

# Doing Business in Chile



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# Introduction



We have prepared this publication in order to answer the main inquiries of the investors and foreign businessmen on how to invest in Chile.

PKF Chile Auditores Consultores Ltda., will be pleased to answer any other specific inquiries on how to invest in Chile.

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# Legislation on foreign investment



In accordance with the current legal system, foreign investment can be brought into our country through different legal procedures. The most widely used are as follows:

## a) The Foreign Investment Law, Decree Law 600

### General aspects

The regulations of this decree law accept to be used by foreign and Chilean private individuals and companies with residence and domicile abroad who transfer capital to Chile and also have a foreign investment agreement with Chile.

The minimum investment stated by the Committee of Foreign Investment amounts US\$5.000.000 or the equivalent in other currencies, when the capital contributions were made in cash. The minimum amount is US\$2.500.000 when the capital is contributed in physical assets, rights and other kind of assets different from money.

## Law agreement – foreign investor’s guarantees

The agreements subscribed between the Committee of Foreign Investment on behalf of the State of Chile and the foreign investor shall be under the regulations of the Decree Law 600 without prejudice of those specific agreements that arise from the negotiation between the parties.

The agreement subscribed under the Decree Law 600 guarantees the investor the access to the foreign exchange market for the remittance of capital and net profits it originates.

Likewise, the indirect tax regime and the ordinary customs duties regime applicable to local investment will be applied to foreign investment and the companies where it participates.

Besides, a non-discrimination guarantee is granted to the foreign investor and the companies where he participates with regard to the local investors, with exception of the access to local loan, on which some limitations could be applied, currently inexistent.

## Capitals that can be brought into and their value

Foreign investment that is made in accordance with the by laws of the Decree Law 600, can be transferred to Chile by any of the following ways:

**a) Foreign currency of free convertibility:**

They are transferred through their sale in the Formal Exchange Market, i.e. commercial banks and financial institutions authorized by the Central Bank. Through the information given the Central Bank of Chile records the contribution made.

The foreign exchange can be liquidated to local currency or given to the interested individual.

**b) Tangible assets, in all their forms:**

They are brought into the country in accordance with the general by laws that rule the imports. These goods are valued in accordance with the general procedures applied to imports.

**c) Technology in their different forms when they can be capitalized:**

Its valuation is authorized by the Committee of Foreign Investments.

**d) Loans associated to a foreign investment:**

They need to meet the general conditions stated for those operations and they have to be reported through an institution from the Formal Exchange Market to be registered by the Central Bank of Chile.

**e) Loan capitalization and foreign debt in free convertibility currency under a duly authorized contract.**

**f) Profits capitalization with the right to be remitted abroad.**

## Capital and profit remittance

Capital remittance can only be made after one year from its entry. There are not time limits for the net profit remittance obtained by the foreign investor.

The foreign exchange needed to make the capital remittance can only be acquired made with the result of the selling of shares or representative rights of the foreign investment or from the liquidation of the company.

Remittances shall be made through the Formal Exchange Market.

## Tax invariability

The foreign investment contract guarantees a fixed 42% income tax burden for a period of ten years or the application of a regular tax regime established in the Income Tax Law.

However the foreign investor may elect at any time to be subject to the general system of income taxes instead of one of the fixed rates, in such a case the foreign investor will have the same rights and obligations applicable to local investors.

## Additional benefits for US\$50,000,000 investments

The investment projects of US\$50,000,000 or above whose object is industrial or extracting, mining included, can obtain some additional benefits, such as having the following aspects invariable for a 20-year period:

Some of the most important benefits are:

- The 42% total income tax.
- Tax regulations and instructions regarding depreciation, carry forward losses and organization and start up expenses.
- Current regulations of the Central Bank regarding the freedom to export and special by laws concerning the foreign exchange remittance of export procedures in case the investment is made to produce export goods.

According to its legal authority, the Committee of Foreign Investments has agreed to exclude from the negotiation of the new

contracts the rights stated in the Article 11 bis of Decree Law 600. This decision can be revised in the future.

## b) Article 47 of the Central Bank law.

It is known as Chapter XIV of the Foreign Exchange Regulations of the Central Bank. It is a procedure to make capital contributions in our country for amounts not below US\$10.000 or its equivalent in other currencies.

### Registration procedure

Once the funds have been brought into the country, the contributions shall be reported through an institution belonging to the Formal Exchange Market for their registration by the Central Bank. The foreign exchange can be liquidated in local currency or given to the interested party.

### Capital and profit remittance

The foreign investor can remit the capital and profits at any moment.

The remittance could be made with foreign exchange acquired in a market different from the Formal Exchange Market, but this remittance shall be made through an institution from such market.

# Forms of business organization



A foreign investor can set up in Chile a partnership, corporation, agency or branch of a foreign company or appointing a representative.

## General partnership (sociedad colectiva)

In a general partnership all the partners administrate the company individually or through an elected representative. Each partner is responsible for the legal liabilities of the partnership in proportion to its contribution.

To create a general partnership the partners, or their legal representatives, must sign a duly notarized deed. The partnership deed must contain, as a minimum, the following:

The names, professions and addresses of the partners.

- The partnership's name, which must be the names of one or more of the partners, followed by the words "y compañía" (and company).
- Partner or partners who will administrate the general partnership and that are allowed to use the company's name.
- The capital contributed by each partner in cash or otherwise; if the contribution is not in cash, the value assigned to it or how such value is to be determined.
- The object of the partnership.

- How the profits or losses are to be assigned to the partners.
- When the partnership will start and when it will end its legal existence.
- The amount each partner can draw annually for personal expenses.
- How the partnership is to be liquidated, and how its assets will be assigned to each partner.
- How differences among the partners are to be settled.

A summary of the partnership deed must be filed with the appropriate Register of Commerce and it must also be published in the Official Gazette within a 60-day period.

## Limited liability partnership

A limited liability partnership is similar to a general partnership. The main difference is that each partner's liability is limited either to the amount of capital contributed or to a greater amount specified in the partnership deed.

A limited liability partnership is formed by means of a notarized deed that should contain the same items required for a general partnership deed.

Filing of a summary with the Register of Commerce is also required within 60 days. The summary must also be published in the Official Gazette within the same 60-day period.

The name of a limited liability partnership should contain the name of one

or more partners or a reference to the partnership's object and the name must end in the word "Limitada" (Limited); otherwise, each partner is unlimitedly liable for all the partnership's liabilities.

The management of these partnerships is granted to the partners as it is specified in the partnership deed.

## Corporations

The corporations are ruled by the Law 18.046 published in the Official Gazette on October 22, 1981.

In accordance with this law, there are two different types of corporations:

- “Publicly traded corporations”

They have one of the following characteristics:

- 500 or more shareholders
- At least 10% of the subscribed capital is owned by more than 100 shareholders, except those that individually or through other private individuals or companies exceed that percentage.
- They are listed in the Register of Securities.

These corporations are subject to the control of the Superintendency of Securities and Insurance.

- “Closely held corporations”

They do not meet the requirements previously mentioned.

Corporations either publicly traded or closely held are formed by means of a notarized deed. A summary must be filed with the Register of Commerce

and also be published in the Official Gazette within a 60-day period.

**a) Notarized deed**

It must contain as a minimum the following items:

- The names, professions and addresses of the shareholders that are starting the corporation;
- The name and domicile of the corporation.
- The specific object or object of the corporation.
- The term of the corporation, that can be indefinite. If nothing is said, the term is presumed to be indefinite.
- The capital of the corporation and the number of shares, indicating any preferred series of shares and privileges, and whether the shares have a par value or not; the way and terms the shareholders must pay in their contributions and the valuation assigned to any contributions that are not made in cash.
- How the corporation is to be administrated and how the administration will be supervised.
- Closing dates for the financial information, balance sheet and the General Shareholders Meeting.
- How the corporation will distribute its profits.
- How the corporation will be liquidated.
- How the differences among the shareholders or between the

shareholders and the corporation are to be decided; if nothing is said, it is understood that the differences will be submitted to arbitration.

- The names of the participants of the Provisional Board of Directors.

## **b) Capital**

One third of the initial capital must be subscribed and paid when the deed is rendered.

The initial capital should be absolutely subscribed and paid in a period not longer than three years since the date the deed is signed. Otherwise the capital will be reduced to the amount actually subscribed and paid.

## **c) Liability**

The Law states that the shareholders are only liable for the payment of their shares and they are not forced to refund the benefits they could have received.

## **d) Management:**

These corporations are managed by a Board of Directors elected by the General Shareholders Meeting. The minimum number of

directors is three in a closely held corporation and five in a publicly traded corporation. When the latter has equity of UF1.500.000 (about \$52 million dollars) the number of directors shall be seven.

In accordance with the Law, it is not necessary to grant special powers to the Board of Directors, because it has all the rights of management and decision that the Law has not established as belonging exclusively to the General Shareholders' Meeting.

The statute must also include the frequency of the Board of Directors' meetings and how these will be arranged.

## Limited partnership (sociedad en comandita)

The requirements to set up a limited partnership are similar to those for forming a general partnership.

It is a partnership formed by two types of partners:

- Managing partners with an unlimited liability for the debts and losses of the partnership.
- Shareholder partners who provide all or part of the partnership's capital. Their liability is limited to the amount of their contributions and with no right to manage the partnership.

The partnership is called "simple limited partnership" (sociedad en comandita simple) or "limited partnership with share capital" (sociedad en comandita por acciones) if the partners' capital is represented by shares.

## Association

An association ("asociación" or "cuentas en participación") is an agreement between two or more businesspeople or companies to make one or more commercial transactions that will be carried out by one of

them in his or her own name. Such partner (gestor) must render an account to the other participant partners (partícipe) and divide with them any profit or loss that might result in the agreed share.

The association is a private agreement that only creates rights among the partners. Consequently, there are no legal requirements for forming an association.

As far as third parties are concerned, only the partner (gestor) in whose name the transaction is carried out is responsible. However, the partner (gestor) and the participant partner shall pay taxes separately for their profits, only if that situation can be stated.

## Branch or agency of a nonresident foreign corporation

The foreign corporation must appoint an agent or legal representative to set up the branch in Chile. The following documents are required:

- a) Proof that the corporation is legally incorporated abroad and a certification that the corporation is still in existence.
- b) Authenticated copy of the corporation's current statutes; and
- c) General power of attorney issued by the corporation to the agent that will represent it in Chile; the power of attorney must state clearly that the agent acts in Chile in the corporation's name with full powers.

These documents must be notarized in a Notary Public with the domicile of the agency in Chile, they must be written in the official

language of the foreign country and must be translated into Spanish and also must be duly legalized.

Likewise, by notarized deed, the agent shall state: the name used in Chile, the corporation will maintain in Chile realizable assets to cover the liabilities that must be served in Chile, the object or objects, the effective capital assigned in Chile for its operations and the domicile of the principal agency among others.

Finally, within sixty days, a summary of the notarized documents must be filed with the Register of Commerce. Within the same period, the summary must also be published once in the Official Gazette.

Branches of foreign limited liability partnerships require the granting of a power of attorney.

## Operations made through a representative

The investor without domicile or residence, either private entity or a company can operate in Chile through a private entity or company with residence in the country. The investor must grant a mandate, with or without remuneration, so the representative makes the operations on behalf and at the risk of the foreign investor.

# Administrative and accounting aspects



## Administrative aspects

All individuals or entities that start a business activity in Chile must comply with certain administrative requirements. The principal requirements are:

- **Taxpayer number "Rol Unico Tributario" or RUT**

This number must be obtained when the individual or entity is registered with the Internal Revenue Service ("Servicio de Impuestos Internos") and no business can operate without a taxpayer number.

- **Declaration of Initiation of Activities:**

This declaration is made to the Internal Revenue Service within the two months following the month the activities start. This declaration must contain a description of the nature of the activities, the amount of capital of the enterprise and percentages of participation in the capital and profits. In most cases, a notice must also be given to the Internal Revenue Service of the setting up of new branches or other operatives units.

## – **Municipal License**

A separate license must be obtained from the corresponding Municipality for each of the enterprise establishments, offices, warehouses, etc.; no activity can be started without the applicable license.

## Accounting and booking aspects

In general, any business or taxpayer is required to maintain complete accounting records: a cashbook, a journal, a ledger, an inventory register and balance sheet. In addition, the following records must be kept for tax purposes:

- Sales and Purchases journals.
- Payroll register (required only when there are five or more employees).
- Tax withholding register.
- Stock Register.
- Taxable profits fund ledger (FUT).

There are some other registers required by the tax authority such as the draft and promissory notes register when the company issues these documents in the normal business operations.

All the accounting and tax books must be stamped by the Internal Revenue Service. The records can be loose leaf, prepared either manually or by data processing equipment.

Those companies who have facilities in areas with tax or custom duties

incentives or benefits, such as the free trade zone in Arica, Iquique and Punta Arenas must keep separate set of accounting records for those operations.

The balance sheets for tax purposes cannot exceed a twelve-month period, unless it is the case of the first period or the end of the activity. The balance sheet must be prepared at December 31 or at the date of the end of activities.

In the case of the corporations, they will prepare their annual balance sheet as of December 31 or in the date specified by the statutes. However, for tax purpose they must comply with the rules abovementioned.

In general, all the Chilean tax system is indexed in order to compensate the inflation effects. In the case of the income tax law, there is an integral system called monetary correction that is applied in the balance sheets of the companies with complete accounting records. Besides the system has special rules to correct the taxpayer's income who do not have a complete accounting (employees, professionals, etc).

Companies must keep their accounting records in local currency. However, if all or most of the contributed capital or business is developed in a foreign currency; an authorization from the Internal Revenue Service could be obtained to keep the records in a foreign currency. Corporations subject to special tax regulations, called "platform corporations", may opt to maintain their accounting books either in local or foreign currency, without submitting any application.

## Other obligations

Broadly speaking, the taxes must be reported in tax returns by filling out special forms, which have to be submitted physically to financial institutions authorized to collect taxes, or by electronics means through Internet (for instance, form 22 used for annual income taxes, form 29 used for VAT and other taxes).

Taxpayers have also to deliver to Internal Revenue Service, in the same way, varied information such as income, expenses and other facts regarding taxpayer or third parties. This information must be given in special forms which are sworn declarations and may affect some activities, certain institutions or have a wider application. Most of these declarations have to be prepared periodically either monthly or annually. Among them there are those related to income tax return process which are more than 50. Some others are eventual and have to be submitted as soon as the facts occur.

# Taxation



## Tax structure

### Income tax

Income taxation is based on the following factors: the taxpayer's place of residence and the source of the income.

All resident taxpayers, whether individuals or corporations, are subject to taxes on their total income, wherever earned, with the sole exception of foreign individuals who only pay taxes on Chilean source income for their first three years in the country. This period can be extended for three more years.

Income from Chilean corporations or Chilean partnerships is always considered to be Chilean-source income, as well as the interests on loans to individuals with domicile or residence in Chile.

Income tax considers other elements in its application, dividing them into category taxes that are applicable to tax income from certain activities and global taxes applicable to all income.

### Category Taxes:

- First Category Tax on income from industry, commerce, mining, real estate, and other activities involving the use of capital. This tax is allowed as a credit against the global taxes due.
- Second Category Tax on income from jobs as an employee. Income

of self-employed people and professionals is classified as Second Category Income but it is not subject to Second Category Tax.

**Global taxes:**

- Complementary Tax on the total income from both categories of resident individuals.
- Additional Tax on the total income from both categories of nonresident individuals or nonresident companies. In some cases it is a sole tax applicable on the income.

The profits produced by companies who have nonresident partners or shareholders are subject to this tax when such profits are withdrawn, distributed as dividends or remitted abroad.

## Principal income tax rates

First Category Tax	17%	
Second Category Tax		
<ul style="list-style-type: none"> <li>• Self-employed people (professionals, directors of corporations, professional partnerships, and others)</li> </ul>		(*)
<ul style="list-style-type: none"> <li>• Employees (Personal Progressive Income tax)</li> </ul>	0% to 40%	
<ul style="list-style-type: none"> <li>• Complementary Tax (Resident individuals)</li> </ul>	0% to 40%	
<ul style="list-style-type: none"> <li>• Additional Tax (Nonresident individuals and nonresident corporations)</li> </ul>	35%	
Withholding of Additional Tax:		
<ul style="list-style-type: none"> <li>• Royalties paid abroad</li> </ul>	30%	
<ul style="list-style-type: none"> <li>• Royalties paid abroad for patents of invention, industrial designs, new vegetal varieties, software and other specific cases</li> </ul>	15%	(**)
<ul style="list-style-type: none"> <li>• Engineering and technical jobs</li> </ul>	15%	(***)
<ul style="list-style-type: none"> <li>• Professional and technical services</li> </ul>	15%	(***)
<ul style="list-style-type: none"> <li>• Other services paid abroad</li> </ul>	35%	
<ul style="list-style-type: none"> <li>• Interest to foreign companies or in case of indebtedness in excess</li> </ul>	35%	
<ul style="list-style-type: none"> <li>• Interest to foreign banks</li> </ul>	4%	
<ul style="list-style-type: none"> <li>• Rent of capital goods</li> </ul>	35%	(****)
<ul style="list-style-type: none"> <li>• Sea freight</li> </ul>	5%	(*****)
<ul style="list-style-type: none"> <li>• Insurance premiums to foreign insurers</li> </ul>	22%	
<ul style="list-style-type: none"> <li>• Reinsurance premiums to foreign reinsurers</li> </ul>	2%	
Special tax:		
<ul style="list-style-type: none"> <li>• Disallowed expenses of limited partnership with share capital and agencies or representatives of foreign corporations</li> </ul>	35%	

(\*) Income is subject to Complementary or Additional Tax only. Professional partnerships can choose to be taxed under the First Category Tax regime.

- (\*\*) The rate is 30% when the creditor or beneficiary of the remuneration is incorporated, domiciled or resident in a country considered as tax havens or negative preferential fiscal regimes by the OECD and included in a list by the Chilean Government. This rate is also applicable when the beneficiary owns or participates 10% or more of the capital or profits of the debtor, or beneficiary and debtor of the remuneration are, directly or indirectly, under a common owner that owns 10% or more of the capital or profits of both.
- (\*\*\*) The rate is 20% in the same situations described in (\*\*)
- (\*\*\*\*) The rate is applicable on a presumed income of 5% each payment.
- (\*\*\*\*\*) There are exemptions on the basis of reciprocity.

## **Income tax rate to foreign investors**

### **Applicable taxation in a general regime**

Simplified example

Income before taxes  
First Category tax 17% over 100

Net income

Withholding tax on dividends or profit withdrawal:

Additional tax 35% over 100  
Less tax credit 17% over 100

Net received by an investor

### **Applicable taxation in accordance with Decree Law 600**

Income before taxes  
First Category tax 17% over 100

Net income

Withholding tax on dividends or profit withdrawal:

Additional tax 25% (42-17) over 100 (83+17)

Net received by the investor

## **Value added tax**

The consumption tax is called Value-Added Tax (VAT).

A 19% Value-Added Tax (VAT) is charged on all recurring sales of tangible assets and, real estate in some cases and on remuneration for services rendered. Imports are also subject to VAT.

The VAT paid on imports, purchases, and services received (tax credit) is deducted from the VAT due on sales and services rendered (tax debit). The tax payer must file a monthly tax return and pay the net tax debit by the twelfth day of the subsequent month. If there is a net tax credit (increased to reflect the changes in the consumer price index) it can be carried forward to the subsequent months.

Exports are zero-rated. However, VAT paid on purchases of goods and services that are necessary to produce the exported goods is either deducted from other VAT due or refunded by the Internal Revenue Service. Sea and air transport, as well as services rendered to non-resident entities, that are deemed to be exports by the customs service, are treated in the same way.

## Royalties, technical assistance and interests

### Royalties and technical assistance

Foreign currency to pay royalty fees can be freely purchased on the informal foreign exchange market. At present no registration requirements are needed.

In accordance with Chilean tax law, in general, royalties paid abroad are subject to withholding tax at the rate of 30% (or 15%, depending on the case). The person or entity who pays, credits in account, or places at the disposal of the licensor, any amount related to royalties, must withhold and pay the 30% tax by the twelfth day of the month following the date the first of these acts occurs.

The deduction as expense for the payment of royalties to related companies is limited to a 4% of the total amount of sales and services of the business, unless the tax levied in the country of the beneficiary has a 30% or higher rate.

The payments abroad to a nonresident entity related to engineering and technical jobs or services, are subject to a 15% withholding tax that is applied on the amount without any deductions. This rate is 20% in some cases, as it is showed in one of the preceding paragraphs.

The withholding tax on technical assistance that is included in the cost of the exported goods is considered as a recoverable credit in the annual tax statement.

Certain services rendered abroad related to foreign trade may be exempt from taxes.

### Interests

The general rule is that interest on loans from abroad is subject to a 35% withholding tax. However when loans have been granted by foreign or international banks, or duly registered financial institutions, the withholding tax is only 4%.

The 35% rate is also applicable to interests produced by certain kind of debts with related parties or in the cases stated in the law, when they are originated in the part of the debt considered as a indebtedness in excess. The so called excess is produced when the total amount of that kind of debts owed is higher than three times the equity of the taxpayer.

## **Capital market**

Last important changes that have been made to the capital market, especially in the deregulation of Mutual Funds and the improvement of the Bank Law; have included the following changes in the tax issue

- Flexibility of the voluntary provisional saving in the pension system. The tax benefit consists in reducing from the taxable income base of the employees or independent people the voluntary provisional saving in different instruments of the capital market. It is allowed the withdrawal of these funds paying a tax determined in each situation.
- The shares and bonds loan or rental in a stock operation of short sale, are not considered a sale, under certain requirements. There are some special tax regulations.
- Exemption of the income tax on capital earnings produced by the sale of shares of publicly traded corporations only if those share are

listed in the stock exchange, the transactions are made in a stock exchange of the country or in accordance with the regulations of a public offer process and the documents have been acquired in a stock exchange of the country, or through a public offer of acquisition of shares of first issuance. This exemption will include the sale or withdrawal of mutual funds installments and of investments with an average portfolio of at least 90% of shares highly rated in the stock exchange.

- Exemption of the income tax on capital earnings for emerging companies. The highest value that results from the sale of shares registered in the stock register that are sold in markets for emerging companies organize in any of the stock exchanges of the country are tax exempt. Only if those companies are opened to Stock Exchange meeting some requirements of non-concentration and dispersion. The sale must be made within the following three years to the placement of the shares in the conditions stated in the law. Such placement should have been made no later than December 30, 2006.
- The 4% tax on interests applied to credits whose final use is the granting of loans abroad was eliminated.
- It became uniform the tax on interests for foreign investors decreasing to a 4%, when it comes from time deposits and other fixed income instrument, denominated in local or foreign currency.

## Taxes paid abroad and bilateral agreements

### Foreign tax credit

A foreign tax credit is allowed against the First Category Tax for income taxes withheld or paid abroad on profits, dividends and branch income. The credit is capped at 17%. There is also a credit with the same limit for the withholding taxes on royalty and technical assistance payments made to local companies.

The cap increases to 30% for countries that have double taxation treaties with Chile. The foreign taxes up to 17% are creditable against the 17% First Category Tax and the balance against the taxpayer's or Chilean company's owners' final taxes (Additional or Complementary taxes).

### Treaties to avoid double taxation

The oldest treaty was signed with Argentina. In general, income earned in one country is subject to taxes in that country only; it is exempt from the other country's taxation when it is repatriated.

Besides, Chile has agreed treaties to avoid double taxation, which are currently in force, with the following countries: Canada, Mexico, Brazil, Norway, South Korea, Ecuador, Peru, Spain, Poland, United Kingdom, Denmark, Croatia, Sweden, New Zealand and France. These treaties have followed that model of the Organization for Economic Cooperation and Development (OECD) and they state tax exemptions, limit the tax rates in some cases and grant a credit for the income tax paid in the other undersigned country.

## Other taxes or duties

### Tax on Assets

**Municipal License.** Annual license received by the municipalities. The fee is calculated on the taxpayer's equity at a rate, which is set by each municipality, with a minimum of 0.25% and a maximum of 0.5%. The total annual fee cannot exceed 8,000 monthly tax units (about US\$480.000 as of January 2007). The fee is allocated among the municipalities in which the taxpayer has an office, factory, warehouse or any other establishment.

### Territorial Tax (Contribution to Real Estate- Law 17.235)

The agricultural real estate is subject to a 1% annual tax calculated on its fiscal valuation that exceeds of Ch\$5.418.083 (US\$10.200), amount in force in the second semester of 2006.

The non agricultural real estate is subject to a 1,2% annual tax calculated on its fiscal valuation.

The real estate for housing is exempt up to the amount of \$14.963.560 (US\$28.200), value in force in the second semester of 2006. The portion that exceed that amount is subject to a 1% annual tax up to \$53.441.284 (US\$100.800) and the excess is subject to a 1,2% annual tax plus a surcharge of 0,025% on that excess.

The payment is made in four quarterly installments. It produces to the owner a credit against the First Category Tax when it is an agricultural real estate that produces taxes subject to such category, for corporations that rent out non-agricultural real estate and for building and real estate companies for the real estate destined to be sold.

### Stamp Taxes (D.L. 3.475)

In general, the bills of exchange, promissory notes, and any document involving loans and especially borrowings (among these the foreign ones), are subject to a tax with a rate that ranges depending on the period of the loan. Such rate is calculated either on the amount expressed on the document or on the amount of money borrowed.

Following are the rates:

- 0,125% monthly with a maximum of a 1,5%, during 2007
- 0,1125% monthly with a maximum of a 1,35%, during 2008
- 0,1% monthly with a maximum of a 1,2%, since 2009

The documents issued at sight are subject as follows:

- 0,625% during 2007
- 0,5625% during 2008
- 0,5% since 2009

Regarding foreign loans, it must be pointed out that are tax exempt only "the documents issued for foreign loans from multilateral financial organizations".

### **Alcoholic and Nonalcoholic Drinks Additional Tax**

The rates of this tax range between a 13% and a 27%.

### **Tax on Manufactured Tobaccos**

The rates range between a 47.9% and a 51% plus a surcharge of 10%. All rates are applicable on the sale price.

### **Customs duties**

Customs duties are 6% ad valorem for virtually all imported goods and

products.

There are bilateral agreements (free trade agreements) with several American countries in order to eliminate customs duties in different terms. The same purpose is present in the agreements signed with MERCOSUR, the European Union, Mexico, and Canada, the United States, China, South Korea and the states members of the European Free Trade Association.

## General aspects on labor and social security legislation

### General Aspects

The by laws about employment contracts are stated in the Labor Code.

The regulation mentioned has a system of wide working freedom, being under the State of Chile the obligation to protect the employee in his right to choose his job freely and ensure that the regulations are observed. Besides, it is pointed out that the rights established in the labor laws cannot be waived by the employees, while the labor contract is in existence.

The Labor Code defines the individual employment contract as "a convention through which the employer and employee are legally bound, the latter to render personal services under dependence and subordination of the former who has to pay for the services a specified remuneration".

## **Types of Employment Contract**

Regarding its duration, employment contracts can be temporal, for a fixed or for an indefinite period of time. If nothing is said they are supposed to be indefinite.

The two former contracts previously mentioned, are explained as follows:

### **a) Temporal Contracts:**

This type of contract is implicitly recognized in the Labor Code, it states: "The contract will expire in the following cases: (5) end of the activity or service that originated the contract".

In this kind of contract, it must be said in a specific and determined way the activity that the employee will develop, therefore there will be no doubt that the contract has expired once the cause for termination is mentioned.

### **b) Fixed Period Contracts:**

These contracts must state the expiration date of the labor relation.

Regarding its duration, these contracts cannot exceed a year, and in special cases two years. They can be renewed once, because the second renewal will change them into indefinite contracts. The same effect is produced if the employee continues in his activities once the contract has expired.

### **Special labor contracts:**

- Learning Contract.
- Agricultural Employees Contract.
- Contract of Boarded Employees or Sea People and Temporal Port Employees.
- Contract of Home Servant Employees.
- Contract of Temporary Services for a Provider of Temporary Services duly registered.

### **Formalities of the Employment Contract**

- It must be in a written copy.
- It should be issued in a fifteen-day period after the employee has started his activities or five days if the contract is for specific work or services or for a period lower than thirty days. The term is five days in the case of a contract of temporary services or two days when the contract lasts less than five days.
- It must be signed in two copies by each one of the parties who should keep one.

The writing of the contract is compulsory as a proof and it benefits mainly the employer because without the written contract, it is legally presumed that its conditions are the ones declared by the employee.

By all means, the employer is bound to keep a copy of the contract at the workplace.

## **Remuneration**

These are the payments in money and the additional in kind valued in money that the employee must receive from the employer because of the employment contract.

Within the remuneration we could find the salary, the supplementary wage, the commission, the share and the profit sharing payment among others.

Profit sharing payment is part of the income that the employer gives to the employee.

It is determined by applying 30% on the net income that results from the calculation for determining the income tax, after deducting the 10% interest of the employer's own capital. The obligation starts at the moment of submitting the annual income tax declaration and it is distributed in proportion to the annual remuneration of each employee.

However, those employers required to pay the profit sharing payment can be exempt from this payment calculated in the way explained above. In fact, the law establishes that paying the employees, as a profit sharing payment, 25% of the employee's annual remuneration, the employer is exempted from the one indicated above, whatever is the profit. The maximum payable amount under this basis cannot exceed 4,75 monthly minimum salaries (US\$1.200 approximately as of January 2007).

## **Expiration of the Employment Contract**

The specific reasons for the expiration of the employment contract are as follows:

- Mutual agreement between the parties.
- The employee's resignation, advising his employer for at least 30 days in advance.
- The employee's death.
- Expiration of the term agreed in the contract.
- Completion of the activity or service that originated the contract.
- Unexpected event or major force.

There are some other reasons for the expiration of the employment contract such as the employee's lack of integrity, sexual harassment or breach of contract. These reasons can be invoked by the employee or the employer. The contract also expires because of the company needs and, in some specific cases, by giving a simple written dismissal notice to the employee.

## **Payment of severance indemnity**

Labor law provides for a severance indemnity payable to employees if they are dismissed for reason other than serious misconduct. The benefit is equivalent to one month's salary for each year of service, with a maximum of eleven months, and is based on the employee's most recent salary level up to a maximum of UF90 a month (US\$3.000 as of January 2007). However, an employment contract (either individual or collective) can provide for a higher severance indemnity. The employer must give the employee a reason for the dismissal. If the reason given is not one of those listed in the law or cannot be evidenced, the severance payment is increased by 30%, 50%, 80% and 100% depending on the circumstances.

No reason is needed when an executive or an employee with a position of the employer's exclusive confidence is dismissed.

An employee is entitled to either 30-day prior notice of dismissal or payment of the equivalent salary with maximum level previously mentioned.

## Regulations and pension costs

### Pension System

There are two general pension systems in Chile. The older system is administrated by an entity that has grouped the numerous Government pension funds and provides health, pension and certain other social security services. The contributions are charged to the employers and go to a common fund. Employers must withhold and pay in to the fund the employees' contributions that are a fixed percentage of the total remuneration.

In 1980, a new pension system was established for old age, disablement and survival based on the individual capitalization mechanism.

This system consists in that each affiliated pays in his individual capitalization account a certain percentage of his remuneration. The amount paid is part of a fund administrated by a private pension fund (Sociedad Administradora de Fondos de Pensiones). These institutions collect the corresponding payments, they credit them in the individual capitalization account, they invest such resources and provide the affiliated the benefits established by law, in accordance with the amount accumulated in each individual account.

The contribution of the employees to the pension funds are withheld from the monthly remunerations at a fixed rate of 10%, plus a variable commission fixed by each pension fund administrator (currently between 2.23% and 2.55%). The compulsory payments are calculated over the monthly remuneration up to UF60 (about US\$2.000 as of January 2007). The fund has to acquire an insurance of disablement and survival from an insurance company. The employee can make additional voluntary payments based on a monthly remuneration of UF60 as a maximum, and the employer can make additional contributions that are tax exempt in favor of the employee.

In accordance with the above, it is necessary to distinguish between the "Pensions Fund" and the "Administrating Corporation" of it. The former is an equity formed by the payments given by the affiliated to the system. The AFP is a corporation in charge of collecting the payments, crediting them in the individual capitalization account, investing the resources and providing the affiliated the benefits established by law.

## **Health Benefit Cost**

Besides, employees are subject to a 7% health insurance tax of their taxable remuneration up to UF60 to finance the health services. This amount is paid either to FONASA or to a private health insurance company (Institución de Salud Previsional - Isapre).

## **Labor-related accident Insurance**

The employers must pay a tax on remuneration for labor-related accident insurance and professional illnesses. This payment corresponds to 0.95% of the monthly remuneration with a maximum of UF60. In accordance with the degree of risk of employer's activity, there could be additional variable rates with a maximum of 3,4%.

## **Unemployment Insurance**

The Law 19728 of 2001 stated an Unemployment Insurance in favor of all employees that were hired since the 1 of October 2002, affiliating them to the system automatically. The employees that had a labor contract in force at that date, can opt by entering the system and submit an application to the Administrating Corporation that manage the fund.

Home servant employees, employees with learning contracts, employees under 18 year old and retired people (unless the retirement has caused by partial disability) are excluded from this insurance.

The fund is financed with a contribution made by the State of Chile and with a monthly 3% of the employees' remunerations, applicable to a maximum of UF90 at its value in the last day of the month before the payment (around US\$3000 as of January 2007).

Such 3% on the remuneration is also considered as a contribution for the

welfare system and it is contributed as follows:

- 0,6% is on the employee and it is credited to the Personal Account for Unemployment.
- 2,4% is on the employer (1,6% to be credited to the Personal Account for Unemployment and 0,8% to be credited to the Supportive Fund for Unemployment).

The contributions made to Personal Account for Unemployment must be made during a maximum of 11 years in every labor contract.

The 3% is only on the employer regarding employees hired for a fixed period of time or until the activity or service is finished.

In case of temporary disability, the entity that pays the compensation during the leave must withhold and pay the contribution of the employee.

## Business incentives

### Free trade zone incentives

A free trade zone is an area of territory surrounding a port or airport that for the purpose of import duties is deemed to be outside Chilean territory. Currently, there are free trade zones in the ports of Iquique, Arica and Punta Arenas. The Arica free trade zone is only available to the electronics, metal mechanical and chemical industries.

Merchandise imported into a free trade zone can be held on deposit, exhibited, uncrated, packaged, labeled, divided, repackaged, or sold within the free trade. Also, within the free trade zone, imported goods and raw materials can be assembled, finished, connected, manufactured, or transformed.

Enterprises operating in a free trade zone are granted the following exemptions:

- First Category Tax: all operations within the free trade zone are exempt.
- Value-Added Tax: all operations within the free trade zone are exempt.
- Import duties: foreign goods imported into the free trade zone are exempt.

Sales and transfers of merchandise from a free trade zone to another area of the country are considered to be imports and will generate import duty and Value-Added Tax when they are moved out of the free trade zone. However, the First Region and the Punta Arenas Region are considered free trade extension zones.

Goods transferred from the free trade zones to these areas are taxed with

a sole 1,1% tax (applicable until March 2007), which can change annually depending on the average duty of the previous year. This tax can be credited against import duties and VAT if the goods are later introduced into the rest of the country. This tax is refunded if the goods are exported.

## **Regional incentives**

Easter Island has a special tax regime through which it is exempt of all taxes and contributions of the goods located in the Island and its rent. Likewise, the benefit is for the activities related with its territory developed by people domiciled in the Island.

Activities located in the I Region and the XI and XII Regions and Chiloé Province are granted a partial exemption on the personal income tax of employees. A deduction equivalent to that granted to civil servants in the Region is allowed against personal taxable income.

If the taxpayer does not pay taxes on a timely basis, these benefits will be lost.

Primavera and Porvenir districts, in the extreme south of the country, have a special tax regime: the income from certain activities developed in this area is not subject to the First Category Tax. However, a credit granted against any additional or personal tax on that income, equivalent to the First Category Tax that should have been paid.

The investment made on Arica and Parinacota provinces, in the north of Chile, for the production of goods and services grant a special credit chargeable to the First Category Tax, equivalent to 30% of the value of the physical goods of the asset immobilized acquired or built in the period.

Since January 1, 2002 the industrial and manufacturing companies of parts and pieces for mining located in Tocopilla province will have the following benefits:

1. Exemption, for a 25-year period of the First Category Tax on the rent.
2. Exemption from all import taxes of goods related to the business.
3. Other tax benefits in the acquisition and sale of goods.

The investments made in the regions of Aysen and Magallanes (XI and XII regions) and Palena province, grant a tax credit, because of the goods acquired or included in projects, which are destined to goods production or services to be carried out in that regions and province. Primary, extractive or simply commercial activities are excluded. The credit range from 10% to 32% of the investment and this must be made until the 31 of December 2008.

## **Special business incentives**

### **Incentives for the forestry industry**

There are some incentives to the forestation in lands which are preferably suitable for forestry activity. The incentives are also granted for small farmers and degraded land. Non taxable bonuses granted range from 75% to 90% of the forestation costs.

### **Incentives for the oil industry**

Companies that enter into a petroleum-operating contract with the Chilean State (Empresa Nacional de Petróleo) can be exempted from the normal systems of corporate taxation. As a substitute, a 50% tax is applied on the contract.

However, reductions of up to 100% of this substitute tax, or of the normal corporate taxes, can be granted, depending on the degree of risk involved for the contractor. Similar reductions can be granted on taxes, duties and levies on the import of machinery and equipment needed to fulfill the contract.

Foreign non-resident subcontractors are subject to a flat 20% tax on their gross fees.

### **Incentives for radioactive substances**

Companies that enter into a contract with Comisión Chilena de Energía Nuclear to explore, exploit or process radioactive substances can be granted a tax treatment similar to that of the petroleum industry.

### **Export incentives**

#### **Deferred payment of customs duties**

Exporters who import capital goods can defer payment of customs duties over three to seven years.

#### **Fiscal credit for the purchase of locally-produced capital goods**

Exporters who purchase new, locally produced capital goods are granted a loan from the Treasury equal to 73% of the prevailing customs duties which must be repaid over 3 to 7 years.

### **VAT exemption**

As exports are zero-rated for VAT, exporters obtain reimbursement of all VAT borne on purchases of goods and services relating to their export activities.

This VAT reimbursement is also available for companies that transport freight and passengers to and from Chile, supply food and beverages to planes and ships in transit, or render services deemed to be exports by the Customs Service.

### **Reimbursement of customs duties**

Exporters can obtain reimbursement of customs duties paid on imports of raw materials, semi-manufactured products, and parts when these are used in exported products or services.

### **Benefit to minor or non-traditional exports**

A draw-back is granted equal to 3% of the value of "non-traditional exports" if the aggregate FOB value of exports for any calendar year does not exceed US\$23.185.800. Goods that allow the benefit must incorporate 50% of imported materials at least.

Goods that are excluded from this benefit are detailed in a list published not later than March 30 each year.

Exporters must choose between this reimbursement and the customs duties drawback when eligible for both benefits.

# Foreign personnel



## Foreign Personnel in Chile

### Entry into Chile

Broadly speaking, foreign nationals seeking entry into Chile are required to have a tourist card or the corresponding visa. Tourist card is issued at the moment the foreigner is entering into the country and allows him to stay in the country for 90 days. Visas can be applied for at the Chilean Consulate in the respective country. There are several kinds of visas that are issued according to their purposes or circumstances, such as diplomatic visas, visa as temporary residents, visa regarding people subject to an employment contract in Chile, visa for students, etc.

A foreigner bearing a visa as a resident subject to an employment contract is only authorized to develop the job for which he has been hired. This type of visa expires within two years, but it can be renewed for new periods of two years.

The law requires that at least an 85% of a company's employees to be Chilean citizens. However, expatriates with more than five years' residence in Chile, people married to Chilean citizens and technicians who cannot be replaced by Chileans are not included in the limitation. This limitation does not apply when a company does not employ more than 25 workers.

After two years under a visa subject to an employment contract, the foreigner can also apply for a visa as a temporary resident which allows the bearer to develop any kind of remunerated activities. This visa is valid for one year and can be renewed only once for another year. Afterwards, he must apply for a permanent residence visa or otherwise leave the country.

Foreigners with a tourist card can also change it into a work permit for a period not longer than 30 days, renewable until the day in which the tourist card expires. After this the foreigner must apply for a visa. The application must be submitted to the Foreign Department of the Ministry of the Interior.

## **Taxation of aliens**

Income taxation is based on the taxpayer's place of residence and the source of the income.

For tax purposes “resident” is an individual who stays in Chile for more than six months in a calendar year or more than six months in total in two consecutive tax years. In other words, an alien is categorized as a nonresident during the first six months of the stay in Chile. However, an alien may be considered resident in Chile from the very first day of his arrival if he may prove that he has established his domicile in the country from that moment. There are some facts that, considered altogether are indicative that the expatriate has established domicile such as to come to Chile with his family, to enroll his children in a Chilean school, to open a current account in a Chilean bank, to rent or buy a house, to have come to Chile under an employment contract and its duration, etc.

Aliens only pay taxes on Chilean source income for their first three years in the country. This period can be extended to three more years. Afterwards

they are subject to taxes on their worldwide income.

Aliens not considered resident or domiciled in Chile from a tax point of view are subject to the Additional Tax at rates of 15% and 20% on the gross income from the Chilean source, whether the activity developed is a technical, scientific, cultural or sportive one. The rate is 35% on income for activities different from those mentioned before. The employer withholds the Additional Tax applied on the salary and it is a sole tax on the income, except when the income is subject to a 35% Additional Tax, in which case, a provisional withholding must be applied at a 20% rate. In this last case, the foreign employee must submit an income tax return in April, for the income tax earned in the prior calendar year, subject to a 35% Additional Tax and with a deduction of the amount withheld duly adjusted for inflation.

The aliens resident or domiciled in Chile are subject to the same taxes and in the same manner as the Chilean citizens, and they are also eligible to claim the same deductions and exemptions. The rates range from 5% to 40% and the tax rates brackets are adjusted to reflect inflation, monthly or annually, whether the Second Category Sole Tax or Global Complementary Tax is applicable.

## **Employees' Rights**

Over its history, Chile has enacted several laws giving specific protection and rights to employees. The Labor Code and other laws containing rules that aim to protect employees and give them rights in different aspects:

- Minimum wage and maximum hour rules
- Nondiscrimination in employment practices
- Collective bargaining rights
- Pension and health guarantees
- Disability benefits
- Safety requirements
- Severance indemnity for termination

- Unemployment insurance

In general, employees are subject to social security contributions, which are deducted from their salary. However, an expatriate who is paying social security in another country can elect to be exempt from Chilean social security, provided that the foreign system provides substantially equivalent coverage. Other requirement is to have a technical degree. The contributions for social security made abroad by the expatriate are not taxable in Chile in the same manner as those made to the Chilean social security system.