

**MINISTRY OF FINANCE**

**(Department of Revenue)**

**NOTIFICATION**

**(Income-Tax)**

New Delhi, the 3rd May, 2023

**S.O. 2059(E).**—Whereas, an Agreement and Protocol between the Government of the Republic of India and the Government of the Republic of Chile for the elimination of double taxation and the prevention of fiscal evasion and avoidance with respect to taxes on income, was signed at Chile on the 9<sup>th</sup> day of March, 2020, as set out in the Annexure to this notification (hereinafter referred to as *the Agreement and Protocol*);

And whereas, the said Agreement and Protocol entered into force on the 19<sup>th</sup> day of October, 2022, being the date of the later of the notifications of the completion of the procedures required by the respective laws of the Contracting States for entry into force of the said Agreement and Protocol, in accordance with paragraph 1 of Article 30 of the said Agreement;

And whereas, sub-paragraph (a) of paragraph 2 of Article 30 of the said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April next following the date on which the Agreement enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement and Protocol, as annexed hereto, shall be given effect to in the Union of India.

**ANNEXURE**  
**AGREEMENT**  
**BETWEEN**  
**THE REPUBLIC OF INDIA**  
**AND**  
**THE REPUBLIC OF CHILE**  
**FOR THE ELIMINATION OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION AND AVOIDANCE**  
**WITH RESPECT TO TAXES ON INCOME**

The Government of the Republic of India 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**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is established in either Contracting State and that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State, but only to the extent that the income is treated, for the purposes of taxation by that Contracting State, as the income of a resident of that Contracting State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents, except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 19, 20, 22, 23, 24 and 27.

**Article 2**

**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, or of its political subdivisions or 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 on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in India, the income tax including any surcharge thereon; (hereinafter referred to as “Indian Tax”);
  - (b) in Chile, the taxes imposed under the Income Tax Act, “Ley sobre Impuesto a la Renta” (hereinafter referred to as “Chilean tax”);
5. The Agreement shall apply also to any identical or substantially similar taxes that 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 that have been made in their respective taxation laws.

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

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “India” means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law;
  - (b) the term “Chile” means the Republic of Chile and includes any area outside the territorial sea designated under the laws of the Republic of Chile and in accordance with international law as an area within which the Republic of Chile may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;
  - (c) the terms a “Contracting State” and “the other Contracting State” mean India or Chile, as the context requires;
  - (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 term “enterprise” applies to the carrying on of any business;
  - (g) 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;
  - (h) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
  - (i) the term "competent authority" means:
    - (i) in India, the Finance Minister, Government of India, or his authorized representative; and
    - (ii) in Chile, the Minister of Finance, the Commissioner of the Revenue Service or their authorised representative;
  - (j) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (k) the term “tax” means Indian or Chilean tax, as the context requires.
  - (l) the term “fiscal year” means:
    - (i) in the case of India: the financial year beginning on the 1 day of April;
    - (ii) in the case of Chile: as defined in domestic law.

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 management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or 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 or capital situated therein.

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 it shall be deemed to be a resident only of the State of which it is a national. If the person is a national of both Contracting States or of neither of them 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;
  - (f) a sales outlet;
  - (g) a warehouse in relation to a person providing storage facilities for others;
  - (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (i) an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources.
3. The term "permanent establishment" shall also include:
  - (a) A building site or construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities last for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve month period;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose where such activities continue within the country for a period or periods aggregating more than 183 days within any twelve month period;
  - (c) the carrying on of activities (including the operation of substantial equipment) by an enterprise of a Contracting State in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period.
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 or display 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 or display;
  - (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;

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

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an 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, if such a person:

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
- (i) in the name of the enterprise, or
- (ii) 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
- (iii) for the provision of services by that enterprise,

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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 closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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.

9. For the purposes of this Article, a person or enterprise is closely related 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.

In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interests in the other (or, in the case of a company, more than 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 or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

**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 or has carried 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. 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.
7. 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****INTERNATIONAL SHIPPING AND AIR TRANSPORT**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international transport conducted by such enterprise.
2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is incidental to its international operations of ships or aircraft shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.
3. Interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft under this article if they are integral and

incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

4. 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 regards 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. However, 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, but 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. 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 10 per cent of the gross amount of the interest.
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 bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 8 or in Article 10.
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, 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, 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 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 10 per cent of the gross amount of the royalties.
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, or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process or other similar 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, 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 Contracting 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 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 12A**

#### **FEES FOR TECHNICAL SERVICES**

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.



2. However, notwithstanding the provisions of Article 14 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State 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 fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the fees.
3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
  - (a) to an employee of the person making the payment;
  - (b) for teaching in an educational institution or for teaching by an educational institution, as part of a degree granting program; or
  - (c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are 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. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in the first-mentioned Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.
6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent establishment situated in that other State or the third State, or performs independent personal services through a fixed base situated in that other State or the third State and such fees are borne by that permanent establishment or fixed base.
7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees 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 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 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, other rights representing the capital of a company, or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares, rights or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Gains derived by a resident of a Contracting State from the alienation, directly or indirectly, of shares or other rights representing the capital of a company that is a resident of the other Contracting State, other than those mentioned in paragraph 4 may be taxed in that other Contracting State.
6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of 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, except in the following circumstances when such income may also be taxed in the other Contracting State.

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his 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 he is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any period of twelve months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, surgeons, dentists and accountants.

**ARTICLE 15****DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other 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 there from 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned 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 SPORTSPERSONS**

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 sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding paragraph 1 of this Article where income accrues from the exercise of activities by entertainers or sportspersons 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 sportspersons on income provided from such public funds paid from that other Contracting State.

**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 remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
(b) However, such salaries, wages and other 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 remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

**Article 20**  
**STUDENTS**

Payments which a student, apprentice or business trainee 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 purpose of his education or training receives for the purpose of his maintenance, education or training 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 of this Agreement 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 of this Agreement and arising in the other Contracting State may also be taxed in that other State.

**Article 22**  
**METHODS FOR ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

1. In India:
  - (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Chile, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Chile.  

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is a attributable, as the case may be, to the income which may be taxed in Chile
  - (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## 2. In Chile:

- (a) residents in Chile, deriving income which has, in accordance with the provisions of this Agreement, been subject to taxation in India, 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 (which shall not affect the general principle of this Article). 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.

**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 individuals who are not residents of one or both of the 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. This provision shall not 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 which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12, or paragraph 7 of Article 12A apply, interest, royalties, other disbursements and fees for technical services paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Companies 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.
5. In this Article, the term "taxation" means taxes that are subject of this Agreement.

**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 in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

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

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) 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 of their political subdivisions 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 administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) 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**

### **ASSISTANCE IN THE COLLECTION OF TAXES**

The Contracting States may lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article.

#### **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**

### **LIMITATION OF 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 or Article 23) 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) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;
- c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;

- d) a person, other than an individual, that is a non-profit organisation agreed upon by the competent authorities of the Contracting States;
- e) a person other than an individual if, at that time and on at least half of the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to benefits of this Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

3.

- a) A resident of a Contracting State shall be entitled to benefits under this Agreement with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term “active conduct of a business” shall not include the following activities or any combination thereof:
  - (i) operating as a holding company;
  - (ii) providing overall supervision or administration of a group of companies;
  - (iii) providing group financing (including cash pooling); or
  - (iv) making or managing investments, unless these activities are carried on by a bank or financial institutions agreed upon by the competent authorities of the Contracting States, insurance enterprise or registered securities dealer in the ordinary course of its business as such.
- b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.
- c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

4. A company that is a resident of a Contracting State shall also be entitled to a benefit that would otherwise be accorded under Article 10 if:

- a) at the time when the benefit otherwise would be accorded and on at least half of the days of any twelve-month period that includes that time, at least 95 per cent of the aggregate vote and value of its shares (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries, provided that in the case of indirect ownership, each intermediate owner is a qualifying intermediate owner, and
- b) less than 50 per cent of the person’s gross income, and less than 50 per cent of the tested group’s gross income, for the taxable period that includes that time, as determined in the person’s Contracting State of residence, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes 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, and in the case of a tested group, not including intra-group transactions) to persons that are not equivalent beneficiaries.

5. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of this Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Agreement. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

6. For the purposes of this and the previous paragraphs of this Article:

- a) the term “recognised stock exchange” means:

- (i) any stock exchange established and regulated as such under the laws of either Contracting State; and
- (ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;
- b) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;
- c) the term “principal class of shares” means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;
- d) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest 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 another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.
- e) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, this Agreement or any other international agreement which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Agreement. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;
- f) the term “disproportionate class of shares” means any class of shares of a company or entity resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;
- g) the term “qualifying intermediate owner” means an intermediate owner that is either:
  - (i) a resident of a State that has in effect with the Contracting State from which a benefit under this Agreement is being sought a comprehensive agreement for the avoidance of double taxation; or
  - (ii) a resident of the same Contracting State as the company applying the test under paragraph 4 to determine whether it is eligible for benefits under the Agreement;
- h) the term “tested group” means the resident of a Contracting State that is applying the test under paragraph 4 to determine whether it is eligible for benefits under the Agreement (the “tested resident”), and any company or permanent establishment that:
  - (i) participates as a member with the tested resident in a tax consolidation, fiscal unity or similar regime that requires members of the group to share profits or losses; or
  - (ii) shares losses with the tested resident pursuant to a group relief or other loss sharing regime in the relevant taxable period;
- i) the term “gross income” means gross receipts as determined in the person's Contracting State of residence for the taxable period that includes the time when the benefit would be accorded, except that where a person is engaged in a business that includes the manufacture, production or sale of goods, “gross income” means such gross receipts reduced by the cost of goods sold, and where a person is engaged in a business of providing non-financial services, “gross income” means such gross receipts reduced by the direct costs of generating such receipts, provided that:
  - (i) except when relevant for determining benefits under Article 10 of this Agreement, gross income shall not include the portion of any dividends that are effectively exempt from tax in the person's Contracting State of residence, whether through deductions or otherwise; and
  - (ii) except with respect to the portion of any dividend that is taxable, a tested group's gross income shall not take into account transactions between companies within the tested group.

7. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraphs 1 to 6 of this Article.

8. Where an enterprise of a Contracting State derives income from the other Contracting State and the income from the other Contracting State 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 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.

9. 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.

10. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion.

11. Notwithstanding the provisions of this Agreement, a Contracting State shall maintain its right to tax in accordance with its domestic legislation an income arising in that State and derived by a resident of the other Contracting State where such income is not effectively subject to tax in that other Contracting State.

### Article 29

#### MISCELLANEOUS RULES

1. With respect to pooled investment accounts or funds, that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Agreement shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

2. 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 Article 24 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. Nothing in this Agreement shall affect the application of the provisions of the Chilean legislation DL 600 (Foreign Investment Statute) and Law N°20.848, as they are in force at the time of signature of this Agreement and as they may be amended from time to time without changing the general principle thereof.

### Article 30

#### ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other through the diplomatic channels 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 later of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) in India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the date on which the Agreement enters into force; and
- (b) 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.

### Article 31

#### TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given; and
- (b) 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.



**IN WITNESS WHEREOF** the undersigned, duly authorised thereto, have signed this Agreement.

**DONE** in duplicate at Santiago, Republic of Chile, this 9<sup>th</sup> March 2020, in the English, Hindi and Spanish languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF INDIA**

**Sd/-**

Ms. Anita Nayar

Ambassador of India to Republic of Chile

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

**Sd/-**

Mr. Ignacio Briones

Minister of Finance, Republic of Chile

**PROTOCOL TO THE AGREEMENT  
BETWEEN  
THE REPUBLIC OF INDIA  
AND  
THE REPUBLIC OF CHILE  
FOR THE ELIMINATION OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION AND AVOIDANCE WITH RESPECT  
TO TAXES ON INCOME**

On signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between the Republic of Chile and the Republic of India, the signatories have agreed that the following provisions shall form an integral part of the Agreement. It is understood that:

1. General provision

(i) In the case of India: Nothing in this Agreement –

(a) shall be construed as preventing India from charging the profits of a permanent establishment which a resident of Chile has in India at a rate of tax (including branch profits tax) which is higher than that imposed on the profits of a similar company of India;

(b) shall affect the additional income-tax on distributed profits of an Indian resident company for any amount declared, distributed or paid by way of dividends;

(ii) In the case of Chile: Nothing in this Agreement –

(a) shall affect the taxation in Chile of a resident in India 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 creditable in computing the Additional Tax;

(b) shall limit the application of the Additional Tax in respect of dividend payments or profit distribution payable in Chile provided that the First Category Tax is fully creditable in computing the amount of Additional tax.

(iii) 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. The terms of any such Protocol shall have regard to any agreements between either Contracting State and a third State for the relief of double taxation on capital.

2. Ad. Article 1

For purposes of paragraph 1, the term “fiscally transparent” means situations where, under the law of a Contracting State, income or part thereof of an entity or arrangement is not taxed at the level of the entity or arrangement but at the level of the persons who have an interest in that entity or arrangement as if that income or part thereof were directly derived by such persons at the time when that income or part thereof is realized whether or not that income or part thereof is distributed by that entity or arrangement to such persons.

3. Ad. Articles 2 and 3

For purpose of Articles 2 and 3, it is clarified that the term “tax” shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes.

## 4. Ad. Article 3

With respect to paragraph 1 subparagraph (d) of Article 3, for greater certainty of meaning of the term “any other body of persons”, it is understood that any entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State shall be regarded as a body of persons.

## 5. Ad. Article 5

For the purposes of preventing misuse of Articles 5 and 7, in computing the time limits in paragraph 3 of Article 5, activities carried on by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise if the activities of the associated enterprises are connected or substantially similar. For the purposes of the preceding sentence, an enterprise shall be deemed to be associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other, or the same person or persons participate directly or indirectly in the management, control or capital of both enterprises.

## 6. Ad. Article 7

For the purpose of paragraph 3 of Article 7, the deductions of expenses to be allowed by a Contracting State shall be in accordance with the provisions of and subject to the limitations of the tax laws of that Contracting State.

## 7. Ad. Article 8

For the purpose of paragraph 1 of Article 8, property includes goods, livestock and mail.

## 8. Ad. Article 9

In the case of Chile and notwithstanding any provisions of this Agreement, Chile, in any case, shall not be obliged to make or accept an appropriate adjustment in the circumstances referred to in paragraph 2 of Article 9 after the expiry of the time limits provided for in its domestic tax laws regarding tax refunds, or after five years, whichever is the higher, from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of India.

**IN WITNESS WHEREOF** the signatories, duly authorised to that effect, have signed this Protocol.

**DONE** in duplicate at Santiago, Republic of Chile, this 9<sup>th</sup> March 2020, in the English, Hindi and Spanish languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF INDIA**

Sd/-

Ms. Anita Nayar

Ambassador of India to Republic of Chile

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

Sd/-

Mr. Ignacio Briones

Minister of Finance, Republic of Chile

[Notification No. 24/2023/ F. No.500/62/2017-FT&TR-V (Pt-III)]

RAJESH KUMAR BHOOT, Jt. Secy.