

GMS Flash Alert

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Argentina – Tax Court Ruling on Argentina Tax Residence

Argentina's Tax Court (*Tribunal Fiscal de la Nación*) delivered an important ruling concerning Argentine tax residence that has implications for the tax treatment of individuals by Argentina's authorities. The ruling mentions the criteria adopted, in this case, by the Tax Court and the tax authority, indicating circumstances under which one would regain tax residence in Argentina.

WHY THIS MATTERS

The court's interpretations and ruling have the potential to impact globally-mobile employees, as tax residency is critical in determining an individual's Argentine tax status. Employers are also affected as their employer obligations (e.g., tax equalizations) may vary depending on an individual's tax residency status.

Background

A person with Argentine tax residence is liable for tax on his/her worldwide income.

Loss of Argentina Tax Residence

Generally, individuals who have the status of tax residents in Argentina (i.e., subject to worldwide income) lose their tax residence when:

- they acquire permanent residence in a foreign state from a migratory standpoint; or
- a current agreement to avoid double taxation is applied; or
- they remain in another country/jurisdiction for a period exceeding 12 months (the temporary presence within Argentina that, in a continuous or intermittent manner, does not exceed 90 days during every 12-month period, does not interrupt the continuous stay abroad).

Regaining Argentina Tax Residence

To regain one's tax residence in Argentina, the law mentions the intention and purpose of permanence in our country.

Court's Ruling

Through this ruling, new positions can be gleaned: for example, the Tax Court and Argentina's tax authority have opined on the "intention to remain" in Argentina, arguing that in order for a taxpayer to regain his/her tax residence the following circumstances must be taken into account:

- Stay more than 90 days in Argentina: It was noted that after 91 days, local law presumes that the intention of the person is to remain in the country, thereby regaining his tax residence. (It is important to highlight this since the law refers to 90 days for the loss of one's tax residence, but not for regaining that residence).
- The company reported the individual as a resident under a regime known as "*Participaciones Societarias Y Rentas Pasivas – RG 4697*." This is an annual information reporting regime, under which Argentinian companies must report the final beneficiaries of their shareholdings to the tax authority.
- Fiscal Domicile: The Tax Court notes that the taxpayer did not change his fiscal domicile and legal domicile for one situated abroad. (*In such a case, it could be prudent to report the quitting or loss of one's tax residence to the consulate of the destination country.*)
- Foreign Beneficiary Regime: In this case, the taxpayer did not provide evidence or receipts to show that beneficiary withholdings from abroad were made (regime that applies to earnings from an Argentine source for nonresidents) for his role as director of a company in Argentina. (*The implication being, had he done so, an argument for the change in his tax residence would have carried more weight.*)

KPMG INSIGHTS

Tax residence issues are fraught with complications and challenges, as the case described above illustrates.

It is a leading practice to discuss residency issues – amongst other tax-related issues – with employees assigned abroad from Argentina or employees inbound to Argentina, before they depart their home country or upon arrival.

The mobile employee's tax service provider is often able to assist with relevant procedures (such as change of tax address, exit forms, reporting to the consulate, withholdings in respect of the foreign beneficiary regime, etc.). Any questions or concerns may also be addressed to the GMS / tax team with KPMG in Argentina (see the Contacts section).

FOOTNOTE:

1 VOCXI - Expediente N° 43.715-I y su acumulado N° 43.7164 "Monti, Roberto Luis s/ recurso de apelacion". Sentencia. See: <https://www.argentina.gob.ar/tribunalfiscal> .

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Contact us

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