



International Tax

Chile Tax Alert

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Extensive guidance issued on new tax regimes

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On 14 July 2016, the Chilean tax authorities issued a public ruling of more than 200 pages containing extensive guidance on the new dual income tax regimes that will apply as from 1 January 2017 (for prior coverage, see the *World Tax Advisor* [article dated 12 February 2016](#)). The new ruling revokes previous rulings issued in 2015 and reflects changes introduced in a February 2016 law designed to simplify and clarify the 2014 tax reform law, including the provisions relating to the dual income tax regimes. Some types of taxpayers are restricted to one of the two tax regimes, but taxpayers eligible for either regime must opt into their preferred regime before 31 December 2016.

Under the existing income tax rules, which will apply until the end of 2016, business income derived by an enterprise in Chile is subject to a 24% first category income tax (FCIT), but such income also is subject to income tax on a cash basis when distributed to the shareholders, at rates that vary depending on whether the shareholder is a resident or a nonresident. Nonresident shareholders are subject to a 35% withholding tax on dividends. The tax paid by the enterprise may be used as a credit against the liability of the shareholders, resulting in an overall income tax rate of 35% on distributed profits for nonresident shareholders.

Starting in 2017, Chilean taxpayers subject to the FCIT will be subject to one of the following two tax regimes:

- The fully integrated regime, under which shareholders will be taxed on their share of the profits that are accrued annually by the Chilean entity. The combined income tax rate under the regime will be 35%.
- The partially integrated regime, under which shareholders will be taxed when profits are distributed. The combined income tax rate under the regime generally will be 44.45%; however, foreign shareholders that are resident in a country that has concluded a tax treaty with Chile will be entitled to a full tax credit, and thus may benefit from a combined rate of 35%.

The types of taxpayers that may opt for the fully integrated regime include the following:

- Sole proprietorships and single-member limited liability companies;
- Companies (other than stock corporations) and joint tenancies owned exclusively by persons subject to final taxes (i.e. individuals resident in Chile and/or individuals or legal entities that are not resident in Chile);
- Companies limited by shares owned exclusively by persons subject to final taxes; and
- Branches and permanent establishments in Chile.

Stock corporations and companies organized as a special form of joint stock company (*sociedades en comandita por acciones*) will have to use the partially integrated regime, as will companies in which at least one of the owners, members, partners or shareholders is not subject to final taxes.

Certain default presumptions will apply regarding the regime applicable to a taxpayer that may opt to pay taxes under either regime. Sole proprietorships, single-member limited liability companies and qualifying companies (other than stock corporations) and joint tenancies will be taxed under the fully integrated regime, unless they expressly opt into the partially integrated regime. In contrast, companies limited by shares and branches and permanent establishments in Chile will be taxed under the partially integrated regime, unless they expressly opt into the fully integrated regime.

Taxpayers that have commenced activities before 1 January 2016 must file the election to opt into a regime on a specified form during the second half of 2016 and, in the case of companies, the form must be accompanied by a public deed containing the unanimous consent of all partners/shareholders.

Under a temporary measure, shareholders in countries that have signed a tax treaty with Chile that has not entered into force on 1 January 2017 will be entitled to a full corporate tax credit (and thus to the 35% combined rate) under the partially integrated regime until 31 December 2019 (as of 20 July 2016, Chile has signed income tax treaties with the following countries that have not yet entered into force: Argentina, China, Czech Republic, Italy, Japan, South Africa, the US and Uruguay).

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