



# PRACTICAL LATIN AMERICAN TAX STRATEGIES



WORLDTRADE EXECUTIVE  
The International Business Information Source™

REPORT ON TAX PLANNING FOR INTERNATIONAL COMPANIES OPERATING IN LATIN AMERICA

April 2013  
Volume 16, Number 4

## VAT Relief in Operational Projects in Chile

BY MANUEL JOSÉ GARCÉS AND DANIELA PFEFFER  
(CAREY Y CÍA. LTDA.)

Value Added Tax (VAT) is a relevant factor that must be considered both by foreign investors and lenders when funding operational projects in Chile. In this regard, the Chilean VAT legislation acknowledges the difficulties of financing operational projects and, with the intention to promote such investment in Chile, mitigates certain VAT effects. Principally, the incentives are structured to exempt from VAT some operations or, in other cases, to allow taxpayers to anticipate recovery of the VAT imposed on the acquisition of goods or the services hired.

Below is a general description of the main relief comprised in the Chilean VAT Law. If properly implemented, these mechanisms could have a material impact on the final costs and cash-flows of a project.

continued on page 9

### IN THIS ISSUE

#### Chile VAT

Value Added Tax (VAT) is a relevant factor that must be considered both by foreign investors and lenders when funding operational projects in Chile. In this regard, the Chilean VAT legislation acknowledges the difficulties of financing operational projects and, with the intention to promote such investment in Chile, mitigates certain VAT effects. If properly implemented, these mechanisms could have a material impact on the final costs and cash-flows of a project.

*Page 1*

#### Taxation of Profits in Brazil

Brazil's Supreme Court rules on automatic taxation of profits earned

## VAT from page 1

### General VAT Regime

VAT levies at a 19% rate the habitual sales or any onerous disposal of movable assets and of real estate property totally or partially built by the seller and the provision of certain kind of services. Additionally, imports are subject to VAT, which is triggered at the moment the import is legally consummated, whether the importer is recurrent or not and whether the imports correspond to capital goods or inventory. On the contrary, the sale of goods exported abroad is specifically exempt from VAT. Generally, the VAT works under a credit-debit mechanism, in which

the VAT borne by the taxpayer in the acquisitions of goods, utilization of services, imports or other taxable operations constitutes a fiscal credit which is offset against the VAT fiscal debit arising from taxpayer's taxable activities. Thus, if the fiscal debit is larger than the fiscal credit in the relevant monthly period, the difference becomes the VAT that the taxpayer must declare and pay. On the contrary, if the fiscal credit is larger than the fiscal debit, the remnant of the fiscal credit can be carried-forward indefinitely.

The following tables explain the described mechanism:

**continued on page 10**

## VAT from page 9

MONTHLY OPERATIONS	NET AMOUNT (USD)	19% VAT (USD)
Goods and services used for production	\$ 1,200,000	\$ 228,000 (credit)
Sales subject to VAT	\$ 5,000,000	\$ 950,000 (debit)
Tax debit to be paid		\$ 722,000

MONTHLY OPERATIONS	NET AMOUNT (USD)	19% VAT (USD)
Goods and services used for production	\$ 5,000,000	\$ 950,000 (credit)
Sales subject to VAT	\$ 1,000,000	\$ 190,000 (debit)
<b>Fiscal Credit in excess</b>		\$ 760,000

### VAT Relief on Operational Projects

#### VAT Exemption on Imports of Capital Goods

The Chilean VAT Law exempts imports of certain capital goods, which are included in a list elaborated by the Ministry of Economy, made under foreign or national investment projects.

In the case of foreign investment projects, imports of capital goods may benefit from the VAT exemption, if contributed as capital by the foreign investor as part of a project subject to the Foreign Investment Statute, Decree Law N° 600 of 1974. This legislation is a mechanism for transferring capital into Chile by entering into a foreign investment agreement with the Chilean government. In the case of similar national investment projects, a resolution issued by the Ministry of Economy and endorsed by the Treasury Department may grant a VAT exemption on imports of capital goods, provided that they are not produced in Chile in enough quantity and quality and are part of an investment project of interest to the country.

Neither the law nor the administrative regulations establish a clear procedure or terms for processing the taxpayer's request for the latter VAT exemption. In our experience, the process could take almost seven months, including a first stage before the Ministry of Economy, which certifies the compliance of the circumstances required by the VAT Law and a second stage before the Treasury Department, which endorses the resolution and returns it to the Ministry of Economy to be informed to the taxpayer. The VAT exemption for national investment projects has not been commonly used by local entities principally due to the uncertainty of the procedures within both Ministries offices. However, in our experience, this exemption could be an attractive and reliable alternative for projects that involve the importation of relevant capital goods into Chile, because it avoids financing the applicable VAT on such event.

#### VAT Anticipated Cash-Refund Mechanism

Article 27 bis of the Chilean VAT Law contemplates a mechanism to request an advance cash-refund of the VAT fiscal credit borne in relation to

the taxpayer's fixed assets and accumulated for six or more consecutive monthly-periods.

To this effect, the fiscal credit must have been borne in the acquisition of tangible personal property or real estate as part of the taxpayer's fixed assets or in services that integrate their cost value. The *Servicio de Impuestos Internos* (Chilean IRS or IRS) has clarified that the concept of fixed assets requires a permanent use in the company's line of business, with no purposes of trading or reselling them. In addition, the VAT borne must qualify to be a VAT fiscal credit under general rules, which requires the taxpayer to be engaged in activities subject to VAT to which the fiscal credit relates.

According to the procedure established in the VAT Law, the VAT cash-refund request initiates by a filing before the Chilean IRS, once the taxpayer has accumulated fiscal credit for at least six months. This request must be answered within 60 days and, in case of approval or non-response, the refund must be paid by the Chilean Treasury within 5 business days.

In our experience, the IRS usually answers the request towards the end of the 60-day period and, in the case of approval, it takes about 7 days to notify the Treasury, who then pays the refund within 5 business days. During the 60-day period, the IRS audits are typically focused on the taxpayer's right to the accumulated fiscal credit and its connection to fixed assets designated to VAT taxable activities. This audit generally involves a detailed review of the supporting invoices, their proper registration in accounting books and the relevant agreements. In some cases, it also involves visits to the location of fixed assets to verify their real existence and its fixed nature.

#### Exporter's VAT Refund Mechanism

Article 36 of the VAT Law allows exporters and certain entities deemed exporters to recuperate the VAT borne in acquiring goods, using services or performing other taxable operations in their export activities. The rationale of this regime is to impede the exporter from financially supporting the VAT that may not impute against

any VAT fiscal debit under the debit-credit mechanism, since it performs VAT-exempt activities of exportation.

In fact, if the VAT borne is exclusively linked to local transactions subject to VAT, then the taxpayer must recuperate said fiscal credit through the debit-credit mechanism. However, if the fiscal credit is exclusively borne and related to export activities, the taxpayer has the right to request a total refund of VAT fiscal credit levied in taxable activities, such as imports, acquisition of goods and services. If the VAT levied in the taxpayer's activities is related both to local activities subject to VAT and to exports exempt from VAT, a partial VAT refund may be granted, in the proportion corresponding to exports.

The VAT Law grants two mechanisms for the VAT refund. Both allow recuperating the totality of the VAT levied in the export activity, although they are subject to different procedures. The first one applies once the export has been realized, while the second one applies before the export takes place. In order to qualify for the first refund mechanism, within the month following the shipping of the goods or its equivalent in the case of export of services or other export activities, the exporter must submit to the Treasury a sworn statement, according to the IRS instructions, together with the supporting documentation and background information.

For applying for the anticipated refund under the second mechanism, the exporter must first receive an authorization from the Ministry of Economy. The application is made through a sworn statement and the attachment of an investment project. Once the Ministry of Economy receives all required documents, it must process the application within 5 business days. If additional documentation is required, then this period may be extended to 10 business days.

In the case of approval, the Treasury Department establishes a period for the export operations. If this period expires and the exporter does not comply with the convened exportation program, the sums improperly refunded must be repaid to the Treasury by the taxpayer.

As from the date established by the Ministry of Economy, and within the month following the VAT borne or paid, the exporter must request the refund to the Treasury, by submitting a sworn statement and a copy of the authorization of the Ministry of Economy. The Treasury must also require a note or accepted letter as guarantee of the refund of amounts improperly refunded. The

Treasury must reimburse the fiscal credit within 5 business days from the refund request date.

#### ***VAT Exemption for Services Rendered Abroad***

The VAT Law benefits services subject to withholding tax under Article 59 of the Income Tax Law (which generally levies payments from Chile to non-residents for services rendered) with an exemption regime. However, this VAT exemption does not apply in the case of services rendered in Chile that are subject to withholding tax under Article 59, but at the end benefit from a reduced rate or exemption regime of withholding tax under domestic or tax treaty regulations.

**Foreign investors should place special importance on the VAT effects if planning to perform large investments that involve imports of goods or constructing a project in Chile.**

Therefore, the VAT Law creates an incentive for Chilean companies to hire services off-shore in tax treaty jurisdictions. If the services are rendered abroad, a withholding tax reduction or exemption regime should apply jointly with a VAT exempt scenario.

#### **Conclusions**

An efficient structure of operational projects in Chile, duly implemented considering the VAT relief described above, could have substantive and positive effects on the financing and funding model of the company. Foreign investors should place special importance on the VAT effects if planning to perform large investments that involve imports of goods or constructing a project in Chile. In such cases, VAT exemption regimes or early-recovery scenarios should be deeply analyzed by the local advisors when structuring the financing model.

---

*Manuel José Garcés (mgarcés@carey.cl) is Senior Associate and member of Carey's Tax Group, in Santiago. He advises clients in personal and corporate tax planning, local and international tax consulting, foreign investments and tax litigation. Daniela Pfeffer (dpfeffer@carey.cl) is Associate and member of Carey's Tax Group. She advises clients in foreign investment, personal and corporate tax planning, local and international tax consulting and tax litigation.*