

**International Bar Association Annual Conference 2023
Recent Developments in International Taxation**

Chile

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I. Tax climate in Chile

Years 2022 and 2023 have been somehow hectic in terms of taxes governing the political agenda. This mainly because there was a tax reform bill presented by the current government in July 2022, which was unexpectedly rejected by the Congress in March 2023. The foregoing came as a surprise not only to local citizens but to local tax experts. Specially because this tax reform was an aggressive one. The tax bill provided for wealth taxes, exit taxes, interest-like taxes to be applied over non-distributed profits and several other taxes that have never existed before in Chile. There were also several proposals to reform our existing international taxation rules. All in all, the proposal of the bill triggered massive transfers of capital from Chile to third jurisdictions. Below you will find a summary of the main tax highlights of 2022-2023:

II. Rejected tax reform bill

The main aspects of the tax reform bill were the following.

Corporate tax rate

The tax reform aimed to reduce the corporate income tax rate from 27% to 25%, but created a new tax, called "development tax" of 2%, applicable to companies subject to the general tax regime.

Desintegration of the tax system

The proposed tax reform sought to disintegrate the tax system, that is, to separate the taxation of the company from that of its shareholders. In addition, a flat capital gains tax was added at a rate of 22%, which was levied on the distribution of profits or dividends. This applied except in cases of foreign taxpayers domiciled in countries with which Chile had a double taxation agreement that had been signed.

Wealth tax

A 1% -1.8% wealth tax was proposed for individuals domiciled or resident in Chile whose net worth exceeded 6,000 Annual Tax Units (UTA – Spanish acronym for Unidades Tributarias Anuales) (US\$ 4.2 million approx.), based on its equivalent value in Chilean pesos as of December 31 of each year. It was levied on the value of the total wealth of the taxpayer, consisting of all its assets, whether in Chile or abroad.

Deferral Tax

A 2.5% tax to be applied to passive income companies on the amount resulting from the application of a 22% tax on undistributed taxable income was proposed. This tax tried to resemble an "interest rate" that was being paid to the Chilean government in exchange for deferring the taxation of undistributed profits.

Exit tax

An exit tax with a fixed rate of 5% was proposed, applicable on the portion of the exiting wealth to exceed 6,000 UTA (US\$ 4.2 million approx.). The tax was triggered with respect to those taxpayers who lost their domicile and residence and requested certification of this circumstance to the Chilean IRS.

III. Double Taxation Treaties

Chile has double taxation treaties in force with 37 countries, and with 3 countries it these have been signed but are not yet in force. The ones that have undergone the most relevant changes in the last 12 months are described below.

Chile the Netherlands

The Double Taxation Treaty between Chile and the Netherlands was published on 8 February 2023, thus fulfilling all the formalities for its entry into force.

Chile and the United States of America

On 22 June 2023, the US Senate ratified the Double Taxation Treaty between Chile and the United States. The agreement was signed in 2010, ratified by Chile in 2015 and approved by the US Senate Foreign Relations Committee on 1 June. With this approval, Presidents Joe Biden and Gabriel Boric must sign the necessary ratification documents to enact it into law.

With the Double Taxation Agreement, the main tax changes are the following:

- The tax that the US Treasury will withhold could be as low as 5%, instead of the 30% it withheld without the treaty.
- For US investors looking to invest in companies in Chile, the exit could be 16% instead of the 35% they paid before.
- Better conditions for debt; rates could be 4% in wider scenarios than those already available.
- In the capital market, 0% rates would be available for those who are currently paying 10%.
- A 2% tax on payments for the use of industrial, commercial or scientific equipment.

IV. The New Mining Royalty Tax

On May 17, 2023, the Chilean Congress approved a new mining royalty tax, which is structured under an *ad valorem component*, applicable only to big-sized mining operations, and a *mining operating margin* component. The applicability of the tax will mainly depend on the Metric Tons of Fine Copper (“MTFC”) annually sold by each operator.

Big sized mining operators

They will be subject to an ad valorem component equivalent to 1% on the annual copper sales. This ad valorem portion is one of the main changes of this bill. For them it will also be applicable the **Mining operating margin component** equivalent to an additional progressive tax rate to be applied on the mining operational taxable income. The rate of this component will depend on whether the operator's percentage of copper sales exceeds 50% of its total sales (for them it will apply a Progressive rate of 8% - 26%) or if they do not exceed the 50% (progressive rate of 5% - 34,5% net income).

Medium and small sized mining operators

Medium sized mining operators will be subject to lower rates (between 0.4% and 4.4%), while small-sized operators will be exempted from the tax.

Maximum tax burden limitation

Part of the political compromise reached to pass the amendments to the royalty regime was to set a limit to the tax burden imposed on a mining business. The maximum potential tax burden is set at 46.5% of the net mining operational taxable income. This limit considers the (a) mining royalty tax (including both components) and (b) income taxes, that is corporate income tax (27%) and potential shareholder's taxation on dividends (35%). If the aggregate of these taxes exceeds the burden cap, the royalty tax shall be reduced correspondingly. For mining operators with sales for an equivalent up to 80,000 MTFC (considering the average sales of the last 6 years), the maximum potential tax burden will be 45.5%.

V. VAT on Services

On Friday 4 February 22, Law N°21.420 was published, which reduced and eliminated certain VAT tax exemptions. One of the most relevant eliminations came into force on 1 January 2023, and consisted of the fact that all services provided as of 1 January 2023 are subject to VAT, unless where expressly exempted. Most of the exemptions disappeared. There is although one relevant exemption that is maintained in respect of services provided by individuals whether they are provided independently or under an employment contract. The exemption also encompasses "professional services entities", which are entities which are basically only incorporated by professionals for purposes of rendering common services. As advisory and consultancy services are now taxes with VAT, this type of entities became one of the last options to continue to operate tax free in certain businesses.