

**SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND PROTOCOL.**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Convention between the Republic of Chile (“Chile”) and Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income and on Capital and its protocol, signed on 21 January 1998 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Chile and by Canada on 7 June 2017 (the “MLI”).

This document was prepared by the Competent Authority of Chile and represents its understanding upon modifications made to the Convention by the MLI. It was shared with the competent authorities of Canada.

The document was prepared on the basis of the MLI position of Chile submitted to the Depository upon ratification on 26 November 2020 and of the MLI position of Canada submitted to the Depository upon ratification on 29 August 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as “Covered Tax Agreement” and “Convention”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the

provisions of the MLI, provided such provisions of the MLI have taken effect.

At last, it is important to note that the Convention may have suffered subsequent modifications by reason of the Most Favored Nation Clause. This text does not reflect these changes. Circulars referring to these modifications must be consulted on this subject.

#### References

The authentic legal texts of the MLI and the Convention can be found following these links:

The MLI:

<https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

The Convention:

[http://www.sii.cl/normativa\\_legislacion/convenios\\_internacionales.html](http://www.sii.cl/normativa_legislacion/convenios_internacionales.html)

The MLI position of Chile submitted to the Depository and the MLI position of Canada submitted to the Depository can be found on [the MLI Depository \(OECD\) webpage](#).

#### **Disclaimer on the entry into effect of the provisions of the MLI.**

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Chile and Canada in their MLI positions.

#### Dates of the deposit of instruments of ratification, acceptance or approval:

For Chile: 26 November 2020;

For Canada: 29 August 2019.

#### Entry into force of the MLI:

For Chile: 1 Mars 2021;

For Canada: 1 December 2019.

#### Entry into effect of MLI provisions with respect to the Convention:

For Chile: with respect to taxes withheld at source, on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022, and with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

For Canada: with respect to taxes withheld at source, on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022, and with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 September 2021.

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

The Government of the Republic of Chile and the Government of Canada, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

***The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:***

**ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Convention*] for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

**I. SCOPE OF THE CONVENTION**

**Article 1  
Persons Covered**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

**Article 2  
Taxes Covered**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each 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 movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
  - (a) in the case of Chile, the taxes imposed under the Income Tax Act, "Ley sobre Impuesto a la Renta" (hereinafter referred to as "Chilean tax"); and

- (b) in the case of Canada, the taxes imposed by the Government of Canada under the Income Tax Act (hereinafter referred to as "Canadian tax").
4. The Convention shall apply also to any identical or substantially similar taxes and to taxes on capital which are imposed 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 which have been made in their respective taxation laws.

## **II. DEFINITIONS**

### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, the Republic of Chile or Canada;
  - (b) the term "person" includes an individual, a company a trust and any other body of persons;
  - (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (d) 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;
  - (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the principal purpose is to transport passengers or property between places within the other Contracting State;
  - (f) the term "competent authority" means:
    - (i) in the case of Chile, the Minister of Finance or the Minister's authorised representative, and
    - (ii) in the case of Canada, the Minister of National Revenue or the Minister's authorised representative;
  - (g) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State; or
    - (ii) any legal person, partnership or association constituted in accordance with the laws in force in a Contracting State.

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.

#### **Article 4 Resident**

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 the person's domicile, residence, 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 or any agency or instrumentality of any such subdivision or authority. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:
  - (a) the individual shall be deemed to be a resident only of the State in which the individual has a permanent home available and if the individual has a permanent home available in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which the individual's centre of vital interests cannot be determined, or if there is not a permanent home available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
  - (d) if the individual 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 paragraph 1 a company is a resident of both Contracting States, it shall be deemed to be a resident only of the State of which it is a national.
4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company, to which paragraph 3 applies, is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to the person. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be entitled to claim any relief or exemption from tax provided by the Convention.

**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 relating to the exploration for or the exploitation of natural resources.
3. The term "permanent establishment" shall also include:
  - (a) a building site or construction or installation project and the supervisory activities in connection therewith, but only if such building site, construction or activity lasts more than six months; and
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purposes, but only where activities of that nature continue within the country for a period or periods aggregating more than 183 days within any twelve month period.

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 shall be aggregated with the period during which activities are carried on by the enterprise if the activities between the associated enterprises are connected.
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 scientific research for the enterprise, 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 7 applies) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, 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. However, an insurance company resident of a Contracting State shall, except in the case of reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or if it insures risks situated therein through a representative other than an agent of independent status to whom paragraph 7 applies.
  7. 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. However, when such agents are acting wholly or almost wholly on behalf of the enterprise they shall not be considered agents of an independent status within the meaning of this paragraph.
  8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which 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 Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has for the purposes of the relevant tax law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in

agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of 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 and aircraft shall not be regarded as 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 immovable property and to income from the alienation of such property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

### **Article 7 Business Profits**

1. The 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 or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is 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 profits which 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 and with all other persons.
3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.
4. No 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 profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8 Shipping and Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1 and of Article 7, profits derived from the operation of ships or aircraft where the principal purpose is to transport passengers or property between places in a Contracting State may be taxed in that State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. For the purposes of this Article:
  - (a) the term "profits" includes gross revenues derived directly from the operation of ships or aircraft in international traffic;
  - (b) the term "operation of ships or aircraft" by an enterprise, includes
    - (i) the charter or rental of ships or aircraft,
    - (ii) the rental of containers and related equipment, and
    - (iii) the alienation of ships, aircraft, containers and related equipment by that enterprise if that charter, rental or alienation is incidental to the operation by that enterprise of ships or aircraft in international traffic.

### **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 income which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions,

has not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State - and taxes accordingly - income on which an enterprise of the other Contracting State has been charged to tax in that other State and the income so included is income 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, shall make an appropriate adjustment to the amount of tax charged therein on that income. 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.
3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the income that would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.
4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

#### **Article 10 Dividends**

1. Dividends paid by a company that is 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 dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed
  - (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends, and
  - (b) 15 per cent of the gross amount of the dividends, in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. For the purposes of this paragraph, the term "taxation of the company" means, in the case of Chile, taxation under both the first category tax and the additional tax as long as the first category tax is deductible in computing the additional tax.

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

4. The provisions of paragraph 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 paying the dividends 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 holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 effectively connected with 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.

#### **Article 10 A Branch Tax**

1. A person that is a resident of a Contracting State may be subject in the other Contracting State to a tax in addition to the tax chargeable on:
  - (a) income or gains from the alienation of immovable property situated in that other State by an enterprise carrying on a trade in immovable property or,
  - (b) the earnings, including any gains of a person attributable to a permanent establishment situated in that other State.

However, the rate of the "tax in addition" shall not exceed the percentage limitation provided for under subparagraph (a) of paragraph 2 of Article 10.

2. For the purposes of this Article, the term "tax chargeable" means, in the case of Chile, taxation under both the first category tax and the additional tax as long as the first category tax is deductible in computing the additional tax.

#### **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 15 per cent of the gross amount of the interest.

3. 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, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.
4. The provisions of paragraph 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 debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 the payer 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.
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 interest, having regard to the debt-claim for which it is paid, 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.
7. **[REPLACED by paragraph 1 of Article 7 of the MLI]**<sup>1</sup> ~~The provisions of this Article 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 the debt claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.~~

## **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 15 per cent of the gross amount of the royalties.

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<sup>1</sup> Please find the box which contains paragraph 1 of Article 7 of the MLI next to article 28 of this text.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic or scientific work, including cinematographic films or films, tapes and other means or image or sound reproduction, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 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 right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether the payer 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 obligation 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.
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 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.
7. **[REPLACED by paragraph 1 of Article 7 of the MLI]**<sup>2</sup> ~~The provisions of this Article 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 the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.~~

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a

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<sup>2</sup> Please find the box which contains paragraph 1 of Article 7 of the MLI next to article 28 of this text.

resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such 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.

3. Gains from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, is treated for the purposes of taxation in the first- mentioned State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, sold and repurchased the property for an amount equal to its fair market value at that time. However, the individual may not make the election in respect of property situated in either Contracting State.
5. Nothing in this Convention shall affect the application of a law of the Contracting States relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

#### **Article 14 Independent Personal Services**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character performed in the other Contracting State may be taxed in that other State but the tax so charged shall not exceed 10 per cent of the gross amount of that income unless the individual has a fixed base regularly available in that other State for the purpose of performing the activities. If the individual has or had such a fixed base, the income may be taxed in the other State in accordance with the law of that State, but only so much of it as is attributable to that fixed base.
2. 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, 18 and 19, 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 there from 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 calendar year concerned, and
  - (b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base that the person has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State unless the remuneration is derived by a resident of the other Contracting State.

#### **Article 16 Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in that resident's capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **Article 17 Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that individual's capacity as such accrues not to the entertainer or sportsperson personally but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsperson nor persons related thereto participate directly or indirectly in the profits of the person referred to in that paragraph.

#### **Article 18 Pensions and Annuities**

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the Contracting State in which they arise.
2. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the portion thereof that is subject to tax in that State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.
3. Notwithstanding anything in this Convention, alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof shall be taxable only in that other State, but the amount taxable in that other State shall not exceed the amount that would be taxable in the first-mentioned State if the recipient were a resident thereof.

#### **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 shall be taxable only in that State.
  - (b) However, such salaries, wages and other remuneration 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, 16, 17 and 18 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**

Payments which 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 solely for the purpose of that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, if such payments arise from sources outside that State.



**Article 21**  
**Other Income**

1. Items of income not dealt with in the foregoing Articles of this Convention may be taxed in both Contracting States.
2. However, where such income is income from an estate or a trust, other than a trust to which contributions were deductible, the tax so charged in Canada shall, if that income is taxable in Chile, not exceed 15 per cent of the gross amount of the income.

**IV. TAXATION OF CAPITAL**

**Article 22**  
**Capital**

1. Capital represented by 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 movable property forming part of the business property of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or by 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.

**V. METHODS FOR AVOIDANCE OF DOUBLE TAXATION**

**Article 23**  
**Avoidance of Double Taxation**

1. In the case of Chile, double taxation shall be avoided as follows:
  - (a) Residents in Chile, obtaining income which may, in accordance with the provisions of this Convention be subject to taxation in Canada, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall also apply to income referred to in Articles 6 and 11.
  - (b) where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.
2. In the case of Canada, double taxation shall be avoided as follows:
  - (a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general

principle hereof - and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Chile on profits, income or gains arising in Chile shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

- (b) subject to the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate and to any subsequent modification of those provisions - which shall not affect the general principle hereof - for the purpose of computing Canadian tax, a company that is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate that is a resident of Chile; and
  - (c) where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.
3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State that may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

## **VI. SPECIAL PROVISIONS**

### **Article 24 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, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
- 2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
- 3. Nothing in this Article shall 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.
- 4. Companies which 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 or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which other similar companies that are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this Article, the term “taxation” means taxes that are the subject of this Convention.

### **Article 25 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 24, to that of the Contracting State of which that person is a national, an application in writing stating the grounds for claiming the revision of such taxation.

***The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:***

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The case must be presented within three 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 endeavour, 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 not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

***The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:***

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [*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.
5. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities the case may, if the competent authorities of both Contracting States so agree, be submitted for arbitration. The procedure shall be agreed upon and shall be established between the Contracting States by notes to be exchanged through diplomatic channels.

**Article 26**  
**Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws in the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. 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 or collection of, the enforcement in respect of, or the determination of appeals in relation to taxes. 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.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation
  - (a) to carry out administrative measures at variance with the laws and the 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 which 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).
3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved even though the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

**Article 27**  
**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.

**Article 28**  
**Miscellaneous Rules**

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded
  - (a) by the laws of a Contracting State in the determination of the tax imposed by that State; or
  - (b) by any other agreement entered into by a Contracting State.
2. Nothing in the Convention shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust, or controlled foreign affiliate, in which that resident has an interest.
3. Nothing in this Convention shall prevent the application of the domestic law of a Contracting State concerning taxation of income, profits, dividends, gains or remittance of institutional investors, funds of any kind including investment funds and pension funds, or their participants, that are residents of the other Contracting State.
4. Nothing in this Convention shall be construed as preventing either Contracting State from imposing a tax referred to in Article 10A.
5. The Convention shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.
6. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.
7. Contributions in a year in respect of services rendered in that year 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 that is recognized for tax purposes in the other Contracting State 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 recognised for tax purposes in that first-mentioned State, if
  - (a) such individual was contributing on a regular basis to the pension plan for a period ending immediately before that individual became a resident of or temporarily present in the first-mentioned State; and

- (b) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognised for tax purposes by that State.

For the purposes of this paragraph, “pension plan” includes a pension plan created under the social security system in a Contracting State.

- 8. Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle hereof.

***The following paragraph 1 of Article 7 of the MLI replaces paragraph 7 of Article 11, and paragraph 7 of Article 12 of this Convention:***

**ARTICLE 7 OF THE MLI –PREVENTION OF TREATY ABUSE**

*(Principal purposes test provision)*

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Convention*].

## **VII. FINAL PROVISIONS**

### **Article 29 Entry into Force**

- 1. Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and its provisions shall thereupon have effect:
  - (a) in Chile, in respect of taxes on income and amounts paid, credited to an account, made at the disposal or accounted as an expense, on or after the first day of January of the calendar year immediately following that in which the Convention enters into force; and
  - (b) in Canada,
    - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January of the calendar year immediately following that in which the Convention enters into force, and

- (ii) in respect of other Canadian tax for taxation years, beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force.
- 2. The existing agreement between the Republic of Chile and Canada for the avoidance of double taxation of income derived from the operation of ships or aircraft in international traffic signed on July 30, 1992, shall terminate upon the entry into force of the Convention. However, the provisions of the said agreement shall continue in effect until the provisions of the Convention, in accordance with the provisions of paragraph 1, shall have effect.

### **Article 30 Termination**

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 of any calendar year after the year in which the Convention enters into force, give to the other Contracting State a notice of termination in writing through diplomatic channels. In such event, the Convention shall cease to have effect:

- (a) in Chile, in respect of taxes on income and amounts paid, credited to an account, made at the disposal or accounted as an expense, on or after the first day of January of the next following calendar year; and
- (b) in Canada,
  - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January of the next following calendar year, and
  - (ii) in respect of other Canadian tax for taxation years, beginning on or after the first day of January of the next following calendar year.

**IN WITNESS WHEREOF** the undersigned, duly authorised to that effect, have signed this Convention.

**DONE** in duplicate at Santiago, this 21st day of January 1998, in the English, French and Spanish languages, each version being equally authentic.

## PROTOCOL

At the moment of 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 Government of the Republic of Chile and the Government of Canada, the signatories have agreed that the following provisions shall form an integral part of the Convention:

1. In the event that pursuant to an Agreement or Convention concluded with a country that is a member of the Organisation for Economic Co-operation and Development after the date of signature of this Convention, Chile agrees to a rate of tax on dividends referred to in subparagraph (a) of paragraph 2 of Article 10 that is lower than 10 per cent or on interest or royalties that is lower than 15 per cent, then such lower rate (but not in any event a rate below 5 per cent in the case of dividends and 10 per cent in the case of interest and royalties) shall apply for the purpose of subparagraph (a) of paragraph 2 of Article 10 with respect to dividends, of paragraph 2 of Article 11 with respect to interest or paragraph 2 of Article 12 with respect to royalties, such new rates shall automatically apply for the purposes of this Convention when the provisions of the first-mentioned Agreement or Convention become applicable, as the case may be. However, the 10 per cent limitation shall not apply in the case of copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), nor to royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experiences (but not including any such information provided under a rental or franchise agreement).
2. In the event that pursuant to an Agreement or Convention concluded with a country that is a member of the Organisation for Economic Co-operation and Development after the date of signature of this Convention, Chile agrees to limit the taxation in the country of source of payments for independent personal services performed in the absence of a fixed base referred to in paragraph 1 of Article 14, to a rate that is lower than that provided for in this Convention, the lower rate (including an exemption) shall automatically apply for the purposes of this Convention from the date when the relevant provision of the first-mentioned Agreement or Convention becomes applicable.
3. 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.



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

**DONE** in duplicate at Santiago, this 21st day of January 1998, in the English, French and Spanish languages, each version being equally authentic.