

# CHILE TAX NEWS

CONTRACTS

BANK

INCOME

## LAW 20.544

### ON THE “TAXATION OF DERIVATIVE INSTRUMENTS IN GENERAL”



Derivative contracts are deemed as an essential tool of day-to-day business, as they can neutralise potential risks derived from the exchange of assets and services, which makes them a very efficient instrument in the management of risks. In this regard, Law N°20,544 on the “Taxation of Derivative Instruments in General” (the “Law”) was published in the Official Gazette last October 22nd and comes into force on January 1st 2012.

“Contracts whose value is established by means of one or more variables that determine the amount of its liquidation”

This Law enumerates the most common types of derivative contracts, such as Forwards, Futures, Swaps, Options and a combination of these contracts. Contracts whose value is established by means of one or more variables that determine the amount of its liquidation, will be deemed as derivatives, in accordance to law or to the provisions enacted by the Superintendencies of Securities and Insurance, Banks and Financial Institutions, of Pensions, or the Chilean Central Bank.

Income resulting from derivative contracts will be deemed as Chilean source income, provided it is accrued or received by taxpayers domiciled or resident in Chile, including permanent establishments belonging to taxpayers without domicile or residence in Chile. Therefore, income attributed to taxpayers neither domiciled nor resident in the country, will not be subject to Chilean income tax.

FURTHERMORE, CONTRACTS WILL ALSO BE DEEMED AS DERIVATIVES IF, REGARDLESS OF THEIR DENOMINATION, THEY COMPLY WITH THE FOLLOWING REQUIREMENTS

- (1) Its value must be established based upon one or more variables that determine the amount of its liquidation.
- (2) It must not require of an initial investment or such investment must be inferior if the investment were made directly in the underlying asset.
- (3) Its liquidation is carried out in a previously determined or determinable future date.

Finally, it is important to underline that this Law also lists contracts that do not qualify as derivative contracts, as for example, loans or leases of short selling of publicly traded securities, stock options, etc.



Finally, Options are regulated by a special provision in this Law and any legal void in this regard shall be will complemented by the remaining provisions of this Law. Overall, income resulting from derivative contracts shall be determined on a received basis, except in cases involving Business Profit taxpayers that determine their effective income in accordance to full accounting, in which case a special revenue determination regime will apply.

Furthermore, income originated from derivatives liquidated by means of the material delivery of the shares or rights of companies incorporated in Chile will also be deemed as Chilean source income.

It is also provided that taxpayers that exclusively receive derivatives' income levied with the Global Complementary Tax or with the Withholding Tax, will be exempt from the Business Profit Tax, provided the taxpayer does not accrue or receive other income that must be ascertained for through full accounting.

In other matters, this Law contemplates several audit rules, as for example:

(a) Contracts between related parties are permitted, provided there are made at arm's length.

(b) The Chilean tax authority may liquidate the corresponding tax, prior subpoena, if it is deemed that there are sufficient motifs to determine that the derivatives contract did not have a legitimate business purpose, but rather pursued to conceal the distribution of taxable profits or a taxable credit.

(c) Taxpayers must file a sworn statement before the Chilean tax authority informing about the derivative transactions concluded, and in addition, must keep a ledger available for the SII, detailing derivative contracts entered into.

(d) The SII has the power to adjust the prices of derivative contracts if these were notoriously inferior or higher to the arm's length value paid in transactions of a similar nature.

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