Chambers and Partners
Private Wealth 2020: Chapter "Argentina".
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Law and Practice

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, though normally irrelevant, may have an impact in the event of 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, if they have not obtained such status, 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 as of 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, in the case of profits derived from the sale of bonds, stocks, other securities and real estate, and income derived from dividends distributed by Argentine entities, the ITL applies a differential treatment at a rate of 5%, 7% or 15%.

Regarding transfers of real estate, personal income tax 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 or ITI) will apply.

Personal income tax 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 – Amends to Legislation

Law 27.430 incorporated significant changes and had a great impact on HNWIs 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However, Law 27.541 (published in the Official Gazette on 23 December 2019) repealed several changes incorporated by Law 27.430, re-establishing some exemptions for certain Argentine-sourced income. Among the main changes are the following:

- it abrogated the Financial Income Tax (Impuesto Cedular) established for income or returns resulting

from allocation of capital in securities such us public securities issued by the national, provincial, municipal or the 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 the City of Buenos Aires governments, and negotiable obligations to their cost to fiscal period 2019;
• 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 the City of Buenos Aires governments; and participations in mutual funds and financial trusts.

Likewise, Law 27.541 established two relevant modifications that, although they are not within the scope of income tax, influence the financial operation of individuals. The first refers to the limit of USD200 monthly established by the central bank of the Argentine Republic for the purchase of foreign currency. The second relates to the creation of the Impuesto PAIS which implies a 30% charge on the purchase of foreign currency and products or services abroad.

Section 130 of the ITL establishes that if certain foreign structures (companies or other entities or contracts such as trusts) meet certain requirements, they will be considered "transparent" for tax purposes. To that end, the ITL establishes three categories of entities, namely:
• 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
Regarding trusts, private interest foundations and similar structures, the ITL establishes that fiscal transparency will apply 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, comprising among others the following cases:
• 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.

On the contrary, if a trust/private interest foundation does not meet the characteristics mentioned above, it will not be considered transparent for tax purposes.

PAT – Amends to Legislation
Section 30 of Law 27.541 (published in the Official Gazette on 23 December 2019) 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; 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%); modified 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).

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 ARS2 million or less remain exempt from tax. For assets above that threshold, the progressive tax rates increase as follows:
• 0.5% (replacing the previous 0.25%) for assets between ARS2 million and ARS3 million;
• 0.75% (replacing the previous 0.5%) for assets between ARS3 million and ARS6.5 million;
• 1% (replacing the previous 0.5%) for assets between ARS6.5 million and ARS18 million; and
• 1.25% (replacing the previous 0.75%) for assets over ARS18 million.

In the case of the real property in which the taxpayer lives (Casa Habitación) or in which the deceased used to live in the case of undivided estates, this will not be taxable when its value is equal to or less than ARS18 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 executive branch through Decree No 99/2019 established the differential tax rates as follows:

- 0.7% (replacing the regular 0.5%) for assets between ARS2 million and ARS3 million;
- 1.2% (replacing the regular 0.75%) for assets between ARS3 million and ARS6.5 million;
- 1.8% (replacing the regular 1%) for assets between ARS6.5 million and ARS18 million; and
- 2.25% (replacing the regular 1.25%) for assets over ARS18 million.

The differential rate will not apply to foreign financial assets if at least 5% of the total foreign assets is repatriated, provided the repatriation occurs by 31 March of each year and that the repatriated funds remain deposited in an Argentine bank account until 31 December of the year of repatriation, or are applied to certain specific purposes.

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 which imposes on the local resident that administers the asset on behalf of the foreigner, the obligation to file the tax return and pay the tax ("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 which has been increased by Law 27.541 from 0.25% to 0.5%.

Expatriates residing in Argentina on work assignments for a period not exceeding five years are considered non-residents (Section 123 (c) ITL). Therefore, they are 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 nor inheritance/estate tax. A gift tax/estate tax (Impuesto a la Transmisión Gratuita de Bienes or 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 the federal government may introduce similar taxes in the future.

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, which 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 Buenos Aires Province is a PBA-situs asset in the proportion of those assets held by the company which 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 ARS1.344 million. If the amount received exceeds this sum, the tax will be applied to the difference. In any other cases, the tax-free allowance is ARS322,800.

The applicable tax rates vary between 1.6% and 8.78%, depending upon the value of the property transferred and the relationship between the transferor and the transferee of the property, and 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 for 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 his family, provided it is the only property and its assessed value does not exceed ARS1,154,400 (for the 2020 fiscal period); and
- a company, whatever its form of organisation provided the valuation of its assets does not exceed the amount established by law (ARS17.91 million, for the 2020 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, when the income of the company derived from rental and financial assets exceeds ARS17.91 million (for the 2020 fiscal period), this exemption will not apply.

1.2 Stability of the Estate and Transfer Tax Laws

Stability is not a quality that is readily identified 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 four 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 from 1 January 2019.
- Law 27.260 (22 July 2016) introduced staggered modifications in the non-taxable minimum amounts and rates of personal asset tax. 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. 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 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 25.541 (23 December 2019) again raised tax rates, which now range within a progressive scale between 0.5% and 1.25%, and delegated to the executive branch (until 31 December, 2020) the power to establish differential rates for assets held outside Argentina. For assets held abroad, the executive branch through Decree No 99/2019 established differential tax rates which may go up to 2.25%.

In addition, the ruling coalition is promoting a Bill to collect a one-off tax on large fortunes (Impuesto a las grandes fortunas) to purchase medical and healthcare supplies for COVID-19 and to assist workers in small and medium-scale enterprises who have been most impacted by this pandemic. It outlines that the tax base will be assets of ARS200 million, and the progressive rates will be from 2% to 3.5%.

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 future uncertainty, mainly in relation to the Bill mentioned here, have aroused concern among HNWIs. Therefore, consultations on tax and estate planning have increased considerably, and many high net worth families are considering moving abroad.

1.3 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

Primarily, fiscal transparency rules apply to individuals who hold shares or have interest ownership in foreign companies located in non-co-operative or LONT (low or nil tax) 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 personal income tax deferral.

Global Reporting

Concerning global reporting, for the past few years Argentina has been an active participant in the progress of 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, also bilateral; and
- the multilateral Convention on Mutual Administrative Assistance in Fiscal Matters proposed by the OECD.

In order to fulfil the commitments assumed, on 30 December 2015 the Federal Public Revenue Administration of the Argentine Republic (AFIP), enacted General Resolution No 3826/2015, 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, National Securities Commission, and 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, on 22 May 2017 the AFIP regulated the automatic exchange of bank account information through General Resolution No 4056-6. The resolution established the subjects, forms, periodicity and deadlines in which the information must be submitted.

Throughout the previous government (2015–2019), Argentina encouraged negotiations with the USA and came near to subscribing to a FATCA intergovernmental agreement (reciprocal IGA) 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. Although the older generation is generally reluctant to turn over wealth and control, the new tax burden to which they are exposed (PAT differential higher rates for assets held abroad and, eventually, the Impuesto a las Grandes Fortunas) will no doubt encourage them to consider succession planning as a way to ease this burden.

Regardless of the fiscal efficiency associated with the structures mentioned, the contribution of assets to them allows that once these assets have been contributed 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 regarding 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 (that is, 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, CCC.

The reserved portions are as follows:

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

These portions are calculated taking into account 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. This 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 which conflict with the portions under the regime may be challenged under a legal action (collation 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, CCC (eg, an heir can invoke 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 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 spouse or third parties' rights.

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). Concerning shared property (bienes gananciales), the management and disposal thereof falls to the spouse who acquired them. However, the other spouse's consent must be obtained in order to transfer recordable assets, shares of stock or businesses (Section 470, CCC).

Conventions may be created (Section 446, CCC) for the purpose of:
- designation and appraisal of the goods that each of the future spouses is bringing to the marriage;
- 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 for a convention to be valid, it must be executed by public deed (escritura pública). 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 to object, as from the date they became aware of the change.

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 (case of divorce) or between the heirs and the surviving spouse (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.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

The only way to transfer assets to younger generations tax-free is through lifetime gifts and 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). However, after the enactment of the CCC (Law 26.994), gifts

involving real property – even in favour of forced heirs – are no longer an option due to the fact that the title would be deemed imperfect (Section 2458, CCC).

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 permitted, through the use of simple structures, 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 HNWIs and families became more prone to plan 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

Until the enactment of Law 27.430, Section 140 (b), 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 either of the following situations applies:

- the settlor is also a beneficiary of the trust; or
- the settlor has direct or indirect powers to decide how 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 PAT's differential rate (Law 27.541, Section 25, third paragraph). Nevertheless, it seems that the way in which this provision has been included does not change 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.

This provision has not, however, been regulated as yet.

Hence, 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, HNWIs have since been affected by the increasing tax burden (regarding PIT, PAT and, possibly, by the Impuesto a las Grandes Fortunas) and will seek tax planning alternatives to ease this burden. Secondly, taking into account the current fiscal deficit deepened by the COVID-19 situation, further taxation cannot be ruled out (inheritance/estate tax at a federal level and/or an increase in the tax rates of PAT and PIT, etc).

Lastly, in line with the above, HNWIs 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, HNWIs and families will seek tax and estate planning but mainly asset protection.

All the factors will encourage HNW families to analyse estate planning alternatives. The efficiency of any structure will depend upon 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), 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 PAT's differential rate (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.

This provision has not, however, been regulated as yet.

The tax consequence if either the beneficiary or the settlor of a foreign trust serves as a fiduciary is that the transparency rules would apply (Section 130, 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 derive in fiscal transparency (Section 130, ITL). Therefore, to attain the benefits derived from planning through these vehicles (concerning both taxes and successions), HNWIs 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 for themselves the economic rights and in some cases the political rights too, 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.

In the case of family-owned companies where, given the particular activity of a company, a reorganisation procedure is not an option, 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 for themselves the economic rights and in some cases the political rights too, until their death (usufructo vitalicio). Unless the company is located within Buenos Aires Province, the transfer during the founder's lifetime is not subject to any transfer tax (same applies to transfer at death). Therefore, there is no need for aa transfer of partial interest. For income tax purposes, transferees must include the interest received at the same value as for the transferor (Section 4, 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 case 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 the aforementioned case, where 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, therefore, would 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 prevalently used is a company owned by the Fiduciante (not a corporate professional fiduciary) who 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:

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

However, the Civil and Commercial Code has since amended the Trusts Law. The regulation of trusts is therefore now set out in Chapter 30 of the Civil and Commercial Code (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

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 the 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 no matter 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 once the situation has normalised, Argentina will not incorporate measures restricting domicile, residency or citizenship.

7.2 Expeditious Citizenship

This is not applicable in this jurisdiction.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

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 (30 years from the date on which it was created) would not apply. In that case, the trust will last until the beneficiary's death or until termination of their incapacity.

8.2 Appointment of 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, disposition of assets usually requires court approval. A minor can inherit and own assets through their legal representative.

8.3 Elder Law

This is not applicable in this jurisdiction.

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 (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 the one 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): in the case of a simple adoption, 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): in a full adoption, 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 in the adoptive family the same intestate inheritance rights 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 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. However, in Argentina there is no single regulatory authority for all charities. 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 the purpose of which is to work for the public benefit without making a profit. The two main types of not-for-profit organisations are:

- foundations (fundaciones) – non-profit legal entities created with certain funds or assets which 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;
- 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, and the appropriate registry will be 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 the following:
- a separate legal personality – the law recognises the charity as having a separate legal personality to that of their founders or members and, thereby, 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:
  - used for charitable purpose only; and
  - not directly or indirectly distributed among its members, founders or directors.

10.2 Common Charitable Structures
See **10.1 Charitable Giving.**