



# ARGENTINA

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## 1. INTRODUCTION

### a. Forms of Legal Entity

Argentine law provides for several types of legal entity through which business activities may be carried out in Argentina. The corporation, Sociedad Anónima (“SA”); the wholly owned corporation, Sociedad Anónima Unipersonal (“SAU”); and the limited liability company, Sociedad de Responsabilidad Limitada (“SRL”) are the most common types of business organisations used as investment vehicles. Act No. 27,349 issued on 12 April 2017 created a new type of legal entity, the simplified corporation, Sociedad Anónima Simplificada (“SAS”). All of these entities provide shareholders/quota holders with limited liability with respect to third parties.

SA, SRL, SAU and SAS are subject to the same tax treatment in Argentina.

### b. Taxes, Tax Rates

#### Federal taxes<sup>1</sup>

#### i Corporate Income Tax (“CIT”) and Income Tax (“IT”)

The tax rate applicable in Argentina for legal entities for fiscal periods commencing as from 1 January 2021 is 35%/30%/25%, depending on the entity’s accumulated net income. Also, an additional withholding tax on dividends or distributed profits is applied.<sup>2</sup>

The income of Argentine resident individuals and “undivided estates” (see explanation below) located in Argentina is subject to tax on a progressive scale that ranges from 5% to 35%.

In Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased’s patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g. to pay taxes. This is known as an “undivided estate”. In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death, are also considered to be Argentine residents for taxation purposes.

Non-resident individuals or legal entities without a permanent establishment in Argentina (“Foreign Beneficiaries”) are taxed only on income arising from Argentine sources at rates from 12.25% to 35%.

Please note that these rates may be reduced in certain scenarios from 0% to 15% due to the application of a Double Taxation Treaty (“DTT”). However, the provisions of the applicable DTT should be considered in each particular case.

<sup>1</sup> Due to our country’s political organization system, there are three different taxing authorities in Argentina: the Federal Government, the Provinces (together with the Autonomous City of Buenos Aires) and the Municipalities. Each one has powers to impose taxes.

<sup>2</sup> For tax periods 2021 onwards, a dividend tax of 7% shall apply on distributions made to Argentine resident individuals and non-Argentine resident shareholders.



## ii Value Added Tax (“VAT”)

VAT applies to the sale of goods located in Argentina, the provision of services in Argentina and the final import of goods. Under certain circumstances, services rendered outside Argentina which are effectively used or exploited in Argentina are subject to VAT (“import of services”).

The general rate is 21% although, in certain cases, a reduced rate of 10.5% or an increased rate of 27% could be applicable.

Exports of goods and services are subject to a 0% VAT rate and Argentine exporters are allowed to recover input VAT paid to their suppliers on the acquisition of goods and services related to export operations.

## iii Personal Assets Tax (“PAT”)

From fiscal year 2019 onwards all individuals resident in Argentina and “undivided estates” located in Argentina are subject to PAT on their worldwide assets held at 31 December of each year, as follows.

In Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased’s patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g. to pay taxes. This is known as an “undivided estate”. In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death, are also considered to be Argentine residents for taxation purposes.

Taxable assets which exceed the non-taxable minimum threshold		Pay AR\$	plus %	Over the exceeding amount of AR\$
More than AR\$	To AR\$			
0	3,000,000, inclusive	0	0.50%	0
3,000,000	6,500,000, inclusive	15,000	0.75%	3,000,000
6,500,000	18,000,000, inclusive	41,250	1.00%	6,500,000
18,000,000	100,000,000, inclusive	156,250	1.25%	18,000,000
100,000,000	300,000,000, inclusive	1,181,259	1.50%	100,000,000
300,000,000	Onwards	4,181,250	1.75%	300,000,000

In addition, increased tax rates are applicable for assets located abroad in accordance with the following table:

Total value of the assets located in Argentina and abroad	The total value of the assets located abroad that exceed the non-minimum threshold not computed against the assets located in Argentina will be subject the % rate	
More than AR\$	To AR\$	
0	3,000,000, inclusive	0.70%
3,000,000	6,500,000, inclusive	1.20%
6,500,000	18,000,000, inclusive	1.80%
18,000,000	Onwards	2.25%



It should be noted that the increased rates would not apply to the extent that the taxpayer repatriates a certain portion of funds derived from the realisation of specific assets located abroad.

Individuals resident abroad as well as undivided estates located abroad are subject to the PAT at a 0.50% rate applicable to the assets located in Argentina.

A local corporation must pay the PAT for the holding of its equity participation by individuals and undivided estates resident or incorporated in Argentina or abroad as of 31 December each year. The applicable tax rate is 0.50% and is levied on the book value of the equity participation.

#### **iv Tax on Credits and Debits in Argentine Bank Accounts (“TDC”)**

This tax is levied upon debits and credits in bank accounts opened in Argentine Financial Institutions (such as banks) and upon other transactions which, due to their special nature and characteristics, are similar or could be used in place of a bank account, such as payments on behalf of or in the name of third parties, procedures for the collection of securities or documents, notes and transfers of funds made by any means, when these transactions are performed by Argentine financial entities.

The general rate of the tax is 0.6% although there are reduced rates of 0.075% and increased rates of 1.2%.

#### **v Excise Tax (or Internal Tax)**

In general, these taxes are levied on the consumption of certain goods. The sale of tobacco, alcoholic beverages, sumptuary goods, the provision of cellular and satellite phone services to consumers, soft drinks, syrups, extracts and concentrates, motorcars and engines, insurance policies and other goods are taxed. The applicable rates vary according to the goods concerned and in general, are imposed on the sales price.

Provincial taxes

#### **vi Gross Turnover Tax (“GTT”)**

The GTT is a local tax levied on gross revenues resulting from commerce, industry, profession, business, services or any other activity conducted on a regular basis within the respective jurisdiction. Each of the provinces and the Autonomous City of Buenos Aires applies a different tax rate depending on the type of activity. The tax rate will depend on the local jurisdiction involved. In the Autonomous City of Buenos Aires, the tax rates vary from 0.75% to 15%.

#### **vii Stamp Tax (“ST”)**

The ST is a local tax levied on public or private instruments executed in a province or in the Autonomous City of Buenos Aires or, when executed abroad, when said instruments have effects in one or more provincial jurisdictions.

As regards the Autonomous City of Buenos Aires, the general ST rate amounts to 1% and unless the Tax Code provides a specific treatment, the tax is computed with respect to the economic value of the instrument.



## viii Free Transmission of Goods Tax

The Province of Buenos Aires establishes a tax on free transmission of assets levied upon the enrichment obtained as a result of any transfer received for no consideration, including: inheritance, legacies, gifts, inheritance advances, and any other transfer that implies an economic enrichment in exchange for nil consideration.

## ix Municipal taxes

Municipal taxes are imposed for the provision of various services related to industrial safety, public hygiene, lighting, etc. Please note that the municipal tax treatment must be analysed in each jurisdiction and in the Autonomous City of Buenos Aires.

### c. Differences between income shown on tax returns and local financial statements

The values reflected in tax returns may show certain differences from the financial statements, regarding the differences in the concept of accrual of revenues and expenses, the utilisation of amortisation rules, the deductibility of certain expenses and the treatment of applicable exemptions, among others.

## 2. RECENT DEVELOPMENTS

On 29 December 2017, Act No 27,430 (the “Tax Reform Act”), was published in the Official Gazette. The Tax Reform Act introduces several modifications to the former tax regime. The Tax Reform Act is generally effective 1 January 2018. Specifically, the Tax Reform Act introduces amendments to the IT Act (both at corporate and individual levels), VAT law, tax procedural law, criminal tax law, social security contributions rules, tax on fuels and tax on the transfer of real estate, among other things.

On 29 December 2019, the Official Gazette published Act No. 27,541, which once again implemented significant modifications to the tax regulations in force in Argentina, even leaving without effect some of the modifications previously introduced by the Tax Reform Act and its implementing regulations. In this sense, Act No. 27,541, declares a public emergency in economic and financial, tax, administrative, pension, tariff, energy, health and social matters and grants special powers to the National Executive Branch until 31 December 2020.

Also, Act No. 26,190, as amended by Act No. 27,191, sets forth the Renewable Energies Promotional Regime which tends to incentive 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.

As of 1 September 2019, new foreign exchange restrictions were reinstated in Argentina.

### Measures in response to COVID-19

The pandemic declared by the World Health Organisation due to the global spread of the epidemic generated by the coronavirus, COVID-19 forced governments around the world to take immediate and extraordinary actions to cope and overcome this crisis. Although many of these measures have since expired in Argentina, we include below a number of headlines as these may still be relevant in the context of tax due diligence processes in Argentina.

In particular, in order to avoid the expansion and to mitigate the effects of the coronavirus in Argentina, the Argentine Government took several measures. In this regard, although the Argentine Federal Tax Authority (“AFIP”) suspended the deadlines applicable to administrative proceedings dealing with the application, collection and supervision of federal, social security and customs taxes from 18 March 2020 to 29 November 2020, no deferrals were generally contemplated for filings of tax returns and/or tax payments at the federal level (except for specific cases).



An Economic Emergency Program (the “Program”) was created addressed to employers and employees affected by the health emergency. Among the benefits provided by such Program, we would highlight: (i) the postponement for the deadline payments or reduction of social security contribution; (ii) allocation of a complementary salary by the National Government for employees of the private sector; etc.

Other measures related to tax deferrals that were taken by the federal authorities included:

- Extension of specific deadlines in PAT.
- A new moratorium was established for fiscal, customs, social security debts, or fines related with said concepts.
- Suspension of the exclusion procedure and ex officio deregistration from the Simplified Regime for Small Taxpayers for taxpayers who do not meet the requirements of such regime.
- Extension of the entrance into force of the new debit and/or credit notes issuance regime up to 1 July 2020.
- Extension of the term for the communication to AFIP of some tax free reorganisations.
- Extension of deadlines and specific payment facilities in IT.
- Extension of deadlines for VAT.
- Extension of deadlines for tax return filing and payment of social security contributions.
- Suspension of tax claim proceedings.
- Suspension of precautionary injunctions to micro, small and medium size companies.

At the federal level, temporary rate reductions on TDC were granted for employers in specific activities within the healthcare business.

Note that a one off tax on big fortunes was approved by the legislative branch in order to outweigh the economic effects of the Pandemic. At the provincial level, specific measures were implemented by certain tax authorities to counteract the economic impact of COVID-19.

## 3. SHARE ACQUISITION

### a. General Comments

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

The procedure is simple and without substantial tax cost. The Argentinean company retains its tax losses and credits in the hands of the buyer. The company retains its asset basis and depreciation terms. Any liabilities of the company, including tax liabilities, that are not satisfied in connection with the acquisition will continue to be liabilities of the company and thus, it is typical to perform a due diligence process and then to also include representations, warranties and indemnities considerations in the purchase agreement. If the Argentine company's shares are purchased by an Argentine company, the acquisition cost of the shares cannot be depreciated for Corporate Income Tax (“CIT”) purposes. Regarding acquisitions or investments, the Tax Reform Act allows the application of certain actualisation methods established in the CIT Act under certain conditions. Under the Tax Reform Act, taxpayers are allowed to adjust the tax base of certain assets purchased after 1 January 2018, to take into account the effects of inflation.



## *From a seller's perspective:*

The procedure is simple. However, the revenues obtained could be subject to Gross Turnover Tax ("GTT"). The sale of SA, SAU, and SAS shares or SRL quotas by Argentine or foreign companies and Argentine or foreign Individuals is subject to corporate income tax or income tax accordingly. Although the tax debts are transferred to the buyer, the directors of the Argentinian company who were in charge during the period of such tax debt would remain jointly and severally liable if the Argentinian company does not pay the tax debt claimed by the Argentinian Federal Tax Authority ("AFIP").

### **b. Tax Attributes**

No restrictions should apply to the use of tax attributes following change in control.

### **c. Tax Grouping**

Tax grouping is not allowed in Argentina.

### **d. Tax Free Reorganisations**

Argentina's CIT Act provides for three different types of tax free reorganisation procedures: merger, spin-off or transfer within the same economic group. The law sets forth special provisions required to achieve a tax free reorganisation 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 reorganisation is not subject to either federal taxes (i.e. CIT and VAT) or, in certain cases, to provincial taxes (i.e. GTT and ST). Failure to comply with these requirements triggers the collapse of the tax free reorganisation regime and it therefore, becomes subject to applicable federal and provincial taxes.

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

- ❖ The owners of the previous company or companies must have held at least 80% of their capital in the two years prior to the reorganisation. This requirement is mandatory only with respect to the transfer of tax losses and promotional regime benefits.
- ❖ Capital must be maintained at the moment of and after the reorganisation.
- ❖ The companies must have been conducting the same or related business prior to the date of reorganisation.
- ❖ The same or related activities of the previous company must be continued for at least two years from the date of the reorganisation.
- ❖ A tax report must be filed with the Argentinian Federal Tax Authorities ("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 reorganisation. Exceptions are made in fulfilling the requirement of related activities prior to the tax free reorganisation, the requirement of conducting business prior to the tax free reorganisation and certain capital requirement differences.



## e. Purchase Agreement

The Purchase Agreement may be subject to Stamp Tax (“ST”).

The ST rates vary according to the jurisdiction involved.

As an international standard, the following items are listed in a stock purchase agreement:

- ❖ Name of company.
- ❖ Par value of shares.
- ❖ Name of purchaser.
- ❖ Warranties and representations made by the seller and purchaser.
- ❖ Possible employee issues such as benefits and bonuses.
- ❖ How many shares are being sold.
- ❖ Where and when the transaction takes place.
- ❖ Indemnification agreement over costs that are unforeseen.

## f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Gains from the transfer of SA, SAU and SAS shares, SRL quotas and other securities are subject to Argentine IT, regardless of the type of person who obtains the income.

Capital gains obtained by Argentine corporate entities derived from the sale, exchange or other disposition of shares are subject to Corporate Income Tax (“CIT”) at the rate of 35%/30%/25% for fiscal years beginning as from 1 January 2021. Any loss derived from the transfer of shares may only be offset against profits of the same source from the same type of transactions.

Income obtained by Argentine resident individuals from the sale of shares is subject to Income Tax (“IT”) at a 15% rate on net income, unless the securities were traded on a stock market or have public offering authorisation, 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.

Capital gains obtained by non-Argentine resident individuals or non-Argentine entities from the sale, exchange or other disposition of shares are exempt from income taxes to the extent the shares are issued by an Argentine company and are authorised for public offering by the Argentine Securities Exchange Commission (“CNV”). The exemption on the sale of Argentine shares applies only to the extent that the foreign beneficial owners reside in and their funds come from, jurisdictions considered as cooperative. If the exemption does not apply, the gain derived from the disposition of shares is subject to Argentine income taxes at either (1) a 15% rate on the net income or (2) a 13.5% rate on the sales price unless the seller resides or channels its funds through non-cooperative jurisdictions in which case the rate increases to 31.5%. Please note that these rates may be reduced in certain scenarios due to the application of a Double Tax Treaty (“DTT”).





In addition, some indirect tax may apply to the transfer of shares. At the federal level TDC may apply and at provincial level, GTT, ST and Free Transfer of goods tax also may apply.

The Argentine CIT/IT Act defines “non-cooperative jurisdictions” as those countries or jurisdictions that have not entered into an agreement to exchange information for tax purposes or a non-double taxation treaty with Argentina with a broad exchange of information clause, as well as those countries that entered into such agreements but do not effectively comply with such exchange of information provisions. The agreements and conventions above mentioned must comply with the international standards of fiscal transparency and information exchange regarding fiscal matters to which Argentina has agreed to be subject to. The regulatory decree of the IT Act, establishes the list of “non-cooperative jurisdictions”.

## **g. Share Purchase Advantages**

- ❖ The purchaser of shares will not be subject to tax in connection with the transaction.
- ❖ Corporate Income Tax losses and tax credits remain in the company and consequently, are “transferred” to the purchaser.
- ❖ Capital gains derived from the transfer of shares obtained by Argentine individuals and non-Argentine residents are taxed on a perception basis (cash-basis accounting method).
- ❖ A share acquisition has tax advantages over an asset purchase, especially when the main assets of the target are real estate.

## **h. Share Purchase Disadvantages**

- ❖ The disadvantage of a share purchase is that the liabilities of the target remain in the company and consequently, are “acquired” by the purchaser.
- ❖ The company retains the depreciation terms of its fixed assets. It is not possible to perform a step-up in value of the assets.

## **4. ASSET ACQUISITION**

### **a. General Comments**

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

The procedure is complex. The tax losses of the seller's company are not transferred to the buyer unless the transfer is of a going concern under a tax free reorganisation provisions. The business' non-assessed tax and social security liabilities are not transferred from the seller to the buyer if the appropriate notification to the Argentinian Federal Tax Authorities (“AFIP”) is made prior to the transfer of the assets and if the AFIP does not take any action afterwards, within a certain period of time. However, the business' 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*

The procedure is complex. The sale of assets is subject to taxation. The tax impact for the seller is made up of income taxes, VAT on the transfer of certain assets (VAT is usually not an economic cost for Argentinian taxpayers), TDC, GTT (generally fixed assets are exempt from this tax) and ST on certain agreements. The seller's tax losses are not transferred to the buyer, unless the transfer is of a going concern under a tax free reorganisation. The seller always remains liable for tax debts related to the assets.

### **b. Purchase Price Allocation**

There are no specific rules governing the allocation of purchase price. Market valuation is used in certain cases; for example, transactions in which the price is undetermined, transactions in immovable assets and transfer of ongoing concern, among others.

### **c. Tax Attributes**

The only way to transfer tax attributes is to carry out a tax free reorganisation within the same economic group.

As mentioned above, Argentina's CIT/IT Act provides for a type of tax free reorganisation procedure which consists of a transfer of assets within the same economic group. The transfer will qualify as a tax-free reorganisation under Argentina's CIT/IT Act if certain requirements are met. In this case, attractive tax benefits would apply. Failure to comply with these requirements triggers the collapse of the tax free reorganisation regime.

### **d. Purchase Agreement**

The Purchase Agreement may be subject to ST. The ST rates vary according to the jurisdiction involved, in the range of 0,8% and 1,5% (tax rates are higher in case of real estate transactions).

### **e. Depreciation and Amortisation**

The CIT/IT Act does not provide for amortisation periods. In general, accounting rules are applied and straight line depreciation is commonly used. As a general rule, Argentina's CIT/IT Act does not allow the amortisation 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 these purposes.

### **f. Transfer Taxes, VAT**

The tax impact for the purchaser would be VAT on the transfer of movable assets other than shares, TDC on Argentine bank accounts and ST on certain agreements. 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.



## **g. Asset Purchase Advantages and Disadvantages**

The disadvantage of this alternative is that the sale of assets will be subject to taxation.

In addition, the unpaid assessed tax and social security liabilities of the seller will be transferred to the purchaser.

The other disadvantage of this alternative is that the income derived from the sale of assets obtained by an Argentine entity is subject to taxation on an accruals basis. The seller's tax benefits (such as promotional regimes and tax exemptions) may not be available or be "transferred" to the buyer.

The advantage of this alternative is that the non-assessed tax and social security liabilities of the business will not be transferred from the seller to the purchaser if the appropriate notification to the AFIP is made prior to the transfer of the assets and if the AFIP does not take any action afterwards within 3 months from the notification.

An additional advantage is that the purchaser may depreciate the acquisition cost of the portion of the purchase price corresponding to the fixed assets. The purchaser may not deduct the depreciation of trademarks.

Another advantage is that for assets acquired since tax periods commencing as of 1 January 2018, taxpayers are entitled to update the cost of the assets.

## **5. ACQUISITION VEHICLES**

### **a. General Comments**

The structuring of investments in Argentina may be achieved by using local and foreign companies, trusts and mutual funds.

### **b. Foreign Acquisition Vehicle**

In general, it is possible to acquire assets through a foreign vehicle directly, except that regulatory restrictions apply (for example, in case of rural lands and border areas). The possession of assets by foreign entities simplifies taxation because, in general, it may reduce local tax impact. If the acquired assets will be used in a business or other activity, it would be advisable to use a local vehicle.

### **c. Strategic vs Private Equity Buyers**

There is no special tax treatment applicable to investments carried out by partnerships and joint ventures organised abroad.



## 6. ACQUISITION FINANCING

### a. General Comments

Currency controls in Argentina, abandoned between late 2015 and 2016, were reinstated in September 2019 and are now in place for an indefinite period. Since exchange control regulations in Argentina are prone to change regularly, applicable regulations should be checked on a case by case basis.

### b. Foreign Acquirer

It is advisable to invest from a jurisdiction which has a DTT in force with Argentina, in order to mitigate the tax impact. In general, tax treaties may allow a tax rate reduction in case of distribution of dividends and sale of shares. They could also establish certain protections.

Argentina has a DTT in effect with Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Mexico, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, the UK, the United Arab Emirates and the State of Qatar. The treaties signed with the Republic of China, Japan, Luxembourg, Austria and Turkey are still undergoing the respective ratification procedures. There is currently no DTT in effect between Argentina and the United States.

### c. Debt

There are no specific limitations on the use of debt.

#### i Limitations on Interest Deductions

The Tax Reform Act provides a new limitation on the deduction of interest expense arising from debts owed to related parties (either local or foreign) and replaces the previous rule applicable to a debt to equity ratio exceeding 2:1. The new limit will be the greater of 30% of earnings before interest, depreciation, and amortisation, or an amount to be fixed by the executive authority. If deductible interest is less than the deductibility threshold, the unused limitation can be carried forward for three tax years. Likewise, if the interest amount exceeds the limit, the difference can be carried forward for five tax years.

Notwithstanding the above, the limitation will not apply on the following situations:

Subjective exceptions:

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

Objective exceptions:

- ❖ Commercial debts.
- ❖ The amount of interest income earned by the Argentinian entity.
- ❖ Interest with respect to which it can be shown that the recipient paid IT in Argentina.

These rules are effective for tax years beginning on or after 1 January 2018.



## ii Related Party Debt

In the case of related party debt, the IT Act limits the deduction of interest and exchange differences. In addition, interest on related party debt is subject to transfer pricing rules.

## iii Debt Pushdown

Common strategies to push down debt on acquisitions include a leveraged buyout of the target company. Under this scenario the AFIP does not allow Argentinian entities to deduct interest payments if the proceeds of the loan are applied to the acquisition of an Argentinian company's shares.

In this regard, the Argentinian Federal Tax Authority ("AFIP") has issued administrative rulings in the last years that have not allowed such interest deductions. There is also a precedent from Argentina's Federal Tax Court upholding the AFIP's position, which was subsequently confirmed by the Federal Court of Appeals (and the Federal Supreme Court for procedural reasons). Although there are also recent judicial precedents supporting the opposite position, the Federal Supreme Court issued a decision against the taxpayer on 15 July 2021.

If the Argentinian 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. The AFIP does not allow the interest deduction in such a case. However, there is a precedent from Argentina's Federal Tax Court allowing the deduction in this case, which has also been confirmed by the Federal Court of Appeals (and the Federal Supreme Court for procedural 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 reorganisation regime certain requirements must be met.

## d. Hybrid Instruments

An alternative to debt pushdowns in the context of an acquisition is the use of hybrid instruments. Case by case analysis should be performed.

## e. Other Instruments

There are tax benefits applicable to listed notes, financial trusts, mutual funds and loans executed by multilateral organisations.

## f. Earn-outs

Earn outs are common and are generally structured as an increase in purchase consideration.



## 7. DIVESTITURES

### a. Tax Free

In the case of listed shares, the divestiture is not subject to tax.

### b. Taxable

Please refer to our comments inserted above.

### c. Cross Border

There are no specific rules to note here.

## 8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

### a. Worldwide or Territorial Tax System

Argentinian federal tax is imposed on worldwide net income of Argentine resident individuals and legal entities.

### b. CFC Regime

There are CFC regulations by which most foreign vehicles would be considered transparent for tax purposes. In this regard, the new CFC legislation implemented under the Tax Reform Act requires specific and detailed analysis to determine whether the Argentine resident should be taxed, even where no dividend or profit distributions were made by the foreign controlled vehicle.

### c. Foreign Branches and Partnerships

Foreign branches of an Argentine entity would be considered transparent for tax purposes. Argentine branches of foreign companies would be taxed as corporations.

### d. Cash Repatriation

Dividends distributed by foreign companies to Argentine individuals are subject to IT in Argentina under tax rates ranging from 5% to 35%. If the dividends are distributed to local companies they are subject to CIT in Argentina at one of 35%/30%/25% tax rates depending on the profits obtained in the tax period..

Another way of structuring the cash repatriation is the redemption of shares. In this sense, if a foreign company redeems shares, (i) a taxable dividend is generated if the Argentine company has retained profits and (ii) also IT derived from capital gains is triggered estimated between the net worth of the Argentine company and the acquisition cost of the shares.



Also, an additional cash repatriation technique is for an Argentine resident (individual and/or legal entity) takes up a loan from a foreign beneficiary. In this sense, as a general rule, interest paid by an Argentine borrower to a foreign lender would be deemed Argentine source income subject to income tax withholding in Argentina at the time payment takes place. Also, the Argentine resident should pay the VAT derived from the interest accrued under the loans at the time interest payments take place or at the maturity date, whichever occurs first.

In case the debts are obtained with related parties certain conditions should be met in order to determine the interest expenses and FX differences for income tax purposes.

In addition, note that certain local jurisdictions have created GTT withholding regimes that may apply to interest received by foreign lenders. Finally, it is important to bear in mind the foreign exchange restrictions that have been reinstated in Argentina in order to make payments to foreign related parties.

## 9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

### a. Special Rules for Real Property, including Shares of “Real-Property-Rich” Corporations

The sale of real estate is subject to tax on net income. The final corporate income tax of Argentine legal entities is calculated at the end of the fiscal year by applying the 35%/30%/25% corporate income tax rates, as appropriate, for fiscal years beginning as from 1 January 2021. The net income arising from the real estate transaction is equal to the difference between the sale price and the acquisition cost of the land plus the depreciated construction and improvement 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.

Inflation has recently been high in Argentina and until 1 January 2018, inflation adjustments were not allowed for tax purposes. Therefore, until fiscal years beginning on or after 1 January 2018, any capital gain from the sale of real estate could be high since the real estate cost is historical.

The Tax Reform Act creates a Revaluation of Assets Regime for Taxation and Accounting Purposes and foresees a regime of actualisation of assets.

Under the Tax Reform Act, taxpayers are allowed to adjust the tax base of certain assets purchased after 1 January 2018, to take into account the effects of inflation.

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 in a deferral of recognition of built-in gains. General depreciation rules provided in the CIT/IT Act are then applied on the cost of the new asset reduced by the assigned income amount. This option is available to the extent that both operations 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 sale of real estate may be subject to GTT. Generally, the sale of fixed assets is exempt from GTT.

The sale of real estate is subject to the ST in the Autonomous City of Buenos Aires at a rate of 3.6%. If the real estate is in a jurisdiction other than the Autonomous City of 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:

- ❖ Direct acquisition of the real property made by a local vehicle (e.g. an Argentine corporation or branch); or
- ❖ Acquisition of shares in an Argentine corporation that owns the real property.

The applicable tax treatment for each of the referred scenarios would have certain advantages and disadvantages. The chosen alternative will depend on the purpose of the transaction.

There are no specific rules regarding shares of “real-property-rich” entities.

As mentioned, capital gains obtained by non-Argentine resident individuals or non-Argentine entities from the sale, exchange or other disposition of shares is exempt from IT/CIT if the shares are issued by an Argentine company and they are authorised for public offering by the Argentine Securities Exchange Commission (“CNV”). The exemption on the sale of Argentine shares applies only to the extent that the foreign beneficial owners reside in, and their funds come from, jurisdictions considered as cooperative. If the exemption does not apply, the gain derived from the disposition of shares is subject to Argentine IT at either (1) a 15% rate on the net income or (2) a 13.5% rate on the sales price unless the seller resides or channels its funds through non-cooperative jurisdictions in which case the rate increases to 31.5%. These rates may be reduced due to the application of a Double Tax Treaty (“DTT”).

## **b. CbC and Other Reporting Regimes**

On 20 September 2017, General Resolution AFIP N° 4130-E (“GR N° 4130-E”) was published in the Official Gazette, in which the AFIP set forth an annual information regime related to Country-by-Country Reporting (“CbCr”), aligned with BEPS Action 13. This obligation applies to multinational enterprise groups (“MNE Groups”) with total consolidated revenue equal to or greater than EUR 750 million, or its equivalent in the local currency converted to the exchange rate as of 31 January 2015, for the fiscal year prior to the year being reported. CbCr introduced by GR N° 4130-E consists of an annual information return through which MNE Groups must identify the jurisdictions in which they operate, the entities that are part of the group and the economic activities they perform. In addition, MNE Groups must provide information related to revenue allocation, profits, accrued and paid IT, number of employees, and other information for each jurisdiction in which they perform activities through subsidiaries or permanent establishments.

GR 4130-E provides an additional reporting regime applicable to Argentine entities belonging to MNE Groups. Those entities must report the ultimate parent company of the MNE Group or the entity that actually filed the CbCr in its respective jurisdiction, should it differ from the ultimate parent company. The CbCr deadline is the last business day of the twelfth month following the end of the ultimate parent's reporting year. The regime is applicable for tax periods of the ultimate parent company beginning after 1 January 2017. Failure to comply with the obligations set forth in GR 4130-E will result in the penalties established in the Procedural Tax Law. Moreover, taxpayers will be subject to inclusion in a higher tax audit category, the suspension or exclusion from Special Tax Regimes in which they might be registered and/or the suspension of the Certificates of Exclusion or Non-Withholding proceedings that may have been requested by the taxpayer.





## 10. TRANSFER PRICING

Argentina's CIT/IT Act also provides transfer pricing provisions under which any payment to a non-Argentinian related party made by an Argentinian taxpayer must be made under the arm's length principle. This provision basically holds that any transaction between related parties must be regarded as entered into 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. 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 reported in the information returns and the acceptability of the comparability criteria used in determining such prices.

Note that, in accordance with Section 17 of the IT Act, transactions entered into by Argentinian 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 to conform to the arm's length principle and therefore, will be subject to the transfer pricing rules.

## 11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

### a. Use of Hybrid Entities

Act No. 27,440 introduced significant changes to the Argentine Capital Markets regulations. Among other changes, this law amends the Mutual Funds and Trusts' regulations and provides certain tax benefits for new taxation for publicly offered mutual funds and trusts.

In this sense, said law establishes that closed mutual funds and trusts would be "transparent" for income tax purposes.

Foreign investors, Argentine resident individuals and undivided estates would be entitled to low tax rates (from 15% to 0%) on distributions made by Closed Mutual Funds or Financial Trusts to the extent certain conditions are met. As noted in section 1, to explain the concept of undivided estates; in Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased's patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g., to pay taxes. This is known as an "undivided estate". In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death are considered Argentine residents for taxation purposes.

Also, certain Argentine entities (e.g. S.R.L.) are considered "transparent" under US law in order to consolidate the results.

### b. Use of Hybrid Instruments

There are no hybrid instruments in Argentina.



## c. Principal/Limited Risk Distribution or Similar Structures

It will depend on the kind of transaction to be executed. In general, the distribution of the risk may be established contractually.

Also, the full range of risk allocation models are possible from principal through to limited risk distributors and commissionaires, among others.

## d. Intellectual Property

Registration of contracts establishing licenses of trademarks, patents and other industrial rights as well as transferring technology confers very important benefits in regard to the taxation of royalties paid to foreign right holders.

## e. Special Tax Regimes

❖ The main available national regimes that establish tax benefits in Argentina are:

❖ “Regime for the Promotion of the Knowledge Economy” (Act No. 27,506).

❖ “National Promotional Regime for the Use of Renewable Sources of Energy” (Act No. 26,190 and Act No. 27,191 as amended).

❖ “Permanent nature of the Productive Recovery Programme”. (Act No. 27,264).

❖ “Promotional regime for entrepreneurial activity”. (Act N° 27,349).

❖ “Regime of Regulation and Promotion for the Production and Sustainable Use of Biofuels” (Act No. 26,093).

❖ “Investment Act for Cultivated Forest” (Act No. 25,080).

❖ “Industrial Promotion Scheme” (Acts No. 21,608 and No. 23,658).

❖ “System of exports that are commercialised under the modality of “Turnkey Contract”(Decree No. 870/2003).

❖ “Drew-Back Regime” (Decree No. 177/1985 as amended)

❖ “Customs-Free Zones” in certain Argentine local jurisdictions.

❖ “Productive Financing Regime”(Act No. 27,440).

❖ “Investment Promotion Regime for the Exploitation of Hydrocarbons” (Decree No.929/2013).

❖ “Mining Investment Law” (Act No. 24,196).

For example, the most common tax benefits foreseen in said regimes are, among others: i) Anticipated VAT refund; ii) Accelerated amortisation of certain assets for IT purposes; iii) Tax certificate to be applied to the cancellation of certain taxes (e.g. IT, VAT); iv) Fiscal Stability; v) Exemption from customs import; and vi) Exemption in ST and GTT to the extent the Argentine local jurisdiction has adhered to the regime involved.



## 12. OECD BEPS CONSIDERATIONS

On 7 June 2017, Argentina signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” to update most of its DTT in line with BEPS. Congressional approval has not been given yet. Note that certain DTT have already included these modifications.

On 29 December 2017, the Tax Reform Act was approved (effective as of 1 January 2018) and many of the changes introduced are in line with OECD and BEPS standards, regarding thin capitalisation rules, permanent establishment assessment rules, “sixth method” regarding transfer pricing rules, Country by Country reporting, Mutual Proceeding Arrangements, Advance Pricing Proceedings and other matters.

Also, in line with the OECD, in Argentina a tax information regime was implemented. In this regard, General Resolution AFIP N° 4697/2020 provides for the obligation of Argentine entities to disclose the “Beneficial Owners” of their shareholders and/or related entities and the implementation of a Registry of foreign entities obtaining passive income.

BEPS measures are not new in Argentina. During recent years the Argentine tax authorities have challenged tax motivated transactions and structures on the basis of the ‘substance over form’ principle 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.

## 13. ACCOUNTING CONSIDERATIONS

From an accounting viewpoint, it is necessary to distinguish transactions between unrelated parties (business combinations) from transactions within the same economic group (corporate reorganisations) because the accounting treatment depends on this distinction.



## 14. OTHER TAX CONSIDERATIONS

### a. Distributable Reserves

If an Argentinian company does not have sufficient reserves to make a distribution, certain alternatives are available, including a loan or a contract for the provision of services.

### b. Application of Regional Rules

Argentina applies only internal law and international treaties to which Argentina is a party.

### c. Tax Rulings and Clearances

There are binding rulings (regarding general consultation carried out by taxpayers), advanced pricing agreements (regarding transfer pricing) and mutual agreement procedures (regarding DTT).

## 15. MAJOR NON-TAX CONSIDERATIONS

In general, there are no restrictions applicable to foreign investors. As of 1 September 2019, new foreign exchange restrictions were reinstated in Argentina. The formation of a corporation is relatively simple and easy, though there are certain restrictions regarding fields, lands and border areas.



## 16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %
Australia	10 / 15	0 / 12	10 / 15
Belgium	10 / 15	0 / 12	3 / 5 / 10 / 15
Bolivia	No limit	No limit	No limit
Brazil	10 / 15	0 / 15	10 / 15
Canada	10	0 / 12.5	3 / 5 / 10 / 15
Chile	10 / 15	4 / 12 / 15	3 / 10 / 15
Denmark	10 / 15	0 / 12	3 / 5 / 10 / 15
Finland	10 / 15	0 / 15	3 / 5 / 10 / 15
France	15	0 / 20	18
Germany	15	0 / 10 / 15	15
Italy	15	0 / 20	10 / 18
Mexico	10 / 15	0 / 12	10 / 15
Netherlands	10 / 15	0 / 12	3 / 5 / 10 / 15
Norway	10 / 15	0 / 12.5	3 / 5 / 10 / 15
Russia	10 / 15	0 / 15	15
Spain	10 / 15	0 / 12	3 / 5 / 10 / 15
State of Qatar	5 / 10	0 / 12	10
Sweden	10 / 15	0 / 12.5	3 / 5 / 10 / 15
Switzerland	10 / 15	0 / 12	3 / 5 / 10 / 15
United Arab Emirates	10 / 15	0 / 12	10
United Kingdom	10 / 15	0 / 12	3 / 5 / 10 / 15

Please note that the treaties signed with the Republic of China, Japan, Luxembourg, Austria and Turkey are still undergoing the respective ratification procedures.



## 17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax at federal, provincial and municipal level. Provide all significant audit correspondence. Indicate whether the statute of limitations has been extended for any period.
4	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
5	Tax Due Diligence	General	A summary of all material tax attributes and their years of expiration. In addition, a summary of any limitations with respect to the use of such attributes.
6	Tax Due Diligence	General	Audited financial statements. Copies of the tax provision work papers supporting the Company's most recent financial statements. Copy of the Company's most recent tax provision calculation for the current period.
7	Tax Due Diligence	General	A broad review of the Company's obligation as withholding agent on the different withholding tax regimes (national, provincial and municipal). Tax returns submitted as "withholding agent" on the different tax regimes.
8	Tax Due Diligence	General	A schedule of any significant recent acquisitions or dispositions or indemnities. Include copies of acquisition agreements. In addition, provide any related tax due diligence reports, structure slides and a description of the manner in which the basis of any asset was stepped-up.
9	Tax Due Diligence	General	Copies of any tax sharing or indemnity agreements. Include a description of any other arrangement pursuant to which tax liabilities could be inherited or have been indemnified against (including several liability).
10	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements. Transfer Pricing reports.
11	Tax Due Diligence	General	A report that describes the tax status of the Company and a list of all local tax jurisdiction in which it is authorised to do business.
12	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas. Information about administrative and judicial claims.
14	Tax Due Diligence	General	A list and description of any country, provincial, state or local tax credits or incentives.



Nº	Category	Sub-Category	Description of Request
15	Tax Due Diligence	General	Debt Status and Compliance Status from the AFIP website (www.afip.gov.ar).
16	Tax Due Diligence	General	Complete texts of all certificates, agreements, letters or similar documents for Company which are currently in effect or pending before any tax authority.
17	Tax Due Diligence	General	Letters of auditors and/or reports prepared by legal counsel regarding pending/ongoing tax administrative and/or tax judicial processes against the company or filed by the Company (including current tax assessments) in the last five years.
18	Tax Due Diligence	General	A list of tax amnesties under which the Company may have scheduled debt over the last five tax years and the months elapsed of the current fiscal year.
19	Tax Due Diligence	General	Sums and balances.
20	Tax Due Diligence	General	A schedule of tax loss and tax credit carry forward (including, date incurred, amount and expiry date) for the Company as of the end of the most recent fiscal and as expected as of the closing date.
21	Tax Due Diligence	General	Inform sub-diaries purchases and sales.
22	Tax Due Diligence	General	Agreements and offer letters.
23	Tax Due Diligence	General	A list of agreements or commitments, especially those agreements related to a finance, royalty or service.
24	Tax Due Diligence	General	Copies of all tax returns of any kind filed within the last six years and receipts for taxes paid.
25	Tax Due Diligence	Income Tax	Information on all material differences between accounting and taxable income as of the most recent income tax filing date for the Company, including detail of each book-tax adjustment item.
26	Tax Due Diligence	Income Tax	Copies of all estimated tax payments made for the following two fiscal years.
27	Tax Due Diligence	Income Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers with adjustments made.
28	Tax Due Diligence	Income Tax	Estimated transaction expenses related to the proposed transaction.
29	Tax Due Diligence	Income Tax	A schedule of tax amortisation intangibles and goodwill and the projected run-off.
30	Tax Due Diligence	Income Tax	Copy of the Company's calculations for its interest expense limitations, if any.
31	Tax Due Diligence	Income Tax	Schedule of the Company's outstanding debt obligations (including debt to related parties) setting forth principal and accrued interest. For each obligation, include a schedule of any differences between the accrual and payment of interest. Also include copies of any calculations related to interest deductions attributable to original issue discount and applicable high yield discount obligations.



Nº	Category	Sub-Category	Description of Request
32	Tax Due Diligence	Income Tax	Description of the Company's significant tax accounting policies. Include a description of the tax accounting method used with respect to deferred or unearned revenue (including deposits) recorded in the financial statements.
33	Tax Due Diligence	Income Tax	Current estimate of taxable income for the following two fiscal years.
34	Tax Due Diligence	Value Added Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
35	Tax Due Diligence	Presumed Minimum Income Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
36	Tax Due Diligence	Personal Assets Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers. Confirm if the taxpayer qualifies as a compliant taxpayer.
37	Tax Due Diligence	Turnover Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
38	Tax Due Diligence	Other taxes applicable to the Company	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.





## FOR MORE INFORMATION CONTACT:



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