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In this article, the author takes an in-depth look at Argentine Law 27,430, a major tax reform package that seeks to increase foreign investment by improving Argentina's tax attractiveness and align the country's tax system with the OECD's base erosion and profit-shifting project.

According to policymakers, the Argentine tax reform package known as Law 27,430, which took effect on January 1, 2018,[1] is the most comprehensive change to the nation's tax system in the last 50 years. Two major forces inspired this initiative: (i) the need make the local tax system less burdensome and, therefore, more appealing to foreign investors; and (ii) the desire to align Argentina's tax system more closely with the OECD's base erosion and profit-shifting initiatives. The U.S. tax cut on corporate income and similar initiatives in some European countries (for example, the Netherlands) added to this pressure and increased the global competition for foreign direct investment. Further, Argentina's formal request for admission to the OECD demanded an overhaul of its domestic tax framework.

Alongside Law 27,430, Argentina also passed a series of measures aimed at improving tax competitiveness at the state level. However, a major devaluation of the Argentine peso in mid-2018 prompted a need for additional revenue at the state level, and the state tax reforms are being revised.[2] In September, the federal government announced its willingness to postpone some of the local tax reforms, such as the gradual repeal of the provincial stamp tax. It also intends to increase the personal asset tax, going back on a previous commitment to reduce it. In fact, the Senate is now debating a proposal to increase the tax from 0.25 percent per annum to 0.50 percent and 0.75 percent, when the taxable assets exceed a threshold of ARS 3 million and ARS 18 million, respectively. Overall, 2018 has been a hectic tax year for Argentina's tax system and for its economy as a whole.

An Overview of and the Impetus for Reform

The first major impetus for Law 27,430 — namely, the desire to enhance Argentina's tax competitiveness — led to a major reduction of corporate income tax rates. The plan is to gradually reduce the corporate tax rate from 35 percent to 25 percent over a two-year period, with a 30 percent rate set for 2018 and 2019. The full burden on corporate income will, however, amount to an effective 35 percent tax burden on fully distributed business income. The current 7 percent withholding rate on dividends and profit distributions will increase to 13 percent for fiscal years beginning on or after January 1, 2020. The goal is to ensure that the tax system promotes reinvestment and capitalization of profits in the local market.

The bill also prospectively repeals the equalization tax on dividends and branch profit distributions from nontaxable income as of the bill's effective date. However, dividends

[1] William Hoke, "Congress Passes Tax Reform Bill, Including Corporate Tax Cut," *Tax Notes Int'l*, Jan. 8, 2018, p. 139.

[2] *See* Hoke, "Government Delays Soy Tax Cuts, Reduces Refunds on Other Exports," *Tax Notes Int'l*, Aug. 20, 2018, p. 831.

accumulated before January 1, 2018, remain subject to equalization tax on distributions — which means companies must carefully monitor the source of any dividends.

Reflecting the second major force behind the reform efforts, policymakers incorporated seven of the 15 OECD BEPS action plans into the tax reform bill. Thus, the reform package includes the following changes to the income tax law (ITL, or Impuesto a las Ganancias), VAT (at the federal level, Impuesto al Valor Agregado), and Tax Procedure Act (Ley de Procedimiento Tributario):

- Inspired by BEPS action 1, the VAT now covers digital services.
- In line with BEPS action 3, the reform package made material changes to Argentina's ITL and anti-deferral rules, including the addition of hard-to-avoid controlled foreign corporation provisions.
- BEPS action 4 inspired the complete overhaul of Argentina's thin capitalization rules.
- BEPS action 7 resulted in the addition of a new and comprehensive definition of permanent establishment. Previously undefined in Argentine tax law, it is now a specific section of the ITL.
- The BEPS action 10 report inspired major changes in the transfer pricing norms. Specifically, the reform bill eliminated some domestic law methodologies for taxing commodity exporters that are disfavored under the OECD's framework.
- BEPS action 13 inspired a new set of penalties and ad hoc sanctions for companies that fail to submit a country-by-country report or fail to comply with related data requirements from the Argentine Revenue Service.
- In line with the BEPS action 14 report, the government modified the Argentine Tax Procedure Act to regulate mutual agreement procedures for use in resolving double tax treaty controversies. Further, the reform package introduced an advance pricing agreement process, which was previously unknown in the local tax framework.

Law 27,430 implements tax cuts gradually to provide certainty and predictability while also ensuring that the cuts do not suddenly compromise federal revenues. Although the government approved the reforms by the end of 2017, most of Law 27,430 took effect on January 1, 2018.

The overall tax reform package includes two additional laws targeting both state taxes and federal transactional taxes:

- Law 27,249 documents an agreement between the federal government and the states to gradually repeal specified provincial taxes that are widely seen as economically inefficient. This includes the gradual elimination of the provincial stamp tax from 2019 through 2022, as well as the gradual reduction of the provincial gross turnover tax on primary and industrial activities. The goal is to fully repeal these taxes sometime between 2020 and 2022 — a target that looks ambitious since it requires substantial consensus among the federal government and all the state congresses. In fact, the Law 27,249 agreement is already undergoing revisions because of the economic downturn in mid-2018. As of November, the House of Representatives already amended this plan to postpone the gradual repeal of the stamp tax, as mentioned above. The Senate reaction is yet to come.
- Law 27,432 extended taxes that were about to expire. It also allows the federal executive branch to increase the amount of the bank debit and credit tax that can be offset against other federal taxes. The goal is to make tax fully creditable by 2022.

The following sections analyze some of the specific changes to the federal tax regime included in Argentina's reform effort, including amendments to the tax procedures as relevant to international transactions.

Federal Income Tax

General Changes to the Corporate Income Tax

With a material fiscal deficit left behind by the previous administration, which left power at the end of 2015, the Argentine government faced the challenge of making the tax system more appealing to foreign direct investors without compromising revenue. This proved to be a delicate balance. By mid-year, the federal

government experienced revenue shortages that led it to levy export taxes again, a decision it implemented on September 4 with Federal Executive Branch Decree 783/18. Export of services will be also taxed, according to a tax reform now approved by the House and that looks to soon be approved by the Senate as well. However, this choice — a decision that primarily targeted exporters, a group that has experienced a windfall of profits because of the major devaluation of the peso over the last four months — also helped the government to support the corporate income tax rate reduction under Law 27,430.

The Argentine tax reform effort reduced the tax rate on undistributed corporate income. For fiscal years that start from January 1, 2018, through December 31, 2019, the reforms reduce the relevant tax rate from 35 percent to 30 percent. As of January 1, 2020, the measures further reduce the tax rate for undistributed corporate income to 25 percent. If an entity distributes corporate income, the dividends face an additional 7 percent tax rate for 2018 and 2019. As of January 1, 2020, that rate will increase to 13 percent.

Given the substantial inflation that Argentina has experienced over the last 15 years, the government opted to reenact the inflationary adjustment. To this end, the tax reform package implements three major provisions:

(i) For assets acquired before 2018, taxpayers have the option to file for a revaluation using a comprehensive mechanism in Title X of Law 27,430. Taxpayers can revaluate most fixed, depreciable assets as long as they pay an ad hoc tax. The deadline for making this election is the last day of the first fiscal year that closes after January 1, 2018. To qualify, the taxpayer must pay a tax on the amount of the adjustment at a rate of 8 percent for noninventory real estate, 15 percent for inventory real estate, 5 percent for shares and equity participations, and 10 percent for all other assets. Revaluated amounts are not subject to the corporate income tax. However, if the taxpayer sells the relevant asset during the first or second year after the readjustment, the adjusted basis will be reduced by 60 percent or 30 percent, respectively.

The rules offer two methods for revaluating assets: (a) using a set correction factor that is included in the law for each year of acquisition, or (b) appealing to the Argentine Revenue Service for a substantiated independent appraisal. Companies should consider the pros and cons of electing for revaluation of specific assets in view of the type of asset, expected business use, level of ad hoc tax, and pending depreciation allowances. Actuarial analysis is recommended to reach a well-founded case-by-case decision.

(ii) For assets acquired as of January 1, 2018, the law provides for the adjustment of the basis using the internal wholesale price index. According to a draft bill evaluated by the House of Representatives, this reference would be changed to a consumer price index.

(iii) As for inflationary adjustments of the full financial statements — which usually involve cash-denominated assets and liabilities that are not subject to any other kind of inflationary correction (such as those mentioned in the two preceding paragraphs) — the reform provides that the full financial statements should be revalued if the variation of the national wholesale price index exceeds 100 percent during the previous 36 months before the end of the relevant fiscal year. Also, the reform includes two transitional fiscal years that may speed up an adjustment. In fact, inflationary correction may still be made if inflation exceeds 33 percent during the first year after the enactment of the tax reform or a cumulative 66 percent during the second year. These figures have been reviewed by the House, so that inflationary ratios that trigger full revaluation would be 55 percent during the first year, 30 percent during the second year, and 15 percent during the third year (that is, still a 100 percent cumulative inflation during the three fiscal years of Law 27,430's effectiveness).

Changes to tax inflationary adjustments are still under review, because of the major,

unexpected devaluation of Argentina's currency that occurred between March and August of this year. Personal asset tax increases and export taxes are also part of the same review, aimed at ensuring a faster approach to a zero fiscal deficit.

Finally, the tax reform package repeals the 35 percent equalization tax on distributed profits in excess of the company's taxable income, as long as those profits accrued on or after January 1, 2018. Accordingly, companies must monitor the source of any distributed dividends during the transitional periods.

The New PE Definition

Since its enactment in 1974, the ITL had not contained a comprehensive definition of a PE. Case law and tax treaty law helped to fill the void. However, that outcome proved insufficient in day-to-day practice, especially in the absence of a relevant double tax convention. The legislature has now acted to address this concern.

The new PE definition lines up with the standards of the OECD model income tax treaty and the guidelines in the BEPS project's action 7 report. The new provision defines a PE as a fixed place of business through which the business of an enterprise is wholly or partly carried on. It typically includes a place of management, a branch, an office, a factory, or a workshop. It also includes a mine, an oil or gas well, a quarry, or any other place where natural resources are extracted.

A PE also includes a building site or the location of a construction or installation project as long as it lasts more than six months. Likewise, it can include services that nonresident aliens perform in Argentina for the same minimum time period, with supplies outsourced to related parties counting for that computation.

However, a PE will not include the following activities if they are of a preparatory or auxiliary character:

- the use of facilities solely for storage, display, or delivery of goods or merchandise belonging to the enterprise;
- the maintenance of a stock of goods or merchandise belonging to the enterprise solely for storage, display, or delivery, or for processing for another enterprise;
- the maintenance of a fixed place of business solely for purchasing goods or merchandise or for collecting information; or
- the maintenance of a fixed place of business solely for any combination of the activities mentioned above as long as the overall activity of the fixed place of business is still of a preparatory or auxiliary character.

The new definition also states that an agent (other than an independent agent) can give rise to a PE, if the agent acts on behalf of a foreign enterprise and:

- has — and habitually exercises — the authority to conclude contracts in the name of the enterprise;
- plays a key role in the execution of agreements for the enterprise;
- assumes risks that are borne by the entity;
- has a storage facility and regularly delivers goods on the enterprise's behalf;
- regularly acts under the control of the foreign entity; or
- collects fees from the foreign enterprise regardless of the outcome.

Independent agents do not create a PE for the foreign entity, provided that the agents:

- are acting in the ordinary course of their business, and the engagement terms are customary for unrelated parties; or
- do not work totally or primarily in the interest of a single client or group of affiliates.

Transfer Pricing Reforms

As far as transfer pricing is concerned, the tax reform includes three major changes. Discussions are ongoing regarding the proper implementing regulations for all three. First, the reform added new provisions to the ITL concerning the level of income attributable to Argentine PEs of foreign companies. Second, the reform heavily regulates international triangular transactions between related parties to ensure that the level of income attributable to the intermediary is commensurate with the value it contributes to the supply chain. And third, the law replaces the so-called sixth method for taxing commodity exporters, which Argentina created 2003, with a new set of

standards that are inspired by the BEPS action 10 report.

As to the first change, the reform package amends ITL section 14 to ensure that an Argentine PE that performs activities that directly or indirectly benefit its foreign head office is allocated a profit that is commensurate to its functions and contributions. The general transfer pricing methods — including the best method rule — will apply to ensure that the level of profit allocated to the PE is aligned with value creation.

Regarding the second change, under the new rules international triangular transactions are closely scrutinized and heavily regulated. If an Argentine importer or exporter purchases goods from or sells goods to an international intermediary, it must show evidence that the margin it receives for its services is commensurate with the assets it contributes, the risks it assumes, and the functions it performs. This new substance test applies to triangular cases if either the foreign middleperson is related to or affiliated with the Argentine party, or the exporter at origin or importer at destination is related to or affiliated with the Argentine resident party. The Argentine party must provide supporting documentation showing the substance of the intermediary's contribution. The level of detail required is under discussion and will be elaborated in the forthcoming implementing regulations.

Thirdly, the reform bill fully replaces the former "Argentine sixth method" with a new set of norms for internationally triangular exports of commodities. If an Argentine commodity exporter performs either of the two cases mentioned in the previous paragraph or if the exporter sells to a trader located in a low-tax or noncooperative jurisdiction, the reform requires the exporter to register the sale agreement with the Argentine Revenue Service. The filing must contain a full disclosure of the main components of the export agreement (such as parties, traded goods, quantity, price, and quality) as well as the information on the comparability adjustments performed whenever the export price differs from the listed prices for the traded commodities. If the registration is not made or if it does not comply with the new registry's standards, the Argentine Revenue Service can price the export by the shipment date, rather than on the price in the export agreement. In this event, the Argentine Revenue Service should apply market prices and make appropriate adjustments in light of the characteristics of the tested transaction.

Tax Havens and Noncooperative Jurisdictions

The amendments to the ITL include a new definition of low-tax jurisdictions and tax havens. They also include a white list of countries that are deemed to be cooperative in terms of the international exchange of taxpayers' information.

The reform does not blacklist low-tax jurisdictions. It does define such low-tax locations as jurisdictions with a corporate income tax burden that is less than 60 percent of the Argentine corporate income tax rate. For these purposes, Argentina's 25 percent rate should be used, even though it is still in the process of being lowered to that rate. Thus, countries with an income tax rate of 15 percent or higher will not be considered tax havens. Notably, the definition of tax havens includes both "countries" and "special tax systems or territories" within a single country.

Noncooperative jurisdictions are defined in a manner that is consistent with the standards of former Decree 589/2013. Cooperative countries are specifically included in a white list; otherwise, countries are "blacklisted" by default. The norm uses a dynamic approach: The definition includes those countries that have signed a tax information exchange agreement with Argentina, but they must also prove to actually exchange tax information as requested. The federal executive branch should monitor whether information exchange agreements are effective in practice. Consequently, it may well include or exclude a given country from the list over time. Under former Decree 589/13, the Argentine Revenue Service was responsible for these decisions.

Notably, dealing with counterparts in low-tax or noncooperative jurisdictions has many adverse tax consequences under Argentine law, such as:

- the imposition of higher withholding taxes at the Argentine source when a resident of one of these locations provides supplies to an Argentine taxpayer (for example, interest on loans from abroad or royalties);
- a delay in the tax accounting of business expenses paid to a foreign supplier that

resides in a low-taxed or noncooperative location;
- the law deems cross-border prices not to be at arm's-length, thus subjecting the prices to reinforced scrutiny; and
- any funding coming from these locations is deemed to be the unreported income of the Argentine recipient unless the taxpayer specifically provides evidence to the contrary.

New Taxes on Specific Types of Income

Indirect Sales of Equity in an Argentine Entity

The reforms include a new tax on the sale of equity interests in foreign companies that indirectly own substantial assets in Argentina that the company acquired after January 1, 2018. This capital gains tax applies if two conditions are met:

- the interest being sold is equal to or greater than 10 percent of the foreign entity's net worth, either as of the realization date or during the previous 12 months; and
- 30 percent or more of the foreign entity's value stems from assets that were located in Argentina during the 12 preceding months.

The taxpayer has the option to either pay a 13.5 percent tax on the gross sale price or, alternatively, pay a 15 percent flat rate on the net gain. If the taxpayer elects the second option, the Argentine Revenue Service should scrutinize the adjusted basis in the equity sold.

This new capital gains tax on indirect transfers of Argentine assets will not apply if the transfer occurs within the same economic group. For those sales, the parties should comply with the evidentiary requirements that will be included in the implementing regs.

Digital Transitions

To ensure that foreign suppliers of digital services pay appropriate tax on income from Argentine sources, the law levies new withholding taxes — or, in some cases, clarifies existing taxes — at the Argentine source.

Nonresident aliens that transmit sounds or images within Argentina must pay a 17.5 percent withholding tax. The rate results from applying the regular 35 percent withholding rate to 50 percent of the price, which is the deemed net Argentine-source income. Under ITL section 13, this tax also applies to the price paid to foreign producers, distributors, or intermediaries that commercialize foreign movies, foreign TV, and foreign radio transmissions in Argentina. Taxable transactions also include any other means of transmitting images or sounds from abroad into Argentina. The text of the provisions on the digital tax is, however, unclear on some points. For example, practitioners are debating whether this withholding tax only applies to business-to-business transactions or whether it covers business-to-consumer transactions too. Hopefully, the implementing regs will clarify this point.

Financial Interests

The tax reform also imposes a new income tax on financial income obtained by Argentine resident individuals and nonresident aliens.[3]

The newly designed levy applies to income from public or private bonds, bank deposits, financial trusts, and investment funds and securities more generally. The tax rate is 15 percent if the relevant investment is either denominated in a foreign currency or denominated in a local currency with an indexation clause. However, the tax rate is only 5 percent if the same type of income stems from securities that are denominated in local currency with no indexation mechanism. The same tax rates apply to nonresident aliens if they are not located in a low-tax jurisdiction and funding is not coming from noncooperative jurisdictions. In those situations, higher withholding rates at source would apply. This tax applies both on explicit interest and similar income, such as original issue discount, that results from securities issued by Argentine resident issuers.

The new rule also taxes capital gains from the sale of the underlying securities. Again, either a 15 percent tax or a 5 percent tax applies, depending on whether the financial investment is denominated in foreign currency or local, nonindexed pesos.

Capital gains from the sale of listed shares issued by Argentine entities and depositary

[3] Hoke, "New Tax Targets Fixed-Income Instruments," *Tax Notes Int'l*, Apr. 16, 2018, p. 471.

receipts listed on Argentine stock markets are tax exempt. Conversely, American depositary receipts and securities listed in foreign stock markets are fully taxed, even though the underlying assets may well be shares issued by Argentine issuers and already taxed at the income source.

Dividends from shares in nonresident companies are subject to either the corporate or the personal income tax, depending on who the shareholder is. In the case of resident individuals, such dividends are taxed in accordance with the standard income tax brackets. The law avoids double taxation using a foreign tax credit.

New Thin Capitalization Rules

The tax reform package fully repeals the previous thin capitalization standards in order to align Argentina's income tax framework with BEPS action 4.

Until 2017, Argentina's thin capitalization rules used a simple 2-1 debt-to-equity ratio and restricted interest from cross-border, related-party financing to the extent that liabilities exceeded twice the borrower's net worth. Further, the old framework provided that taxpayers could not deduct interest expenses that exceeded the limit, dictating instead that the taxpayers treat them as dividends (for example, subject to equalization tax). Only two exclusions arose in the old system: when the borrower was an Argentine financial institution or when interest expenses were subject to 35 percent withholding at source.

The tax reform completely amends the thin capitalization standards. As of January 1, 2018, a taxpayer may not deduct interest expenses from related-party loans that exceed 30 percent of the debtor's net taxable income before interest and amortization. This test considers both interest and foreign exchange results together. This way of computing the limitation is a novelty, and taxpayers should carefully monitor these limits in a country like Argentina that regularly experiences major devaluations of the local peso. Active interest collected by the taxpayer could be used to offset passive interest that is subject to the thin capitalization limitations. In fact, passive interest expenses below active interest ones are fully deductible.

The new rules exclude a taxpayer from the thin capitalization limitation if its overall interest expense ratio falls below the group ratio for unrelated-party debt. Thus, under the Argentine ITL, the 30 percent limit will not apply if the taxpayer provides evidence that the ratio between the interest potentially subject to the limitation and the borrower's net taxable income is similar to or lower than the equivalent ratio between the economic group of companies and unrelated lenders for the same fiscal year.

There are also subjective and objective exclusions from the thin capitalization rules. Like in the previous framework, financial institutions — highly leveraged enterprises, by definition — are excluded from this restriction. One example of an objective exclusion is the exclusion for financial trusts.

Another notable feature of the newly designed thin capitalization rule is that it applies to domestic related-party transactions in addition to cross-border matters. The legislature included this local standard to prevent taxpayers from circumventing thin capitalization restrictions using nondiscrimination clauses in double tax treaties.[4]

Anti-Tax-Deferral Rules

In the past, Argentine resident taxpayers could defer taxation of foreign-source income by interposing controlled corporations, which would only pay taxes when they distributed dividends to the Argentine party. BEPS action 3 inspired Argentine policymakers to implement a material change in the anti-tax-deferral rules including, but not limited to, complex CFC rules.

The new framework details four statutory cases under which taxpayers cannot defer taxation on foreign-source income. The fourth one is a residual, catchall anti-tax-deferral provision. The four cases are:

> (i) Argentine resident taxpayers should account for income from foreign PEs on an accrual basis, regardless of actual distributions from the foreign PE. The taxpayer should allocate the net taxable income from the financial statements of

[4] For a discussion of how the old rules became inapplicable in the double tax treaty scenario, see Cristian Rosso Alba, "IFA Branch Reports: Argentina" in *Non-Discrimination at the Crossroads of International Taxation* (2008).

the foreign branch or PE to the fiscal year of the Argentine head office in which the PE closes its financial statements.

(ii) Similarly, Argentine resident taxpayers should account for income from foreign private foundations, trusts, and similar structuring vehicles that Argentine residents control and that are constituted, domiciled, or located abroad — as well as income from agreements governed by foreign law with the principal goal being the management of assets — on an accrual basis (that is, regardless of actual distributions). This anti-deferral standard applies to the extent such investment vehicles are controlled by Argentine residents. These taxpayers should account for investment income in the same fiscal period that the investment vehicles close their annual financial statements. Again, this outcome is irrespective of actual distributions from the investment vehicle. The exercise of control from within Argentina prevents the structuring vehicle from deferring foreign-source income. The rules deem control to exist when there is actual evidence that the Argentine resident acts as the owner or manager of the assets, such as when the trust is revocable, when the settlor is also a beneficiary, or when the settlor maintains ties over the trust or makes investment decisions.

(iii) Argentine resident taxpayers should also account for income accrued on their equity interests in entities constituted, domiciled, or located abroad that lack fiscal standing. Such income should be accounted for in the fiscal period during which the entities close their annual financial statements, regardless of actual distributions. The governing feature in this anti-deferral category is the lack of fiscal standing — a term that has not been formally defined but seems to resemble the "liable to tax" standard used in the OECD's model tax treaty to define the residence of a business entity. Implementing regs will play a key role in defining when a foreign company has its own tax standing. In these cases, income is attributed to the Argentine equity holder irrespective of whether he controls the foreign entity or not. Notably, this provision is residual as to (i) and (ii), so it only applies if neither of the previous categories does.

(iv) Finally, the new tax framework provides for a fourth, catchall anti-tax-deferral rule that only applies when the previous circumstances detailed in cases (i) through (iii) are not present. It functions as a residual CFC provision. Under this rule, tax cannot be deferred — and income obtained by the foreign controlled company shall be accounted annually on an accrual basis — if all of the following standards are met:

a) *The foreign entities are controlled by Argentine resident taxpayers, family groups, or affiliated companies*. The first requirement is that Argentine resident individuals (including families up to the third family degree) or Argentine affiliated companies control at least 50 percent of the net worth, profits, or voting rights of the foreign entity. This rule may be triggered even if the ownership percentage is less than 50 percent, if the Argentine taxpayer exercises de facto control over the foreign entity. This is deemed to be the case when the Argentine taxpayer performs as the owner or manager of the underlying corporate assets, can appoint the board members, or is entitled to collect its profits. The law also deems relevant Argentine control to exist whenever the foreign entity substantially invests in set Argentine tax-exempt assets. This standard is met if a minimum of 30 percent of the foreign entity's financial investments is made in Argentine exempted securities — that is, listed stock or depositary receipts issued by Argentine entities, which are listed in accordance with the rules of Argentina's SEC (Comisión Nacional de Valores). In all cases, the income deemed to be earned by the Argentine resident taxpayer

should be proportional to the taxpayer's share of the entity's equity.

b) *The foreign entity lacks adequate substance or invests in set assets.* This standard is met if the foreign entity does not have the human and material resources to run its own business, collects passive income that accounts for at least 50 percent of its profits, or when it collects any kind of income that triggers deductible expenses on Argentine related parties. Even if operating income were lower than 50 percent, only income from tainted assets should be accrued, excluding active income.

c) *The foreign entity is not liable for a material tax burden in its country of incorporation*. This requires that the foreign entity is subject to an income tax burden of less than 75 percent of the Argentine corporate income tax. This is deemed to happen unquestionably when the foreign entity is located in a low-tax or a noncooperative jurisdiction. In all other cases, it is necessary to compare the foreign income tax burden with the relevant Argentine corporate income tax rate — 30 percent or 25 percent, depending on the fiscal year.

In the case mentioned in the previous paragraph, anti-tax-deferral standards shall apply to both direct and indirect equity interests in foreign companies. Excluded entities are very limited in number: Argentine financial institutions, insurance companies, and investment funds governed by Law 24,083.

In categories (ii) and (iii) above as well as for the residual anti-deferral provision, entities incorporated abroad should be disregarded for tax purposes (no tax deferral is allowed), and the Argentine taxpayer should account for the underlying profits on an accrual basis in light of the tax rates and timing rules applicable to each source of income.

Federal VAT Reforms

Argentina's VAT is an all-stage consumption tax: Argentina imposes VAT on the sale of most tangible personal property and the rendering of services within Argentina, as well as on imports of both goods and services.[5] As to the VAT, the tax reform had two primary goals — taxing digital services used by Argentine customers, in line with the BEPS action 1 initiative, and easing the recovery of VAT input taxes. The tax reform also clarifies that entities that export services should be able to claim VAT input credit associated with these supplies, an outcome that was previously only included in the VAT implementing decree.

Regarding digital services, the reform modifies section 1 of the VAT law to introduce a new taxable event involving the provision of digital services by suppliers domiciled abroad. As discussed above, the tax is triggered when the supplies are consumed or effectively exploited in Argentina. The taxpayer is the service customer, even if it qualifies as a final consumer. Services are deemed to be exploited in Argentina if the IP address, the customer's billing address, the payment card, or the bank account linked to the transaction is located in Argentina.

The reform offers special relief for VAT input credits connected to the purchase of fixed assets. The Argentine Revenue Service will refund VAT input credits stemming from the purchase, construction, manufacture, or definitive importation of capital assets — except automobiles — that cannot be offset against VAT input taxes within six months. Forthcoming implementing regs will clarify the operation of this rule.

In some cases, public services subject to governmental subsidies may be treated as zero-rated exports. Thus, taxpayers would be able to claim a refund when VAT-related tax credits cannot be offset against VAT input taxes.

Finally, the reform reduces the tax rate from 21 percent to 10.5 percent for chicken, pork, and rabbit meat. Despite the positive political messages that always accompany this type of news, a VAT tax rate reduction could hamper the ability to recover VAT input credits.

[5] For an extensive analysis of the Argentine VAT generally, including a comparative analysis and a particular focus on the VAT's application to financial transactions, see Rosso Alba, "Taxation of Financial Services Under the Value Added Tax: A Survey of Alternatives and an Analysis of the Argentine Approach," 6 *International VAT Monitor* 335 (1995).

Other Tax Reform News

At the federal level, consumption taxes primarily take two forms: the VAT, which applies to all kind of goods and services, and excise taxes, which are a selective consumption tax. The tax reform amends both.

For example, the reform increases excise taxes on beverages with a high alcohol content to 26 percent. This includes whisky, cognac, vodka, tequila, and other beverages with more than 30 percent alcohol by volume. A 20 percent rate applies on other specified alcoholic beverages. The reform package reduces excise taxes on vehicles, motors, buses, vans, and ships to 20 percent, on average, but vehicles used for transportation may be exempt under set conditions.

The reform completely redefines the tax on fuel and gasoline consumption to coexist with a new "green" levy that burdens different fuels based on the level of carbon dioxide emissions connected with the fuels. Further, the new rules reduce the amount of fuel tax that taxpayers in the farming, mining, and fishing industries can credit against income tax to 45 percent.

As for an employer's social security contribution, Argentina will gradually unify the rates over the next four years. Depending on the employer, pre-reform rates were set at 17.5 percent or 21 percent. The rates will reach a uniform 19.5 percent by December 1, 2022. Previously, the contributions could be partially credited against VAT, but the credit will be phased out by 2021.

The tax reform also includes major changes to the Tax Procedure Act. First, the taxpayer must provide an electronic address to ensure fast communication with the Argentine Revenue Service. Second, new rules allow the Argentine Revenue Service to agree on a tax settlement with the taxpayer before making the tax assessment. The tax authority may authorize a final voluntary conclusive agreement, but doing so is always optional for the Argentine Revenue Service. Also, other amendments to the Tax Procedure Act help pave the way for APAs.

The reform package also amends the penalties included in the Tax Procedure Act. The legislation includes a variety of new penalties and fines aimed at ensuring compliance with the new transfer pricing framework. More specifically, BEPS action 13 inspired a new set of penalties for those companies that fail to submit a CbC report or otherwise fail to comply with related data requests from the Argentine Revenue Service.

Amended fines can amount to up to 100 percent of the neglected tax for those taxpayers who do not pay taxes, fail to act as withholding agents, or neglect to make advance payments. The potential fine increases to up to 200 percent of the neglected taxes when the omissions involve cross-border transactions. In the case of tax evasion, the tax reform decreases the previous penalty from two to 10 times the evaded tax down to two to six times the evaded tax. The same fines apply to taxpayers that willfully take advantage of tax benefits, reimbursements, recoveries, or refunds.

The reform bill also amends the Tax Procedure Act to speed up MAPs. Over the past 20 years, MAPs executed by Argentina under double tax conventions patterned after the OECD's model generally proved to be ineffective. Former tax authorities have argued that once a tax assessment was debated in court, competent authorities may not intervene. To overcome this concern, the Tax Procedure Act includes a new MAP process and appoints the Ministry of Finance as the relevant competent authority for MAP proceedings. These mechanisms now apply whenever the taxpayer believes that an Argentine Revenue Service criterion is inconsistent with the (dominant) treaty law. Argentine tax residents — and, in some cases, nonresidents — are entitled to file for MAP proceedings.

Finally, the tax bill also amends the Criminal Tax Act. It raises the threshold at which tax debts can trigger a criminal offense. The reform increases the minimum amount for simple tax evasion to be considered a crime from ARS 400,000 to ARS 1.5 million and the minimum amount for the aggravated crime of tax evasion from ARS 4 million to ARS 15 million.

Under the new rules, aggravated evasion may occur when the taxpayer's willful misconduct involves the use of faked invoices or equivalent documents or when the taxpayer uses another individual, legal person, or other structure to hide his identity.

The new Criminal Tax Act also changes the rules under which a taxpayer can request a full

release from criminal prosecution in exchange for the total payment of the tax claim. The evaded obligations now must be accepted and paid unconditionally within 30 business days following notification of the criminal charges. Argentina will only grant this opportunity once in a lifetime to any individual or legal person.

Looking Ahead

Since the beginning of 2018, taxpayers have been anxiously awaiting the implementing regulations for Argentina's tax reform bill. There are many open issues that require clarification or implementing norms before the rules can become fully effective. The authorities first announced that regulations would be released by March 2018; later they targeted mid-year; and now they hope to provide them by the end of the year. However, material technical discussions have yet to occur. The recent major devaluation of the Argentine peso and rising inflation have altered the federal government's priorities. The new export taxes and the attempt to increase personal asset taxes in the annual budget law under congressional debate are clear examples. The inceptional debate in the House regarding tax inflationary adjustments also illustrates the revenue concern in the short run. However, these current debates do not alter the major tax policy decisions built into Law 27,430.

For the past month capital markets have seemed reluctant to purchase Argentine public debt securities, creating another a pressure point in the somewhat relaxed governmental agenda of reducing the high tax burdens instituted by the previous administration. The shortfall in revenue and capital market financing led the Argentine government to make further tax increases over the end of the year, outside the scope of Law 27,430. The year 2018 will go down as a hectic one for tax professionals as they anticipate final publication of the long-awaited implementing regs. ■