



**PROTOCOL TO THE CONVENTION
BETWEEN
THE REPUBLIC OF CHILE
AND
THE REPUBLIC OF AUSTRIA
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 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital between the Republic of Chile and the Republic of Austria, the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. Ad Article 5, paragraph 5

It is understood that the phrase "authority to conclude contracts in the name of the enterprise" does not confine the application of the paragraph to an agent who enters into contracts literally in the name of the enterprise; the paragraph applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of the enterprise.

2. Ad Article 5, paragraph 6

It is understood that where the commercial or financial conditions made or imposed between the broker or agent and the enterprise differ from those which would be made between independent persons, such broker or agent will not be considered an agent of independent status within the meaning of paragraph 6 of Article 5.



3. Ad Article 7

In the case of Austria, it is understood that the term "profits" as used in this Article includes the profits derived by any partner (Gesellschafter) from his participation in a partnership (Personengesellschaft), including a participation in a sleeping partnership (Stille Gesellschaft), created under Austrian law.

4. Ad Article 7, paragraph 3

It is understood that the provisions of paragraph (3) of the Article shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

5. Ad Article 7

a) Income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other State, otherwise than through a permanent establishment situated in that other State, the tax so charged in that other State shall not exceed a) 5 per cent of the gross amount of the premiums in the case of policies of reinsurance; and b) 10 per cent of the gross amount of the premiums in the case of all other policies of insurance.

b) This provision shall become effective only at the date when a likewise provision enters into force in all existing Agreements or Conventions between Chile and Member States of the European Union and Switzerland. The competent authority of Chile shall inform the competent authority of Austria without delay that the conditions for the application of this subparagraph have been met.

c) If in one of the Conventions mentioned in subparagraph b) lower rates were agreed, such lower rates shall automatically apply for purposes of this Convention under the same conditions as established in that other Convention. The competent authority of Chile shall inform the competent authority of Austria



without delay that the conditions for the application of this subparagraph have been met.

6. Ad Articles 10, 11 and 12

It is understood that the provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of a right or debt-claim in respect of which dividends, interest or royalties are paid to take advantage of those Articles by means of that creation or assignment.

7. Ad paragraph 2 of Article 11 and paragraph 2 of Article 12

If in any agreement or convention between Chile and a third State which is a member of the Organization for Economic Cooperation and Development, Chile agrees to exempt from tax interest or royalties (either generally or in respect of specific categories of interest or royalties) arising in Chile, or to limit the rate of tax on such interest or royalties (either generally or in respect of specific categories of interest or royalties) to a rate lower than the rates provided for in paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply (either generally or in respect of specific categories of interest or royalties) under this Convention as if such exemption or lower rate has been specified in this Convention, with effect from the date on which those provisions of that agreement or convention become effective. The competent authority of Chile shall inform the competent authority of Austria without delay that the conditions for the application of this provision have been met.

8. Ad Article 18

It is understood that this Article may include a lump-sum payment in lieu of periodic pension payments.



9. Ad Article 26

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State,
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

In order to facilitate the exchange of information the requesting State should advise on the period for which the information is requested.

2. It is understood that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

3. It is understood that paragraph 1 of Article 26 allows the Contracting States to exchange information on a spontaneous or automatic basis; however,



paragraph 5 of Article 26 does not require the Contracting States to exchange information within the meaning of that paragraph on a spontaneous or automatic basis.

4. In the case of information held by a bank or other financial institution, the provisions of Article 26 shall not be interpreted as requiring the exchange of information on transactions predating the date of entry into force of the Convention.

10. Ad Article 28

Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the Convention are used in such a manner as to provide benefits not contemplated or not intended, the competent authorities of the Contracting States shall, under the mutual agreement procedure of Article 25, recommend specific amendments to be made to the Convention. The Contracting States further agree that any such recommendation will be considered and discussed in an expeditious manner with a view to amending the Convention, where necessary.

11. Interpretation of the Convention

It is understood that the OECD and UN Model Commentaries – as they may be revised from time to time – constitute a means of interpretation in the sense of Vienna Convention of 23 May 1969 on the Law of Treaties as far as the provisions of this Convention correspond to those Model Conventions and subject to any contrary interpretations in this Protocol and any contrary interpretation agreed to by the competent authorities after the entry into force of this Convention or any future reservations or observations to the OECD and UN Model or their Commentaries by either Contracting State.

12. Anti-abuse

Where an enterprise of a Contracting State derives income from the other Contracting State and the income from the other Contracting State is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the



tax benefits that would otherwise apply under 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 State and in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned State if the income were earned or received in that State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other State, notwithstanding any other provision of the Convention.

This anti-abuse clause is not to be understood as preventing a Contracting State from applying its domestic anti-abuse provisions.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Protocol.

DONE in duplicate at Santiago, this 6th. December, 2012, in the Spanish, German, and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

**FOR THE REPUBLIC OF
CHILE**

**FOR THE REPUBLIC OF
AUSTRIA**