

News Analysis: OECD, U.S. Policies Put Argentine Amnesty on Fast Track

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The prospects appear promising for the broad tax amnesty and reform project submitted to the Argentine Congress by President Mauricio Macri on May 31. (Prior coverage [here](#).) Despite a government minority in both chambers, the goals of the legislative project -- to finance shortfalls on federal fund distributions to the states and on the federal retiree benefit program -- are expected to build consensus. In that context, it would be contentious for the opposition to withhold support for Macri's initiative.

In keeping with its increasing alignment with OECD policies -- including Argentina's status as an early adopter of the common reporting standard (CRS), which envisions the first automatic information exchange in September 2017 -- Macri's government has designed the legislative project around the kind of tax amnesty that the OECD recommends before the exchange of tax-relevant information under the CRS. Also, it is not unlikely that Argentina will soon push forward with a Foreign Account Tax Compliance Act agreement or tax information exchange agreement with the United States. All these factors taken together, along with the severe penalties provided by the domestic tax and anti-money-laundering framework, make it foreseeable that the amnesty program will be successful.

The legislative project also surprised Argentine market players with its unexpected but sensible tax reform measures, which will help build legislative consensus and political support for the initiative about to be debated.

The Tax Reform Proposed in the Legislative Package

The Argentine tax system has been historically designed to have both income taxes (on corporations and individuals) and asset taxes. In fact, resident individuals holding assets within or outside Argentina have been subject to tax burdens that range from 0.5 percent up to 1.25 percent per annum on the market value of their total net worth. Corporate assets, in turn, have been subject to an annual 1 percent tax, which can be credited against the corporate income tax (CIT), thus serving as a minimum threshold of taxation for companies earning low or no income. In many cases, such corporate asset taxes have been successfully challenged for violating the constitutionally guaranteed ability-to-pay principle.

To ensure the success of the tax amnesty program, the government's project provides for a gradual phaseout of the asset taxes until their full repeal, effective January 1, 2019. In the meantime, the minimum thresholds for individuals' asset tax would be increased in 2016, 2017, and 2018. Income tax rates would be gradually reduced to 0.75 percent for fiscal 2016; 0.50 percent for fiscal 2017 and 0.25 percent for fiscal 2018.

The individual asset tax has also historically included a 0.5 percent tax per annum on the net-equity value of shares and equity holdings in Argentine companies and local branches of foreign entities. This tax burden has applied to any kind of nonresident equity holder, even foreign corporations (presumed by law to conceal nonresident individuals). The same tax has applied to Argentine resident individuals -- other than local companies -- who have been required to exclude their equity participations in Argentine companies from their annual asset tax returns. The companies that have issued the stock or shares, or their branches, as the case may be, have been responsible for collecting and paying the tax to the government. The tax reform would reduce the 0.5 percent tax to 0.25 percent per annum until its full repeal.

The tax reform also proposes the full repeal of the 10 percent CIT applicable on dividends and profit distributions in cash or in kind made by local corporations, partnerships, and permanent establishments of foreign companies.

Finally, for individual income tax purposes, the project expands the capital gain exemption applicable on the sale of listed stock to shares listed in foreign stock exchanges. Until now, only securities listed on the domestic stock exchange have been eligible.

Further, the reform would make it easier to update the adjusted basis for assets held outside of Argentina by resident taxpayers by making the conversion of that basis to Argentine pesos by the time the sale takes place, rather than when the asset was originally purchased. Along the same lines, income from foreign-source receivables owned by an Argentine resident individual would be entitled to an exemption on the foreign exchange appreciation that occurred abroad until it has to be cashed by the resident taxpayer.

The Tax Amnesty Program

Argentine resident individuals and companies domiciled in the country are generally eligible for the proposed tax amnesty. The proposed amnesty would exclude executive branch officials who have performed from 2010 onward (including current governmental officials), diplomats, members of the armed forces, and generally speaking, personnel with different governmental responsibilities, other than congressmen, governors, and members of the judicial power.

The amnesty would be in effect through March 31, 2017. However, a filing made before the end of 2016 would be less expensive because the tax rate would increase in 2017. The rates for the proposed tax amnesty program are as follows:

- a) A zero tax rate would apply to:
 - taxpayers that disclose assets worth less than ARS 305,000 (about \$22,000);
 - taxpayers that use the assets disclosed to purchase either a three-year public bond that bears no interest or a five-year public bond that bears 0

percent interest during the first two years and 5 percent per annum, during the last three (such bonds would be registered and nontransferable); and

- taxpayers that use the assets disclosed to purchase set open-ended, listed, or closed investment funds approved by the Argentine Securities and Exchange Commission (CNV) that should be targeted at developing eligible infrastructure projects, real estate, productive investments, and other set projects to foster economic activity, as regulated by the CNV. This kind of investment could not be transferred during the first five years.
- b) A 5 percent tax rate for disclosing immovable property and real estate, as well as assets worth less than ARS 800,000.
- c) A 10 percent tax rate for assets in general -- other than real estate -- that exceed the threshold of b) above, to the extent disclosed before December 31.
- d) A 12 percent tax rate for assets used to purchase set interest-bearing public bonds, called Bonar 17 or Global 17.
- e) A 15 percent tax rate for assets in general -- other than real estate -- that exceed the threshold of b) above, disclosed between January 1, 2017, and March 31, 2017.

The amnesty program applies to assets in general, other than those located in jurisdictions that are deemed not cooperative with the international anti-money-laundering standards of the Financial Action Task Force (on Money Laundering).

Assets included in the tax amnesty should be generally valued at updated market values as of December 31, 2015. As for deposits held abroad -- whether cash deposits or securities held in custody -- taxpayers are required to disclose a financial statement, issued by the foreign bank or custodian, with the account balance, as of December 31, 2015. In the case of local or foreign currency held in the country, disclosure must be made by means of a deposit with local financial institutions and should remain therein for at least six months. In the case of real estate, a specific sworn statement must be filed to provide evidence of the disclosure. The implementing regs to that extent would be issued by the Argentine Revenue Service (ARS). An interesting feature is that assets held outside of Argentina are not subject to mandatory repatriation. Needless to say, in such cases the option to get a 0 percent tax on the disclosure will certainly be reduced.

The amnesty also would enable the taxpayer to disclose assets held or recorded in the name of a person other than the one that actually files for the amnesty. When such a filing implies new owners of existing domestic companies, the tax indemnities are clearer for tax-transparent entities, while there are less developed norms for domestic corporations and taxable entities, with room for potential pitfalls.

Those who filed for the tax amnesty are generally insulated from:

- federal taxes, interest, and penalties, other than the payment of the amnesty tax rates;

- foreign exchange control penalties; and
- transactional taxes required to implement the disclosure (such as a bank debits and credit tax). However, this broad tax insulation will not apply if the ARS finds that a taxpayer's disclosure was partial or if the taxpayer does not comply with the amnesty provisions, including the timely payment of the amnesty tax rates.

Argentine provinces (states) are invited to pass similar legislation regarding provincial taxes.

Other News of the Legislative Project

The legislative package also allows taxpayers to pay outstanding tax, social security, and customs liabilities, with a maximum interest rate of 18 percent per annum for installment payments. Some outstanding tax liabilities may be paid in cash upfront, with a 15 percent discount on the principal. Those who benefit from such a tax moratorium could also benefit from a reduction in past interest due, as well as the full exemption from penalties and criminal tax prosecutions.

A novelty of the tax amnesty program is an incentive for taxpayers who have fully complied with their tax obligations in the past and therefore do not need to disclose any hidden assets or pay outstanding tax liabilities. Those taxpayers would be exempt from the individual asset tax for fiscal 2016, 2017, and 2018, and would be allowed to credit any excess asset tax -- if any -- against their income tax liability.

A new tax committee consisting of members of both the House of Representatives and the Senate, as well as governmental officials, would be created to propose a full-fledged tax reform within a year, starting from the date of its creation. The executive branch has informally noted that estate and gift taxes would be nominated for reform.

Observers now await the final vote on Macri's legislative package. In the meantime, the ARS is already working on its implementing regulations.

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