



REPUBLICA DE CHILE

MINISTERIO DE RELACIONES EXTERIORES

Nº 1049

El Ministerio de Relaciones Exteriores presenta sus atentos saludos a la Embajada de Estados Unidos de América en Chile, y tiene el honor de referirse a su Nota No. 523-2023 de 28 de septiembre de 2023, que señala lo siguiente:

"The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Chile and has the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, with Protocol and related agreement, done at Washington February 4, 2010, and to the exchanges of notes dated February 23 and 25, 2011, and February 10 and 21, 2012, which effected textual corrections to the Convention and Protocol (the aforementioned instruments together constituting "the Convention").

The United States Senate on June 22, 2023, gave its advice and consent to ratification of the Convention subject to two reservations, which the United States seeks the Republic of Chile's agreement to effect through amendments to the Convention as described below. In particular, Section 2 of the Senate's Resolution of Ratification reads as follows:

The advice and consent of the Senate under Section 1 is subject to the following reservations, which shall be included in the instrument of ratification:

(1) *Nothing in the Convention shall be construed as preventing the United States from imposing a tax under section 59A, entitled the "Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts," of the Internal Revenue Code (as it may be amended from time to time) on a company that is a resident of the United States or the profits of a company that is a resident of Chile that are attributable to a permanent establishment in the United States.*

(2) *Paragraph 1 of Article 23 (Relief from Double Taxation) of the Convention shall be deleted and replaced by the following:*

"1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle thereof):

a) *the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens the income tax paid or accrued to Chile by or on behalf of such citizen or resident. For the purposes of this subparagraph, the taxes referred to in subparagraph b) of paragraph 3 and paragraph 4 of Article 2 (Taxes Covered), excluding taxes on capital, shall be considered income taxes; and*



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- b) *in the case of a United States company owning at least 10 percent of the aggregate vote or value of the shares of a company that is a resident of Chile and from which the United States company receives dividends, the United States shall allow a deduction in the amount of such dividends in computing the taxable income of the United States company."*

Consistent with the Senate's Resolution, ratification of the Convention by the Government of the United States of America shall be subject to the above reservations, which shall be included in the United States instrument of ratification of the Convention.

Accordingly, in order to confirm that the above reservations are acceptable to the Government of Chile, the Embassy on behalf of the Government of the United States proposes that the two governments agree to amend the Convention by deleting paragraph 1 of Article 23 of the Convention (Relief from Double Taxation) and replacing it with the following text:

"1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle thereof):

- a) *the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens the income tax paid or accrued to Chile by or on behalf of such citizen or resident. For the purposes of this subparagraph, the taxes referred to in subparagraph b) of paragraph 3 and paragraph 4 of Article 2 (Taxes Covered), excluding taxes on capital, shall be considered income taxes; and*
- b) *in the case of a United States company owning at least 10 percent of the aggregate vote or value of the shares of a company that is a resident of Chile and from which the United States company receives dividends, the United States shall allow a deduction in the amount of such dividends in computing the taxable income of the United States company."*

The Government of the United States further proposes that paragraph 1 of Article 23 of the Spanish language text of the Convention be deleted and replaced with the following text:

"1. De acuerdo con las disposiciones y sujeto a las limitaciones de la legislación de los Estados Unidos (aun cuando fuere eventualmente enmendada sin alterar el principio general de la misma):

- a) *los Estados Unidos permitirán a un residente o ciudadano de los Estados Unidos acreditar contra el impuesto sobre la renta estadounidense aplicable a residentes y ciudadanos el impuesto sobre*



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la renta pagado o devengado en Chile por o a cuenta del ciudadano o residente. Para los efectos de este subpárrafo, los impuestos referidos en el subpárrafo b) del párrafo 3 y en el párrafo 4 del artículo 2 (Impuestos Comprendidos), excluyendo los impuestos sobre el patrimonio, se considerarán impuestos sobre la renta; y

- b) *en el caso de una sociedad estadounidense que posea a lo menos el 10 por ciento del total del derecho a voto o del valor de las acciones de una sociedad residente de Chile y respecto de la cual la sociedad estadounidense recibe dividendos, los Estados Unidos permitirán una deducción en el monto de tales dividendos al computar la renta imponible de la sociedad estadounidense.”*

In addition, the Government of the United States of America proposes that the two governments agree that nothing in the Convention shall be construed as preventing the United States from imposing a tax under section 59A, entitled the “Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts,” of the U.S. Internal Revenue Code (as it may be amended from time to time) on a company that is a resident of the United States or the profits of a company that is a resident of Chile that are attributable to a permanent establishment in the United States, and that the Convention be amended accordingly.

If the foregoing proposals are acceptable to the Government of the Republic of Chile, the Embassy further proposes that this diplomatic note and the ministry’s affirmative diplomatic note in reply constitute an agreement between the two governments to amend the Convention, which agreement shall enter into force on the date the Convention enters into force in accordance with Article 29 of the Convention.”

Al respecto, el Ministerio de Relaciones Exteriores tiene el honor de comunicar a la Embajada de Estados Unidos de América que el Gobierno de la República de Chile acepta las propuestas anteriores, y confirma que su Nota No. 523-2023 de 28 de septiembre de 2023 y esta Nota en respuesta constituyen un acuerdo entre ambos gobiernos para enmendar el Convenio, el cual entrará en vigor en la fecha en que el Convenio entre en vigor de conformidad con el Artículo 29 del Convenio.

El Ministerio de Relaciones Exteriores de la República de Chile se vale de esta oportunidad para reiterar a la Embajada de Estados Unidos de América en Chile las seguridades de su más alta consideración.

SANTIAGO, 06 OCT. 2023

**A LA HONORABLE
EMBAJADA DE ESTADOS UNIDOS DE AMÉRICA
PRESENTE**



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