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# Global Tax Alert

News from Americas Tax Center

## Argentina issues much-anticipated regulations on Tax Reform Law 27,430

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On 27 December 2018, Argentina published, in the *Official Gazette*, Decree 1170/2018 (the Decree), which contains much-anticipated final regulations to implement the tax reform enacted through Law 27,430. The Decree is effective 28 December 2018.

Companies and individuals doing business in Argentina or holding investments in Argentina should review the implications of this broad regulatory decree.

### **Nonresident capital gains taxation of indirect transfers of assets located in Argentina**

The Law introduced the taxation of indirect transfers of assets located in Argentina and indicated that transfers within the same economic group will not be taxed.

The Decree requires nonresidents to meet, directly or indirectly, a participation threshold of at least 80% for two years before an indirect transfer to benefit from the "economic group" exemption. For a subsequent sale to a third party, the tax cost basis is equivalent to the cost basis of the original acquirer of those shares.

In addition, the Decree establishes an anti-avoidance rule under which the exemption will not apply when the transfer is performed with the purpose or main objective of achieving more favorable tax treatment.

### **Tax haven policy**

For purposes of determining whether a jurisdiction is a low- or no-tax jurisdiction, the Decree clarifies that the total tax rate will be considered, regardless of the government level that imposed the taxes. In addition, preferential tax regimes are those that deviate from the general corporate tax system and result in a lower effective tax rate. Prior versions of the regulatory decree contained a list of jurisdictions considered as non-cooperating for tax transparency purposes, but the list has been removed from the Decree.

### **Transfer pricing (TP)**

The Decree includes 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.

Regarding the analysis of foreign intermediaries, the Decree establishes the following aspects for importers and exporters to consider: (1) existence of a real presence in the country of incorporation, in compliance with legal and tax requirements; and (2) an evaluation of the functions performed, assets utilized and risks assumed. Additionally, the remuneration, even in the form of a commission, must relate to actual involvement in the transaction.

### **Permanent establishment**

The Decree includes clarifications on profit attribution, fixed place of business, fishing activities, preparatory or auxiliary activities, and dependent agents that play a significant role in concluding agreements for the foreign entity.

### **Interest deductibility limitations**

Law 27,430 established a new limit on deducting interest arising from financial loans. The limit equals 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) or a certain amount to be determined by the Executive Power, whichever is higher. The Decree establishes that the amount determined by the Executive Power is Argentine Pesos (ARS) 1 million.

The Decree establishes a specific anti-avoidance rule under which the interest arising from a financial debt disguised to distort the nature of the debt is subject to the interest deduction limit.

Finally, the Decree clarifies that the limit does not apply to interest subject to withholding tax, even when the provisions of a tax treaty (e.g., reduced rates or exemptions) apply.

### **Controlled foreign corporation rules**

The Decree includes clarifications about concepts such as control, tax personality and substance.

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