International Fiscal Association

2024
Cape Town Congress

cahiers de droit fiscal international

VOLUME 108

B: Practical approaches to international tax dispute prevention and resolution

1938-2024

Branch reporters
Marcela Silva[1]
Javier Cortés[2]

Summary and conclusions

The report begins by describing the Chilean tax environment and its evolution during the last 15 years, considering all of the tax reforms that have been enacted during such period, which have aimed to increase the tax burden, incorporate new taxes, BEPS recommendations and reduce tax evasion in the country, among others. The report continues explaining the general features of the Chilean tax system.

After describing the structure of the Chilean tax authority ("Tax Authority"), the report explains in detail the audit process, that is, the phases that a taxpayer may face before the Tax Authority, namely: (a) notification stage, (b) summoning stage, (c) assessment stage, and (d) charge stage.

Afterwards, section two of the report goes through the pre-dispute mechanisms, such as the possibility of requesting advance rulings, whether on domestic and international tax matters and APAs, which have become a more used mechanism during the last few years. In our view, so far, advance rulings have been the most used mechanism for preventing tax disputes, as they are effective, transparent, simple and have no cost for the taxpayer, however, may take time in order to obtain an answer from the authority. APAs, on the other hand, have increased in number during the past years, and we expect such mechanisms to become more popular.

Other dispute prevention mechanisms described include the fact that the Tax Authority may not collect taxes retroactively when the taxpayer abides in good faith to a tax interpretation, the statute of limitation term, and the possibility of registering an FFI before the Tax Authority, all of which contribute to avoid controversies. Section two ends by describing international prevention mechanisms which are not quite developed in Chile. In that regard, it refers to the few bilateral APAs existing up to this date.

Later on, the report explains the dispute phase, describing the administrative and judicial remedies. The administrative mechanisms that a taxpayer may use to resolve a tax dispute are basically two: a general administrative appeal, which is widely used by

[1] Javier is the founder and managing partner of a boutique law firm, Cortés Tax & Legal, specialized in tax, corporate and real estate matters. Prior to funding the firm, Javier worked for several years in the international tax group of Deloitte Chile. He provides complex tax advisory services to domestic and foreign clients, including tax structuring, cross-border transactions, interpretation and application of tax treaties, tax litigation before the Chilean Tax Authority and the Tax Courts.

[2] Marcela is tax partner of the law firm Allende Bascuñán y Cía., with more than 20 years of experience in the tax field, having led teams both in the private and public sector. She focuses on tax planning, designing structures both in Chile and abroad, provides legal and tax advice to local and foreign investors, representing clients in their dealings with the Tax Authority. Marcela was formerly Director of the M&A group of Deloitte Chile and Head of the International Audit department of the Tax Authority.

taxpayers and a final administrative resort, which is quite exceptional as the use of the latter is subject to strict requirements.

In case the taxpayer decides not to file an administrative appeal or, if the Tax Authority issues a resolution or decision against the taxpayer, the latter may exercise judicial alternatives for resolving the dispute, thus, moving forward to the litigation phase before the Chilean Tax Courts. As explained, the latter although independent of the Tax Authority, have evidenced a clear bias in favour of the Tax Administration for the reasons explained therein, which in practice has discouraged the filing of tax claims during the past years. In addition, the costs of litigating against the Tax Authority, due to penalties and interest charges have resulted in a notorious decrease of new claims before the Tax Courts. In that regard, the report proposes some adjustments that could be considered in order to improve the effectiveness and objectiveness of the Chilean Tax Courts.

Following the above, the report refers briefly to other mechanisms, such as the conciliation stage within tax trials, extra-judicial agreements and the tax ombudsman, which was recently incorporated into the Chilean tax system, thus, it is too soon to evaluate its effectiveness.

Regarding international dispute solution mechanisms, which have been rarely used so far, the report refers to MAPs, which we expect to increase in the future, due to recent guidelines issued by the Tax Authority -thus, just now it is possible to follow clear rules in order to use such mechanism- and to the fact that the number of cross-border issues and disputes is likely to increase.

Additionally, only a few tax treaties include an arbitration clause within the MAP provision, which is not binding for the Tax Authority. In addition, there is no clear procedure on how to trigger this mechanism.

Finally, the paper explains other mechanisms used by the Tax Authority, such as the Tax Compliance Management Plan and the Catalogue of Potential Elusive/Evasive Schemes, among others, which mainly act as a deterrent to aggressive tax planning, and by taxpayers, which mainly consist in the access to public information and exercising their rights contemplated in the tax laws.

The report concludes with concrete proposals for improving the pre-dispute mechanisms and also for making more efficient and objective the administrative and litigation remedies available in the Chilean tax arena.

Part One: Main features of the corporate compliance system

1.1. General legal framework

1.1.1. Background and context

In the first place, the Chilean Constitution sets forth certain principles in tax matters, such as tax justice, equal treatment and proportionality.[3] In that sense, article 19 N° 20 of the Chilean Constitution guarantees the equal distribution of taxes in proportion to the income

[3] Pascuali Tello, Matías (2021), The material tax constitutional principles, the state of the art a comparative analysis, p. 465.

of the taxpayer or according to the progression established in the laws. Likewise, it states that taxes shall not be disproportionate or unfair.

Consequently, all tax laws and acts of the Tax Authority must comply with and follow such principles established in the Constitution. Otherwise, it is possible to claim the nullity of administrative acts which do not comply with the principles and attributions granted by the Constitution.

That said, the Chilean legal tax system is formed by a Tax Code which sets forth the rights and obligations of taxpayers and the Chilean Internal Revenue Service (hereinafter denominated as the "Tax Authority"). It also establishes the general procedures applicable in the country in tax matters, whether for exercising taxpayer´s rights (e.g. for requesting a ruling or for filing a claim against the Tax Authority) or regulating the procedure for payment and collection of taxes. In addition, there are several other tax laws which refer to specific taxes.

Regarding the Chilean tax environment, it is important to bear in mind that Chile has been subject to several tax reforms since 2012 onwards,[4] the focus of which has been to increase tax collection, by incorporating new taxes, strengthening the powers of the Tax Authority, incorporating BEPS recommendation to the Chilean domestic tax laws and tax treaties, among others. Such constant amendments, in addition to the complexity of the tax system itself and the increase of information and statements required of taxpayers, do not contribute to provide certainty to the latter.

Moreover, certainty to foreign investors has also been challenged as from 2015, when the Foreign Investment Statute contained in Decree Law No. 600 was repealed and replaced by Law No. 20,848 which sets forth a new investment statute. It is important to note that the former Foreign Investment Statute granted tax invariability to foreign taxpayers regarding income taxes, mining tax, depreciation rules, and mechanisms for repatriation of profits abroad, and also included no discrimination rules, among other benefits, for long-term investments, provided the investor entered into a foreign investment contract with the State of Chile and other requirements were met. Such mechanism was widely used by mining companies due to the size of the investment which contributed to providing tax certainty to such investments. The new Foreign Investment Statute in place as of that year has not proven to be as effective in terms of avoiding tax controversy.

All of the above is evidence that the Chilean tax system has become more complex within the last ten years which creates uncertainty for taxpayers and, therefore, becomes a breeding ground for tax disputes and litigation, which is the issue underlying this report.

1.1.2. General description of the Chilean tax system

In broad terms, the Chilean income tax system corresponds to an integrated tax regime. In the first place, companies or legal entities pay a corporate tax on their worldwide taxable income, which is calculated by adding up all gross income and deducting costs and allowed expenses of the taxpayers. Once profits are distributed to shareholders or company owners, a second-tier tax applies to the hands of the latter, with the corporate tax paid available as a credit.

[4] In this regard, substantial tax reforms have been enacted in years 2012, 2014, 2016, 2020 and 2022.

1.2. Organization of Tax Administration

The Chilean Tax Administration ("*Servicio de Impuestos Internos*") is dependent from the Treasury Ministry. However, the Head of the National Office is appointed by the President of the Republic and is considered a position of its exclusive trust.

The Tax Administration is in charge of applying and auditing all internal taxes. On the other hand, the Customs Agency oversees customs duties. Finally, the collection of taxes is under the functions of the National General Treasury.

The Tax Authority is formed by a National Office or Headquarters based in Santiago and Regional Offices in each region across the country. The Metropolitan Region has four regional offices.

The National Office is formed by: (a) an Audit Directorate; (b) a Legal and Regulatory Directorate; (c) a Juridical and Litigation Directorate; and other directorates which oversee administrative and internal affairs.

In turn, each Regional Office has the supervision of the taxpayers domiciled in their jurisdiction regarding auditing and regulatory matters.

Additionally, there is a Large Taxpayer Department which deals with big-size companies regardless of their domicile, including mining companies, energy, construction and infrastructure companies, and banks, among others. Due to the nature of the taxpayers under its supervision, it is common that the Large Taxpayer Department deals with complex tax issues such as cross-border transactions, transfer pricing issues, application, and interpretation of tax treaties, among others. However, these matters are not exclusively dealt with in such department, as they may also arise in any Regional Office.

From a regulatory perspective, the National Office's Commissioner issues the directives and general regulatory guidance that will be implemented by each Regional Office, namely: (a) general rulings which are of general application to taxpayers, (b) resolutions, which generally implement procedural tax aspects, and (c) specific rulings answering questions of taxpayers providing interpretations of the tax laws. It is important to mention that the Tax Code obliges the Tax Authority, prior to issuing a General Ruling which interprets a tax provision, to publish such document on its website for public consultation.

On another note, it is key to bear in mind, that any interpretations of the tax laws contained in general rulings and specific rulings issued by the Tax Authority, are binding for the tax officials. In other words, tax officials may not resolve a case against the interpretation included in such administrative jurisprudence. Taxpayers and tax courts, however, are not obliged to apply such interpretations. Therefore, it is perfectly possible that a tax court may reach a different interpretation and conclusion in a specific case, which brings room for litigation.

1.3. Extent of tax treaty network

Chile has entered 36 bilateral tax treaties which are currently in force, mostly with OECD countries, its commercial partners and countries from the Latin American Region.[5]

[5] https://www.sii.cl/normativa_legislacion/convenios_internacionales.html

1.4. Filing and assessment procedures

The Chilean tax filing system operates on the basis of the self-assessment of taxpayers.

In that sense, taxpayers and other public and private institutions, have the obligation to file several sworn statements throughout the year, with a different kind of information. Certain key market players also have the obligation to withhold taxes and report specific transactions carried out by third parties (for instance, brokers have the obligation to report the transactions carried out in the Stock Exchange, the Real Estate Registrar reports all real estate transactions, among others).

The above is then used by the Tax Authority to massively cross-check information and prepare a tax return proposal to taxpayers. Nevertheless, taxpayers have the responsibility to complete and file their tax returns with all relevant information required. Income tax returns must be filed, as a general rule, no later than April 30 of each year, with the relevant information and transactions carried out during the previous calendar year ending on 31 December.

Taxpayers are allowed to freely amend their tax returns, within the 3- year statute of limitation term established in the Chilean Tax Code.

In case the tax authority detects inconsistencies in a tax return or affidavit, it may summon the taxpayer to clarify and provide further information. This may trigger a formal audit process which will be explained in section 1.5 below.

1.5. Description of the audit process

The administrative audit process involves the following stages:

a) **Notification stage**: an audit process begins with a letter of notification in which the Tax Authority requests to clarify and provide further information on certain aspects of a tax return or transactions carried out by a taxpayer. If satisfied with the additional information, facts or explanations provided by the taxpayer, the audit process ends; otherwise, the Tax Authority may summon the latter, as explained below.
   As a general rule, the Tax Authority has 9 months to review the information provided by the taxpayer. After such term, it will have to decide whether to (a) move to the next stage and summon the taxpayer or issue a tax assessment if there are grounds for the above, or (b) declare, prior to the request of the taxpayer, that the audit process ends.
b) **Summoning stage**: in case the Tax Authority is not satisfied with the information facts or explanations provided by the taxpayer, it may summon the latter to provide the requested additional information, supporting documentation or explanations, within 30 days, a term which may be extended for an additional 30 days if requested. It is worth noting that the summoning extends the statute of limitation term to 3 months plus the extensions granted to the taxpayer. During this stage of the audit procedure, it is possible to enter into an agreement with the Tax Authority and deter a tax assessment. During the summoning stage, the Tax Authority has the right to reassess the taxable base of the taxpayer if the additional information and documentation provided by the taxpayer are not sufficient to support the differences detected.
c) **Tax assessment stage**: if the taxpayer does not provide sufficient supporting information to explain the transactions carried out, or if it is not possible to reach an agreement during the summoning stage, the Tax Authority will likely issue a tax assessment for

any unpaid taxes or transactions which have not been sufficiently explained during such stage.

d) **Charge stage**: finally, the Tax Authority will issue a resolution charging the corresponding unpaid taxes, duly adjusted plus interest charges and penalties.
It is critical to take into consideration that unpaid taxes accrue a 1.5% interest per month or fraction thereof (this results in an 18% interest charge per year). However, taxpayers have the right to a reduction of interest and penalty charges provided they pay the unpaid amount through online means -where a 70% automatic reduction is granted-. In addition, taxpayers may request a reduction of interest and penalty charges to the Regional Director which is allowed to grant such a reduction based on the taxpayer's behaviour, allowing a more significative reduction (e.g. 90%).

1.6. Administrative/pre-litigation remedies

There are two administrative and pre-litigation remedies which can be filed before the Tax Authority which are expressly regulated in the Tax Code and that will be described in Part III, section 3.1.1. below.

(A) A General Administrative Appeal inserted in the normal audit procedure to review a tax assessment or resolution by a juridical team.

(B) A Final Administrative Resort which is becoming more used as an administrative remedy, although sets forth strict requirements for its application.

1.7. Court system

In general terms, the Chilean judicial system for tax controversies is formed by *Tax Courts* which constitute an individual and specialized court acting as the first judicial stage. Their judgements may be reviewed by a collegiate *Court of Appeals* -composed of 3 non-specialized judges- acting as a second judicial stage and whose judgement is subject to cassation by the *Supreme Court* -composed of 5 non-specialized judges-. A detailed description is provided in Part III, section 3.1.2.

Part Two: Pre-dispute phase

2.1. Purely domestic dispute prevention mechanisms

2.1.1. (a) Advance Rulings

According to article 6 of the Chilean Tax Code, it is possible to request an advance ruling on a specific matter, both, namely and on a no-name basis. This is a mechanism to obtain clarification on the interpretation of tax legislation -whether it corresponds to a domestic tax provision or any tax treaty provision in force- from the National Commissioner and Regional Commissioners. Responses obtained from the Tax Authority are binding to tax officials but not on taxpayers.

The Tax Code also contemplates the possibility of requesting a tax ruling for the Tax

Authority to confirm that a transaction or reorganization process does not fall under the General Anti-Avoidance Rule ("GAAR") or a Special Anti-Avoidance Rule ("SAAR").
As explained, an advance ruling can be exercised in three ways:

a) **General consultations on a no-name basis**: This option is available for all taxpayers, whether they are personally and directly involved or have an economic interest in the transaction or not, allowing any taxpayer to request a ruling for interpreting a tax law. Under this scenario, the answer provided by the Tax Authority will not be binding for the taxpayer. However, the Tax Code sets forth a provision in article 26 which states that no retroactive collection applies when the taxpayer has availed in good faith to a certain interpretation of the National or Regional Commissioners sustained in an official interpretation, which would include a specific ruling.
b) **GAAR/SAAR consultation on a no-name basis:** this option is also available for all taxpayers, whether they are personally and directly involved or have an economic interest in the transaction or not. This alternative allows any taxpayer to ask if a transaction or series of transactions may fall under the GAAR. As in letter (a) above, the Tax Authority will also provide an answer to the consultation under a theoretical and general approach. Under this scenario, the answer provided by the Chilean Tax Authority will not be binding, mainly for two reasons:[6] first, the absence of an economic interest of the consultant and second, the general approach of the consultation, which does not correspond to a real an actual case.
c) **GAAR/SAAR specific consultation disclosing the name of the taxpayer and providing details of the transaction**: Taxpayers may also request a ruling proving all relevant information of a transaction, if they are personally and directly involved in such a transaction. In this case, the Tax Authority will rule a specific case with all the relevant information of the taxpayer at sight, thus, the answer provided will be binding, provided that, in the facts, the transaction carried out is identical to the one ruled on by the Tax Authority. In this option the taxpayer must expressly indicate that it is requesting a binding ruling and state if the matter under consultation is subject to an audit process or is under a litigation procedure. Up to date, 36 specific rulings have been issued by the Tax Authority under this consultation procedure, which is quite relevant, as the GAAR has been in force since year 2016 onwards.

In our view, advance rulings are the most used dispute prevention mechanism, as the taxpayer may know in advance the position of the Tax Authority towards the interpretation of a tax disposition. Among these, definitively, GAAR/SAAR specific consultation disclosing the name is the most effective tool, as the taxpayer may know in advance whether a transaction or group of transactions may be challenged by the Tax Authority which will be prevented to further audit the transaction.

Positive aspects of these consultations are their simplicity, expeditiousness and transparency; not only because a request can be submitted, executed and monitored through online means -this does not exclude the possibility of face-to-face meetings-, but also since all rulings are published on the Tax Authority website for the general knowledge of taxpayers on a no-name basis. Another positive aspect is that any administrative consultation is free of charge. Likewise, in any administrative remedy, taxpayers do not need to act through an attorney. In addition, since the status is available to the taxpayer

[6] General Ruling No. 41 of year 2016 of the Chilean Tax Authority.

throughout the process, it allows the possibility of withdrawing the consultation, without justification, prior to receiving an answer. Note that the withdrawal of the consultation will only make sense in case the latter was submitted on a no-name basis

On the other hand, a downside of these procedures may be that due to the volume of consultations performed by taxpayers, the Tax Authority may take 6 months or even more, to answer the request, which may discourage using the mechanism. Only the GAAR and SAAR consultations have a maximum response term of 90 days, with positive silence being applicable under certain requirements.

2.1.1. *(b) Advance pricing agreements ("APAs")*

The Chilean law contemplates the possibility of entering unilateral APAs with the Chilean Tax Authority, which may be requested at any time by the taxpayer. It is worth noting that no charge applies for the taxpayer other than the cost of the requested documentation, as a transfer pricing study becomes mandatory.

Bilateral and multilateral APAs are only available in case a Tax Treaty is in place,[7] which will be explained below in section 2.2.2.

Regarding the APA procedure, taxpayers may file a request to enter an APA with the Chilean Tax Authority describing the transactions that will be executed, the values and prices of such transactions, the term in which they will be executed, together with the supporting documentation and with a transfer pricing report with a determination of the transfer pricing methods supporting the transactions under review.

The Tax Authority, through a resolution, may reject on its exclusive judgment, the APA request made by the taxpayer, which shall not be subject to a claim before the Tax Court, nor will it admit any appeal.

Once the Tax Authority certifies the reception of all the needed documentation, it has a 6-month term to accept or deny the request. However, the 6-months term starts from the certification where all relevant supporting documentation has been provided. This aspect in our view results in the fact that the 6 month-term stated in the law is in practice very relative.

In case no answer is issued by the Tax Authority the request is understood to be denied. The Tax Authority, at any time, may revoke the APA through a resolution, if the request was based on erroneous or false information, or if the critical assumptions and or information provided by the taxpayer have substantially been modified. Such a resolution does not apply retroactively unless the APA was based on false information.

In case the APA is approved by the Tax Authority,[8] it will apply from the year in which the request was filed by the taxpayer and for the following 3 years. The APA may be renewed or extended prior agreement of the Tax Authority.

Finally, it is important to note that the possibility of entering into an APA with the Tax Authority was incorporated into the Chilean legislation in year 2012;[9] however, in practice, the first APA was just concluded in 2021, which is 9 years later. Up to date, there have been 14 unilateral APA requests, 6 have been signed, 5 are in negotiation, 2 have been rejected,

7 Art. 41 E N° 7° of Income Tax Law establishes the possibility of the subscription of unilateral, bilateral and multilateral APAs. This is regulated in Resolution N° 68 enacted on 21 June 2013.

8 Regarding the import of goods, the APA must also be approved by the Chilean Customs Agency.

9 Incorporated under Law 20.630 enacted on 27 September 2012.

and finally, 1 was withdrawn by the taxpayer.[10] As may be inferred, statistics relating to unilateral APAs are publicly available.

In our view, it is most likely that in the future APAs will be a more used mechanism to prevent and/or resolve transfer pricing disputes, due to the recent incorporation of an APA team within the Tax Authority specifically built for such purposes and with the technical capacities needed.

Perhaps there are several reasons why the subscription of APAs has not been as massive as expected when the law was enacted. The most relevant to mention was the lack of a specific APA negotiation team within the Tax Authority; all the strategic information needed to be disclosed; facilitating the financial reporting of potential tax liabilities; the lack of remedies against any rejection of its application; and time and costs involved. If pursuing an APA takes at least two or three years from application to approval, costs are exponential.

2.1.2. Collaborative compliance systems

There are no pre-filing real time audits formally established in the audit procedure, other than namely rulings under the Chilean GAAR, where the Tax Authority carries out a real time audit of the transaction and/or criteria consulted.

2.1.3. Alternative or Supplementary dispute prevention mechanisms

On the other hand, there are no formal mechanisms to solve disagreements and avoid formal disputes arising. However, there are informal ("quasi") mediation mechanisms within the Tax Authority, such as the mandatory "conciliation stage" within the General Administrative Appeal described in Part III, 3.1.1. A) below.

2.1.4. Other

a) **No retroactive collection of taxes:** under article 26 of the Chilean Tax Code, no retroactive collection applies when the taxpayer has availed in good faith to a certain interpretation of the tax laws contained in general and specific rulings, or other official documents aimed at providing instructions to the tax officials or at being known by the taxpayers in general or by one or more of these in particular. This provision certainly aims to provide certainty to taxpayers and, therefore, clearly helps to avoid tax controversies.
b) **Statute of limitations:** under article 200 of the Tax Code, the Tax Authority may adjust a tax, issue a tax assessment or a tax collection, within three years counted from the expiration of the legal term in which the payment should have been made. Such term will be of six years in case a tax return has not been filed or the one submitted is maliciously false. For these purposes, taxes subject to a tax return are those that must be paid prior to declaration by the taxpayer or by the responsible for the tax. This provision helps to provide certainty, therefore avoiding tax controversies.

[10] Information of APAs con be found at https://www.sii.cl/servicios_online/1044-conoce_mas-4430.html

c) **Foreign financial institutions:** there is another provision that could be considered as a tax dispute prevention mechanism which refers to the registration of foreign financial institutions ("FFIs"[11]) before the Tax Authority, in order to secure a reduced tax rate applicable to interest payments to abroad. Under domestic law, the withholding tax applicable to interest paid from Chile to abroad is 35%, whereas the tax is reduced to 4% , regardless of the application of a tax treaty, to interest arising from loans granted by a bank or a foreign or international financial institution, whether related or not to the taxpayer.

A Voluntary Registry of FFI ("Registry"), was created in 2008 in order to register these institutions, so that the Chilean debtor could have certainty that the tax to be withheld is the reduced 4% tax rate. Notwithstanding the above, those entities that meet the requirements to be deemed as an FFI are entitled to the 4% reduced tax rate, even when not registered. Therefore, once an FFI is registered before the Tax Authority, the latter is not able to challenge the 4% withholding tax, thus, reducing the possibility of a dispute over the applicable tax.

In our view, this is a quite straightforward dispute prevention mechanism, which is available for any taxpayer. We consider that the only limitation in order to apply to this Registry is that the Tax Authority requires audited financial statements. In that regard, not all companies are obliged to audit their financial statements. On the other hand, in our opinion, the procedure is simple, transparent and the inclusion or exclusion from the Registry is information that is available for the public. The submission of the application has no cost for the taxpayer.

Likewise, if the taxpayer does not comply with the requirements explained above and is not included in the Registry, or if registered, is excluded at a later stage because it fails to comply with said requirements, no penalties apply. As a general rule, this procedure is quite expeditious and does not take more than 2 months to complete. Finally, note that once the taxpayer is registered, the 4% reduced tax rate will apply regardless of the application of a tax treaty, thus, there is no need to comply with other formal or substance requirements set forth in the tax treaties (for instance, residence in a tax treaty country, beneficial ownership, among others).

2.2. International dispute prevention mechanisms

The Chilean domestic tax system does not contemplate a specific dispute prevention mechanism for international tax matters. In other words, any foreign taxpayer that needs to file a claim against the Chilean Tax Authority would have to follow the general remedies contemplated in the law, which are of general application.

[11] FFIs are entities incorporated abroad whose business purpose is to grant loans or financing, which needs to be carried out periodically; that its income provides mainly from such financing operations; and provided that such institutions have a paid-in-capital and reserves of at least 400,000 Foment Unit which is a Chilean inflation unit (today is equivalent to USD 15 million approximately). In addition, the taxpayer needs to evidence that the loan does not correspond to a "back-to-back" operation with an entity that would not be entitled to the benefit.

2.2.1. Interpretative clarifications under article 25(3) of the OECD/UN Model Tax Conventions which may avoid multiplication of the same disputes

Chile follows the standard provision 25(3) of the OECD/UN Model Tax Convention.

2.2.2. Bilateral or multilateral Advance Pricing Agreements

As mentioned above, the Chilean domestic tax legislation contemplates the possibility of entering into an APA between the Tax Authority and the taxpayer, whereas bilateral and multilateral APAs are available only under tax treaties entered into by Chile.

The procedure to request a bilateral or multilateral APA is the same as described above for unilateral APAs. In that regard, a bilateral APA may be requested at any time by the taxpayer and no fees apply.

All tax treaties entered into by Chile -except the one with Brazil-, contain paragraph 2 of article 9 of the OECD Tax Model Convention, that is, the possibility of making the corresponding adjustment if an audit is carried out in the other State, or granting access to MAP, for such purpose.

Note that there are currently 2 bilateral APAs in place and 4 in negotiation, whereas there are no effective multilateral APAs yet.[12] Note that statistics relating to bilateral APAs are publicly available.

Bilateral APA provisions in Chilean tax legislation do not expressly provide for the roll-back of APAs. However, provided that there is no tax adjustment or tax collection note from the Tax Authority, taxpayers may amend their tax returns at any time. In this regard, it might be possible that results or conclusions of an accepted APA, where appropriate, could be applied to previous tax years. However, tax consequences that might derive from such an amendment (e.g. tax refund request) will be subject to domestic statute of limitations.[13]

Part Three: Dispute phase

3.1. Domestic dispute resolution mechanisms

3.1.1. Administrative review

There are two administrative and pre-litigation remedies which can be filed before the Tax Authority which are expressly regulated in the Tax Code. It is important to point out that this pre-litigation remedies apply to all taxpayers, whether domestic or foreign entities, as there are no specific procedures for the latter.

[12] Information of APAs con be found at https://www.sii.cl/servicios_online/1044-conoce_mas-4430.html

[13] Chile Dispute Resolution Profile document available at https://www.sii.cl

A. General administrative appeal

According to article 123 bis of the Tax Code, within 30 business days from the issuance of a formal tax assessment, it is feasible to file an administrative appeal before the legal department of the Tax Authority. The taxpayer may file this administrative appeal on its own, without the need of having legal representation.

The procedure contemplates a "compulsory conciliation" meeting between the Tax Authority and the taxpayer, the purpose of which, is to avoid any further discussion or litigation. If no agreement is reached during the conciliation meeting, the Tax Authority has the obligation to resolve the appeal within 90 business days.

It should be noted that the filing of the administrative appeal before the Tax Authority suspends the term for filing a judicial claim before the Chilean tax courts until the Tax Authority issues its final resolution whether in favour or against the taxpayer which must be legally notified to the latter. In our view the suspension of the term is critical for encouraging its use (in the past it did not suspend such term).

Against the resolution issued by the Tax Authority resolving the administrative appeal, a limited hierarchical appeal is available, based on a manifest error of law, which has substantially impacted the judgement.

In general terms, there are no limitations for taxpayers to access this mechanism. From a procedural perspective, the administrative appeal may be filed electronically and all supporting documentation provided by the taxpayer must be uploaded to an electronic folder. The taxpayer and its advisors, if any, are allowed to participate during the process. In that sense, once an official is assigned to a case, the taxpayer or its advisors may reach out to him freely and as many times as deemed necessary.

On the other hand, it is important to stress that any interpretations of the tax laws contained in general and specific rulings and resolutions issued by the Tax Authority are binding for tax officials. In other words, the latter may not resolve a case against the interpretation included in such administrative jurisprudence. Therefore, in practice, in many cases, the official's hands are tied in order to reach an autonomous decision which may discourage the use of this mechanism if there is administrative jurisprudence against the taxpayer.

B. Final administrative resort

Under a different procedure described in article 6, letter B, No. 5, of the Tax Code, the Regional Commissioners have the authority to review a case, both *ex officio* or as requested by a taxpayer, provided the following requirements are met: (i) there has been a manifest error in the tax assessment and (ii) there is a different aspect of the assessment to be reviewed or the taxpayer provides new documentation which is worth a new revision of the case. Law No. 21,210 of 2020, amended this provision to establish that the authority may not resolve administrative petitions containing the same basis of claim and based on the same background previously discussed in a jurisdictional or administrative venue.

There is no statute of limitation term for filing such a remedy. There is no need to waive the judicial claim in place even if there is a court judgment against the taxpayer. In that sense, under this administrative remedy, the Tax Authority may review and rectify its own mistakes, thus, amending its previous assessment. It is important to note that Regional Directors may reject the remedy on its exclusive judgment which does not admit any further claims before the Tax Courts or Courts of Appeal.

Again, in general terms, there are no limitations for taxpayers to access this mechanism. It may be stated that this final resort is less likely to occur as the requirements that need to be met are stricter. Additionally, as there is no term for filing this claim, the Tax Authority has no binding term for resolving the issue, thus, it may postpone its resolution indefinitely.

3.1.2. Judicial review

The new Chilean Tax Courts of Justice (Tax and Customs Courts) were created on 27 January 2009.

The judicial claim is established in articles 124 and following the Tax Code. It must be submitted before the tax courts, which also have jurisdiction for public law nullity to administrative acts which do not comply with the principles and attributions granted by the Constitution.

As background, it is worth mentioning that tax courts were incorporated into the Chilean legal system in year 2009 seeking two main objectives:[14] (a) to have independent courts, in order to review and solve tax disputes, and (b) to achieve efficient and expeditious tax procedures. However, as will be explained below, it is unclear if such two objectives have been fulfilled. It should be noted that, prior to the creation of the tax courts, it was the Tax Authority that reviewed and ruled tax matters in case of disputes with taxpayers, acting both, as a claimant and as judge. As mentioned, any interpretations of the tax laws contained in the administrative jurisprudence and guidance, are binding for tax officials, thus, the fact that the Tax Authority acted as judge became particularly relevant to solve tax litigation matters.

Regarding the procedure, it works as follows:

a) **Tax Court**: As mentioned, tax courts correspond to the first level of the judiciary system and deal with tax and customs matters. The procedure is regulated by the law; however, judgements consider equity rules.

   There is one tax court per region in Chile, except for the Metropolitan Region, which has 4 tax courts. Currently, cases are distributed randomly amongst the 4 metropolitan regional courts, whereas previously cases were distributed according to territorial criteria, which discouraged ligations. In our view, a territorial distribution was less encouraging, not only due to the court's bias in favour of the Tax Administration, but also, because this factor contributed to an overload of cases in specific tax courts which in the long term affected a prompt resolution and, therefore, gave a sense of lack or diminished justice.

   Taxpayers have the right to file a judicial claim before the regional tax courts according to its domicile, within 90- business days counted from the tax assessment, tax collection or resolution which is subject to a claim before the courts. Taxpayers are not obliged to pay the disputed amount to file the claim. Nevertheless, if the taxpayer pays such amount, the term for filing the claim is extended to one year. Additionally, the latter alternative has the advantage that no interest continues to accrue on the disputed amount, which is crucial, as unpaid taxes accrue a 1.5% interest per month (18% annually).

[14] These two objectives are stated in the message of Law No. 20.322 which incorporated the tax courts into the Chilean legal system.

Within the tax litigation procedure, the Chilean Tax Code contemplates a "compulsory conciliatory audience" between the taxpayer and the Tax Authority, the purpose of which, is to reach an agreement, in order to settle the dispute. In that regard, the Tax Code states that the attorney representing the Tax Authority needs to be duly authorized in order to fully or partially accept the terms of the agreement reached in the conciliation audience. For that purpose, the Chilean IRS issued a resolution in 2022, indicating the general criteria that should be applied by a tax officer in order to accept a conciliation agreement. However, such criteria refer only to cases in which it is clear that the tax claimed by the authority has been wrongly determined, or the elements for the existence of the taxable event have not taken place. In practice, as most of the tax cases are subject to interpretation and, therefore, do not meet such criteria, it is unlikely that the tax officer can reach an agreement with the taxpayer. The latter means that this provision is not effectively applied.

In addition, such a conciliation audience is not applicable in the cases in which the dispute has been initiated under the GAAR or a criminal claim has been filed by the Tax Authority, which reduces even more its capacity to resolve the dispute. In such situations in which no conciliation agreement is reached, which in our view, corresponds to the vast majority of the trials, the litigation will continue its due course of action, moving forward to the probatory phase.

Finally, it is important to point out that it is possible for the taxpayer to reach out to the Regional Director in order to propose the terms of an extra-judiciary agreement, subject to the same rules and limitations explained above for the conciliation phase. In such cases, it is not mandatory for the taxpayer to abandon the claim. Nevertheless, such mechanism is rarely used, as the National Commissioner, although the head of the institution, requires the prior favourable report of three Deputy Directors (Legal, Juridical and Audit Deputy Directors).

Under an exceptional and transitory rule enacted in February 2020 under Law No. 21.210, the purpose of which was to unclog the tax courts, taxpayers had the option to enter into an extra-judiciary agreement with the Tax Authority regarding existing tax procedures at such date acknowledging the tax debt. In such case, taxpayers would only pay the duly adjusted taxes whereas all interest and penalty charges were waived. This mechanism was widely used which seems to evidence that, if interest charges are reduced or waived, taxpayers are willing to settle unpaid tax liabilities.

b) **Court of Appeals**: Judgements issued by the tax courts are subject to appeal, within 15 business days, before the General Courts of Appeal, which are courts formed by three judges (collegiate court). The Courts of Appeal are entitled to review the case facts and legal matters; however, they do not have specialized judges with a strong tax background. Occasionally, the court may be formed by an external judge who might have deeper tax knowledge, nevertheless, such external judges may be recused by the Chilean Tax Authority.
c) **Supreme Court**: Finally, judgements issued by a Court of Appeal are subject to a Cassation before the Supreme Court. As said above, the latter is entitled to review the formal legal aspects and legal substance of the judgement but not the case facts.

As an interesting data, even though Chile incorporated independent first instance tax courts, according to research performed by the "Observatory of the Judicial System", which reviewed tax judgements during a five-year period (from 2013 to 2017), 70% of the cases

filed before the tax courts were decided in favour of the Tax Authority.[15] According to the conclusions of such report, the fact that the vast majority of the judgements are issued against taxpayers has resulted in a decrease in the filing of new claims before the tax courts, due to the perception of taxpayers that the claims will not be successful. This fact is even more dramatic in the case of the 4th Tax Court of the Metropolitan Region which recorded 91% of cases in favour of the Tax Authority, during the period under analysis.

The research evidenced that during 2013, the number of claims filed before the tax courts nationwide, amounted to 2,396, whereas during 2017, only 1,338 cases were filed before such courts, resulting in a decrease of 44%. Furthermore, according to another report by said Observatory, 2019 only 1,072 claims were filed before the tax courts, less than half of the claims filed in the year 2013.[16] This is particularly relevant considering that the Chilean tax system has increased its complexity, and new taxes have been introduced (digital tax, tax applicable to luxury goods, surcharge applicable to real estate property, among others) all of which should have contributed to an increase of the tax claims; however, this has not been the case.

Moreover, tax litigation may last for several years, thus, taxpayers' liability will continue to increase during the litigation phase, as unpaid taxes will be subject to inflation adjustment and interest charges (18% annual rate). In that regard, considering that a tax litigation case may go through the first instance tax court, an appeal before the Courts of Appeal and a final juridical claim before the Supreme Court, general tax trials last for an average of 35 months, that is, almost 3 years.[17] That term is equivalent to a 52.5% interest charge in addition to the unpaid tax amount.

All in all, according to such report, considering (i) the high probability that the final judgement will favour the Tax Authority and (ii) the extension of tax trials which results in a high cost for taxpayers, due to interest charges and attorney fees, both such considerations discourage the filing of claims before the courts, especially, in the case of small and medium size taxpayers.[18] Furthermore, although there is the option to prepay the taxes prior to litigation, to avoid the accrual of interest charges, nevertheless, this alternative requires the taxpayers to be in an excess cash position. In other words, in our view, it seems that only large-size taxpayers would be in a condition to bear the cost of litigating against the Chilean Tax Authority.

In this regard, in our view, adjustments need to be made to improve effectiveness and objectiveness. For example, specialized judges at the Court of Appeals. Also, tax courts need additional resources for making the procedure more expeditious and for challenging the position of the Tax Authority, in order to avoid the bias explained above (e.g. incorporating additional officials and auditors).

[15] Report No. 12 of the Observatory of the Judicial System named "*Tax and Customs Courts. An Expectation Issue*" published in July 2018, available in the website https://observatoriojudicial.org/informes/

[16] Report No. 33 of the Observatory of the Judicial System, named "*The Cost of Tax Justice*" published in April 2021, available on the website: https://observatoriojudicial.org/informes/.

[17] Idem.

[18] Idem.

3.1.3. Alternative or Supplementary dispute resolution mechanisms

A. Compulsory conciliation stage during litigation phase

As mentioned in the previous section, procedures before the tax courts contemplate a compulsory conciliatory audience between the taxpayer and the Tax Authority. However, as explained, it is unlikely that the parties involved will reach an agreement, due to the lack of powers of the tax officials and the strict requirements needed for such an agreement. Also, since the judge may propose terms for a conciliation, in practice judges have not an active involvement in the case to propose such terms. In our experience, we have seen one case in which a judge proposed conciliation terms.

B. Extra-judicial agreement ("avenimiento extra-judicial")

The Chilean Tax Code contemplates the possibility, once a judicial claim has been filed before a tax court, that the taxpayer requests a meeting with the National Commissioner in order to propose an extra-judicial agreement with the latter. This right can only be exercised once by the taxpayer. The General Commissioner requires the approval of the three directorates, as explained in the Conciliation Stage. Thus, again, there are very strict requirements for such an extra-judicial agreement, therefore, in our view, it is unlikely to occur.

C. Informal extra-judicial agreement (mix of remedies)

In our view, since within the judicial claim there is a mandatory "conciliation stage" -which allows to formally approach the Tax Authority- combined with a "Final Administrative Resort" -which allows the taxpayer to request the Tax Authority to re-examine its position where a manifest error has been incurred-; may result in practice an informal controversy remedy. This is particularly important since this administrative remedy does not necessarily require abandoning the tax claim (e.g. provided new documentation is submitted); however, this will depend on the criteria of the Regional Commissioner where the error has been committed. There are no statistics to measure the effectiveness of this approach; nevertheless, in our experience, it can be effective. As this constitutes an informal approach, there is no final resolution or judgement that may be available for the public's knowledge. Finally, it may take a long time to reach an outcome.

D. Tax Ombudsman

The Tax Ombudsman is a recently incorporated institution in the Chilean tax system, which is appointed and is under the supervision of the President through the Ministry of Finance (it is not dependent of the Tax Authority). It has its own patrimony and legal personality.

It was incorporated into the Chilean tax system in February 2022. The purpose of the Tax Ombudsman is to protect the taxpayers' rights in any matter related to Chilean taxes. Specifically, it is entitled, among others, to:

a) Provide orientation and assistance to taxpayers, especially to small and medium size taxpayers, including providing information of the available dispute and claim mechanisms.
b) Issue recommendations of tax matters to the Tax Authority, which are not binding.

c) Act in representation of taxpayers in administrative procedures before the Tax Authority.
d) Act as a third party in mediation procedures between taxpayers and the Chilean IRS, in order to reach an agreement.

As this institution was recently incorporated into the Chilean tax law, it is difficult to assess its effectiveness so far. Nevertheless, in principle, it is possible to argue that the Tax Ombudsman has not been granted wide powers to act on behalf of the taxpayers, especially in a judicial stage; thus, we would not expect it to be a counterweight to the Tax Authority.

3.2. International dispute resolution mechanisms

3.2.1. Mutual Agreement Procedures ("MAP")

All tax treaties entered into by Chile and third parties include a MAP provision. This procedure is contemplated for preventing and/or solving any controversy regarding the interpretation and application of tax treaties. Chile has committed to the implementation of the minimum standard established in Action 14 of BEPS, for which purposes should bilaterally modify its tax treaties to include article 25 (2) "*Any agreement reached should be implemented notwithstanding any time limits in the domestic law of the Contracting State*".

A. Access to MAP

The text of all tax treaties signed by Chile follows the first sentence of article 25(1) of the OECD Model Tax Convention (as it read prior to the adoption of the final report on Action 14). As a general rule, access to MAP is available in the following cases:

a) When a person considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of the treaty, to present his case to the competent authority of the Contracting State of which he is a resident,[19] or if his case comes under paragraph 1 of article 24 (Non-Discrimination), to that of the Contracting State of which he is a national.
b) MAPs also cover both treaty and domestic anti-abuse provisions. As to the GAAR provided in the domestic tax legislation, that has a specific procedure before tax courts, according to which a judge decides whether the GAAR can be applied or not to the relevant issue, if the tax court decision applies the GAAR, such ruling produces *res judicata*. Therefore, if the same issue is submitted to MAP, although access to MAP will be granted, the Chilean competent authority would not be able to review it again and therefore, it will not be able to reach to any agreement on the same issue.
c) If in respect of an administrative act, a judicial action is filed by the taxpayer who simultaneously submits a MAP request, access to MAP would be granted. However, while such case is pending, the Chilean competent authority would not be able to discuss the MAP case with the other competent authority. If a decision is issued by the court in the meantime, the Chilean competent authority would not be able to deviate from such decision in MAP but will seek correlative relief at the level of the treaty partner. In that regard, according to Chilean law, an issue under dispute already decided via the

[19] General ruling N° 13 of year 2022 of the Chilean Tax Authority.

judicial remedies cannot be reviewed again, this is, the Chilean competent authority is not able to reach any other solution on the same issue.

It is important to bear in mind that multilateral MAPs have not yet been implemented in Chile.

B. Chilean MAP guidelines and procedure

The Tax Authority has recently issued guidance for triggering a MAP,[20] although the first tax treaty was negotiated and entered into force during the early 90's.

According to General Rulings N° 13 of 2022 and 19 of 2023, a MAP must be triggered by a taxpayer although it corresponds to a negotiation between Contracting States. In that sense, such regulation indicates that this procedure seeks to ensure the correct interpretation and application of double tax treaties so that taxpayers enjoy treaty benefits, as the case may be, preventing States from applying taxation not in accordance with the treaty.

In addition, it is important to note that the Chilean MAP regulation follows the OECD and UN models, adapted to Chile. In case a MAP is not successful in solving a matter there is no compulsory arbitration in treaties entered into by Chile. Such guidance sets forth that the States do not have an obligation to reach an agreement, except in the case of article 4 which refers to double residency of individuals. Nevertheless, the Contracting States must act in good faith in order to reach a solution, as stated in the Vienna Convention on the Law of the Treaties.

As a general rule, the MAP must be triggered within the term indicated in the treaty, unless the latter does not specify a term for such purpose, in which case, the MAP may be initiated at any time.

In all cases, the general rulings indicate that it is necessary to take into consideration the statute of limitation established in the Chilean laws. The latter is relevant as the Chilean Tax Code allows to request a refund of overpaid taxes for a 3-year term counted as from the payment or the final judgment that solves the matter.

It is important to note that MAPs may also be used to reduce actual double taxation post-assessment whereas APAs eliminate possible future double taxation through a forward-looking agreement on the arm's-length result of transactions. In our view, APAs as a preventive tool have been much more used and effective as compared to MAP. This is curious since most international tax disputes in Chile deal with transfer pricing and therefore a secondary adjustment through MAP should be something relatively used.

Likewise, it is relevant to recall that in the case of double residency of individuals, article 4 of the Tax Treaties sets forth an obligation to settle the matter through a MAP, so far, we have not seen this affair dealt with through a MAP. Nevertheless, as from the pandemia the number of individuals moving to different jurisdictions, whether permanently or for long-term periods, or the possibility of working remotely through online means, has increased dramatically, we expect MAPs will be increasingly used hereafter.

Regarding the lack of MAPs in this and other tax areas, perhaps this is due to the lack of knowledge of the tool or simply because many doubts regarding treaty interpretation have been effectively clarified through specific consultation with the Chilean Tax Authority.

[20] The Chilean Tax Authority issued a General Ruling in March 2022, establishing the procedure and rules for triggering a MAP under a tax treaty.

Also, perhaps to date, there have been not many situations that have required effective MAP solutions, which we expect to change in the near future. Likewise, we expect, considering recently issued MAP regulations along with more international disputes arising -other than transfer pricing-, that MAP procedures will increase. In addition, it is worth mentioning that there is no cost for the taxpayers when triggering a MAP.

3.2.2. *Arbitration in tax treaties*

Chile follows the Minimum Standard proposed by BEPS Action 14. However, as a general rule, tax treaties entered into by Chile, do not contain an arbitration procedure. Only a couple of treaties include within the MAP provision an arbitration clause that is subject to the condition that both competent authorities accept such a procedure, which has not been triggered so far. We anticipate that in the future, Chile will be able to undertake arbitration under those treaties once such a procedure is introduced in domestic laws.

3.2.3. *Alternative or Supplementary dispute resolution mechanisms applied under tax treaties*

There are no other dispute resolution mechanisms considered under Tax Treaties entered into by Chile.

3.2.4. *Dispute resolution under EU tax law*

Not applicable.

3.2.5. *Any other dispute resolution procedure as may be applied under international investment agreements*

Chile has entered into several Conventions to Reciprocally Promote and Protect Foreign Investment ("Foreign Investment Conventions"), mainly with its commercial partners, following a Free Trade Agreement.

According to such Foreign Investment Conventions, in case of a dispute between the State of Chile and a foreign investor, the matter can be subject to international arbitration. In that regard, most of the treaties state that the dispute shall be filed before the International Centre for Settlement of Investment Disputes ("ICSID") based in Washington D.C., United States of America, which is an organism that functions under the World Bank. Some of the Foreign Investment Conventions, also grant the possibility to file the claim before the United Nations Commission on International Trade Law ("UNCITRAL") at the election of the investor. We understand that such disputes may refer to any matter arising between the foreign investor and the State of Chile, including tax matters.

So far, the State of Chile has been subject to a claim before the ICSID in 6 opportunities: (a) 3 cases have been resolved in favour of Chile, (b) only 1 case was resolved in favour of the foreign investor, and (c) 2 cases are currently pending. It should be noted that none of the disputes were related to tax matters.

Part Four: Other mechanisms and features that may trigger disputes

4.1. Mechanisms used by Tax Authorities

4.1.1. Risk assessment

The Tax Authority must apply and examine all internal taxes, for which purpose it requires detailed information of taxpayers. For that reason, it is one of the public entities with the largest amount of tax data and information regarding citizens and companies.[21] An important portion of such information is publicly available on the authority's website which contributes to facilitating tax compliance and improving the taxpayer's behaviour, in consequence, reducing controversies.

In other words, the business model is guided by the following central concepts: (a) facilitation of compliance, (b) minimization of non-compliance and (c) control of compliance. The model seeks to reduce non-compliance by promoting voluntary compliance with tax obligations so that it is easier to comply and more difficult not to comply.[22]

On the other hand, it is worth mentioning that the Tax Authority publishes a "Tax Compliance Management Plan" every year which sets forth a strategy for increasing tax compliance, diminishing evasion and mitigating risks. This document indicates the main audit targets, whether groups of taxpayers or specific transactions, which will be the focus of audit processes during the corresponding year.

4.1.2. Audit manuals and other compliance training

Additionally, since 2016, the year in which the GAAR was incorporated into the Chilean Tax System, the Tax Authority has issued a catalogue of potential elusive/evasive tax conducts carried out by taxpayers, which is used as a guideline in order to evaluate whether a transaction or reorganization process could be challenged.

The catalogue is updated every year with new cases that may potentially trigger the application of the GAAR. In our view, these guidelines help taxpayers to opt among different alternatives provided in the tax system and make proper use of such rules.

However, some of the conducts included in the document, are described in very general and ambiguous terms and, thus, do not contribute to providing certainty to taxpayers. In our view, this catalogue has acted as a deterrent to aggressive tax planning schemes.

4.1.3. Cross-functional consultations and progress reporting

During the last years, the Tax Authority has created specialized groups or departments to deal with more complex matters (e.g. transfer pricing, tax treaties, GAAR matters).

21 "*Tax Administration Powers and Taxpayers Rights Conference*" dictated by Mr. Julio Pereira, Former National Director of the Chilean Internal Revenue Service, for the Tax Administrations Investigation Center ("CIAT" in Spanish).

22 "E-control of non-compliance Conference" dictated by Mr. Julio Pereira, Former National Director of the Chilean Internal Revenue Service, for the Tax Administrations Investigation Center ("CIAT" in Spanish).

4.1.4. Other

a) **Agreements with other institutions:** the Tax Authority has entered into and concluded several agreements with other public and private institutions in order to seek and collect data from taxpayers which is then used to cross-check information provided by taxpayers.
b) **Specialized and permanent training:** the Tax Authority has a specialized division dedicated exclusively to the continuous training and preparation of tax officials. Additionally, there are several internal and external courses dedicated to tax treaties and international tax planning.
c) **Dedicated teams:** additionally, there are specialized teams for dealing exclusively with APAs and MAPs, given their complexity.

4.2. Mechanisms used by taxpayers

4.2.1. Risk mitigation structures

In our experience, during the past few years, many multinational companies and high net-worth individuals tend to adopt more conservative approaches regarding tax structures and reorganization processes, to avoid potential reputational risks. In that sense, the GAAR, incorporated in 2016 and the catalogue of potential elusive/evasive tax conducts, have acted as a deterrent to aggressive tax planning. In fact, each year it is more frequent that taxpayers implement internal revision systems to prevent or mitigate prolonged disputes with the Tax Authority, as controversies with the latter negatively affect the perception of the general public.

Furthermore, it is increasingly important that taxpayers opt for a collaborative approach with the Tax Authority, especially with the Large Taxpayer's Office where such an approach is promoted and is a factor to be considered in their Risk Assessment Matrix. For example, where taxes are assessed in an audit, it is more feasible to opt for a waiver of interest and fines -which is an exclusive attribution of the Regional Commissioner- in place for collaborative taxpayers.

4.2.2. Public reporting requirements

Chile is a tax jurisdiction construed on self-assessment. However, the taxpayer as well as third parties must submit quite a lot of affidavits regarding every aspect of the tax basis. These are normally mandatory public reporting (e.g. mandatory reporting by the taxpayers may be BEPS Action 13 Country by Country Reporting).

Therefore, in practice, the Tax Authority has such a level of information that can "propose" the tax return. This is something in which Chile has been an innovative leader more than 10 years ago. Thus, in our view, all this reporting is an instrument that may avoid tax disputes.

4.2.3. Other

4.2.3.1. Taxpayers rights

Another mechanism used by taxpayers in Chile is the simple enaction of taxpayers rights granted in the Tax Code, such as a) the right to be informed, b) the right to quality service, c) the right to pay the correct amount of tax; d) the right to challenge the IRS's position and be heard; and e) the right to presume good faith, among others. All these rights granted to the taxpayer are a resource for protection of the latter. The taxpayers may exercise their rights before the hierarchical superior and it is possible to trigger a judicial review before the Tax Courts.

4.2.3.2. Access to public information

The Chilean IRS publishes on its website all the general rulings and specific rulings for the knowledge of the taxpayers.

Lastly, in order to empower the citizen in their examination of public entities, Law N° 20.285, on Access to Public Information was enacted in 2008. The latter provides that every person has the right to request and receive information from any entity of the State's Administration, in the manner and conditions stated in the law. It stipulates the right to access information included in acts, resolutions, minutes, files, contracts or agreements, as well as to all information prepared with public budget, regardless of the format wherein it is included, save for legal exceptions.

Part Five: Conclusion and final comments

In general terms, Chile has undergone several tax reforms since 2012 onwards, to increase tax collection, thus, incorporating new taxes, strengthening the powers of the Tax Authority, eliminating the foreign investment statute, and incorporating BEPS recommendations, among others, all of which brings room for uncertainty and therefore controversy.

As it was evidenced in this report, Chilean domestic legislation contemplates various dispute prevention mechanisms, both formal and informal, which have been quite effective. It is worth mentioning:

a) The possibility of requesting a ruling from the Tax Authority, which in our view is the most used dispute prevention mechanism, as the taxpayer may know in advance the interpretation of a tax rule. Among these, definitively, GAAR/SAAR specific consultation disclosing the name is the most effective tool, as the Tax Authority will be prevented from challenging the transaction. An advantage of these consultations is not only that are free of charge and do not need representation, but their simplicity, transparency, straightforwardness, and flexibility. All these factors make these processes quite transparent, expeditious and effective, although may take time to obtain a response.
b) Another option is registering a foreign financial institution (FFI) to secure a reduced tax rate upon interest paid to abroad, which shares the same positive features with no downsides, a situation which provides a safe harbour to the taxpayer.
c) Finally, during the past few years, unilateral APAs have increasingly been used as a

prevention mechanism, which will also help to provide certainty to taxpayers and, consequently, prevent disputes. We expect APAs may increase in the future, due to various reasons (e.g. first APAs recently concluded, special audit team specially created).

Nevertheless, in our opinion, there is still room for applying additional preventive dispute mechanisms, such as MAP would be, in cross-border or international tax matters, which have not been widely used, but we expect will be soon. Considering that the Tax Authority has only recently put in place guidance for triggering such a procedure, clarifying that in case of double residency of individuals, article 4 of the tax treaties establishes an obligation to settle the matter through a MAP, we would expect MAPs will be increasingly used hereafter.

Moving to dispute procedures, the new tax justice administration as of 2009 is being carried out by specialized tax courts, which are independent from the Tax Authority. This guarantees the due autonomy of the court when deciding tax controversies an aspect that was criticized under the old tax judicial system, where the Tax Authority fulfilled two different roles, as it enforced the compliance of the tax law while, at the same time, acted as a judge in case of controversies.

However, as it was revealed in this report, after 12 years with independent judges in place, taxpayers feel discouraged towards litigation, not only due to statistics unfavourable, but since considerable time and litigation costs are involved (e.g. specialized attorneys, notorious penalties, and interest charges). Such facts have proven to discourage tax litigation, especially for individuals and small and medium-size businesses, which cannot financially bear such costs. In that regard, the following proposals could be taken into consideration:

a) A reduction of interest charges or, at least, that interest charges cease to accrue in case of prepayment of a fraction of disputed taxes (and not all of it), an amount that could be analyzed on a case-by-case basis.
b) Tax courts need additional resources for making the procedure more expeditious and for challenging the position of the Tax Authority, to avoid the bias explained above (for instance, incorporating additional officials and auditors).
c) The Courts of Appeals require expert judges in tax matters.
d) The Tax Ombudsman could take on a more active role in assisting taxpayers with disputes. Nevertheless, that would require an amendment to the law, to grant judicial representation powers to the Ombudsman in that sense.

In our view, there is room for improving alternative dispute resolution mechanisms prior to or during tax litigation such as promoting agreements with the Tax Authority during trials, and granting additional powers to officials during the conciliation stage to make the latter a real dispute resolution mechanism. Otherwise, even if there is a conciliation stage during the procedure, in practice, it is quite unlikely to reach an agreement with the Tax Authority.

Finally, it is worth mentioning that the role of the Tax Authority to prevent controversies is crucial. In fact, its business model is clearly oriented towards reducing non-compliance by promoting voluntary compliance, thus making it easier to comply and more difficult not to comply. For these purposes, there are some aspects that help prevent conflicts, such as information publicly available on the authority's website; proposing a tax return; and publishing a catalogue of potential Tax Avoidance and Evasion schemes that could act as a deterrent mechanism. In general, a collaborative and transparent approach contributes to facilitating tax compliance and improves the taxpayer's behaviour, in consequence, reducing controversies.

International Fiscal Association

9 789083 087498