

NEWSLETTER

Tax & Legal - CHILE

SUBJECT I :
NEW TREATIES
FOR THE
AVOIDANCE OF
DOUBLE
TAXATION

Prior to 2009, Chile had applicable double taxation treaties with Argentina, Brazil, Canada, Croatia, Denmark, Ecuador, France, Mexico, Norway, New Zealand, Peru, Poland, South Korea, Spain, Sweden and the United Kingdom. These 16 treaties remain in force in 2009, along with several double taxation agreements that are newly applicable. These new agreements, which generally follow the OECD Model Tax Convention, are:

a) Treaty between Chile and Ireland

This treaty was signed in Dublin on June 2, 2005, and it entered into force on August 28, 2008. Published in the *Official Gazette* on October 28, 2008, the agreement applies to taxes on income, and on amounts paid, credited to an account, made available, or recorded as an expense, on or after the first day of January 2009.

b) Treaty between Chile and Malaysia

Signed in Santiago on September 3, 2004, this treaty entered into force on August 25, 2008, and the text was published in the *Official Gazette* on October 2, 2008. The agreement is likewise applicable to taxes on income, and on amounts paid, credited to an account, made available, or recorded as an expense, on or after January 1, 2009.

c) Treaty between Chile and Paraguay

This agreement was signed in Santiago on August 30, 2005, and it entered into force on August 25, 2008. The text of the treaty was published in the October 2, 2008 edition of the *Official Gazette*. The agreement is applicable to taxes on income and capital, and on amounts paid, credited to an account, made available, or recorded as an expense, on or after the first day of January 2009.

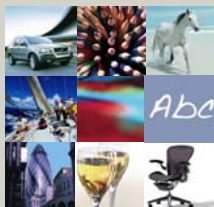
d) Treaty between Chile and Portugal

Signed in Santiago, on July 7, 2005, this treaty entered into force on August 28, 2008, and the text was published on October 28, 2008 in the *Official Gazette*. The agreement applies to taxes on income, and on amounts paid, credited to an account, made available, or recorded as an expense, on or after January 1, 2009.

Av. Vitacura 5093,
Office 302,
7630281 Vitacura,
Santiago, Chile
Phone: +56 (2) 290 8001
Fax: +56 (2) 290 8095

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.



SUBJECT II :
REFORM OF
ARTICLE 14 BIS
COMPANIES'
TAX REGIME

Published on September 15, 2008 in the *Official Gazette*, Law No. 20,291 is part of a program designed to foster the development of small and medium-sized companies by granting a tax deferral until the withdrawal of profits. Specifically, the new law (effective January 1, 2009) amends Article 14 bis of Chile's Income Tax Law--enlarging its scope, so a greater number of corporate taxpayers are able to opt for, and utilize, the Article 14 bis system.

A. - Simplified Tax System of Article 14 bis

With the general taxation system, taxpayers pay the First Category Tax (17% corporate tax rate) for collected and accrued profits. With the Article 14 bis system, however, companies (including those structured as an S.A. or limited liability company) only pay income tax when profits are withdrawn. The taxes paid under Article 14 bis are the First Category Tax, and the Complementary Global Tax (individual tax) or Additional Tax (withholding tax on nonresidents). As such, there is no corporate income tax levied while profits remain in the company, which in turn encourages reinvestment of those earnings.

Moreover, companies that opt for the Article 14 bis system are exempt from a series of administrative obligations that include: keeping a Taxable Income Register (FUT), maintaining inventories, indexing assets and liabilities, accounting for depreciation, and preparing an annual balance sheet.

B.- Increase in Article 14 bis Limits

In addition, Law No. 20,291 substantially increases the gross income cap and capital investment allowance for Article 14 bis eligibility and continued qualification. Previously, in order to qualify for Article 14 bis status, a company's average annual earnings from sales, services, and other activities during the prior three-year period, could not exceed approximately US\$180,000. That cap has now been raised to approximately US\$300,000. The maximum amount of initial capital investment allowed under Article 14 bis has also been increased from approximately US\$12,000 to US\$60,000.

C.- Anti-Abuse Measures

In addition, Law No. 20,291 incorporates a series of safeguards to ensure that larger companies don't utilize the Article 14 bis system as a tax avoidance mechanism. These safeguards are:

- 1.- In order to prevent abuse of the sales figure limits, income earned by related parties taxed under the Article 14 bis system must be calculated together.
- 2.- Taxpayers must leave of the Article 14 bis system under certain circumstances. Article 14 bis companies must exit the system the same year that their sales total more than US\$420,000, or when their annual income from real estate or securities exceeds US\$60,000.
- 3.- Under the new law, Article 14 bis companies cannot own stock or interests in another company (in any form of ownership), or participate in partnership agreements or joint accounts in a managerial capacity. This requirement effectively excludes holding companies from the Article 14 bis system.

Rodrigo Benítez
Partner, Tax & Legal