Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION, AND PROTOCOL

If you follow the information in this document, and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO will take that into account when determining what action, if any, we should take.

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol* (the "Convention") signed on 10 March 2010 as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia and the Republic of Chile ("Chile") on 7 June 2017.

This document was prepared by the Australian Taxation Office and represents its understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of Chile submitted to the Depositary upon ratification on 26 November 2020. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and it does not constitute a source of law. The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement", and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [2019] ATS 1 (provides, in the case of Australia, the authentic legal text of the MLI).

Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion [2013] ATS 7 (provides, in the case of Australia, the authentic legal text of the

Convention signed on 10 March 2010).

Signatories and parties to the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and the MLI position of Chile submitted to the Depositary upon ratification on 26 November 2020).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Australia and Chile in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

26 September 2018 for Australia and 26 November 2020 for Chile.

Entry into force of the MLI:

1 January 2019 for Australia and 1 March 2021 for Chile.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) have effect with respect to this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022;

b) with respect to all other taxes levied by Australia, for taxes levied with respect to taxable periods beginning on or after 1 September 2021; and

c) with respect to all other taxes levied by Chile, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Convention for a case presented to the competent authority of a Contracting State on or after 1 March 2021, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

Australia and the Republic of Chile,

desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion;

The following paragraphs 1 and 3 of Article 6 of the MLI are included in the preamble of this Convention:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by [*the Convention*] 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 [*the Convention*] for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONS COVERED

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

The following paragraph 1 of Article 3 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITES

For the purposes of [*the Convention*], income derived by or through an entity or arrangement 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 purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*].

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

[*The Convention*] 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, paragraph 7 of Article 13 or Articles 18, 19, 20, 23, 24, 25, or 28*] of [*the Convention*].

Article 2

TAXES COVERED

1. The existing taxes to which the Convention shall apply are:

   a) in Australia:

      (i) the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources; and

      (ii) the fringe benefits tax,

      imposed under the federal law of Australia (hereinafter referred to as "Australian tax"); and

   b) in Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*", including the specific tax on mining activity (*Impuesto Específico a la Actividad Minera*), (hereinafter referred to as "Chilean tax").

2. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal law of Australia or the law of Chile after the date of signature of the Convention 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 the law of their respective States relating to the taxes to which the Convention applies within a reasonable period of time after those changes.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

   a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, excludes all external territories other than:

      (i) the Territory of Norfolk Island;

      (ii) the Territory of Christmas Island;

      (iii) the Territory of Cocos (Keeling) Islands;

      (iv) the Territory of Ashmore and Cartier Islands;

      (v) the Territory of Heard Island and McDonald Islands; and

      (vi) the Coral Sea Islands Territory,

      and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

   b) the term "Chile" means the Republic of Chile and, when used in a geographical sense, 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, as the context requires, Australia or Chile respectively;

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 company or 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 Australia, the Commissioner of Taxation or an authorised representative of the Commissioner; and

(ii) in Chile, the Minister of Finance or an authorised representative of the Minister;

i) the term "national" in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any company deriving its status as such from the laws in force in that Contracting State;

j) the term "tax" means Australian tax or Chilean tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

2. As regards the application of the Convention 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 concerning the taxes to which the Convention applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein as a resident of that State or by reason of domicile in that State, 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.

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

a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is

available in both States or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the person shall not be entitled to any benefits provided by the Convention except that the provisions of Article 24 shall apply.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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 mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources; and

g) an agricultural, pastoral or forestry property.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

a) performs services (other than activities to which subparagraphs b) or c) apply) 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;

b) carries on activities (including the operation of substantial equipment) 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 twelve month period; or

c) operates substantial equipment in the other State (including as provided in subparagraph b)) for a period or periods exceeding in the aggregate 183 days in any twelve month period,

such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 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.

5.

a) The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated 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 associate.

b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

6. **[MODIFIED by paragraph 4 of Article 13 of the MLI]** *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, or any other similar activity, if such activity is of a preparatory or auxiliary character*.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 6 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

[*Paragraph 6 of Article 5 of the Convention*] 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 [*Article 5 of the Convention*]; 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.

7. Notwithstanding the provisions of paragraphs 1 and 2 where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts on behalf of the enterprise or manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the 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 6 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.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a person who is a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. 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 make either company a permanent establishment of the other.

The following paragraph 1 of Article 15 of the MLI applies to the provisions of this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [*Article 5 of the Convention*], a person 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 shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest 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 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.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE (REAL) PROPERTY

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

2. For the purposes of this Convention, the term "immovable (real) property":

a) in the case of Australia, means real property according to the law of Australia, and shall also include:

(i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits

or resources; and

(ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources; and

b) in the case of Chile, means such property which, according to the law of Chile, is immovable property and shall in any case include:

(i) property accessory to immovable property;

(ii) livestock and equipment used in agriculture and forestry;

(iii) rights to which the provisions of the general law respecting land apply, including a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(iv) usufruct of immovable property and rights to variable or fixed payments either as consideration for or in respect of the exploitation of or the right to exploit mineral deposits, mineral sources and other natural resources.

Ships and aircraft shall not be regarded as immovable (real) property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits or sources, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

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

5. The provisions of paragraphs 1 and 4 shall also apply to profits from immovable (real) property of an enterprise or immovable (real) property used for the performance of independent personal services. Where such profits are attributable to a permanent establishment or a fixed base in the Contracting State in which the immovable (real) property is situated, the profits shall be determined in accordance with principles of paragraphs 2 and 3 of Article 7.

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 or with other enterprises with which it deals.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes

of the permanent establishment, including executive and general administrative expenses so incurred whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. 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.

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

6. Notwithstanding the preceding provisions of this Article, premiums in respect of insurance policies issued by an enterprise of a Contracting State may be taxed in the other State in accordance with its domestic law. 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:

a) 5 per cent of the gross amount of the premiums in the case of policies of reinsurance; and

b) 10 per cent of the gross amount of the premiums in the case of all other policies of insurance.

7. Where:

a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

8. No adjustments to the profits attributable to a permanent establishment of an enterprise for a year of income shall be made by a Contracting State after the expiration of seven years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of seven years, an audit into the profits of the enterprise has been initiated by either State.

9. Nothing in this Convention shall affect the taxation in Chile of a resident of Australia in respect of profits attributable to a permanent establishment, or a fixed base, situated in Chile, under both the First Category Tax and the Additional Tax provided that the First Category Tax is fully creditable in computing the amount of the Additional Tax.

Article 8

SHIPS AND AIRCRAFT

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. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the operation of ships or aircraft may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.

3. The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers or cargo (including mail) which are taken on board in a Contracting State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

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 operate, or are made or imposed, between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate or be made between independent enterprises, dealing wholly independently with one another then any profits which, but for those conditions, might have been expected to accrue 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 might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, 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 taxes charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. No adjustments to the profits of an enterprise for a year of income shall be made by a Contracting State after the expiration of seven years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of seven years, an audit into the profits of the enterprise has been initiated by either State.

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:

a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph 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 Additional Tax.

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 other amounts which are 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) 5 per cent of the gross amount of interest derived by a financial institution which is unrelated to and dealing wholly independently with the payer. The term "financial institution" means a bank or other enterprise 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 interest in all other cases.

3. Notwithstanding paragraph 2, interest referred to in subparagraph a) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

4. Notwithstanding the rate limits specified in subparagraph 2b) and paragraph 3, Chile may impose tax on interest arising in Chile to which those provisions apply at a rate not exceeding 15 per cent of the gross amount of the interest. However, if Chile agrees to limit the tax charged in Chile on interest arising in Chile to a rate less than 15 per cent in a tax treaty with any other State, the tax imposed in Chile on interest arising in Chile to which subparagraph 2b) or paragraph 3 applies shall not exceed the rate provided in that treaty or 10 per cent, whichever is the greater, after the date of entry into force of that treaty.

5. 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, interest from government securities and interest from bonds or debentures. The term "interest" also includes income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

6. The provisions of paragraphs 1, 2, 3 and 4 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 indebtedness 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.

7. 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 or outside both Contracting States 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.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which might have been expected to 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 Convention.

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) 5 per cent of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; and

b) 10 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

a)

(i) the use of, or the right to use, any copyright, including motion picture films; and

(ii) the use of, or the right to use, in connection with television, radio or other broadcasting, films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission;

b) the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process or other like property or right;

c) the use of, or the right to use, industrial, commercial or scientific equipment;

d) the supply of information concerning technical, industrial, commercial or scientific experience;

e) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph a), b) or c) or any such information as is mentioned in subparagraph d);

f) the use of, or the right to use, some or all of the part of the spectrum specified in a spectrum licence, being spectrum of a Contracting State where the payment or credit arises; or

g) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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 or credited 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 or outside both Contracting States a permanent establishment or a fixed base in connection with which the obligation 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 of the royalties or between both of them and some other person, the amount of the royalties paid or credited having regard to what they are paid or credited for, exceeds the amount which might have been expected to 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 or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable (real) property situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than immovable (real) 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 property, other than immovable (real) 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 income, profits or 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. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than immovable (real) property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. **[MODIFIED by subparagraph a) of paragraph 1 of Article 9 of the MLI]** *Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares, comparable interests or other rights deriving more than 50 per cent of their value directly or indirectly from immovable (real) property situated in the other Contracting State may be taxed in that other State.*

The following subparagraph a) of paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Convention:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

[*Paragraph 4 of Article 13 of the Convention*] shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation.

5. Gains of a capital nature, other than gains to which paragraph 2 or 4 apply, derived by a resident of a Contracting State (other than a pension fund) from the alienation of shares or other rights, not being debts claims, participating in profits, representing the capital of a company that is a resident of the other Contracting State, may be taxed in that other State but the tax so charged shall not exceed 16 per cent of the amount of the gain. However, nothing in this Article shall affect the right of that other State to tax such gains, in accordance with its laws, if the alienator has at any time during the twelve month period preceding such alienation owned shares or other rights representing, directly or indirectly, 20 per cent or more of the capital of that company.

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

7. Where an individual who upon ceasing to be a resident of a Contracting State, is treated under the taxation law of that State as having alienated any property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to

be a resident of the first-mentioned State, alienated and reacquired the property for an amount equal to its fair market value at that time. However, the individual may not make the election in respect of property situated in either Contracting State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Profits 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 profits 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 profits as are 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 income year of that other State, the individual shall be deemed to have a fixed base regularly available in that State; in that case, only so much of the profits as are 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 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 income year of that other State, and

b) the remuneration is paid by, or on behalf of, a person being an employer 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 that 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 exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

4. Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole

or primary taxing right in accordance with paragraphs 1, 2 or 3 of this Article in respect of salary or wages from the employment to which the benefit relates.

5. For the purposes of this Article:

a) "fringe benefit" includes a benefit provided to an employee or to an associate of an employee by:

(i) an employer;

(ii) an associate of an employer; or

(iii) a person under an arrangement between that person and the employer, associate of an employer or another person in respect of the employment of that employee,

and includes an accommodation allowance or housing benefit so provided but does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

b) a Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with paragraphs 1, 2 or 3 of this Article and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in that person’s 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 7, 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 that person’s 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 that person's capacity as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

PENSIONS

1. Pensions, including retirement annuities, paid to an individual who is a resident of a Contracting State shall be taxable only in that State.

2. The term "retirement annuity" means a stated sum payable in respect of retirement and paid periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration from funds out of a retirement savings plan.

3. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of a Contracting State to a resident of the other Contracting State, shall, to the extent it is not allowable as a relief to the payer, be taxable only 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 or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their 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 Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable (real) property, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment or performs in that other State independent personal services from a fixed based 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 the Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

Article 22

SOURCE OF INCOME

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to arise from sources in that other Contracting State.

2. For the purposes of determining where income arises under paragraph 7 of Article 11 or paragraph 5 of Article 12, an individual is a resident of a Contracting State, notwithstanding the provisions of paragraph 2 of Article 4, if that individual is a resident of that State in accordance with its domestic tax law.

CHAPTER IV

RELIEF FROM DOUBLE TAXATION

Article 23

RELIEF OF DOUBLE TAXATION

1. In Australia, double taxation shall be relieved as follows:

   a) subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), Chilean tax paid under the law of Chile and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income; and

   b) in the case of income referred to in Article 10, Chilean tax paid shall, for purposes of subparagraph a) of this paragraph, refer to the amount of the Additional Tax after the First Category Tax is deducted, or 15 per cent of the amount on which the Additional Tax is calculated, whichever is the lesser.

2. In Chile, double taxation shall be relieved as follows:

Residents in Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in Australia, 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 Convention.

3. Where, in accordance with any provision of the Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

[*Article 23 of the Convention*] shall not apply to the extent that [*the*] provisions [*of the Convention*] allow taxation by that other [*Contracting State*] solely because the income is also income derived by a resident of that other [*Contracting State*].

CHAPTER V

SPECIAL PROVISIONS

Article 24

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 in similar circumstances.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for taxation purposes which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 8 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 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.

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 which are residents of the first-mentioned State, in similar circumstances, are or may be subjected.

6. This Article shall not apply to any provision of the laws of a Contracting State which:

   a) is designed to prevent the avoidance or evasion of taxes, including measures designed to address thin capitalisation or to ensure that taxes can be effectively collected or recovered;

   b) provides tax incentives to eligible taxpayers for expenditure on research or development, provided that a company that is a resident of one Contracting State and is wholly or partly owned by residents of the other State can access such incentives on the same terms and conditions as any other company that is a resident of the first-mentioned State; or

   c) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

The competent authorities of the Contracting States shall notify each other of any changes to such laws, where those changes might, in the absence of this paragraph, be affected by the provisions of this Article.

7. The provisions of this Article shall apply to the taxes which are the subject of this Convention, as well as the Goods and Services Tax in the case of Australia and the Value Added Tax (*Impuesto al Valor Agregado*) in the case of Chile.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Convention, the person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person 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 Convention.

2. The competent authority shall endeavour, if the complaint appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by 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 Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States provided that, in the case of Chile, the case is presented under paragraph 1 within three years from the determination of the Chilean tax liability to which the case relates.

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 Convention.

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [*the Convention*].

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.

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 Convention 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 26

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 Convention or to the administration or enforcement of the domestic law concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. 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 law 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.

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 law and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the law 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 27

LIMITATIONS OF BENEFITS

1. **[REPLACED by paragraph 1 of Article 7 of the MLI]**[1] *The provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the assignment of dividends, interest or royalties or with the creation or assignment of a right or debt-claim in respect of which dividends, interest or royalties are paid to take advantage of those Articles by means of that creation or assignment.*

2. Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the Convention are used in such a manner as to provide benefits not contemplated or not intended, relevant authorities of the Contracting States shall consult in an expeditious manner with a view to recommending specific amendments to be made to the Convention.

3. Where under this Convention any income, profits or gains are relieved from tax in Chile and, under the law in force in Australia, an individual in respect of that income or those profits or gains is exempt from tax by virtue of being a temporary resident of Australia within the meaning of the applicable tax laws of Australia, then the relief to be allowed under this

[1] Refer to text box immediately after Article 28 of the Convention.

Convention in Chile shall not apply to the extent that that income or those profits or gains are exempt from tax in Australia.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention 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 international agreements.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] 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 [*the Convention*].

CHAPTER VI

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

The Contracting States shall notify each other through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the provisions of this Convention shall have effect:

a) in Australia:

   (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Convention enters into force;

   (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the Convention enters into force;

   (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Convention 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 1 January next following the date on which the Convention enters into force.

Article 30

TERMINATION

This Convention shall continue in effect indefinitely, but either Contracting State may terminate the Convention by giving written notice of termination, through the diplomatic channel, to the other State at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

a) in Australia:

   (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following that in which the notice of termination is given;

   (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which notice of termination is given;

   (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following that in which the notice of termination 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 1 January next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Convention.

DONE at Santiago, this tenth day of March 2010, in duplicate in the English and Spanish languages, both texts being equally authentic.

For Australia:	**For the Republic of Chile:**
Virginia Grenville	Andrés Velasco Brañes
Ambassador	Minister for Finance

PROTOCOL TO THE CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

On signing the Convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion between Australia and the Republic of Chile, the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. In general,

    a) If, after the date on which the Convention 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 Convention by extending its scope to include any tax on capital so introduced. The terms of any such Protocol shall have regard to any arrangements between either Contracting State and a third State for the relief of double taxation on capital.

    b) With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N°18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention 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.

    c) Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation Decree Law No. 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

    d) A regulated pension fund which is established in a Contracting State primarily for the benefit of residents of that State shall be treated as a resident of that State and the beneficial owner of the income it receives. For the purposes of this Convention the term "regulated pension fund" means, in the case of Australia, an Australian Superannuation Fund, Approved Deposit Fund or Pooled Superannuation Trust within the meaning of the tax laws of Australia and, in the case of Chile, a pension fund established under the pension system of Decree Law No. 3500, and such other similar funds as may be agreed by the competent authorities of the Contracting States.

2. With reference to Article 5,

    a) A person who substantially negotiates the essential parts of a contract on behalf of an enterprise will be regarded as exercising an authority to conclude contracts on behalf of that enterprise within the meaning of paragraph 7, even if the contract is subject to final approval or formal signature by another person.

    b) A person will come within the scope of paragraph 8 of Article 5 only if that person is independent of the enterprise referred to in that paragraph, both legally and economically, and acts in the ordinary course of that person’s business as such a broker or agent when acting on behalf of the enterprise.

    c) The principles set forth in Article 5 also apply in determining, for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12, whether there is a permanent establishment outside both Contracting States and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

3. With reference to Article 7,

   When computing the taxable income of a 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.

4. With reference to Articles 7 and 9,

   Nothing in Articles 7 and 9 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment or accruing to an enterprise as the case may be, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles applicable under Articles 7 and 9.

5. With reference to paragraph 2 of Article 10,

   If,

   a) Chile agrees in a tax treaty with any other State to limit the Additional Tax charged in Chile; or

   b) in either Contracting State the tax imposed on dividends and on profits out of which such dividends are paid exceeds in the aggregate 42 per cent,

   the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

6. With reference to paragraph 2 of Article 11,

   If, in a tax treaty with any other State, Chile agrees to limit the tax charged in Chile on interest arising in Chile and derived by a financial institution to a rate lower than that specified in subparagraph 2a), or derived by a government to a rate lower than that specified in subparagraph 2b), Chile shall without delay enter into negotiations with Australia with a view to making a comparable adjustment.

7. With reference to paragraph 2 of Article 12,

   If, in a tax treaty with any other State, Chile agrees that payments for industrial, commercial or scientific equipment will not be treated as royalties for the purposes of that treaty, or limits the tax charged in Chile on royalties arising in Chile to a rate below that provided for in paragraph 2 of Article 12 of this Convention, Chile shall without delay enter into negotiations with Australia with a view to providing the same treatment for Australia.

8. With reference to Article 17,

   Income referred to in paragraph 1 of Article 17 shall include any income derived from any personal activity exercised in the other State related to performances or appearances in that State.

9. With reference to Article 26,

   Notwithstanding Article 29 of this Convention, in the case of Chile, information to which paragraph 5 of Article 26 applies, to the extent that such information is covered by Article 1 of Decree Law No. 707 and Article 154 of Decree Law No. 3, will be available with respect to bank account transactions that take place on or after 1 January 2010. Nothing in the Convention shall prevent the application of Article 26 to the exchange of other information that existed prior to the date of entry into force of the Convention.

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

DONE at Santiago, this 10th day of March 2010,

in duplicate in the English and Spanish languages, both texts being equally authentic.

For Australia:

H E Virginia Grenville
Ambassador

For the Republic of Chile:

Andrés Velasco Brañes
Minister for Finance