

Setting up your Business in Chile

Issues to consider



Chile is the best evaluated economy in Latin America and, indeed, one of the best evaluated among emerging economies worldwide. Its sustained economic growth and social progress have been highlighted by different international organizations and, in 2010, it became the first South American country to join the Organization for Economic Co-operation and Development (OECD).

Fiscal discipline is one of the pillars of Chile's solid economy. Its fiscal accounts have shown sustained stability.

In the eight years from 2004 to 2011, Chile's GDP grew at an average annual rate of 4.8%, according to the Central Bank of Chile. In 2011, despite the first effects of the European crisis which were felt in the latter part of year, GDP expanded by 6.0% to US\$248,602 million, doubling its growth over the previous six years. As a result, per capita income reached US\$14,413 and, in purchasing power parity terms (PPP), US\$16,171.

Chile is a safe and reliable place in which to do business. This is borne out by risk ratings agencies which have maintained their high ratings for Chile, highlighting its low level of public debt, the health of its financial system and its solid institutions.

However there are a number of issues which you must consider when you are looking to set up your business in Chile. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Forming a Foreign Corporation's Subsidiary in Chile

- A foreign corporation (parent company) may establish a subsidiary in the country as the foreign parent company's legal entity. For this, a resident and duly empowered agent or representative shall be appointed. It is not required that this agent or representative be a partner, shareholder, or owner of the company. He/she may be a company's employee. The company may be formed with a given, but not minimum, capital.

Forming a Company in Chile

- It is possible to form a Chilean partnership (limited liability partnership) or a corporation receiving the investment and in which a foreign corporation participates as partner or shareholder, with no limitations regarding capital ownership. However, the partnership shall have at least two partners or shareholders, and the second partner could have a merely formal ownership (1% or less capital contribution).

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- Legal Formalities**

Forming a Chilean partnership and a foreign corporation's subsidiary is subject to similar legal formalities regarding the granting of a public deed, publishing of its by-laws abstract in the Official Gazette, and registration in the Register of Commerce.

The investor foreign company shall authenticate its articles of incorporation and by-laws and its legal representative's power of representation before the Chilean Consul in its country of origin, and later in Chile before the Ministry of Foreign Affairs.

How much Corporation Tax will the business pay?

Current Corporation Tax rates in Chile are:

Tax Rate (%)	20
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First category tax with a proportional rate (20%) applied on the earned base of income from industry, trade, mining, real estate, movable capital, corporate or commercial service provision, and other activities involving capital use. This tax is a deductible credit or advancement regarding payable global taxes on the base effective at the withdrawal or profit distribution moment.

There are tax exempt companies, which meet the following requirements:

- Total annual income no more than 28.000 UTM (US\$ 2.250.494 at 30/09/2013)
- Do not own or operate rights or shares in or join partnership contracts or participation accounts.
- The social capital must not exceed the 14.000 UTM (US\$ 1.125.247 to 30/09/2013)

Maximum annual amount of the exemption: 1.440 UTM (US\$ 115.740 to 30/09/2013)

Deducting the fiscal year's and previous years' company losses from the gross earnings is accepted, except in the case of companies undergoing changes in their corporate ownership, as long as they have changed their line of business, have no capital assets, or other assets to develop their line of business, or have earnings from their participation in other companies only.

What if we use Chile to set up our holding company?

The advanced foreign investment regime regulations in force in Chile (tariff liberalization, tax stability, national treatment, and trade openness), and deducting carry-forward losses with no time or amount limit, has a positive effect for the investor as does the option to accelerate depreciation considering one third of the assets useful life.

Foreign source income obtained by companies in the country and taxed abroad in connection with the use of brands, patents, formulae, technical consultancy, and other



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similar services are taxed in Chile on the basis of amounts received (except for agencies paying taxes on a drawn basis).

Service and technology exports to non-resident agencies and used exclusively outside Chile, and classified as exports by the Customs Service are exempted from VAT.

Chile has signed agreements with 24 countries to avoid double taxing, and 59 Free-Trade Agreements (TLC) with the most important economies in the world, such as European Union (called Association), Canada, Mexico, European Union, EFTA, Korea, New Zealand, Singapore, Brunei (P4), China, Australia, etc. These agreements eliminate customs tariffs between the signing countries for the terms established in the said agreements.

Earnings generated by corporations with non-resident partners or shareholders are subject to 35% tax when the said earnings are withdrawn, distributed as dividends, or remitted abroad, except in the case of agreements to avoid double taxation.

What if we make cross-border transactions between group companies?

Chile follows internationally recognized **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans

Entities with annual income over \$ 500.000.000 (US\$ 994.000) will need to prepare an annual Transfer Pricing Affidavit proving the arm's length basis of transactions. The affidavit will include a detail of all the operations between related parties: date, amount, type of operation, transfer pricing method used to determine the price of the transaction, etc.

However even if an entity is exempt from the Chile's transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in Chile then they are subject to Chile tax laws.

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- **Second Category Tax** applied to income from dependant workers' personal services in progressive rates as single income tax, at rates ranging from 0% to 40%. It is calculated on total salary and remuneration for work, less social security payments. The tax is withheld and paid monthly by the employer. Independent workers' and professionals' income and that of professionals' partnerships are considered second category income with a 0% rate, as they are only subject to the complementary lump-sum tax (The withholding monthly tax in these cases is 10% rate).

- **Complementary Lump-sum Tax** applied to resident individuals' total income from both categories.

A person is deemed to be domiciled or resident in Chile if:

- It may be assumed from the activities that he/she wishes to stay in the country on a permanent basis (domicile); or
- If he/she spends more than six months in the country in a given calendar year or over a period of two years (resident).

Employers and employees also have to pay Chile social security, over base salaries:

Current Social Security rates are:

	Insurance	Rate (%)
Employer	Unemployment	2.4%
	Life and Disability	1.26%
	Labour Accident	0.95% minimum
Employee	Health	7.0% minimum
	Social Security (Retirement)	10.77% to 12.36%
	Unemployment	0.6%

Note: Social security in Chile is a private system. The rates depend on each Institution.

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Chile tax authorities.

Chile has in force International Social Security Agreements with Germany, Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Ecuador, Spain, United States, Finland, France, Netherlands, Luxembourg, Norway, Peru, Portugal, Quebec, Czech Republic, Sweden, Switzerland and Uruguay. These International instruments are entered into between two or more States, and are intended to meet the needs of migrant workers in social security..

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 19%. on



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the sales of goods and services, with a few exemptions for some services, and on sales of real estate by a construction company if it was built completely by the firm or was partially built on its behalf by a third party. This tax also applies to fiscal institutions, semi-fiscal institutions, autonomous state institutions, local councils, and the companies that belong to these entities, or in which they have a stake.

There are two types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT

The same general rate applies to imports, habitual or otherwise, made by any individual or legal entity.

Exporters are exempt from VAT and are entitled to reimbursement of VAT on purchases of goods and services that they use as part of their export activity.

Special sales taxes apply to alcoholic and non-alcoholic beverages, and luxury goods. These taxes are charged in addition to VAT, and are applied on the same tax base as VAT. They are levied on the sale and/or import of specific goods.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

An Open Corporation may consider that up to 10% of the amount is allocated to compensation plans of its employees or its subsidiaries. This is a complex area and advice should be obtained.

How else can we compensate our employees?

I. Short-term benefits

i. Vacation

Also known as annual holiday is a duty payable to workers with more than one year of service to make use of an annual vacation of fifteen working days, with full pay, which is awarded according to the rules laid down in the Labor Code.

ii. Gratification

Is that part of the profits that legally, the employer must distribute to all employees of the company (mandatory minimum bonus: 30%)

II. Termination Benefits

i. Compensation for years of service

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The employer shall where a Labor Contract has been in place for one or more years, pay the worker compensation equivalent to 30 days of the last monthly salary paid for each year of service.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Chile businesses to their workforce.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.

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