

Global Tax Alert

News from Americas Tax

Argentina reorders income tax law and its regulatory decree and issues list of jurisdictions considered “non-cooperating” for tax purposes

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Through Decree No. 824/2019, published in the Argentine *Official Gazette* on 6 December 2019, the Argentine Government reordered the Income Tax Law (ITL) for ease of reference and interpretation.

In addition, Decree No. 862/2019, published in the Argentine *Official Gazette* on 9 December 2019, reordered the ITL's Regulatory Decree and incorporated provisions that were contained in different regulations (e.g., taxation of nonresident investors, tax rules applicable to real estate transactions and severance payments). The decree also lists the countries that should be considered “non-cooperating” for tax purposes. The list is effective 9 December 2019.

Effect of “non-cooperating” jurisdiction provision

The “non-cooperating” jurisdiction provision affects certain provisions of the ITL and the Tax Procedural Law.

Specifically, a 35% income tax withholding rate, instead of the 5% or 15% income tax withholding rate, would apply to capital gains from the sale of:

- ▶ Shares
- ▶ Public bonds
- ▶ Negotiable obligations
- ▶ Common investment funds

- ▶ Certificates of participation or debt titles of financial trusts and similar contracts
- ▶ Other bonds
- ▶ Certain other investments obtained by foreign investors located in “non-cooperating” jurisdictions or the investments’ funds arising from “non-cooperating” jurisdictions

Additionally, transactions conducted with individuals or entities located in “non-cooperating” jurisdictions are not considered performed on an arm’s-length basis and, thus, are subject to transfer-pricing analysis and documentation obligations. Expenses incurred by Argentine entities that are deemed Argentine-source income in favor of foreign parties established in “non-cooperating” jurisdictions should be deducted for tax purposes in the year of accrual only if the payment is made by the date when the income tax return for that year is due. Otherwise, the expense must be deducted in the year of payment.

The “non-cooperating” jurisdiction provisions affect the exemption for foreign beneficiaries applicable to:

- ▶ The sale of shares
- ▶ Interest income
- ▶ Capital gains on the sale of public bonds, negotiable obligations and share certificates issued abroad that represent shares that are issued by Argentine companies (i.e., ADRs) and publicly traded in stock exchanges under the supervision of the Argentine Securities and Exchange Commission

The exemption will apply, however, if the foreign beneficiaries do not reside in, and the amounts do not arise from, a “non-cooperating” jurisdiction.

The non-cooperating provisions also affect:

- ▶ Interest paid to foreign banks established in “non-cooperating” jurisdictions, which will be subject to a 35% income tax withholding, instead of the 15.05% income tax withholding that applies for payments to banks established in other jurisdictions
- ▶ Amounts from “non-cooperating” jurisdictions that should be considered as an unjustified increase in net worth subject to income tax and value-added tax, except when the taxpayer can prove that the amounts have been previously declared

New “non-cooperating” jurisdiction list

The complete list of “non-cooperating” jurisdictions is as follows:

1. Afghanistan
2. Algeria
3. Angola
4. Ascension Island
5. Bangladesh
6. Benin
7. Bhutan
8. Bolivia
9. Bosnia and Herzegovina
10. Botswana
11. Brechou
12. Burkina Faso
13. Burundi
14. Belarus
15. Cambodia
16. Cape Verde
17. Central African Republic
18. Chad
19. Comoros
20. Cuba
21. Democratic Republic of Congo
22. Djibouti
23. East Timor
24. Egypt
25. Equatorial Guinea
26. Eritrea
27. Ethiopia
28. Federated States of Micronesia
29. Fiji
30. Gabon
31. Gambia
32. Guinea
33. Guinea-Bissau

34. Guyana
35. Haiti
36. Hashemite Kingdom of Jordan
37. Honduras
38. Iran
39. Iraq
40. Ivory Coast
41. Kenya
42. Kiribati
43. Kyrgyz Republic
44. Laos
45. Lesotho
46. Liberia
47. Libya
48. Madagascar
49. Malawi
50. Maldives
51. Mali
52. Mauritania
53. Mongolia
54. Montenegro
55. Mozambique
56. Myanmar
57. Namibia
58. Nepal
59. Nicaragua
60. Niger
61. North Korea
62. Oman
63. Palau
64. Papua New Guinea
65. Paraguay
66. Philippines
67. Pitcairn Islands
68. Republic of the Congo
69. Rwanda
70. Saint Helena Island
71. Solomon Islands
72. Sao Tomé and Príncipe
73. Sark Island
74. Sierra Leone
75. Somalia
76. South Sudan
77. Sri Lanka
78. Sudan
79. Suriname
80. Swaziland
81. Syria
82. Tajikistan
83. Tanzania
84. Thailand
85. Togo
86. Tonga
87. Trinidad and Tobago
88. Tristan
89. Tuvalu
90. Uzbekistan
91. Vatican City
92. Vietnam
93. Yemen
94. Zambia
95. Zimbabwe

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