
CHAMBERS GLOBAL PRACTICE GUIDES

Private Wealth 2023

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Chile: Law & Practice

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Torretti & Cía

CHILE

Law and Practice

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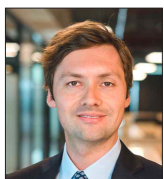
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Torretti & Cía specialises in tax issues, with a strong international outlook and a body of work balanced between corporate tax, private wealth and tax dispute resolution. The firm was born as a reaction to the “Biglaw” model, deliberately seeking to differentiate itself from larger competitors by having the partners directly involved from start to finish in all the matters handled by the firm. Their experience, coupled with the

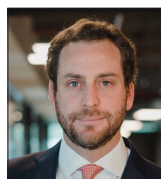
support of a cohesive team of lawyers, results in clear advice that effectively solves their client’s complex needs. **Torretti & Cía** aims to provide personalised strategies for each client’s unique situation and interests. The partners of **Torretti & Cía** are professors of tax law, and their academic background allows them to translate technical matters into simple, understandable concepts.

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Abogados

1. Tax

1.1 Tax Regimes

Income Tax

Chilean-resident individuals are taxed on their worldwide income with personal income tax at a progressive rate ranging from 0% to 40%, while non-residents are taxed only on their Chilean source income with 35% withholding tax (WHT), unless a reduced rate is applicable (eg, those applying to technical or engineering services, software or commissions) or a double tax treaty is in place.

Some small deductions from the taxable income are available to Chilean-resident individuals, but they are usually not relevant for high net worth individuals.

Chilean-resident companies are subject to a flat 27% corporate tax. Small and medium-sized enterprises (SMEs) are subject to a flat 25% corporate tax.

However, as a measure to overcome the economic crisis resulting from COVID-19, Law No 21.578 published in May 2023 reduced corporate tax for SMEs as follows:

- a flat rate of 10% until 31 December 2023;
- a flat rate of 12.5% until 31 December 2024; and
- as of 2025, the corporate tax rate for SMEs will be 25%.

Investment companies do not qualify as SMEs, regardless of their income amount.

Dividends

Dividends obtained by a Chilean-resident individual are taxed with general personal income tax at the 0–40% rate, but 65% of the corporate tax paid by the company is creditable against the former. Nonetheless, the total tax burden (corporate tax plus personal income tax) is capped at 44.45%. If the company paying the dividend is an SME, 100% of the corporate tax is creditable against personal income tax, so the maximum tax burden would be 40% (the maximum tax rate of personal income tax).

Dividends obtained by a Chilean-resident company, such as an investment company, are tax-exempted. This is why it is typical for Chilean investors to retain their income in investment companies, rather than at an individual level.

Dividends obtained by a non-resident from a Chilean company are taxed at a fixed rate of 35% WHT, with the same corporate tax credit that applies to Chilean residents. Double tax treaties do not provide for a reduced rate, but allow for 100% of corporate tax credit even if the payer is not an SME.

CFC Rules

As a general rule, foreign source income is taxable in Chile on a cash basis. However, controlled foreign corporation (CFC) rules result in Chilean taxpayers recognising income obtained by foreign controlled companies of a passive nature, on an accrual basis.

In general terms, Chilean CFC rules follow the OECD structure. Special features include that:

- these rules are not triggered if the CFC obtains passive income below roughly USD108,270; and
- family members are not deemed as related for control purposes.

Thus, if a foreign company is owned by a father, a mother and the children, and none of them hold 50% or more of the shares or income, nor have some specific political powers, the company would not be treated as a CFC.

Gift and Estate Tax

Gift and estate taxes are dealt with together under the same law, and have the same progressive rates of tax, from 1% to 25%, levied upon them. Notwithstanding the foregoing, please note that for estate tax, there is an exempted bracket of approximately USD47,450, and for gift tax the exempted bracket is approximately USD4,750. This means that the fixed rates of 1% to 25% are levied once these amounts are exceeded.

Inheritance tax is applicable on Chilean and foreign situs assets, as long as there is a personal nexus to Chile. Foreign estate taxes applied on foreign situs assets can be creditable against Chilean estate tax, with some limitations.

If the deceased is a foreigner, Chilean estate tax will be applicable on their foreign situs assets only if they were acquired with Chilean source income.

As a general rule, the taxable amount for gift and estate tax is determined as the market value of the assets. However, for real estate and some real estate companies, the taxable amount will be the tax valuation of the properties, which is usually lower than the market value. As the stability of this valuation mechanism is not clear, some families advance gifts of real estate instead of waiting for a future inheritance.

The gift and estate tax progressive rates are applicable across multiple gifts when the grantor and the grantee are the same person, but restart from 0% once any such person is changed. Considering this, a gift to a son would be taxed at a higher rate than a gift of the same amount to the son and grandsons, since each grandson would start the progression from scratch. Likewise, if a child receives a certain amount of money from one parent, the tax rate would be higher than if the same amount were received from both parents.

Luxury Tax

Law No 21.420 published in February 2022 establishes that, as of 1 April 2022, a flat tax rate of 2% will be levied upon the market value of the following assets:

- helicopters and manned airplanes, over 350 lbs, with a current market value of more than roughly USD115,770;
- yachts with a current market value of more than roughly USD115,770, excluding those whose main means of propulsion is sailing and which are used by athletes; and
- automobiles, station wagons and similar vehicles, with a current market value of roughly USD58,840 or more.

Luxury tax is levied on the aforementioned assets located in Chile, whether the owner is a Chilean-resident or a non-resident individual or company.

1.2 Exemptions

Estate and Gift Tax

Estate and gift tax have an exempted bracket: roughly USD47,450 for estate tax versus roughly USD4,750 for gift tax, in the case of spouses, ascendants or descendants.

In order to avoid double taxation, an exemption was introduced to inheritance law regarding assets left by a spouse which were in turn acquired as an inheritance – and thus taxed – if the death of both spouses occurs within a span of five years.

1.3 Income Tax Planning

Capital Gain: Stocks

As a general rule, taxable income on a capital gain event is calculated as the positive difference between the sale price and the tax basis.

The sale price is the economic valuation of the asset being alienated, which can be freely agreed by the parties. Notwithstanding the foregoing, and according to Article 64 of the Chilean Tax Code, the Chilean tax authority (*Servicio de Impuestos Internos*, or SII) is entitled to assess

the price agreed by the parties if it is notoriously lower than the fair market value, considering the circumstances under which the specific operation is carried out.

Moreover, the tax basis will be the acquisition value of the asset, in Chilean pesos, plus inflation. Special rules might be applicable regarding certain assets being alienated.

Income tax rate

The income tax rate would depend on whether the seller is a Chilean-resident individual or company, or a non-resident. If the seller is a Chilean-resident individual, they will be subject to personal income tax up to 40%; and, if the seller is a Chilean company, it will be subject to a corporate income tax at a rate of 27%.

Non-residents will be affected by the 35% WHT rate, unless this is reduced by a double tax treaty. Considering that this is a flat rate, there would be no rate reduction derived from distributing income over several years.

Tax basis

The tax basis will be the acquisition value of the stock, in Chilean pesos, plus inflation. As explained further below, special rules are applicable regarding the tax basis for stocks with high trading volume.

Taxation trigger

Chilean-resident individuals selling stocks to a non-related party will be able to choose between taxation on a cash basis (upon payment) or on an accrual basis, in which case the income can be distributed over up to ten years or the same number of years as the stock was in the possession of the owner of the stock before the sale, whichever is lower. This is useful for lowering the tax rate because of its progressive character.

If the seller is a Chilean company or a non-resident, they will only be levied upon a cash basis.

Stocks with high trading volume

As of 1 September 2022, capital gains obtained on the sale of stock with high trading volume are levied with a flat tax rate of 10%.

Regarding the sale of this kind of stock, Chilean residents may consider the following as the acquisition price of the stock:

- the official closing price of the stock as of 31 December of the year of acquisition;
- the acquisition and/or contribution value according to the general rules of the Chilean Income Tax Law (CITA); or
- regarding stocks acquired before 1 September 2022, the official closing price of the stock as of 31 December 2021.

Non-residents will determine the acquisition price of the stock according to the general rules of the CITA.

Nonetheless, there is a full tax exemption on capital gains obtained in the sale of stocks acquired before 31 January 1984 if the seller is not deemed to be a recurrent trader, nor the purchaser a related party.

Regarding shares acquired between 1 February 1984 and 19 April 2001, the lack of interpretation provided by the SII has led to questioning which tax treatment is applicable to the capital gain on its sale. The foregoing is due to the following reasons.

- Law No 19.768 of 2001 established that the capital gain derived from the sale of shares acquired in such period of time would be qualified as non-taxable income, being sub-

ject to the provisions of Article 18 Ter of the CITA in force at that time. For this, the owner of the shares had to pay a single tax, established as a transitory measure by Law No 19.768 of 2001.

- In 2010, Article 18 Ter was abolished by Law No 20.448, and was replaced by Article 107 of the CITA. The former Article 18 Ter stated that the capital gain would be non-taxable income, while the current Article 107 establishes that it should be taxed with a single tax at a rate of 10%.

For this reason, it is questionable whether the capital gain from these shares is a taxable income or not, since the legal amendments to Article 18 Ter (which modify it and transfer it to the current Article 107 of the CITA) do not address this point.

Furthermore, there is also uncertainty regarding shares which did not pay the single tax established by Law No 19.768 of 2001. Such Law failed to establish a specific sanction for not paying the single tax, and this has only been addressed vaguely by the SII through Ruling No 155 of 2002.

From a conservative understanding of the ruling, if the shares were not subject to the one-time single tax, the capital gain would be subject to the general tax treatment regulated in Article 17 of the CITA in force at that date. This would mean that the capital gain would be subject to corporate tax, personal tax or WHT, as applicable.

Tax exemptions

In the case of stocks, there is a small tax exemption for global capital gains not exceeding approximately USD9,490. Nonetheless, there is a full tax exemption on capital gains obtained in

the sale of stocks acquired before 31 January 1984 if the seller is not deemed to be a recurrent trader, nor the purchaser a related party.

Capital Gain: Real Estate

Chilean-resident individuals

In the case of Chilean-situs real estate, individuals selling to a non-related party have a lifetime capital gain exemption of roughly USD360,900, which can be used in several sales until its consumption. The remaining capital gain is subject to a reduced 10% flat rate. The seller is required to wait one year between the acquisition and the sale; or four years in the case of land division or buildings built by the seller.

In the case of real estate acquired before 1 January 2004, the full capital gain would be exempted. In order to benefit from this exemption, the seller must not be deemed as a recurrent trader, nor the purchaser a related party. For this specific case, the shareholder who owns 10% or more of the shares shall be considered related to the respective company.

Considering the above-mentioned exemptions, from a capital gain perspective it is highly efficient to hold real estate as an individual and not through a company. However, as dividends are taxable with personal income tax at the individual's level, it is usual to find real estate in investment companies rather than at the individual's level (profits are usually retained at the company's level in order to avoid personal income tax upon dividends). This makes it important to plan ahead when acquiring real estate for capital gain.

Chilean corporate taxpayers

The capital gain would be levied with corporate tax, at a rate of 27% or 25% if the seller qualifies as an SME.

1.4 Taxation of Real Estate Owned by Non-residents

Non-resident individuals will benefit from the capital gain exemption mentioned in 1.3 **Income Tax Planning** under the same conditions. However, the remaining capital gain will be affected by the 35% WHT rate, unless reduced by a double tax treaty.

Furthermore, for non-resident taxpayers the capital gain would be levied with a 35% WHT, unless a reduced rate is applicable by a double tax treaty.

1.5 Stability of the Estate and Transfer Tax Laws

Over the past few years, amendments to gift and estate taxes have been part of the public and political debate. Specifically, the discussion has addressed (among other aspects) raising rates for gift and estate taxes and applying taxes on wealth. These proposals were included in the tax reform bill presented by the Chilean government in 2022. On 8 March 2023, the Congress rejected the tax reform bill; therefore, these proposals were dismissed.

Although a new bill is expected to be presented this year, it is also expected to be more moderate, since the government does not have the support of the majority in Congress.

Considering that gift tax and estate tax lead to almost the same level of taxation (some differences exist in the exempted bracket; see 1.2 **Exemptions** for further detail), many families are advancing their succession decisions and making gifts instead of waiting till death. This allows them to use the current law instead of waiting for an uncertain change.

1.6 Transparency and Increased Global Reporting

Internal Measures

Anti-avoidance rules

Chile has several special anti-avoidance rules in its legislation, including those relating to income, estate and gifts taxes. Chile also has transfer pricing rules, CFC rules and several reporting liabilities.

Furthermore, Chile has a general anti-avoidance rule (GAAR) aimed at making substance prevail over form. This rule is not applicable if there is proof of economic justification for a given transaction other than avoiding or lowering taxation. The GAAR is not enforced by the SII, but it is tried before the Tax Courts.

New reporting obligations

Law No 21.453, published on 30 June 2022, establishes new reporting obligations for Chilean banks and other financial institutions, under which they will have to provide information to the SII on the balances of products, investments and other amounts in financial accounts and other instruments held by account holders (whether individuals, companies or affectation assets) domiciled or resident in Chile or established in the country.

These entities must report the balance or value, as well as the total amount of credits, when the balance or amount, individually or as a set, records a daily, weekly or monthly movement equal to or more than roughly USD67,670. The information must be reported within the first 15 days of March of each year.

The reporting obligation is in force for amounts identified as of 1 October 2022.

Public beneficial ownership registers

Currently, Chilean legislation does not provide a definition of beneficial ownership, nor does it regulate the existence of beneficial ownership registers.

Nevertheless, the Chilean Financial Intelligence Unit (*Unidad de Análisis Financiero*, or UAF) has adopted measures to prevent and avoid the use of the financial system to perpetrate money laundering and crimes related to terrorist financing. Specifically, the UAF has established, through administrative rulings, the definition of “beneficial owner” and has demanded that institutions ask their clients to identify beneficial owners.

Moreover, the tax reform bill rejected by the Chilean Congress in 2022:

- included the creation of a national registry of beneficial owners managed by the SII;
- legally defined beneficial owners;
- established the entities obliged to report;
- stipulated the penalties for non-compliance; and
- granted the SII special supervisory powers.

It is uncertain whether the Chilean government will insist on the creation of this registry.

International Agreements

Chile is involved in the US Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS), both of which result in Chilean financial institutions reporting non-Chilean residents’ financial assets.

The CRS also means that the SII receives information about Chilean residents’ financial assets abroad. However, under FATCA, Chile does not receive information from the USA.

Nonetheless, the US Senate recently approved the Convention Between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, which provides for robust exchange of information between the tax authorities in the two countries to facilitate the administration of each country's tax laws.

Finally, Chile has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), and this is fully in force.

2. Succession

2.1 Cultural Considerations in Succession Planning

An emerging trend among Chilean families is increasing internationalisation. It is now quite common for family members to have tax residence in other jurisdictions.

This brings other legal systems into the mix, making it vital to have excellent understanding of international taxation and a close relationship with foreign advisers.

The willingness of older generations to turn over wealth and control to younger generations depends ultimately on each family group, and the authors do not see a specific trend within the jurisdiction. This is especially true in operative companies.

Nonetheless, family offices are becoming an increasing trend and there is a greater willingness among older generations to incorporate younger generations into these structures. There is also a greater willingness among older gen-

erations to incorporate younger generations into foreign asset-protection companies.

2.2 International Planning

Currently, it is quite common to find Chilean families with foreign resident members or assets, which makes it necessary to involve creative advisors from different jurisdictions to reach efficient solutions.

Structures from the past are no longer effective and every family or jurisdiction has its own characteristics, so advisors need to work together in a collaborative way in order to find new alternatives.

Chile's broad treaty network does provide some advantages when designing structures for international families.

From an estate and gift tax perspective, Chilean nexus to a deceased person or an asset (or the income used to purchase this asset) would lead to Chilean estate or gift taxation. This, in turn, could lead to double taxation if there is also nexus to a second jurisdiction willing to tax the gift or heirship.

The gift and estate law allows the use of foreign taxes as a credit against Chilean taxes, with some limitations.

2.3 Forced Heirship Laws

Chile has a forced heirship law, according to which the children have rights in equal shares, while the surviving spouse has the right to two shares, unless the deceased has only one, or more than six, children. If the deceased was married in conjugal community, only half of the assets will be deemed as heirship (with some special rules).

In the absence of children and a spouse, parents and siblings can become forced heirs.

However, through a will, the testator can freely dispose of a quarter of their estate, and dispose of another quarter with the limitation of only favouring an ancestor or descendant. The outstanding half will have to follow the forced heirship rules.

Heirs can be disinherited, but only in very specific and limited situations.

2.4 Marital Property

Chilean law has three marital regimes, which are the economic statutes dealing with property relations between spouses and between spouses and third parties. These regimes are:

- conjugal community;
- separation of property; and
- accrued gains.

Conjugal Community

Under this regime, a single common estate is formed with some of the assets belonging to the spouses before the marriage (ie, real estate is excluded) and those acquired during the marriage. As a general rule, the husband holds administration, though for some acts he requires the authorisation of the wife (eg, to dispose of real estate).

The wife can form a “reserved patrimony” with the income derived from the exercise of a lucrative activity. She has the sole administration of this patrimony.

Separation of Property

Under this regime, each spouse keeps their patrimony separate, as well as the administration of

that patrimony before and during the validity of the marriage.

Accrued Gains

Under this regime, the assets of the spouses are kept separate, as well as their administration during the term of the marriage; however, in the case of termination the spouse who recorded higher profits must compensate the other spouse.

Prenuptial Agreements

Chilean legislation recognises prenuptial agreements as long as they are contained in a public deed.

2.5 Transfer of Property

In a transfer of property by gift or inheritance, donees/heirs will not carry forward the historical cost basis. Instead, their new cost basis will be the taxable value over which the estate or gift tax was applied.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

There are no specific vehicles available for transferring assets to the younger generations. Chilean law does not recognise trust arrangements.

Trust arrangements formed under foreign law are respected by Chilean law, but their tax effects are standardised to Chilean law, which creates uncertainty. This does not mean that trusts should be dropped as an alternative, but they should be structured with care.

Planning would typically not consist in a single swift operation, but rather would be comprised of several decisions involving exemptions, selection of assets with low taxable value, reduced rates (due to the progressive rate of the estate and gifts tax), donations, contracts and even

corporate reorganisations. Some planning also includes retaining the usufruct of the transferred assets.

A well-structured will is also a powerful tool, and could prevent double taxation on the same assets (eg, when an asset is inherited by the surviving spouse and then by the common children, unless fewer than five years have lapsed between both deaths).

This is why estate planning should be started at an early stage. This also prevents the generation of new wealth at the testator's hands – for instance, regarding assets that are deemed to have appreciated.

2.7 Transfer of Assets: Digital Assets

The Chilean succession legal system does not contain any considerations for digital assets. Nonetheless, they would still be part of the patrimony and thus subject to gift and estate taxation, and valued at fair market value.

Special care has to be taken regarding cryptocurrency, because the loss of the keys to the digital wallet could lead to loss of the asset.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

The Chilean civil law system does not recognise trusts, so these kinds of arrangements are not estate planning vehicles to be used in Chile. Nonetheless, tax law has already included a definition of these vehicles and certain reporting obligations.

Foreign trusts can be used for certain goals, but their tax treatment is not fully regulated and can lead to risks. As mentioned in **2.6 Transfer of Assets: Vehicle and Planning Mechanisms**, trust arrangements formed under foreign law are respected by Chilean law, but their tax effects are standardised to Chilean law, which creates uncertainty.

A Chilean alternative is the *fideicomiso*, though it is not widely used.

3.2 Recognition of Trusts

Trusts are not included in domestic law, but Chilean law does recognise the effects of foreign trusts as long as they do not violate domestic law.

Notwithstanding the above, Chilean law compels Chilean residents (individuals or companies), who have or acquire the status of settlor, beneficiary, trustee or manager of a trust created under foreign law, to inform the SII of the trust's name, date of creation and country of origin.

For these purposes, Chilean law establishes that a trust shall be defined as a legal relationship created under foreign law, by an act between living persons or by death, by a person acting as a settlor, and through the transfer of assets which remain under the control of a trustee or a manager, in the interest of one or more beneficiaries or for a specific purpose.

Based on the rulings issued by the SII, the applicable regulation for a foreign trust will depend on the terms and conditions established in each deed of trust. Moreover, since Chile has a lack of regulation on this matter, each step of setting up a trust will be analysed separately and construed specifically under the Chilean legal institutions.

In other words, trust arrangements formed under foreign law are respected by Chilean law, but their tax effects shall be analogised with the effects of other acts, contracts or legal arrangements recognised under Chilean law.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

In order to determine the tax consequences that derive from a trust, either as a fiduciary or as a beneficiary, it will be necessary to analogise the trust to other acts, contracts or legal arrangements recognised under Chilean law.

For instance, a revocable trust in which the settlor retains control could be simply analogised to an investment account. Thus, the settlor would still be deemed as the owner of the assets and of any income to be generated.

Conversely, a non-revocable trust could be deemed as a gift from the settlor to the trustee, triggering gift taxation.

Subsequent transfer to the beneficiaries could again be deemed as a gift, triggering gift taxation, or as plain income, triggering personal income tax.

Unfortunately, this has not been deeply dealt with from a legal or regulatory perspective in Chile, so trust arrangements are used only for limited specific purposes.

3.4 Exercising Control Over Irrevocable Planning Vehicles

Chile has not taken steps in these areas since trusts are not regulated by local law.

4. Family Business Planning

4.1 Asset Protection

Social unrest and political instabilities have led many Chileans to seek asset protection in foreign jurisdictions, particularly the USA and Switzerland.

Nonetheless, for US estate tax, tax efficiency and family governance purposes, it is common to group family members into an intermediate foreign company, located in a third jurisdiction other than the USA.

A typical asset protection structure would avoid Chilean entities in order to eliminate geopolitical risk. Thus, the foreign intermediate company would hopefully be held directly by the individuals.

This creates a challenge for individuals seeking to obtain funds to finance an offshore structure in an efficient way, since, as mentioned under **Dividends in 1.1 Tax Regimes**, income is usually kept at an investment company level, and paying dividends to individuals would trigger personal income tax.

CFC rules are a key element to bear in mind. A special feature of Chilean CFC rules is that family members are not deemed as related when determining whether the company is controlled or not, as further explained under **CFC Rules in 1.1 Tax Regimes**.

When financing through debt, transfer pricing, the GAAR and stamp tax should be carefully considered.

4.2 Succession Planning

See **2.6 Transfer of Assets: Vehicle and Planning Mechanisms**.

Methods for avoiding conflict differ from family to family. In some cases, it is advisable to involve all the family members in the planning, so everybody feels included in the decisions. Other families tend to obey the parents' decisions, in which case it is preferable to have clear instructions from them. In all cases, clear wills, by-laws and family protocols are always useful.

4.3 Transfer of Partial Interest

Chilean law demands that any transfer has to be made at market value, considering the circumstances of the operation. As such, lack of marketability and control could be argued as reasons for a discount.

However, these kinds of adjustments to the price are not legally regulated, and would be a matter of evidence to be demonstrated before the SII.

For the widely used *sociedad de responsabilidad limitada* (the Chilean limited liability company), there is a special valuation rule for gift and inheritance purposes, according to which the company will be valued considering the individual valuation of its assets and liabilities. This being the case, lack of marketability and control could not be considered for discount purposes.

5. Wealth Disputes

5.1 Trends Driving Disputes

Depending on how an estate is structured, there may be relevant contracts potentially subject to arbitration. This is highly advisable since ordinary courts do not have the speed or technical capacity in these matters that competent arbitrators do.

Some disputes can arise when the estate is regulated through a foreign trust arrangement.

Sometimes, trust arrangements are made that assign the estate in breach of the Chilean legal restrictions described in **2.3 Forced Heirship Laws**, leading to disputes among the heirs.

Considering that trusts are regulated by foreign law, it is even more important to have an international arbitration clause, hopefully in a common law jurisdiction or one with experience in trust arrangements.

Nonetheless, Chilean law does provide heirs with several protections, such as the action to request modification of a will in breach of the forced assignments, and the action to void donations in excess (also where these breach the forced assignments), among others.

5.2 Mechanism for Compensation

There is no special compensation mechanism regarding this matter.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

The use of corporate fiduciaries is not prevalent in Chile.

6.2 Fiduciary Liabilities

Fiduciary liabilities are not regulated in Chile in the context of a trust arrangement, though for tax purposes these arrangements could be disregarded or, conversely, be deemed as involving a gift, triggering gift taxation liabilities for the fiduciary.

This would depend on the characteristics of the arrangement. For instance, a revocable trust in which the settlor retains control would be a case in which the SII could “pierce the veil” and con-

sider the settlor as obtaining any income of the trust. Alternatively, a non-revocable trust could be deemed as a taxable gift for the fiduciary.

Fiduciary property is regulated in Chile not as an arrangement, but as a limitation on property (property subject to the obligation of being transferred to a third party if certain conditions are met). Though this retains some features common to a trust arrangement, its nature and legal effect are quite different, so it is mainly used in other contexts.

6.3 Fiduciary Regulation

There is no fiduciary regulation as understood in common law.

6.4 Fiduciary Investment

There is no fiduciary regulation as understood in common law.

7. Citizenship and Residency

7.1 Requirements for Domicile, Residency and Citizenship

Tax residence in Chile is obtained by continuous or discontinuous residence in the country for more than 183 days within a 12-month period.

Citizenship can be obtained by meeting one of the following conditions:

- being born in Chile, with the exception of children of foreigners present in Chile on service for their governments or of foreign passers-by (nonetheless, they can choose Chilean citizenship);
- being children of a Chilean father or mother, when born abroad (one of the parents or grandparents will be required to obtain Chilean nationality);

- obtaining a nationalisation letter; and
- obtaining special nationalisation by law (usually through merit).

7.2 Expeditious Citizenship

There are no standard expeditious means for an individual to obtain citizenship in Chile, though some exemptions could be made by decision of the President.

8. Planning for Minors, Adults With Disabilities and Elders

8.1 Special Planning Mechanisms

Gift and estate tax have special provisions aimed at reducing the tax liability of people with disabilities.

Usually, a will would try to allocate a minimum income (through preferred shares, usufruct or another mechanism) rather than specific assets, in order to ensure a means of survival.

In some cases, fiduciaries could be appointed. Foreign trust arrangements can also be a good option for protecting minors or adults with disabilities, though, as mentioned in **2.6 Transfer of Assets: Vehicle and Planning Mechanisms**, they have to be carefully structured in order to avoid triggering tax derived from the mismatch between the foreign law regulating the trust and Chilean tax law.

8.2 Appointment of a Guardian

The appointment of a guardian, conservator or similar party always requires a court proceeding.

A guardian can be appointed to represent a minor, a disabled person, a person who has legally been declared insane or a person who

has legally been proven likely to squander their assets.

8.3 Elder Law

The current pensions system has been severely damaged by allowing a series of withdrawals from the savings held in individuals' personal accounts.

The country is currently debating the design of a new pension system, ranging from certain modifications to a complete redesign from scratch. In fact, during November 2022, the Chilean government submitted to the Congress a bill aiming to redesign the current system. At this point, it is not possible to foresee the outcome of these discussions, since the Chilean government does not have the support of the majority in the Congress.

9. Planning for Non-traditional Families

9.1 Children

The Chilean legal system does not establish any difference between children; all have the same rights. Surrogate pregnancy is not specifically regulated.

9.2 Same-Sex Marriage

Until 2021, Chile did not recognise same-sex marriage. Thus, the Civil Union Agreement was the only mechanism for same-sex couples who shared a home regulating the legal effects derived from their common and permanent affective life.

However, in December 2021, the Same-Sex Marriage Law was published, entering into force in March 2022. It guarantees same-sex couples equal access to civil marriage, recognises mat-

ters of filiation (by adoption or assisted human reproduction techniques) and provides marital property regimes (those described in **2.4 Marital Property**, with the exception of that described under **Conjugal Community**, whose rules are currently being legally adapted).

10. Charitable Planning

10.1 Charitable Giving

As a general rule, donations from Chilean companies (ie, corporate taxpayers) are considered as rejected expenses, and subject to a single penalty tax. However, if donations are made under certain specific incentive programmes established in special laws, the amounts donated can either be used as a tax credit or deducted as a necessary expense.

For this purpose, the amounts donated cannot exceed the thresholds contained in each of the previously discussed special laws. Additionally, the amounts donated cannot exceed a general threshold provided in Article 10 of Law No 19.885, which applies to donations made under any of the special laws (with certain exceptions, as explained below). If the sums donated exceed the specific thresholds provided in each special law or the general threshold, the excess would be subject to a 40% single penalty tax.

The general threshold provided in Article 10 of Law No 19.885 establishes that, in order to be subject to any of the tax benefits provided in the special incentive programmes, the value of the donations cannot exceed 5% of the taxable income obtained by the donor company in one year. For companies that generate annual tax losses, this threshold would be exceeded regardless of the amount of the donations made during the year. Accordingly, all the donations

made by companies in a tax-loss position would be considered rejected expenses and subject to the single penalty tax of 40%.

Incentive Programmes

Notwithstanding the above, it should be noted that certain incentive programmes provide special rules that limit the application of the general threshold, allowing companies in a tax-loss position to take advantage of tax benefits in the case of certain donations. These incentive statutes are the following.

Law No 20.444

Law No 20.444 regulates donations made to National Public Funds created after natural disasters. The tax benefits established in this Law apply when the amounts donated do not exceed either the general threshold explained above or an amount equivalent to 0.16% of the tax equity of the donor company. Accordingly, if a donor company determines a tax loss in the year of the donation but the value of the donation is lower than 0.16% of its tax equity, the donation can be subject to the tax benefits of this Law. If the amount donated exceeds both thresholds, the single penalty tax of 40% would apply on the part of the donation that exceeds the higher of such thresholds.

Law No 19.885

Law No 19.885 regulates long-term donations made in cash to non-profit corporations or foundations or to a National Welfare Public Fund (*Fondo Mixto de Apoyo Social*). The same thresholds that apply under Law No 20.444 apply to donations made under Law No 19.885, to the extent that the amounts donated do not exceed 14,000 UTM (*Unidad Tributaria Mensual*, an inflation-proof unit of account used in Chile). This is equivalent to approximately USD1.1 million. Accordingly, donations made by compa-

nies that determine a tax loss in the year of the donations would be subject to the tax benefits of this Law provided that their value is lower than 0.16% of the tax equity of the donor company and is also lower than 14,000 UTM.

Law No 18.985

Law No 18.985 regulates donations in cash for cultural purposes made to Chilean universities, professional institutes, public libraries, non-profit corporations or foundations, neighbourhood committees, public museums and other public organisations. The same thresholds that apply for Law No 20.444 also apply to these donations.

Law No 21.440

On 1 May 2022, Law No 21.440 came into force, creating a regime of donations with tax benefits in support of non-profit entities. According to this Law, non-profit organisations registered with the Public Registry of Donating Entities (for which they must meet certain requirements, such as being public benefit entities) may receive donations and use them for different purposes such as science, education, health, protection of human rights and social protection.

Donations may consist of money or tangible or intangible assets included in a public registry. In turn, donors may be Chilean-resident individuals or companies, and non-resident individuals or companies, as long as appropriate WHT is levied.

Donations under Law No 21.440 made by a Chilean resident will not be taxed with gift tax. Donations made by a non-resident will not be taxed with gift tax to the extent that they donate goods located abroad and the donations have not been financed with Chilean resources.

Regarding tax benefits, donors who are companies may deduct from the corporate tax base the amount donated, which may not exceed the lower of USD1.5 million, 5% of the tax base, 0.48% of the tax equity or 0.16% of the paid-in capital. Donors who are individuals may deduct from the taxable amount of their personal income tax or WHT base the amount donated, which may not exceed the lesser of USD790,790, or 5% of the tax base of the applicable tax. The amounts donated that exceed these thresholds cannot be deducted as a necessary expense, but will not be subject to a 40% single penalty tax.

Law No 21.440 establishes that companies with tax losses may make donations under this Law and the amounts donated will not be subject to the 40% penalty tax. This is different from donations made by companies with tax losses under Law No 19.885, as in such cases, the amounts donated will be subject to the 40% penalty tax.

10.2 Common Charitable Structures

As stated in **10.1 Charitable Giving**, there are more than 20 legal provisions that allow individuals and companies to make donations of all kinds and to obtain a tax reduction in return.

The idea is to promote donations by means of incentives such as a reduction of the corporate tax rate in the case of companies, and of the labour tax or personal income tax in the case of individuals. Thus, when a taxpayer funds a project or organisation with part of their resources, the Chilean treasury co-operates with this donation by returning taxes or reducing the taxable base.

Currently, the most widely used law both by companies and by individuals in Chile is Law No 19.985, amended by Law No 20.316. This law seeks to promote donations to non-governmental organisations for social aid purposes, or to a Joint Social Support Fund (*Fondo Mixto de Apoyo Social*, or FMAS), whose resources are distributed according to the criteria of a board of directors based in the Ministry of Planning. The incentives for this Law are outlined in **10.1 Charitable Giving**.

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