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# TaxNewsFlash

## United States

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# Tax treaty update: Senate Foreign Relations Committee approves income tax treaty with Chile

The U.S. Senate Foreign Relations Committee today approved an income tax treaty with Chile.

The U.S. Senate has the authority to approve, by a two-thirds vote, treaties that are negotiated by the executive branch. The Senate does not ratify treaties. Instead, the Senate takes up a "resolution of ratification" by which the Senate formally gives its advice and consent, empowering the president to proceed with ratification.

The United States-Chile income tax treaty was signed in February 2010 and has been pending ratification in the United States since then. Today's approval by the Foreign Relations Committee means that the treaty will be sent for consideration by the full Senate. If or when the full Senate would consider the treaty is unknown.

The treaty was ratified by Chile in 2015.

**Documents**

- Read text of the **United States-Chile income tax treaty** [PDF 277 KB] as signed on February 4, 2010.
- Read a **note** [PDF 160 KB] regarding the treaty.
- Read the Treasury Department's **technical explanation** [PDF 459 KB] of the pending treaty with Chile.

**Overview of treaty's provisions**

The pending United States-Chile income tax treaty includes:

- A six-month permanent establishment threshold, and a services permanent establishment rule of 183 days.
- Dividends withholding tax rates of 5% or 15%, depending on the beneficial owner's interest in the payor.

- An interest withholding tax rate of 4% when the lender is a bank, a financial institution or other select lender. In all other cases, during the first five years during which the treaty is in force, the withholding tax rate is 15%; thereafter, this rate drops to 10%. The interest article contains a unique anti-conduit provision that refers to back-to-back loans.
- A royalty withholding tax rate of 2% for payments for the right to use industrial, commercial or scientific equipment; 10% withholding tax for most other types of royalties.
- A tax on share gain of 16%.

Other notable provisions include:

- A comprehensive limitation on benefits article that includes an anti-inversion provision, a headquarters company test, and a triangular provision.
- The U.S. insurance excise tax is a covered tax.
- An anti-hybrid provision.

Read a detailed description of the treaty's provisions: ***TaxNewsFlash* (February 2010)** [PDF 306 KB]

**Ratification process**

In the United States, ratification requires that the signed tax treaty be forwarded to the U.S. Senate for advice and consent to ratification. The signed tax treaty is then referred to the Senate Foreign Relations Committee for consideration. A public hearing for the tax treaty is typically held. The Senate Foreign Relations Committee must report the tax treaty out of the committee with a recommendation to the full Senate. Once the full Senate has approved the tax treaty, the tax treaty is referred to the U.S. State Department where the "Instrument of Ratification" is drafted and forwarded to the president for signature.

A provision in the United States-Chile income tax treaty provides that the United States and Chile will notify each other in writing, through diplomatic channels, when the ratification procedures are completed in each country. The treaty will then enter into force on the date of the later of these notifications.

**KPMG observation**

Still pending ratification in the United States are other income tax treaties, including treaties with Hungary and Poland. There is no Senate action scheduled on these treaties at this time.

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