

**MARVAL
O'FARRELL
& MAIRAL**

**ARGENTINA-BRAZIL: TAXATION OF CROSS-BORDER
TRANSACTIONS**

TRANSNATIONAL TAXATION NETWORK - December 3, 2009

by Walter Keiniger



INCOME TAX

- Until 1992 applied on a source basis
- Since then, mixed system of taxation:
 - Argentine-residents are taxable on worldwide income
 - Non-Argentine residents are taxable on Argentine-source income through withholdings (rate varies depending on type of income)
- Applies on net income (non-residents: the law presumes it)
- Corporate rate: 35% (including capital gains)
- Rate for resident individuals: 9% to 35% (capital gains are generally excluded)
- Transfer pricing and thin capitalization provisions
- Specific rules for derivative transactions
- Anti-deferral rules

INCOME TAX

Relevant for non-Argentine residents (in general): exemption for transfer of shares

Relevant for Brazilian residents: treaty between Argentina and Brazil

The treaty:

- Does not follow the OECD Model
- Only applies with respect to taxes on income
- Interest, dividends, royalties: both countries allowed to tax
- Capital gains: both countries allowed to tax

INCOME TAX

Methods to avoid double taxation under the treaty:

Argentina: exemption method

"Where a resident of Argentina derives income which under the provisions of this Convention is taxable in Brazil, Argentina shall exempt such income from tax, unless it is deemed to arise in Argentina" (Article XXIII, par.3)

"It is understood that income from property situated, placed or economically used in Argentine territory, from performing therein any action or activity that may produce profits, or from events which have occurred therein, is deemed to arise in Argentina" (Protocol, point 11)

Problems:

- Technical assistance provided from Brazil
- Sale of shares in Brazilian company

INCOME TAX

Methods to avoid double taxation under the treaty:

Brazil: credit method with limitations

"Where a resident of Brazil derives income which in accordance with the provisions of this Convention may be taxed in Argentina, Brazil, notwithstanding the provisions of paragraph 2, shall allow as a deduction from the tax it levies on the income of that resident an amount equal to the income tax paid in Argentina.

However, such deduction shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Argentina" (Article XXIII, par.1)

"Dividends which are taxable in Argentina under the provisions of this Convention, paid by a company being a resident of Argentina to a company being a resident of Brazil which holds more than 10 percent of the capital of the paying company, shall be exempt from tax in Brazil" (Article XXIII, par.2)

PERSONAL ASSETS TAX

- Applies on individuals on a yearly basis (picture every year-end)
- Individuals domiciled in Argentina
 - on worldwide assets
 - rate: 0.5% to 1.25% of value of assets
- Individuals domiciled abroad
 - only on assets located in Argentina
 - Argentine agent obliged to pay (if no agent?)
 - rate: could be up to 2.50% of value of assets
- Shares/interest in Argentine companies:
 - Argentine company obliged to pay
 - rate: 0.5% of proportional equity value
 - does not apply if certain tax treaties apply (Spain, Switzerland, Chile)
 - absolute presumption for foreign entities

PERSONAL ASSETS TAX

- Brazil is part of ALADI treaty (not focused on taxes; applicable to certain Latinamerican countries)
- ALADI treaty includes a "most-favored nation clause" under which a resident of an ALADI country cannot be treated worse than a resident of a non-ALADI country
- Under tax treaty entered into between Argentina and Spain, Argentina cannot apply the Personal Assets Tax to Spanish-residents
- Under the ALADI treaty, Brazilian-residents would not be taxable on their holding of shares/capital of Argentine companies
- Certain Argentine authorities agreed with this interpretation
- However, the Attorney General overruled such interpretation on the grounds that the "most-favored nation clause" of ALADI treaty did not cover tax issues
- The tax authorities have recently indicated that they would follow the Attorney General interpretation



MARVAL, O'FARRELL & MAIRAL

Walter C. Keiniger
Av. Leandro N. Alem 928
(1001) Buenos Aires,
Argentina
Tel.: (54-11) 4310-0100
Dir.: (54-11) 4310-0133
Fax (54-11) 4310-0200
Email: wk@marval.com.ar

