

INVESTING IN CHILE

Felipe Cousiño and Cristóbal Riffo, Alessandri, Santiago de Chile

Introduction

Chile is one of the preferred investment destinations in Latin America due to its open and stable economy, with low inflation rates. Chile is very rich in natural resources, and the most active industries are mineral and energy resources, fisheries, forestry, agriculture, manufacturing and service industries. Chile is a unitary republic. The political system includes a strong executive, a legislature and an independent judiciary. In general, individual guarantees are well defined and protected by the Constitution.

1. - Foreign investment

Capital and loans can be brought into Chile under either Decree Law 600 or Chapter XIV of the Foreign Exchange Regulations of the Central Bank of Chile.

As a rule, foreign exchange transactions must be reported to the Central Bank of Chile, but compliance with foreign exchange control regulations is generally not an issue.

1.1 - Chapter XIV

The capital that may be registered under Chapter XIV must exceed US\$10,000 or its equivalent in other currencies. Funds must be brought through the Formal Exchange Market (commercial banks and authorized exchange houses).

After the funds enter the country they can be either converted into local currency or delivered to the beneficiary in foreign currency. Under Chapter XIV there are no restrictions on repatriations of profits or capital.

El Regidor 66, 10th floor
Las Condes, Santiago, Chile
PO Box 136-34 - Las Condes

Tel. (562) 2787 60 00
Fax.(562) 2787 60 62
(562) 2787 60 73
alessandri@alessandri.cl
ip@alessandri.cl
patents@alessandri.cl

www.alessandri.cl

Arturo Alessandri C.
Rodrigo Velasco S.
Fernando Jamarne
Felipe Cousiño
Rodrigo Velasco A.
Felipe Schuster
Marcos Morales
Loreto Bresky
Raúl Montero
Cristóbal Riffo
Andrea Dawson
Bernardita Dittus
Carla Pacheco
Matías Valenzuela
Mariana Viera
Diego Morandé
M. Alejandra Chávez
Sebastián Molina
Sofía Haupt
Francesca Rodríguez
Nicolás Yáñez
Diego Maldonado
Francisco Espinoza
Carolina Bock
Isidora Alemparte
Javiera Badilla
Guillermo Correa
Andrés Dighero
Mauricio León
José Manuel Urenda
Francisco Cabezas
Nicolás Miranda
Agustina Davis

Consejeros
Arturo Alessandri B.
Alfredo Valdés R.
Andrés Rodríguez M.
José Miguel Cuadra.

1.2 - Decree Law 600

The minimum amount that may be registered under D.L. 600 is of US\$5,000,000 or its equivalent in other currencies. Investment may also be made in tangible assets, technology and capitalization of loans or profits, in which case the minimum amount is US\$2,500,000. Investment under D.L. 600 can be structured as a mixture of capital contribution and foreign loans, in which case the loan cannot exceed a 3:1 loan/capital contribution ratio (extra amounts can be brought in under Chapter XIV). Except for mining investments, the period within which the foreign investor must bring the capital into Chile must not exceed three years. Repatriation of capital is only allowed after the first year, but profits can be repatriated when earned.

Under D.L. 600, the foreign investor enters into a contract with the State of Chile, which governs all the rights and obligations related with the investment. Like all contracts, its amendment requires consent from both parties. Thus, the State of Chile cannot unilaterally alter it. Among other guarantees, D.L. 600 guarantees free access to foreign exchange for the remittance of capital and profits.

D.L. 600 also considers the possibility of choosing an overall effective income tax burden of 42% for a ten year period. Foreign investors are entitled to waive only for one time this right and be subject to the general tax treatment (see below **Corporate tax system**). The advantage of choosing the 42% tax burden is that if there is ever an increase of the tax burden under the general tax treatment exceeding 42%, the burden for the investor shall remain at 42%.

2. - Type of entities

Foreign investors normally organize in Chile using a stock corporation, a limited liability company or a branch. Most recently, the newly created joint stock company (known as "SpA") is also becoming commonly used. The use of a Permanent Establishment (PE) of a foreign entity is also usual since its tax treatment is equivalent to the one applicable to other entities.

A Chilean company requires at least 2 shareholders or members, either legal entities or individuals, resident in Chile or abroad. However, SpAs can be held by a single shareholder. Due to tax reasons, a Chilean entity or PE also requires a business space and a resident manager or representative. Setting up an entity in Chile is not expensive and the time necessary to do so is short.

3. - Corporate tax system

The Chilean tax treatment of stock corporations, limited liability companies, branches and permanent establishments is similar. Thus, the choice of entity is normally based on tax considerations of the home country. Income derived by a Chilean entity is taxed at corporate level with the so called "First Category Tax" at 20% on the net accrued profits. Intercompany dividends paid to another Chilean entity or PE are exempt from First Category Tax in the hands of the recipient entity. Dividends and branch/PE profits distributed abroad are subject to the so called "Additional Tax" at 35%, with the First Category Tax paid on the underlying profits being creditable, thus resulting in a total tax burden of 35%.

3.1 - Taxation of individuals

Both employment income and personal income is subject to income tax at progressive rates ranging from 0 to 40%.

Expatriate workers are normally taxed at 15% during their first 6 months in Chile.

3.2 - Taxation of outbound payments

Outbound payments to abroad are generally subject to withholding tax on e.g. dividends at 35% (less credit for First Category Tax); interest normally at 35% or 4%; royalties normally at 30% or 15%; service fees normally at 35% or 15%; capital gains at 35%, 20% or exempt.

3.3 - Transaction taxes

VAT applies at 19% on customary sales and most of services. Exports are zero rated. Excise taxes apply on at different rates on e.g. certain luxury items, vehicles, beverages, fuels and tobacco products. Import duties generally apply at 6%, unless a free trade agreement (FTA) is in place. Chile's FTA network includes a FTA with the European Union.

3.4 - Other taxes on business

Loans are generally subject to a stamp tax at 0.033% per month on the principal, up to a maximum of 0.4%.

A business license fee generally applies at 0.5% on the tax equity. Most of social security contributions are borne by the employee, except for the contributions for unemployment insurance and the contributions for the insurance against labor accidents.

Profit sharing is compulsory, but normally may be limited to reasonable amounts.

3.5 - Tax treaty network

Chile has an increasing tax treaty network, which includes effective double taxation treaties with the following countries: Belgium, Brazil, Canada, Colombia, Croatia, Denmark, Ecuador, France, Ireland, Korea (Rep.), Malaysia, Mexico, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russia, Spain, Sweden, Switzerland, Thailand and the United Kingdom.

In addition, Chile has already signed double taxation treaties with, Australia, Austria, South Africa and the United States of America. , which are awaiting congressional approval. Further, there is tax treaty negotiation activity with several other countries.