



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2019

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A practical cross-border insight into corporate tax work

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EDITORIAL

Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Corporate Tax*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax

It is divided into two main sections:

Two general chapters, offering an insight into tax and state aid, and tax in relation to the digital economy.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate tax lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor William Watson of Slaughter and May for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Carey

1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Chile has 32 tax treaties. Additionally, there are two tax treaties subscribed to by Chile which have not yet entered into force.

1.2 Do they generally follow the OECD Model Convention or another model?

Yes, except for the treaty with the United States of America (not yet in force) that follows the US model.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Once treaties are ratified by the Chilean Congress and published in the Official Gazette, they become effective and enforceable, and are considered part of the domestic legislation.

1.4 Do they generally incorporate anti-treaty shopping rules (or “limitation on benefits” articles)?

Yes, most of the tax treaties have anti-treaty shopping rules and recently enacted treaties also have limitation on benefits clauses.

Chile is also a signatory party to the Multilateral Convention to Implement Tax Treaty Related Measures of BEPS Actions (“MLI”).

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

No. Pursuant to the Political Constitution of Chile and the Vienna Convention (to which Chile is a signatory party), tax treaties should not be overridden by Chilean domestic laws, either existing or subsequent.

1.6 What is the test in domestic law for determining the residence of a company?

The place of incorporation.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Stamp Tax is applicable to documents evidencing loans.

Stamp Tax ranges from 0.066% up to 0.8% on the principal amount, depending on the maturity date (from one month or less up to 12 months or more). Loans without a maturity date or which are payable on demand are subject to a tax of 0.332%.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Yes, Value Added Tax (“VAT”) exists at a 19% rate.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

As a general rule, VAT applies on: (i) customary sales of local movable and immovable property (excluding land); (ii) commercial, industrial and intermediary services provided or used in Chile; and (iii) special cases (e.g., imports, software licensing, among others).

Thus, the main exclusions refer to the sale of land and professional services.

Also, imports of working capital assets for the development of specific projects (e.g., mining, industrial, energy, among others); exports; and certain payments for services rendered abroad, are VAT-exempt.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

VAT taxpayers can offset the VAT surcharged in their own sales (i.e., “Fiscal Debit”) against the VAT paid for in the acquisition of goods or services (“Fiscal Credit”). Fiscal Credit balance can be carried forward indefinitely.

Exporters and VAT taxpayers acquiring fixed assets and complementary services are entitled to request a VAT fiscal credit refund. Other taxpayers consider the VAT paid as a cost or as an expense (see question 4.2 below).

VAT paid for goods or services used for activities partly subject to VAT is proportionally granted as Fiscal Credit.

VAT paid is not granted as a Fiscal Credit when: (i) acquiring goods or services not related to taxpayer's business, or used in activities exempted or not subject to VAT; (ii) acquiring or maintaining vehicles, station wagons or similar, when not being the main business; and (iii) the invoice paid is deemed to be false or when issued by taxpayers not performing activities subject to VAT (unless certain formalities are taken by the taxpayer when paying the invoice).

2.5 Does your jurisdiction permit VAT grouping and, if so, is it "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

No. Each VAT taxpayer must calculate, declare and pay its Fiscal Debit, even when it is part of the same group of related companies.

2.6 Are there any other transaction taxes payable by companies?

The transfer of motorised vehicles is subject to a transaction tax of 1.5% on the highest between the sale price and the vehicle's fiscal valuation.

2.7 Are there any other indirect taxes of which we should be aware?

The following indirect taxes should be noted:

1. additional tax of 15% or 50% on the first sale or import, customary or not, of some sumptuary goods (e.g., gold and platinum jewels);
2. additional tax from 10% to 31.5% on the sale or import, customary or not, of energising, hypertonic or substitutes drinks; liquors, distilled, whiskies, wines and other alcoholic beverages;
3. additional tax from 52.6% to 62.3% on the sale or import of cigars, cigarettes and tobacco; and
4. additional tax on the first sale or import of gasoline or diesel, equal to 1.5 of a Monthly Tax Unit or UTM (approximately USD 72) per cubic metre of diesel, and six UTM per cubic metre in case of gasoline, which is also adjusted by adding or deducting a variable component provided in Law No. 20.943.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Yes. Foreign individuals or entities are subject to a 35% Withholding Tax ("WHT") on dividends from Chile. The WHT must be withheld, declared and paid by the local payer. The 35% WHT on dividends applies regardless of the existence of a tax treaty by virtue of the "Chile clause".

A tax credit for either 100% or 65% of the Corporate Tax paid by the local company is granted against such WHT, depending on the applicable tax regime (see question 4.6 below).

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Yes. Royalties are generally subject to a 30% WHT. A reduced 15% rate applies in some cases (e.g., use of utility models, industrial

designs, patents, use and exploitation of computer programs, among others). However, if the foreign beneficiary is a resident in a tax-haven jurisdiction, WHT is increased to 30%.

Royalties paid for the use of standard software are WHT-exempt.

Tax treaties can also reduce the WHT applicable on royalties (from 5% to 15%).

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Yes. Interest payments are generally subject to a 35% WHT. A reduced 4% WHT applies on interest payments to foreign banks or financial institutions.

Tax treaties can also reduce the applicable WHT (from 5% to 15%).

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Yes. Local Thin-Cap Rules apply to payments subject to reduced WHT rates made to related parties abroad, when the borrower is in an "excessive indebtedness" situation (i.e., world-wide debt exceeds three times the borrower's adjusted tax equity). Payments to related parties and excessive indebtedness will be proportionally levied with a 35% sole tax borne by the Chilean debtor, with a credit for the WHT paid.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

The 3:1 debt-equity ratio established by the Thin-Cap Rules is supposed to be a safe harbour provision for the reduced WHT rate for interest payments between related parties.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

Yes, Thin-Cap Rules apply to third-party debt guaranteed by a related party, including back-to-back structures.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

Tax treaty relief is subject to the usual limitations (i.e., effective beneficiary and compliance requirements) and local formal requirements (i.e., tax residence certificate and a sworn statement).

3.8 Is there any withholding tax on property rental payments made to non-residents?

Yes. Rental payments for assets located in Chile are subject to a 35% WHT.

A reduced 1.75% WHT applies as a sole tax over the gross amounts paid for by the lease (with or without purchase option) of imported capital goods that fulfil certain requirements.

Tax treaties may also offer reduced WHT rates.

3.9 Does your jurisdiction have transfer pricing rules?

Yes. Chilean transfer pricing rules (“TP Rules”) entitle the IRS to challenge values in cross-border-related transactions when they are not arm’s length.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

At the Chilean company level, the Corporate Tax rate is 25% or 27% depending on the company’s income tax regime (see question 4.6 below), calculated annually on its worldwide taxable income on a cash or accrual basis.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

In general, the net taxable income must be determined according to full accounting records, and it is equal to the accrued and received income-less costs and expenses, and subject to certain adjustments.

Expenses are tax deductible if certain legal requirements are met (i.e., necessary to generate the taxable income of the period, accrued or paid, not deducted as cost, from the corresponding exercise and evidenced to the IRS).

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The main adjustments refer to monetary correction of the assets and liabilities generally under local inflation and exceptionally under US dollar denomination.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

No. However, taxpayers must recognise in Chile the tax result of foreign permanent establishments (“PE”) including tax losses.

4.5 Do tax losses survive a change of ownership?

Under a change of ownership (i.e., owners acquiring or completing directly or indirectly at least 50% of the shares or rights to the profits of the company), the company’s losses can be used provided that certain requirements are met regarding the operational company’s business and assets.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

The Chilean income tax system is a two-level integrated system. Corporate Tax paid by the company at the first level can be totally or partially credited against owners’ income taxes (“Final Taxes”):

1. Income-attribution regime: a 25% Corporate Tax applies at the first level and the income is attributed to the owners who pay Final Taxes, regardless if it is distributed or not, and Corporate Tax is fully granted as a credit.
The total tax burden for foreign owners under this regime is 35%.

2. Semi-integrated income regime: a 27% Corporate Tax applies at the first level and Final Taxes are triggered upon profits’ effective distribution, only with a credit of 65% of the Corporate Tax (except for dividends remitted to a tax treaty resident where a 100% Corporate Tax credit is granted; this also applies to tax treaties subscribed by Chile but not in force, such as those with the United States of America and Uruguay, until 2021).

The total tax burden for foreign owners under this regime is 44.45%.

A tax reform bill was recently submitted before the Chilean Congress in August 23rd, 2018 for its discussion (the “Tax Reform”). The Tax Reform intends to re-establish a single fully integrated tax regime (i.e., Final Taxes triggered upon distribution and Corporate Tax fully creditable).

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Commercial, investment and industrial activities are generally subject to an annual municipal licence tax at rates ranging from 0.25% to 0.5%, applied through the company’s adjusted tax equity, capped at approximately USD 600,000 per year.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Capital gains are subject to the general tax regime (i.e., Corporate Tax plus Final Taxes). The same applies to capital losses, which are tax-deductible provided that certain requirements are met.

However, special rules apply for individuals in case of capital gains arising from the sale of shares, real estate, mining property, water rights, bonds, intellectual property and industrial property, among others.

5.2 Is there a participation exemption for capital gains?

Capital gains derived from the sale of shares by individuals not keeping full accounting records, are considered non-taxable income provided that: (i) the buyer is not a related party to the seller; and (ii) the gains do not exceed 10 Annual Tax Units (UTA, approx. USD 8,700).

Capital gains resulting from a non-habitual and non-related sale of shares acquired before January 31st, 1984 are considered non-taxable income. Also, a full tax-exemption applies on the sale of shares of publicly listed stock corporations that are regularly traded and provided specific requirements are met.

5.3 Is there any special relief for reinvestment?

Some companies have the option to reduce its taxable income up to an amount of 50% of the reinvested taxable income, if certain requirements are met and with a cap of 4,000 indexed units (“UF”).

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

In general, 35% WHT applies on capital gains derived from the direct transfer of Chilean assets and shares of local companies.

The indirect transfer of Chilean assets and shares through the sale of foreign shares, equity rights, quotas, bonds or other titles or rights, may be taxed if:

- a) the foreign titles represent 10% or more of the offshore entity and the underlying Chilean assets: (a) proportionally amounts to equal or higher than UTA 210,000 (approx. USD 180 million); or (b) represent 20% or more of the fair market value of the ownership in the offshore company; or
- b) if the sold foreign entity is domiciled or incorporated in a tax-haven jurisdiction, unless certain requirements are met and evidenced before the IRS.

Exceptionally, indirect taxation does not apply in case of business reorganisations, provided certain requirements are met.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

No Chilean tax levies the incorporation of an entity.

However, the development of investment, commercial and industrial activities, among others, is subject to the municipal licence tax (see question 4.7 above).

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

As a general rule, Chilean branches are subject to the same income taxation as subsidiaries (i.e., two-level system with Corporate Tax and Final Taxes on taxable distributions).

However, subsidiaries are subject to Corporate Tax on their worldwide income, whereas branches and other PEs are subject to taxation on results attributable to them.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Results attributable to PEs must consider income, cost and expenses originated from (a) the PE's activities in Chile and abroad, and (b) assets allocated in or used by the PE, whether located in Chile or abroad.

However, if the books of the PE are not sufficient to determine its effective income, the IRS is empowered to assess such net taxable income as a percentage of the PE's gross income or total assets, in relation to those of the parent company.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

No, because a branch is not considered a tax resident in Chile.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

Distributions of taxable profits by a branch or PE have the same tax treatment as distributions made by Chilean companies.

Hence, they are subject to a 35% WHT with a total or partial credit for the Corporate Tax paid by the PE (see question 4.6

above). Distributions of exempt or non-taxable income and capital reductions could be WHT-exempt.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Yes. As a general rule, foreign-source income is recognised in Chile on a cash basis, except in the case of foreign branches or other PEs, where the PE's income is taxed on an accrual basis.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Yes, as ordinary income (i.e., Corporate Tax and Final Taxes upon distribution).

A foreign tax credit is granted for the taxes paid abroad on such dividends, with certain limitations and requirements.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Yes. Under local CFC rules, foreign passive income of a controlled entity is recognised in Chile on an accrual basis.

A foreign entity is deemed to be controlled if the taxpayer: (i) holds 50% or more of its equity, profits or voting rights; (ii) has the authority to appoint the majority of its board; and/or (iii) is entitled to amend its bylaws unilaterally. Additionally, entities located in a preferential tax regime's jurisdiction are presumed to be controlled.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Yes. Non-residents are subject to ordinary income taxation for capital gains arising from the sale of any kind of real estate located in Chile (i.e., Corporate Tax and WHT).

However, individuals who do not keep full accounting records are not subject to income taxes up to 8,000 indexed units (UF, approx. USD 332,000), provided that certain requirements are met. On the excess, a 35% WHT applies. This benefit is not capped at UF 8,000 for these sellers in case of real estate acquired before January 1st, 2004.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

The ITL taxes the indirect transfer of real estate when the indirect transfer thresholds are met (see question 5.4 above).

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Currently, there is no special tax regime for REITs.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Domestic law contains a general overreaching anti-avoidance rule (“GAAR”), which is a substance-over-form control rule under which the IRS is entitled to challenge the tax consequences derived from legal forms when there is abuse or simulation.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

There is not a general requirement to disclose avoidance schemes. However, taxpayers are required by the IRS to permanently provide information by means of filing sworn affidavits.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

Individuals or legal entities involved in the design or plan of acts, contracts or businesses deemed to be abusive or simulated may be subject to a fine of up to 100% of the avoided taxes.

Persons facilitating false tax documentation can also be subject to fines and criminal sanctions.

9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

Chilean domestic law does not contemplate general “co-operative compliance” programmes.

Regarding the matter of TP, advance pricing agreements (“APAs”) between the taxpayer and the IRS could be agreed.

Additionally, taxpayers may request tax rulings from the IRS to give certainty regarding specific transactions or structures.

Also, the IRS is prevented from retroactively assessing taxes when a taxpayer has relied, in good faith, on a criterion set forth in a ruling or other official document (while the IRS does not issue a new ruling stating a different criterion).

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD’s project targeting Base Erosion and Profit Shifting (BEPS)?

The most important amendments to tackle BEPS Actions up to this date are: TP rules; GAAR (see section 9 above); CFC rules (see question 7.3 above); and Sworn Statements regarding CBCR (see question 10.3 below) and global tax characterisation, among others.

Also, Chile is a signatory party to the MLI and to the CBCR Multilateral Competent Authority Agreement.

Moreover, the Tax Reform bill proposes a “digital tax” on new digital business models (see question 11.1 below).

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD’s BEPS reports?

Chile is currently complying with the BEPS agenda following the OECD’s recommendations (see question 10.1 above).

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

Yes. The CBCR must be submitted annually by the local controller or parent company of a multinational group, in case (i) the group’s consolidated income is equal or higher than EUR 750 million, or (ii) the Chilean company has been designated by the controller or parent company as its substitute to submit the CBCR in its country of tax residence.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

There is no patent box regime in Chile for revenue deriving from intellectual property licensing.

However, certain transfers of intellectual property can be income-tax exempted (see question 5.1 above).

11 Taxing the Digital Economy

11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

No.

However, the Tax Reform includes a new 10% sole indirect tax on gross amounts paid for digital services provided by foreign individuals or entities and used in Chile by individuals.

11.2 Does your jurisdiction support the European Commission’s interim proposal for a digital services tax?

Chile does not follow the European Commission’s interim proposal in this regard (see question 11.1 above).



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