Transfer of technology

Licencing and Transfer of Technology in Argentina

I. Introduction

The licencing and transfer of technology regime in Argentina is governed by law Nbr. 22.426 as amended by decree Nbr. 1852/93 and its implementing regulations decree Nbr. 580/81.

II. Scope of the law

All agreements signed between a licensor domiciled abroad and a licensee domiciled in Argentina which have effect in the last country – Argentina- and in which the main or incidental objective is the transfer, assignment or licensing of technology or trademarks from abroad for a valuable compensation, fall under the scope of the law (art. 1).

The law understands by “technology” all patentable inventions, industrial models and designs and every other technical knowledge for the manufacturing of a product or the rendering of a service (implementing regulations, art. 1).

III. Registration of agreements

Transfer of technology agreements must be filed by with the National Institute of Industrial Property (INPI) for information purposes only (art. 2 and 3).

It is important to point out that the INPI has no opinion to issue in connection with these agreements. The authorities must limit themselves to register them whatever their contents are. Consequently there is no limitation concerning the amount of royalties which can be paid, period of life of the agreements,
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classes limiting exports of the licensee or excluding the licensor’s product liability, submission to foreign jurisdictions, etc.

However the terms and conditions of the agreements must be adjusted to normal market practices between independent parties. Otherwise the agreements may be objected by the tax authorities and considered that the payment of royalties constitutes a disguised profit which will be subject to the tax treatment of such (income tax law art. 14).

Any of the parties may file the agreement with the INPI for registration (implementing regulations, art. 2).

For that purpose three copies of the agreement must be filed with the authorities together with a sworn statement containing the following information: name and domicile of the parties, licensor’s participation in the share capital of the licensee, description of the technology and trademarks which are licensed or transferred, number of employees of the licensee and estimated payments which shall be made under the agreement.

If the agreement is made in a foreign language, a translation made by a public translator must be filed as well.

No presentation with the INPI requires that the signatures be certified nor legalized nor that the copies of the agreements be certified by a notary public (imp. reg., art. 5).

IV. Effects of filing

Agreements which are not filed with the authorities will be valid and enforceable but the licensee will not be able to deduct as an expense the royalties paid for income tax purposes and the total amount of the royalties will be considered a taxable income of the licensor and subject to a 29.7 % income tax withholding established by articles 92 and 93 of the income tax law version 1998 (art. 9).

On the contrary if the agreements are filed with the INPI, the payments of the licensee will be deductible for income tax
purposes and only a portion of the payment will be considered an income taxable in the country:

a) in agreements dealing with technical assistance, consulting an engineering services which are not obtainable in Argentina in the opinion of the INPI, only 60% of the valuable compensation will be considered net income subject to a 35% withholding. Consequently, the effective tax will be 21% on the gross;

b) in all other transfer of technology agreements (sale of license of patents, trademarks, industrial models and designs and know-how) 80% of the payments will be considered net income subject to the 35% income tax withholding. In this case the effective rate will be 28% on the gross.

Argentina has signed double taxation agreements (DTA) with three neighbor countries (Bolivia, Brazil and Chile) and several European countries (Austria, Belgium, Finland, Denmark, United Kingdom, Spain, France, Italy, Sweden, Germany, Netherlands and Canada).

All the DTA signed with the European countries provide for lower tax withholdings on royalties paid to residents of those countries, than those established by the income tax law:

a) Under the DTA signed with Denmark, Belgium, Sweden, Canada, Spain, Netherlands and the United Kingdom the withholding tax may not exceed:

(i) 3 % for royalties paid for the use or license of news;

(ii) 5 % for intellectual property;

(iii) 10 % for patents, trademarks, know-how, technical assistance; and

(iv) 15 % in every other case.

b) Under the DTA signed with Finland:
(i) 3 % for license of news when the beneficiary is a news agency;

(ii) 5 % for intellectual property when the beneficiary is the author or his successor, otherwise the withholding may reach up to 15 %; and

(iii) 10 % for patents, trademarks, know-how and technical assistance.

c) DTAs signed with Austria and Germany: 15 %; and
d) DTA with Italy and France: 18 %.

V. Transference of royalties

There is no limitation for the payment of royalties abroad under transfer of technology agreements. Such payments may be freely made by the licensee by purchasing foreign exchange in the foreign exchange market.

VI. Conclusions

The transfer of technology rules have demonstrated to be flexible enough to allow a fluent flow of technology into Argentina with a minimum State intervention. This state intervention is limited to supervise that by means of technology transfer agreements executed between parent companies and subsidiaries, profits are not paid disguised as royalties which benefit from a lower taxation.

The technology transfer has also been benefited by the stability of the law which has been in force since 1981 with only minor amendments.