

MARVAL
O'FARRELL
& MAIRAL

ARGENTINA: HOW DO I ACQUIRE A BUSINESS IN A TAX EFFICIENT WAY?

by Walter Keiniger



TWO BASIC ALTERNATIVES:

- (i) ACQUISITION OF SHARES (OR INTEREST) OF A LOCAL COMPANY FROM ITS SHAREHOLDERS**

- (ii) ACQUISITION OF ASSETS OF A LOCAL COMPANY**

ACQUISITION OF SHARES (or INTEREST)

- **AMOUNT PAID: TAX BASIS OF SHARES, NOT THE ASSETS**
- **DEPRECIATION OF ASSETS: "OLD" TAX BASIS APPLIES**
- **GAIN FROM THE SALE OF SHARES:**

- **TAXABLE FOR ARGENTINE COMPANIES**

- **NOT TAXABLE FOR** → **ARGENTINE-RESIDENT INDIVIDUALS (IF NOT THEIR REGULAR ACTIVITY)**

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NON-ARGENTINE RESIDENTS (COMPANIES OR INDIVIDUALS)

- **IF THE COMPANY SOLD IS AN LLC, THE EXEMPTION FOR NON-ARGENTINE RESIDENTS DOES NOT APPLY**

ACQUISITION OF ASSETS

- **AMOUNT PAID: TAX BASIS OF ACQUIRED ASSETS**
- **DEPRECIATION**
 - **"NEW" TAX BASIS APPLIES (STEP-UP IN BASIS)**
 - **GOODWILL: CANNOT BE DEPRECIATED**
- **GAIN FROM THE SALE OF ASSETS: TAXABLE FOR SELLER (35%)**
- **VAT APPLIES ON MOVABLE ASSETS (21%), BUT USUALLY NOT A COST BECAUSE VAT PAID IS A VAT CREDIT FOR BUYER**
- **STAMP TAX ON TRANSFER OF REAL ESTATE CANNOT BE AVOIDED (BETWEEN 2.5% AND 4%)**
- **TURNOVER TAX ON INVENTORY (AROUND 3%)**

ASPECTS THAT MIGHT AFFECT THE DECISION:

- **NEED OF LOCAL PRESENCE**
- **CUT OF LIABILITIES OF SUCCESSOR OF THE BUSINESS:**
 - **TRANSFER OF GOING CONCERN LAW**
 - **TAX PROCEDURAL LAW**
- **NEED OF DUE DILIGENCE PROCESS (costs, time, etc.)**
- **THROUGH ACQUISITION OF SHARES, BUYER SHOULD GET LOWER PRICE**

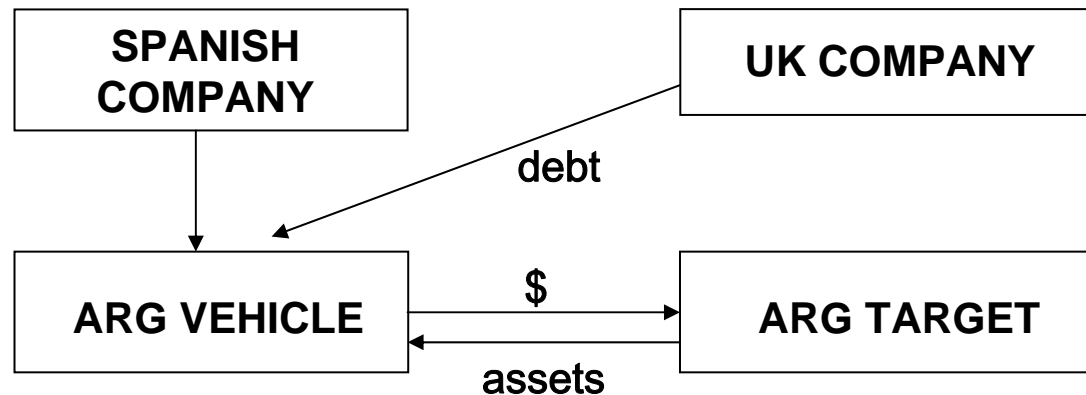
SUMMARY CHART

	ACQUISITION OF SHARES	ACQUISITION OF ASSETS
NEW TAX BASIS GOES TO	SHARES	ASSETS
DEPRECIATION OF ASSETS	"OLD" BASIS	"NEW" BASIS
GAIN FROM THE SALE	-TAXABLE FOR ARG. COMPANIES -OTHERWISE, NOT TAXABLE	TAXABLE FOR SELLER
VAT	DOES NOT APPLY	APPLIES ON MOVABLE ASSETS
STAMP TAX	COULD APPLY OR NOT	WILL APPLY ON REAL ESTATE COULD APPLY OR NOT FOR THE REST OF INVOLVED ASSETS
TURNOVER TAX	DOES NOT APPLY	APPLIES ON INVENTORY
CUT OF LIABILITIES	NOT AVAILABLE	AVAILABLE
DUE DILIGENCE PROCESS	REQUIRED	NOT REQUIRED

FINANCING THE ACQUISITION: ¿EQUITY OR DEBT?

- **IN GENERAL, DEBT IS MORE TAX-EFFICIENT**
- **ACQUISITION OF SHARES OF ARGENTINE COMPANY:**
 - **IF BUYER IS NON-ARGENTINE RESIDENT, NON-ARGENTINE ISSUES ARE INVOLVED**
 - **IF BUYER IS ARGENTINE RESIDENT: "LBO" DO NOT ALLOW INTEREST DEDUCTION, THEREFORE, NOT AVAILABLE**
- **ACQUISITION OF ASSETS (LOCAL PRESENCE IS REQUIRED):**
 - **DEBT IS BETTER IF CREDITOR IS:**
 - (i) **A FOREIGN BANK (15.05% vs 35%)**
 - (ii) **A COMPANY IN A TREATY COUNTRY (12% vs 35%)**
 - **DEBT WOULD BE NEUTRAL IF CREDITOR IS A COMPANY LOCATED IN A JURISDICTION NOT BLACK-LISTED**

EXAMPLE OF ACQUISITION OF ASSETS WITH FINANCING



- SPANISH COMPANY IS SHAREHOLDER OF ARG. VEHICLE (SAVES 0.5% P/Y)
- UK AFFILIATE PROVIDES FINANCING TO ARGENTINE VEHICLE
- ARGENTINE VEHICLE ACQUIRES THE BUSINESS FROM TARGET COMPANY
- ARGENTINE VEHICLE DEDUCTS INTEREST AT 35%
- (THIN CAPITALIZATION AND TRANSFER PRICING RULES APPLY)
- ARGENTINE VEHICLE WITHHOLDS AT 12% (TREATY REQUIREMENTS)
- INCOME FROM BUSINESS AND INTEREST DEDUCTIONS ARE COLLAPSED



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