

# Taxation and Investment in Argentina 2015

Reach, relevance and reliability



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# 1.0 Investment climate

## 1.1 Business environment

Argentina has a presidential system, checked by a bicameral congress. The federal government consists of an executive branch (president), the legislative branch (congress), which consists of the house of representatives and the senate and the judicial branch. Provincial level governments are similarly organized.

Argentina is a member of the Mercosur (Southern Common Market) trade agreement, along with Brazil, Paraguay, Uruguay and Venezuela (with Chile, Bolivia, Colombia, Ecuador and Peru as associate members that do not enjoy full voting rights or full access to the markets of the full members). The agreement, which sets out the basis for a common market among the member states, aims to promote the free movement of goods, services and people by eliminating obstacles to regional trade. The trade of goods originating in, and proceeding from, Mercosur countries is not subject to import duties and a common external tariff has been established for most tariff classification items. The preferential import tariffs within Mercosur countries have helped to boost trade between the two major partners, Argentina and Brazil. Most of Argentina's exports are to Mercosur countries, followed by the EU, the US and Asia. Argentina's main imports are industrial inputs, capital goods, parts and food.

Argentina also is a member of the Latin American Integration Association (LAIA or ALADI in Spanish), which includes all countries in South America, as well as Mexico. LAIA aims to create a common market for the member countries through progressive tariff reductions and to encourage free trade.

The country is richly endowed with natural resources. The most important industries are those related to agribusiness, food and beverages, chemicals, petrochemicals and motor vehicles. The government has created incentive regimes to develop other areas, such as software, biotechnology, biofuel production and mining.

### Price controls

The government controls prices in some sectors, such as urban transport; local telephone services; electricity, water and gas distribution at the retail level; and tolls on highways and rivers.

### Intellectual property

The Transfer of Technology Law 22,426 governs agreements relating to the transfer, assignment or licensing of technology or trademarks. The law defines technology to include patents, industrial models and designs and any technical knowledge applicable to manufacturing a product or rendering a service.

Law 25,859, which covers patents, also protects a patent holder by preventing third parties from using the holder's patented procedure. The law validates international research and technical examinations made by certain international patent offices. Patents are granted for 20 years from the date of publication. The owner of a patent has the right to prevent third parties from using, offering or selling the patent without his/her consent.

The registry of trademarks at the National Trademark Registry Agency establishes the right to the exclusive use or exploitation of a trademark for 10 years, which may be renewed indefinitely for additional 10-year periods.

Article 17 of the Constitution protects intellectual property. Law 11,723 on Intellectual Property provides copyright protection. Infringement of industrial property rights is a criminal offense. A foreign licensor or its local licensee may institute legal procedures.

## 1.2 Currency

The currency in Argentina is the Argentine Peso (ARS).

### 1.3 Banking and financing

Banks increasingly are funding their operations through deposit-taking, rather than through other financing options. Most deposits are short-term (the minimum term generally is 30 days).

Argentina's financial center is the capital, Buenos Aires.

### 1.4 Foreign investment

Foreign companies may invest in Argentina on an equal footing with domestic firms without prior government approval. Foreign investors have the same rights and obligations as domestic investors and may enter any area of economic activity without a local partner. Approval or special procedures generally are not required. However, if the investment of a foreign company consists of an equity holding in an Argentine company, the foreign company must be registered with the Superintendency of Corporations in the jurisdiction in which the Argentine company is located. The government also has adopted a tougher stance toward some new foreign companies, for example, by requiring that such firms provide information to the government about their shareholders.

Investments may be made in the form of capital assets, intangible assets, foreign currency, profits from other investments and any other form accepted by the Argentine authorities.

### 1.5 Tax incentives

Tax incentives are available for certain activities, such as mining, forestry, software production, biotechnology and biofuel production; incentives also are offered at the provincial level.

A preferential regime is available to legal entities incorporated in Argentina that primarily are active in the software industry, with the benefit granted upon the approval of the competent authority.

Benefits include the following:

- Tax stability for all national taxes during the term of the promotion (until 31 December 2019);
- Treating software design, development and production as industrial activities so that such activities may benefit from other incentives offered to industrial companies;
- A nonrefundable tax credit for up to 70% of the employer's social security contributions that may be set off against federal taxes (with certain limitations);
- Tax relief of 60% of income tax due in each fiscal year; and
- An exemption from VAT withholding or additional withholding.

There is a tax-free zone (Tierra del Fuego) with special incentives for certain activities. There are a number of free trade zones where goods generally are not subject to the ordinary customs controls and in general no duties or taxes are levied on goods entering and leaving the country (exported).

### 1.6 Exchange controls

Argentina operates a complex foreign exchange control regime. The transfer of funds into and out of the country must be carried out in accordance with central bank regulations. Restrictions are imposed on inbound and outbound investment and on interest and other amounts payable in foreign exchange. It may be necessary to provide documentation or obtain authorization from the central bank, and 30% of certain inbound loans may be frozen for one year as a legal reserve deposit (i.e. a portion of the incoming funds will be held in a nonremunerated bank account). Loans granted for investments in fixed assets and inventory are exempt from the reserve requirements (although minimum terms are required). Dividends may be paid without prior approval out of profits recognized on an audited financial statement. Capital contributions can enter Argentina without restriction, but may not be repatriated without central bank authorization. Prior authorization from the tax authorities is required to purchase foreign currency.

Prior authorization from the central bank is required for payments made for professional services, computing services, patents, trademarks, technology transfers to foreign related entities (as defined by the central bank), payments made to entities in noncooperative jurisdictions (as defined by the income tax regulations) and payments to bank accounts in noncooperative jurisdictions

where the payments exceed USD 100,000 within a calendar year. Documentation related to the payment must be furnished to the bank making the transfer.

## 2.0 Setting up a business

### 2.1 Principal forms of business entity

The main types of legal entity available for carrying on commercial activities in Argentina are the corporation (*sociedad anónima* or SA) and the limited liability company (*sociedad de responsabilidad limitada* or SRL). Businesses also may be established as sole proprietorships, general partnerships and cooperatives.

A foreign entity generally has three options for carrying out business in Argentina: (1) incorporate an SA or SRL; (2) acquire a participation in an existing Argentine company; or (3) set up a branch office in Argentina.

SAs and SRLs generally are regulated by Corporate Law 19,550, and most SAs also are regulated by resolutions issued by the Superintendency of Corporations. Public companies are subject to regulations issued by the National Securities Commission.

Operating costs of an SRL are lower than in an SA. From a tax perspective, both SAs and SRLs are taxed at the corporate rate of 35%.

#### Formalities for setting up a company

The procedure for setting up a new firm is simple. The name of the company is first vetted by the Superintendency of Corporations to ensure that no other company has the same name. This involves submitting a simple form with the firm name and type of organization. Registration takes place when the new company submits its notarized contract, along with the remaining documentation required by the Superintendency of Corporations.

Foreign companies interested in incorporating local companies or in having interests in local companies must be registered with the relevant Superintendency of Corporations. A foreign company doing business in Argentina must present its balance sheet to the government and show the assets it has in each country in which the company operates.

#### Forms of entity

##### Requirements for an SA

The SA is the legal entity most commonly used by businesses.

**Capital:** A minimum capital of at least ARS 100,000 is required. The level of an SA's capital stock must be appropriate for the achievement of the corporate purpose, and the Superintendency of Corporations may request that an SA set an amount of capital higher than the minimum. If cash is paid in consideration for the capital stock, at least 25% of the capital must be paid in at the time of incorporation, with the remaining amount being paid in within the following two years. If the consideration is other than cash, subscriptions must be fully paid in.

**Shareholders:** A minimum of two shareholders is required. The corporate law does not set minimum or maximum amounts of capital or percentages that an individual must own in a company or corporation to be considered a shareholder. However, in Buenos Aires City, the maximum participation allowed to one shareholder currently is around 95% of the capital stock, with the remaining 5% required to be owned by at least one other shareholder.

Shareholders can be domestic or foreign companies, or individuals of any nationality or residence. Shareholder liability is limited to full payment of the stock subscribed by each shareholder.

A new Civil and Commercial Code that will come into effect on 1 August 2015 will make some changes to the corporate law, including the introduction of an SA with a sole shareholder.

**Board of directors:** For most SAs, the board may be comprised of only one director, although three board members are required for certain corporations (i.e. where capital exceeding ARS 10 million is publicly held and in the case of public utilities).

There are no nationality requirements for directors and they need not be shareholders. However, special rules apply regarding the actual domicile of the directors. The board must appoint a

president. An absolute majority of the board constitutes a sufficient quorum. Special requirements apply to public companies.

**Management:** The board of directors is responsible for the management of the business of an SA. The shareholders are the governing body.

**Types of fees:** Fees and related expenses for registration of a local company are around USD 5,000, and some provinces may impose a stamp tax of up to 1% upon registration.

**Types of shares:** Capital stock is represented by shares. Shares must be nominative and nonendorsable and may be represented by certificates. The issuance and ownership of noncertificate shares arises from records in the company's share registry book.

**Control:** Unless all of the capital stock is represented at a shareholder meeting and all resolutions are adopted by unanimous vote, a meeting should be called by means of publication of a notice (in the official gazette five days before the meeting and, in specific cases, in a national newspaper at least 10 days (but no more than 30 days) before the meeting).

Shareholders' meetings may be ordinary or extraordinary, depending on the issues to be addressed.

Shareholders representing the majority of the voting shares must attend ordinary meetings. Decisions are made by a majority of the votes of those in attendance. An initial extraordinary meeting must have a quorum of 60% of the votes of those present; a second meeting requires a quorum of 30%.

**Labor:** There is no requirement that labor be represented on the board or in the management.

### Requirements for an LLC (SRL)

The SRL is one of the most commonly used legal structures, after the SA.

**Partners:** There must be at least two and no more than 50 partners (with the Superintendency of Corporations applying the same 95% maximum limit on the ownership of capital by a single partner that applies to an SA). Partners can be domestic or foreign companies or individuals (but may not be domestic corporations) and no nationality or residence requirements apply. The liability of a partner is limited to full payment of the equity participation subscribed by the partner.

**Capital:** There is no minimum capital requirement. As in the case of an SA, however, the Superintendency of Corporations requires the capital to be appropriate for the SRL's purpose and may request that an SRL set a higher amount of capital than that decided on by the partners. The capital must be subscribed in full and 25% must be paid in at the time of incorporation, with the balance paid in within two years. Contributions of capital other than cash must be fully paid in at the time of incorporation.

**Management:** Management duties are carried out by one or more managers, acting individually or jointly, as set forth in the articles of incorporation. Managers are not subject to nationality requirements. If the managers act jointly or there is only one manager, an absolute majority of all the managers appointed by the partners must reside in Argentina. Managers need not be partners.

**Partner meetings:** Company resolutions are adopted as set forth in the bylaws of incorporation. If a sole partner represents the majority vote, amendments to the bylaws require the vote of another partner.

**Labor:** There is no requirement that labor be represented on the board or in the management.

### Branch of a foreign corporation

A foreign company may set up a branch in Argentina.

A branch must be registered with the Registry of Companies. An application for branch registration must be made in Spanish, must be notarized and filed locally and must include the articles of incorporation and bylaws of the head office and a copy of the resolution setting up the Argentine branch. There generally is no need for a branch to have a specific amount of capital. The branch must be managed by a legal representative authorized to operate the branch. The branch must keep accounts separate from those of its head office and must file annual financial statements with the Superintendency of Corporations. Different requirements apply to branches in Buenos Aires City.

Foreign corporations usually operate in Argentina through a separately incorporated subsidiary, rather than a branch, primarily to minimize potential legal liability. If a branch is sued, all of the foreign corporation's assets, not just its domestic assets, may be subject to liability. In contrast, if a subsidiary is sued, the foreign corporation's liability generally would be limited to the assets owned by the subsidiary.

## **2.2 Regulation of business**

### **Mergers and acquisitions**

The government generally supports mergers and acquisitions that promote efficiency, provided the results are not monopolistic (although the government has allowed transactions that clearly resulted in monopolies). All mergers and acquisitions involving companies with domestic revenue in excess of ARS 200 million require authorization by the National Antitrust Commission. Reports of the intended transaction must be presented to the commission. However, this law does not apply to foreign firms that have had no previous presence in Argentina.

### **Monopolies and restraint of trade**

Antitrust law prohibits acts related to the production or exchange of goods and services that limit, restrict, falsify or distort competition or access to the market, or that constitute abuse of a dominant position in a market that may damage the general economic interest. Prohibited practices include:

- Fixing, determining or manipulating prices;
- Exchanging information to fix or manipulate prices;
- Limiting or controlling the technical development, production or distribution of goods or services;
- Establishing conditions of sale, minimum quantities, discounts or other marketing rules;
- Conditioning contracts on the acceptance of services or supplementary purchases that are not normally connected with such contracts;
- Impeding market access of competitors;
- Refusing, without commercial reason, to fulfill orders contracted under current market conditions;
- Imposing, without commercial reason, discriminatory specifications as to the sale or purchase of goods or services;
- Conditioning the sale of goods on the purchase of other goods or the use of a service, or conditioning the provision of a service on the use of other services or the purchase of goods;
- Making a purchase or sale conditional on not using, purchasing, selling or supplying goods or services submitted in existing market conditions;
- Suspending the provision of a dominant monopolistic service in the market to a provider of public services or of services that are in the public interest;
- Dividing zones, customers, markets or suppliers among competitors;
- Agreeing or coordinating public bids; and
- Selling or providing services at below production cost without commercial justification, in order to harm competitors.

The National Antitrust Commission is responsible for ruling on monopoly issues and has broad investigative powers. The commission can initiate investigation proceedings ex officio or at the request of any party or entity, and may impose conditions and issue cease and desist orders as a preventive measure at any stage of the process. The commission's decisions are subject to judicial review.

## 2.3 Accounting, filing and auditing requirements

### Accounting standards

Accounting standards are developed by a national professional body, the Argentine Federation of Professional Council in Economic Sciences (FACPCE). These standards, known as “technical resolutions,” are adopted with minor changes by government regulatory bodies, such as the National Securities Commission or the Corporate Inspection Department (regulators for private companies in the 24 jurisdictions or provinces). The central bank and the National Insurance Superintendency supplement the professional accounting standards with rules designed specifically for entities under their control. Certain rules of these two regulators may give rise to material departures from the accounting standards.

The professional accounting standards are based mainly on a 1998 IFRS ruling, thus giving rise to many differences from current IFRS (including the fact that local accounting principles do not provide for the use of a functional currency or a revaluation model for property, plant and equipment, intangible assets and investment property).

FACPCE issued a technical resolution in 2009-2010 fully adopting IFRS for financial years beginning on or after 1 January 2012 (IFRS was optional for financial years beginning 1 January 2011) for public companies whose shares or bonds are quoted in local capital markets (except for banks and financial institutions, insurance companies and other entities subject to special government regulations, including cooperatives). This represents full adoption of the international standards, with the same effective dates applying as are determined by the IASB for each standard or interpretation. Private companies can elect to adopt full IFRS, IFRS for small and medium-sized enterprises or local professional accounting standards as of the same dates.

### Auditing requirements

Annual financial statements and an auditor’s opinion must be submitted. Local auditing standards are established in a technical resolution issued by the FACPCE and are aligned with the International Auditing Standards issued by the International Federation of Accountants (IFAC), but there are certain differences. Annual statutory financial statements must be prepared on the basis of IFRS as from FY 2014 and must be audited by applying the full International Standards on Auditing, and interim financial statements must be prepared under IFRS and be reviewed by applying the International Standards on Review Engagements. In other cases, international standards may be used for audits, reviews, other assurance engagements and related services.

### Filing requirements

Public companies must file interim and annual financial statements, respectively, with the National Securities Commission and the Buenos Aires stock exchange. The quarterly and annual filing must include consolidated and separate financial statements (the latter being those with legal status for purposes of making corporate decisions) allowing comparison with the previous year or period. Financial statements include the statements and supplementary information required by IFRS. If the parent company is a public company, the financial statements of companies under the control, joint control or significant influence of the parent company should be filed with the financial statements of the parent company.

A “summary of financial information” also must be attached to the quarterly and annual statements; this document includes a summary of comparative financial statements (five periods), certain defined financial ratios and general comments on the operations for the period and the business perspectives of the board of directors. Annual filings include the board of directors’ report to the shareholders, with an annex concerning certain aspects of corporate governance.

A private company files its annual financial statements with the Corporate Inspection Department of the relevant jurisdiction. The filing includes consolidated and separate financial statements (the latter being those with legal status for purposes of making corporate decisions) allowing comparison with the previous year or period. Financial statements include a statement of the financial position, a statement of income, a statement of the evolution of shareholders’ equity and a statement of cash flow, as well as supplementary information in the form of notes and schedules, prepared on the basis of local accounting standards (which require, in general, fewer disclosures than IFRS). In addition to filing with the Corporate Inspection Department, banks, financial institutions and insurance companies must file quarterly financial statements with the central bank

and the National Insurance Superintendency, respectively, in accordance with the relevant regulations.

## 3.0 Business taxation

### 3.1 Overview

Taxes are levied at three levels in Argentina: the federal, provincial and municipal levels. The federal tax system is based on the following main taxes: income tax, payroll tax, value added tax (VAT), withholding tax, import and export taxes, the tax on financial transactions and net worth tax. An annual tax on presumed income may be levied. The provinces and the city of Buenos Aires levy property, sales and stamp taxes.

Various incentives are available (see 1.5 above).

Taxes are administered and collected by the Federal Administration of Public Revenue.

Argentina has a small tax treaty network.

The Argentine constitution provides that the federal government (National Congress) shares its legislative powers to tax with the provincial legislatures and with the legislature of the City of Buenos Aires. The power to impose taxes on imports and exports is vested solely with the National Congress.

Argentina does not have a "tax code;" instead, the various categories of taxes are governed by separate laws that are supplemented by regulations issued by the executive branch of the government.

Argentina Quick Facts for Companies	
Corporate income tax rate	35%
Branch tax rate	35%
Capital gains tax rate	35%
Presumed income tax	1%
Basis	Worldwide income
Participation exemption	No
<b>Loss relief</b>	
- Carryforward	5 years
- Carryback	No
Double taxation relief	Ordinary credit
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	Yes
Tax year	Fiscal year
Advance payment of tax	Yes
Return due date	15th day of the 5th month following the fiscal year
<b>Withholding tax</b>	
- Dividends	10%/35%
- Interest	15.05%/35%
- Royalties	12.25%/17.5%/21%/28%/31.5%
- Branch remittance tax	10%/35% (branch profits are treated as dividends)

Capital tax	No
Financial transactions tax	0.6% per transaction
Net wealth tax	0.5% annually
Social security contributions	23%/27% of payroll
Real estate tax	Varies
VAT	21%

### 3.2 Residence

A company is resident in Argentina if it is incorporated in Argentina. A branch of a foreign company also is deemed to be tax resident.

### 3.3 Taxable income and rates

Argentine residents are subject to tax on worldwide income, with a tax credit granted for tax paid abroad on foreign income. Nonresidents without a permanent establishment in Argentina pay tax only on Argentine-source income; tax usually is levied in the form of a final withholding tax at various rates depending on the type of income. Corporations, limited liability companies and branches generally are taxed in the same way.

The corporate income tax rate is 35%.

An annual tax on minimum presumed income is applied at a rate of 1% on the assets of Argentine tax residents, including shareholdings in foreign companies (but not resident companies); taxpayers carrying on certain activities (e.g. banking and insurance) are subject to a reduced rate. The minimum tax—levied at the federal level—is imposed only where its amount exceeds the taxpayer's income tax liability. Any minimum tax payable is creditable against the excess of income tax over minimum tax in the following 10 years.

#### Taxable income defined

Taxable income is the difference between income or gains derived by the taxpayer and the expenses incurred to obtain the income and keep and retain its source. All income and gains are subject to corporate income tax, unless specifically exempted.

Dividends received by an Argentine company from another Argentine company are exempt from income tax, while dividends received from a foreign company are subject to tax, with a credit granted for the underlying corporate tax paid on the profits out of which the dividends are paid, as well as a credit for any withholding tax suffered on the dividends.

#### Deductions

All expenses incurred in obtaining and preserving taxable income may be deducted. In addition to regular business expenses, deductible items include taxes paid (except for income tax and net worth tax), arm's length payments made to foreign affiliates, director's fees, employee salaries and donations of up to a maximum of 5% of taxable income. Interest payments may be deducted unless the thin capitalization rules apply, and the deduction of trademark and patent payments to foreign beneficiaries is limited to 80% of the total amount paid. Other limits on certain expenses may exist (vehicles, entertainment, etc.). All deductions are subject to review by the tax authorities.

#### Depreciation

Annual depreciation rates range from 2% to 33%, calculated on a straight-line basis. The usual rates are 2% for buildings; 10% for machinery and equipment; and 20% for tools and vehicles (with a cap for vehicles). Intangible assets without a definite life (such as goodwill or brands) may not be amortized for income tax purposes.

#### Reserves

Reserves, except reserves for bad or doubtful debts, generally are not deductible.

## Losses

Net operating losses may be carried forward for up to five years. The carryback of losses is not permitted. Certain losses (i.e. foreign-source losses or losses incurred on the sale of shares) may be set off only against profits of the same kind.

### 3.4 Capital gains taxation

Most capital gains are included in taxable income and taxed at the normal corporate income tax rate. Gains derived from the sale of shares by an Argentine entity are subject to income tax. As from 23 September 2013, gains derived by a nonresident from the sale of shares of an Argentine corporation or other participation in the capital of an Argentine entity are subject to a 15% tax. The seller has the option to calculate tax on 90% of the gross proceeds, or on the entire gross proceeds less expenses incurred in deriving the gains. No distinction is made between short- and long-term gains.

### 3.5 Double taxation relief

#### Unilateral relief

A foreign tax credit can be claimed for foreign tax paid, up to the Argentine tax liability computed with respect to the foreign-source income concerned. The credit is granted on an overall rather than a per-country basis. Withholding taxes suffered are creditable, as is underlying direct and underlying tax paid at lower tiers (subject to certain conditions).

#### Tax treaties

Argentina has a relatively small tax treaty network and its treaties do not always follow the OECD model treaty. Argentina has exchange of information agreements with nontreaty countries as part of the G20 initiative.

To obtain benefits under a treaty, a certificate of residence is required; the Argentine authorities have a special certificate that must be used.

Argentina Tax Treaty Network			
Australia	Canada	Germany	Russia
Belgium	Denmark	Italy	Spain
Bolivia	Finland	Netherlands	Sweden
Brazil	France	Norway	United Kingdom

### 3.6 Anti-avoidance rules

#### Transfer pricing

Transfer pricing rules apply when transactions are entered into with foreign affiliates, entities in tax havens and foreign entities with an economic link. Under Argentina's transfer pricing rules, transactions between related resident affiliates must be at arm's length. Five transfer pricing methodologies are authorized: (1) comparable uncontrolled price method, (2) cost-plus method, (3) resale price method, (4) profit split method and (5) transactional profit margin method. A "sixth" method, which is a variation of the comparable uncontrolled price method, must be used in certain circumstances and for certain products, mainly commodities.

Argentina imposes transfer pricing documentation requirements. The tax authorities may request information on transactions with affiliated companies if their arm's length nature is not sufficiently documented.

Advance pricing agreements are not available.

#### Thin capitalization

Argentina's thin capitalization rules operate to deny an interest deduction if a company's debt-to-equity ratio exceeds 2:1 and interest is paid to a controlling financial institution or, in general, to an

entity resident in a tax treaty country. The excess interest is recharacterized as a dividend payment.

### **Controlled foreign companies**

The CFC rules require resident shareholders to include in their taxable income passive income derived by a company resident in “noncooperative country” in which they have a direct or indirect participation, in certain cases. The following income is considered passive income: dividends, interest (unless obtained commercially, for example, where the subsidiary is a bank), royalties, rent from real property (unless the property is commercially exploited) and gains from the sale of shares, participations and bonds, as well as transactions involving derivatives and similar financial instruments (unless entered into for hedging purposes).

The CFC regime applies only to passive income that comprises at least 50% of the income of the foreign company concerned. The passive income of the CFC to be included in the taxable income of an Argentine shareholder is that derived by the CFC in the CFC's fiscal year ending in the fiscal year of the Argentine shareholder. Current taxation will not apply if at least 50% of the profits of the foreign company are related to active income. Foreign partnerships and branches are taxed on an accrual basis.

The Argentine tax authorities have issued a list of countries that are considered “cooperative” for tax transparency purposes. Any country or jurisdiction not included on the list of cooperative countries is deemed to be a noncooperative country and is subject to all tax provisions that apply to low or no-tax jurisdictions.

### **General anti-avoidance rule**

Argentina's tax procedure law includes an economic reality principle as a general anti-avoidance rule, under which the tax authorities can look to the actual economic transaction and disregard the legal form and structure used by the taxpayer.

## **3.7 Administration**

### **Tax year**

The tax year is the fiscal year, which normally ends on 31 December, although a legal entity may set the end of its fiscal year at any time during the calendar year provided the fiscal year covers a consecutive 12-month period.

### **Filing and payment**

Argentine companies must submit a tax return based on the information included in the financial statements. The net taxable income is assessed according to the law. The net income on the financial statements is subject to adjustments set forth in the law. The accounting records of subsidiaries and branches of foreign persons must be submitted separately from their parent companies or head offices, and make any necessary amendments to determine the Argentine tax result.

Companies must make 10 advance payments of income tax during the year, with the first installment, equal to 25% of the previous year's income tax liability, due in the sixth month after the start of the company's fiscal year. The other nine installments each must be equal to 8.33% of the previous year's income tax liability.

The income tax return must be filed electronically by the 15th day of the fifth month after the end of the company's fiscal year.

### **Consolidated returns**

Argentina does not allow the filing of consolidated returns; each company must file a separate return, and there are no provisions for relief of group losses.

### **Statute of limitations**

The general statute of limitations is six years, counted from 1 January of the year immediately following the year the tax return was due. Exceptionally, statute of limitations periods still running as of 31 December 2008 are extended for an additional year (i.e. to six rather than five years). The

same rules apply for both assessment and collection purposes. The one year extension also applies for periods still running as of 31 May 2013 according to Law N°26.860.

### **Tax authorities**

At the federal level, the Federal Administration of Public Revenue (AFIP) reports to the Ministry of Economy and Public Finance.

The AFIP is responsible for the levy and collection of federal taxes, such as the income tax, VAT, minimum presumed income tax, personal assets tax, etc.

Taxes at the provincial level are collected and administered by the provincial revenue agencies working under the relevant provincial ministries of economy. The main provincial taxes are gross income tax (or turnover tax), stamp tax and real estate tax.

The municipalities raise revenue through rates and special contributions.

### **Rulings**

Argentina does not have a ruling system, but there is a binding consultation system that requires certain conditions to be fulfilled.

## **3.8 Other taxes on business**

See section 5.8, below, for the tax on financial transactions.

## 4.0 Withholding taxes

### 4.1 Dividends

Dividends paid to nonresidents are subject to a 10% withholding tax. There is an additional withholding tax that applies only if dividends exceed the payer company's accumulated taxable income, after certain adjustments. If applicable, the withholding tax rate is 35%.

### 4.2 Interest

The general withholding tax on interest is 35%. However, this rate is reduced to 15.05% if:

- The borrower is a financial institution;
- The lender is a bank or financial institution not located in a noncooperative country;
- The interest relates to certain bonds that are registered in countries that have concluded an investment protection agreement with Argentina; or
- The transaction involves the financing by a seller of depreciable movable property

### 4.3 Royalties and technical service fees

Royalty payments made to a nonresident author for the exploitation of a copyright in Argentina are subject to a final withholding tax of 35% on 35% of the gross payment (effective rate of 12.25%), provided the work concerned is registered with the National Copyright Bureau and certain other conditions are satisfied.

Patent royalties and fees for technical assistance, engineering or consulting services paid to a nonresident are subject to a final withholding tax of 35% on a prescribed percentage of the gross payment, which varies depending on the type of payment. Patent royalties paid to a nonresident are subject to a final withholding tax of 28% of the gross payment (35% x 80%) if the agreement under which the royalties are paid is registered by the National Institute of Industrial Technology (INTI). If these conditions are not satisfied, the effective rate on the royalties is 31.5% (35% x 90%). Fees for technical assistance, engineering or consulting services paid to a nonresident are subject to a final withholding tax of 21% of the gross payment (35% x 60%) if the agreement under which the fees are paid is registered by the INTI and the services cannot be obtained in Argentina. If these conditions are not satisfied, the effective rate is again 31.5% (35% x 90%).

Film and television royalties are subject to a final withholding tax of 35% on 50% of the gross payment, resulting in an effective rate of 17.5%.

### 4.4 Branch remittance tax

Argentina does not levy a branch profits tax. Profits distributions are treated as dividends and are subject to the same tax treatment.

### 4.5 Wage tax/social security contributions

There is no payroll tax in Argentina.

The social security system is financed with funds generated by an employer contribution of 17% or 21% of payroll (without a cap and based on the size and activities of the employer) and an employee contribution of 14% of salary (up to a monthly cap).

The health care scheme is financed with funds generated by an employer contribution of 6% of payroll (without a monthly cap) and an employee contribution of 3% of salary (up to a monthly cap).

Self-employed individuals must make their own monthly contribution consisting of a fixed amount.

## 5.0 Indirect taxes

### 5.1 Value added tax

VAT is levied on the sale of personal property located or placed within Argentina, construction and other contracts and services performed or rendered within the country, and on the import of personal property and services rendered abroad, but economically used in Argentina.

The general VAT rate is 21%, although an increased rate of 27% applies to some services, such as the supply of certain communications services, power, natural gas and water. A reduced rate of 10.5% applies to capital goods and other specific items. Exports of goods and services are zero-rated.

A business entity or an individual that makes taxable supplies of goods or services in Argentina is considered a VAT taxpayer. Except for small operations, entities that engage in taxable activities must be registered for VAT purposes.

VAT returns must be submitted monthly between the 18th and the 22nd of the month following the month concerned. In the case of imports, the VAT is computed and paid with the custom duties.

### 5.2 Capital tax

Argentina does not levy capital duty.

### 5.3 Real estate tax

The provincial governments levy real property tax on urban and rural land, with the rate depending on the jurisdiction. The tax base for the real property tax generally is the fiscal value of the property determined by the applicable authority.

### 5.4 Transfer tax

Argentina does not levy a transfer tax.

### 5.5 Stamp duty

Stamp tax is levied on the formal execution of public and private instruments. Documents subject to stamp tax include all types of contracts, notarial deeds, receipted invoices confirmed by a debtor, promissory notes and negotiable instruments.

The rate is 1%, but there are exceptions, such as for real estate sales, where the rate ranges from 2.5% to as high as 4%. Stamp tax may be paid by means of fiscal stamps, a stamping meter or on the tax return.

Each province has its own stamp tax law that applies within its territory. There are some instances of double taxation for which no legal remedy exists.

In Buenos Aires City, the general stamp tax rate is 1%. The rate is higher for the transfer of title to real property in certain cases.

### 5.6 Customs and excise duties

Argentina imposes export duties, the amount of which depends on the nature of the goods exported (commodities are, in general, subject to export duties and manufactured products are, in most cases, subject to reduced rates). The importation of goods is subject to import duties, with special exemptions for certain capital goods.

Excise taxes are levied on certain products (e.g. fuel, luxury items, cigarettes and certain beverages).

Importation is subject to prior authorization before the purchase order is made. Applications for authorization must be filed through a specific access point on the tax authorities' website (DJAI). Certain services and intangibles paid abroad are subject to similar requirements (DJAS).

## **5.7 Environmental taxes**

There are no federal environmental taxes. Some provinces have created special assessments with respect to specific activities.

## **5.8 Other taxes**

### **Sales tax and municipal assessments**

Sales taxes are levied at the provincial level, in Buenos Aires City and in some municipalities, generally at a rate of 4% on gross revenue. Higher rates may be imposed on certain services in some provinces; industrial activities usually are exempt or subject to lower rates.

Municipalities impose assessments for services provided; in certain cases, these are calculated by applying the same taxable base as for sales tax purposes.

### **Financial transactions tax**

The tax on financial transactions is levied on debits and credits in current accounts at a rate of 0.6% per transaction. Of the amount levied on credits, 0.2 percentage points may be taken as an advance payment of income tax or minimum presumed income tax, resulting in an effective rate of 0.4%, and, therefore, 1% on a complete collection/payment cycle. There are some exemptions.

### **Net wealth/net worth tax**

An asset tax of 0.5% is applied to any equity interests in a company organized in Argentina and owned by either resident individuals or nonresidents. The Argentine company is responsible for the payment and has the right to be reimbursed by the owners for the tax paid.

## 6.0 Taxes on individuals

Individuals are subject to income tax, wealth tax and social security contributions.

Argentina Quick Facts for Individuals	
Income tax rates	9%-35% (residents), 24.5% (nonresidents)
Capital gains tax rates	0%/15%
Basis	Worldwide income
Double taxation relief	Ordinary credit
Tax year	Calendar year
Advance payment	Yes
Return due date	April/May
Withholding tax	
- Dividends	10%/35%
- Interest	15.05%/35%
- Royalties	12.25%/17.5%/21%/28%/31.5%
Net wealth tax	0.5%-1.25%
Social security	17% cap
Inheritance tax	No federal tax, but two provinces levy tax
Real estate tax	Varies
VAT	21%

### 6.1 Residence

The following individuals generally are considered Argentine residents:

- Argentine individuals, whether native or naturalized, but excluding those who have lost "permanent resident" status for income tax purposes either because they have acquired permanent residence status for immigration purposes in another country or because they have resided abroad for a continuous period of 12 months. Short trips to Argentina do not interrupt the 12-month continuous period if, cumulatively, the trips do not exceed 90 days in a 12-month period.
- Foreign individuals who have been granted a permanent residence visa or individuals with a temporary visa who have remained in Argentina for more than six months. Temporary absences will be disregarded to the extent they do not cumulatively exceed 90 days in a 12-month period. (Foreign individuals with a temporary visa, as well as accompanying relatives, who are required to remain in Argentina by reason of their employment for a period not exceeding five years are not considered Argentine residents for tax purposes.)
- Under certain circumstances, individuals who, having lost their permanent residence in Argentina or acquired permanent residence elsewhere, re-enter Argentina with the intention of residing there permanently.

### 6.2 Taxable income and rates

Argentine residents pay tax on their worldwide income; nonresidents pay tax only on their Argentine-source income.

## Taxable income

Employment income, including most employment benefits, is taxable, as is income derived from the carrying on of a business or profession. Rental and interest income is also subject to tax. Most Argentine-source financial income is exempt (e.g. interest on time deposits in local banks, interest from bonds, etc.). Dividends and other profits distributed by Argentine entities are subject to a 10% tax, and gains derived by Argentine resident individuals from the sale of shares, bonds and other securities not listed on a stock exchange or authorized for public offering, in both cases according to the National Securities Commission, are subject to income tax at a 15% rate.

A foreign individual with an employment contract for up to five years is taxed only on Argentine-source income, provided the individual holds a temporary visa.

## Deductions and reliefs

A number of personal allowances may be deducted in computing taxable income (e.g. a special employee deduction, an additional deduction for a spouse or child, etc.), but certain requirements must be met. Subject to restrictions, deductions are granted for, among other things, medical expenses, medicare, certain donations, mortgage interest, retirement annuities and the cost of domestic help.

## Rates

Rates are progressive, ranging from 9% to 35%. In addition, professionals working in the country for no more than six months during the year are subject to a single and final income tax withholding of 24.5%.

## 6.3 Inheritance and gift tax

Argentina does not levy an inheritance or a gift tax, although the Buenos Aires and Entre Rios provinces have introduced such a tax.

## 6.4 Net wealth tax

The worldwide assets of individuals domiciled in Argentina held as of 31 December each year are subject to the personal assets tax to the extent the aggregate value of such assets exceeds ARS 305,000. Deposits in local banks and public bonds are exempt.

The net wealth tax rates are as follows:

- 0.5% for amounts over ARS 305,000 up to ARS 750,000;
- 0.75% for amounts over ARS 750,000 up to ARS 2 million;
- 1% for amounts over ARS 2 million up to ARS 5 million; and
- 1.25% on amounts over ARS 5 million.

With respect to holdings of shares in an Argentine company, however, the issuer deducts a final withholding tax at the rate of 0.5%.

Foreign individuals coming to Argentina for employment purposes for a period not exceeding five years are not considered domiciled in Argentina and, thus, are taxed only on their Argentine assets. Argentine and foreign individuals domiciled abroad are subject to personal assets tax only on their Argentine assets. Payments are made through a substitute taxpayer.

## 6.5 Real property tax

The provincial governments levy a real property tax on urban and rural land, with the rate depending on the jurisdiction. The tax base for the real property tax generally is the fiscal value of the property determined by the applicable authority.

## 6.6 Social security contributions

The social security system is financed with funds generated by an employer contribution of 17% or 21% of payroll (without a cap and based on the size and activities of the employer) and an employee contribution of 14% of salary (up to a monthly cap).

The health care scheme is financed with funds generated by an employer contribution of 6% of payroll (without a monthly cap) and an employee contribution of 3% of salary (up to a monthly cap).

Self-employed individuals must make their own monthly contributions consisting of a fixed amount.

## **6.7 Other taxes**

There are no other taxes on individuals.

## **6.8 Compliance**

The tax year for individuals is the calendar year.

Each individual must file a return; joint returns are not permitted.

Individuals who derive only employment income (that does not exceed ARS 144,000 annually) are not required to file an income tax return to the extent tax was withheld at source by the employer. Individuals with other types of income must make five prepayments at bimonthly intervals beginning in June of the tax year. Final payments of tax are made when the tax return is submitted (on an annual basis) in April or May of the year following the year in which the income was derived.

Foreign taxpayers are not required to file tax returns if their income tax liability is fully satisfied by tax withheld on their income from Argentine sources.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

Argentina's Labor Law governs labor-management relations, although there are other laws and agreements relating to employee rights and remuneration, such as the Labor Union Law and the Labor Risk Law and collective bargaining agreements.

### Working hours

The normal work week is eight hours per day on weekdays and five hours on Saturday, i.e. a total of 45 hours per week. The work week may not exceed 48 hours. Night shifts (between 9 pm and 6 am) may not exceed eight hours, but this restriction does not apply to employees working a "swing" shift (i.e. afternoon/evening shift). The schedule for employees engaged in "unhealthy" work (as determined by the Ministry of Labor, Employment and Social Security) may not exceed six hours per day or 36 hours per week.

Overtime is compensated at a 50% premium for work on weekdays and Saturday mornings, and a 100% premium for work after 1 pm on Saturdays and on Sundays and holidays. Overtime may not exceed 30 hours per month or 200 hours per year.

## 7.2 Wages and benefits

There are two types of minimum salary: minimum adjustable salary and salary under a trade union agreement.

The minimum adjustable salary is the lowest remuneration an employee receives in cash (excluding family allowances) for normal work hours to ensure he/she is able to meet basic needs (e.g. food, housing, education, clothing, healthcare, transport, entertainment, holidays and pension benefits). The minimum amount, established periodically by the government, is ARD 4,716 for employees who work a full day. Actual salaries, however, are higher.

A salary under a trade union agreement is the minimum salary for the worker's job description, and the amount established cannot be changed by either party. Collective labor agreements establish realistic minimum salary tables, which generally are used.

Aside from the minimum salary, an employee and an employer can freely agree to a higher salary. The law and collective bargaining agreements are the only limits on the parties' freedom to agree on salary amounts.

### Social benefits

Social benefits are designed to improve the quality of an employee's life or that of his/her family (e.g. the refunding of medical expenses). These benefits have a nonremunerative nature and, therefore, are not subject to social security taxes, even though they are subject to income tax. They also cannot be considered in the calculation of benefits that are remunerative in nature (e.g. annual complementary salary, vacations, paid leave, etc.).

### Accident insurance

Argentina operates an industrial accident and illness scheme that mandates compulsory insurance run by private insurance companies, which cover workman's compensation and work-related illnesses.

### Other benefits

Employees are given an extra month of salary as an annual bonus that must be paid in two installments in June and December. The bonus is calculated as 50% of the highest monthly salary received in the previous six months of employment.

Paid vacation is set at 14 days annually for employees with up to five years of service, 21 days for employees with five to 10 years of service, 28 days for employees with 10-20 years of service and 35 days for employees with more than 20 years of service.

Paid sick leave is required by law. Leave of up to three months is allowed for employees with fewer than 10 years of service, and of up to six months for employees with more than 10 years of service. Allowable sick leave is doubled for employees with dependents. In the event of a protracted illness, an employee's job must be held open for 12 months, beginning after three to six months of illness, based on the employee's number of years of service. Maternity leave of three months is paid by the Social Security Authority. Mothers have the right to extend their leave by another three-month period without salary and may not be fired for one year after giving birth.

### **7.3 Termination of employment**

During the trial employment period, employers may lay off an employee without compensation, provided 15 days' notice is given. Companies must pay all employee contributions and benefits during the trial period.

In the case of redundancies, employees who have worked for an employer for more than five years must be given two months' notice. One month's notice is sufficient for employees with less than five years of employment. Employers may opt to provide payment in lieu of advance notice equal to the salary for either one or two months. Severance pay is calculated on the basis of one month of salary per year worked.

Employees are entitled to compensation for work-related accidents.

Laid-off workers are entitled to one month's salary for each year of service, but the base salary for calculation is limited to a maximum of three basic salaries. To this amount, employers must add a proportionate share of the annual bonus and any remaining vacation days. Companies normally pay all the amounts and sign an agreement with the employee concerned to avoid future legal issues.

### **7.4 Labor-management relations**

The General Confederation of Labor is the main employee organization, with some three million members. The Argentine Workers Central represents about 600,000 workers, mainly in the public sector. The level of unionization is nearly 30%.

### **7.5 Employment of foreigners**

There are no restrictions on the employment of foreigners, provided they hold the appropriate visas. To enter into an employment contract in Argentina, a foreign individual must have a certificate of permanent residence or a certificate of temporary residence issued by the national immigration authority. It is also necessary to comply with the national social security contribution system. In the case of fixed term assignments, and in order to avoid double social security taxation, the local company may request a social security exemption. To obtain a social security exemption, the company must fulfill certain legal requirements or must apply for a reciprocal agreement between Argentina and the employee's country of origin. Argentina has signed reciprocal social security agreements with Mercosur (the economic community comprising Brazil, Uruguay and Paraguay, in addition to Argentina), Chile, Greece, Italy, Portugal, Spain, Slovenia, France, Peru and Portugal. These reciprocal agreements are also social security totalization agreements.

## 8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

### Connect to the source and discover:

**A database that allows users to view and compare tax information for 65 jurisdictions that includes –**

- Corporate income tax rates;
- Historical corporate rates;
- Domestic withholding tax rates;
- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Information on holding company and transfer pricing regimes.

**Guides and Highlights** – Deloitte’s Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

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## 9.0 Office locations

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