Executive summary

The Chilean Executive Branch submitted a new tax reform bill to the Congress that would modify the Chilean tax rules to implement the Organisation for Economic Co-operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) plan and information exchange agreements, such as the Convention on Mutual Administrative Assistance in Tax Matters (MAAT) and the Common Reporting Standard (CRS).

Specifically, the bill includes the following provisions: (a) new rules on the automatic exchange of information; (b) the repeal of the preferential holding regime for nonresident investors; (c) the elimination of a fixed list of tax havens; and (d) the extension of the full corporate tax credit to treaties not yet in force.

Detailed discussion

Implementation of CRS and MAAT

The bill would modify Article 62 of the Tax Code to add new rules on the exchange of financial information.
Under the new rules, the Chilean Internal Revenue Service (IRS) would be allowed to request information from financial entities about: (a) accountholders (and their shareholders) who are individuals or entities residing in another jurisdiction; (b) accounts left at the death of nonresident individuals; and (c) nonresident entities managed from abroad.

The information requested by the IRS could relate to account balances, income received by the accountholder or its shareholder and the accountholder or shareholder’s identity.

For this purpose, financial institutions must keep the information for at least seven years in case it is requested by the IRS.

If a financial institution fails to provide the requested information, the bill would impose a penalty of US$1,000 per account on the financial institution. The bill would impose a penalty of up to US$40,000 on accountholders that supply maliciously false information to the relevant institution.

Chile has committed to exchange information under CRS beginning in 2018.

Repeal of foreign investment platforms

The bill would eliminate the preferential holding regime for nonresident investors called “foreign investment platforms” under Article 41 D of the Income Tax Law, which Chile’s Government deemed harmful in the context of BEPS.

Under the foreign investment platforms regime, Chilean companies (only a sociedad anónima is eligible) are not considered domiciled in Chile for income tax purposes. Such companies are subject to corporate tax only on their Chilean-sourced income. Dividend distributions and capital gains derived from the sale of these companies may be exempt from withholding tax.

According to the transitory provisions of the bill, once the bill is published in the Official Gazette, this regime would be no longer available. Companies formerly subject to this regime would be taxed as regular companies from 1 January 2022.

Elimination of a fixed tax haven list

The bill would eliminate the tax haven list first issued by Chile’s Ministry of Finance in 2003.

This fixed list contains countries considered tax havens or harmful tax regimes under the OECD’s 2003 guidelines.

Currently, this list co-exists with the preferential tax regime provisions introduced by the tax reform of 2014 in the context of BEPS. Under Article 41 H, a jurisdiction is deemed a preferential tax regime if at least two of the following circumstances are met:

- The effective rate on foreign-source income is less than 17.5%.
- No tax information exchange agreement has been entered with Chile or the agreement is not in force.
- There are no transfer pricing rules following OECD or United Nation principles.
- The OECD does not consider the jurisdiction to have implemented or substantially implemented standards of Transparency and Exchange of Information for Tax Purposes.
- One or more preferential tax regimes is in force according to the OECD.
- Only locally-sourced income is taxed.

Most of the provisions in the Income Tax Law refer to both the list and preferential tax regime of Article 41 H, but there are certain rules that only refer to the former (i.e., indirect transference and transfer pricing). The bill would eliminate all references to the list and would instead reference the provisions of Article 41 H.

Because taxpayers themselves must determine when they are dealing with preferential tax regimes and the IRS has not issued any guidance on this, the elimination of the list would imply that every transaction with a potential preferential jurisdiction would be analyzed on a case-by-case basis.

Full corporate tax credit benefit extended to treaties not in force

A brief overview

On 1 January 2017, two alternative corporate tax regimes for Chilean companies entered into force:

- The “Attributed-Income Regime” or “Regime A,” under which income received or accrued by a company is annually allocated to its shareholders, regardless of the dividends paid; the 25% corporate income tax paid by the company is fully creditable against the 35% withholding tax borne by shareholders, resulting in overall taxation of 35%
The “Distributed-Income Regime” or “Regime B,” under which shareholders or partners are taxed only upon the actual distribution of dividends or profits from the company; companies are levied with a 25.5% corporate income tax, which increases to 27% from 2018 and onwards.

Under Regime B, shareholders or partners may use 65% of the corporate income tax paid by the company as a credit against the 35% withholding tax. Therefore, shareholders are taxed at a 43.93% rate (44.45% from 2018 onwards).

Treaty shareholders
Tax treaty shareholders may use the entire corporate income tax as a credit even under Regime B, which results in an overall taxation of 35%.

Treaties signed by Chile on or before 1 January 2017 and not in force (e.g., United States) are also grandfathered until 31 December 2019.

The bill would extend the deadline for ratification of signed treaties to 31 December 2021, which also would benefit those subscribed until 1 January 2019. This extension would allow shareholders to use the entire corporate income tax as a credit under treaties that are signed, but not yet in force.

Deductibility of donations to the Government
The bill would include changes to the Law of Acquisition, Administration and Disposition of State Property to clarify that donations to the Government are fully deductible as a tax expense without limitations on the amount.

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