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GMS Flash Alert

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United States - Income Tax Treaty with Chile Approved by Senate

The U.S. Senate approved in a 95-2 vote on June 22 the tax treaty between the United States and Chile. The treaty was signed 13 years ago.[1] (For prior coverage, see *GMS Flash Alert* 2023-114, June 6, 2023.)

The treaty also issues a declaration on the need for future tax treaties to reflect changes made to international tax provisions as part of the Tax Cuts and Jobs Act.

We will be issuing a more detailed *GMS Flash Alert* on the treaty in the coming days.

WHY THIS MATTERS

The Senate's approval 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.

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 by mutual notification of completion of the necessary approvals by both countries.

The Senate's approval of the treaty was subject to two reservations made necessary by changes to U.S. tax law since the treaty was signed in 2010.[2]

Chile completed its process of approval of the treaty in 2015, but without the reservations. So, Chile must now approve the reservations. Thus, the treaty will not be ratified and enter into force until Chile completes that additional approval process and mutual notification of approvals by both countries is made.

FOOTNOTES:

1 A. Weaver, "Senate votes to ratify U.S.-Chilean tax treaty over Paul, Hawley 'no' votes," The Hill (June 22, 2023) at: https://thehill.com/homenews/senate/4063037-senate-votes-to-ratify-u-s-chilean-tax-treaty-over-paul-hawley-no-votes/#:~:text=The%20Senate%20on%20Thursday%20voted,for%20the%20treaty%20to%20pass . *Please note that by clicking on this link, you are leaving the KPMG website for an external site that KPMG is not affiliated with nor does KPMG endorse its content. Use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.*

2 The first reservation clarifies that the treaty shall not prevent the imposition of the base erosion and anti-abuse tax (BEAT) under section 59A, and the second modifies to Article 23 (Relief from Double Taxation) of the treaty to account for the repeal of the indirect foreign tax credit under former section 902 and its replacement with the dividends received deduction under section 245A.

RELATED RESOURCES

- 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.

The information contained in this newsletter was submitted by the KPMG International member firm in the United States.

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