Argentina changes approach to tax havens, issues ‘white list’

January 30, 2014

In brief

The Argentine government recently issued Decree 589/2013, which eliminated the list of no- or low-tax jurisdictions from the income tax regulations (the so called ‘black list’) and empowered the federal tax authorities to establish a new ‘white list’ of countries, jurisdictions, territories, and tax regimes that are considered to be ‘cooperative’ with respect to fiscal transparency.

The white list was finally published in December 2013 as General Resolution (AFIP) 3576/2013, and took effect January 1, 2014. The white list should interest all entities engaged in cross-border transactions with Argentina.

In detail

In Decree 589/2013, published in the Official Gazette on May 30, 2013, the Argentine government significantly amended the country’s income tax law by removing the list of no- or low-tax jurisdictions. This so-called ‘black list’ was introduced in 2000 and included territories considered to have preferential tax regimes. Transactions with those countries were assumed not to be performed on an arm’s-length basis for transfer pricing purposes. Such transactions were therefore subject to annual analysis and documentation requirements.

Pursuant to the decree, the old black list was repealed and has been replaced with a white list of countries, jurisdictions, territories, and tax regimes that are considered ‘cooperative’ for fiscal transparency purposes.

Cooperative countries are those that have signed either double tax treaties (DTTs) with broad exchange of information clauses or tax information exchange agreements (TIEAs) with Argentina, or that are in the process of negotiating a DTT or TIEA.

A country no longer will be characterized as cooperative if its DTT or TIEA with Argentina is terminated, or the exchange of information is deemed to be ineffective.

The decree also clarified that the DTTs and TIEAs should comply, to the extent possible, with the transparency standards adopted by the Global Forum on Transparency and Exchange of Information for Tax Purposes. These standards require, among other things, that no internal rule can be invoked to allege banking, trading, or other area of secrecy when Argentina requests information.

Based on the decree, any reference in the Argentine tax law and regulations to ‘tax havens’ is now treated as referring to jurisdictions that are not on the new white list.

In addition to the transfer pricing impact described above, other consequences of being characterized as non-cooperative include the following:

- Argentine controlled foreign corporation rules apply to investments made by Argentine taxpayers through companies located in those jurisdictions
- Overseas taxes paid by second-tier subsidiaries are not eligible for foreign tax credits if the first-tier
subsidiary is located in a non-cooperative territory  
- amounts charged by black-listed (now 'non-cooperative') jurisdictions involving Argentine-source income are not deductible by the Argentine taxpayer until paid  
- increased withholding on interest payments made to banks and financial institutions located in non-cooperative jurisdictions  
- unless proof is provided to the contrary, funds transferred from non-cooperative jurisdictions must be treated as unreported income for income tax, valued added tax, and excise tax purposes  
- increased income tax collection on triangulated exports to companies located in non-cooperative jurisdictions  

There are also non-tax implications of being regarded as non-cooperative because other regulations, such as the central bank regulations, also refer to the list.  

The list  
The white list of cooperative territories was published as General Resolution (AFIP) 3576/2013 (Official Gazette on December 31, 2013). The list is currently available on the Argentine tax authority’s (AFIP’s) website:  


Notably, certain jurisdictions that were traditionally considered tax havens under prior law, such as the Cayman Islands, Bermuda, the British Virgin Islands, and Jersey now are viewed as cooperative. This change could impact significantly the use of these territories in Argentine structures.  

The new list entered into force on January 1, 2014. For transfer pricing purposes, taxpayers must consider the list of cooperative jurisdictions that is in force at the beginning of their tax year.  

The takeaway  
US multinational corporations (MNCs) doing business in Argentina should monitor subsequent updates of the list, because changes are likely based on countries’ tax information exchange performance.  

This new approach clearly will affect certain existing structures as well as future planning for MNCs engaged in cross-border transactions with Argentina. Groups may need to consider situations in which a given jurisdiction could be removed from the white list as a result of being deemed non-cooperative.  

Let’s talk  
For a deeper discussion of how this might affect your business, please contact:  

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