

Revenue Service Reinforces Tax Rules on Outbound Payments

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Under a new resolution introduced by the Argentine Revenue Service (ARS), taxpayers will be required, as of February 1, to file with the ARS an anticipated declaration of cross-border payments (Resolution 3417/2012). Another resolution introducing a new tax information regime for financial instruments will enter into force this month (Resolution 3421/2012).

The resolutions are part of a continuing ARS initiative to use tax regulations to control cross-border foreign exchange transactions. In 2012 two other regulations were implemented in connection with the initiative:

- As of February 1, 2012, importers of goods were required to file an anticipated sworn statement (the DJAI) identifying the goods they planned to import. Although the statement was intended merely to inform the tax authorities of the importers' intentions, the ARS reserved the rights to reject the DJAI, in which case the goods would not receive customs clearance.
- As of April 1, 2012, another reporting requirement was introduced in the form of a sworn statement for cross-border payments for services (the DJAS). In this case, the ARS reserved the right to make observations about purchases of foreign currency to honor the cross-border payments.

The new regulations broaden the scope of these information regimes by expanding them to include cross-border payments of dividends, interest, and so on.

Anticipated Declarations

Starting in February, Argentine residents (as defined in the Income Tax Law) will be required to submit, before the execution of certain outbound payments, an anticipated declaration of cross-border payments (a DAPE), providing — through an online ARS system — comprehensive data on the underlying transactions, along with copies of the supporting commercial documents.

The transactions included in the scope of Resolution 3417/2012 are:

- *Payments of financial debts related to purchases of goods that are not imported to Argentina but are sold to third countries:* Comprehensive information must be provided about the sales to the third countries and the purchases of the goods sold to the third countries, as well as any related expenses incurred abroad (such as freight, insurance, and so on). A DAPE must be submitted for every sale, regardless of whether it is related to a single purchase. Copies of the corresponding commercial invoices and bills of lading are also required.
- *Interest payments on loans:* In the case of cross-border interest payments, taxpayers must provide thorough information about the contractual terms of the loan and the transfer itself, along with copies of the loan agreement and any other relevant documents. Each loan agreement, as well as any amendments or renegotiations, must be registered in a separate DAPE. In the case of partial or installment payments, each payment is to be reported in reference to the corresponding DAPE.
- *Royalties and dividend payments:* Taxpayers making these types of payments must identify the foreign beneficiary of the payment, the amount due, and the currency used. The date of approval by the competent corporate administration is also required, as well as copies of the relevant documents.
- *Courier service payments and special import regimes:* Taxpayers in this category must report all relevant information about the goods to be transported or imported (for example, the amount, conditions, and country of origin) and also must report on their purchase or delivery by the Argentine resident. Commercial documents relating to the transactions are also required.

According to section 5 of Resolution 3417/2012, in order to purchase foreign currency, a DAPE must be submitted following the procedure introduced by Resolution 3356/2012, which regulates the foreign exchange operations control system. Additional regulations on the currency exchange implications of Resolution

3417/2012 are expected from the Central Bank, probably before the measure comes into force on February 1.

This resolution, which was published in the official gazette on December 20, 2012, is the last of a series of import and foreign exchange measures introduced by the ARS during 2011 and 2012, allegedly in order to prevent tax evasion by collecting anticipated relevant information about international trade transactions. As mentioned above, these regulations sometimes work as de facto foreign exchange controls.

There will be a centralized control at the ARS level for the three different sworn statements (the DJAI, DJAS, and DAPE) that must be filed with the ARS.

Regime for Financial Instruments

Resolution 3421/2012, published in the official gazette on December 26, 2012, was enacted to consolidate a large number of tax information regimes for financial activities in one single regulation.

However, the resolution also introduces, in Annex VII, a new information regime for derivative contracts and instruments, in addition to improving information regulations for financial transactions such as the assignment of loans, financial documents, factoring, and so forth.

The resolution requires all income tax payers to exclusively report — through the ARS web system — all operations involving derivative contracts or instruments. However, banks and other financial institutions are excluded from reporting derivative transactions; but they are in fact the only reporting agents for the remaining reportable operations (that is, assignment of loans, factoring, and so forth). Registration is due before 10 working days from the initial execution of the transaction, its amendment, the total or partial liquidation of the instruments, or the anticipated termination.

In the case of initial execution of the transaction, taxpayers must provide comprehensive data about the date of execution, the type of derivative instrument or contract, its purpose, the amount involved, and the

identities of the counterparty and brokers. A digitalized copy of the supporting documents must be attached.

Resolution 3421/2012 also contains special provisions governing the fiscal treatment of derivative instruments/contracts for income tax purposes. In that context, certain standards have been introduced to properly characterize hedge operations. It should be noted that in general terms, the Income Tax Law contains strengthened rules for non-hedge derivatives, but not for hedge-type derivatives.

Taxpayers who have obtained taxable income from transactions involving derivative contracts/instruments are required to obtain a special annual report by a CPA if their gross income exceeds the threshold provided in the resolution. The report is to identify the total income obtained from the derivative transactions as well as the proportion of that amount that is related to hedge operations. A professional opinion on the reasonability of the tax treatment of the income must also be included.

Although the regulation refers to “income,” from a tax standpoint what it is actually relevant are the derivative “losses,” which are restricted, as explained above. Having them scrutinized, audited, and reported to the ARS allows the tax authorities to trace and audit such restricted losses. Once the derivative income/loss has been reported, the ARS will have an easy audit of this restricted basket of losses.

The auditing work is complex and requires the certified accountant to scrutinize the accounting, contracts, and supporting documentation, and to provide a grounded conclusion as to the hedge/speculative type of transactions. Commodities exporters and companies engaged in swaps, forward sales, futures, and so forth should plan to have this audit work performed annually for fiscal periods closing on or after January 1, 2013. ♦

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