CUATRECASAS

2022 Tax Reform Bill -

Significant impacts for companies subject to the general tax regime

Legal Flash Chile

July 2022

On July 7, the Government submitted Presidential Statement 064-370 to Congress initiating the parliamentary debate on a tax reform bill in Chile.

The tax reform bill ("Bill") proposes many structural amendments to the current Chilean tax regime. These amendments are aimed at (i) increasing tax revenue; and (ii) funding several Government-led initiatives.

The proposed amendments cover various matters. This legal flash summarizes some of the most relevant modifications applicable to large companies, including notes and comments from our tax team.

1. Corporate income tax

Income tax rate reduction for large companies

The Bill proposes to lower the rate of the first category income tax ("**IDPC**") from 27% (i.e., the rate currently applied to large companies) to 25%. This is the same rate imposed on companies subject to the regime for micro, small and medium enterprises ("MSMEs").

The IDPC is the Chilean income tax on business activities. Under the IDPC, taxpayers are taxed at a 27% rate on the income they obtain from their business activity, irrespective of their legal form, whether incorporated or not, and regardless of the nature, source, or designation of the income.

Effective: January 1, 2025.

Cuatrecasas note: For this purpose, large companies are all those that are not eligible to apply for the simplified tax regime for MSMEs. Only the companies meeting the following requirements can be subject to the MSMEs regime: (i) at the time of starting their activity, their effective capital must be 85,000 inflation-indexed units or *Unidades de Fomento* ("UF"), approximately EUR 2.8 million; and (ii) their average gross annual income obtained from their business must not exceed 75,000 UF (approximately EUR 2.5 million).

2% development fee

The Bill proposes to introduce a **2% development fee**, which for all legal purposes will be an increase on top of the IDPC payable by the company.

This development fee will be equal to (i) 2% of the IDPC tax base or the taxable income minus (ii) the sum of payments during the year qualifying as productivity investments.

According to the Bill, productivity investments are the amounts paid during the relevant tax year and are:

(i) Research and development expenses in the amount that is not tax credit against the IDPC, or

(ii) Payments for the purchase of high-tech products and services. The Government will issue a decree specifying the characteristics of the goods and services qualifying as high-tech, or

(iii) Payments incurred in the preparation and filing of industrial property applications, or

(iv) Payments used to obtain ISO certificates, or

(v) Payments for the purchase of goods and services developed by persons or companies with support from the Production Development Corporation's ("CORFO") innovation and entrepreneurship programs.

If the resulting amount is negative or the taxpayer has negative tax results (i.e., tax losses), **the increase for the development fee will not apply**.

Effective: January 1, 2025.

Cuatrecasas note: Due to the strict requirements for expenses to qualify as productivity investments, in practice, many companies will likely continue being subject to a 27% income tax despite the reduction in the statutory rate of the IDPC to 25%.

Cuatrecasas note: The Bill allows imported high-tech products and services to qualify as productivity investments as long as they are marketed by Chilean suppliers. It will be worth examining if the restriction on the direct acquisition of these goods and services from foreign suppliers could be contrary to Chile's obligations under the free trade agreements to which Chile is a party.

- ***General tax deductibility requirements for expenses***

The Bill proposes that expenses directly related to the generation of income in more than one tax year be deductible, whether they have been paid or remain due, considering a correlation between the expenses and the time when the income will be generated.

Effective: From the first day of the month following the Act's publication date.

Cuatrecasas note: This rule should only apply if the corresponding income is recognized in later tax periods. In case of anticipated income subject to IDPC in the tax period when the income is received, the corresponding expense should be fully deducted in that tax period.

- ***The Specific mining tax will no longer be allowed as a deductible expense***

The Bill provides that the Specific mining tax will be non-deductible for IDPC purposes. Therefore, mining companies subject to this tax will not be allowed to deduct it for the purpose of calculating their taxable income subject to IDPC.

Effective: From 2023.

Cuatrecasas note: This amendment should not apply to mining companies whose foreign investment contracts guarantee that the mining tax will remain unchanged. One of the consequences of the mining tax remaining unchanged is that the mining projects benefitting from this cannot be affected by any subsequent modifications increasing the mining tax burden.

Tax losses

Currently, taxpayers are allowed to deduct tax loss carryforwards with no time limit and until they are fully utilized. The Bill proposes to limit the use of tax loss carryforwards to 50% of the taxable income subject to IDPC calculated at the end of the tax year in which the discount or deduction is applied.

Without prejudice to this, the Bill includes a transitional provision under which, during calendar year 2024, taxpayers may deduct tax losses from previous years up to 75% of the taxable income calculated for that year.

The percentage of non-deductible tax losses may be carried to the following tax year.

Effective: January 1, 2024.

Cuatrecasas comments: Due to this amendment, companies should review their capital asset depreciation policy to prevent expense deductions that can result in higher loss carryforwards. This is particularly relevant considering the special depreciation regimes based on which an immediate and full depreciation of capital assets during the purchase year is allowed. Also, companies would have to (i) reassess their amortization policies regarding their organizational and start-up costs; and (ii) review the option of capitalizing interest and financial expenses incurred to finance the purchase or construction of capital assets. Furthermore, limiting the use of tax losses will have an impact on the financial models for ongoing investment projects, which could modify their expected returns and lead to potential divestments.

Allocation of tax goodwill in mergers

The Bill proposes to prevent the step up in the tax value of non-monetary assets of a company from the allocation of tax goodwill as a result of a merger in case of assets that have been fully depreciated.

Effective: From the first day of the month following the Act's publication date.

Cuatrecasas comments: As a result of this restriction, taxpayers would not be able to step up the value of depreciated capital assets even if acquired at fair value under a share deal. Therefore, the portion of the price paid for the acquired company's shares equivalent to the market value of fully depreciated underlying assets cannot be depreciated or amortized. This tax treatment is inconsistent with the tax regime applicable to directly acquired assets. In asset deals there is no restriction for the purchaser to record the asset at acquisition value, which can be depreciated subject to the general tax depreciation rules.

› ***New tax treatment applicable to financial leasing***

The Bill proposes to modify the regulation introduced by Law 21420, clarifying the income tax treatment of financial lease agreements.

The Bill expressly states that, for the purposes of the Chilean Income Tax Act ("LIR") assets acquired through a financial leasing arrangement qualify as assets for the lessee and liabilities (credit) for the lessor. The value of the assets and liabilities is equivalent to the capital value of the transaction. This is without prejudice to the recognition of these amounts when determining the taxable income from interest and other receivables of the transaction.

Effective: From 2023.

Cuatrecasas comment: The tax treatment of leasing was recently amended by Law 21420. This modification will be effective from January 1, 2023. If the Bill is approved, the amendment under Law 21420 will not apply.

2. Tax treatment of dividends and distributions

› ***Elimination of the imputation credit deductible against final taxes***

Under the current system applicable to large companies, profit distributions or withdrawals are subject to final taxes: (i) the Global complementary tax, for individuals domiciled and resident in Chile for tax purposes; and (ii) the Additional tax, levied on individuals or entities that are neither domiciled nor tax residents in Chile. The Global complementary tax and the Additional tax are commonly referred to as final taxes.

Distributions or withdrawals paid to other companies subject to IDPC are usually exempt from IDPC, not being taxed until they are distributed to, or withdrawn by, taxpayers subject to final taxes.

Under current rules, the final tax on distributions or withdrawals allows for a tax deduction (tax credit) equal to 65% of: **(i)** the amount of the distribution times a factor based on the IDPC rate; and **(ii)** the total IDPC paid for the earnings accumulated by the company, whichever is lower.

Exceptionally, in case of distributions or withdrawals paid to a tax resident in a country that has a double taxation agreement ("**DTA**") with Chile and who is the beneficial owner of this income, the tax credit will be equal to 100% of **(i)** or **(ii)** above, whichever is lower.

The Bill proposes that the IDPC will no longer be deductible in the determination of final taxes imposed on (i) individuals domiciled or resident in Chile; or (ii) non-resident individuals or entities.

However, the Bill maintains the IDPC deduction as a tax credit for distributions or withdrawals for taxpayers that are residents in countries having a DTA with Chile.

Also, the Bill eliminates the IDPC exemption for distributions and withdrawals between local taxpayers subject to IDPC. According to the Bill, the company receiving these distributions must include the amounts in its taxable income, and it will be allowed a tax deduction equal to the IDPC paid when the income was generated by the company that is the source of this withdrawal or distribution.

Effective: January 1, 2025.

> ***New Capital gains tax***

The Bill provides for a new tax on capital income ("IRC"). The IRC would apply at a 22% rate, on dividends, distributions or withdrawals paid by large companies to taxpayers subject to final taxes. This tax would not apply if the distributed amounts qualify as (i) earnings not qualifying as income; (ii) income exempt from final taxes; (iii) income that has already been fully taxed; or (iv) capital repayments and its adjustments.

The companies that pays, remits or distributes income to taxpayers subject to final taxes will be required to withhold and deduct the IRC, except for those remittances or distributions qualifying as capital repayments. If, by the end of the relevant tax period, it is determined that the distribution or remittance was on account of amounts not subject to, or exempt from, final taxes, taxpayers domiciled or resident in Chile may credit the withheld amount against their personal tax, whereas foreign taxpayers must apply for a tax refund subject to the general procedure established in the Chilean Tax Code.

If the distributed amounts have not been previously subject to IDPC and do not qualify as distributions exempt from or not subject to tax, **the distributing company must pay IDPC on**

these amounts at the rate applicable in the relevant tax period. The IRC will apply to the amount of the distribution net of (i.e., deducting) the IDPC payable by the company.

Also, the Bill provides that the amounts subject to IRC will be exempt from Global complementary tax and Additional tax.

The IRC will not apply to distributions made to a tax resident in a country that has a DTA with Chile and who is the beneficial owner of these amounts. In this case, the distributions will be subject to a 35% Additional tax, and the taxpayer will be entitled to credit the IDPC against the tax amounts due, maintaining the currently applicable taxation in this case.

The Bill's wording could suggest that the IDPC credit for tax residents in a country that has a DTA with Chile is capped at 25%, even if the company has paid the 2% development fee.

Finally, the Bill provides that the IRC will not apply during tax year 2025 to the amounts (i) distributed during the year; and (ii) recorded in the Record of income subject to final taxes ("RAI"), which will be subject to the provisions applicable as of December 31, 2024.

Effective: January 1, 2025, without prejudice to the special treatment for that year only.

Cuatrecasas comment: The Bill provides that the IDPC payable by the company for distributions on account of income that has not paid IDPC is calculated by using the applicable "IDPC tax rate" (in Spanish, "*la tasa del IDPC*"). Therefore, we consider that the tax due in these cases should not include the development fee.

Cuatrecasas note: Companies will have to consider recording a provision for the IDPC amount every time they pay distributions, in order to be able to pay IDPC in their next year's annual tax return when the distribution has been made on account of income that has not previously paid this tax.

Cuatrecasas note: According to these rules, the IDPC payable by the company in advance for distributions or withdrawals on account of earnings that have not previously paid this tax cannot be deducted or subsequently credited if the company generates results (income) subject to IDPC. This would lead to double taxation under the IDPC, which could imply an effective tax rate of 66.5%.

- ***Additional tax on dividends paid to taxpayers resident in countries with a DTA***

The IRC does not apply to tax residents in a country that has a DTA with Chile and who are the beneficial owners of the income. They are taxed at a 35% Additional tax and remain entitled to the IDPC credit.

According to the Bill, for these purposes, there is a presumption that the deductible tax credit is obtained by applying to the taxed distribution a factor that is equal to **the IDPC rate** divided by 100 minus this rate.

The Bill also provides that, if the distributed earnings have not paid IDPC, the company must pay IDPC on these amounts at the rate applicable in the relevant tax year. Then, the Additional tax will apply at a 35% rate, and the taxpayer will be entitled to the IDPC credit.

Effective: January 1, 2025.

Cuatrecasas note: The reference to the "IDPC tax rate" for calculating the IDPC credit would prevent taxpayers from crediting against the Additional tax the amount paid by the company on account of the development fee. Although this amount would be treated as IDPC for all legal purposes, this tax is not included in the IDPC rate. Therefore, the effective Additional tax rate on distributions made to tax residents in a country with a DTA would increase, approximately, from 11% to 13%.

Summary of the impact of the amendments to the taxation of distributions and withdrawals

The table below provides an example of the impact of the amendments to the taxation of distributions compared with the taxes applicable under the current legislation.

ITEM	Tax resident in a country with DTA		Tax resident in a country without DTA		Taxpayer subject to Global complementary tax at a 30% effective rate	
	CURRENT RULE	REFORM BILL	CURRENT RULE	REFORM BILL	CURRENT RULE	REFORM BILL
Taxable income	1000	1000	1000	1000	1000	1000
IDPC	-270	-250	-270	-250	-270	-250
Development fee	N/A	-20	N/A	-20	N/A	-20
Gross dividend paid to shareholder	730	730	730	730	730	730
Tax base of final tax	1000	973	1000	730	1000	730
Final tax	-350	-341	-350	Exempt	-300	Exempt
IRC on gross dividends	N/A	N/A	N/A	-160,6	N/A	-160.6
IDPC credit	270	243	175.5	0	175.5	0
Final tax/IRC due	-80	-97.3	-174.5	0	-124,5	0
Total tax paid	-350	-367.3	-444.5	-430.6	-394.5	-430.6
Effective tax rate on dividends	11.0%	13.3%	24%	22%	17%	22%
Total effective tax rate	**35.0%**	**36.7%**	**44.5%**	**43.1%**	**39.5%**	**43.1%**

Cuatrecasas note: The proposed reform would result in an increase in the total tax rate paid by a tax resident in a country with a DTA. The reason being that companies pay a 27% tax overall whereas the IDPC credit is calculated by using the IDPC tax rate, i.e., 25%.

Cuatrecasas note: For individuals domiciled or resident in Chile subject to a personal tax at an average 30% rate, paying the IRC would also increase their tax burden. In this case, the Bill allows these taxpayers to pay the complementary tax, deducting as tax credit the amount of IRC that had been previously withheld.

3. Tax on deferral of final taxes

The Bill would impose an annual **1.8%** tax that would be applicable on the amount of the retained earnings of companies holding passive investments and subject to the general tax regime. This tax would apply to companies whose passive income (e.g., dividends, interest, rental income, passive income earned from entities controlled abroad or capital gains) amounts to more than 50% of their gross annual income.

For **tax year 2024**, the Bill provides a tax on deferred final taxes levied on companies subject to the general tax regime when at least 50% of their gross income comes from passive income. The **tax rate will be 1%** and will apply to the sum of the positive balances of the RAI and DDAN (Difference between normal and accelerated depreciation) records.

Effective: January 1, 2025.

Cuatrecasas note: The Bill's preamble expressly states that no operating companies investing in the real economy will be subject to this tax. However, this was not included in the wording of the Bill's provision. The proposed provision does not include any exception for operating companies that could incidentally have passive income exceeding the limit proposed by the provision.

Cuatrecasas note: The Bill defines passive income only for the purposes of this tax. This definition differs from the definition of passive income for purposes of controlled foreign corporation ("CFC") rules. In that case, the law provides that dividends obtained from a directly or indirectly held CFC, will not qualify as passive income, as long as the company's main activity is not obtaining passive income.

Cuatrecasas note: Having determined that the company is subject to the tax on deferred final taxes if its passive income during the year amounts to at least 50% of the total

income, this tax applies to all the company's accumulated earnings, including the amounts that have been reinvested in assets that generate income not qualifying as passive income without any adjustment to account for the portion of the company's equity that is invest in other type of assets.

4. Changes in international taxation

Restriction on the use of foreign tax credits ("FTC")

The Bill proposes to exclude the possibility of deducting the income tax paid or withheld by foreign subsidiaries in which the taxpayer holds an indirect interest, as an FTC against the IDPC in Chile. The Bill also intends to exclude the possibility of using as an FTC the additional tax paid on Chilean-source income that then moves around other jurisdictions.

The Bill also provides that the FTC will only be deductible against the IDPC, reducing the cap on allowable tax credit to 27%. The possibility of deducting an FTC against final taxes on distributions paid by a Chilean company is eliminated.

Effective: January 1, 2025.

Cuatrecasas note: To avoid double taxation, the Chilean Income Tax Law allows an FTC for the income taxes paid by foreign subsidiaries in which taxpayers holds an indirect interest. The international consensus is that countries should tend towards eliminating double taxation except in tax avoidance cases. By eliminating this tax credit, a Chilean company which, for non-tax related reasons, holds an investment in a UK company with subsidiaries in the UK as well as in, e.g., Spain, France, and Ireland, will be unable to use the taxes paid in those countries as credit, although Chile has international DTAs with all of them.

Transfer pricing

The Bill allows taxpayers to submit a request for a preliminary assessment to the Chilean Internal Revenue Service ("SII") that will be the basis for an Advanced Pricing Agreement ("APA"). The SII must respond to the request or application within two months.

Additionally, the Bill allows for performing taxpayer-initiated transfer pricing adjustments provided they are made before the SII has initiated a transfer pricing audit. These adjustments, performed by taxpayers, must be added to the IDPC tax base. However, a taxpayer self-adjustment cannot be made if it results in a reduction of its taxable income and consequently a lower tax or greater tax loss.

Effective: From 2023.

Cuatrecasas note: Self-adjustments by taxpayers are only allowed if they are performed prior to an SII's requirement. If the adjustment results from a tax authority's requirement, it will not be added to the IDPC tax base. Rather, the adjustment would be subject to a 40% tax.

- ***Thin capitalization rules***

Under current rules, the 35% tax on related party interest payments and other finance related charges payable when the taxpayer is in an excess debt position, can be deducted as an expense for determining the taxable income subject to IDPC.

According to the Bill, this tax will no longer be a tax-deductible expense.

Effective: From 2023.

Cuatrecasas note: Although the Government's plan announced that thin capitalization or excess of indebtedness rules would be amended in accordance with the recommendations of Action 4 of the OECD BEPS Project, the Bill finally kept the current framework with only a specific modification.

- ***Recognition of passive income obtained by controlled foreign entities***

The Bill proposes to modify the provisions on what qualifies as a foreign entity controlled by a taxpayer in Chile. More specifically, the Bill proposes to replace the concept of associated entities within the meaning of article 100 of the Chilean Securities Market Act–which did not provide for the possibility of relations between natural persons–with the definition of "related parties" ("*relacionados*" in Spanish) under the Tax Code.

According to the modifications to this definition proposed by the Bill, "related parties" would now include the person's spouse or partner and his/her relatives up to the second degree of kinship or affinity, which will imply consolidating their percentage stakes in the foreign entity when determining the 50% interest in the entity's capital, their rights to dividends or gains, or their voting rights, as required by the provision.

The exception that entailed considering as earned income any earnings not exceeding 2,400 UF by tax year-end is also modified. The Bill proposes that the passive income of related

persons or entities must be added and, if the addition exceeds the 2,400 UF limit, both the taxpayer and its related parties must consider all their passive income as earned income.

Effective: From 2023.

Cuatrecasas note: Currently, spouses and close relatives are not considered related parties for these purposes. Persons holding investments abroad must (i) determine the impact of these modifications on them; and (ii) decide on any specific action.

> ***Definition of territories or jurisdictions with preferential tax regimes***

The Bill proposes to simplify the conditions that must be met to qualify as a preferential tax regime. The Bill requires the fulfillment of both these cumulative requirements: **(i)** the jurisdiction has not entered into an agreement with Chile that allows for the exchange of information for tax purposes, or the agreement is not in force or otherwise includes restrictions preventing an effective information exchange; and **(ii)** the jurisdiction does not meet the conditions to be considered compliant or substantially compliant with transparency and information exchange provisions.

The SII must issue a resolution listing the territories or jurisdictions in the above situation.

Effective: From 2023.

5. New rules on the termination of business activities

The Bill intends to replace the current tax rules applicable to the termination of business activities to harmonize or reconcile them with the dual tax system.

Regarding the termination of business for taxpayers subject to the general regime, any accumulated income or amounts must be considered withdrawn, remitted or distributed, depending on the recipient.

Accordingly, companies that declare the termination of their business activities will be subject to the IRC at a 22% rate, only for the portion of income corresponding to those of their partners or shareholders subject to final taxes (i.e., individuals domiciled or resident in Chile or non-resident persons or entities from countries without a DTA with Chile).

For tax residents in countries having a DTA with Chile, their income or amounts considered distributed will be subject to a 35% Additional tax. Also, they will be allowed to deduct the IDPC against this Additional tax.

The Bill also points out that the portion of income or amounts corresponding to partners or shareholders of entities (i) declaring the end of their business activities; and (ii) subject to the general regime, must be included as taxable income, increased by the IDPC credit in order to determine the tax year's overall gross income. Additionally, the Bill provides that the IDPC tax credit related to the distribution is deductible against the IDPC amount determined for the company receiving the income or amounts ("recipient company").

If the value of assets transferred by the partners or shareholders of companies subject to the general regime exceeds the total investment value, the difference must be recognized as company's income for that year. However, if the resulting amount is lower than the total investment value, **the expense will not be deductible in the same tax year**. Rather, the company will have to comply with the allocation of goodwill provisions, under which (i) the difference must be allocated to non-monetary assets (that have not been fully depreciated) up to their maximum market value; and (ii) the excess must be recorded as a non-amortizable intangible asset when the recipient company ends its business activities.

The Bill includes a transitional provision establishing that, for companies ending their business activities during 2025 only, the current end-of-business provisions will continue to apply regarding the gains that remain within the company. Therefore, a 35% tax payable by the company will continue to apply on the portion of earnings from taxpayers subject to final taxes. The company will be allowed to use as tax credit the amounts recorded under the Accumulated Credit Balance ("SAC") records.

Finally, the Bill modifies the end-of-business procedure. Under these modifications, the SII must review and collect the tax within a six-month period extendable by three months. If, after this time period, the SII does not issue a decision, the taxpayer's return will be considered accepted, and therefore the taxpayer will be entitled to request its end of business, pay any amounts due and certify the end of business activities.

Effective: As for the tax treatment, from January 1, 2025 (without prejudice to the special treatment for that year only) and as for the procedure, these provisions will be effective from the first day of the month following the Act's publication date.

6 VAT modifications

Rental of furnished property

If the Bill is approved, the rental of furnished property will no longer be subject to VAT.

Effective: From the first day of the month following the Act's publication date.

Cuatrecasas note: As a result of this modification, taxpayers that invest in residential or office units for rental will be unable to recover the VAT paid on the purchase of these type of assets.

- **Consideration of local intermediaries as taxpayers for VAT purposes**

The Bill includes a provision under which the SII may require intermediaries for services provided by foreign taxpayers to pay the VAT on the service if this service (i) is used or received in Chile; and (ii) is acquired by persons domiciled or resident in Chile not qualifying as VAT taxpayers.

The Bill provides that the simplified regime will apply for taxpayers that are neither domiciled nor resident in Chile.

Effective: From the first day of the month following the Act's publication date.

- **Extended scope of the taxable event related to digital services provided by foreign providers**

The Bill includes several modifications aimed at extending the scope of the presumption that digital services are used or received in Chile. Specifically: **(i)** the Bill proposes to change the concept of "digital" provision to "remote" provision; **(ii)** the presumption applies as long as any of the described situations occur, and not at least two; and **(iii)** the Bill includes an additional event or situation related to whether the user declares that it is a tax resident in Chile, whether at the time of registration or in a subsequent information update.

The Bill includes a provision under which the SII may require intermediaries for services provided by foreign taxpayers to pay the VAT on the service if this service (i) is used or received in Chile; and (ii) is acquired by persons domiciled or resident in Chile not qualifying as VAT taxpayers.

The Bill provides that the simplified regime will apply for taxpayers that are neither domiciled nor resident in Chile.

Effective: From the first day of the month following the Act's publication date.

- **Special VAT-related anti-avoidance rule**

The Bill includes tax control provisions related to corporate reorganizations that are conducted to avoid the payment of VAT.

The Bill provides that the SII, giving prior notice to the taxpayer, may impose VAT on sales of capital assets made by a company that remains in existence or is incorporated as a result of a reorganization if it was conducted with the purpose of avoiding the payment of VAT.

Also, the SII will have the authority to **recharacterize** the sale of shares, ownership interests in any type of company, bonds and other convertible securities **as a sale of capital assets subject to VAT** if **(i)** the transaction covers at least 20% of the ownership of the company, considering all direct or indirect sales made by related parties during the 12 month-period prior to the last sale; **(ii)** at least 50% of the market value of the shares is derived from the value of capital assets; and **(iii)** the sale of shares was conducted with the purpose of avoiding paying the VAT that would have been otherwise applicable if the capital assets had been sold individually.

Effective: From the first day of the month following the Act's publication date.

Cuatrecasas note: Although the rule seeks to equate the VAT tax treatment of the sale of shares to the sale of capital assets, it lacks mechanisms to achieve this result. For example, the VAT paid on the purchase of a capital asset may be recovered by the purchaser, even in cash if certain conditions are met. The Bill does not allow the purchaser to recover the VAT if the sale of shares ends up being re-qualified as a sale of fixed assets and the purchaser is required to pay the tax.

Cuatrecasas note: A company's value often is not equal to the sum of the value of its assets. However, the Bill provides that the VAT must be paid on the fair value of the capital assets, without providing for any adjustments in the case for example, that the company has liabilities that have funded the purchase of its capital assets. Additionally, despite establishing that the value to be considered is the assets' market value, the Bill does not allow the purchaser to recognize a step up in their tax value in case the transaction is re-qualified.

Restriction on the export VAT refund mechanisms

The Bill proposes to limit the right of exporters to recover the VAT paid on their supplies of goods or services when acquired for producing products or services that it exports.

Specifically, the Bill proposes that the amount of the input VAT refundable to the exporter in a certain period, will be capped at an amount equal to the VAT rate (i.e., 19%) on the value of its exports made in the same period.

Furthermore, the Bill explicitly allows to keep in force the export permits allowing to obtain VAT refunds in advance of exports, in case after having obtained the refund, a reorganization is conducted whereby the exports are made by a person different than the exporter that obtained the advance refunds. This applies as long as the company remaining in existence or incorporated as a result of the reorganization (i) reports the reorganization to the SII; and (ii) declares that it will continue to develop the originally authorized project. Only by fulfilling these requirements, the reimbursement to the treasury of the advance VAT refunds will not be required from the taxpayer.

Effective: From the first day of the month following the Act's publication date.

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