

Recent Developments on Securities- Related Taxation in Argentina

Capital Gains and Dividends Taxation

Part I - Gains

Topic 1. Sale of Securities. Taxable capital Gains

- Topic 1.a. Sale of Securities by Argentine Entities
- Topic 1.b. Sale of Securities by Argentine Resident Individuals
- Topic 1.c. Comments applicable to all Argentine residents, including entities
- Topic 1.d. Sale of Securities by non-Argentine Residents
- Topic 1.e. Comments on Gains vis a vis Tax Treaties

Topic 1.a. Sale of Securities by Argentine Entities

- Remains substantially the same
- Corporate Income Tax: 35% on net gains

Topic 1.b. Sale of Securities by Argentine Resident Individuals

- Material changes
- “Securities” for purposes of this presentation - and according to the relevant regs. - are stock, bonds, quotas, equity participations, and other similar instruments
- Gains derived from the sale of depreciable movable assets and securities, now subject to tax, except:
 - Argentine Public Securities (i.e. securities that are publicly traded in an Argentine official exchange market)

Topic 1.b. Sale of Securities by Argentine Resident Individuals (cont.)

- In a nutshell:
 - Gains on sale of Argentine Private securities: Subject to tax
 - Gains on sale of Argentine Public securities: Tax Exempt
 - Gains on sale of non-Argentine Private securities: Subject to tax
 - Gains on sale of non-Argentine Public securities: Subject to tax
 - Against the Argentine Constitution, for taxation was not implemented by law but by means of a Presidential Decree
 - The case of ADRs

Topic 1.b. Sale of Securities by Argentine Resident Individuals (cont.)

- Applicable rates:
 - 15%
 - AFIP would claim, full, 35% rate on gains derived from the sale of non-Argentine securities and depreciable movable assets
 - Hot discussion

Topic 1.b. Sale of Securities by Argentine Resident Individuals (cont.)

- Non-Argentine Securities:
 - Gain = sale price minus cost (or basis).
 - Important discussion in an AR\$ devaluation context as to the tax basis:
 - How/When to convert the cost in Non-AR\$ into AR\$
 - AFIP's *unofficial* position: Conversion at the currency exchange rate applicable at the time the securities are bought.
 - Our view: lack of conversion rules for individuals; arguments exist to convert the Non-AR\$ cost at the currency exchange rate applicable at the time the securities are sold
 - Tax Planning: foreign SPV for investments purposes

Topic 1.c. Comments applicable to all Argentine residents, including entities

- Capital Gains/Losses:
 - Losses derived from sale of securities: can only be offset against capital gains derived from sale of securities
 - And, if securities-related losses are derived from non-Argentine source income, then double test:
 - similar type of transaction,
 - similar source

Topic 1.d. Sale of Securities by non-Argentine Residents

- Material change
- Sale of Argentine securities by non-Argentine residents now subject to tax
- Withholding regime:
 - Local Buyer = Withholding Agent
 - Foreign to Foreign transaction (i.e. non-Argentine buyer AND non-Argentine seller) :
 - Withholding Agent: Foreign Buyer. Not practicable
 - Local Withholding Agent: Yet to be regulated

Topic 1.d. Sale of Securities by non-Argentine Residents (Cont.)

- Applicable nominal withholding tax rate: 15%
 - Effective tax rate: 13,5% on gross payment (standard) or,
 - 15% on net gain (notice needed) = sale price minus cost (or basis) and expenses. However, no guidelines as to:
 - Formality to make the election
 - How to make currency conversions, in particular as to the cost (tax basis) of the relevant Argentine stock:
 - How/When to convert the Non-AR\$ cost into AR\$ cost for WHT purposes
 - Our view: lack of conversion rules; arguments exist to convert the Non-AR\$ cost at the currency exchange rate applicable at the time the securities are sold
 - Evidence as to the actual gain/loss by the non-Argentine resident
 - Accounting certification is proposed

Topic 1.e. Comments on Gains vis a vis Tax Treaties

- Reduced, 10% WHT rate under most Argentine treaties assuming +25% ownership