

Update Legal Alert: US Senate Approves Tax Treaty with Chile



June 23, 2023 | By [Amory Heine](#), [Francisco Argüello](#), [Agustín Buzeta](#), and [Matthew Appel](#)

*** Update: On December 19, 2023, the United States notified Chile that it had completed the procedures for the entry into force of the Double Taxation Avoidance Treaty ("DTT") between Chile and the United States.

With this notification, the ratification procedures in Chile and the United States have been completed, so the DTT will be applicable as of 2024. For Withholding Taxes levied by the Source State of an item of income, the DTT will apply to amounts paid on or after February 1, 2024. For other taxes, it will apply for tax periods beginning on or after January 1, 2024. ***

On June 22, 2023, the United States Senate approved the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital ("**DTA**") between Chile and the United States ("**U.S.**"). When this DTA comes into force, there will be several benefits available for residents of both countries that encourage investment flows and the development of cross-border activities. Below is a summary of the main benefits:

Interest – Reduced Rates: Currently, interest paid by a debtor resident in Chile to a creditor resident in the U.S. is subject to a 35% Withholding Tax ("**WHT**") in Chile. On the other hand, when the debtor is a resident of the U.S. and the creditor is a resident of Chile, the statutory rate is 30%.

The DTA allows the beneficial owner of the interest to claim a reduced 15% WHT rate for the first five years after it comes into

force, and a reduced 10% rate afterwards, encouraging debt financing between the two countries. There is also a preferential rate of 4% available to foreign banks, financial institutions, and foreign insurance companies that satisfy certain conditions.

Dividends – Reduced Rates: Dividends paid by a U.S. resident company to a Chilean resident may qualify for reduced WHT rates of 5% or 15%, which is a significant benefit compared to the statutory 30% rate.

Dividends paid by a Chilean company to a U.S. resident are still subject to the statutory 35% rate, with a right to deduct as a credit the Corporate Tax previously paid on the profits out of which the dividends are distributed (this clause is included in all of Chile's DTAs).

Capital Gains – Reduced Rate: Currently, when a US resident entity derives a capital gain from the sale of shares or corporate rights in a Chilean entity, it is taxed with a 35% WHT rate. Now, the DTA may allow the Seller to claim a reduced 16% WHT rate for this type of income.

Royalties – Reduced Rates: The DTA also limits the WHT applicable to royalties paid by a resident of one country to a resident of the other. Furthermore, the WHT rates will be reduced to 2% or 10%, depending on the type of right giving rise to the royalty.

Fees for Services (Business Profits) – Not Subject to WHT: Payment in exchange for the cross-border supply of services may be subject to Income Tax only in the country of residence of the provider. Therefore, if a company resident in the U.S. provides services to a resident in Chile, the fees may not be subject to WHT in Chile and only the U.S. would be entitled to tax this type of income (provided the activities are not carried on through a permanent establishment).

Currently, Chile applies 15% and 35% rates to fees paid in exchange for cross-border services.

The bill approving the DTA must be ratified and passed into law by the President of the United States. The White House has already announced that Joe Biden plans to ratify the DTA. It should be noted that the DTA was ratified by Chile on September 2, 2015.

The DTA would enter into force on January 1 of the calendar year immediately following the date on which it is ratified (January 1, 2024, if ratification procedures are completed in both countries during 2023). However, WHT limitations could apply from the first day of the second month following the date on which the DTA is ratified.

Chile would be the second Latin American country that has a DTA in force with the U.S. (in addition to Mexico). Therefore, its ratification is a milestone for strengthening trade and commercial relations between the two countries.

DLA Piper Chile's tax team specializes in cross-border structuring and optimization of business models for foreign investment channelled into Chile (inbound), as well as for Chilean businesses expanding abroad or executing other international reorganization processes (outbound).



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