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A Case Study of International Tax Planning on a Hotel Construction and Management in Chile, through a Joint Venture of Korean and Venezuelan Partners

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<Abstract>

The purpose of this study is to provide both the tax consequences in Korea, Venezuela and Chile of the investment in a hotel construction and management project to be made in Chile by X Co. and Y Construction through a joint venture, as well as advice as to the most tax efficient structure for such investment.

We recommend that the Joint Venture be incorporated under the Laws of the Republic of Ireland mainly for the following three reasons: (i) Chile has a Double Tax Convention in force with Ireland, according to which the profits of a resident of Ireland may be taxed in Chile but only the amount attributable to a PE, (ii) Ireland has a Double Tax Convention with Korea which allows beneficial tax rates when distributing dividends to Korea, and (iii) the Irish income tax rate for corporations (12.5%) and the withholding income tax on dividends (20%) are lower than the tax rates of other comparable jurisdictions; therefore this arrangement would allow X Korea and Y Venezuela to credit fully the income tax paid in Ireland.

We may summarize the main tax aspects of the proposed transactions as follows: First, the $12 million dollars paid by the Investors to the Irish corporation (Joint Venture) shall not be taxed in Chile because the Joint Venture would not have a PE in Chile according to the Chile−Ireland

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Double Tax Convention. No withholding will be made in Chile in connection with this payment. Second, the Joint Venture will be taxed in Ireland on the $12 million gross income received from the Investors. The Joint Venture will be able to deduct the design and construction payments of $4 and $6 million, respectively. Third, the Joint Venture will distribute the net profit ($2 million) through dividends. The dividends paid to Y Venezuela will be subject to a 20% withholding tax in Ireland, and the dividends paid to X Korea will be subject to a withholding tax at a reduced rate of 10% because of the Double Tax Treaty entered into by Ireland and Korea. Fourth, Dividends paid by the Joint Venture shall be subject to taxation in Venezuela at a 34% flat income tax rate and in Korea at a 22% income tax rate, respectively. X Korea will credit both the withholding tax on dividends imposed in Ireland and the foreign tax deemed paid (indirect foreign tax credit). Y Venezuela shall fully credit the tax paid in Ireland.

<Key words> International Tax Planning, Foreign Tax Credit, Permanent Establishment, Tax Treaty, Location of Joint Venture, Legal Form of SPV

Ⅰ. Facts

The purpose of this study is to provide both the tax consequences in Korea, Venezuela and Chile of the investment in a hotel construction and management project to be made in Chile by X Co. and Y Construction through a joint venture, as well as advice as to the most tax efficient structure for such investment.

X Co., a corporation organized under the laws of the Republic of Korea (hereinafter X Korea), will enter into a joint venture (hereinafter the Joint Venture) with Y Construction, a corporation organized under the laws of the Republic of Venezuela (hereinafter Y Venezuela) to invest in the design, construction and management of a hotel to be built in the Republic of Chile on a parcel of land owned by certain Chilean investors (hereinafter the Investors). The location of the Joint Venture has yet to be determined.

Y Venezuela would send a team of four senior personnel to Chile to conduct investigative studies for sites, to gather preliminary information on Chile's project-related laws, and to meet with the appropriate government officials. The team is expected to stay in Chile for two months.

The Joint Venture will enter into an agreement with the Investors by which the former will design and build the hotel on a parcel of land owned by the Investors and will turn over the hotel upon completion for a cash payment. For such purposes the Joint Venture will enter into separate agreements with both X Korea for design and Y Venezuela for construction. The Joint Venture will get a loan from a third party lender to finance the design and construction of the hotel.

The design of the hotel will be made by X Korea's architects, who will do their work in Korea, although they will be expected to visit Chile regularly during both the design phase and the construction period. However, under Chilean registration rules, X Korea will retain a Chilean architect.

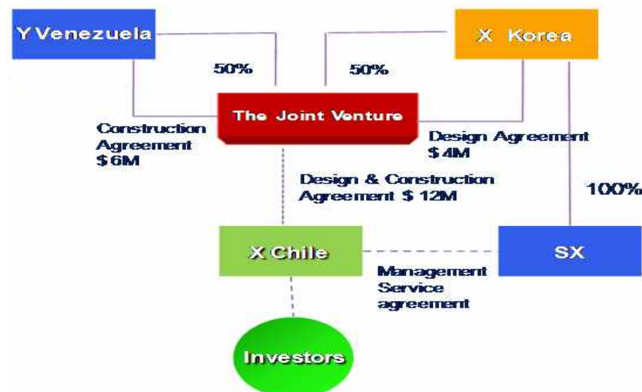
Once the design phase concludes, Y Venezuela will set up an office in Chile and employ Chilean workers for the construction of the hotel. Construction is expected to last 11 months.

The Joint Venture will (a) take out a ten-million dollars loan from a third party lender, (b) pay four million dollars to X Korea upon completion of the design phase, (c) pay six million dollars to Y Venezuela upon completion of the construction of the hotel, (d) turn over the hotel to the Investors for a twelve million-dollar payment, and (e) pay off the loan with ten of the twelve million dollars and split the remaining two million between X Korea and Y Venezuela equally.

The Investors will own the hotel through a Chilean corporation (hereinafter X Chile). Sixty percent of the funds for the design and construction services for building the hotel will be borrowed from a wholly-owned Cayman Island subsidiary, which in turn will obtain its funds from a revolving line of credit with a Bermuda bank. The other 40% of the funds will be derived by a payment made under a sale and leaseback agreement entered into by a Venezuelan leasing company for the equipment used in the hotel building.

At the same time, X Chile will enter into an agreement with SX Management Corporation (hereinafter SX), a wholly owned subsidiary of X Korea that was organized and has its principal office in Venezuela. SX or a subsidiary of it will provide management services for X Chile in exchange for 20% of the hotel's gross revenues. In addition, X Chile will pay a royalty of 5% of the hotel's gross revenues to X Korea, who will grant to X Chile the right to use the name "X" for hotel purposes and advertising.

〈Figure 1〉 Investment relationships



Ⅱ. Analyses of the Transactions

1. Legal form, location, profits and expenses of the Joint Venture

We recommend organizing the Joint Venture as a corporation incorporated under the Laws of the Republic of Ireland mainly for the following three reasons: (i) the corporation form isolates the parties from potential liabilities derived from the construction agreement entered into by the Joint Venture and the Chilean Investors; (ii) Ireland has Double Tax Conventions in force with both Chile and Korea, which allows for the taxation of the Joint Venture income only at the place of residence[1] and has beneficial tax rates when remitting funds from Ireland to Korea; and (iii) the Irish income tax rate for corporations (12.5%) and the withholding income tax on dividends (20%) are lower than the tax rates of other comparable jurisdictions; therefore, besides achieving tax savings this arrangement would allow X Korea and Y Venezuela to credit fully the income tax paid in Ireland.

1) Corporate and tax aspects of the legal form of the Joint Venture

There is no typical form for doing business abroad. There are corporations, limited liability companies, partnerships, branches (permanent establishments, PE), among other corporate vehicles. The choice of the legal form for doing business depends on the parties' interests, risks, and taxation benefits and costs.[2]

However, from a commercial standpoint a corporation form insulates the shareholders from legal liability issues in the host country up to the capital contributions, so long as in the

1) Consequence of not having the Joint Venture a PE in Chile under the Double Tax Convention PE definition, as will be explained later.

2) We may summarize the main corporate characteristics of the most important vehicles to do business abroad as follows :
- (i) *Corporations* : They constitute different legal entities from its shareholders. The corporation's obligations are supported by a stated capital, and the shareholders' liability is limited to the amount of their capital contributions.
- (ii) *Branches(PEs)* : A branch is an extension of the company in the foreign jurisdiction, as opposed to a separate legal entity. Its obligations and liabilities are supported by the capital of the head office.
- (iii) *Partnerships* : In these agreements partners(owners) share with each other the profits or losses of the business undertaking in which all have invested. In its general form(general partnership) all partners are personally liable for the partnership's debts and liabilities.

partnership all partners are personally liable for business debts and liabilities.

Taking into account that the Joint Venture might be responsible for potential civil, labor, and environmental liabilities derived from the construction and also for the contractual obligations assumed with the Chilean Investors, it seems more advantageous from a commercial standpoint to incorporate a corporation.

Regarding the tax consequences of the election, a corporation will be taxed in the foreign country as a domestic entity. Additionally, incorporating a corporation generally allows its shareholders to defer the foreign income tax, controlling the time of repatriating the subsidiary's earnings and profits through dividends.[3)]

2) Location of the Joint Venture

We have examined two different scenarios in terms of the organization and location of the Joint Venture as follows: (i) organizing a partnership under the Laws of Korea[4)] in order to take advantage of the beneficial rates under the Double Tax Convention between Korea and Chile and avoiding the double taxation at the owners' level and at the partnership level and (ii) incorporating a corporation under the Laws of Ireland to take advantage of the double taxation avoidance rules and beneficial tax rates contained in the Double Tax Conventions in force with both Chile and Korea, as explained below.

Venezuela and Chile are not considered as possible locations for the Joint Venture because their income tax rates are higher than Korean's and would make it impossible for X Korea to

3) A branch will be taxed by the foreign country. Branch taxable income usually is determine on the basis of a separate accounting, whereby the branch reports a profit equal to the amount it would have earned if it were an independent entity. On the other hand, a partnership is deemed as "flow－through" entities for income taxation purposes. Flow－through taxation means that the entity does not pay taxes on its income. Instead, the owners of the entity pay tax on their "distributive share" of the entity's taxable income. Likewise, partnership allows foreign tax losses to flow through and be deducted by the owner (partner).

4) Even though the partnership taxation regime was introduced in Korea in 2008, it applies only to *hapmyong hoesa, habja hoesa* and certain professional services corporations within corporations. Tax Special Treatment Limit Law(TSTLL), Article 100－15. Under the Commercial Code, a corporation cannot be a general partner of a corporation, such as *hapmyong hoesa* and *habja hoesa*, who is personally liable for all the business's debts and obligations. Commercial Code, Article 173. Thus, if the joint venture is incorporated as a corporation, it is impossible to elect the partnership taxation regime. However, if X Korea makes an anonymous partnership contract with Y Venezuela under the Article 78 of Commercial Code, the partnership can elect the partnership taxation regime under TSTLL and avoid double taxation.

credit the full amount of the foreign tax paid abroad. In addition, the possibility of locating the Joint Venture in a tax haven, such as Cayman Islands, was ruled out because although such jurisdiction might not tax the Joint Venture's income, the $12 million gross payment would be taxed in Chile at a 35% withholding income tax rate.[5)]

(1) Partnership organized under the Laws of Korea

Under Chilean Tax Law, despite the tax treatment of the partnership in Korea (no taxation at the partnership level), the income generated from the design and construction of the hotel shall be deemed as a Chilean source because it derives from economic activities performed in Chile on the property located therein. As such, the income will be taxed at a 35% rate withholding tax rate if those services are rendered by a non-domiciled entity. However, under the Korea-Chile Double Tax Convention, the profits of a resident of Korea may be taxed in Chile but only to the extent of being attributable to a PE. Considering the definition of PE under the Double Tax Convention, the partnership would not act through a PE since it would not carry out activities in Chile from a fixed place of business, and, thus, the income derived from the construction services will not be taxed in Chile.

Article 5 of the Chile-Korea Double Tax Convention defines the term PE as a fixed place of business, from which the business of an enterprise is wholly or partly carried out.[6)] In our case, the partnership will have neither a direct presence in Chile, nor will personnel of the partnership conduct any activity therein. As a result, under the terms of the Chile-Korea Double Tax Convention, the mere subscription of the construction agreement to execute construction in Chile will not constitute a PE for neither the partnership nor, ultimately, its partners. Since the partnership will not have a PE in Chile, the construction income derived from the Chilean source will be taxed only in Korea according to the aforementioned Double Tax Convention. The net income derived from the partnership (US$ 2 million) will be passed on to the partners, and the "distributive share" to the partners shall be taxed by Korea and Venezuela.

5)

	Taxes
Tax in Chile	$12M*35%=$4,200,000
Tax in Cayman Islands	No tax
Tax in Korea	$1M*22%-($4,200,000*50%*50% indirect FTC)=$0
Tax in Venezuela	$1M*34% -$0 indirect FTC=$340,000
Total Taxes	$4,540,000

6) According to the OECD commentaries, this definition entails that persons who, in one way or another, are dependent on the enterprise (personnel) conduct the business of the enterprise in the State in which the fixed place is situated.

In Korea, X Korea will be subject to the general income tax rate of 22% on the income received, being entitled to credit the deemed paid tax, if any, in Chile.

On the other hand, the distribution to Y Venezuela will be subject to a 22% withholding tax in Korea,[7] and later taxed at the general Venezuelan income tax rate of 34%. Moreover, Y Venezuela will be allowed to credit the withholding tax paid in Korea. As a result, the total burden of choosing a Korean partnership will be US$ 560,000, as shown in the following chart:

	Taxes
Tax in Chile	No tax[8]
Tax in Korea－the Joint Venture	No tax at the Joint Venture income. $1M*22% withholding tax (Venezuela payment)=$220,000
Tax in Korea－X Korea	$1M*22%=$220,000
Tax in Venezuela	$1M*34%－$220,000 FTC=$120,000
Total Taxes	$560,000

(2) Incorporation of a corporation under the Laws of Ireland

As we explained before, the payment made by Chilean investors for the construction of the hotel will be deemed as a Chilean source, taking into account that such income derives from economic activities performed in that country on the property located therein. As a result, the Ireland Corporation would be subject to the Chilean income tax at a 35% rate on the gross amount. However, under the Chile－Ireland Double Tax Convention,[9] the profits of a resident of Ireland may be taxed in Chile only to the extent of being attributable to a PE. Considering that under the Double Tax Convention definition of PE, the partnership would not act through a PE since it would not carry out activities in Chile from a fixed place of business, and, thus, the income derived from the construction services will not be taxed in Chile.[10] As a consequence, no withholding will be required in Chile in connection with the construction payment. Under the terms of the Chile－Ireland Double Tax Convention the mere subscription of the construction agreement to execute a construction project in Chile will not constitute a PE for the corporation.[11]

7) According to Korea Income Tax Law Y Venezuela is treated as having a PE in Korea.

8) Considering that the Joint Venture is not acting through a PE in Chile.

9) In force since 1 January 2009.

10) Article 5 of Chile Ireland Double Tax Convention defines the term PE as a fixed place of business, from which the business of an enterprise is wholly or partly carried out.

Since the Joint Venture will not have a PE in Chile, the construction income derived from the Chilean source will be taxed only in Ireland according to the aforementioned Double Tax Convention.

The income from construction services rendered by the Irish Corporation in Chile shall be subject to taxation in Ireland at the rate of 12.5%. The net taxable income will be calculated by subtracting the costs and expenses (US$ 4 million for the design of the hotel, and US$ 6 million for the construction of it) from the contract price (US$ 12 million). Regarding the distribution of profits to Y Venezuela and X Korea, such distribution will be taxable in Ireland. A dividend withholding tax of 20% applies to dividends made by Irish resident companies unless a Tax Treaty sets forth a different treatment.

Dividends paid by the Irish Corporation to Y Venezuela shall be subject to a proportional tax of 34% in Venezuela. However, Y Venezuela shall be allowed to credit the foreign income tax paid on their foreign source income. Because the 20% Irish income tax rate on dividends is lower than the 34% Venezuelan proportional rate, the whole tax paid in Ireland will be credited in Venezuela. Venezuela does not allow indirect foreign tax credit.

Regarding the dividend payment to X Korea, because of the Korea－Ireland Double Tax Convention rules, the dividends paid to X Korea by the Ireland Corporation will be subject to a 10% tax in Ireland.[12] In addition, the dividends paid by the Irish Corporation to X Korea shall be taxed in Korea at the 22% rate, but the company shall be allowed to credit foreign income tax paid on dividends in Ireland. In this regard, X Korea shall be able to credit the whole tax paid in Ireland (US$ 100,000) since the tax rate of dividends (10%) set forth in the Treaty is lower than Korean's corporate tax rate (22%). In addition, an indirect foreign tax credit is allowed for foreign income tax paid by a first tier foreign subsidiary in which a Korean parent company owns 20% or more of the total investment. Since the Korea－Ireland Double Tax Convention does not provide for the indirect foreign tax credit, the amount of eligible indirect foreign tax credit should be reduced to 50% of the deemed paid foreign tax.[13] Thus, X Korea

11) There is some space to argue that the Irish corporation would have a PE in Chile under the terms of a construction project, whether or not the building activity is directly realized by the Irish Joint Venture or through a subcontracting basis using Y Venezuela and later a Chilean construction company. Nevertheless, for academic purposes and the development of the present paper, we will consider as a standpoint the inexistence of a PE in Chile, leaving the debate for a future analysis.

12) According to the Korea Ireland Double Tax Convention, dividends might be taxed in the State of the residence of the company that pays the dividends, but the tax shall not exceed : (a) 10% of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the company paying the dividends and (b) 15% of the gross amount of the dividends in all other cases.

would be entitled to US$ 62,500 indirect foreign credit.[14)]

As a result, the total tax burden of choosing an Ireland Corporation to serve as a Joint Venture will be US$ 747,500, as shown in the following chart:

	Taxes
Tax in Chile	No tax[15)]
Tax in Ireland −the Joint Venture	$2M*12.5%=$250,000 $1M*20%=$200,000 withholding tax on dividend to Venezuela $1M*10%=$100,000 withholding tax on dividend to Korea
Tax in Korea	$1M*22%−$100,000 direct FTC−$250,000*50%*50% indirect FTC=$57,500
Tax in Venezuela	$1M*34%−$200,000 direct FTC=$140,000
Total Taxes	$747,500

3) Final recommendation

Regardless that the option of organizing a partnership under the Laws of Korea results in a lower total tax burden (US$ 560,000) in comparison with the total tax liabilities derived from organizing a corporation in Ireland (US$ 747,500), we recommend incorporating a corporation in Ireland rather than carry on the Joint Venture activities through a Korean partnership because the corporation insulates the shareholders from legal liability issues in the host country up to the capital contributions, so long as in the partnership all partners are personally liable for business debts and liabilities.

2. Tax consequences of the four million−dollar payment to be made by the Joint Venture to X Korea upon completion of the design phase

The four million−dollar payment to be made by the Joint Venture to X Korea will be a gross income of X Korea. The gross income will be taxed in Korea at a rate of 22% after deducting applicable expenses.

13) TSTLL, Article 104−6, TSTLL−ED, Article 104−3.

14) $62,500=$250,000 income tax of the Joint Venture*50% of the interest in the Joint Venture*50%.

15) *See supra* note 11.

Under the Korea－Ireland Double Tax Convention, the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries out business in the other Contracting State through a PE situated therein.[16] Since X Korea does not have a PE in Ireland, the four million－dollar payment will not be taxed in Ireland.

3. Tax consequences of the six million－dollar payment made by the Joint Venture to Y Venezuela upon completion of the construction phase

The construction payment received by Y Venezuela from the Irish Corporation shall constitute Y Venezuela's gross revenue from a foreign source, and it will be subject to the Venezuelan income tax. This amount will be reduced by the cost of services and normal and necessary expenses incurred or paid abroad to obtain the net taxable income that will be subject to the 34% Venezuelan tax rate.

Venezuelan Income Tax is based on the worldwide taxation system under which Venezuelan residents and domestic entities must pay taxes on their worldwide income whether the income is derived in Venezuela or abroad. The taxable income is calculated by subtracting from the gross receipts of the cost of the goods and services incurred and all normal and necessary expenses incurred. At this stage the taxpayer must distinguish between foreign source income and a Venezuelan－source income since the gross income from foreign sources is determined by subtracting from the foreign source gross revenue the cost of goods and services and the expenses attributable to such revenue.

Since Y Venezuela will subcontract the hotel construction to its subsidiary in Chile, Y Venezuela will pay the price. This payment will constitute a cost incurred abroad by Y Venezuela to generate its foreign source income, and it can be deducted from the foreign gross revenue (US$ 6 million received from the Irish corporation) to determine Y Venezuela's net foreign taxable income. Other costs and normal and necessary expenses incurred abroad and attributable to such revenue may also be subtracted.

With respect to the transactions between related parties, taxpayers are required to verify the existence of arm's length pricing, and prices that do not reflect an arm's length amount may be adjusted by the tax authorities.[17]

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16) Korea Ireland Income Tax Convention, Article 7.1.

17) Venezuelan Income Tax Law defines a related party as a company directly or indirectly involved in the management and control of the capital of the other company, or when the same individuals are

4. Tax consequences of the twelve million-dollar payment by the Investors to the Joint Venture for design and construction services

The payment made by the Chilean investors shall constitute an income derived from economic activities performed in Chile on the property located in Chile. However, as we explained before, under the Ireland-Chile Double Tax Convention, the profits of a resident of Ireland may be taxed in Chile only to the extent of that which is attributable to a PE. Considering the definition of PE under the Double Tax Convention, the corporation would not act through a PE since it would not carry out activities in Chile from a fixed place of business; thus, according to the Tax Treaty, the income derived from the construction services will not be taxed in Chile.[18]

5. Tax consequences of the dividends payments by the Joint Venture to X Korea and Y Venezuela

1) Tax treatment of the dividends paid by the Irish Corporation to Y Venezuela

Dividends paid by the Irish Corporation shall be subject to taxation in Ireland at a 20% tax rate. This levy applies to dividends and other distributions made by Irish resident companies on or after April 6, 1999. Likewise, such dividends shall be subject to taxation in Venezuela at a 34% flat income tax rate. Nevertheless, Y Venezuela may deduct from this tax the income tax

directly or indirectly involved in the management and control of both companies. Since Y Venezuela owns 50% of the stock of the Irish company, for the Venezuelan transfer pricing rules it has control in such company. As a consequence, Y Venezuela and the Irish Corporation shall be deemed as related parties, and the payment received by Y Venezuela from the Irish Corporation should meet Venezuelan transfer pricing rules.

18) Based on the PE definition contained in Article 5 of the Chile-Ireland Double Tax Convention, as the Business Profit rules contained in Article 7 of same Convention, we estimate that the income is not taxable in Chile. However, it is important to point out that, in case Chilean authorities would estimate that the Joint Venture is acting through a PE, the net income derived from the transaction would be taxable with a 35% withholding tax rate. In order to mitigate the consequences of this potential interpretation, the parties – Chilean Investors and the Joint Venture – may consider splitting the contract into two different agreements: construction, and design, which would in turn be considered technical assistance under Chilean Tax Law, and consequently never interpreted as a possible PE.

paid in Ireland. Dividends paid by companies incorporated and domiciled outside of Venezuela or incorporated abroad and domiciled in Venezuela shall be subject to the 34% flat income tax rate in Venezuela. The receiving company may deduct from this tax the income tax paid for the same item outside of Venezuela.

A foreign income tax is briefly defined as a tax imposed by a foreign jurisdiction on income or capital gains on the sale of movable or immovable property. The Venezuelan Income Tax Law contains a limitation[19] on the foreign tax credit, which may not exceed the proportion of Venezuelan income tax that the taxpayer's net foreign-source income bears to its worldwide net taxable income.

Thus, Y Venezuela will pay a US$ 200,000 tax on dividends in Ireland. The corporation will also pay a US$ 340,000 tax on dividends income in Venezuela; however, the company may credit the tax paid in Ireland.

2) Tax treatment of the dividends paid to X Korea by Irish Corporation

Dividends paid to X Korea by the Irish Corporation shall be subject to taxation in Ireland at the reduced tax rate set forth in the Double Taxation Treaty between Ireland and the Republic of Korea. Likewise, such dividends shall be subject to taxation in Korea at a 22% income tax rate. X Korea will be entitled to credit not only the income tax on dividends paid in Ireland (direct foreign tax credit), but also the prorate fraction of the income tax in Chile paid by the Irish Corporation (indirect foreign tax credit).

The Irish Income Tax Law imposes a tax on dividends at a 20% tax rate. However, Korea and Ireland entered into a Double Taxation Treaty, according to which dividends might be taxed in the State of the residence of the company that pays the dividends, but the tax shall not exceed the following: (a) 10% of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the company paying the dividends and (b) 15% of the gross amount of the dividends in all other cases. Since X Korea owns 50% of the stocks of the Irish Corporation, dividends paid to X Korea will be subject to a 10% tax in Ireland.

On the other hand, dividends paid by the Irish Corporation to X Korea shall be taxed in Korea at the 22% rate. The direct foreign tax credit of US$ 100,000 is available for taxes paid abroad and the indirect foreign tax credit of US$ 62,500 is also available for the 50% of deemed paid foreign tax.[20]

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19) Similar to that one contained in §904(a) of the Internal Revenue Code of the United States.

20) *See Supra* note 14.

6. Anti−Tax Haven Rules apply to the Joint Venture

Under Korean Tax Law, if the effective tax rate of a foreign corporation is less than 15%, and any Korean person has ownership of more than 20% of the voting shares in the foreign corporation, anti−tax haven rules may apply,[21] which basically limit the possibilities of deferral for periods longer than a year.[22] Considering the Joint Venture is located in Ireland, the possibility of the application of anti−tax haven rules for the aforementioned deferral intentions would be high because the Irish corporate income tax rate is 12.5% and X Korea has 50% of the voting shares in the Joint Venture.

However, since the Joint Venture will be in operation only during the hotel construction period (11 months), and there is no deferral intentions since the US$ 2 million profit of the Joint Venture is to be split between X Korea and Y Venezuela upon completion of construction, the application of anti−tax haven rules is not a relevant issue if the same facts and structure is respected.

7. Legal form and tax consequences of business activities in Chile

1) Tax consequences of the performance of services in Chile by the employees of X Korea and Y Venezuela for a two−month period, and the regular visits of X Korea's architects during the design phase

While employees are visiting Chile to conduct investigative studies, get preliminary information and meet with the appropriate government officials, it could be fair to concluded under Chilean law that the four−person team would be performing "preparatory facts" in order to later provide a service−drafting a report−abroad, and, consequently, there will be no tax impact.[23]

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21) The Law for the Coordination of International Tax Affairs (LCITA) Article 17.

22) An amount would be deemed as dividend, and should be included in the taxable income of X Korea as if it were distributed. Article 19 LCITA.

23) Furthermore, since Chilean law does not consider "splitting the income doctrine" −the case in which an activity could be considered part of the services rendered in Chile−, and there will be no participation of a withholding agent, and, therefore, no possibility of efficient supervising by the Chilean Internal Revenue Service (*Servicio de Impuestos Internos*), we insist in our conclusion that there is no tax impact on Chile.

The same conclusion is reached for the regular visits from X Korea's architects, who will not be taxed in Chile while they do not remain in the Country more than 6 months in a year,[24] and, thus, will not be considered Chilean residents or part of a PE belonging to X Korea.[25]

Finally, it is important to point out that the four senior－person team, and, at a later date, X Korea's architects, should not enter Chile with sufficient power and/or specific power to act upon and conclude agreements on behalf of their employer because if they did, they would be considered as a PE of the grantor and taxed with a corporate tax at a rate of 17%.

2) Tax consequences of retaining a Chilean architect by X Korea

Assuming the Chilean architect is a Chilean resident, the income derived from the services provided by the architect will be taxed on a personal basis. The responsibility of X Korea will be different depending on its relationship with the Chilean architect, which would be one of the following two scenarios: In one scenario, the Chilean architect would act as an independent service provider, in which case he would be taxed with a Global Aggregate Tax (*Impuesto Global Complementario*), at a progressive rate depending on the architect's income.[26] X Korea, as a withholding agent, would be required to withhold a 10% of the payments.[27] In the other possible scenario, the Chilean architect would act as a dependent contractor, in which case he would be taxed with a Second Category Tax (*Impuesto de Segunda Categoría*), at a progressive rate depending on the architect's income.[28] X Korea, as a withholding agent, would be required to withhold the corresponding tax,[29] plus social, pension and health－fund payments, which are approximately a 12% of the gross income.

The same aforementioned warning applies to the possibility of the Chilean architect being considered a PE of X Korea if he has the power to act and conclude contracts on behalf of X Korea. In this case, X Korea would be taxed in Chile with a corporate tax rate of 17%.

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24) According to the Chilean Income Tax Law (*Ley de Impuesto a la Renta*, hereinafter ITL), any person domiciled in or resident of Chile will be taxed on a worldwide basis, regardless of the income source, and non－resident aliens will be taxed only on their Chilean source income, which, as we mentioned, will not be our case.

25) If these activities were to be considered as a PE of X Korea, any payment would be taxed with a corporate tax at a rate of 17%.

26) Rates from 5% to 40%, Article 43 ITL.

27) The withholding rate corresponds to the 10% Monthly Provisional Payment due from the taxpayer. The withholding obligation is under Article 74 Nº 2 ITL.

28) *See supra* note 26.

29) Article 74 Nº 4 ITL.

When considering the different alternatives for retaining a Chilean architect, it is important to keep in mind, besides the final cost, the liabilities involved in a dependant vs. independent labor relationship from the Chilean Labor Law standpoint.[30)]

3) Legal form and tax consequences of Y Venezuela's construction activity in Chile and employment of local workers : PE vs. incorporating a subsidiary

Y Venezuela's local office will be considered a PE of Y Venezuela, so it will be liable for any tax, social security, labor and construction liabilities arising from the construction of the hotel due to the hiring of local workers. In accordance with Chilean law, the workers must be hired as dependants. Therefore, under Chilean law, the aforementioned liability of the employer will be applied regarding withholding any tax[31)] (including taxes for social, health and pension－fund payments) as well as the general labor liabilities as stipulated in the Chilean Labor Law.

Considering the abovementioned liabilities, we advise Y Venezuela to incorporate a subsidiary in Chile, which will be liable for the construction, its taxes, and the social and labor liabilities of its workers. This has the important benefit of insulating Y Venezuela from any of the aforementioned liabilities and related potential lawsuits.[32)] In this scenario, it will be necessary to sign a construction agreement between Y Venezuela and its subsidiary, considering that under Chilean law Y's subsidiary needs to have a business purpose that generates (or at least appears to generate) profits for the company.

The subsidiary's income from a necessary construction agreement to be signed with Y Venezuela will be taxed with a 17% First Category Tax (corporate tax), which is levied based on the net income of the local company accrued during each fiscal year.[33)] All expenses which are needed to produce such income, such as hired services, maintenance expenses, administration fees, loan interest, etc., will be deductible from the subsidiary's taxable income.[34)] When

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30) Chilean Labor Law comprises certain inalienable rights for the employee, such as an indemnification in case of dismissal and minimum participation regarding the company's profits.

31) Second Category tax, at progressive rates from 5% up to 40%.

32) Under Chilean law there exists a 5 year construction liability.

33) Income is defined as total income less the costs and expenses required to produce that income.

34) In accordance with the Chilean legislation, the net income is determined by deducting from the gross income all such expenses necessary to produce the same that have been paid or indebted within the relevant commercial year and that have not been imputed as cost and provided that such expenses are duly proved to the Internal Revenue Service

remitting Y's subsidiary its profits or dividends to its foreign parent or shareholders, it will be taxed with a 35% withholding tax (*Additional* Tax). A credit against the withholding tax is available based on the level of corporate income tax, or first category tax (17%), actually paid for the taxable income to which the dividend is imputed.[35)]

Based on the established facts and eventual future tax structures, there are mainly two special vehicles that may be set : a Limit Liability Company (LLC), or a Company by Shares (SPA). Its only tax－related difference[36)] will be in regard to the eventual profits to be distributed: while in an SPA any profits distributed or remitted abroad will be subject to a 35% withholding tax, unless they correspond to non－taxable profits or tax－exempt profits, whereas in the case of an LLC any profit distributed in excess of the current taxable profits will only be taxable if taxable profits are obtained later.[37)]

In the case of opting for establishing a local office and consequently a PE, the profits attributable to activities provided through the latter － in this case those derived from the construction of the hotel, to be paid by X Korea － will be taxed in the same way as the subsidiary, with a 17% First Category Tax, and later an Additional Tax at a rate of 35% when remitting the funds, having as a credit the 17% First Category Tax. Here we may find another important difference at the time of taxing Y Venezuela's profit : notwithstanding the final tax burden will be 35% in both scenarios － PE and subsidiary －, when considering a subsidiary alternative the 35% tax burden will be imposed on a lower profit amount (that one derived from the construction agreement between Y Venezuela and its subsidiary), with Y Venezuela also earning a profit from the sub－hiring the construction process, which will be taxed with a 34% corporate tax in Venezuela.

Considering the aforementioned important tax differences, and the eventual possibility of distributing non taxable profits depending on the financial planning of the entity and the market costs involved in the construction process － which may often vary in considerable amounts

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35) To calculate the withholding tax, an amount equivalent to the corporate tax paid corresponding to the profits distributed or remitted must be included in the tax base and the income is thus grossed－up. The 35% rate is applied to the grossed－up income and the corporate tax is deducted as a credit against the tax due.

36) There are certainly important corporate differences regarding the form of incorporation, management and agreement possibilities in the articles of incorporation and by laws. The separate liability (or corporate veil) from its shareholder will be the same in both cases.

37) For this purpose the LLC must keep a record called "Fondo de Utilidades Tributarias － FUT" (Taxable Income Fund), where the company must register all the taxable incomes that may be distributed to the partners. Therefore, profits in excess of the FUT can be distributed abroad without paying withholding tax, and will be taxable only when the LLC obtains taxable profits.

depending on several factors— our recommendation is to set up an LLC.

Also, it is important to consider that under Chilean law, an annual duty is payable to the municipality in which professional, commercial, or industrial activities are carried out. In the case of commercial or industrial activities the duty is determined by applying the tax rate to the patrimony of the business. This tax rate is set by each municipality, ranging from a minimum of 0.25% to 0.5% (the maximum duty payable is 8,000 UTM, or approximately US$ 480,000). In the case of opting for setting up an LLC, it is advisable not to contribute all the necessary funds for constructing the hotel to the subsidiary, mixing capital with a domestic or foreign loan in order to prevent a high municipality duty, which will be a last tax advantage of the subsidiary compared with the PE, which patrimony of the business will be presumed to be the construction cost.

4) Legal form and tax consequences of SX's management activity in Chile: PE vs. incorporating a subsidiary

For Chilean tax purposes, SX will be considered as having a PE in Chile, and consequently any income derived from the activities performed by such PE will be subject to a withholding tax, at a rate of 35%.

However, it is highly advisable to incorporate in Chile a subsidiary of SX, which will be liable for its services, its taxes, and the social and labor liabilities of its workers. This alternative has the important benefit of insulating SX from any of the aforementioned liabilities and any possible future suits, as well as the possibility of deferring payment of part of the final tax burden until distribution. The subsidiary's income from its services will be taxed with a 17% First Category Tax (corporate tax), which is levied on a local company's net income accrued during each fiscal year. It will be deductable from both the taxable income and all expenses required to produce that income, such as services hired, maintenance expenses, administration fees, payroll, etc. When remitting its profits or dividends to its foreign parent or shareholders, the subsidiary will be taxed with a 35% withholding tax (*Additional Tax*). A credit against the withholding tax is available based on the level of the corporate income tax, or First Category Tax (17%), actually paid for the taxable income to which the dividend is imputed.

As mentioned in the preceding section, when referring to the alternative of setting up an entity in Chile for the hotel construction phase, there are mainly two special vehicles that may be set up considering the established facts and eventual future tax structures: a Limit Liability Company (LLC), or a Company by Shares (SPA), with only one tax-related difference in regard to the eventual profits to be distributed, as already explained. Our conclusion is the same, and our recommendation is to set up an LLC.

8. Profit remittance tax consequences and recommendations

1) SX's subsidiary remitting management profit to its parent

As explained in section 7.4 above, the subsidiary's income from its services will be taxed with a 17% First Category Tax (corporate tax), which is levied on a local company's net income accrued during each fiscal year. When remitting its profits or dividends to its foreign parent or shareholders, the subsidiary will be taxed with a 35% withholding tax. A credit against the withholding tax is available based on the level of the corporate income tax, or First Category Tax (17%), actually paid for the taxable income to which the dividend is imputed.

In the case of not opting to incorporate a subsidiary, SX will be considered as having a PE in Chile, and, consequently, any income derived from the activities performed by such PE will be subject to a withholding tax at the same rate of 35%.[38]

2) SX remitting funds to X Korea

The payments made by SX to X Korea will be subject to the provision of the Double Taxation Treaty entered into by Venezuela and Korea. Under the Tax Treaty provisions, the distribution of dividends and payments of royalties shall be taxed in Venezuela at a reduced tax rate. The technical assistance payments will be taxed only in Korea.

In this regard, dividends paid to X Korea will be taxed in Venezuela at the 5% rate (instead of the general 34%) because X Korea holds directly at least 10% of the capital of SX.[39] Such dividends will also be taxed in Korea at the 22% tax rate, but X Korea will be entitled to credit the tax paid in Venezuela. Additionally, X Korea will be entitled to credit an indirect foreign tax credit. The amount of the indirect foreign tax credit will be 50% of the foreign tax deemed paid. This is because the Korea－Venezuela Tax Treaty does not provide an indirect foreign tax credit.[40] The

38) Nevertheless, in the case of opting to incorporate, X Chile may consider remitting part of its payments as technical consultancies payments in order to remit the corresponding amount taxed at a 15% preferential rate. Also, it would be recommendable to analyze the different services to be provided and the consequent possibility of remitting part of the profits of the subsidiary through a royalty to be agreed upon with its parent, in order to have access to the royalty preferred rates that goes from a 15% withholding tax on the total amount paid for the use of process or invention patents, utility－model patents, design patents, topographic integrated circuit patents, computer software and copyrights, up to a general withholding tax of 30% on the total amount paid for the use of trademarks, formulae, patents and other products of similar nature.

39) Korea－Venezuela Income and Capital Tax Convention, Article 10.1.

40) TSTLL Article 104－6, TSTLL－ED Article 104－3.

application of direct and indirect foreign tax credits will result in no tax burden in Korea in connection with the dividends received from SX. Finally, no deduction will be available for SX as a consequence of the remittance of the dividends.[41)]

If SX remits the profits to X Korea as dividends, technical assistance or royalties, the tax effects are summarized as follows :

Dividends	Royalties	Technical assistance payments
Income tax of X Korea (22%) －Direct FTC (5%) －Indirect FTC (34%*50%)＝0%	Income tax of X Korea (22%) －FTC (10%)＝12%	Income tax of X Korea(22%) －FTC (0%)＝22%
Withholding tax in Venezuela : 5%	Withholding tax in Venezuela : 10%	Withholding tax in Venezuela : 0%
Not deductible to SX	Deductible to SX (－34%)	Deductible to SX (－34%)
Net tax amount : 5% of dividends	Net tax benefit : －12% of royalties	Net tax benefit : －12% of royalties

41) If SX remits part of the operation profits as technical assistance payments, such payments shall not be subject to taxation in Venezuela according to the aforementioned Tax Treaty. The furnishing of services, including technical assistance, will be taxed only in the State of residence of the service provider (in our case Korea), unless such services are rendered through a PE located in the source country. Article 5 of the Tax Treaty provides that a enterprise will be deemed as having a PE for this purpose when an enterprise through its employees or other personnel connected to the enterprise executed services in the other country, but only if activities of that nature continue (for the same or connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve－month period. Taking into account that technical assistance services would be provided from Korea, the aforesaid payments shall be only taxed in this country at the ordinary corporate rate of 22%, and they will constitute deductible expenses to calculate SX's net taxable income in Venezuela.
If SX remits part of the operation profits as royalties, according to the Double Taxation Treaty such royalties will be taxed in Venezuela at the maximum rate of 10% (instead of the 30.6% rate that would have applied in the absence of the Treaty). The royalties' payments will be considered as an expense incurred by SX to produce its income, and they will be deductible from the gross income to determine the net taxable income of the corporation in Venezuela. Because SX and X Korea are deemed as related parties according to the Venezuelan transfer pricing rules, royalties and technical assistance payments should be made at arm's length standards.

3) X Chile's royalty payments to X Korea

For Chilean tax purposes these payments will be considered as Chilean source income. Under the general rules of Chilean Tax Law, payments for the use of trademarks, patents, formulae and other similar activities, whether they are royalties or any other form of compensation, are subject to a 30% withholding tax. However, as the Republic of Korea and Chile have a double tax convention in force,[42] we have to apply Article 12 of this convention, which considers, as a general rule, that the royalty income will be taxed in the country where the payee resides, thereby allowing trademark royalty payments to be taxed at the source at a maximum rate of 15%.

Once X Korea receives the royalty income, it will be taxed with a 22% corporate tax, as will any other profit of the corporation, but it will have as a foreign tax credit the 15% tax rate already paid in Chile.

9. Tax consequences of X Chile's financing and recommendations

1) Sale and leaseback agreement of the equipment used in the hotel to be entered between X Chile and a Venezuelan leasing company

For Chilean Tax law purposes, the leaseback agreement will be treated as a former purchase and later lease of the equipment. So, there are two steps : (i) X Chile would be taxed on any capital gain obtained in the selling of the equipment with a corporate tax, and (ii) the Venezuelan leasing company will be taxed with a withholding tax at a 35% rate when receiving payment for the lease, plus a Value Added Tax (VAT), at a 19% rate.[43]

However, partial payments on the lease of any "*imported capital asset*" susceptible of taking advantage of the "*customs duties deferred payment regime*"[44] will be taxed with a 35%

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42) Duly signed by both parties in Seoul on April 18, 2002.

43) VAT must be declared and paid on a monthly basis, and the amount to be paid is determined by the difference between the tax debit and the tax credit, where *tax debit* is the amount of taxes charged on the sales and services supplied in the monthly tax period, and *tax credit* is equivalent to the tax charged on invoices for purchases and use of services in the given monthly tax period.

44) The customs duties deferred payment regime is contained in the Law 18,634 of 1987, which requires, among other things, that the asset production does not disappear after the first use, extending its useful life at least for three consecutive years. It should be appointed to providing goods or services, or the marketing of the same ones, and the asset has to be included in the *List of Capital Assets*, published by the Treasury Department.

withholding tax applicable on a mandatory basis equal to 5% of the payments made under the lease agreement. So, each partial payment will be in practice taxed at a 1.75% rate of its amount. This tax constitutes a sole income lien.

Consequently, it is highly advisable to analyze the leaseback agreement and break it down as much as possible in order to separate those assets that could be qualified as "*imported capital assets*", such as, among other things, machinery used for air−condition systems and industrial cooking machines, separating them into different lease contracts based on which payments will have the aforementioned preferential withholding tax rate.

2) Payments to be made under the loan agreement to be entered between X Chile and its Cayman Island subsidiary

Under the general rules of Chilean Tax, interest on loans granted by a foreign non−resident to Chile entities is subject to a 35% withholding tax on the amount paid abroad or credited to account. However, if the loan is granted by a foreign or international bank or financial institution, the tax rate on the interest is 4% on the amount paid or credited to the account. Under thin capitalization rules, interest on loans considered excess indebtedness is subject to the 35% tax rate instead of 4% rate.[45)]

We recommend analyzing the possibility of X Chile borrowing the credit directly from the Bermuda bank, duly guaranteed by the Cayman Island X Chile's subsidiary, whether with the same revolving credit line, with other collateral, or through a "back to back" structure. As the lender would be domiciled or incorporated in a jurisdiction considered as a tax haven, and eventually would be guaranteed by a third party, the debt equity ratio would also have to be analyzed because if the debt is three times greater than the equity, the interest expense of the excess debt will not be deductible.

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45) Under Article 59 Nº 1, ITL, excess borrowing is understood to exist when the total related borrowing in foreign loans granted by banks or financial institutions, supplier credits and/or bonds issued in local or foreign currency exceeds three times the borrower's equity in the year in which the loan is granted. Related borrowing is understood to exist when: (a) the lender is domicile or incorporated in a jurisdiction considered as a tax haven ; (b) the lender directly or indirectly owns or participates in 10% or more of the capital or profits of the borrower ; (c) the lender and the borrower are owned by a common shareholder that directly or indirectly own or participates in 10% or more of the capital or profits of both, and (d) the financing has been granted with direct or indirect guarantee from a third party in cash or valuables, up to the amount effectively guaranteed in such manner.

Ⅲ. Conclusions

1. Legal form, location, profits and expenses of the Joint Venture

After evaluating different legal forms for organizing the Joint Venture, we recommend incorporating a corporation rather than carry on the Joint Venture activities through a partnership because the corporation insulates the shareholders from legal liability issues in the host country up to the capital contributions, so long as in the partnership all partners are personally liable for business debts and liabilities.

We recommend incorporating the Joint Venture under the Laws of the Republic of Ireland mainly for three reasons : (i) Chile has a Double Tax Convention in force with Ireland, according to which the profits of a resident of Ireland may be taxed in Chile but only to the extent of that which is attributable to a PE,[46] (ii) Ireland has a Double Tax Convention with Korea which allows beneficial tax rates when distributing dividends to Korea, and (iii) the Irish income tax rate for corporations (12.5%) and the withholding income tax on dividends (20%) are lower than the tax rates of other comparable jurisdictions; therefore this arrangement would allow X Korea and Y Venezuela to credit fully the income tax paid in Ireland.

We may summarize the main tax aspects of the proposed transactions as follows: First, the $12 million dollars paid by the Investors to the Irish corporation (Joint Venture) shall not be taxed in Chile because the Joint Venture does not have a PE in Chile according to the Chile－Ireland Double Tax Convention. No withholding will be made in Chile in connection with this payment. Second, the Joint Venture will be taxed in Ireland on the $12 million gross income received from the Investors. The Joint Venture will be able to deduct the design and construction payments of $4 and $6 million respectively. Third, the Joint Venture will distribute the net profit ($2 million) through dividends. The dividends paid to Y Venezuela will be subject to a 20% withholding tax in Ireland, and the dividends paid to X Korea will be subject to a withholding tax at a reduced rate of 10% due to the Double Tax Treaty entered into by Ireland and Korea. Fourth, X Korea will credit both the withholding tax on dividends imposed in Ireland and the foreign tax deemed paid (indirect foreign tax credit). Y Venezuela shall fully credit the tax paid in Ireland.

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46) *See supra* note 11 and 18.

1) Tax consequences of the four million-dollar payment to be made by the Joint Venture to X Korea upon completion of the design phase

The four million-dollar payment to be made by the Joint Venture to X Korea will be a gross income of X Korea. The gross income will be taxed in Korea at a 22% rate after deducting applicable expenses. Since X Korea does not have a PE in Ireland, the four million-dollar payment will not be taxed therein.

2) Tax consequences of the six million dollar payment made by the Joint Venture to Y Venezuela upon completion of the construction phase

The construction payment received by Y Venezuela from the Irish corporation shall constitute Y Venezuela's gross revenue from a foreign source, and it will be subject to the Venezuelan income tax. This amount will be reduced by the cost of services, and normal and necessary expenses incurred or paid abroad to obtain the net taxable income that will be subject to the 34% Venezuelan income tax rate. Because Y Venezuela and the Irish corporation are deemed as related parties according to the Venezuelan transfer pricing rules, the services payment should be made at arm's length standards.

3) Tax consequences of the dividends payments by the Joint Venture to X Korea and Y Venezuela

Dividends paid by the Joint Venture shall be subject to a withholding tax in Ireland at a 20% tax rate in the case of Y Venezuela, and at a 10% tax rate in the case of X Korea because of the provisions of the Korea-Ireland Double Tax Convention. Later, such dividends shall be subject to taxation in Venezuela at a 34% flat income tax rate, and in Korea at a 22% income tax rate, respectively, both cases having as a credit the income tax paid in Ireland.

2. Legal form and tax consequences of business activities in Chile

1) X Korea's employees in Chile

The team of four senior architect sent by X Korea to Chile, as well as the Chilean architect retained by X Korea therein, will not generate tax consequences for X Korea under the Chilean Tax Law while neither of them is considered a PE of the former. Furthermore, the Chilean architect will be taxed on a personal basis, and the tax consequences for the employer will

depend on the dependent or independent contractual relationship maintained between X Korea and its employee.

2) Legal form and tax consequences of Y Venezuela's construction activity and SX's management activity in Chile

We advise Y Venezuela and SX each to incorporate a subsidiary in Chile, which will be liable for the respective contractual terms (construction and management), its taxes, and the social and labor liabilities of their workers. This has the important benefit of insulating Y Venezuela and SX, respectively, of any of the aforementioned liabilities and possible suits.

The subsidiaries' net income will be taxed with a 17% First Category Tax (corporate tax), and later when distributing funds to their parents they will be taxed with a 35% withholding tax, having as a credit the 17% tax already paid at the corporate level. This structure will also have as a benefit the possibility of deferring payment of part of the final tax burden until distribution.

3. SX remitting funds to X Korea

The payments made by SX to X Korea will be subject to the provisions of the Double Taxation Treaty entered into by Venezuela and Korea, under which the distribution of dividends and payments of royalties shall be taxed in Venezuela at a reduced tax rates. The technical assistance payments will be taxed only in Korea. X Korea will be entitled to a direct and indirect foreign tax credit, and it will result in no tax burden in Korea in connection with the dividends received from SX.

4. Z Chile's royalty payments to X Korea

The Chile－Korea Double Tax Convention allows for the taxation of trademark royalty payments at the source site at a maximum 15% rate. Once X Korea receives the royalty income, it will be taxed with a 22% corporate tax, as will any other profit of the corporation, but will have as a foreign tax credit the 15% rate tax already paid in Chile.

5. Tax consequences of Z Chile's financing and recommendations

For Chilean Tax law purposes, the leaseback agreement will be treated as the former purchase and later lease of the equipment. The Venezuelan leasing company will be taxed with a

withholding tax at a 35% rate on its income from the lease payments, plus a Value Added Tax (VAT), at a 19% rate. However, lease partial payments of any "imported capital asset" susceptible of taking advantage of the "*customs duties deferred payment regime*" will be taxed at a 1.75% rate of the gross amount.

On the other hand, we recommend analyzing the possibility of Z Chile borrowing the credit directly from the Bermuda bank in order to have a beneficial 4% tax rate on the interest instead of a general 35% rate, thereby taking advantage of beneficial tax rates when borrowing from international banks or financial institutions.

References

Convention between the Government of the Republic of Korea and the Government of the Bolivarian Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Avoidance and Evasion with Respect to Taxes on Income and on Capital, June 26, 2006.

Convention between Ireland and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, July 18, 1990.

Convention between the Republic of Chile and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, October 20, 2003.

Convention between Ireland and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, June 2, 2005.

한국과 베네수엘라의 합작투자를 통한 칠레 호텔건설과 경영에 관한 세무계획 사례연구

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<요 약>

본 연구의 목적은 X Co.와 Y Construction의 합작투자를 통한 칠레 호텔 건설과 경영에 따른 세금 효과를 분석하고, 세무상 가장 효과적인 투자안을 자문하는 것이다.

우리는 다음과 같은 이유로 호텔 건설을 위한 조인트벤처가 아일랜드공화국에 설립되는 안을 추천한다. 첫째, 칠레와 아일랜드공화국은 조세조약을 맺고 있고, 동 조약에 따르면 아일랜드 회사는 칠레원천의 사업소득 중 칠레의 고정사업장에 귀속되는 사업소득에 대해서만 과세된다. 둘째, 한국은 아일랜드공화국과 조세조약을 맺고 있고, 동 조약에 따르면 아일랜드 회사가 한국 주주에게 배당하는 금액에 대해서는 우대세율이 적용된다. 셋째, 아일랜드공화국의 법인세율과 배당에 대한 원천징수세율은 각각 12.5%와 20%로 대안이 되는 다른 국가의 세율보다 낮고, X Korea와 Y Venezuela가 아일랜드에서 납부한 세금에 대하여 한국과 베네수엘라에서 전액 외국납부세액공제로 세액공제가 가능하다.

제시된 거래에 대한 세금 효과 분석 결과는 다음과 같이 요약할 수 있다. 첫째, 칠레의 투자가들에 의하여 아일랜드에 설립된 조인트벤처에 지불된 1200만달러에 대해서는 칠레에서 과세되지 않는다. 왜냐하면 동 조인트벤처는 칠레와 아일랜드공화국 간의 조세조약에 따르면 칠레에 고정사업장이 없기 때문이다. 따라서 동 지불에 대해서는 칠레에서 원천징수가 발생하지 않는다. 둘째, 동 조인트벤처가 칠레투자가로부터 받는 1200만달러의 익금은 아일랜드에서 과세대상에 해당하며, 400만달러의 설계비 및 600만달러의 건설비는 손금으로 공제된다. 셋째, 동 조인트벤처가 배당으로 분배하는 200만달러의 이익 중 Y Venezuela에게 지급하는 배당은 아일랜드에서 20%의 세율로 원천징수되며, X Korea에게 지급하는 배당에 대해서는 한국과 아일랜드공화국 간의 조세조약에 의해 10%의 우대세율로 원천징수 된다. 넷째, X Korea는 수취 배당에 대하여 22%의 법인세율로 한국에서 과세되며, 아일랜드에서 원천징수된 세액은 외국납부세액공제로 세액공제가 가능하며, 조인트벤처가 아일랜드에서 납부한 법인세 중 50%는 간접외국납부세액공제로 세액공제가 가능하다. Y Venezuela는 수취 배당에 대하여 34%의 법인세율로 베네수엘라에서 과세되며, 아일랜드에서 원천징수된 세액에 대하여 외국납부세액공제가 가능하다.

<주제어> 국제세무계획, 외국납부세액공제, 고정사업장, 조세조약, 조인트벤처의 소재지, SPV의 법적 형태

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