

Annual International Bar Association Conference 2019

Seoul, Korea

Recent Developments in International Taxation

Argentina

Nicolás Procopio

Allende & Brea

nop@allendebrea.com.ar

EXECUTIVE SUMMARY

During the course of this last year, a number of relevant modifications regarding international taxation were introduced in Argentina. Most of these changes were related to the profound amendment of the Argentine Tax System introduced by Law 27.430 enacted in December 2017. Among the most relevant modifications, we can mention the implementation of a Tax on Financial Transactions and new transfer-pricing provisions, the subscription of International Tax Treaties with China and Brazil and the creation of new export duties.

I. DECREE No. 1170/2018

As it was mentioned before, Law 27.430 enacted in December 2017, introduced profound amendments to the Argentine Tax System. Among these, we can highlight the modifications with respect to the Argentine Income Tax Law. Certain details and subtleties of these amendments ought to be regulated by way of a Regulatory Decree, which was finally published in December 2018. Below, find a list of some of the most relevant amendments introduced by Decree 1170/2018.

- ***Financial Transactions:*** In case an Argentine resident (either individuals or legal entities who are domiciled in Argentina) opts to sell their participations in investment funds, the income derived from such sale would be deemed exempted from tax as long as the main underlying asset which comprise the investment fund is considered exempted by the Income Tax Law.

On the contrary, if the main underlying asset is taxed, the income derived from the sale would also be taxed at a 5% or 15% depending on the currency of the fund.

- ***CFC Rules–Fiscal Transparency:*** Argentina has implemented fiscal transparency rules for controlled foreign corporations, which shall be deemed as tax transparent, as long as the foreign entity complies with certain requirements.

If the foreign entity is considered as tax transparent in light of the Argentine Income Tax Law, the Argentine resident will have to include the income arising from this kind of entities in its own annual tax returns.

- ***Transfer Pricing Provisions:*** The Decree provides with different methods in order to properly assess if the transaction meets arms-length provisions. Among the methods described, the taxpayer will have to apply the method which results most appropriate to best reflect the economic reality of such transaction.
- ***Documentation regarding international transactions:*** The Argentine Tax Authority may request the submission of information by means of tax returns on an annual basis, which among others, include (i) transfer pricing reports describing every international transaction, i.e., every operation performed with the intervention of foreign related parties or with individuals domiciled in “low tax jurisdictions” or “non-cooperative jurisdictions”, (ii) a principal report describing a global frame of the related international business; and (iii) a country by country report with the entities related to the international group.
- ***Transaction with international intermediaries:*** For the purpose of assessing import and export operations with an international intermediary, the Argentine taxpayer must evidence that the intermediary’s fee was negotiated within market standards. If the fee exceeds the one that non-related parties have agreed on, such excess must be deemed as a higher Argentine-source of income of the local taxpayer.
- ***Registration of Agreements:*** Export operations of quoted value assets, as well as export operations with international intermediaries, must be registered with the Argentine Tax Authority by the taxpayer, who must provide information regarding certain relevant details of the agreement.

II. EXPORT DUTY ON MERCHANDISE, GOODS AND SERVICES

By way of Decree No. 793/2018, published in the Official Gazette on April 9, 2018, the Executive Branch established an export duty of 12% of the value of the merchandise or goods exported or the official FOB price, to the export of all merchandise and goods included in the MERCOSUR Common Nomenclature’s tariff positions, in force until December 31, 2020.

As a consequence of this, the export of merchandise and goods such as salt, sulfur, stone, lime, cement, metal minerals, ores, slag, iron and steel, copper, nickel, aluminum etc. are subject to a 12% export duty. However, such export duty may not exceed ARS 3 or ARS 4 (depending on the merchandise or goods exported) for each

USD of the merchandise value or of the official FOB price's export duty, calculated on the value of the merchandise.

By way of Decree No. 1201/18, the Executive Branch introduced a new export duty on services. Under this new tax, services that are rendered within Argentina and whose effective use or exploitation takes place outside Argentine territory, will be taxed at a 12% of the taxable value resulting from the invoice. However, the 12% tax rate does not necessarily apply, as the Decree entails a cap of ARS 4 per USD subject to tax.

Nevertheless, "exporters of services" are not obliged to be included in the register of exporters, to obtain a license for exports or to submit export applications.

III. TAX ON DEBITS AND CREDITS IN BANK ACCOUNTS

Exemptions set forth in the Tax on Debits and Credits in Bank Accounts were widened, providing new exemptions for certain mutual investment funds, financial trusts and real estate sale and purchase operations.

In this way, bank accounts used exclusively in the development of the specific activity carried by an open-ended mutual investment fund will be totally exempted from tax. For close-ended mutual investment funds, this exemption will result applicable whenever the investments are focused in financing Small and Medium Sized Enterprises.

Such exemptions shall be applicable when (i) the assets comprised within the mutual investment fund consist of public or private securities or even credit rights arising from financing operations and (ii) every participation have public offerings, in accordance with relevant regulations.

IV. AMENDMENTS INTRODUCED BY THE PRODUCTIVE FINANCING LAW NO. 27,440

On May 9, 2018 the Argentine Congress sanctioned the so-called Productive Financing Law No. 27,440 which introduced significant amendments to the

Argentine Capital Markets (regulated by Law No. 26,831) as well as amendments to the Common Investment Funds Law No. 24,083 and to a number of tax regulations¹.

In connection with the amendments introduced to the Common Investment Funds Law No. 24,083, certain provisions established by that law were repealed and the creation of Open and Closed Common Investment Funds (“FCIs,” as per its Spanish acronym) was authorized with the objective of saving for voluntary retirement.

Also, the creation of funds for qualified investors was established, and new guidelines were introduced regarding the liquidation of the Open FCIs and the functioning of the ordinary and extraordinary assemblies of the Closed FCIs.

Section 205 of Law 27,440 established a new transparency regime for Trusts and FCIs pursuant to which they will be subject to Income Tax to the extent their shares or participation quotas were not placed through public offering. In case such placing through public offering existed, then they will be subject to Income Tax proportionally to the investments done abroad.

In case trusts and FCIs are not required to pay Income Tax, such income must be incorporated in the investor’s tax return. In case of foreign beneficiaries, Income Tax must be withheld by the Trusts and FCIs. Provided that certain requirements are met, the income tax payable by the investor may not exceed 15% and is only due when a distribution or redemption is made.

Also, Section 206 of Law 27,440 establishes a special 15% Income Tax rate for FCIs and Financial Trusts investing on real estate housing developments for low and medium income sectors and/ or mortgage loans, provided certain requirements are met. In addition, no taxation would be due by the investor if certain requirements are met.

V. RISE OF INTEREST RATES ACCRUED ON UNPAID FISCAL DEBTS

The Argentine Treasury issued in February 2019 Resolution No. 50/19, by means of which the interest rate applicable on unpaid fiscal obligations collectable by the

¹ Law No. 27,440 amended Law No. 20,091 allowing for the indexation of the deductible amounts of the sums paid for life insurance. Also, Law No. 23,576 of Negotiable Obligations was amended, stating that the issuance of Negotiable Obligations can be approved by the administrative body of the company if it is provided for in the company bylaws. However, entry into the public offering regime must necessarily be resolved by assembly of the shareholders.

Argentine Tax Administration was raised, and an automatic adjustment method for forthcoming periods was provided.

While compensatory interest rises from an original 3% monthly rate to a 4.5%, punitive interests –which start to accrue after enforcement procedure is initiated- rise from an original 4% monthly rate to a 5.6%

However, both compensatory and punitive interest rates will be automatically adjusted –quarterly- by using a formula based on the annual nominal interest rate payable by the Banco Nacion Argentina upon certain types of deposits.

VI. INFLATION ADJUSTMENT PROCEEDINGS

In November 2018, the Argentine Congress passed certain amendments to the Income Tax Law, particularly regarding the inflation adjustment proceedings. Such amendments were introduced considering the high inflationary process suffered in Argentina during 2018.

In this way, last paragraph of Section 95 of the Income Tax Law was amended, providing that inflation adjustment proceedings shall be applicable when the variance of the Consumer Price Index exceeds 55% for the first fiscal year, 30% for the second fiscal year and 15% for the third fiscal year, summing up a variation of 100% during a period of 3 consecutive years (as from January 1, 2018).

Nevertheless, in 2018, the Consumer Price Index recorded a variation of approximately 47.6%, turning the inflation adjustment proceeding inapplicable for fiscal year 2018.

VII. TAX TREATIES

During 2018, Argentina amended the existent Double Taxation Treaty with Brazil and signed a new treaty with China. Both treaties provide with dispositions in order to eliminate double taxation with respect of taxes on income as well as exchange of information provisions (upon request by any of the countries), evidencing Argentina's efforts to struggle with tax avoidance.

Although the tax treaty with Brazil is already in full force as from July 2018, the treaty with China will enter in force once both parties notify themselves through diplomatic channels that they have complied with domestic requirements for the entry into force of the tax treaty.

VIII. VALUE ADDED TAX ON DIGITAL SERVICES

Before the tax reform in 2017, there was no Value Added Tax on digital services rendered in Argentina by an individual or entities domiciled abroad. However, a new taxable event was introduced by Law 27.430, regarding the provision of digital services by individuals or entities domiciled abroad, as long as the use or effective exploitation is carried out in Argentina.

Decree No. 354/2018 and Resolution No. 4240/2018 issued by the Argentine Tax Authority published in May 2018 comes to regulate the mechanism to determine the provider's domicile, different mechanisms of payment, intermediaries acting as withholding agents and other relevant details.

IX. RESIDENCY FOR TAX PURPOSES

Argentine Tax Authority issued two resolutions expounding certain aspects of the Argentine fiscal residency for tax purposes. In particular, these resolutions clarify the treatment for double tax residency and loss of tax residency.

As per those regulations, the proceedings for accreditation of tax residence loss in Argentina are done online, filing certain documents set forth in the resolutions. Moreover, the resolutions define certain wording provided by the Argentine Income Tax Law, which were subject to discussion by tax experts, providing with much needed clarification.