

## **2001 Income and Capital Tax Convention and Final Protocol (English Translation)**

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*This convention has been amended by a protocol signed June 25, 2002. The text as amended is also available.*

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

[TRANSLATION]

The Government of the Republic of Chile and the Government of the Republic of Peru, desiring to conclude a Convention concerning avoidance of double taxation and prevention of fiscal evasion with regards to tax on income and capital, have agreed as follows:

Chapter I.

Scope of Application of the Convention

#### **Article 1 Personal Scope**

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 capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as Taxes on income and capital all taxes imposed on total income or capital or on any elements of the same, including Taxes on gains from the alienation of movable or immovable property, taxes on total wages and salaries paid by the enterprises as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
  - (a) in Peru: the taxes set forth in the "Ley de Impuesto a la Renta" ([Peruvian] Income Tax Act), and the Extraordinary Solidarity Tax levied on income from the independent and individual exercise of a profession;
  - (b) in Chile: the taxes set forth in the "Ley de Impuesto a la Renta" ([Chilean] Income Tax Act).
4. The Convention shall apply also to any identical or substantially similar taxes as well as 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 without delay of 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 requires a different interpretation:
  - (a) the term "Peru" refers to Republic of Peru.
  - (b) the term "Chile" refers to the Republic of Chile.
  - (c) the terms "Contracting State" or "the other Contracting State" refer to Peru or Chile according to the context herewith.
  - (d) the term "person" refers to any individual or company or other group of people.
  - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.
  - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" refer respectively to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State.
  - (g) the term "international traffic" refers to any transport by a ship, aircraft, or ground transportation vehicle operated by an enterprise of a Contracting State, except when such ship, aircraft, or ground transportation vehicle is solely operated between points located in the other Contracting State.

(h) the term "Competent Authority" refers to:

(i) in Peru, the Minister of Economics and Finance or his authorized representative, and

(ii) in Chile, the Minister of Finance or his authorized representative.

(i) the term "national" means:

(i) any individual who has the nationality of a Contracting State; or

(ii) all bodies corporate, companies, and associations constituted in conformity with the laws in effect in a Contracting State.

2. As regards the application of the Convention by a Contracting State at any given point in time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation shall prevail over any meaning this term may have in accordance with other types of Laws of this State.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to 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 establishment or any other criterion of a similar nature and also includes the State per se and any political subdivision or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in said State situated therein or from capital located in the same.

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 of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center 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 Contracting State of which he is a national;

(d) in case he is a national of both States or neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then such person shall be deemed to be a resident only of the State of which it is a national. In case such person is a national of both States or neither of them or his nationality cannot be determined, the competent authorities of the Contracting States shall undertake whatever is possible to resolve the issue by mutual agreement. In case no mutual agreement is reached between the competent authorities of the Contracting States, such person shall not be entitled to any of the tax benefits or exemptions contemplated hereunder.

#### **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) places of management;

(b) branch offices;

(c) offices;

(d) factories;

(e) workshops,

(f) mines, oil or gas wells, quarries or all other places related with the exploration or extraction of natural resources.

3. The term "permanent establishment" also includes:

(a) A construction, installation or assembly work or project and supervisory activities related with the same, but only as long as the duration of such work, construction project, or activity six months, and

(b) the provision of services by an enterprise, including consulting services, carried out through employees or other staff hired by the enterprise for that purpose, but only as long as such activities continue to be carried out in the country for a period or periods which in the aggregate exceed 183 days during any twelve-month period.

For the purposes of calculating the time limes to which this paragraph refers, the activities carried out by an enterprise associated with another enterprise pursuant to the terms of Article 9 shall be added to the period during which the activities are carried out by the enterprise with which it is associated, as long as the activities of both enterprises are identical, substantially similar, or connected.

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 collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of engaging in advertising, providing information or conducting scientific research, or other activities of a preparatory or auxiliary character on behalf of the enterprise;

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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. The preceding provisions of this Article notwithstanding, an insurance enterprise of a Contracting State residing in a Contracting State, except insofar as reinsurance is concerned, shall be deemed to maintain a permanent establishment in the other Contracting State if it collects premiums in the territory of the other State and insures risks located therein through an employee or a representative other than an independent agent as defined by paragraph 7 below.

7. An enterprise shall not be deemed to have a permanent establishment in a 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 and their commercial or financial relations with said enterprises are not based or subject to terms accepted or imposed which are different from those that are generally agreed upon by independent agents.

8. 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 enterprise 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 only 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 is situated. Said term shall in any case include property accessory to immovable property, livestock, and any equipment used in agriculture and forestry, rights to which the provisions of private Law respecting landed property apply, the rights known as 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 leasing, or use in any other form of immovable property as well as to income from its sale.

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 or has carried on business as aforesaid, the profits of the enterprise may be subject to tax 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 and with all other persons.
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 in such a manner; 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 Ground, Sea or Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of ships, aircraft, or ground transportation vehicles in international traffic shall be taxable only in that Contracting State.
2. For the purposes of this Article:
  - a) the term "profits" includes, in particular
    - (i) gross proceeds directly obtained through the operation of ships, aircraft, or ground transportation vehicles in international traffic, and
    - (ii) interest on amounts generated directly through the operation of ships, aircraft, or ground transportation vehicles in international traffic, always provided such interest is inherent in their operation.
  - b) the term "operation of ships, aircraft, or ground transportation vehicles" by an enterprise also includes:
    - (i) the chartering or renting of ground transportation vehicles, aircraft, or empty ships or boats, and
    - (ii) the renting of "containers" and equipment related therewith, always provided such chartering or renting is accessory to the operation by that enterprise of ships, aircraft, or ground transportation vehicles in international traffic.
3. The provisions of paragraphs 1 shall also apply to profits from the participation in a consortium or 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, as long as it agrees therewith, 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.

3. The provisions contained in paragraph 2 shall not apply in the case of fraud, culpability, or negligence.

### **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, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the voting shares of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends, in all other cases.

The provisions of this paragraph do not affect taxation of the company with respect to profits out of which such dividends are paid.

3. The term "dividends" as used in this Article refers to income from shares or other rights, not being debt-claims, participating in profits, as well as income from other 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 of this Article 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, either an entrepreneurial activity through a permanent establishment situated therein, or 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 the company's 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 in case the beneficial owner of such interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term "interest" as used in this Article refers to 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, as well as any other income which the laws of the State in which the interest arises treat similar to amounts loaned. However, the term "interest" does not include the income listed 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 an entrepreneurial activity 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 he is 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 Contracting 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, having regard to the debt-claim for which it is 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.

7. The provisions of this Article shall not apply if the purpose or one of the main purposes of any person involved in the creation or attribution of the debt-claim in connection with which the interest is paid is to take advantage of this Article through such creation or attribution.

### **Article 12 Royalties**

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

2. These royalties, however, are also taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, in case the beneficiary owner is a resident of the other Contracting State, the tax levied in such a manner cannot exceed 15 percent of the gross amount of the royalties.

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 cinematograph films or films, tapes, and other media for image and sound reproduction, patents, trade marks, designs or models, plans, secret formulas or processes or other intangible property as well as for the use or the right to use any industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific know-how.

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 an entrepreneurial activity 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 property or right 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. The royalties are deemed to arise in a Contracting State in case the payer is a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment or a fixed base in a Contracting State which as such incurs the charge thereof, these royalties are deemed to arise in the Contracting 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 of the royalties or between both of them and some other person, the amount of the royalties, having regard to the service 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.

7. The provisions of this Article shall not apply if the purpose or one of the main purposes of any person involved in the creation or attribution of rights in connection with which the royalties are paid is to take advantage of this Article through such creation or attribution.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in Article 6, situated in the other Contracting State may only 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 of which it is a part) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the alienating enterprise is located.
4. Gains obtained by a resident of a Contracting State through the alienation of titles or other rights representing the capital of a company or any other type of financial instrument situated in the other Contracting State can be taxed in that other Contracting State.
5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

#### **Article 14 Independent Personal Services**

1. Income derived by a natural person residing in a Contracting State in respect of professional services or other activities of an independent character carried out in the other Contracting State shall be taxable in that last-mentioned State, although the tax so charged can not exceed 10 percent of the gross amount received for such services or activities. Such income, however, can be taxed in the other Contracting State:
  - (a) in case said person maintains in the other Contracting State a fixed base available to him on a regular basis for the performance of his activities; in this case, in that other Contracting State, only that part of the income that is attributable to said fixed base can be taxed;
  - (b) in case said person remains in the other Contracting State for a period or periods which in the aggregate equal or exceed 183 days within any twelve-month period; in this case, in that other Contracting State, only that part of the income that is attributable to activities carried out by him in that State can be taxed.
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, accountants, or bookkeepers.

#### **Article 15 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, and 19, wages, salaries, and other remuneration derived by a resident of a Contracting State in respect of 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 employment exercised in the other Contracting State shall be taxable solely in the first-mentioned State if:
  - (a) the recipient is not present in the other State for a period or periods exceeding in the aggregate 183 days during any twelve-month period commencing or ending in the fiscal year in question, and
  - (b) the remuneration is paid by, or on behalf of, 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 which a 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 employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may only be taxed in that Contracting 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 body 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 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 to which this present paragraph refers includes income which said resident obtains through any personal activity carried out in the other Contracting State that is related with his reputation as an entertainer 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**

1. Pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State, although the tax so charged can not exceed 15 percent of the gross amount of the pensions.
2. Support and other maintenance payments made to a resident of a Contracting State can only be taxed in that State as long as they are deductible for the payer. In case they are not deductible, they can only be taxed in the State of residence of the payer.

### **Article 19 Government Service**

1. (a) Wages, salaries, and other remuneration, other than pensions, 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 thereof shall be taxable only in that State.  
(b) However, such wages, salaries, 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.
3. The provisions of Articles 15, 16, and 17 shall apply to wages, salaries, and other remuneration paid in respect of services rendered in connection with an entrepreneurial activity carried on by a Contracting State or one of its political subdivisions or local authorities.

### **Article 20 Students and Trainees**

Payments which a student, apprentice, or intern 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 mainly for the purpose of his education or practical 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 not mentioned in the foregoing Articles of this Convention and which arise in the other Contracting State can also be taxed in that other Contracting State.

Chapter IV.

Taxation of Capital

### **Article 22 Capital**

1. Capital represented by immovable property held by a resident of a Contracting State and located 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 consisting of ships or aircraft operated in international traffic as well as 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 a 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 the Elimination of Double Taxation

### **Article 23 Elimination of Double Taxation**

1. In the case of the Republic of Chile, double taxation shall be avoided as follows:
  - (a) persons residing in Chile who obtain income which, in accordance with the provisions of this Convention, can be taxed in Peru, can take a credit against these Chilean taxes on such income which corresponds to the taxes applied in Peru, in accordance with the applicable provisions of Chilean law. This paragraph shall apply to all items of income covered by this Convention.
  - (b) where, in accordance with any provision of this Convention, the income obtained by a resident of Chile or the capital held by the same are exempt from taxation in Chile, Chile may, however, include the exempt income or capital for the purpose of calculating the amount of tax on the other income or capital of said resident.
2. In the case of Peru, double taxation shall be avoided as follows:

Peru shall grant its residents a tax credit, against the income tax to be paid in Peru, for the Chilean tax paid on income taxed in accordance with Chilean laws and the provisions of this Convention. Under

no circumstances may the credit in question exceed that part of the Peruvian income tax that is attributable to the income to be taxed in Chile.

Where, in accordance with any provision of this Convention, the income obtained by a resident of Peru or the capital held by the same are exempt from taxation in Peru, Peru may, however, include the exempt income or capital for the purpose of calculating the amount of tax on the other income or capital of said resident.

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 are or may be subjected, especially in terms of residence.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 can 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 which it grants to its own residents.

4. Enterprises residing in 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 enterprises of the first-mentioned State are or may be subjected whose capital is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third-party State.

5. For the purposes of this Article, the term "taxation" refers to the taxes covered under 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 endeavor, 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 mutual agreement 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 endeavor to resolve by mutual agreement 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 of this Article.

5. In the event of difficulties or doubts regarding the interpretation or application of this Convention which can not be resolved by the competent authorities of the Contracting States, the case can be submitted to arbitration, provided the competent authorities agree thereto. The procedure shall be agreed upon by the Contracting States by means of notes to be exchanged via diplomatic channels.

### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, which can be used to determine the value-added tax (Impuesto General a las Ventas - General Sales Tax). The exchange of information is not restricted by Article 1. Any information received 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, or the determination of appeals in relation to, the Taxes covered by the Convention. 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.

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

(a) to adopt administrative measures at variance with the laws and 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, industrial, or professional secrets or trade processes or information, the disclosure of which would be contrary to public policy (ordre public).

3. In case information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request pertains in the same manner as in the case of its own taxation, regardless of the fact whether such other State requires such information at that time or not.

### **Article 27 Members of Diplomatic Missions and Consular Posts**

The provisions of this Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international Law or on the basis of special agreements.

### **Article 28 Miscellaneous Provisions**

1. Los Investment Funds and other funds of any type organized to operate in Chile as such in accordance with Chilean laws shall, for the purposes of this Convention, considered residents in Chile and subject to taxation in accordance with Chilean tax laws with respect to dividends, interest, capital gains and other income derived from goods or investments in Chile. The provisions contained in this paragraph shall apply regardless of other provisions set forth in this Convention.

2. For the purposes of paragraph 3 of Article XXII (Consultation) of the Acuerdo General sobre Comercio de Servicios (GATS - General Agreement on the Trade of Services), the Contracting States agree that, without prejudice to that paragraph, any dispute between them as to whether a measure is covered by that Convention, can be submitted to the Consejo de Comercio de Servicios (Service Trade Council) as stipulated in said paragraph, although only with the consent of both Contracting States. Any doubts regarding the interpretation of this paragraph shall be resolved in accordance with paragraph 3 of Article 25 or, in the event that no agreement is reached on the basis of this procedure, by using any other procedure agreed upon by both Contracting States.

3. In the case of Chile, nothing contained in this Convention shall affect the application of the current provisions of the Decree-Law No. 600 (Estatuto de la Inversión Extranjera - Foreign Investment Statute) of Chilean law in the version in effect on the date of signature of this Convention and as it may be amended without modifying its general principle.

4. In the case of Peru, the provisions contained in this Convention shall not affect the application of the provisions of the Legislative Decrees Nos. 662, 757, 109, Laws Nos. 26221, 27342, 27343 and any other modifying and regulatory guidelines of Peruvian laws which are in full force and effect on the date on which this Convention is entered into and even if they are subsequently modified without changing its general principle.

Whoever has entered into or enters into Conventions granting Tax Stability within the scope of the above-mentioned guidelines shall not be entitled to benefit from the rates set forth in this Convention whenever they have been stabilized in a Tax Stability Convention.

5. The contributions made during a year for services rendered during that year and paid for or on account of an individual residing in a Contracting State or who is temporarily present in that State to a pension plan which is recognized for tax purposes in the other Contracting State shall, during a period not exceeding in the aggregate 60 months, be treated in the first-mentioned State in the same manner as a contribution paid to a pension system recognized for tax purposes in that State, provided

(a) said individual has been contributing in a regular manner to the pension plan for a period which has terminated immediately prior to becoming a resident of or being temporarily present in the first-mentioned State, and

(b) the competent authorities of the first-mentioned State agree that that pension plan corresponds, in general terms, to a pension plan recognized for tax purposes by that State.

For the purposes of this paragraph, the term "pension plan" includes the pension plan created in accordance with the social security system of each Contracting State.

6. Considering that the main objective of this Convention is to avoid international double taxation, the Contracting States agree that, in the event that the provisions of the Convention are used in such a manner that they grant benefits neither contemplated nor intended hereunder, the competent

authorities of the Contracting States shall be required, in accordance with the procedure of mutual agreement set forth in Article 25, to recommend specific changes to the Convention. The Contracting States furthermore agree that any of said recommendations shall be considered and discussed in an expeditious manner with the goal to modify the Convention to the extent that this is necessary.

7. Nothing in this Convention shall affect taxation in Chile of a resident in Peru in terms of profits attributable to a permanent establishment situated in Chile, both insofar as the tax of the first category as well as the additional tax is concerned, always provided that the tax of the category is deductible against the additional tax.

Chapter VII.

Final Provisions

### **Article 29 Entry Into Force**

1. The Contracting States shall notify each other, through diplomatic channels and in writing, as soon as respective procedures for the Convention to enter into force have been completed in accordance with its domestic laws. This Convention shall come into effect on the date on which the last notice is received.

2. The provisions of the Convention shall apply:

(a) in Chile:

to taxes on income which is obtained and amounts paid, credited, made available or entered in the books as expenses, on or after the first day of the month of January of the calendar year immediately following that in which the Convention comes into force and effect; and

(b) in Peru:

to guidelines regarding the income tax, on or after the first day of the month of January of the calendar year immediately following that in which the Convention comes into force and effect.

### **Article 30 Termination**

1. This Convention shall remain in force for an indefinite period of time, although each and every one of the Contracting Parties shall be entitled to provide the other Contracting State, no later than on June 30 of each calendar year, with a written notice of termination through diplomatic channels.

2. The provisions of the Convention shall cease to apply:

(a) in Chile:

to taxes on income which is obtained and amounts paid, credited, made available or entered in the books as expenses, on or after the first day of the month of January of the immediately following calendar year; and

(b) in Peru:

to guidelines regarding the income tax, on or after the first day of the month of January of the immediately following calendar year.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in Santiago on the eighth day of the month of June of the year two thousand and one, in two original copies; both texts are equally binding.

**FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE:**

**FOR THE GOVERNMENT OF THE REPUBLIC OF PERU:**

## **PROTOCOL OF THE CONVENTION BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF PERU CONCERNING AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

During the signing of the Convention between the Government of the Republic of Peru and the Government of the Republic of Chile concerning avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, the undersigned have agreed to the following provisions, which shall be an integral part of this Convention:

1. Article 7

It shall be understood that the provisions of paragraph 3 of Article 7 apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax laws of the Contracting State in which the permanent establishment is situated.

2. Article 10

(I) The provisions of paragraph 2 of Article 10 shall not limit the application of the additional tax to be paid in Chile insofar as tax of the first category is deductible against the additional tax.

(II) Subparagraph I) shall apply also to Peru in the event that, in the future, Peru establishes an integrated tax system similar to that in effect in Chile at the time of signing of this Convention, which

must include a total credit or a credit with an equivalent effect for the income tax against the withholding tax affecting the distribution or transfer of profits.

### 3. Article 12

In case Chile and Peru enter into, after the entry into force of this Convention, in a Convention with a third State on the basis of which tax rate on royalties is specified which is below that specified in this Convention, such "lower rate" shall automatically apply for the purposes of paragraph 2 of Article 12, the purposes of this Convention and pursuant to the terms set forth in the Convention with that third State once a period of five years has elapsed from the entry into force of this Convention. Under no circumstances shall such "lower rate" be lower than the higher rate agreed to by Chile and the lower rate agreed to by Peru with third-party States.

For the purposes of this provision, it shall be understood that Chile or Peru enter into a Convention with a third State as soon as said Convention has come into force and effect.

### 4. Article 23

(I) It shall be specified that in the case of a distribution of dividends carried out by a company residing in Chile to a resident of Peru, the credit in Peru shall cover the Tax of the First Category paid by the company in Chile on the income with respect to which the dividends are distributed. For the application of the credit, the First-Category Tax shall be included after using the part of the Additional Tax paid by or withheld by the shareholder.

(II) In the event that the taxpayer of the Additional Tax paid in Chile ceases to be the partner or shareholder, the credit applied in Peru shall include the tax paid by the company making the distribution.

(III) Finally, for the application of the credits in Peru, the tax base shall be the income considered prior to tax withholding and, if applicable, the income considered prior to income tax of the enterprise distributing the dividends.

### 5. General Provisions

(I) Insofar as Peru establishes a tax which is different from the tax levied on the profits of permanent establishment in accordance with its laws, said tax that is different from the tax on profits can not exceed the limit set forth in the Subparagraph a) of paragraph 2 of Article 10.

(II) It shall be specified that income produced by factoring vehicles shall not be covered within the scope of this Convention, and the domestic laws of each State shall apply.

(III) It shall be specified that the term "person" includes community property and undivided successions.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in Santiago on the eighth day of the month of June of the year two thousand and one, in two original copies; both texts are equally binding.

**FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE:**

**FOR THE GOVERNMENT OF THE REPUBLIC OF PERU:**