Argentina, Switzerland sign new tax treaty

On 20 March 2014, Argentina and Switzerland signed a new Convention for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital (Treaty). The Treaty still requires ratification according to the legislation of the respective countries and the notification instruments need to be exchanged for its entry into force.

The new Treaty provides for reduced withholding rates on dividends, interest, royalties and capital gains as long as all treaty requirements are met (e.g., treaty residence or beneficial ownership).

Dividend payments by a company that is a resident of a contracting state to a resident of the other contracting state may be taxed in the first state, but the tax shall not exceed:

- 10% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends, or
- 15% of the gross amount of the dividends in all other cases

Under the Treaty, interest payments that arise in a contracting state and are paid to a resident of the other contracting state may be taxed in the state in which they arise, but the tax shall not exceed 12% of the gross amount of the interest. Switzerland generally does not levy withholding tax on commercial loan interest.

Royalties arising in a contracting state and paid to a resident of the other contracting state may be taxed in the state in which they arise, but the tax shall not exceed:

- 3% of the gross amount paid for the use of, or the right to use, news
- 5% of the gross amount paid for the use of, or the right to use, copyright of literary, dramatic, musical or other artistic work (but not including royalties for motion picture films and works on film or videotape or other means of reproduction for use in connection with television)
10% of the gross amount paid for the use of, or the right to use, industrial, commercial or scientific equipment or any patent, trademark, design or model, plan, secret formula or process, or for the use of, or information concerning industrial or scientific experience including payments for the rendering of technical assistance, or

15% of the gross amount of the royalties in all other cases

This treaty relief only applies to royalty payments from Argentina to Switzerland as Switzerland does not levy any withholding tax on royalties.

Gains derived by a resident of a contracting state from the transfer of shares or securities representing the capital of a company that is a resident of the other contracting state may be taxed in that other state, but the tax may not exceed:

10% of the gain if it is realized on a participation that holds directly at least 25% of the capital

15% of the gain in all other cases

Other rules apply in the case of transfer of shares deriving more than 50% of their value directly or indirectly from immovable property.

It is important to note that in the case where shares in a Swiss company are disposed of, there is no legal basis for Switzerland to impose a nonresident capital gains tax unless the Swiss company qualifies as a real estate holding company.

It should also be noted that a prior Treaty between Argentina and Switzerland was signed in 1997 and provisionally applied as of January 2001. However, the Treaty was terminated by Argentina on 16 January 2012, with immediate effect given its provisional status.

The prior Treaty provided for an exemption for Swiss shareholders from the Argentine tax on personal assets. This 0.5% tax applies to foreign shareholders (among others) on their participation in Argentine entities as of 31 December of each year. The new Treaty does not include such exemption.

The new Treaty also makes a significant modification by inserting Article 25, which allows the exchange of information in accordance with the international standard for mutual administrative assistance, i.e., exchange of information upon request.

As stated above, the new Treaty must still be approved by the Argentine Congress and the parliament in Switzerland before it can enter into force. The Treaty will enter into force 30 days after the exchange of ratification instruments and the provisions will, for taxes withheld at source, apply from 1 January of the year in which the Treaty enters into force. For other taxes on income or capital, as well as Article 25 (Exchange of Information), the Treaty provisions will apply for any fiscal year beginning on or after 1 January of the year following its entry into force.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young Ltd., Zurich**
- Daniel Gentsch +41 58 286 3613 daniel.gentsch@ch.ey.com
- Rainer Hausmann +41 58 286 3193 rainer.hausmann@ch.ey.com

**Ernst & Young Ltd., Geneva**
- Markus F. Huber +41 58 286 3189 markus-frank.huber@ch.ey.com
- Karen Simonin +41 58 286 5653 karen.simonin@ch.ey.com

**Ernst & Young Ltd., Zug**
- Kersten A. Honold +41 58 286 3166 kersten.honold@ch.ey.com

**Ernst & Young LLP, Switzerland Tax Desk, New York**
- Thomas Semadeni +1 212 773 8442 thomas.semadeni@ey.com
- Antonio Pérez +1 212 773 4350 antonio.perez@ey.com
- Martin Baumgartner +1 212 773 4618 martin.baumgartner@ey.com

**Pistrelli, Henry Martin & Asociados S.R.L., Buenos Aires**
- Carlos Casanovas +54 11 4318 1737 carlos.casanovas@ar.ey.com
- Gustavo Scravaglieri +54 11 4510 2224 gustavo.scravaglieri@ar.ey.com
- Ariel Becher +54 11 4318 1686 ariel.becher@ar.ey.com
- Pablo Baroffio +54 11 4510 2271 pablo.baroffio@ar.ey.com
- Alex Saul +54 11 4318 1600 ext. 81421 alex.saul@ar.ey.com

**Ernst & Young LLP, Latin American Business Center, New York**
- Alfredo Alvarez +1 212 773 5936 alfredo.alvarez@ey.com
- Pablo Wejcman +1 212 773 5129 pablo.wejcman@ey.com
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