This document was signed in Santiago, on 7 July 2005, and it was published in the official gazette on 25 October 2008. The Convention entered into force on 25 August 2008 and its provisions shall have effect in respect of taxes on income obtained and amount paid, credited to an account, made available or accounted as an expense, on or after the first day of January 2009.

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

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

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 imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, 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 Chile, the taxes imposed under the Income Tax Act, “Ley sobre Impuesto a la Renta”
   (hereinafter referred to as “Chilean tax”); and

   a) in Portugal,

      (i) The personal income tax (“Imposto sobre o Rendimento das Pessoas Singulares – IRS”) ;

      (ii) The corporate income tax (“Imposto sobre o Rendimento das Pessoas colectivas – IRC”) ; and

      (iii) The local surtax on corporate income tax (“Derrama”) ;
   (hereinafter referred to as “Portuguese tax”).

4. The Convention shall apply also to any identical or substantially similar taxes 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.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

   a) the term "Chile" means the territory of the Republic of Chile, including the territorial sea and inland waters thereof as well as the seabed, the subsoil and any other areas wherein the Republic of Chile exercises sovereign rights or jurisdiction in accordance with international law and the laws of the Republic of Chile;

   b) the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent and the archipelagos of Azores and Madeira, including the territorial sea and inland waters thereof as well as the seabed, the subsoil and any other areas wherein the Portuguese Republic exercises sovereign rights or jurisdiction in accordance with international law and the laws of the Portuguese Republic;

   c) the terms "a Contracting State" and "the Other Contracting State" mean Portugal or Chile as the context requires;

   d) the term "person" includes an individual, a company and any other body of persons;

   e) the term "company" means anybody corporate or any entity that is treated as a body corporate for tax purposes;

   f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

   g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;

   h) the term "competent authority" means:

      (i) in Chile, the Minister of Finance or his authorised representative; and

      (ii) in Portugal, the Minister of Finance, the Director General of Taxation ("Director-Geral dos Impostos") or their authorised representative;

   j) the term "national" means:

      (i) any individual possessing the nationality of a Contracting State;

      (ii) any legal person 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, 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 or any other criterion of a similar nature, and also includes that State and any political or administrative 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.

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 endeavor 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 23 (Non-discrimination) and 24 (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 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 activities last more than six months;

b) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose where such activities continue within the country for a period or periods aggregating more than 183 days within any twelve months 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 (Associated enterprises) 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 identical or 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 for the enterprise and any other similar activity, if such activities are 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. Notwithstanding the preceding provisions of this Article, 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, and that the conditions that are made or imposed in their commercial or financial relations with such enterprises do not differ from those which would be generally made by independent agents.

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.

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. For the purposes of this Convention, 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 paragraph 1and 3 shall also apply to the income from immovable property used for the performance of independent personal services.

5. The foregoing provisions shall also apply to income from associated movable property and from the provision of services for the maintenance or operation of immovable property.

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 determining the profits of a permanent establishment, there shall be allowed as deductions 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. 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.

7. 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.

3. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium or a similar form of association, the provisions of paragraph 1 shall apply to such part of the profits of the consortium or association as corresponds to the participation held in that consortium or association by a company that is a resident of a Contracting State.

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, if it agrees that the adjustment made by the first mentioned State is justified both in principle and as regard the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a 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. 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. However, 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 holds directly at least 25 per cent of the capital of the company paying the dividends, and

b) 15 per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. In the case of Chile, this taxation includes the application of 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 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.

5. Where a company which 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 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) 5 per cent on the gross amount of the interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market;

b) 10 per cent on the gross amount of the interest derived from:

(i) loans granted by banks and insurance companies;

(ii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment;

c) 15 per cent of the gross amount of the interest in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 (Dividends).

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 (Business profits) or Article 14 (Independent personal services), 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 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 there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the interest exceeds, for whatever reason, 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.

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 the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment;

  b) 10 per cent of the gross amount of the royalties, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 or films, tapes and other means of 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or

performs in that other State independent personal services from a fixed base situated therein, and the 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 (Business profits) or Article 14 (Independent personal services), 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.

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 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 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. 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 the other Contracting State if,

a) the gains derive more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State, or

b) the alienator at any time during the twelve month period preceding such alienation owned, directly or indirectly, shares or other rights representing 20 per cent 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 that is a resident of the other Contracting State may also be taxed in that other Contracting State but the tax so charged shall not exceed 16 per cent of the amount of the gain.

Notwithstanding any other provision of this paragraph, gains derived by a pension fund that is a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State shall be taxable only in the first mentioned Contracting State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of 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 to him 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; or

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 commencing or ending in the fiscal year concerned; 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.

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

Article 15

DEPENDENT PERSONAL SERVICES

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the 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 that the person being an employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed by 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 supervisory board or of another 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 (Independent personal services) and 15 (Dependent personal services), 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. Notwithstanding the provisions of Articles 7 (Business profits), 14 (Independent personal services) and 15 (Dependent personal services), 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 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18

PENSIONS

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of a Contracting State to a resident of the other Contracting State, shall, to the extent it is not allowable as a relief to the payer, be taxable only in the first mentioned State.

Article 19

GOVERNMENT SERVICE

1. a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority 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 (Dependent personal services), 16 (Directors' fees) and 17 (Artistes and sportsmen) shall apply to salaries, wages and other remuneration, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative 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 (Income from immovable property), if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 22

ELIMINATION OF DOUBLE TAXATION

1. In the case of Chile, double taxation shall be avoided as follows:

   a) residents in Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in Portugal, 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 apply to all income referred to in this Convention;

   b) where, in accordance with any provision of the Convention, income derived by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

2. In the case of Portugal, double taxation shall be avoided as follows:

   a) Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Chile, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Chile (excluding, in the case of dividends, tax payable in Chile in respect of the profits out of which the dividends are paid). Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Chile;

   b) Where in accordance with any provisions of this Convention income derived by a resident of Portugal is exempt from tax in this State, Portugal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income;

   c) Notwithstanding the provision of sub-paragraph a), where a company which is a resident of Portugal receives dividends from a company which is a resident of Chile and which is subject and not exempt from business profits tax (First Category Tax) in Chile, Portugal shall allow a deduction for such dividends included in the tax base of the company receiving dividends, provided that the latter company holds directly at least 25 per cent of the capital of the company paying the dividends and that participation was held continuously for the preceding two years, or from the date the company paying the dividends was constituted if that occurred later, but in this case only if the participation is held continuously throughout the same period.

CHAPTER V SPECIAL PROVISIONS

Article 23

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 (Persons covered), also apply to individuals 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 favorably 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 (Associated enterprises), paragraph 6 of Article 11(Interest), or paragraph 6 of Article 12 (Royalties), 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 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 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 24

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 23 (Non- discrimination) , 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 endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by 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.

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

4. 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, 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.

5. 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 25

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 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 (Persons covered). 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by that State. 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 26

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 27

MISCELLANEOUS RULES

1. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N°18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

2. 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 24 (Mutual agreement procedure) or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. 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.

4. 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 recognised 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.

5. Nothing in this Convention shall affect the taxation in Chile of a resident in Portugal 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.

CHAPTER VI

FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other in writing through the diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these 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 Portugal,

(i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the calendar year next following the year in which this Convention enters into force;

(ii) in respect of other taxes, as to income arising in any fiscal year beginning on or after the first day of January of the calendar year next following the year in which this Convention enters into force; and

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 specified in the said notice of termination; and

b) in Portugal,

(i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the calendar year next following that specified in the said notice of termination;

(ii) in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the calendar year next following that specified in the said notice of termination.

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

DONE at Santiago, Chile, this 7th day of July 2005, in duplicate in the Spanish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation of this Convention, the English text shall prevail.

FOR THE REPUBLIC OF CHILE **FOR THE PORTUGUESE REPUBLIC**

PROTOCOL

TO THE CONVENTION

BETWEEN

THE PORTUGUESE REPUBLIC

AND

THE REPUBLIC OF CHILE

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

On signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between the Republic of Chile and the Portuguese Republic the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. Ad. Article 2 (Taxes covered)

It is agreed that if, after the date on which the Convention enters into force, either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced. The terms of any such Protocol shall have regard to any arrangements between either Contracting State and a third State for the relief of double taxation on capital.

2. Ad. Article 7 (Business profits), paragraph 3

It is understood that the provisions of paragraph 3 of Article 7 (Business profits) shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

3. Ad. Article 10 (Dividends), paragraph 2

It is agreed that, in relation to the application of the additional tax under the laws of Chile, should:

(i) the first category tax cease to be fully creditable in computing the amount of additional tax to be paid; or

(ii) the rate of additional tax imposed with respect to residents of Portugal, as determined under the provisions of Article 4 (Resident), exceed 42 per cent,

the Contracting States shall consult with each other with a view to amending the Convention to re-establish the balance of benefits under the Convention.

4. Ad. Article 10 (Dividends), paragraph 3

It is understood that the term “other rights” includes an arrangement for participation in profits.

5. Ad. Article 11 (Interest), paragraph 2, subparagraph b)

It is agreed that, when Portugal applies a rate of 5 per cent according to Article 6 of the EU Council Directive 2003/49/CE, such lower rate shall automatically apply with regard to Article 11, paragraph 2, subparagraph b) for interest arising in Chile and beneficially owned by a resident of Portugal and interest arising in Portugal and beneficially owned by a resident of Chile, under the same conditions as if such lower rate had been specified in that subparagraph.

The competent authority of Portugal shall inform the competent authority of Chile without delay that the conditions for the application of this paragraph have been met.

6. Ad. Articles 10 (Dividends), 11 (Interest) and 12 (Royalties)

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

7. Ad. Article 13 (Capital gains)

In the case of an alienator referred to in paragraph 4, subparagraph b), of Article 13 (Capital gains), which has owned the alienated shares or other rights for a period of more than twelve months and is not in the business of habitually selling and buying shares, the tax charged shall not exceed 16 per cent of the amount of the gain.

In any case, the alienator is not considered in the business of habitually selling and buying shares when the participation in the capital of the company is more than 50 per cent.

8. Ad. Article18 (Pensions)

It is understood that the term “pensions” includes any payments made to a scheme member or beneficiary in accordance with the rules of a scheme that is recognized for tax purposes as a pension scheme by the Contracting State in which the payments arise.

9. Ad. Article 22 (Elimination of double taxation)

(i) It is agreed that the information contained in the forms of the Chilean Circular 17 of 2004 and in the “Certificado de Residência Fiscal” used by the Portuguese Competent Authority, as they are in force at the time of signature of this Convention, is sufficient in order to apply the provisions of the Convention.

(ii) Any amendment or change of the mode of application as agreed above shall be settled by mutual agreement by the competent authorities.

10. Ad. Article 23 (Non-discrimination)

It is understood that the provisions of paragraph 4 of Article 23 (Non-discrimination) shall not be interpreted so as to prevent the application by a Contracting State of the thin capitalization provisions provided for in its domestic law, except in those cases in which the associated enterprises can prove that due to the special characteristics of their activities or their specific economic circumstances, the conditions made or imposed between these enterprises are in conformity with the arm’s length principle.

11. Ad. Article 24 (Mutual agreement procedure), paragraph 2

In the case of Portugal any agreement reached shall be implemented notwithstanding any time limits in its domestic law.

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

DONE at Santiago, Chile, this 7th day of July 2005, in duplicate in the Spanish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation of this Protocol, the English text shall prevail.

FOR THE REPUBLIC OF CHILE **FOR THE PORTUGUESE REPUBLIC**