

# Doing business in Chile



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## Preface

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# Introduction



## Geography

Chile stretches along the West Coast of South America from Peru in the North to the South Pole in the Antarctic. Its continental territory and offshore islands cover 302,500 square miles and the Antarctic territory 500,000 square miles. It borders on Peru on the North and on Bolivia and Argentina on the East. Continental territory is often described as a long and narrow strip of land. Its 2,700 miles length (similar distance to that from Madrid to Moscow) explain the wide variety of climates that ranges from the vast and rich mineral Desert of Atacama in the North and the cold and icy islands and islets in the far south beyond the Cape of Horn. Between the extreme North and South, there are valleys, beautiful lakes and dense forests. However, most of the territory has a mild climate that is enjoyed by the majority of over 16 million inhabitants. Special mention deserves Easter Island, attraction for archeologists and tourists, full of ancient and mysterious monuments called “moai” in the native language. It is located in the Polynesia in the middle of the Pacific Ocean, 2,300 miles from the Chilean continental territory.

## Advantages of Investing in Chile

Chile has a special link between the Asia-Pacific region and the countries of the East Coast of South America (Brazil, Argentina, among others). The Chilean economy has evident advantages in the exploitation of some primary products such as those from mining. With its rich reserves of metal and non metal minerals Chile has a privileged position amongst the mining nations of the world. Its vast deposits of high grade ores contain a relevant percentage of the world's reserves of certain minerals like copper, rhenium and molybdenum. Important amongst its non-metal reserves are nitrates, iodine, sulfur and lithium. Forestry is also important and the main specie planted is Insignis Pine (one of its comparative advantages lies in Chile's climatic and geographical conditions that make the tree grow faster). This activity has been encouraged through tax exemptions and financial incentives. Due to its longest coastlines in the world, over 2,400 miles, renewable marine resources are very important too. Its variety of climates along the country allows a varied agricultural activity. Chile has a first class network of highways and roads, seaports and domestic and international airports that connect almost every place of the territory and the world. Chile enjoys a modern and efficient telecommunication system.

Chile has one of the highest schooling index in Latin America and there are many and well-known universities. For these reasons and owing to public and private educational and vocational training programs, Chile can also offer specialized manpower and professionals at reasonable costs.

Strong national institutions, political stability and clear rules contribute to make of Chile one of the most attractive countries to foreign investment.

There are minimum requirements to bring capital into Chile and send it back and a special law to guarantee fixed and favorable regulations to investments is available to foreign investors. Many multinational enterprises have made use of the special tax regulation on Platform Companies and have established their regional headquarters in Chile to make investments in other Latin American countries.

## Constitution

Chile is a unitary republic and the government and administration of the State are vested in the President of the Republic. From the administrative and governmental point of view, Chile has been divided into fifteen regions and these into provinces which are subdivided into local administrative units called communes.

Chile enjoys political stability and the President of the Republic and communal authorities are democratically elected. Members of the National Congress (the Chamber of Deputies and the Senate), which exercise the legislative power, are democratically elected as well.

## Communications

Internal and external communications and transportation are excellent and meet the requirements of all economic activities. Chile has a very efficient integrated telecommunications system providing telephone (fixed and mobile units), data transmission, facsimile, etc., and allowing direct and instantaneous communications inside the country and toward the rest of the world.

## Language and Currency

The main language spoken in Chile is Spanish. However many people speak English. The Chilean government has been concentrating its efforts to achieve that Chile becomes a bilingual country, with English as a second language. The currency used is “Peso” (\$) divided in a hundred cents.

## Legal System

National legislation is applicable to everybody inside the whole territory. Every law, decree, regulation or other official rule is published in the Official Gazette and it is assumed to be known for everybody since that date.

## Major Exports and Imports

Chile is one of the world's leading producers and exporters of copper, molybdenum, sodium nitrate and sodium. It also ranks among the first fishing nations in the world. Owing to this, it is one of the largest producer and exporter of fish meal. Chile also exports wood, pulp, fresh fruit, wine, salmon and other fish, tourism.

Major imports are oil and other fuels, foodstuffs, machinery and vehicles, manufactured products, raw materials, chemical products.

## Government Policy on Foreign Investment in Chile

Chilean governments have recognized the importance of the foreign investment in the development of the country. Broadly speaking, its policy is based on equal treatment for both domestic and foreign investors and free access to the different markets and economic areas. Foreign investors have free access to privileges and incentives applicable on the domestic market. Laws and regulations have general application to Chilean and foreign investors and entrepreneurs. However, if foreign investors wanted to carry out the investment under the special rules of the Decree Law 600 of 1974 (Statute of Foreign Investment), they must enter into a contract with the State of Chile, represented by the Foreign Investment Committee. Proposals submitted are resolved by its Executive Secretary. Others require the approval of the Committee such as investments exceeding US\$5,000,000 or its equivalent in other currencies; those relating to sectors or activities normally performed by the State and those carried out in public utility services or communication media, and those made by a foreign State or a foreign juristic person of public law. Anyway Decree Law 600 regulations are clear enough to reduce the negotiation to a minimum.

## Import Controls

The Government levies customs duties on goods entering Chile. There are lots of goods from countries with which Chile has signed free trade agreements that can be imported free of customs duties. Customs clearance must be obtained to import any goods. There are imports controls on certain goods (drugs, animals, plants, food, firearms, etc.). There are some goods which import is not allowed such as used cars and motorcycles, used tires, asbestos, products considered hazardous for animals, agriculture and human health (some pesticides, toys containing toluene).

## Exchange Controls

Exchange controls on the movements of capital, profits, loans, investments, credits and deposits have been substantially reduced and the procedures simplified. In such cases entities are only required to make the currency transfers of \$10,000 or more, both into and out of Chile, through an institution belonging to the Formal Exchange Market that shall report them for their registration by the Central Bank of Chile. The disposal of the currency directly out of Chile must be reported as well.

Suspect transactions must be reported to the Central Bank of Chile.

## Source of Finance

A wide range of financial services are provided by banks. Important foreign banks have an agency or own a bank in Chile. Regulations in force for many years have only contributed to the development of banking activities and allowed the institutions to face at present the world financial crisis.

Sources of finance include local and foreign banks and financial institutions and the stock exchange.

## Chilean Taxation Number

Every individual, company, institution and other entities that carry on business in Chile must register for the Chilean Unique Tax Number and get de Tax Identification Card (RUT card). In individuals this number shall correspond to the national identity card for foreigners, if they have this document.

This unique tax number is required for all dealings with the taxation authorities or other kind of authorities or institutions or with enterprises or professionals.

# Business Structures



## Types of Business Structures

The main business structures used in Chile are:

- *Individual enterprises of limited liability*
- *Partnerships or companies*
- *Corporations*
- *Companies by shares*
- *Agencies or branches of foreign company*
- *Appointment of a representative*

There are several types of partnerships or companies, but most of them are formed as limited liability partnerships, since partners limit their liability in the partnership up to the amount of the capital or to a higher amount stated in the bylaws of the partnership. Regarding companies by shares, the shareholders are liable up to the amount of their capital contributions. Companies by share can be formed by only one shareholder.

## Individual Enterprises of Limited Liability

Individual enterprises of limited liability are legal entities formed by only one person, who is liable up to the amount he is committed to contribute as capital through a duly notarized deed. This means that both personal and business patrimonies are different and separate. There is a specific law which contains the regulations on these enterprises.

## Partnerships

Partnerships are defined as associations between two or more parties conducting business in common with the objective of sharing profits and losses.

There are several types of partnerships or companies and to form them the partners, or their legal representatives, must sign a duly notarized deed. A summary of the partnership deed must be filed with the Register of Commerce and it must also be published in the Official Gazette within a 60-day period. The partnership deed must contain some minimum and compulsory statements such as the partnership's name, which must be the names of one or more of the partners, followed by the words "y compañía" (and company), the names, professions and addresses of the partners, the partners' contribution, the object of the partnership, how profits or losses are to be assigned to the partners, when the partnership will start and when it will end its legal existence, etc. Some of them can be replaceable by the agreement of the partners.

The rules on partnerships are stated in the Code of Commerce and other laws.

- *General partnerships*

Each partner is responsible, joint and severally, for the legal liabilities of the partnership, even with their private patrimony. In a general partnership all the partners manage the company individually or through an elected representative.

- *Limited liability partnerships*

Differ from general partnerships since each partner is responsible for the legal liabilities of the partnership, limited either up to the amount of capital contributed or to a higher amount specified in the partnership deed.

- *Limited partnerships*

It is a partnership formed by two types of partners:

- a) Managing partners with an unlimited liability for the debts and losses of the partnership.
- b) Shareholder partners who provide all or part of the partnership's capital. Their liability is limited to the amount of their contributions and with no right to manage the partnership. This partnership is called "simple limited partnership", or "limited partnership with share capital" if the partners' capital is represented by shares.

## Corporations

The corporations are ruled by the Law 18.046 of 1981 and require more than one shareholder. The law states that the shareholders are only liable for the payment of their shares and they are not forced to refund the benefits they could have received. According to this law, there are three different types of corporations:

- a) Publicly traded corporations

They are voluntarily or by legal obligation listed in the Register of Securities.

These corporations are subject to the supervision of the Superintendence of Securities and Insurances.

b) Special corporations

They are insurance and reinsurance companies, mutual funds administrators, stock exchange, and others which require an authorization from the Superintendence of Securities and Insurances to get its legal existence.

c) Closely held corporations

These corporations are those ones which are neither publicly traded corporations nor special corporations.

Corporations either publicly traded or closely held are incorporated by means of a notarized deed. A summary must be filed with the Register of Commerce and published in the Official Gazette within a 60-day period.

### Notarized deed

It must contain as a minimum the following items:

- *The names, professions and addresses of the shareholders that are starting the corporation;*
- *The name, the domicile and the specific object or objectives of the corporation.*
- *The term of the corporation. If nothing is said, the term is presumed to be unlimited.*
- *The capital of the corporation and the number of shares, indicating any preferred series of shares and privileges, and whether the shares have a par value or not; the way and terms the shareholders must pay in their contributions and the valuation assigned to any contributions that are not made in cash.*

- *How the corporation is to be administrated and how the administration will be supervised.*
- *Closing dates for the financial information, balance sheet and the General Shareholders Meeting.*
- *How the corporation will distribute its profits.*
- *How the corporation will be liquidated.*
- *How the differences among the shareholders or between the shareholders and the corporation are to be decided. Otherwise, it is understood that the differences will be submitted to arbitration.*
- *The names of the participants of the Provisional Board of Directors.*
- *The frequency of the Board of Directors' meetings and how these will be arranged.*

## Capital

One third of the initial capital must be subscribed and paid when the deed is rendered.

The initial capital should be absolutely subscribed and paid in a period not longer than three years since the date the deed is signed. Otherwise the capital will be reduced to the amount actually subscribed and paid.

## Management

Corporations are managed by a Board of Directors elected by the General Shareholders Meeting. The minimum number of directors is three in a closely held corporation and five in a publicly traded corporation. When the latter has an equity of US\$56 million dollars and at least 12.5% of its issued shares giving right to vote belong to shareholders controlling less than 10% of such shares, the number of directors shall be seven and a Committee of Directors and an independent director shall be appointed.

According to the Law, it is not necessary to grant special powers to the Board of Directors, because it has all the rights of management and decision that the Law has not established as belonging exclusively to the General Shareholders' Meeting. The Directors appoint the manager or general manager.

The Directors are subject to several specific duties, prohibitions and limitations stated in the Law or by the Superintendence of Securities and Insurances. They must provide to shareholders and to the public, sufficient, reliable and timely information regarding legal, economic and financial situation of the corporation. They are also responsible for the accounting records and other registers which the corporation must maintain according to the law.

The Directors are joint and severally liable for the damages caused by their performance to the corporation, the shareholders and the public owing to guilty or malicious acts, with penalties consistent in fines or imprisonment. It is legally assumed the guilt of the Directors if the corporation does not maintain its books and registers.

Certain kind of corporations such as insurance companies, mutual funds administrators, securities exchange, pension fund administrators, private health care institutions of the welfare system have their specific legal regulations regarding its incorporation, administration, control, delivering of information, etc. Each one of the last two types of corporations is subject to a different Superintendence that supervises the respective area of business. However all of them are also subject to the Law of Corporations applicable to publicly traded corporations, regarding those regulations which are compatible or not opposite, which fulfillment is checked by the Superintendence of Securities and Insurances.

Banks and finance companies are ruled by a special law and secondarily by the Law of Corporations, and they are supervised by the Superintendence ad hoc.

All these special entities need a previous authorization to be created or to develop the respective activity, for which they have to file an application or a prospect in some other cases.

## Companies by Shares

It is a kind of a corporation in which the capital is divided in and represented by shares which can be sold by the shareholders through a private contract. The shareholders are liable only up to the amount of their capital contributions. With the exceptions of some specific aspects stated in the law, the rest of the agreements can be freely agreed by the shareholders in the bylaws. In the silence of the bylaws, the regulations applicable to corporations closely held shall be applied, considering the nature of this type of company.

Companies by shares can be formed by only one person or legal entity. From the tax point of view they are considered corporations.

## Foreign Juridical Entity

Any foreign juridical entity that wishes to carry on business in Chile must apply for its registration with the Unique Tax Number Register and gets the Tax Identification Card (RUT card) and file a form to give notice of its starting up activities. All the procedures must be carried out with the Chilean Internal Revenue Service (Servicio de Impuestos Internos).

To do the abovementioned the foreign entity must appoint a representative who is:

- *Domiciled in Chile; and*
- *Authorized to do the procedure and file the required forms before the IRS and to be notified by this institution on behalf of the foreign entity.*

## Branch or Agency of a Non-resident Foreign Corporation

The foreign corporation must appoint an agent or legal representative to set up the branch in Chile. The following documents are required:

- *Proof that the corporation is legally incorporated abroad and a certification that the corporation is still in existence.*
- *Authenticated copy of the corporation's current statutes; and*
- *General power of attorney issued by the corporation to the agent that will represent it in Chile; the power of attorney must state clearly that the agent acts in Chile in the corporation's name with full powers.*

These documents must be notarized in a Notary Public in the domicile of the agency in Chile. They must be written in the official language of the foreign country and must be translated into Spanish and also must be duly legalized.

Likewise, by notarized deed, the agent shall state: the name used in Chile, the corporation will maintain in Chile realizable assets to cover the liabilities that must be served in Chile, the object or objects, the effective capital assigned in Chile for its operations and the domicile of the principal agency among others.

Finally, within sixty days, a summary of the notarized documents must be filed with the Register of Commerce. Within the same period, the summary must also be published once in the Official Gazette.

Branches of foreign limited liability partnerships require the granting of a power of attorney.

## Operations made through a Representative

The investor without domicile or residence, either private entity or a company can operate in Chile through a private entity or company with residence in the country. The investor must grant them a mandate, with or without remuneration, so the representative makes the operations on behalf and at the risk of the foreign investor.

## Joint Ventures

Joint ventures are procedures used some times in mining exploration. The joint venture agreement defines each participant's proportionate share in venture assets, liabilities and results. There are no legal regulations governing the establishment of joint ventures. Owing to this, for tax purpose the procedures must be applied to the IRS in each case. Considering the joint venture is not a taxpayer, it is required to maintain its own accounting books and transfer periodically to participants the costs, expenditures and VAT fiscal credit in liquidation forms that are previously controlled by the IRS.

## Associations

An association is an agreement between two or more businesspeople or companies to make one or more commercial transactions that will be carried out by one of them in its own name. Such partner must render an account to the other participant partners and divide with them any profit or loss that might result in the agreed share.

The association is a private agreement that only creates rights among the partners. Consequently, there are no legal requirements to form an association.

As far as third parties are concerned, only the partner in whose name the transaction is carried out is responsible. However, the partner and the participant partner shall pay taxes separately for their profits, only if that situation can be stated.

## Registration Requirements and Filing Procedures for Public Securities

In order to make public offer of securities (e.g. shares, debt instruments, etc.), the securities and the issuer must be registered with the Register of Securities. To do this, the issuer has to file an application with the Superintendence of Securities and Insurances along with the information on its juridical, economic and financial situation, according to regulations stated by the Superintendence. The issuer must keep giving to the Superintendence and the public the information on the financial statements duly audited periodically and publish it yearly on a newspaper of wide circulation in the place in which the entity has its domicile.

Broadly speaking, publicly traded corporations and other entities controlled by the respective Superintendence are also subject to continuous reporting requirements on quarterly bases. Banks must publish information on their financial statements in a newspaper quarterly.

## Audit Requirements and Practices

Corporations and partnerships subject to control of some of the respective Superintendence (e.g. publicly traded corporations, entities registered with the Register of Securities, banks, etc) must appoint auditors registered with the Superintendence of Securities and Insurances to annually report on their financial reports. Closely held corporations may either appoint two account inspectors or independent external auditors. Corporations or partnerships owned by an entity supervised by the Superintendence of Securities and Insurances could be also audited under certain circumstances.

## Public Information on Shareholders and Partners

Entities listed in the Register of Securities must keep in its headquarters, agencies and branches the list of shareholders or partners, with details of the identification, address and quantity of subscribed and paid shares they own or the respective percentage of the capital. The list shall include a summary of the shares owned by individuals and legal entities, national or foreign.

The information abovementioned must be sent to the Superintendence quarterly.

# Taxation



## Introduction

According to the Constitution, projects of law about taxes are only initiative of the President of the Republic and, if they become a law through the constitutional procedure, which includes the approval by the Congress, are applicable in all the territory. The exemptions are stated in the same way.

Income tax affects the income of corporations and individuals. The Income Tax Law states that “income” for tax purposes is all the profits or benefits produced by a thing or activity and all benefits, profits and increases of a patrimony, whichever its nature, origin or name may be. So, every income is taxable unless it is considered non taxable in a law. Some non taxable incomes are specifically pointed out in the Income Tax Law.

Value added tax is imposed on sales and imports of goods and services rendered. There are some additional taxes on sales and imports of certain products (beverages, jewels, etc.). Exports are exempt of VAT, including some services considered as exports by the Customs Service.

Other taxes are stamp duties, real estate tax, tax on fuels.

## Income taxation Law and Administration

The Chilean income tax regime is contained within the Decree Law 824 of 1974, called Income Tax Law. The taxation system regarding taxes of “internal applicability” is administrated by the Servicio de Impuestos Internos (Chilean Internal Revenue Service).

### Residence and Source

Income taxation is based on the following factors: the taxpayer's place of residence and the source of the income.

Income from Chilean corporations or Chilean partnerships is always considered to be Chilean source income, as well as the interests on loans granted to anybody with domicile or residence in Chile.

All resident taxpayers, whether individuals or corporations, are subject to taxes on their total income, wherever earned, with the sole exception of foreign individuals resident who only pay taxes on Chilean source income for their first three years in the country. This period can be extended for three more years. On the contrary, non-residents are only subject to income tax on Chilean sourced income. For this purpose, the Double Tax Agreements in force must be considered to determine an entity's tax residency or domicile and/or liability.

- *Residence of Individuals*

For tax purposes, a person is deemed to be a resident when staying in Chile more than six months in a calendar year, or more than six months in total in two consecutive tax years.

The Civil Code states that the “residence” is where an individual is settled or where its profession or work is carried out customarily.

The “domicile” as a general rule according to the Civil Code is the residence, jointly with the actual or presumptive intention to stay in it. For this reason, a foreign individual can be considered as domiciled in Chile from the first day of its arrival to the country, if that can be demonstrated through some facts as to come to Chile with the family, to register the children in a school in the country, to open a bank current account, etc. This definition is applicable for tax purposes as well.

- *Domicile of juridical persons*

A juridical person is domiciled in Chile if it is incorporated in Chile. A juridical person domiciled abroad can carry on business in Chile through an agency, a branch, a representative or any types of permanent establishments which are set up by means of a public deed. Despite the regulations require to state a domicile in the public deed, they are not considered domiciled in Chile for tax purposes. Therefore the income tax is applicable on the taxable income of such permanent establishments derived from Chilean resources.

Chilean incorporated subsidiaries of foreign companies are domiciled in Chile.

## Source of Income

The source of income is ordinarily determined according to the circumstances surrounding its receipt. The general rule regarding the source of income states that is considered of Chilean source those deriving from goods located in the country or from the activities developed in it, whichever is the domicile or residence of the taxpayer. In case of services rendered, the income will ordinarily be sourced in the place where the service is rendered. Likewise the Law states that the source of the interests is in the domicile of the debtor. The royalties for the use of trademarks and other similar incomes, derived from the exploitation in Chile of the industrial or intellectual property are also of Chilean source.

Chile has signed Double Taxation Agreements with many countries that must be considered in the determination of where an item of income is sourced. For example, business income, personal services under certain conditions, income from property, dividend, interest, royalty and other income can be impacted by terms of the Double Taxation Agreements.

## Fiscal Year

Taxable income is determined by reference to the year ending December 31 which is the standard Chilean financial year for tax purposes, or the date in which an entity finishes its activities definitely.

## Taxpayers

Taxpayers are individuals, corporations and other legal entities and the administrators and possessors of someone else's goods affected by taxes. Therefore, all resident taxpayers, whether individuals or corporations, are subject to taxes on their total income, wherever earned, with the sole exception of foreign individuals who only pay taxes on Chilean source income for their first three years in the country. This period can be extended for three more years which has to be applied for.

## Taxable Income

Broadly speaking, taxable income is the excess (if any) of gross assessable income over allowable deductions.

The taxable income of enterprises is most of the times fixed through effective results determined by means of financial statements based on full accounting books. From the tax point of view, costs and expenses, losses and outgoings necessary to produce the income are deductible, considering the nature and the amount of them. This definition and specific concepts both included in the Income Tax Law, and others stated in different laws, causes the results determined in the financial statements are usually to be adjusted (e.g. disallowed expenses, monetary correction, etc.).

Personal expenditures of the entrepreneur, partner or shareholder, or related to non taxable income or income exempt from income tax are not deductible.

However, depending on certain factors such as the type of activity, the type of taxpayer that makes the income and the amount of turnover, the taxable income is determined through assumptions stated in the law (e.g. income from real estates, transportation of goods or passengers), or even can consist of a fix amount (small businesses).

The taxable income regarding wages and salaries is based in the gross income, including some benefits, less certain deductions specifically stated in several laws such as legal contributions for pensions and health.

Items of proceeds that are not taxable at all or are considered tax exempt, are specifically stated in the Income Tax Law and others laws.

## Income Tax Structure

Income Tax Law classifies the income into categories and the tax is applicable according to the activity from which the income is obtained. It also considers global taxes applicable to global taxable income. The classification is as follows:

### Category Taxes

- *First Category Tax at a tax rate of 17% on the taxable income from industry, commerce, mining, fishing, agriculture, real estate, investments and other activities involving the use of capital. All income not specifically taxed under another category and not tax exempt are included. This tax is allowed as a credit against the global taxes due. Sometimes is applicable as a sole tax of the Income Tax Law on certain kind of capital gains. The applicable tax rate is transitorily 20% and 18.5% for income accrued in the years 2011 and 2010 respectively.*
- *Second Category Tax on income from jobs as an employee. Income of self-employed people and professionals is classified as Second Category Income but it is not subject to Second Category Tax but global taxes.*

## Global Taxes

- *Global Complementary Tax on the total income from both categories made by resident individuals. It is a progressive tax which maximum rate is 40%.*
- *Additional Tax on the total income from both categories of nonresident individuals or non domiciled companies. In some cases it is a sole tax applicable on the income. There are various tax rates applicable to different types of income. Income tax derived from activities developed in Chile is 35%.*

## Specific Tax on Mining Activities

Specific Tax on mining activities is a progressive tax applicable on a taxable income deriving exclusively from the sale of mining products. From 2011 on the progressive tax rate is determined considering the annual amount of sales. If the annual sales exceed the total value of 50.000 metric tons of fine copper, a higher progressive tax rate is applicable on the mining operational margin. The new rates are applicable from 2010 to enterprises set up in such a year.

## Sole Special Tax Article 21 Income Tax Law

This tax is applicable on certain disallowed effective expenses incurred by corporations and agencies, branches, representatives or any other kind of permanent establishments of foreign enterprises. It is also applicable to partnerships by shares and the type of limited partnerships with share capital, in which some partners (sleeping partners) provide the partnership capital represented by the issue of shares with no right to manage the partnership's affairs. In this latter case, the tax is applied on expenses proportionally to the capital of the sleeping partners. The tax rate is 35%.

## First Category Tax applicable to Individuals and Companies

As already mentioned under the heading “Tax structure”, this tax affects the taxable income deriving from the activities in which the use of capital is relevant. A tax rate of 17% (20% and 18.5% for the years 2011 and 2012, respectively) is applicable regardless of the legal structure of the taxpayer (individual, partnership or other) and its residence or domicile.

With the exception of specific cases, the taxable income consists in the gross assessable income less allowable deductions. It is generally determined taking into consideration the results of financial statements based on full accounting records. If so, the profits shall only be subject to Global or Additional Tax that affects the investor (individuals, partners or shareholders) when it is withdrawn, distributed or remitted abroad. Unless whichever these circumstances happen the taxable income determined by an enterprise is accumulated and recorded in a special accounting record for tax purposes called Taxable Income Fund ledger.

From the tax standpoint, the taxpayer committed to maintain full set of accounting records for tax purposes will incur in losses if allowable deductions exceed assessable income. Losses must be carried back to be set off against the balance of accumulated income tax recorded in the Taxable Income Fund ledger. In such a case the First Category Tax that had affected that income tax shall be refunded by the Treasury. When there is not accumulated taxable income or there has been run out, the losses can be carried forward indefinitely and offset from future income.

However, there are a number of anti-avoidance measures that apply to prevent trafficking in companies with accumulated losses. When there has been a majority change in the underlying ownership of the company, there are several requirements to be fulfilled at the time for the losses to be carried forward. One of them is to conduct the same business after the change of ownership as it did before the change. The restrictions are not applicable when the change in the ownership has been carried out between related companies.

- *Tax Consolidation*

Everyone, individuals, partnerships, corporations or other legal entities are individually taxpayers, with an exclusive taxpayer number, which subsists as long as the taxpayer legally exists. Therefore, the results obtained by the taxpayers, either taxable income or losses, cannot be consolidated with the results of any other taxpayer and must be filed in separated income tax returns and controlled in the same way. In other words, for tax purposes losses can only be offset against profits of the same taxpayer.

However, there are some facts that convey to a kind of consolidation, but once the income tax or the losses have been filed by each taxpayer, and the tax paid as the case may be. Among these facts a merger under specific conditions can cause the consolidation of the accumulated profits and losses for tax purposes of different taxpayers. If so, First Category Tax that affected the income offset with losses of the subsisting taxpayer is refunded. This procedure can only be applied for taxpayers that must determine the First Category Tax on effective income through financial statements based on full accounting records.

## Interest and Other Expense Deductions

General regulations state that expenses are considered allowable for tax purposes if they meet the following requirements:

- *Debited or paid*
- *Incurred in the respective exercise*
- *Related to the activities or business*
- *Reliably prove before the IRS its nature, necessity, reality and amount.*
- *Necessary (inevitable or compulsory), considering its nature and amount.*

Interest accrued or paid on loans and other debts in the financial year is a deductible expense, provided that it has been incurred in connection with borrowings related to the business and complies with the abovementioned requirements as well.

Interests paid on credits or loans obtained abroad are subject to 35% Additional withholding tax. But in some cases, such as credits from banks or international financial institutions, from suppliers of imported goods, etc., interests are subject to the reduced rate of 4% withholding tax. However, if those credits are granted by related parties or in other cases stated in the law, the capitalization rules apply to limit the amount of interest subject to that special tax rate. In such cases, the maximum interests subject to 4% are those derived from the abovementioned credits and loans which total do not exceed three times the equity for tax purposes in the year they were obtained.

## Payment of Income Taxes

A taxpayer's taxable income (or the losses in certain cases) and the income tax are most of the time assessed in the Form 22 to be filed annually. The payment, if any, must be paid at the time of filing the tax return. However, the taxpayer can file the tax return directly to the Chilean Internal Revenue Service (IRS) if it were to be paid after the due date.

Most of the taxpayers and especially those who determine the annual income tax based on the results of a financial statement according to full accounting records are subject to monthly estimated payments on account of income tax.

Income tax on salaries and wages are withheld by the employer and paid on a monthly basis. No annual income tax return is required for an employee who receives only compensation income.

Professionals and self-employed persons must make estimated payments except their remuneration is paid by legal entities or by taxpayers that determine its income tax through accounting books which must withhold such amount.

The provisional payments are offset against the taxpayer's annual tax liability as determined in its annual tax return. Any amount remaining after the liability has been satisfied is refunded to the taxpayer.

Non-residents deriving Chilean-sourced dividend, interest, royalty or some other income have withholding tax deducted at source. The Double Taxation Agreements signed by Chile with countries in which the recipient is resident do not consider any reduction of rates.

## Lodgement of Returns

As it was said previously, taxpayers are required to lodge returns annually except for those taxpayers receiving income exempt from taxes or subject to withholding income tax (non-resident shareholders for their dividends, employees for their salaries in some cases).

## Dividends and Withdrawals of Profits

Dividends received and profits withdrawn are not subject to First Category Tax but Global Complementary or Additional taxes which may affect the beneficiary. In fact, as it was mentioned before, 17% First Category Tax (20% and 18.5% in 2011 and 2012, respectively) affects the activities developed by enterprises whichever its legal structure and it is a credit against investors' income taxes (Global Complementary or Additional). Likewise, the taxpayer committed to determine the taxable income through financial statements based on full accounting records are required to maintain the Taxable Income Fund ledger to control the accumulated profits or losses. When a dividend is distributed, or partners and individuals make a withdrawal of profits, the correspondent enterprise (corporation or partnership) must inform the shareholders (or partners) the credit that they are entitled to use against their own income taxes. If the shareholder (or partner or individual) is resident or domiciled in Chile, the credit can be used against its own taxes (Global Complementary), caused by any type of income. The credit in excess of its tax liability is refunded. If the shareholder or partner was a taxpayer also committed to maintain the Taxable Income Fund ledger, the dividend received or the amount withdrawn shall be recorded in this book with its corresponding credit, to be reported when is distributed to its own shareholders (or withdrew by its own partners or individual, as the legal structure may be). If the recipient enterprise has accumulated losses for tax purposes, the amount received as dividend or withdrawal must be offset from those losses and the credit refunded to such recipient as well.

## Dividend Withholding Tax

Dividends paid to a non-resident shareholder or remitted abroad are always subject to the Additional withholding tax, unless the nature of the amount distributed is a non-taxable income or Additional tax exempt. The general rate of dividend withholding tax is 35%. The 17% First Category Tax is a credit against the Additional Tax that is calculated as follows:

### Applicable taxation in a general regime

#### Simplified example

Income before taxes		100
First Category tax 17% over 100 ( 20% in 2011 and 18.5% in 2012 )		<u>(17)</u>
Net income		83
Withholding tax on dividends:		
Additional tax 35% over 100	35	
Less tax credit 17% over 100	(17)	<u>(18)</u>
Net received by an investor		<u><u>65</u></u>

- *The 42% alternative:*

Foreign investors who have a Decree Law 600 contract subscribed with the State of Chile and have chosen the 42% rate are subject to the 17% First Category Tax (payable by the branch or subsidiary) and a 25% Additional Tax on the same tax base, when profits or dividends are remitted. Thus, the total theoretical tax burden is 42% on pretax income instead of the 35% currently paid under normal taxation. The investor who has opted for the 42% invariable rate can elect at any time to be taxed at the normal rates. This election is irrevocable. This invariable rate does not include the specific tax on mining activities.

## Taxation of Non-resident Partners or Non-resident Entrepreneurs

Unless the Additional Tax applicable is a sole tax that must be withheld by the payer, non-residents are committed to file an annual tax return considering their taxable income. The tax rate is 35% except the investor has opted for the 42% alternative. This tax return must also be filed by partners or individuals that own a Chilean enterprise subject to First Category Tax on the taxable income determined according to full accounting records. They must include in their tax returns the withdrawals made from the respective enterprise, up to the positive balance showed by the Taxable Income Fund ledger at the end of the year, before setting off the amounts withdrawn. If the balance is negative or does not exist, not any withdrawal or remittance abroad is affected to Additional Tax. However, the amounts exceeding the positive balance of the Taxable Income Fund shall be considered as overdrafts and shall be offset from the future positive balances.

The excess of credit for the 17% First Category Tax over the tax liability, if any, is not refunded.

A withholding must be applied on the profits remitted abroad or withdrawn

from the partnership or individual enterprise. This withholding is applied whether or not exist a positive balance in the Taxable Income Fund ledger, but the rate applicable is 20% in the last case and it is considered as an advanced payment on account of the annual definitive tax.

## Taxation of Branches

The Chilean sourced income of Chilean branches of foreign companies is subject to income tax at the ordinary corporate tax rate. The taxable income is calculated as if the branch was a separate entity from the foreign company.

## Repatriation of Profits and Transfer Pricing

In addition to paying dividends, there are payments such as interest, price of goods, service fees and others which could involve methods of repatriating profits to the non-resident associates, controllers and owners of Chilean entities. In these circumstances, the payments made by the Chilean resident to the non-resident associate must reflect the market value of the goods and/or services provided to the Chilean company, that is, all payments must be calculated with reference to arm's length market rates.

When the IRS consider the Chilean entity has paid an excessive amount for the goods, services, interest or other concepts the excess can be disallowed as expense.

Transactions between Chilean taxable entities, branches or agencies, and their head offices, other branches, related or considered as related entities according the law established abroad are also subject to the transfer pricing rules.

Royalties paid abroad for the use of trademarks, patents, formulas,

software and others similar are allowable as expenses up to 4% of the turnover from the activity of the taxpayer in the tax year. This limit is not applied if there is no capital, control or administration relationship, whether direct or indirect, between the taxpayer and the recipient of the royalties or the royalties are taxed in the recipient's country at a rate of at least 30%. To determine the maximum amount allowable as expense it is necessary to compute first the royalties not subject to the limit and then the royalties subject to the limit.

## Taxation of Capital Gains

The Income Tax Law states a list of operations on goods and rights which capital gains obtained are subject to a special taxation, which means capital gains totally not taxed or subject to First Category Tax at a 17% tax rate as a sole tax (20% in 2011 and 18.5% in 2012). The law also states the cases and circumstances that make applicable the general income taxation to these operations instead of the special system.

Broadly speaking, if capital gains made are the results in customary negotiations or activities they shall be subject to income tax under general rules as an ordinary income. There are also legal assumptions that consider as customary operations dealt in certain circumstances, for example, when a sale is carried out before a year from the purchase (real estate, shares). However, some capital gains may also be subject to income tax under the general rules despite of deriving from a non customary operation. For example, capital gains in the sale of rights in partnerships.

In most of the cases the taxable capital gains is the excess of the value obtained in the operation over the cost of the goods or rights adjusted by inflation. Regarding operations subject to the sole tax, unless they are made by First Category taxpayers determining its effective taxable income through accounting records, expenses related to the respective operation are not allowed as a deduction in assessing the capital gains. Likewise, with the same exception, losses obtained in offsetting profits and losses in this kind of operations in a year period cannot be used in following years.

The following are some of the goods and rights which capital gains from non customary operations are subject to the abovementioned especial tax treatment: shares of corporations or partnerships by shares acquired after January 31, 1984 owned at least for a year; bonds and debentures; real estate or rights on them, mining rights and water rights which are not part of the assets of First Category taxpayers determining its effective taxable income through accounting records.

In some circumstances, capital gains are taxed under the general rules when they are made in operations carried out by partners and shareholders with the respective company in which they have participation.

Incomes and capital gains made by superannuation funds, mutual funds, public and private investment funds are not subject to income taxes since the benefits are subject to the correspondent income tax that affects the recipients when distributed or the investment is redeemed.

Capital gains from foreign source are subject to general income tax regime.

## Interaction with International Tax Regimes

Chile has signed conventions to avoid double taxation on income and capital based upon the OECD model with several countries all over the world. However, they are not identical. Counter parties include Mexico, Canada, Republic of Korea, Brazil, Spain, United Kingdom, New Zealand, France, Malaysia and others. Chile has also signed agreements with countries such as Russia and others although they are not effective yet.

The agreements consider three ways to avoid the double taxation: by stating the exclusive jurisdiction of one of the Contracting State on certain incomes; by fixing reduced tax rates and by granting a credit for the foreign tax under the rules of each Contracting State.

A foreign tax credit is allowed against the First Category Tax for income taxes withheld or paid abroad on branches income. The credit is capped at 17% (or the tax rate in force in the corresponding year). There is also a credit with the same limit for the withholding taxes on royalty and technical assistance payments made to local companies.

The cap increases to 30% for withdrawals of profits in partnerships and dividends received, and also regarding countries that have double taxation treaties with Chile. The foreign taxes up to 17% (20% in 2011 and 18.5% in 2011) are creditable against the 17% First Category Tax and the balance against the taxpayer's or Chilean company's owners' final taxes (Additional or Complementary taxes).

Agreement with Argentina is based on a different model that considers the territory in which the income is produced to tax it. Therefore income and losses from Argentinean source received by Chilean residents are exempt of income tax in Chile and cannot be mixed with Chilean sourced income.

Chile has signed several agreements for the avoidance of double taxation of income from international shipping and/or air transport.

## Taxation of Individuals

- *Residents*

### Global Complementary Tax

Resident individuals have to pay an annual income tax called Global Complementary Tax on their total income whichever is the origin. This tax is assessed according to the following scales of taxable income, fixed in UTA (annual tax unit) a unit linked to inflation (1 UTA = round US\$ 990)

### Annual Income Tax Payable

	0		13.5	UTA	Nil
Excess over	13.5	UTA up to	30	UTA	5%
Excess over	30	UTA up to	50	UTA	10%
Excess over	50	UTA up to	70	UTA	15%
Excess over	70	UTA up to	90	UTA	25%
Excess over	90	UTA up to	120	UTA	32%
Excess over	120	UTA up to	150	UTA	37%
Excess over	150	UTA			40%

### Second Category Monthly Income Tax

Employees, pensioners or retirees and people who make salaries, wages and/or superannuation are subject to a sole tax on their taxable income, withheld by the employer or the corresponding institution according to the pension system on a monthly basis. Taxable income is the monthly gross remuneration or superannuation less social security contributions (round 20% for pension plan, disability insurance, health insurance, unemployment fund and commission paid to superannuation institution). Most of the fringe benefits agreed in the labor contract, like allowances for housing, children education in some cases, company car for exclusive use of the

employee, paid vacations and others increase the income and the monthly income tax. Reimbursements of expenditures incurred in the exclusive benefit of the employer and other payments which purpose is to compensate employee for the exact amount disbursed in the development of his job are not taxed. There are legal compensations for some disbursements that are not considered taxable income for the employee (lunch, cost of a roundtrip ticket from home to workplace, cash losses, etc).

The following is the monthly scale of taxable incomes fixed in UTM (monthly tax unit) a unit linked to inflation (1 UTM = round US\$83).

Monthly Income Tax Payable

	0		13.5	UTM	Nil
Excess over	13.5	UTM up to	30	UTM	5%
Excess over	30	UTM up to	50	UTM	10%
Excess over	50	UTM up to	70	UTM	15%
Excess over	70	UTM up to	90	UTM	25%
Excess over	90	UTM up to	120	UTM	32%
Excess over	120	UTM up to	150	UTM	37%
Excess over	150	UTM			40%

These taxpayers are not subject to the annual Global Complementary Tax as long as they only have made the abovementioned incomes and incomes tax exempt. If they have received salaries, wages, etc. from more than one employer or superannuation institution, in one or more months of the calendar year, they must calculate the sole tax corresponding to those months and pay the difference filing a tax return.

A range of rebates are available to Chilean resident individual taxpayers.

Self-employed taxpayers

Individual taxpayers who are self-employed pay a 10% of their monthly fees on account of the annual tax (Global Complementary Tax), unless such a 10% has been withheld by the payer.

- *Non-Residents*

Individual taxpayers who are non-residents or non-domiciled in Chile qualify for a few specific rebates.

Foreign technicians hired as employees can opt for keeping their affiliation and make payments for social security in their own countries, in institutions which provide the same benefits as national institutions. If so, they are not liable to make legal contributions for those purposes in Chile.

Non-residents or non-domiciled individuals are subject to 35% flat tax rate on their taxable income, as a general rule. However there are circumstances and different kinds of income such as those corresponding to some services provided in Chile or abroad, premiums of insurances or reinsurances, interests, technical and professional jobs, royalties and many more, which Additional Tax rates are lower. These rates are also applicable to legal or juridical entities non-domiciled in Chile.

# The Foreign Investment Law, Decree Law 600

## General aspects

The regulations of this decree law can be used by foreign and Chilean private individuals and companies with residence and domicile abroad who transfer capital to Chile and subscribe a foreign investment agreement with the State of Chile.

The minimum investment stated by the Committee of Foreign Investment amounts US\$5,000,000 or the equivalent in other currencies, when the capital contributions were made in cash. The minimum amount is US\$2,500,000 when the capital is contributed in physical assets, rights and other kinds of assets different from money.

## Law agreement – Foreign investor's guarantees

The agreement subscribed under the Decree Law 600 guarantees the investor the access to the foreign exchange market for the remittance of capital and net profits it originates.

Likewise, the indirect tax regime and the ordinary customs duties regime applicable to local investment will be applied to foreign investment and the companies where it participates.

Besides, a non-discrimination guarantee is granted to the foreign investor and the companies where he participates with regard to the local investors, with exception of the access to local loan, on which some limitations could be applied, currently inexistent.

## Ways for capital to be brought in

Foreign investment that is made in accordance with the Decree Law 600 can be transferred to Chile by any of the following ways:

- *Foreign currency of free convertibility*
- *Tangible assets, in all their forms*
- *Technology in their different forms when they can be capitalized*
- *Loans associated to a foreign investment:*

Loans and foreign debt in free convertibility currency and profits can be capitalized.

## Capital and profit remittance

Capital remittance can only be made after one year from its entry. There are not time limits for the net profit remittance obtained by the foreign investor.

## Tax invariability

The foreign investment contract guarantees a fixed 42% income tax burden (17% First Category Tax and 25% Additional Tax) for a period of ten years of the application of a regular tax regime established in the Income Tax Law.

However, the foreign investor may elect at any time to be subject to the general system of income taxes instead of one of the invariability tax burden, in such a case the foreign investor will have the same rights and obligations applicable to local investors.

The invariable tax rate of 42% does not include the specific tax on mining activities.

## Additional benefits for US\$50,000,000 investments

Article 11 bis of Decree Law 600 states some additional benefits for the investment projects of at least US\$50,000,000 or equivalent whose object is industrial or extracting, mining included. However, the Committee of Foreign Investments has decided to exclude these rights from the negotiation of the new contracts. This decision can be revised in the future.

## Summary of Principal Income Tax Rates

First Category Tax	17%	(1)
Second Category Tax		
• Self-employed people (professionals, directors of corporations, professional partnerships, and others)		(2)
• Employees (Personal Progressive Income tax)	0% to 40%	
• Complementary Tax (Resident individuals)	0% to 40%	
• Additional Tax (Nonresident individuals and nonresident corporations)	35%	
Withholding of Additional Tax:		
• Royalties paid abroad	30%	
• Royalties paid abroad for patents of invention, industrial designs, new vegetal varieties, software and other specific cases	15%	(3)
• Engineering and technical jobs	15%	(4)
• Professional and technical services	15%	(4)
• Other services paid abroad	35%	
• Interest to foreign companies or in case of indebtedness in excess	35%	
• Interest to foreign banks	4%	
• Rent of capital goods	35%	(5)
• Sea freight	5%	(6)
• Insurance premiums to foreign insurers	22%	
• Reinsurance premiums to foreign reinsurers	2%	
Sole Special Tax Article 21 Income Tax Law:		
• Disallowed expenses of limited partnership with share capital and agencies or representatives of foreign corporations	35%	

- (1) Applicable tax rates are transitorily 20% in 2011 and 18.5% in 2012.
- (2) Income is subject to Complementary or Additional Tax only. Professional partnerships can choose to be taxed under the First Category Tax regime.
- (3) The rate is 30% when the creditor or the beneficiary of the remuneration is incorporated, domiciled or resident in a country considered as tax havens or negative preferential fiscal regimes by the OECD and included in a list by the Chilean Government. This rate is also applicable when the beneficiary owns or participates 10% or more of the capital or the profits of the debtor, or beneficiary and debtor of the remuneration are, directly or indirectly, under a common owner that owns 10% or more of the capital or profits of both.
- (4) The rate is 20% in the same situations described in (3).
- (5) The rate is applicable on a presumed income of 5% each payment.
- (6) There are exemptions on the basis of reciprocity.

## Other Taxes

### Tax on Fringe Benefits

As commented before, most fringe benefits are considered additional taxable remuneration for the employee and can be deducted as an expense by the employer, provided they are agreed in the labor contract and the amount paid is necessary to produce the income of the enterprise which means, broadly speaking, that is reasonable. When fringe benefits are voluntarily granted to employees and workers, such as profit sharing, they are deductible as an expense provided they are distributed in proportion to wages, salaries, seniority, employee numbers or other general rules applicable to all employees or workers of the enterprise. An amount paid as fringe benefit, totally or partially disallowed as an expense for the employer, is subject to 35% penalty tax (the Special Sole Tax), or subject to entrepreneur's or partner's income tax.

## Value Added Tax (Decree Law 825)

The Value Added Tax (VAT) is levied on the supply of goods sold by a customary seller, services other than rendered by employees and consultants and on goods imported into Chile. It also taxes some other transactions including dealings in real estate sold by who has built them, either totally or partially, and the transference of rights on goods. The VAT rate is currently 19% of the price of the transaction.

The Value Added Tax has the effect of taxing the end user of the goods or service. VAT is paid by the supplier of the goods or service, but the price charged for a good or service includes the VAT payable by the supplier. For imports the taxable basis is the customs value of CIF value, including customs duties

In addition, the supplier is entitled to credits for any VAT that was paid on imports, purchases and services received involved in the taxed supply. Therefore, VAT is paid on the value added at each step of the process of transferring the goods or service to the end users for their private consumption.

Taxpayers must file a VAT return monthly. The excess of VAT credits over the VAT debits is carried forward to the subsequent month.

Exports of all products are zero-rated. In this case VAT paid on imports, local purchases and services that are necessary to produce the exported goods is either deducted from other VAT due or refunded. Sea and air transport, as well as services rendered to non-resident entities, that are deemed to be exports by the Customs Service, are treated in the same way.

VAT paid on import, acquisitions or services received, when accessory to operations exempt from VAT (unless they are exports) or not related directly to the activities of the seller, is not recoverable.

## Gifts and Inheritances Tax (Law 16.271)

A special law states the taxation on gifts and inheritances. There are some gifts and assignments tax exempt such as those for public charity, with educational purposes or science improvement. The amount of each assignment or the amount corresponding to each heir or heiress is taxable separately. It is a progressive tax and the scales range from 1% on a taxable amount of 80 UTA (round US\$ 79,200) up to 25% on amounts exceeding 1,200 UTA (round US\$1,188,000).

### Stamp Tax (Decree Law 3475)

This tax affects basically the bills of exchange, promissory notes, and any document involving loans and especially borrowings (among these the foreign ones), and is calculated either on the amount expressed on the document or on the amount of money involved. The tax rate is 0.05% per each month or a fraction of it gone by since the issuance of the document and its due date, with a maximum total rate of 0.6%.

The documents issued at sight or without a due date are subject to a 0.25% flat rate.

The documents issued in connection with foreign loans from multilateral financial organizations are tax exempt.

## Territorial Tax (Law 17.235)

Real estate subject to property tax is appraised by the IRS, and the appraisal includes the land and the constructions and fixtures.

Non agricultural real estate is subject to a 1.2% annual property tax on the assessed value. Constructions for housing are tax exempt up to the amount of round US\$38,000. The taxable part is subject to 1% up to the value of round US\$138,000, and 1.2% on the excess.

Agricultural real estate is subject to 1% tax rate on the assessed value in excess of round US\$16,000.

The payment is made in four quarterly installments. It allows the owner or usufructuary a credit against the First Category Tax when it is an agricultural real estate that produces taxes subject to such category, for corporations that rent out non-agricultural real estate and for building and real estate companies for the real estate they build or order to build and is destined to be sold.

Mines, machineries and fixtures are not included among the immovable property subject to property tax.

## Customs Duties

General customs duties rate is 6% ad valorem for virtually all imported goods and products. The rate is 0% on the imports of capital goods included in a list fixed by the Ministry of Treasury.

There are bilateral agreements (free trade agreements) with several American countries in order to eliminate customs duties in different terms. The same purpose is present in the agreements signed with the European Union, Mexico, Canada, the United States, China, South Korea and the states members of the European Free Trade Association, Australia and others. Chile is an associate member of Mercosur. There is also an economic strategic association agreement with Japan.

## Municipal License

Annual amount is received by the municipalities for the license to develop a profession, industry, commerce or other considered secondary or tertiary activity (therefore, primary activity such as mining, fishing and others consisting in the extraction of natural products is not subject to this payment). The fee is calculated on the taxpayer's equity at a rate, which is set by each municipality, with a minimum of 0.25% and a maximum of 0.5%. The total annual fee cannot exceed 8,000 monthly tax units (about US\$664,000). The fee is allocated among the municipalities in which the taxpayer has an office, branch, factory, warehouse or any other establishment. Professional or self-employed pay a fixed amount of one UTM (around US\$83).

# Grants and Incentives



## General Introduction

Several laws state grant schemes and other incentives which purposes can be foster business establishments in some areas of the territory, investment in research and development, exports, the private cooperation with education, social assistance, sport practice, job training, etc. Some of them consist in especial tax and customs treatment, refunds, credit against income taxes or allowable expenses.

## Government Incentives

Some significant grants and incentives are detailed next.

### Research and Development (R&D)

The income tax system is used to provide incentives for expenditure on certain research and development projects, made by certain First Category Tax taxpayers. Expenditures required to be made through a contract with an Investigation Center. The credit against First Category Tax cannot exceed 15% of the annual gross income with a cap of 5,000 UTM (about US\$415,000) and the balance can be used in the following years indefinitely.

Excess over the abovementioned maximum is deductible as an expense.

## Exports Grants

As it was pointed out before exports of goods and services are zero-rated for VAT. However, exporters obtain reimbursement of all input VAT borne on purchases of goods and services relating to their export activities.

A drawback is granted equal to 3% of the value of "non-traditional exports" if the aggregate FOB value of exports does not exceed US\$29,349,000. This benefit is applicable on all exported goods containing at least 50% of imported consumables. Goods which are excluded from this benefit are detailed in a list published each year.

Exporters can obtain reimbursement of customs duties paid on imports of raw materials, semi-manufactured products, and parts when these are used in exported products or services. The exporter must choose between this reimbursement and the "non-traditional exports" drawback when eligible for both benefits.

Remittances abroad to pay for certain types of expenditure (assistance, advertising and others) directly connected with the export of goods and services produced in the country are exempt of the Additional Tax.

Additional Tax paid for technical assistance included in the cost of a good or service that is exported is considered an advance payment on account to annual First Category Tax. The remainder is refunded.

## Gifts

There are several laws allowing mainly First Category Tax taxpayers which have made gifts to some institutions to use a portion as a credit against the tax, generally 50% of the gift, with different caps stated in the specific law that rules the respective gift. Some laws consider as an allowable expense the part of the gift not used as credit. Despite the maximum amount each particular law allows as a credit or deductible expense, the absolute maximum as credit and deductible expense allowable for the gifts considered jointly as a whole and cannot exceed 5% of the taxable income. The excess can be accepted as expense under certain circumstances.

## Training for Personnel

Expenses incurred in approved training plans for personnel, up to 1% of the yearly payroll, is allowed as credit against the First Category income tax. The credit is related to the hourly cost of each course and the monthly remuneration of the trainee. Likewise, the contributions to institutions devoted exclusively to promote, organize and supervise training programs (technical intermediate institutions for training) can also be used as a credit with the same cap.

## Platform Corporations

The Income Tax Law allows foreign investors to establish Chile as a base for their investments into third countries. Special regulations (Article 41 D) are applicable to publicly traded corporations, and closely held corporations ruled by the regulations of the former, incorporated in Chile according to Chilean laws, with foreign capital permanently owned by partners or shareholders neither domiciled nor resident in Chile, nor in countries or territories that are considered tax haven jurisdictions or harmful preferential tax regimes. According to that article, such companies are not considered as domiciled in Chile for the purposes of the Chilean Income Tax Law and, therefore, they only pay taxes in the country on their Chilean source income. The same tax treatment is applicable to non-domiciled nor resident shareholders of said companies for remittances and distribution of profits or dividends received from them and from partial or total repatriations of capital, as well as for the capital gains obtained from the disposal of shares in companies ruled by the abovementioned Article 41D in connection with the part of the patrimony invested abroad. Subject to certain conditions people domiciled or resident in Chile can invest in these types of companies.

The line of business of the aforementioned companies must be the investment in Chile and abroad and the capital contributed by the foreign investor must have a foreign source. The regulations related to the bank secrecy are not applicable to them.

## Free Trade Zone Incentives

A free trade zone is an area of territory surrounding a port or airport that for the purpose of import duties is deemed to be outside Chilean territory. Currently, there are free trade zones in the ports of Iquique and Punta Arenas. The Iquique regime is also applicable to industrial manufacturing enterprises installed in Arica such as electronics, metal mechanical and chemical industries.

Merchandise imported into a free trade zone can be held on deposit, exhibited, uncrated, packaged, labeled, divided, repackaged, or sold within the free trade. Also, within the free trade zone, imported goods and raw materials can be assembled, finished, connected, manufactured, or transformed.

Enterprises operating in a free trade zone are granted the following exemptions:

- *First Category Tax: all operations within the free trade zone are tax exempt.*
- *Value Added Tax: all operations within the free trade zone are tax exempt.*
- *Customs duties: foreign goods imported into the free trade zone are tax exempt.*

Sales and transferences of merchandise from a free trade zone to another area of the country are considered to be imports and generate import duties and Value Added Tax when they are moved out of the free trade zone. However, the First Region Tarapacá and the XII Region Magallanes and Chilean Antarctic Territory (where is located Punta Arenas) are considered free trade extension zones.

Goods transferred from the free trade zones to these areas are taxed with a sole tax that changes as much as the average rate of customs duties applied to the imports in the previous calendar year. The so determined tax rate is applicable from April to March of the following year. At present the rate is 0.6% and due to Free Trade Agreements is steadily decreasing. This tax can be credited against import duties and VAT if the goods are later sold or introduced into the rest of the country. This tax is refunded if the goods are exported.

## Regional Incentives

Easter Island has a special tax regime through which it is exempt of all taxes and contributions of the goods located in the Island and its rent. Likewise, the benefit is for the activities related with its territory developed by people domiciled in the Island.

Activities located in I, XI and XII Regions and Chiloé province (according to old administrative division of the country) are granted a partial exemption on the personal income tax of employees. A deduction equivalent to that granted to civil servants in the Region is allowed against personal taxable income. This benefit is also applicable to income of professionals and self employees.

Law 18392 of 1985 (Navarino Law), states a preferential customs and tax regime for 50 years applicable to the territory stated in the law, that is basically to the south of western stretch of the Magellan Straits, including the southern portion of Tierra del Fuego. The incentives for the enterprises consist in several tax rebates and benefits. For example, the income is First Category Tax exempt (17%). Anyway an amount equivalent to First Category Tax rate can be applied as a credit against investors' income taxes (Global or Additional) when income is distributed or withdrawn. Goods can be imported free of customs duties or other customs levies, Stamp Tax and taxes stated in the Decree Law 825 (value added tax and additional taxes). Sales to the rest of the country different from Extension Free Trade Zone of Punta Arenas are subsidized with a 20% of the net value invoiced. Real estate is Territorial Tax free. These benefits are not applicable to industries that extract and/or process hydrocarbons.

Primavera and Porvenir communes (Law 19149 of 1992), also in the extreme south of the country, have a tax regime very similar to the one described in the above paragraph for certain enterprises that install and develop activities in those communes.

According to Law 19709 of 2001, the industrial and manufacturing companies of parts and pieces for mining that are installed in Tocopilla commune (Tarapacá Region) within the term which expires in February 1, 2013 will have the following benefits: exemption, for a 25-year period of the First Category Tax on the income; exemption from all import taxes on goods related to the business, and other tax benefits in the acquisition and sale of goods.

According to the Law 19420 of 1995, the investments made in the provinces of Arica and Parinacota in the northern extreme of the country, grant a tax credit. The credit is in connection with the value of investments consisting in certain fixed assets destined to goods production or services to be carried out in those provinces. Simply primary, extractive or commercial activities are excluded. The credit is 30% or 40% on the value of the assets, which depends on the type of assets included in the investment, and this must be made until December 31, 2012.

## Special Business Incentives

- *Incentives for the Forestry Industry*

There are some incentives to forestation in lands which are preferably suitable for forestry activity. The incentives are also granted for small farmers and degraded land. Non taxable bonuses granted range from 75% to 90% of the forestation costs.

- *Incentives for the Oil Industry*

Companies that enter into a petroleum-operating contract with the State of Chile (Empresa Nacional de Petróleo) can be exempted from the normal systems of corporate taxation. As a substitute, a 50% tax is applied on the contract.

However, reductions of up to 100% of this substitute tax, or of the normal corporate taxes, can be granted, depending on the degree of risk involved for the contractor. Similar reductions can be granted on taxes, duties and levies on the import of machinery and equipment needed to fulfill the contract.

Foreign non-resident subcontractors are subject to a flat 20% tax on their gross fees.

- *Incentives for radioactive substances*

Companies that enter into a contract with the Nuclear Energy Chilean Commission to explore, exploit or process radioactive substances can be granted a tax treatment similar to that of the petroleum industry.

# Protection of Intellectual and Industrial Property



Intellectual and industrial properties are guaranteed by the Constitution, according to the law.

## Copyright

Copyright is protected in Chile by the Law 17336 of 1970 and the copyright owner resident in Chile has the right to use the work directly and personally, to transfer the rights on it totally or partially and to license others to use it either copying the work, performing it in public, broadcasting, publishing and adapting the work. Protection of copyright of non domiciled in Chile corresponds to that recognized by Chile in various international agreements.

## Trade Marks

The Law 19039 of 1991 called Law of Industrial Property gives the exclusive use of a registered trademark to its registered proprietor. Owners of trademarks in other countries must register them in Chile to benefit from the protection. When the registration of a trademark had been submitted abroad, the applicant will have priority for the term of six months to submit the application in Chile.

## Trade Names

Chilean law states that the trade marks include every sign susceptible of being represented graphically among which are words, names of persons, letters and others. So, the trade names are among the rights of industrial property that can be registered in Chile, in which case cannot be used by others in business.

## Patents

The abovementioned law gives a patent holder the exclusive right to exploit the invention, whichever the form may be, or allow others to do so. Protection is only provided where a Chilean patent has been granted.

# Immigration



## Migration to Chile

Entry and stay of a foreigner in Chile are legally ruled and the complexity of the processing depends basically on its purposes or circumstances. Some ways of entry and stay requires the participations of several governmental entities.

The following are usual ways a foreigner may entry and stay in Chile, for which a correspondent visa must be obtained:

## Tourists

It is considered a tourist the foreigner that enters to Chile for recreation, sportive and health purposes, for negotiations or exploratory business visits, for investments, etc., without purposes of migration, residence or development of remunerated activities. Expatriates can stay in the country as tourists for up to 90 days. Citizens of some countries do not need to get tourist visa for entry into Chile.

## Temporary Residence

Temporary residence may be granted in the following situations:

### Residence Subject to Labor Contract

It only allows the foreigner to develop the job for which he has been hired. This type of visa lasts up to two years, but it can be indefinitely renewed for new periods of two years. However the foreigner that had stayed two years in the country under this type of residence could apply for Permanent Residence.

The Labor Code requires that at least an 85% of a company's employees to be Chilean citizens. However, expatriates with more than five years' residence in Chile, people married to Chilean citizens and technicians who cannot be replaced by Chileans are not included in the limitation. This limitation does not apply when a company does not employ more than 25 workers.

### Temporary Residence for Other Reasons

The foreigner having family links, interests in the country or whose stay is considered useful or advantageous can obtain this type of visa, which it is extended to members of the family who are living with him. The holder is allowed to carry out any kinds of activities without specific limitations. The visa lasts up to one year and is renewable for only one more year, after which the foreigner must apply for permanent residence or leave the country.

Foreign professionals, technicians or highly qualified persons may obtain this type of visa when required by juridical national entities or sponsored by international organizations recognized by the Government of Chile.

## Student Residence

This type of visa allows to study in educational institutions recognized by the State of Chile and lasts up to one year or for the duration of the scholarship. It is renewable up to the completion of the studies. When the foreigner proves he has completed his studies he can apply for permanent residence.

## Refuge and Political Asylum

Chilean authorities may grant this type of visa to shelter the personal security of a foreigner when political circumstances in his own country have forced him to ask for asylum.

## Permanent Residence

In order to apply for the Permanent Residence foreigners must have stayed in Chile for a period that depends on the type of visa they have been granted before, as follows:

- *Residence subject to labor contract – Two years of uninterrupted stay in Chile under this type of residence are required.*
- *Temporary residence – It requires a year residence.*
- *Student residence – Two years under this type of residence are required and the student must have finished his studies either professional or high school.*

This type of visa may implicitly become revoked if the holder stays more than one year outside the country without asking for an extension.

## Work Permits

As pointed out before, all foreign nationals are prohibited from working in Chile unless they obtain the correspondent type of visa that enables them such as permanent residence visa or residence. However, foreigners may apply for a work permit in certain circumstances such as that one available for tourists.

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