THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

EIGHTH EDITION

Editor
John Riches

THE LAWREVIEWS

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PREFACE

In my foreword this year, I will focus on the continuing interest that is being devoted to the position of wealthy families and the markedly different approaches that prevail in Western Europe and the United States in terms of tax information exchange and anti-money laundering policy.

While public beneficial registers for companies will be introduced in the EU in the first quarter of 2020, the United States continues to pursue its own agenda where the primary focus of its anti-money laundering policy continues to be around financial institutions.

In broad terms, it is still accurate to say that the principal impetus for ongoing policy initiatives in this area is being driven by the EU, OECD and the Financial Action Task Force (FATF). This has been underlined by two important events in the past week or so as I finalise this foreword. Firstly, the decision of the UK Crown Dependencies[1] to voluntarily adopt public registers of beneficial ownership by 2023. Secondly, FATF's publication of its 2019 guidance for trust and corporate service providers (TCSPs) (the last version was published in 2008). I will return to both of these topics below but, in general terms, they underscore the sense of the 'transparency juggernaut' maintaining its momentum.

I will first deal with EU developments. The focus of activity here is the measures being introduced at Member State level to implement the Fourth and Fifth Anti-money Laundering Directives (4AMLD and 5AMLD, respectively). With some notable exceptions (including the UK, Malta Germany, Luxembourg, Portugal and Ireland), Member States have been quite slow to implement 4AMLD. In practice, implementation in other jurisdictions looks like it will be subsumed into the widened scope of 5AMLD.

So far as corporate registers are concerned, these are due to become public in the EU and wider EEA in early 2020 under 5AMLD (in the UK, the register was public from inception so the change here will be less marked). In the arena of trust registers, the scope of trusts that are within scope has been substantially expanded from those that generate tax consequences and those that are administered in the relevant jurisdiction. The Directive makes reference to 'express' trusts. There is significant uncertainty as to how this term will be construed as, on an expansive reading, it would require, in a UK context or co-ownership of land and joint bank accounts, to be reported. As a general proposition, trust registers are private and it would only be possible to gain access to the information on the beneficial owners of a trust where the applicant can demonstrate a legitimate interest.

It seems likely, from a consultation that has recently been launched by the UK government, that those seeking access to the trust register will have to demonstrate some

1 Jersey, Guernsey and the Isle of Man.

specific evidence of money laundering or terrorist financing activity to justify this. In essence, general 'fishing' expeditions by investigative journalists into the affairs of the wealthy will, hopefully, be discouraged.

Some curious features of the directive implementing 5AMLD have potentially wide-ranging consequences for trusts that are not regarded as resident in the EU or EEA. On a literal reading of the directive, it could be argued that such trusts will be required to register in circumstances where they have a business relationship with an obliged entity – this includes not only financial institutions but lawyers, accountants and other equivalent professionals. We will have to await the detailed regulations to see the final policy stance taken on this issue.

One other area where 5AMLD leads to a surprising outcome is in circumstances where a trust is deemed to control any company that is not incorporated within the EU or EEA. In these circumstances, the directive makes provision for public access to information about the trust; the logic here is that if the relevant company does not open up its information to public scrutiny then the trust that owns it should be disclosed instead. What is completely unclear at this stage is whether this will provide de facto public access to information about trusts that control non-EU or non-EEA companies or whether it will only afford such access in circumstances where the applicant already has detailed information about the relevant company or trust.

Another interesting issue that arises in Luxembourg, where a trust is the ultimate beneficial owner of a Luxembourg company, is that information about the settlor, beneficiaries, protectors and any other natural person exercising effective control will be publicly available on the corporate Register of Beneficial Owners from 31 August 2019. This is markedly different from the position under the UK Corporate register in the case of a trustee owner where the persons with significant control or 'PSC' rules look to those who control the trustee decisions alone rather than those who are beneficiaries of a trust.

The general scope of trust registers in the EU under 4AMLD is starting to become clearer. Following on from the UK and Malta, Ireland recently published its regulations at the end of January 2019. These regulations will, as noted, be potentially subject to material expansion once 5AMLD is implemented.

One general concept within 5AMLD is the proposal that trusts can be effectively passported; in other words, once the trust can evidence registration on one EU or EEA register, this will avoid the need for duplicate registrations. Whether this will result in any practical compliance gains or advantages remains to be seen. In terms of its scope, the information being provided on trusts in the centralised Beneficial Ownership Register will be restricted to information about individuals and will not address (as is the case with Common Reporting Standard (CRS)) asset values.

There are clear signs that the EU is intent upon exporting its concept of centralised trusts and corporate beneficial ownership registers to the rest of the world. Recent commentaries have suggested a move to a global standard in this regard by 2023. NGOs active in the transparency arena have started to advocate the creation of an overarching integrated global asset register for wealthy families although it is difficult to gauge policymakers' enthusiasm for such a radical step.

The position of the UK if Brexit finally happens is also interesting. The UK seems intent upon implementing 5AMLD and has shown no signs of losing its enthusiasm for expanding measures in this area along with its European neighbours. The UK has also been

putting pressure on both its crown dependencies (CDs) and overseas territories (OTs)[2] to adopt the EU's position on public beneficial ownership registers for companies.

Before the CD's announcement on 19 June 2019,[3] it seemed that the OTs were more likely to agree to the EU's position because of their constitutional status where the UK has a stronger formal say in how they make policy. What is interesting about the CD's position is, in the statement issued by the three Island Governments on 19 June, they describe a three-stage process as follows:

> *1. the interconnection of the islands' registers of beneficial ownership of companies with those within the EU for access by law enforcement authorities and Financial Intelligence Units;*
> *2. access for financial service businesses and certain other prescribed businesses for corporate due diligence purposes;*
> *3. public access aligned to the approach taken in the EU Directive.*

It seems obvious that the CD's collective approach here is to forestall criticism from the EU in particular by being seen to take the lead in moving to public access in a phased manner. The fact that public access is the last stage of this process is revealing. The willingness in interim stages to share information with the EU and obliged entities in the regulated sector may well be a model that other jurisdictions will consider following.

Whether the voluntary adoption of public registers of beneficial ownership for companies in the CDs will stimulate other jurisdictions to follow suit remains to be seen. There have been some indications that the UK and EU stance here is to promote a new global standard of public registers for companies by 2023 mentioned above. Given the UK's pronouncements here, it seems inevitable that the OTs will be forced to adopt equivalent measures to the CDs. It will be interesting to see whether other major offshore jurisdictions such as Switzerland and the Bahamas will react to these events.

As a different matter, the separate subject of establishing centralised trust registers outside the EU is bound to be raised as a parallel issue. This may take longer to surface than pressure to establish corporate registers, but seems bound to raise its head at some stage.

From a wider FATF perspective, the key development in 2019 is the publication in late June 2019 of updated guidance to non-financial services professionals. Three sets of parallel guidance to lawyers, accountants and TCSPs[4] have been issued. There has been a significant time gap since the previous edition, which was published in 2008.

One area where the new guidance will have an important impact in the context of TCSPs is in defining 'beneficial ownership'. In this regard, the new guidance follows an expansive view of what constitutes 'control' for the purpose of beneficial ownership akin to the approach taken in the UK Trust Register. This will be potentially significant going forward in considering who needs to be disclosed in the context of trust structures in governance terms. In particular, holding powers as a minority member of a group or a veto power with respect not only to the appointment and removal of trustees but also to the addition and removal of beneficiaries, for example, will be enough to render an individual as being characterised as a 'natural person exercising effective control'. This is potentially very significant because there

2 A wider group that includes Bermuda, British Virgin Isles ,the Cayman Islands and Gibraltar.

3 https://www.gov.je/News/2019/Pages/BeneficialOwnership.aspx.

4 https://www.fatf-gafi.org/publications/fatfgeneral/documents/public-consultation-guidance-tcsp.html.

has been no guidance offered by FATF since it published its 2012 recommendations on how to interpret this expression.

It is still very early to try and discern what the impact of the information flows triggered under CRS has been. For compliant structures, the provision of CRS information should only confirm what has already been disclosed by a taxpayer to domestic tax authorities. However, given the growing concerns being expressed by politicians on the 'inequality' theme, the assembling of information about asset holding positions of wealthy individuals may be the tool that is deployed in assessing the potential impact of future wealth or inheritance taxes where these are not currently employed.

There is also a potentially significant crossover from the FATF domain into CRS reporting. In particular, a broader concept of who may be regarded as a 'controller' in the anti-money laundering context is likely to be applied for CRS purposes in due course, given the express linkage that exists in CRS that directly imports FATF definitions of beneficial ownership into the concept of who may be reportable in a trust context as a 'controlling person'.[5] This could, in particular, lead specifically to the disclosure of family members who have more subtle or 'indirect' means of influence over a family trust structure.

One development in an aligned field worth mentioning is the rules on substance for entities incorporated in offshore jurisdictions. These substance rules have taken on an increased significance recently.

The EU Council has created a code of conduct for business taxation to limit the impact of low tax regimes. In 2017, it established a code of conduct group tasked with considering the measures on business tax within a number of non-EU jurisdictions.

In response to assessments undertaken by the EU, the affected jurisdictions (which include a number of the CDs and OTs) have introduced new rules requiring economic substance that will take effect in 2019.

These rules impact companies carrying on 'relevant activities'. The substance requirements have three principal components. These are to demonstrate, that within the jurisdiction, the company:

a is directed and managed;
b undertakes core income-generating activities; and
c has physical presence.

While these measures are primarily relevant in a base erosion and profit shifting (BEPS) context, they are indicative of wider trends in terms of being able to demonstrate the overall substance of these measures that are operated in offshore jurisdictions. This is of potentially greater significance to private wealth structures that may be seen as more passive than active.

There are nine relevant activities that cover banking, insurance, fund management and financing. One specific area includes the role of pure equity holding companies (PEHs). While supposedly aimed at private equity structures, it could conceivably impact a conventional holding company holding varied investments for a family trust.

At this early stage, there is no clear guidance that delineates the boundaries of what constitutes a PEH; what can be said is that family structures could find themselves impacted if the guidance is couched in wide terms.

5 See page 59 of OECD publication in commenting on meaning of 'controlling person' for CRS purposes.

There is no doubt that the increased cost and complexity of regulation is driving trends towards simpler structures with fewer layers and involving fewer jurisdictions. There appears to be a greater reluctance on the part of corporate service providers to offer a purely passive role as a registered office without any detailed understanding of the operation of the underlying entities themselves. This appears to be coupled with a trend towards re-domiciling entities into jurisdictions where substance can be demonstrated.

At the same time, an increasing awareness as to the implications of disclosure of beneficial ownership is also generating a more reflective view on the retention of control either by settlors or by beneficiaries or connected family members.

In summary, therefore, the theme of ever-greater levels of transparency and increased complexity of overlapping regulation continues. The dichotomy between Western Europe and the United States, in terms of their different approach to these issues, also remains very apparent to observers.

John Riches
RMW Law LLP
London
August 2019

Chapter 7

ARGENTINA

Miguel María Silveyra, Valeria Kemerer and Enrique López Rivarola[1]

I INTRODUCTION

Argentina is home to many wealthy individuals and families. Only a small group of these have received sophisticated technical advice in matters of tax planning and estate succession. Consequently, there is an important group of wealthy people, mainly concentrated in the interior provinces of the country, lacking an adequate tax, financial and succession plan for their estates.

II TAX

i Income tax

Income tax is a national tax applied on the worldwide income obtained by individuals and legal entities domiciled in Argentina and Argentine branches of foreign entities.

Foreign resident individuals are taxed only on their Argentine income source through a withholding system and based on their presumed income. In general, foreign individuals are taxed at a 35 per cent flat rate.

Domestic individuals are taxed upon a sliding scale ranging from 5 per cent to 35 per cent depending on the income subject to taxation.

On 29 December 2017, Law No. 27,430 was enacted, introducing several modifications to the former tax regime, especially with regard to financial investments.

As a result of these amendments, capital gains from sales and interest derived from sovereign and private bonds, debt securities and other similar securities are subject to a 5 per cent rate (if they are nominated in Argentine pesos, without an adjustment provision) or 15 per cent rate (if they are not), for both domestic and foreign individuals.

In the case of foreign individuals, income (trading or interest) derived from securities listed in Argentina – except for Central Bank bonds – is generally exempt from income tax, provided the beneficiary does not reside in, or the funds are not from, a jurisdiction deemed not cooperative, pursuant to Argentine legislation. If this last condition is met, however, the income would be subject to a 35 per cent rate.

In the case of Argentine individuals, capital gains from the sale of shares or equity interest is subject to a 15 per cent rate on net income. The sale of shares or equity interest by Argentine individuals or foreign entities is exempt from capital gains tax in the following

1 Miguel María Silveyra is a partner, and Valeria Kemerer and Enrique López Rivarola are associates at Estudio Beccar Varela. Tadeo L Fernandez and Gustavo Papeschi also collaborated with the preparation of this chapter.

cases: when the shares are placed through a public offering authorised by the National Securities Commission (CNV); when the shares are traded in stock markets authorised by the CNV, under segments that ensure price-time priority and interference of offers; or when the sale, exchange or other disposition of shares is made through a tender offer regime or exchange of shares authorised by the CNV.

Foreign beneficiaries are either subject to a 15 per cent or 13.5 per cent rate on the gross amount paid for shares or equity interests, unless the exemption for listed securities mentioned above is applicable. Indirect sales of Argentine entities (i.e., sales of foreign companies that owns shares of Argentine companies) can also be subject to income tax in Argentina, if certain requirements are met.

Capital gains from the sale of ADS is subject to 15 per cent income tax in the case of Argentine individuals. Capital gains of foreign individuals are exempt from this tax if the underlying shares are issued by Argentine entities and are authorised to be listed by the CNV.

ii Personal asset tax

With regard to taxes on property, all Argentinean residents are subject to personal assets tax on their worldwide assets. The taxable base is, in principle, the value of such assets (except for a few exceptions, debts are not deductible). Foreign residents are subject to this tax only upon their assets located in Argentina.

In 2018, personal assets tax applied when the assets owned by the taxpayer, as of 31 December of each fiscal year, exceeded 1.05 million Argentine pesos. The applicable tax rate for Argentinean residents is 0.25 per cent. As of 2019, a progressive rate that varies between 0.25 per cent and 0.75 per cent is applicable, and 2 million Argentine pesos was established as a taxable minimum.

In the case of individuals, savings deposits in Argentine banks and Argentine sovereign bonds are exempt from tax. However, other securities are usually taxed. In the case of ownership of shares of Argentine companies, the tax is paid by the company.

iii Gift and succession taxes

In Argentina, only the province of Buenos Aires has gift and inheritance taxes. There is currently no such tax nationally and in the remaining provinces.

In Buenos Aires, tax is levied on any asset received free of charge, such as gifts, donations, inheritances and legacies, if received by residents or, alternatively, if they involve assets deemed to be located in the province.

In the case of shares and equity interests, these assets are deemed to be located in such province (and, therefore, taxed regardless of the residence of the beneficiary) if the company is incorporated in such jurisdictions, if the shares are physically located there or, controversially, if the companies own assets within the province (and in such proportion). For tax assessment purposes, the shares will be valued by the net asset value of the latest closed financial statements.

The applicable rates vary between 1.6026 per cent and 8.7840 per cent, depending on the relationship between the beneficiary and the contributor and on the value of the assets. The tax's threshold varies depending on this relationship and is usually adjusted annually.

iv Issues relating to cross-border structuring

Local residents can register for foreign tax credits, taxes paid abroad that are deemed equivalent to income tax and personal assets tax, up to the amount of the tax payable in Argentina for the income or assets located or obtained abroad.

In the case of Argentine residents that are stockholders of foreign entities, tax credits for taxes paid abroad for direct or indirect investments in foreign companies can be offset against the payable income tax in Argentina on dividends paid by such entities. In the case of direct stockholders, the local taxpayer must be able to prove ownership of at least 25 per cent of the foreign company's equity. In the case of indirect shareholders, a minimum 15 per cent ownership must be proved. Foreign taxes paid can be used as a tax credit up to a second-tier subsidiary. In this case, the subsidiary cannot be located in a country deemed to be a tax haven, pursuant to Argentine regulation.

In the case of investments involving derivatives, there is some controversy regarding the potential use of income taxes paid abroad as credits. Income deriving from derivatives is deemed to be an Argentine income if its recipient is an Argentine resident. Domestic rules regarding foreign tax credits establish they can only be used by a local resident if they are linked with foreign source income. Therefore, although debatable, these credits could not be offset against income tax derived from this type of operation, unless a specific double taxation treaty states otherwise.

Argentina has double taxation treaties in force with Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Mexico, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, the UK, UAE and Uruguay. These treaties may set forth limitations to the country's tax jurisdiction in relation to income or personal asset tax and special rules regarding foreign tax credits. Except for the treaty with Bolivia and Uruguay, Argentine double taxation treaties are based on the Organisation for Economic Co-operation and Development (OECD) and UN tax models.

v Issues impacting entrepreneurs as holders of active business interests

Argentine corporations and limited liability companies are not pass-through entities pursuant to Argentine legislation and, therefore, must report their income and pay the resulting income tax at a 30 per cent rate (25 per cent for tax periods commencing after 1 January 2020). These two types of entities comprise the vast majority of Argentine companies.

Payment of dividends and utilities by those entities is subject to an additional 7 per cent income tax in Argentina. A 13 per cent rate would be applicable for profits previously taxed at the above-mentioned 25 per cent rate (unless a double taxation treaty limits it).

However, dividends paid by foreign companies are subject to income tax in the case of domestic individuals, at a 5 per cent to 35 per cent rate (unless an applicable double taxation treaty establishes otherwise). The disbursement of dividends by the foreign company to a domestic individual is not subject to income tax if the beneficiary can prove that the profits that are paid out derive from dividends or utilities originally paid from Argentina to such foreign company and taxed accordingly.

III SUCCESSION

i Applicable jurisdiction and law

On 1 August 2015, a new Civil and Commercial Code (CCCN) entered into force and replaced both the former Civil Code and the Commercial Code. As a consequence, the

inheritance, matrimonial and the private international law rules have been significantly amended, and there is still no sufficient case law on the issues addressed herein to fully foresee the final interpretation that the new provisions may entail.

According to the CCCN, succession to the estate of a deceased person is governed by the law of the country where the decedent was domiciled at the time of his or her death, regardless of the decedent's or his or her inheritors' nationality. However, and regardless of the above general rule, Argentine law will mandatorily govern all issues concerning real estate located in Argentina[2] and precludes the application of any foreign law. The CCCN further provides that the same law governs the content and validity of wills.

Regarding jurisdiction, the general rule is that the judge sitting where the deceased was last domiciled shall have jurisdiction to hear the case. There is an exception to this rule when real estate is located in Argentina, in which case the judges sitting at the place where the real estate is located have jurisdiction to hear the case.

It is worth pointing out that, pursuant to the Constitution, international treaties pre-empt domestic law. However, only two treaties are relevant for our analysis (i.e., the Treaties on International Civil Law (Montevideo) of 1889 and 1940), and given their limited territorial application,[3] we will just point out that they set forth that the applicable law will be the law where the deceased person's assets were located at the time of his or her death and that wills granted through a public deed in any Member States of the treaty will be valid in all other Member States.

Although Argentina signed the 1989 Hague Convention on the Law Applicable to Succession of the Estates of Deceased Persons, this convention is not yet effective, and has had a low rate of acceptance.

Argentina has not signed the 1961 Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions.

ii Outline of Argentine succession system

Forced heirship system

Argentina has a forced heirship system that limits the individual's ability to freely dispose of his or her property by gifts *inter vivos* or wills. In this regard, according to the law, individuals are able to dispose of their property by any of these means as long as a minimum share of their estate (reserved share) is reserved for their spouses, descendants and ascendants (forced heirs).

Descendants have the right to a reserved share of two-thirds of the decedent's estate, whereas ascendants and spouses have the right to reserved shares of half of the estate of the deceased.[4] If there are heirs entitled to share the state with different reserved shares (e.g., spouse and descendants), the highest reserved portion applies globally.

The general rules described above are, however, significantly different when there are disabled heirs. In that case the law allows the individuals to improve such disabled heirs' portion by reducing the reserved share of the other heirs by up to a third.[5]

2 CCCN, Article 2,644.

3 Montevideo Treaty of 1889, ratified by Argentina, Bolivia, Colombia, Paraguay, Peru and Uruguay, while Montevideo Treaty of 1940, only by Argentina, Paraguay and Uruguay.

4 CCCN, Article 2,445.

5 CCCN, Article 2,448.

The reserved shares are estimated using the aggregate value of the estate at the time of the decedent's death and the computable gifts provided for each of the forced heirs.[6] In the case of the spouse, the value of the marital assets belonging to the surviving spouse shall be subtracted from the base of calculation.

Beyond the reserved shares, individuals may freely dispose of their property, either by gift during their lifetime, or by means of a will. This disposable portion of the individual estate is called the 'available share'.

Notwithstanding all of the above, in limited and serious cases listed by the CCCN,[7] forced heirs may be deemed unworthy of inheriting and, therefore, can be excluded from the succession (e.g., when any forced heir is judged to be the author, accomplice or participant in an intentional crime offence against the deceased, his or her honour, sexual integrity, liberty or property).

Order of vesting

The law also determines how heirs are vested over the deceased's estate:[8]

a Descendants: they exclude the ascendants and concur with the spouse. Concurrence among descendants and the spouse is limited to the decedent's non-marital property. Spouses do not concur as heirs with regard to marital property because they receive their half of such property as a result of the dissolution and liquidation of the marital property community. The decedent's own property is distributed in equal portions among all of the descendants and the spouse. Among themselves, descendants equally inherit the deceased's estate.[9] Grandchildren inherit by representing the predeceased offspring.[10]

b Ascendants: if there are no descendants, ascendants concur with the spouse over the non-marital property in halves.[11] Among themselves, ascendants equally inherit the deceased's estate.[12] Closer generations exclude further ascendants.

c Spouse: the spouse may concur with descendants or ascendants.

d Collateral relatives: if no descendants, ascendants or spouse exist, collateral relatives, until the fourth degree of relationship, are equally entitled to the estate.

Legal actions to protect the inheritance rights

Rightful heirs have two options to protect and demand compliance with their inheritance rights.

First, there is an equalisation action that seeks to protect equality among heirs within the same rank of concurrence. This action entitles any rightful heir to claim that certain kinds of gifts received by any other heir during the decedent's lifetime should be deemed as an 'inheritance advance' and therefore as part of the rightful portion of the inheritance corresponding to this heir. The result of this equalisation action would only be a credit arising

6 CCCN, Article 2,445.
7 CCCN, Article 2,281.
8 CCCN, Articles 2,424 to 2,443.
9 CCCN, Article 2,446.
10 CCCN, Article 2,448.
11 CCCN, Article 2,434.
12 CCCN, Article 2,431.

out of the acknowledgement that another rightful heir has received from the decedent and during his or her lifetime certain assets that shall be deemed an 'inheritance advance' to such heirs.

Second, there is a reduction action that seeks to protect the reserved share and is meant to reduce any devise or bequest made in the will or as a gift *inter vivos* by the decedent[13] to the extent that it prevents a forced heir's right to his or her reserved share. This action entitles any forced heirs to file a claim against those heirs, legatees and grantees that have received gifts and legacies in excess of their rightful portion or in excess of the available share to have their legacies reduced or their gifts returned. Reduction affects wills dispositions first, and in case their reduction were not enough to recompose the reserved share of the claimant, affects gifts, beginning by those more recent in time.

It may be reasonably construed that the reduction action regarding gifts is subject to a 10-year statute of limitation counted from when the heir, legatee or grantee took possession of the gifted asset.[14] With regard to the reduction action against bequests or devises made in a will, no specific statute of limitations is provided for. It may be argued that the generic statute of limitation (i.e., five years) applies.[15] However, it could also be construed that the applicable statute of limitation is 10 years (the term for accepting an inheritance), or even 20 years (the adverse possession term for real property).

Agreements on future inheritances

Any general agreement entered into by and between future heirs during the deceased's life is null and void.

However, the CCCN has allowed agreements over future inheritances as long as the covenants only fall over the equity of companies or other business ventures with the aim of maintaining the management unity or preventing or solving conflicts, and the dispositions do not deprive forced heirs of their reserved portions, nor do they affect the spouse or third parties' rights.[16]

iii Inheritance proceedings

After an individual has passed away, a judicial proceeding must commence (the inheritance proceeding) with the purposes of identifying the heirs, determining the content of the inheritance, collecting any outstanding credit, paying the debts, bequests and devises, and filing certain assets before the public registries.[17]

13 Relevant case law (although prior to the CCCN) has ruled that: (1) the fact that a foreign trust (in the analysed case, an UK trust) was subject to foreign law, does not prevent the transfer from being subject to Argentine law for the purposes of an inheritance proceeding; and (2) to the extent that the beneficiary had the right to demand the delivery of the proceeds of the trust and that such trust was incorporated for no consideration against the beneficiary, such trust should be deemed a gift under Argentine law (for the purposes of the equalising and reduction action).

14 CCCN, Article 2,459.

15 CCCN, Article 2,560.

16 CCCN, Article 1,010.

17 CCCN, Article 2,335.

The inheritance proceeding is filed before the judge with jurisdiction in the decedent's last domicile or, in the case of real property located in Argentina, where the assets are located.[18] If real property is located in several of the Argentine provinces, the applicant may (but is not required to) file its application in any of those jurisdictions.

The administration of the estate must be carried out by an administrator, to be appointed either by the testator or the heirs acting by majority. Non-resident individuals may be appointed as executors of the estate.

The length of inheritance proceedings varies according to the complexity of the case. A straightforward case (e.g., with few assets located in urban areas and no minors involved) can take approximately five to six months, from its commencement to the recording of the heirs' title at the relevant registries.

iv Wills

Wills are unusual in Argentina, and are generally only made by wealthy individuals. Most people die without making a will, in which case the rules on intestacy described above apply.

If made in Argentina, a will is only valid when made pursuant to the formalities provided by Argentine law.

Therefore, a will made by a foreigner in his or her country's consulate in Argentina may not be considered valid by an Argentine court, with the exception mentioned above in the Montevideo treaties for the signatories of such treaties.

Under general principles contained in the CCCN, a will made abroad is enforceable if it complies with the law of the place of its making, the testator's place of residence or the country of the testator's nationality.

v Marital property regime

The conflict of laws rules provided in the CCCN states that the marital property regime – in all that is not forbidden on matters of property by the law of the place where the assets are located – is ruled by the spouses' agreement. Spouses' agreements were not valid before the CCCN and the only possible regime was the communal property regime. According to the CCCN, if the agreement was entered into prior to the marriage, it will be governed by the laws of the first marriage domicile. The agreements entered into after the date of marriage will be governed by the laws of the spouses' domiciles at the time of the signing of the agreement.

Under the CCCN, the future spouses have the possibility (by entering into a marriage agreement) of choosing between a communal property regime or a separate property regime. The CCCN[19] provides that, if no marriage agreement is made or the marriage agreement does not set forth any provision regarding the property regime, the traditional shared property regime will be applied. Conventions may be created for the purpose of: designation and appraisal of the goods that each of the future spouses brings to the marriage; admission of debts; donations made between each other; or choice of marriage regime.

The CCCN also provides that marriage agreements must be executed by means of a public deed to be valid, but for the marriage agreements to be effective towards third parties, the marriage certificate must include a note stating the regime chosen. If the spouses decide

18 CCCN, Articles 2,336 and 2,643.

19 CCCN, Article 463.

to change the regime, the amendment must also be made through public deed, after one year of the marriage agreement's date. Creditors affected by this change may object within one year of the date they became aware of the change.

When a marriage is terminated (by death or divorce), the assets that qualify as shared property are grouped together and, after the applicable liabilities and claims of each spouse have been cancelled, divided and distributed equally between the spouses.

vi Same-sex marriages and cohabitation

Argentine law recognises marriage between same-sex couples, so the same marital property regime applies in such cases.

The CCCN also recognises certain rights to cohabitees provided they have been together for at least two years.

Through the means of cohabitation agreements, cohabitees will be able to regulate different aspects of their life together, such as economic aspects and other responsibilities.

The CCCN also provides protection for the family home and, in the event of the death of one partner, the survivor is granted the right of free housing in the home they shared for a period of two years. However, the CCCN does not recognise cohabitees' inheritance rights over their partner's assets.

IV WEALTH STRUCTURING AND REGULATION

i Commonly used vehicles for wealth structuring, such as trusts, foundations or partnerships

As mentioned in Section I, only a small group of wealthy people has taken advantage of sophisticated structures to improve their estate and business organisation from a tax and succession law standpoint. Within this group it is common to see structures that take advantage of foreign trusts and foundations, combined with other structures that are more frequently used, such as company reorganisations and gifts *inter vivos* (usually structured in a way by which the grantor withholds the legal right of using and enjoying the fruits or profits of the property until his or her death). After the CCCN entered into force, the change of marriage regime emerged as another instrument for estate reorganisation.

ii Legal and tax treatment of commonly used vehicles and typical advantages and disadvantages to personal ownership or control

Before Law No. 27,430 was passed, in the case of Argentine residents that invest their wealth abroad, typically either a corporation or a trust was incorporated in a foreign jurisdiction.

No controlling foreign corporation rules were applicable in the case of foreign corporations (or entities that issue shares), if these entities were incorporated in jurisdictions deemed to be 'cooperative for fiscal transparency purposes' and, therefore, Argentine income tax was paid when (and if) such entities paid to dividends to their Argentine shareholders. However, in these structures, the shares owned by the individual were still subject to personal assets tax.

Another traditional structure used to benefit from this tax deferral was the creation of an irrevocable trust abroad. The main advantage of this type of trust was that the settlor would not have to pay personal assets on the assets transferred to the trust, provided that it is not disregarded by the tax authority and the assets deemed to be owned by him or her, as an application of the substance over form principle.

Law No. 27,430 further reinforced controlling foreign corporation rules in Argentina and limited these tax deferral structures. Controlled trusts incorporated abroad for asset management purposes are deemed to be fiscally transparent. The same treatment is applicable to foreign companies that are controlled by Argentine residents, if they do not have sufficient means to carry out their formal purpose or if more than 50 per cent of their income is deemed passive income and if those entities were subject to an income tax in the jurisdiction where they are incorporated that is at least 75 per cent lower than Argentine income tax.

Besides, tax-free reorganisations procedures are typically used to split family companies between their members, without any tax burden. These are complex procedures that require the compliance of several formal and substantial requirements, among which stand out the prohibition for the owners to sell the reorganised entities or change their activities within two years of the reorganisation.

Finally, to avoid commencing an inheritance proceeding and the costs involved (court tax and attorney's fees), it is customary for individuals to grant gifts inter vivos.

iii Applicable anti-money laundering regime

The Argentine Criminal Code and Law No. 25,246 are the main regulations that govern and punish anti-money laundering offences.

This Law sets forth a list of 'regulated entities' (involving both public and private entities, as well as natural persons) that are obliged to, among other duties, to perform know-your-client procedures and report any suspicious operation to the Financial Information Unit.

Likewise, pursuant to anti-money laundering law, persons or legal entities that act as trustees or that own or are affiliated with trust accounts, trustors and trustees in connection with trust agreements, must carry out anti-money laundering measures, which include, as mentioned, but are not limited to, know-your-client procedures, issuance of an anti-money laundering manual and training employees on the subject.

Argentina is a member of the Financial Action Task Force on anti-money laundering in South America, the Egmont Group and the Group of Experts for the Control of Asset Laundering, as well as other anti-money laundering-specific organs within the region and the OECD.

V OUTLOOK AND CONCLUSIONS

Even though there are some wealthy Argentine individuals and families that have been duly assessed in order to plan their estate organisation from a financial, tax and succession standpoint, a significant portion of Argentina's wealthy population still lacks accurate advice with regard to its estate planning.

In 2016, a tax amnesty took place in Argentina, and in 2017, a significant tax reform was enacted. This, and the fact that anti-money laundering regulation is becoming tighter, may cause individuals to start structuring the organisation of their assets and succession.

Appendix 1

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Miguel María Silveyra started his career at EBV in 1998 and has been a partner of the firm since 2009. He specialises in family business governance and family estate planning. He has advised several families in the process of negotiation, planning and designing of their corporate governance rules, in drafting their family protocols and shareholders' agreements, and in planning their estate and business succession. Miguel received his law degree from the Universidad Católica Argentina (1993) and obtained his LLM from the Universidad Austral (Buenos Aires, Argentina, 1995) and his Diploma in Advanced Studies from the Universidad Autónoma de Madrid (Madrid, Spain, 2004). He worked as a foreign associate at Gomez Acebo & Pombo (Madrid, Spain, 2004). He is a member of the Buenos Aires Bar Association, the International Bar Association and the Family Firm Institute.

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