

**CONVENTION BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE REPUBLIC OF CHILE  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

The Government of the United States of America and the Government of the Republic of Chile, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, have agreed as follows:

## **I. SCOPE OF THE CONVENTION**

### **Article 1**

#### **GENERAL SCOPE**

This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

### **Article 2**

#### **TAXES COVERED**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of property as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are:
  - a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), the Federal excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations;
  - b) in Chile: the taxes imposed under the Income Tax Act (*Ley sobre Impuesto a la Renta*).
4. This Convention shall apply also to any identical or substantially similar taxes, and to taxes on capital imposed by a Contracting State after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

## **II. DEFINITIONS**

### **Article 3**

#### **GENERAL DEFINITIONS**

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession;
  - b) the term "Chile" means the Republic of Chile;
  - c) the terms "United States" and "Chile" also include the territorial sea thereof and the sea bed and subsoil of the submarine areas adjacent to the territorial sea over which they exercise sovereign rights in accordance with international law;
  - d) the term "person" includes an individual, a company and any other body of persons;

- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State, and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;
- h) the term "competent authority" means:
  - i) in the United States: the Secretary of the Treasury or his delegate; and
  - ii) in Chile: the Minister of Finance or his authorized representative;
- i) the term "national" of a Contracting State means:
  - i) any individual possessing the nationality or citizenship of that State; and
  - ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.
- j) the term "pension fund" means any person or entity established in a Contracting State that is:
  - i) generally exempt from income taxation in that State; and
  - ii) operated principally either:
    - A) to administer or provide pension or retirement benefits; or
    - B) to earn income for the benefit of one or more persons or entities meeting the requirements of clause i) and subclause A) of clause ii) of this subparagraph.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

#### **RESIDENCE**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof and any agency or instrumentality of such State, but does not include any person who is liable to tax in that State in respect only of income from sources in that State or of capital situated therein.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (center of vital interests);
- b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraphs 1 and 2 of this Article, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the mode of application of this Convention to that person. If the competent authorities do not reach such an agreement, that person shall not be entitled to claim any benefit provided by this Convention, except those provided by Article 26 (Mutual Agreement Procedure).

## **Article 5**

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry, or any other place of extraction or exploitation of natural resources.

3. A permanent establishment likewise encompasses:

- a) an installation used for the on-land exploration of natural resources only if it lasts or the activity continues for more than three months;
- b) a building site or construction or installation project and the supervisory activities in connection therewith, or a drilling rig or ship used for the exploration of natural resources not referred to in subparagraph a) only if it lasts or the activity continues for more than six months; and

c) an enterprise that performs services in the other Contracting State, for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed through one or more individuals who are present and performing such services in that other State.

For the purposes of computing the time limits in this paragraph, activities carried on by an enterprise associated with another enterprise, within the meaning of Article 9 (Associated Enterprises), shall be regarded as carried on by the last-mentioned enterprise if the activities of both enterprises are substantially the same, unless they are carried on simultaneously.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying out scientific research for the enterprise and any other similar activity, if such activity is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts that are binding on the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities that the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business as independent agents.

7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

### **III. TAXATION OF INCOME**

#### **Article 6**

#### **INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)**

1. Income derived by a resident of a Contracting State from real property (immovable property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. For purposes of this Convention, except as otherwise provided, the term "real property (immovable property)" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property (immovable property), livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property (immovable property) and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, aircraft and containers shall not be regarded as real property (immovable property).

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property (immovable property).

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property (immovable property) used for the performance of independent personal services.

## **Article 7**

### **BUSINESS PROFITS**

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits that it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions necessary expenses that are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income that are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base

is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

8. Notwithstanding the provisions of paragraph 1, in the absence of a permanent establishment, the United States may impose its excise tax on insurance premiums paid to foreign insurers and Chile may impose its tax on payments for insurance policies contracted with foreign insurers. However, notwithstanding the provisions of Article 2 (Taxes Covered), the tax so charged shall not exceed:

- a) 2 percent of the gross amount of the premiums in the case of policies of reinsurance; and
- b) 5 percent of the gross amount of the premiums in the case of all other policies of insurance.

9. For the purposes of the Convention, the term “business profits” means income from any trade or business.

## **Article 8**

### **INTERNATIONAL TRANSPORT**

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For purposes of this Article, profits from the operation of ships or aircraft include, but are not limited to:

- a) profits from the rental of ships or aircraft on a full (time or voyage) basis; and
- b) profits from the charter or rental on a bareboat basis of ships or aircraft if those profits are incidental to profits from the operation by the enterprise of ships or aircraft in international traffic.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including related equipment for the transport of such containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

1. Where:

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations that differ from those that would be made between

independent enterprises, then, any profits that, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State, if it agrees with such inclusion, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividend is a resident and according to the laws of that State, but if the dividends are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:

- a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;
- b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the payer is a resident if the beneficial owner of the dividends is an entity that is established and maintained in the other Contracting State principally to provide or administer pensions or other similar benefits to employed and self employed persons, or to earn income for the benefit of one or more such arrangements, and that is generally exempt from tax in that other State, provided that such dividends are not derived from the carrying on of a trade or business by the beneficial owner or through an associated enterprise.

4. For purposes of this Article, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income from rights that is subjected to the same taxation treatment as income from shares under the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company making the distribution is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Where a company that is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is attributable to a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. Notwithstanding paragraph 6, a company which is a resident of a Contracting State and which has a permanent establishment in the other Contracting State or which is subject to tax on a net basis in that other State on items of income or gains that may be taxed in that other State under Article 6 ((Income from Real Property (Immovable Property)) or under paragraph 1 of Article 13 (Capital Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on:

a) in the case of the United States:

i) the portion of the business profits of the company attributable to the permanent establishment; and

ii) the portion of the income or gains referred to in the preceding sentence which may be subject to tax under Article 6 or under paragraph 1 of Article 13;

which represents the "dividend equivalent amount", as that term is defined under the laws of the United States, as they may be amended from time to time without changing the general principle thereof; and

b) in the case of Chile:

i) the portion of the business profits of the company attributable to the permanent establishment; and

ii) the portion of the income or gains referred to in the first sentence of this paragraph which may be taxed in Chile under Article 6 or under paragraph 1 of Article 13;

which represents an amount that is comparable to the amount that would be distributable as a dividend if such income were earned by a subsidiary company resident of Chile.

8. The tax referred to in paragraph 7 may not be imposed at a rate in excess of the rate specified in subparagraph a) of paragraph 2.

## **Article 11**

### **INTEREST**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 4 percent of the gross amount of the interest if the interest is beneficially owned by a resident of the other Contracting State that is either:

- i) a bank;
  - ii) an insurance company;
  - iii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated parties, where the enterprise is unrelated to the payer of the interest. For purposes of this subparagraph iii), the term "lending or finance business" includes the business of issuing letters of credit or providing guarantees, or providing charge and credit card services;
  - iv) an enterprise that sold machinery or equipment, where the interest is paid in connection with the sale on credit of such machinery or equipment; or
  - v) any other enterprise, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50 percent of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50 percent of the assets of the enterprise consist of debt-claims against persons that do not have with the resident a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9 (Associated Enterprises);
- b) 10 percent in all other cases.

3. For a period of five years from the date on which the provisions of paragraph 2 take effect, the rate of 15 percent shall apply in place of the rate provided in subparagraph b) of paragraph 2.

4. Notwithstanding subparagraph a) of paragraph 2, interest referred to in that subparagraph may be taxed in the State in which it arises at a rate not exceeding 10 percent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and, in particular, income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income from debt-claims that carry a right to participate in the debtor's profits shall be regarded as interest under this Article if the contract by its character clearly evidences a loan at interest. Income dealt with in Article 10 (Dividends) shall not be regarded as interest for the purposes of this Convention.

6. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such

interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest for whatever reason exceeds the amount that would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

9. a) Interest paid by a resident of a Contracting State and that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person, may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends); and

b) Notwithstanding the provisions of paragraph 2 of this Article, a Contracting State may tax, in accordance with its domestic law, interest paid with respect to the ownership interests in a vehicle used for the securitization of real estate mortgages or other assets, to the extent that the amount of interest paid exceeds the return on comparable debt instruments as specified by the domestic law of that State.

10. The excess, if any, of the amount of interest allocable to the profits of a company resident in a Contracting State that are:

a) attributable to a permanent establishment in the other Contracting State (including gains under paragraph 3 of Article 13 (Capital Gains)); or

b) subject to tax in the other Contracting State under Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Capital Gains),

over the interest paid by that permanent establishment, or in the case of profits subject to tax under Article 6 or paragraph 1 of Article 13, over the interest paid by that trade or business in that State shall be deemed to arise in that State and be beneficially owned by a resident of the first-mentioned State. The tax imposed under this Article on such interest shall not exceed the applicable rates provided in paragraph 2.

## **Article 12**

### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 2 percent of the gross amount of the royalties described in subparagraph a) of paragraph 3;

b) 10 percent of the gross amount of the royalties described in subparagraph b) of paragraph 3.

3. The term "royalties" as used in this Article means:
- a) payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, but not including ships, aircraft or containers as dealt with in Article 8 (International Transport); and
  - b) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including computer software, cinematographic films, audio or video tapes or disks, and other means of image or sound reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like intangible property, or for information concerning industrial, commercial, or scientific experience. The term "royalties" also includes gain derived from the alienation of any property described in this subparagraph, provided that such gain is contingent on the productivity, use, or disposition of the property.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. For purposes of this Article:
- a) Royalties shall be treated as arising in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
  - b) Where subparagraph a) does not operate to treat royalties as arising in a Contracting State, and the royalties are for the use of, or the right to use, in a Contracting State any property or right described in paragraph 3, then such royalties shall be deemed to arise in that State and not in the State of which the payer is resident.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

### **Article 13**

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property (immovable property) situated in the other Contracting State may be taxed in that other State.
2. For purposes of this Article, the term "real property (immovable property) situated in the other Contracting State" includes:

- a) real property (immovable property) referred to in Article 6 (Income from Real Property (Immovable Property));
  - b) in the United States, a United States real property interest, as defined in section 897 of the U.S. Internal Revenue Code and the regulations thereunder, as they may be amended from time to time without changing the general principles thereof; and
  - c) in the case of Chile, any equivalent interest in real property (immovable property) situated in Chile, including shares or other rights deriving more than 50 per cent of their value directly or indirectly from real property (immovable property) situated in Chile.
3. Gains from the alienation of personal property (movable property) that are attributable to a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
4. Gains from the alienation of ships, aircraft, or containers operated or used in international traffic or from personal property (movable property) pertaining to the operation or use of such ships, aircraft, or containers shall be taxable only in the Contracting State of which the alienator is a resident.
5. Gains derived by a resident of a Contracting State from the alienation of shares or other rights or interests representing the capital of a company that is a resident of the other Contracting State may be taxed in that other State but the tax so charged shall not exceed 16 percent of the amount of the gain.
6. Notwithstanding the provisions of paragraph 5,
- a) gains derived by a pension fund that is a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State shall be taxable only in the first-mentioned State;
  - b) gains derived by a mutual fund or other institutional investor that is a resident of a Contracting State from the alienation of shares of a company that is a resident of the other Contracting State and whose shares are substantially and regularly traded on a recognized stock exchange located in that other Contracting State shall be taxable only in the first-mentioned State, provided that the alienation occurred on a recognized stock exchange located in that other Contracting State; and
  - c) gains derived by a resident of a Contracting State from the alienation of shares of a company that is a resident of the other Contracting State and whose shares are substantially and regularly traded on a recognized stock exchange located in that other Contracting State shall be taxable only in the first-mentioned State if the shares were sold:
    - i) on a recognized stock exchange in that other Contracting State; or
    - ii) in a public offer for the acquisition of shares regulated by law;provided that such shares were previously acquired either:
    - A) on a recognized stock exchange in that other Contracting State;
    - B) in a public offer for the acquisition of shares regulated by law;

- C) in a placement of first issue shares by that company at the time of the constitution of that company or of an increase in the capital of that company; or
- D) in an exchange of bonds convertible into shares.

7. Notwithstanding the provisions of paragraph 5,

- a) gains derived by a resident of a Contracting State if the recipient of the gain at any time during the 12-month period preceding such alienation owned shares, directly or indirectly, consisting of more than 50 percent of the capital of a company that is a resident of the other Contracting State; and
- b) gains derived by a resident of a Contracting State from the alienation of other rights not being debt claims representing the capital of a company that is a resident of the other Contracting State if the recipient of the gain at any time during the 12-month period preceding such alienation owned other such rights, directly or indirectly, consisting of 20 percent or more of the capital of that company;

may be taxed in that other State.

8. Gains from the alienation of any property other than property referred to in paragraphs 1 through 7 shall be taxable only in the Contracting State of which the alienator is a resident.

9. Where an individual who, upon ceasing to be a resident of one of the Contracting States, is treated under the taxation law of that State as having alienated any property for its fair market value and is taxed in that State by reason thereof, the individual may elect to be treated for purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired such property for an amount equal to its fair market value at such time. However, the individual may not make the election in respect of property situated in that other Contracting State.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, except in the following circumstances, when such income may also be taxed in the other Contracting State:

- a) if that resident of a Contracting State has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in that case, only so much of the income as is attributable to that fixed base that is derived in respect of services performed in any state other than the first-mentioned Contracting State may be taxed in that other Contracting State; or
- b) if that resident of a Contracting State is present in the other Contracting State for a period or periods equaling or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. For purposes of paragraph 1, the income that is taxable in the other Contracting State shall be determined under the principles of paragraph 3 of Article 7 (Business Profits), provided that related administrative requirements have been satisfied.

3. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Social Security, Alimony and Child Support) and 19 (Government Service), salaries, wages, and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned;
- b) the remuneration is paid by, or on behalf of, a person who is an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the person who is the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

## **Article 16**

### **DIRECTORS' FEES**

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or an equivalent body of a company that is a resident of the other Contracting State may be taxed in the State where such fees or payments arise.

2. Directors' fees and other similar payments shall be deemed to arise in the Contracting State in which the company is resident except to the extent that such fees or payments are paid in respect of attendance at meetings held in the other Contracting State.

## **Article 17**

### **ARTISTES AND SPORTSMEN**

1. Income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other Contracting State under the provisions of Articles 14 (Independent Personal

Services) and 15 (Dependent Personal Services), may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed five thousand United States dollars (\$5,000) or its equivalent in Chilean pesos for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless that other person or the entertainer or sportsman establishes that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

## **Article 18**

### **PENSIONS, SOCIAL SECURITY, ALIMONY AND CHILD SUPPORT**

1.
  - a) Pension payments and other similar remuneration derived from sources within a Contracting State beneficially owned by a resident of the other Contracting State may be taxed by both Contracting States. Any tax so charged by the first-mentioned State may not exceed 15 percent of the gross amount of such pension payment or other similar remuneration.
  - b) If, however, the payment is from a plan established in a Contracting State that is exempt from income taxation in that State and operated to provide pension or retirement benefits, the amount of any such payment that would be excluded from taxable income in that State if the recipient were a resident thereof shall be exempt from taxation in the other State.
2. Notwithstanding the provisions of paragraph 1:
  - a) any pension paid from the public funds of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in the discharge of functions of a governmental nature other than a payment to which paragraph 3 of this Article applies shall, subject to the provisions of subparagraph b), be taxable only in that State;
  - b) such pension, however, shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. Notwithstanding the provisions of paragraphs 1 and 2, payments made under provisions of the social security or similar legislation of a Contracting State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State. Payments made under provisions of the social security or similar legislation of a Contracting State include payments made pursuant to a pension plan or fund created under the social security system of that Contracting State.
4. Where a resident of a Contracting State is a beneficiary of a plan established in the other Contracting State that is generally exempt from income taxation in that other State and operated to provide pension or retirement benefits, income earned but not distributed by the plan shall be taxable in either State only at such time as and, subject to paragraph 1, to the extent that a payment or other similar remuneration is made from the plan (and not transferred to another pension fund in that other State).

5. Contributions in respect of services rendered paid by, or on behalf of, an individual who is a resident of a Contracting State or who is temporarily present in that State to a pension plan or fund that is generally exempt from income taxation in the other Contracting State and operated primarily to provide pension or retirement benefits in that other State (whether or not sponsored by an employer) shall, during a period not exceeding in the aggregate 60 months, be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is generally exempt from income taxation in the first-mentioned State and operated primarily to provide pension or retirement benefits in that first-mentioned State, if:

- a) such individual was contributing on a regular basis to the pension plan (or to another similar pension plan for which the first-mentioned pension plan was substituted) for a period ending immediately before that individual became a resident of or is temporarily present in the first-mentioned State; and
- b) the competent authority of the first-mentioned State agrees or has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The relief available under this paragraph shall not exceed the relief that would be allowed by the first-mentioned State to residents of that State for contributions to, or benefits accrued under, a pension plan established in that State.

6. Periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, including payments for the support of a child, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States, except that, if the payer is entitled to relief from tax for such payments in the first-mentioned State, such payments shall be taxable only in the other State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in the discharge of functions of a governmental nature shall be taxable only in that State.

b) Such remuneration, however, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- i) is a national of that State; or
- ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees) and 17 (Artistes and Sportsmen) shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 20**

### **STUDENTS AND TRAINEES**

Payments received by a student, apprentice, or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education at a recognized educational institution, such as a university, college or school, or for his full-time training, receives for the purposes of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from, or are remitted from, sources outside that State. The exemption from tax provided by this paragraph shall apply to an apprentice or business trainee only for a period of time not exceeding two years from the date the apprentice or business trainee first arrives in the first-mentioned Contracting State for the purpose of training.

## **Article 21**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## **IV. TAXATION OF CAPITAL**

### **Article 22**

#### **CAPITAL**

1. Capital represented by real property (immovable property) referred to in Article 6 (Income from Real Property (Immovable Property)), owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by personal property (movable property) forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by personal property (movable property) pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships, aircraft, and containers owned by a resident of a Contracting State and operated in international traffic, and by personal property (movable property) pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **V. METHODS FOR ELIMINATION OF DOUBLE TAXATION**

### **Article 23**

#### **RELIEF FROM DOUBLE TAXATION**

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:

- a) the income tax paid or accrued to Chile by or on behalf of such citizen or resident; and
- b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of Chile and from which the United States company receives dividends, the income tax paid or accrued to Chile by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in subparagraph b) of paragraph 3 and paragraph 4 of Article 2 (Taxes Covered), excluding taxes on capital, shall be considered income taxes.

2. In Chile, double taxation shall, in accordance with the provisions and subject to the limitations of the law of Chile (as it may be amended from time to time without changing the general principle hereof), be eliminated as follows:

Where a resident of Chile derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, Chile shall allow as a credit against the Chilean income tax of that person the United States tax paid under United States law and in accordance with the Convention, in respect of that income or any other income from sources outside Chile. This paragraph shall apply to all income referred to in the Convention.

3. Where a United States citizen is a resident of Chile:

- a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Chile who is not a United States citizen, Chile shall allow as a credit against Chilean tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of the Protocol;
- b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to Chile after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Chilean tax in accordance with subparagraph a); and
- c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in Chile to the extent necessary to avoid double taxation of such income under subparagraph b).

4. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such person, take into account the exempted income or capital.

5. For the purposes of allowing relief from double taxation pursuant to this Article, an item of gross income, as determined under the laws of a Contracting State, derived by a resident of that State that under this Convention may be taxed in the other Contracting State (other than solely by reason of paragraph 4 of the Protocol), shall be deemed to be income from sources in that other State.

## **VI. SPECIAL PROVISIONS**

### **Article 24**

#### **LIMITATION ON BENEFITS**

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a “qualified person” as defined in paragraph 2.

2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:

- a) an individual;
- b) that State, or any political subdivision or local authority thereof or any agency or instrumentality of such State;
- c) a company, if
  - i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:
    - A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is resident; or
    - B) the company’s primary place of management and control is in the Contracting State of which it is a resident; or
  - ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
- d) a person that functions as a headquarters company for a multinational corporate group. For purposes of this paragraph, a person shall be considered a headquarters company if:
  - i) it provides in its state of residence a substantial portion of the overall supervision and administration of a group of companies (which may be part of a larger group of companies), which may include, but cannot be principally, group financing;
  - ii) the group of companies consists of corporations resident in, and engaged in an active business in at least five countries, and the business activities carried on

in each of the five countries generate at least 10 percent of the gross income of the group;

- iii) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;
- iv) no more than 25 percent of its gross income is derived from the other Contracting State;
- v) it has, and exercises, independent discretionary authority to carry out the functions referred to in clause i) of this subparagraph;
- vi) it is subject to the same income taxation rules in its country of residence as persons described in paragraph 3; and
- vii) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in clause ii) of this subparagraph.

If the gross income requirements for being considered a headquarters company described in clauses ii), iii), or iv) of this subparagraph are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years;

- e) an entity organized under the laws of a Contracting State and established and maintained in that State exclusively for a religious, charitable, educational, scientific, or other similar purpose, even if the entity is generally exempt from tax in that State;
- f) a pension fund, provided that, in the case of a person described in subclause A) of clause ii) of subparagraph j) of paragraph 1 of Article 3 (General Definitions), more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State;
- g) a person other than an individual, if:
  - i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph e) or f) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and
  - ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph e) or f) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. a) A resident of a Contracting State will be entitled to the benefits of this Convention with respect to an item of income derived from the other State if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or

registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, if it determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.

5. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned Contracting State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income were earned in that Contracting State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

6. For purposes of this Convention:

- a) the term "recognized stock exchange" means:
- i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
  - ii) the "Bolsa de Comercio", "Bolsa Electrónica de Chile" and "Bolsa de Corredores", and any stock exchange recognized by the "Superintendencia de Valores y Seguros" according to Law No. 18.045 (*Ley de Mercado de Valores*), and
  - iii) any other stock exchanges agreed upon by the competent authorities of the Contracting States;
- b) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;
- c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company; and
- d) a company's "primary place of management and control" will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

## **Article 25**

### **NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. However, a citizen or national of a Contracting State who is not a resident of that Contracting State and a citizen or national of the other Contracting State who is not a resident of the first-mentioned State are not in the same circumstances with respect to the tax of that first-mentioned State. This paragraph shall, notwithstanding the provision of Article 1 (General Scope), apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Companies that are residents of a Contracting State the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation that is more burdensome than the taxation to which other similar companies of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described either in paragraph 7 of Article 10 (Dividends) or paragraph 10 of Article 11 (Interest).

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof, except that in the case of taxes not covered by this Convention, the provisions of this Article shall not apply to any taxation laws of a Contracting State that are in force on the date of signature of this Convention.

## **Article 26**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## Article 27

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State insofar as the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. The exchange of information is not restricted by Article 1 (General Scope) or Article 2 (Taxes Covered).
2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of the preceding paragraphs be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information that is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information that would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form requested, such as depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such information can be obtained in the form requested under the laws and administrative practices of that other State with respect to its own taxes.
7. The competent authorities of the Contracting States shall consult with each other for the purpose of cooperating and advising in respect of any action to be taken in implementing this Article.

## **Article 28**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

## **VII. FINAL PROVISIONS**

### **Article 29**

#### **ENTRY INTO FORCE**

1. The Convention shall be subject to ratification in accordance with the applicable procedures in the United States and Chile. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.
2. The Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1. The provisions of this Convention shall have effect:
  - a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month following the date on which the Convention enters into force;
  - b) in respect of other taxes, for taxable periods beginning on or after January 1 of the calendar year immediately following the date on which the Convention enters into force; and
3. Notwithstanding paragraph 2, the provisions of Article 27 (Exchange of Information) shall have effect from the date of entry into force of this Convention, without regard to the taxable period to which the matter relates.

### **Article 30**

#### **TERMINATION**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving to the other Contracting State a notice of termination in writing through diplomatic channels on or before the thirtieth day of June in any calendar year beginning after the year in which the Convention enters into force.
2. In the event of such termination, the provisions of this Convention shall cease to have effect:
  - a) in respect of taxes withheld at source, for amounts paid or credited on or after January 1 of the calendar year immediately following the date on which the notice described in paragraph 1 is given; and
  - b) in respect of other taxes, for taxable periods beginning on or after January 1 of the calendar year immediately following the date on which the notice is given; and
  - c) with respect to provisions not covered in subparagraph a) or b), on January 1 of the calendar year immediately following the date on which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Washington in duplicate, in the English and Spanish languages, both texts being equally authentic, this fourth day of February, 2010.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF  
THE REPUBLIC OF CHILE

**PROTOCOL TO THE CONVENTION BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF CHILE  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

On signing the Convention between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (the "Convention"), the two Governments have agreed to the following provisions.

1. With reference to Article 1 (General Scope)

An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

2. With reference to Article 1 (General Scope)

The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance or benefit now or hereafter accorded:

- a) by the laws of either Contracting State; or
- b) by any other agreement to which the Contracting States are parties.

3. With reference to Article 1 (General Scope)

Notwithstanding the provisions of subparagraph b) of paragraph 2 of this Protocol:

- a) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 26 (Mutual Agreement Procedure) of this Convention; and
- b) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 25 (Non-discrimination) of this Convention.

For the purposes of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.

4. With reference to Article 1 (General Scope)

Notwithstanding any provision of the Convention, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect.

For this purpose, the term "citizen" shall include a former citizen or long-term resident, but only for a period of 10 years following the loss of such status.

The provisions of this paragraph shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 1 b) 3, 4, and 6 of Article 18 (Pensions, Social Security, Alimony and Child Support), and Articles 23 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under paragraphs 2 and 5 of Article 18 (Pensions and Social Security), Articles 19 (Government Service), 20 (Students and Trainees), and 28 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

5. With reference to paragraph 2 of Article 3 (General Definitions)

As regards the application of the Convention at any time by a Contracting State, the competent authorities may agree, pursuant to the provisions of Article 26 (Mutual Agreement Procedure), on an interpretation and arrive at a common meaning of a term not defined in the Convention. Any interpretation so agreed to shall be used with respect to the application of such term.

6. With reference to paragraph 1 of Article 4 (Residence)

The term "resident of a Contracting State" includes:

- a) an organization that is established and maintained in that State exclusively for a religious, charitable, educational, scientific, or other similar purpose; and
- b) a pension fund established in that State,

notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

7. With reference to paragraph 1 of Article 4 (Residence)

Chile shall treat a United States citizen or an alien lawfully admitted for permanent residence (a "green card" holder) as a resident of the United States only if such individual has a substantial presence, permanent home, or habitual abode in the United States and if that individual is not a resident of a State other than Chile for the purposes of a double taxation convention between that State and Chile.

8. With reference to Article 5 (Permanent Establishment)

A person will come within the scope of paragraph 6 only if that person is independent of the enterprise both legally and economically, and acts in the ordinary course of that person's business when acting on behalf of the enterprise.

9. With reference to paragraph 5 of Article 6 (Income from Real Property (Immovable Property))

A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State who is not otherwise allowed to compute the tax on such income on a net basis shall be allowed to elect for any taxable year to compute the tax on such income on a net basis as if such income were business profits attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the Contracting State in which the property is situated agrees to terminate the election.

10. With reference to paragraph 2 of Article 7 (Business Profits)

Business profits to be attributed to the permanent establishment shall only include the profits derived from the assets or activities of the permanent establishment.

11. With reference to Article 8 (International Transport)

An inland transport within either Contracting State shall be treated as the operation of ships or aircraft in international traffic if undertaken as part of a transport that includes transport by ships or aircraft in international traffic.

12. With reference to Article 10 (Dividends)

a) In the case of Chile, because of its integrated, two-level income tax on business profits (First Category Tax and Additional Tax), the provisions of paragraphs 2, 3, 7, and 8 of Article 10 (Dividends) shall not limit the application of the Additional Tax provided that under the domestic law of Chile the First Category Tax is fully creditable in computing the amount of Additional Tax to be paid.

b) Notwithstanding subparagraph a):

i) if at any time under the domestic law of Chile the First Category Tax ceases to be fully creditable in computing the amount of Additional Tax to be paid, subparagraph a) shall not apply and the amount of Additional Tax imposed by Chile shall be limited by the provisions of paragraphs 2, 3, 7, and 8 of Article 10; and

ii) if the rate of Additional Tax imposed under the domestic law of Chile exceeds 35 percent, the provisions of Article 10 shall apply with respect to both the United States and Chile, but the tax charged under subparagraphs a) and b) of paragraph 2 of Article 10 shall not exceed 15 percent of the gross amount of dividends paid by a resident of a Contracting State and beneficially owned by a resident of the other Contracting State. The Contracting States also shall consult to reassess the balance of benefits of this Convention with a view to concluding a protocol to incorporate terms limiting the right of the source country to tax dividends under Article 10.

13. With reference to Article 10 (Dividends)

The provisions of Article 10 shall not apply in the case of distributions or dividends paid by an enterprise when the investment is subject to a foreign investment contract under the Foreign Investment Statute (*DL 600*), as it may be amended from time to time without changing the general principles thereof.

14. With reference to paragraph 2 of Article 10 (Dividends)

Subparagraph a) of paragraph 2 of Article 10 shall not apply in the case of dividends paid by a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 shall only apply if:

a) the beneficial owner of the dividends is an individual holding an interest of not more than 10 percent of the REIT; or

b) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or

c) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent of the REIT and the REIT is diversified.

For purposes of this paragraph, a REIT shall be “diversified” if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership’s interests in real property corresponding to its interest in the partnership.

15. With reference to Paragraph 3 of Article 12 (Royalties)

In order to establish if payments as consideration for computer software should be classified as royalty payments under Article 12, paragraphs of the Commentary to Article 12 of the OECD Model Tax Convention on Income and on Capital of 2008 addressing specifically computer software (paragraphs 12 to 14.4 and paragraphs 17 to 17.4) shall apply.

16. With reference to Article 13 (Capital Gains)

The rate of Additional Tax imposed by Chile under the provisions of paragraph 7 of Article 13 shall not exceed 35 percent. In addition, if under the domestic law of Chile the First Category Tax exceeds 30 percent, paragraphs 5 and 7 of Article 13 shall not apply.

17. With reference to Article 13 (Capital Gains)

For purposes of subparagraph b) of paragraph 6 of Article 13, the terms “mutual fund” and “institutional investor” shall not include an investor of a Contracting State which directly or indirectly owns 10 percent or more of the shares or other rights representing the capital or of the profits in a company of the other Contracting State.

18. With reference to paragraph 3 of Article 18 (Pensions, Social Security, Alimony and Child Support)

In the case of Chile, the social security system referred to in paragraph 3 of Article 18 is any pension scheme or fund administered by the *Instituto de Prevision Social* (formerly *Instituto de Normalización Previsional*) and the social security system created by Decree Law 3500 (*DL 3500*). In the case of the United States, the phrase "similar legislation" is intended to refer to tier 1 Railroad Retirement benefits.

19. With reference to paragraph 5 of Article 18 (Pensions, Social Security, Alimony and Child Support)

For purposes of paragraph 5 of Article 18, pension plans in each Contracting State that generally correspond to pension plans that are recognized for tax purposes by the other Contracting State shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the Protocol:

- a) In the case of Chile, any pension scheme or fund administered by the *Instituto de Prevision Social* (formerly *Instituto de Normalización Previsional*) and the social security system created by Decree Law 3500 (*DL 3500*); and
- b) In the case of the United States, qualified plans under section 401(a) of the Internal Revenue Code (including section 401(k) arrangements), individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, and section 408(p) simple retirement accounts), section 403(a) qualified annuity plans, section 403(b) plans, section 457(g) trusts providing benefits under section 457(b) plans, and the Thrift Savings Fund (section 7701(j)).

20. With reference to Article 27 (Exchange of Information)

Notwithstanding paragraph 3 of Article 29 (Entry Into Force), information covered by paragraph 5 of Article 27, to the extent that such information is covered by Article 1 of DFL No. 707 and Article 154 of DFL No. 3 of Chile, shall be available with respect to bank information corresponding to taxable periods or events commencing as of January 1, 2010 and thereafter. Other bank information like signature cards and other account opening documents may be exchanged without regard to the time they were created.

21. General Provision

With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law No. 18.657, as it may be amended from time to time without changing the general principles thereof) that are subject to a remittance tax and are required to be administered by a resident of Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances (currently at 10 percent) from such accounts or funds in respect of the investment in assets situated in Chile.

22. General Provision

The Contracting States shall consult regarding the terms, operation and application of the Convention to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude protocols to amend the Convention. Either Contracting State may at any time request that consultations be conducted in an expeditious manner on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution. The Contracting States shall in any event consult to assess the terms, operation and application of the Convention within five years of the date of entry-into-force of the Convention. If Chile concludes an income tax treaty with another state that imposes a limit on rates of withholding on payments of interest and royalties lower than the limits imposed under paragraph 2 of Article 11 (Interest) and paragraph 2 of Article 12 (Royalties) or that contains terms that further limit the right of the source country to tax capital gains under Article 13 (Capital Gains), the Contracting States shall, at the request of the United States, consult to reassess the balance of benefits of this Convention with a view to concluding a protocol to incorporate such lower rates or limiting terms into this Convention.

This Protocol shall enter into force on the date of entry into force of the Convention and shall form an integral part of the Convention.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at Washington in duplicate, in the English and Spanish languages, both texts being equally authentic, this fourth day of February, 2010.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF  
THE REPUBLIC OF CHILE