

## Tax Authority Extends Reporting Obligations to Foreign Trusts

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Reprinted from *Tax Notes Int'l*, April 30, 2012, p. 411

# COUNTRY DIGEST

## Tax Authority Extends Reporting Obligations to Foreign Trusts

The Argentine Revenue Service (ARS) on April 19 published General Resolution 3312, which broadens the scope of the registration and reporting obligations (previously limited to domestic trusts) to target foreign trusts and other equivalent foreign structures that have a substantial nexus with an Argentine party (that is, when the settlor, trustee, or any beneficiary is located in Argentina).

The new information and registration requirements apply to:

- trustees of domestic and foreign trusts (financial or regular);
- Argentine residents that are either settlors or beneficiaries of foreign trusts (but only relating to their interest in such trusts); and
- the assignors and assignees of the rights under domestic trust agreements.

Details to be included during registration with the ARS (and at other times as documented below) are:

- information about the creation of the foreign trust, including documentation for all the parties to the agreement;
- the terms of the agreement, as well as the governing law and the details of the trust assets;
- full documentation for the settlors and the beneficiaries, as well as any changes in those roles, if any, that take place after the inception of the trust;
- the assignments of the rights stemming from the trust, whether subject to any consideration or not;
- any contribution of assets to the trust that takes place after the inception of the structure; and
- any changes to the original trust agreement, the appointment of beneficiaries, or the termination of the trust agreement.

Reports filed by the *settlors* of foreign trusts must include:

- the type of trust, name, country of incorporation, taxpayer ID number of the trust, and its tax residency;
- the trustees' and beneficiaries' names, taxpayer ID numbers, and countries of residence;
- information about the trust's assets and any decrease or increase in value as compared with the previous reported year; and
- details about the securities issued by the trust, if any.

Reports filed by the *beneficiaries* of foreign trusts must include:

- the type of trust, name, country of incorporation, taxpayer ID number, and the trust's country of tax residency;
- the trustees' and settlors' names, taxpayer ID numbers, and countries of residence;
- information about the trust's assets and any decrease or increase in value as compared with the previous reported year;
- details about the securities issued by the trust, if any; and
- an accounting of the proceeds collected from the trust during the previous reporting period.

Reports filed by the *trustees* of foreign trusts must include:

- the name of the trust and its type;
- its country of incorporation;
- the trustee's taxpayer ID number and address;
- the settlors' and beneficiaries' names, taxpayer ID numbers, and countries of residence;
- information about the trust's assets and any decrease or increase in value as compared with the previous reported year; and
- details about the securities issued by the trust, if any.

The above-mentioned reports must be filed within 10 business days of the creation of a foreign trust. Also, foreign trusts now must file an annual report documenting their status as of December 31 of each

year. The new resolution also states that the information requirements apply retroactively to trusts in place as of December 31, 2011 (or earlier, in certain cases); and the registration requirements apply to trust agreements implemented between January 1 and July 1, 2012, in which case the reporting deadline is August 31.

Notably, the new regulation leaves open to interpretation a number of issues that will have to be evaluated carefully.

First, the regulation applies not only to foreign trusts but also to any “equivalent foreign structure” as defined by the foreign structure’s governing law. This leads to uncertainty about the scope of reportable structures implemented abroad. The equivalency test used by the ARS is blurred, probably intentionally, in order to have a catchall effect.

Second, the regulation should be compatible with upper-tier provisions. Both the Argentine Constitution and the Tax Procedure Act provide that tax burdens

(such as the need to register and report certain transactions to the ARS) can be imposed only on Argentine residents. This is in line with the need to report foreign trusts with Argentine nexus. However, in no case should the resolution be read — despite its lack of clarity — as imposing any such burden on nonresident trustees, settlors, or beneficiaries.

Third, despite the requirement that the trust’s tax residency be reported, there are no standards under domestic law establishing precedence in the event of conflicting rules. Generally speaking, the regulation could result in contradictory interpretations under Argentine norms and case law about the place where the trust was constituted, the governing law, the location of any of the parties to the agreement, or the trust’s place of effective management. ◆

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