

## Ladies and Gentlemen,

With our newsletter we would like to inform you of recent and significant legal developments in the field of tax law in Argentina.

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#### SOLIDARITY AND PRODUCTIVE REACTIVATION LAW

The Solidarity and Productive Reactivation Law No. 27,541 ("the Solidarity Law") was passed by Congress on December 21, 2019.

The law contains relevant provisions in many fields. In this newsletter we focus on those relating to energy system, taxes and social security, corporate law and employment law.

#### DECLARATION OF EMERGENCY

The Law declares public emergency in relation to economic, financial, fiscal, administrative, social security, public utilities rates, energy, health and social matters, and delegates to the Federal Executive all the authority set forth in the Solidarity Law until December 31, 2020. The Solidarity Law establishes the statutory scope for such delegation of powers.

#### ENERGY

The Solidarity Law grants the Federal Executive the authority to freeze electricity and gas utility tariffs under federal jurisdiction and start a Comprehensive Tariff Renegotiation ("CTR") pursuant to laws 24,065 and 24,076 within 180 days, with the stated objective of reducing the tariff burden on households and companies for the year 2020.

The CTR consists of a review of existing rates of each public

service in order to restructure them in view of the Solidarity Law's stated objective.

The Solidarity Law invites the provinces to freeze the utilities rates and start a CTR regarding those under provincial jurisdiction.

The Solidarity Law also empowers the Federal Executive to take control of the National Electric Power Regulator (ENRE) and the National Gas Regulator (Enargas) for a one-year term, suspends for one year the transfer of the electricity distributors Edenor and Edesur to the jurisdiction of the Province of Buenos Aires and the City of Buenos Aires, and declares that during the emergency period the ENRE shall retain its authority over the distribution of electricity made by Edenor and Edesur.

#### TAX AND SOCIAL SECURITY MATTERS

##### • TAX ADJUSTMENT FOR INFLATION

Under the previous regulation , with respect to the first, second and third fiscal years starting on January 1, 2018, the inflation adjustment was set to apply when the fluctuation in the Consumer Price Index, calculated from the beginning to the end of each of those fiscal years, exceeded 55%, 30% and 15% for the first, second and third year, respectively.

If the adjustment for inflation was to be applied in any of the aforementioned fiscal years, 1/3 was to be charged in the fiscal period in question, and the remaining 2/3 were to be charged, in equal parts, in the two subsequent fiscal years.

The Solidarity Law amends this aforementioned rule of thirds. For the first and second fiscal year beginning on January 1, 2019, when the adjustment for inflation is triggered, 1/6 shall be charged in the fiscal period in question and the remaining 5/6 shall be charged, in equal parts, in the five subsequent fiscal years.

This implies that the adjustment for inflation will be allocated throughout a longer period (specifically, twice as long), which increases the taxable base of the most immediate periods by postponing the charge, and that same adjustment will be affected by the inflation of subsequent years.

#### • INCOME TAX

The Solidarity Law repeals the statutory provisions taxing interest or other income arising from certificates of deposit, government bonds, negotiable obligations, units of investment funds, debt instruments of financial trusts, bonds and other securities received by resident individuals, and reinstated the exemptions established by laws 23,576 (negotiable obligations), 24,083 (units of investment funds), and 24,441 (debt instruments of financial trusts), which are conditioned on their being placed through a public offering. Interest of certificates of deposit with adjustment clauses remain taxable.

The Solidarity Law also repealed the provisions taxing capital gains obtained by resident individuals arising from the sale, exchange or other disposition of government bonds, negotiable obligations, units of investment funds, debt instruments of financial trusts, provided they are quoted in stock exchanges authorized by the National Securities Commission ("CNV"); therefore these transaction have become exempt.

The Solidarity Law also grants an exemption to foreign beneficiaries for sale, exchange or other disposition of securities not included in the fourth paragraph of article 26.u). Such securities are: (i) bonds issued by the Argentine

Government, the provinces, the municipalities and the City of Buenos Aires ; (ii) negotiable obligations placed through public offering, debt instruments of Argentine financial trusts placed through public offering, and units of Argentine open investment funds, placed through public offering, and (iii) ADRs of shares issued by Argentine companies, which are authorized for public offering by the CNV. Capital gains obtained by non-residents arising from the sale, exchange or other disposition of securities not included in any of these three categories have also become exempt under the Solidarity Law, provided they are not residents of non-cooperative jurisdictions or have used funds from non-cooperative jurisdictions.

The current 30% corporate income tax rate, which was scheduled to be reduced to 25% for fiscal years beginning on or after January 1, 2020, remains in force for fiscal years beginning on or before January 1, 2021. Likewise, the current 7% withholding tax on dividends, which was scheduled to be increased to 13%, also remains in force for the same period.

This means that the Solidarity Law reversed the scheduled reduction of the corporate income tax rate, as well as the increase of the applicable rate on dividend distributions. Thus, the effective Income Tax rate after payment of dividends remains at 35 %.

The Solidarity Law ratifies the choice granted to resident individuals by Decree 1170/2018 to allocate the interest received from government bonds and negotiable obligations to their acquisition cost instead of recognizing income for the fiscal year 2018 and extends it to fiscal year 2019.

It converts into a reduction of the income tax basis of salaries and retirement pensions the reduction in withholding tax set by Decree 561/2019, i.e., it makes permanent the temporary benefit of such withholding.

#### • PERSONAL ASSETS TAX

With respect to the Personal Assets Tax, the Solidarity Law modifies tax brackets and increases tax rates. The minimum rate, which was previously 0.25%, is now increased to 0.50%. The maximum rate, which was previously 0.75%, is now increased to 1.25%. The new table is as follows:

### TOTAL VALUE OF ASSETS EXCEEDING THE NON-TAXABLE MINIMUM

More than ARS	To ARS	They shall pay (ARS)	Plus %	Over the excess of ARS
0	3.000.000	0	0,50%	0
3.000.001	6.500.000	15.000	0,75%	3.000.000
6.500.001	18.000.000	41.250	1,00%	6.500.000
18.000.001		156.250	1,25%	18.000.000

The new tax rates and brackets shall apply to the tax levied on assets existing on December 31, 2019.

The Solidarity Law delegates to the Federal Executive until 31 December 2020 the authority to set differential rates of up to twice the 1.25% rate, i.e., 2.50%, to be levied on assets located outside Argentina and to reduce it, in the case of financial assets located abroad, in the event of the repatriation of the proceeds of their realization. If the asset is repatriated, the Federal Executive may set the amount of the refund up to the amount that is repatriated. In the event of setting such differential rates and in order to determine the amount reached by each rate, the non-taxable minimum basis shall be first subtracted from the assets in the country.

For purposes of the above paragraph, "financial assets located abroad" shall mean

"foreign currency deposited in banks and/or financial and/or similar institutions abroad; participations in companies and/or equivalent (private securities, shares, quotas and other holdings) in any type of entity, company or enterprise, with or without legal incorporation, incorporated, domiciled, established or located abroad, including sole proprietorships; rights as beneficiary or under trusts (or equivalent) of any type incorporated abroad, or in private interest foundations abroad or in any other type of asset of similar effect located, established, domiciled and/or incorporated abroad; any type of financial instrument or securities, such as notes, securities, representative securities and share deposit certificates, participations in mutual funds, whatever their title; credits and any type of right abroad that has financial value and any other instrument provided for in the regulations".

It is also clarified that the rules to determine residence for Income Tax purposes also apply to Personal Assets Tax.

The Solidarity Law also changes the personal Assets Tax rate on holdings of shares and equity interests in companies governed by Federal Law No. 19,550, when the holders thereof are individuals and/or undivided estates domiciled in the country or any person or entity domiciled abroad, which is levied on the proportional asset value as of December 31 of each year. The tax rate increases from 0.25% to 0.5%.

The Solidarity Law also raises the Personal Assets Tax rate on assets located in Argentina owned by non-residents from 0.25% to 0.5%.

#### • TAX ON DEBITS AND CREDITS FROM CASH WITHDRAWALS

The Solidarity Law taxes debits in bank accounts caused by cash withdrawals, which are subject to the tax on debits and credits to current accounts, at twice the general rate of 0.6%, i.e. 1.2%. Accounts held by individuals or micro or small enterprises are exempt.

#### • TAX FOR AN INCLUSIVE AND SOLIDARY ARGENTINA (IMPUESTO PARA UNA ARGENTINA INCLUSIVA Y SOLIDARIA [PAIS])

The Solidarity Law establishes a new tax ("PAIS Tax") on residents of Argentina (individuals and legal entities).

The PAIS Tax is in essence a tax on the purchase of foreign currency, expenses or services from abroad paid by credit card or debit card, or purchase of trips with destination abroad. The following entities will act as collection agents: entities authorized by the Central Bank of Argentina, credit card settlement agencies, travel and tourism agencies and transportation companies. Regarding transportation by land, air or water of passengers, such services shall be subject to the PAIS tax only if it is necessary to access the unified free exchange market to purchase foreign currency to pay for them.

The rate is 30% and it is levied on the value of each transaction. In case of payment in installments, the PAIS tax is fully paid with the first installment.

The tax applies to transactions, liquidations, and payments made on or after the entry into force of the Solidarity Law, which is the day of publication in the Official Gazette, "excluding those transactions made before that date".

The Solidarity Law grants the Federal Executive broad authority with respect to the PAIS Tax, including the power to:

- include new transactions, insofar as they involve the direct or indirect acquisition of foreign currency, and identify new collection agents;
- reduce the 30% rate "to the extent that the root causes of this Law have been mitigated" and to reinstate it if necessary; and
- temporarily suspend the application of this tax for justified reasons.

The PAIS Tax is applied during five fiscal periods.

The Solidarity Law exempts from the PAIS Tax expenditures in connection with the following:

- health services, purchase of medicines, purchase of books in any format and use of educational platforms; and
- research projects by the Federal State, Provinces, Autonomous City of Buenos Aires and Municipal Governments.
- Purchase abroad of equipment and other assets for firefighting and civil protection of the people by the recognized volunteer firemen's associations.

#### • EXCISE TAXES

The Solidarity Law increases excise taxes on the first sale and for the importation of automobiles and engines.

Until now, transfers below a certain threshold were exempt and above that threshold, they were subject to a 20% tax to be paid by the seller.

The Solidarity Law establishes three price brackets for the following products:

- Land motor vehicles designed for the transport of persons, excluding buses, trolleybuses, coaches, ambulance cars and police cars;
- Self-propelled land vehicles designed for camping;
- Motorcycles; and
- Motorized chassis and engines of vehicles covered by the preceding subparagraphs.

The first bracket remains exempt; the second bracket continues to be taxed at a 20% rate; and the third bracket, for prices in excess of ARS 2,400,000, is now taxed at a 35% rate. In the case of motorcycles, the third bracket applies to prices in excess of ARS 500,000 and the rate increases to 30%.

Recreational or sports boats and outboard motors remain with two brackets, but the minimum amount is increased.

Recreational or sports aircraft, gliders and helicopters, which are always taxed, continue to be subject to the 20% rate.

The amounts determining the brackets were so far adjusted quarterly by the Consumer Price Index. The Solidarity Law establishes that they will be determined on a quarterly basis by the Domestic Wholesale Price Index.

The new rules shall apply to taxable events that take place on or after the first day of the first month following the publication of the Solidarity Law, i.e., on or after January 1, 2020.

#### • EXPORT DUTIES

The Solidarity Law contains several provisions regarding export duties.

As a general rule, the Federal Executive may establish export duties at a maximum rate of 33% of the taxable value or the official FOB price.

There are some specific maximums for certain products:

- soya beans: 33%;
- goods that were not subject to export duties on September 2, 2018 (when Federal Decree No. 793/2018 was issued, which established an export tax generally on all products) or that had a 0% rate on that date: 15%;
- agro-industrial products from regional economies determined by the Federal Executive: 5%;
- industrial goods and services: 5%; and
- hydrocarbons and mining: 8%. In this case, the Solidarity Law provides that this export duty may not be used to reduce the well head price used to calculate hydrocarbons royalties payable to the provinces.

The Federal Executive may reduce duties on goods which production involves greater value added from the raw materials used.

The Federal Executive may exercise this authority until 31 December 2021.

Several decrees that have established or ratified export duties will remain in force, including Decrees No. 793/2018 and No. 37/2019.

We note that by means of Decree No. 37/2019, published on December 14, 2019, the Federal Executive increased the effective rate of export duties on most products from 6.7% to 12% of the FOB value.

Decree No. 793/2018, published on September 4, 2018, had established a 12% export duty on all goods until December

31, 2020. This export duty was set at a maximum of ARS 4 per USD of the official FOB price. This rendered the effective rate lower than the nominal rate and was progressively reduced with the devaluation of the peso. On December 14, 2019, the effective rate was 6.7%. Decree No. 37/2019 repealed this maximum, which resulted in an increase in the export duty from 6.7% to 12%.

The Federal Executive shall establish mechanisms of segmentation and stimulus to improve the profitability and competitiveness of small producers and cooperatives whose activities are affected by the possible increase of the export duties rates<sup>1</sup> and establish criteria to stimulate the competitiveness of the federal production taking into account the distances between the production and the marketing centers. The rates that may be increased shall not apply in the districts that are declared in agricultural and cattle emergency under Law 26,509.

#### • STATISTICS TAX

The Solidarity Law establishes that the statistics tax rate on definitive imports shall be set at 3% until December 31, 2020. Imports subject to Preferential Agreements signed by Argentina that specifically include an exemption and imports originated in and from the Mercosur member States are exempted. The previous tax rate was 2.5%.

The Solidarity Law authorizes the Federal Executive to grant, for justified reasons, exemptions to specific activities in connection with science, technology or innovation, economic development or the generation of employment.

#### • TAX, CUSTOMS AND SOCIAL SECURITY

##### OBLIGATIONS MORATORIUM FOR MICRO, SMALL AND MEDIUM COMPANIES (MIPYMES)

The Solidarity Law establishes a moratorium for the regularization of tax, customs and social security obligations of Micro, Small and Medium-sized companies (MIPYMES), including payment facility plans.

Fines in all cases and compensatory and punitive interest on the self-employed workers' social security contributions are waived and compensatory and punitive interest on customs taxes is reduced.

Liabilities arising from overdue workers' compensation payments and health care services payments for employees, tax on liquid fuels and carbon dioxide, tax on natural gas, tax on diesel and liquified gas, tax for the Water Infrastructure Fund, and tax on gambling, are excluded from this regime.

#### • REIMBURSEMENTS TO VULNERABLE SECTORS

The Federal Tax Authority (AFIP) is authorized to set up a system of VAT refunds for individuals who are final consumers and for small taxpayers who sell movable property or carry out work on movable property for such individuals.

#### • EMPLOYER CONTRIBUTIONS

The Solidarity Law alters the gradual unification of the employer social security contribution rates established by article 173 of Federal Law No. 27,430. Under the previous legal framework, employers whose main activity is in the "commerce" or "services" sectors under Resolution SEPYME 220/2019, and

<sup>1</sup>This alternative is addressed to small agricultural producers, to whom a partial reimbursement is under consideration.

whose annual sales exceeded ARS 48,000,000 were subject to a 20.4% rate; all other employers were subject to an 18% rate. These rates were scheduled to be reduced to 20.1% and 18.5% in 2020. The Solidarity Law maintains the 2019 rates for 2020, but changes the way of determining which employers of the “commerce” and “services” sectors would enjoy the 18% rate; according to the law, they are those no exceeding the limits set to qualify as a mid-size enterprise level 2 by the SEPYME, i.e. a maximum of ARS 481,570,000 in annual sales and a maximum of 535 employees for “services” and a maximum of ARS 1,700,590,000 in annual sales and 345 employees for “commerce”.

Article 173 of Federal Law No. 27,430 reduced the tax base of the employer social security contributions, which resulted in a benefit to employers. This deduction is a fixed amount, adjusted for inflation. Said law established a transitional framework, in which only 20% of that amount could be subtracted in 2018, 40% in 2019, 60% in 2020, 80% in 2021 and 100% as from 2022 onwards. The Solidarity Law fixes the deduction at ARS 7,003.68, which amount cannot be changed, and is significantly lower than the amount that was originally set for 2020 (approximately ARS 15,000). For workers in certain sectors, such as textiles and health, the deduction is set at ARS 17,509.20.

Employers with a payroll of up to 25 employees will enjoy an additional deduction of ARS 10,000 per month applied to their entire taxable base.

Taxpayers may compute as a VAT tax credit the amount resulting from applying to the employer's social security contributions the percentages set by the Exhibit to the Law, which is between 0.45% and 5.90%; this benefit does not apply to the City of Buenos Aires or its suburbs in the Province of Buenos Aires (Greater Buenos Aires).

## LEGAL ENTITIES. LOSS OR REDUCTION OF CAPITAL

The Solidarity Law suspends the provisions of articles 94(5) and 206 of the General Companies Law until December 31, 2020, which means that, during the emergency period, the following shall not apply: (i) the dissolution of the company due to the loss of corporate capital, and (ii) the mandatory reduction of capital when losses consume reserves and 50% of the capital.

## RETIREMENT PENSION PAYMENTS

The Solidarity Law suspends for 180 days the automatic adjustment of retirement pensions under article 32 of Law 24,241. The Federal Executive is authorized to make any increase in such payments as he deems necessary.

## WAGE INCREASES

The Solidarity Law grants the Federal Executive the authority to:

- order private sector employers to pay their workers minimum wage increases;
- temporarily exempt from the obligation to pay contributions to the Argentine Social Security System, any wage increases resulting pursuant to the preceding paragraph or from collective bargaining; and
- reduce employer contributions and/or personal contributions to the Argentine Social Security System, in specific jurisdictions and activities or in emergency situations.

The Solidarity Law does not define “minimum wage increases”, which is thus at the discretion of the Federal Executive.

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