

## Argentina to Terminate Income Tax Treaties With Chile, Spain

by Cristian E. Rosso Alba

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## Argentina to Terminate Income Tax Treaties With Chile, Spain

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Argentina has made initial moves to terminate two more income tax treaties. The government on June 30 announced that it will terminate its tax treaty with Chile,<sup>1</sup> and on July 16 it published in the official gazette the denouncement of its tax treaty with Spain. (For prior coverage of Argentina's denouncement of its treaty with Chile, see *Tax Notes Int'l*, July 16, 2012, p. 229, *Doc 2012-14645*, or 2012 WTD 134-12.) Argentina terminated its income tax treaty with Austria in 2008, and denounced its treaty with Switzerland in January. (For prior coverage of Argentina's termination of its treaty with Austria, see *Tax Notes Int'l*, July 14, 2008, p. 147, *Doc 2008-14928*, or 2008 WTD 131-1. For prior coverage of Argentina's denouncement of its treaty with Switzerland, see *Doc 2012-2448* or 2012 WTD 26-7.)

There appear to be two main reasons for Argentina's termination of the treaties with Chile and Spain: a provision (which appears in both treaties) that prohibits Argentina from applying the personal asset tax on Spanish or Chilean shareholders that hold an interest in Argentine companies; and the allegedly abusive use of holding corporations (in the case of the treaty with Chile).

### The Personal Asset Tax Issue

Argentina levies personal asset tax on assets located in the country at the end of the calendar year. For shares issued by Argentine companies and held by foreign entities, the personal asset tax has to be paid by the Argentine company on behalf of the foreign shareholders.

<sup>1</sup>Argentina's denouncement of the tax treaty with Chile is expected to be published in the official gazette soon, in accordance with domestic legislation, which gives the government 15 days after denouncing a treaty to publish the denouncement in the official gazette (article 20, Law 24.080).

However, in Argentina's income tax treaties with Chile and Spain, the taxing rights are allocated exclusively to the country of residence of the shareholders. For example, article 22 of the treaty with Spain provides that "capital represented by shares or equity interest or capital of a company shall be taxable only in the Contracting State of which the owner of such shares or equity interest or capital is a resident."

Those provisions could also benefit residents of third countries with which Argentina has signed the Treaty of Montevideo (1980),<sup>2</sup> which contains a most favored nation clause.<sup>3</sup>

In a recent ruling on that clause, the Argentine Tax Court held that a foreign corporation resident in Uruguay cannot be treated less favorably than a resident of Spain or Switzerland;<sup>4</sup> therefore the Uruguayan resident's shares in entities incorporated in Argentina cannot be taxed in Argentina.<sup>5</sup>

### The Holding Corporation Issue

Under the Argentina-Chile tax treaty, the repatriation of assets could be exempt from taxation in Argentina. Also, Chile has a special holding corporation regime under which only source income is taxed. If the treaty and the holding regime are used jointly, double nontaxation can occur.

The Argentine Revenue Service has been scrutinizing tax structures involving Chilean holding companies and has challenged some as being an abusive use of the Argentina-Chile tax treaty.

<sup>2</sup>Which established the Latin American Integration Association.

<sup>3</sup>Article 48 of the Treaty of Montevideo states:

Capital originating in a member country of the Association shall enjoy on the soil of the other member countries a treatment no less favorable than is accorded to capital originating in any nonmember country, without prejudice to the provisions of the agreements that the member countries may enter into in this area under the present Treaty.

<sup>4</sup>The Argentina-Switzerland tax treaty had a provision similar to that in the Spanish treaty.

<sup>5</sup>LOSA Ladrillos S.A., Tax Court, Aug. 8, 2011.

Argentina, Chile, and Spain could not reach agreements on amendments to the treaties to address the issues that are problematic for Argentina. Apparently, however, Argentina does not intend to give up taxing rights for another year, because it has decided to unilaterally denounce the Chile and Spain treaties before the end of the year.<sup>6</sup>

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<sup>6</sup>Article 29 of the Spain treaty states: "Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year." Article 26 of the Chile treaty says: "This Convention shall remain in force indefinitely, but either of the Contracting States may, from January 1 until June 30 of any calendar year as of the fifth year following the entry into force thereof, inclusive, notify the other Contracting State in writing of its termination thereof."

### Effects of the Denouncements

The treaty with Chile, signed on November 13, 1976, will cease to apply to individuals and estates as of January 1, 2013. It will cease to apply to commercial enterprises for the fiscal period starting after Argentina sends the diplomatic notice of termination to Chile. (For an English translation of the treaty, see *Doc 97-24819* or *97 TNI 171-3*; for the Spanish text, see *Doc 93-31571* or *93 TNI 163-13*.)

Effective January 1, 2013, the treaty with Spain, signed July 21, 1992, will cease to apply to taxes withheld at the source on amounts paid to nonresidents. For all other taxes, the treaty will cease to apply for fiscal periods starting after January 1, 2013. (For an English translation of the treaty, see *Doc 97-27829* or *97 TNI 194-3*; for the Spanish text, see *Doc 94-30642* or *94 TNI 224-27*.) ♦