

The Department of State refers the Embassy of Chile to the Convention and Protocol signed today between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital (the “Convention”) and confirms on behalf of the Government of the United States the following understandings reached between our two Governments:

1. With respect to subparagraph d) of paragraph 1 of Article 3 (General Definitions), the term “person” includes an estate, trust or partnership.
2. With respect to subparagraph f) of paragraph 1 of Article 3 (General Definitions), the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State.
3. With respect to paragraph 1 of Article 4 (Residence), the term “resident of a Contracting State” does not include a person who is liable to tax in a Contracting State only on profits attributable to a permanent establishment in that State.
4. With respect to Article 10 (Dividends) and Article 13 (Capital Gains),

Chile has an integrated tax system pursuant to which it collects a total 35 percent tax on business profits imposed at two levels as follows: companies resident in Chile are subject to the First Category Tax at a rate of 17 percent on business profits, and non-resident shareholders are subject to the Additional Tax at a rate of 35 percent with a credit for the First Category Tax paid. Furthermore, Chile has retained its taxing right through the application of the Additional Tax on non-residents in all of its bilateral tax treaties.

The provisions of paragraphs 5 and 7 of Article 13 and subparagraph a) of paragraph 12 of the Protocol (regarding Article 10) reflect the unique operation of Chile's integrated tax system and are intended to prevent the avoidance of the Additional Tax. Accordingly, if in the future Chile's integrated tax system is modified as described in either subparagraph b) of paragraph 12 or in paragraph 16 of the Protocol, the provisions of paragraphs 5 and 7 of Article 13 or subparagraph a) of paragraph 12 of the Protocol (as the case may be) shall not apply, and the right of the source country to tax will be limited by subparagraph b) of paragraph 12 of the Protocol in the case of dividends, and paragraph 16 of the Protocol in the case of capital gains.

5. With respect to Article 14 (Independent Personal Services), the term “performed in that other State” does not mean “received in that other State.”

6. With respect to Article 26 (Mutual Agreement Procedure), the competent authorities of the Contracting States, through consultations, shall develop appropriate bilateral procedures, conditions, methods, and techniques for the implementation of the mutual agreement procedure provided for in this Article. Each competent authority may, in addition, develop unilateral procedures to facilitate such bilateral implementation of the mutual agreement procedure. For guidance in developing such bilateral implementation, the competent authorities will refer to the Best Practices identified in the OECD Manual on Effective Mutual Agreement Procedures.

7. The competent authority of a Contracting State shall be notified by the competent authority of the other Contracting State when that other Contracting State has obtained the consent of the persons to be interviewed by officials of that other Contracting State or for such officials to examine books and records in the possession or control of such consenting persons. Following such interview or examination of books and records, the other Contracting State may make a request under Article 27 (Exchange of Information) for information or documents related to such interview or examination.

If the above confirmation is acceptable to the Government of the Republic of Chile, the Department of State proposes that this Note and the Embassy's Note in

reply reflecting such acceptance shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Convention and Protocol.

Department of State,

Washington, February 4, 2010.

A handwritten signature in black ink, appearing to be "A. H.", located to the right of the typed text.