

Overview

Argentina has three tax jurisdictions that can be applicable to an Argentine branch or subsidiary: national, provincial and municipal. The taxes applicable in each jurisdiction will depend on the location of the activities and the assets of the Argentine branch or subsidiary.

National tax jurisdiction imposes corporate and personal income tax on its residents (including permanent establishments in Argentina) in respect of income earned anywhere in the world. National income tax is imposed under the Income Tax Act (ITA). Non-residents are only subject to taxation on Argentine-source income.

The ITA also imposes a withholding tax on non-residents who receive the payment of dividends, interest, royalties, technical assistance or financial advisory or management fees from Argentina. The withholding tax rate depends on the type of income.

The Argentine payer of any such amounts is liable for withholding and remitting this tax on behalf of the non-resident recipient. Argentina has entered into 21 double-taxation treaties, which will reduce or eliminate the withholding tax rate on such types of income. For example, the Argentina-Brazil Tax Convention of 1982 (updated 2018) reduces withholding tax on cross-border interest payments to 15% and reduces the rate on dividends to 15% or 10% depending on the percentage ownership interest.

Argentina is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and has agreed to adopt the minimum standards (principal purpose test and dispute resolution). The ratification process has not yet been completed.

In addition to income tax, a value-added tax (VAT) is levied at the federal level. This tax applies to the sale of goods located in Argentina, the provision of services and the importation of goods and services.

All of Argentina's provinces impose a revenue tax on the regular activity of commerce, industry, services or any other activity carried out within their jurisdictions (City of Buenos Aires, Province of Buenos Aires, etc.). The taxable base is the taxpayer's total gross revenue. The tax rate varies by provincial jurisdiction.

In addition, all provinces levy a stamp tax on public or private instruments executed in Argentina or, if executed abroad, to the extent that those instruments are deemed to have effects in one or more relevant jurisdictions within Argentina.

The stamp tax rate varies from jurisdiction to jurisdiction, but it generally amounts to 1% of the entire economic value of the agreement, except for the deeds of sale for any kind of property, which in general amount to between 2.0% and 4%.

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Legal system

Argentina and its provinces (including the municipalities) operate under a common law legal system.

While the ability to make certain laws is in the exclusive domain of the federal government, others are within the scope of provincial authority. For example, while the federal government has the authority to regulate foreign trade and impose duties on imports and exports, the provinces have the right to impose revenue tax and stamp tax.

Taxation authorities

The federal tax system in Argentina is administered by the Federal Administration of Public Revenues (AFIP). Each provincial and municipal jurisdiction administers and collects the taxes of its own jurisdiction.

Business vehicles

A non-resident may either establish an Argentine business vehicle to carry on business in Argentina or operate directly through a foreign entity (with or without an Argentine permanent establishment). Argentina business vehicles are corporations (limited liability or unlimited liability) and partnerships.

Partnerships

A partnership is generally treated as fiscally transparent for Argentine income tax purposes. Partnerships are required to file annual information returns. The resident partners, rather than the partnership itself, are subject to income tax under the ITA. However, partnerships have the option to file and pay income tax instead of their partners.

Any individual who is a non-resident partner will be treated as a foreign beneficiary and is subject to 35% withholding tax. Additionally, any entity that is a non-resident partner will be treated as a foreign company branch.

Corporations

Private corporations (SA), limited liability companies (SRL) and foreign company branches are the most common entities.

Corporations where shareholders are not liable for the corporation's debts have to be incorporated either federally and in any of the provinces or municipalities. The jurisdiction of incorporation does not impact on the corporation's federal income tax liability but it may vary the revenue tax liability since it depends on the different tax rates applicable by each province.

The establishment of an SA requires a capital of ARS 100,000. SRLs and foreign company branches have no minimum capital requirement, though an SRL must receive a nominal amount of capital according to the activities to be carried out and in order to issue quotas.

Foreign corporation (with or without an Argentine branch)

A foreign corporation that carries on business in Argentina is subject to tax under the ITA in respect of such income. Non-residents and foreign legal entities without a permanent establishment (PE) in Argentina are taxed only on income from Argentine sources.

Among other situations, the PE definition includes:

- i. A building site, construction, assembly or installation project, or supervisory activities in connection therewith, but only when the site, project or activities are developed in Argentina and last more than six months
- ii. The furnishing of services by a foreign resident, including consultancy services, directly or through employees or other personnel engaged by the enterprise for such purpose, but only if the activities continue in the country for a period or periods aggregating more than six months within any 12-month period
- iii. Persons acting in the country on behalf of a foreign legal entity, who have and habitually exercise authority to conclude contracts, or perform an influential role to conclude those contracts or assume business risks that correspond to the foreign entity

An entity will not be deemed to have a PE merely due to the business conducted in the country through brokers, commission agents or any other independent intermediary.

Certain activities that have a preparatory or auxiliary character are not included within the definition of PE.

Where the foreign corporation or individual is resident in a country with which Argentina has a double-taxation treaty pursuant to which the corporation may claim treaty benefits, the corporation will generally be exempt from Argentine income taxation on its business profits except to the extent that the profits were earned through a PE situated in Argentina.

To apply for the treaty benefits, the foreign corporation or individual must complete and sign a sworn affidavit informing his tax residence and the application of the treaty benefits, duly certified by the competent tax authority and apostilled.

A corporation that operates through an Argentine PE (such as a branch or local subsidiary) will be subject to Argentine income tax.

The ITA imposes a withholding tax of 31.5% on all payments made to non-residents in respect of services rendered in Argentina.

Financing a corporate subsidiary or a branch

Equity financing

Contributions for shares

Where an equity investment is made into an Argentine corporation in exchange for shares, the amount of the investment is added to the corporation's "stated capital" account. Subject to certain adjustments, a corporation's stated capital is generally the same as its paid-up capital for tax purposes.

Contributions without taking additional shares

Where an equity contribution is made by a shareholder to a federally incorporated company without the issuance of additional shares, the amount is added to the "contributed surplus" account of the corporation and not stated capital. The contributed surplus can be transferred to stated capital without incurring negative tax consequences.

Distributions of paid-up capital

A corporation (other than a public corporation) is permitted to make distributions of its paid-up capital to a non-resident shareholder without incurring Argentine withholding tax. In contrast, the ITA does not permit the tax-free distribution of contributed surplus that has not been converted into stated capital except where the contributed surplus is being distributed to a non-resident shareholder who is the same person who previously paid in the contributed surplus.

Debt financing

Withholding tax implications

Argentine corporations are permitted to borrow funds from related or third parties without tax implications. Furthermore, there are no Argentine tax implications on the repayment of the principal amount of such debt. Interest payments (other than participating interest) made by an Argentine resident corporation to a non-resident is subject to a withholding tax of 35%, which is reduced to 15.05% where (i) the borrower is a financial institution, (ii) the lender is

a bank or financial institution not located in a low- or no-tax jurisdiction, (iii) the transaction involves the financing by a seller of depreciable movable property (cars excluded). As previously mentioned, the withholding tax rate can be reduced under an applicable double-taxation treaty. For example, the Argentina-Brazil Tax Convention reduces the withholding tax rate to 15% on cross-border interest payments (other than participating interest).

Thin capitalization

Thin capitalization rules apply as a restriction on the deductibility of interest and foreign exchange losses arising from financial loans that are entered into between an Argentine corporation and related corporations (whether local or foreign). The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilized deduction capacity for three years.

The limit equals to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) or the amount of ARS 1 million, whichever is higher. The limit does not apply to interest paid to a non-resident that was subject to withholding tax, even when the provisions of a tax treaty (e.g., reduced withholding rates or exemptions) were applied.

Stamp tax

Argentina imposes a stamp tax on a private loan agreement in respect of debt or equity financing.

Stamp tax is a provincial tax levied on public or private instruments executed in Argentina or, if executed abroad, to the extent that those instruments are deemed to have effects in one or more relevant jurisdictions within Argentina.

The Argentine Supreme Court ruled that agreements entered into through written offers with a tacit acceptance or through separate documents are not subject to stamp tax.

Corporate income tax

Income tax rate

Local corporations are subject to the federal income tax at a rate of 30% for fiscal periods beginning on January 1, 2018, and at a rate of 25% for fiscal periods beginning on January 1, 2021.

Capital gains

An Argentine resident corporation, including an Argentine subsidiary of a foreign corporation must include all capital gains (referred to as “taxable capital gains”) in its taxable income. Taxable capital gains are taxed in the same manner as ordinary income.

A non-resident corporation is taxable on gains arising from the disposition of “taxable Argentine property,” other than gains exempted under an applicable double-taxation treaty. Taxable Argentine property includes all assets (e.g., a property located in Argentina). The withholding income tax is 17.5% of the transfer price or, at the option of the non-resident, 35% of the net actual income (income less its local deductible expenses).

Additionally, a non-resident (individual or corporation) is taxable on the gains arising from the disposition of shares of a foreign corporation, partnership units or interests in a trust or permanent establishment if, at any time during the 365 days preceding the disposition, they derived more than 30% of their fair market value from shares of Argentine corporations, partnership units or interests in a trust or permanent establishment or from any other asset located in Argentina and the disposal of shares represents at least the 10% of the equity of the foreign corporation at any time during the 365 days preceding the disposition.

The tax rate is 15% applicable on the portion of the disposal derived from Argentine participations or assets.

Branch tax

The federal income tax rate for a branch is equivalent to an Argentine subsidiary of a foreign corporation.

A branch of a non-resident corporation is subject to the federal income tax at a rate of 30% for fiscal periods beginning on January 1, 2018, and at a rate of 25% for fiscal periods beginning on January 1, 2021.

There is no additional branch profits tax. The ITA imposes a withholding tax applicable on the after-tax profits earned by a branch and distributed to the parent company (subject to the same treatment as dividends). The withholding income tax is of 7% for fiscal periods beginning on January 1, 2018, and 13% for fiscal periods beginning on January

1, 2021.

Computation of taxable income

Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be its revenues less its deductible expenditures.

Income tax is payable upon the net income earned during a given fiscal year. As a general rule, income is allocated to the fiscal year in which it accrues.

To determine Argentine income tax, transactions must be valued in Argentine currency. Consequently, fluctuations in foreign exchange rates may generate foreign exchange gains or losses.

The negative tax results (tax loss carry-forwards) can be computed in the following five fiscal years. The carryback of losses is not permitted.

Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. Additionally, the ITA includes the deduction of interests incurred for the purpose of earning income (subject to the thin capitalization rules discussed above) and depreciation expense of fixed assets (referred to as capital cost allowance).

Income tax reporting

Argentine resident individuals and corporations are required to file an annual corporate income tax return. Corporate tax returns must be filed within five months of the fiscal year-end of the corporation in order to avoid late filing penalties. Individuals must file their tax returns within six months of the calendar year-end. Advanced payments are required in respect of current-year taxes.

Cross-border payments

Transfer pricing

Argentina's transfer pricing treatment generally conforms to the arm's length principle of the Organisation for Economic Co-operation and Development (OECD).

Transfer pricing practices are considered to take place when an Argentine company enters into business transactions with (i) a related corporation located abroad, or (ii) a non-related corporation located in a low tax jurisdiction or that it qualifies as "non-cooperative" for tax transparency purposes.

Pursuant to the provisions relating to transfer pricing, any transactions between related companies or unrelated companies located in a low-tax jurisdiction or are qualified as "non-cooperative" are deemed not to be at arm's length, unless evidence to the contrary is provided.

Low-tax jurisdictions are those with a corporate income tax rate lower than 15%.

Non-cooperative jurisdictions include any country or jurisdiction that has not entered into an agreement for the exchange of information on tax matters or a convention to avoid double taxation, providing for the broad exchange of information, with Argentina. In addition, countries that have entered into any such agreement or convention but do not effectively comply with the exchange of information clause will also be considered non-cooperative countries or jurisdictions.

In order to establish that the terms of the transaction are equivalent to an arm's length transaction ("arm's length compliance"), an Argentine entity must submit special reports containing detailed data and supporting documentation.

Additionally, the transfer price analysis requires the issuance of an annual report opinion by an independent public accountant.

Withholding tax on passive income

Payments made by a resident of Argentina to a non-resident on certain types of passive income are subject to the following income tax rates:

- i. Dividends: 7% in respect of income obtained in the three-year period between January 1, 2018, and December 31, 2020, increasing to 13% as from January 1, 2021
- ii. Interest: 35%, which is reduced to 15.05% in certain cases (see point 5.2.1. above)
- iii. Royalties: 28% if the agreement under which the royalties are paid is registered with the National Institute of Industrial Property (INPI); if this condition is not met, the effective withholding rate is 31.5%
- iv. Technical service fees for assistance, engineering or consulting services: 21% if the agreement under which the fees are paid is registered with the INPI and the services cannot be obtained in Argentina; the effective rate is 28% if the agreement is registered with the INPI but the services can be obtained in Argentina, or 31.5 % if the agreement does not fall within the scope of the transfer of technology
- v. Advisory services, management fees or other services: 31.5%

Notwithstanding the above, the withholding tax rate may be reduced under an applicable double-taxation treaty.

Tax on credits and debits in bank accounts

This tax is levied upon debits and credits in bank accounts and upon other transactions which could be used in substitution for a bank account. Transfers and deliveries of funds also fall within the scope of this tax, regardless of the person or entity that performs them, when those transactions are made through organized systems of payment in substitution for bank accounts.

The general rate of the tax is 0.6% over each credit and debit transaction. The 33% of the tax over each credit and debit transaction can be computed as a credit for the income tax.

Payroll taxes

Argentine Social Security System

The Argentine Social Security System is financed with monthly employees' contributions (11% of salary), which the employer is liable to withhold, as well as with monthly employers' contributions (20.4% calculated upon employees' salaries for companies in commerce or services activities and 18% calculated upon employees' salaries for companies in other activities or small entities).

The employee's contributions have a cap which is currently of ARS 184,591.18 per month, which means that if the employee has a higher monthly salary (e.g., AR 200,000), the employer should not withhold beyond the mandatory cap. The employer's contributions have no limitations or caps.

Employment insurance health

Employment insurance health is financed by monthly employees' contributions (3% of the salary) which the employer is liable to withhold, as well as with monthly employers' contributions (6% of the salary)

The employee's contributions have a cap which is currently of ARS 184,591.18 per month, which means that if the employee has a higher monthly salary (e.g., AR 200,000), the employer should not withhold beyond the mandatory cap. The employer's contributions have no limitations or caps.

Indirect taxes

Value-added tax (VAT)

This federal tax applies to the sale of goods located in Argentina, the provision of services and the importation of goods.

Under certain circumstances, services rendered outside Argentina that are effectively used or exploited in Argentina (usually called "importation of services") are deemed rendered in Argentina, and are therefore subject to VAT.

VAT is paid at each stage of the production or distribution of goods or services upon the value added during each of

the stages.

The tax is levied on the difference between the so-called "tax debit," which is the tax levied on the sales, and the "tax credit," which is the tax levied on the purchases. This is because the VAT is intended to be a consumption tax, which is ultimately borne by the final consumer.

The difference between the "tax debit" and the "tax credit," if it is positive, constitutes the amount to be paid to the tax authority.

The present general rate for this tax is 21%. Sales and imports of capital goods are in some cases subject to a lower VAT rate of 10.5%.

The VAT affidavit is submitted on a monthly basis. The VAT credit that is not offset with VAT debit in the same fiscal period can be offset with VAT-debit in the following fiscal periods.

Revenue tax

This provincial tax is levied on the regular activity of commerce, industry, services or any other activity carried out within the respective jurisdiction (City of Buenos Aires, Province of Buenos Aires, etc.)

The taxable base is given by the total gross revenue. The tax rate depends on the activity and the jurisdiction, since each province applies its own tax rate.

The provinces and the City of Buenos Aires have entered into the Multilateral Agreement to prevent double taxation of activities performed in more than one jurisdiction. As an example, the tax rate is 3% on gross revenue for retail sales performed in Buenos Aires City. This tax rate increases to 5% for taxpayers with annual gross revenues higher than ARS 96,000,000 (roughly US\$1,400,000).

The revenue tax affidavit is submitted on a monthly basis.

Stamp tax on property transfer

The stamp tax is payable in all provinces on any acquisition of property. This stamp tax is paid equally by all parties, unless otherwise agreed to by the parties.

The stamp tax rate is 3.6% in the City of Buenos Aires. The tax base is the property transfer value or the fiscal value, whichever is the highest.

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