

VI. SPECIAL PROVISIONS

Article 24

LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a “qualified person” as defined in paragraph 2.
2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:
 - a) an individual;
 - b) that State, or any political subdivision or local authority thereof or any agency or instrumentality of such State;
 - c) a company, if
 - i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:
 - A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is resident; or
 - B) the company’s primary place of management and control is in the Contracting State of which it is a resident; or
 - ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
 - d) a person that functions as a headquarters company for a multinational corporate group. For purposes of this paragraph, a person shall be considered a headquarters company if:
 - i) it provides in its state of residence a substantial portion of the overall supervision and administration of a group of companies (which may be part of a larger group of companies), which may include, but cannot be principally, group financing;
 - ii) the group of companies consists of corporations resident in, and engaged in an active business in at least five countries, and the business activities carried on

in each of the five countries generate at least 10 percent of the gross income of the group;

- iii) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;
- iv) no more than 25 percent of its gross income is derived from the other Contracting State;
- v) it has, and exercises, independent discretionary authority to carry out the functions referred to in clause i) of this subparagraph;
- vi) it is subject to the same income taxation rules in its country of residence as persons described in paragraph 3; and
- vii) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in clause ii) of this subparagraph.

If the gross income requirements for being considered a headquarters company described in clauses ii), iii), or iv) of this subparagraph are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years;

- e) an entity organized under the laws of a Contracting State and established and maintained in that State exclusively for a religious, charitable, educational, scientific, or other similar purpose, even if the entity is generally exempt from tax in that State;
- f) a pension fund, provided that, in the case of a person described in subclause A) of clause ii) of subparagraph j) of paragraph 1 of Article 3 (General Definitions), more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State;
- g) a person other than an individual, if:
 - i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph e) or f) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and
 - ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph e) or f) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. a) A resident of a Contracting State will be entitled to the benefits of this Convention with respect to an item of income derived from the other State if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or

registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, if it determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.

5. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned Contracting State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income were earned in that Contracting State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

6. For purposes of this Convention:

- a) the term "recognized stock exchange" means:
- i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
 - ii) the “Bolsa de Comercio”, “Bolsa Electrónica de Chile” and “Bolsa de Corredores”, and any stock exchange recognized by the “Superintendencia de Valores y Seguros” according to Law No. 18.045 (*Ley de Mercado de Valores*), and
 - iii) any other stock exchanges agreed upon by the competent authorities of the Contracting States;
- b) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;
- c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company; and
- d) a company's "primary place of management and control" will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.