Argentina Incentive Regime for Large Investments

"RIGI"

KPMG Argentina

Contents

* RIGI is the acronym of *Régimen de Incentivo para Grandes Inversiones* (Incentive Regime for Large Investment). It is a bill of the Executive Branch for consideration by Congress.

RIGI

Main objectives

Encourage large national and foreign investments in certain sectors.

Generate conditions of predictability, stability and legal certainty for those investments.

Guarantee compliance with the rule of law by providing special protection in the event of deviations and/or non-compliance by the public administration and the State.

RIGI SECTORS

Sectors initially included:

- 1. Agribusiness
- 2. Infrastructure
- 3. Forestry
- 4. Mining
- 5. Gas and oil, and petrochemical industry
- 6. Energy
- 7. Technology

The Executive Power may include new sectors, after approval of the Law by Congress

RIGI
Incentives

Tax

Customs

Special Foreign Exchange Regime

TAX Incentives

Income tax

- 25 % CIT flat rate.
- 0 % WHT on dividends distributed after three years of the fiscal year that gave rise to them, provided that the earnings are generated in fiscal years that are closed after 4 years from the date of accession to the regime (General Regime is a 7 % WHT).
- Accelerated depreciation:
  - Movable property: 2 years. Infrastructure works: useful life reduced by 60 %.
- NOL / Tax-loss Carryforwards:
  - No temporal limits (five years under the General Regime) in the computation of tax-loss carry forwards
  - In addition, after five years, non used tax-loss carry forwards may be freely transferred to third parties (this is not allowed under general rules).
  - Inflation adjustment for tax-loss carry forwards (not available under the general regime).
- Inflation adjustment for tax purposes and actualization of items of the tax base affected by inflation:
  - More certainty in the inflation index to be used in the inflation adjustment for tax purposes, as it is specifically mentioned in the Law (under the General Regime, the index is published by the tax-authority).
  - No limitation in the application of inflation indexes.
- Possibility to keep accounting books in USD.
- Simpler procedures in case of tax-free reorganizations.
- Special and more beneficial regime for joint ventures and similar contracts.

TAX
& Customs Incentives

- VAT
  - The VAT benefit is likely to be one of the most attractive features of the RIGI
    - It will likely reduce financing costs
  - Input VAT (including import VAT) on acquisition, construction and/or development of fixed assets and infrastructure investments (including services received for such purposes) to be paid with tax credit certificates issued by the SPV.
    - This means that the SPV will just pay the net amount invoiced by the supplier (excluded VAT). The SPV will pay the VAT on that invoice with the delivery of the tax credit certificate.
    - The Input VAT paid with the tax credit certificate shall not be computable as input VAT by the SPV.
    - In the case of SPV with export activities, there will be no need to ask for Input VAT refunds in relation to acquisitions, construction and/or development of fixed assets or infrastructure investments, as no Input VAT would have been paid on such items.
    - This eliminates the cash issue of the general regime in cases of initial large investments or exports, as the general Input VAT refund regime is lengthy and cumbersome.
    - In the case of excess VAT credits, the suppliers may freely transfer the tax credit certificates. The Tax Administration can only audit the SPV in connection with the validity of the tax credit certificates (not the subsequent recipients). This should facilitate the transfer of the tax credit certificates.

* RIGI requires that businesses/projects benefitted by the regime are under the umbrella of an SPV, which is explained on slides 13 and 14.

TAX
& Customs Incentives

- Tax on credits and debits in bank accounts creditable 100% against income tax:
    - Under the general tax regime, transfers from or to bank accounts are subject to a 0.6% tax
    - Under the RIGI, this amount can be computed 100% as a tax credit against Income Tax.

- Customs
    - SPV under RIGI* will not pay customs duties, statistics charges, verification charges and provincial and national withholding taxes for imports.
        - It includes capital goods, spare parts, parts, components, raw materials, supplies related to the SPV.

    - No exports duties after 3 years from the date of accession to the RIGI.
    - Prohibition of imposing restrictions on import and export, including prohibition of mandatory local market quotas.

* RIGI requires that businesses/projects benefitted by the regime are under the umbrella of a SPV, which is explained on slides 13 and 14.

SPECIAL FOREIGN Exchange Regime

Exports

- SPVs are exempted in the percentages described below from the obligation to bring to Argentina the proceeds in foreign currency of exports (goods or services) and to convert such proceeds to Argentine pesos:
  - 20% as of the first year counted from the date of accession to RIGI;
  - 40% as of the second year counted from the date of accession to the RIGI;
  - 100% as of the third year counted from the date of accession to the RIGI.

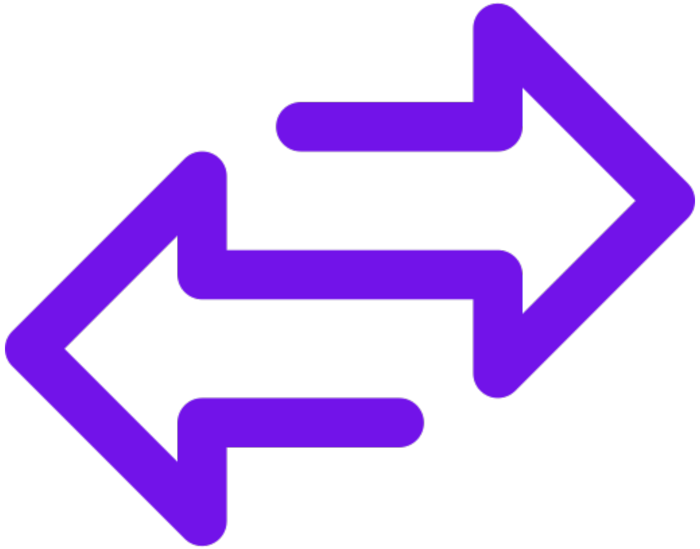
  These funds in the abovementioned percentages will be freely available.

Financing and funding

- Foreign currency from financing will not be subject to restrictions regarding its free availability.

Investment in foreign assets:

- No limits (i.e. with the proceeds from exports).



SPECIAL FOREIGN Exchange Regime

Access to the Official Exchange Market:

- The rules that establish restrictions for access to the official exchange market to convert Argentine pesos to foreign currency to repatriate capital and repay loans will not be applicable to the SPV under the RIGI, up to the total amount that has been previously entered through the official exchange market.

- Interest and dividends shall be payable through the official exchange market provided that the principal (in the case of loans) or the capital (in the case of capital contributions) have been previously entered through the official exchange market.

- Nevertheless, in case of FX controls, SPVs may need to first draw on their foreign assets to repatriate capital, pay loans, interest, commercial debts and dividends before requesting conversion of Argentine pesos to foreign currency through the official exchange market.

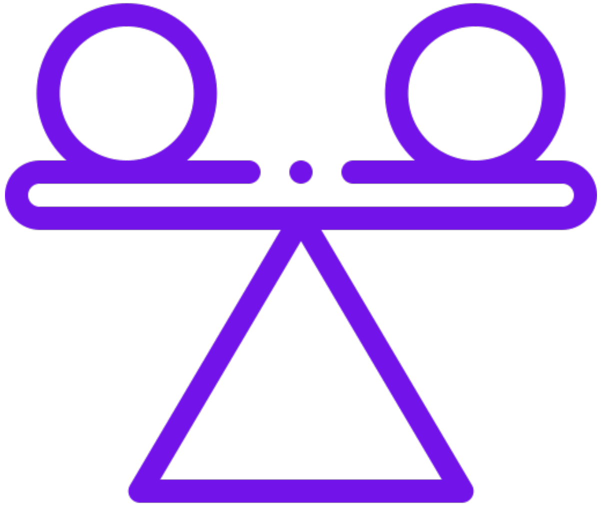
LEGAL CERTAINTY and Stability

- **The tax and customs incentives and special foreign exchange regime cannot be changed by more burdensome legislation during the 30 years following the approval of the project under the RIGI.**

- **The RIGI includes many legal and procedural guarantees that were absent in previous stability regimes, against potential future violations of the benefits.**

- **This should greatly improve the certainty and the effectiveness of the benefits.**

- **The SPV cannot be obligated to pay the higher tax burden (no *solve et repete* rule).**



PROCEDURES TO GRANT the legal certainty and the rule of law:

- Declaration of RIGI as of “national interest”. This could be helpful to limit deviations from provinces and municipalities.

- **In case of tax legislation increasing or creating federal taxes, the burden of proving that such legislation does not violate the stability is laid on the tax authority.**

  - **In other cases, the burden of proving that the legislation violates the RIGI is laid on the taxpayer, but tax claims from federal tax authorities can be appealed with suspensive effects to the Courts.**
  - **Possibility of the SPV to compute overpaid taxes as a tax credit.**

- The RIGI does not preclude the possibility to benefit from a reduction of the tax burden if enacted by new laws or regulations.

- **Special customs procedure through which the SPV will self-declare the taxes that must be paid for an import or export (when applicable). Customs will have two days to make any claim that can be appealed with suspensive effects and with the release of the goods if the exporter/importer provides a guarantee.**

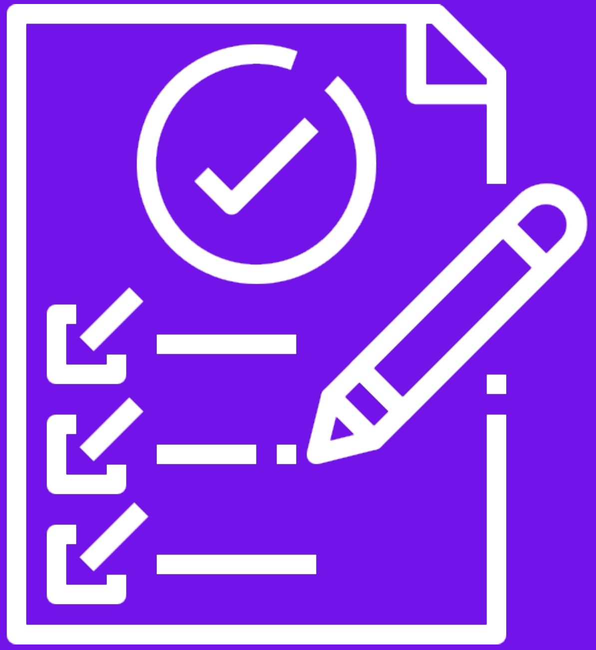
PROCEDURES TO GRANT the legal certainty and the rule of law:

- Any challenge that the Central Bank may raise with respect to compliance with the SPV's foreign exchange obligations under the RIGI can be appealed through judicial actions with suspensive effects. That is to say, the Central Bank will not be able to initiate criminal proceedings until the judicial decision is final.
    - To do this, the SPV must notify the Central Bank of the rule that it considers in violation of its special regime, providing the necessary evidence, which can be accepted or rejected by said authority. In the latter case, throughout the judicial appeal process, the SPV may apply the FX rules according to its interpretation, with no penalties.
- ARBITRATION: any dispute regarding the RIGI may be submitted, at the election of the SPV, to: i) as per the CPA regulations; ii) as per the Arbitration regulations of the International Chamber of Commerce; or iii) according to ICSID rules.

RIGI
Requirements

- Submission of a request for inclusion to the RIGI:
    - Submitted by an SPV which is the acronym of *Vehículos de Proyecto Único* (Sole Purpose Vehicles).
    - The SPV must be the holder of an investment project in the sectors included in the RIGI.
    - The project must qualify as “large investment”. That is, it should qualify as an investment in “computable assets” exceeding the minimums amounts and timing thresholds to be determined by the Regulations.
        - These Regulations will establish minimum percentages of investments during the first and second years after the approval of the project.
    - The project must also qualify as a “long term investment”. A 30% net present value cash flow/investment ratio must be met during the first 5 years.
    - “Investments in computable or eligible assets” means those aiming at the acquisition, production, construction and/or development of assets that will be affected to the activities of the sectors included in the RIGI, excluding financial and/or portfolio assets and inventories.
    - Inclusion of project details as, for example, investment schedule, description of funding and financing, production and export estimates, description of permits and authorizations obtained, etc.

- Obtain approval of the submission from the Competent Authority:
    - It will be considered that the SPV has been included in the RIGI as of the date on which the request was duly submitted and that from that date it acquired the rights granted by the RIGI.



SPV

- The sole and exclusive purpose of the SPV must be to carry out a single investment project admitted to the RIGI.
  - SPVs must not develop activities or possess assets not affected by said project, with the exception of temporary investments of their working capital that make for the prudent administration of the company's funds.

The following can be SPVs:

- *Sociedades Anónimas* (*SAs* or corporations) y *SRLs* (limited liabilities companies)
- Branches of foreign companies
- *Sucursales dedicadas* (branches of local companies, within the Argentine territory).
  - In this way, it is not necessary to create a new legal entity, in case an entity already exists in Argentina but also has businesses not related to the RIGI.
- *UTs* (joint ventures) and similar contracts for joint associations.

- SPVs will keep separate accounting (only capital, assets, liabilities, sales, etc. related to the project should be included) and have a separate tax ID (*CUIT*).

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