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# Global Tax Alert

News from Americas Tax Center

## Argentina and Luxembourg sign new tax treaty

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### Executive summary

Argentina and Luxembourg have signed a new *Convention for the Elimination of Double Taxation With Respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance* (the Treaty), which is based on the Organisation for Economic Co-operation and Development (OECD) Model.

Argentina and Luxembourg must ratify the Treaty and notify each other once the ratification is complete. According to Article 29, the Treaty will enter into force on the date of the last notification made between the parties. The Treaty provisions will apply:

- ▶ For amounts paid on or after 1 January for taxes withheld at source, in the calendar year following the year in which the Treaty enters into force
- ▶ For tax years beginning on or after 1 January for other taxes on income or on capital, in the calendar year following the year in which the Treaty enters into force

## Detailed discussion

### Treaty provisions

#### Tax provisions

The Treaty would reduce the withholding rates on payments of dividends (10% or 15%), interest (12%) and royalties (3%, 5%, 10% or 15%). The Treaty also would exempt interest payments on certain loans from withholding tax for at least three years. The interest rate would not be higher than three points over the London Inter-Bank Offered Rate (LIBOR).

The Treaty would impose a 10% capital gains tax on gain upon the disposal of shares, if the participation interests are higher than 25% during the 365 days before the disposal; in all other cases, capital gains tax would be 15%. The Treaty also would contain a “real estate rich company” clause that would address the taxation of capital gains realized on the transfer of shares or comparable interests that derive their value from immovable property. Under this provision, if the shares or comparable interests derived, directly or indirectly, more than 50% of their value from immovable property at any time during the 365 days preceding the transfer, the taxation right would be allocated to the Contracting State in which the property is located.

Additionally, the Treaty would establish permanent establishment (PE) rules under which a company would be treated as having a PE when its employees furnish services, including consultancy services, to residents in the other Contracting State for the same project for a period or periods aggregating more than 6 months within any 12-month period. The Treaty also would include an exchange of tax information clause that would not limit the exchange of information to taxes covered by the Treaty.

Regarding the elimination of double taxation, Argentina applies the credit method, whereas Luxembourg generally applies the exemption method.

#### OECD-related provisions

The Treaty contains treaty-based recommendations from the OECD Action Plan on Base Erosion and Profit Shifting (BEPS), and more specifically from Action 2 (*Neutralizing the effects of hybrid mismatch arrangements*), Action 6 (*Preventing the granting of treaty benefits in inappropriate circumstances*) and Action 14 (*Making dispute resolution mechanisms more effective*).

In this regard, the Treaty preamble language would clarify that the Treaty is not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining relief provided in the Treaty for the indirect benefit of residents of other countries).

The Treaty also would include a provision dealing with fiscally transparent entities to tackle potential hybrid mismatches in which certain entities are transparent for tax purposes in one Contracting State, but non-transparent in the other Contracting State.

In addition, the Treaty would establish an anti-abuse provision that is similar to the principal purpose test of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*.

The Treaty also would include a Mutual Agreement Procedure (MAP) whereby a taxpayer of a Contracting State may present a case of taxation not in accordance with the provisions of the Treaty to the competent authorities of either Contracting State. The MAP request must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty.

### Protocol

In addition to the text of the Treaty, the parties agreed on a Protocol for purposes of helping with the Treaty's interpretation. Among other things, the Protocol would consider collective investment funds that are established in a Contracting State and treated as a corporation for tax purposes of that State as residents of the State in which they are established and as the beneficial owners of the income they receive.

## Implications

Companies doing business in Argentina and Luxembourg should take note of the changes that the Treaty will introduce once it enters into force and monitor the fulfilment of the necessary steps in both countries in order for the Treaty to apply.

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