

US-Chile tax treaty clears Senate

More than a decade after it was originally signed and after overcoming multiple hurdles, the US-Chile tax treaty was approved in the Senate on June 22 by a vote of 95-2.

Ratification of the treaty has become an increasingly urgent priority for the Senate in light of the growing reliance by US industries on Chile's vast lithium and copper mines. Majority Leader Charles Schumer, D-N.Y., acknowledged that reality during floor remarks the day before the final vote.

"Right now, American companies are at a significant disadvantage," Schumer said. "Because the US doesn't have a tax treaty in place with Chile, they face double taxation and other barriers to investment and trade. Countries like China have an edge on us. It's an unnecessary roadblock to a fruitful and economically prosperous partnership between Chile and the United States."

Chile and the US initially signed the treaty in 2010, but it was not ratified before Congress passed the Tax Cuts & Jobs Act of 2017 (TCJA, P.L. 115-97). Because of the TCJA's base erosion and anti-abuse tax (BEAT) as well as its 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.

URL: <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

The Foreign Relations Committee again approved the treaty on June 1, this time 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.

Republican Sen. Rand Paul of Kentucky cast the sole dissenting vote in committee, a position he has taken on all tax treaties for more than a decade because of his concerns about information sharing between governments as well as financial privacy. Paul and Sen. Josh Hawley, R-Mo., were the only two senators to oppose ratification on the floor.

Now that the treaty with Chile has been approved by the full Senate, the US will exchange articles of ratification with the Chileans, and 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.

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