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International tax

Chile Highlights 2016

Investment basics:

Currency – Chilean Peso (CLP)

Foreign exchange control – Entities and individuals are free to enter into any kind of foreign exchange transactions, although there are reporting obligations on transactions that exceed USD 10,000 (or the equivalent in another currency).

Accounting principles/financial statements – IFRS applies. Financial statements must be filed quarterly.

Principal business entities – These are the corporation, company limited by shares, general partnership, limited liability partnership, limited partnership, individual enterprise with limited liability, association and branch of a foreign corporation.

Corporate taxation:

Residence – A corporation is resident/domiciled in Chile if it is incorporated in Chile.

Basis – Resident/domiciled companies pay Chilean income tax on their worldwide income. Taxpayers without a residence/domicile in Chile pay income tax on their Chilean-source income only. Remuneration paid from Chile to nonresidents/nondomiciled persons for services rendered abroad also is subject to Chilean income tax.

Taxable income – Taxable income is defined as gross income from worldwide sources and is calculated by deducting from total income the direct costs of goods and services and the necessary expenses incurred in earning that income.

Taxation of dividends – Distributions of profits between Chilean entities that prepare full accounting records are not subject to income tax. Profits distributed to individuals resident in Chile are subject to a global complementary income tax at progressive rates that range from 0% to 40%. Profits distributed abroad to nonresident/ nondomiciled taxpayers are subject to an additional withholding income tax of 35%. In both cases, the corporate income tax paid on the profits distributed is creditable against the final taxes.

Capital gains – Capital gains generally are taxed as ordinary income. Capital gains on the disposal of certain assets may be exempt from tax or subject to corporate income tax (known as first category income tax) at 24% as a single tax, if certain requirements are met.

Losses – Tax losses may be carried back until all retained taxable profits are absorbed, and may be carried forward indefinitely. Tax losses are nontransferable and may be used only by the taxpayer that incurred the losses.

Rate – First category income tax is imposed at a rate of 24% for 2016. The rate is to be incrementally increased until it reaches 25% or 27% by 2018.

Surtax – In addition to the 24% first category income tax, either the global complementary income tax for individual residents or the additional withholding income tax for nonresident entities and individuals must be paid upon the distribution of profits, with the first category income tax available as a credit.

Alternative minimum tax – No

Foreign tax credit – Income taxes paid abroad on foreign profits derived from a branch, royalty payments, technical service fees and other income of a similar nature are creditable against Chilean income taxes. The foreign tax credit is capped at 35% on foreign income from countries that have concluded a tax treaty with Chile and 32% (dividends) or 24% (royalties and branch income) on foreign income from countries that have not concluded a treaty with Chile.

Participation exemption – A special regime exists for Chilean publicly traded stock corporations and closely held stock corporations that voluntarily submit to the supervision of the Chilean SEC and that meet certain requirements. Such entities are deemed not to be Chilean domiciled/resident for income tax purposes and, therefore, are exempt from tax on foreign income received.

Dividends paid to shareholders that are not resident/domiciled in Chile are exempt from withholding tax.

Holding company regime – See "Participation exemption."

Incentives – Preferential tax regimes are available for businesses operating in specific regions and/or carrying out specific activities.

Withholding tax:

Dividends – Profits repatriated to a parent company abroad are subject to a 35% additional withholding income tax, against which the corporate tax (first category income tax) paid is creditable.

Interest – Interest is subject to a 35% additional withholding income tax on the gross amount. A 4% reduced tax rate applies, *inter alia*, to interest on loans granted by a foreign bank or foreign/international financial institution and by an insurance company or pension fund that complies with certain registration requirements, provided the lender and borrower are unrelated. If the parties are related, the thin capitalization rules must be observed.

Royalties – Royalty payments by the end user (no commercial exploitation) for the use of shrink-wrapped software are exempt from withholding tax. Payments for the use, enjoyment or exploitation of invention patents, computer programs, utility models, industrial designs and drawings, blueprints or topography of integrated circuits, and of new vegetable varieties, are subject to a 15% additional withholding income tax. The rate increases to 30% if the parties are related and/or if the income beneficiary is resident in a listed tax haven or in a jurisdiction with a preferential tax regime. Royalty payments in respect of trademarks, patents, formulae and other similar services are subject to a 30% additional withholding income tax.

Technical service fees – A 15% additional withholding income tax applies to payments made to nonresident/nondomiciled persons without a permanent establishment in Chile for technical and engineering works and professional or technical services that a nonresident/nondomiciled individual expert in a science or technique renders (in Chile or abroad) through advice, a report or a plan. The rate is increased to 20% if the parties are related and/or the beneficiary is resident in a listed tax haven or in a jurisdiction with a preferential tax regime.

Branch remittance tax – A 35% additional withholding income tax applies to the remittance of profits attributable to a branch, against which the 24% first category income tax paid at the branch level is creditable.

Other – Services rendered abroad, other than technical services, etc., are subject to a 35% withholding tax.

Other taxes on corporations:

Capital duty – While there is no taxable event upon the incorporation of a company, business entities must pay an annual municipal license fee. The fee ranges from 0.25% to 0.5% on tax equity, up to a maximum of approximately USD 500,000 (the cap varies in line with inflation and the exchange rate).

Payroll tax – Self-employed persons (professionals, directors of corporations, professional partnerships and others) and employees are subject to second category income tax charged at progressive rates that range from 0% to 40%. For employees, the tax is withheld by the employer. An employee whose entire income comprises employment income from one employer is not required to file a tax return, since the tax liability is satisfied by the second category income tax paid. Where an individual has other income and is required to submit a tax return, the second category income tax paid is credited against the final tax liability on the total income.

Real property tax – Real property tax is imposed at an annual rate of 1% on rural property and 1.2% on developed nonrural property. Nonrural residential property is subject to an annual rate of 0.98% on the cadastral value up to approximately USD 120,000, and 1.143% on the excess. Surcharges may apply.

Social security – The employer must make the following contributions for social security: (1) a monthly 0.95% premium on remuneration (capped at a floating amount calculated by reference to UF, an inflation-adjusted monetary unit) in respect of labor-related accident insurance; (2) additional contributions that vary according to the risk of the employment activity, at rates up to a maximum of 3.4%; (3) a 2.4% compulsory unemployment insurance on remuneration (subject to the floating cap); and (4) a 1.15% premium for life and disability insurance.

Stamp duty – Foreign loans are subject to stamp tax, whether or not they are documented. The rate is 0.066% for each month or fraction thereof between disbursement and maturity, capped at 0.8%. Loans payable on demand or without maturity are subject to a 0.332% tax.

Transfer tax – No

Other – A tax on nondeductible expenses is applicable at a rate of 35%, unless the relevant expense benefits the shareholder or partner subject to global complementary tax or additional withholding income tax. If the expense does benefit such a shareholder or partner, it is treated as a profit withdrawal, with the tax being increased by 10% of the nondeductible expense.

Anti-avoidance rules:

Transfer pricing – Chile's transfer pricing rules are in line with the OECD guidelines. The following methods may be used: comparable uncontrolled price, resale price, cost plus, profit split, comparable profit split and residual methods. The tax authorities may challenge and reassess transfer prices between related parties where the terms and conditions of transactions are not arm's length.

Thin capitalization – Thin capitalization rules apply to related party loans, the interest on which is subject to the reduced 4% withholding tax rate for interest paid abroad (i.e. loans granted by foreign or international banks or financial institutions). However, if the debt-to-equity ratio exceeds a 3:1 threshold, the excess interest is subject to an additional 31% tax payable by the borrower (35% less the 4% withholding tax paid on interest).

The government has presented a bill under which the thin capitalization rules also would apply to loans benefitting from a reduced withholding tax rate under a tax treaty, which could be enacted in 2016.

Controlled foreign companies – CFC rules are in effect as from 1 January 2016. The rules require Chilean resident taxpayers to include in their current taxable income certain types of passive income earned by nonresident foreign entities that are deemed to be CFCs. A foreign entity will be considered a CFC if a Chilean taxpayer holds, directly or indirectly, 50% or more of the capital, profits or voting rights; can elect the majority of the directors; or has unilateral powers to amend the foreign company's bylaws. A foreign entity generally will be deemed to be controlled (irrespective of the participation or rights involved) if it is established, headquartered or resident in a low or no-tax country or territory (although companies established in OECD member jurisdictions will be excluded from this presumption).

In addition, for the CFC regime to apply, the foreign entity must earn income defined as "passive," which includes interest (unless the foreign entity is a bank or financial entity regulated in the relevant country), capital gains and royalties.

Disclosure requirements – No

Compliance for corporations:

Tax year – Calendar year

Consolidated returns – Chilean entities may not file consolidated returns, although some *de facto* consolidation methods exist.

Filing requirements – Chile operates a self-assessment regime. Companies are required to make monthly advance payments of tax, with the annual tax return filed in April of the year following the tax year.

Penalties – Penalties apply for late filing, failure to file, the underpayment of tax and tax evasion.

Rulings – Guidance may be obtained from the tax authorities on the tax consequences of a planned transaction.

Personal taxation:

Basis – Resident individuals are taxed on their worldwide income; nonresidents are taxed only on their Chilean-source income. Individuals not resident/domiciled in Chile are subject to withholding income tax on services rendered abroad and paid from Chile.

Nevertheless, foreigners are taxed only on Chilean-source income during their first three years of residence in Chile (although a three-year extension is permitted); thereafter, they are subject to taxation on a worldwide basis.

Residence – An individual is resident if he/she remains in Chile for six consecutive months in a calendar year, or for more than six months in total over two consecutive tax years. Depending on the circumstances, domicile can be obtained from the first day in the country.

Filing status – Joint filing generally is not permitted; however, spouses married under a community property system must file a joint annual tax return.

Taxable income – Employment income is subject to second category income tax, while investment income and profits earned from a business are subject to the global complementary income tax. The first category income tax paid by the business on the profits out of which the dividends are paid is creditable against the global complementary tax.

Capital gains – Capital gains generally are taxed as ordinary income. Capital gains on the disposal of certain assets may be exempt from tax or subject to the first category tax as a single tax if certain requirements are met.

Deductions and allowances – Individuals may deduct interest paid on a mortgage for the construction or acquisition of a dwelling and pension and social security contributions. Parents are granted tax relief in the form of a tax credit against their personal taxes to represent expenses associated with the education of their children (primary and high school studies).

Rates – The individual income tax is charged at progressive rates ranging from 0% to 40%. Tax on income from employment is withheld by the employer on a monthly basis. Other income must be declared on an annual income tax return, although tax paid on employment income may be credited against the final income tax liability.

Other taxes on individuals:

Capital duty – No tax is payable by individuals on their total wealth or value or on specific assets, except for the real estate tax based on the value of property.

Stamp duty – See under "Other taxes on corporations."

Capital acquisitions tax – No

Real property tax – See under "Other taxes on corporations."

Inheritance/estate tax – Inheritance tax is levied on the net value of assets transferred at death, at rates that vary depending on the proximity of the relationship between the deceased and the recipient.

Net wealth/net worth tax – No

Social security – See under "Other taxes on corporations."

Compliance for individuals:

Tax year – Calendar year

Filing and payment – An annual income tax return must be filed in April of the year following the end of the tax year, and any tax due must be paid at that time.

Penalties – Penalties apply for late filing, failure to file, underpayment of tax and tax evasion.

Value added tax:

Taxable transactions – VAT is charged on domestic supplies of goods and services, and on the import of goods.

Rates – The standard VAT rate is 19%. Certain items are zero-rated or exempt.

Registration – Registration for VAT purposes is mandatory.

Filing and payment – A VAT return must be filed monthly, and the tax paid at that time.

Source of tax law: Tax Code, Income Tax Law, VAT Law and Stamp Tax Law, among others

Tax treaties: Chile has concluded 25 tax treaties.

Tax authorities: Chilean Internal Revenue Service

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