

**AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF  
CHINA AND THE GOVERNMENT OF THE REPUBLIC OF CHILE FOR THE  
ELIMINATION OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION AND  
AVOIDANCE WITH RESPECT TO TAXES ON INCOME**

The Government of the People's Republic of China and the Government of the Republic of Chile,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States)

Have agreed as follows:

**Article 1**  
**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

**Article 2**  
**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:

- a) in Chile, the taxes imposed under the Income Tax Act (*Ley sobre Impuesto a la Renta*), hereinafter referred to as “Chilean tax”; and
- b) in China:
  - (i) the individual income tax,
  - (ii) the enterprise income tax,

hereinafter referred to as “Chinese tax”.

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

**Article 3**  
**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) the term “China” means the People’s Republic of China; when used in geographical sense, means all the territory of the People’s Republic of China, including its land territory, internal waters, territorial sea and the air space above them, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights or jurisdiction in accordance with international law and its internal law;
- b) the term “Chile” means the Republic of Chile; when used in geographical sense, means all the territory of the Republic of Chile, including its land territory, internal waters, territorial sea, and the air space above them, in which the Chilean laws relating to taxation apply, and any area beyond its

territorial sea, within which the Republic of Chile has sovereign rights or jurisdiction in accordance with international law and its internal law;

- c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Chile or China;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- h) the term "competent authority" means:
  - (i) in the case of Chile:  
the Minister of Finance, the Commissioner of the Revenue Service or their authorised representatives; and
  - (ii) in the case of China:  
the State Administration of Taxation or its authorised representative.
- i) the term "national" means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association constituted in accordance with the laws in force in a Contracting State.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4 RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature, and also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States then the competent authorities of the Contracting States shall by mutual agreement procedure endeavour to settle the question. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.

## **Article 5 PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place relating to the extraction of natural resources.

3. The term "permanent establishment" shall also include:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, the carrying on of exploration activities of natural resources, but only if such site, project or activities last more than six months;
- b) an enterprise that performs services in the other Contracting State, for a period or periods exceeding in the aggregate 183 days in any twelve-month

period, and these services are performed through one or more individuals who are present and performing such services in that other State.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying out scientific research for the enterprise and any other similar activity,

provided that such activity is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or negotiates the material elements of contracts, that are

- a) in the name of the enterprise, or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. a) Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is connected, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

- b) For the purpose of this Article, a person shall be connected to an enterprise if one possesses at least 50 per cent of the beneficial interests in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate voting power and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise. In any case, a person shall be considered to be connected to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises.

7. Notwithstanding Article 7 and the provisions of this Article, premiums in respect of insurance policies, except in the case of reinsurance, issued by an enterprise of a Contracting State may be taxed in the other State. However, except where the premium is attributable to a permanent establishment of the enterprise situated in that other State, the tax so charged shall not exceed 5 per cent of the gross amount of the premiums.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### **Article 6**

#### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### **Article 7**

#### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid,

the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8 SHIPPING AND AIR TRANSPORT**

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For purposes of this Article, profits from the operation of ships or aircraft include, but are not limited to:

- a) the charter or rental on a bareboat basis of ships and aircraft;
- b) the rental of containers and related equipment,

if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9 ASSOCIATED ENTERPRISES**

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regard the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

## **Article 10 DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State. However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11 INTEREST**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 4 per cent of the gross amount of the interest derived from loans granted by banks, insurance companies and other financial institutions. The term "other financial institutions" means other enterprises substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance; and
- b) 10 per cent of the gross amount of the interest in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the State in which the income arises. The term interest shall not include any item which is treated as a dividend under provisions of Article 10 of this Agreement.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such

interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12 ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 2 per cent of the gross amount of the royalties for the use of, or the right to use, industrial, commercial or scientific equipment;
- b) 10 per cent of the gross amount of the royalties in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films and tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process or other like intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 13 CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares or other rights deriving, at any time during the three-year period preceding the alienation, more than 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of shares or other rights or interests representing the capital of a company that is a resident of the other Contracting State may be taxed in that other State. If the taxation by the other Contracting State results in double taxation, the competent authorities of the Contracting States shall consult with the aim to alleviate double taxation.

6. Notwithstanding the provisions of paragraph 5, gains derived by a resident of a Contracting State from the alienation of shares of a company that is a resident of the other Contracting State and whose shares are substantially and regularly traded on a recognized stock exchange located in that other Contracting State shall be taxable only in the first-mentioned State if the shares were sold:

- a) on a recognized stock exchange in that other Contracting State; or
- b) in a public offer for the acquisition of shares regulated by law;

provided that such shares were previously acquired either:

- i) on a recognized stock exchange in that other Contracting State;

- ii) in a public offer for the acquisition of shares regulated by law;
- iii) in a placement of first issue shares by that company at the time of the constitution of that company or of an increase in the capital of that company; or
- iv) in an exchange of bonds convertible into shares.

7. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State in which the alienator is a resident.

#### **Article 14 INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may also be taxed in the other Contracting State:

- a) if the individual has a fixed base regularly available in the other Contracting State for purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- b) if the individual is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### **Article 15 INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

- b) the remuneration is paid by, or on behalf of, an employer being a person who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that Contracting State.

#### **Article 16 DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **Article 17 ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Notwithstanding the provisions of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, where income accrues from the exercise of activities by entertainers or sportsmen in a Contracting State and the visit to that State is financed wholly or mainly from public funds of the other Contracting State, the first-mentioned State shall not tax the entertainers or sportsmen on income provided from such public funds paid from the other Contracting State. In such a case, the income is taxable only in the Contracting State in which the entertainer or sportsman is a resident.

#### **Article 18 PENSIONS**

Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

#### **Article 19 GOVERNMENT SERVICE**

- 1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

#### **Article 20 STUDENTS**

Payments which a student, who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purposes of his education receives for the purpose of his maintenance and education shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### **Article 21 OTHER INCOME**

- 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles shall be taxable only in that State.
- 2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles and arising in the other Contracting State may also be taxed in that other State.

#### **Article 22 ELIMINATION OF DOUBLE TAXATION**

- 1. In Chile, double taxation shall be avoided as follows:
  - a) residents in Chile, obtaining income which has, in accordance with the provisions of this Agreement, been subject to taxation in China, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Agreement;

- b) where, in accordance with any provision of the Agreement, income derived by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.
2. In China, double taxation shall be avoided as follows:
- a) where a resident of China derives income from Chile, the amount of tax on that income payable in Chile in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
  - b) where the income derived from Chile is a dividend paid by a company which is a resident of Chile to a company which is a resident of China and which owns not less than 20 per cent of the shares or other rights of the company paying the dividend, the credit shall take into account the First Category Tax paid in Chile by the company paying the dividend in respect of its income.
  - c) where the income derived from Chile is a dividend, the Chilean tax paid shall, for purposes of direct credit, refer to the amount of the Additional Tax after the First Category Tax is deducted.

### **Article 23 NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 also apply to persons who are not residents of one or both Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and

connected requirements to which other similar companies of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall apply to the taxes which are the subject of this Agreement, as well as the Value Added Tax.

#### **Article 24 MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by a mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable for reaching an agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

#### **Article 25 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy ("*ordre public*").

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **Article 26**

### **ENTITLEMENT TO BENEFITS**

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Agreement (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 24), unless such resident is a "qualified person", as defined in paragraph 2, at the time that the benefit would be accorded.

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Agreement if, at that time, the resident is:

- a) an individual;

- b) a Contracting State, or local authority thereof, or a person that is wholly-owned by such State or local authority;
- c) a person other than an individual, if
  - i) A) more than 50 per cent of the beneficial interest in such person (or in the case of a company more than 50 per cent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
    - (a) individuals who are residents of one of the Contracting States;
    - (b) companies as described in subparagraph 2 c) ii); and
    - (c) one of the Contracting States or local authorities; and
  - B) less than 50 per cent of the gross income of such person, as determined in the person's Contracting State of residence, for the taxable period that includes that time is paid or accrued, directly or indirectly, to persons who are other than persons described in clauses (a) through (c) of subparagraph c) i) A) in the form of payments that are deductible for purpose of the taxes covered by this Agreement in the person's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property); or
  - ii) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

3. For the purposes of this Article and Article 13,

- a) the term "a recognized stock exchange" means:
  - i) in Chile, the "*Bolsa de Comercio de Santiago*", "*Bolsa Electrónica de Chile*" and "*Bolsa de Corredores*", and any stock exchange recognized by the "*Superintendencia de Valores y Seguros*"; and
  - ii) in China, Shanghai Stock Exchange and Shenzhen Stock Exchange, and any national securities exchange approved to be established by the Government of the People's Republic of China or its authorized institution.
- b) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares.

4. If a resident of a Contracting State is not entitled, under the preceding provisions of this Article, to all benefits provided under this Agreement, the competent authority of the Contracting State that would otherwise have granted benefits to which that resident is not entitled shall nevertheless treat that resident as being entitled to these benefits, or benefits with respect to a specific item of income, if such competent authority, upon request from that resident and after consideration of the relevant facts and circumstances, determines that the establishment, acquisition or maintenance of the resident and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this

Agreement. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

5. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

6. Where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under other provisions of the Agreement will not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned State and in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned State if the income were earned or received in that State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any interest or royalties to which the provisions of this paragraph apply shall remain taxable in the other Contracting State to a tax that shall not exceed 15 per cent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other State, notwithstanding any other provision of the Agreement.

#### **Article 27**

#### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

#### **Article 28**

#### **ENTRY INTO FORCE**

1. Each of the Contracting States shall notify the other through the diplomatic channel of the completion of the procedures required by law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the receipt of the latter notification.

2. The provisions of this Agreement shall have effect:

a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which this Agreement enters into force;

b) in China,

as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force.

## **Article 29 TERMINATION**

1. This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force give a written notice of termination to the other Contracting State through diplomatic channels.

2. The provisions of this Agreement shall cease to have effect:

a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given; and

b) in China,

as respect income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

3. With respect to provisions not covered in subparagraphs a) or b) of paragraph 2, this Agreement shall cease to have effect on the first day of January of the calendar year next following that in which the notice is given. Requests for information received before the date on which the notice of termination is given shall be dealt with in accordance with the provisions of this Agreement. The Contracting States shall remain bound by the confidentiality duties provided for in Article 25 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the signatories, duly authorized to that effect, have signed this Agreement.

DONE in duplicate at Santiago, this 25<sup>th</sup> day of May, 2015

in the Chinese, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
PEOPLE'S REPUBLIC OF CHINA**

**Wang Jun**

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF CHILE**

**Rodrigo Valdés Pulido**

## PROTOCOL

On signing the Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile for the Elimination of Double Taxation and the Prevention of Tax Evasion and Avoidance with respect to Taxes on Income, the signatories have agreed that the following provisions shall form an integral part of the Agreement.

1. It is understood that the two Governments shall, through the competent authorities, consult regarding the terms, the operation and application of the Agreement to ensure that it continues to serve the purposes of eliminating double taxation and preventing tax evasion and avoidance and shall, where they consider it appropriate, conclude Protocols to amend the Agreement. Either Government may at any time request consultations, to be conducted by the competent authorities in an expeditious manner on matters relating to the provisions; the operation and application of the Agreement which it considers require urgent resolution.

2. It is agreed that if, after the date on which the Agreement enters into force either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Agreement by extending its scope to include any tax on capital so introduced.

### 3. With reference to the Agreement,

- a) If the Contracting States have or introduce a special legislation that gives the right to a person being an investor, to obtain special benefits under a contractual agreement and the person subscribes to such special benefits under the contractual agreement with the Contracting State, such contractual agreement (as the case with the Decree Law 600 in Chile) shall be binding on the person unless the person expressly renounces to the contractual agreement and in such case the person would be able to obtain benefits of this Agreement. In any case, the person may be benefited by the Articles 11, 12 and 13.
- b)
  - i) Nothing in this Agreement shall affect the taxation in Chile of a resident in China in respect of profits attributable to a permanent establishment situated in Chile, under both the First Category Tax and the Additional Tax but only as long as the First Category Tax is fully deductible in computing the Additional Tax.
  - ii) Nothing in this Agreement shall affect the taxation in China of a resident in Chile in respect of profits attributable to a permanent establishment situated in China, if such taxation is introduced under the Enterprise Income Tax Law or the Individual Income Tax Law.
- c) In relation to the investment accounts or funds ("collective investment vehicles") established in a Contracting State, which do not meet the definition given in paragraph 1 of Article 4, the provisions of this Agreement shall not be interpreted to restrict the imposition of tax, in either of the Contracting States according to its internal law, on the remittances made by such investment accounts or funds, as well as on the income derived from the redemption or alienation of the quotas held by the participants in such

investment accounts or funds.

**4. With reference to subparagraph h), paragraph 1 of Article 3,**

In the case of China, the Commissioner of the State Administration of Taxation represents the State Administration of Taxation.

**5. With reference to Article 4,**

For certainty, as at the time of signing this Agreement a private pension fund in Chile is not a person liable to tax as defined in Article 4, the term "resident of a Contracting State" does not include such a pension fund nor any public pension fund in either Contracting State.

**6. With reference to Article 5,**

- a) For the sole purpose of determining whether the six-month period referred to in subparagraph a) of paragraph 3 has been exceeded,
  - i) where an enterprise of a Contracting State carries on activities (including supervisory and exploration activities) in the other Contracting State at a place that constitutes a building site, a construction, assembly or installation project and these activities are carried on during periods of time that do not last more than six months, and
  - ii) connected activities (including supervisory and exploration activities) are carried on at the same building site, construction, assembly or installation project during different periods of time, by one or more enterprises connected with the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site, construction, assembly or installation project.

- b) For the sole purpose of determining whether the 183-day period referred to in subparagraph b) of paragraph 3 has been exceeded, the duration of activities under this paragraph shall be determined by aggregating the periods during which activities are carried on in a Contracting State by connected enterprises, provided that the activities of the enterprise in that State are substantially the same as the activities carried on in that State by its connected enterprises. The period during which two or more connected enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

**7. With reference to Article 7,**

- a) In applying paragraphs 1 and 2 of Article 7, income or profits attributable to a permanent establishment may, notwithstanding that the permanent establishment has ceased to exist, be taxed in the Contracting State in which it was situated.

- b) When computing the taxable income of that permanent establishment situated in a Contracting State, the deductibility of expenses which are attributable to that permanent establishment shall be determined under the domestic law of that State, provided that it is in line with the principle of paragraph 3 of Article 7 and paragraph 3 of Article 23.

**8. With reference to Articles 5 and 7,**

It is understood that only so much of the profits shall be attributable to a permanent establishment as a result of the functions performed, the assets used and the risks assumed by the permanent establishment, rather than attributing the total profits arising from the project, the activities or the services.

**9. With reference to Article 10,**

In Chile, the provisions of paragraph 2 of Article 10 shall not limit the application of the Additional Tax payable in Chile provided that the First Category Tax is fully creditable in computing the amount of the Additional Tax.

In China, the provisions of paragraph 2 of Article 10 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid in accordance with the Enterprise Income Tax Law and other regulations in relevance.

In case the taxation of business profits or dividends change in either of the Contracting States, the competent authorities shall consult and discuss potential amendments to this Agreement.

**10. With reference to Article 11,**

- a) For a period of two years from the date on which the provisions of paragraph 2 take effect, the rate of 15 per cent shall apply in place of the rate provided in subparagraph b) of paragraph 2.
- b)
  - i) Debt-claims, and bonds and debentures in particular, which carry a right to participate in the debtor's profits, are regarded as loans if the contract by its general character clearly evidences a loan at interest.
  - ii) In the case when the laws of the Contracting States treat an income differently, the competent authorities shall consult in order to avoid mismatches.
- c) In the event that pursuant to an Agreement concluded with a country after the date of signature of this Agreement, Chile agrees to a lower rate of tax in paragraph 2 of Article 11, such new rate shall automatically apply under the same conditions as established in that other Agreement, for the purposes of this Agreement when the provision of the first-mentioned Agreement becomes applicable, in particular with reference to financial institutions wholly owned by the government. In such case, the competent authorities shall by mutual agreement settle the mode of application of this paragraph.

**11. With reference to Articles 10, 11 and 12,**

It is understood that the tax limitations shall be directly applied rather than through a levy-then-refund procedure, in case such tax limitations are lower than those stipulated in the domestic law of the Contracting State in which such income arises.

**12. With reference to Article 25,**

Notwithstanding any provision of this Agreement, the Contracting States shall not be obliged to exchange information on bank transactions occurring before January 1, 2010.

**13. With reference to Article 15 and Article 19,**

It is understood that the expression "salaries, wages and other similar remuneration" shall be interpreted to mean all types of remuneration derived by the resident, including benefits in kind received in respect of the employment.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Santiago, this 25<sup>th</sup> day of May, 2015

in the Chinese, Spanish and English languages all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
PEOPLE'S REPUBLIC OF CHINA**

**Wang Jun**

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF CHILE**

**Rodrigo Valdés Pulido**