

Argentine government reveals main focus of upcoming international tax audits

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The Argentine government has disclosed the target of upcoming tax audits relating to international transactions through a series of measures implemented over the past few weeks by the Argentine Revenue Service (AFIP).

The first regulation, General Resolution 3577/14 (GR 3577), which set up a new advance tax payment mechanism to penalise triangular international transactions, was justified by, among other reasons, the need to bring Argentine law into line with the OECD's action plan to address base erosion and profit shifting, published on 19 July 2013.¹

The new measures have also instituted a registry for related and deemed-related parties, as well as new reporting obligations, the amendment of the previous blacklist of tax havens by means of a new white list of countries considered to be cooperative for tax information exchange purposes, and the fine-tuning of reporting obligations relating to foreign trusts, which now face more detailed filing obligations.

Following is a brief summary of the recent regulations.

GR 3577

The new advance payment mechanism established by GR 3577 will be enforced by the Customs Authority. The new withholding tax, which is creditable against the annual income tax burden, applies to triangular exports (that is, when the country where the invoice is addressed differs from the country of destination of the exported products). The new regime applies to exports taking place from 7 January onwards. (For prior coverage, see [Argentina introduces advance tax payment for triangulated cross-border sales.](#))

The rate is 0.5% of the taxable value as defined for the payment of customs taxes or 2% if the invoices were issued to buyers located in countries considered to be uncooperative in the exchange of tax information. The advance payment is considered to be a payment of income tax and should therefore be reflected in the relevant tax returns.

Failure to make the advance tax payment will result in suspension from the customs registries and the application of interest.

It should be noted that a predicted overpayment of the annual income tax is not grounds to request immunity from the new advance payment. In fact, taxpayers subject to this regime may not cite exclusion from another advance payment mechanism implemented through General Resolution 830 as cause to be excluded from the new one. In that sense, taxpayers with net operating losses corresponding to the fiscal year in which the exports take place may face a new tax burden and are now evaluating – and in some cases filing – legal actions.

Finally, the new regime introduces another penalty as part of a more complex (delayed) procedure for requesting a refund of VAT input credits associated with exports. VAT refund requests related to triangular exports will be excluded from the general procedure for export VAT refunds contained in Title I of (AFIP) GR 2000 and will instead be subject to Title IV of GR 2000, which is more time consuming and has a higher tax burden.

GR 3572

GR 3572 creates, as of 3 January, a registry of affiliated parties; Argentine taxpayers must report in the registry their affiliation with entities located in Argentina or abroad. (For prior coverage, see [Argentine tax authorities issue new regulations for affiliated parties and joint ventures.](#))

For that purpose, the definition of "affiliation" follows that in GR 1122/2001, which governs transactions that are subject to transfer pricing scrutiny. The concept of "affiliated party" included in this broad definition includes both actual and deemed related parties.²

Within 10 days of the occurrence of affiliation, the Argentine entities that are required to join in the registry must provide the name and country of residency of the affiliated party and the type of affiliation. The dissolution of an affiliation must also be reported. The deadlines for enrolment in the registry are 1 April or 1 July, depending on the size of the taxpayer.

Failure to meet the obligations contained in GR 3572 will result in the application of penalties in accordance with the Tax Procedure Act.

GR 3576

In line with Decree 589/2013, published on 30 May 2013, AFIP has finally published on its official website the list of countries deemed as cooperative jurisdictions (the white list), as anticipated by GR 3576 (of 31 December 2013). (For prior coverage, see [Argentina repeals tax haven blacklist](#) and [Argentina announces new white list](#).)

According to the new list, cooperative jurisdictions are those that have signed with Argentina a tax information exchange agreement or a tax treaty that contains a broad information exchange clause, or that have entered into negotiations with Argentina for a TIEA or a tax treaty containing an information exchange clause.

Some countries formerly included in a blacklist contained in the Income Tax Law Regulatory Decree have now been included as cooperative, while others previously excluded from the blacklist are not on the new white list (for example, Bulgaria, Fiji, Saudi Arabia and Taiwan).

The following countries are deemed to be cooperative under three categories included in the new white list:

Countries that have signed income tax treaties with Argentina: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Russia, Spain, Sweden and the United Kingdom.

Countries that have signed TIEAs with Argentina or the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Albania, Andorra, Anguilla, Aruba, Austria, Azerbaijan, the Bahamas, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Curaçao, the Czech Republic, Ecuador, Estonia, the Faroe Islands, Georgia, Ghana, Greece, Greenland, Guatemala, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, the Isle of Man, Italy, Japan, Jersey, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Moldova, Monaco, Montserrat, Morocco, New Zealand, Nigeria, Peru, Poland, Portugal, Romania, St. Martin, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Switzerland, Tunisia, Turkey, Turks and Caicos, Ukraine, the United States and Uruguay.

Countries currently negotiating an income tax treaty or TIEA with Argentina: Angola, Armenia, Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Israel, Jamaica, Kenya, Kuwait, Macao, Macedonia, Mauritius, Montenegro, Nicaragua, Panama, Paraguay, the Philippines, Qatar, Turkmenistan, the United Arab Emirates, Vatican City, Venezuela and Vietnam.

GR 3538

Finally, in connection with the regime implemented in 2012 through GR 3312, which broadened the scope of the registration and reporting obligations to target foreign trusts and other equivalent foreign structures that have a substantial nexus with an Argentine party, GR 3538 includes the obligation to submit to AFIP a PDF file containing supporting documentation for the registered operations, as well as the trust contracts and any amendments of transactions registered from 1 January 2013, onwards.

Notes

¹ As of 17 January 2014, the Addressing Base Erosion and Profit Shifting report was available at <http://www.oecd.org/ctp/beps-reports.htm>.

² GR 1122/01, implementing section 15.1 of the Income Tax Law, establishes that affiliation exists when:

- *an individual or corporation owns all or most of another entity's equity;*
- *two or more individuals or corporations have a common holder for all or most of their equities;*
- *the same individual or corporation owns all or most of the equity of one or more entities and significantly influences one or more of the other entities;*
- *the same individual or corporation has significant concurrent influence;*

- *an individual or corporation owns the necessary votes to make corporate decisions or prevail in the shareholders' or partners' meeting of another entity;*
- *two or more individuals or corporations have common directors, officers; or administrators;*
- *an individual or corporation is the exclusive agent, distributor, or licensee for the purchase and sale of assets, services, or rights of the other;*
- *an individual or corporation provides another with copyright or know-how that constitutes the basis of its operations;*
- *an individual or corporation owns an interest, with another, in entities with no legal capacity (for example, condominiums, joint ventures, non-corporate groups, and so on) through which it exercises significant influence on prices;*
- *an individual or corporation agrees with the other on preferential contractual conditions as compared with those agreed upon with third parties under similar circumstances (for example, volume discounts, financing, and deliveries on consignment);*
- *an individual or corporation substantially participates in the formation of corporate policies, the supply of raw materials, and/or the production and/or marketing of another;*
- *an individual or corporation undertakes a significant activity only in relation to another entity, or exists only in relation to the other entity (for example, as the sole supplier or client);*
- *an individual or corporation substantially provides the funding necessary to carry out another's business (for example, loans or guarantees for financing provided by a third party);*
- *an individual or corporation bears the burden of losses or the expenses of another;*
- *the directors, officers, or administrators of an entity receive orders from or proceed in favour of another; or*
- *the management is given to an individual or entity holding a minority interest in the capital stock (through agreements or special circumstances or situations).*

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