was calculated, prior to the closing of the books of account at year-end. The capital of stock corporations is, thus, increased annually. However, in the case of limited liability companies, the revaluation effect must be accumulated in a special reserve until it is included in capital by means of a formal modification of the by-laws.

The Chilean Institute of Accountants, and most of the Superintendencies and other regulatory bodies, have issued explicit instructions for footnote disclosure by entities under their respective jurisdictions. Other companies that are not supervised by regulatory bodies have, in many cases, adopted these instructions. Banks, financial institutions and pension funds have particularly explicit footnote disclosures, as required by the Superintendence of Banks and Financial Institutions.

b. Differences Between Chilean GAAP, U.S. GAAP and IFRS

In addition to price-level restatements, which are mandatory under Chilean GAAP, there are some other differences between Chilean GAAP and U.S. GAAP and IFRS.[693] Some of these differences are:

(i) Inventory valuation under Chilean GAAP contemplates price-level restatements and, for this purpose, accepts a simplified method based on estimated replacement cost, provided no significant distortions are generated. In addition, there is an extensive practice, particularly in medium and small size businesses, of calculating costs by only including direct labor and raw materials and excluding overhead.

(ii) Appraisals of property, plant and equipment values were, exceptionally, allowed in Chile in 1981 and 1985, based on technical appraisals, by the crediting of a special reserve account within equity, which may only be capitalized. The depreciation related thereto has no tax effect. Under IFRS, an entity may opt to revalue its property, plant and equipment, provided it also recognizes the effect in a special reserve in equity.

(iii) Timber accretion is recognized annually by crediting a forestry reserve. The reserve on the asset is reversed by crediting to cost of production when the related timber is harvested. Under IFRS, revaluation of biological assets is mandatory. The change in the revalued amount is recognized directly in income.

(iv) Pursuant to a norm issued by the SVS, which is also followed in practice by privately-held companies, losses incurred by subsidiaries in the development stage are charged directly to a specific equity account, without the parent company's net income being affected.

(v) There is no requirement to disclose segment information or earnings per share.

c. Accounting and Tax Differences

The principal differences in the determination of income for financial and tax purposes are summarized below:

(i) General provisions based on estimates are not allowable for tax purposes.

[693] For a detailed comparison of Chilean Generally Accepted Accounting Principles (GAAP) in relation to the International Accounting Standards (IAS) and North American countries, see "Significant Differences in GAAP in Canada, Chile, Mexico and the United States," prepared with the participation of the Chilean Institute of Accountants.

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(ii) Shutdown provisions for severance payments to employees are allowable for tax purposes when the employer has a contractual obligation with the employees to pay them and the severance payments are based on the current value of the wages; if no contract exists, the tax authorities accept such expenses on a cash basis. For financial purposes, companies may provide the present value of such obligations.

(iii) Provisions for vacations are not allowable for tax purposes; the expense is only deductible in the year of payment.

(iv) Depreciation for tax purposes must be calculated on the straight-line basis based on the useful lives of the assets, as provided by the tax authorities and, in the case of new assets or imported used assets, depreciation can be accelerated by reducing their useful lives to one-third.

(v) Income tax is not a deductible expense for income tax purposes.

(vi) Inventories must be valued at direct cost, excluding overheads, and replacement cost must be calculated as specifically established by law.

(vii) Specific donations are generally deductible for tax purposes, but the deductible amount may be limited.

(viii) The effect of appraisals of property, plant and equipment accepted in certain circumstances for financial purposes must be eliminated for tax purposes.

(ix) Sales commitments or amounts collected in advance must be included in taxable income, except for sales commitments concerning real estate, which are only recognized as income for tax purposes when the real estate is legally transferred.

(x) Financial price-level restatements of the opening balance of shareholders' equity, plus capital contributions, less dividends, differ in certain aspects from the tax concepts.

d. Accounting Periods

The accounting norms issued by the Superintendencies allow Chilean corporations to choose the end of any calendar quarter as the closing date for their annual statements. However, since for tax purposes all businesses are generally required to have the calendar year as their taxable year, the vast majority of Chilean corporations use the calendar year as their accounting period.[694] Regulated companies have to meet very tight deadlines for filing audited financial statements. All accounts are on an annual basis and income is recorded in accordance with the accrual basis of accounting.

D. Principal Taxes

The principal taxes levied in Chile are listed in this section and are discussed in detail in subsequent chapters.

1. Income Tax

Chilean income tax (*Impuesto a la Renta*) is levied on individuals and legal entities, whether resident or nonresident.[695] Residents are subject to income tax on their worldwide income, while nonresidents are subject to the tax on their Chilean-source income. When the combined effective income tax rate for corporations and shareholders is considered, probably the salient feature of the Chilean income tax regime is that the corporate income tax rate on corporations is relatively low, while the tax due at the time net after-tax income is distributed, paid or withdrawn is high and the tax treaties entered into by Chile do not have an impact on that tax. Corporate tax rates are at a reasonable level pursuant to the government's policy of keeping taxes "neutral," that is, the rates are similar to those prevailing in the countries from which most foreign investment is made. Income tax rates on individuals, on the other hand, are relatively high.

The Income Tax Law (*Ley Sobre Impuesto a la Renta* or LIR, hereafter "ITL") has a number of unique features. To have a basic understanding of its mechanics, it is imperative to be familiar with the fact that the ITL imposes the following taxes:

(i) The first category tax *(Impuesto de Primera Categoría*) is a tax levied on an enterprise's business income on a worldwide basis. The first category tax is generally levied on an accrual basis, although certain types of income are only subject to the first category tax on a cash basis. As of January 1, 2020, the first category tax rate is levied at a rate of 27%, although SMEs can benefit from a reduced rate of 25%. Under Chile's current partially integrated system, taxation at the shareholder level is triggered on a cash basis on actual distributions. The first category tax generally constitutes a tax credit against the surtax and the additional tax. However, the amount of the tax credit is limited to 65% of the first category tax paid if the shareholder is a nonresident and its country of residence is in a non-tax treaty jurisdiction, leading to an overall tax in Chile of 44.45% (27% + [65% × 27%]) versus a 35% overall tax rate for shareholders with tax residence in a tax treaty jurisdiction or in a jurisdiction that has signed a tax treaty with Chile prior to 2020 but that is not yet in force, such as the United States.

(ii) The sole second category tax *(Impuesto Unico de Segunda Categoría)* is a tax on salaries, wages, and other forms of remuneration paid for personal services performed under a relation of dependency. This tax is generally paid via the withholding mechanism at progressive rates.

(iii) The surtax *(Impuesto Global Complementario)* is a progressive tax assessed on individuals resident or domiciled in Chile with respect to their worldwide income. Professional income is subject to the surtax as a single tax. The highest tax bracket is currently 40%. Generally, the first category tax is creditable against the surtax on amounts distributed or paid that have been subject to the

[694] For a discussion of the taxable year, see IV.B.3.

[695] The ITL was enacted under Decree Law No. 824 on December 27, 1974, and was published in the *Diario Oficial* on December 31, 1974. Since its enactment, the ITL has been amended on numerous occasions.

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first category tax. Thus, dividends distributed by Chilean enterprises to Chilean resident individuals may be viewed as subject to the surtax, while the first category tax paid by the distributing entity may be viewed as an advance payment of the surtax.

(iv) The additional tax *(Impuesto Adicional)* is levied on Chilean-source income remitted abroad to a nonresident individual or business enterprise, including a legal entity organized abroad that has a PE in Chile in the form of a branch, an office, an agent or a representative. Generally, the first category tax is creditable against the additional tax on amounts distributed or paid that have been subject to the first category tax. The additional tax is paid by means of a withholding tax at source at a rate of 35%. All tax treaties entered into by Chile provide that the reduction in the withholding tax rate contained in the tax treaty is suspended to the extent that the Chilean tax system allows a tax credit against the additional tax liability for the first category tax paid on the amount being distributed.

2. Value Added Tax

VAT is levied on the sale of goods and the supply of services within Chile, as well as on the importation of goods and services into Chile.[696] Unless a transaction is otherwise exempt, VAT is imposed at each stage of production based on the value added at that stage. Generally, VAT paid on purchases and imports is creditable against VAT collected on sales of goods or the provision of services. The VAT rate is 19%. The largest proportion of Chile's tax revenue is from VAT.

VAT is discussed at XII., below. For further research on Chile's VAT system, see also the VAT Navigator.

3. Stamp Tax

A stamp tax (*Impuesto de Timbres y Estampillas*) is levied on the execution of certain transactions (particularly credit transactions). The tax rate varies depending on the transaction. It can be as low as 0.033% and as high as 1%.[697]

4. Real Estate Tax

The real estate tax (*Impuesto Territorial*) is assessed on an official valuation of real estate and is levied at rates ranging from 1% to 1.4% per year, depending on whether the property is used for agricultural purposes.[698] Certain real estate is exempt from the tax. The official valuation is fixed each year on January 1 and is adjusted each July 1, in accordance with the increase in the CPI.

5. Excise Taxes

In addition to VAT, the importation and first sale of certain products manufactured with gold, silver or ivory as well as furs and other luxury products are subject to a special sales tax levied at rates of 15% and 50%, depending on the actual product.[699] Likewise, certain beverages (mainly alcoholic) are subject to an additional sales tax at rates ranging generally from 13% to 27%.[700]

Excise taxes are also levied on the importation and first sale of cars and locally assembled cars and station wagons. This excise tax is determined as a percentage of the customs value based on the cubic centimeters of the vehicle.[701] A gasoline tax, payable on first sale or on importation, is also levied on the difference between a fixed amount and the sale price of the gasoline. The same tax, but at lower rates, also applies to diesel oil.

6. Municipal Business Tax

Business activities conducted within a municipality are subject to a municipal business tax or *patente municipal*. The tax rate is determined by each municipality and it must range between 2.5 per thousand and 5 per thousand of the taxpayer's capital plus its retained earnings at the end of each taxable year. However, the tax cannot be lower than one and higher than 8,000 monthly tax units. When a taxpayer has establishments in other municipalities, it must first determine the overall tax due and then allocate the amount payable to each municipality on the basis of the number of employees working in each establishment.

7. Environmental Contribution

Taxpayers that are subject to the first category tax are required to make a one-time environmental contribution for each investment project undertaken in Chile that comprises the acquisition, construction or import of tangible fixed assets and the overall investment in those assets must amount to at least US$10 million, provided the investment project is subject to an environmental impact evaluation pursuant to article 10 of Law No. 19,300 on the General Environmental Rules. There are certain exemptions for certain investment projects, such as investment projects that are either solely used for health, educational, scientific, or technological R&D activities, or for the construction of dwellings or offices. The environmental contribution is levied at a rate of 1% over the acquisition value in excess of US$10 million of all tangible fixed assets comprised in an investment project. The environmental contribution is due in the first taxable year in which the investment project generates operational income and must be paid in April of the following year. However, the taxpayer is entitled to pay the contribution in five annual instalments.

8. Net Wealth Tax

Chile does not levy a net wealth tax on either individuals or legal entities.

[696] The *Decreto Ley Sobre Impuesto a las Ventas y Servicios* (Decree Law on Goods and Services Tax, VATL) was enacted under Decree Law No. 825 in 1974 and replaced by Decree Law No. 1,606 of November 30, 1976, published in the *Diario Oficial* on December 3, 1976, but preserving the original Decree Law number. Decree Law No. 825 has been amended on numerous occasions.

[697] The *Decreto Ley de Impuesto de Timbres y Estampillas* (Decree Law on Stamp Taxes) was enacted under Decree Law No. 3,475 of August 22, 1980, and was published in the *Diario Oficial* on September 4, 1980. Decree Law No. 3,475 has been amended on numerous occasions.

[698] The *Ley Sobre Impuesto Territorial* (Real Estate Tax Law, RETL) was enacted under Law No. 17,235 on December 24, 1969. Since that date, the RETL has been amended by subsequent legislation.

[699] VATL, Arts. 37–40.

[700] VATL, Arts. 42–45.

[701] VATL, Arts. 46–48.

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V. Income Taxation of Domestic Corporations

A. Classes of Taxpayers

1. Residence

All legal entities that are either domiciled or resident in Chile are subject to Chilean income tax on a worldwide basis.[702] Neither the Income Tax Law (*Ley Sobre Impuesto a la Renta*, ITL) nor the Tax Code (*Código Tributario*, TC) defines the concept of "domicile" or "residence" for legal entities. As a matter of practice, companies domiciled or resident in Chile are those that are either incorporated in Chile or are managed and controlled in Chile. The concept is important since, as noted, companies with their domicile or residence in Chile are subject to income tax on income derived from both Chilean sources and foreign sources, while companies with their domicile or residence outside of Chile are subject to Chilean income tax only on income from Chilean sources.[703]

2. Taxable Legal Entities

Chilean partnerships, both general and limited, are treated as legal entities separate from their partners and, as such, are considered separate taxpayers.[704] Therefore, Chilean partnerships are not treated as transparent entities for corporate income tax purposes; instead, they must file their own tax returns and pay the first category tax in the same manner as stock corporations and limited liability companies.

The following legal entities are subject to the first category tax:

(i) A stock corporation (*Sociedad Anónima*, SA);

(ii) A limited liability company (*Sociedad de Responsabilidad Limitada*, SRL);

(iii) A general partnership (*Sociedad Colectiva*, SC);

(iv) A limited partnership (*Sociedad en Comandita*, SenC);

(v) A branch of a foreign corporation (*Agencia*); and

(vi) A limited company by shares (*Sociedad por Acciones*, SpA).

3. Look-Through Entities

As noted in 2., above, Chilean partnerships are treated as taxpayers separate from their partners. However, silent partnerships (*cuentas en participación* or Cen Ps), which are merely private contractual arrangements, not legal entities, are treated as look-through vehicles.[705] In particular, for purposes of the first category tax, the income of a silent partnership is fully attributable to and reported by its managing partner, and is only attributed to the silent partners for purposes of the surtax and the additional tax, based on the profit and loss allocation made by the partners under the contract.[706] However, the SII has issued instructions requiring a silent partner to report its income obtained under a silent partnership if such income is determinable pursuant to the terms of the silent partnership contract, separate from the managing partner, for purposes of the first category tax as well as the surtax and/or the additional tax.[707]

A contractual or unincorporated joint venture, whereby two or more parties agree to undertake a venture and share its profit and losses, is another form of look-through vehicle for tax purposes. It is not an entity as such, merely a contractual agreement. Other look-through vehicles include de facto corporations, inheritances, communities of property and trusts. For a discussion of these look-through vehicles, see VIII., below.

One legal entity that may be treated as a look-through entity is an SME, provided its shareholders are persons, whether resident or not, that are subject to either the surtax or the additional tax. The look-through treatment is optional and, if selected, the SME is not subject to the first category tax; instead, its owners will be subject to the surtax or the additional tax based on the SME's net taxable income at the end of the taxable year.[708] Any Chilean entity, regardless of its corporate form, may opt for this regime provided it qualifies as an SME. Furthermore, tax transparent SMEs are not required to have and maintain a full set of accounting books, carry inventory, depreciate assets, adjust their assets and liabilities for inflation, or maintain the RAI, DDAN, REX or SAC registries.

4. Entities Exempt from Income Tax

The following entities are exempt from the first category tax provided that their net taxable income exceeds one tax unit:[709]

(i) The State and Municipalities, as well as their institutions and autonomous bodies;

(ii) Special institutions that are exempt under specific legislation;[710]

(iii) The Boy Scouts Association of Chile and mutual emergency associations that are affiliated to the Mutual Confederation of Chile;

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[702] ITL, Art. 3.

[703] ITL, Art. 3.

[704] CC, Art. 2,053.

[705] ComC, Art. 509. See VIII.E. for a more detailed discussion on the taxation of silent partnerships.

[706] TC, Art. 28.

[707] Circular No. 29, dated June 4, 1999.

[708] ITL, Art. 14(D)(8). For a detailed discussion of look-through SMEs. See V.B.4.c.(1), below.

[709] ITL, Art. 40. For a description of what constitutes a tax unit, see IV.B.1.

[710] Examples of income tax exemptions contained in specific legislation include: (i) income derived from property located in the Island of Pascua, (ii) income derived by enterprises established in free trade zones, (iii) sport institutions and organizations, provided they seek to promote sports and their owners or members do not seek to generate a profit for themselves or receive any kind of compensation from such institutions or organizations, and (iv) universities that are recognized as such by the State.

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(iv) Charitable and nonprofit organizations, as determined by the President of Chile, provided their principal corporate purpose, as provided in their by-laws and as a matter of fact, is the direct provision of assistance to persons with scarce economic resources that are unable to meet their basic needs, even if that assistance is not entirely free of charge; and

(v) Investment funds, mutual funds and their administrators.[711] These entities are required to distribute at least 30% of their net profits to their shareholders.[712]

The exemptions described under paragraphs (i) to (iii) do not extend to business enterprises held by institutions listed in those paragraphs that conduct commercial or industrial activities or provide services.

B. Basis of Taxation

1. Taxation of Worldwide Income

As discussed in A.1., above, legal entities domiciled or resident in Chile are subject to income tax on their worldwide income, while nonresident entities are subject to tax only on their Chilean-source income.[713]

2. Taxable Periods

For a discussion of a corporation's taxable year, see IV.B.3., above.

3. Tax Consolidation

Tax consolidation or grouping is not allowed in Chile.

4. Calculation of Gross Revenues

a. Inclusions in Gross Revenues

(1) In General

The term "revenues" is broadly defined in the ITL to include any income that is derived from an asset or activity, as well as any profit or gain that is received or, accrued, irrespective of its nature, origin or name.[714] Foreign currency exchange gains and losses arising from lending transactions also constitute gross revenues.[715]

The conduct of a trade or business by a resident company is subject to the first category tax. The ITL lists some of these activities, such as commercial, industrial, real estate, and portfolio investments, but it also contains a catch-all provision that subjects to the first category tax revenues generated from activities that are not specifically listed, provided they are not otherwise expressly exempt.[716]

For purposes of the first category tax, as a general rule, a corporation's revenues must be determined on an accrual basis pursuant to the accounting rules.[717] In a number of sectors, specific rules apply for purposes of determining either the timing in which the revenues must be recognized or other specificities. These special sectors are discussed below.

(2) Portfolio Activities

Income derived from portfolio investments is subject to the first category tax, unless it is expressly excluded.[718] For this purpose, portfolio investments include debt instruments and dividends from foreign entities (domestic dividends are generally exempt from the first category tax).

Interest received from the ownership of securities, such as bonds, debentures and loans, as well as from bank deposits, is generally taxed on a cash basis. However, the following special rules apply on portfolio income:

(i) Interest income on publicly traded bonds must be recognized on an accrual basis from the date the bond is purchased until it is either sold or redeemed. Specifically, the amount that must be accrued on an annual basis must be calculated by: (I) multiplying the interest rate by its capital or par value; (II) the result must be divided by the number of days of the calendar year indicated in the prospectus; and (III) the result must be multiplied by the number of days that the taxpayer has held the instrument;

(ii) In the case of banks and financial institutions, interest received in advance must be reported as revenue in the taxable year it is actually received; and

(iii) Dividends received from the ownership of shares in foreign corporations that do not conduct activities in Chile must be reported on a cash basis.

The taxpayer must exclude from its gross revenues the difference between the acquisition value and the nominal value when it purchases loans and loan portfolios. However, sums collected by the taxpayer from these instruments must be reported as gross revenues. The same rule applies when bonds are acquired at a value below their nominal value, except for transactions conducted between related parties, unless the taxpayer can demonstrate that the transaction has been conducted at arm's length.

(3) Real Estate Activities

Income from the ownership or exploitation of real property is subject to the first category tax.[719] Income from real property is defined broadly to cover income and capital gains generated in agricultural activities, rents derived from the lease of land used for agricultural purposes, as well as rents generated and capital gains realized by construction and real estate companies on the lease or sale of real property. For a discussion of the possibility of using the real estate tax liability as a credit against the first category tax, see V.B.10.c., below.

[711] Law No. 20,712, dated Dec. 24, 2013, and published in the *Diario Oficial* on Jan. 7, 2014, as amended, Art. 81(1).

[712] Law No. 20,217, Art. 81(1)(a). Investment funds and mutual funds are required to maintain the same registries as other entities that are subject to the profit attribution system.

[713] ITL, Art. 3. For a discussion of the Chilean sourcing rules, see VI.A., below.

[714] ITL, Art. 2(1).

[715] ITL, Art. 29.

[716] ITL, Art. 20(5).

[717] TC, Art. 16; ITL, Art. 29.

[718] ITL, Art. 20(2).

[719] ITL, Art. 20(1)(a) and (c).

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Generally, revenues from real property activities must be recognized on an accrual basis, except for the following exceptions:[720]

(i) Income received from a contract for a future sale of real property must be reported in the year in which the actual sales contract is executed;

(ii) Payments made to construction companies for construction work for a fixed amount must be reported in the taxable year in which each payment is made;

(iii) Concessionaires of construction projects for public use are also required to determine their gross revenues in accordance with special rules. In this regard, a concessionaire is only required to report income in the taxable year in which the public work becomes operational, i.e., not during the construction period. The amount of income to be reported in the first operational taxable year is deemed to be equal to the construction cost, including labor, materials, services, financial costs, and any amounts paid to subcontractors, minus VAT.[721] The monthly gross revenues of a concessionaire that operates, repairs and maintains works for public use is equal to the actual monthly revenues it receives under the concession for operating the public works minus the total cost of the construction divided, at the concessionaire's option, either by the number of months that comprise the concession or one-third of such period. Any State subsidies received in connection with the works must be adjusted for inflation and reduced when determining the concessionaire's cost of the works. If an existing concession has been transferred to a new concessionaire, its total costs comprise the costs it incurs in performing the works, if any, plus the price paid on the transfer of the concession. If, prior to the end of the concession period used for determining the concessionaire's costs, the concession is extended, only the extension period must be taken into account for purposes of determining the monthly cost and only with respect to those construction costs that have not been deducted from the monthly revenues.[722] Likewise, if the concessionaire undertakes additional construction projects under an existing concession, the overall cost must be determined by adding the cost of the new construction to the residual value of the original construction; and

(iv) Income generated from the rental of real property by taxpayers that are not required to carry a full set of accounting books are the rents that are stipulated in the rental agreement. However, these taxpayers are not entitled to claim any deductions. In this regard, rental income must include the value of any improvements made to the property by the lessee, provided that the taxpayer is not required to reimburse to the lessee the costs of those improvements. Furthermore, when determining their first category tax liability, these taxpayers are entitled to credit the real estate tax paid against its first category tax liability unless the property is leased out to a related party.[723]

(4) Securitization of Receivables

The securitization of a company's existing and/or future receivables is treated as a financing transaction, as the assignor is advancing the receipt of its receivables in order to obtain liquidity. Therefore, revenues generated from the sale of goods or services must be recognized by the assignor in the taxable year in which those revenues are accrued or collected, pursuant to the general rules, even if the receivables have been securitized.[724] Likewise, costs and expenses that have been incurred by the assignor to generate those sales revenues may be deducted pursuant to the general tax rules (see 5.a. and 6., below).[725]

For income tax purposes, all the revenues, existing and future, that the assignor receives or has the right to receive from the securitization firm for the securitization of its receivables must be treated as a liability during the taxable years comprised in the securitization agreement. As the assignor begins to collect its receivables, all the payments it makes to the securitization firm must offset that liability.[726] At the end of each taxable year that is comprised in the securitization agreement, the assignor must determine whether it has generated income or loss by calculating the difference between the *pro rata* liability that is outstanding at the end of that taxable year and the amounts paid to the securitization firm during that year.[727] If there is an outstanding liability for that year it will give rise to a loss which can be utilized to offset taxable income. The securitization firm will have the opposite effect for tax purposes. Thus, the amounts paid to the assignor under the securitization agreement will constitute an asset for the firm and the amounts it receives from it will reduce the value of that asset.

(5) Taxation of Derivatives

The taxation of derivatives is specifically governed by Law No. 20,544.[728] For Chilean income tax purposes, derivatives include forwards, futures, swaps and options as well as a combination thereof. They also include other contracts the value of which is established based on one or more variables (such as an interest rate, the price of another financial instrument, the price of a raw material, an exchange rate, an index, etc.) that determine the payments to be made, provided they are either recognized as such by the relevant authorities, or the instrument contains (i) such variable; (ii) they do not require an initial investment or that investment is significantly lower than what would be required if the investment were to be made in the underlying asset; and (c) the payment is made at a future date.[729] Law No. 20,544 does not govern all financial instruments, as

[720] ITL, Art. 29.

[721] If the construction is fully subcontracted, the concessionaire is only required to report as taxable income the amount paid to the subcontractor. Any other amounts incurred by the concessionaire in connection with the construction, such as studies, legal and financial advice, project valuations, etc., do not need to be reported; instead, the concessionaire may treat them as a deferred expense and deduct them against the income it receives from the maintenance and operation of the concession. Circular No. 49, dated Aug. 27, 1996.

[722] ITL, Arts. 15 and 29.

[723] ITL, Art. 20(1)(b).

[724] ITL, Arts. 29 and 105.

[725] ITL, Art. 105(a).

[726] ITL, Art. 105(b).

[727] ITL, Art. 105(c).

[728] Law No. 20,544, dated Oct. 14, 2011 and published in the *Diario Oficial* on October 22, 2011.

[729] Law No. 20,544, Art. 2.

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it does not cover contracts such as loan agreements and stock lending in short sales, instruments issued by an entity when the value is linked to its own shares, such as stock options, insurance contracts, contracts the value of which is based on variables that are dependent upon nature, commitments to future loans at interest rates applicable at the time the transaction is to materialize, or financial guarantees.

Income derived from derivatives is sourced in Chile when it is received or accrued by residents of Chile as well as Chilean permanent establishments of nonresidents. Also sourced in Chile is income originating from derivatives that are payable through the physical delivery of shares issued by companies incorporated in Chile. Therefore, income generated by nonresident persons is not subject to Chilean income tax unless the nonresident is delivered Chilean shares at the time the derivative is settled.[730]

Derivative income generated by individuals must be recognized on a cash basis. If the taxpayer is subject to the first category tax, it must register each of the derivatives in its books at its reasonable value at the time the derivative is executed, i.e., the amount for which an asset may be acquired or a liability may be settled between unrelated parties; at the end of each taxable year, for each derivative the taxpayer must then compare that value with its reasonable value at year-end. The difference between both values constitutes a gain or a loss for the taxpayer for that year. When the derivative is paid or settled, the difference between the value of the derivative at the year-end prior to that settlement or payment and such settlement or payment also constitutes a gain or loss for the taxpayer.[731]

When calculating the gain or loss, any commission, premium and other costs incurred in connection with the derivatives are deductible if the beneficiary is a Chilean resident. If, however, the other party to the derivative is a nonresident, the costs incurred by the resident taxpayer associated with the derivative are deductible, provided that (i) the other party to the derivative or an intermediary thereto is not established in a tax haven unless its country of residence has signed an exchange of information agreement with Chile and (ii) the derivative has been contracted either (I) in a Chilean stock exchange or a foreign stock exchange that is member of the International Organization of Securities Commission (IOSCO) or an agent or broker has intervened in the execution of the derivative and that person is authorized by an organized market and subject to either the Superintendence of Securities and Insurance or a similar organization in its jurisdiction that is a member of the IOSCO, or (II) outside of an stock exchange through *pro forma* contracts contained in framework agreements prepared by international financial organizations that are habitually used in financial derivative transactions in international markets.[732] Taxpayers must report to the SII the derivative transactions they enter into. Failure to do so, and unless otherwise corrected in an amended return, prevents taxpayers from deducting capital losses incurred on derivatives as well as the costs associated with the execution or payments arising from those derivatives.[733]

The SII has the power to recharacterize a derivative transaction or a set of derivative transactions if they are similar to another transaction. In those cases, the SII must reasonably establish that the derivative does not have a legitimate business purpose and that the intent of executing the derivative was to cover up a profit distribution.[734]

b. Exclusions from Gross Revenues

The following items of income are either tax-exempt or nontaxable:

(i) Dividends distributed by Chilean entities to Chilean corporate shareholders. Dividends must necessarily be declared in cash, notwithstanding the fact that the company may distribute certain tangible assets equal to the value of a dividend that has been declared.[735]

(ii) Stock dividends distributed by SAs to their shareholders as well as increases in the par value of shares arising from the capitalization of a company's earnings.[736] A shareholder's tax basis in shares received as a stock dividend is zero. On the other hand, the shareholder retains its tax basis in the original shares that gave rise to the stock dividend or to an increase in their par value.

(iii) Returns of capital and adjustments made to a company's capital, provided the capital returned does not arise from the capitalization of the company's taxable earnings, up to the amount contributed by the shareholder, as adjusted for inflation.[737] Since corporate distributions are subject to ordering rules, a distribution that is legally structured as a return of capital may be subject to tax if the distributing entity has accumulated earnings. For a discussion of these ordering rules, see B.5.d.(3), below.

(iv) The value of contributions made to the capital of an issuing corporation, increases in value arising from the revaluation of a corporation's equity, and any gain or readjustment realized by an SA on the placement of its own shares, provided this is not distributed.[738] To be exempt, a contribution must comply with the necessary legal formalities; otherwise, it will not be treated as part of the corporation's capital but, instead, either as a liability in favor of the party making the contribution or, if no consideration is received in exchange, as a gift.[739]

If the contribution is in excess of par, the premium must be treated at the level of the issuing company as capital for both corporate and tax purposes and, accordingly, the repayment of premium will be treated as a return of capital. For the shareholder making the contribution, the premium

[730] Law No. 20,544, Art. 3.
[731] Law No. 20,544, Art. 5.
[732] Law No. 20,544, Art. 6.
[733] Law No. 20,544, Art. 13.
[734] Law No. 20,544, Art. 12.
[735] ITL, Art. 39(1). For a detailed discussion of the tax rules dealing with dividend distributions, see B.5.d.(4), below.
[736] ITL, Art. 17(6).
[737] ITL, Art. 17(7). Tax Ruling No. 541, dated March 8, 1999. For a more detailed discussion of the tax rules on returns of capital, see V.B.5.e.(2)(c), below.
[738] ITL, Art. 17(5). Similarly, property transferred by the silent partner to the managing partner of a silent partnership or *cuenta en participación* does not constitute income of the partnership or CenP. For a discussion on capital contributions to Chilean companies, see V.B.5.e.(2)(b).
[739] Circular No. 43, of July 5, 2021.

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must be treated as part of its tax basis in the shares issued in exchange.

(v) Capital gains realized from the sale of qualifying bonds (see V.B.9.c.(3), below).

(vi) Consequential and punitive damages, but with respect to the latter, provided they were ordered in a court decision. If the property consists of a depreciable asset, the amount of the indemnity that is entitled to the tax exemption is limited to the original cost of the property, adjusted for inflation.[740] On the other hand, indemnities for consequential damages to property are not exempt from income tax if they are paid in relation to assets that are used by the taxpayer in the conduct of its business; however, the amount of the damage constitutes a loss and, as such, a deductible expense;

(vii) Gifts received by Chilean corporations, whether from domestic donors or from abroad;[741]

(viii) Profits realized by a payor of a lifetime annuity as a result of the fulfillment of a condition that either reduces or terminates its obligation to make payments;[742]

(ix) Membership fees paid to associations;[743]

(x) The obtaining of a concession from the Chilean government;[744]

(xi) The cancellation of debts, interest and penalties, provided they are cancelled pursuant to the law.[745] Therefore, if the cancellation is voluntary, pursuant to the application of a contract or even a judicial decision, the income deemed to be derived by the debtor is not exempt from tax, because the creditors are cancelling the debt at their will, not under a legal obligation. On the other hand, the cancellation of debt and interest arising from the bankruptcy of a company does not constitute taxable income for the bankrupt company;[746]

(xii) Interest originating from: (I) bonds and other debt securities issued or guaranteed by the State or State-owned organizations; (II) mortgage bonds; (III) bonds, debentures, notes and any other debt instruments issued by the Central Savings and Loans Bank, banks and financial institutions, financial cooperatives and savings and loans cooperatives; (IV) bonds and debentures issued by an SA; (V) savings quotas issued by cooperatives as well as interest arising from contributions to the capital of cooperatives; (VI) deposits made in savings accounts for housing; (VII) interest on time deposits and on deposits made in any of the entities referred to above in (III), above; and (VIII) bills of exchange issued by third parties and intermediated by financial institutions that are supervised by the Superintendence of Banks and the Superintendence of Insurance Companies, SAs and Stock Exchanges.[747] This exemption, however, only applies to a very restricted number of corporate taxpayers, i.e., essentially, corporate taxpayers that are engaged in agricultural activities as well as construction and real estate companies;

(xiii) For certain SMEs, up to 50% of their adjusted net taxable income provided it is not distributed to their shareholders, up to a maximum of 5,000 development units (approximately US$170,000) per year (see V.B.4.c.(2), below);[748]

(xiv) Distributions made by public and private investment funds and mutual funds.

c. Small and Medium-Sized Enterprises

The ITL contains various special rules for small and medium-sized enterprises (SMEs) aimed at, not only simplifying tax compliance for this type of enterprises, but also to provide certain tax incentives to them. The requirements generally vary for each type of regime.

(1) The Pro-Pyme Regime

(a) What Is a Pyme?

The Pro-Pyme regime was introduced in the 2020 ITL reform with effect from January 1, 2020. It is a special regime for SMEs aimed at encouraging investment, employment and liquidity for this type of enterprise.[749]

"Pyme" is the Spanish acronym for *pequeña y mediana empresa* (small and medium-sized enterprise. The Pro-Pyme regime replaced a simplified tax regime that applied to SMEs (other than SAs and SenCAs) under which they had the option of determining their net taxable income and paying the first category tax liability annually on a cash basis, i.e, based on the difference between revenues received and payments actually made during the taxable year concerned, while their shareholders were subject to the surtax or the additional tax on a profit attribution basis.

For purposes of the Pro-Pyme regime, an SME must meet each of the following requirements:

(i) Its effective capital (i.e., the value of its assets except those assets that do not constitute effective investments, such as intangible assets, current receivables, and order values) at the time the enterprise commences its activities cannot exceed 85,000 development units (approximately US$2.8 million).

(ii) Its average annual revenues generated from the conduct of its activities during the three years prior to the one in which the enterprise opts for the regime cannot exceed 75,000 development units (approximately US$2.5 million), irrespective of whether such revenues are received or accrued. The enterprise must maintain that average while it is subject to the Pro-Pyme regime, but only those years in which the enterprise is subject to the regime must be taken into account for purposes of determining

[740] ITL, Art. 17(1).
[741] ITL, Art. 17(9).
[742] ITL, Art. 17(10).
[743] ITL, Art. 17(11).
[744] ITL, Art. 17(21).
[745] ITL, Art. 17(22).
[746] Tax Ruling No. 3,066, dated Aug. 28, 2002.
[747] ITL, Art. 39(4).
[748] ITL, Art. 14(F).
[749] ITL, Art. 14(D).

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the average annual revenues.[750] The average gross revenues must be determined based on the enterprise's sales for VAT purposes, as established in the SII's personal electronic file for the enterprise. When computing the annual gross revenues, the enterprise must also add the gross revenues received or accrued by related parties. For these purposes, the following are deemed to be related parties of an SME:

- Any person that controls or is controlled by the SME: control is based on the ownership of, or rights to, more than 50% of a company's shares, profits, income, or voting rights;
- Any entity that is controlled by the same controlling entity as the SME;
- Any entity in which the SME owns, directly or indirectly, at least 10% of the shares or has the right to at least 10% of profits or revenues, or holds at least 10% of the voting rights in shareholders' meetings; and
- A managing partner in a CenP or joint venture in which the SME has at least a 10% interest.

On the other hand, an SME is entitled to exclude:

- Revenues received or accrued sporadically or in nonhabitual transactions, such as capital gains;
- VAT and other taxes levied on the enterprise's sales; and
- Bad debt write-offs.

(iii) The sum of the SME's revenues from the following activities, which are regarded as passive, may not exceed 35% of its overall turnover in the taxable year:

- Income from portfolio investments;
- Income from real property activities, other than agricultural activities; and
- Dividends and capital gains from companies or investment funds.

(b) Taxation of a Pyme

(i) As a Taxpayer

An SME that qualifies for the Pro-Pyme regime must determine its gross taxable income based on the information made available by the SII to the SME's personal electronic file, which is in turn generally based on the electronic purchases and sales registry used by the SME for VAT purposes. To determine its net taxable income, an SME must deduct the expenses actually paid during the year from the revenues actually received. Dividends received by an SME from an other Chilean entity are exempt from tax. As regards expenses, an SME can treat NOLs from prior taxable years as a deductible expense as well as bad debts written-off during the taxable year. However, if the SME carries out transactions with related parties, it must determine its net taxable income under the general rules. Furthermore, when determining its net taxable income, an SME is not required to adjust its assets and liabilities for inflation and, unlike an ordinary taxpayer, an SME is also not only entitled to fully depreciate its fixed tangible assets in the year in which they are acquired, but can also deduct its input and inventory in the year they are purchased, provided they are not sold or consumed in that year.[751]

SMEs that qualify for the Pro-Pyme regime are subject to the first category tax at the reduced rate of 25%.[752] As a result of the economic crisis, reduced tax rates have applied on a temporary basis since taxable year 2020. The tax rate for income received or accrued in taxable year 2024 is reduced to 12.5%.[753] For income received or accrued during taxable years 2020, 2021, 2022 and 2023 the tax rate was temporarily reduced to 10%.

Furthermore, these SMEs are required to pay advance first category tax on a monthly basis. During the year in which the SME starts its activities, the tax rate is 0.25% over the SME's monthly revenues; in subsequent years, the tax rate is maintained at 0.25% if the SME's revenues in the preceding year do not exceed 50,000 development units, while the rate is increased to 0.5% if the revenues in the preceding year exceed that amount. However, as a result of measures to combat the economic crisis, SMEs are required to pay only 50% of the monthly advance first category tax due during taxable years 2020, 2021, 2022, 2023 and 2024.[754] Therefore, for these years, the monthly advance first category tax rate is 0.125%, unless the SME's revenues in the preceding year exceed 50,000 development units, in which case the rate is 0.25%. Advance first category tax payments may be used by shareholders as a tax credit with respect to distributions they receive from SMEs.

SMEs are not required to keep the RAI, SSAN or REX registries (see V.B.5.d., below), unless the SME receives income that is exempt from the surtax or the additional tax. If no registries are kept, the SME does not have to apply an ordering rule on its distributions, but all distributions made to its shareholders will be subject to the surtax or the additional tax. However, so that the shareholders can determine the tax credits they can claim on distributions made by an SME, the SME is required to keep a SAC Registry and distinguish between those tax credits that may be refunded from those that may not. If an SME has both types of tax credits booked in its SAC Registry, a distribution is deemed in the first instance to carry those tax credits that may not be refunded.

SMEs that are subject to the first category tax have the option of paying a substitute tax in lieu of the surtax or the additional tax. For a detailed discussion of this regime, see V.B.5.d.(5), below.

[750] ITL, Art. 14(D)(1). The 75,000-development unit threshold may be exceeded only once, but the annual gross revenues may not exceed 85,000 development units in any of the years.

[751] ITL, Art. 14(D)(3). SMEs also have the option to do their accounting in simplified form (see IV.C.2., above). The option must be exercised between January 1 and April 30 of the year in question.

[752] ITL, Arts. 14(D)(3)(b) and 20.

[753] Law No. 21,256, of August 27, 2020, published in the *Diario Oficial* on September 2, 2020, Art. 1. This provision was amended by Law No. 21,578, of May 30, 2023 and published in the *Diario Oficial* on the same date.

[754] Law No. 21,256, as amended by Law No. 21,578.

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(ii) As a Tax Transparent Entity

SMEs have the option of being tax transparent for purposes of the first category tax, provided its shareholders are persons, whether resident or not, that are subject to either the surtax or the additional tax. Hence, SMEs that opt to be tax transparent are not subject to the first category tax and their owners will be subject to the surtax or the additional tax based on the SME's net taxable income at the end of the taxable year.[755] Any Chilean entity, regardless of its corporate form, may opt for this regime. Furthermore, tax transparent SMEs are not required to have and maintain a full set of accounting books, carry inventory, depreciate assets, adjust their assets and liabilities for inflation, or have the RAI, DDAN, REX or SAC registries. But a tax transparent SME must determine its revenues and expenses based on the purchases and sales book it uses for VAT purposes or, otherwise, through daily journals, and must maintain a cash journal.

A tax transparent SME must determine its taxable income in a similar manner as regular taxpaying SMEs. However, tax transparent SMEs must include as taxable both exempt income as well as dividends received from affiliates, grossed-up with the first category tax paid by these affiliates on those dividends.

The tax transparent SME's net taxable income is subject to the surtax or the additional tax at the shareholder level at the end of the taxable year. The entities, however, are nevertheless required to make advance income tax payments just like regular SMEs, except that the tax rate during the year in which the SME starts its activities is 0.2% over the SME's monthly revenues as well as in subsequent years, unless the SME's revenues in the preceding year exceeded 50,000 development units, in which case the tax rate increases to 0.5%.

The surtax or the additional tax liability payable by the shareholders may be reduced by investment tax credits (see V.B.10.b., below), but because this tax credit is a credit against the first category tax, it may not exceed that tax had the SME not opted for the tax transparency regime. The surtax may also be reduced with tax credits for the first category tax paid by affiliates with respect to dividends received by the SME. On an annual basis, the SME must certify to its shareholders its net taxable income and the portion of that income that corresponds to each shareholder as well as the amount of tax credits available to them.

For SMEs that initiate their business activities, the option to become tax transparent must be made by filing a notice to the SII no later than April 30 of the year following the one in which the activities were initiated. For other cases, the notice must be filed between January 1 and April 30 of the year in which the SME intends to be subject to the tax transparency regime. Depending on the corporate form of the Chilean entity, the notice to be filed with the SII must also include a consent from the shareholders.

Special tax adjustments must be made by enterprises that were subject to the regular tax regime that decide to switch to the tax transparency regime. Certain tax adjustments must also be made (similar to the ones discussed in (c) below) when a tax transparent SME leaves the regime and becomes subject to either the general regime or the Pro-Pyme regime as a taxable vehicle. A tax transparent SME that decides to leave the regime may not return to it until five years have elapsed.

(c) Entering and Leaving the Pro-Pyme Regime

A company that qualifies as an SME when it commences its activities becomes subject to the Pro-Pyme regime by default, i.e., without the need to make any filings with the SII. Companies subject to the regular tax regime that subsequently meet the requirements to qualify under the Pro-Pyme regime, may opt for the latter regime by filing a notice with the SII between January 1 and April 30 of the taxable year in question, i.e., the switch to the Pro-Pyme regime does not apply by default.[756] In that scenario, the company must make the following tax adjustments on the first day of the taxable year in which the SME becomes subject to the new regime: (a) the adjusted tax basis in fixed assets pending to be depreciated must be claimed as a deductible expense; (b) its inputs and inventory must be claimed as a deductible expense; (c) the accumulated NOLs must be claimed as a deductible expense; and (d) income and expenses that have been accrued while the company was subject to the general tax regime may not be recognized when they are received or paid.[757]

An SME that either opts to switch to the general tax regime or is forced to do so because it fails to fulfill any of the conditions that entitle it to be subject to the Pro-Pyme regime must notify the SII between January 1 and April 30 of the year in which it opts to become subject to the general tax regime or of the year following that in which one of the Pro-Pyme requirements is not met. In this scenario, the general tax regime applies from January 1 of the year in which the notice to the SII is filed.[758] Upon switching to the general tax regime, the taxpayer is required to make the following tax adjustments:

(i) It must recognize its revenues and expenses on an accrual basis if it had not done so under the Pro-Pyme regime;

(ii) Its shareholders' tax equity will continue to be the same it had under the Pro-Pyme regime;[759]

(iii) It must make an initial inventory by registering the property it had by December 31 of the last taxable year prior to the switch. As a general rule, because under the Pro-Pyme regime the SME fully depreciated its assets, each inventory must be valued at PS$1. Intangible property and non-depreciable property, however, may be booked at their acquisition cost and will not be entitled to depreciation; and

[755] ITL, Art. 14(D)(8).

[756] ITL, Art. 14(D)(5). The SII can also force a company to become subject to the Pro-Pyme regime if at the end of the first year of operations the company has generated less than 1,000 development units.

[757] ITL, Art. 14(D)(6).

[758] ITL, Art. 14(D)(7). There is no minimum period to remain subject to the general regime. Therefore, an enterprise can remain subject to the general regime until it decides to switch to an alternative one, provided it meets the conditions to qualify for that alternative regime.

[759] Under the Pro-Pyme regime, the shareholders tax equity is the difference between, on the one hand, the shareholders contributions plus the SMEs annual net taxable income (including dividends received from affiliates) and, on the other hand, reductions of capital undertaken by the SME plus NOLs and distributions made to the shareholders.

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(iv) The enterprise must establish RAI, DDAN, REX and SAC registries using its shareholders net equity.

(d) Access to Financing

Under the Pro-Pyme regime, SMEs that qualify as Pymes can get better financing facilities from financial institutions and other investors, provided that the financing is used to promote the SME's entrepreneurship and technological innovation. These financial arrangements must be certified by the Chilean Production Development Corporation (*Corporación de Fomento a la Producción*) and must include a description of, at least, a two-year plan of the project, a commitment that the funds contributed by the investor will not be used to reduce the SME's capital during the duration of the plan, and an affidavit that the SME and the investor were not related parties prior to the transaction.[760]

(2) Small Enterprises

Taxpayers engaged in certain small businesses may be entitled to be taxed under a special tax regime whereby their net taxable income is only subject to the first category tax, i.e., their income is not subject to the surtax even if the activity is undertaken in an unincorporated form. Furthermore, if the activity is undertaken in corporate form, profit distributions made to the shareholders are not subject to the surtax or the additional tax, unless the taxpayer has generated other business income that is subject to the first category tax.[761] Taxpayers that have opted to be taxed under this special tax regime are not required to file an annual income tax return for the first category tax.[762] This special tax regime is available to the following taxpayers:

(i) Artisan miners with no more than five workers. The miner can be an individual, a cooperative or an entity but, in the latter case, the entity may not have more than six quota-holders and each quota-holder or member of a cooperative must be an artisan miner. The tax is levied on sales revenues, but net of any rent or royalty paid by the miner, at the following rates:[763]

- 1%, if the international price of a pound of copper, based on which the sale price of the mineral is determined, does not exceed 397.00 US cents.
- 2%, if the international price of a pound of copper, based which the sale price of the mineral is determined, exceeds 397.00 US cents but does not exceed 510.49 US cents.
- 4%, if the international price of a pound of copper, based on which the sale price of the mineral is determined, exceeds 510.49 US cents.

If the mineral sold is not copper, gold or silver, the applicable tax rate is 2% of net sales revenue. The above taxes must be withheld by the purchaser of the minerals from the artisan miner.[764]

(ii) Small street vendors who are individuals and who sell directly to the public. The tax liability of such merchants is one-half of a tax unit per month.[765]

(iii) Street news agents. The tax liability of street news agents is 0.5% of their sales revenues.[766] In that regard, newspaper companies, editors, printers, and importers of newspapers and magazines are required to withhold a tax of 0.5% on the sales price of magazines and newspapers that such street news agents actually sell to the public. The withholding tax applies irrespective of whether the company sold those magazines and newspapers directly to street news agents or indirectly through distributors.[767]

(iv) Owners of artisan workshops and building workers who are individuals and whose working capital (including the fair market value of machinery and equipment owned by third parties and used by such taxpayers but excluding current year profits) at any time during the taxable year does not exceed 10 tax units annually and do not employ more than five employees. The tax liability of workshop owners is the greater of either two monthly tax units per month or their advance income tax payments.[768] The advance income tax payments are equal to 3% of gross revenues, unless the workshop is mainly engaged in manufacturing of goods, in which case the advance income tax payment is equal to 1.5% of the owner's gross revenues.[769]

(v) Fishermen who are individuals duly registered in the registry established under the General Fishing and Agricultural Law who operate one or two vessels with a total combined capacity of less than 15 tons. The tax liability of fishermen ranges from one-half to two tax units per month, depending on the tonnage capacity of their vessels.[770]

Individual entrepreneurs engaged in small business undertakings may also opt to be subject to a simplified tax regime, as discussed in (3), below.

(3) Presumed Net Taxable Income for SMEs

(a) In General

Taxpayers engaged in agricultural, mining, and passenger and cargo land transportation activities may opt to be subject to the first category tax on a presumptive net income basis if they meet a number of conditions.[771] However, the taxpayer must be either an individual entrepreneur, an EIRL, a cooperative, an SRL, a partnership, or an SpA, provided that its owners are individuals at the time the taxpayer opts for the regime and during the time it is subject to it. Furthermore, a taxpayer may not own shares in other entities or investment funds, unless the income generated from those equity investments is less than 10% of their gross income.

One of the conditions is that the taxpayer's annual net sales income cannot exceed a certain threshold depending on

[760] ITL, Art. 14(D)(2).
[761] ITL, Arts. 22 and 27.
[762] ITL, Art. 65(1).
[763] ITL, Art. 23. For a description of the mining activity tax, which is also imposed on individuals, see V.C.6.
[764] ITL, Art. 74(6).
[765] ITL, Arts. 22(2) and 24.
[766] ITL, Arts. 22(3), 24 and 25.
[767] ITL, Art. 74(5).
[768] ITL, Arts. 22(4) and 26.
[769] ITL, Art. 84(c).
[770] ITL, Arts. 22(5) and 26 *bis*.
[771] ITL, Art. 34(1).

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the activity undertaken. To that end, for purposes of computing annual net sales, the taxpayer must take into account not only the sales income generated from activities that can opt for the special tax regime but also the income that it generates from activities that are taxed on an actual income basis. However, proceeds generated from the occasional sale of the taxpayer's fixed assets, whether movable or real property, are not to be taken into account.

In addition, when determining whether the taxpayer's annual net sales exceed the threshold, the ITL contains special attribution rules whereby sales revenues generated by related parties must be added to the taxpayer's, irrespective of the business activity undertaken by the related party. If the threshold is exceeded, neither the taxpayer nor the related party are entitled to opt for the special net taxable income presumption regime.[772] For these purposes, related parties are defined as follows:

(i) A controlling and a controlled person;

(ii) All the entities that have a common controlling person;

(iii) A person that, either directly or through other entities, owns or has the beneficial ownership of 10% or more of the shares, or the right to 10% or more of the profits, income, or voting rights of the board of directors, of an entity;

(iv) The managing partner in a CenP or silent partnership with respect to that CenP or partnership to the extent that the person has a right to more than 10% of the profits in the CenP or partnership. The same attribution applies for silent partners with respect to the CenP or silent partnership to the extent that the silent partner has a right to more than 10% of the profits in that CenP or partnership;

(v) Entities related with an individual under paragraphs (iii) and (iv) that are not under scenarios (i) and (ii) are deemed to be related with each other; and

(vi) Parent companies and their affiliates as defined under Law No. 18,046.

For these purposes, a controlling person is any individual or entity (or a group of them with an explicit agreement to act jointly) that, either directly or through other persons or entities, owns or has the beneficial ownership of more than 50% of the shares, or has the right to more than 50% of the profits, income or voting rights in the board of directors of another entity, i.e., the controlled entity. An explicit agreement to act jointly is deemed to exist when there is an understanding between two or more individuals or entities that participate simultaneously in the equity of another entity, either directly or through other individuals or controlled entities, pursuant to which they commit to manage the other entity under a common interest or obtain control of the entity.

In scenarios (i) and (ii), the taxpayer must add all the income generated by its related party. For scenarios (iii) and (iv) (that are also not specifically covered under (i), (ii) or (vi)), taxpayers are only required to add their *pro rata* share of income based on their interest percentage in the related party.

The taxpayer must exercise the option to be taxed on a presumptive net taxable income basis by giving notice of such option to the SII between January 1 and June 30 of the taxable year in which they become subject to the regime.

Taxpayers failing to meet the requirements in a given taxable year must opt out of the special regime on January 1 of the following taxable year. If the requirements that are no longer met involve the corporate form of the entity or the nature of its shareholders, the entity must opt out of the special regime on January 1 of the year in which the requirements are not met. At that point, the entity will become subject to the general regime.

Furthermore, such taxpayers are not entitled to opt back into the net taxable income presumption regime unless they do not undertake agricultural, mining or land transportation activities for a period of at least five years. In that regard, a taxpayer is deemed to undertake one of these activities if it rents its agricultural, mining or transport assets to third parties. Taxpayers that are subject to the net taxable income presumption regime may exit that regime and opt to be taxed under the actual net taxable income regime. In that case, they must inform the SII between January 1 and April 30 of the taxable year in which the option is taken; however, if they do so, they may not go back to the former regime.

Upon leaving the presumed net taxable income regime and joining the actual net taxable income one, taxpayers must prepare a balance sheet and book their assets and liabilities. Generally, the taxpayer has the option of booking the land used in the business at either its official value or at the acquisition cost, adjusted for inflation, while other fixed assets must be booked at their acquisition cost, adjusted for inflation, minus the accumulated depreciation that would have been taken; inventory must be booked at the acquisition cost and adjusted by its replacement value; other assets must be booked at their acquisition value, adjusted for inflation. Liabilities must be booked at their face value, while cash loans may only be booked if the taxpayer has paid stamp duties, if applicable. In the case of agricultural activities, plantations, seeds and products must be booked at their replacement value. Rather than booking fixed assets at their acquisition cost, taxpayers engaged in transportation activities have the option of booking their vehicles at fair market value, as determined by the SII, adjusted for inflation.[773] The SII may adjust the values booked by the taxpayer using transfer pricing principles. Once in the actual net taxable income regime, taxpayers are entitled to depreciate the assets on an accelerated basis.

Taxpayers that determine their net taxable income on a presumptive basis are required to file an annual income tax return under Form No. 1943.[774]

(b) Agricultural Activities

Taxpayers engaged in agricultural activities may opt to be taxed on a presumptive net income basis if their annual net sales do not exceed 9,000 development units.[775] For new agricultural enterprises, the option may be exercised to the extent that the value of the taxpayer's assets, other than intangibles, does not exceed 18,000 development units.

[772] ITL, Art. 34(3).

[773] ITL, Art. 34(5).

[774] Form No. 1943 can be accessed at the SII's portal at www.sii.cl as well as in Annex 1 of SII Resolution No. 87, dated August 30, 2024. Annex 2 of that Resolution contains instructions.

[775] ITL, Art. 34(1).

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Under the presumptive net taxable income regime, the taxpayer's net taxable income is deemed to be 10% of the official value of the real property.[776] In determining the presumed net taxable income, the official value is the value established on January 1 of the year in which the first category tax is payable (i.e., on January 1 of the year following the close of the taxable year).

However, income generated from the lease or sublease of real property cannot be taxed under this regime. Instead, that income must be taxed under the ordinary regime on the basis of the rent that is reflected in the rental agreement. Furthermore, the value of any improvements to the property for the benefit of the lessor constitutes income of the lessor, unless the lessor is required to reimburse the lessee for such improvements.[777]

(c) Mining Activities

Taxpayers engaged in mining activities are entitled to determine their net taxable income on a presumptive basis if their annual net sales do not exceed 17,000 development units. For new mining enterprises, the option may be exercised to the extent that the value of the taxpayer's assets, other than intangibles, does not exceed 34,000 development units.

The net taxable income presumption is based on a percentage of the taxpayer's annual net sales of mining products and is only applicable to the extent that more than 50% of the volume of minerals that are treated by the taxpayer comes from the taxpayer's own mining operations. The percentages of annual net sales are as follows:

(i) 4%, if the average price of a pound of copper during the taxable year does not exceed 374.25 US cents;

(ii) 6%, if the average price of a pound of copper during the taxable year exceeds 374.25 US cents but does not exceed 397.00 US cents;

(iii) 10%, if the average price of a pound of copper during the taxable year exceeds 397.00 US cents but does not exceed 453.69 US cents;

(iv) 15%, if the average price of a pound of copper during the taxable year exceeds 453.69 US cents but does not exceed 510.49 US cents; or

(v) 20%, if the average price of a pound of copper during the taxable year exceeds 510.49 US cents.[778]

The price of a pound of copper is the price of Chilean manufacturers as determined by the Chilean Copper Committee. The value of the monthly mining sales must be adjusted for inflation and the U.S. cent figures are updated before February 15 each year based on the previous year's inflation rate in the United States.

Taxpayers engaged in mining gold and silver are subject to the same percentages but the average prices are set by the SII. Taxpayers engaged in mining other minerals that elect to be taxed on a presumptive basis are deemed to have net taxable income equal to 6% of their net annual sales.

For a description of the mining activity tax, see C.6., below.

(d) Land Transportation Activities

Taxpayers engaged in the land transportation of passengers and cargo may opt to be taxed on a presumptive basis if their annual net sales do not exceed 5,000 development units.[779] Taxpayers leasing vehicles for the transportation of passengers by land from entities that determine their net taxable income on an actual basis may not opt to be taxed on a presumptive basis, even if they otherwise meet all the requirements for presumptive taxation.

For new enterprises, the option may be exercised to the extent the value of the taxpayer's assets, other than intangibles, does not exceed 10,000 development units.

The net taxable income of these taxpayers is deemed to be equal to 10% of the fair market value of their vehicles, as determined by the SII at the beginning of each calendar year in which the first category tax is due.[780]

(4) Incentive to Savings

Enterprises with average annual revenues of 100,000 development units (approximately US$3.4 million) over the previous three taxable years have the option of excluding from the first category tax on an annual basis up to 50% of their adjusted net taxable income that is reinvested in the enterprise. The annual exclusion cannot exceed 5,000 development units.[781] For these purposes, adjusted net taxable income that is reinvested in the enterprise is the net taxable income of the enterprise minus the distributions made to the shareholders throughout the taxable year. For purposes of calculating the 100,000 development unit threshold, the enterprise must also include the revenues generated by its related parties.

SME's that have opted for the tax transparency regime are not entitled to claim this exclusion. Also, a company that generates more than 20% of its annual income from the ownership of bonds, shares, investment or mutual funds, or CenPs, cannot make that net taxable income exclusion.

(5) Exemption from the Additional Tax on Certain Payments

Payments made to nonresidents for advertising services rendered from abroad as well as for the use of internet services by enterprises with average annual revenues of 100,000 development units (approximately US$3.4 million) over the previous three taxable years, are not subject to the additional tax.[782] For purposes of calculating the 100,000 development unit threshold, the enterprise must also include revenue generated by its related parties. The additional tax exemption with respect to such payments does not apply if the nonresident recipient of the payments is resident in a jurisdiction that is viewed as having a preferential tax regime; in that case, the additional tax must be levied, but at a rate of 20%. Payments that are exempt from the

[776] ITL, Art. 34(2)(a).
[777] ITL, Art. 20(1)(b).
[778] ITL, Art. 34(2)(c).
[779] ITL, Art. 34(1).
[780] ITL, Art. 34(2)(b).
[781] ITL, Art. 14(F).
[782] ITL, Art. 14(G).

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additional tax will be subject to VAT as they constitute services that are either rendered or deemed to be used in Chile.[783]

5. Calculation of Gross Income

a. Cost of Goods

A taxpayer's gross income is arrived at after deducting from gross revenues the direct cost of goods and services that are necessary to generate those revenues.[784]

The direct cost of locally acquired goods is the purchase price, as reflected in the invoice or contract, plus local freight and insurance costs incurred in connection with the transportation of those goods up to the taxpayer's premises. In the case of imported goods, the direct cost includes the cost, insurance, freight (CIF) value and customs duties and other import charges, increased by any local freight and insurance costs incurred with respect to the transportation of those goods up to the taxpayer's premises. The direct cost of goods manufactured or processed by the taxpayer is the cost of raw materials (determined by applying the above rules with regard to locally acquired or imported goods) plus direct labor costs. If the product involves mineral extraction, for purposes of determining the direct cost, the taxpayer is entitled to take into account the acquisition cost for the mineral claims by applying a ratio of the mineral that is extracted over all the minerals that the mine is estimated to have.

As gross revenues in the case of promises to sell real property are reportable when the actual sale takes place, the direct acquisition or construction cost of the real property may only be deducted at that time. Similarly, as gross revenues from construction contracts with a fixed price are reportable when actual payments are received, the cost of the work is deductible at that time. In the case of construction contracts for public use, the cost of the work must be deducted at the time the exploitation of the work commences.

b. Inventory Valuation

As a general rule, the cost of goods, raw materials and inventory sold, whether finished or in process, must be determined on a first-in first-out (FIFO) basis. However, a taxpayer may elect to use the weighted average method. The inventory valuation method used in a taxable year determines the valuation of the closing inventory. This valuation is adjusted for inflation by crediting to income at the end of the year the replacement cost of the inventory.[785] The inventory valuation must be used by the taxpayer for at least five consecutive taxable years.

The taxpayer is required to estimate the cost of goods if the goods that are sold or promised to be sold by the taxpayer have not yet been purchased, produced or constructed. The estimate must be made on the basis of the sales contract executed by the taxpayer and must reflect an estimate profit similar to the one obtained by the taxpayer in other transactions undertaken during the taxable year. In any event, the taxpayer is required to adjust its gross income in the taxable year in which the goods sold are eventually purchase, produced or constructed by the taxpayer by using the actual cost that it has incurred.

c. Foreign Source Income

(1) In General

As a general rule and subject to the CFC rules discussed in (2) below, foreign source income is includible as taxable income in Chile at the time it is actually received by a Chilean taxpayer.[786] However, as an exception to the general rule, branch profits and net operating losses are includible at the end of the Chilean taxpayer's taxable year irrespective of whether they are actually remitted. Those profits and losses must be converted into Chilean pesos at the exchange rate in effect at the end of the taxable year.[787]

Foreign source income that is derived by a taxpayer but that, on the other hand, may not be made available to it by reason of a fortuitous act, *force majeure* or a legal provision in effect in the foreign country from which the income is derived, is not includible as taxable income in Chile. The statute of limitations does not begin to run for the SII until the income becomes includible.[788]

Under Chile's worldwide system of taxation, the sale of shares in nonresident companies is subject to Chilean taxation. A taxpayer is not entitled to adjust its basis in such shares for inflation. However, since the investment in foreign shares (and PEs) is treated as a foreign currency denominated asset, the tax basis in those shares must be adjusted annually based on the fluctuation that the foreign currency has had at the end of the taxable year. In the event of a sale of shares in (or a reduction in the capital), the taxpayer is entitled to deduct from the amount realized the tax basis, adjusted through the beginning of the taxable year in which the shares are sold. The investment must have been registered with the Foreign Investment Registry maintained by, or reported to, the SII and the foreign investment is proven by means of public deeds or duly authenticated certificates issued by the competent authorities in the foreign jurisdiction concerned.[789] Also, for purposes of computing a capital gain on the sale of foreign shares, a Chilean taxpayer is entitled to add to its basis in the shares the accumulated profits in the company whose shares are being sold that the taxpayer has already accrued in Chile as passive income and that, as such, have been subject to the first category tax, the surtax or the additional tax, pursuant to the CFC rules discussed in V.B.5.c.(2), below. When determining the Chilean tax liability, the taxpayer must convert the foreign income received or accrued to Chilean pesos at the exchange rate in effect at the end of the taxable year.

(2) Controlled Foreign Corporation Regime

Chilean taxpayers that directly or indirectly control entities that are domiciled or resident outside of Chile (CFCs) must treat as received or accrued in Chile the passive income that is

[783] VATL, Art. 12(E)(7).

[784] ITL, Art. 30.

[785] ITL, Art. 30.

[786] ITL, Arts. 12.

[787] ITL, Art. 41-B(1). If there are items in the PE's net taxable income that are denied as a deduction and are treated as a withdrawal or a deemed withdrawal, these items will not be subject to the first category tax at the Chilean home office level but, instead, to the sole tax of 40%. ITL, Art. 21. For a discussion of these items, see V.B.9.b., below.

[788] ITL, Art. 12.

[789] ITL, Art. 41-B(3). For a description of the registration requirements, see B.10.a.(4), below.

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either received or accrued by the CFCs.[790] In this regard, a CFC is defined as any entity that, irrespective of its nature and regardless of whether it has legal personality, is either incorporated, domiciled or established abroad or has its tax residence abroad.[791] A CFC may therefore consist of a company of any legal form, a fund, a community of owners, or a trust.

A foreign entity is a CFC if it is controlled by entities that are either incorporated, domiciled, resident or established in Chile.

To that end, a CFC is controlled by such entities if:

(i) At the end of the taxable year or at any time during the preceding 12 months, 50% or more of the CFC's capital, right to profits, or voting rights is owned, directly or indirectly, by those entities alone or together with other related persons.[792] For purposes of the CFC rules, a related party includes:[793]

a. A controlling company and its controlled entities:

o In this regard, a controlling entity is a person or group of persons that have an agreement to act jointly that, either directly or through other persons, is the legal or beneficial owner of more than 50% of the shares, profits, income, voting rights in another entity;

o An agreement to act jointly is deemed to exist if there is a convention between two or more persons participating in the ownership of the entity simultaneously, either directly or through controlled persons or companies, and by virtue of that convention they commit to participate with a common interest in the entity's management or obtain the control thereof;

o A controlling entity is not deemed to be related to a controlled entity if the former has been incorporated or established, or has its domicile or residence, abroad, if it is not controlled by an entity that is domiciled or resident in Chile;

b. All the controlled entities having a common controlling entity;

c. Entities and their legal or beneficial owners who own, either directly or through other companies, 10% or more of the shares, profits, income or voting rights;

d. The managing partner of a silent partnership with respect to the partnership, provided the managing partner has the right to receive more than 10% of the profits;

e. Parent companies and their affiliates, as defined in Law No. 18,046. In that regard, a company has an affiliate if it either controls, either directly or through another company or an individual, more than 50% of its voting capital or merely its capital if the affiliates capital is not divided into shares, or may appoint the majority of its directors;[794] and

f. Unless otherwise proven, a spouse or civil partner as well as ascendents or descendants up to a second degree of kinship as well as their relatives provided they participate in the same Chilean entity through which a non-resident entity is controlled.

(ii) The Chilean company can, either directly or indirectly and either by itself or through the above related parties, appoint, make appoint, change or remove the majority of the members of the Board of Directors or officers of the foreign entity, or unilaterally has the power to amend its by-laws;

(iii) Unless otherwise proven, the CFC is incorporated, domiciled or resident in a jurisdiction that is viewed as having a preferential tax regime, irrespective of the percentage of shares, profits or voting rights the Chilean company owns, directly or indirectly, in the CFC. In this regard, a jurisdiction is considered to have a preferential tax regime when each of the following two conditions are met:[795]

a. It does not have an in-force exchange of information treaty with Chile or, even it is in-force, it contains limitations that prevent an effective exchange of information;

b. Its legislation does not meet the requirements to be treated as compliant or largely compliant with internationally accepted standards on matters dealing with tax transparency and exchange of information as per the standards set out by the OECD's Global Forum on Transparency and Exchange of Information for Tax purposes or another international body that replaces it, provided Chile is a permanent member. These standards include the exchange of information on request (EOIR) and the automatic exchange of information. In this regard, the SII has ruled that, when determining whether a jurisdiction's rating, only the exchange of information on request may be taken into account. Moreover, a jurisdiction will be regarded as non-compliant with the EOIR standards if it has not been rated or the rating is in progress;[796]

(iv) The Chilean company has, directly or indirectly, an option to purchase at least 50% of the CFC's capital, the rights to its profits, or voting rights; or

(v) A foreign entity that is, in turn, controlled by a CFC.

[790] ITL, Art. 41-G. The CFC regime came into effect on January 1, 2016. Law No. 20,780, Transitory Provisions, Art. 1(c). Therefore, passive income received or accrued by the CFC prior to that date was not susceptible of being taxed in Chile until actually received. SII Circular No. 30, dated May 8, 2015.

[791] ITL, Art. 41-G(A). Foreign permanent establishments are excluded from the CFC rules as their income or loss must be accrued by the Chilean head office when received or accrued, whichever occurs earlier (see c.(1), above). If, however, a CFC is owned through a foreign PE, passive income generated by that CFC is subject to the CFC rules in spite of the existence of the PE.

[792] ITL, Art. 41-G(A)(2).

[793] TC, Art. 8(17).

[794] Law No. 18,046, Art. 86. A general partnership can also be regarded as an affiliate if the parent company has controls the partnership's management.

[795] ITL, Arts. 41-G(B) and 41-H. Jurisdictions with low or no tax are also referred to as jurisdictions with preferential tax regimes under the ITL.

[796] SII Circular No. 11, dated January 30, 2025.

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The following types of income are treated as passive for CFC purposes:[797]

(i) Dividends and other profit distributions made out of equity interests in other entities, even if they are capitalized. However, dividends received by a CFC are not passive if they are distributed by a foreign entity that is directly or indirectly controlled by the CFC if the foreign entity's principal business activity does not consist of generating passive income. This exception to the general rule seeks to prevent income from being recharacterized as passive by the mere fact that it is distributed to a holding or intermediary company that is controlled by the Chilean taxpayer;

(ii) Interest, unless the CFC is a financial institution that is regulated as such by the authorities in the foreign jurisdiction and is not incorporated, established, domiciled or a resident of a jurisdiction that is regarded as having a preferential tax regime;

(iii) Royalties and similar type of remuneration from the use of trademarks, patents, formulae, computer programs, and similar concepts, unless the income derives from R&D projects, as defined under Law No. 20,041, and those projects are approved by the Production Development Corporation;[798]

(iv) Capital gains realized from the sale of property or rights that generate income of the type listed in (i) to (iii) above;

(v) Rents from the rental of real property, unless the principal business of the CFC consists of operating real property in its country of incorporation, domicile or residence. In this regard, a business is considered principal if it is undertaken on a regular and continuous basis and the majority of the income is generated from that business;

(vi) Capital gains from the sale of real property, unless it has been used or operated to undertake a business activity that generates income other than passive;

(vii) Income generated from the assignment of rights to use or enjoy any property or rights that are capable of generating passive income; and

(viii) Income that the CFC obtains from transactions entered into with taxpayers that are incorporated, domiciled, established or residents of Chile, provided that (I) they are related parties (as defined for purposes of the transfer pricing rules; see XIII.B., below), (II) the income constitutes for the Chilean related party a deductible expense or a higher cost for purposes of amortizing or depreciating the asset for Chilean tax purposes, and (III) the income is not Chilean sourced for the CFC or, regardless of whether it is Chilean or foreign sourced, it is subject to Chilean tax at a rate lower than 35%, which is the general tax rate applicable on Chilean source income received by nonresidents.

If more than 80% of the CFC's income is passive, then all of the income of the CFC should be regarded as passive. However, a taxpayer is not required to treat the passive income of its CFCs as received or accrued if the total passive income from all its CFCs at the end of the taxpayer's taxable year is less than 2,400 development units, except if the passive income is generated by a CFC that is resident in a jurisdictions that is regarded as having a preferential tax regime since the passive income of those CFCs cannot benefit from the exception.[799]

When determining the 2,400 development unit threshold, the taxpayer must also take into account the passive income obtained in the taxable year by its related parties. If the threshold is exceeded, both the taxpayer and its related parties must accrue all the passive income in proportion to their equity interests in the CFCs.

Unless the taxpayer can prove otherwise, all of the income generated by a company incorporated, domiciled, established or resident in a jurisdiction with a preferential tax regime is deemed to be passive. Also, a company in such jurisdiction is deemed to generate each taxable year passive net income at least equal to the average interest rate charged by the financial institutions in that jurisdiction times the higher of either (a) the acquisition cost of the shares of the CFC or (b) the CFC's net equity value in proportion to the equity interest that the Chilean company(ies) own in the CFC. The average interest rate to be used is the official one that may be published by the financial institutions in that jurisdiction; otherwise, the average interest rate to be used should be the one that is determined by the Chilean Ministry of Finance.

On the other hand, the CFC rules do not apply with respect to a CFC if either:

(i) The passive income generated by that CFC in any given taxable year is less than 10% of its overall income in that year;

(ii) The value of the assets of that CFC that are susceptible of generating passive income does not exceed 20% of the value of all of its assets; or

(iii) The passive income of the CFC has been subject to tax in its country of residence at an effective rate of at least 30%.

The CFC rules are not applicable with respect to income or losses of a foreign permanent establishment if, as discussed above, such income or loss is allocable to the Chilean head office at the end of the taxable year.[800]

Passive income received or accrued by a CFC is deemed to be received or accrued by its Chilean shareholder in proportion to the latter's percentage of direct and indirect interest in the equity of the CFC. The amount of passive income of the CFC to be picked up in Chile must be determined by applying the Chilean first category tax rules that apply when determining a taxpayer's net taxable income. To that end, if the CFC incurred expenses that generated both passive and active income, the deductible amount when determining the CFC's passive income must be equal to the proportion of the passive income over the overall income of the CFC.

The passive income must be picked up in Chile at the end of the taxable year of the Chilean shareholder by adding it to its net taxable income, unless the CFC incurred a net operat-

[797] ITL, Art. 41-G(C).
[798] For a description of these projects, see B.10.e., below.
[799] ITL, Art. 41-G(D)(6).
[800] ITL, Art. 41-G(A)(1).

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ing loss; in that case, the net operating loss cannot be utilized to offset the Chilean taxpayer's net taxable income. The calculation of passive income must be made in the foreign currency of the country where the CFC is located and converted into Chilean pesos at the exchange rate in effect on the day the passive income is picked up as taxable in Chile, generally December 31 of each taxable year.

Passive income received or accrued by a Chilean shareholder is subject to the first category tax.[801] The foreign tax on passive income that may be used as a tax credit includes taxes paid, owed and withheld in foreign jurisdictions by the CFC that is directly held by the Chilean taxpayer or lower-tier subsidiaries. These foreign taxes must be converted into Chilean pesos at the exchange rate in effect on the last day of the taxable year of the Chilean taxpayer but they cannot be adjusted for inflation.[802] Both the passive income and the foreign tax credit must be added to the Chilean taxpayer's net taxable income and may be used as a credit against the first category tax liability. The foreign tax credit on passive income must be used after those local tax credits that may not be claimed as a refund are applied but before applying those local tax credits that may be refunded. Excess foreign tax credits on passive income may only be carried forward indefinitely to subsequent taxable years to offset future first category tax liabilities on any type of income. Therefore, as these excess credits cannot be used to offset surtax and additional tax liabilities, they must not be booked in the SAC registry. In any case, for purposes of the carryforward, these excess tax credits may be adjusted for inflation.

Dividend distributions made by a CFC to its Chilean shareholder that consist of previously taxed passive income under the CFC rules are not subject to tax in Chile. In this regard, a dividend is deemed to contain net passive income to the extent of the proportion that such net income bears over the overall net income of the CFC.[803]

The Chilean CFC rules also require Chilean taxpayers to keep a registry of the passive income that has been taxed in Chile, of the dividends that they have actually received from their CFCs, and of the foreign taxes that have been paid or are owed on that passive income.[804]

d. Dividends

(1) In General

Since 2020, Chilean companies and their shareholders are subject to the, so-called, partial integration system. Under this system, after-tax profits generated by Chilean companies are taxed at the shareholder level on a cash basis, i.e., when dividends are actually distributed. The manner in which the dividend is taxed depends on the shareholder's residence, as follows:[805]

(i) If the shareholder is a resident company, the dividend is exempt from the first category tax, but it carries as a tax credit the underlying first category tax paid by the distributing company on the profit being distributed, which can be eventually utilized against the surtax liability (see (ii) below) or the additional tax liability (see (iii) below);

(ii) If the shareholder is a resident individual, the dividend is subject to the surtax at progressive rates (see IX.C.4.b., below), but the individual is entitled to claim a tax credit for the first category tax paid by the distributing company;

(iii) If the shareholder is a nonresident, whether an individual or a legal entity, the dividend is subject to the additional tax at a rate of 35%, which is withheld by the distributing company. However, the first category tax paid by the distributing company is creditable against the additional tax liability.

A shareholder subject to either the surtax or the additional tax liability can only apply up to 65% of the first category tax paid by the distributing company on the dividend as a credit against the shareholder's surtax or additional tax liability. For nonresidents, this leads to an overall effective tax rate of 44.4%. However, the 65% tax credit limitation does not apply to nonresident shareholders to the extent they reside in jurisdictions with a tax treaty with Chile that is either in force or signed.

Example:

Net taxable income	1,000
First category tax liability (27%)	270
Dividend grossed up to shareholder	1,000
Surtax or additional tax liability (35%)	350
First category tax credit (270 × 65%)	(176)
Surtax or additional tax payment	174
Overall tax liability (270 + 174)	444 or 44.4%

The profit attribution system is currently only available for small and mid-size enterprises, i.e., enterprises with annual sales revenues of 75,000 development units (approximately US$2.5 million) or less (for a discussion on how small and mid-sized enterprises are taxed, see V.B.4.c., above).[806]

Note: The 2023 Tax Reform Bill proposed further amendments to the manner in which dividend distributions are currently taxed. The Bill aimed to replace the partial integration system for resident individuals and nonresident companies and individuals by establishing a specific dividend tax that would not have allowed for first category tax to be claimed as a credit against the surtax or additional tax liability. The dividend tax would have been levied at a rate of 22% on actual profit distributions, provided the profit distributed was subject to the first category tax. However, the Tax Reform Bill was rejected on March 8, 2023 by the Chamber of Deputies.

[801] ITL, Art. 41-G(D)(5).
[802] ITL, Art. 41-A(B)(4).
[803] ITL, Art. 41-G(E).
[804] ITL, Art. 41-G(F).
[805] See V.B.5.d.(8) below regarding the previous elective system.
[806] Law No. 21,210, 9th Transitory Provision.

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(2) Tax Registries

(a) General

Owners, partners and shareholders, whether resident or nonresident in Chile, of a business enterprise, including a Chilean PE, are only subject to the surtax or the additional tax when they receive distribution from that enterprise, unless that distribution, or a portion thereof, is either exempt from the surtax or the additional tax, does not constitute income, has been subject to final taxation at the distributing enterprise's level, or constitutes a return of capital.[807]

To control whether a distribution is taxable at the shareholder level and to determine whether it carries a tax credit against the surtax or the additional tax liability, business enterprises, including PEs, are required to have the following three registries and update them at the end of each taxable year:[808]

(b) RAI Registry

The RAI Registry is a registry in which a business enterprise must book, at the end of each taxable year, profits that are subject to either the surtax or the additional tax (*rentas afectas a impuestos finales*).

The amount to be entered each year in the RAI Registry is the difference between:

(i) What the ITL refers to as the enterprise's "tax capital," which is roughly the equivalent of its current earnings.

Specifically, tax capital is defined as the tax value of an enterprise's assets and liabilities. It must be calculated by subtracting the tax value of the enterprise's current liabilities from the tax value of its assets;[809] and

(ii) The sum of:

- The balance in the REX Registry + *plus*
- The capital the shareholders have contributed to the enterprise, plus or minus subsequent capital increases (except capitalizations of earnings) or reductions of capital, adjusted for inflation.

The tax capital amount must be increased by:

(i) Distributions made by the enterprise during the taxable year, adjusted for inflation; and

(ii) A negative balance in the REX Registry, if any.

(c) DDAN Registry

The DDAN Registry (*diferencias depreciación acelerada y normal*) is used to account for the difference between the accelerated depreciation method and the straight-line method applied by an enterprise with respect to its assets. Since that difference is only deductible for purposes of the first category tax, it must be booked in the DDAN Registry so that it constitutes taxable income subject to the surtax or the additional tax when it is distributed to a shareholder.

However, once an asset has been depreciated using the accelerated method, the balance in the DDAN Registry must be reduced by the amounts resulting from the straight-line method until the asset is fully depreciated.

(d) REX Registry

At the end of its taxable year, a business enterprise must book the following items of income in the REX Registry (*rentas exentas*):

(i) Income generated by the enterprise that is exempt from the surtax or the additional tax;

(ii) Revenue generated by the enterprise that does not constitute taxable income;

(iii) Income that is already deemed to have been subject to the surtax or the additional tax; and

(iv) Dividends from affiliates that satisfy any of the above three criteria.

When determining the REX Registry balance, the enterprise must first bring forward the REX Registry balance from the previous taxable year, adjusted for inflation. The enterprise must then add the current year income that satisfies one of the four criteria, net of any costs or expenses that are attributable to the generation of that income.

Enterprises that do not generate income that is exempt from the surtax or the additional tax are not required to maintain these registries (except the SAC Registry). Consequently, all distributions made by such entities will be subject to the surtax or the additional tax with the corresponding tax credits out of the SAC Registry.[810]

(e) SAC Registry

The SAC Registry must be used to book both accumulated tax credits (*saldo acumulado de créditos*) for the first category tax paid by an enterprise and foreign tax credits, which may be used by shareholders against their surtax or additional tax liability on distributions they receive.

As further discussed below, the amount of the tax credit is generally subject to a 35% restriction. In other words, the shareholder is generally only entitled to claim 65% of the tax credit against his or her surtax or additional tax liability. However, certain tax credits are not subject to restriction. Therefore, the enterprise must book the tax credits in the SAC Registry in two separate baskets, as follows:

(i) One basket for those tax credits that are not subject to the 35% restriction, which generally includes the tax credit for the first category tax paid by SMEs that are subject to the Pro-Pyme regime and foreign tax credits of enterprises that are subject to the general tax regime; and

(ii) Another basket for those tax credits that are subject to the 35% restriction, which generally includes the tax credit for the first category tax paid by enterprises subject to the general tax regime as well as the tax credit on dividends received by such enterprises from both companies that are subject to the general tax regime and companies subject

[807] ITL, Art. 14(A)(1).
[808] ITL, Art. 14(A)(2).
[809] ITL, Art. 2(10).
[810] ITL, Art. 14(A)(3).

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to the Pro-Pyme regime. If an SME that is subject to the Pro-Pyme regime switches to the general regime, the tax credits in the SAC Registry that are not subject to the 35% restitution must be included in the non-restitution basket under the general tax regime.[811]

In addition to the above two baskets, when booking tax credits in the SAC Registry, the enterprise must also distinguish between those tax credits which the shareholder may not claim as a refund when their offset exceeds the shareholder's surtax liability (e.g., first category tax that has been offset with real estate taxes) from those tax credits that are capable of being refunded.

(3) Taxation of Distributions to Shareholders and Ordering Rules

A distribution made by a business enterprise to its shareholder is subject to either the surtax (for resident individuals) or to the additional tax (for nonresidents), unless that distribution consists of items that either have already been subject to the surtax or the additional tax, are tax exempt or do not constitute income at the shareholder level, or they constitute a reduction of capital. Since a distribution may consist of several items that are subject to a different tax treatment at the shareholder level, the ITL contains ordering rules for each of the four Registries to determine the tax implications for the shareholders.

All distributions must be imputed to the relevant Registry on a chronological basis pursuant to the following ordering rules:[812]

(i) The distribution is first deemed to come out of the business enterprise's RAI Registry balance. This portion of the distribution is subject to the surtax or the additional tax, but it also carries a tax credit to the extent that there is a balance in the SAC Registry, in which case the shareholder is entitled to use it against his or her surtax or additional tax liability. A dividend distribution received by the enterprise from another Chilean entity is exempt from the first category tax, but the enterprise is entitled to book in its SAC Registry the tax credit that such dividend carries.

(ii) Once the RAI Registry is exhausted, the distribution is deemed to come out of the DDAN Registry, which is taxed in the same manner as distributions made out of the RAI Registry.

(iii) Then the distribution is deemed to come out of the REX Registry in the following order: (i) first out of the basket that reflects income that is deemed to have been subject to the surtax or the additional tax; (ii) then out of the basket that reflects income that is exempt from the surtax or the additional tax; and (iii) then out of the basket reflects revenue that does not constitute taxable income. Distributions out of the REX Registry are not taxable for the shareholder and, therefore, do not carry tax credits from the SAC Registry. If the portion of the distribution that comes out of the REX Registry is received by a Chilean entity, it is not subject to the first category tax and that entity must book it in its own REX Registry.

(iv) If the distribution exceeds the sum of the above three balances, then it will be deemed to come from the enterprise's book earnings in excess of its tax earnings. That distribution will be treated as a dividend and will be subject to the surtax or the additional tax with a tax credit to the extent that there is a positive balance in the SAC Registry.

(v) Only to the extent that a distribution exceeds the amounts described in 1. to 4., above, may that excess be treated as a return of capital for tax purposes, i.e., even if the payment is structured as a return of capital from a corporate law point of view. The imputation of a distribution to a return of capital can only be made up to the extent of a shareholder's investment in the capital of the enterprise, as adjusted for inflation. The inflation adjustment must be computed taking into account the CPI for the month prior to that in which the contribution was made through the month prior to the year-end.

The imputation of a distribution to the capital of the enterprise must be made by taking into account the balances of the Registries at the end of the enterprise's taxable year prior to the one in which the return of capital is made. Returns of capital are not subject to the surtax or the additional tax provided they are legally formalized as such.[813] A capital reduction must be formalized no later than February of the year following that in which the distribution was made.

(vi) Distributions in excess of the above categories are treated as a dividend and are subject to the surtax or the additional tax to the extent there is a balance in the SAC Registry.

(4) Tax Credit Computation

As stated above, when a distribution is subject to the surtax or the additional tax, the shareholder is entitled to claim a tax credit on that distribution up to the balance reflected in the SAC Registry at the end of the taxable year in which the distribution is made. The tax credit rate for the first category tax is calculated by dividing the first category tax rate in effect at the close of the taxable year in which the distribution takes place by 100% minus the tax rate.

For taxable years 2018 and onwards, with a first category tax rate of 27%, the tax credit rate is 36.9863%.

If the tax credit comes out of the pre-2017 basket, the tax rate must be determined annually by dividing the overall pre-2017 tax credit balance at the beginning of the taxable year by the overall pre-2017 tax earnings balance at that time, net of the first category tax paid on those earnings, multiplied by 100.

The rate for foreign tax credits is equal to the difference between 35% and the first category tax rate applicable in the year in which the distribution is made.

[811] ITL, Art. 14(D)(3)(i). As discussed in more detail in VI.B.2., the 35% restitution does not apply with respect to the additional tax on distributions received by nonresidents that are tax residents in jurisdictions that have tax treaties with Chile, whether in force or merely signed before January 1, 2020, such as the United States.

[812] ITL, Art. 14(A)(4).

[813] ITL, Arts. 14(A)(4)(v) and 17(7).

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The SAC Registry balance must be reduced by the amount of the tax credit that has been added to the distribution. The reduction must be applied pursuant to the following ordering rules:[814]

(i) Tax credits out of the non-restricted basket, firstly from those that do not entitle the shareholder to claim a tax refund and then from those that do; and

(ii) Tax credits out of the restricted basket, firstly from those that do not entitle the shareholder to claim a tax refund and then from those that do.

Unutilized SAC Registry balances must be carried forward to the following year.

Example:

RAI balance at the end of the taxable year	1,500,000
SAC balance from first category tax	300,000
SAC balance from foreign tax credits	110,000
Distribution subject to surtax or additional tax.	100,000
First category tax rate.	27%
Foreign tax credit rate [35% – 27%]	8%
Tax credit factor [27% / (100% – 27%)]	0,369863
Distribution grossed-up with tax credits [100,000 / 1 – (0.27 + 0.08)]	153,846
Tax credit from first category tax [153,846 × 27%]	41,538
Tax credit from foreign tax credits [153,846 × 8%]	12,308

The RAI Registry will have a year-end balance after allocation of 1,400,000 (1,500,000 – 100,000).

The SAC Registry will have a FCT Tax Credit of 258,462 (300,000 – 41,538) and an FTC or 97,692 (110,000 – 12,308).

If the enterprise does not have a balance in the SAC Registry on a portion of a distribution that is subject to the surtax or the additional tax, it may voluntarily pay the first category tax on that portion and have the shareholder utilize it as a tax credit on the profit distribution.[815] The first category tax voluntarily paid by the enterprise is categorized as of a non-restricted nature, i.e., the shareholder is not subject to the 35% limitation. The business enterprise may also treat that first category tax voluntarily paid as a credit against its first category tax liability in subsequent taxable years. However, if in that subsequent year the business enterprise were to have excess tax credits (for example, because it had incurred net operating losses), it would not be entitled to claim the first category tax paid in the previous taxable year as a refund or as a credit against other taxes. Thus, it is only creditable against future first category tax liabilities. When so credited, it cannot be used also as a credit against the surtax or the additional tax because it was already used when the initial distribution was made.

For the manner in which resident individuals are taxed on dividend distributions received from business enterprises and the tax credits that they may claim against their surtax liability, see IX.C.3.c.(1) and IX.C.5.b., below. For a discussion of these rules when the dividend is received by nonresident entities and individuals, see VI.B.2., below.

(5) Tax Substituting the Surtax or the Additional Tax

A company has the option of paying a substitute tax on all or part of its accumulated earnings and profits, i.e., the balance in the RAI Registry of the company, in lieu of the surtax or the additional tax that would otherwise be levied on a distribution of those earnings and profits. The substitute tax may be paid on earnings and profits accumulated from January 1, 2017 through December 31, 2023.[816] The RAI Registry balance on January 1, 2017 included the earnings and profits that the company had accumulated prior to that date.

The substitute tax regime is also available to SMEs but only to the extent they have opted to be subject to the first category tax (see V.B.4.c.(1)(b)(i), above).[817] The substitute tax is levied at a rate of 12% for companies subject to the general tax regime and 30% for SMEs subject to the Pro-Pyme regime.

A company is entitled to apply the substitute tax to all or part of its accumulated earnings and profits balance. That balance may consist of profits generated by the company's own activities as well as dividends received from affiliates. The RAI Registry balance of the company must be adjusted for inflation for the period between November 2023 and the month prior to that in which the option is exercised. That adjusted balance must be reduced by the following amounts, adjusted for inflation, to the extent they occur during 2024 or January 2025 and prior to the exercise of the option:

(i) Dividends distributed or withdrawals made by the company during 2024 or January 2025 and, in any event, prior to the exercise of the option;

(ii) Non-deductible expenses accrued by December 31, 2023, and that were actually paid between January 1, 2024 and the date on which the option is exercised;

(iii) Other adjustments to the accumulated earnings and profits of the company, such as adjustments arising from amended tax returns or tax audits; and

[814] ITL, Art. 14(A)(5).

[815] ITL, Art. 14(A)(6). Since the business enterprise making the distribution must pay the voluntary first category tax only at the time it files the annual corporate income tax return in April of the following year, it is nevertheless entitled to apply a credit for that future tax payment when it calculates the additional tax liability that is withheld at the time the distribution is made. This option is only available when the distribution is made to shareholders subject to the surtax or the additional tax. Therefore, it is not available on a domestic distribution to another Chilean company.

[816] Law No. 21,681, dated June 27, 2024 and published in the *Diario Oficial* on July 1, 2024, Art. 11.

[817] Law No. 21,681, Art. 11.

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(iv) If the option is exercised in January 2025, NOL, if any, that may have been incurred in taxable year 2024.

An SME that has opted to pay the substitute tax is entitled to apply a tax credit for the first category tax paid against the substitute tax liability, up to the SAC Registry balance on December 31, 2023.[818] In that case, the taxable base on which the substitute tax is levied must be grossed up by the amount of the tax credit, adjusted for inflation. The SAC Registry, therefore, will have to be reduced by the amount of the tax credit used.

On the other hand, a company subject to the general regime is not entitled to credit the first category tax against the substitute tax liability.[819] However, given the reduced rate of the substitute tax, such a taxpayers is still required to reduce the SAC Registry balance on December 31, 2023 by the amount of the tax credit it would otherwise have claimed.

The substitute tax liability may not be reduced by foreign tax credits, irrespective of whether the company is an SME or a regular taxpayer.

In the case of both types of taxpayers, the RAI Registry balance must be reduced by the amount that the taxpayer has opted to subject to the substitute tax.[820] The amount of the reduction must be transferred to the REX Registry in a special column.[821] That transfer is not viewed as a deemed distribution; rather, it is a conversion of taxable earnings to exempt income at the shareholder level. A future distribution of the amount that has been subject to the substitute tax, as reflected in the REX Registry, may be made at any time without regard to the ordering rules discussed at V.B.5.d.(3), above.

In addition, since the surtax or the additional tax has already been paid by the distributing company, the actual distribution will not be subject to further taxation at the shareholder level. If, however, the amount is distributed to another company that is subject to the first category tax, the amount distributed must be reflected in that company's REX Registry and, as such, can be subsequently distributed without any further taxation.[822]

A shareholder receiving a dividend that has been subject to the substitute tax is entitled to receive a certificate from the distributing company evidencing that the amount distributed has been subject to that tax.[823] A nonresident shareholder can request such a certificate from the SII with respect to both the first category tax and the additional tax.

The option could be exercised until January 31, 2025 by filing Form 50 (lines 80 and 81).[824] Once filed, the option is irrevocable. Since the substitute tax is in lieu of the surtax or the additional tax, a payment of substitute tax does not constitute a deductible expense for income tax purposes.

(6) Tax Reporting

Business enterprises must inform the SII on an annual basis and prior to March 15 of the following items:[825]

(i) The profit distributions that have been made to the owners, partners or shareholders during the taxable year, their names, the dates such distributions were made, and whether such distributions consist of earnings that are subject to the surtax or the additional tax, earnings that are exempt from those taxes, earnings that are deemed to have been subject to the surtax or the additional tax, or revenues that do not constitute taxable income;

(ii) The amount of the tax credits associated with each distribution, and whether the shareholder subject to the surtax is entitled to claim a refund for excess tax credits;

(iii) With respect to each of the Registries, the amount of the balance carried forward from the previous taxable year, current year increases and reductions to that balance, and the year-end balances;

(iv) The manner in which the amounts in the RAI Registry have been determined, including the values that have been used to determine current year earnings that are subject to the surtax or the additional tax and the capital that has been contributed to it plus subsequent increases and reductions to it, as adjusted for inflation;

(v) The difference between the accelerated and the straight-line depreciation amounts on a per asset basis; and

(vi) The investments made abroad by the enterprise during the taxable year. The information must include the type of investment and the amount thereof and the country of destination. If the investment involves shares, the information must include the percentage owned by the enterprise in the capital of the nonresident company and the destination of the amounts invested. This information must be provided by June 30 of each taxable year.[826]

Failure to provide this information or submitting incomplete or erroneous information is subject to fines equal to 10 annual tax units plus one additional tax unit for each month of delay, capped at 50 annual tax units. If the relevant investment is made in a tax haven or a jurisdiction with preferential tax regimes, in addition to the above information, the enterprise must also indicate, on an annual basis, the status of the investment, additional investments or disinvestments made, and what the funds received by the investee are destined to be used for.

Business enterprises are also required to inform their owners, partners or shareholders of the amounts that have been distributed to them, specifying the amounts of the distribution that are subject to the surtax or the additional tax, exempt from those taxes, or revenues that do not constitute taxable income, and the tax credit that such distribution carries with it.

(7) Impact on Corporate Reorganizations

A corporate reorganization, such as a transformation, a merger or a de-merger, has implications on the amounts booked in the various registries as well on the new amounts that need to be allocated to the tax capital. The following paragraphs describe these for the entities involved in the reorganizations. All

[818] Law No. 21,681, Art. 11(1).
[819] Law No. 21,681, Art. 10(1).
[820] Law No. 21,681, Art. 10(3).
[821] Law No. 21,681, Art. 10(8).
[822] Law No. 21,681, Art. 10(9).
[823] Law No. 21,681, Art. 10(10).
[824] SII Resolution No. 78, dated August 5, 2024. For a sample of Form 50, see http://www.sii/formularios/imagen/F50.pdf.
[825] ITL, Art. 14(A)(8).
[826] ITL, Art. 14(A)(8)(e).

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corporate reorganizations must be notified to the SII within two months from the date of the reorganization:[827]

(i) Merger: In the case of a merger, the surviving company must include the balances in the four Registries of the merged entity into its own Registries. The inclusion must be made at the time the merger takes place.

(ii) Corporate transformation: Since the transformation of an entity's corporate form is tax neutral, i.e., it is not viewed as a deemed liquidation, since there is continuity of life, the entity Accordingly, all its Registries will continue to have the same balances on the day of the transformation.

(iii) De-merger: In a de-merger, the balances in the RAI, REX and SAC Registries of the de-merged entity must be allocated to the new Registries of the new entity in the same proportion as the tax capital is allocated among the two entities. However, the DDAN Registry of the de-merged entity must be allocated on the basis of the manner in which the fixed assets that are depreciated on an accelerated basis are distributed among the de-merged and the new entities.[828]

Special rules deal with mergers of small enterprises and enterprises that determine their net taxable income on a presumed basis with entities that are subject to the regular tax system.[829] Special rules also apply on the tax effects when an entity that is subject to the regular tax regime opts to be subject to the simplified tax regime.[830]

(8) Previous Elective System Applying from 2015 to 2019

For taxable years 2015 through 2019, the manner in which Chilean companies and their shareholders were taxed was changed by introducing an elective mechanism which, due to its complexity, all in all only lasted five years. Under that mechanism, the shareholder had the option to elect to either continuing being taxed under the partial integration system or, instead, under a profit attribution system. The mechanism was initially introduced under Law No. 20,780 (published in the *Diario Oficial* on September 29, 2014), but due to the significant confusion it created, it was replaced two years later with the approval of Law No. 20,899 (published in the *Diario Oficial* on February 8, 2016) to simplify the dual taxation method.

Under the profit attribution system, a shareholder was taxed on the profits of a Chilean company at year-end on an attribution basis, i.e., irrespective of whether a dividend was actually distributed. In general, Chilean business enterprises were free to elect between the two tax systems, but only to the extent their owners, shareholders or partners were resident individuals and/or nonresidents, whether individuals or legal entities. Open and closed SAs and SenCAs were not eligible entities and could only be subject to the partial integration system. Once elected or by application of certain default rules, taxpayers were subject to the selected system for at least five years. Thus, under the profit attribution system, resident individuals and nonresidents, the first category tax paid by the distributing company was fully creditable against the shareholder's surtax or additional tax liability, resulting in an overall income tax rate on profits actually or deemed distributed of 35%.

Since taxpayers subject to the profit attribution system were taxed on a current basis irrespective of actual distributions, while taxpayers subject to the partial integration system could benefit from tax deferral as dividends were only taxed upon actual distributions, the ITL provided that taxpayers subject to the latter regime could only apply up to 65% of the first category tax paid on the dividend as a credit against the shareholders surtax or additional tax liability. This led to an overall effective tax rate of 44.4%. The 65% tax credit limitation did not apply to nonresident shareholders, but only to the extent they resided in jurisdictions with a tax treaty with Chile that was either in force or signed. Consequently, Chilean affiliates of foreign investors generally opted for the partial integration system when they resided in a tax treaty country or invested through an investment platform that was located in a treaty country.

e. Capital Gains

(1) In General

For a discussion of the capital gains tax rules on the sale of shares in Chilean companies and other financial instruments, see V.B.9.c., below.

(2) Corporate Reorganizations

(a) In General

From a tax point of view, it is important to structure corporate reorganizations properly, so as to avoid adverse tax consequences. For instance, capital gains from the sale of shares are normally considered taxable and, as such, are taxed as ordinary income.

Certain reorganizations can be made on a tax-neutral basis. Since the general rules on tax neutrality are contained in the TC, they are applicable to all taxes, not just income tax. However, and as described below, the ITL also contains certain tax-neutrality rules just are only applicable to the potential capital gains tax that may be levied on a corporate transaction.

If a reorganization meets certain conditions, the SII may not exercise its powers to determine the fair market value of the asset being transferred and assess taxes on the difference between the value determined by the taxpayer and the one determine by the SII.

The following reorganizations can be accomplished on a tax-neutral basis:[831]

(i) Any type of domestic corporate reorganization undertaken by individuals or companies, provided:

a. The reorganization has a valid non-tax business purpose, e.g., facilitating business conditions or an improvement thereof, obtaining competitive advantages, financing, eliminating or mitigating costs or risks, an

[827] ITL, Art. 14(C)(4).

[828] ITL, Art. 14(C)(1)(a).

[829] ITL, Art. 14(C)(2). For a description of the rules dealing with the taxation of small and medium-seized companies, see V.B.4.c.

[830] ITL, Art. 14(C)(3).

[831] TC, Art. 64.

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increase in productivity or market presence, or optimizing the company's management;

b. The historical tax basis in the asset being transferred is carried over in the new or surviving entity in the case of a merger or de-merger or in the issuing entity in the case of an in-kind contribution; and

c. The transferor does not receive cash; or

(ii) A cross-border corporate reorganization, other than a merger or de-merger, with effects on Chilean property, provided:

a. The reorganization has a valid non-tax business purpose, as exemplified above;

b. The transferor does not receive cash;

c. The tax basis in the asset being transferred is carried over;

d. The legal requirements in the relevant foreign jurisdiction are complied with; and

e. Chile maintains the power to tax the deferred tax liability; that is, a future transfer of the asset being transferred during the reorganization is susceptible of being taxed in Chile.

Notwithstanding the above, the SII continues to have the power to determine the fair market value and assess a tax on the difference when the corporate reorganization, including a merger and a de-merger, involves the transfer of ownership in Chilean property to companies that are either domiciled or resident in jurisdictions having preferential tax regimes or are not required to maintain books and records under generally accepted accounting standards.

In any case, taxpayers are entitled to submit ruling requests to the SII on the application of the above tax neutrality regime.

(b) Capital Contributions

Contributions of assets of any type, whether tangible or intangible, made to the capital of a corporation are in principle, treated as dispositions and, as such, constitute taxable events. However, a contribution of assets to the capital of a company may be made on a tax-neutral basis, provided there is a legitimate business reason for the contribution.[832] The person making the contribution may be an individual entrepreneur, a resident entity, or a PE of a foreign corporation, and must survive the contribution. A tax-neutral capital contribution may be made to an existing entity as well as to an entity that is created as a result of the contribution, provided it gives rise to an increase of capital in the issuing entity. As discussed in V.B.5.e.(2)(a) above, to be tax-neutral, a capital contribution may not give rise to a cash payment or distribution to any of the contributing parties.[833] The tax legislation does not impose a specific time-period during which the contributing entity must hold the stock of the issuing entity or a minimum percentage of shares that needs to be received as a result of the contribution. Share-for-share exchanges may be made on a tax-neutral basis provided they are made pursuant to a corporate reorganization for legitimate business reasons.[834]

To be tax neutral and as provided under the general rules in the tax code, the issuing company tax basis in the assets received must be carried over. The rules do not deal with the tax basis the transferor will receive in the shares received in exchange, but it should be presumed the tax basis should be the same it had on the asset it contributed.

Stock dividends distributed by SAs to their shareholders as well as increases in the par value of shares arising from the capitalization of a corporation's earnings is exempt at the issuing company level.[835] For purposes of determining the cost of those shares, the taxpayer is required to divide the acquisition cost of the original shares by the total number of shares held, i.e., the original shares and the stock dividends, at the time of the sale. Likewise, revenues generated by an SA from a stock placement and increases in value in its capital are exempt from income tax provided that those increases in value are not distributed to its shareholders.[836] Once distributed, those increases in value are subject to the first category tax at the distributing company level and to the surtax or the additional tax at the shareholder level.

(c) Reductions of Capital

Reductions of capital can also be made on a tax-neutral basis. However, shareholders may not make a reduction of capital in a company or in an investment fund unless it has been previously authorized by the SII.[837] Furthermore, a reduction of capital is subject to tax at the shareholder level if the capital arose as a result of a capitalization of earnings that had not been subject to the surtax or the additional tax.[838] For purposes of determining whether a corporate distribution is subject to the surtax or the additional tax, there is an ordering rule pursuant to which the distribution is first deemed to be made out of accumulated or current earnings and then out of the distributing company's capital.[839]

(d) Mergers and Transfers of All Assets and Liabilities

As discussed in V.B.5.e.(2)(a) above, domestic corporate mergers may be made on a tax-neutral basis. Contributions of going concerns or of all the assets and liabilities by a company to another company may also be carried out on a tax-neutral basis. A tax-neutral merger may be effected by creating a new entity as a result of the merger of two existing entities, or with an existing entity as a result of the merger of the merged entity into a surviving entity. The assets and liabilities of the merged entity are transferred to the new or surviving entity, including the former's accumulated earnings and profits.[840] To be tax-neutral, the surviving entity in the case of a merger or the issuing entity in the case of a contribution of all the assets and liabilities

[832] ITL, Art. 17(5).
[833] TC, Art. 64.
[834] ITL, Art. 41.
[835] ITL, Art. 17(6).
[836] ITL, Art. 17(5).
[837] ITL, Art. 17(7). The authorization from the SII must be requested by filing Form No. 3239.
[838] ITL, Art. 17(7).
[839] For a discussion of the taxation of dividend distributions, see V.B.5.d., above.
[840] TC, Art. 64; ITL, Art. 14-A(1)(c).

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by another company must assume all the tax liabilities of the merged entity or the contributing entity. The assumption must be reflected in the public deed of the merger or corporate contribution. Those taxes that were due at the time of the merger or contribution must be paid by the surviving company within two months following the dissolution of the merged entity or liquidation of the company making the distribution.[841]

If the amount paid by the surviving entity for the shares of the merged entity is higher or lower than the latter's shareholders tax equity, the difference must first be allocated among those non-monetary assets of the merged entity to the extent that the tax basis in those assets is lower or higher than the fair market value. The allocation must be made in proportion of the fair market value of each of those assets over their total fair market value. The allocation to each asset must be made by increasing or decreasing its tax basis to its fair market value. If there is still a positive difference after the allocation, it must be treated as goodwill; in this regard, since goodwill is an intangible asset and this type of assets may not be amortized for tax purposes, it may only be written off when the entity is liquidated or ceases its activities. The goodwill, however, will continue to be part of the entity's equity and must be adjusted for inflation.[842]

On the other hand, if there is a negative goodwill after the allocation, it must be treated as deferred income, which must be recognized for tax purposes over a period of up to 10 years from the date the negative goodwill was generated. Any deferred income must be adjusted for inflation. Furthermore, any deferred income that is pending to be recognized at the time the company goes into liquidation must be recognized in the taxpayer's last taxable year.[843]

Comment: Since NOLs cannot be transferred from one taxpayer to another as a result of a merger, it is common for the company with accumulated NOLs to survive in a merger with a profitable company. However, there are anti-avoidance measures that need to be satisfied for the surviving entity to utilize those NOLs.

(e) Corporate Splits

Domestic corporate splits or divisive reorganizations may be carried out on a tax-neutral basis. As in the case of corporate mergers, the assets and liabilities transferred as a result of a tax-free divisive reorganization are received on a carryover basis by the new entity.[844] In this regard, the SII has indicated that a divisive reorganization does not give rise to a taxable event, since the transaction merely involves a redistribution of the net worth of the company being divided by means of the allocation of shares or quotas in a new entity.[845]

The de-merger of an entity does not give rise to taxation if there are accumulated earnings and profits in the de-merged entity at the time of the de-merger.[846] Such accumulated earnings and profits must be split or allocated in proportion to the resulting net worth in each of the companies involved in the de-merger.

(f) Acquisitions

In many cases, asset acquisitions are preferred to share acquisitions, since they reduce the risk of prior tax contingencies and the taxpayer obtains a step-up in the value of the assets. In some cases, however, a stock acquisition followed by the dissolution of the target company may give rise to a step-up in the value of the assets.

(g) Liquidations and Corporate Transformations

Corporate liquidations are generally taxable both at the corporate and the shareholder level. However, liquidation proceeds distributed to the shareholders are exempt from the surtax or the additional tax up to the amount of capital that was invested by the shareholder. If those proceeds are distributed in the form of property other than cash, that property has to be valued at the adjusted tax basis it had in the distributing company.[847]

In a corporate liquidation, the company must treat the following amount as having been distributed to its shareholders: the difference between (i) the company tax net equity at the time of its liquidation and (ii) the sum of (I) the amounts booked in the REX registry i.e., the amounts that are not subject to shareholder taxation, and (II) the amounts contributed by the shareholder to the capital of the entity, minus any reductions of capital. The company must also add the tax credits available in the SAC Registry. The amount resulting from that computation is subject to a sole tax at the liquidating company level at a rate of 35% but only to the extent that the company is directly owned by shareholders that are subject to the surtax or the additional tax. The company is entitled to credit against this sole tax liability 65% of the tax credits it has booked in the SAC Registry for the first category tax it has paid on its retained earnings and from dividend distributions it has received from other entities.[848] Foreign tax credits booked in the SAC Registry can also be used to offset the 35% sole tax liability and are not subject to the 35% tax credit limitation. Unutilized tax credit balances in the SAC registry may not be used to offset other obligations of the company and may not be claimed as a tax refund.

[841] TC, Art. 71.

[842] ITL, Art. 31(9). The inability to amortize the goodwill applies to mergers taking place as of January 1, 2015. If a merger process was initiated prior to that date but had not been concluded, the surviving entity was entitled to amortize the goodwill, if any, provided that the merger process concluded prior to January 1, 2016. To prove the initiation of the merger process, the surviving entity was required to file a sworn statement to the SII by December 31, 2014. The information that the sworn statement had to contain is described in SII Resolution No. 111, dated December 4, 2014. Law No. 20,780, Transitory Provisions, Art. 3(XIX). Prior to 2015, goodwill was treated as a deferred expense and was amortizable over a 10-year period.

[843] ITL, Art. 15.

[844] TC, Art. 64.

[845] Circular No. 45 of July 16, 2001.

[846] ITL, Art. 14-A(1)(c).

[847] ITL, Art. 17(8)(g).

[848] ITL, Art. 38 *bis* (1).

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Example:

Amount pending to be taxed at liquidation	1,000,000
SAC Registry tax credit balance	300,000
Taxable income	1,300,000
Tax rate	35%
Tax liability	455,000
(*Less*) Tax credit (300,000 × 65%)	(195,000)
Tax due	260,000

The tax liability must be paid within two months following the date of the liquidation.[849] The tax return must also include the first category tax due for the year in which the entity is liquidated as well as the 40% sole tax on the amounts that are deemed withdrawn by the shareholders (see V.B.9.b., below). Against this tax liability the entity is entitled to claim as a credit the advance first category taxes, as adjusted for inflation, it has paid during the course of the taxable year. The entity is entitled to seek a tax refund to the extent that the tax credits exceed the total tax liability arising from the liquidation.[850]

As a general rule, liquidation proceeds should not be further taxed at the shareholder level as the 35% sole tax paid by the company is considered a final tax. However, instead of having the company being liquidated pay the 35% sole tax, the shareholders that are subject to surtax have the option of reporting the liquidation proceeds in their surtax returns as if they had accrued the proceeds over the period of ownership (excluding the year in which the company is liquidated) up to a maximum period of 10 years. The proceeds deemed accrued during each of the years of ownership must be adjusted for inflation and then converted into monthly tax units based on the value in the month the liquidation takes place. The surtax liability must be determined for each year of ownership pursuant to the surtax rates in effect in each of those years and based on the value of the monthly tax unit on December of each of the years. The shareholder must file the surtax return at the same time as the liquidation is reported.[851]

If the shareholder does not file the surtax return when the company is liquidated, he or she may still compute his or her surtax liability under this procedure in his or her annual surtax return for the year in which the company is liquidated. If the company has already paid the 35% sole tax with respect to that shareholder, the shareholder may claim a refund for the difference between the sole tax paid by the company and his or her surtax liability on the liquidation.

However, this option to compute the surtax liability does not entitle the shareholder to file amended surtax returns with respect to prior surtax returns that were filed during the years of ownership. If not all the shareholders subject to the surtax exercise the option (or if the company has shareholders subject to the additional tax), then the company must still pay the sole tax with respect to those shareholders that have not exercised the option.

If there is a resident entity as a shareholder, the portion of the 35% sole tax that is attributable to that resident entity based on its percentage of ownership must be booked in that entity's SAC registry so that it can eventually be used as a credit by its shareholders on future distributions against their surtax or additional tax liability.[852]

A shareholder obtains a carryover basis in the property that is transferred as a result of a corporate liquidation. To this end, the company being liquidated must inform the shareholder of the acquisition value of that property. However, if the shareholder is a Chilean entity and that entity's tax basis, adjusted for inflation, in the shares of the company being liquidated is lower than the value of the property received in the liquidation, that difference constitutes taxable income for the Chilean entity. On the other hand, if the shareholder's tax basis, adjusted for inflation, in the shares is higher than the value of the liquidation proceeds, that difference may be treated by the shareholder as a deductible expense in the year of the liquidation.[853]

Taxpayers are required to inform the SII when they terminate their business activities. The taxpayer must attach a final balance sheet to the notice of termination and pay any tax due within two months following the termination.

The SII can deem a taxpayer to have ceased its business activity or to have been liquidated, even if the taxpayer has not given notice of such liquidation, if it either fails to file monthly and annual tax returns for a period of 18 months or files tax returns but, for two consecutive taxable years, does not report taxable or exempt income. In those cases, the SII can assess a tax against the enterprise for the same amount that would have been due had the enterprise filed the notice of termination. In these situations, the three or six-year statute of limitations period can be extended for one additional year against the taxpayer as well as against its shareholders from the date the SII notifies the taxpayer of the deemed business cessation or deemed liquidation.[854]

Furthermore, the SII can initiate actions to determine if the taxpayer has ceased its business activity if during six or more continuous monthly taxable periods it has failed to file monthly tax returns. A taxpayer is legally deemed to have ceased its business activities if, after six months of investigation by the SII, the taxpayer has not indicated to the SII its intention to continue its business activity or has not restarted its business activity by regularly filing its monthly tax returns, provided the taxpayer does not have taxable profits or assets pending to be taxed or owes any taxes. In this case, the SII will issue a resolution declaring the cessation of the taxpayer's business activity. The taxpayer does not need to be summoned but it can challenge the decision. The same presumption can be made without a prior investigation by the SII if the taxpayer has not undertaken any transaction during 36 months.

[849] ITL, Art. 69(2); TC, Art. 69.
[850] ITL, Art. 97.
[851] ITL, Art. 38 *bis* (3).
[852] ITL, Art. 38 *bis* (2).
[853] ITL, Art. 38 *bis* (5).
[854] TC, Art. 69.

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In general, the transformation of an unincorporated enterprise into corporate form is viewed as a deemed liquidation of the enterprise followed by a contribution of the assets and liabilities to the corporation. The same applies to transfers of a going concern or of all the assets and liabilities from one company to another and mergers. In principle, these transactions constitute taxable events. However, the taxable event can be avoided if the newly created or surviving company, in the relevant deed, jointly assumes all the tax liabilities that are due by the unincorporated enterprise at the time of the transformation.[855]

f. International Business Platforms

(1) Chilean Holding Companies

Chile was the first country in Latin America, excluding tax havens, to have introduced a special holding company regime, in December 2002.[856] The regime, however, was repealed in November 2017.[857]

The holding company regime partially addressed the potential double taxation of dividends distributed by a Chilean company to nonresident shareholders out of earnings generated by the Chilean company from foreign investments, due to the fact that at that time Chile granted a foreign tax credit only against the first category tax liability in the case of income derived from countries with which Chile did not have a tax treaty in force. Although Chile has since then remedied this problem (see 10., below, for a discussion of the Chilean foreign tax credit rules), the Chilean holding company regime remained in place until 2017.

In essence, Chilean holding companies were not considered to be domiciled in Chile and, thus, were taxed in Chile only with respect to the Chilean source income they derived. Chilean holding companies could invest in shares of nonresident companies as well as in Chilean SAs. Investments abroad had to consist of shares or convertible instruments in nonresident companies. Thus, Chilean holding companies could not fund their nonresident affiliates with debt. Furthermore, either the nonresident company in which an investment was made or an affiliate of that company had to conduct an active business. Investments abroad could not be made in a nonresident company located in a jurisdiction listed as a tax haven by the OECD.

Since, as stated, a Chilean holding company was not considered to be domiciled in Chile for Chilean income tax purposes, dividends received from nonresident affiliates and gains realized on the sale of shares in nonresident affiliates by Chilean holding companies were not subject to Chilean tax. On the other hand, Chilean source income derived by a Chilean holding company was subject to tax in Chile. As a Chilean holding company was treated as a nonresident entity for Chilean income tax purposes, dividends distributed by Chilean SAs to a holding company were subject to the additional tax. In determining the amount of the additional tax, the tax credit for the first category tax paid by the SA was available to the Chilean holding company. Moreover, gains realized by a holding company on the sale of shares in Chilean SAs were also subject to Chilean tax. Dividends received by nonresident shareholders from a Chilean holding company relating to income derived by the holding company from its investments abroad were not subject to Chilean taxation, while gains realized by nonresident shareholders on the sale of shares in the holding company relating to increases of value in nonresident affiliates of the holding company were not subject to Chilean capital gains tax.

Chilean resident shareholders of a holding company were not entitled to claim the benefits of the special holding regime.[858]

While the repeal of the Chilean holding company regime came into effect on January 1, 2022, it has not been possible to register a new holding companies with the SII since November 2017.[859] Open and close SAs that were subject to the Chilean holding company regime through December 31, 2021, became subject to the general income tax regime with effect from January 1, 2022 and are required to maintain their books and records in Chilean pesos, unless the SII allows them to maintain them in a foreign currency.[860]

If a Chilean holding company has retained earnings on December 31, 2021 and distributes them to its nonresident shareholders, the distribution is not subject to Chilean taxation, even if the distribution is made after the company became subject to the general income tax regime. However, if the earnings are distributed to Chilean resident shareholders, the dividend will be subject to Chilean taxation but the shareholders will be entitled to claim tax credits for any Chilean income tax the holding company may have paid on its Chilean-source income.[861]

(2) Regional Headquarters

In its continued efforts to make Chile an attractive country for foreign multinationals to do business in, the SII has created the concept of a regional headquarters (*Presidencia Regional*) without the need for the foreign multinational to establish a legal entity in Chile. In that regard, a regional headquarters consists of a number of executives established in Chile but who are employed by, and report to, a foreign company. The establishment of these executives in Chile does not constitute a corporate tax presence of the foreign multinational in Chile. The executives generally manage, supervise and coordinate from Chile the implementation of, among other things, commercial, marketing, financial, administrative, production, and human resources policies in foreign affiliates of the foreign employer. The implementation of these policies may not be made with respect to a Chilean subsidiary or PE of the foreign multinational.[862]

The foreign head office must execute a notarial power of attorney in favor of the executives deployed in Chile, listing the activities those executives are entitled to undertake on behalf of the foreign head office, and register it with the SII. If the activities to be undertaken by the regional headquarters are not to

[855] TC, Art. 69.

[856] ITL, Art. 41-D.

[857] Law No. 21,047, dated November 13, 2017, and published in the *Diario Oficial* on November 23, 2017, Art. 1(3).

[858] ITL, Art. 41-D(2).

[859] Law No. 21,047, Transitory Provisions, Art. 1.

[860] Law No. 21,047, Transitory Provisions, Art. 2(1).

[861] Law No. 21,047, Transitory Provisions, Art. 2(7).

[862] Circular No. 52, dated October 4, 2005.

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constitute a PE, the powers listed in the power of attorney may not include the carrying on of taxable activities in Chile.[863]

The foreign head office, through a tax representative with tax residence in Chile, is also required to obtain the *Rol Único Tributario* (RUT). To that end, in the RUT application the foreign head office will need to attach, among other documents: (i) a copy of its deed of incorporation and by-laws, and a certificate of good standing; (ii) the power of attorney; (iii) a copy of the employment agreement between the foreign head office and the executives or a board of directors resolution; (iv) a list of the executives who will work at the regional headquarters; and (v) the Chilean domicile of the regional headquarters.

Since a regional headquarters is not viewed as a taxpayer for Chilean tax purposes and, except for the RUT, has no other compliance obligations, the SII requires it to: (i) maintain a daily journal listing all the activities it performs in favor of the foreign head office; (ii) maintain a journal booking all the provisions of funds remitted by the foreign head office and all the expenses incurred on behalf of the foreign head office in connection with the activities undertaken by the regional headquarters; and (iii) to file a sworn affidavit with the SII in April of each calendar year certifying that the foreign head office has not received any consideration for the activities undertaken by the regional headquarters.

Since the executives working at the regional headquarters need to reside in Chile, they are subject to the sole second category tax. For a discussion of this tax, see IX.C.3.a., below. For the possibility of subjecting to the sole second category tax only the executives' Chilean source income, see IX.C.4.a., below. The tax representative of the regional headquarters must act as the withholding tax agent.

VAT incurred by the regional headquarters may not be recovered.

6. Calculation of Net Income: Deductions

a. Business Expenses

(1) In General

Net taxable income of a taxpayer is arrived at after deducting from gross income all the expenses that are necessary to derive that income.[864] In this regard, an expense is deemed necessary if it is capable of generating income, whether in the current or in future taxable years, and must be incurred in the taxpayer's interest, whether it is for the development or maintenance of its business. The concept of whether an expense is capable of generating income was introduced in the 2020 ITL reform. Until then, the SII had adopted a fairly restrictive approach by interpreting that an expense was necessary only if it was unavoidable, indispensable, and compulsory. It also required a direct correlation between the expense and the income it generated. This approach led to numerous tax assessments requiring taxpayers to pay the 40% penalty tax on the amounts that were denied as a tax deduction.

The SII issued a Circular interpreting the new wording on whether an expense is capable of generating current or future incomes.[865] The SII acknowledges at the outset that not all the expenses incurred by a taxpayer can guarantee an actual generation of taxable income; hence the acceptance that an expense can still be deductible if it is at least capable or has the potential of generating income, even if it ultimately does not generate it. This interpretation marks a clear departure from previous interpretations that required a direct correlation between the expense and the income. Nevertheless, the expense must be in the interest of the taxpayer's business, whether it is a future business undertaking or preserving an existing business. Therefore, the SII now interprets that an expense is deductible for tax purposes if there is a reasonable link between that expense and the taxpayer's expectation of generating current or future income, irrespective of whether those expectations materialize or whether there exists a contractual obligation to incur the expense. Furthermore, the SII accepts that an expense can be deductible even if it is not directly aimed at generating income but is related with unforeseen events or other circumstances, such as preserving the health and safety of employees and enhance customer relationships.

For an expense to be deductible, it must have been paid or accrued by the taxpayer during the taxable year. Furthermore, the expense may not have already been deducted from gross revenues as a cost. Moreover, the taxpayer must be in a position to justify the expense before the SII to claim a tax deduction. An expense is not deductible if it is incurred to acquire or maintain an asset that is not used in the taxpayer's regular course of business. Also, expenses incurred by the taxpayer to acquire property to be used or benefiting its shareholder or its related parties are not deductible.

Expenses incurred abroad are deductible provided they are duly supported by documents issued in the foreign country concerned pursuant to its legal requirements. These documents must, at the very least, state the name and address of the vendor or service provider, and the nature and date of the transaction. If required by the SII, these documents may have to be translated into Spanish. If there is no supporting foreign documentation, a foreign expense may still be accepted if the SII deems it to be reasonable and necessary for the activities of the taxpayer. In determining whether to accept a deduction, the SII considers a variety of facts, such as a comparison between the expense in question and expenses incurred by other entities in Chile undertaking activities that are the same as or similar to the activities of the taxpayer.[866] Furthermore, payments made to nonresident related parties that are subject to the additional tax (see VI.B., below) are only deductible in the taxable year in which they are paid.[867] Moreover, the payor must have withheld the additional tax from the payment and must have remitted it to the Chilean Treasury for it to be deductible for income tax purposes, unless

[863] Circular No. 54, dated September 20, 2002. If the power of attorney is executed abroad, the signatures need to be legalized. Supreme Decree No. 172 of 1977, Arts. 107 and 108.

[864] ITL, Art. 31.

[865] SII Circular No. 32, dated April 29, 2020. This Circular addresses whether expenses incurred and gifts made to the Chilean State to fight the effects of COVID-19 are deductible for income tax purposes.

[866] ITL, Art. 31.

[867] ITL, Art. 31. The determination as to whether a nonresident is related to the payor must be made pursuant to the transfer pricing definition of related parties. For an analysis of these rules, see XIII.B., below.

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the payment is exempt from the additional tax by application of the ITL or a tax treaty.

The expenses described in the following sections are deductible for income tax purposes if, in additional to complying with the general rule described above, also meet the special requirements laid out for that particular expense.

(2) Interest

Interest accrued or paid during the taxable year constitutes a deductible expense.[868] In fact, interest on loans the principal of which is used to acquire shares, bonds and other type of securities is deductible for income tax purposes. The SII has clarified that the interest is still deductible even if the security that has been acquired with the loan proceeds does not generate income that is subject to the first category tax.[869]

In spite of complying with the general tax rules on deductibility discussed in (1), above, interest, commissions or other amounts arising from financial transactions paid or accrued in excess of what would otherwise habitually be charged in a similar transaction may be denied as a tax deduction when the payment is made between the following parties:

(i) A Chilean branch of a nonresident bank and its head office or another branch thereof, as such a payment is regarded as a profit distribution;[870]

(ii) A Chilean branch and a financial institution whose share capital the branch's head office owns at least 10%;

(iii) A Chilean entity and a foreign entity that has, directly or indirectly, either the management, control or capital of the Chilean entity, or vice-versa; or

(iv) A Chilean entity and a foreign entity where the same persons participate, either directly or indirectly, in the management, control or capital of both entities.

With respect to (iii) and (iv), there is a presumption that there is participation in the management, control or capital if the payor and the payee enter into exclusivity agreements, joint ventures or agreements to grant preferential treatment, or where there is financial or economic dependency between them. The presumption also applies if the payee is incorporated in a country or territory listed as a tax haven by the OECD. For a list of countries considered tax havens or jurisdictions with preferential harmful tax regimes, see the Worksheets.

The taxpayer is required to maintain a registry listing the persons indicated above in (i) to (iv) to which it pays interest, commissions or other payments arising from financial transactions. This registry and the documentation relating to these transactions must be made available to the SII upon request.[871]

Interest payable during the construction period of assets can optionally be capitalized and deducted as of the date the assets commence to be used. Alternatively, it can be deducted during the construction period.

(3) Royalties

Royalties are deductible provided the use of the intangible property that gives rise to the royalties is necessary to produce income. In the case of royalties paid abroad for the use of trade names, patents, formulae, advisory services and similar intangibles, the annual deductible amount is limited to 4% of the taxpayer's gross revenues generated during the taxable year. However, this limitation does not apply in the following two scenarios:

(i) Royalties paid to parties that were and continue to unrelated during the taxable year. For this purpose, a licensor and the Chilean licensee are deemed to be related if, directly or indirectly, they have an equity interest in the other or one of them controls or manages the other. To be entitled to the exclusion from the limitation, within two months following the close of the taxable year, the taxpayer must issue a sworn statement to the SII indicating that it was not related to the licensor during the taxable year in question. The sworn statement must be kept by the taxpayer together with the copy of its annual corporate income tax return and be available for inspection at the request of the SII;[872] and

(ii) Royalties paid to a nonresident provided the country of residence of the nonresident are subjects those royalties to an income tax at a rate equal to or in excess of 30%, even if the royalties are paid to a related party.[873]

If in a taxable year a taxpayer has paid royalties that are subject to the 4% limitation as well as royalties that are not so subject, there is a presumption that the taxpayer is first paying those royalties that are not subject to the limitation.

In addition to the above requirements, a royalty paid to nonresident related parties, as defined for transfer pricing purposes, is only deductible in the taxable year in which both the royalty and the withholding tax thereon are paid.[874]

(4) Taxes

Except for income taxes governed by the ITL, Chilean taxes constitute a deductible expense provided they are related to the business activities of the taxpayer. Real estate taxes, however, are not deductible for income tax purposes if they are claimed as a credit against the first category tax liability (see V.B.10.c., below).[875] Although the mining activity tax is based on income, the ITL specifically considers it a deductible expense for corporate income tax purposes.

[868] ITL, Art. 31(1).

[869] SII Circular No. 62, dated Dec. 2, 2014.

[870] ITL, Art. 37. Chile does not have a set of thin capitalization rules where interest paid or accrued in excess of a certain debt-to-equity ratio is not deductible or recharacterized as a dividend for tax purposes. However, the ITL does contain rules that impose additional tax on interest paid or accrued to nonresident parties if the interest is paid or accrued on certain types of financing and the debtor's total debt exceeds its equity by a ratio of 3 to 1. For a discussion of these rules, see VI.B.3., below.

[871] ITL, Art. 38.

[872] ITL, Arts. 31(12). False sworn statements are subject to fines and, in certain circumstances, imprisonment. TC, Art. 97(4).

[873] ITL, Art. 31(12).

[874] ITL, Art. 31. This requirement is applicable as of January 1, 2015. For a discussion of the withholding tax rules on royalties paid to nonresidents, see VI.B.4., below.

[875] ITL, Art. 31(2).

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(5) Casualty Losses

Casualty losses, including thefts, suffered during the taxable year by the taxpayer with respect to assets used to derive taxable income are deductible for income tax purposes.[876]

(6) Damages

Damages paid or discounts granted by the taxpayer in compliance with a legal obligation to compensate its customers or users pursuant to an order issued by a competent authority are deductible, provided that the order does not consider the taxpayer to have been negligent; if it does, the damages or discounts are not tax deductible (but they will not be subject to the 40% penalty tax that is otherwise levied on nondeductible expenses). On the other hand, amounts received by the taxpayer resulting from claims filed against third parties to recover damages it has paid must be included in the taxpayer's net taxable income in the year when they are received. These third parties, however, are not allowed to deduct those amounts from their taxable income (although they are not subject to the 40% penalty tax). The same rules apply if, instead of paying damages, the taxpayer replaces or restores a product to its customer. In those cases, the taxpayer does not have to include the payment received from its customer as taxable income, but when it will have to make that inclusion in the taxable year it replaces or restores the product to the customer up to the product's replacement value.[877]

Payments made by the taxpayer to an unrelated party as a result of a court judgement or an out-of-court settlement are also tax deductible, even if the case is of a criminal nature.

(7) Bad Debts

As a general rule, bad debts may be deducted provided the loan concerned was granted in relation to the taxpayer's business, the bad debt has been written off for accounting purposes, and the company has exhausted all reasonable means in attempting to collect it.[878] In this regard, the ITL provides that a bad debt, unless it is with a related party, may be deducted for tax purposes if more than 365 days have elapsed since it became overdue. On the other hand, a general provision for bad debts is not allowable. Likewise, a cancellation of a debt does not constitute a deductible expense for the creditor because it is viewed as a voluntary or gratuitous act. If the debtor is a shareholder, the cancellation of a debt is treated as a deemed dividend to the extent of the creditor's earnings and profits.[879]

Banks and financial institutions (including credit card companies) are entitled to deduct as bad debts loans that are due, provided the requirements laid out by the Superintendence of Banks and Financial Institutions and the SII with respect to the writing off of such bad debts are complied with. The same rule applies with respect to the forgiveness of a risky loan. In any case, the conditions laid out by the Superintendence must at least require that the loan be classified for at least one year in the last two categories of risk that are established for purposes of classifying a loan portfolio. This limitation applies to loans granted to bank customers as well as to loans acquired between banks.

(8) Depreciation

(a) In General

Fixed tangible assets, except land, may be depreciated and that depreciation is deductible for tax purposes. An asset becomes depreciable when it is put into operation by the taxpayer. The depreciation base is the net book value of the asset plus the inflationary component. As a general rule, the depreciable amount must be determined using the straight-line method based on the asset's useful life. In this regard, the SII has published guidelines for purposes of determining the useful life of an asset (see b., below). Intangible assets may not be depreciated or amortized for income tax purposes.

Taxpayers may opt for an accelerated method of depreciation with respect to new fixed tangible assets acquired locally or imported, provided their regular useful life is three years or more. The accelerated method is established by assigning to the asset concerned a useful life equal to one-third of the asset's regular useful life, eliminating fractions of months. Taxpayers may discontinue the use of the accelerated method at any time, but may not later return to it.[880] If an asset has become of no use to a taxpayer and its useful life has not expired, the taxpayer will be entitled to double the depreciable amount. Fully depreciated assets must be booked by the taxpayer at P$1 and are not subject to inflation adjustments.

The accelerated depreciation method may only be chosen by the taxpayer for purposes of determining its first category tax liability, i.e., a depreciable amount in excess of what would have been deductible using the straight-line method is only deductible for purposes of determining the first category tax liability. Accordingly, the difference between the amount deducted using the accelerated depreciation method and the amount that would have been deducted using the straight-line method must be added back for purposes of determining the shareholders surtax or additional tax liabilities.

The taxpayer and the Foreign Investment Committee may petition the SII for a modification of the depreciation regime applicable to a specific set of facts.

Taxpayers who, during the three years preceding that in which the asset is placed into use, generate annual average revenues of 100,000 development units or less are entitled to depreciate the asset by considering its useful life to be one-tenth of its regular useful life, as long that is not less than one year. This benefit is available with respect to both new and used

[876] ITL, Art. 31(3).
[877] ITL, Art. 31(14).
[878] ITL, Art. 31(4).
[879] Tax Ruling No. 2,750, dated Sept. 3, 2009.

[880] ITL, Art. 31(5). A temporary accelerated depreciation regime applies with respect to investments in fixed assets made between June 1, 2019, and December 31, 2021, under which the taxpayer may deduct 50% of the cost within a two-year window. An immediate deduction of the full cost may be claimed if the investment is made in the Araucanía Region. Law No. 21,210, 22nd Transitory Provision, provides that as a result of the economic crisis caused by COVID-19, the full deduction of the acquisition cost is extended to all investments made in new fixed tangible assets anywhere in the country or imported from June 1, 2020, through December 31, 2022. The deduction may be claimed in the year the assets are acquired. The same regime applies with respect to the acquisition of intangible assets made during the same time frame, provided the intangible asset is used for the company's business development or maintenance and is legally protected, such as industrial property rights and copyrights. Law No. 21,256, Art 3(3).

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fixed assets. Once exercised, this option may not be reversed. If the taxpayer has been in existence for less than three years, the annual average must be calculated during those years in which the taxpayer has been in existence.[881]

(b) Useful Lives

The SII has issued general guidelines on the useful lives of fixed assets that depend on the business activity undertaken by the taxpayer. The following list provides the useful lives of assets used for manufacturing activities:[882]

Asset	Regular	Accelerated
Machinery, equipment in general	15	5
Heavy tools	8	2
Light tools	3	1
Trucks and jeeps	7	2
Cars, pick-up trucks	7	2
Buildings, depending on structure (6 different categories)	20–80	6–26
Office equipment	3	1
Furniture	7	2
Computers	6	2

The following list provides the useful lives of assets used for mining activities:

Asset	Regular	Accelerated
Heavy machinery	10	3
Heavy tools	10	3
Light tools	5	1
Trucks and jeeps	7	2
Installations	5	1
Permanent buildings	25	8
Provisional buildings	10	3

(9) Depletion

The acquisition cost of mines is deductible for income tax purposes. The acquisition cost must be added to the direct cost of the extracted mineral, as the mineral is extracted within total reserves under the unit of production method. On the other hand, the depletion of mining resources is not deductible for income tax purposes.[883]

(10) Salaries

Salaries, wages and other types of remuneration paid to employees are deductible for income tax purposes. Voluntary bonuses and reimbursements made to employees for expenses incurred on behalf of and while representing the company are also tax deductible, provided there is a direct relationship between the expense and the nature of the employee's activity in the company. Profit sharing and bonuses distributed to employees are deductible for tax purposes when they are paid and provided the employee pays tax thereon, either directly or through the withholding mechanism.[884] There is no limitation as to the deductibility of salaries paid to foreign personnel.

The SII is empowered to deny the deductibility of an expense (or a portion thereof) if it relates to remuneration paid to an employee who, due to either his or her personal circumstances or position in the company (for example, as an officer or a shareholder), may have had an influence in determining the amount of his or her remuneration. For the tax deduction to be denied, the SII must find that the remuneration is not reasonable, taking into account factors such as the importance of the company, its net taxable income, the services rendered by the individual in question and the profitability of the company. Whether the remuneration is reasonable is determined without regard to the taxes paid by the individual on that remuneration. Salaries paid to shareholders and sole proprietors are deductible for tax purposes provided they effectively are working for the entity, provided that the salary is proportionate to the services rendered. The same rule applies with respect to salaries paid to a shareholder's spouse and descendants. Remuneration paid for services rendered outside Chile is also deductible for Chilean income tax purposes provided the service is documented and is directly or indirectly linked with the company's business activities.

Indemnities paid to employees arising from corporate or functional reorganizations that involve the transfer of employees from one group company to another are deductible for tax purposes. If the new employer does not recognize a labor continuity, the indemnity that is ultimately paid to the employee when the employment relationship is terminated must be deducted by the various employers in proportion to the number of years the employee has worked for each employer.

A company may also deduct scholarships paid to children of employees, but only to the extent the company has established standard and uniform norms on how the scholarships are granted and are made available to all the employees. The annual deductible amount is limited to 1.5 annual tax units per child or 5.5 annual tax units per child if the scholarship is for higher education.[885]

(11) Service Fees

Service fees are deductible for tax purposes provided the service received is necessary to produce income. The service

[881] ITL, Art. 31(5 bis). This rule is applicable with respect to assets that are acquired or constructed by the taxpayer on or after October 1, 2014. Assets acquired or constructed prior to that date may continue to be depreciated under the accelerated depreciation rules. Law No. 20,780, Transitory Provisions, Art. 3(12). The calculation of a taxpayer's annual turnover must exclude extraordinary or sporadic revenues, such as proceeds from the sale of fixed assets. SII Circular No. 62, dated Dec. 2, 2014.

[882] SII Resolution No. 43, Nov. 23, 2002.

[883] ITL, Art. 31(5).

[884] ITL, Art. 31(6).

[885] ITL, Art. 31(6 *bis*).

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must also be duly supported by the appropriate documentation. This requirement also applies with respect to services rendered from abroad.[886]

(12) Foreign Currency Exchange Losses

Foreign currency exchange losses arising from loans are deductible provided the loan principal is used in a company's regular course of business. In this regard, loans used to acquire fixed assets and to make short-term investments are deemed to be used in a company's regular course of business.[887]

(13) Organizational and Pre-Operating Expenses

Organizational and pre-operating expenses may be amortized over a period ranging from one to six consecutive taxable years, at the taxpayer's option.[888] The period starts running when the expenses are incurred or when the taxpayer begins to derive income from its principal activity if that occurs after the expenses were incurred.

If the taxpayer's by-laws provide that the corporate purpose is to be undertaken for a period of less than six years without the possibility of renewing or extending it, then the organizational and pre-operating expenses must be amortized over the number of years the company is in existence.

(14) Contributions to Non-profit Organizations

(a) General

Contributions in cash or in-kind made to a non-profit organization are deductible for income tax purposes provided the organization is registered with the public registry of non-profit organizations (see, below). However, in-kind contributions may only be claimed as a deduction if the property contributed is subject to registration in a public registry.[889] All taxpayers may claim a tax deduction for contributions made to non-profit organizations, including legal entities and individuals, whether or not resident in Chile.

(b) Qualifying Criteria for the Recipient

To be deductible for tax purposes, the organization receiving the contribution must be engaged in at least one of the following activities and the contribution must be earmarked to finance those activities:[890]

(i) Social development, including activities that provide assistance to vulnerable persons due to age, illness, handicap, financial difficulties and similar circumstances.

(ii) Community and local development, as well as urban and housing development.

(iii) Health-related activities: the activities must consist of health promotion, research in the field of medicine, the prevention of illness, rehabilitation services, including activities involving making up and implementing programs to prevent and rehabilitate alcohol and drug addiction.

(iv) Educational activities: the activities must consist of actions intended to improve education throughout the country, as well as academic research.

(v) Scientific activities, including activities that promote knowledge, scientific research, innovation, and technology, provided the activity contributes to sustainable development and social welfare.

(vi) Cultural activities, including activities aimed at promoting and disseminating art at architectural, urban, plastic, language, scenic, audio visual and musical levels, as well as activities aimed at recovering, preserving, increasing, promoting and disseminating art.

(vii) Sporting activities. These activities must involve actions aimed at financing projects that meet the requirements of article 43 of Law No. 19,712 on Sports.

(viii) Environmental activities. These activities must involve the protection, preservation and restoration of the environment, including the fight against the adverse effects of climate change, pollution reduction, and the promotion of a circular economy.

(ix) Worship activities, including those undertaken by churches and religious institutions.

(x) Gender equality activities. These activities must involve plans and programs aimed at promoting the equality of rights and opportunities between men and women, the elimination of arbitrary discrimination based on gender, and the full participation of women in cultural, political, economic and social activities.

(xi) Promotion and protection of human rights.

(xii) Development and protection of children, families, indigenous population, immigrants, and diversity.

(xiii) Activities aimed at strengthening democracy, including the promotion of the rights and responsibilities of citizens, the promotion of democratic values, as well as the support, promotion and study of public policies.

(xiv) Assistance and cooperation in disasters of any nature.

(xv) Humanitarian aid in foreign countries, provided it is given directly by the charitable organization concerned.

(xvi) Activities aimed at the promotion of, education about and research into matters involving the defense of animals and their protection.

In addition to performing one of the above activities, the nonprofit organization must meet each of the following requirements:[891]

(i) It must register with the public registry of nonprofit organizations.

(ii) It must be governed by Title XXXIII Book I of the Civil Code, which governs legal nonprofit organizations, Law

[886] ITL, Art. 31(6).
[887] ITL, Art. 31(8).
[888] ITL, Art. 31(9).
[889] Decree Law No. 3,063, of 1979, as amended in a consolidated text under Decree No. 2,385, of 1996, as amended by Law No. 21,440, of April 1, 2022, published in the *Diario Oficial* on April 12, 2022, Art. 46-A.
[890] Decree No. 2,385, Art. 46-A(B).
[891] Decree No. 2,385, Art. 46-A(C).

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No. 20,564, which governs the fire department, or Law No. 19,638, which governs religious institutions.

(iii) Its principal activity, as reflected in its bylaws, must consist in promoting one of the activities listed above in (i) to (xvi).

(iv) Its activities must be for the public benefit, i.e., its services or activities must be offered to the public at large or to a group of persons with general and uniform features, provided that group is not created based on any form of arbitrary discrimination that is contrary to the principle of universality and common welfare.

Nonprofit organizations may not receive contributions from members of their boards of directors, or their spouses, antecedents or descendants. Furthermore, if the person making the contribution is a legal entity, the prohibition on making contributions applies to the entity's board members, its shareholders that own at least 10% of the share capital, or their spouses, antecedents or descendants. This restriction, however, does not apply to persons making contributions to an organization that has met the requirements for being a nonprofit organization for at least two years and is able to prove that its activities are not conditioned on, or aimed at, benefiting candidates in political elections.

As noted above, for a contribution to a nonprofit organization to be deductible, the organization must be registered with the public registry run by the Ministry of Finance's Technical Secretariat for Nonprofit Organizations. Registration must be made electronically at the Ministry of Finance's website (www.hacienda.cl).[892] In any event, neither political organizations nor entities making contributions to political organizations, nor organizations receiving contributions from entities on whose boards of directors there are members who are candidates in political elections may be registered as nonprofit organizations. Also, nonprofit organizations that are deregistered for not complying with the rules cannot ask to be registered again for a period of two years. Duly registered nonprofit organizations must remain registered while the contributions they receive are being used.

The Technical Secretariat runs a portal listing every registered nonprofit organization. In addition to an organization's name, the portal provides information on the organization's members, directors, bylaws, financial statements, and the annual reports filed with the Technical Secretariat, as well the amount of each contribution the organization has received and from whom.

The contributions received by a registered nonprofit organization may be used not only to finance projects that achieve the organization's nonprofitable purpose, but also to finance its operational costs as well as to maintain the premises in which the organization's nonprofitable activities are predominantly carried on and the equipment located on those premises. Property received by a nonprofit organization may be sold to meet such financial needs.[893] A nonprofit organization is also required to file, by March 31 each year, an annual report with the Technical Secretariat describing, among other things, its activities and projects, the contributions it has received and the use it has made of them, including to cover management and administrative expenses.[894]

A nonprofit organization may not give any consideration in return for a contribution to a donor in the form of special treatment. This prohibition is extended to the donor's employees, directors, spouses and other family members, as well as to related parties. The prohibition applies for the period from 12 months prior to the date of the contribution to 48 months after the contribution is made. Examples of consideration a nonprofit organization may not give include placing guaranties, granting loans or scholarships, providing training courses, transferring property or rendering services when these are financed by the contribution, allowing the donor to sell goods or services but only to the extent the donor's business activity includes providing such goods or services, or advertising the contribution, other than by way of mere recognition. Taxpayers who fail to comply with this prohibition must return the tax benefits they have claimed and pay a penalty ranging from 50% to 300% of the tax the tax due. A safe harbor applies when the consideration given by the nonprofit organization to the donor does not exceed the higher of 10% of the amount contributed by the donor or 50 monthly tax units.[895]

A qualifying contribution made to a non-profit organization under Decree Law No. 3,063 entitles the donor to a number of tax benefits, which are discussed below. These tax benefits are incompatible with other tax benefits provided under other legislation.[896]

On the one hand, such a contribution is not subject to either the estate and gift tax or VAT, as the transfer is not made for consideration.[897] The person making the contribution is not precluded from claiming a VAT credit for the VAT paid when the property and/or services contributed was or were purchased, even though its contribution to the nonprofit organization is VAT-exempt. If the contribution originates from abroad, it is only exempt from the estate and gift tax if it is made by a nonresident legal entity in favor of a duly registered Chilean nonprofit organization, the property contributed is located abroad and the contribution is not financed with Chilean-based resources.[898] No customs duties are levied if the property to be contributed to the nonprofit organization is imported into Chile.[899]

Furthermore, the transfer of property in favor of the nonprofit organization does not need to be made in a notarial deed, as otherwise required under the Civil Code (*Código Civil* or CC).[900]

(c) Qualifying Criteria for the Contributor

From an income tax perspective, the person making a contribution is entitled to the deduct the value of the property contributed, subject to the following limitations:[901]

[892] Decree No. 2,385, Art. 46-F.
[893] Decree No. 2,385, Art. 46-H(1).
[894] Decree No. 2,385, Art. 46-H(2).
[895] Decree No. 2,385, Art. 46-I.
[896] Decree No. 2,385, Art. 46-B(C)(6).
[897] Decree No. 2,385, Art. 46-C.
[898] Decree No. 2,385, Art. 46-B(C)(3).
[899] Decree No. 2,385, Art. 46-C.
[900] Decree No. 2,385, Art. 46-B(A) and (B).
[901] Decree No. 2,385, Art. 46-B(C)(1).

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(i) Resident corporate taxpayers may deduct the amount of their contributions on an annual basis against their taxable income, subject to a limit equal to the lesser of: the peso equivalent of 20,000 monthly tax units; or, at the taxpayer's option, either 5% of their net taxable income, 4.8 per thousand of their net equity, or 1.6 per thousand of the value of their tangible assets. These values must be taken at year-end and apply even where taxpayers have incurred NOLs.

(ii) Resident individuals may deduct their contributions against their taxable income, subject to a limit equal to the lesser of 10,000 monthly tax units or 5% of their net taxable income. In this regard, resident employees may either make contributions directly or ask their employers to deduct the amount from their payroll, in which case the employers must recalculate the amount to be withheld from the employees' payroll.

(iii) Nonresidents may deduct their contributions against their taxable income but, as in the case of resident individuals, the deduction is subject to a limit equal to the lesser of 10,000 monthly tax units or 5% of their net taxable income. Nonresidents can claim the tax deduction against the additional tax in their annual additional tax returns; nonresidents that are not required to file annual additional returns may still do so to enable them to claim the benefit of the tax deduction and claim tax refunds for the additional tax withheld in excess.[902]

Resident corporate taxpayers making contributions of property other than cash are required to value the property at its tax basis. Other taxpayers are required to value their property contribution pursuant to the valuation rules contained in the estate and gift tax law (see XI.D., below). If the property in question does not have a specific valuation rule, it must be valued at their fair market value. Property valuations in excess of PS$5 million must be certified must an independent appraiser, the cost of which may be treated as part of the contribution.

The deduction must be claimed in the taxable year in which the corresponding contribution is made. The amount of the deduction can be adjusted for inflation.[903] The portion of the contribution that exceeds the above limits may not be carried forward to subsequent taxable years.

A nonprofit institution must issue a certificate to the party making a contribution, giving a description of the property contributed and its amount or value. The certificate must be issued within 10 working days from the date on which the contribution was received and, to be entitled to claim the tax deduction, the person making the contribution must attach to its annual tax return a copy of the certificate and a receipt for the transfer of the property.[904]

A nonprofit organization is required to file a sworn statement with the SII if the foreign contributions it receives during the calendar year exceed the peso equivalent of US$10,000. The statement must list each donor and, if applicable, the donor's ultimate owner, the amount contributed, the origin of the funds, the financial institutions that have intervened in the money transfer as well as the bank accounts at origin and destination, and, if the contribution consists of property other than cash, information on its importation into Chile. The SII will notify the Financial Analysis Unit if the nonprofit organization does not provide this information.

A person making a contribution to a nonprofit organization may still claim the tax benefits even if the nonprofit organization is in breach of its legal obligations, provided the person has acted in good faith.[905]

(d) Expenses Qualifying for Relief

Expenses incurred by a taxpayer in favor of the community are deductible if the benefit conferred on the community is of a permanent nature. These expenses may relate to construction works to be used by the community, related equipment and improvements thereto. It can also include financing specific educational or cultural projects. The expenses must be evidenced in an agreement between the taxpayer and a State-owned organization. The disbursement, however, may not be paid, directly or indirectly, to a related party of the taxpayer that is seeking the deduction.

The deduction is limited to the highest of the following three amounts:

(i) 2% of the taxpayer's net taxable income;

(ii) 0.16% of the value of the taxpayer's tangible assets at the end of the taxable year; or

(iii) 5% of the amount invested for the community.[906]

For taxable years starting after 2023, taxpayers will also be allowed to deduct for tax purposes the cost of the following items contributed to non-profits:

(i) Food for humans or pets;

(ii) Personal hygiene products;

(iii) Cleaning products and books;

(iv) School supplies;

(v) Clothes;

(vi) Toys;

(vii) Construction supplies; and

(viii) Other products that the taxpayer donates to non-profit organizations that are registered with the SII so that these organizations may distribute them for free among the needy.

The products need not necessarily be fit for distribution to the general market (for instance, as a result of expiration dates, defects, or substantial changes in the taxpayer's marketing or distribution policies) but must be fit for use or consumption.

A tax deduction may also be claimed with respect to pharmaceutical products for human consumption donated to public or private healthcare centers, provided these centers dispense them to patients for no charge.

[902] For a discussion of a nonresident's annual filing obligations, see VI.C.
[903] Decree No. 2,385, Art. 46-B(C)(2).
[904] Decree No. 2,385, Art. 46-B(C)(4).
[905] Decree No. 2,385, Art. 46-E.
[906] ITL, Art. 31(13).

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Furthermore, the voluntary destruction of raw materials or semi-finished or finished products that qualify for the donation deduction not only does not give rise to a tax deduction, but results in the imposition on the taxpayer of a penalty tax of 40% over the cost of the materials or products.

Contributions made to the Ministry of the Environment that are earmarked for the Environment Protection Fund are deductible for income tax purposes as they are viewed as a necessary expense.[907] If the contribution is in-kind and the asset is imported from abroad, the import is not subject to either VAT or customs duties.

(15) Gifts of Real Property

The tax cost of real property transferred for no consideration under the Dwelling Emergency Program is deductible for income tax purposes, provided the property is used exclusively for dwelling programs.[908] The deduction is also available to resident individuals subject to the surtax. For the deduction to be available, the beneficiary of the transfer must be either the Dwelling and Urbanization Services (SERVIU) or the transferor's employees provided they are collectively organized in a trade or professional union. In the case of the latter, the building work must commence before December 31, 2025. The deductible amount is limited to the taxpayer's tax cost with respect to the real property concerned.

The following are the tax benefits of a transfer that meets the above requirements:

(i) The transfer is not subject to the IGT (see XI., below);

(ii) The transfer is not subject to VAT — the transfer is not treated as a taxable transaction as there is no consideration for it;

(iii) For income tax purposes, the transfer is treated as an expense necessary to generate income;

(iv) The transfer does not constitute an accession to income for the transferee; and

(v) The transfer is not subject to the 5% limitation discussed in V.B.6.a.(16), below.

(16) Limitation on Total Relief for Contributions and Gifts

Unless otherwise exempted from the limitation, the deduction or tax credit for all the contributions or gifts made by a taxpayer is limited to 5% of the taxpayer's net taxable income. If the taxpayer is in an NOL position, the limitation is set at 4.8 per thousand of its net equity or 1.6 per thousand of the value of its assets.[909]

In the case of a resident individual, the limitation is set at the lower of 20% of the individual's net taxable income or 320 monthly tax units.

(17) Promotional and Marketing Expenses

Expenses incurred by a taxpayer on sales promotions and marketing with respect to new products produced by the taxpayer may be amortized, at the taxpayer's option, over up to three consecutive taxable years as of the year in which the expenses are incurred.[910] In an effort to minimize tax challenges, the SII has established requirements for taxpayers documenting expenses incurred in relation to the organization of promotional and marketing events. In essence, the SII requires taxpayers to maintain a Registry of Business Guests (where certain specific information pertaining to business guests must be recorded), as well as a Business Guest Expense Form (where lodging, meal and transportation expenses incurred by the taxpayer for each business guest must be inserted and duly documented with the relevant receipts). Both the Registry and the Form must be completed within the 12 days following the date of the event, be signed by the taxpayer and be available for inspection by the SII. However, they do not need to be stamped by or submitted to the SII.[911]

Comment: Although the SII is not specific on the issue, it appears that these measures are optional and aimed to minimize a challenge upon a tax audit.

(18) Research and Development Expenses

Expenses incurred by a taxpayer in connection with scientific and technological research are deductible for income tax purposes provided the research is conducted for the benefit of the taxpayer, even if the expense is not deemed necessary to generate gross income in the taxable year in which it is deducted. At the taxpayer's option, research and development (R&D) expenses may be either fully deducted in the year in which they are accrued or paid, or amortized over up to six consecutive taxable years.[912]

(19) Rents

Rental payments are deductible for income tax purposes. Payments made under finance leases are regarded as rental payments for income tax purposes. The lessor of the leased property, as the recognized owner, is entitled to depreciate the property using either the straight-line method or the accelerated method.[913]

[907] Law No. 19,300, of March 1, 1994, published in the *Diario Oficial* on March 9, 1994, as amended, Art.

[908] The Dwelling Emergency Program is governed by Law No. 21,450, as amended by Law No. 21,558, published in the *Diario Oficial* on April 25, 2023.

[909] Law No. 19,885, Art. 10.

[910] ITL, Art. 31(10).

[911] SII Resolution No. 20, dated September 6, 2002.

[912] ITL, Art. 31(11).

[913] Law No. 21,420, which was published on February 4, 2022, partially amended the ITL and, among other measures, introduced Art. 37 *bis* into the ITL. This article modified the tax implications of rental agreements with an option to purchase by treating this type of agreement as a financial transaction. This treatment required the lessor to report as income the interest component of the rental payments, while the lessee was entitled to depreciate the asset and deduct the interest component of the rental payment, even before it exercised the option to purchase. This provision was scheduled to come into effect on January 1, 2024, However, Law No. 21,540, of February 1, 2023, published in the *Diario Oficial* on February 15, 2023, repealed Art. 37 *bis* with immediate effect. Accordingly, the lessor continues to have the obligation to report the rent received as taxable income and to depreciate the asset, while the lessee continues to be entitled to deduct the rental payments.

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(20) Insurance Premiums

Insurance and reinsurance premiums paid to either local or foreign insurers are deductible for income tax purposes provided insurance of the property concerned is proven necessary for the taxpayer to conduct its regular course of business.

(21) Intercompany Charges

Charges made to a Chilean entity by a foreign related party or head office are allowable as a deduction only if they are directly related to the Chilean entity's business. A pro rata allocation of the foreign entity's expenses is generally not acceptable as a deduction for income tax purposes. However, the SII has indicated that, in certain cases, expenses incurred abroad may be deductible provided they are viewed as necessary for the derivation of income by the Chilean entity and provided certain other requirements are met. If these requirements are not met, charging intercompany costs may prove costly to multinationals as a deduction may be denied and the payment subjected to withholding tax at a rate of 35%.

(22) Company Vehicle

The acquisition cost of or rental expense incurred on automobiles, station wagons and similar vehicles is not deductible if the taxpayer is not engaged in the business of renting vehicles. This rule also applies with respect to expenses incurred on gasoline, lubricants, repairs, insurance and, in general, all the expenses incurred in connection with the maintenance of automobiles. The taxpayer, however, may be allowed to deduct such expenses if the SII, in its own judgment, views them as necessary.[914]

(23) Deduction for Reinvestment of Profits

Entities that over the preceding three taxable years have had an annual average turnover of 100,000 development units or less (approximately US$3.4 million) may, on an annual basis, claim a tax deduction against their taxable income equal to 50% of their net taxable income generated from their ordinary course of business that remains invested in the entity, i.e., the entity's net taxable income minus distributions made to the shareholders during the year.[915] When calculating annual revenues, the taxpayer must exclude extraordinary or sporadic items of income, such as capital gains as well as VAT charged on the enterprise's sales as well as revenue generated by domestic related parties.

The annual tax deduction may not exceed 5,000 development units (approximately US$170,000). Furthermore, to claim the deduction, the income generated by the entity during the taxable year from investments in bonds, shares, investment or mutual funds, or silent partnerships, may not exceed 20% of its gross income in that year. Since the tax deduction is optional, taxpayers wishing to claim it must expressly so indicate in their annual income tax returns.[916]

Example:

Net taxable income	P$10,000
Dividend distributions	(P$4,000)
Net taxable income invested in entity	P$6,000
Investment deduction (50%)	P$3,000
Adjusted net taxable income	P$7,000

Since the amount reinvested in the company only constitutes a deduction for purposes of the first category tax, the amount deducted must be included in the RAI Registry given it will be subject to the surtax or the additional tax when it is eventually distributed to the shareholders.

(24) Environmental Expenses

Expenses incurred by the taxpayer to comply with environmental measures or conditions in connection with the execution of a project are deductible provided those measures or conditions are imposed by the competent authority that has approved the project.[917]

The taxpayer can also deduct for tax purposes expenses incurred in connection with environmental obligations that are included in an environmental impact study or declaration issued by a competent authority with respect to an activity conducted by the taxpayer. These expenses must be evidenced in an agreement between the taxpayer and a State-owned organization. The disbursement, however, may not be paid, directly or indirectly, to a related party of the taxpayer that is seeking the deduction. The deduction is limited to the higher of the following three amounts: (i) 2% of the taxpayer's net taxable income; (ii) 1.6 per thousand of its net tax equity at the end of the taxable year; or (iii) 5% of the amount invested for the community.

b. Nondeductible Expenses

As a general rule, expenses are not deductible for income tax purpose if they are not incurred to derive taxable income. In addition to the specific nondeductible expenses listed in a.(1), above, payments made for the purchase of fixed assets or, for permanent improvements thereto to the extent they increase the assets' value are not deductible for tax purposes.[918] Instead, these payments must be added to the taxpayer's tax basis in the asset.

Expenses that do not generate taxable income or generate income that results in exempt dividends at the shareholder level may only be deducted against the type of income they generate.[919] In cases where the taxpayer incurs an expense that produces both taxable income as well as income that is not subject to tax at either the taxpayer or the shareholder level, the taxpayer must apportion the expense between the two categories by means of opting between one of the following alternatives, which must be used for at least three consecutive taxable years:

[914] ITL, Art. 31.
[915] ITL, Art. 14(E).
[916] SII Resolution No. 172, dated Dec. 30, 2020.
[917] ITL, Art. 31(13).
[918] ITL, Art. 33(1)(d).
[919] ITL, Art. 33(1)(e).

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(i) It may divide the exempt income over its total income and apply the resulting percentage to the expenses incurred that have generated both categories of income;

(ii) It may apply to the expenses incurred that have generated both categories of income the factor that results from multiplying the result from the following two amounts;

(iii) The ratio between the value of the assets that generate exempt income either at the taxpayer level or at the shareholder level over the total value of the assets associated with this category of income at the end of the taxable year; or

(iv) The ratio between income that is exempt from tax at either the taxpayer or the shareholder level over its overall income at the end of the taxable year. The taxpayer must take into account the number of days these assets or income have been with the taxpayer during the taxable year;

(v) If none of the above two methodologies reflects the taxpayer's business model, the taxpayer may propose an alternative method to the SII. This method may take into account other proportionality factors based on the present value of future flows of property or functions.

Property transferred by a legal entity either for no consideration or for consideration less than its acquisition cost by a legal entity to:

(i) Individuals who, due to special circumstances or by reason of their position in the company, are able to influence the determination of their remuneration;

(ii) Shareholders in a closed SA;

(iii) Shareholders in an open SA owning 10% or more of the shares in the SA;

(iv) Individual entrepreneurs; or

(v) Shareholders or partners in other legal entities

is not deductible for the legal entity if the transfer of the property is not necessary for deriving income. This rule also applies if the company, with respect to those individuals and shareholders, fully or partially forgives debt, pays interest in excess of an arms' length rate, pays excess rent or makes share offerings at prices below market value.[920]

Also, costs incurred by a company in purchasing and maintaining an asset that is used or enjoyed by a shareholder and which gives rise to the 10% surcharge for that shareholder are not deductible by the company.[921]

c. Adjustments to Net Income

Once the deductions from gross income listed in a., above, have been taken into account, the resulting net taxable income of the taxpayer must be further adjusted. The adjustments to net income may either increase or decrease such income, as discussed below.

The following items must be deducted from net taxable income:[922]

(i) The inflation adjustment with respect to the shareholders' equity at the beginning of the taxable year and with respect to any increases in capital occurring during the taxable year (for a discussion of the rules on inflation adjustments, see 7., below);

(ii) The inflation adjustment with respect to the taxpayer's liabilities that are subject to such adjustment as well as those liabilities that are denominated in foreign currency, provided those liabilities are related to the taxpayer's regular course of business and have not already been deducted as a business expense;[923]

(iii) Dividends received or accrued from legal entities that are incorporated in Chile to the extent such dividends were included in the taxpayer's gross income.[924]

(iv) Income that is exempt from the first category tax under the ITL or pursuant to provisions contained in other laws;[925] and

(v) Amounts that have been subject to the sole tax at a rate of 40% at the taxpayer's level (see b., above).

The following items must be added to the taxpayer's net taxable income:[926]

(i) The inflation adjustment with respect to any reductions in the shareholders' equity at the beginning of the taxable year;

(ii) The inflation adjustment with respect to the taxpayer's assets;

(iii) Transfer pricing adjustments made by the taxpayer; and

(iv) Expenses incurred that are not deductible as per the rules described in b., above.

d. Presumed Net Taxable Income for Regular Taxpayers

If a company's accounting records do not adequately reflect its actual income and this is due to *force majeure*, the company has six months to redo its accounts and to file the relevant amended tax returns, if necessary. The company is required to inform the SII of such an event and the statute of limitations is extended by six months. However, if the company's net taxable income is within comparable margins when compared with other taxpayers engaged in similar businesses, the SII must understand that the company's accounting records are sufficiently accurate and reliable, although the company must still proceed to redo its accounts. Taxpayers that during the three years prior to the *force majeure* have committed tax fraud are not entitled to redo their accounts and file amended returns.

[920] ITL, Arts. 31(6) and 33(1)(f).

[921] ITL, Arts. 21 and 31. For a list of assets the use of which is treated as a deemed withdrawal that triggers the 10% surcharge for the shareholder, see IX.C.3.c.(1)(b), below.

[922] ITL, Art. 33(2)(c). For a description of the amounts that are subject to the sole tax, see V.B.9.b., below.

[923] ITL, Art. 32(1).

[924] ITL, Art. 33(2)(a). This adjustment to net taxable income allows the double taxation of domestic dividends to be avoided.

[925] ITL, Art. 33(2)(b).

[926] ITL, Art. 32(2).

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If a company's net taxable income cannot be clearly established because there are no clear records or other special circumstances apply and the company is at fault and this is reasonably demonstrated by the SII, the ITL presumes that its minimum net taxable income is equal to 10% of the value of the company's assets, except intangibles. Alternatively, the SII has the power to deem the company's minimum net taxable income to be equal to a percentage of its sales made during the taxable year. In determining the actual percentage, the SII will consider a variety of factors, such as the ratio of sales to net taxable income of other taxpayers engaged in the same line of business or operating in the same location.[927] If the taxpayer's net taxable income has been determined by the SII on a presumptive basis, it will be subject to a sole tax at a rate of 40%, not the first category tax.[928]

In the specific case of Chilean taxpayers engaged in import and/or export activities, the SII has the power to determine their actual taxable income. In this regard, the SII may challenge the pricing or values of imported and exported goods if it has reason to believe that such pricing or values differ from the pricing or values prevailing in the Chilean market or foreign markets. If the SII challenges the net taxable income of a taxpayer engaged in these activities because the taxpayer cannot sufficiently demonstrate the calculations used in determining its net taxable income, it is presumed that the taxpayer's minimum net taxable income is equal to 1% to 12% of the sales value of the goods that it imports and/or exports during the taxable year. The actual percentage is established by the SII on a case-by-case basis.[929] If the net taxable income of an import-export company is determined by the SII on a presumptive basis, then that income will not be subject to the first category tax; instead, the presumed net taxable income is subject to a sole tax at the rate of 40%.[930]

7. *Inflation Adjustments*

a. *In General*

The inflation adjustment rules contained in the ITL seek to resolve the distortion that otherwise would be created in the financial statements of Chilean entities as a result of inflation. An example of the rules discussed in b. to g., below, can be found in h., below. All taxpayers that are subject to the first category tax are required to adjust their net worth, assets and liabilities for inflation on an annual basis.[931]

b. *Impact on Shareholders' Equity*

The shareholders' tax equity at the beginning of the taxable year must be adjusted for inflation based on the variation in the CPI for the period running from the last day of the second month prior to the beginning of the taxable year through the last day of the month prior to the month in which the taxable year ends. For this purpose, shareholders' equity is defined as the difference between assets and liabilities of the taxpayer at the beginning of the taxable year, as determined pursuant to tax rules, minus intangibles and nominal values and other items that do not constitute actual investments. Increases and decreases in capital occurring during the taxable year must also be adjusted for inflation based on the variation in the CPI from the last day of the month prior to the increase or decrease through the last day of the month prior to the month in which the taxable year ends. Dividends (whether final or interim) distributed, withdrawals made by partners, and any amounts invested in property or rights that the law excludes from shareholders' equity during the taxable year are deemed to constitute decreases of capital for purposes of the annual inflation adjustment and must be adjusted accordingly.[932]

The inflation adjustment with respect to the shareholders' equity and capital increases must be reflected in a profit and loss account (known as "Monetary Correction") and must be booked as a liability in an account known as "Revaluation of Shareholders' Equity."[933] The inflation adjustment with respect to capital decreases must also be reflected in the Monetary Correction account but, in this case, it must be booked as a debit in the Revaluation of Shareholders' Equity account. The amount of the adjustment results in an addition to the taxpayer's taxable income.

For income tax purposes, any increase or decrease in the value of the shareholders' equity arising from the annual inflation adjustment does not constitute income or loss for the year; instead, it will constitute part of the entity's shareholders' equity for the next taxable year and, at the taxpayer's option, it may form part of either its capital or reserves.[934]

c. *Impact on Fixed Assets*

The net value of the taxpayer's tangible and intangible fixed assets at the close of the taxable year is adjusted for inflation based on the variation in the CPI for the period running from the last day of the second month prior to the beginning of the taxable year through the last day of the month prior to the month in which the taxable year ends. A tangible or intangible fixed asset that is acquired during the taxable year must be adjusted for inflation from the last day of the month prior to the acquisition through the last day of the month prior to the month in which the taxable year ends. If the fixed asset is acquired with a loan denominated in foreign currency or with a readjustable loan, it must also be adjusted for inflation but the foreign currency exchange differences or the amount of the loan readjustment are not to be treated as part of the acquisition cost of the asset; instead, these differences or amounts constitute income or a deductible expense.[935] The adjustment of the assets must be recorded in the Monetary Correction account and constitutes an increase in taxable income.

[927] ITL, Art. 35.
[928] ITL, Art. 21.
[929] ITL, Art. 36.
[930] ITL, Art. 21.
[931] ITL, Art. 41.
[932] ITL, Art. 41(1).
[933] ITL, Art. 41(12)(a).
[934] ITL, Art. 41(13).
[935] ITL, Arts. 31 and 41(2) and (6).

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d. Impact on Inventory

The rules discussed below deal with the replacement cost of certain types of inventory for purposes of adjusting it for inflation. However, the taxpayer is allowed to determine its own replacement cost, particularly if that cost is lower than what it would be if the rules below were applied.

The acquisition value or direct cost of the closing inventory must be adjusted by reference to its replacement cost at the close of the taxable year. In this regard, if there is an invoice during the second half of the taxable year for goods of the same type and quality, the replacement cost is the highest price appearing in any such invoice. If there are only invoices for the first half of the year, the replacement cost is the highest price appearing in any such invoices plus an adjustment for inflation for the variation in the CPI from the last day of the second month prior to the beginning of the second half of the taxable year to the last day of the month prior to the month in which the taxable year ends.

If the inventory already existed in the prior taxable year and there is no invoice for such inventory during the current taxable year, its replacement value is determined by adjusting its book value by the variation in the CPI from the last day of the second month prior to the beginning of the current taxable year through the last day of the month prior to the month in which the current taxable year ends. If the inventory is acquired outside Chile and goods of the same type and quality are imported in the second half of the taxable year, the replacement value is equal to the value appearing in the context of the last import. The import value is the cost, insurance and freight (CIF) value plus customs duties and customs charges.

If the last import is made during the first half of the year, its replacement value is the value appearing in the context of the last import readjusted by the exchange difference during the second half of the taxable year in the foreign currency used for the import. If no import is made during the taxable year, the replacement value will be the book value readjusted by the exchange difference during the full taxable year in the foreign currency used for the import.[936]

e. Impact on Finished Goods and Work-in-Process

Finished goods and work-in process must be adjusted by reference to their replacement value, which is equal to the value of the raw materials used plus the cost of labor based on the last month of production, excluding compensation paid that does not relate to that month.[937]

f. Impact on Foreign Currency Denominated Assets and Liabilities

The value of receivables and payables that are denominated in a foreign currency and that are held by the taxpayer at the end of the taxable year must be adjusted by taking into account the exchange rate of that currency versus the Chilean peso in effect at that point in time.[938] In this regard, investments made in shares of nonresident companies and foreign permanent establishments must be treated as foreign currency denominated assets.[939] The adjustment to the payables that are denominated in foreign currency must be booked in the "Monetary Correction" account as a debit and in the "Current Liabilities" account as a credit.

g. Impact on Shares

Shares in SAs and SRLs held by a taxpayer at the end of the taxable year must be adjusted for inflation in the same way as fixed assets (see c., above).[940] This adjustment will increase the taxpayer's tax basis in the shares for purposes of determining the future capital gain when the shares are sold. However, the inflation affecting the shares in the year of the sale as well as increases and decreases of capital made in that year in the entity being sold are not to be taken into account.

h. Example of Operation of Inflation Adjustment Rules

The inflation adjustment rules discussed in a. to g., above, may be illustrated by the following simplified example, which assumes:

(i) A variation in the CPI for the year December 1 to November 30 of 50%;

(ii) A variation in the CPI for the period September 30 to November 30 of 5%;

(iii) A devaluation of the peso for the year December 1 to November 30 of 30%;

(iv) A fiscal year-end of December 31; and

(v) An annual depreciation rate for fixed assets of 10% from the year following the year of acquisition.

[936] ITL, Art. 41(3).

[937] ITL, Art. 41(3)(e).
[938] ITL, Art. 41(4) and (10).
[939] ITL, Art. 41 B(3).
[940] ITL, Art. 41(8) and (9).

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Opening balance sheet as of January 1:

Assets	
Financial assets	1,000
Financial assets denominated in foreign currency	1,500
Inventory (100 units × unitary value of 20)	2,000
Fixed assets	*8,000**
Total assets	12,500
Liabilities	
Liabilities denominated in local currency	1,500
Liabilities denominated in foreign currency	*1,000*
Total liabilities	2,500
Net Worth	
Paid in capital	2,000
Retained earnings	*8,000*
Total net worth	10,000
Total liabilities and net worth	12,500
* Value at the beginning of the year net of accumulated depreciation of 2,000.	

Transactions during the fiscal year:

(i) Purchase of fixed assets in October for 1,000.

(ii) Purchase of inventory in September of 100 units with a unitary value of 25.

Adjustments:

To financial assets denominated in foreign currency:	
Financial assets denominated in foreign currency at the beginning of the year	1,500
Inflation adjustment (× 30%) (taxable income)	450
To inventory:	
Inventory at the beginning of the year	2,000
Inflation adjustment — *** Since the unitary value of the purchases of the second semester of the current year is 25, the replacement cost of the inventory existing at the beginning of the current year is also 25. Thus, the inflation adjustment is the difference between 25 and 20 (the unitary value of the inventory at the end of the prior year) times the 100 units of the initial inventory.	500
Inventory purchased during the second half of the year (25 × 100)	2,500
Inflation adjustment	0
To fixed assets:	
Fixed assets at the beginning of the year	10,000
Inflation adjustment (× 50%) (*taxable income*)	*5,000*
Adjusted value	15,000
Initial balance of accumulated depreciation (2 years at 10% per year)	(2,000)
Inflation adjustment of accumulated depreciation (3,000 − 2,000) (*tax deduction*)	(1,000)
Adjusted value	(3,000)
Fixed assets acquired during the year	1,000
Inflation adjustment (× 5%) (*taxable income*)	*50*
Adjusted value of fixed assets acquired during the year	1,050
Accumulated depreciation	0
To liabilities denominated in foreign currency	
Liabilities denominated in foreign currency at the beginning of the year	1,000
Inflation adjustment (30%) (*tax deduction*)	(300)
To net worth	
Net worth at the beginning of the year	10,000
Inflation adjustment (50%) (*tax deduction*)	(5,000)

Income Statement of the fiscal year January 1 to December 31:

Operating income	3,550
Net interest income	450
Depreciation	(1,500)
Net income	2,500
Net inflation adjustment	(300)
Pre-tax income	2,200

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Closing balance sheet as of December 31:

Assets	
Financial assets	1,000
Financial assets denominated in foreign currency	1,950
Inventory (100 units × unitary value of 20)	5,000
Fixed assets (16,050 − 4,500)	11,550
Total assets	19,500
Liabilities	
Liabilities denominated in local currency	1,000
Liabilities denominated in foreign currency	1,300
Total liabilities	2,300
Net Worth	
Paid in capital	3,000
Retained earnings	12,000
Pre-tax income for the year	2,200
Total net worth	17,200
Total liabilities and net worth	19,500

8. Net Operating Losses

NOLs incurred by a taxpayer in the taxable year may be carried forward indefinitely.[941] It is not possible to carry back NOLs. An NOL carried forward to offset taxable income of subsequent taxable years may be adjusted for inflation from the last day of the month prior to the close of the taxable year in which the NOL was incurred through the last day of the month prior to the end of the taxable year in which the NOL is utilized.

Even though the ITL does not allow companies to consolidate for tax purposes, until 2020 a company with NOLs that received a dividend from another Chilean entity was entitled to offset those dividends with its NOLs. The offset entitled the company to treat the first category tax paid by the distributing entity on the dividend as an advanced income tax payment. As such, the company was entitled to claim a tax refund for the first category tax paid by the distributing entity. Prior to the offset, the dividend had to be grossed up by the first category tax paid thereon by the distributing company.[942] Tax credits arising from first category tax liabilities that had been offset with foreign tax credits could not be treated as an advance corporate income tax payment.

For a discussion of the ordering rules applicable to the use of advance corporate income tax payments, including the possibility of seeking a tax refund, see V.B.11.b., below.

Even though the dividend may have been received from an entity that is subject to the partial integration system, the 65% tax credit limitation did not apply for purposes of determining the amount that could be used as an advance income tax payment when the dividend was offset with NOLs. The 2020 ITL reform, however, no longer allows dividends to be offset with a company's NOLs. Instead, the first category tax associated with a dividend must be booked in a company's SAC registry, so that it may still be utilized as a tax credit by the shareholder against his or her surtax or additional tax liability when the company distributes a dividend.[943]

The 2020 ITL reform provided a transitional rule for taxable years 2020 to 2023, which allowed NOLs to offset only up to:

(i) 90% of dividends received in 2020;

(ii) 80% of dividends received in 2021;

(iii) 70% of dividends received in 2022; and

(iv) 50% of dividends received in 2023.

This transitional rule allows taxpayers to still claim a tax refund from 2020 through 2023 for the first category tax carried in the dividend but only up to the percentage established for each of these four years.

Comment: Through 2019, it was common in Chile to have a two-tier corporate structure, with a holding company with debt and the operating affiliate generating profits. The NOL offset mechanism allowed the holding company to recover through a tax refund the first category tax paid by the affiliate. The limitation introduced for the recoverability of the first category tax will induce companies to revisit their Chilean corporate structure and financial arrangements.

The ITL contains a provision restricting the use of NOLs where companies with accumulated NOLs are sold. In this regard, if there is a change of ownership in the shares in a company with accumulated NOLs, that company is not entitled to offset the NOLs that were accumulated prior to the change in ownership against profits generated after the sale. A change of ownership is deemed to occur during the taxable year if the new shareholders acquire or end up acquiring, either directly or indirectly through related parties, at least 50% of the company's shares. On the other hand, a change of ownership is not deemed to occur for this purpose if the transfer of shares is made between related parties. This limitation on the use of NOLs only applies if the company with accumulated NOLs:

(i) During the 12 months prior to or after the sale or as a result of the sale, changes its business activity or broadens its original activity so as to encompass a new activity, unless the original activity remains its principal one;

(ii) At the time of the change of ownership does not have the assets that are necessary to allow it to undertake its business activities or the value of the assets does not correspond to the acquisition cost paid on the change of ownership; or

(iii) Obtains dividend income as a shareholder in other entities or as a result of a reinvestment of its earnings.

[941] ITL, Art. 31(3).

[942] ITL, Art. 31(3).

[943] ITL, Art. 31(3).

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9. Tax Rates and Calculation of the Tax Liability

a. General Tax Rate

The first category tax rate is 27%.[944] For SMEs under the Pro-Pyme regime the first category tax rate is set at 25% (for a discussion of the Pro-Pyme regime, see V.B.4.c.(1), above).

The first category tax generally constitutes a tax credit against the surtax and the additional tax.

b. Higher Tax Rate

A Chilean entity, including Chilean PEs of nonresidents and individual entrepreneurs, is required to pay a sole tax at a rate of 40% on amounts paid or deemed paid or property withdrawn or deemed withdrawn from it, irrespective of the entity's year-end results.[945] This tax is not treated as a first category tax, which has the effect that it may not be used as a credit by the shareholder against the shareholder's surtax or additional tax liability. The sole tax, which is also known as a penalty tax, is levied on the following amounts:

(i) Amounts which have been claimed as a deduction when determining a taxpayer's net taxable income and which, due to their nature, the ITL requires the taxpayer to add them back as nondeductible items. These items include the following:

- Amounts paid in cash or in-kind by the taxpayer that, directly or indirectly, benefit a related party of either the taxpayer itself or its shareholders, unless these amounts have been subject to the penalty tax at the shareholder level, as discussed below; or
- Disbursements which the taxpayer cannot justify.

(ii) Amounts which are related to valuations or attributions, including:

- Differences in value, as determined by the SII, when the taxpayer transfers property in excess of, or below, its fair market value;
- The amount that the SII determines to be the taxpayer's net taxable income when its books and records are not sufficiently clear to make that determination. In that regard, the SII may opt to presume that the taxpayer's net taxable income is either 10% of its capital or a percentage of its sales made during the taxable year based on an average percentage generated by third parties engaged in similar activities and serving similar markets;
- The net taxable income presumed by the SII of taxpayers engaged in import/export activities;[946]
- Transfer pricing adjustments made by the SII;[947]
- Assessments made by the SII on income that should be attributable to Chilean PEs; and
- Income or profits deemed generated by the taxpayer by the SII on the grounds that the taxpayer cannot prove the origin of funds used to make expenditures or investments.

However, not all the expenses that are not deductible for tax purposes trigger the 40% sole tax. For example, expenses paid in advance which become deductible in a subsequent taxable year, the first category tax, the real estate tax paid, late interest charges, and fines paid to the SII and to other Chilean public institutions, and nondeductible royalties and payments for mining concessions are not subject to the sole tax.

Certain other amounts are treated as withdrawals made by the shareholder from the entity that, rather than being subject to the 40% sole tax at the entity level, are subject to a surcharge of 10% on top of the surtax at the individual level if the shareholder is a resident individual. If the shareholder is a nonresident entity or individual, the withdrawal is subject to the additional tax, which is withheld by the entity at a rate of 45%.[948] If the expense or reimbursement benefits more than one shareholder, the amount of the benefit must be apportioned on the basis of the shareholder's percentage of capital in the entity. For a description of the amounts that are treated as withdrawals, see IX.C.3.c.(1)(b), below.

c. Capital Gains

(1) Shares

(a) In General

The tax rules on the sale of shares in Chilean entities were simplified as a result of the enactment of Laws Nos. 20,780, 20,899 and 21,120. This capital gains tax regime is applicable with respect to sales occurring on or after January 1, 2017.[949] Generally speaking, the current rules apply irrespective of whether the shares being sold are issued by an SA, an SRL

[944] ITL, Art. 20. The first category tax rate has increased over the years. Before 2011, the rate was set at 17%, while for years 2011 through 2013 the rate was set at 20%. It was increased to 21% for taxable year 2014, to 22.5% for taxable year 2015, and to 24% for taxable year 2016. With the 2017 ITL reform and the introduction of a dual system, the first category tax rate varied depending on whether the taxpayer had elected to be subject to either the profit attribution system or the partial integration system. For 2017, when the dual system of shareholder taxation came into effect, the rates were 25% for the profit attribution system and 25.5% for the partial integration system. The rates in 2018 and 2019 remained at 25% under the profit attribution system but increased to 27% under the partial integration system.

[945] ITL, Art. 21. Prior to January 1, 2017, the higher tax rate was set at 35% on amounts paid or withdrawn prior to that date.

[946] For a discussion of these rules, see B.6.d., above.

[947] For a discussion of the transfer pricing rules, see XIII., below.

[948] ITL, Art. 74(4). In addition, the nonresident is required to file an annual income tax return reporting these amounts.

[949] The taxation of capital gains realized on the sale of shares in Chilean companies prior to 2017 varied depending on whether: (i) the taxpayer had held the shares for at least one year; (ii) the taxpayer was engaged in selling shares on a habitual basis; and (iii) the shares were sold to a related party. Thus, if the taxpayer was deemed to sell shares on a habitual basis or the shares were sold to a related party then, in addition to the first category tax, the capital gain was subject to either the surtax or the additional tax, with a tax credit for the first category tax paid on the capital gain. If the taxpayer was not deemed to be engaged in selling shares on an habitual basis and the shares were held for at least one year, the capital gain was only subject to the first category tax, which was the sole tax levied on the gain. If, however, the taxpayer was not deemed to be engaged in selling shares on an habitual basis but the shares had been held for less than one year, then the capital gain was subject to the first category tax as well as to either the surtax or the additional tax, with a tax credit for the first category tax paid on the capital gain.

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or an SpA.[950] These rules are also applicable to the sale of shares in Chilean companies by resident and nonresident individuals, although there are certain differences in treatment when compared to the treatment of sales made by legal entities, which are discussed in IX.C.3.c.(2), below.

As a general rule, the seller, whether a resident or a nonresident, is subject to tax on the capital gain, i.e., the difference between the amount realized on the sale and his, her or its adjusted tax basis in the shares. In this regard, the seller is entitled to adjust for inflation his, her or its adjusted tax basis in the shares.[951] Specifically, the acquisition cost of the shares, plus or minus increases or reductions in the capital, must be adjusted for inflation from the month prior to that in which the contribution to the entity's capital was made, the shares were acquired, or the increase or reduction in capital was made through the month prior to that in which the shares are sold. If the shares in an SA that are being sold were acquired by the seller at different times, the seller is entitled to determine their tax basis by either deciding which shares are being sold or, if that is not possible, choosing the LIFO or FIFO method.[952]

All sellers of Chilean shares, whether resident or nonresident, are entitled to set off capital losses incurred on the sale of shares against capital gains generated from the sale of shares, provided the gains and the losses are generated and reported in the same taxable year. In this regard, capital losses may be adjusted for inflation.[953]

Capital gains realized, as computed in accordance with the above rules, on the sale of Chilean shares by taxpayers that are subject to the first category tax are subject to that tax.[954] The sale of treasury stock by Chilean entities is subject to the same capital gains tax rules as set out above.

A repurchase agreement with respect to a financial instrument entered into by the taxpayer with a bank or a stockbroker does not constitute a sale for tax purposes.[955] Therefore, capital gains realized from such an agreement, whether it involves shares or other financial instruments, are not subject to tax. Instead, the transaction is recharacterized as giving rise to interest expense for the seller and interest income for the purchaser. Likewise, a stock lending transaction is also not treated as a sale of shares, provided the shares are issued by an open SA and originally acquired on a stock exchange and the transaction is executed as a short sale on a stock exchange. This tax treatment also applies to lending transactions involving bonds. These tax exemptions apply irrespective of whether the seller is a legal entity or an individual.

(b) Increases and Reductions of Capital

Increases of capital in a Chilean entity may only be made by means of the issuance of shares for consideration or the capitalization of retained earnings. In the latter case, the Chilean entity can either issue new shares (bonus stock) or increase the nominal value of the shares already issued; since the shareholder has not paid for them, this type of capitalization does not increase the shareholder's basis in the shares.

Accordingly, a shareholder who owns both shares for which he or she has paid and bonus stock or stock with a higher nominal value as a result of a capitalization of earnings must determine his or her tax basis in each share by dividing the acquisition cost of the shares for which he or she paid consideration over the total number of shares owned by him or her at the time of the sale[956]

Reductions of capital only reduce a shareholder's tax basis in the shares to the extent there has been an actual return of capital to the shareholder concerned. Consequently, reductions of capital made to cover net operating losses or to acquire treasury stock do not reduce the shareholder's basis in the shares he or she owns.

(c) Publicly Traded Shares

Capital gains realized on the sale of shares in open stock corporations (SAs) on or after September 1, 2022 are subject to tax at a reduced rate of 10%. Prior to that date, capital gains on publicly traded shares meeting the requirements were tax-exempt. The requirements are as follows:[957]

(i) The shares are publicly traded;

(ii) The sale takes place either on a Chilean stock exchange, in the context of a public offering made under Title XXV of Law No. 18,045 or in a transaction in which the taxpayer exchanges publicly-traded shares for quotas in a mutual fund; and

(iii) The shares that are the subject of the sale were originally purchased by the taxpayer: on a Chilean stock exchange; in the context of a public offering made under Title XXV of Law No. 18,045;[958] through a stock placement of first issuance on the incorporation of a company or on a subsequent increase of capital; on a public offering involving the conversion of publicly traded convertible bonds into shares; or in a transaction in which the taxpayer exchanged quotas held in a mutual fund for publicly-traded shares.

If the taxpayer acquired the shares that are the subject of the sale before their placement on the stock exchange, the gain that is subject to the reduced 10% rate is the difference between the value the shares had on placement on the stock exchange and their sale value. Thus, the difference in value between the acquisition cost, as adjusted under the above rules, and the value of the shares on the date they were placed on the stock exchange is treated as ordinary income and is thus subject to tax at the general rates.[959]

The reduced 10% capital gains tax in any of the above scenarios only applies to the extent the shares being sold are

[950] These capital gains tax rules are also applicable to the sale of shares in Chilean legal and contractual mining companies.

[951] ITL, Art. 17(8)(a)(i). However, the adjustment to the tax basis for inflation relating to shares in nonresident companies is not allowed. ITL, Art. 41-B.

[952] SII Circular No. 39, of August 31, 2022.

[953] ITL, Art. 17(8)(a)(iii).

[954] ITL, Art. 17(8).

[955] ITL, Art. 17(8)(j).

[956] ITL, Art. 17(8).

[957] ITL, Art. 107(1)(a) and (b). The 10% tax was introduced by Law No. 21,420, dated January 27, 2022, and entered into effect with respect to sales made on or after September 1, 2022.

[958] Under Law No. 18,045, a public offer of shares may only take place if sufficient shares are offered to allow the purchaser to take a controlling interest in the open SA.

[959] ITL, Art. 107(1)(c).

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actively traded on a Chilean stock exchange. In this regard, shares are deemed to be actively traded on a stock exchange if they meet the requirements established by the Financial Markets Commission (CMF) that are indicative of the liquidity of the shares and of the activity on the stock exchange on which those shares are traded so that the price of the shares is set appropriately.[960] To that end, the CMF has issued a specific rule providing that shares are deemed to be actively traded if they are registered with a Chilean stock exchange and either at least 25% of the shares are traded or the issuer of the shares has contracted a broker to act as a market maker.[961] In any case, if the shares are actively traded only by virtue of an agreement that ensures the existence of daily offers to buy and sell shares in order to comply with Article. 4 bis of Law No. 18,045, the reduced 10% rate only applies for a period of one year from the date of the first public offering and once the issuer is registered with the CMF.[962] If the shares are not deemed to be actively traded, the reduced 10% rate may nevertheless still be available if the sale takes place within 90 days following the date on which the shares ceased to be actively traded. However, the reduced rate is limited to the average price of the shares during the last 90 days on which they were deemed to be actively traded.[963]

Resident companies and individuals are entitled to choose either of the following two methods for purposes of computing their tax basis when selling actively-traded shares in open SAs:

(i) The official closing price of the shares on December 31 of the year in which the shares were purchased, on a FIFO basis;[964] or

(ii) The actual acquisition value under the general rules discussed in (a), above.

Nonresidents, however, whether companies or individuals, can only compute their capital gains based on the actual value of the shares at the time they were purchased and adjust them for inflation.[965]

A capital loss incurred on the sale of shares in an open SA, either on or outside a stock exchange, may only be used to offset capital gains subject to tax at the reduced 10% rate.[966] The capital loss must be incurred in the same taxable year as the capital gains. However, a capital loss may also be carried forward indefinitely, if the capital gains realized in the taxable year are insufficient to absorb it. To this end, a capital loss can be adjusted for inflation for the period comprising the month prior to that in which the capital loss was incurred until the end of the taxable year.

If the seller of actively traded shares in an open SA is a nonresident, the buyer or the stockbroker acting on behalf of the nonresident seller must withhold the 10% tax at the time the sales proceeds are paid. The tax must be withheld based on the capital gains, unless the buyer or stockbroker does not have sufficient information for purposes of determining the amount of the capital gains; in these circumstances, withholding tax must be levied on the sales proceeds on a provisional basis at a rate of 1%. The withholding tax agent must remit the tax to the Chilean Treasury by the 12th day of the month following that in which the sales proceeds were paid. The tax withheld constitutes a tax credit against the 10% tax liability. The withholding tax agent cannot set off capital losses against capital gains when determining the amount to be withheld. Such a set off must be made by the nonresident taxpayer via the filing of a tax return (see below).

A resident seller must report sales of shares on its annual income tax return. A nonresident seller may also file an annual return if the tax withheld exceeds its capital gains tax liability. Taxes withheld in excess of the final tax liability can be claimed as a refund. On the other hand, a nonresident has no obligation to file a tax return if the tax withheld fully discharges its tax liability.[967]

On filing a tax return and paying the tax due, a resident company may treat the 10% tax as the final tax liability. Consequently, the sale proceeds, net of associated costs, can be booked in the REX registry and distributed free of withholding tax in accordance with the ordering rules.[968]

The SII has made it clear that neither sellers of publicly traded shares in open Sas nor sellers of quotas in investment and mutual funds are required to include the sale proceeds when determining their advance monthly income tax payments.[969]

By way of exception to the above, capital gains realized by institutional investors, whether resident or nonresident, on the sale of actively-traded shares in open SAs are exempt from Chilean tax, including the reduced 10% tax, provided the requirements laid out above are met.[970]

(d) Stock Lending Transactions

Stock lending transactions are not subject to the capital gains tax rules because they are not regarded as sales. (The con-

[960] Law No. 18,045, Art. 4 *bis (g)*.; ITL, Art. 110.

[961] SVS, Rule of a General Nature No. 327, dated Jan. 17, 2012. In any case, the website of the stock exchange lists those shares that are deemed to be actively traded.

[962] ITL, Art. 110.

[963] ITL, Art. 107(4). Circular No. 7, dated Jan. 15, 2002. The SII may request the taxpayer to provide a certificate issued by the stock exchange indicating the date on which the shares ceased to be actively traded as well as the average price during those 90 days.

[964] Alternatively, if the shares were acquired before September 2, 2022, the taxpayer has the option of using the official closing price on December 31, 2021. If the taxpayer chooses the year-end official value as its tax basis in the shares, for purposes of adjusting its tax basis in the shares for inflation that year-end date will be deemed to be the date of acquisition. SII Circular No. 39, of August 31, 2022.

[965] ITL, Art. 107(7).

[966] ITL, Art. 107(5).

[967] ITL, Art. 107(6). For a discussion of the mechanism for the filing of tax returns by nonresidents, see VI.B.5.a.(1)(a).

[968] ITL, Art. 107(8). If the taxpayer has decided to use the official year-end closing price as its tax basis, the difference between that price and the actual tax basis computed under the general rules must also be booked in the REX registry.

[969] SII Circular No. 31, of July 20, 2023.

[970] ITL, Art. 107(9). In this regard, institutional investors consist of banks, financial companies, insurance companies, Chilean reinsurance companies and fund managers that are duly authorized by law. An institutional investor also includes an entity that meets the requirements laid out in general guidelines issued by the CMF, provided:

(i) the entity's principal activity is to make investments of a financial nature with funds from third parties; and

(ii) the number of transactions entered into by, and the nature of the assets of, the entity, qualify the entity as a relevant market player. Law No. 18,045, Art. 4 *bis* (e).

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ditions that must be fulfilled for these transactions not to be treated as sales are the same as those that apply in the case of sales of shares in open SAs, including that the lending of shares in a short sale must be undertaken through a stock exchange.) Thus, the consideration received by the stock lender is treated as ordinary income and is subject to the first category tax.

For tax purposes, dividends and other revenues received while the shares are held by the stock borrower are deemed to be received by the stock lender and taxed accordingly. On the other hand, since the conditions for stock borrowing are the same as those that apply to the sale of shares in open SAs, capital gains realized on the subsequent sale of the shares by the stock borrower to a third party are subject to the reduced 10% rate if the conditions for sale set out in Article 107 of the ITL are also fulfilled.

Irrespective of whether the subsequent sale is taxed at regular rates or at the reduced 10% rate, the stock borrower's tax basis in the shares is the consideration it paid to the stock lender as well as the cost it pays on their replacement (Article 30 of the ITL). The same treatment applies to short sales of publicly traded bonds, provided that, at the time of restitution, the bonds are acquired on one of the formal bond markets.[971]

(2) Quotas in Investment and Mutual Funds

Capital gains realized on the sale of publicly traded quotas in investment funds are also subject to the 10% tax, provided:

(i) The sale is made through a Chilean stock exchange;

(ii) The investment fund is governed by Law No. 20,712; and

(iii) The quotas are actively traded.

The reduced 10% capital gains tax is available even where the quotas are sold through the stock exchange but either the quotas are not actively traded or the gain arises out of a redemption of quotas when the fund is either liquidated or its participants agree to a voluntary reduction of capital, provided the investment policy contained in the internal regulations of the investment fund provides that at least 90% of the asset portfolio is to be invested in actively traded shares. Furthermore, in both cases, the internal regulations of the investment fund must require the fund manager to distribute among the participants all the net income that it has received from the companies in which the investment fund has invested less the amortization of financial liabilities pertaining to that taxable year, provided those liabilities were contracted within at least six months prior to the date that the amortizations were paid. The distribution must be made either in the same taxable year as that in which the dividends were received by the investment fund or within 180 days following the close of the taxable year. However, even if the internal regulations of the investment fund contemplate those investment and distribution policies, the capital gains tax exemption is not available if either the 90% asset portfolio test or the net profit distribution requirement is not met by the fund and either the failure to meet that test or requirement is attributable to the fund manager or, if it is not so attributable, it nonetheless fails to regularize the situation within three months from the date on which the failure occurs.[972] In this regard, the 90% asset portfolio test is deemed to have been failed if the investments made by the investment fund in actively traded shares were to amount to less than 90% of the fund's overall investments for a period of at least 30 days during a calendar year, whether continuously or not.

Capital gains realized on the sale of quotas in mutual funds that invest in actively traded shares are also subject to the reduced 10% tax, provided each of the following requirements is met:

(i) The mutual fund is governed by Law No. 20,712;

(ii) The quotas are sold: on a Chilean stock exchange; as a result of the conversion of quotas into shares or quotas in other mutual funds; or as a result of the redemption of the quotas in the mutual fund; and

(iii) The quotas were originally acquired: on an issuance by the mutual fund; on a Chilean stock exchange; or on a conversion of shares into mutual fund quotas.[973]

For the reduced tax rate to apply, the internal regulations of the mutual fund must provide that at least 90% of the mutual fund's asset portfolio consists of actively traded shares and debt instruments that are publicly traded on a Chilean stock exchange and the sale of which is exempt from Chilean tax.[974] As in the case of investment funds, the capital gains tax exemption does not apply if the failure to comply with the 90% asset portfolio test is attributable to the fund manager or, if it is not so attributable, the fund manager nonetheless fails to regularize the situation within six months from the date on which the failure occurs.[975]

Furthermore, the internal regulations of the mutual fund must also provide that the fund manager is to distribute among the participants all the dividends received from the date the quotas are acquired through the date of their sale or redemption, as well as all the interest accrued on the debt instruments held by the fund. The redistribution of the interest must be made during the taxable year following that in which the interest accrued, regardless of the year in which the interest is actually paid or the date on which the debt instruments are sold by the mutual fund.[976]

If any of the above requirements is not met, the reduced 10% tax rate may still be available if the investment policy contained in the internal regulations of the mutual fund provides that at least 90% of the asset portfolio must consist of the following instruments:[977]

(i) Securities issued in Chile and sold in a public offering. These securities may consist of: (a) shares in open SAs incorporated in Chile that are publicly traded on a Chilean stock exchange; (b) debt instruments that are publicly traded on a Chilean stock exchange and the sale of which is

[971] ITL, Art. 17(8).

[972] ITL, Art. 107(2).

[973] ITL, Art. 107(3.1)(a) and (b).

[974] For a detailed discussion of these debt instruments, see V.B.9.c.(3), below. In this regard, the internal regulations must also expressly provide a prohibition to invest in securities that, by virtue of an agreement or any other act, prevent the fund from receiving the dividends or interest that the issuing company has agreed to distribute or pay. ITL, Art. 107(3.1)(e).

[975] ITL, Art. 107(3.1)(c).

[976] ITL, Art. 107(3.1)(d).

[977] ITL, Art. 107(3.2)(a) and (b).

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exempt from Chilean capital gains tax (see (3), below); (c) other debt instruments that are publicly traded on a Chilean stock exchange with a term of at least three years, that pay interest with a periodicity of no more than once a year; and (d) other securities sold in a public offering that generate periodic payments, if they are listed in a regulation to be issued by the Ministry of Finance.[978]

(ii) Securities issued abroad and sold in a public offering. These securities must consist of instruments that generate payments to their holders, such as interest and dividends, with a periodicity of one year or less. The securities must be publicly traded on securities exchanges with information, transparency, regulatory, supervision and penalty standards that are similar to the Chilean standards.[979]

The 90% asset test requirement is not deemed to have been met if the investments made by the Chilean mutual fund in these types of instruments do not meet the 90% threshold over a period of 30 days, whether continuous or discontinuous, during a calendar year. In any event, the internal regulations of the mutual fund must include an obligation for the fund administrator to distribute among the fund's quota-holders all the dividends or interest received from the date the quotas are acquired through the date on which they are either sold or redeemed. This requirement is not applicable to interest accrued by the mutual funds from debt instruments the sale of which is exempt from capital gains tax; in that particular case, the internal regulations must provide that all the interest accrued on those instruments must be distributed among the quota-holders during the taxable year following that in which the interest is accrued by the mutual fund, irrespective of whether the interest is actually paid and the date on which such instruments are sold by the mutual fund.[980] Furthermore, if the mutual fund sells shares or debt instruments that carry a right to dividends or interest within five days from the date on which the beneficiaries of those dividends or interest are determined by the paying company, the fund administrator is required to distribute the dividends and/or interest among the fund's quota-holders as the fund is deemed to have received that income.[981] Failure by the mutual fund to comply with these distribution rules results in the income being subject to tax at a rate of 35% at the fund administrator level, plus penalties equal to the amount that should have been distributed. The tax must be reported and paid by the fund's administrator during the month of April of the taxable year following that in which the distribution should have been made to the quota-holders.

If the above requirements for the application of the reduced 10% capital gains tax rate on the sale or redemption of quotas in mutual funds are not met, the gain realized by the taxpayer is subject to the first category tax. If the sale or redemption of quotas in the mutual fund is made by a resident individual or a nonresident, then the gain is subject to the surtax or the additional tax. In this regard, the gain is the difference between the acquisition value of a quota and its sale or redemption price. The gain must be determined in development units.

The tax on capital gains realized on redemptions of quotas in mutual funds that do not qualify for the reduced 10% capital gains rate may nevertheless be deferred with respect to the redemption proceeds that the taxpayer reinvests in another mutual fund. If the reinvestment is partial, the investor is subject to capital gains tax only in proportion to the proceeds that are not reinvested.[982]

The exchange of publicly-traded shares for quotas in mutual funds is not a taxable event. In this regard, the taxpayer's basis in the quotas is the same as the tax basis the taxpayer had in the shares. This rule also applies to the redemption of quotas in mutual funds in exchange for publicly-traded shares.[983]

Institutional investors are not subject to the 10% tax on gains realized on the sale of quotas in investment and mutual funds. Instead, such gains are exempt from Chilean tax.[984]

Capital gains realized from the sale of shares or quotas in entities other than SAs and SPAs are subject to Chilean taxation: the capital gain is subject to the first category tax and to the surtax or additional tax (depending on the residence of the seller), who is entitled to claim a tax credit for the first category tax paid on the capital gain.[985]

(3) Sale of Publicly Traded Debt Instruments

Capital gains realized on the sale of publicly traded debt instruments are not subject to Chilean taxation, provided the following requirements are met:[986]

(i) The public offering of the debt instruments must be issued in Chile;[987]

(ii) The public offering of the debt issuance must have been registered with the Securities Registry under Law No. 18,045;

(iii) The prospectus must expressly indicate that the debt instrument will be subject to Article 104 of the ITL and the issuance must be reported to the SII;

(iv) To determine the interest income that accrues during the period of ownership, which is taxable for the holder of the instrument, the prospectus must establish a fiscal interest rate. In this regard, the fiscal interest rate is the annual interest rate at the time of the placement, which must be expressed in percentage terms, as per the following formula that is to reflect that the value of the instrument is equal to the sum of the present value of each cash flow ("CF") that the bond issuer undertakes to pay on each date ("d") until the maturity of the instrument ("M"):

$$\text{Transaction value} = \sum_{d=pd}^{M} CF_d * \frac{1}{(1+FR)^{\frac{d-pd}{365}}}$$

where:

[978] ITL, Art. 107(3.2)(c.1).
[979] ITL, Art. 107(3.2)(c.2).
[980] ITL, Art. 107(3.2)(d).
[981] ITL, Art. 107(3.3)(e).
[982] ITL, Art. 108.
[983] ITL, Art. 109.
[984] ITL, Art. 107(9).
[985] ITL, Art. 20(5).
[986] ITL, Art. 104.
[987] Debt instruments issued by the Chilean Central Bank or by the Chilean State are subject to the same treatment as those discussed in this section, even if they do not comply with all of these requirements. ITL, Art. 104(4).

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(1) The present value of each cash flow that the instrument yields on each date is equal to the cash flow multiplied by a discount factor equal to the reverse of the sum of 1 plus the instrument's annual fiscal interest rate ("FR") raised to the number that results from dividing the days that have elapsed between the date of the payment in question ("d") and the placement date ("pd") by 365.

(2) "TV" is the transaction value, expressed in percentage terms, and seeks to measure the difference between the sum of money disbursed by the investor to acquire the bond and its nominal value.

Subsequent placements of the same issuance must have the same fiscal interest rate if the interest rate in its placement is lower or equal to the fiscal interest rate of the first placement;

(v) The instrument must contemplate at least one interest or coupon payment per year and its percentage value cannot be lower than 1/25 times the value of the fiscal interest rate; and

(vi) The taxpayer has either (I) held the debt instrument for at least one year, or (II) purchased and sold the debt instruments on a Chilean stock exchange in the open market through a stockbroker duly registered with the Financial Markets Commission, unless the purchases and sales are performed by a bank.[988]

Capital losses incurred on the sale of the above debt instruments may only offset other exempt income of the taxpayer.[989]

(4) Sale of Cryptocurrency

The Chilean tax regime does not contain specific rules dealing with the taxation of capital gains on the sale of cryptocurrency. However, the tax authorities have issued a tax ruling that provides certain guidance on the capital gain and VAT tax treatment on those transactions.[990] In that tax ruling, the tax authorities treat cryptocurrencies as unregulated digital or virtual assets, not as foreign currency. As such, the tax authorities have ruled that capital gains realized on the sale of cryptocurrencies are subject to the first category tax under the general rules. As such, the acquisition cost of a cryptocurrency must be considered when determining the taxpayer's capital gain. That acquisition cost must be evidenced with the receipt received from the electronic transfer made when the cryptocurrency was purchased.

(5) Sale of Other Property

Capital gains realized on the sale of other property are subject to the first category tax. In those cases, the taxpayer's tax base in the asset is the acquisition cost, as adjusted for inflation.[991] However, as an exception to that rule, gains on the sale of intellectual or industrial property are exempt from tax if the taxpayer is the inventor or author of the property being sold.[992]

Gains realized on the sale of bonds and debentures are subject to the same rules as the sale of Chilean shares. However, the taxpayer's basis in the bonds and debentures must be reduced by any repayments of principal received by the taxpayer.[993]

d. Lottery Prizes

Lottery prizes won by Chilean entities are subject to the first category tax at a rate of 15%. However, this tax is viewed as final, in the sense that its subsequent distribution is not subject to the additional tax or the surtax.[994]

10. Tax Credits

a. Foreign Tax Credit

(1) In General

Prior to the 2020 ITL reform, foreign income taxes paid on income received from tax treaty jurisdictions could be used to credit the first category tax and, in certain cases, the surtax and the additional tax liabilities, while foreign taxes paid on income received from non-treaty countries could only be used to credit the first category tax, except for foreign taxes paid on dividends, which may also be used to offset the above three taxes. After the 2020 ITL reform, foreign taxes may be used to credit the three Chilean taxes on income, irrespective of whether they are paid in a tax treaty jurisdiction.

Furthermore, prior to the 2020 ITL reform, Chilean taxpayers receiving or accruing foreign source income were entitled to claim a foreign tax credit for foreign taxes paid, but that credit could not exceed 32% of the taxpayer's net income from foreign sources when the income was received from non-tax treaty countries. If, however, the foreign income originated from tax treaty countries, then the foreign tax credit limitation was increased to 35% of the taxpayer's net income from sources arising from those countries. After the 2020 ITL reform, the foreign tax credit limitation is set at 35% of the taxpayer's net foreign source taxable income, whether or not that income is generated from a tax treaty country.

(2) Creditable Taxes

Only foreign taxes on the following foreign source income may give rise to a foreign tax credit in Chile:[995]

(i) Dividends;

(ii) Royalties from the use of intangibles;

(iii) Fees for the provision of professional or technical services or for services that qualify as an export;

(iv) Salaries, bonuses and fees received by resident individuals;

(v) Branch profits;

[988] ITL, Art. 104(2). Nonresident sellers of these debt instruments are required to appoint a Chilean representative to handle the nonresident's Chilean tax obligations that may arise.

[989] ITL, Art. 104(6).

[990] Ruling No. 963, dated May 14, 2018. For a discussion of the VAT implications, see XII.B.1., below.

[991] ITL, Art. 17(8)(m).

[992] ITL, Art. 17(8)(e).

[993] ITL, Art. 17(8)(d).

[994] ITL, Art. 20(6).

[995] ITL, Art. 41-A(1).

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(vi) Income generated in countries with which Chile has signed a tax treaty for the avoidance of double taxation that is in force and that contains a tax credit provision for taxes paid in the other contracting state; and

(vii) Passive dividends and royalties generated by CFCs as well as passive income from CFCs located in jurisdictions described in (vi), above.

The following are types of foreign taxes that are allowable as a foreign tax credit:[996]

(i) Withholding taxes directly borne by the taxpayer on the type of income described in the above paragraphs;

(ii) With respect to foreign dividends received by the taxpayer, in addition to withholding taxes thereon, the taxpayer may also utilize as an indirect tax credit the corporate income tax paid by the foreign distributing company in proportion to the dividend that is either being distributed or included as taxable income under the CFC rules;

(iii) As regards foreign dividends distributed by lower-tier subsidiaries to the CFC directly held by the Chilean taxpayer, the latter can claim as a foreign tax credit the corporate income tax paid (or accrued in the case of passive dividends) provided that all those lower-tier subsidiaries and the CFC held by the Chilean taxpayer are resident or incorporated in the same jurisdiction and the CFC directly held by the Chilean taxpayer owns, directly or indirectly, 10% or more of the capital of the lower-tier subsidiaries. If the CFC that is directly held by the Chilean taxpayer is a resident in a jurisdiction different from that of its lower-tier subsidiaries, the corporate income tax paid by those subsidiaries can still be creditable in Chile if the CFC is a resident of a country with which Chile has signed a tax treaty for the avoidance of double taxation or a treaty for exchange of tax information, provided that the CFC owns, directly or indirectly, at least 10% of the capital of those subsidiaries;

(iv) With respect to foreign PEs and CFCs, the Chilean taxpayer is entitled to claim as a foreign tax credit the corporate income taxes accrued in the taxable year that are payable no later than December 31 of the following year by the PE with respect to its year-end profits and by the CFC with respect to the profits which are includible as taxable income by the Chilean taxpayer by application of the passive income rules. If the foreign corporate income tax is paid after December 31 of the following taxable year, the taxpayer can only use the foreign tax as a foreign tax credit in the year it is paid; and

(v) In structures involving Chilean subsidiaries held by CFCs, the additional tax withheld by those subsidiaries also constitutes a creditable tax in Chile if the dividend distributed by the CFC includes Chilean dividends distributed by those subsidiaries.

In any case, a foreign tax is only creditable if its payment is compulsory and final, i.e., the taxpayer cannot have the right to recover the foreign tax through a refund mechanism. Furthermore, the foreign tax must be equivalent or similar to the first or second category tax, the surtax or the additional tax, regardless of whether the foreign tax is levied on actual or presumed income as a substitute to the former. Therefore, license fees or royalties paid to a foreign authority are not creditable in Chile because the taxpayer has received an economic benefit as a result of that payment (e.g., a license to exploit natural resources). Foreign tax credits granted by a foreign jurisdiction for other foreign taxes paid in a third country are treated as a foreign tax paid in the foreign jurisdiction for purposes of the Chilean foreign tax credit rules. This means that the foreign tax creditable for Chilean purposes is reduced by the amount of the credit for the third country foreign tax (i.e., the rule seeks to prevent a credit effectively being claimed twice — once in the foreign country and once in Chile). Moreover, if a foreign income tax is fully or partially creditable against another foreign income tax of the same country and on the same income, the Chilean taxpayer may only take the foreign tax into account once in computing the foreign tax credit for Chilean tax purposes to avoid double counting. There is also a soak-up provision in the sense that, if the imposition of a foreign tax in a foreign jurisdiction is dependent upon the availability of a foreign tax credit in the country of residence of the investor, then the foreign tax is not creditable in Chile.[997]

A foreign tax can only be credited in Chile if the taxpayer shows evidence of payment. It may do so with foreign receipts or foreign tax returns. It may also do so with an official certificate issued by the foreign competent authority or any other legal documentary evidence. An unofficial translation of the relevant document is generally sufficient.[998]

(3) Foreign Tax Credit Limitations

At the end of each taxable year, Chilean residents who have received foreign source income subject to a creditable foreign tax must determine their foreign source taxable income and their foreign source net taxable income. The former is the foreign source taxable income plus the foreign taxes that may be claimed as a tax credit. A taxpayer's foreign source net taxable income is the net result of its overall foreign source income and losses that have borne a foreign tax minus the expenses incurred to generate that income and loss. In this regard, the taxpayer is required to apply the Chilean tax rules for purposes of determining the deductibility of expenses, except the NOL carryforward rules, the inflation adjustment rules, and the tax depreciation rules, which are not applicable for purposes of making that determination.[999]

The available foreign tax credit consists of the foreign taxes borne abroad but is capped by the lesser of the following two amounts:

(i) The individual cap: is the lesser of either (I) the foreign tax effectively borne abroad and (II) 35% on the gross foreign source income for each type of foreign income that has been subject to tax, calculated on a separate basis. If the gross foreign source income cannot be calculated, the foreign tax credit cannot exceed 35% of an amount which,

[996] ITL, Art. 41-A(2).

[997] ITL, Art. 41-A(7)(b).
[998] ITL, Art. 41-A(7)(c).
[999] ITL, Art. 41-A(3).

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after deducting that 35% thereon, is equal to the net foreign income that has been received; and

(ii) The global cap: this limitation is equal to 35% of the foreign source net taxable income plus the lesser of the foreign taxes borne abroad and the individual cap.

Taxpayers that have to report foreign passive income under the CFC rules must calculate the foreign source net taxable income and the individual and global caps in the taxable year in which that passive income must be reported. When that passive income is received in the form of a dividend in a subsequent taxable year, the taxpayer must again make those three computations, but this time taking into account the foreign withholding tax and the underlying corporate income tax borne on that dividend, unless they had already been paid in the foreign jurisdiction and the taxpayer had already considered it as a credit in the year the passive income was reported in Chile.

Companies, when calculating the foreign tax credit offset against the first category tax, must first add the overall foreign tax credit to their taxable income. The foreign tax credit that may offset the first category tax is equal to the company's foreign source taxable income times the first category tax rate. The resulting foreign tax credit must be used before other tax credits that entitle the taxpayer to seek a refund and after the tax credits that cannot give rise to such refund. Excess foreign tax credits against the first category tax can be carried forward to subsequent taxable years until they are utilized. They can be adjusted for inflation. A taxpayer may not seek a refund of its first category tax liability to the extent that liability has been offset with foreign tax credits.

The first category tax that has been offset with foreign tax credits may be recorded in the company's SAC registry. Furthermore, the difference between the overall foreign tax credit and the portion that may be used to offset the first category tax constitutes the foreign tax credit balance which may be used to offset the shareholder's surtax or the additional tax liability when the Chilean company distributes a dividend to it. That foreign tax credit balance must also be recorded in the company's SAC registry. However, if a portion of the tax credit carried in a dividend distribution does include a foreign tax credit, that portion cannot be used by the shareholder to offset other taxes or claimed as a tax refund. Furthermore, if that portion of the tax credit exceeds the shareholder's surtax or additional tax liability, that portion cannot be carried forward to subsequent taxable years.

Foreign source income accrued or received by a resident individual is exempt from the first category tax, provided that income cannot be attributed to a Chilean enterprise of that individual. That foreign source income is, instead, subject to the surtax. Foreign tax credits on that foreign source income may be utilized to offset the individual's surtax liability on that income in the taxable year in which it becomes taxable. The individual may not claim excess foreign tax credits as a refund or carry them forward to subsequent taxable years. The foreign tax credit for individuals is subject to the following special rules:

(i) Foreign taxes borne on foreign service fees received by resident individuals may be utilized to offset the individual's surtax liability on those fees. For purposes of determining the amount of foreign taxes that may be utilized as a foreign tax credit, the individual must apply the foreign tax credit limitation rules in the same manner as companies by determining both the individual cap and the global cap. Excess foreign tax credits may not be refunded, carried forward or utilized to offset other taxes; and

(ii) Foreign taxes borne on foreign salaries and similar type of remuneration may be utilized to offset the individual's second category tax liability on that foreign income. Unlike foreign fees, when determining the amount of foreign taxes that may be utilized as a tax credit, the individual is required to add the foreign creditable taxes to his or her foreign salaries and similar type of remuneration and only apply the individual cap when calculating the foreign tax credit limitation. Furthermore, the individual is also required to recompute his or her second sole category tax and apply the foreign tax credit on the recomputed taxable base. The difference between the second sole category tax paid by, or withheld from, the individual and the tax liability paid the individual on the recomputed taxable base (after applying the foreign tax credit) can be used as a credit against the individual's other Chilean tax liabilities in the calendar year or claimed as a refund. This is only applicable to the extent that the individual has not received other income that is subject to the surtax; if he or she has received that type of income, then the foreign tax credit on the foreign salary must be computed according to the rules described in (i), including the impossibility to carry forward excess credits or to utilize them to offset other taxes or claim a refund.

When calculating foreign tax credits, those taxpayers that are subject to the inflation adjustment rules must convert both the foreign income and the foreign tax into Chilean pesos at the exchange rate in effect on the day the income is received (or accrued in the case of passive income). If the taxpayer does not use the Chilean peso as its functional currency, it must convert the foreign income and foreign taxes into that functional currency pursuant to the above rule. Those taxpayers that are not subject to the inflation adjustment rules must convert the foreign income and the foreign tax at the exchange rate in effect at the end of the taxable year. The exchange rate is the one published by the Central Bank on the applicable date. If the foreign currency is not listed by the Central Bank, that currency must first be converted into U.S. dollars and then into Chilean pesos.[1000]

(4) Registration

All taxpayers that make investments abroad that generate income that is subject to a foreign creditable tax must register with the Foreign Investment Registry that is run by the SII. The registration must be made in the year in which the investment is made. Alternatively, instead of registering the investment, taxpayers may file a sworn statement with the SII describing the foreign investment that has been made, the type of income that is generated and the foreign taxes that have been borne. Failure to register the investment or of filing the sworn statement, or doing so late or with inaccuracies, is subject to a penalty of 10

[1000] ITL, Art. 41-A(7)(a).

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monthly tax units plus one additional monthly tax unit for each month of delay, up to 100 monthly tax units.[1001]

b. Investment Tax Credit

Taxpayers that are subject to the first category tax are allowed to claim a tax credit against their first category tax liability for investments made in new fixed assets. The investment may consist of an acquisition of a fixed asset, the construction of a fixed asset, or the rental of a fixed asset with an option to purchase. The amount of the tax credit varies depending on the annual average of sales revenues the taxpayer generated during the three years that precede the year in which the investment is made, as follows:[1002]

(i) If the annual average of sales revenues does not exceed 25,000 development units, the tax credit is 6% of the amount invested.

(ii) If the annual average of sales revenues is between 25,000 and 100,000 development units, the tax credit is equal to a percentage determined in accordance with the following formula (figures in development units):

$$\frac{6\% \times 100{,}000 - \text{sales revenues}}{75{,}000}$$

If the resulting percentage is less than 4%, the taxpayer may take 4% as the amount of the tax credit.

Maintenance or repair works carried out on fixed assets during the taxable year do not give rise to the investment tax credit. Also, investments in fixed assets that may be used for housing do not qualify for the tax credit. Investments made in transportation vehicles do not give rise to the credit, unless such vehicles are used to transport cargo (e.g., trucks and single-cabin station wagons, or buses for the transportation of passengers). Lessors of new movable tangible assets are not entitled to claim the investment tax credit; for the lessee, the investment tax credit must be determined based on the total value of the lease contract. Moreover, State-owned enterprises and entities in which the State or a municipality owns more than 50% of their share capital are not entitled to the tax credit.

The tax credit may be claimed against the first category tax liability of the taxable year in which the investment is made or the construction is finalized. The basis for determining the amount of the credit is the value of the fixed asset as adjusted for inflation at the close of the taxable year but prior to any depreciation adjustment to its basis. The tax credit may not exceed 500 monthly tax units per year. Taxpayers with excess credits are not entitled to a refund or to carry it forward.

c. Real Estate Tax Credit

Taxpayers engaged in agricultural activities are entitled to credit the real estate tax paid against their first category tax liability, as are taxpayers that lease out agricultural land to unrelated parties.[1003] Construction and real estate companies are also entitled to claim the real estate tax as a credit against their first category tax liability with respect to buildings they construct or buildings they contract others to build for them, provided that the building is constructed for sale, not to lease out.[1004]

For purposes of determining the creditable amount, the real estate tax paid may be adjusted for inflation for the period running from the last day of the month prior to the payment of the real estate tax to the last day of the month prior to the one in which the taxable year ends. Any real estate tax paid in excess of the first category tax liability may not be carried over as a credit to subsequent years, refunded or claimed as a credit against another tax.[1005] Those excess credits, however, constitute a deductible expense, if the real estate tax paid constitutes a tax credit for the taxpayer.[1006]

d. Employee Training Tax Credit

Expenses incurred on staff training plans are generally deductible for income tax purposes. However, expenses incurred on training programs that are duly approved by the *Servicio Nacional de Capacitación y Empleo* (SENCE) are allowed as credits against the first category tax. The amount of the credit may not exceed 1% of the annual taxable compensation paid by an employer to its employees. In that regard, salaries paid to employees who are also shareholders of the company can also be taken into account for purposes of determining the 1% limitation, provided these salaries constitute taxable income in the hands of the employees/shareholders.[1007] Amounts incurred on personnel training in excess of the 1% limitation constitute a deductible expense.

e. Research and Development Tax Credit

An R&D tax credit is available to Chilean taxpayers that are subject to the first category tax.[1008] In essence, taxpayers can claim an R&D tax credit against their first category tax liability equal to 35% of the investment made in R&D activities. The remaining 65% of the investment constitutes a deductible expense.

The taxpayer may conduct the R&D activity itself or outsource it. In any case, for the R&D tax credit to be available both methods require the R&D activity to be conducted in Chile and the R&D investment to exceed 100 monthly tax units. Furthermore, if the activity is outsourced, it must be performed by a research center registered with the *Corporación de Fomento de la Producción* (CORFO), a Chilean State-owned institution that promotes entrepreneurship. In both cases, however, the R&D activity must be certified by CORFO. CORFO gener-

[1001] ITL, Art. 41-A(6).

[1002] ITL, Art. 33 *bis*. This tax credit is available as of January 1, 2023. Prior to that date, the investment tax credit was 4% of the investment provided the taxpayer's annual sales revenues during the preceding three years were in excess of 100,000 development units. Excess tax credits can continue to be carried forward indefinitely until they are fully utilized. SII Circular No. 39, of August 31, 2022.

[1003] ITL, Art. 20(1)(a) and (b).

[1004] ITL, Art. 20(1)(c).

[1005] ITL, Art. 20(1)(a) and (c).

[1006] ITL, Art. 31(2). Circular No. 68, dated Oct. 2, 2001.

[1007] Circular No. 34, dated July 7, 1993.

[1008] Law No. 20,241, published in the *Diario Oficial* on Jan. 18, 2008, as amended.

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ally ensures that the activity to be conducted constitutes R&D, as defined under Law No. 20,241, and that the costs to be incurred (either by the taxpayer itself or the fee payable to the research center) are at market value. CORFO must issue a resolution within six months after the application is filed. CORFO also charges a certification fee, which is payable when the application is filed and may not exceed 4% of the R&D Project or be lower than 10 monthly tax units. This fee constitutes a deductible expense for income tax purposes.

The basis on which the tax credit must be determined depends on whether the R&D project is undertaken by the taxpayer itself or is outsourced. In the case of the former, the taxpayer may take into account not only the current costs associated with the project but also the annual depreciation (on a straight-line or accelerated basis) of an asset to the extent that the project requires the taxpayer to acquire fixed assets. In the case of the latter, the taxpayer may only take into account the cash payments made to the research center.

The R&D tax credit is limited to 15,000 monthly tax units per annum. Excess tax credits may be carried forward indefinitely. If the R&D project includes investment in fixed assets, the R&D tax credit is incompatible with the investment tax credit in connection with those assets.

As stated above, the remaining investment in R&D constitutes a deductible expense for income tax purposes. The taxpayer is entitled to deduct the expense over a period of 10 taxable years.

f. Tax Credit for Contributions to Educational Institutions

For a description of this tax credit, see IX.C.5.b., below.

11. Assessment and Filing

a. Advance Corporate Income Tax Returns

(1) In General

Taxpayers that are required to file an annual income tax return for the first category tax or the second category tax (generally professionals not working under a relationship of dependency) must make monthly income tax payments by way of advance payment of their annual income tax liability. The tax rate may be fixed or variable depending on the taxpayer's activities. However, under either method, neither proceeds from the sale of publicly traded shares in open SAs nor proceeds from the sale of quotas in investment and mutual funds are includible in determining advance monthly income tax payments.[1009]

(2) The Variable Rate

In general and unless the taxpayer is subject to the fixed rate mechanism (see a.(3), below), all taxpayers that are subject to the first category tax are required to make monthly income tax payments under the variable rate mechanism.[1010]

The variable rate, which is levied on the taxpayer's monthly gross income, is determined in accordance with the following rules:[1011]

(i) The compounded average advance monthly income tax rates levied on the taxpayer's gross income during the prior taxable year are calculated and divided by 12;[1012]

(ii) The difference (in percentage terms) between the advance monthly income tax payments made during the prior taxable year and the final first category tax liability of the prior taxable year is calculated (before applying any tax credits); and

(iii) The percentage determined under (ii) is applied to the compounded average advance monthly income tax rate determined under (i).

If the advance monthly payments are lower than the final income tax liability, the prior year's average monthly rate must be increased by the percentage difference; if, on the other hand, the advance monthly payments exceed the taxpayer's final income tax liability, the prior year's average monthly rate must be reduced by the percentage difference.[1013] The new average rate applies throughout the following 12 months, from the month in which the annual income tax return is filed through the month prior to the month in which the next final income tax return is due. Thus, for calendar year taxpayers with an April filing deadline, the new rate applies from April through March of the following year.[1014]

As stated, the applicable rate is applied to the taxpayer's monthly gross income. However, the taxpayer may exclude exempt income from the taxable base.[1015]

As an exception to the general rule, when determining their monthly advance corporate income tax liability, construction companies are entitled to credit up to 65% of the VAT debit generated on the sale of residential housing they have constructed with a value of up to 2,000 development units.[1016] The deduction may not exceed 225 development units per dwelling. When the sale is VAT-exempt because the purchaser is entitled to housing subsidies, the VAT deduction is limited to 12.35% of the sale price. Monthly VAT debits in excess of the deduction may be utilized to offset either other taxes of a construction company that are payable in the month in which the VAT debit was generated or advance monthly tax payments in future months.

This tax benefit will no longer be available with respect to construction contracts entered into on or after January 1,

[1009] SII Circular No. 31, of July 20, 2023.

[1010] ITL, Art. 84(a).

[1011] ITL, Art. 84(a).

[1012] During the first taxable year, the monthly rate is 1%. This fixed rate also applies if the taxpayer has incurred NOLs during the prior taxable year. Once the taxpayer has filed an annual income tax return showing an income tax liability, it is required to determine the monthly variable rate pursuant to the above rules.

[1013] The same formula applies to advance monthly mining activity tax payments, but takes into consideration the mining activity tax paid during the previous taxable year. If the percentage cannot be determined, either because the taxpayer did not generate income in the prior taxable year or because it is the first year of operations, then it must use the monthly rate of 0.3%. ITL, Art. 84(h).

[1014] Companies engaged in copper mining are entitled to reduce the monthly tax rate at the end of each quarter if as a result of a reduction in their profitability there is an inappropriate ratio between their monthly tax liability and their annual first category tax liability. Supreme Decree No. 1,151 of January 15, 1992, Ministry of Finance.

[1015] ITL, Arts. 84 and 86; Decree Law No. 910, dated February 24, 1975 and published in the *Diario Oficial* on March 1, 1975, as amended, Art. 21.

[1016] Decree Law No. 910, Art. 21.

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2025.[1017] There is a transition period for construction contracts entered into between January 1, 2023 and December 31, 2024. Contracts entered into before January 1, 2023 are not affected by the transition rules, provided the construction works are initiated before December 31, 2023. Construction contracts entered into in 2023 and 2024 also qualify for the tax credit, provided the constructor obtains a construction license from the municipality concerned and the construction works commence before January 1, 2025. However, in the case of qualifying construction contracts entered into during the transition period, the credit is reduced to 0.325 of the VAT debit. If the sale is VAT-exempt because the purchaser is entitled to housing subsidies, the VAT deduction is limited to 6.175% of the sale price.

The ability to utilize the VAT debit as a tax credit for income tax purposes will be eliminated with respect to sales of residential housing executed after 2024. Construction companies that executed sales of residential housing before 2023 are nevertheless entitled to claim the tax credit, provided they obtained the municipal building concerned before 2023 and initiated construction before December 31, 2023. However, in the case of a sale executed during 2023 or 2024, the amount of the tax credit is reduced to 0.325 and to 0.06175 of the VAT debit in the case of low-income housing.

A taxpayer that incurs NOLs in a given taxable year is entitled to suspend making advance monthly income tax payments during the first quarter of the following taxable year. If the taxpayer continues to incur NOLs in any quarter of that taxable year, it is entitled to suspend making advance monthly income tax payments during the following quarter. However, the taxpayer is required to resume its advance income tax payments in a given quarter if it generates net taxable income in the previous one.[1018]

A taxpayer is entitled to recalculate the applicable monthly tax rate if it faces significant changes to its gross income or expenses that may significantly affect its annual net taxable income. For these purposes, a taxpayer can face a significant change to its estimated annual net taxable income if the net taxable income in a quarter ending on March 31, June 30 or September 30 is 30% higher or lower than the net taxable income in the previous quarter. In this regard, net taxable income in a given quarter must be determined without taking into account inflation adjustment rules. The new monthly tax rate, as determined by the taxpayer, must be applied as of the month following the one in which the taxpayer faced the significant change.

(3) The Fixed Rate

The fixed rate applying to advance monthly income tax payments varies depending on the taxpayer's activity, as follows:[1019]

(i) 5% of the gross amount of the monthly discounts obtained by wholesalers or of the gross commercial margin generated on the sale of such products in the case of retail distributors of hydrocarbons;[1020] and

(ii) 0.3% of the fair market value of land transportation vehicles used by taxpayers engaged in land transportation activity with respect to passengers and cargo.[1021]

(4) Payment of the Advance Tax

The advance monthly tax payment must be made through a bank during the first 12 days of the month following the month in question.[1022]

The same interest charges and penalties that apply to the first category tax are applicable with respect to advance monthly tax payments (see c., below).[1023]

b. Annual Income Tax Return

The following entities are required to file annual income tax returns by using Form 22:[1024]

(i) Entities that carry on activities subject to the first category tax, irrespective of the amount of net income they derive or the NOLs they incur;

(ii) Taxpayers subject to the mining royalty; and

(iii) Chilean branches of nonresident corporations.

If an entity's taxable year ends on December 31, its annual corporate income tax return with respect to that year must be filed between April 1 and April 30 of the following year. If, on the other hand, the taxable year ends in June, the annual corporate income tax return must be filed during the month of October of that calendar year.[1025]

The advance income tax payments made during the taxable year must first be utilized as a tax credit against the taxpayer's final first category tax liability of that taxable year. If the advance income tax payments exceed the final first category tax liability, the excess must first be utilized as a credit against the mining royalty (if applicable to the taxpayer) and then against the surtax or the additional tax.[1026] In determining the amount of the tax credit, the advance monthly tax paid must be adjusted for inflation by reference to the Consumer Price Index from the last day of the month prior to the advance tax payment through the last day of the month prior to the end of the

[1017] Law No. 21,420, dated February 4, 2022, Arts. 5 and 6(3).

[1018] ITL, Art. 90.

[1019] See also IX.C.5.f., below, for a discussion of the advance monthly tax payments determined at a fixed rate for individual professionals and entrepreneurs.

[1020] Supreme Decree No. 140 of April 23, 1991, Ministry of Finance.

[1021] ITL, Art. 84(e). For a discussion of the tax regime applicable to those taxpayers, see V.B.4.c.(3)(d).

[1022] ITL, Art. 91. Companies engaged in the construction of homes were entitled to claim a tax credit against their monthly advance income tax liability equal to the total or a portion of the value of thermal solar systems and their installation placed in dwellings built by them. The thermal solar system had to generate hot water for human consumption. Any excess tax credit in a given month could be used to offset any other tax liability of the taxpayer in that month and, if there was no such liability, it could be used in the following months, in which case the tax credit could be adjusted for inflation. If, at the end of the taxable year, the taxpayer still had excess tax credits, they could be treated as an advance income tax payment and, as such, be used as a credit against the taxpayer's final corporate income tax liability of that taxable year. The tax credit was available until 2019. *See* Law No. 20,365, dated Aug. 11, 2009, published in the *Diario Oficial* on Aug. 19, 2009.

[1023] ITL, Art. 98.

[1024] ITL, Art. 65.

[1025] ITL, Art. 69. For a discussion of the rule regarding the taxable year end, see IV.B.3., above. For a discussion of other information that must be filed with the annual tax return, see IV.B.6., above.

[1026] ITL, Arts. 93 and 94.

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taxable year.[1027] If there is still an excess credit, the taxpayer can utilize it to offset other tax liabilities that are due annually.

The final first category tax liability that has not been covered by the advance income tax payments must be paid in full at the time the annual income tax return is filed.[1028] The tax must be paid in Chilean pesos. The tax due must be adjusted for inflation for the period running from the month prior to the end of the taxable year to the month prior to the deadline for filing the annual income tax return. The inflation adjustment must be made only with respect to the tax due after the taxpayer has applied its tax credits, i.e., the advance corporate income tax paid during the taxable year and taxes withheld against the taxpayer during the taxable year.[1029] The return must be filed and the tax paid through an authorized bank. The annual return is deemed filed even if the taxpayer does not pay the tax due.

If in the annual tax return the taxpayer still shows excess credits after applying a credit for the advance income tax payments made throughout the year and for withholding taxes on payments made to the taxpayer, the taxpayer is entitled to seek a tax refund from the SII. Generally, the SII must pay the tax refund within 30 days following the due date for filing the annual income tax return. The statute of limitations is not affected by the tax refund procedure. The tax refund is generally paid to the taxpayer's bank account shown in the tax return. The amount of the refund is subject to inflation adjustments.[1030]

c. Withholding Tax Obligations

(1) In General

Corporate taxpayers are required to withhold taxes on the following payments:

(i) Interest on bonds, debentures, other types of loans, bank deposits and lifetime annuities. The withholding tax rate is the first category tax rate applicable for the taxable year in which the interest is paid.[1031]

(ii) Salaries and other remuneration paid to employees.[1032]

(iii) Fees for professional services paid to individuals and professional companies. The withholding tax is levied at a rate of 17%.[1033]

(iv) Payments made to members of boards of directors of Chilean SAs. The withholding tax is levied at a rate of 10%.[1034]

(v) Payments made to nonresidents that are subject to the additional tax. For a discussion of the applicable withholding tax rate, see VI.B., below. For a detailed discussion of the withholding tax obligations on payments made to nonresidents, see (2), below.

(vi) Withdrawals made or deemed made by shareholders of Chilean companies (for a discussion of the withdrawal rules, see 9.b., above). These withdrawals are subject to withholding tax at a rate of 45%.

(vii) The sale of newspapers and magazines to street news agents (see V.B.4.c.(2), above) — a 0.5% withholding tax applies.[1035]

(viii) Purchases of minerals — the special tax on small artisan miners must be withheld by the purchaser of the minerals (see V.B.4.c.(2), above).[1036]

(ix) Interest accrued on publicly-traded bonds — a 4% withholding tax applies.[1037] For a discussion on the taxation of these bonds, see 9.c.(3), above. The issuer of the bond must report to the SII the withholding taxes it has applied on the interest payments. Failure to do so is subject to fines.

The above withholding taxes are treated as a preliminary tax and, thus, constitute a tax credit against the taxpayer's surtax, the first category tax or the additional tax liability. Withholding taxes must be adjusted for inflation when credited against the surtax or additional tax liability.[1038]

The withholding tax is due at the earlier of: when the payment is made or distributed, when it is made available to the payee, or when booked by the payor as an expense.[1039] As a general rule, taxes withheld in a given month must be paid within the first 12 days of the following month, except for the following:[1040]

(i) The withholding tax on interest accrued on publicly-traded bonds is payable during the month of January following the end of the taxable year of the issuing company, and

(ii) Taxes withheld on withdrawals and on indirect sales of Chilean assets must be paid when the withholding tax agent files its annual income tax return.

The obligation on withholding tax agents to withhold taxes extends to shareholders of SRLs and members of boards of directors and officers of SAs if the entity fails to withhold the tax. In that regard, those shareholders, board members and officers are jointly liable to pay the tax together with the withholding tax agent.[1041] The SII may also claim the withholding tax from the beneficiary of the payment if the tax was not withheld.[1042]

Withholding tax agents are required to keep a special registry where the amounts of tax withheld and the names and addresses of the payees must be booked.[1043] In addition to the registry, before March 15 of each year, withholding tax agents must file with the SII a report detailing the names and addresses of the persons that have received payments subject to withholding tax as well as the amount of the payments and the tax that has been withheld during the prior taxable year. With respect to salaries, all employers are also required to issue, at the re-

[1027] ITL, Art. 95.
[1028] ITL, Arts. 72 and 96.
[1029] ITL, Art. 72.
[1030] ITL, Art. 97.
[1031] ITL, Art. 73.
[1032] ITL, Art. 74(1).
[1033] ITL, Art. 74(2).
[1034] ITL, Art. 74(3).
[1035] ITL, Art. 74(5).
[1036] ITL, Art. 74(6).
[1037] ITL, Art. 74(7).
[1038] ITL, Art. 75.
[1039] ITL, Art. 82.
[1040] ITL, Arts. 78 and 79.
[1041] ITL, Art. 76.
[1042] ITL, Art. 83.
[1043] ITL, Art. 77.

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quest of an employee, a certificate indicating all the remuneration paid to the employee during the taxable year as well as the deductions made against that remuneration relating to social security contributions and the taxes withheld thereon.[1044]

(2) Withholding the Additional Tax

Payments made from Chile to nonresidents are subject to the additional tax. The additional tax must be withheld at source by the Chilean payor who thus becomes a withholding tax agent. The obligation to withhold the additional tax arises not only when a payment is made but when the rights of the creditor are satisfied, such as an offset or a novation. On the other hand, no obligation to withhold arises when the payor does not satisfy his or her obligations, for instance in the case of a cancellation of debt.[1045]

The liability to remit the withholding tax to the Treasury lies solely on the withholding tax agent, provided the payee can demonstrate that the withholding tax was applied on the payment it received. If the withholding tax agent fails to withhold the additional tax, the SII may seek payment from both the withholding tax agent and from the nonresident.[1046]

If the seller is a resident in a tax treaty jurisdiction, is entitled to the benefits of that treaty, and that treaty provides for a lower capital gains tax rate, then the withholding tax must be levied at the treaty rate, provided that the seller is able to demonstrate to the withholding tax agent its tax residence by means of a certificate issued by the Competent Authority of the other Contracting State.[1047] The nonresident must also provide to the withholding agent an affidavit declaring that, at the time of the payment is made, it does not have a PE in Chile to which the payment should be attributed and that it is the beneficial owner of the proceeds. The affidavit must also contain the following information:[1048]

(i) Its name, entity type, its date of incorporation, its tax identification number, and corporate address;

(ii) The name of its Chilean tax representative as well as his or her address, and his or her tax identification number;

(iii) The name and RUT number of the withholding tax agent;

(iv) Place and date in which the affidavit is signed; and

(v) Name of the notary before which the affidavit is executed.

The affidavit must be signed in the same month that the sales proceeds are remitted to the nonresident seller.

Failure to submit the affidavit allows the SII to claim the tax that should have been withheld in the absence of a tax treaty. Furthermore, the payor is solely responsible for any tax underpayment if the SII determines that the tax treaty was not applicable, although it may later seek reimbursement from the payee.

d. Information Requirements

The Tax Code grants the SII wide powers to require taxpayers to attach affidavits or additional forms to their tax returns on specific matters involving either the taxpayer of third parties.[1049] These requests from the SII must be made through resolutions, which must generally be published at least four months in advance to the due date. The type of information the SII may request through special forms or affidavits includes (i) transactions entered into with tax havens and; (ii) becoming a settlor, beneficiary or trustee in a foreign trust.

As a result of these powers, in addition to filing the advance and annual income tax returns, Chilean taxpayers are required to submit to the SII certain information about their investments, whether in Chile or abroad. Failure to provide that information is penalized with punitive taxation and sanctions, as discussed below. There are also tax filing obligations in place to report transactions that are relevant for purposes of characterizing large taxpayers.

(1) Investments Abroad

If the investment is made abroad, the enterprise must file with the SII by June 30 of each taxable year Form No. 1929, reporting the investments made during the preceding taxable year, indicating the amount and type of investment, the country in which the investment is made and, if the investment consists of shares, the percentage of ownership that is invested in the capital of the foreign entity.[1050] If the investment is made directly or indirectly in a jurisdiction that is regarded as having a preferential tax regime by the OECD, the business enterprise must, in addition to the above information, also provide on an annual basis the status of the investment, whether additional capital contributions or reductions have been made, and the purpose given to the investment by the receiving entities.

The following penalties may apply if the taxpayer fails to file Form 1929, files Form 1929 after the due date, or files erroneous or incomplete information. The actual penalty depends on the type of information the taxpayer is required to report, as follows:[1051]

(i) When the obligation entails reporting the amount and type of investment and the country in which the investment is made and the taxpayer has not reported it or reports it after the due date, the penalty amounts to 10 annual tax units increased by an additional one annual tax unit for each month of delay, up to 100 annual tax units. However, if the taxpayer has intentionally and knowingly reported false or incomplete information, the penalty ranges from 50% to 300% of the tax liability that has been avoided plus imprisonment.

(ii) When the obligation entails reporting directly or indirectly controlled foreign corporations, the penalty ranges from 10 to 50 annual tax units, up to the greater of 15% of the value of the taxpayer's net assets or 5% of the value of the taxpayer's gross assets.

[1044] ITL, Art. 101.

[1045] SII Circular No. 54, dated Nov. 25, 2013.

[1046] ITL, Art. 83.

[1047] The certificate must be issued in Spanish or translated into Spanish if issued in another language.

[1048] SII Resolution No. 48, dated May 25, 2015. See the Worksheets.

[1049] TC, Art. 33 *bis* (1).

[1050] TC, Art. 33 *bis* (2)(A)(a); ITL, Art. 14(E)(1)(a). See the Worksheets for Form 1929.

[1051] SII Circular No. 48, of October 12, 2022.

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In addition to the above monetary penalties, failure to report the requisite information results in the foreign assets not being able to be allocated a tax basis; instead, there is a presumption that the investment is a non-deductible disbursement. Such disbursement is subject to a sole tax at the rate of 40% on the amount invested.[1052] However, prior to applying this tax on the business enterprise, the SII is required to summon the business enterprise for the opportunity to demonstrate that no Chilean tax is due with respect to the income that has been generated from these investments abroad. The business enterprise can rebut the presumption by showing that the foreign investment was made from its capital or from non-taxable income, although if the enterprise's taxable earnings exceed the sum of its capital and non-taxable income, then there is a rebuttable presumption that the investment has been made with that excess, in which case it will be subject to the sole 40% tax. In addition, if the business enterprise fails to submit the information to the SII, submits it after the due date, or files incomplete or erroneous information, it is subject to a fine equal to 10 annual tax units plus one annual tax unit for each month of delay, up to 100 annual tax units.[1053]

(2) Investments in Foreign Trusts

A Chilean resident, whether an individual or a legal entity, that, in any given year, either sets up or becomes a beneficiary or trustee of a trust that is set up under foreign law, or controls a foreign settlor, beneficiary or trustee, must file a form with the SII on an annual basis and provide the following information:[1054]

(i) The name of the trust, the date it was set up, the country whose laws govern the trust, its tax residence, its foreign tax ID number, its net equity, whether the trust is revocable and, if so, the causes of revocation;

(ii) The name of the settlor, trustee, administrators, and beneficiaries of the trust, their addresses, countries of tax residence, their tax ID numbers and the countries of issuance, and subsequent appointments of new trustees and administrators;

(iii) Whether the distributions from the trust are subject to the trustee's discretion, a condition or a lapse of time;

(iv) Whether there are different types of beneficiaries and whether any of those types include persons who, at the time the information is submitted to the SII, are either not known or undetermined because they are either not born or may be subsequently added; and

(v) Whether the trust property must or may be invested to specific ends.

The information to the SII must be submitted on June 30 of the taxable year following the one in which the trust is set up. The information must be updated if there is a change of the information that was previously submitted. The update must be submitted by June 30 of the year following that in which the change occurred.

There is a presumption that if the settlor does not submit the information to the SII, the set-up of the trust constitutes tax fraud or simulation and the various parties involved will be taxed on the basis of the real legal nature of the transaction. Furthermore, submitting false or incomplete information to the SII is subject to a penalty that ranges from 50% to 300% of the tax due, plus imprisonment.[1055] In addition to these penalties, persons who fail to submit the information to the SII, submit it after the due date, or file incomplete or erroneous information, are subject to a fine equal to 10 annual tax units plus one annual tax unit for each month of delay, up to 100 annual tax units.[1056]

(3) Passive Income from Investments

The TC and the ITL contain punitive tax rules that are aimed at preventing the abusive use of Chilean entities to generate passive income as a way to defer or reduce taxation at the shareholder level. Specifically, a Chilean entity that makes an investment that generates passive income is subject to the sole 40% tax on the amount invested if that investment is deemed to have been made under simulation or by means of tax fraud, as discussed in IV.A.4.a., above, to reduce or defer the surtax or the additional tax at the shareholder level.[1057] In addition to this tax and/or any penalties that may be imposed on the Chilean entity, the shareholder of that entity will be subject to the surtax or the additional tax on the income generated from these investments when it is distributed or attributed to it.[1058] The presumptions established in d.(1), above, are also applicable in the case of investments in Chile that generate passive income. Furthermore, if it is found that the taxpayer has acted with malice to avoid, reduce or defer the surtax or the additional tax, the penalty that may be imposed ranges from 50% to 300% of the surtax or the additional tax due and the shareholder may also be imprisoned.[1059]

(4) Global Tax Characterization Affidavit

Taxpayers that are classified by the SII as large taxpayers on December 31 of the prior taxable year are required to file Sworn Statement No. 1913 on an annual basis.[1060] The annual affidavit is known as the Sworn Statement on Global Tax Characterization and must be filed electronically before the annual income tax return is filed. It is intended to provide to the SII with quantitative information on processes and transactions that are relevant for purposes of characterizing large taxpayers. Some of the information requested, which is aligned with some of the global changes ushered in by the OECD's Base Erosion

[1052] ITL, Art. 21.

[1053] ITL, Art. 14(E)(3).

[1054] TC, Art. 33 *bis* (2)(B). ITL, Art. 14(E)(2). See the Worksheets for the annual form to report information on foreign trusts. For purposes of this rule, a Chilean person is deemed to control a foreign settlor, beneficiary or trust if it either directly or through other persons, it owns or is entitled to more than 50% of the shares, profits, revenues or voting rights in another entity. TC, Art. 8(17).

[1055] TC, Art. 79(4).

[1056] ITL, Art. 14(E)(3).

[1057] TC, Art. 33 *bis* (2)(A)(b); ITL, Art. 14(E)(1)(b).

[1058] For a discussion of the tax rules on dividends or profits when they are distributed or attributed to shareholders, see V.B.5.d., above.

[1059] ITL, Art. 14(E)(1)(b); TC, Art. 97(4).

[1060] SII Resolution No. 110, dated Dec. 24, 2015, as amended by SII Resolution No. 84, dated August 30, 2024. See at www.sii.cl/normativa_legislacion/resoluciones/2024/reso84.pdf Annex 1 of SII Resolution No. 84 for Sworn Statement No. 1913 and Annex 2 for instructions on how to complete the Sworn Statement.

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and Profit Shifting (BEPS) project, is intended to bring transparency with respect to the activities of economic groups in different jurisdictions by raising specific questions about corporate and tax reorganizations and complex financial transactions, among others. Specifically, the information to be reported by Chilean taxpayers is classified into the following sections on which the taxpayer must answer specific questions:

(i) Information regarding the economic group, such as whether the group is foreign or local, what percentage of transactions undertaken by the taxpayer during the taxable year were conducted with related parties, and which of those parties does not have personnel or material assets;

(ii) Information regarding business reorganizations, such as whether an external person advised on that reorganization, whether goodwill was generated in a merger, and whether during the reorganization there were entities that were created and liquidated within the same taxable year;

(iii) Information regarding financial instruments and/or derivative agreements, such as who sets within the entity the policies on investments in such instruments and/or agreements, whether such investments have been made during the taxable year, and whether the benefits generated under those investments favored related parties located in low tax jurisdictions;

(iv) Information regarding the entity's expenses, such as whether expenses incurred on royalties, interest and management fees paid to related parties exceed 30% of the entity's EBITDA, and on whether the entity has undergone a debt push-down transaction by asking whether the principal indebtedness of the entity is with a related party and whether such indebtedness was used to finance other Chilean entities of the group, and whether the financing structure was advised by external parties;

(v) Information regarding capital goods, such as whether such goods were made to measure and whether the price paid for those goods included royalties, interest, management fees paid or owed to related parties for the design of those goods or for intangibles that are included therein; and

(vi) Information regarding international transactions, such as whether the entity has entered into a scheme that involves foreign entities, or a scheme that involves transferring functions to a foreign entity, and whether any of those schemes was advised by an external party.

Failure to file the Sworn Statement or filing it after the due date is subject to penalties equal to up to 0.2 monthly tax units for each month of delay and for each person that has been omitted or delayed in reporting up to a maximum of 30 annual tax units.[1061] If the information contained in the Sworn Statement is either incorrect or incomplete, the taxpayer is also subject to a fine of no less than 1% and no more than 100% of one annual tax unit or up to three times the tax that has been avoided if the breach results in tax evasion.[1062]

(5) Bank Account Balances

Chilean financial institutions, insurance companies and security custodians are required to report to the SII the names and Tax ID numbers of bank account holders that reside or are domiciled in Chile (for both individuals and legal entities). In addition, the financial institution must also provide the identity of the final beneficiary or controlling entity of the account holder, provided they are resident or domiciled in Chile.[1063]

The information to be reported includes the balance of, or value in, checking and savings accounts, time deposits, call accounts, savings accounts for housing and education, custody accounts, insurance policies that include either an investment or savings account or a redemption value that guarantees capital upon termination of a time period, as well as life or temporary annuity contracts. However, the information must only be provided when the balance or daily, weekly or monthly movements in those accounts, whether individually or in total, amounts to 1,500 development units or more, irrespective of the number of holders in each account. If the product or instrument is denominated in a currency other than the peso, the foreign currency must be converted into and reported in pesos at the exchange rate published by the Central Bank on the last day of the month that is being reported. Once converted into pesos, it must again be converted into development units.

The information must be remitted to the SII on an annual basis during the first 15 days of March of the following calendar year. The SII is required to eliminate the information received within one year if it is not used in a tax audit.

Financial institutions are subject to penalties equal to one annual tax unit for each of the products or instruments they are required to report if they fail to report complete information on a timely basis. The penalty is capped at 500 annual tax units per year if the financial institution remits the information within 30 days after being notified. The cap does not apply if the financial institution continues to fail to provide the information once the 30 days have elapsed.

The SII can also request a judicial order to obtain a list from a bank (including a Chilean branch of a foreign bank) of all the money transfers of at least 10,000 US dollars made in and out of Chile during the preceding year, on an annual basis before March 15. If a money transfer is subject to bank secrecy or reservation rules, it can only be utilized by the SII to verify the veracity of the taxpayer's tax returns and to collect taxes and penalties owed by the taxpayer.[1064]

Unless the information is already reported to the SII under the above rules, every six months, financial institutions are also required to provide to the SII the details of credits to accounts received by individuals and entities with residence or domicile in Chile, provided the account holder receives either more than 50 crediting in the account on the same day, week or month from 50 or more persons or in a semester at least 100 crediting of account from at least 100 persons. Certain deposits are not taken into account, such as transfers between the holder's accounts, whether in the same or different financial institutions and, generally, deposits received not arising from the sale of

[1061] TC, Art. 97(1).
[1062] TC, Art. 109.
[1063] TC, Art. 85 *bis.*
[1064] TC, Art. 62 *bis.*

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goods or the provision of services. The number of crediting of account must be determined on an accumulated basis if the holder has more than one account in a financial institution.[1065]

The information must be filed by financial institution under Form 1959 with the SII.[1066] The information to be reported includes the identity of the account holder, the RUT, account number, the number of crediting of account during the period in question on an accumulated basis, their amount, and whether the 50 or 100 crediting threshold has been exceeded in more than one period. The information must be reported in Chilean pesos and must aggregate all the crediting of account in a given month in each account. The bank does not have to disclose the identity of the person making the crediting of account.

The information must be reported every July and January with respect to the immediately preceding semester. The SII can also request the above information, even if the number of crediting of account is less than 50 or 100, if the SII has reason to believe that the taxpayer is underreporting its his, her or its income or has committed a tax offense.

The failure by the financial institution to report the above information on a timely basis is subject to a penalty of one annual tax unit for each of the persons it has failed to report, up to a maximum of 500 annual tax units per period.

(6) Telecommunication Companies

Chilean-based telecommunication companies that provide internet, mobile telecommunication and pay-per-view television services are required to report to the SII the payments they make as intermediaries to nonresident service providers.[1067] The reporting obligation relates to aggregated payments that telecommunication companies make to nonresidents and that are charged to customers either under a prepaid services arrangement or through a direct debit.

The report must be remitted to the SII based on the following schedule:

Period	Payments Made During	Filing Deadline Last Working Day of:
Q1	January – March	May
Q2	April – June	August
Q3	July – September	November
Q4	October – December	February

e. Interest Charges and Penalties

For a discussion of interest charges and penalties on late payment of taxes, see IV.B.7.e., above.

C. Other Taxes

1. Global Minimum Tax

As of March 26, 2024, Chile had made no public announcement regarding its position on the OECD's Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

2. Value Added Tax

VAT is discussed at XII., below. For further research on Chile's VAT system, see also the VAT Navigator.

3. Stamp Duty

a. In General

Chile imposes stamp duties on the execution of certain legal documents. The stamp duty rate varies depending on the document executed. Stamp duties are governed by Decree Law No. 3,475.[1068]

b. Transactions Subject to Stamp Duty

Most legal documents are subject to stamp duties. Listed below are the most commonly used legal documents that are subject to stamp duties:[1069]

(i) Stamp duty is levied at a rate of 1% on the amount of a check that bounces as a result of lack of funds in the relevant account, with a floor of P$3,028 and a monthly cap of one monthly tax unit.

(ii) Loans, notes and any other document containing a credit transaction, as well as the delivery of accounts receivable to banks, credit notes issued by Chilean banks with respect to foreign transactions, and the issuance of bonds and debentures — the stamp duty on these transactions is levied on the value of the instrument and is payable at a rate of 0.066% per month from the date the document is issued up to its maturity and capped at 0.8%. If the instrument is payable on sight or does not have a maturity date, stamp duty is still levied on its value, but the rate is 0.166%. It should be noted that a temporary stamp duty exemption for mortgages taken out to purchase homes applies from May 30 to December 31, 2024.[1070]

(iii) The extension or renewal of loan documents — the stamp duty is levied on the principal amount extended or renewed. The stamp duty is payable at a rate of 0.066% per month from the date the original loan document matured until the new maturity date, up to a maximum rate of 0.8%. If the instrument does not have a maturity date, the

[1065] TC, Art. 85 *ter*.

[1066] Form 1959 is available in the SII website at www.sii.cl as well as in Annex 1 of SII Resolution No. 5, of January 9, 2025. Annex 2 provides instructions on how to fill-in Form 1959.

[1067] SII Resolution No. 20, dated January 31, 2024. To access the form in which the information must be reported, see the Annex in the SII Resolution No. 20.

[1068] Decree Law No. 3,475, approved on Aug. 29, 1980, and published in the *Diario Oficial* on Sept. 4, 1980, as amended.

[1069] Decree Law No. 3,475, Art. 1.

[1070] To reduce indebtedness, Law No. 21,673, published in the *Diario Oficial* on May 30, 2024, provides a temporary stamp duty exemption for mortgages entered into between May 30 and December 31, 2024. The mortgage must be executed to buy a new dwelling. The exemption must be reflected in the notarial deed executed to purchase the property. The exemption may be claimed by both individuals and companies. The mortgage cannot be taken out to cancel an existing loan, even if the existing loan met the requirements for claiming the exemption.

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stamp duty is levied at a rate of 0.166%. The stamp duty paid on the original principal amount and on earlier extensions or renewals is taken into account for purposes of determining whether the cap has been reached.[1071]

(iv) Import documentation, including bank guarantees, even where the importation is made into a free trade zone, if the payment for the goods being imported is made after the goods are accepted — the stamp duty is payable at a rate of 0.066% per month from the date on which the import documents or goods are accepted until such time as the importer acquires the foreign currency to pay for the import. The taxable base is the amount of the import minus interest charges and the stamp duty is capped at a maximum rate of 0.8%.[1072]

If the amount contained in a legal document subject to stamp duty is expressed in foreign currency, that amount must be translated into Chilean pesos at the exchange rate in effect at the time the document is executed.[1073] If the taxable base cannot be determined from the legal document at the time of its execution, the parties may estimate the base and pay the tax based on that estimate. When the final amount is determined, the parties are required to pay an additional stamp duty to the extent that the final amount exceeds the original estimate given by the parties. The additional stamp duty must be paid within 10 days from the date the final amount becomes determinable.[1074]

c. Taxpayers

Banks are primarily liable for the payment of the stamp duty due by means of charging the stamp duty owed to the bank account of the holder. In the case of stamp duties on loans and credit notes, the party responsible for the payment of stamp duties is the creditor, who has the right to recover the tax from the debtor, who is jointly liable for the tax. In the case of issuances of bonds, the party responsible for paying the tax is the issuer.[1075] Stamp duties payable on import documentation are payable by the importer.[1076]

In the case of other documents, the parties are entitled to agree in the relevant document which party will be responsible for the payment of the stamp duty. However, the SII may demand payment of the full tax liability from either party. Thus, if the tax is finally paid by the party that, under the contract, is not required to pay it, that party will have a claim against the other party under the contract.[1077] When one of the parties is a nonresident, documents are frequently executed by the nonresident's Chilean representative. In those cases, the Chilean representative is jointly liable for the stamp duty liability, if any, of the nonresident.[1078]

d. Payment of Stamp Duty

The tax liability arises when the document in question is either issued or executed by all the parties. If the document is issued or executed abroad, the tax liability arises when the document is either protocolized or accounted for in Chile. Thus, if the transaction involves a loan granted from abroad and is not documented, the stamp duty liability arises when the Chilean debtor or creditor enters it in its books. In the case of issuances of bonds and debentures, the tax becomes due when such documents are publicly placed. With regard to stamp duties payable on import documentation, the tax must be paid when the importer remits the payment abroad.[1079]

As a general rule, stamp duty must be remitted to the SII within five working days from the date on which the liability arises, which, in the case of private documents, is generally the date on which the documents are executed. Certain taxpayers are allowed to pay the tax in the month following that in which the document in question is issued or executed. This is the case for banks, when they are primarily responsible for the payment.[1080] Stamp duties on import documentation must be remitted within the month following the date on which the liability arises.

4. Real Estate Tax

The real estate tax (*Impuesto Territorial*) is a tax levied on an annual basis on the official value of real property.[1081] The tax rate depends on whether the real property is used for agricultural purposes or for other uses. Real property used for agricultural purposes is subject to the real estate tax at a rate of 1% of its official value. If the property is used for other purposes, the real estate tax is levied at a rate of 1.4%, unless the property is used for housing, in which case it is subject to a rate of 1.2% if the official value is below P$37.6 million. The 1.4% rate applies to the value in excess of that amount.[1082]

The real estate tax also imposes the following two surtaxes:

(i) A 100% surtax on the general tax rate for urban land (i.e., land located in an urban area without any construction thereon);[1083] and

(ii) A surtax based on the official value of the property on December 31 of the year prior to the one in which the surtax is due that exceeds 670 annual tax units.[1084] The surtax is levied on both agricultural and non-agricultural property. The surtax is levied at the following rates:

- 0.075% for values in excess of 670 monthly tax units up to 1,175 annual tax units;

[1071] Decree Law No. 3,475, Art. 2. Law No. 20,780, Art. 6 and Transitory Provisions, Art. 13.
[1072] Decree Law No. 3,475, Art. 3.
[1073] Decree Law No. 3,475, Art. 6.
[1074] Decree Law No. 3,475, Art. 7. In those cases, the statute of limitations only begins to run on the maturity of the legal obligations under the contract.
[1075] Decree Law No. 3,475, Art. 9.
[1076] Decree Law No. 3,475, Art. 10.
[1077] Decree Law No. 3,475, Art. 9.
[1078] Decree Law No. 3,475, Art. 12.
[1079] Decree Law No. 3,475, Art. 14.
[1080] Decree Law No. 3,475, Art. 15.
[1081] Enacted by Law No. 17,235 of Dec. 24, 1969, as amended. Law No. 17,235 was consolidated in a new text under Decree with the Force of Law No. 1, dated July 1, 1998 (DFL No. 1).
[1082] DFL No. 1, Art. 7. The P$ figure is a 2003 amount, which must be adjusted in the same proportion as the official increase in value of the real property as of that date.
[1083] DFL No. 1, Art. 8.
[1084] DFL No. 1, Art. 7 *bis.*

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• 0.15% for values in excess of 1,175 annual tax units up to 1,510 annual tax units; and

• 0.425% for values in excess of 1,510 annual tax units.[1085]

The surtax is levied on the owner of the property as reflected in the Property Registry on December 31 of the year prior to that in which the payment is due, regardless of whether the owner is an individual or a corporation unless, in the latter case, the corporation is either a pension fund or subject to the Pro-Pyme regime and the property is used in the corporation's business. Since the surtax accrues on January 1, a landowner will not be subject to the surtax if the property is sold during the year in which the tax accrues. The surtax is payable twice a year during the months of June and December.

Real property is officially valued by the SII, which must revalue it every five years. However, the annual additional real estate tax liability due in a given year as a result of a revaluation may not exceed 10% of the tax liability paid in the previous year.[1086] The official value is also readjusted for inflation twice a year, on January 1 and July 1.[1087] The official value may also be adjusted by the SII when there has been an alteration to the real property, for example, in the case of new constructions or installations on, extensions to, repairs of, improvements to, and demolitions of existing structures.[1088]

The real estate tax is generally payable by the owner of the property, although the occupant, if other than the owner (for example, a tenant), may also pay it. If the tax is paid by the tenant, the tenant is entitled to deduct it from his or her rent.[1089] If the property is owned by more than one person, each owner is jointly liable for the full tax. If the real property is owned by a legal entity, the officers and directors of that entity are also jointly liable for the payment of the tax.[1090] Although property used by the public is exempt from the real estate tax, if that real property is subject to a concession or has a tenant, the concessionaire or tenant is subject to the tax during the life of the concession.[1091] The tax is due annually but the taxpayer has the right to pay it in four equal installments.[1092]

Depending on the use and/or user of the property, a full or partial exemption from the real estate tax may apply. For instance, individuals with income levels below certain thresholds are entitled to a 50% reduction of the tax liability.[1093] Agricultural land predominantly used as forests is exempt from the real estate tax.

5. Excise Taxes

For a description of the excise taxes levied in Chile, see XII.G., below.

6. Mining Royalty

a. In General

Taxpayers engaged in mining activities are subject to a mining royalty, which is a tax payable to the Chilean State.[1094]

b. Taxpayers

The mining royalty is payable by mining enterprises. A "mining enterprise" is defined as any individual or corporation that is engaged in extracting mineral substances under a concession and sells those substances in whatever productive form they are in. In this respect, a "sale" consists of any legal act entered into by a mining enterprise aimed at transferring title to a mining product.[1095] Thus, a sale not only comprises the transfer for cash consideration but also the contribution of a mining product to a company's capital.

Mining enterprises that are subject to the mining royalty may claim the rights conferred under Article 11 *ter* of the Foreign Investment Statute (see item (iv) under II.A.2.a., above).[1096]

Small mining enterprises are not subject to the mining royalty. In this regard, a small mining enterprise includes individuals and legal entities that, on an individual basis, sell no more than 10,000 tons of mineral products on a monthly basis. In the case of mining extraction activities, exempt small mining enterprises may either own or rent the mining site, while in both cases the extraction must be performed under a concession.[1097]

[1085] The value thresholds increase automatically by the percentage increase indicated by the SII in determining the official value of the property.

[1086] DFL No. 1, Art. 3.

[1087] DFL No. 1, Art. 9.

[1088] DFL No. 1, Art. 12.

[1089] DFL No. 1, Art. 25.

[1090] DFL No. 1, Art. 26.

[1091] DFL No. 1, Art. 27.

[1092] DFL No. 1, Art. 22.

[1093] DFL No. 1, Art. 3.

[1094] Law No. 21,591, of August 3, 2023, published in the *Diario Oficial* on August 10, 2023. Law No. 21,591 was subsequently amended by Law No. 21,674, published in the *Diario Oficial* on December 23, 2023. Before the introduction of the mining royalty, which entered into force on January 1, 2024, taxpayers were subject to the mining activity tax, which was contained in ITL, Arts. 64 *bis* and 64 *ter*. The mining activity tax was similar to the operational mining component of the mining royalty (seeV.C.6.c.(2)).

[1095] Law No. 21,591, Art. 1.

[1096] Law No. 21,591, Transitional Art. 3. Neither a foreign investor nor a Chilean recipient of foreign investment that has entered into a foreign investment agreement with the Chilean State under Decree Law 600 is subject to the mining royalty currently in force while the agreement is in force, provided the agreement was signed before December 1, 2004. The Chilean mining company will become subject to the mining royalty currently in force either on the expiration of the agreement or if the agreement is voluntarily renounced by the Chilean mining company or the foreign investor. Law No. 20,026, Transitional Art. 2. Taxpayers who are not subject to the current mining royalty are subject to the mining activity tax in effect until February 1, 2022. For a description of Decree Law 600, see II.A. The above rights are also available to a mining enterprise that is subject to the mining royalty but is not a recipient of foreign investment covered by a tax stability contract with the Chilean State, provided: (i) the mining enterprise's sales in financial year 2004 exceeded the equivalent in value of 12,000 metric tons of fine copper; and (ii) the application was filed with the Ministry of Economy no later than November 30, 2005, and the tax stability agreement was executed in a public deed by the Chilean entity and a representative of the Ministry. In such cases, the tax stability period was set for 12 years (as opposed to 15 years) from the date on which the tax stability contract was applied for, and the mining activity tax rate was set at 4%, as opposed to 5%, while the tax stability contract was in force. The application seeking these benefits must have been filed by the Chilean entity and only refer to one or more specific mining projects that were under the ownership of the entity before December 1, 2004, and were already in an exploitation phase on that date. New mining projects not covered by the tax stability contract do not qualify for the benefits of the tax stability contract. Law No. 20,026, Transitional Art. 5.

[1097] Law No. 21,591, Art. 11(a).

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Mining artisans are also exempt from the mining royalty. A mining artisan is an individual entrepreneur who personally works a mine or a mineral plant, whether his or her own or rented out. A mining artisan can work in the mine or plant with or without the support of his or her family and may only have up to five employees. A mining artisan also includes a legal mining company or cooperative with no more than six owners, each of whom is an artisan miner. Individual miners (*pirquineros*), i.e., those who extract minerals independently and under rustic conditions, are also exempt from the mining royalty.[1098]

c. Computation

The mining royalty has two components: an *ad valorem* component; and an operational mining margin component. As discussed below, a mining enterprise may be subject to only one of those components or to both them, depending on the mining enterprise's sales revenues and the type of mineral product extracted.

(1) The Ad Valorem Component

The *ad valorem* component of the mining royalty is levied on mining enterprises with annual sales revenues from the sale of copper in excess of the equivalent of 50,000 metric tons of fine copper. This component of the mining royalty is levied on gross sales revenues at a rate of 1%. Thus, the *ad valorem* component is only levied on the sale of copper.

If, in a given taxable year, a mining enterprise has negative adjusted operational mining taxable income, the *ad valorem* component payable is the *ad valorem* component itself minus the negative adjusted operational mining taxable income.[1099] In other words, since the mining royalty is deductible for income tax purposes, if the adjusted operational mining taxable income is negative as a result of the deduction for the *ad valorem* component of the mining royalty, the deduction from gross taxable income is limited to an amount that leaves the adjusted operation mining taxable income is zero. Adjusted operational mining taxable income is the mining enterprise's net taxable income, as determined for income tax purposes, after applying the following adjustments:[1100]

(i) Add back the operational mining margin (see V.C.6.c.(2), below).

(ii) Subtract all income not directly attributable to the sale of mining products.

(iii) Add back all costs and expenses incurred that were necessary to generate non-mining income.

(iv) Add back the common expenses (i.e., those incurred to generate both mining and non-mining income) on a *pro rata* basis proportionately between non-mining income and the enterprise's gross income.

(v) Add back interest expenses paid or accrued during the taxable year, NOL carryforwards, and accelerated depreciation deductions claimed with respect to fixed assets.

(vi) Add back the difference, if any, between the pre-operational or start-up expenses that were amortized over a period of less than six years and the amount that would have been deductible had those expenses been amortized over a period of six years on a straight-line basis. That difference must be amortized over the period remaining to complete the six-year period on a straight-line basis.

(vii) Add back the consideration received under contracts for the supply of materials, sales of minerals, mining concessions, and any other payment received from a third party for the delivery of exploitation of a mining site, including the portion of the purchase price for the mining site that is structured as a percentage of sales of mining products or the profits obtained by the purchaser.

(viii) Subtract the annual depreciation of tangible fixed assets on a straight-line basis to the extent the taxpayer has not applied an accelerated depreciation method.

(2) The Operational Mining Margin Component

Mining enterprises more than 50% of whose annual sales derive from copper are subject to the operational mining margin (OMM) component of the mining royalty, provided their annual sales exceed the equivalent of 50,000 metric tons of fine copper. The OMM component is applied to the mining enterprise's adjusted operational mining taxable income for the taxable year. The applicable annual rate depends on the mining enterprise's OMM, i.e., the quotient resulting from dividing the adjusted operational mining taxable income by the operational mining income for the taxable year, multiplied by 100, which must be expressed to one decimal point, in accordance with the following rules:[1101]

(i) When the OMM is 20 or less, the rate is 8%;

(ii) When the OMM is more than 20 but no more than 45, the rate is determined based on the following formula, although the effective tax rate cannot exceed 12%:

$$8.0 + \frac{12.0 - 8.0}{45 - 20} \times (\text{OMM} - 20)$$

(iii) When the OMM is more than 45 but no more than 60, the rate is determined based on the following formula, although the effective tax rate cannot exceed 26%:

$$12.0 + \frac{26.0 - 12.0}{60 - 45} \times (\text{OMM} - 45)$$

(iv) When the OMM is more than 60, the tax rate is 26%.

The OMM component will not apply in a taxable year if the mining enterprise's adjusted operational mining taxable income for that year is negative.

Mining enterprises that do not meet the two thresholds (i.e., 50% or less of annual sales do not derive from copper or annual sales do not exceed the equivalent of 50,000 metric tons of fine copper) are still subject to the OMM component of the

[1098] Law No. 21,591, Art. 11(b) and (c).
[1099] Law No. 21,591, Art. 2.
[1100] Law No. 21,591, Arts. 1(5) and 6.
[1101] Law No. 21,591, Art. 3.

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mining royalty. The tax rate depends on whether the mining enterprise's annual sales are above or below 50,000 metric tons of fine copper. In both cases, the tax is levied on adjusted operational mining taxable income. However, the OMM component will not apply if the mining enterprise's adjusted mining taxable income is negative.

If annual sales are between 12,001 and 50,000 metric tons of fine copper, the tax rates are as follows:[1102]

Annual Sales (Metric Tons of Fine Copper)	Tax Rate (%)
Up to 12,000	0
12,001 – 15,000	0.4
15,001 – 20,000	0.9
20,001 – 25,000	1.4
25,001 – 30,000	1.9
30,001 – 35,000	2.4
35,001 – 40,000	2.9
40,001 – 50,000	4.4

If annual sales are more than 50,000 metric tons of fine copper, the tax rates are as follows:[1103]

Operational Mining Margin	Tax Rate (%)
Less than 35	5
35 – 40	8
40 – 45	10.5
45 – 50	13
50 – 55	15.5
55 – 60	18
60 – 65	21
65 – 70	24
70 – 75	27.5
75 – 80	31
80 – 85	34.5
Over 85	14

(3) Common Rules

The following rules must be taken into account in determining both components of the mining royalty:[1104]

(i) In determining its annual sales, a mining enterprise must consider the average annual sales over the last six taxable years. However, if the enterprise has been selling mining products for less than six years, the average must then be calculated from the first taxable year in which the enterprise started to sell mining products.

(ii) The annual sales must be expressed in metric tons of fine copper and must be determined based on the average annual value of Grade A copper during each of the taxable years, as quoted on the London Metal Exchange. This value is to be published, in Chilean pesos, by the Chilean Copper Commission within 30 days following the end of each calendar year. Annual sales to be converted into metric tons of fine copper must be expressed in Chilean pesos. If the annual sales are expressed in foreign currency, the mining enterprise must convert them into Chilean pesos using the exchange rate on the financial market on the last working day of the calendar year, as published by the Central Bank in the *Diario Oficial* on the first working day of the following calendar year.

Hence, the average annual sales of mining products in metric tons of fine copper must be determined based on the following formulae:

$$\text{Annual sales of the taxable year in MTFC} = \frac{\text{Annual sales of taxable year in Chilean pesos}}{\text{Value of a MTFC of taxable year in Chilean pesos}}$$

$$\text{Average annual sales in MTFC} = \frac{\text{Sum of annual sales of last 6 taxable years}}{6}$$

(iii) For purposes of determining the amount of a mining enterprise's annual sales and the applicable tax rate (but not the taxable base), the enterprise is required to take into account all sales of mining products undertaken by all persons that are related to it that are also mining enterprises. For these purposes, the following persons are considered related:[1105]

(a) A controlling person and its controlled entity. A controlling person means any person (or group of persons that have an agreement to act jointly) that, either directly or through other persons, holds or is entitled to more than 50% of the legal or beneficial ownership of shares, profits, income or voting rights in the controlled entity. An agreement to act jointly is deemed to exist when there is proof of an agreement between two or more person that simultaneously participate in the ownership of the entity, either directly or through other individuals or controlled entities, by virtue of which they agree to participate with a common interest in the entity's management or to obtain control of it.

[1102] Law No. 21,591, Art. 4(2).
[1103] Law No. 21,591, Art. 4(3).
[1104] Law No. 21,591, Art. 5.
[1105] TC, Art. 8(17). For purposes of the test, a person includes a PE, an investment fund and any type of taxpayer.

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(b) All entities controlled by a controlling entity.

(c) An entity and its owner, if the latter owns, either legally or beneficially, and either directly or through other persons, more than 10% of the shares, profits, income or voting rights of the entity.

(d) The managing and silent partners with respect to a silent partnership (*contrato de asociación*), to the extent the former have an interest of more than 10% in the silent partnership's profits.

(e) Entities that are deemed to be related to an individual under (c) and (d) are considered related parties provided they do not satisfy the criteria under (a) and (b).

(f) Parent companies and their affiliates, as defined in Law No. 18,046.

The combination of the mining royalty, the first category liability and the surtax or additional tax liabilities may not exceed 46.5% of a mining company's adjusted operational mining taxable income.[1106] This limit is reduced to 45.5% in the case of mining enterprises with annual sales revenue of less than the equivalent of 80,000 metric tons of fine copper. Hence, the mining royalty must be reduced if the sum of these three tax liabilities exceeds the applicable limit. The first component to be reduced is the OMM component followed by the *ad valorem* component.

d. Payment of Tax

A mining enterprise is required to make advance monthly mining royalty payments, irrespective of whether the enterprise is subject to the *ad valorem* or OMM component, or both.[1107]

For taxable year 2024, the advance mining royalty monthly payment payable by a mining enterprise is based on a percentage of revenues received or accrued from the sale of mining products. The actual percentage is dependent on whether, on December 31, 2023, the enterprise's annual sales revenue were equivalent in value to more or less than 50,000 metric tons of fine copper. If the value was between 12,001 and 50,000 metric tons, the rate is to be determined in April 2024 under the variable tax rate rules on advance corporate income tax payments (see V.B.11.a.(2)); if the rate cannot be calculated (for example, because the mining enterprise has not generated operational mining income), the rate will be set at 1% of monthly sales. If, on the other hand, the value was in excess of 50,000 metric tons, the advance monthly mining royalty must be calculated in January 2024 under the variable tax rules on advance corporate income tax payments, increased by 1% of the average sales revenues of the prior quarter. Advance mining royalty payments made in 2024 in a given quarter must be increased on a quarterly basis by 1% of the average sales for the immediately preceding quarter.[1108]

The advance monthly payments are based on a percentage of the enterprise's gross revenue received or accrued from the sale of mining products. The percentage is established based on the weighted average of the percentages the mining enterprise applied to its monthly gross revenues for the immediately preceding taxable year, increased or reduced by the difference, in percentage terms, between the total advance monthly mining royalty payments (as adjusted for inflation) and the total mining royalty that the enterprise should have paid (with no adjustment for inflation) in the prior taxable year. If that difference is negative, the weighted average percentage of the advance monthly payments must be increased by that difference; if, on the other hand, the difference is positive, the weighted average percentage must be reduced by that difference. The percentage is set at 0.3% if the weighted average percentage in a given taxable year cannot be determined, for example, because the mining enterprise has not generated adjusted operation mining taxable income in the prior taxable year or it is the first taxable year in which the enterprise becomes subject to the mining royalty or any other circumstance.

Advance monthly mining royalty payments must be adjusted on a quarterly basis based on the average variation in the price of a pound of copper. To this end, the Ministry of Finance will set the average price of a pound of copper for each quarter based on its trading value in the London Metal Exchange during the immediately preceding quarter. On publication of the average price, a mining enterprise must adjust its advance monthly payments proportionately to the variation between the average price for the previous quarter and the last average price published by the Ministry of Finance.

Advance monthly mining royalty payments must be made within the month following that in which the mining enterprise generated the relevant revenue. The payments must be made together with advance corporate income tax payments (for a discussion of the latter, see V.B.11., above). The advance monthly mining royalty must be self-assessed using Form 50 if the taxpayer pays its taxes in foreign currency. The taxpayer must use Form 29 if it pays its taxes in local currency.[1109]

Advance mining royalty payments can be suspended under the same rules as apply to advance income tax payments if the mining enterprise is in an NOL position. However, the enterprise can only suspend the payments in the event the adjusted operation mining taxable income is negative, regardless of the actual NOL position for income tax purposes.

The mining royalty must be reported on an annual basis under the same rules as the first category tax (see B.11.b., above).[1110]

e. Reporting Obligations

A mining enterprise subject to the mining royalty must send its quarterly and annual audited individual and consolidated financial statements to the Financial Markets Commission. The audit report must include a note on the ownership of the enterprise.[1111] Failure to file the financial statements is subject to penalties.

[1106] Law No. 21,591, Art. 8.

[1107] Law No. 21,591, Art. 7.

[1108] Law 21,591, Transitional Art. 2.

[1109] SII Resolution No. 18, of January 31, 2024. Forms 29 and 50 can be accessed at www.sii.cl. For instructions on how to prepare Forms 29 and 50, see Annexes II and I, respectively, of SII Resolution No. 18.

[1110] Law No. 21,591, Art. 9.

[1111] Law No. 21,591, Art. 10. The timing for the filing is to be determined by the Financial Markets Commission.

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7. Tax on Emissions

Persons that pollute the air with certain particles are subject to a tax on the emissions they produce. The particles must consist of particled material, nitrogen oxide (NO_x), sulfur dioxide (SO_2) and carbon dioxide (CO_2) and must be produced by establishments that on an annual basis generate 100 tons or more of particled material or 25,000 tons or more of carbon dioxide.[1112]

In the case of particled material, nitrogen oxide (NO_x), and sulfur dioxide (SO_2) emissions, the tax is equal to US$0.10 per ton of emissions times the amount resulting from the following formula:

$T_{ij} = DCP_j \times SCPpc_i \times Pop_j$

Where T_{ij} = is the tax per ton of pollutant "i" emitted in the community "j" as measured in US$/ton

DCP_j = is the dispersion coefficient of pollutants in the community "j"

$SCPpc_i$ = is the social cost *per capita* of contamination of pollutant "i"

Pop_j = is the population of the community "j"

The dispersion coefficient depends on whether the community "j" has a high, medium-high, medium, medium-low, or low dispersion factor and the dispersion factor must be determined based on emission-concentration factors (ECF) that are estimated at 2.5 for particled materials for each community, as per the following table:

Dispersion Factor	ECF	Coefficient
High	0 +600 ton/ug/m^3	0.8
Medium-high	400–600 ton/ug/m^3	0.9
Medium	200–400 ton/ug/m^3	1.0
Medium-low	100–200 ton/ug/m^3	1.1
Low	0–100 ton/ug/m^3	1.2

Forthcoming regulations to be issued by the Ministry of the Environment must establish the methodology to be used for purposes of determining the emission-concentration factors for each community. The social cost of contamination *per capita* associated to each pollutant is the following:

Pollutant	US$
Particled material	0.9
SO_2	0.01
NO_x	0.025

The population of each community must be determined on an annual basis based on official projections from the National Institute of Statistics.

In the case of carbon dioxide emissions, the tax is equal to US$5 per ton that is emitted. However, the tax on the emission of carbon dioxide is not applicable if the fixed source operates by means of unconventional renewable generation and the primary source of energy is biomass.

The Ministry of the Environment must publish a list on an annual basis of the establishments that must report their emissions to the Ministry. The Ministry of the Environment must also publish a list of the district (comunas) that are regarded as saturated for purposes of calculating the tax on emissions. Once the listed establishments have reported their emissions, the Superintendence of the Environment must, during the first calendar quarter, publish a list of those establishments that are subject to the tax on emissions.

The tax on emissions for each taxpayer is to be determined by the SII, based on data provided to it by the Superintendence of the Environment during the month of March which, in turn, is based on the report issued by each listed establishment that is subject to the tax. The Superintendence of the Environment must also inform the establishment that it is subject to the tax. The tax must be paid in April of each year based on the emissions generated during the previous calendar year. The tax must be paid in Chilean Pesos but, since it is calculated in U.S. dollars, the exchange rate to be applied must be the one in effect on the date the tax is paid.

8. Municipal Business Tax

Most business activities conducted within a municipality are subject to a municipal business tax or *patente municipal*.[1113]

The tax rate is determined by each municipality and it must range between 2.5 per thousand and 5 per thousand of the taxpayer's capital plus its retained earnings at the end of each taxable year. However, the tax cannot be lower than one and higher than 8,000 monthly tax units. The municipality has the power to establish different rates for different areas within the municipality.

The portion of the capital and retained earnings the taxpayer has invested in other entities that are subject to the municipal business tax may be deducted from that taxpayer's taxable base.[1114] Furthermore, when a taxpayer has establishments in other municipalities, it must first determine the overall tax due and then allocate the amount payable to each municipality on the basis of the number of employees working in each establishment, irrespective of their rank and including part-time, seasonal workers and subcontractors. Specifically, during May of each year the taxpayer must report to the municipality where its home office is located (i.e., where the taxpayer's principal management is located) the number of employees working in each of its establishments. That municipality must then report to the other municipalities as well as to the taxpayer the amount of capital and retained earnings allocated to each municipality and each of those municipalities must then determine the tax

[1112] Law No. 20,780, Art. 8. Polluters started to pay the tax on emissions in 2018 with respect to the emissions they produced in 2017. Law No. 20,780, Transitory Provisions, Art. 14.

[1113] Decree No. 2,385, published in the *Diario Oficial* on May 30, 1996, as amended, Art. 23.

[1114] Decree No. 2,385, Art. 24.

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due after applying the applicable tax rate. At the same time, during the month of May, the SII remits to each municipality information for each taxpayer, including the capital and retained earnings the taxpayer has reported to the SII.

9. Environmental Contribution

Taxpayers that are subject to the first category tax are required to make a one-time environmental contribution for each investment project undertaken in Chile that meets the following two thresholds:[1115]

(i) The investment project must comprise the acquisition, construction or import of tangible fixed assets and the overall investment in those assets must amount to at least US$10 million. A fixed asset is also treated as part of an investment project if it is structured as a lease with an option to purchase; and

(ii) The investment project must be subject to an environmental impact evaluation pursuant to article 10 of Law No. 19,300 on the General Environmental Rules.

Any structure or installation of the taxpayer is deemed to be part of an investment project if, based on the nature of the project, it becomes part of a coherent commercial and geographical unit; to this end, an investment project constitutes such unit when, among other circumstances, the structures and installations share a defined geographical area and their functions either complement each other or are used to execute the same contract.

Certain investment projects in excess of the U.S.$10 million threshold are nevertheless exempt because of their nature. Thus, investment projects that are either solely used for health, educational, scientific, or technological R&D activities, or for the construction of dwellings or offices are exempt from the environmental contribution. However, the taxpayer must file a request for the exemption to the Ministry of Finance.

The environmental contribution is levied at a rate of 1% over the acquisition value in excess of U.S.$10 million of all tangible fixed assets comprised in an investment project. To this end, the acquisition price of the assets must be converted into Chilean pesos at the exchange rate in effect on the date of the invoice of the seller of the asset. If the asset is imported, the acquisition value is the CIF value plus customs duties and customs fees. If the investment project is undertaken in phases, the environmental contribution will apply at the time the U.S.$10 million threshold is exceeded after taking into account all the tangible fixed assets that have been acquired in each of the phases of the investment project. Merely replacing a fixed asset is not taken into account for purposes of determining the U.S.$10 million threshold.

The environmental contribution is due in the first taxable year in which the investment project generates operational income and only to the extent the works have been approved by the relevant municipality or, if not applicable to the project, the Superintendence of the Environment has been informed of the project's execution as provided in the relevant Environmental Qualification Resolution. The contribution must be paid in April of the year following its accrual together with the taxpayer's annual first category tax return. However, the taxpayer is entitled to pay the contribution in five annual instalments, with the first instalment payable as stated above and the remaining four during the following four years. If this option is taken, the taxpayer must convert the amount due in monthly tax units. The payment of the instalments may be suspended if the authorities suspend the investment project. The taxpayer does not have the obligation to pay outstanding instalments is there is an act of *force majeure* that forces it to terminate the project; however, the taxpayer does not have the right to claim a refund for the full contribution or instalments it has already paid in connection with that project.

If there are instalments pending to be paid and the taxpayer transfers the project, the transferee is jointly liable for those pending instalments. Also, if the taxpayer undergoes a corporate reorganization, such as a merger, that leads to a change in the owner of the project, both the taxpayer (if it continues to exist) and the surviving entity will be jointly liable for the outstanding instalments.

10. Luxury Tax on Vehicles

Individuals and legal entities that own certain vehicles on December 31 are subject to an annual tax at a rate of 2% of the fair market value of the vehicle concerned if the vehicle is located in Chile. A vehicle is deemed located in Chile if it is registered in Chile in an official vehicle registry.[1116]

The following vehicles are subject to the tax:

(i) Piloted helicopters weighing more than 160 kilos and with a fair market value on December 31 of 122 annual tax units or more;

(ii) Piloted aircraft weighing more than 160 kilos and with a fair market value on December 31 of at 122 annual tax units or more;

(iii) Yachts with a fair market value on December 31 of 122 annual tax units or more.

a. For purposes of the tax, a yacht is defined as either a small or large boat that is used for sports or recreation, is propelled by an engine or sails, and has a fixed structural deck that allows the existence of a covered interior for passengers or crew;

b. However, yachts that are designed to have and maintain sails as their main propelling mechanism and the engine only has a secondary and supportive role are not covered by the tax, provided:

i. Their registered tonnage is less than 20; or

ii. They were effectively used on a regular or systematic basis in an annual championship of a federated class during the calendar year prior to the one in which the tax accrues; and

(iv) Automobiles, station wagons and similar vehicles with a fair market value on December 31 of 62 annual tax units or more.

A resident company owning any of the above vehicles is not subject to the annual tax provided the vehicle is part of the

[1115] Law No. 21,210, Art. 32.

[1116] Law No. 21,420, Art. 9.

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company's fixed or current assets and is effectively used in, and indispensable to the carrying on of, the company's business.[1117]

The fair market value of the above vehicles is determined on an annual basis by the SII.[1118] To this end, on December of each year, the SII publishes in its website a list of helicopters, aircraft and yachts that are subject to the tax and their fair market value.[1119] The list is updated on a quarterly basis. The list is prepared on the basis of information provided by Chilean air, maritime and terrestrial civil authorities (who also report the vehicles that are registered with them) as well as from information obtained by the SII from other institutions, such as notaries public, customs agents, importers and distributors.[1120] If a vehicle is not listed, it does not mean the vehicle is not subject to the tax; instead, the owner must require from the SII to include it on the list.

Owners of vehicles subject to the tax are entitled to access the information maintained by the SII on those vehicles, such as the type of vehicle, brand, model, year it was manufactured, number plate, fair market value and the tax due. They can also request the SII to amend the information by providing documentation justifying the change. However, if the information to be changed has been obtained by the SII from official registries, the SII will not introduce the changes until the information in the official registry has been changed.

The tax accrues on an annual basis on January 1 based on the vehicles owned by the taxpayer on December 31 of the previous year. The tax due is determined by the SII and notified to the taxpayer by the regional office of the SII which they are under the jurisdiction of. One notice is sent for each of the vehicles owned by the taxpayer that are subject to the tax. The tax notice is sent during the first five days of April and the tax must be paid during that month through the SII's website. Late payment of the tax is subject to interest charges.

If the owner has not received the tax notice with the tax due during April of a given year, it is required to inform the SII of this failure by the end of August of that year.[1121]

The tax due notified by the SII can be modified and a new notification will be issued if the SII has new information, whether it is obtained *ex officio* or provided by the owner of the vehicle, showing a different fair market value. The updated tax due shown in the amended notification must be paid during the month following the one in which the notice was received. If the vehicle is owned by more than one person, all the owners are jointly liable to the tax and the SII will generally send the tax notice to one of the owners. Whichever owner pays the tax has the right to be reimbursed from the other owners in proportion to their interest in the vehicle. The taxpayer can challenge the valuation made by the SII.

The tax paid by resident companies does not constitute a deductible expense in calculating the first category tax.

11. Tax Control

Persons that manufacture, import, bottle, distribute or sell goods which are subject to special taxes, as determined by the SII, must establish a marking system on such goods or on their containers or packages consisting of a seal, stamp, sign, mark or other distinction in order to control their commercialization. The cost incurred in implementing this marking system can be utilized as a tax credit against the taxpayer's advance income tax liability in the month in which the expense was incurred. Excess credits may be utilized to offset withholding taxes that, as withholding agent, the taxpayer must remit to the Treasury in that month and, to the extent there are still unutilized credits, they can be carried forward against those two taxes until the end of the taxable year in which the expense was incurred or against advance income tax or withholding tax liabilities of subsequent taxable years. Goods subject to these rules may not be withdrawn from the taxpayer's premises or from customs warehouses unless they are duly marked pursuant to these rules; otherwise, they will be deemed to be smuggled.[1122]

Failure to comply with the marking systems is subject to penalties of up to 100 annual tax units. Falsifying products or inventory or the information provided to the SII under the marking system in order to reduce the taxpayer's tax liability is subject to a penalty ranging from 150% to 300% of the unpaid tax and criminal charges may also be brought against the taxpayer. Failure to have the goods duly marked is subject to a penalty ranging from 10 to 100 annual tax units and the goods will be confiscated.[1123]

[1117] SII Circular No. 38, of September 6, 2023.

[1118] The fair market value is taken from the provisions contained under Decree Law No. 3,063, of 1979, as amended by Supreme Decree No. 2,385, of 1996, from the Ministry of the Interior. If the value of a vehicle is not contained in that legislation, the SII will estimate it based on the purchase price in the local or international market, taking into account the vehicle's brand, model and year it was manufactured.

[1119] See www.sii.cl.

[1120] SII Circular No. 57, of December 26, 2022.

[1121] SII Circular No. 9, of January 16, 2025.

[1122] TC, Art. 60 *quinquies.*

[1123] TC, Arts. 60 *quinquies* and 97(4) and (6).

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VI. Taxation of Foreign Corporations

A. Sourcing Rules

1. In General

Nonresident corporations are subject to income tax on their Chilean source income.[1124] Income is sourced in Chile if it arises from assets located, or from activities performed, in Chile, irrespective of the country of residence of the owner of the asset or the service provider. The following rules apply in determining whether an asset is located, or an activity is performed, in Chile:

(i) Shares and partnership interests in Chilean entities are deemed to be located in Chile.[1125]

(ii) Indirect sales of underlying Chilean assets, where income or gains realized by a nonresident from the sale of shares, quotas, bonds or other instruments that are convertible into shares, as well as any other right in the capital of a legal entity incorporated or with tax residence abroad have value attributable to underlying Chilean assets (see VI.A.2. below).[1126]

(iii) Income and gains derived from Certificates of Deposit of securities issued in Chile and representing such securities are not sourced in Chile, provided the Certificates of Deposit are issued by entities that are incorporated abroad or by international organizations. Therefore, income or gains arising from trades in American Depository Receipts (ADRs) representing shares in Chilean corporations are not sourced in Chile.[1127]

(iv) Income and gains derived by Chilean investment funds that are governed by Law No. 18,045 are not sourced in Chile, provided that 90% of the financing of such funds is backed by foreign securities or other foreign assets. The remaining 10% of the fund's assets may only be invested in fixed income instruments with a maturity period not greater than 120 days from the date of their acquisition.[1128]

(v) Bonds and other debt instruments are sourced in Chile if they are issued in the country by taxpayers that are domiciled, resident or established in Chile irrespective of whether the bonds or debt instruments are publicly traded or privately issued.[1129]

(vi) Interest on loans, bonds and other debt instruments is sourced in the country of domicile of the debtor. If those instruments have been issued by a foreign PE, the interest thereon is sourced in the country where the head office or principal office is situated.[1130]

(vii) Royalties and similar payments arising from the right to use trademarks and other similar intellectual or industrial property are sourced in Chile if the relevant property is used, enjoyed or exploited in Chile.[1131]

2. Taxable Indirect Sales Sourced to Chile

a. General

When foreign shares, quotas or instruments are being sold (item (ii) of the list at V.A.1. above), an indirect taxable sale may be sourced to Chile in the following circumstances:

(i) 20% of the fair market value of the assets disposed is attributable to underlying Chilean assets (see VI.A.2.c.);

(ii) The fair market value of the underlying Chilean assets exceeds 210,000 tax units (see VI.A.2.d.); or

(iii) The entity disposing of the assets is situated in a jurisdiction with a harmful or preferential tax regime, and the assets disposed of themselves hold any amount of underlying Chilean assets, subject to certain ownership conditions (see VI.A.2.e.).

These circumstances seek to prevent an otherwise frequently used exit strategy for the avoidance of Chilean capital gains taxes consisting of interposing an offshore shell entity between the investor and the Chilean entity and selling that shell entity instead of the shares in the Chilean entity. Consequently, foreign investors in Chilean companies that have their corporate structures set up pursuant to this technique need to reconsider such structures if they fall under any of the above three scenarios.

If the nonresident seller is caught under any of the above three scenarios and the sales proceeds are denominated in a foreign currency, it has to calculate the gain or loss by converting the foreign currency into Chilean pesos at the exchange rate in effect on the date of the sale.

The above rules do not apply if the sale of the shares in the foreign company takes place as a result of an intra-group reorganization and the seller has not generated income or gain or a basis step-up.[1132] For this exception to apply, both the seller of the foreign shares and the buyer or recipient of those shares must be owned, directly or indirectly, by the same controlling company.

See VI.B.5.a.(2), below, for a discussion of the manner in which a taxable indirect sale is taxed in Chile and the filing requirements for the seller, the buyer, and the Chilean entity whose shares are indirectly being transferred.

b. Underlying Chilean Assets

For the purpose of these tests, the following asset types will be considered to be underlying Chilean assets:

(i) Shares or quotas and other equity interests participating in the ownership, control or profits in a company, fund or entity that is incorporated in Chile;

[1124] ITL, Art. 3.
[1125] ITL, Art. 11.
[1126] ITL, Art. 10.
[1127] ITL, Art. 11.
[1128] ITL, Art. 11.
[1129] ITL, Art. 11.
[1130] ITL, Art. 11.
[1131] ITL, Art. 10.
[1132] ITL, Art. 10.

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(ii) A PE in Chile of a taxpayer without domicile or residence in Chile (for these purposes, the PE is regarded as independent from its home office); and

(iii) Any other movable or immovable property located in Chile, or rights thereto, provided that its owner is a company without domicile or residence in Chile.

c. 20% of Value Attributable to Chilean Assets

A disposal is sourced to Chile where at least 20% of the fair market value of the shares, quotas or instruments held, directly or indirectly, by the nonresident seller in the foreign entity is attributable to underlying Chilean assets.

The test must be considered to be met if at least 20% of the fair market value of the assets disposed of was attributable to underlying Chilean assets either:

(i) At the time of the sale; or

(ii) At any time within the 12 months prior to such sale.

The ownership proportion is attributed according to the actual indirect interest that such seller has in those assets, looking through the chain of direct ownership proportions.

When computing the tax liability, the underlying Chilean assets must be valued on an arm's length basis, taking into account the facts and circumstances in which the sale of the foreign shares is made.

In this regard, the SII is entitled to exercise its right to value the assets. When determining the fair market value of the Chilean shares or PE, the fair market value of investments held by the Chilean entity abroad at the time of the sale minus any outstanding liability owed by that entity which was utilized to acquire, maintain or expand those investments should be excluded from the computation.[1133]

For the sale to be sourced in Chile, it is also necessary that the nonresident seller sells at least 10% of the shares, quotas or instruments of the foreign entity. To that end, the 10% equity threshold must be calculated by taking into account all the direct and indirect sales of such shares, quotas or instruments made by the seller itself and by other nonresidents that are related to the seller on the date of the last sale as well as those undertaken within 12 months prior to it, including those sales that, when considered on an individual basis, do not exceed the 10% threshold.

d. Fair Market Value Threshold

When at the time the shares, quotas or instruments in the foreign entity are sold, or within 12 months prior to the sale, the fair market value of one or more of the underlying assets described above and in proportion to the indirect interest owned by the seller in such assets, is at least 210,000 annual tax units.

To that end, the value of the tax unit must be determined on the date of the sale. As in the previous scenario, for the sale to be sourced in Chile, it is also necessary that it consist of at least 10% of the shares, quotas or instruments of the foreign entity made during the prior 12 months by the nonresident seller or a related party.

e. Harmful or Preferential Tax Regime Entities

When the foreign shares, quotas or instruments being sold are issued by a company that is domiciled or incorporated in any of the jurisdictions deemed having harmful preferential tax regimes.[1134]

In this scenario, there is no minimum percentage that the fair market value of the foreign shares that the seller owns, directly or indirectly, be attributable to one or more of the underlying Chilean assets described above. Furthermore, neither the percentage of shares being sold by the nonresident nor whether the value of the underlying assets located in Chile exceed 210,000 annual tax units is irrelevant.

This rule, however, only applies if either the nonresident seller, its Chilean agent or the buyer proves that the following two conditions are met:

(i) There are no Chilean resident persons that, directly or indirectly, own at least 5% of the shares are being sold, and

(ii) The shareholders who, directly or indirectly, control at least 50% or more of the capital or profits of the company whose shares are being sold are residents in jurisdictions not having harmful preferential tax regimes.

B. Determination of Taxable Income and Taxation

1. In General

Chilean-source income derived by a nonresident corporation without a PE in Chile is generally subject to the additional tax at the rate of 35%. The additional tax is generally levied as a withholding tax on the gross amount of the payment.[1135] For the rates of source country taxation applying to investment income, services income and capital gains under Chile's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

2. Dividends

Dividends distributed by a Chilean entity to nonresident shareholders are subject to the additional tax at a rate of 35%.[1136] The additional tax must be levied on the amount distributed to the nonresident shareholder, which must be grossed-up by the tax credit that such amount carries.[1137]

The tax credit against the additional tax is equal to the first category tax that was levied on the grossed-up dividend at the rate in effect in the year in which the distribution is made. The tax credit is limited to the amount available in the SAC registry of the distributing company at the end of the taxable year prior to the one in which the distribution is made or where the

[1133] To determine the correlation between the investments abroad made by the Chilean entity and the liabilities that should be excluded from the computation, the taxpayer is required to determine which liabilities are directly related with those investments. If this is not possible, the taxpayer must determine the proportion of the fair market value of the foreign assets of the Chilean entity over the fair market value of its total assets times the book value of its total liabilities, as per its balance sheet. In any case, the amount of deductible liabilities cannot exceed the fair market value of the foreign assets. SII Resolution No. 119, dated September 28, 2020.

[1134] See the Worksheets for a list of countries or territories considered as having a preferential tax regime.

[1135] ITL, Art. 58(1).

[1136] ITL, Arts. 58(1) and (2) and 60.

[1137] ITL, Arts. 58(2) and 63.

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distributing company has received foreign dividends that carry foreign tax credits during the taxable year in which the distribution takes place. However, as in the case of resident individuals, the nonresident shareholder is only entitled to claim 65% of that tax credit provided it originates from the first category tax paid by the distributing entity.[1138] The tax credit against the additional tax originating from foreign tax credits is not subject to the 35% non-creditable amount. The 35% tax credit limitation is also inapplicable to distributions made by SMEs that are subject to the Pro-Pyme regime. The 35% non-creditable amount is deemed to be part of the additional tax. However, by way of exception to the general rule, the 65% tax credit limitation does not apply if the nonresident shareholder is resident in a jurisdiction with which Chile has a tax treaty in force, that tax treaty contains the "Chile clause" (i.e., it expressly provides that the first category tax paid by the distributing entity constitutes a tax credit against the additional tax) and the recipient is the beneficial owner of the distribution.[1139] Nor does the 65% limitation apply to dividend distributions made to persons resident in a jurisdiction with which Chile has signed a tax treaty before January 1, 2017, the treaty is not yet in force and the treaty also contains the Chile clause referred to above.[1140]

The additional tax on dividend distributions must be withheld at source net of the tax credit to which the shareholder is entitled (with or without the 35% tax credit limitation, depending on the shareholder's tax residence.[1141]

Example:

RAI balance	230,000
SAC balance from first category tax	22,000
SAC balance from foreign tax credits	0
Tax credit factor [27% / (100% − 27%)]	0.369863
Dividend distribution	50,000
Gross-up [50,000 / (1 − 0.27)]	68,493
Additional tax liability [35%]	23,973
Tax credit limitation [35%]	6,473
Tax credit	−18,493
Additional tax withheld	11,953

If at the end of the taxable year it is determined that the tax credit has not been properly calculated and the amount withheld on the dividend distribution is less than what it should have been, it is for the distributing company to pay to the SII on behalf of the shareholder and on account of the additional tax the amount of tax that has not been paid through the withholding tax mechanism. The amount must be reported and paid in the annual first category tax return and must be adjusted for inflation. The distributing company, however, may claim the amount paid from the recipient of the dividend.[1142] If, on the other hand, the tax withheld by the distributing company exceeds the tax due by the nonresident shareholder, the latter is entitled to claim a tax refund for the excess. The shareholder may also request the distributing company to add the tax withheld in excess to the SAC registry.[1143]

For a discussion of how a substitute tax can be paid in lieu of the additional tax by the Chilean company with respect to earnings and profits accumulated through December 31, 2023, see V.B.5.d.(5), above.

Nonresident companies are subject to the same tax rules as resident individuals with respect to amounts withdrawn or deemed withdrawn from a Chilean entity. For a discussion of the amounts that are treated as withdrawals, see IX.C.3.c.(1)(b), below. However, the surcharge or penalty tax that is applicable to nonresident shareholders is levied through a withholding tax at a rate of 45%.[1144] The withdrawal rules are generally applicable irrespective of the entity's year-end results.

The following distributions are not subject to the additional tax:[1145]

(i) Stock dividends and increases in the nominal value of shares arising from a capitalization; and

(ii) Returns of capital that have been previously invested in Chile.

3. Interest

a. Withholding Tax

As a general rule, interest paid to nonresidents is subject to the additional tax at a rate of 35%.[1146] The tax is withheld at source. However, the following interest payments are subject to a lower withholding tax rate of 4%:[1147]

(i) Interest paid on loans granted from abroad by foreign or international banks or financial institutions, or by foreign insurance companies and pension funds that are exempt from Chilean capital gains tax on the sale of certain securities;[1148]

a. The reduced 4% withholding tax rate only applies if the loan is not structured as a back-to-back loan, i.e.,

[1138] ITL, Art. 63. For the Chilean tax filing obligations of a nonresident, see VII.D., below.

[1139] ITL, Art. 63.

[1140] Law No. 20,899, Fourth Transitory Provision and Law No. 20,210, Eleventh Transitory Provision. This exception is important for U.S. investors in Chilean companies since the tax treaty between the United States and Chile was signed in 2010 but its ratification is pending as it is still awaiting approval from the U.S. Senate (see XIV., below). Therefore, U.S. investors are entitled to claim a full credit against their Chilean additional tax liability. The other tax treaty that has been signed but is not yet in force is with the United Arab Emirates.

[1141] ITL, Art. 74(4).

[1142] ITL, Arts. 14(F)(2) and 74(4).

[1143] ITL, Art. 74(4).

[1144] ITL, Art. 74(4).

[1145] ITL, Art. 58(2).

[1146] ITL, Art. 59(1).

[1147] ITL, Art. 59(1).

[1148] The lower withholding tax rate prevails even if the foreign bank or financial institution has a branch in Chile. For a discussion of the foreign insurance companies and mutual funds that are exempt from Chilean capital gains tax on the sale of certain securities, see VI.B.5.b.

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a structured arrangement whereby the foreign or international financial institution that receives the interest from Chile transfers it to another nonresident person who would not be entitled to the reduced rate if that person had received the interest directly from the Chilean debtor;

b. Furthermore, the financial institution must deliver a statement to the Chilean debtor at the time the loan agreement is executed confirming that it has not entered that type of structured arrangements.[1149] Failure to furnish the statement renders the 4% rate inapplicable;

c. For these purposes, a foreign financial institution is an entity:

i. With tax residence or incorporated abroad;

ii. Whose principal activity is granting financing and the majority of its income derives from that activity;

iii. Its financing activities are performed regularly; and

iv. Its paid-up capital and reserves are equal to or in excess of half the minimum that is required for a foreign bank to be set-up in Chile pursuant to the General Banking Law;

(ii) Interest paid on outstanding purchase prices relating to goods imported into Chile with a deferred coverage or with a receivable system;

(iii) Interest on foreign or local currency denominated bonds and debentures issued by legal entities incorporated in Chile. In this regard, the issuer must inform the SII of the terms and conditions of the issuance;

(iv) Interest on local or foreign currency denominated bonds and debentures issued by the Chilean State and the Chilean Central Bank;

(v) Interest paid on deposits made in local or foreign currency in current accounts held in, and time deposits made with, any Chilean institution that is authorized to receive them by the Chilean Central Bank;

(vi) Interest on Latin American Banking Acceptances (ABLAs) made by members of the Latin American Integration Association (ALADI) and other benefits granted thereunder; and

(vii) Interest accrued on publicly-traded debt instruments issued by Chilean companies if a gain realized on the sale of such instruments is exempt from Chilean tax. For a discussion of these instruments, see V.B.9.c.(3), above. The tax must be withheld by the Chilean representative or custodian that has been designated by the nonresident.[1150]

In addition to the lower withholding tax rate of 4%, an exemption from withholding tax on interest paid to a foreign bank or financial institution is available if the borrower is a financial institution incorporated in Chile that uses the loan principal to grant a loan abroad.

b. Tax on Chilean Debtor for Excess Indebtedness

In addition to the 4% additional tax that is levied on interest payments made to nonresidents, Chilean debtors may be subject to a 35% tax on interest and other related payments that are made during the taxable year to nonresident lenders related or deemed related to the Chilean debtor when the latter is found to be thinly capitalized.[1151]

A taxpayer is deemed to be thinly capitalized if, at the end of the taxable year, its total annual indebtedness exceeds three times its equity.[1152] For these purposes, a taxpayer's equity is the one that is determined for tax purposes on January 1 of each taxable year pursuant to the ITL rules, but adding any capital contributions made by the shareholders during the taxable year and subtracting any reductions of capital and profit distributions made to the shareholders during such year. The taxpayer's equity must also be reduced by any contribution made to the Chilean debtor's capital that has been, directly or indirectly, debt financed by related parties, provided, however, that such debt financing is of the type that is subject to these excess indebtedness rules (see below). However, this debt financing will not be taken into account and, therefore, the capital contribution will be added to the Chilean debtor's equity, if the Chilean debtor repays that loan within the taxable year, unless the repayment is, in turn, financed with debt that is also subject to the excess indebtedness rules. The taxpayer's equity will be deemed to be 1 if, after these calculations, it turns out to be negative.[1153]

A Chilean debtor's total annual indebtedness includes the following:

(i) The liabilities listed in paragraphs (i), (ii), (iii), (v) and (vii) in VI.B.3.a., above, that the taxpayer has registered in its books;

(ii) Any other loan or liability of the taxpayer contracted with resident and nonresident lenders, irrespective of whether they are related to the taxpayer;[1154] and

(iii) Any loans or liabilities of a foreign PE of the Chilean taxpayer.[1155]

The total annual indebtedness in a given taxable year is the sum of the average value of the liabilities described above dur-

[1149] The statement must be made pursuant to the form issued by the SII, which can be obtained by accessing SII Resolution No. 95, Annex 1. Furthermore, the SII has set-up a registry where foreign and international financial institutions can voluntarily register to be entitled to the reduced withholding tax rate. The registration form can be accessed electronically at https://www.sii.cl/normativa_legislacion/resoluciones/2021/Anexo3_Res95.pdf. The form must be filed electronically at the SII's website www.sii.cl. Registration is valid for two years, at which point the foreign or international financial institution must renew it. SII Resolution No. 95, dated Aug. 13, 2021.

[1150] ITL, Art. 74(8).

[1151] ITL, Art. 41-F(1). For these purposes, interest is deemed to include not only the agreed upon interest, but also any commission, service fee, reimbursement of expenses, and any other charge that increases the cost of financing for the Chilean debtor, regardless of whether these are directly charged by the nonresident creditor or a related party.

[1152] ITL, Art. 41-F(3).

[1153] ITL, Art. 41-F(4).

[1154] However, loans contracted by the Chilean debtor with unrelated parties for terms of 90 days or less (including extensions and renewals) are to be excluded from the computation.

[1155] ITL, Art. 41-F(5).

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ing the months in that year that are registered in the taxpayer's books, plus any interest and related payables that have accrued but remain unpaid at the end of the taxable year. If during the taxable year the Chilean debtor is part of a corporate reorganization, such as a merger, split or dissolution, that results in the assumption or novation of new liabilities, these will also be taken into account when determining its total annual indebtedness as from the month in which such liabilities have to be recorded in its books.[1156]

The 35% tax is payable by the Chilean debtor if it is thinly capitalized according to the above calculations but only with respect to the percentage of the interest paid and related payments made during the taxable year to nonresident related parties and only on debt instruments the interest on which was either subject to the 4% additional tax or exempt from the additional tax under the following formula:

$$\frac{\text{total annual indebtedness} - (3 \times \text{equity})}{\text{total annual indebtedness}} \times 100$$

In any case, the taxable basis that is subject to the 35% tax cannot exceed the interest paid and related payments made to nonresident related parties during the taxable year that have either been subject to the additional tax at a rate of 4% or, by application of a tax exemption contained in the Law or a tax treaty, that interest has not been subject to the additional tax or that tax has been withheld at a rate of less than 35%.[1157] Furthermore, interest on a related party loan will also not be taken into account when determining the taxable basis for the 35% tax if the Chilean debtor proves to the SII that the financing and related services are received for the development, extension or improvement one or more projects to be undertaken in Chile and such financing and services are largely granted by parties that are unrelated to the debtor and such parties require the formation of joint venture vehicles with the debtor or its related parties either to ensure or guarantee the repayment of the loan or service fees or due to legal, financial or business reasons.[1158] This financing must respect arm's length principles.

For purposes of determining the 35% tax on interest paid to nonresident related parties, a nonresident person is deemed to be related to the Chilean debtor when:

(i) The lender is incorporated, established or domiciled in or is a resident in a territory that meets at least two of the criteria to be treated as having a preferential tax regime (for a list of the criteria, see V.B.5.c.(2), above);

(ii) The lender and the debtor either (I) are part of the same corporate group; (II) directly or indirectly own 10% or more of the capital, or have the right to participate in 10% or more of the profits, of the other; or (III) have a common shareholder that owns, directly or indirectly, 10% or more of the capital, or has the right to participate in at least 10% of the profits, of any of them, provided that the lender is incorporated, established, domiciled, or is tax resident, abroad;

(iii) The loan is granted by a related nonresident lender in a back-to-back situation, i.e., if the nonresident related party guarantees a loan from an unrelated party, provided the related nonresident lender is the ultimate beneficiary of the interest;

(iv) The financial instrument is placed or acquired by an unrelated party that subsequently becomes related to the Chilean debtor; or

(v) Either the lender or the debtor undertakes a transaction with a third party who, in turn, either directly or indirectly, undertakes another transaction with a related party of that lender or debtor and that other transaction is similar to the one undertaken between the lender or the debtor with the third party.[1159]

The Chilean debtor is required to submit a sworn statement under Form No. 1930 on an annual basis to the SII listing its debts, guarantees, and whether the lender is a related party pursuant to the above scenarios.[1160] There is a presumption that the debtor and the lender are related if the Chilean debtor fails to submit the statement or if the statement is inaccurate or false.

The additional 35% tax is not withheld at source; instead, it is borne by the Chilean debtor and constitutes a deductible expense for purposes of the first category tax.[1161] However, the Chilean debtor is entitled to credit the additional tax withheld on the interest paid to the nonresident creditor, provided that the additional tax has been paid.[1162] Therefore, if the interest paid to the nonresident creditor has been subject to the 4% additional tax or to a tax treaty rate and that tax has been withheld and paid, the tax payable by the Chilean debtor will be reduced accordingly.

The tax payable by the Chilean debtor on excess financing must be reported and paid on an annual basis when it files its annual income tax return (for a discussion of a Chilean taxpayer's annual income tax filing obligations, see V.B.11.b., above).[1163]

The Chilean 35% tax on excess indebtedness does not apply to Chilean banks, insurance companies, savings and loans cooperatives, credit card companies, and other financial institutions that are governed by the Superintendence of Banks. It also does not apply to companies that are expressly certified by the Ministry of Finance to be engaged in financing activities.[1164] This should include companies which, during at least 330 days

[1156] ITL, Art. 41-F(5).

[1157] ITL, Art. 41-F(8). For the type of interest that is subject to the additional tax at a rate of 4% or that is not subject to the additional tax, see 3.a., above.

[1158] ITL, Art. 41-F(11). In addition, loans and other debt instruments with nonresident related parties that were in place prior to January 1, 2015, are not to be taken into account for purposes of determining the taxable basis for the 35% tax, unless, as of that date, those debt instruments have either been novated, assigned or transferred to a related party, or the loan principal or the interest rate thereon has been changed. Law No. 20,780, Third Transitory Provision, para. XVIII.

[1159] ITL, Art. 41-F(6).

[1160] ITL, Art. 41-F(7). See the Worksheets for Form No. 1930.

[1161] ITL, Art. 41-F(10).

[1162] ITL, Art. 41-F(9).

[1163] ITL, Art. 41-F(2).

[1164] The Ministry of Finance will not issue that certificate if the Chilean entity is an affiliate or a PE of an entity that is incorporated, established or domiciled in or is a resident of a territory that is either considered a tax haven or as having a preferential tax regime by the OECD (see the Worksheets for a list of those jurisdictions), or meets at least two of the criteria to be treated as having a preferential tax regime (for a list of these criteria, see V.B.5.c.(2), above).

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of the taxable year, at least 90% of their assets consist of loans or leases containing a purchase option that are granted to unrelated parties. In any case, the indebtedness of these companies with related or unrelated parties may not exceed 120% of all the loans and leases granted throughout the taxable year; if it does and the excess is not corrected within 90 days, that excess will be subject to the 35% tax on excess indebtedness.

4. Royalties

Royalties paid to nonresident companies are subject to the additional tax, which is withheld at source. The withholding tax rate varies depending on the nature of the intangible giving rise to the royalties, in accordance with the following rules:[1165]

(i) 30% for royalties for the use of trade names, patents, formulae, know-how and similar intangibles;

(ii) 15% for royalties paid for the use of invention patents, models, industrial drawings and designs, and topographies of integrated circuits, and for new vegetable varieties, as defined under the Industrial Property Law and in the Law that Regulates the Rights of Owners of New Vegetable Varieties;

(iii) 15% for royalties paid for the use of a computer program, i.e., a set of instructions to be used, directly or indirectly, in a computer or processor to make or obtain a specific process or result, when contained in a physical or intangible support, as defined under the Intellectual Property Law.

No withholding tax is levied on payments made to nonresident entities and individuals for standard software programs. Pursuant to the Law on Intellectual Property, a standard computer program consists of a set of instructions which are directly or indirectly to be used in a computer to produce or obtain a specific process or result. The programs may be contained in a tape, diskette, disc or other type of support.[1166] To qualify as a standard software program, the rights to the software license must be limited to those that are necessary to use the programs and not to exploit it commercially, reproduce it or change it. The exemption is also applicable to payments for the use of electronic books. For the VAT implications on payments made to nonresidents for the use of standard software, see item (v) in XII.C.3., below;

However, the 15% rate indicated in (ii) and (iii) above does not apply and, instead, a 30% withholding tax rate applies, if the beneficiary of the royalty is incorporated, domiciled or resident in any of the countries that are considered jurisdictions with preferential tax regimes (for a definition of these jurisdictions, see V.B.5.c.(2), above).[1167] The withholding tax agent is required to make a sworn written statement of the facts within two months following the end of the taxable year. (For a discussion of the limitations imposed on the deductibility of these kinds of royalties for the Chilean licensee, see V.B.6.a.(3), above).

(iv) 20% for payments made to nonresident producers and/or distributors for materials shown in cinemas or on television;

(v) 15% for copyright royalties; and

(vi) 0% for advertising services rendered from abroad as well as for the use of internet services, provided the Chilean payor is an SME, i.e., an enterprise with average annual revenue of 100,000 development units (approximately US$3.4 million) over the previous three taxable years.[1168] For purposes of calculating the 100,000 development unit threshold, the enterprise must also include the revenues generated by its related parties. The additional tax exemption on the payment does not apply if the nonresident recipient of the payment is a resident in a jurisdiction that is viewed as having a preferential tax regime; in that case, the additional tax must be levied but at a rate of 20%.

5. Capital Gains

a. Taxable Transactions

(1) Direct Sales

(a) In General

As a rule, capital gains realized by nonresident entities are subject to the additional tax.[1169] For a discussion of the computation of capital gains and, in particular, what adjustments taxpayers may make to their tax basis in the shares being sold, see V.B.9.c.(1), above.[1170]

As in the case of sales by Chilean companies, capital losses incurred by nonresidents in a taxable year on the sale of shares in Chilean entities can be used to offset capital gains on the sale of shares realized in the same taxable year.[1171]

If, after offsetting the sales that gave rise to a capital loss, the amounts realized by the seller on the sale of shares to unrelated parties during a taxable year do not exceed 10 annual tax units, the capital gains realized on those sales, i.e., sales to unrelated parties, are exempt from the additional tax.[1172] If, on the other hand, the 10 annual tax unit threshold is exceeded, all the

[1165] ITL, Art. 59.

[1166] Law No. 17,336 of 1970.

[1167] For a discussion of the CFC rules, see V.B.5.c.(2), above.

[1168] ITL, Art. 14(G). See V.B.4.c.(3), above.

[1169] ITL, Art. 17(8)(a)(iii).

[1170] As discussed in detail in II.A.3., even though Decree Law No. 600 was repealed under Law No. 20,780, an investment contract signed by a foreign investor with the Chilean government under that Decree Law is still enforceable. In this regard, Decree Law No. 600 provides that, on the sale of Chilean shares, only the amount realized over the amount actually invested by the foreign investor in foreign currency is subject to Chilean taxation. Decree Law No. 600, Art. 6. Therefore, for purposes of determining the capital gain on the sale of Chilean shares, these investors may determine their adjusted tax basis pursuant to either the general tax rules discussed above or by converting into Chilean pesos the investment made in foreign currency at the exchange rate in effect on the date of the sale of the shares, as established by the Central Bank.

[1171] ITL, Arts. 17(8)(a)(iii) and 62.

[1172] ITL, Art. 17(8)(a)(vi). When determining whether the 10 annual tax unit threshold is met, the taxpayer must, in addition to the sale of shares, also take into account the amounts realized during the taxable year on the sale of mining and water rights as well as bonds and other debt instruments. Even though capital gains realized on the sale of shares, water and mining rights, and bonds to related parties are not entitled to benefit from this exemption, the amount realized on the sale of that property must be taken into account for purposes of determining whether the 10 annual tax unit threshold is met.

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capital gains realized by the taxpayer during the taxable year will be subject to the additional tax, i.e., without the 10 annual tax unit deduction. For these purposes, the seller is related to the party that acquires the shares in the any of following circumstances:[1173]

(i) The purchaser is an entity in which the seller has an equity interest. If the affiliate is an open SA, the seller must own at least 10% of its shares.

(ii) The purchaser and the seller are part of the same corporate group. In this regard, a corporate group consists of all the entities that are directly or indirectly controlled by one person. For these purposes, a person exercises control over an entity if that person, either alone or together with other persons by means of a shareholders' agreement, has an equity interest in that entity and has the power either: to obtain a majority of the votes in the entity's shareholders' meetings and appoint a majority of the members of the entity's board of directors or administrators; or to have a decisive influence in the entity's management.[1174]

(iii) The purchaser is a director, manager, administrator, principal executive or liquidator of the seller or an entity controlled by such a person.

(iv) The purchaser is an entity of whose board the seller, either directly or through a shareholders' agreement, may appoint at least one member.[1175]

(v) The purchaser is the seller's spouse or a collateral relative by consanguinity up to the second degree of kinship, i.e., a parent, grandparent, child or grandchild.[1176]

A nonresident seller that has generated a net capital gain in the taxable year on sales to unrelated parties and is not entitled to claim the 10 annual tax unit exemption has the option of subjecting the gain to tax either on an accrual basis or when it actually receives the sales proceeds.[1177]

As a rule, the sale of Chilean shares by a nonresident is subject to withholding tax at source at a rate of 10%.[1178] The withholding tax must be levied on a provisional basis on the sales proceeds. However, if the nonresident seller is able to determine the capital gain to be realized from the sale, the withholding tax must be levied on the gain at the additional tax rate of 35%. All withholding taxes must be remitted to the SII by the 12th day of the month following that in which the transaction took place.[1179]

A nonresident seller has the option of filing a request with the SII so that the SII may confirm the taxpayer's calculation of the estimated capital gain on which the withholding tax is to be levied, as well as the proposed withholding tax rate on that sale.[1180] The request must be filed before the remittance of the withholding tax to the SII is due.[1181] Since such a request affects the amount to be withheld and suspends the deadline for withholding the tax, the nonresident seller should inform the withholding tax agent/buyer that the request has been filed. The SII has 20 working days within which to respond to the request. The 20-day period starts from the date on which the nonresident seller files the request and the necessary supporting documentation. The request is deemed to be accepted if the SII fails to respond within the 20-day period, in which case the buyer will be required to withhold the tax at a rate of 35% based on the gain that the seller calculated in the request made to the SII. The capital gain as determined by the seller cannot be challenged by the SII unless the request filed with the SII contained false, incomplete or inaccurate information.

There is no obligation to withhold the tax on the sales proceeds or on any other amount if the seller is able to demonstrate that the sale will give rise to a capital loss.[1182] Nor is there any obligation to withhold the tax if the seller generates a capital gain, the SII has responded favorably and the seller opts to pay the tax itself, in which case it must do so by filing Form No. 50 within five working days from the date of the SII's response. The nonresident seller, however, is required to inform the buyer that the SII has issued a favorable response. It is important to note that the SII may only seek the tax due from the buyer as withholding tax agent, although the buyer may seek reimbursement from the nonresident seller.[1183]

A nonresident whose capital gains tax liability is paid in full via the withholding tax mechanism is not required to file an annual income tax return, unless it has generated other Chilean-source income that requires it to do so.[1184]

The above withholding tax rules also apply to: the sale of mining assets, including shares in mining companies, as well as water rights; the sale of industrial and intellectual property; and the sale of bonds and debentures.

(b) Publicly-Traded Shares

See V.B.9.c.(1) and (2), above, for discussions of the rules regarding: (i) the reduced 10% capital gains tax applicable to the sale by a nonresident of actively traded shares in open SAs and quotas in Chilean investment and mutual funds on a Chilean stock exchange; and (ii) the set off of capital losses against capital gains on actively traded shares in open SAs.

(2) Indirect Sales

As noted in VI.A.1. and VI.A.2., above, gains realized by nonresidents from the sale of shares in a legal entity incorporated abroad are generally sourced in Chile if a certain percentage of the fair market value of such shares is attributable to underlying Chilean assets.

[1173] ITL, Art. 17(8)(a).
[1174] Law No. 18,045, Arts. 96 and 97.
[1175] Law No. 18,045, Art. 100.
[1176] CC, Arts. 27 and 28.
[1177] ITL, Art. 17(8)(a)(iii).
[1178] ITL, Art. 74(4).
[1179] ITL, Art. 79.
[1180] ITL, Art. 79. The request may be filed on behalf of the nonresident by its tax representative when the nonresident obtained its RUT registration or by someone else specifically appointed to file the request. It may also be filed by the withholding tax agent/buyer on behalf of the nonresident seller.
[1181] In that regard, since the SII has 20 days to respond, it is recommended that taxpayers opting to file the request do so at least 20 working days prior to the date in which the withholding tax is due. SII Circular No. 54, dated Nov. 25, 2013.
[1182] ITL, Art. 74(4). For a discussion of the withholding tax rules applicable to nonresidents sellers residing in tax treaty countries, see V.B.11.c.(2), above.
[1183] ITL, Art. 83.
[1184] ITL, Art. 74(4). For a discussion of a nonresident's tax filing obligations, see VI.C.

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The seller has the option of determining the taxable gain pursuant to one of the following two alternatives:

(i) It can determine the taxable capital gain by determining the gain that is attributable to the Chilean assets in proportion to the gain realized on the sale of the foreign shares. In this regard, the nonresident seller must first determine the capital gain it has realized on the sale of the foreign shares by subtracting the adjusted basis it has in the shares under Chilean tax rules from the amount realized on the sale, which must be at arm's length. It must then determine the proportionate fair market value of the Chilean underlying assets over the sales proceeds of the foreign shares, in proportion to the percentage of ownership the buyer is indirectly acquiring in those assets as a result of the purchase of shares in the foreign company. If the seller cannot prove its adjusted basis in the foreign shares, it loses the right to opt for this alternative, thus being required to determine the capital gain by applying the alternative method discussed below.

(ii) Alternatively, the seller can also determine the taxable gain by calculating the proportion of the sales price of the foreign shares over the Chilean underlying assets and in proportion also to the percentage of the underlying assets that the buyer is indirectly acquiring through the purchase of the foreign shares, times the sales price of the foreign shares minus the tax cost in the Chilean underlying assets. In that regard, the tax cost in the Chilean assets is the same one as the one that would have applied if those assets had been sold directly. If the assets being indirectly sold constitute a PE in Chile, the tax cost is the PE's net equity for tax purposes on December 31 of the year prior to the sale of the foreign shares, minus the accumulated earnings and profits, if any, regardless of whether they have constituted taxable or nontaxable income.

As a general rule, the capital gain on an indirect sale is subject to the additional tax at a rate of 35% as a sole tax. On the other hand, rather than paying the 35% capital gains tax as a sole tax, the seller has the option of paying the capital gains tax as if it were the Chilean underlying assets that had been sold by the direct owner of such assets in Chile. In that event, the general tax regime will apply.[1185]

The SII has indicated that the indirect sales rules are subject to tax treaties if the seller resides in a treaty jurisdiction. However, the SII has ruled that the capital gain realized by the seller in an indirect sale should be treated as "other income," which generally allows the source State to subject it to its domestic tax rules. However, if the seller opts to pay the tax as if it were the Chilean assets that had been disposed of by their direct owner, the SII has ruled that the actual seller is entitled to apply the "capital gains" provision of the treaty.[1186] What Circular No. 14 does not resolve is whether the capital gain should be taxed pursuant to the provisions of the tax treaty that may apply to the actual seller of the shares in the nonresident company or, if different, of the tax treaty that may apply to the direct owner of the underlying Chilean assets. In a subsequent Circular issued in the same year, however, the SII changed its original position and ruled that the tax treaty that should apply is the one applicable to the actual seller. Furthermore, the SII indicated that it cannot lay down a general rule to apply to indirect sales but, instead, the provisions of the relevant tax treaty should apply irrespective of the option taken by the seller in determining the amount of the capital gain.[1187] In that regard, capital gains tax provisions in tax treaties that allow for taxation in the source country when the seller in the other Contracting State indirectly owns assets in Chile would allow Chile to tax the capital gain in the event of an indirect sale of those assets.

The 35% capital gains tax is payable by the nonresident seller. It must be reported and paid by the seller during the month following the one in which the sale took place. However, the seller may report the indirect sale and pay the tax thereon in an annual income tax return if it has generated other income and is required to file such a return.[1188]

In addition to the seller's filing requirements, the purchaser of the foreign shares must withhold a tax on the sales proceeds at a rate of 20%.[1189] The obligation to withhold the tax applies irrespective of the tax residence of the buyer, i.e., even if the buyer is a nonresident. Alternatively, the buyer can withhold the tax on the actual capital gain, provided it is computed on the basis of the alternative described in (ii) above, i.e., by taking into account the tax basis in the underlying Chilean assets.[1190] The withholding tax must be reported and paid in an annual tax return filed by the buyer during the month of April of the year following the one in which the indirect sale took place.[1191] The nonresident seller is allowed to credit in its annual tax return the amount withheld by the buyer against its 35% tax liability.

If the capital gains tax is neither paid by the nonresident seller nor withheld at source, the SII has the authority to request the payment not only from the seller, but also from the buyer of the foreign shares, irrespective of whether it is a Chilean resident, or from the underlying Chilean entity or PE, who are all jointly liable for the additional tax. The joint liability, however, is limited to the additional tax that is owed by the seller, not on the amount that should have been withheld by the buyer.

In addition to the filing requirements by both the buyer and the seller, both the seller and buyer of the foreign shares as well as the Chilean entity that owns the underlying assets are required to file Form No. 1921, which is a statement reporting the sale of the foreign shares, their sales price, and the fair market value of the Chilean underlying assets.[1192] In that regard, the SII published Resolutions No. 119 and 11 laying out the rules to be followed in connection with the information statement.[1193] Hence, every time there is an indirect sale of at least 10% of the shares of a foreign entity that directly or indirectly owns Chilean assets, each of the parties involved in the transaction, as well as the Chilean issuing company or PE, is required to file

[1185] ITL, Art. 58(3).

[1186] SII Circular No. 14, dated March 7, 2014.

[1187] SII Circular No. 59, dated Nov. 14, 2014.

[1188] ITL, Art. 69(4). For a discussion of a nonresident's annual filing obligations, see VII.D., below.

[1189] ITL, Art. 74(4).

[1190] SII Circular No. 14, dated March 7, 2014.

[1191] ITL, Arts. 65(1), 69, and 72.

[1192] See the Worksheets for a copy of Form No. 1921.

[1193] Resolution No. 119, published on Sept 28, 2020 and No. 11, published on Feb. 4, 2021.

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the statement that is contained in Form No. 1921. The obligation to file the statement applies even if the indirect sale does not give rise to a capital gains tax liability in Chile. The 10% threshold must be calculated by adding all the stock sales in the foreign entity conducted by all the corporate group members within the 12 months prior to the last sale. Both the seller and purchaser of the foreign shares are required to obtain a RUT to be able to file Form No. 1921.

Form No. 1921 must be filed on paper by the last working day of the month following the one in which the indirect sale took place. The Chilean entity or PE can file Form No. 1921 on the last working days of the sixth month following the indirect sale but only if it has not been informed of that sale. The Form must be filed with the Directorate of Large Taxpayers of the SII if either the seller, the buyer or the Chilean entity are registered therein. If not, Form No. 1921 must be filed in the Regional Office of the SII where the filer or its Chilean representative are registered. Failure to file Form No. 1921 or filing it late is subject to penalties.

b. Exempt Transactions

Capital gains realized by a nonresident from the sale of publicly traded bonds or other debt instruments issued by the Central Bank of Chile, the Chilean State or a company incorporated in Chile are exempt from Chilean taxation, provided either the sale is made on a Chilean stock exchange or the seller has held the bonds for at least 12 months.[1194]

6. Service and Management Fees

As a rule, fees paid by Chilean persons to nonresident companies for services rendered abroad are subject to the additional tax at a rate of 35%.[1195] However, fees paid to nonresidents for: (i) engineering services; (ii) technical services; and (iii) technical or professional services rendered by a person that is knowledgeable in a technique or science provided the services are rendered by means of advice, reports or plans, are subject to a lower withholding tax rate of 15%, regardless of whether the services are rendered within Chile or abroad. The 15% rate does not apply and, instead, a 20% rate applies, if the beneficiary of the fees is incorporated, domiciled or resident in a jurisdiction with a preferential tax regime (for a list of these jurisdictions, see the Worksheets). In that event, the withholding tax agent is required to make a sworn written statement of the facts within two months following the end of the taxable year.[1196]

Fees paid to nonresidents for the following services are exempt from Chilean tax, provided the transactions and the contractual conditions are reported to the SII:[1197]

(i) Freight, loading and unloading;

(ii) The warehousing, weighing, sampling and analyzing of products, as well as the submission of Chilean products for melting, refining and other special processes;

(iii) Commissions paid abroad by a Chilean taxpayer to foreign agents in connection with the export of goods or the provision of services to be used abroad by such taxpayer;

(iv) International telecommunication services;

(v) Fees paid for advertising and promotional services, market studies, scientific and technological research, and legal advice and defense in foreign administrative or judicial proceedings or at arbitration, provided such services are used by the Chilean payor strictly for the export of goods manufactured in or services rendered in Chile and the fees are reasonable;

(vi) Fees paid to nonresidents for advertising services abroad and for the use and subscription of internet services provided that the Chilean payor's average annual turnover during the previous three taxable years does not exceed 100,000 development units. However, the additional tax is levied on those fees at a rate of 20% if the beneficiary of the fees either (I) is domiciled, incorporated in, or a resident of, a jurisdiction which is considered as a tax haven by the OECD or a jurisdiction with no or low taxation, or (II) owns, directly or indirectly, at least 10% of the payor's capital or has a right to receive 10% or more of its profits;[1198] and

(vii) Fees paid by a university to nonresident individuals and legal entities for: technical works; professional or technical services rendered through a report or plan; congresses, conferences and training that take place in Chile; and similar services that are directly related to the educational activities of the university.[1199]

7. Rents

Rents paid to a nonresident for the rental of property that has been imported into Chile are subject to the additional tax at a rate of 35%. The tax is withheld at source and applies irrespective of whether the rental agreement contains an option to purchase the property. However, the additional tax is levied only on the profit or interest component that is deemed to be realized by the lessor, which is deemed to be 5% of the gross rental payment.[1200] Accordingly, the gross amount of the payment is subject to an effective additional tax rate of 1.75%.

8. Insurance

Insurance premiums paid to nonresident insurance companies relating to property that is permanently placed in Chile or to merchandise that is temporarily present in Chile either in transit or under the temporary import admission regime are subject to the additional tax at a rate of 22% on a gross basis. This withholding tax rate also applies with respect to premiums paid to nonresident insurance companies relating to life insurance or other types of personal insurance of individuals that are

[1194] ITL, Art. 104. For a detailed discussion of these rules, see V.B.9.c.(3), above.

[1195] ITL, Art. 59(2).

[1196] ITL, Art. 59(2).

[1197] ITL, Art. 59(2).

[1198] ITL, Art. 59. For a description of the list of tax havens, see the Worksheets. For a description of requirements for a jurisdiction to be considered as having no or low taxation, see V.B.5.c.(2), above.

[1199] Law No. 16,840, dated May 20, 1968 and published in the *Diario Oficial* on May 24, 1968, as amended, Art. 243.

[1200] ITL, Art. 59(6).

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residents of Chile. Premiums paid to nonresidents for the reinsurance of the above items are also subject to the additional tax, but at a lower rate of 2%. This tax is also withheld at source on a gross basis.[1201]

Premiums paid to nonresidents for the following are exempt from the additional tax:

(i) The insurance of ships and aircraft, and other payments relating to shipping and air transportation activities;

(ii) The insurance and reinsurance of export credits;

(iii) Insurance and reinsurance guaranteeing the payment of loans granted to third parties or the issuance of bonds in connection with the financing of: public works undertaken by concession companies under Supreme Decree No. 900 of 1996; harbor companies created under Law No. 19,542; and concession harbor companies; and

(iv) Other insurance or reinsurance not specifically subject to the 22% or 2% withholding tax, such as insurance for professional firms.[1202]

9. Shipping Activities

As noted in 6., above, payments for maritime freight and loading and unloading charges for services rendered abroad are not subject to the additional tax. If the charge is not strictly related to services entirely rendered abroad, the payment for such services rendered to a nonresident is subject to the additional tax at a rate of 5%. The tax is withheld at source and also applies to commissions paid in relation to maritime freight as well as to any fee paid in relation to any service rendered in connection with a vessel and with the loading and unloading of products in Chilean or foreign ports. However, the withholding tax may be avoided if no such tax or similar tax is levied on Chilean vessels in the country in which the foreign vessel is registered or by application of a tax treaty. If the foreign vessel is owned by a company that is not domiciled in the country in which the vessel is registered, a reciprocity requirement between Chile and the country of the company's domicile must exist for the withholding tax exemption to apply.[1203]

Payments made to nonresidents for the rental, sub-rental or any other form of temporary use of foreign vessels used for cabotage services are subject to the additional tax at a rate of 20%. The tax is withheld at source and is also levied if the shipping contract allows for, or does not prohibit the use of, the ship for purposes of cabotage. In this regard, the transportation of empty containers within Chile is not deemed to be cabotage.[1204]

No withholding tax is levied on the above shipping services if the vessel is Chilean. If the vessel is subject to a finance lease, the lease payments are not subject to withholding tax, unless the option to purchase the vessel is not exercised or the contract is terminated in advance without the option to purchase having been exercised. In the event the option is not exercised or the contract is terminated in advance, all lease payments made during the life of the contract will be subject to the 20% additional tax. The tax will be due in the month following that in which the option to purchase the vessel expired or the contract was terminated in advance, and the tax due must be adjusted by the variation in the monthly tax unit since the date on which the tax accrued.[1205]

10. Other Payments

For a description of other payments to nonresidents that are subject to withholding tax at a rate of 40%, see V.B.9.b., above. Payments to nonresidents not described in the preceding sections are treated as other income and are subject to the additional tax at a rate of 35%.[1206]

For a description of the withholding tax exemption for payments made to foreign sports organizations participating in sports events in Chile, see X.B.9., below.

C. Assessment and Filing

As a general rule, the additional tax withheld by the payor acts as a final tax and, as such, the nonresident is not required to file an annual corporate income tax return. However, there are certain types of Chilean-source income which, when received by a nonresident, must be reported and filed in an annual corporate income tax return (Form 22), even if that income has been subject to the additional tax via the withholding mechanism.[1207] Thus, nonresidents that receive the following types of income are required to file Form 22 in April of the taxable year following the one in which the income was either received or accrued:

(i) Nonresident shareholders that receive dividend distributions from Chilean entities;[1208]

(ii) Nonresidents that receive either returns of capital or amounts that are deemed withdrawn from Chilean entities;[1209]

(iii) Nonresidents that receive proceeds from the liquidation of a Chilean entity;[1210]

(iv) Nonresident sellers of Chilean shares;[1211] and

(v) Nonresident sellers of Chilean assets in transactions involving an indirect sale, unless the sale has been subject to withholding tax at a rate of 35%.[1212]

The tax, whether it is the additional tax or a preliminary tax, that has been withheld by the payor constitutes a tax credit against the nonresident's annual income tax liability. The taxpayer is entitled to claim a refund if the amount withheld exceeds the final tax owed. Furthermore, the nonresident is not

[1201] ITL, Art. 59(3).
[1202] Tax Ruling No. 3,645, dated Dec. 11, 2008.
[1203] ITL, Art. 59(4).
[1204] ITL, Art. 59(5).
[1205] ITL, Art. 59(5).
[1206] ITL, Art. 60.
[1207] ITL, Art. 65(4).
[1208] ITL, Art. 74(4).
[1209] ITL, Art. 74(4). For a discussion of the ordering rules affecting returns of capital, see V.B.5.d., above. For a general discussion of the withdrawal rules, see V.B.9.b., above. For a discussion of the withholding tax rules when a withdrawal is made to a nonresident, see VI.B.2., above.
[1210] ITL, Arts. 60 and 65(4). For a discussion of the tax rules on corporate liquidations, see V.B.5.e.(2)(g), above.
[1211] ITL, Art. 74(4). See VI.B.5.a.(1), above, for a discussion of the capital gain tax rules on the sale of Chilean shares by nonresidents, including the procedures that the nonresident may pursue to avoid having to file an annual corporate income tax return.
[1212] ITL, Art. 74(4). See VI.B.5.a.(2), above, for a description of the options the taxpayer has in connection with the withholding tax obligations.

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required to file the annual tax return if the tax withheld covers its annual tax liability. The tax return must be filed by the Chilean legal representative of the nonresident company if the latter does not have a PE in Chile.[1213] The tax return must be filed by April 30 of the following year.[1214] See also V.B.11.c., above, for a discussion of the various taxes Chilean companies must withhold from payments to a nonresident company or individual. A nonresident taxpayer that files a tax return is entitled to claim deductions against its taxable income. For instance, a nonresident company may deduct against its taxable income contributions it has made to Chilean nonprofit organizations (see V.B.6.a.(14), above).

[1213] ITL, Art. 67.
[1214] ITL, Art. 69.

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VII. Taxation of a Branch

A. In General

In Chile, the concept of a permanent establishment (PE) has developed only recently. Before 2017, the ITL did not contain a definition of a PE and it was only through various interpretations issued by the SII that a nonresident could become subject to local taxation as a resident, if it operated in Chile through a branch or office that performed business activities on behalf of the nonresident pursuant to a mandate.

As a result of the OECD's publication of Action 7 under BEPS and the consequent amendment of Article 5(5) of the OECD Model Convention as regards commissionaire arrangements, the SII issued a Circular identifying two scenarios in which, in its view, a nonresident could be deemed to act in Chile through a PE.[1215]

One scenario, like the pre-2017 position, involved a nonresident conducting all or part of its business activities in Chile through an agency, office, branch or other site, regardless of whether the nonresident had a representative in Chile; this scenario neither required the place of business to be fixed nor required a degree of permanency or habitualness.

The second scenario involved the existence of an agent or representative in Chile acting on behalf of a nonresident by undertaking all or part of the nonresident's business activities; the position taken by the SII extended the concept of a PE to include not only in instances in which the agent signed contracts on behalf of the foreign principal but also instances in which the agent performed a principal role in having those contacts signed by the principal.

In 2020, Chile took a significant step by partially amending the ITL to include, among other measures, a legal definition of what does and does not constitute a PE in Chile, substantially in line with Article 5 of the OECD Model Convention.[1216] In this regard, a PE is deemed to exist in Chile where:

(i) A nonresident company or individual has a place in Chile that is used to conduct, on a permanent or habitual basis, all or part of the nonresident's business activity, irrespective of whether the place is used by the nonresident exclusively for that purpose.

The definition offers examples of this kind of PE in the form of offices, agencies, installations, construction projects and branches.

It should be noted, however, that this domestic law definition slightly departs from that contained in Article 5(1) of the OECD Model Convention in that the former includes the concept of a "place of business" but does not require the place to be "fixed," which is central to the Article 5(1) definition and which denotes a certain degree of physical presence; the domestic law definition only requires the place of business to be permanent or habitual.

Furthermore, the domestic law definition does not establish a minimum time period criterion that must be satisfied for a construction work or installation to constitute a PE.

(ii) A nonresident carries on activities in Chile through an agent and the latter, when exercising his or her duties, either concludes contracts on behalf of the nonresident, undertakes a principal role when such contracts are negotiated, or negotiates essential aspects of such contracts and these are not amended by the nonresident.

On the other hand, a PE is not deemed to exist where a nonresident:

(i) Acts in Chile through an agent acting in the ordinary course of his or her business if the agent is economically and legally independent from the nonresident principal; or

(ii) Performs only preparatory or auxiliary activities in Chile.

The SII has not addressed in detail PE issues arising from the digital economy. However, the SII has indicated that registration for VAT purposes under the simplified regime by a nonresident provider of digital services does not give rise to a PE for income tax purposes.[1217]

Comment: Given the current definition of a PE, which does not require the place of business to be fixed, the SII may have a certain degree of flexibility to change its current tax policy. However, it is unlikely to do so unless the OECD moves in that direction.

A branch of a foreign corporation operating in Chile is taxed on the income that is attributable to it based on the activities that it undertakes both within Chile as well as abroad.[1218] In that regard, income is attributable to a branch only if it is generated from activities undertaken by it or from property that has been allocated to the branch or used by it, or from investments made by the branch with its own resources, regardless of whether such property is located in Chile or abroad. A branch can be allocated any kind of asset, whether tangible or intangible, for purposes of attributing income to a branch, while assets of the branch may also be allocated to its head office and to other branches of the head office, whether Chilean or foreign. However, if the allocation involves shares or quotas in Chilean entities made by the foreign head office to the Chilean branch, the SII does not have the power to value such allocation provided that it is made for valid business reasons, it does not give rise to a cash payment, and the branch books the allocation at book value or with the same tax basis that it had in the hands of the head office.

Since branches, therefore, are taxed on a worldwide basis, the ITL allows them to claim direct and indirect foreign tax credits for taxes paid abroad pursuant to the same rules as Chilean corporations.[1219]

A PE's taxable income is determined on an accrual basis, as in the case of a local corporation, and must be treated for tax purposes as an entity that is separate and independent from its head office with respect to transactions entered into with it, with other Pes of the head office, with related parties of the head office, and with unrelated parties. However, unlike

[1215] SII Circular No. 57, dated December 7, 2017.

[1216] ITL, Art. 2(12).

[1217] SII Circular No. 42, dated June 11, 2020. For a discussion of the VAT implications and obligations of nonresident digital service providers, see XII.B.2.

[1218] ITL, Art. 38.

[1219] For a discussion of the Chilean foreign tax credit rules, see V.B.10.a.

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Chilean companies, foreign source income or loss of a PE must be included in Chile on an accrual basis, i.e., at the end of the PE's taxable year. The accrual must also be made with respect to income taxes paid or owed in the foreign country by the PE.[1220] The PE's net taxable income or loss must be determined by applying the first category tax rules but in the foreign jurisdiction's currency and must be converted into Chilean pesos at the exchange rate in effect on the last day of the Chilean taxpayer's taxable year.

If a branch's accounting records are inadequate for purposes of determining its net taxable income, the SII may estimate its net taxable income by applying to the branch's gross revenues the proportion of its head office's overall net income to its overall gross receipts. These amounts must be determined in accordance with the rules contained in the ITL. Alternatively, the SII may estimate a branch's net taxable income by applying to the branch's assets the proportion of its head office's overall net income to the total value of its assets.[1221] A branch whose net taxable income is determined on a presumptive basis is not subject to the first category tax but to a sole tax levied at a rate of 40%. The 40% sole tax also applies to nondeductible expenses incurred by the branch.[1222] For special rules on the deductibility of interest by branches, see V.B.6.a.(2), above.

There is a special rule for Chilean branches of foreign financial institutions in that the SII may deny as a deductible expense interest, commissions and other payments arising from financial transactions between the Chilean branch and its head office, which the SII deems as excessive when compared with comparable transactions, as provided by the Central Bank and the Superintendence of Banks and Financial Institutions.[1223]

B. Branch of a Shipping Company

The 5% additional tax withheld on maritime freight, loading and unloading charges paid to a nonresident shipping company that has a PE in Chile may be utilized as a tax credit by the PE against its first category tax liability. (For a discussion of the additional tax on nonresident shipping companies, see VI.B.9., above.) In determining the amount of the tax credit, the additional tax withheld may be adjusted for inflation. Any excess credits may not be carried forward, are not refundable, and may not be utilized to offset other tax liabilities of the PE.[1224]

C. Taxation of a Branch

Net taxable income that is attributable to a branch is subject to the first category tax. The remittance or withdrawal of branch profits to the home office is subject to the additional tax at a rate of 35%.[1225] The additional tax must be withheld at source by the branch in the taxable year in which the profits are remitted or withdrawn.[1226] However, the branch is entitled to offset the first category tax it paid on those profits as a credit against the additional tax liability that is being withheld.[1227] In determining the base for the additional tax, the tax credit arising from the first category tax must be added to the base. However, as in the case of dividends distributed to nonresidents, the home office is only entitled to claim 65% of that tax credit.[1228] The 35% non-creditable amount is deemed to be part of the additional tax. However, as an exception to the general rule, the 65% tax credit limitation is not applicable if the home office is a resident in a jurisdiction with which Chile has a tax treaty in force, that tax treaty contains the so-called Chile clause, i.e., it specifically provides that the first category tax paid by the distributing entity constitutes a tax credit against the additional tax, and the home office is the beneficial owner of that distribution.[1229] The 65% limitation is also inapplicable on branch profits remitted to home offices that are residents in a jurisdiction with which Chile has, prior to January 1, 2017, signed a tax treaty that is not yet in force and that tax treaty also contains the Chile clause mentioned above.[1230]

Example: The following is an example of the calculation of the additional tax liability:

Taxable income	100
First category tax (27%)	(27)
Remittance	73
Tax credit add-back	27
Additional tax base	100
Additional tax (35%) liability	(35)
First category tax credit	27
Net additional tax liability	(8)
Net remittance	**65**

D. Assessment and Filing

A branch is subject to the same filing requirements as a resident company. For a discussion of these requirements, see V.B.11., above.

[1220] ITL, Art. 12.
[1221] ITL, Art. 38.
[1222] ITL, Art. 21.
[1223] ITL, Art. 37.
[1224] ITL, Art. 59(4).
[1225] ITL, Arts. 58(1) and 62.
[1226] ITL, Art. 74.
[1227] ITL, Art. 63.
[1228] ITL, Art. 63. For the Chilean tax filing obligations of a nonresident, see X.C., below.
[1229] ITL, Art. 63.
[1230] Law No. 20,899, Fourth Transitory Provision and Law No. 20,210, Eleventh Transitory Provision. This exception is important for U.S. investors in Chilean companies since the tax treaty between the United States and Chile was signed in 2010 but its ratification is pending as it is still awaiting approval from the U.S. Senate (see XIV., below). Therefore, U.S. investors are entitled to claim a full credit against their Chilean additional tax liability.

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VIII. Taxation of Other Business Entities

A. Limited Liability Company

The taxation of a limited liability company (*Sociedad de Responsabilidad Limitada*, SRL) is discussed at V., above.

B. Company by Shares

Since a company by shares (*Sociedad por Acciones*, SpA) has legal personality, it is treated as a taxpayer.[1231] The tax rules applicable to a closed stock corporation (*Sociedad Anónima*, SA) are also applicable to a SpA.[1232]

C. Limited Liability Enterprise (EIRL)

A limited liability enterprise (*Empresa Individual de Responsabilidad Limitada*, EIRL) is treated as a taxpayer since it has legal personality even though it may only have one individual as a shareholder.[1233] As such, an EIRL is required to have a *Rol Único Tributario* (RUT).[1234] In particular, an EIRL is subject to the same tax rules as an SRL[1235] and is, therefore, subject to the first category tax.[1236] In turn, the individual shareholder is subject to the surtax or the additional tax, depending on his or her tax residence, based on the actual or deemed taxable withdrawals made out of the EIRL.[1237]

D. General Partnership and Limited Partnership

A general partnership (*Sociedad Colectiva*, SC) and a limited partnership (*Sociedad en Comandita*, SenC) are taxed as separate legal entities under the first category tax and their individual partners are taxed separately.[1238] Since partnerships are separate taxpayers, they must file their own first category tax returns in the same manner as corporations. SenCs and SCs are treated in the same manner for tax purposes.

The taxable income of an SC and an SenC is basically determined in the same manner as that of a corporation. Foreign partners (corporate or individuals) are subject to the additional tax on the taxable profits distributed by the partnership.

Membership in a Chilean partnership does not, in itself, create a PE in Chile. In turn, the local entity has the obligation to withhold and pay the additional tax when due.

E. Silent Partnership

A silent partnership (*Asociación o Cuenta en Participación*, CenP) is treated as a transparent entity for Chilean tax purposes. As a general rule, the income of a CenP is generally declared as pertaining wholly to the managing partner and is attributed to the silent partners only for surtax and additional tax purposes. Income allocations to resident entities are subject to the first category tax, while allocations to nonresident participants or resident individuals are subject to the additional tax or the surtax, respectively, with a tax credit for the first category tax paid by the managing partner.[1239]

F. Unincorporated Joint Venture

Unincorporated joint ventures are not regulated under Chilean law. In practice, the legal form of an unincorporated joint venture is a power of attorney that the venture partners grant to a person so that the latter may act on his or her own and on behalf of the grantors or venture partners. It may also take the form of a contractual arrangement whereby two or more parties agree to undertake a venture and share the profits and losses arising from the venture.

An unincorporated joint venture is not a taxpayer in its own right. The SII regards it as a community for income tax purposes and, as such, treat it as a look-through vehicle.[1240] In principle, each venture partner is jointly liable to report all the profit or loss generated under the joint venture and pay the income tax thereon. A venture partner may be freed from this joint liability and, consequently, just report the income or loss pursuant to its partnership allocation if in its tax return it identifies the other joint venture partners, indicating their domicile, their activity, and their allocation of profits and losses.[1241]

In view of the above, persons that seek to operate as an unincorporated joint venture must obtain special authorization from the SII. In general, the SII will grant the authorization if the joint venture partners are able to prove that the business in question is under common ownership by the partners. If authorization is granted, the unincorporated joint venture will be entitled to have its own accounting as well as that of the joint venture partners. In this manner, the revenue allocated to each of the partners can be offset by contributions they make to meet the common expenses of the business venture.[1242] If, on the other hand, the authorization is not granted, the business will be deemed to be owned by the partner which legally has title to the assets.

Nonresident participants in an unincorporated joint venture are taxed as if they were operating on their own.

G. De Facto Corporation

De facto corporations, which do not have legal personality as they have not been duly incorporated, are, as a general rule, treated as look-through entities. Each shareholder or partner of a *de facto* corporation is jointly liable to report all the income derived by the corporation and pay the relevant income tax.

As in the case of unincorporated joint ventures, a shareholder or partner may avoid the joint tax liability if he or she states the names, addresses, and percentage interests of the other shareholders or partners in the *de facto* corporation[1243] However, the SII has established that a *de facto* corporation that exercises actual control over its business may act as the taxpayer of the first category tax, while the shareholders will be subject to the surtax or the additional tax at the time the corporation

[1231] TC, Art. 8(5).
[1232] ITL, Art. 2(6).
[1233] TC, Art. 8(5).
[1234] TC, Art. 66.
[1235] Law No. 19,857, Art. 18.
[1236] Circular No. 95, dated Dec. 20, 2001.
[1237] Circular No. 60, dated Dec. 3, 1990.
[1238] CC, Art. 2,053.
[1239] ITL, Art. 13.
[1240] Tax Ruling No. 4,270, dated Nov. 25, 1999; Tax Ruling No. 264, dated Jan. 26, 2006.
[1241] ITL, Art. 6.
[1242] Tax Ruling No. 714, dated April 8, 1997.
[1243] ITL, Art. 6.

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makes profit distributions, provided the corporation is subject to full accounting rules. If, on the other hand, the *de facto* corporation is subject to simplified accounting rules, the surtax or the additional tax will be due at the time the income is either accrued or received by the corporation.[1244] Thus, if the *de facto* corporation reports its income and pays the first category tax, look-through treatment is limited to the fact that the shareholders are jointly liable with respect to that tax. As stated above, this joint liability will be limited to the shareholder's equity interest in the corporation if, in its tax return, it reports the identity of the other shareholders, their domicile and their equity interests in the corporation.[1245]

H. Inheritance

Income arising from an estate that has not yet been distributed to its heirs must be allocated to the heirs in proportion to their quotas in the estate. If the quotas have not yet been determined, both the estate to be inherited and the income arising therefrom is to be allocated to the deceased. Once the heirs' quotas have been established, all the income that arises from the estate during the calendar year in which the quotas are determined must be reported by each of the heirs in proportion to their quotas. The quotas must be determined within a period of three years from the time the estate is opened. If the quotas are not determined within the three-year period, they will be deemed to be in the same proportions as have applied for purposes of the estate and gift tax.[1246]

I. Community of Property

A community of property is treated as a look-through entity. Each member of the community is jointly liable to report all the income derived by the community and pay the relevant income tax. However, a member may avoid the joint tax liability if he or she states the names, addresses, and percentage interests of the other members of the community.[1247]

J. Trust

Trusts or usufructs are transparent entities for income tax purposes. Income derived by a trust is taxable at the level of the beneficiaries. However, income from property held in trust is taxed at the level of the trustee until such time as the real beneficiaries of the income are determined.[1248] Gains realized by the settlor upon the transfer of the property to the trust constitutes income in the hands of the settlor.[1249]

[1244] Circular No. 60 of 1990 and Circular No. 40 of 1991.
[1245] *Oficio* No. 926 of March 5, 2001.
[1246] ITL, Art. 5.
[1247] ITL, Art. 6.
[1248] ITL, Art. 7(3).
[1249] ITL, Art. 13.

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IX. Taxation of Resident Individuals

A. Scope of Taxation

An individual who is a resident of Chile is subject to income tax on a worldwide basis.[1250] However, by way of exception to this rule, a foreigner is taxed in Chile only on his or her Chilean source income during the first three years from the date on which he or she entered the country. This period can be extended for a maximum of three additional years.[1251] The most relevant factor that the SII takes into account in deciding whether to grant an extension is the foreign individual's lack of an intention to reside in Chile on a permanent basis.[1252] After the initial three-year period or the extended period, foreign individuals are taxed on their worldwide income.

B. Residence

Whether an individual is a resident or a nonresident for tax purposes determines whether the individual should be taxed generally on a net basis and at progressive rates (resident individual) or on a gross basis, generally at a flat rate of 35% (nonresident individual). The resident/nonresident distinction is, therefore, important when an individual derives income that is sourced in Chile, since a resident is generally subject to a lower effective tax rate because he or she is generally entitled to claim certain tax deductions, while a nonresident is subject to tax at flat rates levied on a gross basis. The resident/nonresident distinction is also important in the case of an individual who derives foreign-source income while present in Chile, as the foreign-source income will not be subject to Chilean taxation if the individual is a nonresident for Chilean income tax purposes.

An individual is a tax resident of Chile if he or she has established either his or her residence or his or her domicile in Chile.[1253] Tax residence in Chile can only be achieved if the individual remains in the country for more than 183 days, whether consecutively or not, within any 12-month period.[1254] This is an objective test, in the sense that an individual can only become a tax resident of Chile if he or she meets the 183-day test. The SII has ruled that, for purposes of computing the days on which an individual has been present in Chile, the days of arrival and departure must be included in the computation. On the other hand, the days an individual has only been in transit must be excluded.[1255]

An individual can still become subject to income tax in Chile on a world-wide basis if he or she maintains his or her domicile in Chile, even if he or she has been absent from the country for more than 183 days in any 12-month period. In this regard, an individual is deemed to be domiciled in Chile if his or her principal place of business is in Chile.[1256] Aside from the economic test, an individual can also attain Chilean domicile if he or she signs a sworn statement indicating his or her intention of reside in the country.[1257]

The loss of Chilean domicile must be evidenced with proof that the individual no longer has his or her principal place of business in Chile. To this end, a taxpayer must submit documents that evidence that he or she is physically performing remunerated activities in another country, that he or she receives investment income from investments made in that other country on a permanent basis and that that income exceed the income he or she receives from Chile, or that he or she has sold Chilean-based assets. The taxpayer can also sign a sworn statement expressly indicating his or her intention to relinquish his or her Chilean domicile and that he or she has no intention of establishing his or her domicile in Chile in the future.

If an individual becomes a tax resident of Chile because he or she remains in Chile for a period in excess of 183 days, the income the individual receives during the first six months is taxed as if he or she were a nonresident (see X., below), while the income he or she receives after the 183-day period is subject to tax under the rules applicable to resident individuals. Nonetheless, as noted in A., above, a foreign individual who becomes domiciled or resident in Chile will be subject to income tax only on his or her Chilean-source income during the first three years from the date on which he or she arrives in Chile.[1258] On the other hand, an individual who has established his or her domicile in Chile is deemed domiciled in the country from the date of his or her arrival.[1259]

Civil servants of the Chilean State, employees of State, Regional or Municipal-owned enterprises or enterprises in which the State, a Region or a Municipality has an equity interest, and employees of State-owned universities or universities recognized by the State, are deemed to be residents of Chile even if they render services abroad. Their taxable income is deemed to be that which they would earn in Chile in Chilean pesos if they rendered equivalent services in Chile.[1260]

C. Taxation of Income

1. Taxable Income

The manner in which income derived by resident individuals is taxed depends on the nature of that income. Income of

[1250] ITL, Art. 3.

[1251] ITL, Art. 3.

[1252] Tax Ruling No. 68, dated Jan. 7, 2005.

[1253] ITL, Art. 3.

[1254] TC, Art. 8(8). This rule was introduced by Law No. 20,210 and came into effect on March 1, 2020. Prior to this amendment, an individual was a resident of Chile if he or she remained in the country for six consecutive months in one calendar year or more than six months, whether consecutive or not, in two consecutive calendar years.

[1255] Circular No. 63, dated November 25, 2021.

[1256] ITL, Art. 4. Thus, an individual may be subject to income tax like a resident if he or she has his or her domicile in Chile. The individual's economic circumstances will determine his or her domicile, i.e., the place where the taxpayer performs the activity or activities that generate the majority of his or her income as well as the place where the individual's principal place of business is located. Family circumstances, such as the place where the family's principal home is located, or where the taxpayer's children study, are not necessary or essential for purposes of determining a taxpayer's domicile, although they may be taken into account as evidence in those cases where it is not entirely clear where the taxpayer's principal place of business is located. See Circular No. 63. A foreigner seconded to Chile for eight years who returns to the United States on retirement loses his status as domiciled and resident in Chile even if he continues to own property in Chile and visits it irregularly: Tax Ruling No. 1,583, dated July 29, 2008.

[1257] Circular No. 63.

[1258] ITL, Art. 3. See VI.A., for a discussion of the Chilean source rules.

[1259] Circular No. 63.

[1260] ITL, Art. 8.

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resident individuals may be classified as first or second category income.

Income derived from the performance of personal services, whether or not rendered under a relationship of dependency, is classified as second category income. Income within this category derived from personal services rendered under a relationship of dependency, such as an employer-employee relationship, is subject to the sole second category tax, which is generally withheld at source. On the other hand, income derived from the performance of services rendered where there is no relationship of dependency is subject to the surtax, which must be determined and paid on an annual basis at progressive rates, although if the payor of the fees is subject to the first category tax, the payor must withhold 10% of the fees paid, which the individual is entitled to credit against his or her annual surtax liability.[1261]

Income other than second category income, such as business income and passive income is, in some cases, classified as first category income and, as such, it is subject to the first category tax and to the surtax. The first category tax paid on such income is creditable against the individual's surtax liability.

2. Exclusions from Taxable Income and Exemptions from Tax

The distinction between an item of income that is excluded from taxable income and one that is exempt from income tax is not material for purposes of determining an individual's effective or marginal tax rate for purposes of both the sole second category tax and the surtax, as both kinds of income are excluded when the applicable marginal tax rates are determined. The following items of income are either excluded or exempt:

(i) Income earned by ambassadors, consuls, ministers and other diplomatic representatives of foreign countries based in Chile and their employees, provided they have the same nationality. The exemption applies to salaries and other types of official remuneration paid by the foreign government concerned, as well as income derived by the foreign diplomat in the foreign country that sent him or her to Chile; and bank interest on deposits made with those salaries and other such income. However, for the exemption to apply, the foreign country that sends the diplomat must grant the same or a similar income tax exemption to Chilean diplomats sent to that country;[1262]

(ii) Indemnities paid as a result of accidents suffered at work, irrespective of whether they are paid in a lump sum, annuities or pensions;[1263]

(iii) Family subsidies, social security benefits, widow's pension, and indemnities for evictions and dismissals. However, with respect to the latter, the exemption is capped at one month of salary for each year of service. In this regard, the one month of salary is deemed to be the average monthly salary earned during the last 24 months, adjusted for inflation and excluding bonuses and other extraordinary remuneration. Foreign-source pensions and other retirement benefits paid to resident individuals are also exempt from income tax;[1264]

(iv) Indemnities paid under life insurance policies, a credit life insurance, and, lifetime annuities, whether paid during the life of such policies or upon termination thereof. Payments made under lifetime annuities and pension plans are also exempt, unless the payments are made pursuant to lifetime annuities held in funds that are capitalized by a pension fund administrator, as provided for under Decree-Law No. 3,500 of 1980. The amount of the pension or lifetime annuity that is exempt from income tax is capped at one quarter of a monthly tax unit per month. The tax exemption is also applicable to indemnities paid to beneficiaries under endowment insurance policies contracted by the deceased, provided it is payable after five years from the date the policy was contracted; the tax exemption is capped at 17 monthly tax units per year. Furthermore, the exemption is only applicable if the person who contracted the endowment insurance policy did not deduct the insurance premiums as an expense;[1265]

(v) Marital property received by spouses on the dissolution of a marriage, property received *mortis causa*, as gifts, or as property received from a spouse on termination of the community property regime.[1266] The tax basis on property received under these circumstances mortis causa is the value that was reported when it was adjudicated or for estate and gift tax purposes, as the case may be, as adjusted for inflation;

(vi) Meals, transportation and lodging provided to employees, provided these are for the benefit of the employer. If the employer elects to pay for such items in cash, the payments will be exempt from income tax if they are reasonable.[1267] In this regard, the SII has indicated that amounts paid in cash for meals are reasonable if they are uniform among all employees (although a higher amount may be paid for high-ranking employees, the exemption is only applicable with respect to amounts paid for a common meal and only to the extent that it is paid for days actually worked);[1268]

(vii) Daily allowances, travel expenses and other expense reimbursements incurred on behalf of the employer.[1269] In connection with daily allowances and travel expenses, the SII has indicated that these reimbursements are exempt from income tax if it can be proven that the employee was absent for work reasons, that the allowances, etc. are proportionate to the category of employee concerned and to the country or city to which the employee travelled, and, in the case of daily allowances, that they are not paid for an indefinite period;[1270]

[1261] ITL, Art. 52.
[1262] ITL, Art. 9.
[1263] ITL, Art. 17(2).
[1264] LC, Art. 178; ITL, Art. 17(13), (17) and (26); Circular No. 29 of May 17, 1991.
[1265] ITL, Art. 17(3) and (4).
[1266] ITL, Art. 17(8)(f), (h), (9) and (30).
[1267] ITL, Art. 17(14).
[1268] Tax Ruling No. 2,497, dated June 6, 2001.
[1269] ITL, Art. 17(15) and (16).
[1270] Tax Ruling No. 738, dated March 17, 1998.

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(viii) Special bonuses received by employees for living in remote areas. These areas and the amount of the bonus must be established in specific legislation. In that regard, there is specific legislation that provides that a portion of the salary received by employees working in the I, XI and XII Regions as well as in the Chiloé provinces, is deemed to constitute a special bonus for working in a remote area;[1271]

(ix) Amounts received and expenses paid in connection with scholarships, as well as prizes given by the State, Municipalities, universities, corporations or foundations for purposes of conducting studies or research, or practicing science or art, provided the prize is given on a permanent basis and the beneficiary is not an employee of the enterprise giving the prize;[1272]

(x) Payments made between spouses, provided they are agreed to in a public deed, judicial decision, or out-of-court settlement.[1273] Alimony received to pay for food for children is also exempt;[1274]

(xi) Indemnities received by a taxpayer for consequential and punitive damages suffered by him or her to his or her property.[1275] In the case of punitive damages, however, the amount must have been established in a court judgment;

(xii) Income derived from the creation, formation or establishment of intellectual property.[1276] The exemption does not extend to the income derived from the exploitation or sale of the intellectual property;

(xiii) Income from the redemption of bonds and other securities issued or guaranteed by the State or State-owned organizations as well as municipalities, and similar type of debt instruments; and[1277]

(xiv) Prizes given in raffles organized by nonprofit organizations.[1278]

3. *Determination of Net Taxable Income by Category of Income*

a. *Salaries*

As noted in 1., above, remuneration received for personal services rendered under a relationship of dependency, such as salaries and pensions, is subject to the sole second category tax. Remuneration includes wages, salaries, overtime pay, bonuses, allowances, profit sharing, pensions and any other remuneration paid to compensate an individual for his or her services.[1279] A relationship of dependency generally exists where an employer and an employee have entered into an employment agreement. However, an employer-employee relationship is also presumed to exist if the individual's work is subordinated to the orders or instructions of his or her superior, such as a time schedule.

The sole second category tax is levied on the gross amount of the remuneration. However, except for payroll-related contributions mandatorily paid by an employer on behalf of an employee, such as social security, retirement, health and unemployment contributions are not considered remuneration up to the various caps established in the laws that govern these contributions.[1280] The gross amount of salaries may also be reduced by voluntary social security contributions that the individual has made through payroll reductions to an authorized social security institution or pension fund administrator.[1281] In this case, the deduction may not exceed 50 development units per month. The voluntary social security contributions are also deductible when they are paid directly by the employee to an authorized social security institution or pension fund administrator, in which case the amount of the deduction for such contributions may not exceed 600 development units per year, minus the contributions withheld through payroll deductions.[1282] In that case, the employee will be required to file an annual second category tax return and claim a tax refund.

Reimbursements of travel expenses, moving expenses and reasonable relocation allowances are considered nontaxable income and are also excluded from the sole second category tax calculation.[1283] On the other hand, such items as cost-of-living allowances, area allowances, vacation travel and utilities are taxable. In most cases, housing allowances constitute taxable income since, for it to be considered nontaxable, it is required that a house be provided for the employer's sole interest, such as housing within the premises of a factory or in a camp.[1284] Medical expenses reimbursed by an employer are also excluded from the sole second category tax liability computation if they are paid under a general welfare program made available by the employer.

Options granted by employers to officers, directors and employees to acquire shares or other financial instruments of the employer or a related party do not constitute income for the individual, irrespective of whether the instrument is issued in Chile or abroad, provided that the stock option plan is included in the employment agreement or in a collective bargaining agreement.[1285] Exercising the option is not a taxable event. However, a capital gain realized on the subsequent sale of the instrument by the individual is subject to the surtax. In this regard, the capital gain is determined by the difference between

[1271] ITL, Art. 17(27); Decree Law No. 889 of 1975, Art. 13.

[1272] ITL, Art. 17(18) and (23). The scholarship may be paid to the educational center or to the beneficiary but, in the latter case, the taxpayer is required to prove that the amount received was only used to finance his or her studies. Tax Ruling No. 380, dated Feb. 3, 2005.

[1273] ITL, Art. 17(31).

[1274] ITL, Art. 17(19).

[1275] ITL, Art. 17(1).

[1276] ITL, Art. 17(20).

[1277] ITL, Art. 17(25).

[1278] ITL, Art. 17(24).

[1279] ITL, Art. 42(1).

[1280] ITL, Art. 42(1). For a discussion of the social security contribution obligations of employers and employees, see II.D.10.c., above.

[1281] ITL, Art. 42 *bis* (1). In Circular No. 24, dated June 8, 2023, the SII has made it clear that if an individual claimed a deduction with respect to contributions made to his or her pension fund and later makes a withdrawal from that fund to pay for alimony, the amount withdrawn becomes taxable income in the year in which the withdrawal is made.

[1282] ITL, Art. 42 *bis* (2). Expatriates who have social security coverage in their country of origin may be exempt from Chilean social security contributions and can deduct their actual contributions from their Chilean taxable income up to a maximum of 60 tax units.

[1283] ITL, Art. 42(1).

[1284] ITL, Art. 17(13)–(15).

[1285] ITL, Art. 17(8)(1).

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the sales proceeds and the amount paid by the individual when the option was granted or when it was exercised, if any, adjusted for inflation. If, however, the stock option is not contemplated in the employment agreement or in a collective bargaining agreement, then the triggering event arises when the individual exercises the option. In these cases, the capital gain is the difference between the acquisition price of the financial instrument and whatever the individual paid when the option was granted and/or exercised, if anything. The acquisition price is deemed to be the instrument's fair market value or its book value.

If instead of exercising the option the individual sells it, then the capital gain will be subject to the surtax or the additional tax. The capital gain in this case is the difference between the sales price and whatever the individual paid for the option, if anything.

A resident individual is also entitled to deduct interest actually paid during the calendar year on a first mortgage loan that the individual has used to acquire or build one or more homes or a second mortgage loan used to repay the first mortgage loan. The annual deduction is limited to the lesser of eight annual tax units or the interest that has actually been paid. This limitation does not apply if the taxpayer's annual gross income is less than 90 annual tax units; on the other hand, no deduction whatsoever is available if the taxpayer's annual gross income exceeds 150 annual tax units. If the taxpayer's annual gross income is between 90 and 150 annual tax units, the amount of the deduction is equal to the taxpayer's annual gross income, expressed in annual tax units, times 1.667 minus 250 (expressed in percentage points) times the amount of the interest paid. Since the interest deduction cannot be taken into account for purposes of determining the withholding tax on salaries, the sole secondary category tax is not a final tax. To this end, a resident individual in these circumstances must readjust his or her net taxable income by deducting the interest paid on a mortgage and file an annual income tax return. If the sole second category tax liability withheld by the employer exceeds the taxpayer's readjusted tax liability, the excess may be refunded to the taxpayer.[1286] The ability to deduct interest on home mortgages is also available to taxpayers who are subject to the surtax.

b. Service Fees

Fees arising from the performance of services rendered where there is no relationship of dependency are also categorized as second category income but are subject to the surtax, not the sole second category tax.[1287] Services rendered by an individual in the absence of a relationship of dependency essentially consist of services of an independent nature where personal work based on the application of knowledge, science, art or technique predominates over work performed to operate machinery, tools, equipment and other capital assets. These services include liberal professional services and brokerage services rendered by individuals where no capital is invested.[1288]

Professional service companies that render exclusively professional services or advice are also subject to the surtax at the level of their individual partners.[1289] However, these companies may opt to be taxed under the first category tax regime (see V.B., above). A professional service company that wishes to exercise this option must notify the SII accordingly within the first three months of the taxable year. If it does so, the company will be subject to the first category tax in the year in which the notice is filed.[1290] A professional service company that opts to be subject to the first category tax may not later opt to revert to the second category tax regime.[1291] Moreover, opting for the first category tax has the result that the company will be required to comply with all the tax and accounting obligations and rules that apply to other companies subject to the first category tax. For example, the professional services company will be taxed on an accrual basis, will have to make inflationary adjustments and will also have to make advance first category tax monthly payments.

Individuals who derive service income and individual partners of professional service companies that have not opted to be subject to the first category tax are taxed on a cash basis.[1292] Thus, only income that has been received during the taxable year constitutes taxable income.[1293] Out-of-pocket expenses or the reimbursement of expenses incurred by such a professional on behalf of his or her clients do not constitute taxable income, provided the professional can prove that he or she incurred the expenses. Moreover, the taxpayer must be able to break down the expenses. Accordingly, expenses charged to clients that have been determined on an estimated basis or using global allocation mechanisms do constitute taxable income as they cannot be broken down on an item-by-item basis.

As a general rule, individuals rendering services where there is no relationship of dependency are allowed to deduct from their gross income all necessary expenses actually paid during the taxable year. The rules on the deductibility of expenses for taxpayers subject to the first category tax are generally applicable to taxpayers subject to the surtax.[1294] Thus, in addition to being necessary, the expenses must be directly related to the performance of the services and must be reasonable. As to the reasonableness of an expense, the taxpayer must ask himself whether the amount of the expense is reasonable in proportion to the actual income that is derived during the taxable year in which the expense is incurred. Thus, expenses that are excessive or extraordinary for one taxable year may have to be pro-rated over two or more years. For example, travel expenses for traveling to fairs, congresses or courses are viewed as investments and, as such, must be amortized over a peri-

[1286] ITL, Art. 55 *bis.*

[1287] ITL, Arts. 42(2) and 43(2).

[1288] ITL, Art. 42(2).

[1289] Professional service companies must be owned by professionals or by or by partnerships. Thus, neither a professional service company nor its shareholders may be an SA.

[1290] If the company is commencing its activities, the notice in which it opts to be subject to the first category tax must be filed within two months from the date on which the activities commence. TC, Art. 68.

[1291] ITL, Art. 42(2). Professional service companies operating clinics, maternity hospitals and laboratories do not qualify for this option and, as such, are subject to the first category tax.

[1292] ITL, Art. 43(2).

[1293] It is not entirely clear whether fees received in advance of rendering a service, such as retainers, should constitute taxable income at the time of receipt if the service is actually rendered in a subsequent taxable year. The SII has taken the position that fees paid in advance should constitute taxable income when received, even if the service is rendered subsequently.

[1294] ITL, Art. 50.

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od of three years.[1295] Self-paid social security contributions as well as those paid through professional service firms, whether mandatory or voluntary, are also deductible for purposes of determining a professional's surtax liability.[1296] All income generated and expenses incurred by individuals performing services must be adjusted for inflation based on the CPI variation between the last day of the month prior to the one in which the fee was earned or the expense was incurred and the last day of the month prior to the close of the taxable year.[1297]

Alternatively, rather than determining actual allowable expenses, individuals who render independent professional services are also entitled to claim a deemed expense equal to 30% of their annual gross revenue capped at 15 annual tax units.[1298] This option is available year by year at the taxpayer's option. The option is not available to professional service companies.

Fees received by members of boards of directors that reside in Chile are subject to the surtax. If the director is a nonresident, the fees received are subject to the additional tax.[1299] As discussed in V.B.11.c., above, the payment of director's fees is subject to withholding tax at source at a rate of 10% and can be used as a tax credit against the director's surtax or additional tax liability.[1300]

Taxpayers subject to the surtax are entitled to deduct interest paid on home mortgages. For a discussion of these rules, see C.3.a., above.

c. Business Income

Income and capital gains that have been subject to the first category tax may also be subject to the surtax at the resident individual level.[1301]

(1) Dividends

(a) In General

Dividends received by resident individuals are subject to the surtax.[1302] For a detailed discussion of the rules applicable to distributions made by Chilean enterprises to their shareholders, see V.B.5.d., above. See also IX.C.5.b., below, for a discussion of the manner in which resident individuals may utilize the first category tax paid by the distributing company as a credit against their surtax liability. For a discussion of how a Chilean company can pay a substitute tax in lieu of the surtax with respect to earnings and profits accumulated through December 31, 2023, see V.B.5.d.(5), above.

Dividends received by resident individuals that carry tax credits must be grossed-up by the amount of the credit that such dividends carry. Therefore, these credits must be included as part of the individual's taxable income that is subject to the surtax.[1303] A gross-up of the foreign creditable tax must also be made with respect to distributions received from nonresident entities. Furthermore, a resident individual must also include as part of his or her gross income dividends received from Chilean entities that are exempt from the surtax but only for purposes of determining the individual marginal surtax rate.[1304]

Note: Under the 2023 Tax Reform Bill, distributions by public and private investment funds and mutual funds were going to be subject to a dividend tax at a rate of 22%. Individuals were not entitled to a tax credit for the first category tax even if the investment fund making the distribution was subject to it.

However, the Tax Reform Bill was rejected on March 8, 2023, by the Chamber of Deputies.

(b) Withdrawals

A special charge (or penalty tax) of 10% on top of the surtax is levied on amounts or property that are withdrawn or deemed withdrawn from a legal entity for the benefit of its shareholders.[1305] As a general rule, the value of the withdrawal is subject to this higher tax at the shareholder level irrespective of the company's results at year-end. The objective of this rule is to prevent the avoidance of the surtax or the additional tax since, in the absence of the rule, shareholders would be allowed to use or enjoy corporate assets without receiving a taxable dividend distribution. If it cannot be determined what portion of the withdrawal benefits each shareholder, it must be allocated among all of them on the basis of their share in the company's capital or profits. The deemed withdrawal rules apply not only in cases where the withdrawal benefits the shareholder, but also to the shareholder's spouse, civil partner, children that are not legally emancipated, controlled or controlling entity, as well as the entity's officers and directors and companies controlled by them.

The following are amounts or property that may be taxed as an actual or deemed withdrawal subject to the 10% surcharge on top of the surtax:[1306]

> (i) Expenses incurred or disbursements made by the entity that are not necessary to derive income and that provide to the persons listed below either: (I) the right to use or enjoy property for free or at a cost below its real value; (II) a partial or full forgiveness of indebtedness; (III) interest paid in excess of the market rate; (IV) rents paid in excess of, or received below, their market value; and (V) share subscriptions at preferential prices. The persons to whom these rules apply are: (I) any person who, due to personal circumstances or his or her position in the entity, may have exercised an influence in the determination of his or her remuneration received from the entity; (II) a shareholder of a closed stock corporation; (III) a shareholder of an open stock corporation that owns at least 10% of the shares in the corporation; (IV) an individual entrepreneur; (V) a quota-holder in an SRL; and (VI) any person who may have an interest in the entity. However, to assess the 10% surcharge, the SII must be able to justify that the entity's retained earnings constitute a deemed withdrawal by

[1295] Circular No. 21, dated April 23, 1991.
[1296] ITL, Art. 50.
[1297] ITL, Art. 51.
[1298] ITL, Art. 50.
[1299] ITL, Art. 48.
[1300] ITL, Art. 74(3).
[1301] ITL, Art. 52.
[1302] ITL, Arts. 14 and 54(1).
[1303] ITL, Art. 54(1).
[1304] ITL, Art. 54(3).
[1305] ITL, Arts. 21 and 54(1).
[1306] ITL, Arts. 21, 33(1) and 54(1). The same rules apply when the shareholder is a nonresident entity or individual, except that the surcharge takes the form of a withholding tax at a rate of 45%. ITL, Art. 74(4).

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taking into account the entity's amount of retained earnings, the entity's assets and their origin, and the ratio between those earnings and assets and the deemed withdrawal the SII is attempting to justify;

(ii) The benefit obtained from the use or enjoyment of the entity's assets by the entrepreneur or shareholder, to the extent that such use or enjoyment is not necessary for the entity to generate income. To this end, the amount of the benefit or deemed withdrawal is presumed to be the greater of either 10% of the adjusted tax basis of the asset in question at the end of the taxable year, the annual depreciation amount claimed on the asset or, in the case of real property, 11% of its official value. If the asset in question is a vehicle, the amount of the withdrawal is deemed to be 20% of the value of the vehicle at the end of the taxable year. In determining the taxable amount, any payment made by the beneficiary of the withdrawal to the entity should be deducted from the deemed amount of the withdrawal. If the taxpayer carries on his or her activities in a rural area, the use or enjoyment of an asset in that area is not considered a taxable withdrawal. The same exclusion applies if the asset is used by the entity's employees for recreational purposes provided that the use of the asset in question is available to all personnel without exclusion. If the benefit is only for the exclusive use of certain employees, then, rather than subjecting the benefit to the surtax and surcharge, it will be subject to the 40% sole tax to be levied at the entity's level. If the benefit is obtained by several shareholders and it is not possible to determine the amount for each one of them, the amount of the benefit must be attributed to each pursuant to the same rules that are followed for dividend distributions. However, the amount of this benefit cannot be reduced from the entity's registries;

(iii) Loans made by an entity (including PEs), other than an open SA, to the shareholder or home office, irrespective of whether it is a resident individual or a nonresident entity or individual. For the surcharge to apply, the SII is required to prove that the loan is a deemed distribution of taxable earnings. To that end, the SII may take into account the amount of the Chilean entity's retained earnings at the time the loan is granted, the ratio between those retained earnings and the loan principal, the ultimate beneficiary of the loan proceeds, the terms of the loan as well as its extensions and renewals, the interest rate, and other terms that it considers important to demonstrate the existence of a disguised or deemed distribution. The surcharge is levied on the principal of the loan, as adjusted for inflation.[1307] However, the recharacterization of a loan as a deemed distribution must reduce the Chilean entity's registries pursuant to the same ordering rules that are established for actual dividend distributions;[1308] and

(iv) Assets of the entity that are placed and executed as a guaranty of direct or indirect obligations of a shareholder. The amount of the deemed withdrawal is the fair market value of the guarantee that has been executed. That amount must be reduced from the entity's registries pursuant to the ordering rules that are followed for dividends.

(c) Disproportionate Distributions

If a Chilean entity has individuals that, directly or indirectly, have an equity interest in that entity, are subject to the surtax, and are related parties among themselves, the SII can levy a 40% tax on a disproportionate distribution if, after taking into account the facts and circumstances of the entity and the shareholders, it can prove there are no commercial, economic, financial or administrative reasons that justify one or more of those individuals receiving a distribution in excess of his or her percentage in the capital of the entity. To this end, two shareholders are related if they are either married or are ascendants or descendants related up to second degree of consanguinity.

The 40% tax is levied on the entity making the distribution on the portion that exceeds the shareholder's percentage of interest in the capital of the entity.[1309] If the resident individual has paid the surtax on that distribution and subsequently the SII decides to levy the 40% tax on that distribution (or a portion thereof), the individual will be entitled to claim a full tax refund for the surtax paid on that distribution in the same tax audit proceeding and by means of amending his or her income tax return. The amended tax return, therefore, needs to be amended by excluding the amount of the distribution from the individual's taxable income and transferring the tax credit claimed by the individual on that distribution surtax to the distributing entity's SAC Registry.

If the distribution is subject to this 40% tax but it is made to an intermediary Chilean company, this company must book the amount received in its REX Registry as revenues that do not constitute taxable income and, as such, it is entitled to distribute it to its shareholders at any time without further taxation and irrespective of the ordering rules applicable to dividend distributions (for a discussion of those rules, see V.B.5.d.(3), above).

(2) Capital Gains and Losses

(a) In General

Capital gains realized by resident individuals are generally treated as ordinary income and are subject to the surtax.[1310] Generally speaking and unless the sale of the property is exempt from the surtax (see (b), below), the taxpayer is entitled to offset the gain from capital losses incurred on the sale of the same type of property in the same taxable year.

Resident individuals are subject to the same capital gains tax rules as Chilean companies as regards the computation of the adjusted tax basis in the shares being sold (for a more de-

[1307] ITL, Arts. 21 and 54. This provision was introduced in the 2012 ITL reform and seeks to prevent granting loans to shareholders out of the Chilean lender's retained earnings to defer triggering the additional tax. This rule became applicable with respect to loans entered into as of January 1, 2013. However, the rule could also apply to loans entered into prior to January 1, 2013, if the essential terms and conditions of those loans have been substantially modified as of that date, such as a capitalization of interest or a novation. SII Order No. 074, dated Jan. 15, 2013.

[1308] For a discussion of these ordering rules, see V.B.5.d.(3), above.

[1309] ITL, Arts. 14(A).

[1310] For a discussion of the capital gain tax rules applicable to individuals on the liquidation of a Chilean company, see IX.C.3.c.(2).

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tailed discussion of those rules, see V.B.9.c.(1), above). Resident individuals are entitled to offset capital losses incurred on the sale of shares against capital gains realized on the sale of shares.

The capital gain realized by a resident individual is subject to the surtax. That tax is generally levied on a cash basis, i.e., in the year in which the shares are sold. But resident individuals have the option of allocating the capital gain over the number of years in which the shares were owned, up to a maximum period of 10 years, adjusted for inflation.[1311] In this regard, month fractions are deemed to constitute a full year of ownership. The taxpayer must then convert the portion of the capital gain allocated to each of the years of ownership into monthly tax units based on the value of the unit on December of the year in which the shares were sold and then reconverted into pesos based on the value of the unit on December of each of the taxable years in which the capital gain has been allocated. The capital gain liability for each of those years must be determined by applying the capital gains tax rules in force in each of those years and by recalculating the average marginal surtax rate for each of those years. The new surtax liability for each of the years must be converted again into monthly tax units based on their value on December of each of those years and then reconverted into pesos based on the value of the monthly unit on December of the year in which the sale took place. The sum of these annual computations (which may entitle the taxpayer to a tax refund) must be reported and paid (or refunded) in the surtax return of the year in which the shares were actually sold. In this regard, the taxpayer is not entitled to file amended surtax returns for the years that were used to recalculate his or her surtax liability.

Resident individuals may exclude from their taxable income the first 10 annual tax units of the combined proceeds obtained from the sale of shares, mining and water rights as well as bonds and other debt instruments.[1312]

The possibility of allocating the capital gain over the years of ownership and the exclusion of the first 10 annual tax units is not available if the individual sold the shares to a related party. In this regard, a related party is considered to be a company (other than open SAs) in which the individual, his or her spouse or partner, as well as ascendants or descendants up to the second degree of consanguinity, owns, directly or indirectly, an equity stake. The allocation and income exclusion facility is also unavailable if the shares are sold to an officer, director or liquidator of the issuing company or to a company controlled by such a person.

By way of exception to the general rule, capital gains realized on the sale on a Chilean stock exchange by a resident individual of actively traded shares in open SAs and Chilean investment and mutual funds are subject to a reduced 10% rate, as opposed to the surtax. For a discussion of these rules, as well the rules dealing with offsetting capital losses against capital gains on the transfer of this type of shares, see V.B.9.c.(1) and (2), above.

[1311] ITL, Art. 17(8)(a)(v).
[1312] ITL, Art. 17(8)(a)(vi).

The sale of bonds and debentures by resident individuals is subject to the same rules as the sale of shares in Chilean companies. However, repayments of the principal reduce the taxpayer's tax basis for purposes of determining the capital gain.[1313] Unlike the sale of shares, the individual cannot allocate the capital gain realized on the sale of bonds and debentures over the years of ownership.

(b) Exemptions

The following capital gains are exempt from tax:

(i) Gains realized by a taxpayer during the calendar year on the sale of shares in Chilean SAs and SRLs, provided the overall gains do not exceed 20 monthly tax units.[1314] The same exemption applies with respect to capital gains realized by a resident individual on the redemption of mutual funds, provided the overall gains realized in the course of the taxable year do not exceed 30 monthly tax units. The monthly tax unit threshold on the sale of shares and the redemption of mutual funds must be computed separately. Both of these exemptions, however, are only available to small taxpayers and to individuals who work in an employer-employee relationship (see a., above);

(ii) Gains from the sale of a passenger or cargo transportation vehicle if the seller owns no more than one such vehicle;[1315]

(iii) Gains realized on the occasional sale of movable personal property, including furniture and objects from the taxpayer's principal home;[1316] and

(iv) Gains from the disposal of intellectual or industrial property, provided the individual seller is the inventor or author of the property.[1317]

(c) Sale of Real Property

As a general rule, the sale of real property by resident individuals is subject to the surtax. The taxpayer's adjusted basis in the real property must include the acquisition cost as well the cost of improvements made to the property to the extent that they have increased its value and irrespective of whether the improvements were made by the individual himself or a third party although, in the latter case, the improvement must be owned by the individual. To be entitled to adjust the tax basis for the cost of the improvement, the individual must, prior to the sale, have reported such improvement to the SII so that it becomes part of the new value of the property for purposes of the real estate tax.[1318] The acquisition cost and the cost of improvements must be adjusted for inflation.

The taxpayer is entitled to offset the capital losses incurred on the sale of real property with the capital gains realized on the sale of other real property, provided the sales occur during the same taxable year. Furthermore, provided that the resident

[1313] ITL, Art. 17(8)(d).
[1314] ITL, Art. 57.
[1315] ITL, Art. 17(8)(i).
[1316] ITL, Art. 17(12).
[1317] ITL, Art. 17(8)(e).
[1318] ITL, Art. 17(8)(b)(i).

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individual has owned the real property for at least one year, he or she:[1319]

(i) Is entitled to reduce up to 8,000 development units from the sum of all capital gains realized from the sale of real property in a given year, irrespective of the number of sales; and

(ii) Instead of subjecting the capital gain to the surtax, he or she is entitled to apply a single tax at a rate of 10% over the sales proceeds.

As in the case of the sale of shares in Chilean companies, the individual also has the option of allocating the total capital gain realized from all sales of real property made during the taxable year over the number of years he or she has owned the property, up to a maximum of 10 years, and adjust the deemed gain of each year for inflation. Even though the surtax liability for each of those years will have to be readjusted, the surtax return filing and the payment of the tax must be made in the year in which the sale of the property takes place.

If the real property being sold was acquired by the individual by way of inheritance, he or she is entitled to claim the inheritance and gift tax paid by him or her, as adjusted for inflation, as a tax credit against his or her surtax liability.[1320]

(3) Real Property Rental Income

Since the 1950s, Chile has encouraged the construction and rental of low-income housing by granting construction companies and landlords a number of tax incentives. The rules are contained in the National Housing Program.[1321] At its inception, the tax benefits for landlords were the following:

(i) A 50% rebate on the real estate tax, provided the official value of the dwelling was below P$33,199,976 (based on the 2018 official valuation). The rebate was applicable for a period of 20 years for dwellings of up to 70 square meters, 15 years for dwellings ranging from 71 to 100 square meters, and 10 years for dwellings ranging from 101 to 140 square meters;

(ii) An exemption from surtax on the rental income;

(iii) A capital gains tax exemption on the sale of the dwelling, provided that, at the time of sale, the landlord has owned the dwelling for more than 12 months;

(iv) A 50% discount on fees charged by the Real Property Registry, which amount to approximately 1% of the real property value;

(v) A reduction of stamp duties, as the transfer of these low-income dwellings is only subject to a 0.2% stamp duty on the mortgage, if any; and

(vi) An exemption from the inheritance and gift tax.

When DFL2 was enacted, the number of dwellings a landlord could subject to the tax incentives was not restricted. Furthermore, those incentives were available to both individuals and companies. In 2010, DFL2 was amended, restricting the availability of the tax benefits to individuals only and limiting the number of dwellings that could benefit from the incentives to two dwellings per individual, provided they were acquired *inter vivos*.[1322] Thus, dwellings acquired *mortis causa* were not taken into account for purposes of determining the two-dwelling limitation. However, in 2020 the exception for *mortis causa* acquisitions was eliminated.[1323] If a resident individual has more than two dwellings, the tax benefits apply to the two dwellings that were first acquired by him or her.[1324] The tax benefits cease to apply if the property ceases to be used as a dwelling.

Note: The 2023 Tax Reform Bill limited the tax benefits under DFL2 to resident individuals who were more than 65 years of age and whose annual gross income did not exceed 30 annual tax units. The Bill also limited the income tax exemption on rental income to a combined total of 15.5 annual tax units and eliminated the possibility of claiming a capital gains tax exemption on the sale of the dwelling.

However, the Tax Reform Bill was rejected on March 8, 2023 by the Chamber of Deputies.

(4) Other Business Income

Other business income, such as interest, annuities and royalties, received by resident individuals is also subject to the surtax, unless that income does not exceed 20 monthly tax units per year and the only income generated by the taxpayer during the taxable year consists of a salary or the taxpayer is a small enterprise (see V.B.4.c., above). Specifically, a resident individual's gross income includes the following items:[1325]

(i) Income that is subject to the first category tax and to the second category tax;

(ii) Income received from nonresident entities; and

(iii) Passive income pursuant to the CFC rules.[1326]

d. Deductions

Individuals engaged in business enterprises are entitled to deduct the expenses incurred that are necessary to derive taxable income. The deductibility of such expenses is subject to the same rules and limitations as those applicable to corporations under the first category tax (see V.B.6., above).[1327]

If an individual cannot prove the origin of funds used by him or her to incur an expense or a reimbursement, or to make a particular investment, then it is presumed that such funds constitute either business income subject to the first category tax or professional fees subject to the surtax, depending on the activity carried on by the individual.[1328]

Taxpayers subject to the surtax are entitled to deduct interest paid on home mortgages. For a discussion of these rules, see

[1319] ITL, Art. 17(8)(b). The holding period is extended to four years if the real property sold involves a subdivision of urban or rural land or of a building into floors or apartments.

[1320] For a discussion of the inheritance and gift tax rules, see XI., below.

[1321] Decree with the Force of Law No. 2, of July 7, 1959, as amended ("DFL2").

[1322] Law No. 20,455, of July 31, 2010.

[1323] Law No. 21,210, published in the *Diario Oficial* on February 24, 2020. The elimination of the *mortis causa* exception applies to bequests received on or after March 1, 2020.

[1324] SII Circular No. 22, of May 6, 2022.

[1325] ITL, Art. 54(1).

[1326] ITL, Art. 54(1). For a description of these rules, see V.B.5.c.(2), above.

[1327] ITL, Art. 50.

[1328] ITL, Art. 70.

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a., above. Other deductible expenses for purposes of the surtax include the real property tax in the year it is paid, provided that the taxpayer reported income from real property, such as rents, and the real estate tax is not used by the taxpayer as a tax credit against the surtax.[1329] Also, employer-related social security contributions borne by individuals entrepreneurs in connection with amounts that hey withdraw from the enterprise also constitute a deductible expense for those individuals when computing their surtax liability.[1330]

For a discussion of the deductibility of contributions made by resident individuals to nonprofit organizations, see V.B.6.a.(14), above.

4. Tax Rates

a. Sole Second Category Tax

As noted in C.1. and 3.a., above, salaries and other compensation received for dependent personal services are subject *only* to the sole second category tax, as the name indicates. The sole second category tax is levied at the following rates:[1331]

Net Salary Income (in monthly tax units)	Tax Rate (%)
13.5	0
13.5 – 30	4
30 – 50	8
50 – 70	13.5
70 – 90	23
90 – 120	30.4
120 – 310	35
310 – over	40

The sole second category tax is withheld at source by the employer. For purposes of determining the withholding tax, bonuses, extra hours and other extraordinary compensation are deemed to be paid with respect to work performed in the year when they are received.[1332] The tax withheld by the employer must be remitted to the tax authorities within the first 12 calendar days following the month in which it was withheld.

Individuals whose annual income consists only of salaries or pensions are not subject to any filing requirements. Their tax obligations are fulfilled by the sole second category tax withheld from their compensation.[1333] Nevertheless, these taxpayers have the right to file an annual tax return and they may do so particularly if the sole second category tax withheld by the employer exceeds their final tax liability since, in this event, taxpayers would be entitled to claim a refund for the excess.[1334] Individuals who, during the calendar year, receive other income that is subject to the surtax in addition to their salaries or pensions, are required to file annual surtax returns, report their salaries, and have them subjected to the surtax to determine the applicable progressive rate.[1335] In such cases, however, individuals are entitled to utilize the sole second category tax withheld during the year as a credit against their surtax liabilities. In determining the amount of the credit, the sole second category tax withheld must be adjusted for inflation from the last day of the month preceding the withholding date to November 30 of the taxable year.[1336]

Salaries paid in arrears are taxed on an accrual basis and, therefore, are taxed pursuant to the rules in effect at that time.[1337] Moreover, a taxpayer who has received salaries from more than one employer during the taxable year is required to re-compute his or her sole second category tax on an income accumulation basis and apply the relevant progressive tax rates on an accumulated basis in an annual second category tax return, unless this recalculation does not give rise to a higher tax liability.[1338] Otherwise, the second category tax is a final tax.

Individual taxpayers who generate fewer than 20 monthly tax units per year of income from the investment of capital (for example, bank interest, dividends, life-time annuities, distributions made by mutual and investment funds) are entitled to exclude it from taxation, provided the only other income they derive during the calendar year consists of salaries. The same rule applies with respect to capital gains realized on the sale of shares in Chilean companies.[1339] A similar exemption applies to gains realized on the redemption of quotas in mutual funds, except that the annual exemption is increased to 30 monthly tax units.

[1329] ITL, Art. 55(a).

[1330] ITL, Art. 55(b).

[1331] ITL, Art. 43(1). Prior to 2020, the highest marginal rate was set at 35% for net salaries in excess of 120 monthly taxable units. Prior to 2017, net salary ranging from 120 to 150 monthly tax units was taxed at a rate of 35.5% and net salary in excess of 150 monthly tax units was taxed at a rate of 40%. Also, as of 2017, salaries and other compensation in excess of 150 monthly tax units received by the President of Chile, Ministers, Secretaries of State, and members of Congress are also subject to the sole second category tax but the highest marginal rate is set at 40% rather than 35%. ITL, Art. 52 *bis* (a).

[1332] ITL, Art. 45.

[1333] By way of exception to this rule, under Circular No. 63 of May 18, 1976, employees and officers of foreign diplomatic and consular missions who have a nationality different from that of the country for which they work are required to report and pay the sole second category tax directly to the SII within the 15 calendar days following the day on which they received their compensation. The same rules apply to Chilean residents who work in Chile for the Andean Development Corporation (*Corporación Andina de Fomento*, CAF). Circular No. 2,003 of April 12, 1976.

[1334] ITL, Art. 47.

[1335] ITL, Art. 54(3).

[1336] ITL, Art. 54(3).

[1337] ITL, Art. 46.

[1338] ITL, Arts. 47 and 65(5).

[1339] ITL, Art. 57. These limited exemptions are also applicable to individuals engaged in small enterprises.

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b. Surtax

As noted in C.3.b. and c., above, business income and service fees derived by resident individuals are subject to the surtax on a net basis.[1340] The surtax is levied at the following rates:[1341]

Net Taxable Income (in annual tax units)	Tax Rate (%)
0 – 13.5	0
13.5 – 30	4
30 – 50	8
50 – 70	13.5
70 – 90	23
90 – 120	30.4
120 – over	35

For purposes of determining the applicable tax rate, a taxpayer is required to include all the income he or she has derived that is subject to the surtax as well as income that is fully or partially exempt from the surtax and salaries. However, the taxpayer is also entitled to claim a tax credit equal to the tax that would have been paid on the fully or partially exempt income. The taxpayer is also entitled to claim a tax credit for taxes that have been withheld on salary.[1342] Excess tax credits may be claimed as a refund.

5. Tax Credits

Given that not all excess tax credits may be refunded, in determining their tax liability, a taxpayer is first required to utilize those tax credits that may not be refunded and, to the extent there is still a liability, then utilize those credits that give rise to a refund if there is an excess. In essence, the tax credits that may be refunded to a taxpayer are those arising from the first category tax paid by the distributing company, unless that tax has been offset by a tax credit for the real property tax paid.

a. Withholding Taxes

Professional service fees paid to a resident individual or a professional firm are subject to withholding tax at source at the rate of 10% on the gross amount of the payment.[1343] Specifically, the tax must be withheld if the payor of the fees is a legal entity, a taxpayer (including an individual) that is subject to the first category tax, a State-owned organization or a municipality. The tax must be withheld at the time the fee is paid or made available to the service provider and must be remitted to the SII within the first 12 days of the month following that in which the tax was withheld.[1344] However, if the service provider is a professional service company that has opted to be subject to the first category tax, the payor is not required to withhold the tax.[1345] If the payor does not reside in Chile or is not a withholding tax agent, the fee is not subject to withholding tax. Instead, the service provider is required to file monthly tax returns together with a payment of 10% of the gross fees charged.

Interest paid to resident individuals on publicly-traded bonds is subject to withholding tax at a rate of 4% (for a discussion of the taxation of such bonds, see V.B.9.c.(3), above). The tax withheld on the interest constitutes a tax credit against the taxpayer's surtax liability.[1346]

b. First Category Tax

A taxpayer whose surtax gross income includes dividends distributed by a Chilean company is entitled to claim a tax credit equal to 65% of the first category tax liability paid by the company on those profits or 65% of the refund if the taxapayer has excess tax credits and these excess credits are capable of being refunded.[1347] This first category tax limitation leads residents individuals to bear an effective tax rate on dividend distributions of 44.55%. In any case, the 65% tax credit limitation is not applicable to individuals whose net taxable income does not exceed 50 annual tax units. Furthermore, after the 65% tax credit limitation has been applied, the taxpayer is entitled to apply an additional tax credit equal to 5% of the dividends received during the taxable year, provided his or her gross income exceeds 310 annual tax units. This additional tax credit can also be applied on dividends distributed by nonresident companies. The amount of the dividend must be grossed-up by the first category tax or the foreign tax on the dividend.[1348]

Excess tax credits arising from the first category taxes paid by the distributing company may be used by the taxpayer to offset other annual tax liabilities. If there are still excess credits, those may be refunded to the taxpayer. However, the tax credit for the first category tax is not available for a refund if the first category tax liability was offset by a tax credit arising from the real estate tax paid by the company or with foreign tax credits.[1349]

c. Advance Monthly Tax Payments

Taxpayers engaged in liberal professions, such as accountants, lawyers, builders, journalists and professional firms that are subject to the surtax are required to make advance monthly tax payments equal to 17% of gross fees received during the month.[1350] Taxes withheld on fees paid during the month may be utilized as a credit against the advance monthly tax liability.

[1340] ITL, Art. 43(2).

[1341] ITL, Art. 52. The 35% marginal rate came into force as of January 1, 2017. Prior to that date, net taxable income ranging from 120 to 150 monthly tax units was taxed at a rate of 35.5% and net taxable income in excess of 150 monthly tax units was taxed at a rate of 40%. Furthermore, as of 2017, income in excess of 150 monthly tax units that is subject to the surtax and that is received by the President of Chile, Ministers, Secretaries of State, and members of Congress from its political activities is still subject to the surtax but the highest marginal rate is set at 40% rather than 35%. ITL, Art. 52 *bis* (b).

[1342] ITL, Arts. 54(3) and 56(2).

[1343] ITL, Art. 74(2). The withholding tax is not levied on the amount of expenses reimbursed to the service provider.

[1344] ITL, Arts. 78 and 82.

[1345] In that event, the professional service company must clearly indicate on its invoices that it has opted to be subject to the first category tax.

[1346] ITL, Art. 74(7).

[1347] ITL, Arts. 14(A)(1) and 56(3).

[1348] ITL, Art. 56(4).

[1349] ITL, Art. 41-A(D)(7).

[1350] ITL, Art. 84(b). The monthly tax due must be determined net of amounts received by way of the reimbursement of expenses incurred by the service provider on behalf of a client.

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Moreover, if all the fees received during the month have been subject to the 17% withholding tax, the taxpayer is not required to file an advance monthly tax return.[1351]

A small taxpayer must also make advance income tax payments. These tax payments are equal to 3% of the monthly gross income derived by the business, unless the business involves artisan workshops that predominantly manufacture goods, in which case the monthly advance tax rate is reduced to 1.5% of the monthly gross income.[1352]

The advance monthly tax return and payment must be filed and paid within the first 12 days of the month following that in which the fees were received.[1353] Advance monthly tax payments constitute a credit against the taxpayer's annual surtax liability.[1354] For a discussion with respect to obtaining tax refunds for advance monthly tax payments paid in excess of a taxpayer's overall annual tax liability, see V.B.11.a.(4), above.

d. Foreign Tax Credit

For a discussion on the foreign tax credit rules applicable to individuals subject to the surtax, see V.B.10.a., above.

Foreign taxes withheld or paid on service fees generated by resident individuals who are subject to the sole second category tax or the surtax constitute a foreign tax credit against those tax liabilities. The tax credit may not exceed the lesser of: (i) the foreign tax paid; or (ii) 35% of the foreign fees.[1355]

e. Tax Credit for Purchase of Dwellings

A resident individual is entitled to claim a tax credit when purchasing a dwelling.[1356] The tax credit is available on a transitional basis for calendar years 2024 through 2029. The tax credit is only available if the purchase is financed with a home mortgage extended by a financial institution. The following requirements must be met:

(i) The dwelling must be new and either the dwelling must have been built at the time of the purchase or there must be contract to purchase it in the future, and the contract must be notarized after October 16, 2023; and

(ii) The dwelling must be purchased on or after November 1, 2023 and registered in the Property Registry in the name of the beneficiary of the tax credit before October 1, 2024.

The tax credit is limited to one dwelling. If a taxpayer has acquired more than one dwelling, the purchase deed must indicate which of the dwellings will entitle the taxpayer to claim the tax credit. The title deed must also indicate which individual will claim the tax credit in the event a dwelling is purchased by more than one individual.

The tax credit is limited annually to the lesser of the actual mortgage payments made during the calendar year and 16 monthly tax units based on the December value each year. The credit is available to individuals earning salaries, business income or both. The credit may be claimed against the second category tax or the surtax. Excess tax credits may be refunded. There is an ordering rule that provides that the tax credit for the purchase of a dwelling may be claimed only after the taxpayer has claimed those tax credits that do not entitle the taxpayer to claim a refund.

The tax credit is compatible with the deductibility of interest on mortgage loans under Article 55 *bis* of the ITL.[1357] However, if the interest deduction and the tax credit are claimed with respect to the same mortgage, the taxpayer must first reduce the tax credit claimed with respect to the mortgage payments and if the mortgage payments include both interest and capital, the tax credit must first be imputed to capital and only to the extent there is a positive balance can the tax credit be imputed to the interest component of the mortgage payment. The remaining interest paid on the mortgage during the calendar year is the amount deductible.

Example:

Principal paid:	150,000
Interest paid:	1,500,000
Mortgage payments:	1,650,000
Annual limit (16 MTU):	1,027,456
Tax credit:	1,027,456
Article 55 *bis* deduction:	622,544[1358]

f. Other Tax Credits

A resident individual who is subject to the surtax is entitled to claim the following tax credits against his or her surtax liability:

(i) If the taxpayer, in addition to salaries or pensions, has also derived income that is subject to the surtax, he or she is required to report such salaries or pensions in his or her surtax return. However, the taxpayer is entitled to claim a credit for the sole second category tax paid. The taxpayer may also claim a tax refund for the excess of the second category tax paid over his or her final tax liability;[1359]

(ii) A tax credit equal to 5% of the gain realized on the sale of quotas in a mutual fund is available provided the mutual fund has invested in shares an annual average of at least 50% of its assets. If the annual average is between 30% and 50%, the tax credit is equal to 3% of the gain realized by the taxpayer.[1360] If the tax credit exceeds the taxpayer's annual income tax liability, the excess may be utilized by the taxpayer to offset other taxes. If after such offsets there

[1351] ITL, Art. 89.

[1352] ITL, Art. 84(c). For a discussion of the taxation of small taxpayers, see V.B.4.c.(2), above.

[1353] ITL, Art. 91.

[1354] ITL, Art. 93.

[1355] ITL, Arts. 41-C(3) and 56(3).

[1356] Law No. 21,631, dated October 26, 2023 and published in the *Diario Oficial* on October 31, 2023.

[1357] See IX.C.3.a.

[1358] The amount of the tax deduction is determined by subtracting the principal paid on the mortgage from the tax credit (1,027,456 – 150,000 = 877,456). This is the interest component of the tax credit, which must be deducted from the total interest paid on the mortgage to determine the amount of interest deductible under ITL, Art. 55 *bis* (1,500,000 – 877,456 = 622,544).

[1359] ITL, Art. 54(3).

[1360] ITL, Art. 108.

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is still an excess tax credit, the excess may be refunded to the taxpayer;

(iii) A credit is available equal to 50% of contributions made by taxpayers that are subject to the surtax to universities, professional institutions and Technical Educational Centers, whether private or State-owned, although in the latter case the State cannot have a majority interest. Contributions can only be made in cash and must be used to finance the purchase of real property or equipment used for educational purposes, or to finance an educational institution's infrastructure or R&D projects. The educational institution must repay to the SII the amounts credited by the donor if it makes improper use of the contribution.[1361] The tax credit must be claimed in the year in which the contribution is made. The creditable amount is limited to 14,000 monthly tax units, valued as of December 31 of the taxable year.[1362] Amounts in excess of this limit cannot be deducted for income tax purposes, but excess tax credits may be carried forward indefinitely and must be adjusted for inflation. Companies subject to the first category tax are also entitled to claim this tax credit and are subject to the same limitations as individuals;

(iv) The first category tax paid on agricultural activities, which has been offset with the real property tax, does not constitute a tax credit against the individual's surtax liability if the net taxable income has been determined on a presumptive basis;[1363] and

(v) The real property tax paid on non-agricultural property constitutes a tax credit against the surtax. However, excess tax credits arising from this offset may not be claimed as a refund or used as a credit to offset other tax liabilities;[1364]

(vi) Resident individuals who are subject to the surtax and/or to the second category tax may claim a tax credit against one of those taxes equal to 4.4 development units per child. The amount of the development unit is the one in effect at the end of the year. This tax credit is available on account of school fees and other education expenses paid by parents. To that end, the credit is only available if the child is under 25 years of age, is registered in an educational institution that is recognized by the State, and has an attendance rate of at least 85%, unless the absence is duly justified. Furthermore, the tax credit is only available if the annual combined income of both parents does not exceed 792 annual development units. Parents that are entitled to the tax credit who only receive salary income that has been subject to withholding tax will be required to file an annual second category tax return to be able to claim a refund after taking the tax credit. Excess tax credits cannot be refunded, carried over to subsequent taxable years, or offset against other tax liabilities.[1365]

6. Assessment and Filing

The following is an example of the computation of a resident individual's surtax liability.

Second Category Tax	
Annual salary	P$40,000,000
Monthly salary	3,333,333
Social security (1 month)	(182,569)
Monthly taxable income	3,150,764
Second category tax monthly (35%)	1,102,767
Second category tax annually (× 12)	13,233,209
Surtax	
Second category income (salary)	40,000,000
Interest income	1,200,000
Dividends	900,000
Rents	1,500,000
Capital gains on sale of shares in SA	3,000,000
Total gross surtax income	46,600,000
Exempt income (capital gains)	(3,000,000)
Adjusted taxable income	43,600,000
Business deduction from rental activity	400,000
Net taxable income	43,200,000
Surtax liability (35%)	15,120,000
Real estate tax credit	(100,000)
First category tax credit on dividend[1366]	(186,750)
Second category tax credit	(13,233,209)
Surtax liability	1,600,041

The following individuals are required to file an income tax return (Form 22) on an annual basis:[1367]

(i) Professionals who do not have an employer-employee relationship and whose income is subject to the surtax;

(ii) Individuals who receive first or second category tax income that is subject to the surtax if their annual gross income exceeds the minimum exempt amount for purposes of the surtax, which is currently set at 13.5 annual tax units; and

(iii) Employees who, during one or more months in a given calendar year, simultaneously receive income from two or more employers. Such individuals must compute their liability on Form 2514, which is not filed; instead they must file Form 22 with the SII.

[1361] SII Circular No. 49, of October 18, 2022.

[1362] Law No. 18,681, of December 30, 1987, published in the *Diario Oficial* on December 31, 1987, Art. 69, as amended.

[1363] ITL, Art. 56(3).

[1364] ITL, Art. 56(5).

[1365] ITL, Art. 55 *ter.*

[1366] 900,000 × 0.83 = 747,000 × 25% = 186,750.

[1367] ITL, Art. 65.

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Individuals whose annual income consists only of salary from a single employer or a pension are not required to file an annual income tax return as the sole second category tax should have been withheld at source, although they have the right to do so if a tax refund is due after applying tax credits they are entitled to claim.[1368] Couples that are married under a separation of property regime or civil partners are required to file their surtax return separately, unless either one of them has the legal power to administer or sell the property of the other spouse, or they still own martial property jointly, in which case they are required to file jointly.[1369]

Annual tax returns with respect to the income of a calendar year must be filed typically between April 1 and April 30 of the following calendar year; the SII issues notices each year confirming the specific deadlines applicable for that year's filings.[1370] Filing deadlines may differ slightly depending on whether the taxpayer has a tax liability to pay or is in a nil-payable or refund position. The tax must be paid fully in one installment.[1371] A resident individual who is about to lose his or her Chilean residence status due to an absence from Chile is required to file a surtax return and pay the tax due before he or she leaves the country.[1372]

7. Taxation on Net Wealth

The 2023 Tax Reform Bill proposed to introduce a net wealth tax on resident individuals levied on the taxpayers' global net wealth. The net wealth tax was proposed to be levied at a rate of 1% on net wealth ranging from 6,000 annual tax units (approximately US$4.2) and 18,000 annual tax units (approximately US$14.7 million) and of 1.8% on net wealth in excess of the latter amount.

However, the tax bill was rejected on March 8, 2023, by the Chamber of Deputies.

[1368] ITL, Art. 65(3) and (5).
[1369] ITL, Art. 53.
[1370] ITL, Art. 69.
[1371] ITL, Art. 72.
[1372] ITL, Art. 103.

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X. Taxation of Nonresident Individuals

A. In General

Nonresident individuals are subject to income tax in Chile only on income derived from Chilean sources.[1373] Chilean source income includes any compensation for work performed in Chile, regardless of the place of payment. For a discussion of the Chilean source rules, see VI.A., above. For a discussion of the residence rules, see IX.B., above.

B. Taxation of Chilean Source Income

1. In General

As a general rule and except as otherwise noted in 2. to 8., below, nonresident individuals are subject to the additional tax, which is generally levied at the rate of 35% on income derived from Chilean sources.[1374]

2. Dividends

The tax rules on dividend distributions made to nonresident individuals are the same as those applicable to distributions made to nonresident companies. For a detailed discussion of these rules, see VI.B.2., above. For a discussion of how a Chilean company can pay a substitute tax in lieu of the additional tax with respect to earnings and profits accumulated through December 31, 2023, see V.B.5.d.(5), above.

Nonresident individuals who are shareholders in SRLs are subject to the same rules as resident individuals with respect to amounts withdrawn or deemed withdrawn from the company. Such amounts are subject to a surcharge of 10% on top of the additional tax.[1375]

Note: Under the 2023 Tax Reform Bill, distributions made by public and private investment funds and mutual funds were going to be subject to taxation. If the nonresident individual was a resident in a jurisdiction with a tax treaty for the avoidance of double taxation with Chile, the distribution was going to be subject to an additional tax at a rate of 35%, while if the nonresident individual was not a resident in a tax treaty jurisdiction, the distribution was going to be subject to both the first category tax (27%) and the dividend tax (22%).

However, the Tax Reform Bill was rejected on March 8, 2023, by the Chamber of Deputies.

3. Interest

Interest paid by Chilean borrowers to nonresident individuals is generally subject to the additional tax at a rate of 35%. For a description of the rules providing for a lower withholding tax rate of 4% on certain interest payments that may apply to nonresident individuals, see VI.B.3., above.

4. Rents

There is no difference between the Chilean tax treatment of rental income paid to nonresident individuals and the treatment of rental income paid to nonresident legal entities. See VI.B.7., above, for an analysis of the relevant rules.

5. Royalties

The Chilean tax treatment of royalties paid to nonresident individuals is the same as the treatment of royalties paid to nonresident legal entities. See VI.B.4., above, for an analysis of the relevant rules.

6. Service Fees

Fees paid by Chilean persons to nonresident individuals for services rendered in Chile or abroad are subject to tax in the same manner as fees paid to nonresident companies. For a discussion of the tax rules on service fees paid to nonresidents, see VI.B.6., above. However, the ITL contains a rule specifically applicable to a nonresident individual receiving fees for scientific, cultural or sports activities rendered in Chile. These fees are subject to the additional tax at a rate of 20%. The tax must be withheld at source on the gross amount of the payment and paid to the SII as a final tax by the Chilean person hiring those services before the nonresident individual leaves Chile.[1376]

7. Salaries

Under Chilean source rules, the portion of a salary that is received by a nonresident individual for work rendered in Chile constitutes Chilean source income even if that salary is paid by a nonresident company or is paid abroad.[1377] Technically, therefore, such a salary should be subject to Chilean income tax. A Chilean employer is required to withhold the sole second category tax on the portion of the salary that is attributable to the dependent services rendered in Chile. If the employer is a nonresident and the employee does not give rise to a permanent establishment (PE) in Chile of the employer, the employee must pay the sole second category tax during the first 12 calendar days following the month in which he or she was paid.

8. Capital Gains

The Chilean capital gains tax rules on the sale of Chilean situs assets do not distinguish between a nonresident company and a nonresident individual (see VI.B.5., above, for a discussion of those rules). However, nonresident individuals selling Chilean real estate are subject to the same tax rules as resident individuals (see IX.C.3.c.(2)(c), above, for a discussion of those rules).

9. International Sporting Events

Income received by sports organizations, sportspersons, technical staff and referees arising from the performance in Chile of official sports events of international relevance is exempt from withholding tax, provided the recipient of the income is a nonresident.[1378] The payor, however, must be a Chilean sports organization with legal personality that is responsible for planning, organizing and executing the sporting event. That organization must be duly registered with the Na-

[1373] ITL, Art. 3.

[1374] ITL, Art. 58(1).

[1375] ITL, Arts. 21 and 62. For a discussion of the rules dealing with actual or deemed withdrawals, see IX.C.3.c.(1)(b).

[1376] ITL, Art. 60.

[1377] Circular No. 26 of May 14, 1973.

[1378] Law 21,564, Art. 1, of April 28, 2023 and published in the *Diario Oficial* on May 9, 2023.

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tional Institute for Sports. The sporting events that are covered by the exemption are world championships, the Olympic Games, the Paralympic Games, the Pan American Games, the Parapan American Games, the South American Games, the Para South American Games and the Bolivarian Games.

For such income to be exempted from Chilean withholding tax, before the payment is made the Chilean sports organization must file a request with, and obtain a favorable resolution from, the Chilean Under Secretariat for Sports as well as informing the SII.

C. Assessment and Filing

A nonresident individual who derives Chilean source income that has not been subject to the additional tax is required to file an income tax return on an annual basis (Form 22). A tax return may also be filed and a tax refund may be claimed by a nonresident individual who has deductible expenses that lead to excess tax being withheld.[1379] No tax return need be filed by a nonresident individual who renders services in Chile, as the fees received during the first six months should be subject to the additional tax at source. On the other hand, after the sixth-month period, such an individual would become a resident of Chile and, as such, would be required to file a surtax return. Moreover, if the payor of the fees was a nonresident of Chile, the individual would be required to file an advance monthly tax return and pay a 10% tax on the gross fees received during the previous month.

Income received by a nonresident individual for serving as a member of the board of directors of a Chilean SA must be reported on the annual income tax return.[1380] (For a description of the tax return filing procedure, see V.B.11.b., above).

[1379] For instance, a nonresident individual may claim as a deductible expense contributions made to Chilean nonprofit organizations. For a discussion of these rules, see V.B.6.a.(14), above.

[1380] ITL, Art. 65(1).

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XI. Inheritance and Gift Tax

A. In General

Gifts, inheritances and legacies are subject to the inheritance and gift tax (*Impuesto a las Herencias, Asignaciones y Donaciones*, IGT), which was enacted under Law No. 16,271.[1381] Gifts, inheritances and legacies are exempt from income tax.

For IGT purposes, a gift is an inter vivos act whereby one person transfers property for free and irrevocably to another person, who accepts it.[1382] An inter vivos act taking place abroad may qualify as a gift for IGT purposes if it meets the aforesaid definition, irrespective of the formalities that have been undertaken in the foreign jurisdiction.

B. Taxable Persons

Each individual heir or beneficiary of a gift is liable for the payment of the IGT on the amount effectively received. However, beneficiaries who are declared bankrupt or who are insolvent are not subject to the IGT unless and until their debts are fully or partially cancelled.[1383]

C. Territorial Scope

1. Property Subject to Tax

Property subject to the IGT includes property located in Chile as well as property located abroad. However, in the case of inheritances, if the decedent is a foreigner, the property that is located abroad will form part of the taxable base only if it has been acquired with Chilean proceeds.[1384]

To ensure taxpayers report all the property subject to the IGT, the IGTL provides that any person that habitually rents out safe deposit boxes must report on an annual basis a list of its safe deposit boxes rented out in Chile and abroad, the box number, the name of the lessee and his, her or its tax ID number. That person must also maintain a registry noting the names and addresses of the lessees accessing their safe deposit boxes as well as the day and time in which they did so. That registry may be inspected by the SII at any time upon request.[1385]

2. Property Exempt from Tax

Legacies and gifts made to the Chilean Public Charity (*Beneficiencia Pública Chilena*), the municipalities, and public corporations and foundations that are financed or subsidized by the Chilean State are exempt from the IGT. Also exempt are legacies and gifts made to charities, educational and cultural institutions, and for scientific development in Chile.[1386]

Resident individuals are also entitled to make, on an annual basis, gifts that are exempt from the IGT, provided that the amount given has been subject to income tax at the donor's level and does not exceed both (i) 20% of the taxpayer's net taxable income of the year prior to the one in which the gift is made and (ii) 250 monthly tax units. The donor must inform the SII of the gifts made throughout the year; the information must be provided within the first two months following the end of the calendar year during which the gifts were made.

Payments made to beneficiaries under life insurance policies have traditionally not been subject to IGT. However, as a result of a tax reform in 2022, these payments are now subject to IGT.[1387] Insurance companies cannot pay life insurance proceeds to beneficiaries unless they have documentary evidence that the relevant IGT has been paid.[1388]

D. Taxable Base

The IGT is levied on the net taxable value of all the property inherited or received by way of a gift by the beneficiary.[1389] The actual valuation of the property depends on its nature, according to the rules below. The SII is not entitled to challenge valuations or offer counter-valuations if the taxpayer has valued the property pursuant to those rules:

(i) In the case of real property, the value is the official value used for purposes of the real property tax, unless the real property was acquired by the deceased or donor within three years prior to his or her death or to the time of the gift, in which case the acquisition value is to be taken into account for purposes of determining the IGT liability;[1390]

(ii) In the case of shares and other securities, the value is the average value of the securities during the six months prior to the time of death or the gift. Securities that are not publicly traded must be valued by the Superintendence of Securities and Insurance (SVS) or by the Superintendence of Banks if the issuing company is registered with one of these organizations. Otherwise, the securities must be valued at their fair market value.[1391] The same rule applies when the shares in question are issued by a Chilean stock corporation (*Sociedad Anónima*, SA) and either the deceased, his or her spouse, the heirs or the donee own at least 30% of its capital; and

(iii) Other property, including intangibles and going concerns, is valued at its fair market value.[1392]

The net taxable base is determined after deducting the following items:[1393]

(i) Medical expenses relating to the last illness of the deceased, as well as funeral expenses;

(ii) Expenses incurred in winding-up the estate, such as fees for the publication of the will, costs relating to the effective possession and/or partition of the property, and

[1381] Law No. 16,271, as amended, published in the *Diario Oficial* on July 10, 1965 (IGTL).

[1382] IGTL, Art. 1; CC, Art. 1,386.

[1383] IGTL, Art. 14.

[1384] IGTL, Art. 1.

[1385] IGTL, Art. 38.

[1386] IGTL, Art. 18.

[1387] IGTL, Art. 20. Payments made to beneficiaries of life insurance policies have been subject to IGT since February 4, 2022.

[1388] IGTL, Art. 54.

[1389] IGTL, Art. 2. For a discussion of the deductions taxpayers can claim for income tax purposes in connection with gifts they make during the taxable year, see V.B.6.a.(14), above, in the case of corporations, and IX.C.3.d., above, in the case of individuals.

[1390] IGTL, Art. 46(a).

[1391] IGTL, Art. 46(b).

[1392] IGTL, Arts. 46(c) and (f) and 46 *bis*.

[1393] IGTL, Arts. 4 and 5.

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reasonable fees charged by the administrator winding-up the estate; and

(iii) Liabilities and other encumbrances on the property subject to the IGT.

If the inheritance or gift is subject to a usufruct (for the benefit of either the donor or a third party), the legal owner of the property is also entitled to deduct the value of the usufruct from his or her taxable base. The amount of the deduction depends on the nature of the usufruct, according to the following rules:[1394]

(i) If the usufruct is for a fixed period, the legal owner is entitled to deduct one-tenth of the value of the property for each five years of the usufruct;

(ii) If the usufruct is for an undeterminable period, the legal owner is entitled to deduct one-half of the value of the property; or

(iii) If the usufruct consists of an annuity, the deduction is dependent on the age of the beneficiary of the annuity as follows:

Age	Deduction
< 30	9/10
< 40	8/10
< 50	7/10
< 60	5/10
< 70	4/10
> 70	2/10

The taxable base for the beneficiary of a usufruct is equal to the amount deductible by the legal owner of the property subject to the usufruct.[1395]

If the inheritance or gift involves a trust, the beneficiary is entitled to deduct one-half of the value of the property given in trust.[1396] The beneficiary will have to pay the full IGT on the property once the trust terminates and the beneficiary becomes the full owner over the property. The IGT must be levied over the property's fair market value at the time the trust terminates but the full owner is entitled to claim a tax credit for the IGT he or she already paid when he or she became the beneficiary. If, however, the trustee becomes the full owner, he or she will have to pay the IGT over the full value of the property with a credit for the IGT paid when the beneficiary received the beneficial ownership.

If the inheritance or gift involves the payment of a periodic pension in favor of a third party, the legal owner of the property is entitled to claim the following amounts as a deduction from his or her taxable base:[1397]

(i) If the pension is perpetual, 8% of the capital out of which the pension is paid;

(ii) If the pension is temporary, one-tenth of the capital for each five years that the pension lasts;

(iii) If the pension is for an undeterminable period, one-half of the capital out of which the pension is paid; or

(iv) If the pension consists of an annuity, 8% of the capital out of which the pension is paid based on the fraction used for usufructs based on the age of the beneficiary.

Property subject to litigation is not subject to the IGT until such time as there is a final judicial decision or out-of-court settlement. Moreover, the beneficiary is entitled to deduct the fees and other costs incurred in the litigation in determining his or her taxable base.[1398]

E. Tax Rates and Payment

The IGT is levied at the following progressive rates:[1399]

Taxable Base (in annual tax units)	Tax Rate (%)
< 80	1
80 – 160	2.5
160 – 320	5
320 – 480	7.5
480 – 640	10
640 – 800	15
800 – 1,200	20
over 1,200	25

The effective tax rate varies and certain amounts of the inheritance or gift may be exempt from the IGT, depending on the degree of kinship between the donor or decedent and the beneficiary, according to the following rules:[1400]

(i) Spouse, parents and children and their issue: the first 50 annual tax units of the amount inherited is exempt; in the case of gifts to such individuals, the first five annual tax units are exempt;[1401]

(ii) Relatives up to the fourth degree: the first five annual tax units are exempt from IGT in the case of both gifts and inheritances. However, such gifts and inheritances are also subject to a 20% surcharge on the above tax rates;

(iii) Inheritances and gifts to persons beyond the fourth degree of kinship are subject to the above tax rates with a surcharge of 40%; and

(iv) Beneficiaries of inheritances and gifts that are registered with the National Registry of Disability are entitled

[1394] IGTL, Art. 6.
[1395] IGTL, Art. 7.
[1396] IGTL, Art. 8.
[1397] IGTL, Art. 9.
[1398] IGTL, Art. 13.
[1399] IGTL, Art. 2.
[1400] IGTL, Art. 2.
[1401] Provided the IGT has been paid, if the surviving spouse dies within five years from the date of death of the deceased spouse, the property that is inherited by forced heirs of both spouses will be exempt from the IGT up to the value that property had at the time the first spouse died.

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to a rebate of 30% of the IGT due up to a maximum of 8,000 development units.

Foreign taxes paid on the winding-up of an estate are creditable against the IGT. However, the IGT liability may not be lower than what it would have been had the estate consisted of property located solely in Chile.[1402] Likewise, if a gift taking place abroad is subject to the IGT, the donee may use the foreign gift tax actually paid abroad as a tax credit against the IGT, provided that the foreign tax is similar in nature to the IGT. Excess foreign gift taxes may not be claimed as a refund or as a tax deduction in Chile. For purposes of determining the foreign tax credit, the foreign tax must be converted into Chilean pesos at the exchange rate in effect on the day the foreign tax was paid.[1403]

The irrevocable transfer of property under an inheritance or by way of gift is only valid once the IGT is paid.[1404] To that end, a receipt of payment of the IGT must be attached to all notarial deeds executing the transfer of property received under a legacy or a gift.[1405] Without such proof, the notary will not execute the deed.[1406]

The IGT must be paid by the heir or donee within two years from the date of the legacy.[1407] Payment of the IGT after the two-year period gives rise to late payment interest charges. On the other hand, the donee also has the option of paying the IGT in equal installments over a three-year period; to that end, the donee must request the deferral to the SII during the initial two-year period. The tax that is deferred must be adjusted for inflation and the readjusted amounts is subject to interest charges. Each installment must be paid prior to December 31 of each of the three years, being the first year of payment the one in which the request for the deferral was submitted. Any heir that fails to pay an installment is required to pay the IGT due by March 30 of the year following the one in which it failed to pay. Furthermore, heirs are entitled to make an advance IGT payment within the two-year period.[1408] On the other hand, the IGT due on gifts must be paid by the donee within one month following the date on which the gift contract is executed.[1409]

[1402] IGTL, Art. 1.
[1403] IGTL, Art. 1; ITL, Art. 41(a)(7)(a).
[1404] IGTL, Art. 21.
[1405] IGTL, Art. 22.
[1406] IGTL, Art. 54.
[1407] IGTL, Art. 50.
[1408] IGTL, Art. 51.
[1409] IGTL, Art. 52.

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XII. Value Added Tax

A. In General

Value added tax (VAT) was first introduced in Chile in 1974 pursuant to Decree Law No. 825 and came into force on January 1, 1975. VAT is a noncumulative turnover tax imposed on the sale of goods, i.e., from the sale of raw materials through the last sale to the final consumer, as well as on the provision of services. VAT is levied on the value added to the good or service at each stage of production. Because VAT is an indirect tax, the burden of the tax falls on the ultimate consumer of the product or service. VAT is the most important of all the indirect taxes in Chile as its collection constitutes almost 50% of the country's fiscal revenues.

For further research on Chile's VAT system, see also the VAT Navigator.

B. Taxable Transactions

The sale of goods, real property constructions other than land, the supply of services, and the importation and exportation of goods and services into and out of Chile are generally subject to VAT. Specifically, the following transactions are generally subject to VAT:

(i) The sale of real property constructions, excluding land, and movable property located in Chile;

(ii) The importation of goods into Chile;

(iii) The supply of services that are either rendered or utilized in Chile; and

(iv) The export of goods and services out of Chile.

1. Sale of Goods and Real Property

VAT is levied on the sale of movable tangible property if the seller is a VAT taxpayer (see D., below) and the property is located in Chile. In this regard, the place where the sale contract is executed is immaterial.[1410] On the other hand, movable tangible property located abroad is deemed located in Chile if it is purchased remotely from a person not domiciled or resident in Chile by a person that is not a seller of products or a service provider, when that property is eventually shipped to Chile, provided its price, including all charges, does not exceed 500 US dollars.

The definition of a sale of movable tangible property is broad, as it encompasses any transfer of such property for consideration. However, in the case of cryptocurrencies, since these are viewed by the tax authorities as digital or virtual assets, and not as tangible assets, their sale is not subject to VAT.[1411] The sale of real property, both new and used, is also subject to VAT, although the transfer of land is not.[1412] However, to be subject to VAT, the seller of real property must be habitually engaged in the business of selling it.[1413] In this regard, it is up to the SII to determine whether there is habitualness on the transfer of real property (for a discussion on the concept of habitualness, see D., below).

For purposes of determining the taxable base, the value of the land may be deducted. The same rule applies with respect to rental agreements with an option to purchase when the value of the land is included in the rental payments and in the option price, in which case the proportional value of the land must be deducted on a pro-rata basis. Nevertheless, the SII is entitled to adjust the purchase price on the transfer of real property when the value allocated to land is substantially higher than other land of a similar character or when the value of the construction is substantially lower than the value of similar constructions.[1414] On the other hand, the taxable base on the sale of real property by an habitual seller the acquisition of which had not been subject to VAT is the difference between its purchase price, as adjusted for inflation, and the sales price, minus the value of the land in both transactions. As regards the deduction for the land, the seller must reduce from the sales price the fair market value of the land at the time of the sale. By the same token, the seller must also reduce from the acquisition price an amount equal to the percentage value that is allocated to the land in the sales price.[1415]

The VATL contains the following specific rules on the applicability of VAT to the sale of movable and real property:

(i) In the case of contributions of movable and real property to the capital of a company, including incorporations, and increases of capital, it is the person contributing the property that is viewed as the VAT taxpayer, i.e., it must charge VAT to the issuing company;[1416]

(ii) In the case of transfers of movable and real property to shareholders as a result of a corporate liquidation, it is the company being liquidated that must charge VAT on the property being transferred, although the shareholder receiving the property is jointly liable for the VAT;[1417]

(iii) Withdrawals of movable and real property made by owners, shareholders, officers or employees of an enterprise for their own use or consumption or that of their family are subject to VAT, irrespective of whether the prop-

[1410] VATL, Art. 4. Property is deemed to be located in Chile, even if at the time of the sale it is physically located abroad, if its registration or plate has been granted in Chile. Thus, the sale of vehicles registered in Chile is subject to VAT even if the vehicles are abroad at the time they are sold.

[1411] Tax Ruling No. 963, dated May 14, 2018.

[1412] VATL, Art. 2(1). Payments charged by construction companies for promises to sell real property as well as rental contracts with an option to purchase are also subject to VAT. VATL, Art. 8(l). VAT on the sale of real property is applicable only as of January 1, 2016. Until that date, VAT was only levied on the sale of (i) real property by a construction company that had either been built by the company itself or had been partly built by a third party as a contractor for the construction company and (ii) rights to such real property. Law No. 20,780, Art. 2(1)(a). Therefore, real property sold prior to January 1, 2016, was not subject to VAT provided that the public deed evidencing such sale was executed prior to that date. The same rule applied with respect to rental payments made under a rental contract with an option to purchase executed in a public deed prior to that date. Furthermore, the sale of new real property prior to January 1, 2017, was also exempt from VAT provided that the construction had a construction license issued prior to January 1, 2016. Law No. 20,780, 7th Transitory Art. Also exempt from VAT was the sale of real property and rental contracts with an option to purchase provided that the request for final delivery of the property had been filed before the relevant municipal authorities prior to January 1, 2017. Law No. 20,899, 9th Transitory Art.

[1413] VATL, Art. 2(3).

[1414] VATL, Art. 17.

[1415] VATL, Art. 16(g).

[1416] VATL, Arts. 8(b) and 11(d).

[1417] VATL, Arts. 8(c) and 11(c).

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erty was produced by the enterprise concerned or acquired for resale. Movable and real property are considered to have been withdrawn from an enterprise if they are unjustifiedly missing from its inventory. The same rule applies to property given gratuitously for promotional purposes. VAT paid on such withdrawals does not give rise to a VAT credit.[1418] The VAT basis is the higher of the value of the item withdrawn that the enterprise has in its books or its fair market value;[1419]

(iv) The sale of a going concern is subject to VAT.[1420] In this case the value allocated to the movable and real property contained in the sale, including the taxpayer's fixed assets, without a deduction for any encumbrances on such property, constitutes the taxable base provided that the original purchase, import or production of that property by the seller was subject to VAT;[1421]

(v) A rental contract with an option to purchase real property is subject to VAT provided that it is sold by a VAT taxpayer.[1422] The taxable basis consists of each rental payment minus the interest component. In this regard, the SII may challenge the resulting amount if it considers that the interest component is notoriously high in comparison with comparable transactions;[1423]

(vi) The sale of movable and real property that is part of the seller's fixed assets but only to the extent that the seller claimed a VAT credit when it purchased, imported, manufactured or constructed that property. However, the sale of movable property that is part of the seller's fixed assets is not subject to VAT if the sale takes place after 36 months from the date the property was purchased, imported, manufactured or constructed if the sale is made by or to a taxpayer that has opted to be taxed under the simplified income tax regime (see V.B.4.c.(3), above).

• However, the SII may raise a tax assessment for VAT due in those cases where, as a result of a corporate reorganization, movable and/or real property has been transferred to a newly created or surviving company (different from the original owner that claimed the VAT credit when it purchased that property) becoming part of its fixed assets, and the newly created or surviving company later sells the property exempt from VAT, if the principal purpose of that reorganization was to avoid it.

• In that regard, the specific circumstances of the reorganization and its tax effects, such as the time lapsing between the steps, whether the newly created or surviving company as well as the purchaser of the property are subject to VAT, or whether the property in question is used in the conduct of the taxpayer's business activities. In the event of a tax assessment, the SII is entitled to levy the VAT on the basis of the property's fair market value;[1424]

(vii) The difference, if any, of goods booked in the taxpayer's accounts and the inventory the SII may conduct on the taxpayer is deemed to constitute a sale for VAT purposes taking place when that inventory is made. Likewise, income adjustments made by the SII on the taxpayer are deemed to constitute sales and, as such, are also subject to VAT.[1425]

Sales made by a nonresident seller on a remote basis are also subject to VAT when the Chilean buyer is not a VAT taxpayer and the value of the product acquired does not exceed 500 US dollars or its Chilean peso equivalent. For a discussion of the rules dealing with the simplified VAT registration regime for these nonresident taxpayers, see XII.D.2., below.[1426]

The VAT basis is the sale price including, unless they are already included in the sale price, any monetary corrections, interest, finance charges and penalty interest.[1427] The VAT itself is excluded from the taxable base, but other taxes levied on the sale are not, except for excise taxes on beverages and hydrocarbons.[1428]

As a rule, VAT liability accrues when the seller issues an invoice. However, the VAT liability may accrue at the time the property is delivered if such delivery takes place prior to the issuance of the invoice.[1429] In the case of withdrawals of property from an enterprise, the VAT is due at the time of the withdrawal.[1430]

2. Supply of Services

a. In General

The supply of services is subject to VAT if the services are either rendered or utilized in Chile. It is immaterial that the fee for the services is paid or received abroad. A service is deemed rendered in Chile if the activity is performed in Chile, irrespective of the place where the service is actually utilized.[1431] Furthermore, a service performed abroad for use by a Chilean beneficiary is also subject to VAT. For purposes of VAT, a service is the supply of activities rendered by one person to another for consideration, which may be in the form of a fee, commission, interest or any other form of remuneration.[1432]

Specifically, the following services are subject to VAT:

(i) Installation and construction contracts.[1433] The VAT is due at the time the invoice is issued. In these cases, the taxable base is the contract value, including the value of the materials used in the installation or construction. In the case of construction contracts for works for public use that

[1418] VATL, Art. 8(d).
[1419] VATL, Art. 16(b).
[1420] VATL, Art. 8(f).
[1421] VATL, Art. 16(d). The SII is empowered to determine the amount to be allocated to the property.
[1422] VATL, Art. 8(l).
[1423] VATL, Art. 16(i).
[1424] VATL, Arts. 8(m) and 16(j).
[1425] VATL, Art. 76. Casualty losses arising from *force majeure* must be communicated to the SII to avoid being characterized as a deemed sale of goods. VATL, Art. 79.
[1426] This rule will come into effect on October 25, 2025.
[1427] VATL, Art. 15(1).
[1428] VATL, Art. 15(3).
[1429] VATL, Art. 9(a).
[1430] VATL, Art. 9(c).
[1431] VATL, Art. 5.
[1432] VATL, Art. 2(2).
[1433] VATL, Art. 8(e).

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are paid for by way of a concession to exploit such works, the taxable base is the total cost of the construction, including labor costs, materials and finance costs. However, if the concession is transferred or assigned to the concessionaire, the taxable base is the actual cost incurred by the concessionaire, without taking into account the cost charged by the assignor at the time of the assignment;[1434]

(ii) The rental, sublease, usufruct and any other form of transfer for temporary use of movable property and real property, whether furnished or with installations or machinery that allow the undertaking of an industrial or commercial activity.[1435] In that regard, the furniture or the installations or machinery must be sufficient to allow the use of the property as a dwelling or office or for the adequate exercise of an industrial or commercial activity. In these situations, the taxable base for VAT purposes is the rent charged minus 11% per year of the official value of the real property;[1436] If the rental of the real property is not of this type, the rental fee is exempt from VAT;[1437]

(iii) Licensing, sublicensing and any other form of transfer for temporary use of trademarks, patents, industrial processes and formulae, and other similar property;[1438]

(iv) Parking for automobiles and other vehicles;[1439] and

(v) Insurance premiums, unless they are otherwise exempt (see XII.C., below).[1440]

If the service is rendered periodically, VAT is due at the end of each period for which the fee is due, unless the service provider issues an invoice prior to the end of such period.[1441] In the case of interest payments, VAT is due at the earlier of the time the interest is due or when it is paid.[1442]

The basis for determining the VAT to be charged is the price for the service including, unless they are already included in the price, any monetary corrections, interest, finance charges and penalty interest.[1443] The VAT itself is excluded from the taxable base as are excise taxes on beverages and hydrocarbons. Other taxes levied on the supply of the service are not excluded.[1444] If a service comprises a taxable component and an exempt one, VAT is only levied on the fee related to the taxable service. Consequently, the fees for these services must be computed and charged separately. If the fees cannot be individualized for each type of service, then VAT must be levied on the overall fee.[1445] If a specific service is paid with property, the fee is deemed to be the value given to the property by the parties; the same rule applies to cases involving sales of property in exchange for services.[1446]

The taxable base for the preservation, repair and exploitation of a concession is the monthly fee charged by the concessionaire minus the amounts that are to be imputed to the costs incurred in the construction, as determined by the concession contract. For purposes of computing the VAT credit, the amount charged that has not given rise to the levying of VAT is not considered exempt or not subject to VAT. If the preservation, repair or exploitation of the concession is performed by an entity as a result of an assignment by the original concessionaire, the VAT basis for such preservation, repair or exploitation is the monthly fee charged minus the amortization of the payment made to the assignor.[1447]

In the case of services, the VAT liability generally arises when the service provider issues an invoice. However, the VAT liability may arise at the time the consideration is received by the service provider if the provider does not issue an invoice for its services.[1448] In the case of services rendered remotely by a nonresident, the VAT liability will generally accrue when the nonresident charges the fee to the Chilean user's card.

b. Services Rendered Remotely

(1) In General

As a rule, the provision of services is subject to VAT when the services are either performed or used in Chile, irrespective of whether the fee for the services is paid or received in Chile or abroad. In this regard, a service is deemed to be performed in Chile when the activity concerned is undertaken in Chile, irrespective of where the service is used.[1449]

In 2020, in line with the OECD work on the matter, Chile amended the VATL to provide for equal treatment between traditional activities and services rendered remotely.[1450] Thus, as a rule, services rendered remotely are subject to VAT if they are deemed to be utilized in Chile, even if they are rendered by a nonresident, provided the recipient of the service is not a VAT taxpayer. The concept of remoteness, which was introduced in a 2024 amendment to the VATL, widens the scope of application of VAT beyond digital services.

A service rendered remotely is the subject of a special VAT place of supply rule when the service is rendered by a nonresident and is used in Chile. The SII has indicated that this rule must be applied and interpreted strictly to avoid situations of extraterritoriality. Thus, a service that is rendered remotely is deemed to be utilized in Chile when, at the time it is procured or paid for, at least two of the following conditions are fulfilled:[1451]

(i) The IP address of the user's device indicates that the user is located in Chile;

[1434] VATL, Art. 16(c).
[1435] VATL, Art. 8(g).
[1436] VATL, Art. 17.
[1437] VATL, Art. 12(E)(11).
[1438] VATL, Art. 8(h). For a discussion of VAT on payments for the use of standard software programs, see item (v) under C.3., below.
[1439] VATL, Art. 8(i).
[1440] VATL, Art. 8(j).
[1441] VATL, Art. 9(e). By way of exception to this rule, if the service is related to the periodic monthly supply of gas, electricity, telephone services, water or sewage, VAT is due at the end of each payment due date, even if such payment is made at another time.
[1442] VATL, Art. 9(d).
[1443] VATL, Art. 15(1).
[1444] VATL, Art. 15(3).
[1445] VATL, Art. 2(2).
[1446] VATL, Art. 19.
[1447] VATL, Art. 16(h).
[1448] VATL, Art. 9(a).
[1449] VATL, Art. 5.
[1450] OECD International VAT/GST Guidelines (2017).
[1451] VATL, Art. 5. For a description of the simplified VAT registration regime for nonresidents, see XII.D.2., below.

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(ii) The card, bank account or other means used to pay for the service is issued or registered in Chile;

(iii) The user's address for billing purposes or for purposes of issuing a receipt is located in Chile; or

(iv) The SIM card of the phone on which the service is received has Chile as its country code.

The following nonresidents are not required to charge VAT on the provision of services and, therefore, are not required to register under the VAT simplified regime:

(i) The services are subject to VAT but they are provided to VAT taxpayers;

(ii) The services are either not subject to or exempt from VAT; or

(iii) The services are subject to VAT but they are also subject to the additional tax.

3. Imports

Imports of movable property into Chile are subject to VAT, regardless of whether the importer undertakes imports on an habitual basis.[1452] The taxable base for imports is the customs value plus customs duties levied on the import. If there is no customs value, the VAT base is the cost, insurance, freight (CIF) value of the product plus customs duties.[1453]

The first sale of automobiles imported into Chile under the customs duties full or partial exemption regime is subject to VAT. In this respect, public notaries are prohibited from authorizing public deeds on the sale of such vehicles, unless the parties show evidence that the VAT on the first sale or import has been paid. Moreover, no such transfer may be registered with the Motorized Vehicle Registry unless there is proof of payment of VAT in the title deed.[1454]

The VAT liability on imports arises once the importation has legally concluded or, if the importation is conditional, at the time the procedures for the importation have concluded. The Customs Authorities do not authorize the release of the property until the importer shows proof that the VAT liability has been paid.[1455]

C. Exempt Transactions

1. Property

The sale of the following property is exempt from VAT:

(i) Used vehicles, except those imported, those transferred as a result of the exercise of an option to purchase by the acquirer in a lease with an option to purchase transaction, and those on which VAT was not paid at the time of importation as a result of the application of a special import regime;[1456]

(ii) Chilean raw materials provided they are used in a production or manufacturing process with respect to goods to be exported, provided this is expressly authorized by the SII. Moreover, the exemption is only applicable if the seller of the raw materials does not issue an invoice or, if the invoice is to be issued, the seller expressly waives its right to claim the VAT credit that would otherwise be available had the sale been subject to VAT;[1457]

(iii) The sale of a dwelling when the purchaser is entitled to a housing subsidy granted by the Ministry of Housing, as well as general construction contracts and rental agreements with an option to purchase, provided that the sale, contract or rental agreement has been fully or partly financed by such subsidy. For these purposes, a beneficiary of a housing subsidy also includes a purchaser of a finished dwelling or dwelling under construction that sells it or rents it out with an option to purchase to an actual beneficiary of a housing benefit. The exemption is also applicable to the sale of a dwelling to a third party when the dwelling has been rented out with an option to purchase to a beneficiary of a housing subsidy, provided that the option to purchase is to be financed in full or in part with such subsidy;[1458] and

(iv) The import and sale of tokens, bills and coins as well as the raw materials used to manufacture them, provided they are purchased by the State-owned mint house, *Casa de Moneda de Chile*, S.A., or other persons, provided the sale takes place within the framework of transactions involving the Central Bank. The exemption applies to trials as well as actual sales of these goods in compliance with the execution of a contract. The supplier of these goods is entitled to claim a VAT credit for the VAT it incurred in its purchases in connection with these goods and, therefore, it is not subject to the pro-rata rules.[1459]

2. Imports

The following imports are exempt from VAT:

(i) Imports made by the Chilean Ministry of Defense, as well as by agencies engaged in national defense, public order and police activities, provided the import is of war machinery, arms and ammunition. The exemption covers the entry into Chile of such property and its spare parts from Chilean duty-free zones.[1460]

(ii) Imports made by representatives of foreign nations duly accredited in Chile, international organizations of which Chile is a member, international diplomats and civil servants, Chilean civil servants posted abroad and immigrants; however, in the latter case, only the importation of personal property, such as household items, is exempt from VAT.[1461]

(iii) Imports classified by the SII as contributions to foundations and universities.[1462]

[1452] VATL, Art. 8(a).
[1453] VATL, Art. 16(a).
[1454] VATL, Art. 8(a).
[1455] VATL, Art. 9(b).
[1456] VATL, Art. 12(A)(1).
[1457] VATL, Art. 12(A)(5).
[1458] VATL, Art. 12(F).
[1459] VATL, Art. 12(A)(6) and (B)(17).
[1460] VATL, Art. 12(B)(1).
[1461] VATL, Art. 12(B)(3), (5) and (8).
[1462] VATL, Art. 12(B)(7).

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(iv) Imports made by manufacturers that consist of raw materials used for the production or manufacture of goods for export. The SII must expressly authorize this exemption.[1463]

(v) Imports of capital assets made by foreign investors and Chilean entities receiving foreign investment, provided that the assets are used to develop, explore or exploit in Chile mining, industrial, forestry, energy, infrastructure, or telecommunication projects, as well as R&D projects of a technological, medical or scientific nature.[1464] The import must be made in connection with an investment of US$5 million or more. The VAT exemption is only available if the investment project generates income within two months from either (I) the date the first exempt import took place, (II) the issuance of an environmental resolution by the Environmental Evaluation Service, or (III) the date in which the concession for the onerous use of land is granted by the Ministry of National Property, irrespective of whether the income is subject to or exempt from VAT. To claim the VAT exemption, the applicant must request an authorization from the Ministry of Finance. The Ministry of Finance must respond within 60 days from the date the request was made by the applicant. The request is deemed to be approved if the Ministry fails to respond within the 60-day period, in which case it is required to issue a resolution granting the VAT exemption within five days from the date the 60-day period elapsed. If there are a number of imports to be made, either because the investment is undertaken in stages or because the investment project that already benefits from the VAT exemption is expanded, the subsequent imports will not require the applicant to apply for a new authorization from the Ministry of Finance; instead, the applicant is only required to submit a VAT exemption request to the Ministry, attaching a copy of the initial resolution granting the VAT exemption and evidencing that the subsequent imports are either related to an investment undertaken in stages, to an expansion of the initial investment, or that it involves a replacement of property of a similar type and value because the one that was originally imported was defective. The Ministry of Finance is required to send a copy of the authorization to the SII within 20 days from the date it is passed. If the information furnished by the investor is erroneous or false, the SII will require the importer to pay VAT on the import and will impose interest charges and possibly penalties. On the other hand, the VAT paid on the import will constitute a credit for the importer. However, the VAT credit will not be available if the importer obtained the VAT exemption through malicious means.

(vi) Imports made on a temporary admission basis or to bonded warehouses.[1465]

(vii) Imports of vehicles made by the Chilean fire brigade under customs tariff number 8705.30 and related merchandise with customs tariff number 00.36 of Section 0, as well as imports of these goods made by third parties, provided the goods are donated to the Chilean fire brigade within three months from the date of importation.[1466]

(viii) Imports of merchandise to provide and equip a sporting venue for official sporting events of international relevance, as well as merchandise for preparation for or the execution of such events, or use or consumption by participants in those events.[1467] Such merchandise comprises sporting goods, food, non-alcoholic beverages, pharmaceutical, medical and first aid products, trophies, medals, prizes, sporting and advertising material, as well as other sporting items and mementoes, firearm munitions used in a sports event, wheelchairs and other goods to transport para athletes, and any other item that is necessary to practice the sporting event, as decided by the customs authority. The import must be made by a Chilean sporting organization, which must request the exemption from the Under Secretariat for Sports, as well as informing the SII.[1468] The VAT exemption can apply up to 30 days after the conclusion of the sporting event.

(ix) Persons that are not regarded as sellers of products or service providers, provided the VAT on the import was previously charged by the seller or digital platform.

3. Services

a. In General

The supply of the following services is exempt from VAT:

(i) Tickets for artistic, scientific, and cultural events approved by the Ministry of Culture, sport events, and up to 12 annual events held for the benefit of certain nonprofit organizations.[1469]

(ii) International air, sea, river and land transportation to and from Chile up to the port of destination, even if that involves local transportation.[1470]

(iii) Insurance premiums for import-export transportation, air transportation, property located outside Chile, for earthquakes;[1471] reinsurance premiums; and readjustable life insurance premiums.[1472]

(iv) Commissions charged by certain nonprofit organizations on subsidized home mortgages.[1473]

[1463] VATL, Art. 12(B)(9).

[1464] VATL, Art. 12(B)(10). This article was amended by Law No. 20,848 and came into effect on January 21, 2016. Prior to this date, a similar exemption was available but it only applied to investments made by way of a capital contribution under an investment project formally concluded with the Chilean government under Decree Law No. 600. The exemption was also available if the property imported was not manufactured in sufficient quantities in Chile or the quality of such Chilean manufactured property was inferior, provided the import was part of an investment project that was considered to be of interest for the country.

[1465] VATL, Art. 12(C)(2).

[1466] VATL, Art. 12(b)(16).

[1467] Law No. 21,564, Art. 2. For a list of the sporting events covered by the exemption, see X.B.9.

[1468] Law No. 21,564, Art. 3. For the requirements that the sporting organization must meet, see X.B.9.

[1469] VATL, Art. 12(E)(1).

[1470] VATL, Art. 12(E)(2).

[1471] VATL, Art. 12(E)(3)–(5).

[1472] VATL, Art. 12(E)(14) and (15).

[1473] VATL, Art. 12(E)(6).

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(v) Payments made to nonresidents that are subject to the additional tax. Payment that are exempt from the additional tax by application of Chilean legislation or a tax treaty will be subject to VAT if they are for services rendered or used within Chile.[1474] Of particular relevance are payments for the use of standard software programs, which are exempt from the additional tax (see VI.B.4., above). Such payments should be subject to VAT if they are exempt from the additional tax and are deemed to constitute services deemed to be rendered in Chile. In this regard, as stated in XII.B.2., above, a service is deemed to be rendered in Chile if the relevant activity is undertaken in Chile, irrespective of the place where the service is used. In the specific case of the right to use standard computer programs that are used in Chile, the activity is deemed to take place in the jurisdiction in which the owner of the copyright is located.[1475] Thus, if the licensor is a nonresident, the service is deemed to take place outside Chile. Consequently, the SII has concluded that payments made for this type of software are exempt from the additional tax but are subject to VAT.[1476]

(vi) Interest on any transaction, financial instrument, or loan of any nature, including commissions charged by financial institutions on guarantees. The exemption, however, does not apply to interest on transactions involving installment payments.[1477]

(vii) Services rendered to nonresidents that the Customs Authorities classify as exports. The exemption applies even if the services are fully or partially rendered in Chile, provided they are used abroad.[1478]

(viii) Income derived in foreign currency by a hotel as well as from the rental of furnished dwellings, provided the service is rendered to a nonresident tourist and the hotel or owner of the dwelling is registered with the SII.[1479] In that regard, the SII has ruled that a hotel is an establishment in which tourists can stay for at least one night and which qualifies as a tourist establishment under the relevant regulations issued by the Ministry of Economy. The SII has also ruled that hotel services include not only the use of a room but also ancillary services provided by the hotel, such as food, beverages, laundry, and telephone.[1480] However, goods sold to nonresidents in hotels are subject to VAT.

(ix) Commissions received for managing voluntary pensions, voluntary pension savings deposits and voluntary collective pension savings deposits made under duly authorized voluntary savings pension plans, provided the payments are received by institutions that are duly authorized to manage those funds.[1481]

(x) The rental of real property (with or without an option to purchase), provided: the property is not used to undertake commercial or industrial activities; and the preceding purchase of the property by the lessor was exempt from VAT.[1482]

(xi) Health services, provided they are financed by either the National Health Fund (FONASA) or Pension Health Institutions (ISAPRES), but only up to the amount of the fee payable by FONASA.[1483]

(xii) The provision of drinking water and water sanitation services in rural areas by operators that are registered in the Rural Operators of Sanitation Services Registry.[1484]

(xiii) Educational services.

(xiv) Sanitary services rendered in rural areas, provided the operators that render the services are registered with the Registry of Operators of Rural Sanitary Services and are nonprofit organizations.[1485]

b. Cultural Services

Cultural services rendered by cultural associations are also exempt from VAT subject to certain conditions.[1486] In this regard, cultural services means services that are directly related to research, training, mediation, production and broadcasting with respect to culture, arts and heritage. A cultural association can be a company, an enterprise or a cooperative that meets the following requirements:[1487]

(i) It is made up solely of individuals who effectively render cultural services within the association. The association, however, can have its own employees. The association, therefore, cannot have individuals who only contribute capital to it or who do not render cultural activities for the benefit of the association;

(ii) The revenue it receives from non-cultural activities in the preceding taxable year does not exceed 35% of its overall revenue; and

(iii) Personal work, whether physical and/or intellectual, predominates over the use of capital.[1488] In determining whether this is the case, consideration must be given to the amount of share capital, the value of the association's fixed assets, the number of persons hired by the association and the relevance of the personal work performed by the owners. The SII has ruled that, just like a professional company, where personal work must also predominate

[1474] VATL, Art. 12(E)(7).
[1475] Law No. 17,336, Art. 1.
[1476] SII Circular No. 42, dated June 11, 2020.
[1477] VATL, Art. 12(E)(10).
[1478] VATL, Art. 12(E)(16).
[1479] VATL, Art. 12(E)(17).
[1480] SII Circular No. 37, dated June 10, 2014. See also Decree No. 222, issued by the Ministry of Finance, for the requirements that an establishment must meet to qualify as a hotel.
[1481] VATL, Art. 12(E)(18).
[1482] VATL, Art. 12(E)(11).
[1483] VATL, Art. 12(E)(11).
[1484] Law No. 20,998, dated February 6, 2016 and published in the *Diario Oficial* on February 14, 2017, as amended by Law No. 21,581, dated July 4, 2023 and published in the *Diario Oficial* on July 17, 2023.
[1485] Law No. 20,998, dated February 6, 2016, published in the *Diario Oficial* on February 14, 2017, Art. 64 *bis*. Law No. 20,998 was amended by Law No. 21,581, dated July 4, 2023 and published in the *Diario Oficial* on July 17, 2023, to introduce Art. 64 *bis*.
[1486] Law No. 18,985, of June 22, 1990, on Contributions to Cultural Associations, as amended, Art. 12 *bis* (a).
[1487] SII Circular No. 22, dated May 16, 2024.
[1488] Law No. 18,985, Art. 12 *bis* (b).

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over the use of capital, a cultural association with a corporate form cannot be an SA or a partnership, where capital predominates over work.[1489]

A cultural association can also take the form of a foundation, a community organization, a public interest organization, or a professional association or guild.[1490] A entity in one of these forms must, however, be not for profit. Furthermore, this type of entity can have one or more corporate owners provided they are also cultural associations.

Beginning in 2024, a cultural association must be registered with the Registry of Cultural Associations run by the SII and which may be accessed through the SII's portal. Registration is achieved by the filing a sworn statement with the SII indicating that the entity meets the above requirements.[1491] Registration must take place either within the two months following the one in which the cultural association started its activities or between January 1 and March 31 of each year. Once the SII has verified the application, it will register the cultural association since the date it started its activities or from January 1 of the year it registered, as the case may be, and will send a registration certificate. The registration must be renewed on an annual basis from January 1 through March 31.

A taxpayer must notify the SII through the SII's website when it fails to comply with any of the requirements to be treated as a cultural association. The taxpayer has until the last day of the month in which the act that led to non-compliance took place to file the notice with the SII. The exclusion from the Registry will be effective as of the first day of the month following the occurrence of the event, unless the event that led to not complying with the requirements is the one described in (ii) above, in which case the taxpayer loses the VAT exemption on January 1 of the year following the one in which the 35% limit has been exceeded.

The SII can also exclude a taxpayer from the Registry if it has reason to believe it does not comply with any of the requirements to qualify as a cultural association and the taxpayer has not notified it. The SII must inform the taxpayer of the exclusion in the taxpayer's personal site in the SII's portal and the reason for the exclusion.

c. Professional Services

The provision of services that, for income tax purposes, generate income that is subject to second category tax, such as professional services rendered either independently or by virtue of an employment contract, is exempt from VAT.

The exemption applies to professional services rendered by both an individual and a professional firm, even if the taxpayer conducting the professional activity has opted to be subject to the first category tax.[1492] To that end, the SII has ruled that professional service fees rendered by an entity only qualify for the VAT exemption when all of the following conditions are fulfilled:[1493]

(i) The entity is a partnership. The entity therefore cannot be a stock corporation, a limited company by shares, a limited partnership by shares or a limited liability enterprise.[1494]

(ii) The entity can only render professional services, although the entity can invest its cash-flow and purchase fixed assets, provided, however, that capital is subsidiary to work.

(iii) The services must be rendered through the entity's partners, although the partners may be assisted by the entity's employees. The partners' professions must be the same or similar.

(iv) The entity's partners must exercise their profession for the entity. The entity therefore cannot have limited partners, i.e., partners who only contribute capital. How a partner is remunerated by the entity is not relevant. An entity can have a professional firm as a partner although, in that case, the professional services must be rendered by a partner of that firm to the entity's clients. The SII does not accept that a professional firm partner renders supervisory or management services for the entity.

d. Outpatient Health Services

Outpatient health-related services are also exempt from VAT, provided the supply of such services does not include accommodation, food or medical treatments of the types rendered by hospitals, clinics and maternity wards.

The exemption encompasses the provision of medicines dispensed in the course of the provision of outpatient services but only to the extent the medicines are used and consumed on the outpatient premises and their price is included in the overall service price. Laboratory services are not covered by the exemption.[1495]

In view of the above, the SII considers that outpatient health-related services comprise all medical services that do not entail continuous health treatment that includes accommodation and food. On the other hand, a service is considered rendered by a hospital and, thus, subject to VAT, if the health service and food and lodging are rendered by the same entity.[1496]

4. Exports

The export of goods is exempt from VAT as well as from other excise taxes contained in the VATL.[1497] Moreover, fees charged for services rendered in relation to an export of goods are also exempt from VAT, such as harbor and dock charges, warehousing charges, customs agent's fees, transportation charges, and foreign exchange commissions, when the foreign currency derived from the export is exchanged into pesos.[1498] The following services are also regarded as exports:[1499]

(i) Land cargo transportation and cargo and passenger land and air transportation to and from Chile as well as ser-

[1489] SII Circular No. 22, dated May 16, 2024.
[1490] Law No. 18,985, Art. 12 *bis* (b).
[1491] For a sample of the sworn statement, see the annex in SII Resolution No. 6, of January 10, 2024, as replaced by SII Resolution No. 96, of October 10, 2024.
[1492] VATL, Art. 12(E)(8).
[1493] SII Circular No. 21, of April 23, 1991.
[1494] SII Circular No. 50, of October 27, 2022.
[1495] VATL, 12(e)(20).
[1496] SII Circular No. 50, of October 27, 2022.
[1497] VATL, Arts. 12(D) and 50.
[1498] VATL, Art. 12(E)(13).
[1499] VATL, Art. 36.

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vices rendered to nonresidents that the Customs Authorities classify as exports;

(ii) Air and shipping companies undertaking cargo or passenger transportation in transit, i.e., they do not load or unload cargo or passengers in Chile, with respect to their provisioning in Chile for their crew. The same rule applies to provisioning made in Chile by oil platforms;

(iii) Nonresident fishing companies operating outside of Chile's exclusive economic zone when they dock in certain Chilean harbors with respect to the provisioning of goods they make in those locations as well as for repair and maintenance services they receive;

(iv) Services that are entirely rendered and used in a foreign jurisdiction, provided that foreign jurisdiction applies a tax that is similar to the Chilean VAT; and

(v) Hotels and furnished dwelling rental services rendered to nonresident tourists, provided the hotel or owner of the dwelling is registered with the SII, as well as shipping companies insofar as they transport foreign tourists.

5. Exempt Entities

The following entities are exempt from charging VAT:[1500]

(i) Radio and television companies, as well as news agencies, with respect to the income they derive, except advertising income;

(ii) Transportation companies with respect to the income they derive from the transportation of passengers;

(iii) Educational institutions with respect to fees that they charge only for their educational activities;

(iv) Hospitals, whether they are owned by the government or by universities, and health services rendered by the Chilean Health Service as well as by individuals or entities that render those services by virtue of an authorization granted by the former; and

(v) Entities engaged in coinage and bill minting, even if the service is subcontracted, and the post office.

D. Taxpayers

1. In General

In Chile, any person, whether a legal entity or an individual, that either sells property (whether movable or real) or supplies services that are subject to VAT is a VAT taxpayer.[1501] Specifically:

(i) With respect to movable property, the person must be a habitual seller of movable property that is subject to VAT, irrespective of whether the property was manufactured by the taxpayer or was purchased from a third party.[1502] It is up to the SII to determine whether a seller sells goods on a habitual basis. However, importers are required to pay VAT irrespective of whether they carry out imports on a habitual basis;[1503]

(ii) With respect to the sale of real property, the seller must act on a habitual basis for the sale to be subject to VAT. However, the sale of real property resulting from a mortgage foreclosure as well its subsequent sale is not deemed habitual, provided that there is an obligation to sell the property within a specific time period, including sales in public auctions ordered by a court;[1504]

(iii) With respect to the provision of services, any person, whether a legal entity or an individual, is a VAT taxpayer irrespective of whether the services are rendered on an habitual basis or sporadically;[1505] and

(iv) In cases involving in-kind contributions to the capital of a company, the VAT taxpayer is the party making the contribution.[1506]

The VATL also empowers the SII to require debit and credit card companies to recharge, withhold, report and pay the VAT with respect to sales made or services rendered by nonresident individuals and companies from abroad that are not registered under the simplified VAT regime (see D.2., below) which are paid via a debit or credit card. The VATL also empowers the SII to require nonresident sellers or intermediaries of movable property located abroad to withhold the VAT payable upon the importation of that property if the purchaser is not a VAT taxpayer.

Chilean transparent entities are also VAT taxpayers with respect to their liquidation. However, in these circumstances, each of the partners is jointly liable for the VAT due in proportion to the property that it receives in the liquidation.[1507]

As a general rule, government-owned entities may also be VAT taxpayers and may also be charged VAT if they buy property or receive services that are subject to VAT.[1508]

2. Simplified Regime for Nonresident Taxpayers

Operators of intermediation digital platforms are treated as habitual sellers of the product sold or service rendered through the digital platform and, as such, these operators are treated as VAT taxpayers, provided that the sale of the product or the provision of the service is subject to VAT and the buyer of the product or recipient of the underlying service are consumers that are not VAT taxpayers.[1509] For these purposes, an intermediation digital platform is an internet interface that allows third parties to sell their products or render their services, while an operator can be an individual or company, whether local or foreign, that economically exploit a digital platform. Services that merely consist in advertisement and payment processing are not digital platforms.

[1500] VATL, Art. 13.

[1501] VATL, Arts. 3 and 10. Even though the VAT is actually paid by the purchaser of the property or the recipient of the service, the VAT taxpayer is the seller or service provider as that is the person that collects the tax from the customer and is required to remit the tax to the SII. A purchaser or recipient of services may also be treated as a VAT taxpayer if the seller or service provider is not a Chilean resident. VATL, Art. 11(b) and (e).

[1502] VATL, Art. 2(3).

[1503] VATL, Art. 11(a).

[1504] VATL, Art. 2(3).

[1505] VATL, Art. 2(4).

[1506] VATL, Art. 11(d).

[1507] VATL, Art. 11(c).

[1508] VATL, Art. 6.

[1509] VATL, Art. 3 *bis.*

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If more than one intermediation digital platform facilitates a transaction in a joint or simultaneous manner, the VAT taxpayer is the platform through which the transaction is authorized or the payment is processed.

As discussed in XII.D.1., above, when a nonresident renders services, the VAT position is typically reversed so that the recipient of the service is responsible for paying the tax. By way of exception to the general rule, as described in XII.B.2.b., above, the provision of services on a remote basis used in Chile is subject to VAT even when the services are rendered from abroad by a nonresident to Chilean persons that are not VAT taxpayers, whether they are individuals or companies. Likewise, as discussed in XII.B.1., above, sales made by a nonresident seller on a remote basis are also subject to VAT when the Chilean buyer is not a VAT taxpayer and the value of the product acquired does not exceed 500 US dollars or its Chilean peso equivalent.

Thus, nonresident sellers and service providers that sell their products or render their services remotely must charge Chilean VAT on the amounts charged to their customers at the general VAT rate.[1510] That charge will generally occur when the customer is an individual. However, the situation may also arise when the customer is a Chilean company that, given the nature of its business, is not a VAT taxpayer. In this case, if the nonresident has not registered in Chile for VAT purposes, the Chilean company may request from the SII authorization to withhold the VAT and remit it to the Chilean Treasury.

Nonresidents that are required to charge and paying VAT have the option of either registering for VAT purposes under the general regime or, instead, register under a simplified VAT regime that was established for such taxpayers.[1511] A nonresident that has opted to be registered under the simplified regime is generally required to charge VAT to a Chilean customer, unless:

(i) The customer informs the nonresident seller or service provider that it is a VAT taxpayer. In this case, the customer is solely responsible to inform the nonresident of its VAT status, provide the latter with its RUT number, and pay the VAT to the Chilean Treasury.[1512] The customer is required to issue a purchase invoice, withhold the VAT from the payment, pay it to the Treasury, and apply a VAT credit for to the VAT paid, without the nonresident's intervention. The nonresident, however, must report to the SII during the month following the VAT period a list of the Chilean VAT taxpayers that have not been charged VAT on transactions that are subject to VAT. If, however, the customer fails to inform the nonresident, the latter must charge the VAT, report it in Form 129 (see below), and pay it to the Treasury; or

(ii) The amount charged by the nonresident is subject to the additional tax and, thus, exempt from VAT.[1513] In such cases, as in the case of sales to Chilean VAT taxpayers, the Chilean customer must inform the nonresident that the payment is subject to the additional tax. It must also provide the nonresident with its RUT number. With that communication, the nonresident is released from charging VAT and it is the customer will be solely responsible to withhold the additional tax. As in the case of transactions with VAT taxpayers, the nonresident is nevertheless required to send a list of the Chilean customers that have not been charged VAT because the payment is subject to the additional tax. If, however, the Chilean customer fails to inform the nonresident, the latter is required to charge VAT, report it in Form 129, and pay it to the Treasury.

Registration under the simplified regime allows the nonresident taxpayer to access the, so-called, VAT Digital Portal at www.sii.cl and communicate with the SII through a special access at ivasd.chile@sii.cl. The registration process requires the nonresident to provide the following information:[1514]

(i) The nonresident's name, country of residence and foreign tax ID;

(ii) A description of the services remotely and the date the nonresident will start to provide those services to Chilean customers. The nonresident must select one of the following options:

- Intermediation services rendered in Chile, irrespective of their nature, or sales intermediation taking place in Chile or abroad, provided the latter result in an import into Chile;
- Supply of digital entertainment content, such as videos, music, games or similar content, through downloads, streaming or similar technology, including texts, magazines, newspapers or books;
- Making available software, storage, platforms or electronic infrastructure;
- Advertising, irrespective of the support used to supply it or execute it; or
- Any other service subject to VAT and utilized in Chile, indicating the type of service.

(iii) The VAT period selected by the nonresident (see below);

(iv) The currency selected by the nonresident to report and pay the VAT due (see below); and

(v) Three contact persons to whom the SII can communicate with, providing the name, position, phone number and email address.

Once the registration has been validated, the nonresident will receive an email with a user number, which identifies it as a nonresident VAT taxpayer in Chile.

While, for a regular VAT taxpayer, the VAT period is one month, nonresidents are entitled to select the VAT period when they register. That period can be one or three months.[1515] The quarterly periods are:

[1510] VATL, Art. 35(D).

[1511] As explained in VII.A., registering for VAT purposes does not automatically cause a nonresident to have a PE in Chile for income tax purposes.

[1512] VATL, Art. 11(e).

[1513] VATL, Art. 12(E)(7). For a discussion of when the additional tax is levied, see VI. and X., above.

[1514] SII Resolution No. 105, dated October 30, 2024.

[1515] VATL, Art. 35(D).

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(i) January to March;

(ii) April to June;

(iii) July to September; and

(iv) October to December.

Once the VAT period has been selected, the nonresident may modify on an annual basis from January 21 through 31, provided there is no VAT, interest charges or penalties pending to be paid, by sending a request to the SII through the VAT Digital Portal. If approved, the change becomes effective for the monthly or quarterly period starting on January 1 of that year.

The nonresident must electronically file a simplified VAT return using Form 129.[1516] In Form 129, the nonresident report the number of transactions made during the VAT period, the taxable base and any applicable reductions. The other fields in the Form are automatically filled-in. In this regard, the taxable base to be reported is the total consideration received from Chilean non-VAT taxpayers during the VAT period. The applicable deductions may consist of discounts to the price or if, after the Chilean customer has been charged VAT, the transaction is not carried out either because the contract has been annulled, terminated or rescinded. However, the VAT deduction may only be claimed if the nonresident has repaid the VAT to the Chilean customer and only in the VAT period in which the repayment has been made. The VAT deduction may be carried forward to subsequent VAT periods if it exceeds the VAT due. But the nonresident is not entitled to claim a VAT refund.

A nonresident is not required to file Form 129 for a given VAT period in any of the following circumstances:[1517]

(i) It has not conducted transactions in that period;

(ii) The transactions it has conducted are not subject to or are exempt from VAT; or

(iii) The transactions are subject to VAT but the Chilean purchaser or service recipient are VAT taxpayers.

Form 129 must be filed and the VAT due must be paid during the first 20 days of the month immediately following the end of each VAT period.

The VAT must be paid in the either Chilean pesos, US dollars or euros, as selected by the taxpayer when it registered at the time Form 129 is filed.[1518] The nonresident may, however, change the currency on an annual basis by sending a notice to the SII through the VAT Digital Portal from January 21 through 31, provided it has no VAT due, interest charges or penalties pending to be paid. If approved, the change will apply to monthly or quarterly VAT periods starting on January 1 of that year and will be applicable for at least one year until a new change is requested.

Registration under the simplified regime has the following implications for nonresident taxpayers:

(i) They are not entitled to claim a VAT credit against their VAT debits, i.e., the VAT they have charged to their Chilean customers, as the simplified regime is in essence a pay-only regime;[1519]

(ii) They have no obligation to issue invoices, credit or debit notes, or other tax-related documents; and

(iii) They have no obligation to carry a registry of purchases and sales as they are not required to issue tax-related documents nor are they entitled to credit VAT on their purchases.

The simplified regime provides a mechanism for cases in which discounts, annulments or service terminations have occurred after the VAT liability has been determined by the nonresident. In such cases, the nonresident must return to the customer the VAT charged in excess. The nonresident is also entitled to reduce the VAT amount in the taxable period in which the VAT has been returned.[1520]

In view of the potential for nonresident not registering under the simplified regime, Chilean banks and credit and debit card companies that are intermediaries in payments for remote sales of products and services are required to withhold the VAT where the nonresident has not registered under the simplified regime.[1521] Thus, unless the nonresident has registered as a VAT taxpayer and complies with its Chilean VAT obligations, there is an inversion of the VAT taxpayer where the sales are rendered by a nonresident, with banks as well as credit and cash card companies becoming the taxpayers as withholding tax agents.

In addition, the SII is entitled to ask banks and other payment intermediaries to provide information on the identity of nonresidents for which they have acted as intermediaries as well on the amounts that have been paid to them.[1522] Nonresidents that have registered for VAT purposes and comply with their VAT obligations are required to notify the financial intermediary of such registration so that the intermediary does not withhold VAT.

Any person that becomes aware that a nonresident having an obligation to register under the simplified regime has not done so, may denounce it to the SII through the VAT Digital Portal.

E. Rate

VAT is levied at a single rate of 19%.[1523] However, certain luxury products are subject to an additional luxury sales tax, at the rate of either 15% or 50%, and certain beverages are subject to additional rates (see G., below). Exports of goods and services are exempt from VAT.[1524]

[1516] VATL, Art. 35(E).

[1517] SII Resolution No. 107, dated November 14, 2024.

[1518] VATL, Art. 35(F); SII Resolution No. 107, dated November 14, 2024.

[1519] VATL, Art. 35(C).

[1520] VATL, Art. 35(G).

[1521] VATL, Art. 3; SII Resolution No. 46, dated May 13, 2022.

[1522] VATL, Art. 35(I).

[1523] VATL, Art. 14. Originally, the 19% rate was to have temporary application from October 1, 2003, through December 31, 2006. However, the temporary measure became permanent by application of Law No. 20,102, Art. 7, published in the *Diario Oficial* on April 28, 2006.

[1524] VATL, Art. 50.

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F. Recovery

1. In General

The VAT charged during a given month on sales of property and on the supply of services constitutes the VAT debit for the month.[1525] The VAT incurred during a given month on purchases of property, the receipt of services and imports constitutes the VAT credit for that month.[1526] For VAT incurred on a purchase to be creditable, the invoice must be genuine and valid and must comply with all the necessary formalities, unless the purchaser paid the invoice with a nominal check and on the back of the check the payor wrote the tax ID number of the seller and the invoice number. In these circumstances, the VAT paid may still be creditable provided the seller remitted it to the SII; the invoice is deemed false if the payor does not meet these requirements.[1527] For the VAT paid to be creditable, the payor must also show that the purchase concerned is directly related to its business and that the VAT is separately stated in the relevant invoice and entered in the taxpayer's books.[1528] There are special, simplified rules for small VAT taxpayers, although the special regime is not available to legal entities.[1529]

VAT paid on imports, purchases or services received in relation to transactions that are either not subject to VAT or exempt or not directly related to the activities of the purchaser or service recipient, is not recoverable by the purchaser or recipient of the service.[1530] Similarly, VAT incurred on imports, leasing and purchases of vehicles is not recoverable if the import or purchase was subsidized, unless the purchaser is habitually engaged in the sale or rental of these items. Likewise, VAT incurred on purchases in supermarkets and similar establishments is not creditable if the expense is not deductible for income tax purposes.[1531] On the other hand, if the purchaser or service recipient incurs VAT relating to activities that are partly subject to VAT and partly exempt, then the VAT incurred will constitute a VAT credit on a pro rata basis.[1532]

The SII may determine the taxpayer's VAT liability in the following cases:

(i) When, upon a VAT audit, the taxpayer's VAT liability cannot be determined with certainty. To that end, the SII may value the products sold and the services rendered using the taxpayer's own information or by taking into account the products sold or the services rendered by other taxpayers engaged in similar activities, businesses, or industries, or located in the same area, as well as other elements that allow it to make a reasonable estimate of the VAT payable. Once the SII has determined the VAT debit, it will be entitled to credit it against the VAT credit arising from the purchase of goods and services; or

(ii) When the taxpayer, on a voluntary basis, requests the SII to make that determination because it is not in a condition to determine it for itself. This option is only available to taxpayers with sales revenues below 2,400 development units in a calendar year, as determined by the SII, and for one time only. The SII can make an estimate of the VAT credit based on VAT credits claimed by other taxpayers engaged in a similar activity, business, industry or location. This procedure does not trigger the imposition of interest charges or penalties, provided the taxpayer pays the VAT due within three months from the date the SII quantified the VAT payable and the taxpayer has initiated its business activities at the time the payment is made.

The taxpayer must pay its monthly VAT liability based on the VAT it has charged to its customers, even if the VAT charged exceeds the correct amount; however, the taxpayer may rectify the situation by issuing a credit note to the customer in the month in question or during the following month.[1533]

The VAT taxpayer must credit its monthly VAT credits against its monthly VAT debits. The amount of the VAT debit that exceeds the VAT credit is the VAT due in that month.[1534] If, on the other hand, during a given month, the VAT credit exceeds the VAT debit, the excess VAT credit may be carried forward to the following month.[1535]

VAT taxpayers, including exporters, that have accumulated excess VAT credits during two consecutive months arising from the purchase of movable property and real property that forms part of their fixed assets, as well as services the cost of which is allocated to the cost of those fixed assets, are entitled either to utilize such excess credits against any other Chilean tax or levy or to apply for a VAT refund. If the purchases do not constitute fixed assets, the amount of the offset or refund must be determined by applying to the remaining excess VAT credit the percentage of VAT borne by the taxpayer in acquisitions of fixed assets over the total excess VAT credit. The SII has 25 days within which to make the refund.[1536]

2. Exporters

VAT paid by exporters of products and services on their purchases and imports is also recoverable even though their exports are exempt from VAT (i.e., they do not generate VAT debits). These purchases and imports, however, must be related to the taxpayer's export activities.

Exporters may recover their excess VAT credits either against any Chilean tax due or by requesting a refund.[1537] The refund may be claimed during the month in which an export

[1525] VATL, Art. 20.
[1526] VATL, Art. 23(1).
[1527] VATL, Art. 23(5).
[1528] VATL, Art. 25.
[1529] VATL, Arts. 29–35.
[1530] VATL, Art. 23(2).
[1531] VATL, Art. 23(4).
[1532] VATL, Art. 23(3).
[1533] VATL, Art. 22.
[1534] VATL, Art. 20.
[1535] VATL, Art. 26. To adjust the value of the excess credit, the VAT taxpayer may convert such excess into tax units at the time the tax was due, and reconvert the tax units into pesos at the time the excess credit is to be utilized against the VAT debit. VATL, Art. 27.
[1536] VATL, Art. 27 *bis*. In this regard, real property is deemed to be part of the taxpayer's fixed assets as of the date the receipt of the work is received by the customer. In the case of corporate liquidations, any excess VAT credits may be used to offset any VAT due on the sale of property or the transfer thereof to the shareholders. Any remaining excess VAT credit can only be used against the first category tax. VATL, Art. 28.
[1537] VATL, Art. 36.

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is made. Alternatively, exporters may also claim the refund in advance if they prove that they have export commitments. If the exporter is in a start-up phase, VAT credits arising from the purchase of fixed assets may only be recovered through the refund mechanism once such credits have accumulated over six months. Generally speaking, once the VAT refund claim has been filed, the SII may either authorize it or deny it in full or in part, or subject the request to a limited tax audit.[1538] The limited tax audit is particularly applicable in the following scenarios:[1539]

(i) If either the proportion that export sales represent over all sales of products and services in the period for which a VAT refund is being claimed or the VAT refund claimed in a given month is notoriously higher than the average of the last twelve periods. If during the limited tax audit the taxpayer is unable to explain the circumstances around the amount of the VAT refund being claimed, the amount of the VAT to be refunded will be determined by applying overt the total VAT credit for the period, the percentage that the value of the exports represent over the sales. This calculation must be made over the 12-months prior to the one for which the VAT refund is claimed.

(ii) The amount of the VAT refund claim exceeds the FOB value of the products or services exported. If the taxpayer is unable to explain the circumstances leading to the VAT refund claim, the amount of the refund will be determined by the SII. To that end, the SII will take into account the average VAT refunds actually paid to the exporter over the previous 12 month. If that average is higher than the FOB value of the exports giving rise to the refund claim, the amount to be refunded will be the same as the FOB value; if it is lower than the FOB value, the amount to be refunded will be the 12-month average VAT actually refunded

The limited tax audit may not last longer than 45 days.[1540] A refund request is deemed approved if the SII fails to respond within the five-day period. If the refund request is approved, the SII must communicate it to the Treasury, which has five days to pay the refund to the taxpayer. The Treasury is also required to pay the refund if the SII has failed to respond and the five-day period has elapsed.[1541]

If an exporter notifies the SII that it is ceasing its business must show that, during the 36 months prior to the last export shipment, their export revenues, based on the FOB value of the export, equal at least the total VAT refunded during that 36-month period. If this condition is not met, the exporter must pay back the VAT refund in proportion to the export revenue that was not generated. However, the VAT refund paid back to the SII will constitute a VAT credit. The obligation to pay back VAT refunds does not apply to exporters that found in liquidation bankruptcy proceedings.

In corporate reorganizations, the surviving company assumes all the rights and liabilities of companies that end-up wound-up as a result of the reorganization. Thus, if an exporter that is authorized to obtain VAT refunds prior to the export taking place undertakes a corporate reorganization by virtue of which it is taken over by a surviving company, the latter will assume all the rights and liabilities of the exporter and, as such, will continue to be authorized to obtain the VAT refund prior to the export taking place after having received the VAT refund but prior to making the export.

G. Additional Sales Tax

The sale of the items described in this section is subject to an additional tax, which is levied on top of the general VAT. The taxable base for this additional tax excludes the general VAT.

1. Luxury Items

The import and first sale of the following products is subject to an additional tax at a rate of 15%:[1542]

(i) Gold, platinum and ivory, as well as jewelry, natural and synthetic precious stones, furs, fine rugs and tapestries;

(ii) Caviar and substitutes; and

(iii) Air or compressed gas rifles and their accessories, except for those used for underwater fishing.

The additional tax levied on items included in (i) also applies to sales made subsequent to the importation or first sale at the same 15% rate. Moreover, the additional tax paid on the purchase of the items listed in (i) through (iv) is recoverable in the same manner as the VAT.[1543]

The importation or first sale of pyrotechnic items, such as fireworks, is also subject to the additional tax but at a rate of 50%, unless those items are to have an industrial, mining, agricultural or light-sign usage.[1544] This tax is also recoverable in the same manner as the VAT.

2. Beverages

In addition to VAT, the importation and sale of the following beverages are subject to an additional tax at the rates indicated below. The taxable base for this additional tax excludes the general VAT:[1545]

(i) Liqueurs, *piscos,* whisky, distilled beverages and scented wine, such as vermouth: 31.5%;

(ii) Wine, sparkling wine, sherry, cider, beer and other alcoholic beverages: 20.5%; and

(iii) Natural and artificial nonalcoholic beverages, energy and hypertonic drinks, syrups and, in general, any other product that substitutes for such drinks or that serves to prepare similar drinks, as well as mineral or thermal water to which colorants, flavors or sweeteners have been added: 10%. However, if these beverages have a high sugar content, i.e., more than 15 grams per 240 milliliters, the rate is increased to 18%.

[1538] VATL, Art. 81. A limited tax audit for purposes of reviewing a VAT refund does not preclude the SII from conducting a regular tax audit at a later stage, including a review as to whether an actual VAT refund granted after a limited tax audit was appropriate.

[1539] VATL, Art. 83. SII Circular No. 12, dated January 30, 2025.

[1540] VATL, Art. 83.

[1541] VATL, Art. 82.

[1542] VATL, Art. 37.

[1543] VATL, Art. 40; Circular No. 41, dated June 29, 2001.

[1544] VATL, Art. 37(j).

[1545] VATL, Art. 42.

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Since non-alcoholic beverages are not defined in the VATL, the SII has used the technical definition used by the Ministry of Health, which, due to their composition, classifies hypotonic and isotonic drinks as well as nectars as non-alcoholic beverages, provided their ethyl alcohol content does not exceed 0.5% in volume.[1546]

The tax is payable by the importer, the producer, the bottler and the distributor. On the other hand, the sale of these products by the retailer to the consumer is not subject to the additional tax.[1547]

The additional tax paid on alcoholic beverages constitutes a tax credit against the additional tax collected on the taxpayer's sales. The rules pertaining to the computation of this tax credit are the same as the rules applicable to VAT.[1548]

3. Sale of Vehicles

In addition to VAT, the sale of new small and mid-sized cars is subject to an additional tax, that is computed according to the following formula:[1549]

$$\text{Tax (in monthly tax units)} = \frac{35}{\text{urban efficiency in km/l} + (120 \times \text{g/km of NOx})} \times (\text{sales price} \times 0.00000006)$$

Where g/km of NOx is the vehicle's nitrogen oxide emissions and the sales price includes VAT

To calculate the additional tax, the Ministry of Transport and Telecommunications must issue forthcoming regulations listing the urban efficiency and the nitrogen oxide emissions of each model.[1550]

The sales of certain new vehicles are exempt from the additional tax. These include new vehicles to be used to transport passengers with more than nine seats, taxis, trucks, vans, tractors, electric vehicles, ambulances, and hearses. Also, the sale of vehicles which have been subject to the additional tax when imported into Chile (see 4., below) are exempt from the additional tax when they are sold in Chile.

The additional tax must be paid by the person who registers the vehicle with the Motor Vehicle Registry and without proof of payment of the additional tax the vehicle will not be registered.

4. Importation of Vehicles and Parts

In addition to VAT, the importation of finished or semi-finished vehicles for the transportation of passengers and cargo and spare parts for such vehicles is subject to an additional tax. The additional tax is calculated based on the customs value of the product, multiplying 0.03 by the cylinder capacity of the engine, expressed in cubic centimeters, and subtracting 45 from the result. However, the additional tax due is capped at US$7,503.55. Reductions of up to 75% of the above rate apply to the importation of certain vehicles and their spare parts, such as vans, jeeps, and mini-buses. There are also exemptions for buses, trucks, and heavy vans.[1551]

The additional tax paid by taxpayers on the importation of vehicles and parts constitutes a tax credit against the additional tax collected on their sales. The rules pertaining to the computation of this tax credit are the same as the rules applicable to VAT.[1552]

5. Tobacco

The sale of cigarettes is subject to an excise tax equal to 0.0010304240 monthly tax unit per cigarette contained in the box. An additional excise tax of 30% is also levied on the sale of each cigarette box.[1553] The sale of cigars is subject to an excise tax of 52.6% on the sales price of each cigar box.[1554]

H. Registration, Filing and Payment

1. Registration

Prior to initiating their activities, persons that will conduct transactions subject to VAT are required to register with the SII by obtaining a *Rol Único Tributario* (RUT).[1555]

2. Invoices

Taxpayers undertaking transactions that are subject to or exempt from VAT are required to issue an invoice for each transaction.[1556] Subject to a number of exceptions for taxpayers located in remote areas without cellular coverage or telephone services, these invoices can only be issued electronically by the seller. In the case of sales of movable property, the invoice must be issued no later than the time at which the property is delivered. In the case of the supply of services, the invoice must be issued in the month in which the consideration is received. In the case of installation and construction contracts, as well as rental agreements with an option to purchase real property, the invoice must be issued no later than the time at which the payment under the contract is made. In the case of sales of real property, the invoice, which must include the total price, including down payments, must be issued at the time the public deed is executed. In the case of concessions, the invoice must be issued at the time the concessionaire is to receive a payment pursuant to the concession contract; in the case of preservation, repair and exploitation contracts under concession, the invoice must be issued in the month in which payment for the service is received.[1557]

[1546] SII Circular No. 11, dated March 11, 2024. The definition of a non-alcoholic beverage is contained in Supreme Decree No. 977 of 1996, Art. 478.
[1547] VATL, Art. 43.
[1548] VATL, Arts. 44 and 45.
[1549] Law No. 20,780, Art. 3.
[1550] The additional tax on the sale of new vehicles will come into force 30 days after the regulations are published by the Ministry of Transport and Telecommunications. Furthermore, during 2015 and 2016 the additional tax liability was lower as the formula used to calculate the additional tax was slightly different from the one above. Law No. 20,780, Transitory Provisions, Art. 10.
[1551] VATL, Art. 43 *bis.*
[1552] VATL, Arts. 44 and 45.
[1553] Law No. 828, Art. 4, as amended by Law No. 20,780, Art. 4.
[1554] Law No. 828, Art. 3.
[1555] VATL, Art. 51.
[1556] VATL, Arts. 52 and 53.
[1557] VATL, Art. 55.

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All invoices must clearly separate the consideration payable for the purchase or service from the VAT.[1558] Invoices or receipts must be kept for at least six years.[1559]

3. Books and Records

All electronic invoices issued by each seller and service provider is registered in an automated manner and chronologically by the SII in a special file for each VAT taxpayer known as "Purchases and Sales Registry".[1560] With an obligatory invoicing system, there is no longer an obligation by taxpayers to maintain special VAT books to register their imports, purchases and receipts of services, as well as all exports, sales and supplies of services. However, the accounts of VAT taxpayers must record all the VAT incurred on their imports, purchases and receipts of services as well as all the VAT collected by them on their sales and supplies of services.[1561]

4. Payment and Filing

The VAT taxable period is generally one month.[1562] The VAT liability accrued in a given month must be paid within the first 12 days of the following month. The payment may be made either directly to the Treasury or to an authorized bank. The taxpayer must also submit a monthly VAT return reporting all the transactions undertaken during the month in question, including those that are exempt from VAT.[1563] In the case of an enterprise with more than one establishment, the VAT return must be filed and payment made by the head office.[1564]

By way of exception to the general rule, the following taxpayers are entitled to defer the monthly VAT payment for up to two months:

(i) A small or medium sized taxpayer that opts for the Pro-Pyme tax regime for purposes of the first category tax (see V.B.4.c.(1), above); and

(ii) A taxpayer that, on an annual average and over the prior three calendar years, has generated less than 100,000 development units in sales revenues.

The following conditions must also be fulfilled:

(i) The taxpayer must be registered with the SII to be notified via electronic mail;

(ii) The taxpayer may not be in a position of repeated delinquency with respect to its VAT and income tax liabilities; and

(iii) At the time of the postponement, the taxpayer must have duly and timely filed its monthly VAT returns for the previous 36 months and its annual income tax return for the previous three taxable years.[1565]

For these purposes, a taxpayer is deemed to be in a repeated delinquency position if it has either VAT payments outstanding with respect to three VAT periods in the last 36 months or income tax outstanding for the last taxable year.

In the case of imports, the VAT must be paid before the goods are withdrawn from customs.[1566]

Penalties for non-payment of VAT include fines and even the closing of the business for up to 20 days for commercial establishments that do not issue the required receipts or invoices. If the violation is repeated, the penalty may lead to imprisonment.

[1558] VATL, Art. 69.
[1559] VATL, Art. 58.
[1560] VATL, Art. 59.
[1561] VATL, Art. 60. This obligation is not applicable to VAT taxpayers that are nonresident suppliers of digital services. VATL, Art. 61.
[1562] VATL, Art. 2(5).
[1563] VATL, Art. 64.
[1564] VATL, Art. 67.
[1565] VATL, Art. 64.
[1566] VATL, Art. 64.

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XIII. Transfer Pricing

A. In General

Prior to 2012, the obligation to charge an arm's-length price on the sale of property and the provision of services was indirectly established by the Tax Code (*Código Tributario*, TC), which provides that the SII may carry out a valuation of the price charged for property transferred or a service provided if such price is egregiously lower than that charged in the market place for property or services of a similar nature, taking into account the circumstances underlying the transaction.[1567] As a result of a partial amendment of the ITL, as of taxable years starting January 1, 2013, Chile has transfer pricing norms in line with the Guidelines issued by the Organization for Economic Cooperation and Development (OECD), although the rules contained in the TC remain in force.[1568]

The SII may challenge prices, valuations or margins determined by taxpayers in cross-border transactions entered into with foreign related parties when they are not at arm's length. In this regard, related party transactions also include business and corporate reorganizations or value chain transformations undertaken with foreign related parties when such reorganizations, for consideration or for no consideration, give rise to either: (i) a transfer of functions, assets, risks, property and/or activities from Chile to a foreign jurisdiction or *vice versa* that is susceptible of generating taxable income in Chile; or (ii) a termination of an agreement or a substantial amendment thereto, and the SII considers that such reorganization is not arm's length. The SII may also determine such prices, valuations and margins when the taxpayer has not determined them.

Furthermore, the concept of a cross-border transaction is broad as it comprises any transaction between a party with a Chilean domicile, residence or PE and a party without a domicile, residence or PE in Chile. The SII has also indicated that the concept of a transaction that is covered under the transfer pricing regime should also be construed broadly as it covers any cross-border transaction between related parties that would have had any value if it had been conducted between unrelated parties, including the transfer of functions, risks or assets.[1569]

An arm's-length price, value or profitability is defined for purposes of the ITL as what has or would have been agreed upon or obtained between unrelated parties in comparable transactions and circumstances, taking into account the relevant characteristics of the market, the functions, assets and risks that each of the parties assume, any particular circumstance, any key component or element of the goods, services or contracts, and any other reasonably relevant transaction or circumstance, depending on the case that is being analyzed.

The SII will consider a transaction to be comparable if either there is no difference that would significantly affect the factor that has been selected when applying the transfer pricing methodology, such as the price or the margin, or it is possible to undertake the necessary adjustments to eliminate a difference. In this regard, the SII has expressly accepted the comparability factors used in the OECD Guidelines, as follows:

(i) Differences in the specific type of goods or services, such as physical characteristics, quality, reliability, availability and product offer in the case of transfers of tangible property; in the case of services, their nature and scope; and in the case of intangible assets, the type of transfer (sale or license), the type of asset (patents, trademarks or know-how), their duration and degree of protection, as well as the estimated profitability from their use.

(ii) A functional analysis must be performed to determine and compare whether the functions that have been undertaken by a party in a related-party transaction are comparable with the functions that have been undertaken by another party in a transaction between unrelated parties. The functional analysis must identify and compare the relevant economic activities, the functions that have been exercised, the assets that have been used, and the risks that have been assumed by the parties. The functional analysis must also include an examination of the contractual terms and conditions of a transaction to determine how the obligations, risks and benefits of the transaction are allocated between the parties.

(iii) To be comparable, the markets in which related and unrelated parties operate must not show differences that could have a significant effect on the prices, or at least that appropriate adjustments can be made. The economic circumstances that may be relevant to see whether two markets are comparable are their geographic location, their size, the degree of competitiveness of purchasers and sellers, the availability of alternative goods and services, the offer and demand in the market, the purchasing power of consumers, the nature and scope of market regulation, production costs (including labor and capital costs), and transportation costs.

(iv) Business strategies of both the related and unrelated parties must also be considered, such as innovation, product development, product diversification, risks, and duration of agreements, as well as any other factors that may influence the day-to-day running of the company, such as market penetration strategies.

B. Related Parties

Parties are deemed to be related for transfer pricing purposes when any one of the following conditions are met:

(i) When one party directly or indirectly participates in the management, control, capital, profits or income of another party;

(ii) When a person or persons directly or indirectly participate in the management, control, capital, profits or income of both parties, in which case they are all deemed to be related with each other;

(iii) In the case of a branch, agency or PE, with respect to its head office, with other PEs of the head office, and with related parties of the head office and the PEs;

[1567] TC, Art. 64. For a description of tax audit rules involving transfer pricing issues, see IV.B.7.d., above.

[1568] ITL, Art. 41-E.

[1569] SII Circular No. 29, dated June 14, 2013.

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(iv) When the transaction is entered into with a party that is either domiciled, established, incorporated or a resident of a country or territory which Chile views as having a harmful preferential tax regime, regardless of whether they are part of the same corporate group; or

(v) When a party enters into one or more transactions with an unrelated party and the latter enters, directly or indirectly, into one or more identical or similar transactions with a related party of the former, irrespective of the nature of the intervention of any of the parties in those transactions.

C. Transfer Pricing Methods

Chilean taxpayers are entitled to determine the price, valuation or profitability in a related party transaction pursuant to the following methods:[1570]

(i) Comparable Uncontrolled Price (CUP) method, which may be used for purposes of determining the fair market value of goods or services by considering the price that have or would have been used by unrelated parties in comparable transactions and circumstances.

A difference in prices between the two transactions may be indicative of the terms and conditions agreed upon between related parties not being at arm's length, which would entitle the SII to make an adjustment to the price or value given in the related-party transaction. A transaction entered into between unrelated parties is comparable to one entered into between related parties for purposes of applying the CUP method if one of the following two conditions is met: (1) none of the differences, if any, between the transactions being compared or between the companies undertaking them can have, under market conditions, a significant effect on the price; or (2) if there are such differences, it is possible to make accurate and reasonable adjustments that eliminate the effects of such differences. The CUP method may be used by the taxpayer on the basis of transactions entered into either by the taxpayer itself with unrelated parties (internal comparable) or by two parties that are unrelated to the taxpayer (external comparable). The SII has pointed out that, although the CUP method may be used for any type of transaction, it is more appropriate to use it with respect to (a) transactions involving sales of raw materials negotiated in an open market, provided that the transactions under comparison are undertaken in comparable circumstances and the sale is made at the same level of the manufacturing or commercial process (e.g., manufacturer, distributor, retail), and (b) certain financial transactions, such as loans.[1571]

(ii) Resale Price Method (RPM), which consists in determining the fair market value of goods and services by taking into account the price or value at which these goods or services are subsequently sold or rendered by the purchaser to an unrelated party. The resale price must be discounted by a gross profit margin that a reseller has or would have obtained in a comparable transaction with an unrelated party under similar circumstances. In this regard, the gross profit margin must be determined by dividing the gross margin over the goods sold or services rendered in transactions between unrelated parties, while the gross profit must be determined by deducting the cost of goods or services from the gross sales revenues generated in unrelated party transactions. The SII has indicated that the RPM should be used in transactions involving trading of goods, such as by a distributor.

(iii) Cost Plus Method (CPM), which consists in determining the fair market value of goods or services by adding a gross profit to all direct and indirect costs of production incurred by the seller or service provider, except general and operational expenses, that unrelated parties generate or would have generated in comparable transactions under similar circumstances. The profit margin over costs must be determined by dividing the gross margin in transactions with unrelated parties over their cost of sales or provision of service, while the gross profit must be determined by subtracting the direct and indirect production, transformation, manufacturing and similar costs, except general and other operational costs, from the revenues obtained in unrelated party transactions.

(iv) Profit Split Method, which consists in allocating to each party in related party transactions the overall profits generated in all those transactions. The overall profit must be allocated to each party based on the profit that unrelated parties have or would have agreed to or obtained in comparable transactions under similar circumstances.

(v) Transaction Net Margin Method (TNMM), which consists in determining the net profit margin in a transaction by taking into account the one that would have been obtained by unrelated parties in comparable transactions under similar circumstances. The taxpayer must use operational profit or margin indicators based on return on assets, return on costs, operating profit on net sales ratios, or other reasonable indicators.

(vi) Residuals methods: if the taxpayer finds that, in view of the special characteristics and circumstances of the case, it is not possible to apply any of the above methods, it may determine the price or value of its related party transactions by using other methods that may reasonably allow it to determine or estimate the arm's-length price or value which have or would have been agreed to by unrelated parties in comparable transactions under similar circumstances. In these situations, the taxpayer has the burden to prove that the methods listed above cannot be applied.

The taxpayer is required to use the method that is most appropriate under the circumstances of each case. In that regard, the taxpayer must take into account the advantages and disadvantages of each method, the applicability of the methods in relation to the type of transaction and circumstances of each case, the availability of relevant information, the existence of comparable transactions, the selection of the party being analyzed, the number of years of financial information being utilized, comparable ranges and adjustments as well as any other fact that it considers relevant.

[1570] ITL, Art. 41-E(2).
[1571] Circular No. 29.

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If a taxpayer carries out, under identical or similar circumstances, two or more transactions with related parties, and the transactions are closely connected or are part of a series of transactions that cannot be analyzed separately, then the taxpayer may aggregate them when undertaking the comparability analysis and apply the most appropriate transfer pricing methodology under the circumstances.

D. Transfer Pricing Adjustments

1. Primary Adjustments

If the SII determines that the taxpayer has not been able to prove that its transactions with related parties have been entered into at arm's length, it will then determine the price, value or margin of those transactions by using the documentation that has been provided by the taxpayer as well as any other documentation the SII may have, including information that the SII may have obtained from abroad from foreign tax authorities. The taxpayer has the obligation to have and maintain all of the transfer pricing documentation that it has used to apply the transfer pricing methods and to prepare its transfer pricing reports for purposes of determining the arm's-length price or value in its related party transactions. The transfer pricing documentation may have been prepared or provided by the taxpayer itself or by the foreign related person that is a party to the transaction under analysis.[1572] The SII must apply one of the above methods when making transfer pricing adjustments.

If the SII concludes that the taxpayer is unable to prove that the transactions with related parties have been carried out at prices, values or margin at market value, it is for the SII to make that determination using the transfer pricing documentation provided by the taxpayer and any other data available to the SII, including data obtained from abroad and using one of the aforesaid transfer pricing methods. Once the SII has made that determination, it must issue a tax assessment or a transfer pricing adjustment and impose interest charges and penalties.

The transfer pricing adjustment may be made by means of determining a single amount, which may be a comparable price or profit margin, and this amount will become the reference for purposes of determining whether a transaction is at arm's length. If there is more one comparable price, value or margin, then an interquartile range must be used. If the price, value or margin is outside the interquartile range, and it is within the first and the third quartile, then that value, price or margin will not be deemed at arm's length. If the taxpayer accepts the transfer pricing analysis conducted by the SII, the transfer pricing adjustment must be made by using either a single amount or one point or value within the interquartile range. If the tax assessment is the result of a regular tax audit, the transfer pricing adjustment must always be made using a single amount or the median of the interquartile range.

The amount of the transfer pricing adjustment is subject to a single tax of 35%, irrespective of whether the SII and the taxpayer agree to amend the taxpayer's return or a tax assessment is issued. This tax is not regarded as a category tax in the sense that the adjustment does not constitute taxable income of the taxpayer that is subject to the first category tax; therefore, the 35% tax payable on the transfer pricing adjustment cannot be utilized as a tax credit against the surtax or the additional tax liability.[1573]

In addition to the 35% tax, the taxpayer will also be subject to a fine equal to 5% of the transfer pricing adjustment, unless it has submitted its transfer pricing documentation in a timely manner to, and as requested by, the SII during the tax audit process.[1574] In this regard, the SII has indicated that, to avoid the fine, the taxpayer is required to submit, in a timely manner, at least the following documentation to the SII:

(i) The transfer pricing information return (see E., below); and

(ii) Any other documentation requested by the SII that may be used to verify the tax returns filed by the taxpayer as well as the transactions entered into by the taxpayer and that have been taken into account for purposes of determining its taxable income.[1575]

The SII may also challenge import and export prices or values set by Chilean entities if such prices or values differ from those commonly charged within Chile or abroad. The challenge may be made even if the import or export is not undertaken with foreign related parties. In that regard, the minimum net taxable income of Chilean importers and/or exporters ranges from 1% to 12% of the total sales value of the products they import and/or export. The actual percentage must be determined by the SII based on information in its possession with regard to the taxpayer concerned.[1576]

2. Secondary Adjustment

Taxpayers may rectify the price, value or profit margin used in transactions entered into with foreign related parties when such rectification is based on a transfer pricing adjustment made in by the tax authorities of another country with which Chile has a tax treaty in force, provided the tax treaty does not expressly prohibit the secondary adjustment. Furthermore, the request for a secondary adjustment in Chile is only possible if all the administrative or judicial claims against the primary adjustment have been exhausted.[1577]

The request for rectification must be filed electronically by the taxpayer.[1578] The taxpayer must provide the following information:[1579]

(i) The taxpayer's name, address, RUT number and business activity and those of the foreign related parties to whom the primary transfer pricing adjustment was made;

(ii) The taxable year or years that are to be rectified;

(iii) The original or an apostilled or legalized copy of the document ordering the primary adjustment made in the other jurisdiction, proof of payment of any tax due and any other official documents evidencing the tax obligations of the foreign related parties;

[1572] ITL, Art. 41-E(3).

[1573] ITL, Arts. 21 and 41-E(4); Circular No. 29.
[1574] ITL, Art. 41-E(4).
[1575] Circular No. 29.
[1576] ITL, Art. 36.
[1577] ITL, Art. 41-E(8).
[1578] The request must be filed at www.oficina.partes@sii.cl.
[1579] SII Resolution No. 6, of January 9, 2025.

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(iv) Claims and responses to those claims made by the foreign related party before the competent authority of the jurisdiction where the primary adjustment has been made during the tax audit proceedings;

(v) Administrative or judicial decisions in the jurisdiction where the primary adjustment has been made and/or a certificate from the foreign tax authority or court, confirming that the primary adjustment is final;

(vi) A calculation of the tax impact of the secondary adjustment on the Chilean taxpayer whether it is at the pricing, value or profit margin level; and

(vii) Draft amended corporate income tax returns for the year or years in question.

The request must be filed within one year as of the date the primary adjustment became final in the other jurisdiction. The SII must authorize both the nature and the amount of the secondary adjustment before the taxpayer may claim it. If the transfer pricing adjustment authorized by the SII gives rise to a tax refund, it may be adjusted for inflation from the month prior to the one in which the original income tax was paid to the month prior to the one in which the resolution from the SII was issued. The refund claim must be filed within three years from the date the SII issued the favorable resolution.

The SII will deny, wholly or partially, the request for the secondary adjustment if the primary adjustment made in the other jurisdiction is contrary to the Chilean transfer pricing rules. There is no possibility for an administrative or judicial appeal to that denial.

The taxpayer is entitled to pursue the procedure described above and, on a parallel basis use the mutual agreement procedure contained in tax treaties entered into by Chile. In that regard, transfer pricing adjustments between related parties may also be made under the Chile-U.S. tax treaty. In that regard, a company of one Contracting State is related to a company of the other Contracting State if it either participates directly or indirectly in the management, control or capital of such other company or the same persons participate directly or indirectly in the management, control, or capital of both companies.[1580] If a transfer pricing adjustment is made in either the United States or Chile, then the other country, if it agrees with such adjustment, must make an appropriate adjustment to the profits of the company within its jurisdiction.[1581]

3. Self-Adjustments

A taxpayer may make its own transfer pricing adjustment to the prices, values or margins used in its transactions with foreign related party by taking into account those prices, values or margins that unrelated parties would have agreed or obtained in comparable circumstances if its transfer pricing analysis concludes that its transactions with related parties are not at arm's length. The self-adjustment may be made at any time prior to a transfer pricing audit by the SII. The amount of the adjustment must be arm's length price, value or margin reflected in its transfer pricing analysis, even if it differs from the one actually charged or obtained in the related party transaction.

The adjustment may be made by applying a single amount, provided it is a comparable price or profit margin. That amount will become the reference for purposes of determining whether a transaction is at arm's length. If there is more than one comparable price, value or margin, the taxpayer must use the interquartile range and may make the adjustment using any point or value within that range. The adjustment may only be made to the extent it gives rise an increase of the taxpayer's taxable basis.

The taxpayer must keep all the transfer pricing documentation it has used to make the self-adjustment. Transfer pricing adjustments made by the SII to self-adjustment made by the taxpayer give rise to the implications described in D.1., above.

E. Filing Requirements

1. Transfer Pricing Information Return

The domestic taxpayers described below that undertake transactions of the type described in A., above, with related parties, are required to file a transfer pricing information return on an annual basis on Form No. 1907.[1582] The SII may require taxpayers to provide information on the types of transactions it enters with both related and unrelated parties, the methods it has applied for purposes of determining the arm's-length price, and information on foreign related parties. The specific information to include in the annual transfer pricing information return is contained in Form 1907 (see the Worksheets).

In that regard, the SII has indicated that the following taxpayers are required to file Form No. 1907:[1583]

(i) Taxpayers that are either domiciled or have their tax residence in Chile as well as branches or PEs of foreign companies that, on December 31 of the taxable year in question, are regarded as either Medium or Large Taxpayers and that have undertaken transactions during that year with nonresident related parties;[1584]

[1580] Chile-United States tax treaty, Art. 9(1). For a detailed discussion of the Chile-U.S. tax treaty, see XIV.B., below.

[1581] Chile-United States tax treaty, Art. 9(2).

[1582] ITL, Art. 41-E(6).

[1583] SII Resolution No. 126, dated December 27, 2016, replacing SII Resolution No. 14, dated January 31, 2013.

[1584] In SII Resolution No. 76, of August 23, 2016, the SII divides taxpayers into different categories, i.e., persons, micro-size taxpayers, small-size taxpayers, medium-size taxpayers and large taxpayers. Medium-sized taxpayers are defined as: (i) entities subject to the first category tax or the second category tax (excluding individuals) if, in either of the preceding two taxable years, they have generated annual revenues of 15,000 to 60,000 monthly tax units, have a net asset value of 75,000 to 300,000 monthly tax units or have conducted purchases amounting to 15,000 to 60,000 monthly tax units; (ii) taxpayers subject to the first or second category tax (excluding individuals) that commence business activities and have a share capital of 75,000 to 300,000 monthly tax units; or (iii) companies that only generate income subject to the second category tax, effect a capital increase or change their activity and become subject to the first category tax, and have share capital of 75,000 to 300,000 monthly tax units.

Large taxpayers are defined as: (i) entities subject to the first category tax or the second category tax (excluding individuals) if in any of the preceding two taxable years they have generated annual revenues of at least 60,000 monthly tax units, have a net asset value of at least 300,000 monthly tax units, or have made purchases amounting to at least 60,000 monthly tax units; (ii) taxpayers that are included in the list of Large Taxpayers published by the SII on December 31 of the previous taxable year; (iii) foreign companies or international organizations; (iv) taxpayers subject to the first or second category tax (excluding individuals) that commence business activities and have a share

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(ii) Taxpayers not covered under (i), above, who have undertaken transactions during the taxable year with persons that are either resident or domiciled in tax haven jurisdictions (see the Worksheets); and

(iii) Taxpayers not covered under (i), above, that during the taxable year have undertaken transactions with nonresident related parties totaling at least P$500,000.

Form No. 1907 must be filed on an annual basis for a given year no later than the last business day of June of the following year.[1585]

The taxpayer may ask the SII (only once) for a three-month extension to file the transfer pricing information request. The request must be filed at least one week prior to the deadline for filing the annual transfer pricing information return.[1586]

2. Country-by-Country Reporting

As a result of Action No. 13 on Transfer Pricing Documentation and Country-by-Country Reporting issued by the OECD under the BEPS initiative, the SII issued Resolution No. 126, requiring certain taxpayers to file a country-by country report under Form 1937 (see the Worksheets).[1587] These taxpayers are those that are regarded as parent or controlling companies of Multinational Enterprise Groups with tax residence in Chile.[1588] Form 1937 is deemed to be part of Form 1907 in the sense that all taxpayers that are required to file Form 1937 are also required to file Form 1907, while taxpayers that are required to file Form 1907 do not necessarily have to file also Form 1937. In this regard, a parent or controlling company is defined as an entity with tax residence in Chile that is part of a Multinational Enterprise Group and that:

(i) Holds, directly or indirectly, a sufficient interest in one or more entities that are part of that Group and that is in charge of filing Consolidated Financial Statements of that Group under accounting principles that are generally accepted in its country of residence or which would be required if the equity interest were to be traded in a stock exchange in its country of residence; and

(ii) There is no other entity that is part of the Group that, directly or indirectly, holds an interest as the one described in (i), above.

For these purposes, a Multinational Enterprise Group is a group of entities which, during the 12-month period prior to the beginning of the taxable year, had consolidated group revenue of at least 750 million euros when the consolidated financial statements are closed. The Chilean resident entity may also be required to file Form 1937 if it is part of the Group and it has been designated by the parent or controlling company as its only substitute for purposes of filing the country-by-country report in Chile. This designation may occur if the nonresident parent or controlling company of the Group is not required to file the country-by-country report in its country of residence. Likewise, the Chilean parent or controlling company may also delegate the obligation to file the country-by-country report to another Group company. In either case, the delegation must be notified to the SII within 30 days prior to the filing deadline.[1589]

Since Form 1937 is part of Form 1907, it must also be filed on an annual basis for a given year no later than the last business day of June of the following year.[1590] The filing deadline may also be extended once for three-months.[1591]

The information contained in Form 1937 is mostly analogous to the BEPS model template and requires the following financial and tax information for each entity of the Group: (i) gross income of the Group, differentiating between that earned via related entities and that earned via unrelated parties; (ii) profit or loss before income tax or taxes; (iii) income tax paid on a cash basis, including withholding taxes incurred; (iv) income tax accrued in the current year, excluding deferred taxes or unrealized tax accruals; (v) statutory paid-in capital; (vi) accumulated earnings; (vii) number of employees; (viii) tangible assets, other than cash and cash equivalents; (ix) list of resident entities, including PEs and core activities carried out by each entity; and (x) other information that is considered relevant and an explanation, if warranted, of the data that is included.

3. Master and Local Files

In line with Action 13 under the BEPS initiative, the SII has issued Resolution No. 101, requiring certain taxpayers to file a Master File electronically on an annual basis.[1592] The Master File, which must contain standardized information relating to all the multinational group members, must be filed using Form 1950. These taxpayers must also file an annex to Form 1950 containing descriptive information, as well as the documents referred to in that annex.[1593]

The following taxpayers are required to file a Master File:

(i) A holding or controlling company of a multinational group, if that company is tax resident in Chile and the revenues of all the Chilean and foreign entities forming part of the group are at least 750 million euros, as reflected in the consolidated financial statements as of December 31 of the year being reported. The Chilean holding company must use the Chilean peso exchange rate on January 1, 2015 when determining whether it meets the 750 million euro threshold.

(ii) A Chilean company that is part of a multinational group and has been designated by the holding or control-

capital of at least 300,000 monthly tax units; or (v) companies that only generate income subject to the second category tax, effect a capital increase or change their activity and become subject to the first category tax, and have a share capital of at least 300,000 monthly tax units. All taxpayers can ascertain the category to which they belong at https://misii.sii.cl/cgi_misii/siihome.cgi.

[1585] SII Resolution No. 126, Sec. 3. Form No. 1907 is contained in Annex No. 1 of SII Resolution No. 126. Instructions to Form No. 1907 are contained in Annex 2.

[1586] Circular No. 29.

[1587] SII Resolution No. 126.

[1588] SII Resolution No. 126, Sec. 2(B).

[1589] SII Resolution No. 126, Sec. 5. The notice is contained in Annex 5 of the Resolution.

[1590] SII Resolution No. 126, Sec. 3.

[1591] ITL, Art. 41-E(6). Taxpayers were required to start filing Form 1937 by June 30, 2017, with respect to the information pertaining to taxable year 2016. SII Resolution No. 126, Sec. 3.

[1592] SII Resolution No. 101, dated August 31, 2020.

[1593] To access Form 1950 and its instructions, see Annexes 1 and 2, respectively, of SII Resolution No. 101; the annex to Form 1950 is contained in Annex 3 of SII Resolution No. 101. Form 1950 and its annexes can be accessed at https://www.sii.cl/normativa_legislacion/resoluciones/2020/reso101.

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ling company of the group as its only substitute for purposes of filing the Country-by-Country Report in its country of tax residence on behalf of the holding or controlling company.

SII Resolution No. 101 also requires certain taxpayers to file with the SII on an annual basis a Local File using Form 1951.[1594] The Local File must contain information specifically pertaining to the most important and material transactions of the Chilean taxpayer. The taxpayers concerned must also file an annex to Form 1951 that contains descriptive information, as well as the documents referred to in that annex.

Taxpayers that meet the following requirements on December 31 of a reporting year are required to file a Local File with the SII:

(i) A Chilean company that is treated as a Large Enterprise for Chilean tax purposes;[1595]

(ii) A Chilean company whose holding or controlling company had to file the Country-by-Country Report with either the SII or any other tax authority for the taxable year in question; and

(iii) A Chilean company that, in that taxable year, conducted one or more transactions with nonresident related parties totalling 200,000 Chilean pesos (or its equivalent in foreign currency) or more.

The Master and Local Files relating to a taxable year must be filed on the last business day of June of the following taxable year. This deadline may be postponed only once for a maximum period of three months at any time prior to the deadline, on request to the SII Regional Director or to the Director for Large Taxpayers. Forms 1950 and 1951 and their annexes must be filed electronically at www.sii.cl. The Master and Local Files may be prepared in Spanish or in English, although if they are prepared in English the SII may request a translation into Spanish.

4. Penalties

The following are subject to penalties:

(i) Failure to file either the Transfer Pricing Information Return (Form 1907), the Country-by-Country Report (Form 1937), the Master File (Form 1950) or the Local File (Form 1951);

(ii) Filing any of the above Forms after their due date;

(iii) Filing any of the above Forms with mistakes or in incomplete form; and

(iv) Filing any of the above Forms with maliciously false information.

The offenses described in (i) to (iii) are subject to a fine ranging from 10 to 50 annual tax units, but that may not exceed the greater of either 15% of the taxpayer's net asset value, as defined in the inflation adjustment rules (see V.B.7.b., above), or 5% of its gross asset value, i.e., the value of its total assets except assets that are not considered to represent actual investments, such as intangible property.[1596] However, if the information contained in any of the three Forms is maliciously false, i.e., is the result of a conscious act on the part of a taxpayer who knew or should have known that the information reported was false, the penalty amounts to 50% to 300% of the tax due; in serious cases the taxpayer may also be imprisoned.[1597] The SII has three years to impose the penalty from the date on which the return or report concerned was due.[1598]

F. Advance Pricing Agreements

Taxpayers that undertake transactions with foreign related parties may propose to the SII to enter into an advance pricing agreement (APA) that would fix the price, value or margin for those transactions.

Prior to filing an APA request, a taxpayer may opt to file a ruling request with the SII containing the following information:

(i) The name of the persons or entities that will undertake the transactions;

(ii) A description of the transaction to be covered under the APA;

(iii) The basic elements of the valuation proposal the taxpayer intends to formulate; and

(iv) An email address for correspondence with the SII.

Within two months from the date the ruling request was filed, the SII may either request additional information to the taxpayer or inform the taxpayer whether filing an APA request is viable. It should be noted that the SII's response is limited to the viability of filing an APA request, not its result. In any case, a negative response from the SII does not prevent the taxpayer from filing an APA request.

Whether or not a ruling request has been filed, the taxpayer can file an APA request with the SII. The APA request must contain a description of the transactions, their prices, values or margins, the proposed duration of the APA, and attach transfer pricing documentation supporting the taxpayer's proposal and a transfer pricing report or study showing the application of the transfer pricing methods to such transactions. Upon review of the request, the SII will issue a resolution in which it may either reject the request for an APA, a decision which is not subject to any appeal, or accept it fully or in part. In that case, the SII is required to draft a resolution containing the APA, which must be signed by the SII and a representative of the taxpayer, who must be duly and expressly authorized to sign it on behalf of the taxpayer. The APA may be a bilateral agreement between the SII and the taxpayer, but it may also have foreign tax authorities as parties to the APA in order to determine in advance the price, value or margin also in foreign jurisdictions. Furthermore, the APA must also be signed by the National Customs Authorities if it involves the importation of goods.

The SII must respond to the taxpayer's APA request within 12 months from the date the taxpayer had submitted all the

[1594] To access Form 1951 and its instructions, see Annexes 4 and 5, respectively, of SII Resolution No. 101; the annex to Form 1951 is contained in Annex 6 of SII Resolution No. 101. Form 1951 and its annexes can be accessed at https://www.sii.cl/normativa_legislacion/resoluciones/2020/reso101.

[1595] See XIII.E.1., for the definition of a Large Taxpayer.

[1596] SII Resolution No. 29, of June 24, 2022.

[1597] TC, Art. 97(4). SII Circular No. 29, of June 24, 2022.

[1598] Tax Code, Art. 200.

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documentation requested by the SII. The SII will issue a certificate once the documentation has been submitted to the SII. The 12-month period starts to run as of the date of that certificate. The APA request is deemed to be rejected if the SII does not respond within that 12-month period or if the taxpayer fails to provide the information requested by the SII. The taxpayer, however, has the right to file a new APA request. The SII cannot make transfer pricing adjustments or, where applicable, customs valuations while the APA or its extensions or renewals are in force with respect to related party transactions contained in the APA, provided the prices, values, margins or imports reported by the taxpayer are aligned with those contemplated in the APA.

The APA is applicable as of the taxable year in which it is signed plus the following four taxable years. The APA may be extended or renewed if the taxpayer, the SII and, if applicable the Customs Authorities and foreign tax authorities agree to do so. The APA may also contemplate that its application up to the three years preceding the year in which the APA was executed.

The SII has the duty to keep the content of the APA and the information submitted by the taxpayer in the APA request secret, unless the taxpayer authorizes the SII to include it in its list of socially responsible taxpayers that is publicly available.[1599]

Throughout the duration of the APA, the SII must monitor the taxpayer's compliance with its terms. To that end, the APA must indicate the manner and the timing in which the taxpayer will submit to the SII an annual report evidencing that its transfer price is in conformity with the terms of the APA. If the taxpayer fails to submit the report, it will be notified to file with a warning that the SII may terminate the APA if the taxpayer does not submit the report within 30 days. Termination of the APA will come into effect in the same taxable year in which the SII resolves to terminate it. During the duration of the APA, the SII may not make tax assessments based on transfer pricing grounds provided that the transactions under review are contained in the APA and the prices, values or margin used by the taxpayer are within the ranges established in the APA.

The SII has the right to cancel the APA at any time if it finds that the information submitted by the taxpayer in the APA request was either wrong, maliciously false, or the information or essential circumstances that led the SII to accept the APA, or the extension or renewal thereof, have varied substantially. In its resolution, the SII is required to justify the cancellation of the APA on the basis of one of those grounds by means of proving why the information initially submitted was wrong, maliciously false, or substantially different. If the cancellation of the APA is based on wrong information or a substantial variation of the information, the cancellation comes into effect as of the date it is communicated to the taxpayer; if, on the other hand, the cancellation is based on the grounds that the taxpayer had submitted information that was maliciously false, then the cancellation has retroactive effect to the date in which the APA, or its extension or renewal, was signed.[1600] In those cases, the taxpayer not only may be levied penalties ranging from 100% up to 300% of the tax due, but it may also be prosecuted and imprisoned. The decision by the SII to cancel an APA may not be appealed by the taxpayer. However, the taxpayer has the right to challenge tax assessments made by the SII in tax audits arising from the inapplicability of the APA through the ordinary tax procedures.

The taxpayer may also unilaterally cancel an APA but only if the information or the essential circumstances that led it to execute the APA, or the extensions or renewals thereof, have changed substantially. In that event, the taxpayer is required to notify the SII. The unilateral cancellation is effective on the date of the notice.

For a discussion of the Chilean Competent Authority functions and procedures, see Chapter 35 of 6885 T.M., *Income Tax Treaties: Competent Authority Functions and Procedures of Selected Countries (A–C)*.

[1599] For a list of Chilean companies that are signatories to this program, see http://www.sii.cl/mipyme/proyecto_rset.htm.

[1600] TC, Art. 97(4) and ITL, Art. 41-E(7). Submitting an APA request with information that is maliciously false may be subject to imprisonment. Moreover, tax due arising from a tax assessment that is based on maliciously false information is subject to a fine that ranges from 50% to 300% of the tax due.

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XIV. Avoidance of Double Taxation

Under the ITL, the international double taxation of foreign source income can be avoided via the foreign tax credit rules discussed in V.B.10.a., above. In addition, Chile's tax treaties generally provide for the credit method for the avoidance of double taxation.

A. Tax Treaty Interpretation and Application

1. Creation of Tax Treaty Relationships

Tax treaties for the avoidance of double taxation entered into by Chile are negotiated by the SII and are generally signed by the Minister of Finance on behalf of the Chilean government. The first tax treaty signed by Chile was with Argentina in 1976, and it followed the Andean Pact model, where double taxation is avoided by only allowing the source State to tax income.

All subsequent treaties signed by Chile have followed, in general terms, the Organisation for Economic Cooperation and Development (OECD) Model Convention, with certain variations based on Chilean domestic legislation. For instance, all tax treaties signed by Chile include the "Chile clause", whereby the withholding tax rate on dividend distributions provided by the tax treaty is not applied as long as Chile's income tax regime continues to be based on a semi-integrated system, i.e., the withholding tax liability on the dividend distribution can be reduced by the first category tax paid by the distributing company on the profits being distributed. Exceptionally, Chile may follow another model depending on the country with which it is negotiating, e.g., the US Model was followed when Chile negotiated the treaty with the United States.[1601]

The Congress has the exclusive power to ratify international treaties signed by Chile. Hence, once a treaty is signed, the President of Chile must submit it to the Congress for its ratification.[1602] The ratification process requires congressional approval through the enactment of a special law that must then be promulgated by the President and published in the *Diario Oficial* (Official Gazette).

During the ratification process, the Ministry of Finance and the Directorate of the Budget remit reports to the Chilean Congress for each tax treaty being ratified. These reports contain very general statements and do not provide any legal analysis or any meaningful analysis of the economic impact on tax revenues.

The provisions in a tax treaty have a status superior to that of domestic legislation.[1603] Only the President of Chile has the power to revoke a treaty, but he or she is required to seek the opinion of the Congress within 15 days from the date the President denounces the treaty.

2. Administrative Measures Dealing with Tax Treaty Provisions

The SII interprets both comprehensive and specialized tax treaties via *Oficios* and *Circulares* (Circulars) and expresses its position on the application of certain treaty clauses by issuing tax rulings.[1604]

3. Mutual Agreement Procedure

a. Competent Authority and Applicable Cases

The SII is also the competent authority in Chile for the application of the Mutual Agreement Procedure (MAP) contained in all the tax treaties signed by Chile.[1605] For purposes of handling MAPs, the SII is assisted by the Chief of the International Risk Analysis Department of the Deputy Directorate of Taxation when the issue at hand involves a transfer pricing matter or the attribution of profit to a PE, or, with respect to all the other matters, by the Chief of the International Norms Department of the Deputy Directorate of Norms.

None of the tax treaties signed by Chile contain a mandatory arbitration clause as a means to resolve tax controversies. In fact, under the tax treaties, the competent authorities are not under any obligation to reach an agreement to resolve the case; they only have an obligation to negotiate.

All Chile's tax treaties provide that Chilean tax residents may file a MAP with the SII. Chilean nationals may also file a MAP if the issue at hand is covered under the non-discrimination clause of the relevant treaty.

The SII has published instructions on the steps taxpayers must follow when applying for a MAP.[1606] The SII has also listed some examples of cases in which a MAP can be filed:

(i) An individual is considered a resident of both Chile and the other Contracting State, leading to double taxation. The individual must file the MAP with the competent authority of the Contracting State in which the individual believes he or she is resident.

(ii) A taxpayer is subject to tax in the other Contracting State as a result of a transfer pricing adjustment arising

[1601] The negotiations between the IRS and the SII took more than 10 years. The first round started in December 1999 and the fourth and last round took place in December 2009. One of the main obstacles during the negotiation process was the point regarding the exchange of information between tax administrations, since, at that time, the Chilean legislation restricted the SII access to certain banking information and, therefore, this prevented information from being exchanged with foreign tax authorities. This issue was resolved once Chile passed Law No. 20,406, allowing the SII to access banking information on taxpayers and exchange it with foreign tax administrations under an exchange of information clause contained in a tax treaty.

[1602] Constitution, Art. 58.

[1603] Constitution, Art. 5; Tax Code, Art. 5.

[1604] For instance, the SII has published a number of Circulars dealing with the impact the most favored nation clause has had on a number of tax treaties as a result of the signature of the Chile-Japan tax treaty, which entered into general effect on January 1, 2017. The treaty establishes a withholding tax rate of 10% on interest payments, which became applicable on January 1, 2019. As a result of this rate, the SII has indicated in a number of Circulars that the withholding tax rate on interest is reduced to 10% as of that date when paid to residents (other than financial institutions) of Argentina, Austria, China, the Czech Republic, Denmark, Ecuador, France, Ireland, Italy, Poland, South Korea, Spain, Sweden, and the United Kingdom. See Circulars Nos. 23 and 50, of 2018, and No. 27, of 2019, and No. 5, of 2020.

[1605] Most tax treaties signed by Chile designate the Ministry of Finance, the SII Director or their authorized representatives as the competent authority, although some tax treaties only designate the Ministry of Finance as the competent authority. In any case, the Ministry of Finance has issued a resolution delegating this function to the SII Director.

[1606] Circular No. 13, of March 18, 2022, amended by Circular No. 19, of April 19, 2023. These instructions are based primarily on OECD Model Convention, Art. 25, as well as on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

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from transactions carried out with a Chilean related party. That Chilean related party may file a MAP with the SII.

(iii) A Chilean resident is subject to Chilean tax as a result of a transfer pricing adjustment made by the SII arising from transactions carried out with a related party that is a resident of the other Contracting State. The Chilean resident may request that the adjustment be reduced or eliminated, or have the SII address this scenario with the other competent authority.

(iv) A Chilean resident believes the other Contracting State has levied a withholding tax that is not in accordance with the tax treaty. The Chilean resident may bring a MAP before the SII.

(v) A Chilean resident operating in the other Contracting State through a PE is subject to tax in that State as a result of an adjustment arising from the profits attributed to that PE. The taxpayer may bring a MAP before the SII with a view to having the SII address the issue with the competent authority of the other Contracting State.

(vi) A Chilean resident generates income from the conduct of a business activity in the other Contracting State and that income is subject to tax in Chile and in the other Contracting State, despite the fact that the Chilean resident does not operate in that State through a PE pursuant to the tax treaty. The taxpayer may bring a MAP before the SII with a view to having the SII address the issue with the competent authority of the other Contracting State.

(vii) A Chilean resident is in disagreement with a tax adjustment made either in Chile or in the other Contracting State because he or she believes that either the conditions to apply the tax treaty abuse provisions are not met, or the application of the domestic anti-abuse provisions are in conflict with the tax treaty.

b. Procedure

MAP requests must be addressed to the SII Director and filed electronically at oficina.partes@sii.cl within the period established in the applicable tax treaty. If the treaty is silent as to this deadline, a MAP request may be filed at any time. While there is no need to pay the alleged tax due before filing a MAP, the taxpayer must show that there is a probable risk that the measures adopted by one of the Contracting States will lead to the imposition of the tax, and this position must be supported by evidence. A MAP request filed during the course of a tax audit carried out by the SII will not prevent the audit continuing.

If the MAP request is admitted by the SII, the SII must then determine whether that request is well grounded. A MAP request is deemed well-grounded if it is reasonable to conclude that one of the Contracting States has levied or will levy a tax that is not in accordance with the tax treaty. The SII has two months to review the documentation submitted by the taxpayer, verify that the submission meets with the formalities, and determine whether the case is well-grounded. The SII may also request the taxpayer to provide additional documentation or to clarify the request, in which case the taxpayer has two months to do so. If the taxpayer does not respond in a timely manner, the MAP request will be regarded as not submitted. The admissibility of the case must be notified to the taxpayer within three months since the request was filed or the additional documentation was submitted.

c. Requirements

The MAP request must contain the following information:

(i) The Chilean taxpayer's name and contact details and, if applicable, the identity and contact details of the foreign taxpayers. A copy of the powers of representation must be attached when a representative is acting on behalf of the taxpayer;

(ii) A description of the issue and a reasonable interpretation of the applicable rule. In the cases where the taxpayer wants to ensure that the MAP request is filed on a timely basis but he or she is unsure whether a measure that is contrary to the tax treaty will be imposed, the taxpayer may also file a protective request, requesting the SII not to consider the MAP application until further notice;

(iii) A detailed description of the factual background of the case, including the taxable years involved and the tax amounts at stake, and documentary evidence supporting those facts;

(iv) A description of the clauses in the tax treaty that the taxpayer believes are not being interpreted or applied correctly by either the SII and/or the tax authorities of the other Contracting State, as well as the taxpayer's interpretation of such clauses;

(v) If the dispute involves a transfer pricing adjustment, the taxpayer must indicate whether a MAP has been or will be filed before the competent authority of the other Contracting State, in which case the taxpayer must attach a copy of the foreign MAP request and supporting documentation;

(vi) Whether the taxpayer or a foreign party has filed any administrative or judicial claims in Chile or abroad in connection with the matter that is subject to the MAP request. The taxpayer must attach a copy of the claim even if said administrative or judicial claims were submitted after the MAP request was filed; and

(vii) Other relevant information relevant to the case, such as existing advanced pricing agreements.

The taxpayer must translate all documents into English if the original copies are written in a foreign language other than in English. The SII may also request documents to be translated into Spanish or into the official language of the other Contracting State. Filing a MAP before the SII is free of charge.

d. Possible Scenarios

The following scenarios may then occur:

(i) If the SII concludes that the request is not well-grounded, it must notify it to the competent authority of the other Contracting State. If that competent authority does not reply within 30 days, the MAP is deemed to be concluded. If, on the other hand, the other competent authority responds within that 30-day period, the SII must then analyze the response and determine whether to continue with the case or terminate it;

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(ii) If the SII determines that the request is well-grounded and the measure being challenged is exclusively within its jurisdiction, it must unilaterally provide a solution to the taxpayer's request pursuant to the provisions of the relevant tax treaty and, if necessary, to the domestic provisions;

(iii) If the SII determines that the request is well-grounded, but the solution requires the intervention of the other competent authority, the SII will try to reach an agreement with that competent authority; and

(iv) If the MAP has been initiated in the other Contracting State and involves a transfer pricing adjustment made by either of the tax authorities, the SII will notify the Chilean taxpayer once it has been notified of the MAP request by the other competent authority. However, in this case, the Chilean taxpayer does not need to file a MAP request before the SII.

Where the MAP has been brought to the SII and the taxpayer has been notified that a solution has been reached, whether unilaterally by the SII or in agreement with the other competent authority, the taxpayer must request the implementation of the decision either before the Regional SII Director or the Department of Large Taxpayers. In the request for implementation, the taxpayer must withdraw or waive its right to bring judicial or administrative actions. If the applicable tax treaty establishes a timeframe for implementing the solution, the SII must respect that timeframe. If, on the other hand, the treaty does not contain a timeframe and the solution gives the taxpayer the right to a tax refund, the SII has three years within which to make the refund.[1607] The three-year period begins to run depending on the circumstances, as follows:

(i) In transfer pricing cases, cases involving the attribution of income to a PE and any other case involving a measure taken by the SII, the three-year period begins to run from the working day following that on which the taxpayer is notified that a solution has been reached;

(ii) In transfer pricing and PE income attribution cases initiated as a result of an adjustment made by the tax authorities of the other Contracting State, the three-year period begins to run from the first business day following the day on which the tax authorities notified the taxpayer of the tax adjustment, unless the taxpayer resident in the other Contracting State challenges the adjustment, in which case the period begins to run on the first business day following the day on which the challenge was resolved;

(iii) In cases not involving transfer pricing or income attribution adjustments that were initiated as a result of a measure taken by the tax authorities of the other Contracting State and the tax sought to be refunded was voluntarily paid by the taxpayer based on its own interpretation of either the Chilean tax rules or those of the other Contracting State (and not on an interpretation made or a measure taken by the SII), the three-year period begins to run from the business day following the day on which the tax at issue was paid; and

(iv) In cases not involving transfer pricing or income attribution adjustments that were initiated as a result of a measure taken by the tax authorities of the other Contracting State and the tax sought to be refunded was paid by the taxpayer based on an interpretation made or a measure taken by the SII, the three-year period begins to run from the business day following the day on which the taxpayer was notified that a solution had been reached.

It is not necessary to exhaust all administrative and judicial actions prior to filing a MAP. Therefore, filing a MAP does not suspend or interrupt administrative or judicial timeframes to file an action; likewise, filing an administrative or judicial action does not interrupt the timeframe to file a MAP if the relevant tax treaty provides one. However, if the taxpayer files a judicial action on the same matter as the one contained in the MAP, the SII will not resolve the MAP until either the court decides on the case, or the taxpayer decides to withdraw it.

4. Tax Treaty Interpretation

The Vienna Convention on the Law of Treaties must be applied when interpreting the tax treaties signed by Chile. Consequently, tax treaties must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in their context and in the light of their object and purpose.[1608] Furthermore, a tax treaty must be interpreted on an isolated basis, without taking into account domestic legislation, unless the tax treaty remits to domestic legislation. In practice, however, even when there is no specific remittance by the tax treaty to domestic legislation, the SII makes use of it when interpreting tax treaties.

Given the lack of official explanatory texts remitted to the Congress during the ratification process, the OECD Model Convention and the Comments thereto are probably the most important texts used in Chile for purposes of interpreting tax treaties. However, since they are not part of the tax treaty, their authority is limited as a legal source and can only be used as a legal reference, albeit a very persuasive one. The SII has made use of the Commentaries to the OECD Model Convention when issuing interpretative *Oficios* or *Circulares*, but the degree of authority given to the Commentaries depends on whether a particular Commentary serves the SII's own interests. For instance, in an *Oficio* of 2005, the SII regarded the OECD Commentaries as non-binding.[1609] In a subsequent *Oficio*, the SII treated the OCED Commentaries as having a certain degree of binding authority and, as such, should be treated as doctrine.[1610] The SII has also considered the OECD Commentaries as not binding but included as an instrument contemplated under Article 31 of the Vienna Convention on the Law of Treaties and, as such, a valid instrument to interpret tax treaties.[1611] Finally, the SII has also regarded the OECD Commentaries as binding and, as such, supplementary means of interpretation of tax treaties pursuant to Article 32 of the Vienna Convention.[1612]

[1607] Tax Code, Art. 126.

[1608] Vienna Convention on the Law of Treaties (1969), Art. 31(1).

[1609] *Oficio* No. 2,890, of August 4, 2005.

[1610] *Oficio* No. 2,521, of August 27, 2007.

[1611] *Oficio* No. 2,176, of April 26, 2009.

[1612] Circular No. 57, of October 16, 2009.

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5. Certificates of Tax Residence

Withholding tax agents must have a certificate of residence of the payee when applying a lower withholding tax rate contained in a tax treaty.[1613] The certificate of residence must be issued by the competent authority of the other contracting state. The certificate may be issued on paper or electronically. As a rule, every certificate of residence must be legalized or be authenticated with the Apostille of The Hague Convention, unless the SII can verify its authenticity on the foreign competent authority's website or by other technological means made available by that authority.[1614] A certificate of residence is valid for the period indicated therein; if the certificate does not indicate an expiration date or if the foreign legislation does not establish specific validity periods for certificates issued by its authorities, it is assumed that a certificate of residence will expire on the last day of the calendar year in which it is issued.

For a list of Chile's tax treaties and other tax-related agreements, see International Tax Treaties.

B. Income Tax Treaties

Chile has signed three types of double taxation agreements on income: (i) a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI); (ii) bilateral tax treaties with specific countries for the avoidance of double taxation; and (iii) limited agreements for the avoidance of double taxation in specific sectors of the economy, e.g., shipping and/or air transport.

1. Multilateral Instrument

Chile is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The Chilean Congress finalized the ratification process in 2020 and deposited its instrument of approval with the OECD on November 26, 2020, together with its MLI positions, reservations and the list of covered tax agreements. For Chile, the MLI entered into force on March 1, 2021. Hence, for covered tax agreements for which the MLI is already in force, the MLI applies in Chile on or after January 1, 2022, for taxes withheld at source as well as for all other taxes levied in taxable years beginning on or after that date.

The primary objective of the MLI is to transpose the results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide. The MLI, therefore, modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

Under the provisions of the MLI, at the time of the signature, Chile provided a list of reservations and notifications to the MLI.[1615] The reservations to the MLI made by Chile are the following:

(i) The MLI provisions dealing with transparent entities are not to apply to tax treaties that already contain a provision dealing with transparent entities.[1616] These tax treaties are the ones signed with Japan, New Zealand, Sweden, the United Kingdom, the United States, and Uruguay.

(ii) The MLI provisions dealing with dual resident entities are not to apply in their entirety.[1617]

(iii) The preamble language contained in Article 6(1) does not to apply to tax treaties that already contain preamble language describing the intent of the Contracting States to eliminate double taxation without creating opportunities for non-taxation or reduced taxation. These tax treaties are the ones signed by Chile with Argentina, China, Italy, Japan, and Uruguay.[1618]

(iv) The anti-abuse provision contained in Article 7(1) of the MLI does not to apply to Chile's tax treaties that already contain provisions that deny all of the benefits where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits. This reservation is applicable to the tax treaties signed by Chile with Argentina, China, Italy, Japan, and Uruguay.[1619]

(v) The provisions contained in Article 7(8) through (13) of the MLI dealing with the simplified limitation on benefits provision are not to apply to tax treaties that already contain such provision. This reservation affects the tax treaties signed by Chile with Argentina, China, the United States, and Uruguay.[1620]

(vi) The entirety of Article 8 of the MLI regarding taxation of dividends is not to apply to any of the tax treaties entered into by Chile.[1621]

(vii) The provision contained in Article 9(1)(a) of the MLI does not apply to Chilean tax treaties that already contain a provision dealing with a period for determining whether the relevant real estate value threshold is met. The affected tax treaties are the ones signed with Argentina, China, Italy, Japan, and Uruguay.[1622]

(viii) The entirety of Article 10 of the MLI does not apply to tax treaties signed by Chile that already contain the provision described in Article 10(4) of the MLI that denies or limits benefits that would otherwise be granted to an enterprise of a Contracting State which derives income from the other Contracting State that is attributable to a permanent establishment of the enterprise situated in a third jurisdiction. The affected tax treaties are the ones signed by Chile with Argentina, Austria, China, the Czech Republic, Italy, Japan, the United States, and Uruguay.[1623]

[1613] SII Resolution No. 151, of December 9, 2020.

[1614] Circular No. 47, of August 3, 2021.

[1615] The reservations and notifications made by Chile at the time of the signature are preliminary and subject to change until such time as Chile deposits the ratification instrument with the MLI's depositary, i.e., the OECD.

[1616] MLI, Art. 3(5)(b).

[1617] MLI, Art. 4(3)(a).

[1618] MLI, Art. 6(4).

[1619] MLI, Art. 7(15)(b).

[1620] MLI, Art. 7(15)(c).

[1621] MLI, Art. 8(3)(a).

[1622] MLI, Art. 9(6)(d).

[1623] MLI, Art. 10(5)(b).

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(ix) Article 11 of the MLI regarding the application of tax treaties to restrict a party's right to tax its own residents does not apply to the tax treaty between Chile and the United States because it already contains such a provision.[1624]

(x) The entirety of Article 14 of the MLI on splitting-up of contracts is not to apply to any of the tax treaties signed by Chile.[1625]

(xi) Chile has reserved the right for the first sentence of Article 16(1) of the MLI, which deals with mutual agreement procedures, not to apply to its tax treaties on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its tax treaties a person may present a case to the competent authority of the Contracting State of which that person is a resident or, if the case involves non-discrimination based on nationality, to that of the Contracting State of which that person is a national.[1626]

(xii) Chile has reserved the right for the entirety of Article 17 of the MLI on corresponding adjustments not to apply to tax treaties that Chile has notified that already contain a provision requiring a Contracting State to make an appropriate adjustment to the amount of the tax charged on the profits of an enterprise of that Contracting State where the other Contracting State includes those profits in the profits of an enterprise of that other Contracting State and taxes those profits accordingly, and the profits so included are profits which would have accrued to the enterprise of that other Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises.[1627]

The notifications to the MLI made by Chile are the following:

(i) The tax treaties that are covered by the MLI are all the tax treaties that Chile has signed until June 7, 2017, the day of the MLI's signature, including those that are pending ratification, such as the tax treaty signed with the United States.[1628]

(ii) Chile has opted to apply the preamble language contained in Article 6(3) of the MLI with respect to those tax treaties that do not contain a preamble text referring to a desire to develop an economic relationship or to enhance co-operation in tax matters.[1629]

(iii) Chile has chosen to apply the simplified limitation on benefits provision pursuant to Article 7(6) of the MLI.[1630] Furthermore, Chile has included a statement accepting the application of the principal purpose test under Article 7(1) of the MLI alone but only as an interim measure as it intends, where possible, to adopt a limitation on benefits provision in addition to or in replacement of the principal purpose test through bilateral negotiations, as the simplified limitation on benefits provision can only apply with respect to a tax treaty where the other Contracting State has chosen to apply it.[1631]

(iv) Chile has notified the Depositary of the list of tax treaties that already contain a provision described in Article 9(1) of the MLI regarding the taxation of the sale of shares in real estate-rich companies.[1632]

(v) Chile has notified that a significant number of tax treaty jurisdictions have the provisions that are contained in Article 12(3)(a) and (b) of the MLI dealing with the artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies.[1633]

(vi) Chile has not made a reservation to Article 13 of the MLI in connection with the artificial avoidance of permanent establishment status through the specific activity exemptions and has chosen not to apply an option under Article 13(1) of the MLI. Instead, it has notified the Depositary of the tax treaties that contain the provision contained under Article 13(5)(b) of the MLI.[1634]

(vii) Chile has notified that a significant number of its tax treaties contain a provision that provides that a case referred to in the first sentence of Article 16(1) of the MLI must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.[1635]

(viii) Chile has notified the Depository that most of its tax treaties do not contain a provision described in Article 16(4)(b)(ii) of the MLI. Therefore, the second sentence of paragraph 2 of Article 16 of the MLI, which provides that any agreement reached will be implemented notwithstanding any time limits in the domestic law of the Contracting States, will apply to those tax treaties.[1636]

(ix) Chile has notified the Depository of the tax treaties that do not contain the provision described in Article 16(4)(c)(ii) of the MLI that provides that the competent authorities of the Contracting State may consult together for the elimination of double taxation in cases not provided for in the tax treaty. Therefore, the second sentence of Article 16(3) will apply to those tax treaties, thus allowing for such consultation.[1637]

(x) Chile has notified the Depository that, solely for the purpose of the application of Article 35(1)(b) and 5(b) of the MLI, Chile has chosen to replace the reference to "taxable periods beginning on or after the expiration of a pe-

[1624] MLI, Art. 11(3)(b).
[1625] MLI, Art. 14(3)(a).
[1626] MLI, Art. 16(5)(a).
[1627] MLI, Art. 17(3)(a).
[1628] MLI, Art. 2(1)(a)(ii).
[1629] MLI, Art. 6(6).
[1630] MLI, Art. 7(17)(c).
[1631] MLI, Art. 7(17)(a).
[1632] MLI, Art. 9(7).
[1633] MLI, Art. 12(5) and (6).
[1634] MLI, Art. 13(8).
[1635] MLI, Art. 16(6)(b)(ii).
[1636] MLI, Art. 16(6)(c)(ii).
[1637] MLI, Art. 16(6)(d)(ii).

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riod" with a reference to "taxable periods beginning on or after January 1 of the next year beginning on or after the expiration of a period."[1638]

Although the provisions contained in the tax treaties that Chile has signed are fairly similar, the discussion below is generally made with reference to the Chile-United States tax treaty.

2. Bilateral Tax Treaties

a. Taxes Covered

The tax treaties signed by Chile apply to income taxes and taxes on capital. In the case of the Chile-United States tax treaty, the Chilean taxes covered are those provided for in the ITL.[1639]

The Chile-United States tax treaty was signed on February 4, 2010. After more than 10 years during which advice and consent to ratification was awaited from the U.S. Senate, that advice and consent was finally given on June 23, 2023 and President Biden signed the instrument of ratification in December 2023. Pursuant to Article 29(1), the Chile-United States treaty entered into force on December 19, 2023 after the United States notified Chile that it had completed the required procedures for bringing the treaty into force. Under Article 29(2), the provisions of the treaty have effect:

(i) With respect to taxes withheld at source, for amounts paid or credited on or after the first day of the second month following the date on which the treaty entered into force, i.e., February 1, 2024; and

(ii) With respect to other taxes, for taxable periods beginning on or after January 1, 2024.

For the text of the treaty, see International Tax Treaties.

b. Taxation of Business Income

(1) Permanent Establishment

The tax treaties signed by Chile, including the Chile-United States tax treaty, define a permanent establishment (PE) as a fixed place of business through which an enterprise wholly or partly carries on its business, including a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry, or any other place of extraction or exploitation of natural resources.[1640] The tax treaties also provide that a PE includes a building site or construction or installation project, and supervisory activities related thereto, but only to the extent that the site, project or activities last for more than six months.[1641] A PE also includes the furnishing of services, including consulting services, undertaken by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only to the extent that those activities continue within the country for a period or periods aggregating more than 183 days in any 12-month period.[1642] The tax treaties entered into by Chile thus far do not contain a rule on whether the time spent by subcontracted personnel should also be taken into account for purposes of determining whether the six-month or 183-day period is met. However, certain tax treaties, including the Chile-U.S. tax treaty, provide that, for purposes of determining whether such periods are met by the foreign enterprise, the time spent by related parties of the foreign enterprise must be taken into account as long as the activities of both parties are connected.[1643]

If the services rendered in Chile by a resident of a Contracting State do not constitute a PE, the fees paid by the Chilean customer should not be subject to the Chilean first category tax or additional tax. Chile's tax treaties do not include technical services or assistance within the definition of royalties. Accordingly, fees paid for such assistance should not be subject to Chilean taxation if the provision of such assistance does not give rise to a PE in Chile, as they should be treated as business profits or as payments for independent personal services. Therefore, residents of treaty countries, including U.S. residents, rendering technical services or assistance should no longer be subject to the Chilean additional tax of 20%.

The tax treaties entered into by Chile provide that the following activities do not constitute a PE: (i) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise, as well as the maintenance of a stock of goods or merchandise for such purpose; (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for purposes of processing them by another enterprise; and (iii) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of advertising, supplying information, the carrying out of scientific research, and any other similar activity that is of preparatory or auxiliary nature.[1644]

Chile's tax treaties also provide that certain activities are deemed to create a PE, regardless of whether the nonresident corporation maintains a place of business in Chile. Specifically, a person (other than an independent agent, as explained below) acting in Chile as an agent of an enterprise of the other treaty country that has and habitually exercises the authority to conclude contracts that are binding on that enterprise is generally deemed to create a PE in Chile for the enterprise, unless the activities of the person are comprised within one or more of the activities stated in the above paragraph.[1645] On the other hand, and as a general rule, an enterprise of a treaty country will not create a PE in Chile if it carries on business in Chile through an independent agent, broker or general commission agent, and that agent or broker acts in the ordinary course of its business as an independent agent.[1646] However, if the activities of the independent agent or broker are devoted wholly or almost wholly on behalf of the foreign enterprise and the financial or commercial relationship between the agent or broker and the principal has conditions that would not normally be agreed upon by independent agents, then the agent or broker will not be regarded as

[1638] MLI, Art. 35(3).

[1639] Chile-United States tax treaty, Art. 2(3)(b).

[1640] Chile-United States tax treaty, Art. 5(1) and (2).

[1641] The Chile-United States tax treaty also includes a drilling rig or ship used for exploration of natural resources if the activity lasts more than six months, as well as an installation used for the on-land exploration of natural resources but only if it lasts or the activity continues for more than three months. Chile-U.S. tax treaty, Art. 5(3)(a) and (b).

[1642] Chile-U.S. tax treaty, Art. 5(3)(c).

[1643] Chile-U.S. tax treaty, Art. 5(3).

[1644] Chile-U.S. tax treaty, Art. 5(4).

[1645] Chile-U.S. tax treaty, Art. 5(5).

[1646] Chile-U.S. tax treaty, Art. 5(6).

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an agent of independent status. Therefore, it would appear that, under certain tax treaties, a PE could be avoided by engaging the services of an independent agent, even if it is on a full-time basis, provided the conditions in the agency agreement are of the type that would have been agreed upon by an independent agent.[1647]

A company domiciled in the other treaty country does not have a PE in Chile just because it has a subsidiary in Chile. Rather, the Chilean subsidiary is seen as a separate legal entity for purposes of determining whether the company has a PE in Chile.[1648] While this provision is consistent with most treaties, it has no Chilean counterpart and serves to clarify the status of companies domiciled in tax treaty countries with subsidiaries in Chile.

(2) Taxation of Business Profits

Under the ITL, Chilean source income that is not subject to the additional tax is generally subject to either the first category tax or the surtax. Under the tax treaties entered into by Chile, if a company of a tax treaty country carries on a business in Chile through a PE, then the business profits that are attributable to the PE will be subject to Chilean income tax on a net basis.[1649] However, if the activity does not give rise to a PE, then the consideration paid for such activity will not be subject to taxation in Chile. This should eliminate the ability that Chile currently has to tax nonresidents for services rendered to Chilean customers when the rendering of those services does not create a taxable presence in Chile. Therefore, the current Chilean withholding tax applicable to service fees paid by Chileans to nonresidents no longer applies to resident of tax treaty countries even though the services are rendered to and paid by Chilean companies or individuals residing in Chile.

The business profits articles of Chile's tax treaties also contain an arm's length rule for PEs, in that the business profits that are to be attributed to a PE are those that it might be expected to make if it were a distinct and independent company engaged in the same or similar activities under the same or similar conditions.[1650] Moreover, the tax treaties allow for the deduction of expenses that are attributable to the PE, regardless of where the expenses are incurred, including a reasonable allocation of executive and general administrative expenses. Importantly, the Chile-U.S. tax treaty specifically also allows as a deduction a reasonable allocation of research and development (R&D) expenses and interest.[1651] This provision marks an important policy change by Chile in comparison to its policy in other tax treaties it has signed, such as the Chile-Canada[1652] and Chile-Mexico[1653] tax treaties, under which royalties, certain fees, commissions and interest paid by a Chilean PE to its Canadian or Mexican head office are not deductible for Chilean income tax purposes.

c. Taxation of Investment Income

(1) Dividends and Branch Profits Tax

The tax treaties entered into by Chile limit to 5% the rate of withholding tax on the distribution of dividends by a company to a corporate shareholder that is the beneficial owner of a certain percentage of the shares of the distributing company. In the case of the Chile-U.S tax treaty, the equity threshold is set at 10% of the voting stock of the distributing corporation.[1654] In all other cases, the withholding tax is limited to a higher percentage.[1655] However, all tax treaties entered into by Chile provide that the first category tax on net taxable income and the additional tax on dividend distributions continue to apply as long as the first category tax constitutes a credit against the additional tax. Thus, Chile continues to apply the additional tax to dividends distributed to shareholders resident in tax treaty countries. Therefore, the above withholding tax rates should not apply while the additional tax is levied.[1656]

The tax treaties entered into by Chile limit the imposition of a branch profits tax by Chile to the withholding tax that would have been levied had the remittance of branch profits been a dividend distributed by a subsidiary resident in Chile.[1657] However, as in the case of dividends, this limitation does not apply to the extent the first category tax is creditable against the additional tax. Thus, the after-tax net income of Chilean PEs of companies located in treaty countries continues to be subject to the additional tax. For a discussion of this tax, see VII., above.

[1647] Protocol to the Chile-U.S. tax treaty, Provision 8 provides that a person will not constitute a PE for his principal if he is independent of the principal both legally and economically, and acts in the ordinary course of his business when acting on behalf of the principal.

[1648] Chile-U.S. tax treaty, Art. 5(7).

[1649] Chile-U.S. tax treaty, Art. 7(1). However, under the Chile-U.S. tax treaty, Chile may nevertheless continue to impose the additional tax on payments for insurance policies contracted with U.S. insurers, but the withholding tax may not exceed 2% of the gross amount of the premiums in the case of policies of reinsurance, and 5% of the gross amount of the premiums in the case of all other policies of insurance. For a discussion of the additional tax on insurance premiums paid to nonresidents, see VI.B.8.

[1650] Chile-U.S. tax treaty, Art. 7(2).

[1651] Chile-U.S. tax treaty, Art. 7(3).

[1652] Convention Between Canada and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed on Jan. 21, 1998 (the "Chile-Canada tax treaty").

[1653] Convention Between the Government of the Republic of Chile and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on April 17, 1998 (the "Chile-Mexico tax treaty").

[1654] Chile-U.S. tax treaty, Art. 10(2)(a).

[1655] Under the Chile-U.S. tax treaty, Art. 10(1)(b), as well as under the Chile-Canada tax treaty, the withholding tax rate is set at 15%, while under the Convention Between the Kingdom of Spain and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed on July 7, 2003 ("the Chile-Spain tax treaty"), the withholding tax rate is limited to 10%. Under the Chile-U.S. tax treaty, however, dividends are free from withholding tax if the beneficial owner of the dividends is an entity that is established and maintained in the United States principally to provide or administer pensions or other similar benefits to employed and self-employed persons and that is generally exempt from tax in the United States, provided such dividends are not derived from the carrying on of a trade or business by the beneficial owner or through an associated enterprise. Chile-U.S. tax treaty, Art. 10(3).

[1656] Protocol to the Chile-U.S. tax treaty, Provision 12(a). However, if at any time, under the domestic law of Chile, the first category tax ceases to be fully creditable in computing the amount of additional tax to be paid, the additional tax imposed by Chile will be limited by the treaty provisions. Furthermore, if the rate of additional tax were to exceed 35%, the additional tax could not exceed 15%. Chile-U.S. tax treaty, Art. 10 does not apply if the dividend is paid out of an investment that is subject to the foreign investment contract under the Foreign Investment Statute DL 600. For a discussion of the additional tax on dividend distributions made to nonresidents, see VI.B.2.

[1657] Chile-U.S. tax treaty, Art. 10(7).

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(2) Interest

Interest paid on loans granted by lenders resident in tax treaty countries is generally subject to a reduced withholding tax of either 10% or 15%. Under the Chile-U.S. tax treaty, the withholding tax rate is further reduced to 4% if the lender is: (i) a bank or insurance company; (ii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business, such as issuing letters of credit or providing guarantees or charge and credit card services, involving transactions with unrelated parties, where the lender is unrelated to the payer of the interest; (iii) an enterprise that sold machinery and equipment, where the interest is paid in connection with the sale on credit of such machinery and equipment; or (iv) any other enterprise if, during the three years preceding that in which the interest is paid, it derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50% of the assets of the enterprise consist of debt-claims against persons who are not deemed to be associated enterprises with the resident borrower.[1658] However, the 4% withholding tax is increased to 10% if interest is paid as part of an arrangement involving back-to-back loans or another arrangement that is economically equivalent and intended to have a similar effect to a back-to-back loan arrangement.[1659] In all other cases, the withholding tax on interest paid to U.S. lenders is levied at a rate of 10%.[1660]

The Chile-U.S. tax treaty attempts to discourage the use of hybrid instruments since income from debt-claims that carry a right to participate in the debtor's profits are regarded as interest if the contract, by its character, clearly evidences a loan at interest.[1661] Furthermore, interest paid by a Chilean company that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person may also be taxed in Chile, but at the rate applicable to dividends distributed on portfolio interest, i.e., 15%.[1662]

(3) Royalties

The tax treaties entered into by Chile also reduce the withholding tax rate on royalties. The withholding tax rate is generally set at 10% or 15%, although under the Chile-U.S. tax treaty the withholding tax rate is further reduced to 2% for royalties paid for the use of industrial, commercial or scientific equipment.[1663]

(4) Capital Gains

The tax treaties entered into by Chile have not produced positive results for the avoidance of double taxation on the taxation of capital gains on the sale of shares in Chilean entities. The Chile-Canada tax treaty and the Chile-Mexico tax treaty provide that nothing in the respective treaty prevents Chile from levying a capital gains tax under its domestic tax rules on the transfer of shares in Chilean entities.

On the other hand, the Chile-Spain and Chile-U.S. tax treaties provide that, except in the case of pension funds, the Chilean capital gains tax on the sale of shares in Chilean companies may not exceed 16%.[1664] Moreover, a capital gain realized by a Spanish or U.S. resident on the sale of Chilean shares will not be subject to Chilean tax if the seller has held, directly or indirectly, less than 20% of the capital of the issuing company within the 12-month period preceding the sale.[1665] Furthermore, gains derived by U.S. resident pension funds from the alienation of shares in Chilean companies may not be taxed in Chile. Likewise, gains derived by a U.S. mutual fund or other U.S. institutional investor from the alienation of shares in a Chilean company may not be taxed in Chile if those shares are substantially and regularly traded on a recognized Chilean stock exchange and the sale took place on such stock exchange.

Gains derived by a U.S. resident from the sale of shares in a Chilean company may not be taxed in Chile if those shares are substantially and regularly traded on a recognized Chilean stock exchange, provided the shares were sold either on a recognized Chilean stock exchange or in a public offer for the acquisition of shares regulated by law, and provided such shares were previously acquired either: (i) on a recognized Chilean stock exchange; (ii) in a public offer for the acquisition of shares regulated by law; (iii) in a placement of first issue shares by that company at the time of the constitution of that company or of an increase in the capital of that company; or (iv) in an exchange of bonds convertible into shares.[1666]

Gains derived by tax treaty residents from the sale of real property located in Chile may still be taxed in Chile.[1667] In that regard, real property generally includes shares in companies deriving more than 50% of their value directly or indirectly from real property situated in Chile.[1668] The tax treaties also allow Chile to tax gains derived from the disposition of personal property that is attributable to a PE or fixed base, as well as gains derived from the alienation of the PE itself.

(5) Income from Real Property

All the tax treaties signed by Chile provide that income derived from real property located in Chile is subject to Chilean

[1658] Chile-U.S. tax treaty, Art. 11(2)(a).

[1659] Chile-U.S. tax treaty, Art. 11(4). The requirement contained in all Chile's tax treaties that the recipient of the interest be the beneficial owner thereof may make entering into back-to-back arrangements more complicated than under domestic legislation. At issue is whether the tax treaties can impose a higher burden on tax treaty residents wishing to benefit from lower Chilean withholding taxation than the ITL itself, which also levies the additional tax on certain interest payments at a rate of 4% even when there is a back-to-back arrangement.

[1660] Chile-U.S. tax treaty, Art. 11(2)(b). However, the withholding tax rate is temporarily increased from 10% to 15% for a period of five years from the date on which Article 11 takes effect. Chile-U.S. tax treaty, Art. 11(3).

[1661] Chile-U.S. tax treaty, Art. 11(5).

[1662] Chile-U.S. tax treaty, Art. 11(9)(a).

[1663] Chile-U.S. tax treaty, Art. 12(2) and (3). To establish if payments in consideration for computer software should be classified as royalty payments, Article 12 of the Commentary to the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital of 2008, which specifically addresses computer software, applies. Protocol to the Chile-U.S. tax treaty, Provision 15.

[1664] Chile-U.S. tax treaty, Art. 13(5).

[1665] Chile-U.S. tax treaty, Art. 11(7).

[1666] Chile-U.S. tax treaty, Art. 11(6).

[1667] Chile-U.S. tax treaty, Art. 13(1).

[1668] Chile-U.S. tax treaty, Art. 13(2)(c).

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income tax.[1669] In this regard, income from real property includes rents, and real property includes property accessory to real property, livestock and equipment used in agriculture and forestry, usufructs on real property, and rights to variable or fixed payments as consideration for the exploitation of mineral deposits and other natural resources. On the other hand, ships, aircraft and containers are not regarded as real property.[1670]

d. Other Income

The Chile-Canada and Chile-Mexico tax treaties provide that income derived by an individual not residing in Chile from rendering professional services or similar activities of an independent character in Chile is subject to Chilean income tax. That tax may not exceed 10% of the gross amount of the fees. The Chile-Spain and Chile-U.S. tax treaties provide that these fees are not subject to Chilean taxation unless the provision of the services gives rise to a PE in Chile.[1671]

The tax treaties authorize Chile to tax salaries, wages and other similar remuneration derived from services performed as an employee in Chile, unless:

(i) The employee is present in Chile for fewer than 183 days in any 12-month period;

(ii) The employer is not a resident of Chile; and

(iii) The remuneration is not deductible in computing the profits of a PE or fixed base in Chile of the employer.[1672]

Tax treaty residents are subject to Chilean income taxation on fees earned in their capacity as directors of the boards of Chilean corporations.

e. Relief from Double Taxation

Foreign taxes paid by Chilean residents on income derived in the other treaty country are creditable against Chilean taxes in accordance with the provisions of the ITL. For a description of the Chilean foreign tax credit rules, see V.B.10.a., above.

C. Exchange of Information Agreements

1. In General

In addition to the standard exchange of information clauses contained in all tax treaties signed by Chile, the government has signed treaties that only deal with the obligation to exchange information. Treaties of this type have been signed with Guernsey, Uruguay, Bermuda and Jersey, although the latter two are not yet in force.

2. Mutual Administrative Assistance in Tax Matters

Chile is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters (MAAT), which was drafted jointly by the OECD and the Council of Europe.[1673] The Convention is a multilateral instrument currently signed by 127 jurisdictions allowing tax administrations in those jurisdictions, including the SII, to prevent tax evasion and avoidance by cooperating among themselves in the assessment and collection of taxes. The administrative cooperation includes exchange of information to recover foreign tax claims.

As a signatory of MAAT and as transposed into Chilean legislation, the TC was amended to allow the SII to ask banks to provide records to allow it to comply with requests made in application of exchange of information clauses contained in tax treaties entered into by Chile with foreign jurisdictions.[1674] The rules contained in the TC must be applied and interpreted pursuant to the recommendations made by the OECD.

However, banks are only under an obligation to provide information if it relates to accounts held by nonresident individuals or legal entities. Banks are required to keep such information for seven years.

Chile has also adopted the OECD's Common Reporting Standards (CRS).[1675] Pursuant to the OECD's Recommendation of the Council on the Standard for Automatic Exchange of Financial Account Information in Tax Matters, the CRS comprises both the model rules on how jurisdictions must request the account information from financial institutions and the Model Convention Between Competent Authorities to Exchange Account Information. Hence, the SII can obtain financial account information from Chilean financial institutions and automatically exchange it with other jurisdictions on an annual basis pursuant to the rules contained in the MAAT itself but also under tax treaties for the avoidance of double taxation and treaties dealing only with exchange of information.

The type of accounts held in Chilean financial institutions that are subject to the CRS are broad since it covers not only current and deposit account, but also custody accounts, equity or debt instruments held in an investment fund, insurance contracts with a redemption value, and annuity contracts. Financial institutions are required to perform due diligence processes relating to pre-existing and new accounts, enroll and test the information delivery systems set forth by the Chilean Ministry of Finance, and report to the SII the relevant CRS information. The SII, in turn, will remit the account information to the Competent Authority of the country of residence of the person holding the account in the Chilean financial institution.

Pursuant to the MAAT, the SII also signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA), pursuant to which the SII is required to automatically exchange on an annual basis with the other Competent Authorities the financial account information obtained under the CRS MCAA, provided it relates to accounts held by residents in the jurisdictions of those Competent Authorities.

Thus, by June 30 of every year, financial institutions must file Form No. 1958 with the SII reporting each of the new and existing accounts held by nonresidents at any time from January 1 through December 31 of the previous calendar year after having performed the due diligence procedure established un-

[1669] Chile-U.S. tax treaty, Art. 6(1) and (3).

[1670] Chile-U.S. tax treaty, Art. 6(2).

[1671] Chile-U.S. tax treaty, Art. 14(1).

[1672] Chile-U.S. tax treaty, Art. 15(2). Under the ITL, employment income derived by nonresidents from services rendered in Chile is sourced in Chile irrespective of the duration of the employee's presence in the country.

[1673] The Chilean government signed the Convention, as amended by a Protocol in 2010, on October 24, 2013. It came into force on July 20, 2016, through Decree No. 104 of the same date.

[1674] TC, Art. 62 *ter*.

[1675] Decree No. 418 of the Ministry of Finance, published in the *Diario Oficial* on July 5, 2017.

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der the MAAT.[1676] The information must include the name of the account holder, the account number, the financial institution in which the account is held, the account balance or value at the end of the calendar year, whether the account was closed during the year, and the amounts deposited into and paid from the account during the year. Financial institutions with no accounts held by nonresidents are also required to file Form No. 1958.

The financial institution may be subject to penalties if it either fails to conduct the due diligence, fails to remit the account information to the SII, or fails to keep the information for seven years. The penalty is equal to one annual tax unit for each of the reportable accounts and is capped at 500 annual tax units per year. The financial institution may challenge the fine by filing a claim with the Tax and Customs Tribunal.

3. Foreign Account Tax Compliance Act

In 2014, while negotiating the income tax treaty with the United States, Chile signed a cooperation agreement with the United States to facilitate the implementation of the Foreign Account Tax Compliance Act (FATCA).[1677] Chile opted for an Intergovernmental Model 2 Agreement, such that Chilean financial institutions are required to report information about financial accounts to the U.S. Internal Revenue Service upon request. Chile excluded private pension funds held by Chilean pension administrators from the application of FATCA.

[1676] SII Resolution No. 94, of October 10, 2024. Form No. 1958 can be accessed in annex 1 of Resolution No. 94, while annex 2 provides instructions on how to fill-in the Form.

[1677] Agreement between the Government of the United States of America and the Government of Chile for Cooperation to Facilitate the Implementation of FATCA, dated March 5, 2014. FATCA came into effect on May 30, 2014.

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Worksheet 2	Chile's Monetary Value of Annual Tax Unit.
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Worksheet 4	Countries or Territories Considered Tax Havens or with Harmful Preferential Tax Regimes.

Working Papers for this Portfolio can be found online at *https://bloombergtax.com.*

Additional Resources

The following forms, among others such as returns (income tax, VAT, and informational), declarations, annual affidavits, and notices, are available in electronic format (in Spanish) on the website of the Chilean Internal Revenue Service (Servicio de Impuestos Internos) at http://www.sii.cl/ayudas/formularios/.

- Form 4415: Application for Tax Registration (RUT) and Notice of Commencement of Activities for Residents http://www.sii.cl/formularios/imagen/4415.PDF.
- Form 4415.1: Application for Tax Registration (RUT) and Notice of Commencement of Activities for Nonresidents http://www.sii.cl/formularios/imagen/F4415_1.pdf.
- Form 1907: Annual Sworn Statement on Transfer Pricing http://www.sii.cl/documentos/resoluciones/2016/reso126_anexo1.pdf.
- Form 1937: Annual Sworn Statement on Country-by-Country Report (Annex to Form 1907) http://www.sii.cl/documentos/resoluciones/2016/reso126_anexo3.pdf.
- Form 1913: Annual Sworn Statement on Global Tax Position www.sii.cl/normativa_legislacion/resoluciones/2024/reso84.pdf.
- Form 1929: Annual Sworn Statement on Foreign Transactions http://www.sii.cl/declaraciones_juradas/suplemento/2017/f1929.pdf.
- Form 1930: Annual Sworn Statement on Indebtedness with Foreign Persons, http://www.sii.cl/documentos/resoluciones/2016/reso121_anexo1.pdf.
- Annual Sworn Statement of Trusts http://www.sii.cl/normativa_legislacion/resoluciones/2018/reso46.pdf.
- Model Sworn Statement for Application of Tax Treaty Rate http://www.sii.cl/documentos/resoluciones/2015/reso48_anexo.pdf.

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