

This convention was published in the official gazette on 20 October 2003. The Convention entered into force on 25 July 2003 and its provisions shall have effect in respect of taxes on income obtained and amounts paid, credited to an account, made available or accounted as expenses, on or after the first day of January 2004.

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

The Republic of Chile and the Republic of Korea, 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;

Have agreed as follows:

**CHAPTER 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 a Contracting State or of its political subdivisions or local authorities, 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 amounts 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 Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*" (hereinafter referred to as "Chilean tax"); and

(b) in Korea,

(i) the income tax;

(ii) the corporation tax;

(iii) the special tax for rural development, and

(iv) the inhabitant tax;

(hereinafter referred to as "Korean 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. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

## **CHAPTER 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 the Republic of Korea, hereinafter "Chile" or "Korea", respectively;
  - (b) the term "person" includes an individual, a company and any other body of persons;
  - (c) the term "company" means anybody corporate or any entity that 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 except when such transport is solely between places in a Contracting State;
  - (f) the term "competent authority" means:
    - (i) in Chile, the Minister of Finance or his authorised representative, and
    - (ii) in Korea, the Minister of Finance and Economy or his authorised representative;
  - (g) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person or association deriving its status as such from 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, 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**

##### **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 his domicile, residence, place of management, place of incorporation, place of head or main office, or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. 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, or of capital situated there in.
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 (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not 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 procedure.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the States shall endeavour to settle the question by mutual agreement having regard to its place of effective management, the place of main or head office, place of incorporation, or any other relevant factors. In the absence of such agreement, such person shall not be entitled to any benefits under this Convention, except that such person may claim the benefits of Articles 24 (Non-discrimination) and 25 (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 relating to the exploration for or extraction 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 activities last 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 purpose, but only where such activities 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 of this Convention shall be aggregated with the period during which activities are carried on by the enterprise if the activities of the associated enterprises are substantially the same.

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 or any other activity of a similar nature 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 6 applies) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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. 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.

7. 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.

### **CHAPTER 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. The term "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 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.

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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions necessary expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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 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. The provisions of paragraph 1 shall also apply to profits from the 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 which differ from those which would be made between independent enterprises, then any profits which would, but for those

conditions, 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 which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, if it agrees, 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 company which 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) 5 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) 10 per cent 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.

Notwithstanding this paragraph, Chile is entitled to impose the first category tax and the additional tax under Chilean tax law 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 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 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 the company's 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 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) 10 per cent of the gross amount of interest derived from loans granted by banks and insurance companies; and
- b) 15 per cent of the gross amount of the interest in all other cases.

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. The term interest shall not include income dealt with in Article 10.

4. The provisions of paragraphs 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 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 of this Convention, 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 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.

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 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 this Convention.

7. 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:

- (a) 5 per cent of the gross amount of such royalties which are paid for the use of, or the right to use, industrial, commercial or scientific equipment; and
- (b) 15 per cent of the gross amount of such royalties in all other cases.

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, artistic or scientific work, including cinematographic films, any 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 paragraphs 1 and 2 of this Article 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 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 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 this Convention.

7. 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 to 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 referred to in Article 6 and 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 which an enterprise of a Contracting State has in the other Contracting State or of 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, 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 derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by 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 may be taxed in that other Contracting State if,

- a) the assets of the company consists or consisted, directly or indirectly, principally of immovable property referred to in Article 6 and situated in that other Contracting State; or

- b) the recipient of the gain at any time during the 12-month period preceding such alienation owned, directly or indirectly, shares or other rights consisting of 20 percent or more of the capital of that company.

Any other gains derived by a resident of Contracting State from the alienation of shares or other rights representing the capital of a company resident in the other Contracting State may also be taxed in that other Contracting State but the tax so charged shall not exceed 20 percent of the amount of the gain.

- 5. Gains from the alienation of any other property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State in which the alienator is a resident.

#### **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 shall be taxable only in that Contracting State. However, such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available in the other Contracting State for purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;
- (b) if he is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that State.

- 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 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 months period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, a person being 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 being an employer has in the other State.

- 3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

#### **Article 16**

## **DIRECTORS' FEES**

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 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 SPORTSMEN**

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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself 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 sportsman are exercised.

### **Article 18**

## **PENSIONS**

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.

### **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 and 17 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 his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

### **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, 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 or Article 14, 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.

## **CHAPTER 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.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise operating such ships or aircraft is resident.

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

## **CHAPTER V**

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

#### **Article 23**

#### **ELIMINATION OF DOUBLE TAXATION**

1. In Chile, double taxation shall, subject to the provisions of Chilean law regarding the elimination of international double taxation (which shall not affect the general principle hereof), be eliminated as follows:

Residents in Chile, obtaining income which may in accordance with the provisions of this Convention be subject to taxation in Korea, may credit the tax so paid against any Chilean tax payable in respect of the same income; this paragraph shall apply to all income referred to in the Convention

2. In Korea, double taxation shall, subject to the provisions of Korean law regarding the allowance as credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), be eliminated as follows:

- (a) Where a resident of Korea derives income from Chile which may be taxed in Chile under the laws of Chile in accordance with the provisions of this Convention, in respect of that income, the amount of Chilean tax payable shall be allowed as a

credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income;

- (b) Where the income derived from Chile is a dividend paid by a company which is a resident of Chile to a company which is a resident of Korea which owns not less than 10 per cent of the total shares issued by that company, the credit shall take into account the Chilean tax payable by the company in respect of the profits out of which such dividend is paid.

3. 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.

## **CHAPTER 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which 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. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Companies 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 which is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State are or may be subjected.

6. 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 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 24, to that of the Contracting State of which he is a national. 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 a mutual agreement procedure 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 in accordance with the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement procedure 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 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of 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 or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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 which 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 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.

## **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.

## **CHAPTER VII**

### **FINAL PROVISIONS**

## **Article 28**

### **ENTRY INTO FORCE**

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with. The Convention shall enter into force on the fifteenth day after the date of the later of the notifications.
2. The provisions of this Convention shall have effect:
  - (a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which this Convention enters into force.
  - (b) in Korea,
    - (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Convention enters into force; and
    - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Convention enters into force.

## **Article 29**

### **TERMINATION**

1. This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State a notice of termination in writing through diplomatic channels.
2. The provisions of this Convention shall cease to have effect:
  - (a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given; and
  - (b) in Korea:
    - (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which the notice is given; and
    - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Seoul, this 18th<sup>o</sup> day of April, 2002, in the Spanish, Korean, and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

**FOR THE REPUBLIC OF CHILE**

**FOR THE REPUBLIC OF KOREA**

**PROTOCOL TO THE CONVENTION BETWEEN  
THE REPUBLIC OF CHILE  
AND  
THE REPUBLIC OF KOREA  
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 of 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 Korea, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. Ad Article 8

1) For the purposes of Article 8:

(a) the term "profits" includes especially:

- (i) gross revenues derived directly from the operation of ships or aircraft in international traffic, and
- (ii) interest over the amounts derived directly from the operation of ships or aircraft in international traffic, only if such interest is incidental to the operation.

(b) the expression "operation of ships and aircraft" by an enterprise, also includes:

- (i) the charter or rental on a bareboat basis of ships and aircraft;
- (ii) the rental of containers and related equipment,

if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

2) An enterprise of a Contracting State which operates ships or aircraft in international traffic in the other Contracting State shall be exempt from the value added tax or other similar tax in that other Contracting State on transport of goods or passengers.

2. Ad Article 11

If in any Agreement or Convention concluded by Chile with a third State, being a member of the Organization for Economic Co-operation and Development, Chile would agree to reduce the rate or exemption of tax provided in paragraph 2 of Article 11, such reduced rate shall automatically apply under the same conditions as if it had been specified in this Convention.

3. Ad Article 12

If in any Agreement or Convention concluded by Chile with a third State, being a member of the Organization for Economic Co-operation and Development, Chile would agree to reduce the rate or exemption of tax provided in paragraph 2 of Article 12, such reduced rate shall automatically apply under the same conditions as if it had been specified in this Convention.

4. Ad Article 24

1) Nothing in Article 24 of this Convention shall impede the application of a provision in force (or amendment of such a provision) at the time of signing the Convention.

2) The tax rate of 30 per cent referred to in Article 31, number 12 of the Chilean Income Tax Act (Ley sobre Impuesto a la Renta) shall be substituted by a tax rate of 15 per cent for the beneficiaries of royalty payments resident in Korea.

5. Other Miscellaneous

- 1) Investment funds or any other fund of any kind, organised in order to operate as such in Chile and under the laws of Chile shall, for the purposes of this Convention, be treated as a resident in Chile and subject to taxation in accordance with the Chilean tax legislation in respect of dividends, interest, capital gains and other income derived from property or investment in Chile. The provision of this paragraph shall apply notwithstanding any other provision of this Convention.
- 2) Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) 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 thereof.
- 3) Nothing in this Convention shall affect the taxation in Chile of a resident in Korea in respect of profits attributable to a permanent establishment situated in Chile, under both the first category tax and the additional tax but only as long as the first category tax is deductible in computing the additional tax.
- 4) 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.
- 5) 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 thereto, have signed this Protocol.

DONE in duplicate at Seoul, this 18th day of April, 2002, in the Spanish, Korean, and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

**FOR THE REPUBLIC OF CHILE**

**FOR THE REPUBLIC OF KOREA**