



BEPS in the eyes of Argentina

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CONTENT OF THE PRESENTATION

- Global Context
- Review of BEPS Action Plan from an Argentine perspective
- Conclusions

Global Context



Global Financial Meltdown (2008)

Leading cases:

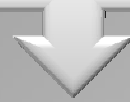


among many others.

OECD Base Erosion and Profit Shifting Initiative (2013...)



Argentina (although not an OECD Member...)



Member of G-20

Signed OECD Multilateral Convention on Mutual Administrative Matters

Signed OECD Declaration on BEPS

Signed OECD Declaration on Automatic Exchange of Information (early adopter)

Action 1

Address the tax challenges of the digital economy



Argentina

Significant withholding tax rates applicable to digital economy (e.g. 31.5% on software license payments)

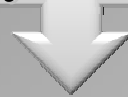
Wide definition of “Argentine source income”, widely construed by domestic case law (e.g. “Aerolineas Argentinas” and “Austral” cases)

General anti-avoidance rule (although not specific anti-avoidance rule for the digital economy)



Action 2

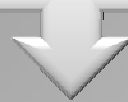
Neutralize the effects of hybrid mismatch arrangements



Argentina

Domestic law neutralizes the effects of Argentine income tax exemptions if the existence of the exemption could result in a transfer of income to foreign States, unless a DTC applies.

Action 3 Strengthen CFC rules



Argentina

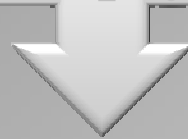
CFC Rules already in place

CFC Rules require Argentine resident shareholders to include in their taxable income passive income derived by a company resident in a non-cooperative country in which they have a participation, in certain cases.



Action 4

Limit base erosion via interest deductions and other financial payments



Argentina

Significant withholding tax rates on interest payments (in general, 35% WHT, could be lower in certain cases, e.g. if paid to certain financial institutions or under a DTC).

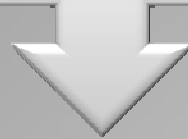
Thin capitalization rules already in place

Complex FX control regulations (which, as a consequence, limit base erosion on interests)

Instruction 747/2005 and case law (“Hauni Latinoamericana”, “Domaine Vistalba”, etc.).

Action 5 & 6

Counter harmful tax practices more effectively, taking into account transparency and substance / Prevent treaty abuse



Argentina

EOI with 135+ countries via DTCs, TIEAs, and OECD Multilateral Convention

Early adopter of the Declaration on Automatic EOI

Substance over form approach under domestic law as construed by case law (“Molinos Rio de la Plata” case, among others)

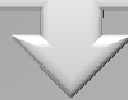
No private rulings in Argentina (except for rulings issued by the National Tax Agency in respect of tax treaty clauses)

No patent box regimes / no participation exemption regimes / no territorial tax regime



Action 7

Prevent the artificial avoidance of PE status

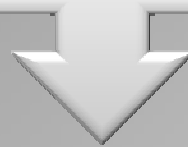


Argentina

Not a critical concern for Argentina pursuant to its extra wide definition of “Argentine source” as construed by case law (“Aerolineas Argentinas” and “Austral” cases)

Could be relevant under certain DTCs signed by Argentina

Action 8, 9 & 10
Assure that transfer pricing outcomes are in line with value creation



Argentina

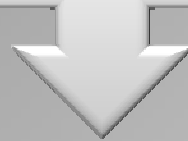
Special defensive transfer pricing mechanism applies to commodities (known as “Sixth Method”)

Wide definition of “related parties” under domestic law, even wider than the concept provided by OECD TP Guidelines



Action 11

Establish methodologies to collect and analyze data on BEPS
and the actions to address it



Argentina

Sophisticated data base management already undertaken by the Tax Authority:

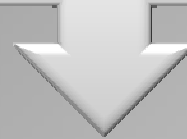
- Classification of Tax Payers according to its risk, size, etc.
- Combined data base shared with the National Securities Commission and the National Financial Intelligence Unit

Early Adopter of the Declaration on Automatic EOI



Action 12 & 13

Require taxpayers to disclose their aggressive tax planning arrangements / Re-examine transfer pricing documentation



Argentina

Transfer pricing report required to “related entities” and to transactions undertaken with non-cooperative jurisdictions (even if no related parties are involved in the transaction)

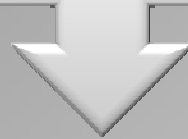
Additional domestic rules which require thorough reporting or aim to protect Argentine tax base in transactions with non-cooperative jurisdictions:

- Expense deduction on a cash basis
- 35% WHT for interest payments
- Presumption on Inflows
- CFC Rules
- Increased Central Bank FX Controls / AML Regulations



Action 14 & 15



Make dispute resolution mechanisms more effective /
Develop a multilateral instrument



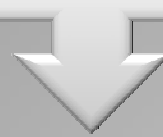
Argentina

Argentina does NOT agree to include an Arbitral Clause and has almost no MAP experience

Argentina already signed the OECD Multilateral Convention on Mutual Administrative Assistance

BEPS Action Plan	Previous to BEPS, did Argentina already introduced measures consistent with BEPS Action Plan?
Action 1	
Action 2	
Action 3	
Action 4	
Action 5	
Action 6	
Action 7	
Action 8	
Action 9	
Action 10	
Action 11	
Action 12	
Action 13	
Action 14	
Action 15	

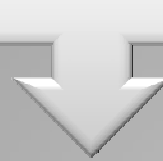
BEPS Initiative Conclusions (so far...)



BEPS approach:

- Substance over form approach
- Favors source countries compared to the traditional OECD framework which was more biased towards residence countries

Conclusions (so far...)



Not new for Argentina: significant measures consistent with BEPS are already in force

Still, Argentina (as a source country) benefits from the BEPS approach as, in some way, confirms and reinforces nearly all the tax defensive measures taken by Argentina in the last 50 years

So... How does Argentina feel about BEPS Initiative?



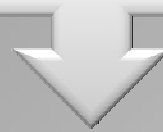
In Short...

BEPS is making Argentina believe it will increase its tax revenue

Will this be true?



What to expect for the future...?



Maintenance of tax defensive measures already in place

Introduction of more specific defensive measures in the near future? E.g. in areas not thoroughly explored yet (e.g. digital economy)



Thank you!

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