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ARGENTINA

Law and Practice

Contributed by:
Juan McEwan and Agustín Lacoste
McEWAN

Contents

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.

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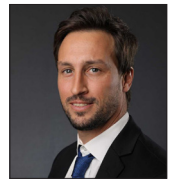

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1. Tax

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 7% or 15%.

For transfers of real estate, a 15% rate of 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 tax-free threshold from ARS2 million to ARS6 million. The law also provided that this value will be adjusted annually based on the IPC (consumer price index). The IPC adjustment began to apply from the 2022 tax period, in

which the tax-free threshold amounted to ARS11 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 ARS11 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 ARS56 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.

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.
- 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 ARS3,410,400. If the amount received exceeds this sum, the tax will be applied to the difference. In any other cases, the tax-free allowance is ARS819,105.

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 2023 fiscal period).
- A company, whatever its form of organisation, provided the valuation of its assets does not exceed the amount established by law (ARS66,845,493 for the 2023 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 ARS2,680,165 (for the 2023 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 ARS455 to ARS700,551) 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 3.5% 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 still considering moving abroad (mainly to Uruguay and Spain under special tax regimes).

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.

The AFIP has demonstrated an active commitment in response to the information provided by jurisdictions with which bilateral agreements have been established. This commitment has resulted in a high level of initiation of tax audits related to taxpayers' holdings abroad.

On 5 December 2022, after several negotiations, Argentina signed an Intergovernmental Agreement (IGA) with the United States of America (hereinafter "USA") to facilitate implementation of the United States Foreign Account Tax Compliance Act (FATCA). Although the agreement allows the reciprocal exchange of certain financial account information between the USA and Argentina (Model 1), there is still asymmetry considering the extent of the information that the USA will receive in comparison with Argentina (mainly as per the definition of an Argentine Reportable Account).

Although the agreement has been signed, it establishes that the obligation of the USA to obtain and exchange information shall take effect on the date that the USA provides written notification to the Argentina Competent Authority when it is satisfied that Argentina has in place appropriate safeguards to ensure that the infor-

mation received pursuant to the Agreement shall remain confidential and used solely for tax purposes and that he infrastructure for an effective exchange relationship.

Taking the aforementioned into consideration, it is presumed that the first exchange of information will not take place before September 2024, with respect to information from fiscal year 2023 and it may even be extended for another year, depending on the success of confidentiality and security protocols that will be carried out.

New Tax Amnesty Bill

On 6 June 2023, the National Executive Branch sent a draft Bill to the congress proposing a regime for the "Disclosure of Argentine Savings" ("*Exteriorización del Ahorro Argentino*") aimed at individuals, estates, and companies.

The initiative establishes special tax payment rates ranging from 5% to 20% for those who adhere to the regime, which will be higher if the declared assets are not repatriated.

Among the assets that could be voluntarily and exceptionally declared are:

- holding of foreign currency in the country and abroad;
- financial assets in Argentina or abroad, including stocks, securities, certificates of deposit for stocks and other securities, units and social shares (including shares of investment funds and certificates of participation in financial trusts and any other rights over trusts and similar contracts), crypto assets, cryptocurrencies, digital currencies or similar instruments and bonds;
- real estate properties in Argentina and/or abroad; and
- other assets in the country and/or abroad, including credits.

Additionally, individuals, estates and companies who adhere to the regime will be exempted from the following taxes that they may have omitted to declare:

- Income Tax;
- Internal Taxes and Value Added Tax; and
- and Personal Property Taxes.

They will also be exempted from any civil, commercial, tax-related criminal, foreign exchange criminal, customs criminal, and administrative infractions that may correspond to the declared assets within the framework of the disclosure process.

In a year marked by presidential elections, the prospects of the bill being ultimately approved remain uncertain. The political landscape during electoral periods introduces various factors that can significantly impact the legislative process and the fate of proposed bills.

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 cryp-

tocurrency) 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 national-

ity by choice. However, whether the person can retain their original nationality will be a matter for the foreign country in question.

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**.

Trends and Developments

Contributed by:
Herberto Robinson and Micaela Cagnoli
McEWAN

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.

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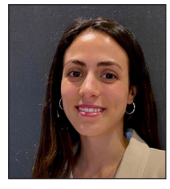

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The Importance of the Principle of "Forced Inheritance" in Codified Systems and its Regulation Under the Civil and Commercial Code of Argentina

Introduction

This report addresses the issue of "forced heirship" as a specific principle and as part of the so-called general "public policy rules" under Argentine law, and will analyse similar legislation in other countries with a comparative approach.

Over the years, after the constitutionalisation of private law and the incorporation of international human rights treaties, we can observe that the rules have become more flexible and that a place has been established for the autonomy of the will, thus causing the expansion of the available inheritance portions and the possibility of granting donations, as these are legal institutes that give people a greater scope for planning.

However, the law seeks to strike a balance between the autonomy of the will and the set of mandatory legal rules. Although the reduction of the forced heirship portion is to a minimum and the power to award the inheritance during life is achieved (for example, to dispose of future inheritance or to make a partition by donation), there are regulations that prevent the deprivation of a part of the inheritance to forced heirs.

Public policy rules in succession matters– forced heirship

Under Argentine law, there are certain types of regulation that make up a "public policy" regime. These are rules that embrace the social, political, economic, moral and religious principles of a legal community. Furthermore, a "public order" is a set of fundamental conditions of social life instituted in a legal community which, due to the central nature of established social organisation and limitation of the autonomy of the will, cannot be left aside by the will of individuals or the application of foreign rules.

In terms of inheritance, we find that "forced heirship" is a public order legal institute laid down as such by the lawmaker, with a view to safeguard general interest and the protection and permanence of family.

In this sense, Articles 2444 and 2445 of the Civil and Commercial Code of Argentina (CCC) establish the "forced heirship" as an imperative legal rule. This term means that certain heirs referred to as forced heirs are entitled to a portion of the estate which cannot be deprived of by will or

by actions to dispose of property conducted inter vivos and for no valuable consideration. This portion is then the statutory portion of the estate of the deceased. Such forced heirs are the descendants, ascendants and the surviving spouse.

Article 2445 of the CCC demarcates what that portion of is, by stipulating that the forced portion of the descendants is two thirds, while that of ascendants and spouse is half (this being a calculation over total assets).

Said portions are ascertained by taking into consideration the sum of the liquid value of the inheritance by the time of death and that of the donated assets which are computed for each forced heir by the time the donation was made.

That property which has been previously donated by the deceased to the descendants and the spouse are subject to collation or are reducible except for a waiver clause of express advancement by the time donation is created or the will is made (Article 2385 of the CCC).

Legal institutes under the CCC – flexible rules incorporated in the regime of forced heirs

However, as previously discussed, the public policy regime contemplates exceptions where the autonomy of the will of the testator/deceased is enabled, making regulations more flexible and allowing people to grant certain benefits. These are explained as follows.

Available portion

As explained above, forced heirship is a percentage reserved for forced heirs. Said portion does not cover the entire inheritance, so a fraction of the deceased's estate is made available and can be used both to make advancements in favour of forced heirs and to test or bequeath in favour of third parties. However, said disposal will never compromise the statutory portion that must be made available to forced heirs.

The portion available will depend on which heirs concur in the succession process. In the event there are descendants who are to inherit a portion of two thirds as imposed by law, the available portion will be one third. In the case of ascendants or spouse, the available portion will be half. With said available portion, one could make a will in favour of a third party or an advancement in the portion of one of their forced heirs in the partition of estate (Article 2414 of the CCC).

Advanced estate in favour of the disabled heir

The portion of estate preserved by statute may only be affected by applying the clause of "strict advancement" in favour of an heir with a disability either descendant or ascendant by the means that the deceased deem convenient (Article 2448 of the CCC). In this case, the deceased may affect up to a third of the portion protected by law in order to apply it as an advancement for descendants or ascendants with disabilities. The available portion may also be added to that.

In other words, the descendant or ascendant with a disability would be benefiting beyond their lawful portion imposed by law and the available portion, by taking a portion from the rest of the forced heirs who will therefore receive a smaller portion of the inheritance.

Expansion of agreements on future inheritance

Any general agreement entered into by and between future heirs during the life of the deceased is null and void. However, Article 1010 of the CCC establishes that an agreement on future inheritance is valid, provided it meets the following requirements:

- it is related to a productive exploitation or to corporate participations, based on the assets of companies or other businesses; or
- is intended for the conservation of the business management unit and the prevention of conflicts; or
- is to establish compensations in favour of the other forced heirs who are not party to the agreement; and
- does not affect the portion of estate protected by law, the rights of the spouse or the rights of third parties.

We nowadays see that there are many family-owned businesses that decide to enter into these agreements to preserve their management and business.

Another alternative allowed by the CCC is the donation of the shares and/or interests to their heirs, while reserving the economic and political rights until their death (usufruct for life). Hence, they would be making a partition by donation (Articles 2415 to 2420 of the CCC), through which the donor transfers full ownership or bare ownership of the donated estate, reserving the right of usufruct, to prevent said assets from being covered by the succession process.

Such donations can never affect the forced heirship. Otherwise, those forced heirs omitted in the partition may file an action for reduction if, at the opening of the succession, there are no other assets of the deceased sufficient to cover the reserved portion.

It is worth clarifying that these donations are revocable by the donor if expressly stipulated in the agreement.

Action for collation

As discussed previously, the nature of a public order regime means that any provision or estate planning by the deceased which may adversely affect the portions of forced heirship can be challenged by the legatees, by virtue of legal action in the succession process.

In addition, Article 2386 of the CCC stipulates that all donations made to descendants or spouses which exceed the sum of the available portion plus the legitimate portion will be subject to reduction by the excess value, even if there is a waiver of collation or advancement; and in such case, they must also collate the benefits received as a consequence of any previous agreement (except as provided in Article 2448).

Comparative law

If we analyse the provisions of different countries, we can observe that Argentina is not the only country in which progress has been made with a laxer legislation which enables the transfer of ownership for no valuable consideration.

By way of example, Spain uses the same system of forced inheritance, by designating children and descendants as lawful heirs, as well as parents and ascendants and the widow or widower.

In Spain, the forced portion of heirship for children or their descendants is made up of two thirds of the estate, with the remaining third freely available. A provision is made to allow advancement of children or descendants with one of the aforementioned two thirds which make up the group of forced heirs, since the remaining third is the so-called strict portions, reserved for forced heirs in situations of disability (Article 808 of the Spanish Civil Code). Said portion, except for the testator's disposition, will be encumbered with substitution of final beneficiary, and the heir with

a disability will not be able to dispose of such assets either free of charge or upon death. It is in this way that the system of advancement is incorporated into the legal system, by allowing the person with disabilities a greater portion over the strict third portion prescribed by law for forced heirs.

Additionally, the portion for forced heirs who are ascendants corresponds to half of the inheritance. In the case of the surviving spouse, Article 834 of the Spanish Civil Code sets forth that if the surviving spouse concurs with the descendants, they will have the right to usufruct of the third portion destined for advancement. Moreover, if you concur with the ascendants, you will have the right to the usufruct of half. Article 838 of the Spanish Civil Code determines that if there are no descendants or ascendants, the spouse will be entitled to the usufruct of two thirds of the inheritance. This may be satisfied with the allocation of a life annuity, proceeds of certain assets or a capital in cash.

In Spain, unlike the CCC, the surviving spouse does not inherit property but only the usufruct while alive, unless there are no descendants or ascendants, in which case they would inherit everything, except a will on the available part.

Like the CCC, it accepts the collation action and the institute of partition by donation or by inter vivos transactions as long as it does not adversely affect the portion for forced heirs. Accordingly, it receives future inheritance agreements due to the conservation of the company.

These countries differ from the United States of America, which has not adopted the forced inheritance regime. Rather, the guiding principle is the full freedom of the testator at the time of drafting their will. There are no limitations, with the exception of the rights of the spouse that vary according to the laws of each State, since each one provides their own regulations regarding inheritance.

Under the common law system, prevailing in 41 States (except Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, Wisconsin and Alaska), the rule is that the property ownership will be ascertained by the property title of each and the name of the owner that appears on it, or by whom it has been paid.

However, the spouse is protected by law which entitles him or her to receive a share of the property, which in most states is one third. The only way to infringe it is if the spouse accepts, in writing, a reduction in the portion prescribed by law.

As for the descendants, they are not legally protected and the testator can dispose of all their assets without contemplating them.

In the absence of any will, the spouse will inherit first and then the remaining estate will go to the descendants.

Conclusions and recommendations

After our analysis, we understand that this principle has been sustained as a pillar of the succession regime over the years. With this intended purpose and in order to keep it standing (with flexibilities), countries' legislations have implemented changes so as to adapt to their social and economic contexts and the needs of their citizens.

Each country will determine what its inheritance regime will be, and the mandatory rules that will support the common interests of society.

Although most countries, except those governed by common law, adopt certain compulsory regimes, we observe that they have become more flexible and oriented towards the autonomy of the will of the testator/deceased.

Thus, we recommend getting to know and consulting the regulations adopted by each country in which the estates are located, in order to carry out a plan that is appropriate and to the interests of each family. It should take into consideration the available options and the transfers that can be carried out for free and those that cannot in order to avoid future conflicts with the imperative rules of the State.

As we usually assert, the advantage of anticipating and planning inheritance allows us to achieve the desired goals for the family; and by not doing so, the law will do it for you.

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