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Argentina - Switzerland Tax Treaty enters into force

On 28 October 2015, the remaining notification instruments for the entry into force of the *Tax Treaty for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital* (the Treaty) were exchanged between Argentina and Switzerland.

According to Article 27 of the Treaty, which indicates that its entry into force would occur 30 days after all of the notifications are exchanged, the Tax Treaty will enter into force on 27 November 2015.

The Treaty provisions will consequently apply retroactively, for taxes withheld at source, from 1 January 2015, onwards, as regulated by Article 27 of the Treaty. For the exchange of information (Article 25) and other taxes on income or capital gains, the Treaty provisions will apply for any fiscal year beginning on or after 1 January 2016.

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, beneficial ownership).

Background

A prior Treaty between Argentina and Switzerland was signed in 1997 and provisionally applied as of January 2001. The Treaty was terminated by Argentina on 16 January 2012, however, with immediate effect given its provisional status.

Dividends and interest

Dividend payments from 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
- ▶ 15% of the gross amount of the dividends in all other cases



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Under the Treaty, interest payments arising in a contracting state that are paid to a resident of the other contracting state may be taxed in the state in which they arise. The tax, however, shall not exceed 12% of the gross amount of the interest if the recipient of the interest payment is the beneficial owner. Switzerland generally does not levy withholding tax on commercial loan interest.

Royalties

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. Provided the recipient of the royalty payment is the beneficial owner, 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

- ▶ 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.

Capital gains

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 disposal of an investment in which the seller directly held at least 25% of the capital
- ▶ 15% of the gain in all other cases

Other rules apply to the transfer of shares that derive more than 50% of their value directly or indirectly from immovable property. If 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 company.

Argentine tax on personal assets

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

Exchange of information

The new Treaty adds 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.

For additional information with respect to this Alert, please contact the following:

Pistrelli, Henry Martin & Asociados S.R.L., Buenos Aires

- | | | |
|------------------------|------------------|--------------------------------|
| ▶ Carlos Casanovas | +54 11 4318 1619 | 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 | alex.saul@ar.ey.com |

Ernst & Young LLP, Latin American Business Center, New York

- | | | |
|------------------------|-----------------|----------------------------|
| ▶ Pablo Wejcman | +1 212 773 5129 | pablo.wejcman@ey.com |
| ▶ Ana Mingramm | +1 212 773 9190 | ana.mingramm@ey.com |
| ▶ Enrique Perez Grovas | +1 212 773 1594 | enrique.perezgrovas@ey.com |

Ernst & Young LLP, Latin American Business Center, London

- | | | |
|----------------|------------------|--------------------|
| ▶ Jose Padilla | +44 20 7760 9253 | jpadilla@uk.ey.com |
|----------------|------------------|--------------------|

Ernst & Young AG, 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 AG, 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 AG, 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 |
| ▶ Peter Dormann | +1 212 773 9931 | peter.dormann1@ey.com |

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