

NEWSLETTER

Tax & Legal - CHILE

SUBJECT:

**CHILE'S
INCORPORATION
TO THE
ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND
DEVELOPMENT
(OECD)**

On December 15th, Chile was officially invited to be part of the OECD, incorporation that will become effective in January, 2010. This fact, very relevant for our economy, has different consequences, which will be studied briefly in this News Letter.

a. First, Chile had to adequate its legislation to the OECD's requirements, which meant, basically, the enactment of four new laws, referring to:

1. Corporation's criminal responsibility;
2. Corporate Government of Codelco (Chile's Corporation of Cooper);
3. Corporate Government of private companies;
4. Lifting of Banking Secret.

b. From the moment Chile enters the OECD it becomes mandatory, for the application of the agreements to avoid double taxation, the incorporation of the OECD's commentaries, included in "Model tax convention on income and on capital". These commentaries are incorporated as interpretative rules of international law, mandatory in these agreements. Excluded from this are only the topics to which Chile had laid an express reservation to its application, which is an extension of a basic principle of International Law.

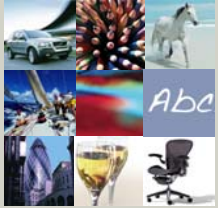
c. Without doubt, the legal reform that had the biggest debate was the "lifting of the banking secret", which became Law N° 20.406 (Official Gazette 05/12/09), that begins to rule on January 1st, 2010. This law allows expressly and exclusively to the Director of the Chilean IRS to ask for banking information of certain people, when there is a need to find out about some possible irregularities on the tax liabilities of the taxpayer.

This power was given through the modification of Article N° 62 of the Tax Code (DL N° 830 from 1974), which, in its new text, subjects the audit of the accounts to certain basic requirements, such as: individualization of the taxpayer; period of time to be investigated; kinds of operations to be investigated. The respective Bank must be notified, and the Bank has to give notice to the taxpayer, who, within 15 days counted from the notification, can adopt two positions: accept the requirement, thus the Bank proceeds to give the information without further regulations; or, he can oppose, which means, not authorizing the Bank to give the information. In this last case, the IRS must obtain a judicial resolution authorizing its investigation of the relevant bank operations, expressly contained in the requirement. This judicial resolution will be given, when operative, by the Tax and Customs Courts; meanwhile, the competent Courts will be the civil courts that have jurisdiction over the residency of the required Bank. The resolution can be appealed within 5 days.

The requirements can also come from foreign tax administrations, under an active tax agreement.

BDO international is a worldwide network of public accounting firms, called BDO Member Firms. Each BDO Member Firm is an independent legal entity in its own country. The network is coordinated by BDO Global Coordination B.V., incorporated in The Netherlands, with its statutory seat in Eindhoven (trade register registration number 33205251) and with an office at Boulevard de la Woluwe 60, 1200 Brussels, Belgium, where the International Executive Office is located.

The material discussed in this document is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs.



Finally, the IRS workers having access to this information must keep it duly under secret, under sanction of imprisonment, fines, or loss of job. Besides, the information thus collected, that does not imply a control or charge, must be eliminated, and it cannot be used for purposes other than those contained in the requirement.

d. There is also an implication for the practical application of Transfer Pricing. With Chile's integration to the OECD, these operations will be audited according to the rules given by this organization to its members, as international law rules. This means great news, since, nowadays, the audit of the IRS on this subject is very low. The OECD rules, contained in the *"Transfer Pricing Guidelines"* should turn into a greater range of actions that the IRS will be able to require Transfer Pricing sworn statements and studies in operations between related parties.

e. The last remarkable consequence is that with this integration Chile is no longer named in the "grey list" of the list of jurisdictions qualified as tax havens by the OECD.

Rodrigo Benítez
Partner, Tax & Legal