LAGOS

TAX ALERT

Draft bill on capital markets reform and homeownership financing

This document summarizes the principal tax and corporate structuring aspects of the Draft Bill on Capital Markets Reform and Homeownership Financing (the "**MK4 Bill**").

1. AMENDMENTS TO STAMP TAX

Article 24 Nº 6 of Decree Law Nº 3,475 currently provides an exemption from Stamp Tax for banks and financial institutions in respect of deposits and capital-raising transactions involving domestic savers and investors, where such transactions are necessary for the extension of financing.

The exemption is intended to prevent Stamp Tax from being levied more than once on the same flow of funds intermediated by a domestic bank or financial institution. In this regard, the Chilean Internal Revenue Service (the "**Chilean IRS**") has clarified the meaning of "financial institution" for purposes of this exemption in numerous administrative rulings, recognizing leasing and factoring companies as financial institutions in certain circumstances, including where they are not directly supervised by the Financial Market Commission (the "**CMF**").

The proposed amendment seeks to extend the exemption to deposits and capital-raising transactions involving funds provided by foreign investors, thereby removing an existing distortion that has historically made offshore financing more costly than domestic financing.

In addition, **the MK4 Bill introduces a new Stamp Tax exemption for bonds and other publicly offered debt instruments that the CMF exempts from registration in the Securities Registry, where such instruments are issued for trading on stock-exchange segments or markets intended for emerging or expanding companies**.

2. EXEMPTIONS FROM THE REQUIREMENT TO OBTAIN A CHILEAN TAX IDENTIFICATION NUMBER FOR FOREIGN INVESTORS

Foreign investors are currently required to obtain a Chilean tax identification number (Rol Único Tributario, or "RUT") when investing in securities such as shares of publicly held corporations and corporate bonds.

Pursuant to Exempt Resolution Nº 150 of 2020, responsible agents may access an online platform to register foreign investors without domicile or residence in Chile under a simplified RUT procedure. The procedure covers individuals, legal entities and other arrangements (including trust and other collective investment vehicles holding assets legally separate from those of their participants) whose Chilean-source income arises exclusively from investments or transactions in movable capital, whether such income derives from holding or disposing of those investments.

Under current regulations, registration may also be effected through a correspondent bank or financial institution, in accordance with Circular N° 26 of 2025.

The MK4 Bill removes the obligation to obtain such registration in respect of investments in securities, including shares, mutual fund units, investment fund units and bonds, falling within the scope of Articles 104 and 107 of the Chilean Income Tax Law.

This amendment is significant because it facilitates foreign capital flows into Chilean financial markets by eliminating formalities that are not generally required in major international financial centres.

3. VAT EXEMPTION FOR EXPORTS OF FINANCIAL SERVICES

Article 12, letter E, N° 16, of Decree Law N° 825 provides a value-added tax ("**VAT**") exemption for income derived from exported services, provided they are rendered wholly or partly in Chile for "use abroad". However, this provision has been interpreted as denying the exemption where the economic effects of a service arise in Chile, for example, where investment management services relate to funds located in Chile.

The MK4 Bill clarifies this provision by establishing that the requirement that services be used abroad will be deemed satisfied in respect of financial management, advisory and consulting services, and comprehensive wealth management services, provided to individuals, trusts, segregated estates or other entities whose owners are neither domiciled nor resident in Chile. **Accordingly, such services may qualify for the exemption even where the assets under management are located in Chile**.

This amendment is relevant to efforts to position Chile as a regional financial centre, as it seeks to prevent the export of an indirect tax and to establish more competitive tax conditions for the domestic financial services industry.

4. AMENDMENTS TO TAX RULES GOVERNING FOREIGN CURRENCY TRANSACTIONS AND OFFSHORE INVESTMENTS

A specific rule is introduced into Article 17 N° 8, letter m), of the Chilean Income Tax Law for determining gains or losses arising on disposals of foreign currency. The amendment provides for the use of observed exchange rates prevailing on the respective acquisition and disposal dates.

The Bill also amends Article 41 bis of the Chilean Income Tax Law by **adding a new second paragraph governing the determination of real interest on obligations denominated in foreign currency**. Exchange-rate fluctuations are excluded from the calculation of real interest and are recognized separately under the general rules.

The Chilean Income Tax Law would also be amended to **allow individuals who are not required to report income on the basis of full accounting records to offset, within the same calendar year, losses arising from certain income** referred to in Article 20 N° 2, foreign-source capital income under Article 41 B, and income under Article 17 N° 8 of the Chilean Income Tax Law against gains derived from those same categories of investments.

These amendments are particularly relevant to individual investors who do not determine their taxable income as "empresarios individuales". They would facilitate the offsetting of investment gains and losses, provide greater clarity on the calculation of real interest earned on US dollar-denominated time deposits and,

more generally, money-lending transactions, and allow foreign-exchange differences to be deferred until the foreign currency invested is ultimately liquidated.

5. EXTENSION OF THE REINVESTMENT RELIEF UNDER ARTICLE 108 OF THE CHILEAN INCOME TAX LAW

In simplified terms, Article 108 of the Chilean Income Tax Law allows capital gains tax to be deferred upon the redemption or disposal of units in mutual funds that do not satisfy the requirements of Article 107 of the Chilean Income Tax Law, provided that the proceeds are reinvested in other mutual funds that likewise do not satisfy those requirements.

The MK4 Bill extends the deferral mechanism under Article 108 to permit reinvestments between investment funds, or between mutual funds and investment funds, without triggering income tax, provided that the relevant fund management company certifies that the proceeds of the disposal or redemption will in fact be reinvested in such instruments.

This measure is intended to remove a statutory impediment that distorts the reallocation of capital towards investment funds. It would thus **facilitate tax-neutral reallocations among the investment vehicles concerned and, ultimately, contribute to the deepening of Chilean capital markets**.

6. CAPITAL GAINS ON DISPOSALS OF SHARES AND FUND UNITS UNDER ARTICLE 107 OF THE CHILEAN INCOME TAX LAW

Under the wording approved in the National Reconstruction Bill, Article 107 of the Chilean Income Tax Law provides for non-taxable income treatment of capital gains arising on disposals of shares, investment fund units and mutual fund units, subject, among other requirements, to the relevant securities meeting the statutory stock-market presence requirement (presencia bursátil).

In the case of investment fund and mutual fund units, the same tax benefit generally applies, subject to the fund itself, or at least 90% of its portfolio, satisfying the stock-market presence standard.

The MK4 Bill proposes a comprehensive overhaul of Article 107 of the Chilean Income Tax Law, easing the conditions for non-taxable income treatment and expanding the range of potentially eligible instruments:

> (i) For shares of publicly held corporations, **the stock-market presence requirement would be replaced by a minimum free float of 15%**, defined as the percentage of shares not held by controlling shareholders, directors, senior executives or their related parties. The remaining existing requirements would be retained.

> (ii) For investment fund units, broadly speaking, it would be sufficient for the units to be traded on a stock exchange and for the fund's internal regulations to require distribution of all dividends and interest received.

> (iii) For mutual fund units, it would be sufficient for at least 90% of the fund's portfolio to be invested in shares of publicly held corporations or stock corporations admitted to exchange trading, whether or not they meet the stock-market presence requirement, instruments covered by Article 104, or foreign publicly offered securities that make periodic distributions of income.

> (iv) The following additional investment instruments would become potentially eligible for non-taxable income treatment, subject in each case to the applicable requirements:

• **Foreign publicly offered securities**, provided they are registered in the Foreign Securities Registry maintained by the CMF under Title XXIV of the Securities Market Law or have been exempted by the CMF from such registration pursuant to Article 189, second paragraph, of that Law.

• **Derivative contracts whose underlying assets consist exclusively of shares, investment fund units, mutual fund units, other securities meeting the requirements of Article 107, or bonds referred to in Article 104 of the Chilean Income Tax Law**. The MK4 Bill prescribes a series of eligibility requirements that, in practice, exclude over-the-counter ("OTC") derivatives, which would remain subject to Law Nº 20,544, itself also amended by the MK4 Bill.

• **Endorsable mortgage loans traded on commodity exchanges (bolsa de productos)**.

The proposed changes are a central pillar of the MK4 Bill and should contribute to the deepening of Chilean capital markets.

We particularly note that **extending Article 107 treatment to certain financial derivatives could provide a significant incentive for the development of an exchange-traded market in options and other derivatives in Chile**. By requiring both the opening and the closing or settlement of positions to take place on authorized Chilean exchanges, the proposal favours trading on organized markets over OTC transactions.

Another noteworthy amendment is the extension of Article 107 to certain foreign securities traded on Chilean stock exchanges, subject to compliance with the statutory requirements. **This measure could encourage the listing and trading in Chile of shares issued by foreign companies, particularly Latin American issuers**, thereby expanding available investment opportunities and furthering the objective of positioning Chile as a regional financial centre.

The amendment could also create opportunities for the listing of units in **foreign investment vehicles, including private credit funds**, provided they satisfy the applicable regulatory and tax requirements. This, in turn, could create new opportunities to structure domestic funding on more favourable tax terms than those available under other existing structures.

Finally, the MK4 Bill includes a transitional provision for shares, fund units, bonds and other instruments qualifying under Articles 104 or 107 of the Chilean Income Tax Law that were acquired before the reform enters into force.

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7. AMENDMENTS TO ARTICLE 104 OF THE CHILEAN INCOME TAX LAW

Article 104 of the Chilean Income Tax Law provides for non-taxable income treatment of capital gains arising on disposals of publicly offered bonds, debentures and other debt securities, including instruments issued by the Central Bank of Chile and the General Treasury of the Republic.

The current rules impose several conditions for this treatment, including the specification of a Tax Interest Rate (Tasa de Interés Fiscal) in the terms of issuance, the payment of an annual coupon equal to at least 1/25 of that rate, and the holding of the instrument for a minimum period determined by decree of the Ministry of Finance.

In addition, subject to certain requirements, interest accrued on these debt instruments may be subject to 4% withholding tax, applicable both to bondholders resident in Chile and to foreign investors.

As a general rule, this withholding is made by the issuers or, in certain cases, by representatives, custodians, intermediaries, securities depositories or other persons domiciled or incorporated in Chile who have been appointed or engaged by non-resident taxpayers to discharge the tax obligations arising from the holding or disposal of the publicly offered debt instruments referred to in Article 104 of the Chilean Income Tax Law.

As stated in the explanatory message accompanying the MK4 Bill, the Tax Interest Rate "results in the recognition of taxable income on an accrual basis that does not necessarily correspond to the coupon actually paid, while the withholding obligation imposes substantial compliance costs on issuers, custodians and securities depositories, as well as on the Internal Revenue Service itself, without generating significant tax revenue".

This situation has created obstacles to the internationalization of Chile's debt capital markets. In particular, withholding taxes on interest may lead foreign investors to demand gross-up provisions, thereby increasing domestic issuers' financing costs and reducing the competitiveness of their debt instruments in international markets.

These challenges are particularly significant in light of the admission of Chilean corporate bonds to Euroclear in 2021, an initiative intended to broaden the foreign investor base and deepen the domestic debt market, but whose potential has not been fully realized, among other reasons, because of existing tax barriers.

Against this background, **the principal amendments proposed by the MK4 Bill may be summarized as follows**:

> (i) **It replaces the determination of a Tax Interest Rate with a requirement that the securities be issued at a market rate of interest**, while maintaining the obligation to pay a coupon at least once a year;

> (ii) It removes the minimum holding-period requirement applicable to sellers, which should enhance the liquidity of the bonds and other debt instruments concerned;

> (iii) **It abolishes the 4% withholding tax on interest paid on these instruments**, both for holders domiciled or resident in Chile and for non-resident holders;

> (iv) **It eliminates Chilean taxation on interest earned by non-resident holders**, as such interest would cease to be treated as Chilean-source income.

For investors domiciled or resident in Chile, the elimination of the 4% withholding tax would not constitute an exemption from income tax. Interest would remain taxable under the rules applicable to each taxpayer. In this connection, the MK4 Bill also amends Article 54 of the Chilean Income Tax Law to require recognition on a receipts basis for purposes of the Chilean Global Complementary Tax.

For purposes of qualifying for non-taxable income treatment of capital gains, the new Article 104 would require the instruments to be acquired and disposed of on a Chilean stock exchange through a continuous auction procedure previously authorized by the CMF, with the involvement of a CMF-registered stockbroker or securities dealer, subject to the exception applicable to banks.

8. INVESTMENT INCENTIVE REGIME FOR THE JUNIOR STOCK EXCHANGE SEGMENT FOR INNOVATION AND MINING EXPLORATION COMPANIES

The MK4 Bill introduces an Investment Incentive Regime for the Junior Stock Exchange Segment, under which stock exchanges, subject to prior CMF approval, may establish a dedicated segment separate from the general market. Issuers would be classified, according to their principal business activity, as Innovation and Growth Issuers or Mining Exploration Issuers.

For this purpose, the registration, public offering and ongoing disclosure requirements under the Securities Market Law would be replaced by a simplified regime proportionate to each issuer's stage of development. Registration in the Securities Registry would not be required, and each issuer would be supported on an ongoing basis by a Sponsoring Agent responsible for verifying its compliance with applicable requirements and overseeing its disclosure obligations.

The following tax incentives are proposed for investors in the Junior Stock Exchange Segment:

> (i) **Capital gains arising on the disposal of shares issued by companies in the Junior Stock Exchange Segment would qualify as non-taxable income,** subject to the conditions set out in the new Article 107 of the Chilean Income Tax Law proposed by the Bill.

> (ii) **A tax credit against the Chilean Global Complementary Tax would be introduced, equal to 35% of the investment made, subject to an annual cap of 50 Annual Tax Units** (Unidades Tributarias Anuales, or "UTA") per taxpayer.

> (iii) The credit would not be refundable to the extent it exceeds the Global Complementary Tax liability for the relevant year. However, any excess could be carried forward indefinitely, subject to inflation adjustment. The credit would neither reduce the tax basis of the shares acquired nor be incompatible with the mechanism for passing through greenfield exploration expenses.

> (iv) **Rules would be established allowing this tax credit to be allocated to investment fund unitholders who are subject to the Chilean Global Complementary Tax**, through the issuance of a certificate for this purpose.

> (v) **For Mining Exploration Issuers, the Bill proposes a mechanism for passing through greenfield exploration expenses to the investors who financed them**. This would create a form of tax transparency in respect of those expenses, as rather than being deducted by the issuer, they would be deducted directly by its shareholders. Specific rules would apply to investments made through investment funds.

Under the proposed regime, and without prejudice to the powers of the Central Bank of Chile, **securities registered in the Junior Segment could be denominated, offered and traded in US dollars**, subject to the conditions established by the CMF through a general regulation.

J**unior Segment issuers could also list their securities on foreign stock exchanges**, without such dual listing in itself constituting grounds for exclusion from the segment or affecting the benefits under the proposed law.

Furthermore, **with a view to integrating regional securities markets, the necessary arrangements could be entered into to allow Junior Segment securities to be traded through the integrated regional trading, clearing and settlement infrastructure** in which the relevant Chilean exchange participates, subject to that infrastructure's applicable terms and safeguards.

9. AMENDMENTS TO THE TAXATION OF DERIVATIVE CONTRACTS

Law N° 20,544, which governs the taxation of derivatives, requires Corporate Tax taxpayers determining their taxable income on the basis of full accounting records to recognize gains and losses on their derivatives on a mark-to-market basis, by comparing the contract's value at inception with its fair value at the close of each fiscal year.

A particular feature of Law N° 20,544 is that failure to file the annual and monthly derivatives information returns (Forms 1820 and 1829) on time, or filing returns containing incorrect, incomplete or false information, results in the loss of the right to deduct losses or expenses associated with derivatives that were not properly reported, regardless of the nature or seriousness of the breach.

The MK4 Bill proposes significant structural changes to the tax treatment of derivative contracts, as follows:

> (i) It **eliminates mark-to-market recognition and provides for derivatives gains and losses to be recognized on a receipts basis, except in the case of Corporate Tax taxpayers, who would recognize the results of derivative transactions on a receipts or accrual basis**;

> (ii) **It replaces the automatic disallowance of deductions for derivatives-related losses or expenses with the general penalties under the Tax Code**, reserving the disallowance of such deductions for cases involving wilful misconduct or gross negligence in the filing of information returns;

> (iii) **It requires the Chilean IRS to issue a prior formal notice (citación) to the taxpayer before exercising its valuation adjustment powers in respect of prices or values agreed under derivative contracts**, thereby strengthening procedural safeguards in derivatives tax audits;

> (iv) It allows individuals not acting as empresarios individuales to offset, within the same tax year, losses arising on derivatives against income from derivatives of the same kind, as well as income falling within Article 17 N° 8 and Article 20 N° 2 of the Chilean Income Tax Law.

10. CORPORATE MATTERS, INVESTMENT FUNDS AND BUSINESS FINANCING

In addition to the tax amendments discussed above, the following other significant changes are worth highlighting:

> **(i) Modernization of company law.** The MK4 Bill proposes to relax certain shareholder approval thresholds for corporate transactions, permit the issuance of shares carrying multiple voting rights, increase the limits on share buybacks and introduce compulsory minority acquisition and exit mechanisms (squeeze-out and sell-out). It also includes amendments aimed at facilitating capital increases and the issuance of convertible bonds.

> **(ii) Amendments to the regulation of investment funds and fund management companies.** The MK4 Bill proposes to relax minimum capital and security requirements applicable to general fund management companies, grant the CMF greater authority to establish proportionate requirements based on the characteristics and risks of funds and their managers, and simplify certain stock-exchange registration requirements for non-redeemable funds offered exclusively to qualified investors. It also expressly regulates the outsourcing of investment portfolio management.

> **(iii) Simplified bond issuance regime for smaller companies (mini-bonds).** The MK4 Bill refines the simplified debt securities issuance regime introduced by the Fintech Law, which has not yet entered into force pending the issuance of the relevant CMF regulations. To this end, it creates a special public registry separate from the Securities Registry and simplifies the regulatory requirements applicable to issuers. **It also expressly provides that instruments registered under this regime may qualify for the tax treatment afforded by Article 104 of the Chilean Income Tax Law, subject to satisfaction of its remaining requirements**.

We note that Article 253 of the Securities Market Law, as introduced by the Fintech Law, permits the structuring of debt instruments whose returns are determined by reference to a proportion of the issuer's net profits, without affecting their legal characterization as debt or the characterization of such returns as interest. **This feature, together with the proposed amendments to Article 104 of the Chilean Income Tax Law, could create opportunities to structure hybrid financing instruments, particularly for medium and smaller companies.**

Legislative Developments and Monitoring

At LAGOS, we will continue to monitor the legislative consideration of the MK4 Bill and any amendments that may be introduced during its passage.

We remain available to assist our clients and contacts in assessing the tax and corporate implications of the proposed measures, as well as the opportunities they may present for their transactions and investments.

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