

## **2003 Income and Capital Tax Convention and Final Protocol (English Translation)**

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

[TRANSLATION]

The Kingdom of Spain and the Republic of Chile, 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 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, its political subdivisions or local entities, 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 income or capital, including taxes on gains from the alienation of movable or immovable property, taxes on total wages and salaries paid by the enterprises, whether individuals or legal persons, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
  - a) insofar as Spain is concerned:
    - i) the tax on the income of legal persons (Impuesto sobre la renta de personas físicas);
    - ii) corporation tax (impuesto sobre sociedades);
    - iii) the tax on the income of non-residents (impuesto sobre la renta de no residentes), and
    - iv) capital tax (impuesto sobre el patrimonio).
  - a) insofar as Chile is concerned:

the taxes set forth in the "Income Tax Law" (Ley sobre Impuesto a la renta).

4. This Convention shall apply also to any identical or substantially similar taxes and 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 significant changes which have been made in their respective taxation laws at the end of each year.

Chapter II

Definitions

#### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context requires a different interpretation:
  - a) the term "Spain" refers to the territory of the Kingdom of Spain, including the areas beyond its territorial waters over which, in accordance with international law and by virtue of its domestic laws, the Kingdom of Spain has jurisdiction or exercises rights of sovereignty with respect to the sea floor, its subsoil, and water column as well as its natural resources;
  - b) the term "Chile" refers to the territory of the Republic of Chile, including the areas beyond its territorial waters over which, in accordance with international law and by virtue of its domestic laws, the Republic of Chile has jurisdiction or exercises rights of sovereignty with respect to sea floor, its subsoil, and water column as well as its natural resources;
  - c) the terms "Contracting State" or "the other Contracting State" refer to Spain 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 "activity", as used with respect to a company, and the term "business" includes the provision of professional services as well as any other activity of an independent nature.

h) the term "international traffic" refers to any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is solely operated between points located in the other Contracting State;

i) the term "competent authority" refers to:

i) in the case of Spain, the Minister of Finance (Ministro of Hacienda), or his or her authorized representative;

ii) in the case of Chile, the Minister of Finance (Ministro of Hacienda), or his or her authorized representative.

j) the term "national" means:

i) any individual or legal person having the citizenship of a Contracting State.

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 this Convention by a Contracting State at any given point in time, any expression or term not defined therein shall, unless the context requires a different interpretation, have the meaning which it has at that time 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 or her domicile, residence, headquarters, place of establishment or any other criterion of a substantially similar nature and also includes that State itself and any political subdivisions or local entities. This term, however, 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 or her status shall be determined as follows:

a) such person shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him in both States, such person shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (center of vital interests);

b) if the State in which such person has his or her center of vital interests cannot be determined, or if such person has not a permanent home available to him or her in either State, such person shall be deemed to be a resident of the Contracting State in which he or she has an habitual abode;

c) if such person has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;

d) if such person is a national of both States or of 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, the Contracting States shall undertake whatever is possible to resolve the case by mutual agreement. In case the competent authorities of the Contracting States fail to come to an agreement in this respect, said person shall not be entitled to any of the tax benefits or exemptions contemplated in this Convention.

#### **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, and

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

3. The term "permanent establishment" also includes:

a) construction, installation, or assembly works or projects as well as the supervisory activities related therewith, but only as long as the duration of said works, construction projects or activities exceeds six months;

b) the provision of services by an enterprise, including consulting services, through employees or other individuals assigned by the enterprise for that purpose, as long as these activities continue in a Contracting State for a period or periods which, in the aggregate, exceed 183 days within any twelve-month period;

c) the provision of professional services or other activities of an independent nature in a Contracting State by an individual as long as such person is present in a Contracting State for a period or periods which, in the aggregate, exceed 183 days within any twelve-month period;

In calculating the time limits to which this paragraph refers, insofar as the activities that are conducted by an enterprise that is associated with another enterprise as defined by Article 9 are concerned, the period during which the activities are carried out by the enterprise shall be added to that of the associated enterprise as long as the activities of both enterprises are identical or substantially similar.

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 transformation 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 marketing, supplying information, or conducting scientific research for the enterprise, as well as engaging in any other activity 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 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 and which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment in accordance with 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 independent agent, always provided that such persons are acting in the ordinary course of their business and, in their commercial or financial relationships with said enterprises, no conditions are made or imposed which differ from those which would be generally agreed to by independent agents.

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 of the two companies a permanent establishment of the other.

Chapter III

Taxation

### **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 laws of the Contracting State in which the property is situated. Said 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 private 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 income from immovable property of an enterprise.

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be subject to tax 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 subject to tax in the other State but only so much of them as is attributable to such permanent establishment.

2. Pursuant 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. 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.

5. For the purposes of the preceding Paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year after year, unless there are good and sufficient reasons to proceed otherwise.

6. Where profits include items of income that 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 Transport by Sea or Air**

1. Profits derived by 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:

a) the term "profits" includes, in particular:

i) the gross profits derived directly through the operation of ships or aircraft in international traffic, and

ii) the interest on amounts directly generated through the operation of ships or aircraft in international traffic, always provided that said interest is inherently linked with the operation.

b) the term "operation of ships or aircraft" by an enterprise also includes:

i) the chartering or renting of an empty vessel or aircraft;

ii) the renting of containers and related equipment.

always provided such chartering or renting is accessory to the operation of ships or aircraft in international traffic by such enterprise.

2. The provisions of Paragraph 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) one and the same persons participate, whether 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 income 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 subjected to tax accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State, and taxes accordingly, income on which an enterprise of the other Contracting State has been charged to tax in that other Contracting 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 shall make, as long as it agrees thereto, an appropriate adjustment to the amount of tax charged therein on such income. 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, but if the beneficial owner of the dividends is a resident of the other Contracting, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 20 per cent of the capital of the company paying the dividends;

b) 10 per cent of the gross amount of the dividends in all other cases.

This Paragraph does not affect taxation of the company with respect to profits out of which such dividends are paid.

The provisions of this paragraph shall not limit the application of the additional tax to be paid in Chile to the extent to which the first-category tax is deductible against the additional tax.

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 corporate 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, an entrepreneurial activity through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 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 such other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor may such other Contracting State 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, whether as a whole or in part, of profits or income arising in such other State.

6. The provisions of this Convention shall not affect taxation in Chile of a resident in Spain with respect to profits attributable to a permanent establishment situated in Chile, both insofar as the First-Category Tax as well as the additional tax is concerned, always provided that the First-Category Tax is deductible against the additional tax.

### **Article 11 Interest**

1. Interest arising in a Contracting State and which is 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 is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of interest obtained through:

i) loans granted by banks and insurance companies;

ii) bonds and securities which are regularly and substantially traded on a recognized stock exchange;

iii) the sale on credit of machinery and equipment by the beneficial owner, who is the seller of the machinery and equipment, to a buyer;

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

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. The term "interest", however, does not include the income covered by 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship which exists between the payer and the beneficial owner or between both of them and some third party, the amount of the interest exceeds the amount which would have been agreed upon by the debtor and the creditor 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 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 can be subjected to tax in that other State.

2. These royalties, however, may also be 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 can not exceed:

a) 5% of the gross amount of the royalties paid for the use, or the right to use, industrial, commercial, or scientific equipment;

b) 10% 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 cinematograph films or films or tapes and other image and sound reproduction media, any patent, trade mark, design or model, plan, secret formula or process or other intellectual property, information concerning industrial, commercial or scientific know-how as well as for the use or the right to use any industrial, commercial, or scientific equipment.

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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 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 in a Contracting State with respect to which the duty of payment of the royalties arises and which as such incurs the charge thereof, such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship which exists between the payer and the beneficial owner or between both of them and some third party, 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 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, as defined in Article 6 of this Convention, that is situated in the other Contracting State may be subjected to tax 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, including such gains from the alienation of such a permanent establishment (whether alone or together with the whole enterprise of which it is a part), may be subjected to tax 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 seller resides.

4. Gains derived by a resident of a Contracting State from the alienation of shares or other rights representing the assets of a company which is a resident of the other Contracting State can be taxed in such State as long as:

- a) they are the result of the sale of shares more than 50 per cent of the value of which is derived, whether directly or indirectly, from immovable property situated in the other Contracting State, or
- b) the recipient of the gains has held, at any time within a period of twelve months prior to the sale, whether directly or indirectly, shares or other rights representing 20 per cent or more of the capital of such company.

Any other gains obtained by a resident of a Contracting State through the sale of shares or other rights representing the capital of a company residing in the other Contracting State may also be subject to taxation in such other Contracting State, but the tax so charged may not exceed 16 per cent of the amount of the gains.

Any other provisions of this paragraph notwithstanding, capital gains obtained by a pension fund which is a resident of a Contracting State through the sale of shares or other rights representing the capital of a company which is a resident of the other Contracting State shall only be taxed in the first-mentioned Contracting State.

5. Gains from the alienation of elements of property that are different from those mentioned in the preceding Paragraphs shall be taxed in the Contracting State of which the seller is a resident.

#### **Article 14 Income From Dependent Personal Services**

1. Subject to the provisions of Articles 15, 17, and 18, wages, salaries, and similar remuneration received 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. In case the employment is so exercised, such remuneration as is received therefor can be taxed in that other State.

2. Notwithstanding the provisions of Paragraph 1, remuneration obtained 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 not present in the other State for a period or periods exceeding in the aggregate one hundred and eighty-three days during any twelve-month period commencing or ending during 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 which such employer has in the other State.

3. The preceding provisions of this Article notwithstanding, remuneration obtained in respect of employment exercised aboard a ship or aircraft operated in international traffic by a company of a Contracting State may be taxed in that Contracting State.

#### **Article 15 Directors' Fees**

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

#### **Article 16 Artistes and Sportsmen**

1. Notwithstanding the provisions of Articles 7 and 14, 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 an athlete, from his or her personal activities as such exercised in the other Contracting State, may be subjected to tax in that other State.

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

#### **Article 17 Pensions and Support Payments**

1. Pensions that are paid to a resident of a Contracting State shall only be taxable in that State.

2. Support payments and other allowances for food and necessities paid to a resident of a Contracting State shall only be subject to taxation in that State. However, allowances and other allowances for food and necessities paid by a resident of a Contracting State to a resident of the other Contracting State, in case they are not deductible for the payer, shall not be subject to taxation in the Contracting State of the recipient of the income.

#### **Article 18 Public Functions**

1. a) Wages, salaries and other similar remuneration, other than pensions, paid by a Contracting State or by one of its political subdivisions or local entities to an individual in respect of services rendered to that State, political subdivision or local entity thereof shall be taxable only in that State.
- b) However, such wages, salaries and other similar 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 Articles 14, 15, and 16 shall apply to wages, salaries and other similar remuneration and pensions paid within the scope of services rendered in connection with an entrepreneurial activity carried on by a Contracting State or one its political subdivisions or local entities.

### **Article 19 Students**

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 solely for the purpose of his education or practical training receives for the purpose of his maintenance, education or practical training shall not be taxed in that State, always provided that such payments arise from sources outside that State.

### **Article 20 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, that are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of Paragraph 1 above shall not apply to income, other than income from immovable property as defined in Paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State through a permanent establishment situated in such other State, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 shall apply.
3. The provisions of Paragraphs 1 and 2 notwithstanding, elements of income of a resident of a Contracting State that have not been mentioned in the preceding articles of this Convention and which arise in the other Contracting State may also be taxed in that other State.

#### Chapter IV

#### Taxation of Capital

### **Article 21 Capital**

1. Capital represented by immovable property that is held by a resident of a Contracting State and which is located in the other Contracting State may be taxed in such 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 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 only be taxable in that State.

#### Chapter V

#### Methods for the Elimination of Double Taxation

### **Article 22 Elimination of Double Taxation**

1. In Spain, double taxation shall be avoided as follows:
    - a) Where a resident of Spain obtains income or holds elements of capital which, in accordance with the provisions of this Convention, may be subjected to tax in Chile, Spain shall allow, in accordance with the provisions or Spanish law:
      - i) a deduction on the tax on income actually paid by such resident, in an amount that is equivalent to that of the income tax paid in Chile, if applicable, after deducting the First-Category Tax;
      - ii) a deduction on the tax on capital actually paid by such resident, in an amount that is equivalent to that of the tax paid in Chile on such elements of capital;
      - iii) a deduction on the income tax actually paid by the company distributing the dividends pertaining to the profits out of which such dividends are paid (First-Category Tax)
- Such deduction, however, may not exceed that part of the tax on income or tax on capital, calculated prior to such deduction, which corresponds to the income or elements of capital which may be subjected to tax in Chile.

b) Where, in accordance with any provision of this Convention, income obtained by a resident of Spain, or the capital held by such resident, is exempt from taxes in Spain, Spain may, however, include the exempted income or capital in calculating the amount of tax on the remaining income or capital of such resident.

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

a) residents of Chile who obtain income which, in accordance with the provisions of this Convention, can be subjected to taxation in Spain, can deduct from the Chilean taxes corresponding to such income the taxes which were levied in Spain, in accordance with the applicable provisions of Chilean law. This paragraph shall apply to all types of income covered under 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 is exempt from taxes in Chile, Chile shall, however, be entitled to include the exempted income or capital in calculating the amount of tax on the remaining income or capital of such resident.

Chapter VI

Miscellaneous Provisions

### **Article 23 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. The provisions of Article 1 hereof notwithstanding, this present provisions shall also apply to persons who are not residents of one or of neither 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision may not 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.

3. 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 disbursements 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. Accordingly, liabilities assumed by a company of a Contracting State with respect to a resident of the other Contracting State shall be deductible in determining the capital that is subject to tax of such company under the same conditions as if such liabilities had been assumed with respect to a resident of the first-mentioned State.

4. Enterprises being 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 enterprises of the first-mentioned State are or may be subjected.

5. For the purposes of this Article, the term "taxation" refers to the taxes covered by this Convention.

### **Article 24 Mutual Agreement Procedure**

1. In the event that a person believes that the actions of one or both of the Contracting States result or will result for him or her in taxation that is not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided for by the domestic law of those States, submit his case to the competent authority of the Contracting State of which he or she is a resident or, if such case comes under Paragraph 1 of Article 23, to the competent authority of the Contracting State of which he or she is a national. The case must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if such competent authority 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, in order to avoid taxation which is not in accordance with this Convention.

3. The competent authorities of the Contracting States shall to everything in their power to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this 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. To achieve this, the competent authorities of the Contracting States may communicate directly with each other, including within the scope of a commission consisting of the competent authorities or their representatives.

### **Article 25 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. The exchange of information shall not be 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 this 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 carry out 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 the information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request refers in the same manner as if its own taxes were concerned, even in case such other State does not require such information at that point in time.

### **Article 26 Members of Diplomatic Missions and Consular Posts**

No provision of this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international Law or by virtue of the provisions of special agreements.

#### Chapter VII

#### Final Provisions

### **Article 27 Entry Into Force**

1. The governments of the Contracting States shall notify each other through diplomatic channels as soon as the domestic legal procedures for the entry into force of this Convention have been completed. This Convention shall come into force and effect on the date on which the last of such notices is received.

2. The provisions of the Convention shall apply:

a) in Chile,

with respect to taxes on income which is obtained and sums that are paid, credited, provided or accounted for as expenditures, starting on the first day of the month of January of the calendar year immediately following that during which the Convention comes into force and effect; and

b) in Spain,

with respect to taxes on income or capital pertaining to the fiscal year commencing on or after the first day of January of the calendar year following that during which this Convention came into force and effect.

3. The existing Convention between Chile and Spain concerning the avoidance of double taxation with respect to taxes on income, insofar as taxation of air traffic is concerned, concluded by means of the exchange of notes on December 28, 1976, shall hereinafter be repealed, and the provisions of this Convention shall apply.

### **Article 28 Termination**

This Convention shall remain in force and effect indefinitely, but either one of the Contracting Parties can, as soon as five (5) years have elapsed from the date of entry into force of this Convention and no later than by June 30 of each year, notify the other Contracting State in writing and through diplomatic channels that it wishes to terminate the same:

2. The provisions of the Convention shall cease to be in effect:

a) in Chile,

with respect to taxes on income which is obtained and sums that are paid, credited, provided or accounted for as expenditures, starting on the first day of the month of January of the immediately following calendar year;

b) in Spain,

with respect to taxes on income or capital pertaining to the fiscal year commencing on or after the first day of January of the calendar year following that during which the termination of this Convention is communicated

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

Done in two copies in Madrid on the 7th day of the month of July of 2003; both texts shall be equally binding.

**FOR THE KINGDOM OF SPAIN:**

**FOR THE REPUBLIC OF CHILE:**

### **PROTOCOL**

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

I. This Convention shall not apply to the "Foreign Capital Investment Fund" regulated by Chilean Law N° 18.657 or any other substantially similar laws that are enacted in Chile after the signing of this Convention. Taxation of the distributions and transfers of said funds shall be governed by the provisions of the aforementioned laws.

II. For the purposes of Paragraph 3 of Article XXII (Consultation) of the Acuerdo General sobre Comercio de Servicios (General Service Trade Agreement), the Contracting States agree that, without prejudice to that Paragraph, any dispute between them as to whether any measure comes within the scope of that Convention can be submitted to the Consejo de Comercio de Servicios (Service Trade Committee) in accordance with the stipulations contained in said Paragraph, although only with the consent of both Contracting States. Any question regarding the interpretation of this Paragraph shall be resolved in conformity with Paragraph 3 of Article 24 or, in the event that no agreement is reached by using this procedure, in accordance with any other procedure agreed upon by both Contracting States.

III. Nothing contained in this Convention shall affect the application of the current provisions of D.L. 600 (Foreign Investment Statute) of Chilean law, in the version in effect on the date on which this Convention is signed and even in case such provisions may have been modified without changing its general principle.

IV. The contributions that are made during a given year, for services rendered during that year and paid by, or on behalf 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 must, for a period which must not exceed a total of 60 months, be treated in the first-mentioned State in the same manner as if it were a contribution paid to the pension system recognized for tax purposes in that State, as long as the following conditions are met:

a) said individual was participating in the pension plan for a period of time which would have terminated immediately prior to such individual 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 the pension plan is equivalent, generally speaking, to a pension plan that is recognized for tax purposes by that State.

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

V. Considering that the main purpose of this Convention is to avoid international double taxation, the Contracting States agree that, in the event that the provisions of this Convention are used in such a manner as to obtain profits that are neither contemplated nor provided for hereunder, the competent authorities of the Contracting States shall be under obligation, in conformity with the mutual agreement procedure set forth in Article 24, to recommend specific modifications to the Convention. The Contracting States furthermore agree that any such recommendations shall be considered and discussed in an expedient manner with a view to modifying the Convention as necessary.

VI. Ad. Article 5

Insofar as activities pertaining to the exploration of natural resources are concerned, it shall be understood that Paragraph 3, Letter b) of Article 5 shall apply to the extent that such services are not provided by the person to whom such license of exploration or operation has been granted.

VII. Ad. Article 7

Without prejudice to Article 24, Paragraph 2, it shall be understood that the provisions of Paragraph 3 of Article 7 shall only apply in case 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.

VIII. Ad. Article 10, Paragraphs 2 and 6

Insofar as the application of the additional tax in conformity with the provisions of Chilean law is concerned, it is agreed that, in case:

i) the First-Category Tax becomes no longer totally deductible for the determination of the amount of additional tax to be paid; or

ii) the rate of the additional tax imposed on a resident of Spain, as defined in Article 4 of this Convention, exceeds 42 per cent, the Contracting States shall consult with each other in order to modify this Convention in order to reestablish the balance of profits of the same.

IX. Ad. Articles 10, 11, and 12

The provisions of Articles 10, 11, and 12 shall not apply in the event that the main purpose or one of the main purposes of any person involved in the created or attribution of the right or debt-claim in conjunction with which the dividends, interest or royalties are paid is to obtain the benefits of these Articles as a result of such creation or attribution.

X. Ad. Article 11 (Interest) and Article 12 (Royalties)

It is herewith agreed that, in case that, within the scope of any agreement or convention between Chile and a member state of the Organization for Economic Cooperation and Development which comes into effect after the date of entry into force of this Convention, it is agreed that Chile shall exempt from taxes interest and royalties (whether in general or limited to any special category of interest or royalties) arising in Chile, or limit the tax rate that is levied on such interest or royalties (whether in general or limited to any special category of interest or royalties) to a rate which is lower than that provided for in Paragraph 2) of Article 11 or in Paragraph 2) of Article 12 of this Convention, such exemption or reduced rate shall automatically apply to interest or royalties arising in Chile whose beneficial owner is a resident of Spain and to interest or royalties arising in Spain whose beneficial owner is a resident of Chile, pursuant to the same terms as if such exemption or reduced rate had been specified in those Paragraphs. The competent authority of Chile shall proceed to inform the competent authority of Spain without delay that the conditions for the application of this Paragraph have been met.

XI. Ad. Article 13

In case the recipient of the gain to which Paragraph 4, Letter b), of Article 13 refers has held the shares or other rights which are sold for a period of more than twelve months and always provided that the recipient does not habitually engage in the sale of shares, the tax levied may not exceed 16 per cent of the gain.

In all cases, it shall be understood that a recipient does not habitually engage in the sale of shares as long as the interest that is held directly represents 50 per cent or more of the capital of the company in which the interest is held.

XII. During negotiations, it was discovered that, insofar as income arising in a third country is concerned which enters Chile and is thereafter transferred to Spain, in some cases, double taxation is not fully avoided, even though a Convention has been entered into between both countries. The contracting parties are aware of the difficulties in resolving this issue through a bilateral Convention between them and herewith state their intention to continue analyzing this matter in an attempt to identify a possible solution thereof.

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

Done in two copies in Madrid on the 7th day of the month of July of 2003; both texts shall be equally binding.

**FOR THE KINGDOM OF SPAIN:**

**FOR THE REPUBLIC OF CHILE:**