

Senate Foreign Relations Committee reapproves US-Chile tax treaty

In a development that many in Congress and the business community hope will lead to the end of a more than decade-long wait, the Senate Foreign Relations Committee on June 1 once again approved a US-Chile tax treaty that will help prevent double taxation for companies and has become increasingly important to the US electric vehicle (EV) industry because of Chile's copper and lithium mines. The treaty cleared the panel by a vote of 20-1, with Republican Sen. Rand Paul of Kentucky casting the sole dissenting vote. (Paul had unsuccessfully sought to include additional privacy safeguards in the agreement.)

Senate Majority Leader Charles Schumer, D-N.Y., has committed to providing the necessary floor time to process the treaty this year, although the exactly when it will be taken up in the chamber is not yet known.

Chile and the US initially signed the treaty in 2010, but it was not ratified before Congress passed the 2017 tax bill known as the Tax Cuts & Jobs Act (P.L. 115-97). Because of that law's base erosion and anti-abuse tax (BEAT) as well as new rules regarding the distribution of certain foreign dividends, it was determined that the bilateral treaty (as well as several others) required changes before it could be ratified. Those changes—known as reservations—were worked out with the Treasury Department last year, but while the Foreign Relations Committee approved the treaty with the additional language in March of 2022, the full Senate did not vote on it before the 117th Congress formally adjourned in January of this year.

The treaty approved this week was also accompanied by a new declaration addressing double taxation relief in future tax treaties. The declaration addresses concerns raised by GOP senators about the double taxation relief language in the Chile tax treaty without making changes to the treaty or the two reservations previously approved by the Foreign Relations Committee in May of 2022.

Assuming the treaty with Chile is approved by the full Senate and the US exchanges articles of ratification with the Chileans, Chile will also have to vote on the treaty again before it will go into effect. Chile previously approved the original version without the reservation language.

Without the treaty in place, Chilean taxes on US companies' operations are due to reach a rate of 44 percent in 2027, when a special waiver issued by the Chilean government is set to expire. The treaty also addresses Chilean withholding taxes on interest, royalties, US services, and fees for the use of equipment.

In remarks on the Senate floor May 31, Schumer advocated for the treaty's approval, saying, "At stake in this treaty is access to critical minerals like lithium that make everything from iPhones to EVs function. The world is racing to source these materials, and this US-Chile treaty would give America an important edge."

A May 30 letter in support of the treaty, sent to Foreign Relations Committee Chairman Robert Menendez, D-N.J., and ranking member James Risch, R-Idaho, by an ad hoc coalition of companies and business organizations, noted that Chile is one of the world's largest producers of lithium and copper and said, "US companies are working with the Chilean government and local partners to develop these resources responsibly to meet increased global demand for these critical minerals."

In a statement posted on Twitter after the Foreign Relations Committee vote on June 1, Menendez called the treaty “critical for prosperity [and] growth in the Western Hemisphere,” adding that it “demonstrates growing potential for shared economic partnership between our [two] nations.”

URL: <https://twitter.com/SFRCdems/status/1664293618780102657?cxt=HHwWgoCz1c-O4ZguAAAA>

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.