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# *Tax treaty with Spain provides for structuring opportunities in Argentina*

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## ***In brief***

Argentina and Spain signed a new double tax treaty on March 11, 2013. The Argentine government terminated the previous treaty in 2012. We expect the treaty to be ratified soon and it will apply retroactively to January 1, 2013. In general the treaty retains the terms of the previous one terminated in 2012; however it excludes the relief from Argentine 0.5% wealth tax.

This is an important development for US MNCs who have relied on the Spanish treaty with Argentina to facilitate more efficient holding company structures for their Latin American affiliates, including Argentina. The treaty can help mitigate Argentine withholding tax on dividend distributions in certain cases, as well as withholding tax on interest, royalties and certain service payments.

In addition, the Argentine government is negotiating new treaties with Switzerland and Austria that could offer US MNCs further flexibility in structuring investment into Argentina.

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## ***In detail***

### ***Interest***

Under domestic law interest payments on related-party loans to a foreign beneficial owner are subject to 35% withholding tax. However, under this treaty, interest payments to Spanish beneficial owners should be subject to a maximum withholding tax rate of 12%.

Although the treaty contains non-discrimination provisions they do not override domestic thin capitalization rules. These rules establish a 2:1 debt-to-equity ratio. Therefore taxpayers should still consider

these rules if debt funding an Argentinean company.

### ***Royalties***

Under domestic law, royalties and technical assistance payments may be subject to withholding tax rates as high as 31.5%. Under this treaty such payments made to Spanish beneficial owners should be subject to a maximum withholding tax rate of 15%. In certain circumstances, lower rates may apply.

### ***Dividends***

Under domestic law, dividend payments are subject to 35% withholding tax to the extent the

payment exceeds the accumulated tax earnings. Under this treaty such payments made to Spanish shareholders should be subject to a maximum rate of 10% where shareholding exceeds 25%. The rate is 15% of the gross dividend amount in all other cases.

### ***Capital gains***

Under this treaty, if a Spanish shareholder directly disposes of shares or quotas in an Argentinean subsidiary the tax rate applied on any capital gain realized will not exceed 10% where the direct shareholding exceeds 25%. The rate is 15% in

all other cases. Please note that this will not apply if more than 50% of the value of those shares is derived from Argentinean real estate property.

The Argentine domestic regulations currently provide for full exemption on capital gains realized Argentine shares disposed by a foreign shareholder. However, if this exemption is repealed, taxpayers would benefit from the relief provided by this treaty.

The treaty also provides that a transfer of assets during an internal reorganization will not create any tax implications in accordance with the legislation of each Contracting State.

### ***The takeaway***

US MNCs may wish to consider the use of Spain to facilitate holding and financing structures as well as shared services center and headquarter or principal structures taking advantage

of reduced withholding rates provided by the treaty on certain types of payments.

This development is an encouraging indication that the Argentine authorities are continuing to expand the tax treaty network. The network had not changed since the 2001.

### ***Let's talk***

For a deeper discussion, please contact:

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