

This document was signed in Santiago, on 2 of April 2008, and was published in the official gazette on 6 of August 2010. The Convention entered into force on 5 of May 2010 and its provisions shall have effect in respect of taxes on income obtained and amount paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January 2011.

**CONVENTION BETWEEN THE REPUBLIC OF CHILE
AND
THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Government of the Republic of Chile and the Swiss Federal Council,

DESIRING to conclude a Convention for the avoidance of double taxation 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 the case of Chile:
the taxes imposed under the Income Tax Act, "Ley sobre Impuesto a la Renta" (hereinafter referred to as "Chilean tax");
 - b) in the case of Switzerland:
the federal, cantonal and communal taxes
 - (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and
 - (ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital) (hereinafter referred to as "Swiss tax").
4. The Convention shall apply also to any identical or substantially similar taxes, and to taxes on capital, which are imposed after the date of signature of the Convention in addition to, or in place of,

the existing taxes. The competent authorities of the Contracting States shall, at the end of each year, 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 Republic of Chile;
 - b) the term "Switzerland" means the Swiss Confederation;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Chile or Switzerland as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - 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 the case of Chile, the Minister of Finance or his authorised representative;
 - (ii) in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;
 - i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person 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 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 therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (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.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, such person shall be treated as a resident for the purposes of this Convention only if and to the extent that the competent authorities of the Contracting States so agree pursuant to Article 24.

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, and
 - b) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose if such activities continue within the country for a period or periods aggregating more than 183 days within any twelve month period.
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, 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 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.

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. 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 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 commercially justified 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. For the purposes of this Article the expression "operation of ships and aircraft" by an enterprise includes:

- a) the charter or rental on a bareboat basis of ships and aircraft;
- b) 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.

3. 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 in the 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 regards the amount, shall make the 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.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws and, in

any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud or wilful default.

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 15 per cent of the gross amount of the dividends.

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.

The provisions of this paragraph shall not limit the application of the additional tax payable in Chile provided that the first category tax is fully creditable in computing the amount of 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 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 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) 5 per cent on the gross amount of the interest derived from:
 - (i) loans granted by banks and insurance companies;
 - (ii) bonds or securities that are regularly and substantially traded on a recognized securities market;
 - (iii) 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.

- b) 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.

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, 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, 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 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 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.

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 cinematograph films, or films, tapes and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process, or other intangible property or for the use, 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 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 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. a) 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,

- (i) 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, or
- (ii) the gains derive more than 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 of this Convention situated in that other Contracting State.

b) Any other 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 also be taxed in that other Contracting State but the tax so charged shall not exceed 17 per cent of the amount of the gain.

c) 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 paragraphs 1, 2, 3 and 4, 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 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 12 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 12 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 which the person being the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed 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.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsman himself, nor persons related to him, participate directly or indirectly in any manner in the receipts or profits of the person referred to in that paragraph.

Article 18

Pensions

Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of the pension.

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 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.

CHAPTER IV

TAXATION OF CAPITAL

Article 21

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 which 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 AVOIDANCE 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 or owning capital which may, in accordance with the provisions of this Convention be subject to taxation in Switzerland, may credit the tax so paid against any Chilean tax payable in respect of the same income or capital, 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 or capital owned by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

2. In the case of Switzerland, double taxation shall be avoided as follows:
 - a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Chile, Switzerland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted; however, such exemption shall apply to gains referred to in paragraph 4, subparagraph a) of Article 13 only if actual taxation of such gains in Chile is demonstrated.
 - b) Where a resident of Switzerland derives interest or royalties which, in accordance with the provisions of Article 11 or 12, may be taxed in Chile, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Chile in accordance with the provisions of Articles 11 and 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Chile; or
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Chile from the gross amount of the interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.
 - c) Where a resident of Switzerland derives dividends which, in accordance with the provision of Article 10, may be taxed in Chile, Switzerland shall allow, upon request, a relief to such resident. The relief shall consist of a credit equal to 15 per cent of the gross amount of the dividends. The gross amount of dividends is understood as the dividend received grossed up by 15 per cent.
 - d) Where a resident of Switzerland derives income covered by Article 13, paragraph 4, subparagraph b Switzerland shall allow, upon request, a deduction from the Swiss tax on this income of an amount equal to the tax levied in Chile in accordance with this subparagraph; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Chile.
 - e) Where a resident of Switzerland derives income covered by Article 18, Switzerland shall allow, upon request, a deduction from the Swiss tax on this income of an amount equal to the tax levied in Chile in accordance with Article 18; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given on this income.
 - f) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Chile shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

CHAPTER VI

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, 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 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 which it grants to its own residents.
4. Except where the provisions 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 which are residents 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, 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 mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.
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 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange, on request, such information as is necessary:

- a) for carrying out the provisions of this Convention in relation to the taxes which are the subject of this Convention;
- b) for the administration or enforcement of the domestic laws in cases of tax fraud which have been committed by a resident of a Contracting State or by a person subjected to a limited tax liability in a Contracting State, in relation to taxes which are the subject of this Convention.

2. Any information received under paragraph 1 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 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.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In cases of tax fraud the provisions of paragraphs 1 and 3 shall not be construed so as to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Members of diplomatic missions and consular posts

1. 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.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- a) in accordance with international law he is not liable to tax in the receiving Contracting State in respect of income from sources outside that State or on capital situated outside that State and
- b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or on capital.

Article 27

Miscellaneous Rules

1. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund Law No 18 657 in Chile), 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 Service, 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 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. Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event 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 24, 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. Nothing in this Convention shall affect the taxation in Chile of a resident in Switzerland 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 VII

FINAL PROVISIONS

Article 28

Entry into force

1. Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the latter of these notifications.
2. The provisions of this Convention shall have effect:
 - a) in Chile,
 - (i) 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; and
 - (ii) in respect of taxes on capital, if and to the extent such tax will be imposed by Chile after the date of signature of this Convention, for tax levied in relation to capital owned on or after the first day of January of the calendar year next following the date on which tax on capital has been introduced; and
 - b) in Switzerland,
 - (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the year next following the year of the entry into force of the Convention;

- (ii) in respect of other taxes on income and of taxes on capital for taxation years beginning on or after the first day of January of the year next following the year of the entry into force of the Convention.

3. The Agreement of the 1st of June 2007 between the Republic of Chile and the Swiss Confederation for the avoidance of double taxation with respect to enterprises operating aircraft in international traffic shall cease to have effect on the date on which this Convention shall take effect.

Article 29

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in Chile
 - (i) 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
 - (ii) in respect of taxes on capital, if and to the extent such tax has been imposed by Chile after the date of signature of this Convention, for tax levied in relation to capital owned on or after the first day of January of the calendar year next following that in which the notice is given; and
- b) in Switzerland
 - (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following that in which the notice was given;
 - (ii) in respect of other taxes on income and of taxes on capital for taxation years beginning on or after the first day of January of the calendar year next following that in which the notice was given.

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

DONE in duplicate at Santiago, on this 2nd day of April, 2008, in the Spanish, French and English languages, all texts being equally authentic. In case there is any divergency of interpretation between the Spanish and the French texts the English text shall prevail.

**FOR THE GOVERNMENT OF
REPUBLIC OF CHILE:**

**FOR THE SWISS
FEDERAL COUNCIL:**

PROTOCOL

The Republic of Chile

and

The Swiss Confederation

Have agreed at the signing at Santiago, on this 2nd day of April, 2008 of the Convention between the two States for the avoidance of double taxation with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Convention.

1. In general

It is understood that any item of income not dealt with in the Convention is not covered by the Convention. Hence, the taxation of such income is exclusively governed by the domestic laws of each Contracting State.

2. Ad paragraph 3 of Article 5

For the purposes of preventing misuse of Articles 5 and 7, in determining the duration of activities under paragraph 3 of Article 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise (other than enterprises of that Contracting State) may be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

3. Ad Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business, provided they conform to prices and conditions prevailing in the ordinary market between independent parties.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of the real economic function of such permanent establishment.

The profits related to that part of the contract corresponding to the real economic function of the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

4. Ad paragraph 3 of Article 7

It is agreed that the expression "commercially justified" is to be understood under Chilean jurisprudence as to have the same meaning as the term "necessary" in the relevant legislation.

5. Ad Articles 10, 11 and 12

The provisions of Articles 10, 11 and 12 shall not apply in respect to any dividend, interest or royalty paid under, or as part of a conduit arrangement. The term "conduit arrangement" means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received

that item of income directly from the other Contracting State, would not be entitled under a Convention for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favorable than, those available under this Convention to a resident of a Contracting State; and the main purpose of such structuring is obtaining benefits under this Convention. The competent authorities, under the mutual agreement procedure, may agree on the cases or circumstances where the structuring of a conduit arrangement has as main purpose the obtaining of benefits under this paragraph.

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

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

7. Ad Article 18

It is understood that the term "pensions" as used in Article 18 does not cover lump sum payments and, in the case of Switzerland, does not cover payments made according to recognized individual retirement savings schemes ("formes reconnues de prevoyance individuelle liee").

8. Ad Article 25

It is understood that, in cases of tax fraud:

a) It is understood that the term "tax fraud" means fraudulent conduct, which is an offence in the requesting State, and if occurred in the requested State would also be considered an offence under the laws of that State, and is punishable by imprisonment either at the time where the fraud has been committed or where the request has been submitted.

b) In any case, the provision of information presupposes a direct connection between the fraudulent conduct and the requested administrative assistance measure. It is understood moreover that the administrative assistance provided for in paragraph 1 of Article 25 does not include measures aimed only to simple collection of pieces of evidence ("fishing expeditions").

c) The requested State shall provide information where the requesting State has a reasonable suspicion that a certain conduct would constitute tax fraud. The requesting State's suspicion of tax fraud may be based on:

(i) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;

(ii) Testimonial information from the taxpayer;

(iii) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or

(iv) Circumstantial evidence.

d) As regards the procedure followed in Chile for obtaining information, including banking information, in the case of tax fraud under Article 25, the Chilean competent authorities will apply the internal procedures provided for by the Chilean internal law in order to comply with the information request of the Swiss competent authorities.

e) The exchange of information is based on the principle of reciprocity.

f) The exchange of information applies to tax frauds, which have been committed on or after the first day of January of the year following upon the entry into force of this Convention.

9. Ad article 25: Holding Companies

If Chile becomes a Member of the Organization for Economic Cooperation and Development (OECD), the competent authorities of the Contracting States shall exchange, on request, such information as is necessary for the administration or enforcement of the domestic laws in the case of holding companies, in relation to taxes, which are the subject of this Convention.

a) The Contracting States agree that under this paragraph, only information which is in possession of the Tax Authorities and which does not necessitate specific investigation measures may be exchanged;

b) It is understood that, as regards this paragraph, Swiss companies covered by Article 28, paragraph 2 of the Federal Law on Harmonization of direct taxes of 14 December 1994 and the Chilean companies equivalent to abovementioned Swiss companies are considered as holding companies;

c) This exchange of information will take effect concerning information regarding tax years starting on or after the first day of January next following the later of (i) the date Chile becomes a Member of the OECD or (ii) the date of entry into force of this treaty.

Done in duplicate at Santiago, on this 2nd day of April, 2008, in the Spanish, French and English languages, all texts being equally authentic. In case there is any divergency of interpretation between the French and the Spanish texts the English text shall prevail.

**FOR THE GOVERNMENT OF REPUBLIC OF
CHILE:**

**FOR THE SWISS
FEDERAL COUNCIL:**