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United States and Chile Sign Income Tax Treaty

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On February 4, the Treasury Department announced the signing of a new income tax treaty between the United States and Chile. The treaty will be presented to President Obama for his signature before it is sent to the United States Senate, which must advise and consent to its ratification before the treaty enters into force.

The treaty is the first between the United States and Chile, and would become only the second bilateral income tax treaty between the United States and a South American country (the other being Venezuela). This development coincides with Chile's recent acceptance into the Organisation for Economic Co-operation and Development (OECD), an organization with a commitment to fostering financial stability and contributing to growth in world trade by coordinating domestic and international policies. Signing of the treaty by the Treasury Department represents the most recent progress in the Treasury's efforts to expand the flow of cross-border investment between the United States and South America.

In addition to relieving double taxation and outlining rules that will govern United States and Chilean cross-border investors, the treaty provides for reduced rates of source-country withholding on gross payments of dividends, interest, and royalties. These reduced rates are as follows:

Dividends	Interest	Royalties
5%, 15%[1]	4%, 15% (reducing to 10%)[2]	2%, 10%[3]

The treaty contains a comprehensive Limitation on Benefits (LOB) article intended to prevent abuse by third-country investors by restricting the benefits of the treaty only to "qualified persons" of the United States and Chile. The inclusion of an LOB article will require careful consideration in any circumstance where a party claims benefits under the treaty.

1 The 5% rate applies if the beneficial owner is a company that owns directly 10% or more of the voting stock of the company paying the dividends. The 15% rate applies in the case of all other dividends.

2 The 4% rate primarily applies to interest paid to banks, insurance companies, and active lending or financing businesses. The 15% rate applies in all other cases for a period of five years from the date the provision is effective, reduced to 10% thereafter.

3 The 2% rate applies to payments for the use of, or right to use, industrial, commercial, or scientific equipment. The 10% rate applies to payments for the use of, or the right to use, any copyright, patent, trademark, or other like intangible property.

With respect to taxes withheld at source, the provisions of the treaty will be effective for payments made on or after the first day of the second month following the date on which the treaty enters into force. In respect of other taxes, the treaty will be effective for taxable periods beginning on or after January 1 of the calendar year immediately following the date on which the treaty enters into force.

A copy of the treaty can be accessed via the following link:
http://www.treas.gov/press/releases/reports/chiletreaty2010.pdf.

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