



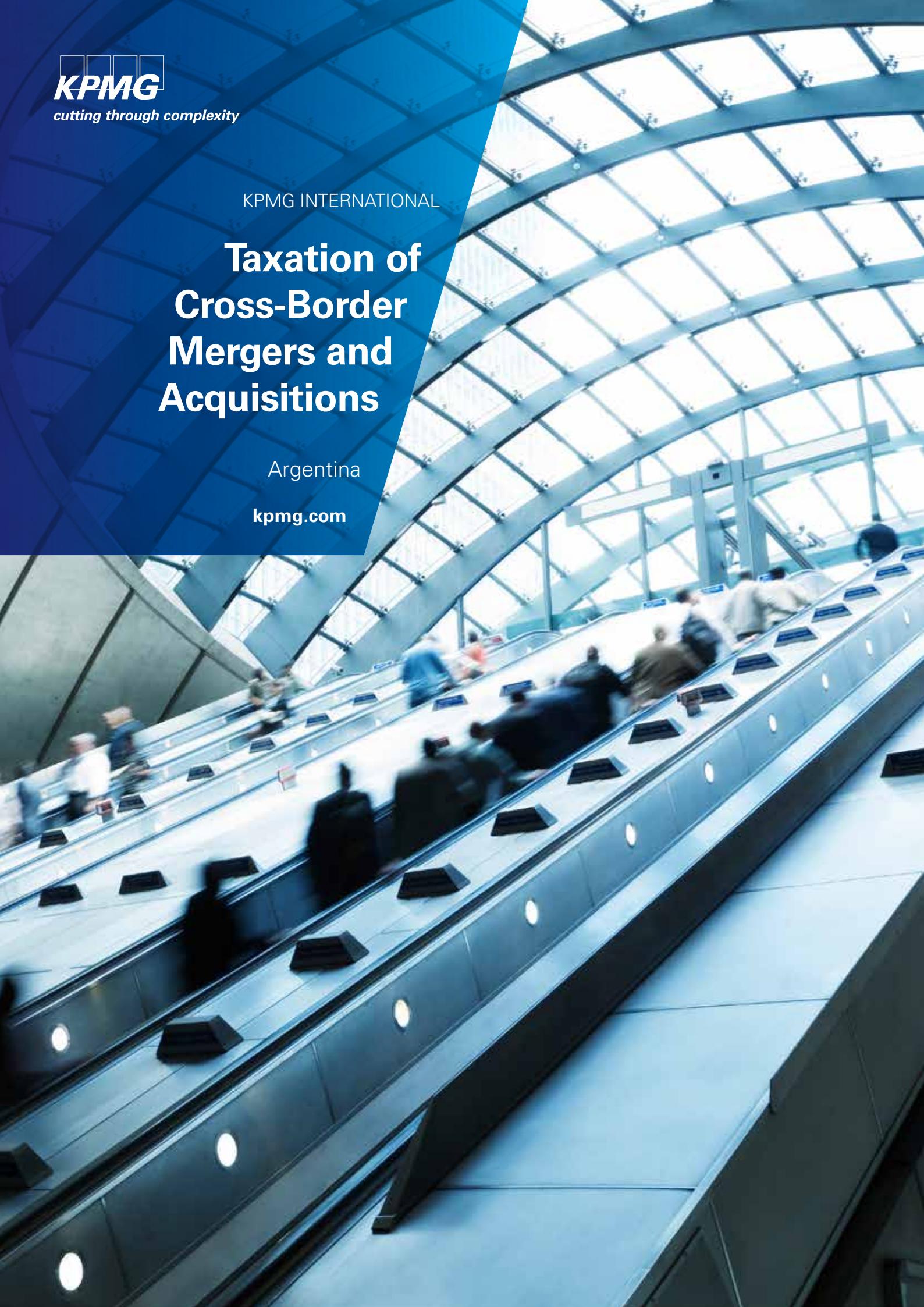
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KPMG INTERNATIONAL

# Taxation of Cross-Border Mergers and Acquisitions

Argentina

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# Argentina

## Introduction

In 2004 through 2006, the Latin American economy grew at a rate not seen since the late 1970s. The 2008 crisis contracted that growth but, since 2010, the rate of growth has recovered and economic strength is returning.

The Argentine Republic imposed tight controls on its foreign exchange market as of 2011, limiting the outflow of foreign currency through formal and informal regulations. The country also adopted a general import substitution and trade balancing policy, implemented through import licensing procedures and informal export requirements.

Many additional restrictions have not been embodied in legislation. These informal restrictions (e.g. communicated orally) include delays in the payment of services between independent parties, delays in foreign loan repayments, the inability to repatriate foreign investments and a prohibition against payments for services and dividends to foreign related parties.

In theory, international acquisitions of Argentine entities may take the form of either the purchase of an equity participation in a target resident company or the purchase of the company's assets. In practice, most acquisitions by foreign corporations take the form of purchases of equity in the target resident company, so tax due diligence is an essential part of the due diligence process.

In Argentina, the investor must bear in mind that merger and acquisition (M&A) transactions are evaluated according to anti-trust law as well as taxation rules. In addition, Argentine laws establish control mechanisms on actions or events that threaten free competition.

This chapter focuses on M&A-related issues that should be taken into account by parties entering M&A transactions in Argentina.

## Recent developments

### New withholding tax on dividends

Under a tax reform package enacted on 23 September 2013, dividends and profit distributions are subject to a new 10 percent tax. This tax applies in addition to the existing 35 percent 'equalization' tax on distributions from earnings that were not previously subject to corporate income tax such that the earnings are taxed in Argentina.

### New tax on capital gains

Proposed rules state that capital gains of Argentine and foreign individuals derived from the alienation of shares, bonds or other listed securities are subject to income tax at the rate of a 13.5 percent on gross proceeds or 35 percent on net proceeds, at the taxpayer's option. The tax basis of the shares would need to be verified by the Argentine tax authorities. Regulation is still pending.

### Tax treaties

Argentina and Spain signed a new tax treaty that entered into force retroactively as from 1 January 2003.

A new tax treaty under negotiation with Switzerland is expected to come into force in 2014.

## Asset purchase or share purchase

An acquisition in Argentina usually takes the form of a purchase of the shares of a company, rather than its business and assets. An asset purchase is subject to income tax (and other taxes, such as valued added tax (VAT) and turnover tax). The purchasers are jointly and severally liable, along with the tax debtors, for prior tax liabilities.

### Purchase of assets

The acquisition of assets results in a stepped-up basis of the assets to the buyer. However, the step-up is limited to the market value of the assets. The sale price is allocated to the assets, tangible and intangible, net of liabilities. Any additional consideration is attributed to goodwill, which is not deductible for tax purposes.

The asset purchase establishes a limit on the co-responsibility of purchasers for non-declared fiscal and social security liabilities, as long as they comply with the requirements in Law No. 11867 to report the transaction to the national fiscal authority. In practice, sellers rarely agree to report the asset transfer because such notification may prompt the tax authorities to subject the seller to a tax examination.

Thus, it is advisable to perform due diligence on the owner of the asset to be sold to estimate the contingencies that could transfer to the purchaser. In defining the scope of the tax due diligence process, bear in mind that the statute of limitations for tax liabilities is generally 5 years.

However, there is no statute or regulation that limits the tax authorities' power to examine open periods, even those already examined. Because the tax authorities may examine open fiscal years that have already been subject to examination, the tax due diligence process should cover all open tax years, whether or not such tax years have been examined.

### Purchase price

For tax purposes, it is necessary to apportion the total consideration among the assets acquired. It is generally advisable for the purchase agreement to specify the allocation. Normally, this allocation is acceptable for tax purposes, provided it is commercially justifiable. The purchase price of inventories and fixed assets should be calculated based on their market value. It is advisable that such valuation should be prepared by an independent valuations professional.

### Goodwill

Generally, the tax treatment of intellectual property and other intangible assets is aligned with their accounting treatment. Amortization of goodwill, trademarks and similar intangible assets is not deductible.

At the taxpayer's option, reorganization costs may either be deducted in the year incurred or capitalized and amortized over a period not exceeding 5 years.

### Depreciation

Depreciation of buildings used to generate taxable income may be deducted at a 2 percent annual rate on the cost of the buildings. Other depreciation rates may be used if they are technically supported.

Annual depreciation of all other depreciable assets used to generate taxable income is determined by dividing the acquisition cost of the asset by its estimated years of useful life. The tax law does not include standard depreciation rates.

Other depreciation methods, such as those based on units of production or time of use, may be used where they are technically justified.

### Tax attributes

Tax losses and other tax attributes (such as industrial promotional benefits) are not transferred on an asset's acquisition. They remain with the seller because the law does not permit their transfer unless the asset deal is organized as a tax-free operation (i.e. transfer of assets among the same economic group, subject to certain legal requirements). See the section on tax losses on share purchases later in this chapter.

### Value added tax

VAT is levied on a large number of goods and services, although goods and services exported from Argentina are zero rated. The seller charges VAT (output VAT) to the buyer on the transfer of inventories, fixed assets and movable goods. The buyer can use the input VAT as a fiscal credit to offset future VAT charged to customers on domestic transactions, as long as the buyer is registered for VAT purposes in Argentina. The standard VAT rate is 21 percent. A reduced rate of 10.5 percent applies to the sale of certain capital goods. Although goodwill is not subject to this tax, it may be taxed where it is tied to taxable services rendered as part of the general transaction.

Transfers of goods are exempt from VAT in the case of a tax-free reorganization.

The transfer of a business as a going concern could be treated as tax-free provided the transfer is organized as a tax-free transfer within the same economic group and certain legal requirements are met. Professional advice should be sought where buildings are being sold because complications may arise if the sale occurs within 10 years of acquisition (or completion of construction). Section 11 of the VAT Law prescribes that tax credits computed on time will be refunded.

### Transfer taxes

The sale of assets may also trigger a turnover tax for the seller. Generally, the tax applies to the transfer of inventories. Transfers of accounts receivable, fixed assets and intangible assets are not usually subject to turnover tax in the same way as the transfers of goods when a tax-free reorganization treatment applies (see reorganizations). The turnover tax is a state tax collected by the city of Buenos Aires and other provinces. However, there is the equivalent of a tax treaty among all local jurisdictions to avoid double taxation.

The turnover tax base is similar to that of VAT but the turnover tax does not generate a tax credit. Turnover tax rates vary among the provinces, ranging from 2.5 percent to 4.0 percent. A reduced rate of 1.5 percent or an exemption may apply in a province where a factory is located.

The stamp duty is a provincial tax levied on legal transactions expressly provided for by statute. Such transactions are documented with public or private instruments. Generally, the stamp duty is assessed at a rate of 1 percent and is applied on the economic value involved in the transaction. The parties signing the agreement/instrument are jointly liable for the payment of the tax.

Transfers of assets are generally subject to the stamp duty when the transfer is completed with a written agreement.

### Purchase of shares

Shares in a resident Argentinean corporation may be purchased through an existing or newly created local subsidiary of the foreign acquiring corporation. The acquisition may be financed by the subsidiary's own funds or through loans granted by the parent foreign corporation or a third party, such as a bank.

Generally, a foreign entity acquires a target Argentinean company directly. The deductibility of interest on acquisition debt may be in doubt when a resident holding company structure is used.

Purchasers of stock in an Argentinean company cannot obtain a step-up in the tax basis of the assets purchased.

### Tax indemnities and warranties

Most acquisitions in Argentina are stock purchases.

In a stock purchase, purchasers become fully liable for the tax liabilities of the target company until the end of the statute of limitations period. It is customary for the purchaser to initiate a due diligence exercise, which normally incorporates a review of the target's tax affairs.

In defining the scope of the tax due diligence process, bear in mind that the statute of limitations for tax liabilities is generally 5 years. However, there is no statute or regulation that limits the tax authorities' power to examine open periods, even those already examined. Because the tax authorities

may examine open fiscal years that have already been subject to examination, the tax due diligence process should cover all open tax years, whether or not such tax years have been examined.

The party acquiring the shares of a company usually requests a guarantee that, by buying its shares, the buyer is also inheriting the company's tax history. As a result, after the due diligence process – with a subsequent purchase audit – an escrow account generally is opened on the buyer's behalf in case of contingencies. The Argentinean tax authorities do not grant clearance certificates stating that a particular taxpayer has no tax outstanding.

### Tax losses

Net operating losses may not be carried back but may be carried forward for up to 5 years.

Foreign-source losses are subject to an additional limitation as they may offset only foreign-source income. A similar restriction applies to losses on sales of shares and certain derivatives transactions.

Changes in the shareholder do not remove the possibility of offsetting the tax losses with taxable earnings of the entity that owns the tax losses.

Under a tax-free reorganization, tax attributes, such as loss carry forwards, can be conveyed from the predecessor company to the surviving company. Tax loss carry forwards (and unused tax exemptions/promotional benefits) are only transferable to the surviving company or companies when the holders of record of the predecessor company or companies retained at least 80 percent of their capital contributions in these companies (unless the shares are traded under self-regulated stock markets) for at least 2 years prior to the date of the reorganization.

### Transfer taxes

The stamp duty is a provincial tax levied on legal transactions expressly provided for by statute. Such transactions are documented with public or private instruments. Generally, the stamp duty is assessed at a rate of 1 percent and is applied on the economic value of the transaction. The parties signing the agreement/instrument are jointly liable for the payment of the tax.

Transfers of shares or interests held in business organizations (such as limited liability companies/SRLs) are subject to the stamp duty, provided generally that the transfer is completed with a written agreement.

## Choice of acquisition vehicle

The purchase of shares in a resident Argentinean corporation may be made through either an existing or newly created local subsidiary of the foreign acquiring corporation and tax factors often influence this choice.

There is no stamp tax on the introduction of new capital into an Argentinean entity.

### Local holding company

An Argentinean company could be used where the purchaser already owns another entity located in Argentina.

However, capital gains arising from the disposal of shares of an operating company are taxable at the level of the resident holding company, and the deductibility of interest on acquisition debt may be in doubt where a resident holding company structure is used.

## Rules and consequences for foreign shareholders

### Supervisory Board of Companies

General Resolution No. 7/2005, issued by the Supervisory Board of Companies (IGJ), is intended to prohibit the registration of foreign companies that do not effectively conduct business or own assets outside of Argentina but whose sole purpose is to conduct business activities in Argentina. The resolution may require non-Argentinean companies to incorporate as Argentinean companies before those companies are registered with the IGJ as shareholders of Argentinean corporations domiciled in the city of Buenos Aires. Incorporation as an Argentinean company is required where the foreign investor cannot prove that the value of its non-Argentinean non-current assets is significant when compared to the value of its ownership interest in the Argentinean company.

Note that there must be a minority shareholder holding at least 5 percent of the Argentinean company or the company can be re-classified as a branch.

### Special-purpose vehicles

Special-purpose vehicles (SPV) that do not strictly comply with Resolution No. 7 may still be registered as foreign, provided they can demonstrate that the ultimate controlling company of the group complies with the resolution (i.e. has significant assets outside Argentina).

The SPV must submit a certificate stating that its sole purpose in seeking registration is to serve as an SPV of the controlling company. The certificate must be accompanied by documents issued by the boards of directors, management or governing bodies of the SPV and the controlling company. For this purpose, an affidavit executed by the legal representative of the SPV is required with:

- a corporate organizational chart of the chain of companies that control the SPV
- certain information about the shareholders of the SPV and the SPV's parent.

### Equalization tax

The treatment of the payment of dividends (and other types of profit) is as follows.

Dividends are non-taxable where the amount distributed does not exceed the cumulative taxable income. Any excess is subject to a withholding of 35 percent as a one-off final payment. Stock dividends are not subject to withholding.

Article 69.1 of the Income Tax Law imposes the following limitation: "When individuals/entities included in paragraphs 1, 2, 3, 6 and 7 of subsection a) of section 69, as well as those indicated in subsection b) of the same section pay dividends or distribute earnings, in-cash or in kind, exceeding income determined in accordance with the general principles of the Income Tax Law, accumulated at the end of the fiscal year prior to the payment or distribution thereof, 35 percent will be withheld over such excess as one-off payment."

Under the tax reform enacted on 23 September 2013, a new 10 percent withholding tax (WHT) applies on gross dividends paid to Argentine individuals or foreign shareholders.

### Tax-efficient shareholders

It is essential to structure the acquisition of a target company in Argentina so as to minimize taxes applicable to cash exchanges between the Argentinean target company and the foreign-related companies.

Currently, Argentina has tax treaties in force with 16 countries: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, the United Kingdom and Russia.

The treaties grant various tax benefits to the foreign beneficiary generating Argentinean-source income, such as reduced income tax withholding on the payment of dividends or interest. The treaties also establish rules for determining the deductibility of such payments by the local taxpayer.

### Non-resident intermediate holding company

If the foreign country taxes capital gains and dividends received from overseas, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with Argentina. However, the purchaser should be aware that Argentinean treaties contain treaty-shopping provisions that may restrict the ability to structure a deal in a way designed solely to obtain tax benefits.

### Local branch

As an alternative to an Argentinean holding company, a foreign purchaser may structure the acquisition through an Argentinean branch. Argentina does not impose additional taxes on branch profits remitted to an overseas head office. Argentinean branches and corporations are taxed similarly at the national and provincial levels.

If the Argentinean operation is expected to make losses initially, a branch may be advantageous. Subject to the tax treatment applicable in the head office's country, a timing benefit could arise from the ability to consolidate losses with profits of the head office.

### Joint venture

Joint venture structures are not commonly used in Argentina.

## Choice of acquisition funding

A purchaser using an Argentinean vehicle to carry out an acquisition for cash needs to decide whether to fund the vehicle with debt or equity. The principles underlying these approaches are discussed later in this chapter.

### Debt

The principal advantage of debt is the potential tax-deductibility of interest (see deductibility of interest).

### Leveraged buy-outs

In a leveraged buy-out, a new holding company, the acquiring company, typically does not have sufficient capital to acquire the target company, so it arranges to take out a loan from a financial institution or related party.

Where the transaction is limited to the acquisition of capital stock or the merger of the new holding company with the target company, and the acquiring company's indebtedness is transferred to the target company, then the transaction is characterized as a leveraged buy-out merger. In these circumstances, the target company seeks the interest deduction for the loan, provided that the target has high and stable cash flows. However, the tax authorities have determined that interest arising from loans taken out to finance the purchase of shares cannot be deducted for tax purposes.

The Argentinean tax laws do not have special provisions on financial leverage or leveraged buy-outs. The current provisions on the deduction of interest apply. As a general rule, interest is deductible to the extent that it is related to the generation of taxable income. There are also capitalization rules applicable to loans granted by foreign-related entities under certain conditions.

In Opinion No. 62/03, the tax authorities considered interest accrued in connection with the purchase of the majority of the capital stock of a company that was then absorbed (leveraged buy-out merger). The tax authorities concluded that the purchase was not a part of the merged company's activities (operating activities) and that the interest was not deductible.

In a later decision, the National Special Tax Court held that "interest accrued from loans taken out to acquire the aggregate capital stock of a company before the merger of such company is an expense which is not necessary to obtain income or maintain the source of income of the company. Therefore, any such interest is not deductible. It is an investment made by the shareholder and, thus, it is the shareholder who will be subject to any applicable tax consequence."

## Thin capitalization rules

Thin capitalization rules only apply to interest on loans granted by foreign related financial institutions to local companies. Interest is not deductible where the debt/equity ratio of the local company exceeds a 2:1 ratio. Interest that is not deductible as a result of the application of this rule should be re-characterized as a dividend and treated accordingly. In the case of a treaty country intercompany loan, the thin capitalization rules may not apply, even where the 2:1 equity ratio is exceeded. However, opinions differ on this issue.

Although not necessarily a proper practice, the Argentinean tax authorities have previously sought to apply a regulatory decree stating that interest (other than on loans subject to the 35 percent WHT rate) is not deductible when the debt/equity ratio exceeds a 2:1 ratio and should be re-characterized as a dividend. As a result, interest generated by a treaty country intercompany loan may be subject to thin capitalization rules where the 2:1 equity ratio is exceeded.

Based on the above, leverage can be introduced to a target Argentinean company by borrowing capital from lenders in both treaty and non-treaty countries, as long as the 35 percent domestic WHT rate can be claimed as a tax credit in the foreign non-treaty country.

## Thirty percent bank reserve

Currently, the Argentinean Central Bank imposes a 30 percent bank reserve requirement on foreign currency inflows. The reserve must exist for 365 days, be denominated in US dollars, and cannot be used as collateral. Liabilities are exempt from the 30 percent bank reserve requirement as long as they are agreed and settled after 2 years and the local company uses them to invest in non-financial assets, such as fixed assets and inventories.

## Deductibility of interest

### Temporary limitation

Under section 18 of the Argentinean Income Tax Law, interest payments are expenses incurred by local companies holding foreign capital and such expenses become Argentinean-source taxable income for a foreign company which participates, either directly or indirectly, in its capital, control or management, and/or for an entity located in a tax haven. Therefore, the relevant recording in the financial statements for tax purposes can only be made when the expenses are paid within the term fixed for the filing of the tax return of the

fiscal year in which the corresponding disbursement accrued (5 months following year-end date).

Hence, where an Argentinean holding company does not pay the interest within the term fixed for the filing of the tax return, then the interest is not deductible in the financial statements for tax purposes (otherwise, it will be deductible in the year paid).

## General Instruction Number 747

With this instruction, the Argentinean tax authorities attempted to challenge the deductibility of interest and exchange gains/losses arising from loans in foreign currency between companies located in Argentina and foreign companies. Reasons for these challenges included the lack of a formal agreement between the parties, failure to state the terms for the repayment of principal and/or interest, and failure to include an interest rate in the loan agreement.

In addition, it is important to meet the formal requirements discussed above in the event of leveraged buy-outs to avoid the possibility that the tax authorities may challenge the exchange gains/losses and interest derived from these loans.

## Payment of withholding tax

A failure to pay WHT implies that the expenses (interest) is not deductible for tax purposes.

## Transfer pricing

Under transfer pricing provisions, interest on borrowings between a local company and a foreign-related company must conform to normal market practices on an arm's length basis.

## Withholding tax on debt and methods to reduce or eliminate it

AWHT is imposed on payments of interest to non-residents. The WHT rates for the payment of interest to foreign beneficiaries are:

- 15.05 percent where the borrower is a local financial entity the loan is related to the financing of capital goods imports, or the foreign creditor is a financial or banking institution located in a country that either
  - a) is not considered a low-tax jurisdiction, or b) has a treaty with Argentina that contains an exchange of information clause that has no local restrictions regarding information exchange between revenue services
- 35 percent for all other cases.

However, interest from the following portfolio investments is not taxed if paid to non-residents:

- obligations of the Argentinean government
- obligations (bonds) issued by resident corporations and other non-government entities through a public offer.

The existing tax treaties may stipulate that lower WHT rates apply in the case of payments to recipients in the relevant countries.

To obtain WHT relief under a treaty, the foreign beneficiary shall submit an affidavit demonstrating that it is a foreign resident, according to General Resolution 3497. The data in the affidavit must be certified by the related foreign tax authorities and it must be in line with the Hague Apostille regime.

#### Checklist for debt funding

- The tax authorities have determined that interest on loans taken out to finance the purchase of shares cannot be deducted for tax purposes.
- The use of bank debt may avoid thin capitalization and transfer pricing problems.
- Meet formal requirements of loans to avoid a possible tax authority challenge regarding the exchange gains/losses and interest derived from these loans.
- Deductibility of interest from related companies is conditional on the effective payment of such interest.
- For certain loans, the Argentinean Central Bank imposes a 30 percent bank reserve requirement for 365 days, denominated in US dollars, which cannot be used as collateral. The 30 percent fixed deposit does not apply to the purchase of fixed assets and inventory. Liabilities that are agreed and settled after 2 years are exempt from the bank reserve, provided the local company uses loan to invest in non-financial assets, such as fixed assets.
- Thin capitalization rules only apply to interest on loans granted by foreign-related financial institutions to local companies and other loans where the applicable WHT rates are less than 35 percent.

#### Equity

Foreign companies usually structure inbound investments into Argentina by using a portion of debt and a portion of equity.

Stamp tax is not applicable to new shares and/or to capital contributions.

A capital contribution is not subject to the 30 percent bank reserve requirement as long as the contribution is registered with the Public Registry of Commerce, the registration is submitted to the banking authorities (a temporary deposit may be required, which is released once the documentation is submitted), and the foreign investor holds more than 10 percent of the capital of the local entity.

#### Reorganizations

Tax-free reorganizations may be structured under an Argentinean law that allows tax attributes, such as loss carry forwards, to be conveyed from the predecessor to the surviving company. Tax loss carry forwards and unused tax exemptions are only transferable to the surviving company or companies where the holders of record of the predecessor company or companies held at least 80 percent of their capital contributions in these companies (unless the shares are traded under self-regulated stock markets) for at least 2 years prior to the date of the reorganization.

Under Argentinean law, reorganization is defined as:

- the merger of pre-existing enterprises
- the division of an enterprise into another or others that continue, together, the operation of the first enterprise
- the sale or transfer of one entity to another that, although being legally independent, constitute the same economic whole.

For a reorganization to qualify for tax-free treatment, certain requirements must be satisfied. For example, the holder or holders of record of the predecessor company must retain an investment in the surviving company equal to the investment in the predecessor company for not less than 2 years from the date of the reorganization. The reorganized companies must have had the same or related activities during the 12 months preceding the merger, and each company must have existed for at least 18 months before the reorganization. The surviving entity must continue its activities for at least 2 years after the date of the reorganization, so that the goods and/or services the surviving company or companies produce and/or trade have characteristics similar to those of the predecessor company or companies.

The reorganization must be communicated to the tax authorities within 6 months of the reorganization date.

M&A transactions are evaluated according to anti-trust laws where they involve economic concentrations through mergers, going-concern transfers, acquisitions of interests in other companies that confer control over them, and transfers of assets that also confer control or a dominant influence on decision-making.

## Hybrids

Hybrids, which are instruments treated as equity in the accounts of one party and as debt in the accounts of the other, are not applicable for Argentinean income tax purposes.

## Discounted securities

No special Argentinean tax benefits arise in connection with the issuance of securities issued at a discount.

## Other considerations

### Labor issues

Where a business is transferred by whatever means, all the obligations arising from the employment contract between the transferor to the worker at the moment of the transfer, are transferred to the transferee or purchaser, including those resulting from the transfer itself. The employment contract remains in full force and effect with the transferee or purchaser, and the worker retains the rights vested in all the years of service with the transferor. The transferor and the transferee of a business are jointly and severally liable for the related obligations arising from the employment contract at the moment of the transfer.

### Sale of shares of stock corporations (SA) or quotas of limited liability companies (SRLs)

Under the tax reform enacted on 23 September 2013, capital gains derived by non-residents from the sale of shares or quotas are subject to a 15 percent tax on gross proceeds or 13.5 percent tax on net proceeds (at the taxpayer's option). Where net proceeds are chosen, the costs should be validated by the Argentine tax authorities.

The responsibility for the collection of the tax is assigned to the buyer. However, regulation on the collection mechanism is still pending.

### Sale of interest in limited liability company

The sale of an interest in a limited liability company is treated the same way as a sale of shares.

### Company law and accounting

Mergers are regulated in Corporations' Law 19,550 (ACL), and acquisitions of shares/quotas are regulated by the Civil and Commercial Codes.

ACL foresees two types of mergers: a pure or simple merger where two or more companies are dissolved (without liquidation) in order to create a new one, and an absorption merger where an existing company incorporates another or other companies that are dissolved without being liquidated.

To effect a merger, several steps must be performed:

- preparation of special merging financial statements
- board of directors' meeting approving the merger
- signing of a preliminary merger agreement (*v.gr. Compromiso Previo de Fusión*)
- extraordinary shareholders' meeting
- publication of legal notices in the Official Gazette and other main newspapers
- signing of the definitive merger agreement (*v.gr. Acuerdo Definitivo de Fusión*)
- registration before the respective Public Registry of Commerce of Buenos Aires City.

ACL allows mergers of different types of companies. It is possible to merge corporations with limited liability companies or commercial and civil entities.

The practical advantage of carrying out a reorganization procedure (merger) rather than an acquisition of shares/quotas is that the companies involved do not need liquidity to merge. When acquiring shares/quotas, the purchaser must either have liquidity or obtain financing.

To effect a merger, special merging financial statements must be prepared, which must be audited by a local certified public accountant (CPA). Legal notices and accounting documents must also be prepared.

Third parties and creditors are specially protected by ACL. Before signing the definitive merger agreement, creditors could oppose the merger procedure and request their debts be paid, and corresponding judicial recourses are available to them.

Once all requirements have been fulfilled, the documents must be filed before the respective Public Registry of Commerce of Buenos Aires City. Once registered, the merger can still be opposed by third parties.

Where a merger (or acquisition of shares/quotas) amounts to an abuse of a dominant position in a specific market (or is alleged to do so), the operation (merger or acquisition of shares/quotas) must be submitted to and approved by the Anti-Trust Commission in advance. A failure to request the commission's authorization could lead to fines or the prohibition of the merger or acquisition of shares/quotas.

In the case of a shares/quotas acquisition, a purchase agreement must be entered into by the parties and the vendor must notify its participants so that they can modify and update their registrations.

Where quotas of a limited liability company are acquired, the purchase agreement must be registered with the Public Registry of Commerce of the relevant jurisdiction and a legal notice must be published in the Official Gazette.

Where the minority shareholders/partners of the companies involved in a merger procedure or an acquisition of shares/quotas hold less than 5 percent of the registered capital, the Public Registry of Commerce of Buenos Aires City deems the local company to be a branch of the main shareholder.

Foreign companies participating in a merger or acquisition procedure must be registered with the Public Registry of Commerce of the relevant jurisdiction under section 123 of the ACL (foreign entity registered to participate as a shareholder/partner of a local company) or section 118 of the ACL (branch of a foreign company) under the penalty of not registering the acts of the participating local companies. Every local jurisdiction also has administrative requirements for foreign companies.

From an accounting viewpoint, it is necessary to distinguish transactions between unrelated parties (business combinations) from transactions within the same economic group (corporate reorganizations) because the accounting treatment depends on this distinction.

In the case of a business combination, both assets and liabilities are stated at fair market value. If there is a difference between fair market value and the price paid, positive or negative goodwill arises. If the useful life of goodwill is indefinite, it is not amortized, but annual recoverability analysis is required.

In the case of a corporate reorganization (within the same economic group), assets and liabilities are added to the book value and no goodwill arises.

### Group relief/consolidation

Consolidated filing is not permitted. Each entity, even where it belongs to the same owner or affiliated group, must file a separate tax return.

### Transfer pricing

Argentina's transfer pricing regulations are broadly comparable with Organisation for Economic Co-operation and Development (OECD) guidelines.

There is, however, no hierarchy for the application of the OECD accepted transfer pricing methods in Argentina. The selection of the appropriate method depends primarily on the availability of information and the number and magnitude of the adjustments necessary to achieve comparability.

Under these provisions, the services between a local company and a foreign-related company must conform to normal market practices on an arm's length basis. If not, the tax authorities may make appropriate adjustments, by applying methods and procedures prescribed by the law, to the tax return of the local company, and thus increase its taxable base.

The transfer pricing return (i.e. a report certified by a CPA) must be filed 8 months after year-end. Under section 15.1 of the Income Tax Law, failure to file the tax returns and related transfer pricing analyses with the tax authorities may result in fines of up to 6,000 US dollars (USD) for each tax return not filed.

#### Foreign investments of a local target company

For resident corporations, worldwide income is taxable, including the income of foreign branches and subsidiaries, even where such income is not repatriated. Income of foreign subsidiaries is taxable only to the extent of dividends actually paid. However, where the subsidiary is organized in a tax haven country, the Argentinean company is taxed on its allocated share of the subsidiary's income, regardless of whether a dividend is paid.

### Comparison of asset and share purchases

#### Advantages of asset purchases

- Limits the co-responsibility of purchasers for non-declared fiscal and social security liabilities, as long as they comply with Law No. 11867 and report the transaction to the tax authorities.

- The purchase price, or a portion of it, can be depreciated or amortized for tax purposes.
- Possible to acquire only part of a business.

#### Disadvantages of asset purchases

- Higher transfer taxes apply (VAT, turnover tax, etc.).
- Benefits of cumulative tax losses incurred by the seller remain with the seller, because the law does not permit their transfer.

#### Advantages of share purchases

- May benefit from tax losses of seller's company.
- Lower transfer taxes apply to the operation (no VAT, no turnover tax, etc.) compared to asset purchases.
- Lower capital payments compared to asset purchases.

#### Disadvantages of share purchases

- Purchaser assumes all the tax and social security history of the company.
- Purchaser remains liable for any claims or previous liabilities of the entity, including tax, social security and labor obligations.

## Argentina – Withholding tax rates

This table sets out reduced WHT rates that may be available for various types of payments to non-residents under Argentina's tax treaties. This table is based on information available up to 1 January 2014.

Source: *International Bureau of Fiscal Documentation, 2014*

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
<b>Domestic rates</b>				
<i>Companies:</i>	10/35	10/35	15.05/35	12.25/28/31.5
<i>Individuals:</i>	10/35	N/A	0/15.05/35	12.25/28/31.5
<b>Treaty rates</b>				
<i>Treaty with:</i>				
Australia	15	10	12	10/15 <sup>3</sup>
Belgium	15	10	12	3/5/10/15 <sup>4</sup>
Bolivia	— <sup>5</sup>	—	—	—
Brazil	— <sup>6</sup>	—	—	—
Canada	15	10	0/12.5 <sup>7</sup>	3/5/10/15
Denmark	15	10	0/12 <sup>8</sup>	15
Finland	15	10	15	3/5/10/15 <sup>9</sup>
France	15	15	20	18
Germany	15	15	10/15 <sup>10</sup>	15
Italy	15	15	0/20	10/18 <sup>11</sup>
Netherlands	15	10	0/12	3/5/10/15
Norway	15	10	0/12.5	3/5/10/15
Russia	15	10	15	15
Spain <sup>12</sup>	15	10	0/12 <sup>13</sup>	3/5/10/15 <sup>14</sup>
Sweden	15	10	0/12.5	3/5/10/15
United Kingdom	15	10	0/12	15

### Notes:

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid by the government or to government institutions or to state-owned institutions, or in respect of commercial debt claims in the case of the supply of goods, in respect of a loan for development purposes or for the promotion of exports, etc. Such exemptions are not considered in this column.
2. The rate generally applies with respect to participations of at least 25 percent of capital or voting power, as the case may be.
3. The 10 percent rate applies to copyrights, patents, lease of equipment; the supply of know-how or information; and technical assistance.
4. The 3 percent rate applies to news-related royalties; the 5 percent rate applies to copyright royalties (other than royalties related to films or tapes); the 10 percent rate applies to patents, trademarks, know-how, certain lease-related royalties and technical assistance.
5. The domestic rate applies; there is no reduction under the treaty. The source state has the exclusive right to tax.
6. The domestic rate applies; there is no reduction under the treaty. Both states have the right to tax. However, the state of source has the exclusive right to tax interest paid by public bodies.
7. The zero rate applies, *inter alia*, to interest paid by public bodies.
8. The zero rate applies to interest paid to banks and financial institutions (under certain conditions).
9. The 3 percent rate applies to payments for news; the 5 percent rate applies to copyright royalties (excluding computer software, cinematographic films, and works on film, videotape or other means for television or radio broadcasting); 10 percent for patents, equipment, software, know-how and technical assistance; and 15 percent for copyright royalties paid to someone other than the author or the author's *mortis causa* successor (including cinematographic films and works on film, videotape or other means for television or radio broadcasting).
10. The 10 percent rate applies to sales on credit of industrial, commercial or scientific equipment, and loans granted by a bank or for the financing of public works.
11. The 10 percent rate applies to copyright royalties.
12. Retroactively effective 1 January 2013.
13. The zero rate applies to sales of industrial, commercial or scientific equipment.
14. The 3 percent rate applies to news-related royalties; the 5 percent rate applies to copyright royalties; the 10 percent rate applies to patents, trademarks, know-how, certain lease-related royalties and technical assistance.

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