

The Ministry of Finance adjusts Article 104 of the Income Tax Law to facilitate trading of debt instruments

On April 13th, 2020, the Supreme Decree No. 59 (<https://www.hacienda.cl/oficina-de-la-deuda-publica/documentos-legales/articulo-104/decreto-que-libera-plazo-de-tenencia.html>) of the Ministry of Finance was published in the Official Gazette, which frees the period of time that should exist between the date of acquisition and the sale of publicly offered debt instruments that benefit from the tax exemption established under Article 104 of the Income Tax Law as per the amendment incorporated by the recently enacted tax reform (law N° 21,210 that modernize our tax legislation) .

We note that article 104 establishes a tax-free regime for the capital gain obtained from the sale of publicly offered debt instruments that meet certain specific requirements. Among other requirements, said article requires the seller of these debt instruments to meet alternatively one of the following requirements:

- a) That between the date of acquisition and sale of the instruments, at least one year has elapsed, or the lower term or the release of a period has elapsed, as determined by decree of the Ministry of Finance; or,
- b) That they have acquired and sold the instruments in a local Stock Exchange in a continuous auction procedure that meets certain specific conditions established in article 104.

With the issuance of Supreme Decree No. 59, the Supreme Decree No. 581 of 2014 was replaced, which established the holding period of one hour for apply of the Article 104, now eliminating the requirement of any term.

In practice, this new decree will facilitate that these types of instruments can be traded or registered on platforms or custodians of securities, national or international and benefiting from this tax-free regime and, in this way, it also promotes that Chilean companies can access international markets when they issue in Chilean pesos.