

Latin American Tax Newsalert

A Washington National Tax Services (WNTS)
Publication

Argentina

February 9, 2012

Argentina terminates tax treaty with Switzerland

The Argentine Government has formally notified the Swiss authorities that it has terminated the provisional application of the double tax treaty signed by both countries in 1997. The notification was sent on January 16, 2012 but was not published in the Official Gazette until January 31, 2012.

This unilateral decision was recommended by an *ad-hoc* commission specially created in 2011 by the Argentine tax authorities ("AFIP") to review Argentina's double tax treaties for potential tax abuse.

Background

The double tax treaty with Switzerland, and its additional protocol, were signed in April 1997 but never came into effect since the signing parties did not follow the ratification procedure established by Article 25, the exchange of ratification documents in accordance with domestic law. However, an amending protocol signed by both countries in November 2000 established the "provisional application" of the treaty and the amending protocols effective January 1, 2001. Since 2001, the treaty provisions have been applied under this precarious "provisional application."



Consequences of the termination

The treaty's revocation may significantly impact multinationals that relied on its favorable provisions, particularly with respect to taxation of royalty payments. Under certain circumstances, withholding tax on royalties paid to Swiss residents was subject to a zero percent withholding tax. Upon the treaty's termination, however, withholding tax on royalty payments to Swiss residents may be subject to rates as high as 31.5%.

Furthermore, nondiscrimination provisions included in the treaty allowed taxpayers to circumvent certain restrictions established by Argentine income tax law that limit the deductibility of trademark and patent royalty charges when paid abroad. After the treaty's termination, such royalties paid to Swiss residents will be deductible only up to 80% of the amount paid.

Multinationals have also used the treaty to facilitate holding company structures for Argentine entities. These entities received relief from the Argentine wealth tax -a 0.5% tax on the book value of the participation in Argentine companies held by nonresidents.

Although the termination's effective date is not certain, the Argentine government intends to consider it effective on the notification date. US multinationals that have structured operations in Argentina via Switzerland may wish to analyze the impact of these changes and evaluate potential responses.

Notwithstanding Argentina's unilateral decision to end the treaty's provisional application, the Swiss Authorities could seek to understand Argentina's approach and possibly negotiate new treaty wording.

For more information, please contact:

Your LATAX team in the U.S.

John Salerno (646) 471-2394 john.salerno@us.pwc.com

Eduardo Pupo (646) 471-7007 eduardo.pupo@us.pwc.com

Ignacio Rodriguez (646) 471-6450 ignacio.e.x.rodriguez@us.pwc.com

Your tax team in Argentina

Andres Edelstein +54 11 4850 4651 andres.m.edelstein@ar.pwc.com

Juan Manuel Magadan +54 11 4850 6847 juan.manuel.magadan@ar.pwc.com

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2012 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.