Regional Developments

ARGENTINA

OIL AND GAS IN ARGENTINA—TAX HIGHLIGHTS

Argentina; Exploration; Oil and gas production; Shale gas; Tax

I. Introduction

Argentina is a major hydrocarbons producer and it has great potential to increase its current production. In Argentina there are 19 sedimentary basins with a total surface area of 1,750,000sqkm, at least five of them continue on Argentina's continental shelf, while others continue below the sea.

It also has great potential in unconventional oil and gas. According to the US Energy Information Administration,[1] Argentina has the second largest technically recoverable shale gas resources in the world behind China (802 trillion cubic feet), and the fourth largest technically recoverable resources of shale oil (27 billion barrels).

Yacimientos Petrolíferos Fiscales S.A. (YPF), Argentina's leading energy company, aims to invest more than $30 billion in the next five years ($4.5 billion of which is to come from strategic partners) to help pay to develop its huge shale oil and gas resources. In virtue of this, the Argentine Government began talks with international oil and gas companies regarding the exploitation of the discovered deposits. YPF organised joint venture models in the development of these projects.

This document comments on the main tax considerations for oil and gas exploration and production—E&P) in Argentina and provides the current market developments on shale hydrocarbon resources.

II. Relevant background

Oil and Gas concessions in Argentina

The issuance by the state of an exploration concession gives its owner the exclusive right to perform all tasks that require the search for hydrocarbons in the defined area and during the periods specified in the authorisation.

According to the Hydrocarbons Law,[2] the term of each exploration concession is divided as follows: (i) first stage—up to four years; (ii) second stage—up to three years; a (iii) third stage—up to two years; and (iv) a final five-year extension.[3]

If hydrocarbon discoveries are made within the defined area, the holder of an exploration permit has the right to be granted an exploitation concession, thus acquiring the exclusive right to exploit hydrocarbon reservoirs that exist in that area.

Oil production concessions grant the concessionaire the exclusive right to produce oil from the area covered for a 25-year term, to which, in some particular cases, part of the unexpired term of a prior exploration permit is added. This term can be extended for an additional 10-year term.[4] Additionally, production concessions grant the right to hold a corresponding transportation license.

[1] See *http://www.eia.gov/todayinenergy/detail.cfm?id=14431* [Accessed October 14, 2014].
[2] Hydrocarbons Law No.17,319, as amended, published in the *Federal Official Gazette*, June 30, 1967.
[3] Hydrocarbons Law No.17,319 s.23.
[4] Hydrocarbons Law No.17,319 s.35.

Joint operating agreements (JOA)

The JOA is typically used in the context of E&P, where the technical complexity and/or economic exposure necessitate the creation of a joint venture (JV). In general, JVs are in respect of single concessions.[5] Concessions are often held by several parties, which agree to act together in a JV whereby they divide the expenditures as well as the benefits of any oil or gas which is produced under the terms of the concession.[6]

We note that JVs are contractual rather than legal entities under Argentine law. Each party to a JV is treated individually for tax purposes and they can have different liabilities from each other under different taxes.

Overview of Argentine taxation system

Argentina has three different levels of taxation, namely, federal, provincial and municipal. The main federal taxes are income tax, VAT, minimum presumed income tax, personal assets tax and debits and credits tax. At the provincial level, the main taxes are the gross receipts and stamp taxes. With respect to municipal fees, there are several fees, including public lighting and advertisement fees, but the most important fee is for health and safety.

III. Legal framework

The Hydrocarbons Law provides a specific tax legal framework for E&P all over Argentina, which is complemented with the Federal Hydrocarbon Agreement, different incentive programs and the general tax regulations provided for the national, provincial and municipal level.

Hydrocarbons Law

Section 56 of the Hydrocarbons Law provides that:

i. permit-holders and concessionaries would be subject to the payment of all provincial and municipal taxes existing at the date of issuance of the permits and concessions. During the term of permits and concessions, provinces and municipalities would not tax these holders with new taxes or increase existing ones, except the remuneration rates for services and contributions for improvements or general tax increases;

ii. at the national level, permit-holders and concessionaries would be subject to the payment of customs duties, taxes levied on goods imported into the country and foreign exchange fees. They are also liable to pay the fee established by ss.57 and 58,[7] and the royalties set out in ss.21, 59 and 62 of the Hydrocarbons Law, and the obligations referred to in s.64; and

iii. s.56(c) of the Hydrocarbons Law provides that the net income obtained in the exercise of their activity as permit-holders or concessionaires would be subject to a special income tax. Notwithstanding the foregoing, such net income would be settled in accordance with the general income tax principles stated on the Income Tax Law.

Permit-holders or concessionaires would be exempt from payment of all other national taxes, present or future, of any kind, including the taxes that may apply to shareholders or other direct beneficiaries of the income associated with the activity.

[5] Peter Roberts, *Joint Operation Agreements: A Practical Guide* (Globe Business Publishing Ltd, 2010), pp.14–15.
[6] Roberts, *Joint Operation Agreements: A Practical Guide* (2010), p.16.
[7] An annual surface canon based on the surface area of the concession or permit.

Decrees numbered 1055/1989, 1212/1989 and 1589/1989 concerning the privatisation and deregulation of the oil sector in Argentina partially modified the tax benefit program. The following changes were implemented through the degrees, among others:

i. a stability clause guaranteeing a maximum of a 1 per cent royalty on the production and extraction of liquid hydrocarbons; and
ii. a protection with respect to any tax assessment or charges that may be considered discriminatory against the permit-holder or concessionaire. This tacitly repealed the special tax on income provided for in Law No.17,319, meaning that the general provisions of income tax would apply to this type of activity.

However, the system established in 1967 by Law No.17,319 was not repealed, but never implemented in its entirety. So it is basically partially effective.

Federal Hydrocarbon Agreement

By the Federal Hydrocarbon Agreement, signed in 1994 between the National Government and the governors of the participating provinces, and the Fiscal Agreement between the National Government and the oil-producing provinces, the signatories agreed not to increase the tax burden applicable to permit-holders, concessionaires and other holders of exploitation rights.

The Supreme Court in the case of *Apache Energía Argentina SRL*[8] determined the enforceability of these agreements for signatories who have ratified them by a provincial law, as in the case of the Province of Rio Negro. However, we note that certain provinces, such as Mendoza, have not ratified these agreements by the issuance of a law, so they could not be validly enforced against those provinces.

Oil Plus and Refining Plus Programs

The "Oil Plus and Refining Plus" Programs were created by Decree No.2014/08 and regulated by Resolution No.1312/08 issued by the Argentine Secretariat of Energy, among others. These programs were created to promote investment in oil production and refining. The incentives of the programs are actually effective by means of transferable tax credit certificates, which may be used to pay export duties.

Additionally, Decree No.2014/08 provides that infrastructure works performed for the exploration and exploitation of new oil fields, and the increase of the production capacity and the incorporation of new technologies for the exploitation and development of existing oil fields that increase their current capacity may qualify as "critical infrastructure works" subject to the benefits provided by Law No.26,360, as described below.

Capital and infrastructure investments—promotional program

Law No.26,360 sets forth a temporary program for taxpayers who invest in capital assets for industrial purposes as well as in infrastructure works. Under this promotional program, infrastructure works are defined as all work whose main objective is the performance of productive activities or when its performance is declared to be a critical infrastructure work by the Federal Planning Ministry provided that it involves certain activities, such as the production, distribution and transportation of hydrocarbons.

[8] *Apache Energía Argentina SRL c/ Provincia de Río Negro, Fallos* : 332:640, March 26, 2009.

The promotional program may be joined by individuals and legal entities that develop productive activities in Argentina which evidence, by means of an affidavit filed with the enforcement authority, the existence of an investment project in industrial activities or an infrastructure work to be carried out between October 1, 2007 and December 31, 2014.

The interested parties will be entitled to the following tax benefits, which are granted through calls made from time to time:

(a) anticipated reimbursement of VAT paid for the acquisition, manufacture, production or definite import of capital assets or for the performance of an infrastructure work of the relevant project; or
(b) accelerated depreciation for income tax purposes.

Both benefits are mutually exclusive. However, they may be applicable together in the case of investment projects destined to the external market or that comprise a clean production or a sustainable industrial reconversion plan, duly approved by the Environment and Sustainable Development Office of the Cabinet of Ministries.

Provinces and the City of Buenos Aires are invited to join the promotion program and exempt, in whole or in part, the sale of the assets included in this system from local taxes.

Gas Plus Program

Created by Resolution No.24/08 of the Argentine Secretary of Energy, the "Gas Plus" Program gives companies a financial incentive to explore for natural gas by allowing them to charge higher rates for natural gas from new discoveries, i.e. reducing re-sale restrictions for eligible companies.

Due to the "Gas Plus" program, Argentina became the first country in South America to apply new technology in finding unconventional gas. Moreover, shale gas production is expected to grow and such growth may create opportunities for new investments in Argentine gas areas, particularly for service companies with shale gas know-how.[9]

IV. Tax treatment-national level

At the national level, oil and gas upstream is subject to the following taxes:

(a) income tax;
(b) VAT;
(c) minimum presumed income tax;
(d) income on personal assets;
(e) tax on bank debits and credits;
(f) export duties; and
(g) royalties.[10]

It is also subject to comply with withholdings requirements in respect of some of these taxes.

Income tax

As was mentioned above, the special income tax provided for in s.56(c) of Law No.17,319 was never applied. The activity is governed by the general rules of income tax. Accordingly, companies incorporated in Argentina, as well as branches or other permanent establishments in Argentina belonging to foreign companies or individuals are subject to taxation of 35 per cent

[9] Latin American Law & Business Report, *Latin American Energy Markets for 2011—Argentina and Peru* (March 2011), Vol.19, No.3.
[10] By judgment of December 11, 2007, in the case *Neuquén Province v Capex SA/royalty-fee, Fallos* : 330:2470, the Supreme Court concluded that the royalty is not a tax. Notwithstanding this, it is included in this section, in order to maintain the systematic order of the proposed analysis.

over their net income. These companies are subject to taxation over their total income obtained in Argentina or abroad, with a set-off applicable in respect of amounts paid abroad for similar taxes on their activities performed outside Argentina, up to the limit of the increase of the fiscal obligation that arises from including the income obtained abroad into their Argentine tax return.

Expenses incurred in order to obtain, maintain and preserve the income levied by this tax are deductible when determining the income tax. There are limitations for certain expenses. If those expenses exceed the income obtained in a given fiscal year, the losses (tax losses) may be carried forward and offset against the income obtained in the following five fiscal years.

Argentine-sourced income obtained by foreign residents is levied with income tax on a withholding basis. Consequently, when a payment for work subject to income tax is performed for a foreign beneficiary, the local payer must withhold the 35 per cent of the net income as unique and definite income tax payment. Income tax Law sets out presumptions of net income (without admitting evidence to the contrary), at different rates according the nature of the payment made to a foreign beneficiary.

Income obtained from the export of goods produced, manufactured or purchased in Argentina is considered in the aggregate Argentine source income for the exporter. In turn, the income obtained by foreign exporters from the mere incorporation of their products in Argentina is considered foreign source income, not subject to income tax in Argentina.

Within the general tax system, there are some pertinent regulations. Specifically, s.75 of the Income Tax Law provides:

> "The tax value of mines, quarries, forests and similar goods is given by the portion of cost attributable to them, plus, any costs incurred in obtaining the concession. When the proceeds from the exploitation of such assets involves the consumption of the substance which produces the income, the proportion of the substance expended shall be deductible from the income … ."

Section 87 of the Regulatory Decree of the Income Tax Law sets out how to calculate the annual tax depreciation to offset the depletion of the income-producing assets. General Resolution No.2165/1979 of the Federal Tax Administration (FTA) and Note DGI No.1079/1979 complement this specific regulation.

One of the significant distortions in the income tax system is the amortization of goods that should be done in a linear manner, allowing the deduction in equal installments typically over five, 10, 15, 20, 33 or 50 years, according the estimated duration of the good. That is, the deduction allowed from the financial point of view is insufficient to cover the initial cost of investments on E&P, taking into account the relevant interests of the delay on performing the deduction.

As was previously noted, JVs are not corporate entities under Argentine law, but contractual, so as not expressly identified as being subject to this tax under the Income Tax Law, each of the members of these consortiums must determine their own income tax.[11] In fact, JVs are only considered taxpayers on the VAT.

Abandonment of oil wells—deduction of related expenses

Law No.17,319, Decree-Law No.33,598 and Resolution No.5/1996 of the Argentine Secretary of Energy provide the procedure to follow for the abandonment of oil wells. This abandonment involves certain obligations of environmental remediation, all of which will involve expenses for the operator of the site.

[11] In this regard, FTA Opinion No.16/2004.

The treatment of this expenses is a controversial issue, not only for the interpretation of the accrual principal for income tax but also because of the different interpretations adopted by the FTA, court precedents and taxpayers in calculating these amounts across the exploitation term.

The FTA's reasons for refusing the deduction of expenses not actually incurred could be based on the fact that the quantum of the expenses are not known; they lack supporting evidence; the substantial transaction giving rise to the expense has not yet occurred; there is no obligation to make an accurate and certain payment, so the mere expectation of unpaid debts should be considered losses only when they are incurred, among others.

The Supreme Court in *Astra CAPSA*[12] confirmed some aspects of the position of the FTA. In this case, the court held that the deducted expenses were not extraordinary losses under s.82(c) of the Income Tax Law, but rather regular losses deductible under the regular amortisation system, and consequently it is not applicable to the deduction of expenses derived from the exploitation of an oil well, as the expenses related to the burning of the well.

The Supreme Court stated that the deduction of extraordinary losses is held on specific situations that technically are not "necessary expenses", regarding the loss of the source of income. Necessary expenses (as in this case the expenses related to the oil well burning) should be deducted under s.17 of the Income Tax Law.

There are two different treatments applicable to the expenses related to the abandonment of oil wells, the applicability of each depends on the possibility of exploitation of the relevant oil well. In case of the impossibility of exploitation of an oil well, according to Note 1079 and reg.2165 of the FTA, the expenses related to the study, discovery and/or exploration should be deducted as losses in the same fiscal year of the abandonment of the well. On the other hand, in the precedent mentioned there were not guidelines regarding the possibility to deduct an accrued expense related to well exploitation (e.g. the abandonment of an exploited oil well).

In the case of *Jota K S.R.L.*,[13] the Federal Tax Court details the correct approach. The majority decision, in this case, agreed that accounting provisions made by the appellant were instrumented and are admitted because it is an inherent cost to the business and were deductible in accordance with s.87(a) of the Income Tax Law.

Notwithstanding this, in the case *Enap Sipetrol Argentina S.A.*,[14] in which the taxpayer deducted these expenses for the remainder of the exploitation term, the Federal Tax Court confirmed the FTA criteria that the deduction was not authorised under the applicable rules, and exceeded the amount attributable to that tax period.

To date there has been no final decision of the Supreme Court on this particular matter.

Dividends

By means of the last amendment to the Income Tax Law,[15] distributions of dividends or profits by Argentine companies are subject to an income tax withholding at a rate of 10 per cent over the total amount of the dividends or profits paid or distributed. If the amount of distributed dividend exceeds the accumulated earnings at the end of the fiscal year before the date of payment, a 35 per cent income tax withholding is also applied on the exceeding amount (i.e. 10 per cent rate over the total amount, and a 35 per cent over the net profits of the exceeding amount).

[12] *Astra CAPSA (TF 19.173-I) c/DGI, Fallos* 334:53, March 2, 2011.
[13] Federal Tax Court, Room "D", October 8, 2009.
[14] Federal Tax Court, Room "D", April 19, 2011.
[15] Law No.26.893, published in the *Federal Official Gazette*, September 23, 2013.

Dividends remittances abroad must be carried in accordance with the Argentine Central Bank regulations. In this regard, there is no legal restriction to perform such remittances other than: (i) evidencing that they derive from closed and audited financial statements; and (ii) an approved Advanced Return of Payments Abroad (ARPA), as determined by the Federal Tax Administration (FTA) Resolution No.3417/2012.

Under the ARPA certain information must be submitted electronically through the FTA's website. Once the return is approved, the return ID should be informed to the bank through which the remittance of the dividends would be performed.

However, it should be noted that certain non-regulated restrictions are currently applied, by which any transaction must be, in practice, approved in advance by the Argentine Central Bank, even though this prior approval is not a legal requirement.

VAT

This tax is levied on all different stages of domestic trade, production and importation of movable goods, and a wide range of services. The general tax rate is 21 per cent. A differential tax rate of 10.5 per cent or 27 per cent may apply to certain specific cases.

Every time taxpayers supply services or commercialize any levied products, they collect VAT, at the corresponding tax rate, over the net value of the services or the products supplied or sold. The amount collected as VAT is considered a tax debit that can be offset against the tax credits from the same fiscal period, assessed on a monthly calendar basis, arising from the VAT paid for levied transactions. The balance, if any, shall be paid to the FTA. VAT fiscal credits can be carried over indefinitely.

Hydrocarbon exploration projects are generally slow to mature, which may be capable of commercial exploitation several years after starting. This means that during the period in which production is not obtained to start the extraction stage conditions of merchantability, VAT tax credits may not be charged against tax debts arising from the commercialisation of production. Only those companies that are developing and manufacturing operations and generating tax debits would be able to rapidly recover tax; not so, new businesses or corporate groups formed only for the purposes of a particular project.

Upstream oil and gas is generally conducted by corporations working together as part of a JV. Section 4 of the VAT Law and ss.15 and 15.1 of its Regulatory Decree No.692/1998 provide that the JV itself is responsible for VAT payments rather than its individual constituents.

There are different positions for the treatment of tax credits accumulated during the exploration activity:

i. the monthly transfer of the tax credit from the operator of the JV to the partners, by notes of assignment of expenses;
ii. transmission to partners when returning the area; and
iii. tax credits cannot be transferred to shareholders, the JV must bear that cost.

It is noted that is a common practice in the industry for JV's to assign the corresponding tax credit to companies that are parties to the JV's through notes of assignment of expenses, which reflect the proportion to their interest in the project, i.e. assuming the position stated in (i) above.

Furthermore, tax credits accumulated during the production activity are also usually transferred from the operator of the JV to the companies' parties through notes of assignment of production, which reflect the amount of hydrocarbons corresponding to each member in proportion to their interest in the total production extracted. The total amount expressed is the amount corresponding to the VAT apportioned to each part.

Currently, there are no relevant administrative or judicial precedents which may prevent the use of notes of assignment to transfer tax credit from JV's to the partners. Moreover, it has been accepted in certain non-binding opinions issued by the FTA[16] and other federal authorities.

Minimum presumed income tax (MPIT)

MPIT is levied on the value of assets of companies located in Argentina and abroad at the end of each fiscal year. The term "assets" includes acquired or manufactured goods, movable assets, real estate, inventories, credits and bank deposits. The effective tax rate is 1 per cent and the taxable base is represented by the value of the assets in excess of AR$ 200,000. Companies whose total assets value is less than AR$ 200,000 (two hundred thousand Argentine Pesos) are not levied.

The income tax paid in a given fiscal year can be offset against the resulting MPIT of the same fiscal year. If the income tax exceeds the MPIT, the excess is not refundable to the taxpayer. If the MPIT exceeds the income tax, the excess can be carried forward to the following ten fiscal years to be offset against the income tax.

On the contrary, if as a consequence of the fact that the income tax computable as payment on account of the tax under analysis is not sufficient, the payment of the MPIT is applicable in a given fiscal year, the MPIT paid will be allowed to be computed as a payment.

Section 12(b) of the MPIT law establishes what will not be included in the tax base: "… the value of first use depreciable property, except automobiles, in the year of acquisition or investment, and the next …" (subpara.(a)) and "… the value of investments in the construction of new buildings or improvements … in the year in which the total investment is made or, if partial, and the next …".

Income on personal assets

Foreign individuals or companies which hold stock in Argentine entities must pay an annual tax of 0.5 per cent of the value of the stock.

This tax must be paid by Argentine companies in their capacity as substitute taxpayers and will be considered a single and final payment. Companies will be allowed to request the reimbursement of the amount paid on behalf of the shareholders.

Tax on bank debits and credits

This tax applies to: (i) all credits and debits made in any bank account, whatever their nature may be, opened with Argentine financial entities; (ii) all transactions carried out by Argentine financial entities, the beneficiaries of which do not use bank accounts, irrespective of the type of transaction; and (iii) all own or third party funds movements, even in cash, that any individual or entity makes on its own account or on account and/or in the name of a third party, by any means. These types of movements are those made through organised payment systems that substitute the use of bank accounts.

The general tax rate is 0.6 per cent for credits and 0.6 per cent for debits. In the cases set forth in (ii) and (iii) above, the rate is 1.2 per cent, except for certain specific cases. Thirty-four per cent (17 per cent if the tax rate is 1.2 per cent instead of 0.6 per cent) of the tax on credits can be considered as a credit against the income tax and/or minimum presumed income tax and the rest is deductible for income tax purposes.

[16] In this regard, FTA Opinion No.56/08 (DAT), May 30, 2008, and, as therein quoted, a Memorandum of the National Tax Directorate.

Export duties

Duties of taxes on the export of oil were introduced in February 2002.[17] Initially this export duty was fixed at a rate of 25 per cent. In August 2004, the Ministry of Economy issued Resolution No.532/2004, which established an additional rate to the export duty when the price of West Texas Intermediate (WTI) barrel was more than US $32.

However, by means of Resolution No.394/2007, the Ministry of Economy repealed Resolution No.532/2004 and modified the export duties. Resolution No.394/2007 now provides that when the international price equals or exceeds the reference value indicated in the Resolution for those hydrocarbons, the export duties shall be determined on the basis of the following formula:

$$d = \frac{Pi - VC}{VC} \%100$$

d: export duty, Pi = international price and VC = cut off value.

Please note that if the international price falls below the reference value indicated in the above mentioned resolution, a 45 per cent rate applies.

Regarding gas, Resolution No.127/2008 of the Ministry of Economy increased export duties applicable to natural gas to 100 per cent, mandating a valuation basis for the calculation of the duty as the highest price established in any contract of any Argentine importer for the import of gas.

Royalties

Sections 59 and 62 of the Hydrocarbons Law provide that concessionaires must pay to the Federal Government a monthly royalty on the value of the hydrocarbons extracted at a rate of 12 per cent. The government may reduce this to a 5 per cent rate, taking into account productivity, condition and the location of wells.

The Hydrocarbons Law included royalties in the chapter of taxes, which led to varied opinions on how it would apply. On the one hand, it has been argued that it is inappropriate to consider the royalty as a tax burden. On the other hand, treating the royalty as a tax leads to different consequences regarding the statute of limitations and the application of specific constitutional principles in taxation.

In the case of "Provincia de Neuquén c/ Capex SA",[18] the Supreme Court concluded that the royalty was not a tax. Thus, in Recital 3 (second paragraph) of the judgment, the court assimilates the royalty to a share of the proceeds from the activity. The court justified its position by reference to the following:

i. the possibility of payment in kind is an alternative treatment absent on general taxes;
ii. s.59 gives the Federal Government the power to change and to set the royalty rate "taking into account productivity, conditions and location of wells" extrinsic criteria to any strict definition of tax in respect to the mode of their calculation; and
iii. s.80(b) allows the termination of the concession if there is a failure to pay royalties beyond three consecutive months (the so-called protection status of the territory), and according to s.3 of the Decree No.1671/69, the concessionaire may request a

[17] Decree No.310 (*Official Gazette* of February 14, 2002), Decree No.809 (*Official Gazette* of May 13, 2002), Decree No.645 (*Official Gazette* of May 26, 2004) and its complementary and amendments.
[18] *Provincia de Neuquén c/ Capex SA, Fallos* 330:2470, December 11, 2007.

reduction in the percentage of royalties on the grounds that the production is not economically exploitable because of the quantity and/or quality of the oil.

The court found that these circumstances showed that the legislator intended to proscribe measures that followed conventions, which were unrelated to taxes.

On another controversial issue, it should be noted that the Federal Energy Administration has been designated by s.97 of Hydrocarbons Law as the implementing authority. Thus, the obligation to pay royalties is to the Federal Government, notwithstanding that it is a provincial resource. Provinces are not entitled to claim the royalty payments or even to make estimates or assessments of the amounts payable.

Finally, no royalties should be levied on the oil used by the permittees or concessionaires on the needs of exploration or exploitation.

V. Tax treatment-provincial level

At the provincial level, the activity is affected by the following taxes:

(a) gross receipt tax; and
(b) stamp tax.

In accordance with the Supreme Court decision in *Apache Energy Argentina SRL* (Fallos 332:640, above mentioned), the provinces must comply with the provisions of the Federal Hydrocarbons Agreement, which confirms s.56(a) of the Hydrocarbons Law, by which they are not entitled to burden permittees or concessionaires with new taxes or increase existing ones, except the remuneration rates for services and contributions for improvements or general tax increases.

Gross receipt tax

This provincial tax is levied on the gross income arising from primary activities, manufacturing activities, business and services carried out within the respective provincial jurisdictions. In general, no deductions are allowed over the taxable base, except for the amounts corresponding to: (i) refunds, rebates and discounts; (ii) bad debts; (iii) packages and goods returned by the purchaser; and (iv) VAT debits. This tax can be deducted for the purpose of assessing income tax.

Each province has the authority to set the rate it considers appropriate. On "extraction" of hydrocarbons activity, in general, the tax rates range from 1.5–3.5 per cent. If activities take place in two or more jurisdictions, it is necessary to follow the Multilateral Tax-Sharing Agreement (Convenio Multilateral) to apportion the corresponding revenue to each relevant jurisdiction. Expenses incurred in a given jurisdiction must also be considered for assessing the tax, even when no income is obtained in such jurisdiction.

The problems that can arise with respect to this tax-sharing agreement are on the distribution of the taxable basis when the activity is carried out in more than one jurisdiction (e.g. extraction and commercialisation dissociated into two different jurisdictions) and on the determination of the coefficients for this purpose. But this is not a problematic of E&P activity in particular, but overall of this tax.

Stamp tax

This tax is imposed on instruments or documents that evidence acts or a business made for consideration in the Argentine provinces or the City of Buenos Aires. The existence of the document itself is the taxable event and not the fulfillment of the transaction stated in it.

The tax rate depends on the act instrumented and the province where it is performed or has effects. In general, tax rates range between 0.5 per cent and 3 per cent.

It should be highlighted that this tax can be lawfully avoided through the execution of agreements under an offer letter accepted by performance.

VI. Tax treatment-municipal level

At the municipal level, in general, the commercial, industrial or services activities within the municipal jurisdiction are affected by remuneration rates for services, with the Health and Safety Fee being the most onerous.

The rates and rules that govern them are local, so they may vary according to the legislation of each jurisdiction. The rate for Health and Safety Fee is usually about 0.5 per cent to 2.5 per cent of the gross income arising from the activity.

In general, these fees cannot be deducted except for the amounts corresponding to: (i) refunds, rebates and discounts; (ii) bad debts; (iii) packages and goods returned by the purchaser; and (iv) VAT debits, among others.

For upstream oil and gas exploration and production activity in particular, some municipalities have special rates, such as "fees derived from the evaluation and inspection of environmental impact of hydrocarbon activities". This fee is generally a fixed amount, which should be in accordance with the service provided, and may vary according to the jurisdiction.

VII. Current market developments—oil and gas upstream in Argentina after YPF's expropriation

In 2012, through Law No.26,741, the Argentine Government expropriated 51 per cent of YPF's shares that were owned by Spanish based multinational Repsol, taking back the control of the mayor hydrocarbon producer of Argentina in order to achieve the hydrocarbons self-sufficiency, a matter of national public interest and a priority of the state.

After a series of negotiations on March 27, 2014 the Argentine Government and Repsol reached an agreement on the payment of the compensation for the expropriation. The agreement establishes compensation of US $5 billion in public bonds. The agreement has already been approved by the Argentine Congress, by the issuance of Law No.26,932, published in the *Federal Official Gazette* on April 28, 2014.

So, the market changes resulting from YPF's expropriation provides opportunities in all levels of the oil and gas sector. At the top end, the market is being re-shaped, with new opportunities for multinational companies to get a greater foothold in the sector. There also appears to be substantial opportunities for juniors and service providers to explore and develop new areas, and to subcontract services which may revive the whole sector.

There is a clear aim of boosting E&P in Vaca Muerta's significant shale oil and gas field, with the door open for foreign investors to partner with YPF and help develop these resources.

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