Chile enacts Direct Foreign Investment Framework Act

Chile approved the Direct Foreign Investment Framework Act (IED Act) on 16 June 2015, creating the new foreign investment framework under the 2014 tax reform. The IED Act was published in the Official Gazette on 25 June 2015, enacting it on that date.

Background

Tax Reform Law 20780, enacted in 2014 (the Tax Reform Act), repealed Decree Law 600 of 1974 (DL 600) effective 1 January 2016. DL 600 established a foreign investment regime that provided access to the official foreign exchange market and offered:

- The option of invariable income taxation at a rate of 42% for 20 years
- Invariable Value-Added Tax (VAT) and customs duties on the import of capital goods
- The option of no variation in the mining tax for 15 years
- Alternative mechanism of calculating tax costs in a foreign currency

What does IED, or Direct Foreign Investment, mean?

The IED Act defines direct foreign investment as the transfer of foreign capital or assets, owned or controlled by a foreign investor, to Chile for a value greater than or equal to US$5 million or the equivalent in another foreign currency.

Investment alternatives

The IED Act adds the reinvestment of profits to the alternative forms of foreign investment contained in DL 600 (foreign currency, physical goods, loan capitalization, technology) and eliminates investment through profit capitalization.

A direct foreign investment is also any acquisition that results in the direct or indirect control of at least 10% of the voting rights of a company’s shares or an equivalent percentage interest in the capital or equity.
New framework

The IED Act creates new agencies that will foster and promote foreign investment in Chile. The President of the Republic will be in charge of setting a foreign investment promotion strategy by means of an executive decree.

The IED Act establishes a Council of Ministers that will advise the President on these matters and define plans, programs and priorities in implementing the aforesaid strategy.

Lastly, the IED Act creates a “Foreign Investment Promotion Agency” that will be dedicated to promoting and attracting capital and investments of all types from abroad. It will be, for all legal purposes, the legal successor and continuer of the Foreign Investment Committee.

The IED regime

A qualified foreign investor may request a certificate from the Foreign Investment Promotion Agency, which will authorize the investor’s access to the direct foreign investment regime. Under the direct foreign investment regime, an investor will have the right to remit the capital invested and profits earned on investments once the relevant taxes have been paid and access the official foreign-exchange market to convert foreign currency or make remittances.

An investor also will be eligible for an exemption from VAT on the import of capital goods. The IED Act amended Article 12.B.10 of the VAT Law establishing the VAT exemption on imports of capital goods by foreign investors provided the investment is US$5 million or more. Goods allocated to investment projects that generate taxable income, non-taxable income or income exempt from VAT also will be exempt from VAT for at least 12 months after clearance through customs or acquisition in Chile. The Act also amends the way in which this exemption is granted. The Ministry of Finance must now make a decision on exemptions within 60 days after the exemption request.

Additionally, the IED Act provides that foreign investors will not be discriminated against, but it does not provide an administrative procedure to ensure that foreign investors are protected.

All other rights and preferences contained in the repealed DL 600 have been excluded from this new IED Act, including invariable income, the invariable mining tax and the possibility of calculating tax costs in a foreign currency.

Authorization to sign DL 600 agreements for the next four years

Although DL 600 was expressly repealed by the Tax Reform Act, foreign investments may request a DL 600 foreign investment authorization for the next four years after the IED Act becomes effective (25 June 2015). Investors must sign the respective foreign investment agreement in the same period.

Under the authorization, foreign investors will enjoy the following rights and have the following obligations under DL 600:

- The right to execute the investment through any of the procedures established by the mentioned regulation
- An invariable income tax rate for 10 years, limited to an aggregate rate of 44.45% (the maximum rate under the tax law entering into effect in 2017)
- Invariable taxation for 15 years for investments allocated to mining projects of a value of US$50,000 or more. These investors will have the right to invariability in the rules of law in effect on the date of signature of the foreign investment agreement in regard to the specific mining tax, to any new mining taxes or to changes in the amount or form of calculation of mining exploration and exploitation permits.

Foreign investment agreements signed before 2016

Foreign investors and the recipients of their investments that have a foreign investment agreement in effect will retain all rights and obligations set down in those agreements, provided the agreements were signed before 1 January 2016.¹

Endnote

¹. The operators of mining projects that have signed an agreement according to transitional Article 4 of Law 20469 (that amended the mining tax) will also retain their rights, provided they have made such an agreement within the period granted by that law.
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