Santiago, 16 April, 2018

Mr. WANG Jun
Commissioner of the State Administration of Taxation
Address: No. 5 Yangfangdian Xilu, Haidian District, Beijing 100038
China

Subject: Most favored nation clause.

Dear Mr. Commissioner,

I'm writing to you in your capacity as the competent authority for the Convention between Chile and China for the avoidance of double taxation and the prevention of fiscal evasion that was signed on May 25, 2015, and that entered into force on August 8, 2016.

In the capacity as the Chilean competent authority，I would like to address an issue in relation with the application of paragraph 10 of the Protocol of the Convention，which establishes a most favored nation clause upon interests.

I hereby inform you that the condition for this clause to apply has been fulfilled，since Chile concluded after the date of signature of the Convention with China，a convention with Japan and another with Italy that contemplates lower source tax rates for interests than those contained in the Convention between Chile and China. Indeed，the convention between Chile and Japan came into force on December 28 of 2016，and the convention between Chile and Italy came into force on December 20，2016, and both apply with respect to taxes on income obtained and amounts paid，credited to an account, put at the disposal or accounted as an expense，on or after the first of January of 2017.

As a result of the application of paragraph 10 of the Protocol, effective from 1 of January of 2017，the tax rates contained in the Convention between Chile and China should automatically be replaced by the tax rates provided under the same circumstances in the convention between Chile and Japan，and between Chile and Italy.

Please find below the tax rates contained in the conventions with Japan and Italy，and our view of how tax rates in the Convention with China should be read after the application of the most favored nation clause.

ARTICLE 11 INTEREST.
a) Convention between Chile and Japan.
Article 11 of the convention between Chile and Japan establishes in paragraphs 2，3

and 4 the following:

"2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 4 per cent of the gross amount of the interest if the beneficial owner of the interest is either:

(i) a bank;

(ii) an insurance company;

(iii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated persons, where the enterprise is unrelated to the payer of the interest. For the purposes of this clause, the term "lending or finance business" includes the business of issuing letters of credit, providing guarantees or providing credit card services;

(iv) an enterprise that sold machinery or equipment, where the interest is paid with respect to indebtedness arising as part of the sale on credit of such machinery or equipment; or

(v) any other enterprise, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50 per cent of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50 per cent of the assets of the enterprise consist of debt-claims against unrelated persons;

(b) 10 per cent of the gross amount of the interest in all other cases.

For the purposes of subparagraph (a), an enterprise is unrelated to a person if the enterprise does not have with the person a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9.

3. For a period of two years from the date on which the provisions of paragraph 2 of this Article shall be applicable in accordance with the provisions of paragraph 2 of Article 29, the rate of 15 per cent shall apply in place of the rate provided in subparagraph (b) of paragraph 2 of this Article.

4. Notwithstanding the provisions of subparagraph (a) of paragraph 2, if interest referred to in that subparagraph is paid as part of an arrangement involving hack-to-back loans or other arrangement that is economically

equivalent and intended to have a similar effect to an arrangement involving back-to-back loans, such interest may be taxed in the Contracting State in which it arises but the tax so charged shall not exceed 10 per cent of the gross amount of the interest."

Additionally，it should be noted that number 6 of the Protocol of the convention between Chile and Japan contemplates the following:

"6. It is understood that the term "arrangement involving back-to-back loans" would cover, inter alia，any kind of arrangement structured in such a way that a financial institution which is a resident of a Contracting State receives interest arising in the other Contracting State and the financial institution pays an equivalent interest to another person which, if the person received the interest directly from the other Contracting State, would not be entitled to limitation of tax under subparagraph (a) of paragraph 2 of Article 11 of the Convention with respect to that interest in that other Contracting State."

b) Convention between Chile and Italy.

Article 11 of the convention between Chile and Italy establishes in paragraph 2 the following:

"2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent on the gross amount of the interest derived from:
(i) loans granted by banks and insurance companies;
(ii) bonds or securities that are regularly and substantially traded on a recognized securities market;
(iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.
b) 15 per cent of the gross amount of the interest in all other cases."

c) Text of the Convention between Chile and China by the application of the most favoured nation clause.

Therefore，in accordance with paragraph 10 of the Protocol of the Convention between Chile and China，this Competent Authority considers that under the aforementioned conditions, paragraph 2 of article 11 of the Convention as of **January 1, 2017** shall be read as follows:

"2. However，such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State，but if the beneficial owner of the interest is a resident of the other Contracting State，the tax so charged shall not

exceed:

a) 4 per cent of the gross amount of the interest derived from loans granted by banks，insurance companies and other financial institutions. The term "other financial institutions" means other enterprises substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance;

b) 4 per cent of the gross amount of the interest if the beneficial owner of the interest is:

(i) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated persons, where the enterprise is unrelated to the payer of the interest. For the purposes of this clause, the term "lending or finance business" includes the business of issuing letters of credit, providing guarantees or providing credit card services;

(ii) an enterprise that sold machinery or equipment, where the interest is paid with respect to indebtedness arising as part of the sale on credit of such machinery or equipment;

c) 5 per cent of the gross amount of the interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market; and

d) 10 per cent of the gross amount of the interest in all other cases.

For the purposes of subparagraph b)(i), an enterprise is unrelated to a person if the enterprise does not have with the person a relationship described in subparagraph a) or b) of paragraph 1 of Article 9.

Notwithstanding the provisions of subparagraph b)，if interest referred to in that subparagraph is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to an arrangement involving back-to-back loans，such interest may be taxed in the Contracting State in which it arises，but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

It is understood that the term "arrangement involving back-to-back loans" would cover，inter alia，any kind of arrangement structured in such a way that a financial institution which is a resident of a Contracting State receives interest

arising in the other Contracting State and the financial institution pays an equivalent interest to another person which，if the person received the interest directly from the other Contracting State，would not be entitled to limitation of tax under subparagraph (b) with respect to that interest in that other Contracting state."

When applying paragraph 10 letter c) of the Protocol to the Convention, the reference in paragraph 10 letter a) of the Protocol to the Convention to subparagraph b) of paragraph 2 of article 11, is now understood to refer to the new subparagraph d) of paragraph 2 of article 11. Therefore, by the application of the most favored nation clause, as from January 1, 2017, paragraph 10 letter a) of the Protocol to the Convention shall be read as follows:

"10. With reference to Article 11,

a) For a period of two years from the date on which the provisions of paragraph 2 take effect, the rate of 15 per cent shall apply in place of the rate provided in subparagraph d) of paragraph 2."

I have the honour to propose that this letter and your letter in reply confirming our interpretation of the application of paragraph 10 of the Protocol to the Convention between Chile and China as stated in the above paragraphs shall together constitute an agreement between the two competent authorities in this matter. We remain at your disposal for any further additional information that you may need.

Your sincerely,

Fernando Barraza Luengo
Commissioner of Servicio de Impuestos Internos

Mr. Fernando Barraza Luengo
Commissioner of Servicio de Impuestos Internos
Chile

Beijing, June 6th, 2018

Subject: Most Favored Nation Clause

Dear Mr. Fernando Barraza Luengo,

I have the honour to acknowledge the receipt of Your Excellency's letter dated 16th April 2018, which is in relation to the application of paragraph 10 of the Protocol of the *Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile for the Elimination of Double Taxation and the Prevention of Tax Evasion and Avoidance with respect to Taxes on Income* (hereinafter referred to as " the DTA") signed on May 25, 2015.

Thank you for informing us that the condition for the application of paragraph 10 of the Protocol of the DTA which establishes a most favored nation clause upon interest has been fulfilled, since Chile concluded after the date of signature of the DTA with China, a Convention with Japan and another with Italy that contemplates lower source tax rates for interest than those contained in the DTA between China and Chile.

I have the honour to confirm that in accordance with paragraph 10 of the Protocol of the DTA, and the relevant provisions of the Chile-Japan Convention and the Chile-Italy Convention, paragraph 2 of Article 11 (Interest) of the DTA as of January 1, 2017 shall be read as follows:

> *"2. However，such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State，but if the beneficial owner of the interest is a resident of the other Contracting State，the tax so charged shall not exceed:*
>
> *a) 4 per cent of the gross amount of the interest derived from loans granted by banks，insurance companies and other financial institutions. The term "other financial institutions" means other enterprises substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance;*
>
> *b) 4 per cent of the gross amount of the interest if the beneficial owner of the interest is:*

(i) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated persons, where the enterprise is unrelated to the payer of the interest. For the purposes of this clause, the term "lending or finance business" includes the business of issuing letters of credit, providing guarantees or providing credit card services;

(ii) an enterprise that sold machinery or equipment, where the interest is paid with respect to indebtedness arising as part of the sale on credit of such machinery or equipment;

c) 5 per cent of the gross amount of the interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market; and

d) 10 per cent of the gross amount of the interest in all other cases.

For the purposes of subparagraph b)(i), an enterprise is unrelated to a person if the enterprise does not have with the person a relationship described in subparagraph a) or b) of paragraph 1 of Article 9.

Notwithstanding the provisions of subparagraph b)，if interest referred to in that subparagraph is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to an arrangement involving back-to-back loans，such interest may be taxed in the Contracting State in which it arises，but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

It is understood that the term "arrangement involving back-to-back loans" would cover，inter alia，any kind of arrangement structured in such a way that a financial institution which is a resident of a Contracting State receives interest arising in the other Contracting State and the financial institution pays an equivalent interest to another person which，if the person received the interest directly from the other Contracting State，would not be entitled to limitation of tax under subparagraph b) with respect to that interest in that other Contracting state."

I have the honour to confirm that when applying paragraph 10 letter c) of the Protocol to the DTA, the reference in paragraph 10 letter a) of the Protocol to the DTA to subparagraph b) of paragraph 2 of Article 11, is now understood to refer to the new subparagraph d) of paragraph 2 of Article 11. Therefore, by the application of the most favored nation clause, as from January 1, 2017, paragraph 10 letter a) of the

Protocol to the DTA shall be read as follows:

"10. With reference to Article 11,

a) For a period of two years from the date on which the provisions of paragraph 2 take effect, the rate of 15 percent shall apply in place of the rate provided in subparagraph d) of paragraph 2."

I have the honour to confirm that Your Excellency's letter and this letter in reply confirming the interpretation of the application of paragraph 10 of the Protocol to the DTA as stated in the above paragraphs shall together constitute an agreement between the two competent authorities in this matter.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

WANG Jun
Commissioner
State Administration of Taxation
People's Republic of China