

Turkey ratifies Double Tax Treaty with Argentina

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On 16 May 2020, Turkey published the Double Tax Treaty between Turkey and Argentina (Treaty), which was signed on 1 December 2018, in *Turkey's Official Gazette*.

The Treaty provisions reflect Turkey's MLI¹ approach.

The purpose of the Treaty is to: (i) develop economic relationships; and (ii) avoid double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or tax avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States).

This Alert summarizes the main provisions of the Treaty.

Resident (Article 4)

Article 4 covers: (i) the definition of resident of Contracting States; and (ii) explanations on how to determine the residency of individuals who are resident of both Contracting States.

Permanent Establishment (Article 5)

Under Article 5, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term “permanent establishment” includes especially a place of management; a branch; an office; a factory; a workshop and a mine, an oil or gas well, a quarry or any other place related to the exploration, exploitation or extraction of natural resources.

In addition to the above, permanent establishment also includes; (i) a building site, a construction, an installation or assembly project or any supervisory activity in connection therewith, but only if such site, construction, project or activity lasts more than six months, (ii) the furnishing of services by an enterprise, including consultancy services, through employees or other persons engaged by the enterprise for such purposes, but only where activities of that nature continue within the territory of a Contracting State for a period or periods aggregating more than 6 months within any 12-month period.

This article also addresses:

- ▶ An undertaking or a closely related undertaking that conducts its business in the same place or elsewhere in the same Contracting State
- ▶ A person acting on behalf of a resident of a Contracting State in the Other State and having an authority to conclude contracts
- ▶ Status of independent agencies
- ▶ Closely-related enterprises
- ▶ Status of companies controlled or managed from the Other Contracting State

Business Profits (Article 7)

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Profits of an enterprise of a Contracting State derived from insurance and re-insurance activities by insuring property situated in the other Contracting State or persons who are residents thereof at the date of signature of the insurance contract, may be taxable in that other State, whether or not the enterprise carries on those activities through a permanent establishment situated therein. However, in the absence of a permanent establishment, the tax so charged shall not exceed:

- ▶ 3% of the gross amount of the premium in the case of re-insurance activities
- ▶ 10% of the gross amount of the premium in other cases.

Dividends (Article 10)

If the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- ▶ 10% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365-day period that includes the day of the payment of the dividend; (in the calculation of the 365-day period; no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend).
- ▶ 15% of the gross amount of the dividends in all other cases.

Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with subparagraph (a) of paragraph 2 of this Article.

Interest (Article 11)

If the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 12% of the gross amount of the interest.

Interest arising in Argentina and paid to the Government of Turkey or to the Central Bank of Turkey shall be exempt from Argentina tax and interest arising in Turkey and paid to the Government of Argentina or to the Central Bank of Argentina shall be exempt from Turkish tax.

Royalties (Article 12)

If the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- ▶ 3% of the gross amount of the royalties paid for the use of, or the right to use, news
- ▶ 5% of the gross amount of the royalties paid for the use of, or the right to use, any copyright of literary, musical or other artistic or scientific work (but not including royalties in respect of any cinematographic film, or work on film, tape or other means of reproduction of sounds or images)

- ▶ 10% of the gross amount of the royalties in all other cases

In addition, with the Protocol, payments to be applied with a maximum tax rate of 15% have been determined. Accordingly, royalties derived from the use or the right to use any copyright of literary, musical or any other artistic work, shall apply solely if the beneficial owner is the author or his/her heirs. Otherwise, the taxation at source shall not exceed 15% of the gross amount of the payment.

The limitation on the taxation at source by either Contracting State regarding transfer of technology provided shall apply as long as it is required for the contracts to be registered or authorized according to the regulations of their domestic law. Otherwise, the taxation at source shall not exceed 15% of the gross amount of the payment.

Capital Gains (Article 13)

Gains derived by a resident of a Contracting State from the alienation of immovable property and movable property forming part of the business property of a permanent establishment or movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property.

Gains derived by a resident of a Contracting State from the alienation of shares representing the capital of a company that is a resident of the other Contracting State may be taxed in that other State, but the tax so charged shall not exceed:

- ▶ 10% of the gain if, at any time during the 365 days preceding the alienation, the alienator holds directly at least 25% of the capital
- ▶ 15% of the gain in all other cases

Independent Personal Services (Article 14)

Income derived by an individual who is a resident of a Contracting State may also be taxed in the other Contracting State if such services or activities are performed in that other State via a fixed base regularly available to this individual in the other State for the purpose of performing those services or activities; or this individual is staying to perform those services or activities in that other Contracting State for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

Elimination of Double Taxation (Article 22)

Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State.

However, deduction will not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

Mutual Agreement Procedure (Article 24)

If a person considers that a transaction of one or both Contracting State is not complying with Treaty provisions, this person can submit the situation to the competent authority of one of the States, notwithstanding of the internal procedures of one or both States for solutions. The situation must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty.

Entry Into Force (Article 28)

This Convention shall enter into force on the date of the receipt of the last written notification by which the Contracting States notify each other, through diplomatic channels, of the completion of their internal legal procedures required for the entry into force of this Convention. The provisions of this Convention shall have effect:

- With regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which this Convention enters into force.
- With regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which this Convention enters into force.

Endnote

1. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.*

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