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Worldwide Business Tax Guide, Argentina, [ARG ¶1-010] FORMS OF DOING BUSINESS IN ARGENTINA

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(a) Overview

The most common business forms in Argentina are:

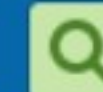
- joint stock corporations (SA)
- simplified joint stock corporations (SAS)
- limited liability companies (SRL)
- partnerships
- sole proprietorships
- branches of a foreign entity
- joint ventures, and
- trusts.

The most common business entity used by resident businesses in Argentina is the SA.

Other less common business entities include collaboration groups, corporations with the majority of shares owned by the government, temporary associations, public and private mixed companies.

(b) Joint stock corporations (SA)

Formation and governance



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(a) Business registration

Newly Argentine formed businesses must register at the Public Register of Commerce (Registro Público de Comercio) at the General Inspectorate of Justice (Inspección General de Justicia). Companies located outside the federal capital must register with the Public Register of Commerce maintained by the local Commercial Court.

Certain industries need a special licence to do business in Argentina, including financial institutions, mining companies and telecommunication companies.

Ref: CL Art 5; Law N° 21526, 14 February 1977, [23602] BO 21 February 1977; Law N° 24498, 14 June 1995, [28188] BO 19 July 1995, 1; Law N° 19798, 22 August 1972, [22489] BO 23 August 1972

(b) Tax registration

Newly formed Argentine businesses and their individual directors or senior managers must obtain tax identification numbers (clave única de identificación tributaria or CUIT) from the Federal Administration of Public Revenue (Administración Federal de Ingresos Públicos (AFIP)). A business must register for state (local) turnover tax at the Dirección General de Rentas (DGR) in the state in which it is located.

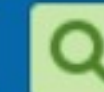
Ref: General Ruling N° 10/1997, 21 August 1997, [28715] BO 25 August 1997, 3

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Argentine corporate income tax liability is reflected in the Income Tax Law (Ley de Sociedades Comerciales (ITL)).

Argentina adopts the residence concept of taxation. A company is considered to be an Argentine resident when it has been established in accordance with the laws of Argentina. Companies that are residents of Argentina are subject to corporate income tax on their worldwide income. Companies that are not residents of Argentina are subject to corporate income tax only on their Argentine source income.

If an Argentine resident's foreign income also is subject to tax in a foreign country, Argentina allows a foreign tax credit to offset Argentine tax payable. The foreign tax credit is limited to the tax levied on the foreign income in Argentina. A taxpayer may carry over any excess credit for a maximum of five years (see [ARG ¶3-080](#)).

Ref: ITL Art 1, 168 and 178

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(a) Argentine corporate tax rate

The corporate income tax rate for resident and non-resident businesses for 2018, 2019 and 2020 is 30%. Before 1 January 2018, the corporate income tax rate had been 35% for more than 10 years. From fiscal years in progress as of 27 December 2016, gambling businesses are subject to corporate income tax at the rate of 41.5%.

Ref: ITL Art 69

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Developments

The corporate income tax rate will be reduced from 30% to 25% from 1 January 2021.

Ref: Tax Reform Law No 27,430 (Ley de reforma tributaria), 29 December 2017, Art 86

(b) Argentine personal progressive tax rates

The taxable income of trading partnerships, sole proprietorships, joint ventures and some types of trusts is subject to the personal progressive income tax rates. The following rates apply for 2019:

Taxable income (pesos)	Tax rate on this level of income
0–47,669	5%
47,669–95,338	2,383.46 pesos plus 9% of each peso over 47,669

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Worldwide Business Tax Guide, Argentina, [ARG ¶1-075] ANTI-AVOIDANCE AND REVENUE PROTECTION

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(a) General anti-avoidance rules

There are no general anti-avoidance rules (GAAR) under Argentine law. However, Argentine law permits the tax authorities to look to the "economic reality" of a transaction: they may disregard any transactions that have been undertaken principally in order to avoid tax.

Ref: TPL Art 47

(b) Dual resident companies

A company is considered to be an Argentine resident when it has been established in accordance with the laws of Argentina. The laws of another jurisdiction may define the residence of a company using different criteria, so for tax purposes a company may be dual-resident. Where a company has suffered foreign taxation, an applicable tax treaty will specify the method of credit or deduction from the Argentine tax liability. In the absence of a tax treaty, any foreign taxes levied on foreign income may be deducted as a credit (see [ARG ¶13-080](#)).

(c) Tax shelter disclosure rules

Argentina imposes restrictions on the deductibility of interest paid to a related party (see [ARG ¶11-220\(c\)](#)).

(d) Treaty shopping

Argentine legislation does not include specific anti-treaty shopping measures. Many tax treaties include "limitation on benefits" or residence clauses to prevent treaty shopping.

(e) Thin capitalisation rules

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(a) Self-assessment

Argentina's corporate income tax system operates by self-assessment. Taxpayers must submit tax returns annually.

Ref: TPL Art 11

(b) Audits

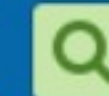
If a taxpayer does not file an annual return or files a return and incorrectly states the amount of tax due, the Argentine tax authority (AFIP) will make an assessment based on the taxpayer's available books and records or a presumed tax base. Additionally, the tax authorities audit taxpayers' accounts periodically and inspect the accounts and other commercial documentation that they consider relevant. In anticipation of a tax audit, taxpayers must retain supporting documentation of all operations and transactions for a period of 10 years. Audits may cover all issues in an entire tax year or only a specific issue. The tax authorities may also require additional information from third parties who have carried out commercial transactions with the business in question.

The statute of limitations for tax audits is five years. For social security taxes, the statute of limitations extends to 10 years. The statute of limitations also is extended to 10 years if the taxpayer is not registered; however, it is not increased in cases of fraud. The statute of limitations begins on 1 January in the year that follows the year of the due date for the tax return. For example, for income tax determined for 2019, if the due date for the tax return is in May 2020, then the five-year term begins on 1 January 2021. The statute of limitations begins to run even if the taxpayer fails to file a return.

The tax authority may impose fines and temporary suspensions (precautionary closing) of a company's activities during the five-year period beginning on 1 January of the year following the year in which the non-compliance occurs.

Ref: TPL Art 18, 35, 56 to 59

(c) Appeals



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(a) Currency controls

A single free exchange market controls all exchange transactions negotiated in Argentina. The central bank regulates exchange controls. The central bank has undertaken to maintain backing for the currency to be held in gold and freely available foreign currency.

Ref: Instruction (Central Bank) "B" 3712, 3 September 2002, [29989] BO 23 September 2002, 8; Instruction (Central Bank) "A" 3972, 30 June 2003, [30190] BO 14 July 2003, 10

(b) Restriction on inward investment

Prior approval from the central bank is required for foreign currency and international transactions.

Ref: Instruction (Central Bank) "B" 3712, 3 September 2002, [29989] BO 23 September 2002, 8; Instruction (Central Bank) "A" 3972, 30 June 2003, [30190] BO 14 July 2003, 10; Instruction (Central Bank) "A" 4643, 22 March 2007, [31139] BO 20 April 2007, 27; Instruction (Central Bank) "A" 4359, 10 June 2005, [30685] BO 30 June 2005, 21; Instruction (Central Bank) "A" 4360, 10 June 2005, [30698] BO 19 July 2005, 29

(c) Income

Payments for exported goods

Companies must deposit foreign currency received on export sales into the foreign currency exchange market according to the following methods as appropriate:

- free on board (FOB)

- cost, insurance, and freight (CIF)

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Worldwide Business Tax Guide, Argentina, [ARG ¶2-020] TRADING IN ARGENTINA

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Companies that are not residents of Argentina are subject to corporate income tax on their Argentine source profits. Generally, profits are considered to have an Argentine source when they arise from goods located in the country or the performance of any activity within the country's borders.

Ref: ITL Art 1 and 5

(a) Transfer of income to persons abroad

Asset transfers are deemed to occur at arm's length values and may give rise to tax on capital gains to the transferor. Argentine tax-free reorganisation provisions are applicable only to transactions between Argentine entities. There is no limitation on the availability of rollovers for the transfer of assets to non-residents.

Taxpayers may deduct payments made by an Argentine company to foreign affiliates if they can show that the amounts sent abroad are on arm's length terms and were made before the annual return filing deadline, provided that such payment is required to generate, preserve and maintain taxable profit. Additionally, supporting documentation must be available (agreements, invoices, etc) and transactions or operations must be registered with corresponding authorities when applicable (ie technical assistance agreement with the National Industrial Property Institute (Instituto Nacional de la Propiedad Industrial or INPI)). Furthermore, corresponding income tax withholding must have occurred.

Tax is withheld on fees and other remuneration to be paid abroad for services rendered in Argentina. These rates may be reduced by a tax treaty.

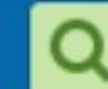
Ref: ITL Art 15, 17, 18, 40 and 93; Decree N° 1344, 19 November 1998, [29030] BO 25 November 1998, Art 151 and 152.

(b) Cash transfers

Cash transfers may be subject to withholding tax if they arise from taxable foreign income (see [ARG ¶2-050\(a\)](#)).

Ref: ITL Art 91 and 93

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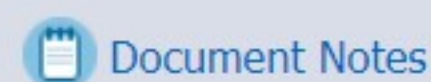
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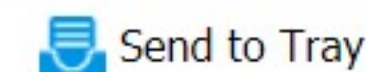
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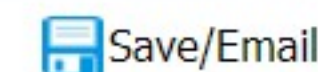
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In order to conduct business through a branch in Argentina, a foreign company must:

- prove its existence according to the laws of its home country
- create a domicile in Argentina and register in Argentina
- demonstrate its decision to have a branch in Argentina and appoint a branch legal representative, and
- submit an annual report to Argentina's General Inspectorate of Justice (Inspección General de Justicia) detailing the ultimate beneficial owner/s of the company.

To prove its existence according to the laws of its home country, a foreign company must file with the General Inspectorate of Justice (which is Argentina's corporations control authority) a copy of the minutes of the meeting of the board of directors held in the home country which recorded the decision to establish a branch in Argentina, duly apostilled, together with the designation of a legal representative residing in Argentina and a designated address.

A branch is considered a separate entity from its home office for tax purposes. A branch is subject to tax in Argentina on its worldwide income. The tax rate applicable to branches is the same as the tax rate that applies to Argentine companies (30%).

A registered branch of a non-resident corporation must appoint a legal representative to perform all acts its head office is authorised to perform. The legal representative is also responsible for the administration and representation of the branch and replaces the figure of a corporation board of directors president. Legal representatives must be individuals that are residents of Argentina. There is no requirement that a fiscal representative must have a permit once the branch correctly registers in Argentina.

Ref: CL 11, Art 118; ITL Art 69; Law N° 2637, 5 October 1889, R.N T. II, 795; General Ruling N° 9/2015, 22 October 2015, BO 28 October 2015

An Argentine branch's taxable trading profits are calculated on the same basis as those of an Argentine incorporated company. The branch must keep

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Worldwide Business Tax Guide, Argentina, [ARG ¶3-010] FOREIGN SOURCE INCOME

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Companies that are residents of Argentina are subject to corporate income tax on their worldwide income from all sources.

Ref: ITL, as amended by Law N° 24073, 8 Apr 1992, [27368] BO 13 April 1992 and implemented by Law N° 25063, 24 Dec 1998, [29053] BO 30 December 1998

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A resident of Argentina may deduct foreign source losses (foreign source revenue less foreign source expenses) incurred against Argentine corporate income tax, but only to the extent of foreign profits. Taxpayers may carry forward foreign source losses for offset against future foreign source profits for a period of five years (see [ARG ¶1-080\(a\)](#)).

EXAMPLE

Example

	Argentine source (pesos)	Foreign source (pesos)
Revenue	100,000	100,000
Expenses	(90,000)	(120,000)
Income/(loss)	10,000	(20,000)

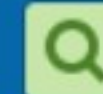
Income tax is payable at 30% on 10,000 pesos, and there is a foreign loss carry-forward of 20,000 pesos for offset against five years of future foreign income.

Foreign source capital losses can be set off only against losses of a similar nature.

Ref: ITL Art 134 and 135; Decree N° 2334, 20 December 2013, BO 07 February 2014

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Worldwide Business Tax Guide, Argentina, [ARG ¶3-060] CONTROLLED FOREIGN COMPANIES

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According to Argentine CFC rules, an Argentine resident's taxable income from a foreign PE is included in the annual period of the Argentine resident owner in which the foreign PE annual period ends. If the owners are individuals or undivided estates (Argentine residents), taxable income from a foreign PE is included in the fiscal year of the owners in which the foreign PE annual period ends.

The same rules apply for Argentine residents that are shareholders of stock companies located in low tax jurisdictions on taxable income originated in interest, dividends, royalties, rents or other similar passive income (eg income generated by real estate lease (non-habitual business including lease and administration of said assets); loans; shares, quotes or equity participation sales; financial or banking entities deposits; government securities and derivative agreements (non-risk coverage operations or formed by dividends or royalties)). Argentina does not tax these profits until their distribution if at least 50% of the profits of the low-tax jurisdiction are from active income (eg income from commercial activities, manufacturing, agriculture, mining activities, etc).

Ref: ITL Art 133; Decree N° 1344, 19 November 1998, [29030] BO 25 November 1998, 2, Art 165(VI).1 and 21.7

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A resident of Argentina that incurs foreign tax on income that also is subject to tax in Argentina may take a tax credit for the foreign tax due if no tax treaty addresses double taxation or the applicable tax treaty applies the credit method. The foreign tax credit is limited to the tax levied on the foreign income in Argentina. A taxpayer may carry over any excess credit for a maximum of five years.

EXAMPLE

Example

Argentine source income (not including foreign source):

$$10,000 \text{ pesos} \times 30\% = 3,000 \text{ pesos (tax)}$$

Net income (Argentine and foreign source):

$$12,000 \text{ pesos} \times 30\% = 3,600 \text{ pesos (tax)}$$

There is a tax variance of 700 pesos (due to foreign source income). If there is foreign source withholdings of 800 pesos, a tax credit of only 600 pesos is possible in the current fiscal year (tax variance originated in foreign source income). The remaining 200 pesos (800 pesos minus 600 pesos) can be carried over for the next five years to offset foreign source profits.

Ref: ITL Art 1 and 168 to 179

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