

# Global Tax Alert

News from Americas Tax Center

## Argentina issues numerous pieces of guidance on various tax issues

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Argentina has recently issued numerous pieces of guidance on various tax issues, including value added tax (VAT) and export duties. Argentina also announced the upcoming release of new regulations, which are currently awaiting approval. This Tax Alert provides an overview of such developments.

### VAT regulations

Argentina recently published, in the *Official Gazette*, Decree No. 813/2018 (the Decree), establishing various VAT regulations.

For taxable services rendered and activities performed in Argentina by nonresidents, Law 27,346<sup>1</sup> established that the Argentine beneficiaries, recipients, lessees, borrowers, agents and intermediaries were required to pay the VAT as substitute taxpayers.

The Decree, however, clarifies that:

- ▶ Resident beneficiaries, intermediaries, etc. will not be required to act as substitute taxpayers when they qualify as end consumers or are registered under the Simplified Taxpayers' System; in other words, only VAT-registered taxpayers are required to pay the VAT under these rules.
- ▶ The VAT must be paid within 10 business days from the triggering taxable event (e.g., for services upon the completion of the services or the collection of the payment for the services, whichever occurs earlier).

- ▶ The tax authorities will establish specific procedures for cases in which federal, provincial and municipal governments must act as substitute taxpayers.
- ▶ The VAT paid is creditable as input VAT in the month in which it is paid.

With respect to the VAT amendments introduced by Tax Reform Law 27,430,<sup>2</sup> the Decree reorders the regulations, addressing the taxation of digital services, and includes clarifications on the reimbursement of VAT credits related to fixed asset acquisitions and for companies with subsidized prices.

### Export duties

Through Decree No. 793/2018 and Decree No. 865/2018, Argentina established export duties on exports of goods as from 4 September 2018. The general rate is 12%. The export duty, however, will not exceed Argentine Pesos (ARS) 3 or 4 per each US Dollar (USD) of the tax base or the official FOB (free on board) value, depending on the tariff code of the exported product. For goods that were already subject to export duties (e.g., soy and soy by-products), the abovementioned 12% general export duty must be added to the currently applicable duties.

### Pending regulatory decree for Tax Reform Law 27,430

Taxpayers have been awaiting a broad regulatory decree on Tax Reform Law 27,430. A draft of the decree was released, but not officially published. The main aspects of the draft decree were:

- ▶ *Nonresident capital gains taxation of indirect transfers of assets located in Argentina.* To benefit from the “economic group” exemption, the draft decree required nonresidents to meet a participation threshold of at least 80% for two years before an indirect transfer.
  - ▶ *Tax haven policy.* The draft decree included a new list of jurisdictions considered as non-cooperating for tax transparency purposes.
  - ▶ *Transfer pricing (TP).* The draft decree included additional regulations on: (1) the functional analysis required for foreign intermediaries that participate in the import and export of goods into and from Argentina respectively; (2) guidelines and parameters for the application of TP methods; and (3) documentation requirements, including the local file, master file and country-by-country report.
- ▶ *Permanent establishment.* The draft decree included clarifications on profit attribution, fixed place of business, and dependent agent, among others.
  - ▶ *Interest deductibility limitations.* The draft decree clarified that 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA) limit may not be applicable to interest subject to withholding tax.
  - ▶ *Controlled foreign corporation rules.* The draft decree included substance guidelines in relation to “personal and material means” requirements.

### Proposed tax changes

A number of project bills are being discussed in the Argentine Congress that would introduce tax amendments, mainly for 2019 and onwards. Among the many proposed tax changes, we note the following:

For the inflationary adjustment for income tax purposes, Law 27,430 established the application of an integral inflation adjustment mechanism for tax years starting 1 January 2018, when the variation of the Internal Wholesale Price Index (in Spanish, *Indice de Precios Internos al por Mayor* or IPIM) supplied by the National Institute of Statistics and Censuses (in Spanish, *Instituto Nacional de Estadística y Censos* or INDEC), was higher than 100% for the 36-month period before the end of the tax period. For the first and second tax years, the index had to exceed 1/3 and 2/3 respectively.

According to the proposed changes, the inflation adjustment for tax purposes would be based on the Consumer Price Index (in Spanish, *Índice de Precios al Consumidor nivel general* or IPC), and would only be triggered for tax years starting from 2018, 2019 and 2020 if the index exceeds 55%, 30% and 15% respectively. In practical terms, this would imply that the inflation adjustment would not apply to 2018 because the index is not expected to exceed 55%. Under the prior calculation provided in Law 27,430, the inflation adjustment would have been triggered for 2018.

For export duties, the proposed changes would amend the Customs Code to allow for duties to be applied to the exportation of services. The proposed changes would authorize the Executive Power to impose export duties of up to 30% until 31 December 2020. However, for the goods that were not subject to export duties until 2 September 2018, the maximum rate would be 12%.

With respect to the VAT, the proposed changes would allow companies engaged in TV and radio broadcasting, newspaper editing and other similar activities to use a portion of social security contributions as VAT credits. In addition, the proposed changes would establish a VAT exemption for construction activities related to community housing, under certain circumstances.

For the tax on credits and debits to bank accounts, the proposed changes would not include an increase to the portion that taxpayers may use as a tax credit against income tax, as originally planned.

With respect to the tax on personal assets applicable to individuals, the proposed changes would impose progressive tax rates for 2019 and onwards, ranging between 0.25% and 0.75%. The proposed changes also would change the methodology for the valuation of real estate for 2018 and onwards.

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## Endnotes

1. See EY Global Tax Alert, [Argentina enacts tax changes, including a VAT collection system for nonresidents](#), dated 10 January 2017.
2. See EY Global Tax Alert, [Argentine comprehensive tax reform bill sent to Congress](#), dated 14 December 2017.

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