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Private Wealth 2022

Contributing Editor
Basil Zirinis
Sullivan & Cromwell LLP

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INTRODUCTION

Contributed by: *Basil Zirinis,* ***Sullivan & Cromwell LLP***

Global Outlook – Private Wealth in 2022

The pace of legal, cultural and technical developments around the world increases each year, and international estate, trust and tax planning continues to evolve with them. Decades of globalisation, combined with the unprecedented mobility of the world's wealthy, have made it common to have clients whose residences and assets range across multiple jurisdictions.

International practice

The COVID-19 pandemic presented a temporary disruption to such mobility but for many clients, and for a variety of reasons, the pandemic encouraged movement to other jurisdictions, such as movement away from urban areas, responding to changing life circumstances, or to take advantage of temporarily decreased exit tax costs due to depressed asset values. New and increasingly complex challenges have arisen in planning during life and at death, as countries attempt to stabilise economies reeling from the effects of the pandemic and the conflict in Ukraine, and as families are affected by multiple, often conflicting tax laws, rules of inheritance, treaties and cultural norms. As a result, international private client lawyers must work closely with legal advisers in many jurisdictions to ensure that advice is not being given in isolation, and that all factors affecting a client's planning have been identified.

Cultural differences

Understanding and appreciating the cultures (both legal and national) of the various jurisdictions is also vital, and lawyers who do so will be increasingly valuable, whether in non-contentious planning or in trust and estate litigation. Making an effort to bridge cultures and languages will also make mistakes much less likely. Lawyers who function as a team, who respect the intricacies and unique aspects of each legal system, and who recognise that an appreciation of language and culture is fundamental to successful cross-border work will have enormous advantages over lawyers who see multi-jurisdictional planning or litigation as separate pieces where each lawyer has responsibility only for their own jurisdiction. The Chambers Private Wealth Global Practice Guide is designed to help encourage and facilitate such cross-border co-operation.

A few recent global trends in the law that relate to families, their businesses and their planning are discussed below.

The COVID-19 Pandemic

The COVID-19 pandemic has been called the defining global health crisis of our time, causing the deaths of millions of individuals worldwide and creating an unprecedented economic crisis. Many countries incurred considerable debt in record time to protect their economies and their residents, and are now bearing the brunt of those measures. As they struggle to bolster supply chains and tamper inflation, many jurisdictions are placing a renewed emphasis on the enforcement of current tax laws and negotiating or enacting increased tax rates and new forms of taxation, such as wealth or exit taxes. In past economic crises, some governments have sought forced loans from private companies and individuals, or have nationalised private companies in key sectors. It is possible that these strategies may again be considered.

These times of uncertainty have also generated attention to personal planning. Clients may need to balance the desire to move assets out of their estates against the ability to gain access to such assets in times of financial hardship. The risk of

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nationalisation in particular creates the need to ensure private clients separate personal wealth from assets in companies that can be nationalised, which may prove difficult given that a family's wealth is often predominantly tied up in its family business.

The pandemic also resulted in the increased use of electronic tools in international estate, trust and tax planning. With private client data being increasingly accessible via electronic platforms, the need to safeguard against security vulnerabilities has never been greater.

Crisis in Ukraine

Russia's military invasion of Ukraine in February 2022 has caused many thousands of civilian deaths and displaced many millions of people.

In response to the crisis, the European Union, the USA and other countries have imposed economic sanctions against Russia, with broad international economic ripple effects.

These sanctions have had a significant impact on private client advisers, who must keep abreast of rapidly changing guidance in relation to clients with ties to Russia. Individual violators of sanctions are generally subject to strict liability and face stiff penalties.

The Global Economy

The lingering effects of the pandemic and Russia's invasion of Ukraine have created economic conditions that many forecasters now predict will lead to a global recession. These include energy and food shortages, disrupted supply chains and inflation. All of these factors have dramatic consequences for our clients and their business interests.

The Demand for Increased Transparency and Oversight

The global drive for transparency continues to be a dramatic force of change in the international private client world. Governments are increasingly focused on cross-border arrangements and structures, and have implemented regulatory schemes that require the exchange of tax-related information. For example, the USA has achieved near-complete international compliance with the Foreign Account Tax Compliance Act (FATCA).

The Common Reporting Standard (CRS – the reciprocal automatic information exchange agreement developed by the OECD) has been adopted in over 100 jurisdictions and requires entities (including trusts and foundations) to report information on controlling persons. For entities, the controlling persons are generally the individuals who exercise control over the entity or who have a direct or indirect controlling ownership interest in the entity. For a trust, the controlling persons are defined to include the settlors, the trustees, the protectors (if any), the beneficiaries or class of beneficiaries, and any other natural persons exercising ultimate effective control over the trust (whether directly or indirectly).

Of course, few of these individuals (who may be resident in numerous jurisdictions) actually control a trust, yet the broad reporting requirements are creating significant compliance burdens and challenges for trustees and financial institutions dealing with trusts. The global reach of the CRS has also made the co-operation of teams of advisers across multiple relevant jurisdictions that much more important.

Expansion of mandatory disclosure

The European Union has expanded the scope of mandatory disclosure beyond the CRS with the adoption of DAC6, a European Directive

requiring tax, accounting and legal professionals ("intermediaries") to report their clients' qualifying cross-border planning arrangements. Any cross-border arrangement involving one of a number of specified "hallmarks" is subject to disclosure. The implementation of DAC6 varies by jurisdiction. DAC6 is retroactive to 25 June 2018, which means that intermediaries and their clients may already have substantial reporting obligations under the disclosure regime.

In addition to increased emphasis on the automatic exchange of information in programmes that purport to make the information available only to tax and law enforcement authorities, some governments and organisations have moved for even greater transparency, demanding public registers. For instance, in July 2018, the European Parliament and Council adopted the fifth Anti-money Laundering Directive (5AMLD), which broadens the availability of EU Member States' national registers of ultimate beneficial ownership of trusts. Since 2020, trusts' beneficial ownership information must be made available to:

- professionals and institutions subject to anti-money laundering rules, including attorneys and financial institutions acting within the framework of customer due diligence;
- persons who can demonstrate a "legitimate interest" in the information, as determined under national law; and
- the public, in the case of any trust that holds certain interests in a company outside the EU.

The United Kingdom has already enacted similar legislation in the context of shareholders of corporations, which requires the disclosure of persons with significant control. Since 2016, all UK-incorporated companies and limited liability partnerships (LLPs) have been required to maintain and hold open for public inspection a register of natural persons with significant control. Furthermore, since 2018, UK-resident trusts, as well as trusts with UK assets or income, have been required to provide information for inclusion in the UK register of trusts.

In response to 5AMLD, the UK expanded the register of trusts to include additional categories of non-UK trusts with connections to the UK, such as trusts that enter into a business relationship with a business that is subject to the UK's anti-money laundering regime. Such trusts must now be registered by September 2022. As required by EU regulation, the register, which was previously available only to government institutions, will now be available to the categories of persons described in the three bullet points above. EU Member States are now required to fully implement the 5AMLD requirements; as of June 2022, infringement proceedings are pending against 12 non-compliant EU Member States.

The EU has also indirectly imposed transparency obligations on offshore jurisdictions through the publication of a list of non-co-operative tax jurisdictions. In February 2022, the "blacklist" contained nine non-co-operative jurisdictions, including several US territories. Numerous offshore jurisdictions have adopted, or have announced plans to adopt, local laws and regulations that implement the provisions of DAC6 and 5AMLD.

These developments coincide with the increasing criminalisation of tax and compliance advice. In recent years, the UK Criminal Finances Act, the US Foreign Corrupt Practices Act and similar laws have threatened private client advisers with criminal penalties for their clients' misconduct, effectively co-opting them into the oversight of client behaviour. Under the UK Criminal Finances Act, a corporate body (eg, a law firm or a financial institution) that fails to institute policies designed to prevent the facilitation of tax

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offences or money laundering by its employees could itself be subject to substantial fines or the termination of licences.

The substantial reporting burdens imposed by these types of regulations have already had a notable impact on the offshore trust world. Many smaller trust companies simply do not have the resources to comply with the complex regulations, and the risks of incorrect reporting often outweigh the benefits of taking on clients from certain jurisdictions.

Some commentators have questioned the privacy implications, as well as the efficacy and fairness of the burden placed by these expansive transparency and oversight frameworks upon individuals, families and advisers. In particular, practitioners are increasingly challenging the requirement that court proceedings relating to trust administration or related intra-family matters be kept open to the public where not specifically requested by the parties. These proceedings generally involve non-contentious petitions, brought with the consent of all the interested parties. Under such circumstances, the public's general interest in transparency may not justify the impairment of the litigants' privacy. Commentators suggest that the norm of public access to court proceedings in the UK and other jurisdictions is likely to drive trust administration business to offshore forums.

Rise of Estate and Trust Litigation

The world is in the middle of the greatest generational transfer of wealth in history, and cross-border estate and trust litigation has never been busier. Trustees find themselves entangled in a rising number of complex and costly cross-border disputes, often serving as the target of aggrieved beneficiaries (or excluded family members) in jurisdictions that have forced inheritance laws or that do not recognise trusts. The forecasted global recession will likely increase the occurrence of such disputes as, for example, trustees must determine whether to distribute assets to beneficiaries in difficult financial positions and make investment decisions in a volatile market. Litigation in the areas of bankruptcy and fraud may also increase.

Whether representing fiduciaries or challengers, anticipating litigation can go far towards increasing the likelihood of obtaining a favourable result (whether through the courts or a negotiated settlement). The greatest risks in multi-jurisdictional trust litigation come from the potential clash of laws and procedures of the different countries, yet these inconsistencies also create opportunities for surprise and victory. The litigation team that truly understands the intricacies in each jurisdiction and appreciates the contrasting cultural forces can exploit the gaps that are created to its substantive and procedural advantage.

Political Risk

Introductions to recent editions of this Guide named increased political volatility worldwide as a significant change in the preceding years, highlighted by the reintroduction of broad-scale tariffs in international trade, a rise in nationalism and the continued consolidation of authoritarian regimes around the globe. The socio-economic fallout resulting from the COVID-19 pandemic and other societal forces has increased worldwide political turmoil and, in some cases, civil unrest.

The resulting substantial changes to legislation, policy and politics have created risks and opportunities for clients who live and work across multiple jurisdictions. To provide sound advice, advisers must understand the full import of political changes worldwide and their potential consequences.

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The Future

We are living in times of increased uncertainty as countries determine how to address economic volatility, international conflict and a lingering health crisis. Such uncertainty will impact the trends discussed above – transparency, the increase in trust and estate litigation and political volatility. But, of course, the world of private client advice does not involve only these areas; much of our work relates to helping families structure the succession of wealth in responsible and lasting ways, preserving long-existing family businesses, encouraging family harmony, protecting family assets for both current and future generations, and preserving private property. These needs will also continue and grow.

New challenges that are emerging include adapting current laws and structures to evolving methods of reproduction due to scientific and medical advancements. These range from the increasing use of surrogacy arrangements to the birth of children from frozen embryos after one or both of their biological parents are dead, and even to posthumous conception and reproduction. Laws to address questions of inheritance rights and the definition of such terms as "issue" and "legitimate" in these contexts either do not exist or conflict among jurisdictions.

Digital assets, including virtual currencies such as Bitcoin, mark another new territory that national legal systems will need to address. The development of law around these new challenges in the shadow of the pandemic and resulting economic crisis will be of increasing importance.

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Sullivan & Cromwell LLP has advised many of the world's most influential families for more than 135 years, on all aspects of their business and legal affairs, from complex transactions to family business governance and wealth preservation. Through 13 offices on four continents, the firm provides highly integrated legal services to some of the world's leading families and companies in their most important domestic and cross-border matters. The firm prides itself on being at the intersection of private client, trust and transactional advice, and can advise on and execute any type of transaction, in any industry, economic climate or geographic region.

CONTRIBUTING EDITOR

Basil Zirinis has been a partner in Sullivan & Cromwell's estates and personal group since 1994 and leads the international private client practice from London and New York. He represents private clients around the world in a broad range of matters, including domestic and international estate and trust planning, family business governance and transition, estate and trust administration and litigation. Basil is a member of the International Academy of Estate and Trust Law, STEP and ACTEC, and is recommended by a number of leading publications.

Sullivan & Cromwell LLP

1 New Fetter Lane
London
EC4A 1AN
England

Tel: +44 20 7959 8900
Fax: +44 20 7959 8950
Email: zirinisb@sullcrom.com
Web: www.sullcrom.com

SULLIVAN & CROMWELL LLP

ARGENTINA

Law and Practice

Contributed by:
Juan McEwan and Agustín Lacoste
McEWAN see p.48

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1. TAX

1.1 Tax Regimes

The Argentine tax regime functions at the three levels of government: federal, provincial and municipal. The most relevant taxes at federal level levied on individuals are income tax and personal assets tax, although there are other taxes that, although normally irrelevant, may have an impact on wealth structuring.

Personal Income Tax

Individuals residing in Argentina are subject to personal income tax (PIT) on worldwide income. Briefly, the following are regarded as Argentine residents:

- Argentine citizens, whether native or naturalised individuals;
- foreign individuals who have obtained permanent residency status in Argentina or have been in Argentina with temporary authorisation for 12 months (provided that temporary absences do not exceed 90 days); and
- undivided estates in which the decedent was Argentine domiciled on the date of their death.

In the case of individuals, the Income Tax Law (ITL) establishes a progressive scale consisting of two concepts:

- a fixed tax value; and
- a variable rate (from 5% to 35%).

However, the ITL applies a differential treatment to profits derived from the sale of bonds, stocks, other securities and real estate, and income derived from dividends distributed by Argentine entities, at rates of 5%, 7% or 15%.

For transfers of real estate, PIT applies to the extent that the real estate was acquired on or after 1 January 2018. Where the real estate being sold was acquired prior to 1 January 2018, a 1.5% withholding tax (real property transfer tax – ITI) will apply.

PIT is an annual tax and the tax return must be filed in mid-June of the year following the tax period settled. A tax credit will also be permitted with respect to a similar tax paid abroad.

PIT – Amendments to Legislation

Law 27.430 incorporated significant changes and had a great impact on high net worth individuals and families due to the taxability of financial investments and the inclusion of fiscal transparency through the controlled foreign company rules.

However, Law 27.541 was published in the Official Gazette on 23 December 2019 and repealed several changes incorporated by Law 27.430, re-establishing some exemptions for certain Argentine-sourced income. The main changes include the following:

- it abrogated the Financial Income Tax (*Impuesto Cedular*) established for income or returns resulting from the allocation of capital in securities such us public securities issued by the national, provincial, municipal or City of Buenos Aires governments, negotiable obligations, debt securities, participations on mutual funds, bonds and other securities as of fiscal period 2020;
- it extended the option to affect the interests of public securities issued by the national, provincial, municipal or City of Buenos Aires governments, and negotiable obligations to their cost to fiscal period 2019; and
- it exempted interest from savings accounts and fixed term deposits in national currency, capital gains from public securities issued by the national, provincial, municipal or City of Buenos Aires governments, and participations in mutual funds and financial trusts.

Section 130 of the ITL establishes that certain foreign structures (companies or other entities or contracts such as trusts) will be considered "transparent" for tax purposes if they meet certain requirements. To that end, the ITL establishes three categories of entities:

- trusts, private interest foundations and similar structures established or domiciled abroad;
- companies without fiscal personality; and
- companies with fiscal personality.

Trusts and Private Interest Foundations

The ITL establishes that fiscal transparency will apply to trusts, private interest foundations and similar structures if an Argentine tax resident exercises control over the structure – ie, when there is evidence that the assets remain in its possession and/or are administered either directly or indirectly by the tax resident, in the following cases, among others:

- revocable trusts or foundations;
- when the settlor/founder is also a beneficiary; and
- when the settlor/founder has decision-making power, directly or indirectly, to invest or divest assets.

If a trust/private interest foundation does not meet these characteristics, it will not be considered transparent for tax purposes.

Personal Asset Tax – Amendments to Legislation

Section 30 of Law 27.541 changed the criteria by which an individual falls within the scope of personal asset tax (PAT) from domicile to residency under the terms and conditions foreseen in the ITL, and increased the tax rate on the net equity value of stock owned by Argentine resident individuals and non-residents or entities (from 0.25% to 0.5%).

Law 27.667 (published in the Official Gazette on 31 December 2021) increased the value of the standard exemption from ARS2 million to ARS6 million. Therefore, an Argentine-resident individual will be subject to PAT on the assets held in and outside Argentina as of 31 December each year. Assets with a value of ARS6 million will be exempt from tax. For assets above that threshold, the progressive tax rates go from 0.5% to 1.75%.

Real property in which the taxpayer lives (*Casa Habitación*) or in which the deceased used to live in the case of undivided estates will not be taxable when its value is equal to or less than ARS30 million. The taxable base is the market value of such assets and, apart from a few exceptions, debts are not deductible.

For assets held abroad, the progressive tax rates go from 0.7% to 2.25%.

Law 27.667 delegated to the executive branch the power to reduce the differential tax rates on foreign assets, provided the proceeds of those assets are repatriated.

The law also provides that the above values will be adjusted annually based on the IPC (consumer price index). The changes already apply to tax period 2021, except for the indexing, which will apply as from the tax period 2022.

As mentioned in **1.4 Taxation of Real Estate Owned by Non-residents**, for real estate property, PAT is also applicable to non-resident individuals exclusively on assets held in Argentina. To ensure that the tax is collected, the law provides a method of substitution that imposes the obligation to file the tax return and pay the tax on the local resident that administers the asset on behalf of the foreigner ("substitute taxpayer regime"). Those individuals must designate a local substitute taxpayer to pay the tax assessed

on property located in Argentina, applying a fixed tax rate of 0.5%.

Expatriates residing in Argentina on work assignments for a period not exceeding five years are considered non-residents (Section 123 (c) of the ITL) and are therefore taxed exclusively on their Argentine situs assets. The employment reasons that require Argentine residence must be duly proven.

Gift/Estate Tax

In Argentina there is neither federal gift tax nor inheritance/estate tax. A gift tax/estate tax (*Impuesto a la Transmisión Gratuita de Bienes* – ITGB) is only applicable for Buenos Aires Province (PBA). Even though there are no similar taxes in the rest of the provinces (Entre Ríos Province abrogated this tax on 22 December 2018), it cannot be ruled out that other provinces may introduce similar taxes in the future (as contemplated in Fiscal Consensus 2022).

ITGB is assessed on any increase in an individual's wealth due to the receipt of a gratuitous transfer of assets from acts including inheritances, legacies and gifts. According to the law, the following are regarded as liable:

- natural persons and legal entities domiciled within PBA that benefited from the gratuitous transfer. In this case, the tax applies to the total sum of the assets received by that person or entity; and
- natural persons and legal entities domiciled outside PBA when the increase in their wealth comes from a gratuitous transfer of assets located within PBA (PBA situs assets). In this case, the tax applies only to the amount of the increase derived from the transfer. The Buenos Aires Province Tax Code considers that the shares and equity interests of a company registered outside PBA are a PBA situs asset in the proportion of those assets held by the company that are situated in PBA (eg, a company incorporated and registered in the Autonomous City of Buenos Aires having real property in PBA). For tax assessment purposes, the shares will be valued according to the net asset value of the latest closed financial statements.

The tax-free allowance when the beneficiary is the spouse, child or parent of the transferor is ARS1,948,800. If the amount received exceeds this sum, the tax will be applied to the difference. In any other cases, the tax-free allowance is ARS468,060.

The applicable tax rates vary between 1.6% and 9.51%, depending on the value of the property transferred and the relationship between the transferor and the transferee of the property. The rates are based on the assessment value or the market value, whichever is higher.

The Buenos Aires Province Tax Code (Section 320 of Provincial Law 10.397) provides that certain heirs (surviving spouse, ascendants and/or descendants) will be exempt from ITGB when they receive any of the following assets mortis causa:

- a homestead (*Vivienda Familiar*, in accordance with Section 244 of the Argentine Civil and Commercial Code – CCC);
- real property entirely destined for the housing of the decedent or their family, provided it is the only property and its assessed value does not exceed ARS1,154,400 (for the 2022 fiscal period); and
- a company, whatever its form of organisation, provided the valuation of its assets does not exceed the amount established by law (ARS34,279,740 for the 2022 fiscal period) and as long as the activity is effectively maintained in the five years following the death of the decedent. Otherwise, they must pay the

tax reassessment for the remaining years to obtain the benefits of the exemption. However, this exemption will not apply when the income of the company derived from rental and financial assets exceeds ARS1,374,443 (for the 2022 fiscal period).

1.2 Exemptions

See **1.1 Tax Regimes** (Gift/Estate Tax).

1.3 Income Tax Planning

There are no special provisions in the ITL that provide a step-up in the value of assets to their fair market value.

1.4 Taxation of Real Estate Owned by Non-residents

Non-residents are subject to PAT on all property located in Argentina as of 31 December each year. To collect this tax, the law provides a method of substitution that is imposed on the local resident who administers the asset owned by the foreign national. Such person must submit and pay the tax return (Substitute Taxpayer Regime). The applicable fixed tax rate is 0.5% and there is no tax relief allowed.

In addition, provincial real estate tax must be paid annually, in one or several instalments in the months of February, April, June, August and October. For example, in PBA the tax is composed of a fixed amount (from ARS260 to ARS400,314) and the tax rate to be applied on the surplus of the established minimum of the scale goes from 0.028% to 2.363%, depending on the type of property and the fiscal valuation carried out by the Land Registry and Territorial Information Service.

If the property is rented out, the tenant should withhold tax at an effective rate of 21% (the ITL presumes that 90% of the rent is the net income and applies a 35% tax rate). If the property is to be rented for commercial purposes (ie, it is not to be the tenant's home), VAT would apply at a rate of 21% of the rental value. As for PAT, the law provides a substitution method for the collection of this tax, which is imposed on the local resident designated by the non-resident for this purpose. Such person must submit and pay the tax return (Substitute Taxpayer Regime).

Regarding onerous transfers of real estate, PIT applies to the extent that the real estate was acquired by the non-resident on or after 1 January 2018. Where the real estate being sold was acquired by the non-resident prior to 1 January 2018, a 1.5% withholding tax (ITI) will apply. In addition, the deed of sale of the real estate is subject to stamp tax, the rate of which will depend on where the real estate is located, as each province sets a specific rate within its own provincial tax code. For example, in the Autonomous City of Buenos Aires, the tax rate for the transfer of ownership of real estate is 3.6% on the economic value of the contract. Where a non-resident receives income on the sale or transfer of shares or other interests in foreign entities, and the value of this derives at least 30% from assets located in Argentina (eg, real estate), this income will be taxed in the same way as capital gains.

Gratuitous transfers during the non-resident lifetime (gift) of real estate situated within PBA will be subject to ITGB. If the gratuitous transfer derives from the death of the non-resident (inheritance), court fees derived from the succession proceeding will also apply (amounting from 1.5% to 2.2% of the value of the property).

Fideicomisos (local trusts) are commonly used structures to defer ITGB and avoid court fees. If the property is situated outside PBA, gifting the real estate could be an alternative (the donor may keep lifetime usufruct over the given property).

1.5 Stability of the Estate and Transfer Tax Laws

Stability is not a quality that is readily associated with Argentina, and the country's tax legislation is no exception to this. This can clearly be seen by the changes made to PAT in the last five years, which can be summarised as follows.

- In May 2016, the National Executive Branch sent a draft Bill to the congress, which included a tax amnesty, a moratorium and staggered modifications in the non-taxable minimum amounts and rates of PAT, until this was abrogated as of 1 January 2019.
- Law 27.260 (22 July 2016) introduced staggered modifications in the non-taxable minimum amounts and rates of PAT. The abrogation of this tax was finally set aside.
- Law 27.429 (22 December 2017) established the fiscal consensus reached by the federal government, the provinces (except San Luis) and the Autonomous City of Buenos Aires. It was aimed at implementing tax policies designed to promote and increase investment, as well as private employment, through a reduction in the fiscal burden of taxes with a distortive effect on overall economic activity. The other side of the obligations assumed by local jurisdictions was the commitment not to create new national taxes on assets or increase the tax rate on PAT.
- On 12 October 2018, the National Executive Branch submitted a Bill to ratify amendments to the previously mentioned fiscal consensus. Item (e) of the Bill provided for the suspension of the commitment assumed by the national government.
- Law 27.480 (21 December 2018) raised the minimum taxable base, and the fixed 0.25% tax rate was finally replaced by a progressive scale, which could increase to a 0.75% tax rate.
- Law 27.541 (23 December 2019) again raised tax rates, which now range within a progressive scale between 0.5% and 1.25%, and delegated the power to establish differential rates for assets held outside Argentina to the executive branch (until 31 December 2020). For assets held abroad, the executive branch established differential tax rates through Decree No 99/2019, which may go up to 2.25%.
- Law 27.667 (31 December 2021) again raised tax rates, which now range within a progressive scale between 0.5% and 1.75% for domestic property and from 0.70% to 2.25% for assets held abroad.

Besides PAT, Law 27.605 was finally enacted on 4 December 2020, creating a one-off extraordinary contribution levied on the assets held by individuals and undivided estates (both residents and non-residents), known as *Aporte Solidario or Impuesto a la Riqueza* (the ASE).

However, many individuals have decided not to file and pay the ASE because they consider that this new tax duplicates the existing PAT and that – because of the excessively high rates – it absorbs entirely the income generated by the taxable assets as well as part of the capital, violating different constitutional principles. Those individuals filed an action before court claiming that applying the law in their case results in the unconstitutionality of Law 27.605 (known as *Acción Declarativa de Certeza*). At the time of writing, the Federal Public Revenue Administration of the Argentine Republic (AFIP) has initiated tax inspections of each of these individuals, which will end with a Tax Assessment Resolution. The review of this official assessment may be requested, at the taxpayer's option, by filing the following within 15 days of receiving written notice:

- a motion of reconsideration before the Director General of the AFIP (administrative review); or

- an appeal before the Federal Tax Court with suspensive effect (jurisdictional review).

The lack of stability in the tax laws, the extremely high overall tax burden (mainly after the introduction of differential higher rates for assets held abroad and the ASE) and future uncertainty due to the economic crisis and insecurity context have aroused concern among high net worth individuals. Therefore, consultations on tax and estate planning have increased considerably, and many high net worth families are considering moving abroad.

1.6 Transparency and Increased Global Reporting

Following the international standards suggested by the Organisation for Economic Co-operation and Development (OECD), fiscal transparency through controlled foreign company rules was introduced for the first time in Argentina by Law 27.430 (27 December 2017).

Fiscal Transparency for Individuals

Fiscal transparency rules apply primarily to individuals who hold shares or have an interest ownership in foreign companies located in non-co-operative or low or nil tax (LONT) jurisdictions, modifying the moment of recognition of foreign-source income by resident taxpayers. In this way, the income will be recognised as having been earned by an Argentine resident as if the foreign entity does not exist, to the extent that certain conditions are met (control through ownership, lack of "substance", passive income representing more than 50% of gross income, etc).

Fiscal transparency also applies to individuals with interests in foreign trusts/private foundations, provided certain conditions are met (revocable trusts, trusts in which the settlor is also a beneficiary, and trusts in which the settlor keeps direct or indirect control over the structure).

These structures are therefore no longer useful for PIT deferral.

Global Reporting

For the past few years, Argentina has been an active participant in the exchange of international tax information. In this sense, Argentina has subscribed to:

- tax treaties to avoid international double taxation, which are bilateral and include information exchange clauses;
- specific tax exchange agreements, which are also bilateral; and
- the multilateral Convention on Mutual Administrative Assistance in Fiscal Matters proposed by the OECD.

In order to fulfil the commitments assumed, the AFIP enacted General Resolution No 3826/2015 on 30 December 2015, which established an information regime on financial accounts, so that financial institutions provide the required information.

Through different communications, the AFIP requested that the different entities involved (such as the Argentine Central Bank, the National Securities Commission and the Superintendence of Insurance) take the necessary measures to identify holders of the accounts reached in the field of information exchange.

According to the commitment assumed in previous years, the AFIP regulated the automatic exchange of bank account information through General Resolution No 4056-6 on 22 May 2017. The resolution established the subjects, forms, periodicity and deadlines within which the information must be submitted.

Throughout the previous government (2015–2019), Argentina encouraged negotiations with the USA and came close to subscribing to a

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (reciprocal Information Exchange Agreement) to attain an automatic exchange of information. At present, negotiations are on hold. However, the Information Exchange Agreement subscribed to by both countries on 23 December 2016 is still in force.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

As family wealth and investments become increasingly global, foreign structures such as revocable and irrevocable trusts become more relevant and useful (unless members of the next generation reside in countries where these figures are not recognised or in which anti-deferral rules might render them inconvenient). Although the older generation is generally reluctant to turn over wealth and control, the overall tax burden to which they are exposed (PIT, PAT and the recent experience of the ASE) will no doubt encourage them to consider succession planning as a way to ease this burden.

Regardless of the fiscal efficiency associated with these structures, once assets have been contributed to them they will not be included in the judicial succession process that will be carried out upon the death of the decedent, thus avoiding several costs involved in the court process.

2.2 International Planning

See **2.1 Cultural Considerations in Succession Planning**.

2.3 Forced Heirship Laws

Argentina has a forced heirship (public order) regime. The forced heirship portion refers to the part of the estate that is reserved for certain heirs by law (ie, forced heirs). This allows for descendants, ascendants and the surviving spouse to have a reserved portion (*la legítima*) in the deceased estate, of which they cannot be deprived either by will (*testamento*) or by any free inter vivos act (gifts) (Section 2444 of the CCC).

The reserved portions are as follows:

- descendants – two thirds;
- ascendants – one half; and
- the surviving spouse – one half.

These portions are calculated by considering the sum of the liquid value of the estate at the time of the decedent's death and the gifts provided for each of the forced heirs at the time the gift was made.

The CCC introduces the concept of improvement, which allows the decedent to reduce the reserved portion to exclusively improve it for disabled heirs, whether they are descendants or ascendants (first part of Section 2448). Section 48 of the CCC establishes that a disabled person is someone who suffers from a mental or physical disorder, either permanent or prolonged, which, in relation to their age and social environment, entails considerable disadvantages for their family, social, educational or professional integration.

Since the forced heirship regime is a public order regime, any provisions or structures used by the parties that conflict with the portions under the regime may be challenged under a legal action (collatio bonorum). There have been precedents in Argentine courts in which forced heirship claims have been admitted against trust assets when the legitimate portion of one of them was infringed.

A forced heir cannot be deprived of their legitimate portion by the decedent. However, upon the decedent's death, any of the heirs can file a

legal action to exclude another heir, invoking one of the statutory causes for indignity established in Section 2281 of the CCC (eg, an heir can claim that the decedent was the victim of violence by the heir against whom the action is filed). The onus probandi of the invoked indignity cause is in the hands of the heir filing the action (*Acción de indignidad* under Section 2283 of the CCC).

Any general agreement entered into by and between future heirs during the deceased's life is null and void. However, Section 1010 of the CCC allows agreement over future inheritances if the agreement meets all the following conditions:

- it relies on the equity of companies or other business;
- it aims to maintain unity in the management or to prevent/solve conflicts; and
- the dispositions do not deprive forced heirs of their reserved portions, nor do they affect the rights of the spouse or third parties.

2.4 Marital Property

Under the CCC, future spouses have the possibility of opting – by entering marriage conventions – between a shared/marital property regime or a separate property regime. Section 463 of the CCC establishes that if no convention is entered into, or if the convention does not set forth any provision regarding the property regime, the traditional shared/marital property regime will be applied. Under this regime, each spouse is entitled to the full management and disposal of their personal assets (*bienes propios*). The management and disposal of shared property (*bienes gananciales*) falls to the spouse who acquired it. However, the other spouse's consent must be obtained in order to transfer recordable assets, shares of stock or businesses (Section 470 of the CCC).

Conventions may be created (Section 446 of the CCC) for the purpose of:

- the designation and appraisal of the goods that each of the future spouses is bringing to the marriage;
- the admission of debts;
- donations made between each other; or
- choosing an option considering the regimes contemplated in the CCC.

Section 448 of the CCC provides that a convention must be executed by public deed (*escritura pública*) in order to be valid. For a convention to be effective towards third parties, the marriage certificate must include a note in the margin specifying the chosen regime. If the spouses decide to change the regime (which they can only do after being married for at least one year), the amendment must also be made by convention and by public deed. If creditors are affected by this change, they will have one year from the date they became aware of the change to object to it.

When a marriage is terminated (due to death or divorce), the assets that qualify as shared/marital property are grouped together and, after the applicable liabilities and claims of each spouse have been worked out, they are divided and distributed equally between the spouses (in the case of divorce) or between the heirs and the surviving spouse (in the case of death).

2.5 Transfer of Property

The cost basis of any property being transferred (whether gifted or at death) must be maintained at the same cost assigned by the transferor in their income tax return – ie, the value in Argentine pesos at which they acquired that property. As mentioned in **1.3 Income Tax Planning**, there are no special provisions in the ITL that provide a step-up in the value of assets to their fair market value.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

The only way to transfer assets to younger generations tax-free is through lifetime gifts, to the extent that the gifted assets do not qualify as PBA situs assets and that the donee is not domiciled within the PBA (in which case, the ITGB would apply). Gifts involving real property in favour of forced heirs are now a viable instrument as per the amendments to the CCC introduced by Law 27.587.

2.7 Transfer of Assets: Digital Assets

There are no specific provisions regarding how digital assets (such as email accounts and cryptocurrency) should be treated for succession purposes.

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Traditionally, families used to make inheritance advances (gifts) to their successors to avoid court succession proceedings. With respect to tax matters, there were benefits in the use of certain double tax treaties (DTTs), such as those made with Austria and Chile, which use simple structures to permit the exemption of the property that was subject to PAT as well as the exemption of income tax with respect to the income generated by it. When both DTTs were denounced, the tax impact of maintaining the assets in the individual estates led to a gradual change of trend, and high net worth individuals and families became more prone to planning through foreign fiduciary structures.

Under Argentine law, the applicable law is the law of the place where the trust has been settled, providing that Argentine public order is not infringed (mainly, the forced heirship rules).

Revocable and Irrevocable Trusts

Before the enactment of Law 27.430, Section 140 (b) of the ITL was the only reference to foreign trusts in local legislation. Law 27.430 establishes the cases in which a foreign trust should be considered transparent for tax purposes. In this sense, fiscal transparency applies to revocable trusts, so they are no longer useful for income tax planning purposes. However, as mentioned, it must be stressed that these structures will still be useful for estate planning.

Concerning irrevocable trusts, neither fiscal transparency nor anti-deferral rules will apply unless:

- the settlor is also a beneficiary of the trust; or
- the settlor has direct or indirect powers to decide how the assets comprising the trust fund should be invested.

Therefore, if structured correctly, revenues derived from the assets held in trust will not be subject to tax in the jurisdiction of the trustee, and the trustee becoming the legal owner of the assets will ensure that neither PAT nor income tax will be levied on the settlor for such assets and their revenues.

However, it must be stressed that there has been an attempt to change this situation by taxing the "rights inherent to the capacity as beneficiary of a foreign trust" with the differential rate of PAT (Law 27.541, Section 25, third paragraph). Nevertheless, it seems that the way in which this provision has been included does not change the tax consequences for the beneficiary of an irrevocable discretionary trust for the following reasons:

- the provision implies an excess in the exercise of taxing rights by Argentina;
- the provision infringes the ability to pay principle (*Principio de capacidad contributiva*).

Until they receive actual distributions, beneficiaries of an irrevocable discretionary trust have no ability to pay PAT; and
- in any case, the value of the beneficiary's rights would be zero.

However, this provision has not yet been regulated.

Therefore, the use of an irrevocable trust – ignoring the fact that the transfer in trust that must be made by the settlor to a third party (trustee) generally generates resistance in individuals in countries such as Argentina (due to various cultural factors) – may give rise to benefits concerning both taxes and successions.

Irrevocable Fiduciary Structures

It seems probable that there will be an increase in the implementation of irrevocable fiduciary structures for different reasons. Firstly, high net worth families have entered the Tax Amnesty (Law 27.260), under which they declared the possession of national or foreign currency and other property located in the country and abroad. Consequently, high net worth individuals have since been affected by the increasing tax burden (regarding PIT, PAT and, recently, the ASE) and will seek tax planning alternatives to ease this burden. Secondly, considering the current fiscal deficit, economic and political crisis, further taxation cannot be ruled out – inheritance/estate tax issued by the provinces (as suggested in the Fiscal Consensus 2022) or at a federal level (in which case the provinces should previously delegate this attribution), and/or an increase in the tax rates of PAT and PIT, etc.

Lastly, in line with the above, high net worth individuals and families will be uncomfortable when showing all their assets (recently disclosed under the Tax Amnesty) periodically in their relevant tax returns. The events of recent Argentine political history will surely speed up this planning decision. In other words, high net worth individuals and families will seek tax and estate planning but mainly asset protection.

All these factors will encourage high net worth families to analyse estate planning alternatives. The efficiency of any structure will depend on the eventual terms of these upcoming amendments to tax laws.

3.2 Recognition of Trusts

Argentina has not signed the Convention on the Law Applicable to Trusts and on Their Recognition (1 July 1985). However, court precedents have recognised the existence and enforceability of foreign trusts, providing that Argentine public order is not infringed (mainly, the forced heirship rules). This was then included in Section 2651 (e) of the CCC. Argentina therefore recognises and respects foreign trusts.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

The tax consequence of a fiduciary of a foreign trust being an Argentine resident is that the trust would be considered a taxable entity for Argentine tax purposes.

The tax consequences of a beneficiary of a foreign trust being an Argentine resident will appear exclusively upon receiving distributions from the trust (provided it is an irrevocable and discretionary trust). However, it must be stressed that there has been an attempt to change this situation by taxing the "rights inherent to the capacity as beneficiary of a foreign trust" with the differential rate of PAT (Law 27.541, Section 25, third paragraph). However, it appears that the way in which this provision has been included does not change the tax consequences for the beneficiary for the following reasons:

- the provision implies an excess in the exercise of taxing rights by Argentina;

- the provision infringes the ability to pay principle (*Principio de capacidad contributiva*) – until they receive actual distributions, beneficiaries of an irrevocable discretionary trust have no ability to pay PAT; and
- in any case, the value of the beneficiary's rights would be zero.

However, this provision has not yet been regulated.

The tax consequence of either the beneficiary or the settlor of a foreign trust serving as a fiduciary is that the transparency rules would apply (Section 130 of the ITL) and the assets in the trust would be included in the settlor's PAT return.

3.4 Exercising Control Over Irrevocable Planning Vehicles

Exercising control over irrevocable planning vehicles (ie, if the settlor/founder retains extensive powers) would result in fiscal transparency (Section 130 of the ITL). Therefore, to attain the benefits derived from planning through these vehicles (concerning both taxes and successions), high net worth individuals would be well advised to overcome their usual resistance to giving up control.

4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

The most popular mechanism to seek asset protection is through trusts.

4.2 Succession Planning

When it comes to family-owned companies, it is common for the founder to gift their shares/interest to their heirs, reserving the economic rights for themselves and in some cases the political rights as well, until their death (*usufructo vitalicio*). Related to this, and mainly when the family-owned company holds real property or rural land, tax-free reorganisation procedures are commonly used to split the shares/interest between the members (*escisión libre de impuestos*), to avoid any tax burden, provided the following requirements are met:

- the owners are prohibited from selling the reorganised entities within two years of the reorganisation; and
- the owners are prohibited from changing their activities within two years of the reorganisation.

For family-owned companies where a reorganisation procedure is not an option due to the company's particulars, further planning might be suggested to achieve not only an efficient succession on the property (shares of the family company) but also the subsistence of the family company throughout the generations. A family business constitution (*Protocolo de Empresa Familiar*) might be an effective way to future-proof a family business, especially if the amendments to Section 1010 of the CCC are finally approved by the congress.

4.3 Transfer of Partial Interest

When it comes to family-owned companies, it is common for the founder to gift their shares/interest to their heirs, reserving the economic rights for themselves and in some cases the political rights as well, until their death (*usufructo vitalicio*). Unless the company is located within PBA, the transfer during the founder's lifetime is not subject to any transfer tax (the same applies to transfer at death), so there is no need for a transfer of partial interest. For income tax purposes, transferees must include the interest received at the same value as for the transferor (Section 4 of the ITL).

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

Argentine law provides legal remedies for a forced heir to make a claim if the forced share that should be allocated to them has been adversely affected. In this sense, the affected party could file a collatio bonorum claim regarding the trust fund.

Case Involving Collatio Bonorum

This interpretation was extended by the courts in a unique and unprecedented case in Argentina where the collatio bonorum was discussed in the matter of a trust created under the laws of the United Kingdom. In this case, the two daughters from the first marriage of the decedent and the surviving divorced spouse filed a complaint against the other heirs – the children from a third marriage of the decedent – with respect to the collatio bonorum of the real estate located in London and received by them as beneficiaries of a trust created in the United Kingdom by their deceased father. The court resolved, regarding the collatio bonorum, that a trust created with a view to gratuitously benefiting a forced heir of the settlor might be deemed a gift to the heirs made before the death of the decedent, and so goes into the accounting of the estate, as its content and significance exceed that permitted under inheritance law.

Regarding matters of private international law, the court established that, even though the trust was governed by UK law, the succession was subject to Argentine law because that was the last address of the decedent. As a general principle in succession matters, the Argentine legal system provides that succession proceedings will be governed by the laws of the country in which the decedent's address is located, as seen in this case, where the law of the decedent's address prevailed over the law governing the trust.

A Sham Trust

Furthermore, if the settlor received funds from the trust then any party with a legitimate interest could pursue a sham trust claim for the irrevocable trust to be declared void ab initio. Therefore, those assets would be treated as if they had never left the settlor's estate. A sham trust is the term used to refer to a trust that was set up with intentions other than those expressed in the deed, and where the trustees had no intention of acting on the terms of the trust.

5.2 Mechanism for Compensation

As a general principle in succession matters, the Argentine legal system provides that succession proceedings will be governed by the laws of the country in which the decedent was domiciled at the time of their death.

If a settlor dies and their last domicile is in Argentina, the CCC's forced heirship rules would apply. Therefore, if the trust was created with a view to gratuitously benefiting some of the forced heirs of the settlor (to the detriment of the others), it would be considered a gift to those heirs (made before the death of the decedent) and would therefore go into the accounting of the estate, as its contents and significance exceed that permitted under inheritance law. As seen in **5.1 Trends Driving Disputes**, the remaining forced heirs (aggrieved parties) should file a collatio bonorum claim against the trust fund to compensate the other forced heirs of the estate.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries

The use of corporate professional fiduciaries/trustees is prevalent when planning through foreign irrevocable discretionary trusts. When planning through local *Fideicomisos*, the fiduciary

most commonly used is a company owned by the *Fiduciante* (not a corporate professional fiduciary), which usually gifts the bare ownership of the shares in the company to their descendants, keeping lifetime usufruct over those shares.

6.2 Fiduciary Liabilities

Fiduciaries' protection from liabilities is attained through exoneration/exculpatory clauses and by delegating power of investment to third-party professionals (investment advisers).

6.3 Fiduciary Regulation

In Argentina, trusts were originally regulated by Title I of the Housing and Construction Financing Law No 24,441 (Trusts Law), which contemplated two types of trusts:

- the financial trust (*fideicomiso financiero*), under which the trustee must be a financial entity or a corporation specifically authorised by the Argentine Securities Commission to act as financial trustee; and
- the ordinary trust (*fideicomiso ordinario*), which can be:
  (a) management trusts (*fideicomisos de administración*); or
  (b) guarantee trusts (*fideicomisos de garantía*).

However, the CCC has since amended the Trusts Law. The regulation of trusts is now set out in Chapter 30 of the CCC (local trusts), which incorporates suggestions from legal scholars and case law with respect to certain issues of interpretation and the application of trust law.

6.4 Fiduciary Investment

There are no specific provisions related to fiduciary investments in Argentina.

7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

Unlike in many other countries, obtaining citizenship in Argentina is relatively straightforward. The first step is to obtain a visa, which will allow a person to live in the country for one year on a temporary residence permit. When the year has expired, the visa can be extended for an additional year. At the end of the second year, the visa can be extended again for another year. At the end of the third year, the person can extend the visa again and receive permanent residency. At this point, they will be legally entitled to reside in Argentina permanently. Two years after receiving permanent residency, they may apply for citizenship.

The children of an Argentine father or mother (regardless of whether native or by choice) who were born abroad also have the right to acquire Argentine nationality, regardless of their age, even when the Argentine father or mother has passed away.

Those who cannot apply for Argentine nationality are family members of Argentine citizens (such as the spouse, grandchildren or siblings), despite some of them having the right to reside in Argentina.

It is not a requirement to give up (renounce) another nationality to acquire Argentine nationality by choice. However, whether the person can retain their original nationality will be a matter for the foreign country in question.

Although COVID-19 has impacted global travel and immigration, it appears that Argentina will not incorporate measures restricting domicile, residency or citizenship once the situation has normalised.

7.2 Expeditious Citizenship
This is not applicable in Argentina.

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms
The Argentine Trust Law does not include any specific provisions regarding a special needs trust. However, if the beneficiary is a natural person without legal capacity, the maximum duration period for local trusts would not apply (30 years from the date on which it was created). In that case, the trust will last until the beneficiary's death or until termination of their incapacity.

8.2 Appointment of a Guardian
In general terms, minors are represented by the surviving parent. If there is no surviving parent, the court designates a legal representative to handle all the assets on the minor's behalf. Likewise, the disposition of assets usually requires court approval. A minor can inherit and own assets through their legal representative.

8.3 Elder Law
The Medical Anticipated Directives (*Directivas Médicas Anticipadas*) is a relatively new method (regulated in the CCC) by which a capable person can anticipate directives and grant power of attorney regarding their health and foreseeing their own potential incapacity. A person (or more than one) may be appointed to express consent to medical acts and to act as curator. However, directives related to euthanasia are null and void, and can be freely revoked.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children
Since the enactment of Law 23.264, and pursuant to the American Convention on Human Rights (*Convención Americana sobre Derechos Humanos*), Argentine law has not made a distinction between legitimate and illegitimate children (those born out of wedlock). Therefore, they have the same rights to inherit or be included in a class of beneficiaries.

An adopted child is one who is taken into a family that is different from that of its natural parents, after a legal process is followed under the CCC. Sections 594 to 637 of the CCC distinguish between simple, full and integrative adoption.

The distinction has a direct impact on the intestate inheritance rights of the adopted children, as follows.

- Simple adoption (*adopción simple*) – the law grants the adopted child the same intestate inheritance rights as a biological child but does not create any relationship between the adopted child and the adoptive family. The CCC provides the adopted child with the right of representation in the succession of the ascendants of their adoptive parents, but not as forced heirs. However, the descendants of the adopted person have a right of representation in the succession of the adoptive parents, in this case as forced heirs.
- Full adoption (*adopción plena*) – the relationship between the adopted child and their blood family is terminated, being replaced by a relationship with the adoptive family. This implies, on the one hand, that the fully adopted child will have no intestate inheritance rights regarding their blood family and, on the other hand, that the child will acquire

the same intestate inheritance rights in the adoptive family as those of a biological child.
- Integrative adoption (*adopción de integración*) – the adopted child is the son or daughter of the spouse or cohabitee.

9.2 Same-Sex Marriage

Argentine law recognises marriage between same-sex couples, so the same marital property regime applies in such cases. This has no special effect on the testator's will, since they have the same inheritance rights as any other spouses in a marriage. "Marriage" is defined as a union between one person and another of the same or opposite sex, in a consensual and contractual relationship recognised by law, the consent to which is usually expressed in the presence of a public officer. Argentine law also recognises a civil partnership, which is a legal union or contract like a marriage between two people of the same sex.

10. CHARITABLE PLANNING

10.1 Charitable Giving

Charities are recognised under Argentine legislation, but there is no single regulatory authority for all charities in Argentina. In addition, unlike in many other jurisdictions, Argentine law does not provide an exact definition of a "charity".

Main Types of Not-for-Profit Organisations

Despite the lack of a proper legal definition, a charity can generally be defined as an organisation whose purpose is to work for the public benefit without making a profit. The two main types of not-for-profit organisations are as follows.

- Foundations (*fundaciones*) are non-profit legal entities created with certain funds or assets that have been endowed by their founders to carry out some specific activity for the public benefit without seeking profit. Foundations are governed by Chapter 3 of the CCC.
- Civil associations (*asociaciones civiles*) are non-profit legal entities with a public benefit purpose, governed by Chapter 2 of the CCC. Unlike foundations, they are incorporated by a number of people willing to carry out their charitable purpose for the benefit of those who are members of the organisation.

Incorporation of a Charity

To incorporate a charity, the founding members must file the following documents with the local Public Registry of Commerce:

- constituting documents – memorandum of association and the by-laws (*Estatuto*);
- a financial forecast for the first three years;
- details of activities to be performed during the first three years; and
- evidence of paid-in capital or assets – the assets initially donated or promised to the foundation must be at least prima facie sufficient to carry out its purpose to obtain registration by the relevant authority.

Registration of a Charity

Local registration is mandatory, with the appropriate registry being determined by the domicile of the foundation or association. For example, in the City of Buenos Aires, foundations and civil associations are registered with and controlled by the Public Registry of Commerce (*Inspección General de Justicia*), the government agency with supervisory authority over companies registered in the City of Buenos Aires. In other provincial jurisdictions, the same body that controls commercial companies may also oversee the regulating of charities and registering them in the local Public Registry of Commerce.

Once the charity is registered with the Public Registry of Commerce, it must be registered with the AFIP, which will provide the charity with an

identification number, identifying the organisation as a charity, with all applicable tax exemptions.

Benefits

The benefits for individuals when setting up a charitable organisation are as follows:

- a separate legal personality – the law recognises the charity as having a separate legal personality to that of its founders or members, so people may engage in charitable activities limiting their responsibility, and the charity's assets are segregated from the patrimony of the founder; and
- tax benefits – most charities are exempt from property tax and/or value added tax (VAT), and are income tax-exempt, provided the income is:
  (a) used for charitable purpose only; and
  (b) not directly or indirectly distributed among its members, founders or directors.

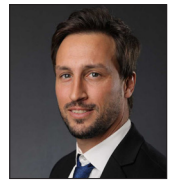
10.2 Common Charitable Structures

See **10.1 Charitable Giving**.

McEWAN was a pioneer in the provision of legal and tax services to private clients in Argentina and is prepared and qualified in all aspects of legal and tax advice, with broad expertise on tax and estate planning for high net worth individuals and families. The firm is recognised for delivering creative and value-added solutions by designing and implementing family wealth planning structures, and for its advisory capacity in asset protection, tax, succession matters and complex litigation. McEWAN's expert team is formed of professionals (lawyers and accountants) who have worked together for many years, guaranteeing the firm's broad experience in estate and tax planning. In this field, the firm assists private clients (individuals and families) and corporate clients, banks, investment banks and private equity funds. McEWAN also has team members with a deep understanding of family law and wide expertise in matters involving family disputes and succession, and probate proceedings of all levels of complexity.

AUTHORS

Juan McEwan is the founder and managing partner of McEWAN. He is an attorney and a pioneer in the development in Argentina of legal and tax advisory services targeted at high net worth individuals and families. He advises clients in connection with all aspects of domestic and international estate planning and succession matters for individuals, trust and estate administration, charitable giving and the operation of tax-exempt organisations. He also assists clients with tax planning and has expertise in creating local and international trusts and foundations. Juan's practice encompasses multi-jurisdictional and international matters for a number of multinational families. He co-authored the book "International Succession" (Oxford University Press, 2014), as well as a law review concerning private wealth.



Agustín Lacoste is a partner in the private client law department of McEWAN and a member of the Buenos Aires Bar Association. His practice is focused on the daily counselling of high net worth families, providing them with highly valuable, creative and reliable solutions through sophisticated legal advice and tax services. Agustín has published articles on tax litigation, wealth and estate planning in Argentina, as well as on international succession.

McEWAN

Esmeralda 1061. PB
C1007ABM
Ciudad de Buenos Aires
Argentina

Tel: +54 11 7078 1112
Email: info@estudiomcewan.com.ar
Web: www.estudiomcewan.com.ar

Trends and Developments

Contributed by:
Herberto Robinson and Micaela Cagnoli
McEWAN see p.53

International Successions: Insights and Impact

Legislatures in many different jurisdictions, especially Argentina, have recently reviewed estate planning tools (including both fiscal and succession planning), as estates and their structures increasingly have contact points in multiple jurisdictions, mainly based on the location of property.

Given these constant changes in family estates, including changes in fiscal residences (due to reasons required by families) and the consequences thereof, it is often necessary to revise and prepare co-ordinated, cross-jurisdictional actions. To that end, it is important to have a clear picture of the shifting paradigms in international private law and the regulatory forms containing relevant international elements.

There follows a specific analysis of international successions from the perspective of Argentina.

How to Recognise an International Succession

The first issue to be considered when it comes to treating a succession as international is the final domicile of the deceased and the location of the property.

If the deceased owned property in several states or in a given state but had domicile in another state, this will lead to an international succession process.

These factors determine which set of rules is applicable and which courts will hear the case. They also help to determine which overriding mandatory provisions (*loi de police*) must be taken into consideration.

Cross-Border Jurisdiction and Applicable Law Under Argentine Legislation

The Civil and Commercial Code of 2015 establishes the concurrent jurisdiction of judges in the place of the last domicile of the deceased, or the jurisdiction of Argentine judges in cases of solely local property (Section 2643). For example, if the last domicile of the deceased is within Argentina, Argentine judges will be able to decide on the whole estate, as prescribed by Section 2643. If the last domicile of the deceased is abroad and they had assets in different jurisdictions as well as Argentina, the succession process may be initiated in the state of the last domicile, thus attracting all assets there, due to the concurrent nature of the rule. Alternatively, succession may be initiated in Argentina insofar as real property is concerned, and in the state of the last domicile with respect to the remaining estate. If this is the case, Argentine judges would only be competent with respect to the real property.

The legal rules (Section 2644) are clear for both intestate and testate successions, stating that the law of the domicile of the deceased upon the time of their death must be applied. There is an exception for real estate located in Argentina, to which local law must apply. This includes *loi de police* or the so-called internationally mandatory provisions, which, as laid down by legal scholars and judicial precedents, contribute to local public order; failing to apply such rules is forbidden.

The Form of Wills

Argentine law establishes that any will granted as prescribed by the law of the place of execu-

tion or the law of the domicile, habitual residence or nationality of the testator at the time of granting will be valid. Therefore, the connecting factor is expanded in an alternative way, providing more options for the will to be valid.

Accordingly, if the will is granted in Argentina and the testator dies in Argentina, the local overriding mandatory rules must be applied. The percentage of the share of the estate reserved to forced heirs (another rule that is regarded as being protective of "public policy") cannot be affected by the provisions of said will, and such clauses can be revoked.

However, if the will is granted in Argentina but the final domicile of the deceased is in another state, the rules of private international law governing in said jurisdiction would apply, as well as any existing overriding mandatory rules.

Successions Under Argentine Tax Law

Under Argentine Civil Law, successions do not qualify as legal entities (Section 148 of the Civil and Commercial Code). However, for tax purposes, a legal fiction is created, allowing them to be treated as a tax subject until it is possible to ascertain the identity of the deceased's heirs.

Tax Procedure Law No 11,683 ascribes taxpayer status to undivided successions, with Section 5(d) stipulating that those under tax duties shall be "undivided successions, whenever they are treated under the tax laws as them as subjects for the attribution of a taxable event, subject to the conditions prescribed in respective laws..." In other words, Law No 11,683 establishes that undivided successions are subject to tax, provided such is established by more specific tax laws.

In this sense, both the Income Tax Law (LIG for its Spanish acronym) and the Personal Assets Tax Law (IBP) expressly establish that undivided estates are under a duty to pay said taxes. According to Section 1 of the LIG, all undivided successions are subject to Income Tax, regardless of their nationality, domicile or residence for the earnings derived from an Argentine source. For Personal Assets Tax, Section 1 of the IBP provides that undivided estates located in the country are liable to tax on account of property located in said country and abroad.

Under both taxes, undivided successions are liable to tax on the property they own and the profits they obtain from the death of the deceased, until the declaration of heirs is issued or the will is declared valid. From that time on, successions cease to act as taxpayers and the assets and profits are distributed subject to the proportion corresponding to each heir according to their hereditary status until the approval of the partition account, in which profits and assets are incorporated into each estate.

Alternative Mechanisms to Ease Procedure

Argentine legislation has incorporated remedies and mechanisms that allow the avoidance or mitigation of the succession procedure, thereby enabling individuals to make decisions regarding their assets during their lifetime, safeguarding the interests of all. Such mechanisms also reduce the likelihood of cross-jurisdictional conflicts over the law to be applied, or potential conflicts between heirs if they reside in other jurisdictions.

In this sense, the most effective tools are fiduciary structures or trusts, which can have effects in the different jurisdictions where families have assets as they are afforded recognition in many legal systems, including Argentina. This type of instrument allows not only the optimisation of tax issues but also the simplification of succession processes.

As an alternative, donation agreements (including the provisions on future inheritance reserved for agreements that deal with family businesses) and life usufruct allow those who settle them to maintain the economic rights for themselves until the time of death, subsequently transmitting the ownership or "freehold" to heirs at the time stipulated under the contract or when they so wish. This concept facilitates the transfer from one generation to another, avoiding judicial succession and the probate procedure. However, this type of contract has fiscal impacts that must be analysed on a case-by-case basis.

Finally, the importance of the so-called "Separate Situs Will" must be highlighted, as it enables better management of assets in several jurisdictions and ensures validity in each of them, by selecting the applicable law in each state.

These instruments make it possible to lighten the burden on the heirs, but overriding mandatory rules on the share belonging to forced heirs as prescribed by statute and the location of the real property cannot be disregarded.

Conclusions and Recommendations

The rules described above must be considered when planning family succession and choosing which channels or tools will improve and facilitate the transfer of an estate to the subsequent generation.

Therefore, the following actions are recommendable when it comes to estate planning:

- create a detailed list of the assets to make sure you are aware of the tax and legal consequences prevailing in the place of their location;
- become familiar with the taxes and the advantages and disadvantages of each jurisdiction in which property is located;
- consider the alternative of changing residence when becoming aware of internationally relevant elements that could hinder the succession process and the transfer to heirs;
- obtain legal advice in those jurisdictions that are relevant to the family assets; and
- consider the various options available for proper planning.

By anticipating the triggering event of the succession process and by getting to know the relevant legal remedies and estate planning methods, the burden on the heirs can be eased when estate assets are incorporated into the prescribed legitimate portion allocated for forced heirs, thus avoiding the direct imposition of fiscal burdens with respect to these new assets.

The main advantage of using these innovative mechanisms in the new Argentine legislation is that the goals proposed for each family to be achieved (tax, succession, legal, etc). The consequence of not making such decisions is that, at the end of the day, the law does it for you.

McEWAN was a pioneer in the provision of legal and tax services to private clients in Argentina and is prepared and qualified in all aspects of legal and tax advice, with broad expertise on tax and estate planning for high net worth individuals and families. The firm is recognised for delivering creative and value-added solutions by designing and implementing family wealth planning structures, and for its advisory capacity in asset protection, tax, succession matters and complex litigation. McEWAN's expert team is formed of professionals (lawyers and accountants) who have worked together for many years, guaranteeing the firm's broad experience in estate and tax planning. In this field, the firm assists private clients (individuals and families) and corporate clients, banks, investment banks and private equity funds. McEWAN also has team members with a deep understanding of family law and wide expertise in matters involving family disputes and succession, and probate proceedings of all levels of complexity.

AUTHORS

Herberto Robinson is a civil and corporate law attorney, with more than 15 years' experience in representing families and their companies in a variety of cross-border transactions in Argentina and Latin America. He collaborates with individuals and families on structuring matters arising out of the management of wealth during life and after death. Herberto also assists clients on estate planning and family-business succession planning, and has vast experience in family litigation matters.

Micaela Cagnoli is a junior associate at McEWAN, who collaborates with individuals and families on general legal matters. She also assists in corporate law.

McEWAN

Esmeralda 1061 PB
C1007ABM
Buenos Aires
Argentina

Tel: +54 11 7078 1112
Email: hrobinson@estudiomcewan.com.ar
Web: www.estudiomcewan.com.ar

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