

**CONVENTION BETWEEN
THE REPUBLIC OF CHILE AND
THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL**

The Republic of Chile and the Republic of Austria, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Austria:

- i) the income tax (die Einkommensteuer);
- ii) the corporation tax (die Körperschaftsteuer);
- iii) the land tax (die Grundsteuer);
- iv) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);
- v) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken);
(hereinafter referred to as "Austrian tax")

b) in Chile, the taxes imposed under the Income Tax Act, "Ley sobre Impuesto a la Renta" (hereinafter referred to as "Chilean tax").

4. The Convention shall apply also to any identical or substantially similar taxes and to taxes on capital which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, the Republic of Austria or the Republic of Chile, hereinafter "Austria" or "Chile", respectively;
- b) the term "person" includes an individual, a company and any other body of persons;
- c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- f) the term "competent authority" means:
 - i) in the case of the Republic of Austria, the Federal Minister of Finance or his authorised representative; and
 - ii) in the case of the Republic of Chile, the Minister of Finance, the Commissioner of the Revenue Service or their authorised representative;
- g) the term "national", in relation to a Contracting State, means:
 - i) any individual possessing the nationality or citizenship of that Contracting State; and
 - ii) any legal person or association constituted in accordance with the laws in force in that Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement procedure.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the States shall endeavour to settle the question by mutual agreement, having regard to its place of effective management, the place of main or head office, place of incorporation, or any other relevant factors. In the absence of such agreement, such person shall not be entitled to any benefits under this Convention, except that such person may claim the benefits of Articles 24 (Non-discrimination) and 25 (Mutual agreement procedure).

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop; and
 - f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.
3. The term "permanent establishment" shall also include:
 - a) a building site or construction or installation project and the supervisory activities in connection therewith, but only if such building site, construction or activities last more than six months;
 - b) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose where activities of that nature continue within the country for a period or periods aggregating more than 183 days within any twelve months period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, carrying out scientific research or any other similar activity for the enterprise, if such activity is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2 where a person (other than an agent of an independent status to whom paragraph 6 of this Article applies) is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in

that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, the expression "operation of ships or aircraft" by an enterprise, includes:

- (a) the charter or rental on a bareboat basis of ships and aircraft,
- (b) the rental of containers and related equipment,

if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State. However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

The provisions of this paragraph shall not limit application of the Additional Tax payable in Chile provided that the First Category Tax is creditable in computing the amount of additional tax.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt claims, participating in profits, as well as income from rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent on the gross amount of the interest derived from:

(i) loans granted by banks and insurance companies;

(ii) bonds or securities that are regularly and substantially traded on a recognized securities market;

(iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficially owner that is the seller of the machinery and equipment.

b) 15 per cent of the gross amount of the interest in all other cases.

3. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. The term interest shall not include income dealt with in Article 10.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt - claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last - mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment;
- b) 10 per cent of the gross amount of the royalties, in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films, tapes and other means of image or sound reproduction, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
- 4.a) Gains derived by a resident of a Contracting State, from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State, may be taxed in the other Contracting State if,
 - (i) the alienator at any time during the twelve month period preceding such alienation, owned, directly or indirectly, shares or other rights representing 20 per cent or more of the capital of that company, or
 - (ii) the gains derive more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.
- b) Any other gains derived by a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State may also be taxed in the other Contracting State but tax so charged shall not exceed 17 per cent of the amount of the gain.
- c) Notwithstanding any other provision of this paragraph, gains derived by a pension fund that is a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may also be taxed in the other Contracting State:
 - a) if he has a fixed base regularly available to him in the other Contracting State for purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
 - b) if he is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first - mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, a person being an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base that the person has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. The income referred to in this paragraph shall include any income derived from any personal activity exercised in the other State related with that person's renown as an artiste or sportsman.

2. Notwithstanding the provisions of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18

PENSIONS

Pensions arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 19

GOVERNMENT SERVICE

1.a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State, or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 of this Article shall likewise apply in respect of remuneration paid to the Austrian Foreign Trade Commissioner for Chile and to the members of the staff of that Austrian Foreign Trade Commissioner.

3. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other remuneration, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof or the Austrian Foreign Trade Commission.

ARTICLE 20

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first - mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case maybe, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV

TAXATION OF CAPITAL

ARTICLE 22

CAPITAL

1. Capital represented by immovable property owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise operating such ships or aircraft is resident.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS FOR AVOIDANCE OF DOUBLE TAXATION

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. In Austria, double taxation shall be avoided as follows:

a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Chile, Austria shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax.

b) Where a resident of Austria derives items of income which, in accordance with the provisions of Articles 11 and 12, Article 13 paragraph 4 and Article 21 paragraph 3, may be taxed in Chile, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Chile. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Chile.

c) Where a resident of Austria derives items of income which, in accordance with the provisions of Article 10 may be taxed in Chile, Austria shall allow as a deduction from the tax on the income of that resident an amount of the Chilean tax which shall be the lesser of:

- (i) the net amount of the Additional Tax payable in Chile in respect of the dividends, or
- (ii) 15 per cent of the gross amount of the dividend before computing the Additional Tax.

d) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

e) The provisions of subparagraph a) shall not apply to income derived or capital owned by a resident of Austria where Chile applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Articles 10, 11 or 12 to such income.

2. In Chile, double taxation shall be avoided as follows:

a) Residents in Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in Austria, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Convention;

b) Where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

CHAPTER VI

SPECIAL PROVISIONS

ARTICLE 24

NON - DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursement paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first mentioned State are or may be subjected.
6. In this Article, the term "taxation" means taxes that are subject of this Convention.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by a mutual agreement procedure with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement procedure any difficulties or doubts arising as to the interpretation or application of the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities the case may, if the competent authorities of both Contracting States so agree, be submitted for arbitration. The procedures shall be agreed upon and shall be established between the Contracting States by notes to be exchanged through diplomatic channels.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy ("ordre public").

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

MISCELLANEOUS RULES

1. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N°18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

2. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be

brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

4. Nothing in this Convention shall affect the taxation in Chile of a resident in Austria in respect of profits attributable to a permanent establishment situated in Chile, under both the First Category Tax and the Additional Tax but only as long as the First Category Tax is deductible in computing the Additional Tax.

CHAPTER VII

FINAL PROVISIONS

ARTICLE 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other through the diplomatic channel of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect:

a) in Austria,

in respect of taxes for any fiscal year beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force; and

b) in Chile,

in respect of taxes on income derived and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which this Convention enters into force.

ARTICLE 30

TERMINATION

1. This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the year in which the Convention enters into force, give to the other Contracting State a notice of termination in writing through diplomatic channels.

2. The provisions of this Convention shall cease to have effect:

a) in Austria,

in respect of taxes for any fiscal year beginning on or after the first day of January in the calendar year next following that in which the notice is given; and

b) in Chile,

in respect of taxes on income derived and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Convention.

DONE in duplicate at _____, this

in the Spanish, German, and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the
Republic of Chile:

For the
Republic of Austria:

PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

On signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital between the Republic of Chile and the Republic of Austria, the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. Ad Article 5, paragraph 5

It is understood that the phrase "authority to conclude contracts in the name of the enterprise" does not confine the application of the paragraph to an agent who enters into contracts literally in the name of the enterprise; the paragraph applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of the enterprise.

2. Ad Article 5, paragraph 6

It is understood that where the commercial or financial conditions made or imposed between the broker or agent and the enterprise differ from those which would be made between independent persons, such broker or agent will not be considered an agent of independent status within the meaning of paragraph 6 of Article 5.

3. Ad Article 7

In the case of Austria, it is understood that the term "profits" as used in this Article includes the profits derived by any partner (Gesellschafter) from his participation in a partnership (Personengesellschaft), including a participation in a sleeping partnership (Stille Gesellschaft), created under Austrian law.

4. Ad Article 7, paragraph 3

It is understood that the provisions of paragraph (3) of the Article shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

5. Ad Article 7

a) Income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other State, otherwise than through a permanent establishment situated in that other State, the tax so charged in that other State shall not exceed a) 5 per cent of the gross amount of the premiums in the case of policies of reinsurance; and b) 10 per cent of the gross amount of the premiums in the case of all other policies of insurance.

b) This provision shall become effective only at the date when a likewise provision enters into force in all existing Agreements or Conventions between Chile and Member States of the European Union and Switzerland. The competent authority of Chile shall inform the competent authority of Austria without delay that the conditions for the application of this subparagraph have been met.

c) If in one of the Conventions mentioned in subparagraph b) lower rates were agreed, such lower rates shall automatically apply for purposes of this Convention under the same conditions as established in that other Convention. The competent authority of Chile shall inform the competent authority of Austria without delay that the conditions for the application of this subparagraph have been met.

6. Ad Articles 10, 11 and 12

It is understood that the provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of

a right or debt-claim in respect of which dividends, interest or royalties are paid to take advantage of those Articles by means of that creation or assignment.

7. Ad paragraph 2 of Article 11 and paragraph 2 of Article 12

If in any agreement or convention between Chile and a third State which is a member of the Organization for Economic Cooperation and Development, Chile agrees to exempt from tax interest or royalties (either generally or in respect of specific categories of interest or royalties) arising in Chile, or to limit the rate of tax on such interest or royalties (either generally or in respect of specific categories of interest or royalties) to a rate lower than the rates provided for in paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply (either generally or in respect of specific categories of interest or royalties) under this Convention as if such exemption or lower rate has been specified in this Convention, with effect from the date on which those provisions of that agreement or convention become effective. The competent authority of Chile shall inform the competent authority of Austria without delay that the conditions for the application of this provision have been met.

8. Ad Article 18

It is understood that this Article may include a lump-sum payment in lieu of periodic pension payments.

9. Ad Article 26

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State,
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

In order to facilitate the exchange of information the requesting State should advise on the period for which the information is requested.

2. It is understood that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

3. It is understood that paragraph 1 of Article 26 allows the Contracting States to exchange information on a spontaneous or automatic basis; however, paragraph 5 of Article 26 does not require the Contracting States to exchange information within the meaning of that paragraph on a spontaneous or automatic basis.

4. In the case of information held by a bank or other financial institution, the provisions of Article 26 shall not be interpreted as requiring the exchange of information on transactions predating the date of entry into force of the Convention.

10. Ad Article 28

Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the Convention are used in such a manner as to provide benefits not contemplated or not intended, the competent authorities of the Contracting States shall, under the mutual agreement procedure of Article 25, recommend specific amendments to be made to the Convention. The Contracting States further agree that

any such recommendation will be considered and discussed in an expeditious manner with a view to amending the Convention, where necessary.

11. Interpretation of the Convention

It is understood that the OECD and UN Model Commentaries – as they may be revised from time to time – constitute a means of interpretation in the sense of Vienna Convention of 23 May 1969 on the Law of Treaties as far as the provisions of this Convention correspond to those Model Conventions and subject to any contrary interpretations in this Protocol and any contrary interpretation agreed to by the competent authorities after the entry into force of this Convention or any future reservations or observations to the OECD and UN Model or their Commentaries by either Contracting State.

12. Anti-abuse

Where an enterprise of a Contracting State derives income from the other Contracting State and the income from the other Contracting State is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under other provisions of the Convention will not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned State and in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned State if the income were earned or received in that State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other State, notwithstanding any other provision of the Convention.

This anti-abuse clause is not to be understood as preventing a Contracting State from applying its domestic anti-abuse provisions.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Protocol.

DONE in duplicate at _____, this

in the Spanish, German, and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the
Republic of Chile:

For the
Republic of Austria: