

Tax Reform Rebill regarding direct foreign investment in Chile



On January 30, 2015, the Chilean government sent Congress a Bill that establishes a new legal regime for direct foreign investment in Chile (hereinafter, the "Bill").

The Bill complies with the requirement established through Law No. 20,780 ("The Tax Reform") of legislating on this matter before January 31, 2015. The Bill includes the comments of the Presidential Advisory Committee which rendered a report on January 13, 2015 and should be enacted this year to replace the current foreign investment statute contained in Law Decree N° 600 as of January 1, 2016.

Foreign investor

The Bill restrictively defines its scope of application, by defining what should be understood as "foreign investor" and "direct foreign investment".

With respect to the foreign investor, it refers to any individual or legal entity incorporated abroad, not resident or domiciled in Chile, who transfers capitals into Chile. Whoever qualifies as a foreign investor will be able to request a certificate that enables access to the special regime contained in the Bill.

Direct foreign investment is referred to the transfer into Chile of foreign capitals or assets owned or controlled by the foreign investor, for an amount equal to or greater than \$US5M that

occurs through freely convertible foreign currency, physical assets, profit reinvestment, loan capitalization, and technology susceptible of being capitalized or loans associated to the

shall be incorporated, for all legal effects, as the legal successor of the Foreign Investment Committee.

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foreign investment arising from related companies.

Regime applicable to the investment

The Bill guarantees the foreign investor access to the formal foreign exchange market, so that the investor may convert the currency comprising the investment and obtain the necessary currencies to organize the capital invested or the net profits obtained. In turn, the foreign investor will be entitled to remit the capital and the profits resulting from the investment, as long as all Chilean tax obligations have been complied.

The Bill maintains the Value Added Tax ("VAT") exemption on imported capital assets meeting the requirements established in article 12 of the Chilean VAT Law and states that foreign investors will be subject to the general legal regime applicable to national investors without discrimination.

Incentives and promotion of foreign investment

The Bill states that the President will set the strategy for the incentive and promotion of direct foreign investment into Chile. For this purpose, a Committee of Ministers for the Incentive and Promotion of Foreign Investment will be instituted, and its main task will be to advise the President on these matters.

In addition, the Agency for the Promotion of Foreign Investment is created (hereinafter, the "Agency") which will have the objective of promoting and attracting the remittance of all types of capitals and foreign investments into Chile, acting as the single institution authorized for this purpose. The aforementioned Agency

Except for the provisions contained in the transitory dispositions mentioned below, the Bill does not establish a tax invariability rule as the one that currently exists in Law Decree No. 600.

Validity of the contracts

It is important to note that the Bill regulates the effects of the contracts established while Law Decree No. 600 is in force, in order to secure the full validity of the rights and duties acquired by foreign investors under the relevant foreign investment contract. The above applies to contracts subscribed before January 1, 2016, or before the date of entry into force of the Bill, whichever occurs last.

Also, an exceptional transitory regime is instated to enable the subscription of new foreign investment contracts, with the requirements, rights and obligations indicated. As from January 1, 2016 or at the date the Bill enters into force, whichever happens last, and for a maximum term of 4 years, foreign investors may request foreign investment authorizations through the subscription of contracts with the Chilean state, being subject to the regime contained in Law Decree No. 600. Nevertheless, the total income tax rate in these cases, and regarding which they will be subject to tax invariability, will be 44.45%.

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