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**Recent Developments in International Taxation**

**Argentina**

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## **Executive summary**

In the past year, no major tax reforms took place in Argentina and there was little movement in the area of international tax law.

Nevertheless, in November 2023, national elections took place in Argentina, and the new President Javier Milei aims to introduce significant changes to current regulations with the purpose of generating a more attractive business environment for both Argentina and foreign investors.

To this extent, his administration introduced two major bills in Congress.

### *Bases and Starting Points for the Freedom of the Argentinians*

One of these bills, denominated as Bases and Starting Points for the Freedom of the Argentinians (the 'Basis Law'), is a wide-ranging bill, involving several matters and a broad declaration of emergency, and a delegation of legislative powers to the Executive Branch for one year. The bill includes the creation of an Incentive Regime for Large Investments (Régimen de Incentivo para Grandes Inversiones or RIGI), which provides a comprehensive and very attractive system of benefits, incentives and guarantees for investment promotion unlike anything in the current Argentine rules and laws.

The RIGI applies to new investments of at least \$200m in mining, energy, steel, technology, agroforestry, tourism and infrastructure sectors. The benefits will be applicable for 30 years and include tax stability, preferential income tax rates, accelerated depreciation, exemptions from export and import taxes, and the granting of VAT tax credit certificates. Moreover, as a key benefit for investment, the RIGI provides for a guarantee of free availability over export proceeds, which entitles investors to keep the currency obtained from the export of goods and services without being obliged to repatriate it and exchange it for domestic currency.

### *Palliative and Relevant Tax Measures Law*

The other bill, denominated as the Palliative and Relevant Tax Measures Law (the 'Tax Measures Law') relates exclusively to tax measures, including a moratorium and tax amnesty regimes, with many benefits, and certain amendments to the personal asset tax, income tax and special regime for small taxpayers.

After a prolonged parliamentary discussion, on 27 June 2024, both bills passed Congress, although with certain amendments introduced by both chambers. Finally, on 8 July 2024, both laws were published in the *Official Gazette* and entered into force. Nevertheless, several regulations are expected both regarding the RIGI and the amendments introduced by the Tax Measures Law.

## **Argentina tax environment**

As an introduction to this report and with the purpose of understanding the relevance of the new laws recently enacted, please find below some general considerations of the current Argentine tax environment.

Argentina is a Federal Republic with three levels of government entitled to exercise taxing powers: the Federal Government, the provinces and the City of Buenos Aires, and the Municipalities. However, there are certain regulations for coordinating and harmonising taxation among these levels.

The main federal taxes are as follows:

### *Income tax*

Income tax is levied on the worldwide annual net income obtained by Argentine residents (both individuals and legal entities), with tax rates up to 35 per cent. Dividend distribution to

shareholders, whether they are individuals residing in Argentina or foreign residents, are subject to a seven per cent withholding. Non-Argentine residents are also subject to income tax for any gains deemed to be from an Argentine source. Rates vary depending on the type of income obtained.

#### *Personal asset tax*

Personal asset tax is levied on assets held worldwide by Argentine resident individuals and undivided states on 31 December of each year. The tax rates used to range from 0.5 to 2.25 per cent, depending on the global value and location of the assets. The Tax Measures Law, however, provides for a reduction of the tax rates as of fiscal year 2023. Non-Argentine residents are subject to this tax for their assets located in Argentina. Finally, Argentine companies, acting as substitute taxpayers, must pay this tax in relation to the participation that Argentine individuals and foreign residents hold in such companies. The applicable rate in this last case is 0.50 per cent and is calculated over the proportional equity value of the participation as of 31 December of each year.

#### *VAT*

VAT is levied on the domestic sale of goods and services, the imports of goods into Argentine territory and the provision of services from abroad that are effectively used or exploited in Argentina (imports of services). The general tax rate is 21 per cent, although the reduced 10.5 per cent applies in certain cases. Exports of goods and services (ie, services rendered in Argentina but effectively used or exploited abroad) are exempt.

#### *Tax on debits and credits in Argentine bank accounts*

Tax on debits and credits in Argentine bank accounts is levied on debits and credits from and to Argentine bank accounts, and other transactions that are similar or could be used in substitution of a bank account. The general rate is 0.6 per cent and an increased rate of 1.2 per cent applies in cases in which there has been a substitution for the use of a bank account. In any case, the taxpayer can compute at least 33 per cent of the amount paid for this tax as a payment on account of its income tax liability.

At the local level, most relevant taxes collected by the provinces and the City of Buenos Aires are as follows:

#### *Turnover tax*

Turnover tax is levied on gross income (revenue) resulting from economic activities carried out within any of the Argentine provinces and the City of Buenos Aires. The rate varies depending on the activity and the jurisdiction where the activity is performed (average four per cent).

#### *Stamp tax*

Stamp tax is levied on acts and contracts with a pecuniary interest formalised on public or private instruments. In general terms, the tax is assessed by applying an average one per cent rate on the economic value of the act or contract being instrumented.

Finally, municipalities are entitled to collect certain fees and special taxes related to the provision of an individualised service to the taxpayer.

Although not very large, Argentina has an interesting double taxation treaty (DTT) network with more than 20 countries currently in force. Moreover, in the last few years, Argentina executed DTTs with Austria, China, Japan, Luxembourg and Turkey, which are still pending approval by Congress. President Milei has expressed his interest in moving forward with the parliamentary approval of these treaties as soon as possible. Although Argentina is not a member of the OECD, most of the DTTs are substantially based on the OECD model, although with certain special features.

## **Laws promoted by the new Argentine Government: tax-related relevant matters**

In December 2023, the new Argentine Government introduced two major bills in Congress. After several months of parliamentary discussions and the introduction of amendments by both Chambers of Congress, on 27 June 2024, the Basis Law and Tax Measures Law were approved. On 8 July 2024, both laws were published in the *Official Gazette* and entered into force.

### *The RIGI included in the Basis Law*

The Basis Law is a wide-ranging law, including unprecedented changes in legal, commercial, regulatory and social relationships in Argentina, with the aim of simplifying rules and obstacles to promote free market, competition and private initiative, and limit state intervention.

The Basis Law provides for a broad declaration of emergency and a delegation of legislative powers to the Executive Branch for one year; a major reorganisation of the public sector, including the privatisation of certain public companies, and the reform of the Administrative Procedures Law; and amendments to energy and labour laws and regulations.

One of its most relevant features is the creation of the RIGI, which provides for a comprehensive and very attractive system of tax, customs and foreign exchange (FX) incentives, as well as guarantees and stability. The RIGI will be applicable in the entire Argentine territory and the deadline for joining the regime is two years as of the entry into force of the Basis Law. The term may be extended for a period of up to two years, on a one-time basis, by the Executive Branch. The term of the benefits under the regime is 30 years.

Large investments carried out under the RIGI are declared to be of federal interest under the terms of section 75, paragraph 18, of the Argentine Constitution. Any regulation or de facto measure issued or implemented at the federal level or local level (provinces, City of Buenos Aires and municipalities, if they adhere to the RIGI) infringing such a declaration of federal interest will be null and void, and the Federal Justice will prevent its application.

Adhesion to the RIGI must be structured through a single project vehicle registered in Argentina (SPVs) holding a project that qualifies as a 'large investment' (ie, a project involving a long-term investment equal to or higher than \$200m up to \$900m, depending on the promoted productive sector) in certain promoted productive sectors. Those sectors are mining, energy, steel, technology, agroforestry, tourism and infrastructure.

If the minimum investment amount in computable assets is equal to or greater than \$1,000m and results in the positioning of Argentina as a long-term supplier in global markets in which it does not have relevant participation, the project may be qualified as 'long-term strategic exports' and secure additional benefits for the promoted SPV.

As mentioned above, the regime provides for many tax benefits, including:

- a preferential income tax rate at the corporate level of 25 per cent (instead of the general progressive scale that goes up to 35 per cent);
- no time limitation for using net operating losses (NOL), which shall be updated by inflation, and the extraordinary possibility of transferring such NOL to a third party if the SPV is not able to offset such losses against taxable profits after five years;
- a reduced 3.5 per cent withholding rate for dividend distributions (instead of the regular seven per cent rate currently applicable) after seven years from adhering to the RIGI;
- benefits aimed at reducing the tax burden of the investment, such as no limitations on the deductions for interest and exchange differences linked to the financing of the project, accelerated depreciation of the assets involved in the project and the implementation of a system of 'VAT credit certificates' useful for settling VAT obligations; in this sense, SPVs may pay VAT to their suppliers or the Argentine tax authority, in the case of imports of goods, by delivering these tax credit certificates; and

- exemptions and preferential treatments for other taxes (eg, SPVs would be entitled to compute 100 per cent of the tax on debits and credits in Argentine bank accounts as a payment on account of its income tax liability).

Tax incentives granted through the RIGI will not produce effects if they result in a transfer of income to foreign tax authorities by applying a global minimum tax under Pillar Two of the Inclusive Framework of the Organisation for Economic Cooperation and Development (OECD).

Moreover, promoted SPVs are also exempt from import and export duties, and subject to a preferential FX regime. In this sense, the collection of proceeds from the export of goods arising from the promoted projects is exempt from mandatory repatriation through the Argentine FX market in the following percentages: 20 per cent after two years from the initiation of operations, 40 per cent after three years from the same date and 100 per cent after four years from the same date.

The RIGI guarantees regulatory stability in tax, customs and FX matters for 30 years. This stability implies that the incentives mentioned above may not be hindered or reduced by any future regulation that could change the tax, customs or FX treatment of the project, even if the Basis Law enacting the RIGI is repealed. In addition, the RIGI provides for tax stability, meaning that the taxes applicable to the SPVs will be those in force on the date they were included in the RIGI, considering the modifications above. New taxes created after the date of adhesion, other than those in force at that date or provided for in this regime, will not apply to such SPVs. Increases in existing taxes or the elimination of tax exemptions will not apply either.

Finally, the RIGI includes relevant provisions on dispute resolution mechanisms for disputes that may arise between an SPV and the Argentine Government. In this sense, it establishes a 'tiered' clause establishing that all disputes arising from the RIGI will be resolved by amicable negotiations or, if the dispute cannot be resolved within 60 calendar days, submitted to arbitration.

It is important to note that the Federal Executive Branch, the enforcement authority and the different government agencies involved (eg, the Argentine tax authority and the Argentine Central Bank) must regulate the RIGI. Although pending certain regulations up to the date of this report, the RIGI has already generated large expectation in the market because it is expected to be the driving force that channels all much-needed local and foreign investment for the development of certain strategic sectors of Argentina, such as the mining and energy sectors.

### *The Tax Measures Law*

The other relevant law to highlight in this report is the Tax Measures Law, which relates exclusively to tax matters, including the creation of a moratorium and a tax amnesty regime, and certain amendments to the personal asset tax and income tax, as described below.

#### MORATORIUM

The Tax Measures Law creates an exceptional regime for the regularisation of tax, customs and social security obligations at the federal level, overdue by 31 March 2024, and the infractions committed up to that date. The benefits resulting from adhesion to the regime include: (1) the forgiveness of accrued compensatory and punitive interest in a portion ranging from 20 per cent to 70 per cent depending on the method of payment (upfront payment or instalments) and the moment in which the debt is paid; (2) the forgiveness of 100 per cent of applicable fines; (3) the suspension of any ongoing tax and customs criminal process on adhesion to the regime and the extinction of the criminal action on full payment; and (4) the cancellation of the debt in instalments at a preferential rate.

- TAX AMNESTY REGIME

The Tax Measures Law also creates a voluntary disclosure regime of assets located in Argentina or abroad (the 'Tax Amnesty Regime') applicable to Argentine resident individuals, undivided estates and local companies. In the case of non-residents who lost their Argentine tax residence

on 31 December 2023, they may opt for the same treatment as resident individuals. In this case, they will be considered to have reacquired tax residence in the country as of 1 January 2024.

Any interested persons may state their intention to adhere to this regime by 30 April 2025, although the Executive Branch may extend the deadline to 31 July 2025.

Adhering to this Tax Amnesty Regime would trigger the payment of a 'special disclosure tax', levied on the total value of the disclosed assets, with a tax rate of zero per cent (for assets below \$100,000) and, once such a threshold is exceeded, ranging between five per cent and 15 per cent on the excess, depending on the moment in which the person states the intention of adhering to the regime. The tax is assessed and paid in USD.

Adhering to the Tax Amnesty Regime involves the following main benefits: (1) release from paying omitted taxes and ancillary obligations related to the disclosed assets; and (2) release from any potential claim or penalty, even under criminal tax law, criminal FX law and criminal custom law, and administrative infringements for failing to fulfil legal obligations related to the disclosed assets.

#### *Amendments to Personal Asset Tax Law and the creation of a special regime for fiscal years 2023–2027*

The Tax Measures Law amends certain aspects of the Personal Asset Tax Law, such as: (1) the increase of the non-taxable minimum; (2) the repeal of the differential and increased tax rate for assets located abroad; and (3) progressive reduction of the general tax rate up to 0.25 per cent as of 2027.

Moreover, it creates a special regime for paying personal asset tax applicable to individuals and undivided states resident in Argentina, which allows the payment of the Personal Asset Tax in advance and in an integrated manner corresponding to tax periods 2023–2027 at a reduced fixed tax rate of 0.45 per cent.

#### *Other relevant tax matters*

The Tax Measures Law also includes amendments to the Income Tax Law regarding employment gains and the special regime for small taxpayers.