

March 28, 2014

## LEGAL ALERT

### Chile and USA sign the inter-governmental agreement (IGA) within the scope of the Foreign Account Tax Compliance Act (FATCA)

FATCA is a United States Act that requires US persons, including individuals who live outside the United States, to report their financial accounts held outside of the US, and requires foreign financial institutions ("FFIs") to report information regarding their US clients to the US Internal Revenue Service ("\*\*US IRS\*\*"). FATCA was meant to combat offshore tax evasion and to recoup federal tax revenues. Under FATCA, FFIs (which include banks, funds and insurance companies) must sign agreements ("FFI Agreements") with the US IRS to identify and disclose details regarding their US accountholders.

A participating FFI accepts complex reporting obligations in relation to direct and indirect US accountholders, including requirements to provide information about not only the FFI's direct clients and counterparties, but also about related persons – including, in particular, individual beneficial owners of direct accountholders (for example, an individual owner of a corporate client). It reports directly to the US IRS and, in some circumstances, to persons from whom it receives payments which are to be passed to a client or counterparty. It also agrees to withhold US taxes at a 30% rate from certain US source payments to accountholders that refuse to comply with information requests ("Recalcitrant Accountholders"). Finally, it agrees to withhold US taxes at a 30% rate on payments by certain US sources made to non participating FFIs. It is important to note that these obligations arise as a result of the combination of US tax law and the FFI Agreement.

On March 5, 2014, Chile and the US signed an inter-governmental agreement ("IGA") that simplifies disclosure and reduces or eliminates conflicts with local law. There are two "Model" IGAs and Chile signed Model 2, which directs local financial institutions and branches to enter into FFI Agreements and make direct disclosure of their US accountholders to the US IRS. A financial institution benefiting from a Model 2 IGA must only accept new accounts that consent to disclosure and the partner country agrees to lower any legal barriers

to that reporting. Model 2 is available in two versions: 2A with no Tax Information Exchange Agreement (TIEA) or Double Tax Convention (DTC) required, and 2B for countries with a pre-existing TIEA or DTC. In addition, local FFIs may be required to withhold on payments to Recalcitrant Accountholders and non participating FFIs. Finally, the IGA regulates the functions and obligations that the Chilean IRS will have and the interaction and collaboration duties with the US IRS.

The IGA was executed under the umbrella of the Double Tax Treaty previously signed with the US (not yet in force) that has been negotiated for a long time between the authorities of both countries. Note that Chile is member of the OECD and has recently signed the Convention of Mutual Administrative Assistance in Tax Matters (“**MAAT**”).

Finally, the introduction of FATCA has a number of phases, from 1 July 2014:

- Complete due diligence procedures on all remaining accounts— i.e., accounts held by entities other than prima facie FFIs and by individuals with account balances or values between US\$50,000 and US\$1,000,000;
- Begin information reporting;
- Expand its withholding capabilities to encompass U.S.-sourced FDAP payments to entities other than undocumented prima facie FFIs (in 2016) and gross proceeds (in 2017); and
- Complete responsible officer certifications to the US IRS (in 2016), including establishing an internal compliance program. The final regulations provide that withholding on foreign pass-through payments may begin no earlier than January 1, 2017.

Authors: Diego Peralta; Jessica Power