



# ARGENTINA



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## INTERNATIONAL DEVELOPMENTS

### 1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

On 29 December 2017, it was published on the Official Gazette the Act No 27.430 (the “Tax Reform Act”), which introduces several modifications to the former tax regime. The Tax Reform Act is generally effective 1 January 2018. Specifically, the tax reform measures include changes concerning the corporate income tax rates, dividend withholding tax, taxation of certain financial investments, indirect capital gains taxation, interest limitation rules, the definition of a permanent establishment, transfer pricing, fiscal transparency rules and revaluation of assets, among others. In addition, the Tax Reform Act introduces amendments to value added tax law, tax procedural law, criminal tax law, social security contributions rules, tax on fuels and tax on the transfer of real estate, among other aspects.

It is important to point out that the regulatory decree of said Act is still pending.

Also, act No. 26.190, as amended by act No. 27.191, sets forth the Renewable Energies Promotional Regime which tends to incentivize the use of renewable energy sources for the production of electricity, and which foresees significant tax benefits such as anticipated VAT refund, accelerated depreciation and a tax certificate, among others.

Furthermore, Act No. 27,264 and Act No. 27,349 established a promotional regime for small, medium and micro companies (“PYMES” in Spanish) and for entrepreneurial activity which includes a number of tax benefits.

### 2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

On June 7, 2017, Argentina signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” to update most of its treaties to avoid double taxation in line with BEPS.

Also, Argentina has signed the OECD Declaration on BEPS, the OECD Multilateral Convention on Mutual Administrative Matters, OECD Declaration on Automatic Exchange of Information and the Multilateral Competent Authority Agreement.

Treaties to avoid double taxation with Chile, México and United Arab Emirates were signed in 2015 and 2016 (the latter still undergoing internal ratification procedures prior to entering into force). Argentine tax authorities in the most recently signed treaties have adopted several BEPS directives (including LOB provisions, PPT clauses, and additional considerations regarding “permanent establishment” assessment). Additionally, an amendment protocol to the treaty currently in force with Brazil was signed in 2017, which foresees many BEPS directives. Other treaties include anti-abuse clauses, such as the treaties with Spain and Switzerland.

BEPS measures are not new in Argentina. During the last years the Argentine tax authorities challenged tax-motivated transactions and structures on the basis of ‘substance over form’ principles as construed in case law. In addition an Argentine government commission was created to review the country’s tax treaty network to determine whether there was potential for abuse; and new tax information reporting requirements were created, among other measures.

On 29 December 2017, the Tax Reform Act was approved and many of the changes introduced are in line with OECD and BEPS standards (mainly regarding interest limitation rules, permanent establishment assessment rules, “sixth method” regarding transfer pricing rules, Country by Country reporting, Mutual Proceeding Arrangements, Advance Pricing Proceedings, among other subjects).



## GENERAL

### 3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND AN ASSET DEAL IN YOUR COUNTRY?

#### **From a buyer's perspective**

##### **A) Share deals**

The procedure is simple.

There is no substantial tax cost.

The tax losses of the Argentinean company are transferred to the buyer. Also, the tax credits arising from taxes other than income tax remain in the company and, consequently, are 'transferred' to the buyer.

The Argentine company's liabilities remain in the company and, consequently, are 'acquired' by the buyer. If the Argentine company's shares are purchased by an Argentine company, the acquisition cost of the shares cannot be depreciated for income tax purposes. Regarding acquisitions or investments, the Tax Reform Act provides the possibility to apply certain actualization [ed.: indexing] methods established in the income tax law under certain conditions. In certain cases, the shareholder could be subject to said methods.

The purchaser keeps the depreciation terms of the seller's assets.

##### **B) Asset deals**

The procedure is complex.

The tax losses of the seller's company are not transferred to the buyer except if the transfer is of a going concern under a tax-free reorganization .

The business's 'non-assessed tax and social security liabilities' are not transferred from the seller to the buyer if the appropriate notification to the AFIP is made prior to the transfer of the assets and the AFIP does not take any action within a prescribed period of time.

The seller's unpaid 'assessed tax and social security liabilities' are transferred to the buyer.

The buyer depreciates the acquisition cost of the portion of the purchase price corresponding to the fixed assets. However, the portion of the purchase price that exceeds the purchase price of the fixed assets and inventories is considered goodwill of the buyer and is not subject to tax depreciation in Argentina.

#### **From a seller's perspective**

##### **A) Share deals**

The sale of S.A., S.A.U, and S.A.S shares or SRL quotas by Argentine companies, Argentine individuals and/or foreign individuals or companies is subject to income tax (see section 20).

Although the tax debts are transferred to the buyer, the directors of the Argentinean company who were in charge during the period of such tax debt would remain jointly and severally liable if the Argentinean company does not pay the tax debt claimed by the AFIP.

The procedure is simple.

##### **B) Asset deals**

The sale of assets is subject to taxation. The tax impact for the seller is made up of income tax, VAT on the transfer of certain assets (VAT is usually not an economic cost for Argentinean taxpayers), tax on debits and credits in Argentinean bank accounts, turnover tax (generally fixed assets are exempt from this tax) and stamp tax on certain agreements.



The seller's tax losses are not transferred to the buyer, except if the transfer is of a going concern under a tax-free reorganization.

The seller always remains liable for tax debts related to the assets.

The procedure is complex.

## BUY-SIDE

### 4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

In principle, there are no special provisions in Argentina's income tax law that provide a step-up in the value of the underlying assets in share deals.

However, each case should be analyzed separately. For example, a step-up could be applicable in a purchase of assets.

It is important to note that the Tax Reform Act creates a Revaluation of Assets Regime for Taxation and Accounting Purposes. This regime enables individuals, undivided estates and companies, all of which must be residents in Argentina, to opt for the reassessment of the assets, which produce argentine source income, in order to determine the income tax.

For this purpose, said regime provides a method for the revaluation of the assets, by applying a "revaluation factor" to the original value of the assets. In certain cases, the taxpayer may choose the application of a revaluation factor or a revaluation performed by an appraiser expert. The adherents to this regime would be liable for the payment of a special tax on the difference between the asset's residual value for tax purposes and the tax value determined, at the time of exercise of the option. The applicable rates vary from 5% to 15%, depending on the assets involved.

### 5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

As a general rule, Argentina's income tax law does not allow the deduction of intangibles such as goodwill, trademarks and similar assets.

However, depreciation of intangible assets with limited economic useful life — such as concessions, patents and licenses — can be deducted for income tax purposes.

### 6. WHAT ARE THE LIMITATIONS ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

#### Interest limitation rules

The Tax Reform Act provides a new limitation on the deduction of interest expenses arising from financial debts obtained with related parties (either local or foreign companies) and replaces the previously applied rule based on debt-to-equity ratio exceeding 2:1. This limit will be the greater of 30% of earnings before interest, depreciation, and amortization, or an amount to be fixed by the executive authority.

If the amount of interest expense is less than the limitation, the unused limitation can be carried forward for three tax years.

Likewise, if the interest amount exceeds the limit established, the difference can be carried forward for five tax years.



Notwithstanding the above, such limitation would not apply on the following:

a) Subjective exceptions:

- ❖ Interest paid by Argentine financial institutions, financial trusts, leasing companies, and/or any other entity to be determined by the Argentine Government (considering the nature of its main activity).

b) Objective exceptions:

- ❖ Commercial debts
- ❖ The amount of interest revenues obtained by the Argentine entity
- ❖ Any amount of interest, if it is demonstrated that the beneficiary paid income tax in Argentina on those payments.

These rules are effective for tax years beginning on or after 1 January 2018. Please note that the regulatory decree of the Tax Reform Act is still pending.

### **Transfer pricing rules**

Argentina's income tax law also provides transfer pricing provisions relating to deductions for payments by Argentinean taxpayers to non-Argentinean related parties.

Deductions can only be made to the extent that the terms and conditions agreed upon with the related party are in accordance with the 'arm's length principle' in Section 14 of the income tax law. This provision basically holds that any transaction between related parties must be regarded as entered into between independent parties. This is the case insofar as the consideration and conditions are consistent with normal market practices between independent parties.

As evidence of compliance with the arm's length standard, local taxpayers must prepare and submit a transfer pricing study (that includes comparability and economic analyses). Such transfer pricing studies must include the functions, activities and risks borne by each party in the transaction and an explanation of the transfer pricing method used. Failure to submit the transfer pricing study and information returns is subject to severe penalties.

Local taxpayers carrying out transactions with non-resident related parties are also required to maintain additional documentation, which must demonstrate the correct determination of the prices or profit margins that are declared in the informative returns and the acceptability of the comparability criteria used in determining such prices.

As a result, these transactions are subject to the Argentinean transfer pricing rules. Please note that, in accordance with Section 15 of the income tax law, transactions made by Argentinean entities, among others, with companies domiciled, registered or located in low-tax or null-tax jurisdictions listed in its regulatory decree (whether or not related to the Argentine entities) will not be considered compliant with the arm's length principle and, therefore, will be subject to the transfer pricing rules.

In view of the Argentinean transfer pricing provisions; the interest payments in the cases mentioned above should follow the arm's length principle in order to allow the Argentinean party its full deduction for income tax purposes.

### **Test debt/equity**

Over the past years, the AFIP has been focusing on the deduction of interest associated with loans granted by foreign lenders under certain conditions. Based on a series of circumstances such as, among others, the lack of proper documentation, the absence of usual indemnity and guarantee agreements and interest rates that do not correspond with market standards, the AFIP has been presuming that the aim of certain loans under scrutiny was to erode the tax basis of the local borrower. This has resulted in denied deduction of interest payments and exchange differences.



### **Evidence to prove the existence of loan agreements**

If the existence of the loan were not proved, the registered liabilities could be considered an 'unjustified wealth increase' (subject to taxes accordingly) and the deduction of interest and exchange differences for income tax purposes could be challenged. In order to avoid any challenges from the AFIP, certain formalities and facts are relevant or advisable to prove the existence of loan agreements.

### **Limitations on deduction of loan interest related to the acquisition of shares**

AFIP does not allow Argentinean companies to deduct interest payments on loans related to the acquisition of shares of an Argentinean company.

This is based on the fact that dividends or distribution of profits received by Argentinean entities from other Argentinean entities were not subject to income tax and, therefore, such interest was not related to the company's taxable income.

Therefore, AFIP argues that such deductions do not comply with the general requirements for income tax deductions.

Nevertheless, since there are conflicting judicial precedents, the subject matter is open to discussion. Please note that this issue may change as a consequence of the taxation of dividends, which was introduced by the Tax Reform Act.

## **7. WHAT ARE COMMON STRATEGIES TO PUSH-DOWN DEBT ON ACQUISITIONS?**

Common strategies to push down debt on acquisitions include a leveraged buyout of the target company. Under this scenario the AFIP does not allow Argentinean entities to deduct interest payments if the proceeds of the loan are applied to the acquisition of an Argentinean company's shares. This is based on the fact that dividends or distribution of profits received by Argentinean entities from other Argentinean entities were not subject to income tax and, therefore, such interest was not related to the company's taxable income.

In this regard, the AFIP has issued administrative precedents in the last years that have not allowed such interest deductions. There is also a precedent from Argentina's Federal Tax Court holding the AFIP's position, which was subsequently confirmed by the Federal Court of Appeals (and the Federal Supreme Court for formal reasons).

However, there are also recent judicial precedents in the opposite direction. The jurisprudence is divided. The Federal Supreme Court has yet to express a direct opinion on the subject matter.

It could be argued that such interest payments should be deductible because:

1. Dividends are taxed both at the distributing company's level and at the time of distribution, following the 'integration system' adopted by Argentina.
2. Future capital gain arising from the sale of Argentinean shares by Argentinean companies, Argentine individuals and foreign companies or individuals is subject to income tax. Please note that the approach to this matter may change as a consequence of the taxation of dividends, which was introduced by the Tax Reform Act.

If the Argentinean entity finances the acquisition by issuing private bonds with public offering, this provides a strong case to sustain the interest deduction. Private bond law states that the interest payments are fully deductible for income tax purposes if certain requirements are met. AFIP does not allow a deduction for such interest either. However, there is a precedent from Argentina's Federal Tax Court allowing the deduction of interest in this case, which has also been confirmed by the Federal Court of Appeals (and the Federal Supreme Court for formal reasons). The second part of the leveraged buyout is the merger between the buyer entity and target entity. In order to perform a merger under the tax-free reorganization regime certain requirements must be met. Two of the main requirements hold that both entities should have maintained the same or related activities for at least 12 months before the date of reorganization, and that the continuing entity must maintain the same or



related activities as the previous entities for at least 2 years from the date of the reorganization. Due to certain precedents of the Federal Supreme Court, the AFIP has recently allowed, in rulings, the tax-free merger conducted between a holding entity and an operative entity of the same economic group even when the aforementioned requirements were not satisfied. Also, if certain conditions are met, the tax-free reorganization could be possible in this alternative scenario.

## **8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?**

There are no tax incentives for equity financing in Argentina.

Please note that Act No. 27,349 provides tax benefits for Venture Capital Institutions. In this regard, local investors will be able to deduct a percentage of the total investments they perform in Venture Capital Institutions or Ventures. Regular investors will be able to deduct up to 75% of the total investment and, investors who invest in less developed areas or with lower access to financing, will be able to deduct up to 85%. They will be able to deduct a maximum of 10% of their net income.

## **9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?**

In share deals, the target company's tax losses are transferred to the buyer.

Also, under the scenario of a tax-free reorganization, tax losses can be transferred from one company to another, provided that certain requirements are met (see section 15). Argentina's income tax law provides for three types of tax-free reorganization: mergers, spin-offs and transfers within the same economic group.

## **10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?**

Provide all material in connection with intercompany transactions corresponding to the last 6 fiscal periods. Provide documentation regarding transfer pricing filings with the Argentine tax authority (AFIP General Resolution 1122).

List of judicial or administrative claims made by the Federal, Provincial or Municipal Tax Authorities against the Argentine company.

## **11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?**

### **Federal Taxes**

Tax on debits and credits is levied on debits and credits on Argentine bank accounts and other transactions that are used as a substitute for checking bank accounts. The general rate is 0.6%, however there are increased rates of 1.2% and reduced rates of 0.075%. Thus, if Argentine bank accounts are used for the payment for shares, this transaction would be subject to tax at a rate of 0.6% applicable on each credit or debit on Argentine bank accounts. Part of this could be used as a credit against income tax and/or minimum presumed income tax (MPIT), and the remaining amount is deductible for income tax purposes.

No other indirect tax (such as VAT) applies on transfer of shares.

### **Provincial taxes**

#### **A. Gross turnover tax.**

Gross turnover tax could be applicable to Argentine residents on the transfer of shares to the extent such activity is conducted on a regular basis within an Argentine province or within the City of Buenos Aires. However, please



note that in certain jurisdictions (e.g. City of Buenos Aires) exemptions may apply.

### **B. Stamp Tax**

The stamp tax could be applicable in the jurisdiction in which the transaction documents are executed but, in addition, it may also apply in the jurisdiction in which the transaction has effects. Please note that documents executed abroad may also be subject to stamp tax to the extent their effects take place in an Argentine province or in the City of Buenos Aires.

However, exemptions could apply in certain jurisdictions for the transfer of shares of Argentine companies. Also, there are some alternatives, depending on the transaction, to enter into agreements that are not subject to the stamp tax.

### **C. Free transmission of goods tax**

The province of Buenos Aires establishes a tax on free transmission of assets, including inheritance, legacies, donations, etc. Hence, free transmission of shares could be subject to this tax.

## **12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?**

According to AFIP's position, costs incurred on the acquisition of an Argentinean company's shares (e.g. interest on loans, legal fees, advisory fees, etc.) are not deductible for income tax purposes (see section 7) on the grounds that such expenses are not necessary for the obtainment, maintenance and conservation of taxable income.

However as we mentioned in section 7 the deductibility of such expenses may be argued.

Also, although it is not free from doubt, it could be argued that legal or advisory fees should be included as part of the acquisition cost of the shares. Under said scenario, such expenses would not be deductible for income tax purposes. Nevertheless in case of a future sale of the shares the sale price would be compared to a higher acquisition cost.

Please note that the criteria on this matter may change as a consequence of the taxation of dividends, which was introduced by the Tax Reform Act.

## **13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?**

In general, Argentine VAT is levied on three different classes of transactions, namely: the sale of tangible personal property within Argentina; the definitive import of tangible personal property and services into Argentina; and the provision of services within Argentina.

In this regard, the provision of advisory or legal services for the acquisition of an Argentine company would be subject to VAT as they will be "economically used" in Argentina. Hence, VAT paid for the aforementioned transactions will constitute a VAT credit to be compensated only against VAT debits (i.e. against its output VAT).

If VAT credits for the rendering of the services cannot be compensated they should be included as part of the acquisition cost of the shares.

There is a regime that establishes the early reimbursement of VAT credits in case of the acquisition of capital goods and infrastructure works.





#### 14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?

There are no particular issues in the acquisition of Argentine shares by foreign companies. However please note the following:

- ❖ The sale of shares of an Argentine company is subject to income tax in Argentina
- ❖ Due to inflation and devaluation scenario in Argentina any capital gain from the sale of shares of an Argentine company could be high since the acquisition cost of the shares is historical and should be determined in local currency at the moment of the purchase.
- ❖ Indirect sale of Argentine shares is subject to income tax at a 13.5% rate over the gross income and at a 15% rate over the actual net income. The tax has to be paid when:
  - At least 30% of the market value of shares, interests, units, securities or rights held by such seller in the entity located abroad, upon the sale or during 12 months prior to the sale, is due to the value of the Argentine assets directly or indirectly owned by the seller. Such assets include:
    - Shares, rights, units or other interests in ownership, control or earnings of a company, fund, trust or any other entity established in Argentina.
    - Permanent establishments in Argentina that are owned by one person or entity not residing in the country.
    - Other assets of any nature located in Argentina or any interests therein.

For these purposes, the assets in the country are to be stated at the current market value.

- Shares, interests, units, securities or rights sold which, at the moment of the sale or during 12 months prior to the sale, account for at least 10% of the equity of the foreign company that directly or indirectly owns the above mentioned assets.
- ❖ Argentine entities should pay Personal Asset Tax at a rate of 0.25% on the net worth on behalf of foreign shareholders.
- ❖ Transactions between related parties must comply with transfer pricing regulations.
- ❖ If Argentinean bank accounts are used, tax on debits and credits would apply.
- ❖ If the sale is between two non-Argentine residents, the tax has to be paid by the foreign seller's legal representative domiciled in Argentina. If the seller does not have a legal representative domiciled in Argentina, the tax shall be paid by the foreign seller through international wire transfer.

#### 15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL MANNER THROUGH MERGERS OR A TAX GROUPING?

The group can be reorganized after the acquisition in a tax neutral environment if a tax-free reorganization is performed.

Argentina's income tax law provides for three different types of tax-free reorganization procedures: merger, spin-off or transfer within the same economic group. The law sets forth special provisions required to achieve a tax-free reorganization in which the assets and tax status of a company may be transferred with attractive tax benefits. If the law's requirements and regulatory provisions are met, the tax-free reorganization is subject neither to federal taxes (i.e. income tax and VAT) nor, in certain cases, to provincial taxes (i.e. turnover tax and stamp tax).

Failure to comply with these requirements causes the tax-free reorganization regime to be inapplicable and, therefore, the transaction becomes subject to applicable federal and provincial taxes.



For a merger or spin-off to qualify as a tax-free reorganization under Argentina's income tax law, and for the tax status to transfer to the continuing or surviving company, the following general requirements must be met:

- 1) The owners of the previous company or companies must have held at least 80% of their capital in the two years prior to the reorganization. This requirement is mandatory only to transfer income tax losses and promotional regime benefits. This requirement does not apply to companies whose shares are listed.
- 2) Capital must be maintained at the moment of and after the reorganization
- 3) The companies must have been conducting the same or related business prior to the date of reorganization
- 4) The same or related activities of the previous company must be continued for at least two years from the date of the reorganization
- 5) A tax report must be filed before the AFIP

Compliance with all requirements established under a merger or spin-off scenario is required when qualifying a transfer within the same economic group as a tax-free reorganization. Exceptions are made in fulfilling related activities prior to the tax-free reorganization, the requirement of conducting business prior to the tax-free reorganization and certain capital requirement differences.

## 16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?

The sale of real estate is subject to income tax on net income. The final income tax of Argentina legal entities is calculated at the end of the fiscal year by applying the 30% corporate income tax rate for fiscal years initiated after January 1, 2018 and up to December 31, 2019; and at the rate of 25% for tax periods initiated after January 1, 2020 and onwards. The real estate transaction affects the result of the fiscal year as per the difference between the sale price and the acquisition cost of the land plus the depreciated construction and improvements cost. The depreciation of the premises and improvements takes place at a rate of 2% per year; for real estate, the depreciation is 2% per year over 50 years.

The collapse of the Argentine financial system resulted in the Argentine Peso's devaluation from its 10-year-long exchange rate of US\$ 1 = AR\$1. In addition, after 2002 Argentina has fallen into an inflationary scenario and inflation adjustments have not been allowed for tax purposes. Therefore, until fiscal years initiated after January 1, 2018, any capital gain from the sale of real estate could be high since the real estate cost is historical.

Please note that the Tax Reform Act creates a Revaluation of Assets Regime for Taxation and Accounting Purposes (see section 4) and foresees a regime of inflation indexing of assets.

Rollover transactions are applicable in Argentina: whenever a depreciable asset is sold and replaced income derived from the sale transaction may be assigned to the new asset's cost, resulting therefore in a deferral in the recognition of built-in gains. General depreciation rules provided in the income tax law are then applied on the cost of the new asset reduced by the assigned income amount. This option is available to the extent that sale and replacement are performed within a one-year term.

In general, real estate transfers are not subject to VAT. However, if the seller uses the premises as a fixed asset, the seller must pay VAT in some specific cases, if the property is sold within 10 years after the date the seller obtained permission to use the premises.

The holding of real estate is subject to minimum presumed income tax. Investments to construct new buildings or make improvements in real estate that are fixed assets are not subject to the minimum presumed income tax in the construction year as well as the following year.

The sale of real estate could be subject to turnover tax. Generally, the sale of fixed assets is exempt from turnover tax.



The sale of real estate is subject to the stamp tax in the city of Buenos Aires at a rate of 3.6%. If the real estate is in a jurisdiction other than Buenos Aires, the tax treatment may vary.

An alternative is to sell the Argentine entity's shares. In general terms, real estate investments in Argentina are usually structured under two possible scenarios:

- 1) Direct acquisition of the real property made by a local vehicle (e.g. an Argentine corporation or branch)
- 2) Acquisition of shares in an Argentine corporation ('sociedad anónima', "sociedad anónima unipersonal", and "sociedad por acciones simplificada", in Spanish) that owns the real property. The applicable tax treatment for each scenario would have certain advantages and disadvantages. The chosen alternative will depend on the purpose of the transaction.

## 17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

Tax grouping is not allowed in Argentina.

## 18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUS SUCH AS A PATENT BOX FOR COMPANIES THAT HOLD INTANGIBLE ASSETS?

There is not a special tax status for companies that hold intangible assets.

## 19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?

There are not adverse tax consequences. The transfer is subject to tax even if the seller is an individual.

## SELL-SIDE

## 20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

No participation exemption regime is available in Argentina. The results derived from the transfer of S.A, S.A.U and S.A.S shares, SRL quotas and other securities are subject to Argentine income tax, regardless of the type of person receiving the income.

- A. Capital gains derived by Argentine corporate entities (in general, entities organized or incorporated under Argentine law, certain traders and intermediaries, local branches of non-Argentine entities, sole proprietorships and individuals carrying on certain commercial activities in Argentina) from the sale, exchange or other disposition of shares are subject to income tax at the rate of 30% on net income for fiscal years initiated after January 1, 2018 and up to 31 December 2019 and at the rate of 25% for tax periods initiated after January 1, 2020 and onwards. Any loss derived from the transfer of shares may only be offset against profits of the same source from the same type of transactions. If such offset cannot be made in the same fiscal year in which the loss occurred or such loss cannot be offset in full, then such amount may be offset against income of the same source generated by the same type of transactions in the immediately subsequent 5 fiscal years.
- B. Income obtained by Argentine resident individuals from the sale of shares is subject to income tax at a 15% rate on net income, unless such securities were traded in stock markets and/or have public offering authorization, in which case, under certain conditions, an exemption applies. Any loss derived from the transfer of shares may only be offset against profits of the same source from the same type of transactions. If such offset cannot be made in the same fiscal year in which the loss occurred or such loss cannot be offset in full, then such amount may be offset against income of the same source generated by the same type of transactions in the immediately subsequent 5 fiscal years.



- C.** Capital gains obtained by non-Argentine resident individuals or non-Argentine entities (the “Foreign Beneficiaries”) from the sale, exchange or other disposition of shares are exempt from income tax if the shares are issued by an Argentine company and are authorized for public offering by the CNV. The exemption on the sale of Argentine shares would only apply to the extent that the Foreign Beneficiaries reside in or their funds come from jurisdictions considered as cooperative. The list of non-cooperative jurisdictions shall be published by the Executive Branch. Decree 279/2018 establishes that until the Executive Branch issues the non-cooperative jurisdictions list, taxpayers should consider the list of “cooperative jurisdictions” published by the Argentine tax authorities to determine whether a jurisdiction is deemed cooperative or not. The tax rate applicable to the sales of shares conducted by non-Argentine residents that reside in or whose funds come from non-cooperative jurisdictions is 35%.

If the exemption does not apply, the gain derived from the disposition of shares is subject to Argentine income tax at either (1) a 15% rate on the amount resulting from the deduction from the gross profit paid or credited, the expenses incurred in Argentina necessary for its obtainment, maintenance and conservation, as the deductions admitted by the income tax law or (2) at a 13.5% rate on the sales price. There is currently no guidance under Argentine law with respect to how this election is made. Please note that these rates could be reduced in certain scenarios due to the application of a Double Taxation Treaty. If the sale is between two non-Argentine residents, the tax has to be paid by the foreign seller’s legal representative domiciled in Argentina. In case the seller does not have a legal representative domiciled in Argentina, the tax shall be paid by the foreign seller through international wire transfer.

**21. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES OR ASSETS ARE REINVESTED?**

In general, Argentina does not provide any fiscal advantage if the proceeds from a sale are reinvested. Argentina only provides fiscal advantages for reinvestments in depreciable assets (i.e. real estate or movable assets). In this particular case, if the depreciable asset is sold and replaced, the taxpayer can either (i) charge such income to the fiscal period or (ii) apply such gain to the cost of the new depreciable asset. Therefore, the depreciation rules provided in Argentina’s income tax law would then be applied to the cost of the new asset reduced by the assigned income amount. The sale and replacement of depreciable assets must take place within a one-year term for the taxpayer to apply this regime.

**22. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?**

No. However, if the shareholders of the companies are Argentine residents, there is a new CFC regulation by which many holding companies would be considered transparent for tax purposes. It has to be analyzed on a case by case basis. These substance requirements are not defined.

**23. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?**

Please refer to our comments in section 15 above.



## MANAGEMENT INCENTIVES

### 24. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

There are no special incentives other than the contributions that the directors can make to mutual guarantee companies, pension plans or other special forms of insurance.

Furthermore, there is no special treatment for stock options, since they are subject to income tax as of the moment that the option is exercised, but not before.

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