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United States - Income Tax Treaty with Chile Approved in Senate Committee

The U.S. Senate Foreign Relations Committee recently voted (20-1) to advance the income tax treaty with Chile to a full Senate vote.[1]

WHY THIS MATTERS

The signing of the treaty is a significant step forward that will facilitate cross-border commerce, including the movement of globally-mobile employees coming to the United States from Chile or vice versa. This agreement should help mitigate double taxation that international assignees can be exposed to and may provide further benefits, including relief for contributions to pension plans, once the necessary determinations have been made.

Context

The United States-Chile income tax treaty was signed in February 2010 and has been pending ratification in the United States since then. The approval by the Foreign Relations Committee means that the treaty will be reported by the Committee for possible consideration by the full Senate. If or when the full Senate would consider the treaty is unknown. In practice, income tax treaties are rarely approved by the Senate except by unanimous consent, that is, a single member can often prevent approval. Senate approval of the Chile treaty is therefore uncertain.

Process

Under the U.S. Constitution, the U.S. Senate must 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.

KPMG NOTE

This income tax treaty comes at an opportune time considering that recent U.S. foreign tax credit (FTC) regulations have redefined what a creditable foreign income tax is and added new requirements. In the absence of the income tax treaty, tax professionals would have to analyze Chilean income taxes to determine whether they are creditable for U.S. tax purposes or not. However, once the income tax treaty enters into force, Chilean income taxes that are treated as income taxes under the relief from double taxation article should be treated as creditable for U.S. tax purposes, provided they are paid by a citizen or resident of the United States that elects to use the benefits under the treaty.

In addition, given that the United States Senate has not ratified a new income tax treaty in over a decade, it may be significant that a treaty is being allowed to progress toward ratification, given that several other treaties and protocols (i.e., amendments to existing treaties) have also been pending consideration for a number of years.

FOOTNOTE:

1 See Senate Foreign Relations Committee Chairman's Press (June 1, 2023), "SFRC Chairman Menendez Celebrates Historic Approval of the Chile Tax Treaty to Protect and Promote U.S. Foreign Direct Investment in Chile."

Read text of the United States-Chile income tax treaty as signed on February 4, 2010.

Read the resolution of advice and consent to ratification .

Read a U.S. Department of State note regarding the treaty.

Read the U.S. Treasury Department's technical explanation of the pending treaty with Chile.

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The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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