

1999 Income and Capital Tax Convention and Final Protocol (English Translation)

Signed date: August 26, 1999

In force date: October 24, 2003

Effective date: January 1, 2004. See Article 29.

Status: In Force

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

[TRANSLATION]

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 by a Contracting State, irrespective of the manner in which they are levied.
2. All taxes imposed on total income or capital, or on any part thereof, including taxes on gains from the alienation of movable or immovable property as well as taxes on capital appreciation, shall be regarded as taxes on income and capital.
3. The existing taxes to which this Convention shall apply are in particular:
 - (a) in the Republic of Chile, the taxes specified in the "Ley sobre Impuesto a la Renta" (Income Tax Act), (hereinafter referred to as "Chilean Taxes") and
 - (b) in the Republic of Ecuador:
 - (i) los impuestos sobre la renta de las personas naturales (tax on income of natural persons);
 - (ii) los impuestos sobre la renta de las sociedades y cualquier otra entidad similar (taxes on income of corporations and other similar entities) (hereinafter referred to as "Ecuadorian Taxes").
4. The Convention shall also apply to any identical or substantially similar capital taxes imposed after the date of signature of the Convention in addition to, or in place of, existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant change made in their respective taxation laws.

Chapter II

Definitions

Article 3 General Definitions

1. For purposes of this Convention, unless the context implies a different interpretation:
 - (a) the term "Contracting State" or "the other Contracting State" refers to the Republic of Chile or the Republic of Ecuador according to the context herewith, hereinafter referred to as "Chile" and "Ecuador", respectively.
 - (b) the term "person" refers to any natural person, company or group of people.
 - (c) the term "company" means any body corporate or any entity treated as a body corporate for tax purposes;
 - (d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (e) the term "international commerce" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the transportation is carried out solely between two points located in the other Contracting State;
 - (f) the term "Competent Authority" refers to:
 - (i) in the case of Chile, the Minister of Finance or his legal representative.
 - (ii) in the case of Ecuador, the Executive Director of the Internal Revenue Service.
 - (g) the term "national" refers to:
 - (i) all individuals possessing the nationality of a Contracting State, or
 - (ii) all bodies corporate 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 time, any term not defined therein shall, unless the context otherwise implies, 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 tax legislation shall prevail over any meaning attributed to this term by other legal entities of that State.

Article 4 The Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of domicile, residence, management headquarters, place of establishment, or any other criterion of a similar nature to include the State itself or any political subdivision or local authority thereof. This term, however, does not include persons liable to taxation in that State solely in regard to income from sources in said State, or to capital located therein.

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

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

(b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has a habitual abode;

(c) if he has a 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) if he 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 a natural person is a resident of both Contracting States, such person shall be deemed to be a resident of the State only of which such person is a national. In case such person is a national of both Contracting States or of neither of them, the Contracting States shall do everything in their power to resolve the case by mutual agreement. In case no mutual agreement is reached by the competent authorities of the Contracting States, said person shall not be entitled to claim any of the tax benefits or exemptions referred to 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) management headquarters;

(b) branch offices;

(c) offices;

(d) factories;

(e) shops, and

(f) mines, oil or gas wells, quarries or any other place of exploration or extraction of natural resources.

3. The term "permanent establishment" furthermore includes:

(a) a construction work or project, installation or assembly site or project and supervisory activities related thereto, but only when the duration of such work, construction project or activity exceeds six months, and

(b) the provision of services by an enterprise, including consulting services, carried out by employees or other natural persons in charge thereof, but only when such activities are carried out in the country for a period or periods which in the aggregate exceed six months within any twelve-month period.

For the purpose of calculating the time limits to which this Paragraph refers, the activities carried out by an enterprise associated with another enterprise as defined in Article 9 shall be added, during the period in which they are carried out, to the activities of the enterprise with which it is associated if the activities of both enterprises are identical or substantially similar.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not include:

(a) the use of facilities solely for 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 storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for processing by another enterprise;

(d) the maintenance of a fixed place of business solely for purchasing goods or merchandise or of collecting information for the enterprise;

(e) the maintenance of a fixed place of business solely for advertising, providing information or conducting scientific research or engaging in any other similar activity of a preparatory or auxiliary character for the enterprise;

5. Notwithstanding the provisions of Paragraphs 1 and 2, whenever a person - other than an independent agent to whom Paragraph 7 applies - is acting on behalf of an enterprise, and who holds and habitually exercises in a Contracting State the power to sign contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect to 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 under the provisions of that Paragraph.

6. Notwithstanding the above provisions of this Article, an insurance enterprise, resident of a Contracting State, except in the case of reinsurance, shall be deemed to maintain a permanent establishment in the other Contracting State if it collects premiums in the territory of the other State, or if it insures risks therein by means of a representative other than an independent agent as defined by Paragraph 7.

7. 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, provided that such persons act in the ordinary course of their business, and that within their commercial or financial relations with said enterprises no accepted or imposed terms are agreed upon or imposed that differ from those generally agreed to by independent agents.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company that 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 make either company a permanent establishment of the other.

Chapter III

Taxation of Income

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention, the term "immovable property" shall have the meaning it has under the law of the Contracting State in which the property in question 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 general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, springs and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of Paragraph 1 shall apply to income derived from the direct use, leasing, or use in any other form of immovable property.

4. The provisions of Paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the rendering 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 is carrying on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise is carrying on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only that part of them such as is attributable to the permanent establishment.

2. Subject to the provisions of Paragraph 3, whenever an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, in each Contracting State the permanent establishment shall be attributed with 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, expenses incurred for the purposes of the permanent establishment shall be allowed as deductions, 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 is 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 among its various parts, nothing in Paragraph 2 shall preclude that Contracting State from determining taxable profits on such a basis; 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 solely by the fact that it purchases 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. Whenever profits include items of income dealt with separately in other Articles of this Convention, the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Maritime and Air Transport

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

2. For the purposes of this Article:

(a) the term "profits" includes:

(i) gross income derived directly from the operation of ships or aircraft in international commerce, and
(ii) interest on amounts generated directly by the operation of ships or aircraft in international commerce, as long as such interest is related to the operation.

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

(i) chartering or leasing of an empty ship or aircraft;

(ii) leasing of containers and related equipment,

provided that such chartering or renting is related to the operation of ships or aircraft in international commerce by that enterprise.

3. The provisions of Paragraph 1 shall also apply to profits from the participation in a pool, a joint business or a company with international scope.

Article 9 Associated Enterprises

1. Whenever

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 the two enterprises are linked in their commercial or financial relations by accepted or imposed conditions that differ from those which would be agreed upon by independent enterprises, any income which, were it not for these conditions, would have accrued to one of the enterprises, but which has failed to do so by reason of these conditions, may be included in the income of that enterprise and taxed accordingly.

2. Whenever a Contracting State includes in the income of an enterprise of that State, and accordingly taxes, income on which an enterprise of the other Contracting State has been taxed in that other State, and the income so included is income which would have accrued to the enterprise of the first-mentioned State if the conditions agreed upon by the two enterprises were those that would have been agreed upon by independent enterprises, then that other State shall correspondingly adjust the amount of the tax levied on that income, if it deems such action justifiable. In determining such adjustment, due regard shall be given 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. Such dividends may also be taxed in the Contracting State wherein the company paying the dividends resides and according to the laws of that State; however, if the beneficiary of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 percent of the gross amount of the dividends if the beneficiary is a company that holds directly or indirectly at least 25 percent of the voting shares of the company paying the dividends;
- b) 15 percent 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. For the purposes of this Paragraph, the term "taxation of the company" covers, in the case of Chile, both the tax of the first category as well as the additional tax as long as the tax of the first category is deductible from the additional tax.

3. The term "dividends" as used in this Article means income from shares or other rights, except for creditor's rights, that allow for profit-sharing, as well as income from other rights subject to the same taxation treatment as income from shares based on the laws of the State wherein the distributing company is resident.

4. The provisions of Paragraphs 1 and 2 of this Article shall not apply if the beneficiary of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or provides in this other State independent personal services from a fixed base situated therein, and the shareholding in respect of which the dividends are paid is actually connected to the permanent establishment or fixed base. In such instances the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Whenever a company that 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 dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the shareholding 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 may it levy 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 that 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 beneficiary is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds and debentures, as well as any other income which the laws of the State in which the interest arises treat similarly to amounts loaned. The term "interest", however, does not include income covered under Article 10.

4. The provisions of Paragraphs 1 and 2 shall not apply if the beneficiary of the interest, resident of a Contracting State, carries on a business activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or provides 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 therewith. 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 debtor is a resident of that State. Whenever, however, the person paying the interest, whether a resident of a Contracting State or not, maintains in a Contracting State a permanent establishment or 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. Whenever, by reason of a special relationship between the debtor and the beneficiary or between both of them and some other person, the amount of the interest, taking into account the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the debtor and the beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the latter amount. In such case, the excess may be taxable according to the laws of each Contracting State, taking into account the other provisions of this Convention.

7. The provisions of the Article shall not apply if the purpose or one of the main purposes of any person associated with the creation or assignment of the debt-claim for which the interest is paid is to take advantage of the provisions of this present Article by such creation or assignment.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxable 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 is a resident of the other Contracting State, the tax thus levied may not exceed:
 - (a) 10 percent of the gross amount of the royalties for the use, or the right to use, industrial, commercial, or scientific equipment;
 - (b) 15 percent 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 consideration for the use of, or right to use, any copyright of literary, artistic or scientific work, including cinematographic films, or films, tapes, or other media for the reproduction of images and sound, any patent, trade mark, design or model, plan, secret formula or process or other intellectual property (including the right of developers of plant varieties) as well as for the use or 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 of this Article shall not apply if the beneficiary of the royalties, resident of a Contracting State, carries on business activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or provides independent personal services from a fixed base situated therein, and the property or right or in respect of which the royalties are paid is actually connected to such a permanent establishment or fixed base. In such instances the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties are deemed to arise in a Contracting State whenever the payer is a resident of that State. However, whenever the payer of the royalties, whether a resident of a Contracting State or not, maintains in a Contracting State a permanent establishment or a fixed base that is liable for the payment thereof, these royalties are deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Whenever, by reason of a special relationship between the payer and the beneficiary, or between both of them and an outside party, the amount of the royalties, taking into account the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the latter amount. In such case, the excess may remain taxable according to the laws of each Contracting State, taking into account 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 associated with the creation or assignment of the rights for which the royalties are paid is to take advantage of the provisions of this Article by such creation or assignment.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed only in the latter State.
2. Gains from the alienation of movable property forming part of the assets of a permanent establishment which an enterprise of a Contracting State maintains in the other Contracting State, or of movable property pertaining to a fixed base maintained by a resident of a Contracting State in the other Contracting State for the purpose of providing independent personal services, including gains from the alienation of such permanent establishment (alone or with the whole enterprise of which it forms 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 commerce or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the alienator is resident.
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 located in the other Contracting State may be taxable 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 resident of a Contracting State from the providing of professional services or other activities of an independent character shall be taxable only in that State, except under the following circumstances, in which case such income can also be taxed in the other Contracting State:

- a) if the interested party habitually maintains a fixed base in the other Contracting State in order to carry out his activities; in this case, only the part of the income attributable to that fixed base is taxable in the other Contracting State; or
 - b) if his stay in the other Contracting State extends over a period or periods whose total equals or exceeds 183 days during any twelve-month period. In this case, only the part of the income derived from the activity exercised in that other Contracting State is taxable in that other Contracting State.
2. The term "professional services" includes in particular independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, attorneys, engineers, architects, dentists, accountants, and auditors.

Article 15 Dependent Personal Services

1. Without prejudice to the provisions of Articles 16, 18, and 19, salaries, wages and other remuneration derived from employment by a resident of a Contracting State 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 from employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding a total of 183 days during any twelve-month period commencing or ending during the respective fiscal year, and
 - b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State, and
 - c) the remuneration does not proceed from a permanent establishment or a fixed base which a person maintains in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State from employment exercised aboard a ship or aircraft operated in international commerce may only be taxed in that Contracting State.

Article 16 Directors' Fees

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

Article 17 Artists 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 performer, or a musician or sportsman, from personal activities exercised in the other Contracting State, may be taxed in that other State. The income to which this Paragraph refers includes income which said resident obtains through any personal activity carried out in the other Contracting State that is related to his reputation as an entertainer or sportsman.
2. Notwithstanding the provisions of Articles 7, 14 and 15, where income derived from personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18 Pensions

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

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 a natural person concerning services rendered to that State, subdivision or authority 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 natural person 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 15, 16, and 17 shall apply to wages, salaries, and other similar remuneration paid for services rendered in connection with business activity carried on by a Contracting State, political subdivision or local authority thereof.

Article 20 Students

Payments for the purpose of upkeep, education or practical training, made to a student, apprentice or intern who, immediately before coming to a Contracting State, is or was a resident of the other Contracting State and who is present in the first-mentioned State solely for reasons of education or

practical training, shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21 Other Income

Items of income of a resident of a Contracting State arising in the other Contracting State not dealt with in the foregoing Articles of this Convention can also be taxed in that other Contracting State.

Chapter VI

Taxation of Capital

Article 22 Capital

1. Capital represented by immovable property owned by a resident of a Contracting State and located in the other Contracting State may be taxed in such other State.
2. Capital represented by movable property forming part of the assets 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 by a company of a Contracting State in international commerce as well as movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. All other elements of capital owned by a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for Elimination of Double Taxation

Article 23 Assessment Method

1. In the case of Chile, double taxation shall be avoided as follows:
 - (a) residents of Chile who derive income which, in accordance with the provisions of this Convention, may be taxed in Ecuador, shall be entitled to deduct the taxes applied in Ecuador from the corresponding Chilean taxes, in accordance with the applicable regulations of Chilean legislation. This Paragraph shall also apply to income referred to in Articles 6 and 11; and
 - (b) whenever, in accordance with any provision of this Convention, income derived by a resident of Chile or the capital such resident owns is exempt from tax in Chile, Chile may nonetheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
2. In the case of Ecuador, double taxation shall be avoided as follows: whenever a resident of Ecuador derives income or owns items of capital that can be taxed in Chile, in accordance with the provisions of this Convention, Ecuador shall deduct:
 - (a) from the tax levied on the income of such resident, an amount equal to the income tax paid in Chile, and
 - (b) from the tax levied on the capital of such resident, an amount equal to the capital tax paid in Chile.

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 obligation thereto related that is not required or more burdensome than the taxation and related obligations to which nationals of that other State in the same circumstances are or may be subjected, especially in terms of residence.
2. Taxation levied on permanent establishments such as an enterprise of a Contracting State may maintain in the other Contracting State shall not be less favorable in that other State than taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal tax deductions, reliefs or reductions on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of Article 9, Paragraph 7 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.
5. Enterprises of a Contracting State, whose capital 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 obligation thereto related that is not required of other similar enterprises of this State or that is more burdensome than the taxation and related obligations to which these enterprises are or may be subjected.

6. For the purpose of this present Article, the term "taxation" refers to taxes covered under this Convention.

Article 25 Mutual Agreement Procedure

1. Whenever a person considers that the actions of one or both 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 it deems the objection to be justified and it is unable to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, for the purpose of avoiding taxation that is not in accordance with this 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. 5. In case a problem or doubt arises regarding the interpretation or application of this Convention which can not be resolved by the competent authorities of the Contracting States, the case can, as long as the competent authorities agree, be submitted for arbitration. The procedure shall be agreed to between the Contracting States by means of notes to be exchanged through diplomatic channels. The arbitration award for a particular case, in accordance with the procedure agreed upon by the parties, shall be binding for both States for that specific case but shall have no retroactive effect.

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. 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, entrusted with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes, and 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 its laws and administrative practices, or those of the other Contracting State;

b) to supply information not obtainable under its laws or in its normal course of administration, or those of the other Contracting State;

c) to supply information that would disclose any trade, business, industrial, commercial or professional secrets or trade processes or information, the disclosure of which would be contrary to public order.

3. Whenever information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall do everything in its power to obtain the information to which the request pertains in the same manner as any of its own requests, regardless of whether that other State does not need such information at that time or not. Whenever specifically requested to do so by the competent authority of a Contracting State, the competent authority of the other Contracting State shall do everything in its power to supply the information to which this present Article refers in the required form, which may be in the form of statements of witnesses and copies of original documents and documents without amendments (including books, papers, statements, records, reports, or written documents) to the same extent as such statements and documents can be obtained, in accordance with the laws and administrative practice of that other Contracting State with respect to its own taxes.

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 by virtue of the provisions of special agreements.

Article 28 Miscellaneous Provisions

1. Nothing in this Convention shall preclude the application of the domestic laws of either of the Contracting States in terms of taxation of income, profits, dividends, gains or remittances of investment institutions or funds of any type, including investment or pension funds and their participants, who are residents of the other Contracting State, as long as such income is not subject to taxation in accordance with the provisions of this Convention.
2. Nothing in this present Convention shall affect the application of the current provisions of Decree-Law 600 (Foreign Investment Statute) under Chilean law, as in effect at the date on which this Convention is signed and such as it may be amended without altering its general principle.
3. Whereas the main goal 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 not contemplated nor intended hereunder, the competent authorities of the Contracting States shall, in accordance with the procedure of mutual agreement described in Article 25, recommend specific changes to the Convention. The Contracting States furthermore agree that each of these recommendations shall be considered and discussed in an expedient manner with a view to modifying the Convention to the extent that such may be necessary.

Chapter VII

Final Provisions

Article 29 Entry Into Force

1. The Contracting States shall notify each other through diplomatic channels as soon as the constitutional formalities that are necessary for the Convention to enter into force have been finalized. This Convention shall enter into effect on the date on which the last notification is received.
2. The provisions of the Convention shall apply:
 - a) in Chile: to taxes on income received and sums paid, credited, made available or entered on the books as expenses, as well as tax on capital, from the first day of the month of January of the calendar year immediately following the year during which the Convention enters into effect;
 - b) in Ecuador: to taxes on income received and sums paid, credited, made available or entered on the books as expenses as well as tax on capital, from the first day of the month of January of the calendar year immediately following the year during which the Convention enters into effect.

Article 30 Termination

1. This Convention shall remain in force without limitation of duration. However, either Contracting State can terminate this Convention by providing a written notice of termination through diplomatic channels no later than June 30 of each calendar year.
2. The provisions of the Convention shall cease to apply:
 - a) in Chile: to taxes on income received and sums paid, credited, made available or entered on the books as expenses as well as tax on capital, from the first day of the month of January of the immediately following calendar year;
 - b) in Ecuador: to taxes on income received and sums paid, credited, made available or entered on the books as expenses as well as tax on capital, from 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 Quito on the twenty-sixth day of the month of August of nineteen hundred and ninety-nine, in two copies in the Spanish language, both versions being equally authentic.

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

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

1. With reference to Article 4 With respect to Paragraph 1 of Article 4 of this Convention, the companies established under the laws of a Contracting State shall not be considered residents if the tax regulations of said State specify that income from a foreign source shall not be subject to tax. The

forementioned provision shall not apply to a natural person who during his first years of residence in Chile is not taxed on his income from a foreign source.

2. With reference to Article 7

(a) The permanent establishment must deal, in the manner indicated in Paragraph 2 of Article 7 of this Convention, with all enterprises with which the enterprise of which it is a permanent establishment is associated, pursuant to the terms of Paragraph 1 of Article 9 of this Convention.

(b) It is 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. In particular, any amounts paid by the permanent establishment (except for reimbursement of actual expenses) to the parent company of the enterprise or to any of its other subsidiaries in terms of royalties, fees or similar payments in consideration of the right to use patents or other rights, as commissions or other charges, for specific services rendered or for management or, except in the case of a bank, as interest on funds loaned to the permanent establishment, shall not be deductible.

3. With reference to Article 11 In the event that after the date on which this Convention is signed, Chile enters into an Agreement or Convention with another State pursuant to which Chile grants a tax rate on interest that is lower or preferential compared to that proposed in this Convention with respect to such income, said lower or preferential rate shall automatically apply, for the purposes of Paragraph 2 of Article 11, under the same conditions for purposes of this Convention as of the date on which the provisions of said new Agreement or Convention are applicable, depending on the case.

4. With reference to Article 12 In the event that after the date on which this present Convention is signed, Chile enters into an Agreement or Convention with another State, based on which Chile grants a tax rate on royalties that is lower than that proposed in this present Convention with respect to such income, said lower rate shall automatically apply, for the purposes of Paragraph 2 of Article 12, under the same conditions for purposes of this Convention as of the date on which the provisions of said new Agreement or Convention are applicable, depending on the case. This lower rate, however, must not be lower than 10 percent.

5. With reference to Article 24 The 30 percent rate to which Article 31, Number 12 of the Ley de la Renta de Chile (Chilean Income Act) refers shall be replaced by the 15 percent rate for the beneficiaries of royalty payments who reside in Ecuador.

6. With reference to Article 24 Nothing in the provisions contained in Article 24 of the Convention shall affect the application, renewal, or modification of any provision existing at the time the Convention is signed that differs from the provisions in said Article.

7. Nothing in this Convention shall affect the taxation in Chile of a company that is a resident in Ecuador insofar as the profits attributable to a permanent establishment of this company situated in Chile are concerned, in terms of the tax of the first category as well as the additional tax, as long as the tax of the first category is deductible from the additional tax.

This Paragraph shall also apply to Ecuador, in case Ecuador should eventually implement integrated tax regulations similar to those in effect in Chile at the time this Convention is signed, which must include a comprehensive credit for income tax against the withholding tax applicable to a remittance. In witness whereof the undersigned, duly authorized to that effect, have signed this Protocol.

Executed in Quito on the twenty-sixth day of the month of August of nineteen hundred and ninety-nine, in two copies in the Spanish language, each version being equally authentic.