

Doing Business in Chile

2009



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 75 countries throughout the world. Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Chile has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at October 2009.

We look forward to helping you do business in Chile.

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2. Business environment

History and Government

From its independence in 1810 Chile has been governed by a series of constitutions which have reflected political currents and influences around the world, but which have managed to give the country political stability for decades. Chile experienced Republicanism which continued virtually uninterrupted from 1833 to 1973 when the *coup d'état* led by the Armed Forces defeated the president of that time.

Chile's current political constitution which replaced the former, in place since 1925, was passed in 1980 and as its basis indicated that the nation of Chile was, Republican, democratic and of political unity.

Chile possesses a presidential regime where both the executive and legislative powers are elected by universal suffrage. As the presidential system is a form of representational government, the powers of the state are separated into: executive, legislative and judicial; each of them being autonomous and independent.

Geography

Chile is located in the Westerly part of the Southern cone of South America, stretching to the continent of Antarctica and reaching Easter Island and Polynesia to the West. Also incorporated in its territory are: the Archipelago of Juan Fernández, The Juan Félix Islands, San Ambrosia, Sala and Gómez-the exclusive economic area of 200 miles serving as a platform to the continent. From north to south the visitor can discover the desert all the way to the eternal ices, passing along the way: valleys, pastures, lakes, forests, islands, glaciers, rivers and canals.

The surface area of Chilean Antarctica and other Chilean territories off the mainland is 2,006,000 km². The length of the country is over 8000 km, the maximum width 445km whilst the average width is 180km.

The country is divided into 15 regions: Tarapacá, Antofogasta, Atacama, Coquimbo, Valparaíso, Metropolitan, General Libertador Bernardo O'Higgins, Maule, Bío Bío, La Araucanía, Los Lagos, Aysén del General Carlos Ibáñez del Campo, Magallanes, Antártica Chilena, Los Ríos, Arica and Parinacota. These regions, in turn, are divided into 51 provinces and 342 communes. Santiago is the capital city located in the Metropolitan region. Other major cities are: Iquique, Antofogasta, Copiapó, La Serena, Valparaíso, Rancagua, Talca, Concepción, Temuco, Valdivia, Puerto Montt and Punta Arenas.

In the north the climate is mostly temperate. The average temperature on the coast is 23°C and inland this rises to 30°C. In the central area, the four seasons are very much evident, with pleasant temperatures found in every season. Towards the south, temperatures fall around 1°C for each 150m altitude in The Andes. These conditions create a Mediterranean climate. The average temperature reaches 20°C in summer whilst it drops to 8°C in winter. Precipitations tend to be concentrated in the winter months (May to August) reaching an average of 375mm. Winters are generally calm and summers are relatively hot.

The Domestic Market

Population

One of the great characteristics of the Chilean people is their strength of character inherited from the indigenous cultures. Furthermore, the condition of being a descendant of the Spanish conquistadors and the later arrival of European immigrants has brought together a unique population, which nowadays has a relatively homogenous profile, where diversity continues to keep its place.

The last census, carried out in 2002, showed that Chile has a population of 15 million inhabitants, 40% of whom live in the Metropolitan region where the city of Santiago is located. According to estimate made by the National Institute of Statistics, life expectancy has significantly increased in Chile: from aged 30 at the beginning of the 20th century to an average of 73 now.

Language

The official language of Chile is Spanish, alongside which exist a variety of indigenous languages.

In the north of Chile, approximately 20,000 inhabitants speak *Aymará*, although the majority of those are bilingual and regularly use Spanish.

In the central area, specifically in the territory of Easter Island, the original inhabitants speak *Rapa Nui*, a language of Polynesian origin.

In the south, ½ million people speak *Mapudgun* of *Mapuche* ethnic origin, though the majority employ Spanish as a second language. In these areas education is provided in both languages to prevent indigenous languages from dying out.

In terms of foreign languages, the Ministry of Education caters for various languages in schools around the country. The most important of these is

English, although French and German are also taught in some schools. As a result of commercial agreements, some schools and universities are teaching Mandarin Chinese.

National elections

Presidential elections were last held in December 2005; the next will be in 2010. The last elections for senators and deputies were held in December 2005; the next will be in 2012.

Currency

The Chilean currency is peso.

Units of Weight and Measure

The measurement unit in Chile is the metric system.

Economy

Economically, Chile is an exemplary country in Latin America. Political stability, strong macroeconomic indexes and the quality of human resources are all factors which have allowed Chile to reach such a leadership in the continent. If one compares Chile to other emerging countries, its privileged position in terms of country risk, economic and political freedom and quality of life can be highlighted. Alongside this, there is a vast mining potential, low corporate taxes, modern transport and telecommunications infrastructure. Chile also stands out for its solid and efficient financial industry as well as high levels of market penetration in Information Technology and the use of Internet.

Economic Growth

According to figures given by the Central Bank of Chile, in the 1990s the economy grew on average 8%. In the 1st years of the new century growth has slowed down and in the context of an international crisis growth expectations are not as high. Growth between 2000 and 2008 was 4%. The growth rate in 2005 reached an extraordinary rate of 6% due to an increase in production oriented towards the service sector, low inflation and the increased level of international reserves.

Credibility

The macroeconomic management based on pre-established policy and the independent and autonomous Central Bank guarantee fiscal and monetary discipline. The existence of stable and transparent policies, an efficient and independent judiciary and the presence of a dynamic and innovative private sector situates Chile as the most competitive country in the area and provides an offer of stability very much appreciated by foreign investors

Exports

Currently, in a large number of companies, there are almost 4,000 different products exported to 176 countries. Amongst those products are: copper, saltpetre fertilizer and lithium. In agriculture there are: wines, a wide variety of fruits, the seafood industry-which is particularly dedicated to salmon, tinned fish and seafood and fishmeal. Another range, by no means minor in terms of export includes: frozen foods, pre-prepared foods, ceramic designs and forestry amongst others. Added to this is a wide variety of manufactured products because Chile is blessed with a highly qualified workforce renowned in the international market. Last but not least, there is the large quantity of telecommunications and financial consulting that the country offers the world.

Foreign Investment

For a long time Chile has been attractive to first-time investors in Latin America as they value the economic and political stability and the clarity in business and taxation matters. But increasingly investors are going a step further, having gained confidence in the country, and are not only gaining experience trading with Chile but are also using Chile as a base to provide to other markets, i.e. a business platform to other countries of the region. Examples of this abound from mining companies such as: BHP Billiton, Placer Dome and Anglo American in the north that export Copper to the world markets and the Canadian company Methanex in the extreme south which produces methanol and sells it around the world. Agricultural and manufacturing companies in sectors from the food industry, producers of the best wines in the world to salmon farming, ship building and computer assembly now supply to markets outside Chile and use Chile as a base, taking advantage of the growing network of trade agreements.

Tax Reform

In the year 2002, Chile updated its tax legislation to facilitate the process of using Chile as a platform from which businesses can invest in trading with other foreign markets and to strengthen alliances between foreign investors and local businesses. In line with Chile's policy to minimise tax barriers to foreign investors, the reform means that foreign investors do not have to pay Chilean taxes on earnings which are obtained from investments in other countries. It means that its current legislation allows national and international companies have their business platforms in Chile by applying paid taxes in such countries under the credit mechanism.

The consequences of credibility in Chile

The use of Chile as a platform for trading with neighbouring countries has created a significant number of new jobs, as well as increasing technological exports and services within the country. However, there are also benefits which are less visible: in the form of know-how and technology. Consequently, all these positive aspects are combining and providing the impetus for Chilean development, which in turn is beneficial for foreign associates.

The Financial System

Currently there are 26 banks operating in Chile, 19 of which consider themselves banks established in Chile. They are the following *Banco de Chile, Banco Internacional, Scotiabank Sud Americano, Banco de Crédito e Inversiones, Corpbanca, Banco Bice, HSBC Bank, Banco Santander-Chile, ABN AMRO Bank, Banco Security, Banco Falabella, Deutsche Bank, Banco Ripley, HNS Banco, Banco Monex, Banco Penta, Banco París, Banco Bilbao Vizcaya Argentaria, Chile (BBVA) and Banco Desarrollo*. As well as the aforementioned, there are 6 branches of foreign banks which include: *Banco do Brasil S.A., Citibank N.A., BankBoston, N.a., JP Morgan Chase Bank, N.A., Banco de la Nación Argentina and The Bank of Tokyo-Mitsubishi, LTD*. Finally, there is the Central Bank of Chile¹ which is not audited by the Superintendence of Banks and Financial Institutions.

All the banks mentioned, (with the exception of the Central Bank) are subject to inspections from the Superintendence and are regulated by legal decree No. 3 26th November 1997 which is outlined in The General Law of Banks as well as the norms which the Superintendence outlined in the Updated Version of Norms.

The General Banks Law defines what a bank is in article no. 40. This definition states that the basic operation is: to obtain money from the public with the objective of offering it in loans, adding interest, investing, acting as a financial intermediary and making profits from these and any other operations that the law allows.

State guarantee and preference for deposits and attracting savings

The norms of the General Law of Banks (article 65,123, section 5, 132 and articles 144-153) assure deposits in national or foreign currency with a bank or financial institution in the form of the following transactions:

- In 100% of their balance
- Deposits via a savings book with an unconditional deadline draft

- In 90% of their total balance with a maximum payment limit of 108 index linked units in the whole financial system each calendar year for on-time deposits, which fulfil the following requirements:
 - The account holder is a person, not a business
 - Deposits are made within the deadline via nominative documents on demand or with savings books via instalments
 - Deposits with the deadline of which the expiry date does not exceed 10 days following the presentation of an agreement or the declaration of forced liquidation Current account deposits
 - Deposits via a savings book, payable on demand
 - Other deposits at call.

3. Foreign investment

Trade Agreements

The stimulus for foreign investments has been encouraged by various trade agreements. These agreements have achieved the following international alliances:

Free Trade Agreements

The Free Trade Agreements that Chile has signed with other nations have been vital in encouraging businesses to adopt a positive approach. In 1991, Chile signed a free trade agreement with Mexico and in 1996 proceeded to finalise an FTA with Canada and become an associate member of the MERCOSUR commercial bloc formed by Argentina, Brazil, Uruguay and Paraguay. Furthermore, Chile has bilateral economic and trade agreements with: the European Union, the USA, South Korea, the EFTA bloc (formed by Norway, Iceland, Liechtenstein, Switzerland, Singapore, New Zealand and Brunei, that along with Chile form the denominated P4 bloc) China, Japan and Australia. It is currently in negotiations with India. It also has signed free trade agreements with Colombia and Peru.

Confidence in Investors

Thanks to these agreements, Chilean businesses now enjoy privileged access and in many cases no customs fee to a market of more than one thousand million consumers worldwide. In response to this, an increasing number of companies such as the British-Dutch Unilever, the Swiss Nestlé, the German Baiersdorf Ag and Packard-Bell, controlled by Japanese capital, are using installations in Chile to export to neighbouring markets and, indeed, the rest of the world.

In many cases such as that of Packard-Bell, foreign businesses have formed strategic alliances with Chilean partners to access local knowledge. In the 1990s Chilean businesses, using their experience in a domestic, competitive and unregulated market, started to expand to neighbouring countries in favour of applying their acquired expertise. For foreign investors this is a significant advantage; as well as knowledge of export markets-Chilean entrepreneurs and executives have practical experience of operating in other countries.

A number of foreign investors were attracted by the world-class telecommunication infrastructure in Chile, given that they are already using Chile as a launching base. Delta Airlines, Air France and Hewlett Packard are just three of these companies which have adopted this strategy. They all chose Chile as the centre of support and contact to: sell

tickets, reply to clients queries and provide other services around the region.

A similar phenomenon can be observed in the banking sector. The Spanish banking group SCH uses Chile to maintain and develop systems processing for its operations around Latin America, whilst the US Citigroup has decided to locate its new regional software development centre in Santiago.

Many international companies have started to look towards “shared services”, that is the centralisation of internal services, such as accounting and financial administration for subsidiaries in different countries, as a way of reducing their operational costs. And thanks to Chile’s trustworthy telecommunications and wide range of highly-qualified professionals, our country has emerged as an attractive business alternative.

Agreements of Double-Taxation Elimination

These are legal international agreements between two states, which are incorporated into the internal legal regulations of each nation, with the aim of eliminating or reducing the duplication of international taxes which affects or restricts the exchange of: goods and services, capital transfers, technology and people. This exclusively benefits people of both countries who are legal nationals or residents of either country.

In general these agreements are applied to taxes which burden earnings or ownership. The following alternatives exist to counteract problems of this nature:

- The taxation jurisdiction is conceded exclusively to one of the states involved, to be imposed on earnings and estates in the country where the business has its headquarters or the country which is the source of revenue
- Taxation jurisdiction is conceded to both nations but a limit is given , from which the nation of origin can impose a determined levy (interest, royalties)
- A norm where the countries concerned agree to avoid double taxation is envisaged in the cases where revenue is taxed in both countries. Rebates and exemptions exist based on how much tax has been paid in the other country.

Export/Import Policies

As world trade is rapidly growing, free trade agreements have become commonplace. The WTO endeavours to regulate every aspect of this. Countries continue to implement measures that protect their industries.

The following are some of the most consequential measures adopted by Chile.

Imports Policy

This refers to general procedures, mainly administrative for carrying out imports. Amongst those are licences, norms in the valuation of excise duty on merchandise and inspections prior to shipments. Matters of customs/tariffs are also included.

Technical Regulations and Sanitary Measures

These consist of specifications with regards to the characteristics of some products must have such as: packaging requirements, labelling, including sanitary measures (also relating to plants and animals)

Intellectual Property

Norms that regulate commerce and investments with a view to protect author's rights, manufacturing and commercial brands and denominations of origin amongst others.

Subsidies

This refers to the economic support which the state grants, allowing a reduction in costs and generating a distortion in sales prices

Export of Services

Services are not affected by customs duties, which mean that the barriers concerning these are in: laws, norms and regulations which discriminate against this sector or the suppliers of foreign services. In this area transport, telecommunications and financial services are included.

Commercial Safeguards

These are temporary measures a country adopts to protect a national industry faced with an increase of imports or disloyal business practice (dumping). Or when there is a financial contribution from a government or any other public organisation granting subsidies, applying excessive excise duty and anti-dumping right or compensation, respectively, on the import of a product.

4. Setting up a Business

How to operate in Chile

Foreign people and companies that are not residing in Chile may develop commercial activities by:

- Appointing a representative
- Having an agency or branch of a foreign company
- Having a company of people or public limited company
- Having a private limited company.

Companies can be private or public. Private ones provide profits for the associate members and public ones according to contributions. In the latter, members can change without the authorization of other members, which is exactly what happens in incorporated companies. There are mixed companies, such as those in limited partnership by shares. In private companies, the contract to create, modify or terminate a contract requires the agreement or consent of all members. Conversely, in public companies the majority vote is sufficient.

In Chile, companies can have any money-making objectives long as it is within the boundaries of the law, morality and good practice. However, the law requires that certain companies of a particular specialisation can only exist in a determined form, in public limited corporations, and are under particular supervision. This is the case in: banks, financial institutions, insurance companies, global equity, investment funds, funds administration, pensions, health provision institutions, commercial stock brokers and to a lesser extent stock valuers and stock exchange agents are also in this category. Furthermore, as a general rule, Chilean law does not demand a minimum of capital to form a company, except in the case of some particular public corporations.

Companies regulated by the Civil Chilean Code, collective civil companies and partnerships, are subject to terms agreed by both parties where the law does not cover their specific case. The other companies, that is, public and private limited companies are formed public decree.

Types of companies

General Partnerships

In general partnerships, partners are liable up to their personal wealth and possessions. A debt of an insolvent partner burdens other partners and agreements on payments are, as a general rule, taken unanimously. In partnerships with private investors, the company directors or owners are liable up to their personal wealth and possessions but private investors or silent partners only up to their contribution. The dissolution of these companies is a spoken agreement and it is therefore enough with the consent of all parties without having to register or publish these decisions officially.

In Corporate enterprise, the contract of the business constitution is formal and must be published in the official weekly newspaper and registered in the Registry of Commerce. Essential information which the notification must contain is the name of the all partners-as it is legally binding to all parties. This along with the trading headquarters will determine which assets supervisor and which court of justice will regulate the business and determine the applicable legislation.

Private Limited Liability Company

In private limited liability companies, partners are liable up to the amount which they have contributed to the company. Private limited companies, civil or commercial, are always publicly registered. They must be legalized by public decree in the Registry of Commerce and published in the official newspaper. Modifications in terms of the partners are acts where the same formality applies: amendments must be published and registered in the Registry of Commerce. All for which norms do not exist relating to private limited companies are subject to by-laws in the Civil Code and Code of Commerce.

Individual Limited Liability Company

An Individual Limited Liability Company is an individual whose capital is different from the holder's. To create this company you just need a Chilean or foreign individual.

An Individual Limited Liability Company is constituted through a public deed which must at least contain the stipulations indicated in the law.

An abstract of the public deed authorized by the Notary is registered in the Commerce Registry of the company's address and is published in the Diario Oficial within the sixty days after the deed's date.

Limited Co-Partnerships

In limited co-partnerships there are two types of associate members; the directors are the only ones with administrative power and the shareholders are passive or capitalist members. In turn, there are two types of limited co-partnerships. In simple limited co-partnerships, share holders have the rights of general partners and in partnerships limited by shares, the issue of shares represents the extent of the ownership of shareholders as in public limited companies. Simple co-partnerships are by spoken agreement whereas commercial limited partnerships and partnerships limited by shares are by official announcement in the official newspaper and by decree in the Registry of Commerce.

Public Limited Company

The public limited company is defined by law as an entity formed by joining a common fund, provided by shareholders who are liable only up to the amount which they invested. It is administered by a board of directors subject to modifications. The public limited company has the same characteristics as the other companies: it is a business entity, shareholders provide capital or goods valued in monetary terms, it pursues lucrative goals, losses are sustained by a pool of shareholders, but shareholders are distinguished from one another in their rights as individual title holders. These companies are always commercial, even when they were formed for civil ends. The public limited company constitution, modifications and the dissolution are made lawful by public decree, registered in the Registry of Commerce and published in the official newspaper.

Public corporations can be open or closed. The first is where shares are offered publicly and for this the company should be registered with the Registry of Securities within 60 days of its creation and being subject to the auditing system agreed by this registry. Banking entities are audited by the SBIF. Closed corporations, on the other hand, cannot offer shares publicly except where they voluntarily undergo auditing by the Registry of Securities. Notwithstanding, by the authority of the shareholding representatives, they have the power to become closed to the public and consequently no longer need to be registered in the Registry of Securities or be subject to their auditing system. The law does not require a minimum amount of capital for the forming of a public limited company except in special cases such as for banks and insurance companies.

Operations through a representative

A representative operates according to a mandate, contained in agreement, which is provided by a non-resident investor to a resident individual or entity. The representative acts on behalf of and at a risk of the foreign

investor to carry out one or more business operations. The mandatory and representative are free to agree the existence of a payment for the last one.

Chilean branch or agency of a foreign company

A foreign company must appoint a legal representative to constitute the branch. The legal representative should authenticate, among other formalities, the following documents which must be registered in the official language of the foreign country and its corresponding translation into Spanish. In case of a different language:

- Verification that the company is legally established abroad.
- Certification that the company still exists
- An authentic copy of the current statutes of the company
- A general power of attorney issued by the company to the legal representative to be represented in Chile. This power should clearly establish that the legal representative acts in Chile under the direct responsibility of the company with wide powers to act on its behalf.

5. Labour

Working relations between employers and employees are regulated in Chile by The Code of Work and by complementary laws included in the work contract.

The legal parties are outlined in terms of:

- Employer-the person or entity which uses the intellectual or manual services of one or more people, specified contractually
- Employee-any person who offers intellectual or manual services according to the specifications outlined by the contract which the employer creates
- Independent worker-who exercising their activity does not depend on an employer nor has employees working for them.

In terms of work legislation and social security, a business is understood as any organisation which employs people under a management with an economic, social, cultural or beneficiary objective legally determined as an individual entity.

The working contract is the means by which both parties can be guaranteed, the employer-that the employee will carry out the services and the employee pledges to remunerate the employee as specified.

The work contract must contain at least the following information:

- Place and date of work
- Indication of full name, nationality, date of birth and entry date of the employee
- Determine the nature of the work and the place or city in which this will be carried out. The contract should mention 2 or more specific job functions which can be separate or complementary.
- The salary, form and frequency of agreed remuneration
- Length and Distribution of working day, except where the company operates on a rota system, in which case it will be subject to internal regulation.
- Length of Contract
- Other work-related agreements made by both parties
- When an employee must change address due to work, their original address must be stated

- If, due to the nature of the job, the worker must frequently travel in the working day, the geographical area in which the company operates must be mentioned
- The working contract can be individual or collective. The contract is individual when it is agreed between an employer and an employee and collective when is agreed between one or more trade unions or workers who form together to negotiate collectively, with a view to establishing common working and remuneration conditions, for a determined period of time.

The contract is mutually signed and must state the dates on both copies, one of each going to each party. The employer who does not sign the contract within 15 days of the employee starting work (5 days in the case of projects lasting fewer than 30 days) will be sanctioned by law.

Legal Requirements to Employ Foreign Workers in Chile

For a foreigner to be allowed to work in Chile, they must be legal residents in their country of origin and should be authorized to work in Chile by their country of origin.

Requirements for foreigners to be granted a visa subject to contract are:

- The company or institution must have a legally recognised address in Chile.
- The working contract must be signed before a notary by the employer and worker or those representing them. If signed abroad, it must be signed by both parties before a consulate or diplomatic agent recognised by the Ministry of Foreign Affairs according to the procedure established in the Civil Code of Procedure.
- Professionals or specialised technicians must be accredited with the respective title duly legalised. Contrary to this, their knowledge or ability in their specialized field must be evidenced through the necessary documentation.
- If the profession, industry or work of the contracted party is indispensable to the development of the country, an official report by an accredited organisation would need to be made to substantiate the grounds for this.
- The activities carried out by the foreigner should not endanger national security. If there is any query relating to the nature of the work, prior to application the National Ministry of Defence should be contacted.
- The contract should be verified in accordance with the appropriate work-related legislation and regarding health and social provisions.

Working Schedule Norms

The length of the working week must not exceed 45 hours per week.

The employer has the right to extend this by two daily hours prior to Christmas, national holidays or other festivals. In this case, the hours exceeding the aforementioned maximum will be paid as extraordinary hours.

Extraordinary hours can only be allocated to cater for temporary situations within the company. Such agreements should be put in writing and be valid for a period of no longer than three months, with the possibility of extension provided that both parties agree. Extraordinary hours carried out without a written agreement and with the knowledge of the employer will be paid as extraordinary hours.

Extraordinary hours must be paid with a 50% increment and should be paid alongside remuneration in the respective period. Hours worked *in lieu* are not considered extra hours. These should be officially requested by the employee and authorized by the employer

Breaks during the Working Day

The working day must be divided into two parts, leaving a minimum of 30 minutes for a meal break. This is not considered as time worked during the working day.

Sundays and Public Holidays are days off, except those industries authorised by law to work on those days. Excluded from this are jobs which require ongoing production or are subject to *forces majeures* that require workers presence. Companies excluded from the Sunday off should be allowed a rest day *in lieu* of this or other public holidays on which employees have to be present.

Remuneration

The term remuneration refers to the salary paid to the employer valued in terms of money and stated in the contract. Remuneration does not include the following: transport allowances, cash losses, wear and tear, meals, per diem, family loans granted by law compensation for years of service and other factors relating to contract termination or refunds of expenses for accidents which happened at work

The following *do* form part of remuneration:

- Salary which is the fixed amount of money paid at determined periods (e.g. monthly) stated in the contract for services rendered.
- Extraordinary hours
- Commission, which is a percentage of the sales price which the employer agrees in conjunction with the employee
- Shares or a proportion of the profits of a business or only one or more sections or branches.
- Bonuses which corresponds to the part of the profits which the employer shares with their employee and adds to their remuneration

Remuneration must be paid in money of legal tender with a frequency stipulated in the contract and no later than 1 month after the work is carried out.

The employer must deduct from remunerations taxes, social security and other provisions in conjunction with the relevant public or private organizations.

Holiday Entitlement

Workers with more than one year service have the right to 15 days paid holiday. Saturday is not considered a working day. Remunerations are paid in this period as stipulated in the contract via the fixed remuneration. In the case of employees with variable earnings, an average of earnings over the previous three months will be taken.

These holidays are a legal entitlement and should only be paid in money instead if the employer leaves the company before taking their annual leave.

6. Taxation

In Chile taxes can be categorised as direct and indirect taxes. Direct taxes are those which are directly incurred on individuals or legal entities. Under direct taxes, the following are included: tax on earnings, on capital growth and those paid in obtaining permits, licences, rights and other such documents.

Indirect taxes are those applied to the purchasing of goods or services and the transactions involved in those. That is to say, the customer who purchases the product/service pays such tax even when the nation where it is bought is not directly charging taxes, but the individual or entity which sells or renders the service retains the tax and pays it to the State. Indirect taxes are therefore charged in the buying/selling of goods or services and also to other commercial transactions such as imports of goods brought from other countries. A typical tax in this category, and generally applied, is Value Added Tax (VAT). Its rate corresponds to a 19%.

Expenditure, Income and Property Tax

Expenditure taxes are those which are mainly levied on transactions of buying and selling (at the time an individual or business buys a good, they pay tax). Another type of expenditure tax is that which is charged when goods are brought to Chile from another country (imports). This type of tax is called customs duty.

Income taxes directly affect people and businesses that receive profits, benefits or increase of capital for a determined activity/work carried out. There are also property taxes, i.e. any person who has an immovable asset (property) must pay property tax because of being in Chile.

Property taxes are contributions relating to houses, estates, buildings, land and inheritance. Real estate tax, legacy duty and vehicles tax are included amongst these.

Regressive and Progressive Taxes

Regressive taxes are those which are charged equally, that is, the tax rate applied does not relate to the economic capacity of a person. It implies that a person with no means of support must pay a higher amount of tax in relation to his/her income than that resourceful person. Therefore, this situation will strongly affect his/her personal economy.

Conversely, progressive taxes take into account the economic capacity of a person/company. With this type of tax, poor people pay less than rich people. That is to say, that while profits or earnings rise, the amount of tax paid also rises proportionally. Progressive taxes seek to retain a proportional amount of income. In this way, the government seeks to redistribute wealth and bring more benefits to the less-favoured in society.

There is a clear positive relation between tax burden and development level. The Chilean tax burden is perfectly consistent with the development level of our country. It is a normal rate expected for a country with an income like Chile.

Indirect taxes tend to be regressive and direct taxes progressive. In the latter, these are normally calculated on personal wealth, personal earnings or company earnings. It is vital that these taxes are not charged to people with the greatest needs always taxes on items such as cigarettes, alcohol, gambling etc.

The level of taxation depends on the amount being taxed and on the particular goods/services on which they are incurred. For this reason, national governments should be very careful when imposing taxes. A mistake in calculations could generate results which may be the opposite of the expected outcome.

Value Added Tax

Taxes are one of the most significant sources of income of any government in the world. Thanks to these taxes, governments receive money which they can use to carry out social projects, investments, state administration along with many other purposes.

Many types of tax exist including: direct, indirect, regressive and progressive. Equally there are income, property, expenditure taxes etc.

VAT is a tax on sales of consumer goods. It is an expenditure tax given that it is charged on consumers at the moment of purchasing merchandise or services. The current VAT rate is 19%.

First Category Tax (tax on companies)

The tax rate of first category is 17%. It is applied to incomes paid and/or earned on annual basis from January 1st to December 31st (calendar year.)

The first category tax is a tax that affects the companies. It is applied and calculated on a paid or earned basis. Although this tax affects the companies' profits, whether they are individuals or companies, it acts as

an advance to the complementary global tax or additional tax. It means whenever the entrepreneur, partner or shareholder receives the incomes from the company, he/she should pay their corresponding taxes and he/she will apply this first category tax as a credit.

For such purpose, any company must pay this first category tax on a complete accounting basis. The entrepreneur, partner or shareholder will pay the complementary global tax or additional tax when he/she receives the incomes from the company which should keep a special record known as FUT – “Fondo de Utilidades Tributarias” (Tax Profit Fund). This fund will be used to follow up the profits that have not been distributed by the company and the credits for the first category tax.

Domestic credit (First Category Tax)

The taxpayers subject to a complementary global tax and additional tax have the right to reduce, as a credit, the amount of the first category tax paid at a company level. Even if the company responsible for the payment of the first category tax does not comply with this obligation, the shareholder or owner is not obliged to pay such tax.

Dividends and profits distributed among companies are not taxed on the receiving company. The 17% credit against the tax goes after the distribution and will be able to be used when the income is finally received by the individual, who resides in Chile, subject to a complementary global tax or by the person who is not residing in Chile or is domiciled subject to an additional tax whether he/she is an individual or a legal entity.

The level of taxation is worked out after the settlement of financial accounts in accordance with the relevant legislation relating to earnings tax. Losses can be deducted from accumulated profits from previous earnings within a certain deadline.

The law of Income Tax establishes, as a principle, that all expenditures, which are adequately detailed and relating to the appropriate transactions, necessary in generating profits can be deducted from taxable profits. It also indicates how this can be applied to rapid depreciation. Tangible goods can depreciate in value throughout their time of use; rapid depreciation is available to the tax-payer in relation to new or imported goods whose time in use is equal to or more than 5 years. In this case, depreciation is calculated on the basis of 1/3 of the time the object is used. Organization and start-up costs can be, depending on the tax-payer, deducted in the first year or redeemed over the first six years of the project.

Branches and Permanent Establishments

The revenue obtained by a permanent branch or an establishment product of an activity developed in Chile, is subject to additional taxation when it is transferred abroad. The permanent establishment or branch has the right to use the additional taxes or first category taxes to later gain credit for taxes paid on revenue.

The permanent branches and establishments of companies or foreign individuals are subject to first category tax (17% of the actual earnings resulting from business activity in Chile).

Any distribution or reissue of earnings is subject to extra payment of tax.

Credit for taxes paid abroad

Taxes paid abroad can be used as a credit against the domestic taxes up to a certain amount and, for the excess, they can be treated as a deductible expense. A unilateral credit of 17% is allowed respect to some incomes of foreign source. In case of an existing agreement to avoid the double taxation, this credit increases a 30%. The credit excess can be used within the next years.

Second Category Tax

This category involves the incomes paid to individuals by means of their intellectual or physical performance. In the case of dependent employees who have a contract of employment, their incomes are taxed with a unique tax and monthly applied. Its rate goes from 0% to 45% which will depend on the income. This tax is paid on a monthly basis and retained by the employer.

On the other side, the independent employees who do not have a contract of employment, that is, they practice their profession freely, such as professionals, technicians, etc. They do not have a second category tax. The incomes paid for this type of people are directly taxed with the complementary global tax, with a progressive rate that goes from 0% to 45%. This rate will depend on the income amount and annual application.

Complementary Global Tax

This tax is progressive, with rates that go from 0-40% expressed annually and should be applied when a tax-payer receives incomes during one year from one or more sources.

The Taxable base and its calculations

This tax is applied on an annual basis. Earnings from all sources are included in calculations.

Earnings corresponding to dividends or withdrawn profits are added and calculated to determine the taxable amount according to the information the company provides on those earnings and the following general guidelines:

Dividends or withdrawn profits must firstly be declared as taxable profits. Profits can only be distributed after they have been taxed.

Profit distribution carried out by the company must be imputable to the oldest taxable retained profits (FIFO).

First category tax corresponding to taxable profits obtained must be added to determine the level of taxation. Later the rate of the first category tax (17%) is applied on the base of this tax in order to apply the credit to the global complementary tax. It should be mentioned that in recent years the level of first category taxation has been variable.

Additional Tax

Main Characteristics

In general, this tax is applied to revenue of Chilean origin to legal nationals or residents abroad when money is made available from Chile to a resident abroad. It has two modalities, according to the types of revenue it could be a tax of retention or of annual declaration.

Rates

The general rate of additional tax is 35%, applying different rates in some cases.

For interest payments the rate is 35%. However, if the operation has been authorized by the Central Bank of Chile, the rate is 4%.

Payments for services rendered are taxed at a rate of 35% of gross revenue, except for technical consulting or personal services taxed at a rate of 20%.

Any payment for services rendered abroad is taxed at a rate of 35%. However, there are some payments exempt from this such as transport services rendered abroad. Foreign companies involved in maritime transport and services related to and from Chile have a tax level of 5%. The tax is not applicable to cargo ships from countries where they do not tax Chilean cargo ships at a similar rate.

Quantities paid for the lease of imported capital goods with or without buyer's option are susceptible to the payment of excise duty at 1.75%.

Insurance premiums contracted by businesses not established in Chile to insure the plant, other goods, life or medical assistance of residents or individuals with Chilean addresses, 22% and 2% reinsurance.

Remittance of profits and dividends: 35%.

Royalty payments: 30%. However, if the payment is related to films shown on TV or at a cinema the level of retention is reduced to 20% and if it is related to the use of editing rights or authors of books this is reduced to 15%.

Calculation of Taxable Profits

Dividends or profit distribution must firstly be declared as taxable profits and following that as distributed revenue. Distribution of profits is imputed starting with the oldest retained profits.

First category tax corresponding to taxable profits obtained must be added to determine the level of taxation. Later the rate of the first category tax (17%) is applied on the base of this tax in order to apply the credit to the global complementary tax. It is important to mention that first category tax rate has changed during the time in the same way as if the revenue recipient was Chilean and subject to personal tax in Chile.

Taxes on payments for bonus or royalty

In accordance with the Chilean tax law, all the bonuses paid abroad are subject to a deduction tax of 30%. This is a deduction tax which must be completed the next month after paying the bonus.

In case of payments for bonuses to people residing or domiciled in countries that Chile has signed agreements to avoid the double taxation, the regulations of the agreement must be applied.

From January 1st of 2007, certain bonuses have a reduced rate of 15%. This is the case of bonuses related to the use and operation of invention patents, utility models, industrial drawings and designs, diagrams or topography of integrated circuit, new varieties of vegetables and computing programs about any type of physical support. This reduced rate will not be applicable in case the payments are paid to a related party or to a country considered as a tax haven.

For tax purposes, the payments of bonuses paid to related companies are only deductible up to 4% of the sales total and services of the year unless the tax applied in the beneficiary country be 30% or higher. The part of the

bonuses that exceeds the limit of 4% that is not deductible is not subject to the unique tax with a rate of 35% established in the article 21 of the Income Tax Law.

Payments made abroad to entities without domicile or residence in Chile for engineering or technical works or professional or technical services expressed in reports or plans are subject to deduction tax of 15%. However the rate will increase 20% if the payments are paid to people residing in a fiscal haven or a related party.

The additional tax deducted on the technical assistance related to exports can be recovered as a provisional payment of the Income Tax provided that certain requirements are complied.

Certain services rendered abroad in relation to the exports are exempt from additional taxes. When certain requirements are met (It is not associated with bonuses, technical consulting or interests).

The bonuses paid to producers or dealers of cinema or video are also subject to a rate of 20%. The bonuses paid for copyright and edition are subject to the tax rate of 15%.

Capital Earnings

As a general rule, capital earnings are considered normal sources of revenue and are subsequently taxed in the first category and with global complementary tax or additional tax according to the particular case, but only after the disposal of the shares. There are some exceptions to this rule; the most significant are the following:

- The capital earnings, product of the disposal in discontinuation of shares in a company can be subject to first category tax in the nature of a tax only on earnings (17%) if:
 - a) The shares have been owned for more than 1 year.
 - b) The seller does not carry out the operation within a common transaction/industry
 - c) The buyer is not a related party to the seller
 - d) The shares of open public corporations bought and sold in the stock market and published in a list by the Internal Revenue Service are also exempt from tax.

- The capital earning from the alienation of immovable assets carried out by people who are not obliged to declare an effective income in the first category does not pay when:

- a) The property has been owned for more than one year.
- b) The seller does not carry out the operation within a business or regular activity and
- c) The buyer is not a related party of the seller.

The immovable asset is not part of a company's assets that must declare its incomes based on the complete accounting. If the goods are not disposed of within some of these exceptions, the earnings are taxed, as any other profit resulting from a business activity.

Special Regime

Statute of Foreign Investment

Under the statute of foreign investment (DL 600), the foreign investor can choose to pay a higher tax of 42% instead of 35% additional tax. This rate will be fixed for a period of 10 years which will have the possibility of extension up to a maximum of 20 years. The investor can choose to abandon the special arrangement and consequently pay the additional tax, but once this has been changed, it is not possible to revert back to the previous agreement.

Investment Fund of Foreign Capitals

Under the legislation of foreign investment fund, the foreign investor can also choose a special reduced tax. The requirement to receive this benefit is the obligation to maintain investments in Chile for at least 5 years. The fund is taxed with a fixed rate of 10% on shipments.

Other Special Agreements for Certain Regions of Chile

The law allows tax exemption in some regions of Chile according to the following:

Easter Island has a duty-free zone as it is free from all taxes and contribution on goods located on the Island and its earnings; equally on industries related to the territory developed by people with an address on the island.

The cities of Iquique and Punta Arenas have a tax-free zone. In this region first category taxes are not paid, however any additional or personal tax is applied and as first category tax is not paid there is not a rebate when profits and dividends are remitted.

In the area of Navarino and the communities of Primavera and Porvenir in the extreme south of the continent, there is a special tax regime where first

category tax is not paid, nonetheless, a rebate is granted to any additional or personal tax according to the equivalent first category tax which would have needed payment.

The provinces of Arica and Parinacota in the north of Chile have a special rebate allowance of first category tax equivalent to 20% of the physical value of goods of the fixed asset acquired or made during trading.

Tax supervising authority

The Service of Inland Taxes is given the right to regulate taxes by its Organic Statute, tax contributions code and laws for applying tax regulations and administrative auditing.

Before the Service of Inland Tax, every individual or business acting on behalf of the tax-payer must legally certify their representation. The mandate must be made in written form. The Service of Inland Taxes accepts their representation without proof of identity but is able to ask for ratification or proof of association with the tax-payer within a determined deadline. If this procedure is not followed, the application will not be accepted.

Any notification by the service will be done by letter and sent to the addressee, except where an alternative preference is expressed.

All notifications will be sent to the address indicated by the tax-payer in their declaration at the beginning of business activities or that which the party in question expresses in their previous respective tax declaration.

Accounting norms on tax matters

The law requires that tax-payers use accounting systems and inventories which clearly reflect their business activities.

When it is necessary to carry out an inventory to determine the profits of a tax-payer, the regional director will use the powers entrusted to them to ensure the actual gross revenue is reflected in the accounts.

Except where a wish to the contrary is expressed, taxable incomes and revenues will be determined according to an accounting system which the tax-payer has used regularly to calculate their revenue. However, if the tax-payer does not use a recognised system or if it is felt that the system used does not reflect the taxable revenue, they will be determined in accordance with an approved system with all accounts redone.

Balances must be over a 12 month period, except where they are at the

beginning of business operations or where the tax-payer initially was authorized for the first time a change in the balance date.

Balances should run until December 31st of each year. Nevertheless, the regional director could authorize special cases where the balance runs until June 30th, at his discretion

Every individual/business must certify their income via a registered accountant, except where a law exists to the contrary.

Accounting books must be kept in Spanish and their values expressed in the manner indicated in article 18, being kept by the tax-payer alongside appropriate documentation in case of spot-check inspections. Foreign currencies can be used in accounting and converted into the national currency.

If the main currency used is not the Chilean Peso, the regional director can allow the accounting operations to be carried out in the other currency, as long as this does not devalue the taxable income which must be paid.

Without affecting the Code of Taxation or laws relating to international capital, foreign currencies will be recorded in accordance with the following guidelines.

- The exchange rate will be calculated as an average of the rate a month prior to the money entering the business account.
- In the case of international goods entering Chile, their value will be fixed according to the corresponding wholesaler price at the point of entry. As a result, any difference in value recorded will affect the results of the respective financial year.

7. Accounting & reporting

In Chile there are various institutions in charge of regulating business. These are the following:

The Chilean School of Accountancy

This is the main institution which regulates the profession in Chile. Originating from the creation of a national register of accountants in 1932 accrediting them in law no. 5.102, later in 1958 The Chilean School of Accountancy in law no.13.011, later reformed in 1979 as the current School of Accountancy AG which promotes common standards of good practice, development and protection of the accounting profession; to publicise the role of the profession amongst the community and to supervise progress, prestige, ongoing improvements and prerogatives for everyday practice. They aim to incorporate accountancy into cultural, social and economic development of the country as well as to maintain professionalism among associates and dictate accounting norms.

The Chilean Securities and Insurance Supervisor (SVS)

This is an autonomous corporate body affiliated with the Chilean government through the Ministry of Finance. It is responsible for the supervision of all activities and entities involved in Chilean securities and insurance markets. The SVS enforces compliance with all laws, regulations, by-laws and other provisions governing the operation of these markets. The SVS has among its main objectives to maintain honest and correct policy among the markets it supervises, achieving this through opportune and wide distribution of public information and maintaining/ collaborating with knowledge and education of investors, insurers and the general public. All those are essential elements for the development and correct operations within those markets. Transparency of policy is a principal strongly encouraged by the Chilean government and linked to the strategy of bringing together state services and citizenship.

The Supervisor of Banks and Financial Institutions (SBIF)

This was created in 1925 and is a public autonomous institution whose statute is found in title I of the revised text of the General Banks Law according to the decree subject to law No. 3 of the Ministry of Finance of 1997 and related to the government through this ministry. The head of this supervising institution is the superintendent, appointed by the President of the Republic.

The designated function of the SBIF is to supervise the banking industry and other financial institutions to protect depositors, creditors and the public interest.

Entities that Require Auditing

Companies in Chile that are public and float shares on the Chilean stock market are known as open public companies and are audited by the Supervisor of Public Companies and must be audited by auditing companies authorized by the supervisor.

The banks and financial institutions controlled by the SBIF must be audited by auditors registered with this regulating institution.

In private limited companies, auditing is requested by directors in the measure that it is deemed necessary. In Chile there are a large number of companies requiring auditing services and it is therefore a very interesting market.

8. UHY firms in Chile

UHY Macro Consultores and UHY Ossandón Consultores have partnered together to create a unique alliance and expanded market competitiveness in Chile, with capabilities to meet the most demanding client.

Our firms are located in Santiago, Viña del Mar, Aisén and Punta Arenas. This network allows us to provide a service of quality and integrity to our clients and all those who wish to set up business in Chile. We form part of a global company, which allows us to offer services in several domains including, amongst others: fiscal policy, accounting, labour-market related issues, legal, auditing/financial reporting and business consulting.

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9. UHY offices worldwide

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