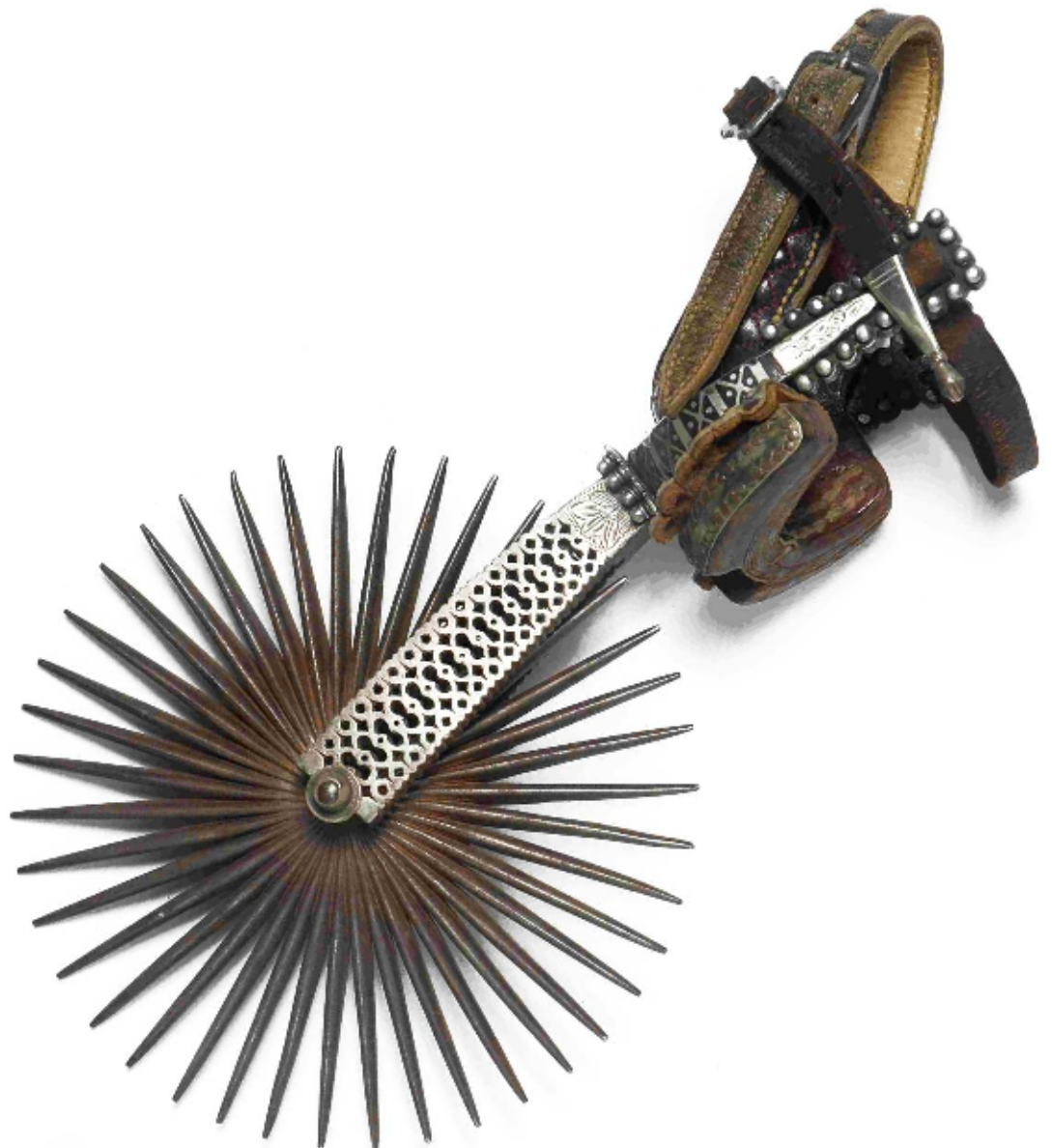


# Doing Business in Chile





# Doing business in Chile

Over the years, many foreign investors and businessmen have asked us the question: “Just how do I go about doing business in Chile?”

As a leading international firm of auditors and consultants, we first answered this question in 1923, when we opened our first office in Chile. Eighty-seven years later, the answer has varied with the changes in business law and taxation and in the political and economic environment, but the question is still being asked.

This publication summarizes our current answers to the questions that you, as an investor or potential investor in Chilean business, have probably asked yourself. They are, of course, of a general nature and before making a decision you should consider the unique characteristics of your own situation.

The information is current as of the date indicated in the cover page. From time to time, we will update this guide to incorporate our current thoughts regarding the issues to which we refer herein.

We shall be glad to help you to answer more specific questions you may have on just how you should do business in Chile. Please contact the Deloitte Touche Tohmatsu office nearest to you. We are located in over 680 cities around the world. In Chile, we operate as Deloitte and our offices are located at:

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# Ways to operate in Chile

Nonresident individuals and companies can operate in Chile in one of the following ways:

- By appointing a representative.
- By forming an agency or branch of a foreign corporation.
- By forming a partnership or corporation under Chilean law.
- By forming a limited liability individual enterprise

## Through a representative

A representative acts on the basis of a mandate, contained in a contract that the nonresident principal confers to a Chilean resident individual or entity. The representative acts on behalf and at the risk of the foreign principal to carry out one or more business transactions. The principal and the representative are free to agree whether or not the latter will receive any remuneration.

## By setting up a Chilean branch or agency of a nonresident foreign corporation

The foreign corporation must appoint an agent to set up the branch. The agent must notarize the following documents that must be written in the official language of the foreign country and must be accompanied by a translation into Spanish, if they were granted in another language:

- Proof that the corporation is legally incorporated abroad.
- Certification that the corporation is still in existence.
- Authenticated copy of the corporation's current statutes.
- 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 broad powers

At the same time, the agent, on behalf of the corporation, must notarize a deed that indicates, amongst other, the following information:

- The corporation will maintain in Chile current assets to cover the liabilities that must be served in Chile.
- The effective capital assigned to the Chilean branch or agency, and the way and dates that such capital will be brought into the country.
- The domicile of the main agency or branch in Chile.

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 (Diario Oficial).

## **By forming a partnership or corporation**

A Chilean partnership or corporation, which requires a minimum of two partners or shareholders, can be formed with one or more foreign partners or shareholders. The types of entities and how they are formed are detailed in the following chapter.

## **By setting up a limited liability individual enterprise**

A limited liability individual enterprise is a legal entity with its own assets and liabilities, separate from those of the individual holder.

Only one individual, a Chilean or a foreigner, is required to set up a limited liability individual enterprise.

Limited liability individual enterprises must be incorporated by means of a public deed, which should contain at least those stipulations required by law.

A summary of the public deed, duly authorized by the Notary Public before whom it was signed, must be filed with the Register of Commerce corresponding to the domicile of the enterprise, and must be published in the Official Gazette within the sixty days following the deed's date.

## **By setting up a “Sociedad por Acciones” (“SPA”)**

**An SPA is a new form of corporate entity, which is the only one in Chile which can have only one shareholder.**

# Types of companies that may be set up in Chile

Under Chilean commercial law, the following types of partnerships or corporations can be formed:

## Corporation ("sociedad anónima")

The "sociedad anónima" (corporation) is a body corporate that results from the forming of a single equity contributed by the shareholders. The shareholders' liability is limited to the amount of their individual contributions. The corporation can be publicly traded or closely held and a Board of Directors whose members can be replaced at any time administers its affairs.

Chilean law considers that a corporation's activities are always mercantile, even though it is formed to carry out acts that would otherwise be deemed to be civil.

A corporation is considered to be publicly traded if it meets one or more of the following conditions:

- The corporation's shares or other securities are listed on a Stock Exchange or are offered to investors in general through a public offering.
- The corporation has more than 500 shareholders of record.
- At least 10% of the subscribed capital is owned by more than 100 shareholders (excluding any shareholder that individually owns, either directly or through another person or legal entity, more than 10% of the corporation's capital).
- The corporation has elected voluntarily to be ruled by the regulations and standards of a publiclytraded corporation.

All other corporations are deemed to be closely-held.

Publicly-traded corporations are subject to the regulatory control of the Superintendencia de Valores y Seguros (Superintendency of Securities and Insurance) and must be listed in the Register of Securities.

A corporation is created by means of a notarized deed that must contain, as a minimum, the following:

- The names, professions and addresses of the shareholders that are starting the corporation; at least two shareholders are required.
- The name and domicile of the corporation.
- The specific objects for which the corporation is created.

- The life of the corporation, which can be indefinite; if nothing is said, the life is presumed to be indefinite.
- 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 manner and terms in which the shareholders must pay in their contributions, and the indication and value of all non-monetary contributions.
- How the corporation is to be administrated and how the administration will be supervised by the shareholders.
- The corporation's financial year-end (at which date the financial statements must be drawn up) and when the General Shareholders Meeting must be held.
- How the corporation will distribute its profits.
- How the corporation will be liquidated.
- The nature of the arbitration by which any differences between shareholders or between shareholders and the corporation are to be decided; if nothing is said, it is understood that the differences will be submitted for resolution by an arbitrator ex aequo et bono.
- The names of the first directors and external auditors or comptrollers.

A summary of these statutes, duly notarized, must be filed with the Register of Commerce that corresponds to the corporation's domicile. The summary must also be published once in the Official Gazette. Both the filing and the publication must be made within sixty days of the date the deed is signed.

### General partnership ("**sociedad colectiva**")

In a general partnership all the partners administrate the company individually or through an elected representative. Each partner is responsible for the legal liabilities of the partnership without limit.

To create a general partnership the partners, or their legal representatives, must sign a duly notarized deed. The partnership deed must contain, as a minimum, the following:

- The names, professions and addresses of the partners.
- The partnership's name, which must be the names of one or more of the partners, followed by the words "y compañía" (and company).
- Partner or partners who will administrate the general partnership and who are allowed to use the company's name.
- The capital contributed by each partner in cash or otherwise; if the contribution is not in cash, the value assigned to it or how such value is to be determined.
- The partnership's line of business.
- The partnership's domicile.
- How the profits or losses are to be assigned to the partners.
- When the partnership will start and when it will end its legal existence.
- The amount each partner can withdraw annually for personal expenses.
- How the partnership is to be liquidated, and how its assets will be assigned to each partner.
- How differences among the partners are to be settled, whether or not an arbitrator will be used, and, if so, how he or she will be appointed.

A summary of the partnership deed must be filed with the appropriate Register of Commerce within sixty days.

### **Limited liability partnership ("sociedad de responsabilidad limitada")**

A limited liability partnership is similar to a general partnership. The principal difference is that each partner's liability is limited either to the amount of capital he or she contributed or to a greater amount specified in the partnership deed.

A limited liability partnership is formed by means of a notarized deed that should contain the items required for a general partnership deed. The name of a limited liability partnership should contain the name of one or more partners or a reference to the partnership's object. However, the name must end in the word "limitada" (limited); otherwise, each partner is unlimitedly liable for all the partnership's liabilities.

Filing of a summary with the Register of Commerce is also required within 60 days. The summary must also be published in the Official Gazette within the same 60-day period.

### **Limited partnership ("sociedad en comandita")**

In a limited partnership some partners provide all or a part of the partnership's capital with no right to manage the partnership's affairs. These partners have limited liability.

In addition, one or more other partners are designated as managing or general partners and have unlimited liability for the partnership's debt and losses.

If shares represent the limited partners' capital, the partnership is known as a limited partnership with share capital ("sociedad en comandita por acciones"). Otherwise, it is a simple limited partnership ("sociedad en comandita simple").

The requirements to create a limited partnership are similar to those for forming a general partnership.

### **Association ("asociación" or "cuentas en participación")**

An association ("asociación" or "cuentas en participación") is a contract between two or more businesspersons or entities to share in one or more commercial transactions, which will be carried out by one of them in his or her own name. Such partner must render an account to the other partners and share with them any profit or loss that might result.

The association only creates rights among the partners. As far as third parties are concerned, only the partner in whose name the transaction is carried out is responsible.

There are no legal requirements for forming an association.

## Company by shares (“sociedad por acciones”)

A Share Company (Sociedad por Acciones) is a newly created legal entity that can be set up and can exist with only one shareholder.

It is very flexible and its bylaws can establish different series of shares that can participate separately in the results of different business ventures, amongst others. In the absence of specific stipulations in the entity’s bylaws, the rules governing corporations apply.

## Corporate criminal liability

Law N° 20,393 published in the Official Gazette on December 2, 2009, establishes that criminal liability extends to legal entities in the case of money laundering, terrorist financing and bribery.

Legal entities will be criminally liable, when as consequence of their non-compliance with their management and supervisory duties, the abovementioned crimes are committed in their interest or benefit by their owners, controllers, responsible parties, senior executives, representatives or those who perform activities of administration and supervision; and even when these crimes are committed by those who are under the direct management or supervision of any of the referred to individuals.

Notwithstanding the above, if the legal entity has implemented organizational, management and supervisory models to prevent the commitment of these crimes, or they were committed by individuals in their own benefit or for a third party benefit, the legal entity will not be criminally liable.

# Foreign investments and loans

## How to bring foreign capital into Chile

The transfer of foreign capital into Chile must be made using any of several legal statutes.

The statutes most frequently used are:

- Title I, Chapter XIV of the Chilean Central Bank's Compendium of Foreign Exchange Regulations.
- Decree Law 600 (D.L. 600), the Foreign Investment Law.

## Title I, Chapter XIV of the Chilean Central Bank's Compendium of Foreign Exchange Regulations

- These regulations are applied to investors who make foreign exchange operations related to credits, deposits, investments and capital contributions coming from abroad. The procedure is applied to the operations whenever the amount is greater than USD10,000 or their equivalent in other foreign currencies.
- Foreign currencies must be brought into the country through the Formal Exchange Market (FEM), composed of banks and authorized exchange houses. The foreign investor must inform the Chilean Central Bank of the investment, through a commercial bank or the intervening financial institution, according to the terms and conditions contained in the Chapter XIV regulations.
- The registration process begins once the funds have entered the country through the FEM. However, foreign currency can also be disbursed directly abroad, in which case the Central Bank must be informed directly by the interested parties, normally within the first 10 days of the following month.
- The Chilean Central Bank must be informed of payments or remittances of foreign currencies that correspond to capital, interest, profits and other benefits through the FEM entity involved in the operation. There are no restrictions as to the term or the amount of repatriations of these items.
- All the transactions related to the conversion of the investment to Chilean pesos, and the foreign currency purchases for remitting profits or for repatriating the investment that should be made through the FEM, can be carried out whether the funds are acquired or not in the FEM. However the remittance abroad of the foreign currency must be performed through the FEM.
- Under recent amendments to the income tax law and to the foreign exchange regulations, investments can also be made through the contribution of shares or rights in foreign resident entities to locally resident entities or to entities set up under the rules of article 41 D of the Chilean Income Tax Law.

Notwithstanding Chapter XIV's regulations, the Chilean Central Bank, under article 47 of its Organic Law, can enter into a foreign exchange agreement with external or internal investors or creditors and other parties in a foreign exchange operation, establishing the terms and conditions in which the capital, interests, profits or benefits that are generated can be used, sent abroad or restored to the investor or to the internal creditor, and also, to assure them free access to the FEM.

## Decree Law 600

This system has existed since 1974 and regulates the relationship between the State of Chile and the foreign investor. Basically, the relationship is an investment contract between the State of Chile and the investor that contains the specific rules applicable to the specific investment. D.L. 600 contains general guidelines that govern these contracts, but specific clauses can be negotiated with the Foreign Investment Committee. Some of the clauses contained in a typical foreign investment contract are the following:

- The investment can be made in foreign currency, in tangible assets (both new and used), in technology and in loans.
- The accepted minimum investment is US\$5,000,000 or its equivalent in other currencies and US\$250,000 in the case of physical goods or technology. The loans or credit facilities associated to the investment cannot represent more than 75% of the total amount invested in Chile.
- The contract guarantees free access to the foreign exchange market for the remittance of capital (or principal) and profits (or interest).
- The investor can repatriate the capital after one year has lapsed from the date it was brought into the country. Profits can be remitted abroad at any time, once all the taxes due are paid off or the proper tax withholding has been made.
- The contract guarantees that the Value-Added Tax and customs systems shall be frozen until the investment in physical assets has been completed.
- The contract guarantees non-discrimination with respect to local investors. Although access to local borrowings may be limited, no such restrictions are currently imposed.
- The contract guarantees a fixed 42% income tax burden for a period of ten years; however, the foreign investor may elect at any time to waive the fixed tax rate and be subject to the general system of income taxes. The contract can also guarantee that the special mining activities tax will not be increased over a 10 year period.

There are additional benefits for investments of US\$50,000,000 and over. The most important of which are the following:

- The 42% invariability of the income tax can be extended to 20 years.
- Tax regulations and instructions regarding depreciation, carry forward of losses, and organization and start up expenses can be frozen for the same period.
- If the investment will produce exportable products, the Central Bank rules regarding freedom to export can be frozen, and special rules regarding the repatriation of export proceeds can be agreed upon.

In general, the Foreign Investment Committee approves only productive investments.

The Foreign Investment Committee has prepared free translations into English, German, Italian and French of the Foreign Investment Law. These translations are available upon request or can be obtained at the FIC's website ([www.cinver.cl](http://www.cinver.cl)).

Chile has signed a number of investment protection treaties.

## Bringing loans into the country

Foreign loans do not require prior authorization from the Chilean Central Bank for their entrance into the country. In order to receive foreign currencies entered into the country, certain information regarding the operations must be submitted to the FEM entity involved, information that the Formal Exchange entity must send to the Chilean Central Bank before the funds are handed over to the debtor.

The debtor can receive the foreign currency or its equivalent in Chilean pesos.

The payment of the capital, of the interest and other obligations related to the loan must be remitted through the FEM and the Chilean Central Bank must be informed through a commercial bank.

## Foreign exchange restrictions on foreign investment

As of April 19, 2001, the restrictions formerly applicable to deposits, investments and capital contributions operations have been repealed. Only information requirements and execution of certain operations through the FEM (Banks and Exchange Houses) remain.

## Debt-to-equity swap investments

The Chilean Central Bank has repealed the foreign investment system usually referred to as debt-to-equity swaps. Existing investors who used this system are free to remit their investment and profits abroad, with no time constraints.

# Foreign exchange operations

## Special regulations regarding foreign exchange operations

The Chilean Central Bank Law that is interpreted by circulars issued by the Chilean Central Bank regulates foreign exchange operations.

Chilean law considers the following to be foreign exchange operations:

- The purchase and sale or exchange of any type of foreign currency.
- Any operation that involves notes or currencies of foreign countries and the exchange notes, checks, letters of credit, payment orders, promissory notes, drawings, wire transfers by mail or cable, or any other document type denominated in a foreign currency, even if it does not involve the transfer of funds from or to Chile.
- All acts, agreements, contracts or any other operation in which one or more of the parties assumes a liability in foreign currency.
- All transactions involving securities, bonds, shares, or commercial paper denominated in a foreign currency.
- Transfers or transactions in gold or gold certificates.

Contracts or documents that contain liabilities expressed in a foreign currency with the stipulation that they are payable only in Chilean pesos, are not considered as foreign exchange operations.

## Limitations to foreign exchange operations

The Organic Constitutional Law governing the Chilean Central Bank that is in force since April of 1990 established the principle of free trading in foreign currency.

However, the law empowers the Chilean Central Bank of Chile to establish certain limits to foreign exchange operations.

Following are the limits that the Chilean Central Bank currently applies to foreign exchange operations:

1. Some operations must be informed to the Chilean Central Bank and performed through the FEM. These are, among others: foreign exchange operations undertaken by insurance companies and reinsurance operations; derivative operations; investment operations, deposits and credits abroad; and credits, deposits, investments and capital contributions coming from abroad.
2. Other operations of which the Chilean Central Bank must only be informed are payments related to imports and exports.
3. Operations that must be performed through the FEM but need not be informed are, amongst other: royalty payments for trademarks, copyrights and patents and operations with foreign capital funds.

Furthermore, the law empowers the Chilean Central Bank to establish certain restrictions to foreign exchange operations that consist of: need to bring back export proceeds and foreign currency liquidation; reserve deposits on credits, deposits or investments in foreign currencies that are coming from or granted abroad; requirement of prior authorization for some payment obligations or for the remittance of foreign currencies abroad; and limitation to the foreign currency held by the FEM entities. The Chilean Central Bank has not issued restrictions that are currently in force.

## Differential exchange rates

The foreign exchange regulations allow freedom in the setting of exchange rates for transactions on both the formal and the informal exchange markets. The principal foreign currency quoted in Chile is the US dollar and exchange rates for other currencies are usually linked to the dollar exchange rate.

The following exchange rates in relation to the US dollar have evolved:

- The formal rate which is quoted by banks and financial institutions. An average of the previous day's transactions ("dólar observado") is published daily by the Central Bank and is the "official" rate for payment of taxes and customs duties.
- The informal rate ("dólar informal") which is quoted on the Santiago Stock Exchange.
- The agreed rate ("dólar acuerdo") is fixed daily by the Central Bank for a limited number of its own transactions. For certain transactions with banks, the Central Bank may increase or decrease the agreed rate.

# Royalties, technical assistance and interest

The foreign currency required to pay royalty fees can be purchased either in the FEM or in the informal market. However, the payments must be made through the FEM (Banks).

## Taxes on royalty payments

In accordance with Chilean tax law, all royalties paid abroad are subject to a withholding tax at the rate of 30%, except where royalties are paid to persons resident or domiciled in countries with which Chile has executed a treaty to avoid double taxation, in which case the treaty provisions will apply. However, as of January 1, 2007, certain royalty payments enjoy a reduced rate of 15%. Such is the case for royalties related to the use and exploitation of patents, industrial models, industrial designs and drawings, integrated circuit designs and routings, new varieties of vegetation, and computer programs on any type of physical support. The reduced rate does not apply if the payment is to a tax haven or to a related party. The person or entity that pays, credits to account, or places at the disposal of the licensor any amount relating to this item, must withhold and pay in the 30% tax, without deductions. The tax withheld must be paid in to the Treasury within the first twelve days of the following month.

Tax deductibility of royalty payments made to related companies is limited to a 4% of total sales and services for the year, unless the tax applied on royalty payments in the beneficiary's country is 30% or more. The part of the royalties which exceeds the 4% limit and is deemed nondeductible is not subject to the 35% penalty tax.

Payments made abroad to nonresidents for engineering and technical work and for professional and technical services resulting in advice, reports or plans are subject to a 15% tax rate. However, the rate increases to 20% if paid to a tax haven or to a related party.

The withholding tax on technical assistance services related to exports of goods and services may be recovered as an estimated tax payment, provided that certain requirements are met.

Certain services rendered abroad related to foreign trade may be exempt from the withholding tax, provided certain requirements are met (this does not refer to royalties, technical assistance and interest).

Royalties paid to film and video producers or distributors are also subject to the withholding tax at the 20% rate. Royalties paid for authors' rights and edition rights are subject to the withholding tax at a 15% rate.

## Taxes on interest on loans

As a general rule, interest on loans coming from abroad is subject to a withholding tax of 35%. However, the tax decreases to 4% when the loans have been granted from abroad by a foreign or international bank or financial institution, as well as by certain foreign pension funds and insurance companies. The Chilean Internal Revenue Service (SII) must be informed of the operation in the month of March of every year. This tax must be withheld and paid in to the Chilean Treasury in the same way as the tax on royalty payments.

In the event that "excess indebtedness" exists, consistent in a debt-equity ratio exceeding 3 x 1, the interest on the excess indebtedness is subject to an additional 31% tax payable by the borrower.

Chilean tax law establishes the conditions under which excess indebtedness is understood to exist.

## Restrictions on foreign loans

Law N° 20,326 published in the Official Gazette on January 29, 2009, eliminated the stamp tax on loans granted in the year 2009, and reduced to 50% the stamp tax on loans granted within the first semester of the year 2010.

However, law 20,455 established that the reduced rate will become permanent. Therefore, the stamp tax rate is of a f 0.05% per month or fraction thereof, between disbursement and maturity with a maximum of 0.6% and it applies on all foreign loans regardless of their amount. The rate will be 0.25% if the loan is payable on demand or has no fixed maturity date.

# Taxation

## Principal taxes in Chile

All taxes in Chile are levied at the national level. There are no significant municipal, provincial or regional taxes, excepting for the Municipal License.

The principal sources of tax revenue are:

- Corporate and personal income taxes.
- Value-added tax (VAT).
- Customs duties.
- Stamp tax

In addition, the Chilean tax system includes a real estate tax, inheritance and gift tax, and several other lesser important taxes.

## Tax control

The institution in charge of the inspection and control of taxes in Chile is the Chilean Internal Revenue Service (SII). The SII is also in charge of issuing instructions, rulings and interpretation to the tax laws. The SII has a special inspection unit for large corporate taxpayers included in a special list.

In the event of a controversy between the taxpayer and the SII, the administrative procedure is carried out in first instance before the Regional Director of the SII who acts as Tax Judge. The possibility of appealing to the Courts of Appeals and, finally, to the Supreme Court exists.

The statute of limitations is three years from the date in which the payment of the corresponding taxes should have been made. In special cases the term extends to 6 years.

Law N° 20,322 published in the Official Gazette on January 27, 2009, established the Tax and Customs Courts that will solve the controversies between the taxpayer and the SII. These courts are already working in several regions of the country; however they will not open in Santiago until the year 2013.

## Income tax

Income taxation in Chile is based on two factors: the taxpayer's place of residence and the source of the income. All resident taxpayers, whether individuals or corporations, are subject to taxes on their total income, wherever earned, with the sole exceptions of foreign individuals who only pay taxes on Chilean source income for their first three years in the country. This period can be extended. In general, nonresident taxpayers are only taxed on Chilean-source income; that is, on income earned from assets located in Chile or from activities carried out in Chile. However, services rendered abroad to a Chilean resident are taxed.

Income from Chilean corporations or Chilean partnerships is always considered to be Chilean-source income.

Law N° 19.840, published in the Official Gazette on November 23, 2002, considers as Chilean source income the income arising from the disposal of shares or interests representative of the capital of a legal entity constituted abroad, made to an entity domiciled, resident or constituted in Chile, whose acquisition causes, either directly or indirectly, ownership in the property or income of a company constituted in Chile. However, this does not apply when the ownership acquired directly or indirectly in the Chilean company represents 10% or less of its equity or profits.

Chilean taxes are divided into category taxes, which tax income from certain activities, and global taxes, which tax all income.

The Category Taxes are:

- First Category Tax with a proportional rate applied on income from industry, commerce, mining, real estate, and other activities involving the use of capital. This tax is allowed as a credit against the global taxes due.
- Special mining tax.
- Second Category Tax with a progressive rate applied on income from personal services, as an employee. Income of self-employed persons and professionals is classified as second category income but is not subject to second category tax.

The Global Taxes are:

- Complementary Tax on the total income from both categories of resident individuals.
- Additional Tax on the total income from both categories of non-resident individuals or non-resident legal entities when they are withdrawn, distributed as dividends, or remitted abroad.

## Income tax rates

The principal tax rates are the following:

|   |                   |
|---|-------------------|
| <b>First Category Tax:</b>  | 17% (Tax Alert)   |
| <b>Second Category Tax:</b>   |                   |
| • Self-employed persons (professionals, directors of corporations, professional partnerships, and others) | No tax (I)        |
| • Employees (if subject to an employment contract, this is the only tax payable).                         | Exempt to 40% (I) |
| <b>Complementary Tax (resident individuals)</b>   | Exempt to 40%     |
| <b>Additional Tax (nonresident individuals and nonresident legal entities)</b>                            | 35%               |
| <b>Withholding of Additional Tax:</b>   |                   |
| • Royalties paid abroad, in general   | 30% (II)          |
| • Computer programs and others  | 15% (VI)          |
| • Royalties paid abroad for film and video  | 20%               |
| • Royalties paid abroad for authors' and edition rights   | 15%               |
| • Engineering or technical work   | 15% (III)         |
| • Professional or technical services  | 15% (III)         |
| • Other services paid abroad  | 35%               |
| • Interest to foreign corporations  | 35%               |
| • Interest to foreign banks and registered financial institutions   | 4% (IV)           |
| • Marine freight  | 5% (V)            |
| • Insurance premiums to foreign insurers  | 22%               |
| • Reinsurance premiums to foreign reinsurers  | 2%                |
| <b>Single Taxes:</b>  |                   |
| • Disallowed expenses of corporations (penalty taxes)   | 35%               |
| • Single tax payable on the capital gain on the sale of shares  | 17% (VI)          |

- (I) Second category income can be subject to the Global Complementary Tax or to the Second Category Tax. Partnerships formed by professionals can choose to be subject to the First Category Tax regime.
- (II) A deductibility limit of 4% of the total amount of the annual sales and services applies when the total or partial payment of the royalties is made to related companies, unless these are taxed with a rate of 30% or more in the beneficiary's country.
- (III) The tax is raised to 20% if rendered by a related party or by an entity in a tax haven.
- (IV) Interest on any excesses indebtedness is taxed with an additional 31%, provided that the borrowing is deemed to be related.
- (V) There are exemptions based on reciprocity.
- (VI) The single tax on capital gains applies when the specific requirements of the income tax law are met. In general capital gains on the sale of publicly traded shares are exempt.

(Tax Alert) Due to the February 2010 earthquake damage and related reconstruction costs, the First Category Tax rate was temporarily increased from 17% to 20% and 18.5% for income received or accrued in the years 2011 and 2012, respectively. In the year 2013 the rate will return to its current 17% tax rate.

## Payment of income taxes

Each taxpayer must file an annual income tax return and pay any tax due during the month of April following the year end.

No annual income tax return is required for an employee who receives only employment income. In this case, the Second Category Tax is withheld and paid to the Treasury by the employer on a monthly basis.

The First Category Tax or corporate tax is payable on accrued income on a yearly basis.

In most cases, estimated payments must be made on account of First and Second Category Taxes, Additional Tax and Complementary Tax.

## Income taxes applicable to a foreign investment

### Normal taxation

The following is a simplified example of the income taxes that generally affect a foreign investment in Chile:

| YEAR  | 2009    |
|---|---------|
| • Income before taxes   | 100.00  |
| • First Category Tax  | (17.00) |
| • -Net distributable  | 83.00   |
| <b>Withholding tax on distributions or dividends:</b>           |         |
| • Additional Tax (I)  | (35.00) |
| • Less tax credit   | 17.00   |
| • Net received by a nonresident parent, partner and shareholder | 65.00   |

*(I) The tax credit is added to the dividend to compute the tax basis for the Additional Tax.*

According to the Decree Law 600, 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.

## The 42% alternative

Foreign investors that have a DL 600 contract and have chosen the 42% rate are subject to the 17% First Category Tax (as from 2004), payable by the branch or subsidiary and to a 25% Additional Tax on the same tax base, without tax credit, when profits or dividends are remitted. Thus, the total theoretical tax burden is 42% on pretax income instead of the 35% currently payable under normal taxation.

| YEAR  | 2009    |
|---|---------|
| • Income before taxes   | 100.00  |
| • First Category Tax  | (17.00) |
| <hr/>   |         |
| • -Net distributable  | 83.00   |
| <hr/>   |         |
| <b>Withholding tax on distributions or dividends:</b>           |         |
| • Additional Tax (I)  | (25.00) |
| • Net received by a nonresident parent, partner and shareholder | 58.00   |

## Taxation of different types of business establishments

In general, differences arising from the choice of business organization are not very significant.

For an agency, branch, or permanent establishment of a foreign corporation only Chilean-source income is taxable. Taxable income is determined on the basis of the actual profits earned in its activities in Chile. When the accounting records do not reflect actual profits, the Internal Revenue Service can determine presumptive net income using either of the following bases:

- By multiplying the agency's gross income by the parent company's ratio of net income to gross income.
- By multiplying the agency's total assets by the parent company's ratio of net income to total assets.

In the case of limited liability individual enterprises, the tax provisions applicable to limited liability partnerships apply.

In a limited liability partnership, if any of the partners is a Chilean resident individual, that partner's share of income is not subject to the Additional Tax, but is added to his or her other income and taxed at the appropriate personal rates (Complementary Tax) with a tax credit equivalent to the First Category Tax paid by the limited liability partnership.

In a Chilean corporation, the First Category Tax is paid by the corporation, but it is a tax credit for the shareholders. Resident individual shareholders receive a credit against their Complementary Tax on dividends received. Resident corporate shareholders are not taxed on the dividend received and transfer the related tax credit to their own shareholders when they distribute dividends. Nonresident shareholders receive a tax credit against the Additional Tax due on dividends remitted abroad.

## Specific tax on mining activities

Since January 1, 2006, mining activities are subject to a tax in addition to normal taxes called the Mining Activity Tax which is known as Mining Royalty.

This tax is levied on income deriving from operational income of the metal mining activity obtained by a mining exploiter. A mining exploiter encompasses all individuals or legal entities that extract mineral substances and sell them in any state of production.

The mining exploiters whose annual sales exceed the equivalent of 50,000 metric tons of fine copper pay a single 5% tax rate. If the annual sales have an equivalent value of between 12,000 and 50,000 metric tons of fine copper they pay a progressive tax rate that varies between 0.5% ,4 and 5%. Finally, if the annual sales are lower than 12,000 metric tons of fine copper they do not pay this tax.

The value of a metric ton of fine copper is calculated according to the average value on the London Metal Exchange.

The operational income of the mining activity is calculated following the rules established by the income tax for the First Category tax, but with certain special additions and deductions.

## Value added tax

A 19% Value-Added Tax (VAT) is charged on all recurring sales and other customary conventions over material goods. The customary element is presumed on sales that relate to the line of business of the company. VAT is charged on services, whether recurrent or not, that originate interest, premiums, commissions or other similar remunerations that are considered of a commercial, industrial or financial nature, or that derive from mining, construction, publicity and computers, amongst others. Imports are also subject to VAT, regardless of them being customary or not. Professional services rendered by employees or independent consultants are not subject to VAT.

This is a typical Value-Added tax: the VAT paid on imports, purchases, and services received (tax credit or input tax) is deducted from the VAT due on sales and services rendered (tax debit or output tax). The vendor or the service provider must file a monthly tax return and pay the net tax debit by the twelfth day of the subsequent month. A net tax credit (increased to reflect the changes in the consumer price index) can be carried forward to the subsequent months.

Exports are not subject to VAT, but VAT paid on purchases of goods and services that are necessary to produce the exported goods is either deducted from other VAT due or refunded by the Internal Revenue Service. Incoming and outgoing marine and air transport services are exempt from VAT. Services that are rendered to nonresident entities, and which are used exclusively outside Chile can be deemed to be exports by the customs service, and therefore exempt from VAT.

Foreign investors covered by the foreign investment statute are not subject to VAT on their capital contributions, as long as those assets are included in a listing specially set up for that purpose.

Certain luxury items and beverages are subject to sales tax in addition to VAT at rates that vary according to the type of items sold.

## Foreign tax credit

Foreign source income pays taxes in Chile on a net paid basis (except for branches that pay on an accrued basis). If certain conditions established in our Income Tax Law are met, the investors are entitled to a credit against the First Category Tax and final taxes for the income taxes paid or withheld abroad on dividends profit remittances and income deriving from permanent establishments. The credit is capped at 30% in the case of dividends and 17% in the case of branch profits. In computing taxable income, foreign taxes paid are added to the taxable income. Foreign taxes paid in excess of the cap, which cannot be used as a tax credit, are allowed as a deduction from taxable income.

Notwithstanding the information above, the cap is 30% for countries that have double taxation treaties with Chile. The foreign taxes up to 17% can be used as a tax credit against the 17% First Category Tax and the balance against the Chilean company's owners' Additional or Complementary taxes.

Notwithstanding the above, tax credits are capped at a 30% of net foreign source income i.e. foreign source income, less expenses incurred in order to generate it.

## Treaties to avoid double taxation

Chile has subscribed to several general and specific treaties.

Currently, double taxation treaties are in force with the following countries: Argentina, , Belgium, Canada, Colombia, Mexico, Brazil, Norway, South Korea, Ecuador, Peru, Spain, France, Poland, the United Kingdom of Great Britain and Northern Ireland, Denmark, Croatia, New Zealand, Ireland, Malasia, Paraguay, Portugal, Sweden, Switzerland and Thailand. Additionally, Chile has signed double taxation treaties with, Rusia, the United States and Australia, which are not yet in force as they are subject to the approval of the Chilean Congress.

The double taxation treaty with Argentina is based on the exemption principle, in which income is subject to taxation in the source country. Therefore, for example, Argentinean source income obtained by Chilean residents is only subject to taxation in Argentina.

In computing his or her Complementary Tax, a Chilean resident must include Argentine-source income only for determining the applicable tax rate.

Chile currently does not have a tax treaty with the United States.

All the other treaties are based on the OECD model, of which Chile has become a full time member.

There are several treaties with other countries to avoid double taxation on the transport of goods and people by sea or by air.

## Article 41 of the Income Tax Law

Law N° 19,840, published in the Official Gazette on November 23, 2002, allows foreign investors to establish Chile as a base for their investments into third countries.

This regulation states that instead of the general regulations of the Income Tax Law, only Article 41D of such Law will be applicable (except for specific regulations). This applies to publicly traded corporations and closely held corporations ruled by the regulations of the former incorporated in Chile and in accordance with Chilean laws, incorporated with foreign capital permanently owned by partners or shareholders not domiciled nor resident in Chile, not in countries or territories that are considered tax haven jurisdictions, or harmful preferential tax regimes. The same tax treatment will be applicable to non domiciled nor resident shareholders of said companies for remittances and distribution of profits or dividends obtained 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 aforementioned Article 41D.

In accordance with Article 41D, the aforementioned companies are not considered as domiciled in Chile for the purposes of the Chilean Income Tax Law and, therefore, they will only pay taxes in the country on their Chilean source income.

Article 41D allows the participation of shareholders domiciled or resident in Chile in said companies, but limits their possibilities of ownership.

Among other requirements, the aforementioned companies must have as an exclusive line of business the investment in Chile and abroad in shares or partnership rights or in convertible bonds. The capital contributed by the foreign investor must have a foreign source; and the regulations related to bank secrecy will not be applied to them.

## Tax news

Financial Instruments.

Law N° 20,343 published in the Official Gazette on April 28, 2009 modified the tax legislation in order to improve the financial conditions for individuals and companies. Among the modifications introduced in said law is a tax benefit for all those taxpayers that acquire or sell publicly-offered debt instruments on a local exchange, either through a broker or a securities dealer.

According to the new article 104 of the Income Tax Law, the capital gain obtained in the sale of the referred instruments will not be considered income, if the following requirements are fulfilled: a) that they are registered in the Securities Register; b) that they are issued by a taxpayer who determines its income based on full accounting records; c) that they are traded on a stock exchange; d) that they are placed at an equal or higher value than the nominal value that appears in the emission contract, or if they are placed at a lower value, that they have paid a 17% tax on the difference between the nominal value and the lower value; and finally, e) that the debt agreement references that it is under this tax regimen.

However, the interest is understood to be accrued in the period of the anticipated payment or rescue, and the losses can only be deducted from the non-income revenues.

Moreover, the instruments issued by the Central Bank or the General Treasury can also use the abovementioned tax benefit, fulfilling special requirements established in the same article.

#### The Earthquake.

As a result of the need to extensively reconstruct the infrastructure damaged by the February 27<sup>th</sup> earthquake, Law No. 20.455 was published in the Official Gazette on July 31, 2010. The most important tax aspects of the referred Law are the following:

- **Temporary increase of the Corporate Tax.** The First Category Income Tax rate was raised from 17% to 20% and 18.5% for the income received or accrued in the years 2011 and 2012, respectively. In the year 2013 the rate will return to its current 17% tax rate.
- **Reduction of the Stamp Tax.** This tax has been permanently reduced by 50%, and will have the following tax rates: 0.05% per month or fraction thereof, between the date of the document or disbursement, as the case may be and maturity, with a maximum of 0.6%. The rate will be of 0.25% on documented credit operations or foreign loans payable on demand or with no fixed maturity date.
- **An exemption of the Corporate Tax.** Small and medium sized companies whose total annual income does not exceed 28,000 UTM (approximately US\$ 2 million) and with a tax equity lower than 14,000 UTM (approximately US\$ 1 million) will be exempt from paying Corporate Tax up to an amount of 1,440 UTM (approximately US\$ 105,000).
- **Temporary increase of Property Taxes** A surcharge of 0.275% will apply on rates of the Territorial Tax in the years 2011 and 2012 on real estate property whose fiscal value is over CLP\$96,000,000 (approximately US\$ 187,000).
- **Limit to housing benefit.** There is an amendment which refers to the tax benefits from Decree with Force of Law No. 2 regarding the the Housing Plan. It eliminates the tax exemption that legal entities used to have when owning real estate that qualified for this plan. It also limits the number of properties owned by individuals which will benefit from the exemptions and tax breaks down to 2.
- **Tax applied to Tobacco is also increased permanently.**

## Customs duties

Customs duties are 6% ad valorem for virtually all imported goods and products. There are some bilateral and regional reductions regarding some products, in the context of the ALADI (Latin American Integration Association) Agreement.

Chile has signed free trade agreements with Canada, Mexico, the United States, the European free trade association (EFTA), Guatemala and Central America, the European Union, South Korea, Panama, Japan and China. FTAs seek to eliminate, within a given period of time, customs duties applied by the contracting States. Chile has also entered into bilateral and economic complementation agreements with Colombia, Brazil, Cuba, Venezuela, Peru, Ecuador, Argentina, among others, in order to reduce or eliminate customs duties.

Chile is an associate member of MERCOSUR, and has negotiated immediate and staged reductions or eliminations of customs duties.

## Stamp tax

**This tax has been permanently reduced by 50%, and will have the following tax rates: 0.05% per month or fraction thereof, between the date of the document or disbursement, as the case may be and maturity, with a maximum of 0.6%. The rate will be of 0.25% on documented credit operations or foreign loans payable on demand or with no fixed maturity date.**

### **Municipal license**

This is an annual fee that is collected by the municipalities. It taxes any activity made by a taxpayer in its territory. 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\$ 533,000). The fee is allocated among the municipalities in which the taxpayer has an office, factory, warehouse or other establishment.

Law N° 20,280 published in the Official Gazette on July 4, 2008 stated that the SII has the obligation to inform to the municipalities the equity declared by the taxpayers, in order to facilitate the collection of the municipal license.

Additionally, according to resolution N° 27,677 issued by the Chilean Controller General's office on May 25, 2010, companies that hold only passive investments would not be subject to the Municipal license Tax. However, this is still being hotly contested by the municipal authorities.

# Pensions, social security and other employee benefits

## Pension systems

There are two general pension systems in Chile. The older system is administrated by an entity which has grouped the numerous Government pension funds and provides health, pension and certain other social security benefits. Employers must withhold and pay into the fund the employees' contributions that are a fixed percentage of total remuneration. The pensions payable are set by the Government.

In 1980, a new system of private pension funds was established. From that date, employees who join the labor force are required to contribute to the private system. Other employees could elect to change to the private system before May 1, 1986.

Employees' contributions to the private pension funds are also withheld from the monthly remunerations at a fixed percentage on remuneration up to 60 UF, readjusted according to the variation of the index of real remunerations determined by the National Statistic Institute between November of the antepenultimate year and November of the precedent,, for the year that it will begin to apply. The taxable cap readjusted as mentioned, will be in force as from the first day of each year and will be determined by a resolution of the Superintendence of Pensions. As from January 1st, 2010, the taxable cap for calculating the pension contributions will be of 64,7 UF (the UF is an index-linked unit that is equivalent to approximately US\$ 40). The employee can elect to make additional contributions to the fund up to an amount equal to 64,7 UF a month. In addition employers can make voluntary tax-free contributions to their employees' accounts.

Upon retirement, the employee can opt for a lump-sum payment, a pension or an interim combination of the two, all of which are based on the amounts the employee has contributed to the fund. The lump sum can only be used to purchase an annuity from an insurance company.

## Contributions to pension plans

Contributions to either the Government or the private pension plans are made only by employees and self-employed individuals. Employee contributions are deductible from taxable income in computing personal income taxes due. Contributions to a pension plan are based on monthly as the indicated above.

Employers have no responsibility for pensions other than withholding and paying employees' contributions.

Contributions to a Government plan depend on the activity; for example, the pension contributions rate of most employees in the private sector is about 22%.

Contributions to the private pension plans are at the rate of 10%, plus a variable commission established by each fund (currently about 3.5%). The pension fund must purchase disability and survivors' pension insurance from an insurance company. In addition, the employee can make voluntary contributions up to a total, as from January 1<sup>st</sup> of 2010, of 64,7 UF a month, readjustable as indicated in the previous paragraphs and employers can make voluntary tax-free contributions.

### **Cost of health care benefits**

Employees and self-employed individuals pay 7% on monthly remunerations up to a cap of 64.7 UF, as from January 1<sup>st</sup> of 2010, readjusted as indicated in the previous paragraphs, for health insurance. Employers are only required to withhold and pay the insurance.

If the employee is affiliated with one of the Government pension plans, the health insurance premium is collected by the pension plan and paid to the State Health Fund (Fondo Nacional de Salud - FONASA).

Employees affiliated with one of the private pension plans can elect to make their contributions either to FONASA or to a private health insurance company (Institución de Salud Previsional or ISAPRE). Most health plans cover up to 80% of medical and hospital costs.

### **Labor-related accident insurance**

All employers must pay a 0.95% premium on remunerations capped, as from January 1<sup>st</sup> of 2010, at 64,7 UF a month, readjusted as indicated in the previous paragraphs, for labor-related accident insurance, (workmen's compensation). According to the risk of the employer's activity, additional contributions at varying rates may be required up to a maximum of 3.4%. The rate can also decrease based on the employer's track record.

### **Unemployment insurance**

As of October 1, 2002, mandatory unemployment insurance has been established in favor of employees governed by the Labor Code. This insurance is financed with an obligatory contribution by the employee of 0.6% plus a mandatory contribution of the employer of 2.4%, both calculated on the base of the employee's taxable income capped at 97.1 UF. This cap will be annually readjusted according to the index of real remunerations determined by the National Statistic Institute or by the index that substitutes it, between November of the antepenultimate year and November of the penultimate year, for the year that the readjustment will begin to apply. The taxable cap readjusted as mentioned, will be in force as from the first day of each year

## Severance indemnity payments

Labor law provides for a severance indemnity payable to employees if they are dismissed for reasons other than serious misconduct. The benefit is equivalent to one month's salary for each year of service, with a maximum of eleven months, and is based on the employee's most recent salary level up to a maximum of 90 UF a month. However, individual or collective work contracts may provide for the payment of a higher amount. The employer must give the employee a justified reason for the dismissal. If the reason given is not satisfactorily proven before the Courts, depending on the circumstances, the severance payment may increase by 30% to 100%, depending on the reason given for the dismissal. The severance indemnity payment must be performed at the end of the labor relationship. Notwithstanding the above, the parties can agree to advance payments of amounts accrued. If the indemnity is not paid, employees can recourse to the Labor Courts, who can impose fines on the employer. The employee can also demand that the amounts due be increased up to 150%, when the employer does not pay the indemnity payment agreed in the termination of the working contract.

In the case of executives or people that are in sensitive positions, it is not necessary invoke a specific legal cause in order to terminate the work contract.

Additionally, the employee has the right to be informed at least thirty days in advance of the discharging or to receive a payment equivalent to one month's salary.

In general, the severance payments are tax exempt for the employee and are deductible for the company.

In the case of executives or people that are in sensitive positions, it is not necessary to invoke a specific legal cause in order to terminate the work contract.

Additionally, the employee has the right to be informed at least thirty days in advance of the discharge or to receive a payment equivalent to one month's salary.

In general, the severance payments are tax exempt for the employee and are deductible for the company.

Currently, the Labor Court can order the General Treasury to withhold from the employer's tax returns an amount equivalent to the one due to the employee in a trial, to assure that the employee will receive the amounts determined in said trial.

## Profit-sharing

Profit-sharing payments are required by law, unless the employee's labor contract specifically includes a different arrangement. If the contract is silent, the employer must pay the legally established profit sharing and can choose annually either of the following bases:

- 30% of taxable profits after deducting a 10% return on equity, allocated in proportion to the annual remuneration of each employee.
- 25% of each employee's annual remuneration, with a maximum mandatory profit sharing of 4.75 monthly minimum salaries for each employee, whether or not the employer has a profit and whatever its amount. The maximum amount payable to each employee under this alternative is approximately US\$1,419 a year.

Mutually agreed profit sharing cannot be less favorable for the employee than the above alternatives.

Profit sharing is taxable to the employee and deductible for the employer.

## Disability and survivor insurance

As from July 2009, companies with more than 100 employees have begun to pay the cost of the disability and survivor insurance. Before the Pension Reform, this insurance was paid by the employees; therefore, this modification will result in a small increase of the employees' net income of approximately 1%.

The companies that currently have less than 100 employees will have to pay this cost as from June 2011.

# Expatriate executives

## Employment of expatriates in Chile

The law requires that at least 85% of a company's employees be Chilean citizens. However, expatriates with more than five years' residence in Chile, persons 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.

Two-year work permits are easily obtained. It is possible to change a tourist visa or card into a work permit in Chile. The work permits can be renewed or converted to a permanent resident status.

## Payment of salaries in a foreign currency

Individuals and entities resident in Chile can pay remunerations in a foreign currency to foreign specialized personnel who are subject to an employment contract and are exempt from Chilean social security contributions.

## Payment of a portion of an executive's remuneration outside Chile

There is no requirement for remunerations to be paid in Chile; they can be paid anywhere in the world, either by the employer or by any other company.

However, if the remuneration relates to services provided in Chile, it is subject to Chilean taxes regardless of the place where the remuneration is paid, as it is understood to be Chilean source income.

## Chilean income taxes on expatriate's remunerations

For a period of three years (which can be extended by the Chilean IRS), only Chilean-source income of a resident expatriate is subject to income taxes. After the third year, worldwide income is taxed. A resident is defined as a person who either is domiciled in Chile or is physically present in Chile for more than six consecutive months. Chilean domicile mainly reflects the intention of the expatriate to establish a principal place of business or residence in Chile over a period of time.

A nonresident expatriate is subject to a 20% withholding tax on remunerations earned in Chile due to scientific, cultural or sporting activities and to a 15% in the case of technical, professional and engineer services.

## Chilean social security contributions

In general all employees are subject to Chilean social security contributions. However, foreign technical personnel who are paying social security in another country can elect to be exempt from Chilean social security, provided the foreign system provides substantially equivalent coverage at least for illness, disability, old age and death.

Chile has signed agreements concerning social security with, Argentina, Austria, Australia, Belgium, Brazil, Canada, Denmark, France, Germany, Luxembourg, Norway, Portugal, Peru, Quebec, Spain, Sweden, Switzerland, the Netherlands, the United States of America, Uruguay, Finland, Ecuador and the Czech Republic. These agreements establish exemptions, amongst other benefits.

## Tax on fringe benefits

In general, fringe benefits are either not allowed as a deduction for the employer or are taxed as income to the employee. In many cases, fringe benefits that are not allowed as a deduction to the employer are subject to a 35% penalty tax. Most fringe benefits are considered to be additional taxable remuneration for the employee and can be deducted as an expense by the employer. The tax treatment of some of the more usual fringe benefits is as follows:

- Foreign service allowance or differential: this is treated as additional taxable remuneration.
- Housing (or rent) allowance: this is treated as additional taxable remuneration.
- Housing provided by the employer: the Chilean Internal Revenue Service will usually consider that this is additional taxable remuneration; however, the law is unclear on the subject and there is no definitive court ruling. The law does state that housing provided in the sole interest of the employer is not taxable.
- Home leave for the employee and his or her family: this is treated as additional taxable remuneration; however, any portion of the executive's expenses that relate to business travel (such as visits to the head office) is a deductible expense for the employer and is not taxed as additional remuneration to the employee.
- Tax equalization: if the tax equalization relates to income derived from services rendered in Chile, it is treated as additional taxable remuneration.
- Bonuses and profit sharing: these are treated as additional remuneration; if the amount paid relates to a period of several months, it is allocated to the income of each month and the monthly taxes are recomputed.
- Company car: in general, all expenses relating to company cars (including depreciation) are not allowed as a deductible expense for the employer, and they are not taxable income to the employee unless he has been granted the exclusive use of the car. Expenses related to pick-up trucks and similar vehicles are deductible only if they are used for company purposes.
- Reimbursement of entertainment expenses: if they are necessary for the business and are adequately documented, such expenses are deductible for the employer and the reimbursement is not taxable income for the employee; however, the Internal Revenue Service tends to routinely deem these expenses as not necessary for the business.
- The severance payments established by law are essentially non-taxable, although there are limits. However, the severance indemnity voluntary paid or the one agreed to in a contract that is higher than the legal severance payment is considered income.

# Special business or tax incentives

Chilean law provides special incentives for:

- The oil industry
- The radioactive substances industry
- Operations in the Iquique, Arica and Punta Arenas free trade zones
- Operations in the I, XI and XII Regions and in Chiloé Province
- Exporters
- The forestry industry
- Research and development activities
- Solar thermal systems

## Oil industry

Companies that enter into a petroleum-operating contract with the Chilean State can opt between the normal systems of corporate taxation or be subject to a 50% tax applied on their retribution as contractors.

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 nonresident subcontractors are subject to a flat 20% tax on their gross fees.

## Radioactive substances

Companies that enter into a contract with Comisión Chilena de Energía Nuclear to explore, exploit or process radioactive substances can be granted a tax treatment similar to that of the petroleum industry.

## Free trade zones

A free trade zone is an area of territory surrounding a port or airport that for the purposes of import duties is deemed to be outside Chilean territory. Currently, there are free trade zones in the ports of Iquique, Arica and Punta Arenas.

Merchandise imported into a free trade zone can be held on deposit, exhibited, uncrated, packaged, labeled, divided, repackaged, or sold within the free trade zone. 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 exempt
- Value-Added Tax: all operations within the free trade zone are exempt
- Import duties: foreign goods imported into the free trade zone are exempt

Sales and transfers of merchandise from a free trade zone to another area of the country are considered to be imports and generate import duty and Value-Added Tax when they are moved out of the free trade zone. However, the First Region and the Punta Arenas Region are considered free trade extension zones. Goods transferred from the free trade zones to these areas are taxed with a single 0.6% tax, which can be credited against VAT. This tax increases or decreases in proportion to the changes in the average customs duty rate.

In the year 2002, a free trade zone was created in the Second Region for the sale of mining products.

The free zone in Arica has benefits and tax incentives for manufactured products. Also, there are export centers with similar characteristics to those of the free trade zones and it has a special regime for manufacturing industries to be installed in the area, among other measures whose purpose is to develop the local economy.

## Regional incentives

Activities located in the extreme North (I Region) and extreme South (XI and XII Regions and Chiloé Province) 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.

In addition, employers receive a grant equivalent to 17% of taxable remunerations with annual limits.

These benefits will be lost if the taxpayer does not pay taxes on a timely basis.

Under the “Ley Austral” tax credits are granted for investments in fixed assets.

There are also special tax incentives for business in the Tierra del Fuego and Antarctic Territories. Effective January 1, 2002, industrial and manufacturing companies based in the Tocopilla Province, who produce supplies parts and pieces for the mining industry have the following benefits:

1. A 25-year period exemption from the Corporate Tax.
2. Exemption from customs duties on imports of goods related to their business.
3. Other free trade zone special regulations.

## Export incentives

Private export warehouses allow exporters to use foreign raw materials and parts in their manufacturing processes without paying custom duties, provided the finished products are exported within certain time periods.

As exports are zero-rated for VAT, exporters obtain reimbursement of all input VAT borne on purchases of goods and services relating to their export activities. This reimbursement is also available for companies that transport freight and passengers to and from Chile, supply food and beverages to planes and ships in transit, or render services deemed to be exports by the customs service to non-resident entities.

As of January 1, 2003, the drawback has been reduced to 3% of the value of "non-traditional exports" if the aggregate FOB value of exports for any calendar year does not exceed \$18,000,000. The goods which are excluded from this benefit are detailed in a list published no later than March 30 of 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 customs law allows for the reimbursement of duties on products which are re-exported after only minor processes, such as assembling, packaging, finishing, ironing and labeling.

The exporter must choose between this reimbursement and the "non-traditional exports" drawback when eligible for both benefits.

## Forestry industry

There are incentives for reforestation of marginal and degraded land. Incentives have also been created for small farmers.

## Research and development activities

Law N° 20,241, published in the Official Gazette on January 19, 2008, establishes a tax incentive for private investment in research and development. Corporate taxpayers, who declare their taxes through full accounting records can benefit from this incentive.

In general, the incentive consists in a credit against the corporate tax. This credit is equivalent to 35% of all payments related to research and development contracts duly certificated by The Corporation for Development and Production (CORFO). Additionally, these taxpayers must comply with other requirements established by this law.

## Solar thermal systems

According to Law N° 20,365 published in the Official Gazette on August 19, 2009, construction companies will have the right to deduct from the obligatory estimated monthly payments established in the Income Tax Law, a credit equivalent to all or part of the value of the solar thermal systems installed in the real estate they built.

# Accounting and reporting

## Administrative formalities that must be met before operations in Chile begin

All individuals or entities that start a business activity in Chile must comply with certain administrative requirements. The principal requirements are:

- **Taxpayer number ("Rol Único Tributario" or "RUT"):** this number must be obtained when the individual or entity is registered with the Internal Revenue Service ("Servicio de Impuestos Internos") and no business can operate without a taxpayer number.
- **Declaration of initiation of activities:** this declaration is made to the Internal Revenue Service within the two months following the month that activities start; the declaration must contain a description of the nature and amount of the enterprise's capital.
- **Municipal license:** a separate license must be obtained from the corresponding Municipality for each of the enterprise's establishments, offices, warehouses, etc.; no activity can be started without the applicable license.
- **Sectored permits:** some businesses require special permits depending on the nature of the activities to be developed, such as: health permits (SNS); environmental permits (SESMA); forestry permits (CONAF); agricultural and livestock permits (SAG); mining permits (SERNAGEOMIN); marine permits (DMM); air navigation permits (DGAC); and telecommunications permits (MTT), among others.

Notwithstanding the above, for investment in certain kind of securities, foreign investors can be released from the obligation of maintaining complete accounting records and from filing yearly tax returns.

## Accounting and bookkeeping requirements

The entity's financial year cannot exceed twelve months and can end on any day chosen by the shareholders. However, for tax purposes, a December 31 year-end must be used, although the Internal Revenue Service can authorize the use of a June 30 year-end. Usually, such authorization is not granted.

In general any business or taxpayer is required to maintain complete accounting records: a cashbook, a journal, a ledger and a balance sheet register, or their equivalents. In addition, the following records must be kept for tax purposes:

- Sales and purchases journals
- Payroll register (required only when there are five or more employees).
- Tax withholding register.
- Inventory register.
- Taxable profits ledger (FUT).

All the accounting and tax books must be stamped by the Internal Revenue Service. The records can be loose leaf, prepared either manually or by data processing equipment, if they have been previously authorized by the Internal Revenue Service.

Enterprises that operate in the free trade zones (Arica, Iquique and Punta Arenas) and in areas subject to incentives (currently the I, XI and XII Regions and Chiloé Province) must maintain a separate set of accounting records for those operations.

Accounting entries must conform to Chilean accounting principles and practices. However, Chile has adopted IFRS as of January 1, 2009, which is being gradually phased in, starting with the regulated industries.

Recent changes to the Tax Code have made it simpler to keep accounting records in foreign currency when certain requirements are met. Rules for paying taxes in foreign currency have also been relaxed.

### **Independent statutory audits**

In general, only certain types of entities are required to appoint independent auditors. Such entities include banks, financial institutions, insurance companies, pension plans, publicly-traded corporations, and cooperatives. Almost all other entities are usually free to appoint auditors or to establish other means of control.

### **Public availability of financial statements**

Certain entities (principally banks, financial institutions, insurance companies, pension plans, and publicly-traded corporations) are required to file quarterly and annual financial statements with the appropriate regulatory agency (Superintendencia). These statements are publicly available.

In addition, the annual financial statements filed with a Superintendencia and those of an agency or branch of a foreign corporation must be published in a newspaper.

Other entities are not required to file financial statements with any Government agency.

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