

Setting up your Business in Argentina

Issues to consider



Argentina is a place which has a lot of natural resources, qualified human resources and the synergies deriving from our commercial partnership with countries like Brazil, which make their country a good place to invest. In addition, there are sector motivators in certain specific areas of economy, as well as regional motivators which make the vast majority of the provinces count on supporting infrastructure to companies as "Industrial Parks" or "Duty Free Areas".

However there are a number of issues which you must consider when you are looking to set up your business in Argentina. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. All of them have statutory audit requirement. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Argentine operations
- If have a permanent establishment in Argentina then profits from this PE are liable to Argentine Corporation tax
- Must file **parent company accounts**, prepared under Argentine Company Law, at Companies House for public inspection, even if these are not made publically available overseas.
- Should show the existence of their headquarters abroad and credit they are effectively working abroad.
- Should register the Social Agreement of the Headquarters in the Public Registry of Commerce, appoint a Legal Representative and establish domicile within the Argentine Republic.
- Should there be any principal granted, such shall be registered before the Public Registry of Commerce.

Limited Company:

- Provides limited liability and ring-fencing to Argentine operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits
- Shareholders can either be individuals or entities, whether Argentinian or foreigner. Should shareholders be foreign partnerships, they shall submit their Statutes before the Public Registry of Commerce, appoint a Legal Representative and establish a social site within the country.

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- Minimum Principal: \$100,000 (USD 20000)

Limited Liability Partnership:

- Partners have limited liability.
- Its partners can be either individuals or companies, either Argentinian or foreigners, Should the partners be foreign partnerships, they shall submit their statutes before the Public Registry of Commerce, appoint Legal Representative and establish a social site within the country.
- No minimum principal required.

Joint Ventures:

- Temporary mergers of companies which aim at providing a concrete service or product within or outside the Argentine territory.
- Cooperation groups which aim at generating a mutual help among their members for the development of certain phases of a business, improve and/or increase the results of such.

How much Corporation Tax will the business pay?

Current Corporation Tax rates in Argentina are:

Tax rate (%)	Taxable profit (ARS)
Every Corporation domiciled in Argentina including LLCs	35% Taxable Income
	–

Companies or Enterprises domiciled in Argentina, including the branches of foreign companies, are liable to income tax on a worldwide basis regardless the source of the income or profit.

In the case of income obtained abroad, taxpayers may take a tax credit for similar taxes paid outside Argentina on their foreign business up to the limit of increase in tax liability caused by the inclusion of foreign-source income.

The tax is determined annually by the taxpayer through the filing of a tax return where the tax result is established according to the rules set by the corresponding legislation on taxable income (deductible expenses, inventory valuation methods etc.)

Non resident tax payers that operate temporarily in Argentina without setting up branches, affiliates, etc. will solely pay tax on their Argentine source-income. In this case the tax is



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withheld as a unique and definite payment by the one who makes the corresponding payment.

The exchange restrictions for certain transactions in foreign currency for transferring funds abroad and the floating exchange rate for the peso in relation to the US dollar implemented in 2002 used to impact the tax system.

Mauricio's Macri Government, which took office on December 10, 2015 set the elimination of the foreign exchange clamp as the main objective for their first days in office and began to dismantle foreign exchange and import controls after only seven days of taking office.

The foreign exchange unification took place after authorities negotiated a series of financial lines to increase liquid international reserves and short-term interest rates to raise the demand for Argentine pesos.

Natural persons are now authorized to purchase US dollars up to USD 2 million on a monthly basis without the AFIP's (tax authorities) authorization. For imports pending payment and dividends that could not be remitted abroad, companies will receive a bond in US dollars or may opt for an already defined payment schedule.

Promotional tax regimes:

- Promotional regime for the software industry was extended to 2019.
- Although with certain limitations in the case of new projects, companies established in this province enjoy a general exemption and important benefits in customs matters, based on a system established by Law N° 19640 and supplementary regulations.

During 2012, Argentina put an end to the provisional application of the Double Tax Treaty with Switzerland and has repudiated the treaties with Chile and Spain.

Nowadays there are new Tax Treaties signed with those three countries and so Argentina has in effect 17 treaties with to avoid double international taxation and thus promote reciprocal investment and trade.

What if we use Argentina to set up our holding company?

Corporations domiciled in Argentina –included Limited Partnerships- or branches of foreign business enterprises are taxed at 35% of their taxable income. The latter remittance of dividends and/or distribution of profit are not subject to any withholding nor are taxes burdened on its beneficiaries.

Nevertheless, for those cases that profit distributed exceeds the recorded profit in order to determine the tax, this excess is subject to a withholding of 35%, as unique definite payment.

Since September 2013, dividends or profits, in cash or in kind –except shares or membership interests- which are distributed by companies and branches are subject to a ten percent

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(10%) income tax rate, paid as a single one-time payment.

On 30 June 2016, Argentina's Congress approved a bill that would significantly change the pension system and establish new tax regimes and reforms, which may significantly affect individuals and companies doing business in Argentina. One of those changes is the elimination of the above mentioned 10% dividend withholding tax.

What if we make cross-border transactions among affiliated entities?

Argentina follows internationally recognized **Transfer Pricing** (TP) rules where cross-border trading and financial transactions among affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

The transfer pricing regulations governing intercompany transactions, which were introduced in income tax law by Law 25,063, as amended by Laws No. 25,239 and 25,784, adopt principles similar to those of the Organization for Economic Cooperation and Development ("OECD") pursuant to which companies must comply with the arm's length principle to determine the value of goods and services in their transactions with foreign related companies.

Transactions between related parties should be carried out at arm's length. This principle was included in the new transfer pricing rules introduced by the 1998 tax reform and was extended to transactions with companies located in low or no tax jurisdictions by the tax reform of October 2003.

The tax authorities will determine income by applying one of six methodologies:

- comparable uncontrolled price,
- resale price,
- cost plus,
- profit split,
- markup on total cost, and
- transactional net margin.

Payments to foreign affiliates or related parties and companies located in low or no tax jurisdictions that represent income of Argentine source are tax deductible, provided they are paid before the due date for filing the tax return and the corresponding withholding is paid to the tax authorities.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest

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on loans

A business will need to prepare a Transfer Pricing Report proving the arm’s length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm’s length basis.

What Employment Taxes and Social Security will need to be paid?

A person’s liability to Argentinean tax is determined by residence status. A person can be a resident, a non-resident with permanent presence, or a non-resident for Argentinean tax purposes (foreign beneficiary). Individuals are considered to be resident in Argentina for the following reasons:

- They are of Argentinean nationality, whether by birth or naturalization, except for those individuals who have lost their residence status; or
- They are foreign individuals who are not residents for immigration purposes but have spent more than 12 months in Argentina, or foreign individuals with permanent residence for immigration purposes, or those who have been in the country for more than 5 years.

The general rule is that people who are residents of Argentina are assessable on their worldwide income.

Current Personal Income Tax rates in Argentina are:

Band of income (\$)	Tax rate (%)
0 – 10.000	9
10.000 – 20.000	14
20.000 – 30.000	19
30.000 - 60.000	23
60.000 – 90.000	27
90.000 – 120.000	31
Over 120.000	35

Employers and employees also have to pay Argentinean social security, which is called “Sistema Unico de la Seguridad Social – SUSS -

Current Social Security rates are:

	Band of income (\$)	Rate (%)
Employer	Over 0	17 (I)
	Over 0	21 (II)
Employee	Over 0	17 (III)



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- (I) Employers for manufacturing, commercial, and service activities, invoicing less than ARS48 million a year
- (II) Commercial and service activities invoicing more than \$ 48.000.00 million a year.
- (III) Since March 2013, a monthly amount of \$ 24.473 is applicable to employee's contributions.

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Argentinean tax authorities.

Argentina has Reciprocal Agreements with Spain, Italy, France and many other countries when an overseas national of those countries is seconded to Argentina for a defined period of time and continues to pay social security in their home country, then the employer and employee are exempted from paying Argentinean social security.

What is Value Added Tax (VAT) and should the business be registered?

If a business has taxable activities in Argentina, it will be required to register and account for Argentine VAT. Under Argentine VAT legislation, it is not possible for a non-Argentine entity to register voluntarily in Argentina and act as an "Argentine established entity". VAT must be filled on a monthly basis.

There are three types of supply:

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Argentine VAT system

The supply of most types of goods and services in Argentina would be classed as Taxable supplies. However when these supplies are made to companies which are outside of the country, advice needs to be sought as to what rate of VAT, if any, to use.

Under the VAT system, tax is levied at each stage of the manufacturing and distribution process on a noncumulative basis. The accumulation of tax is avoided through the deduction of VAT invoiced to an entity by its suppliers of goods and services.

If at any period the credit for input VAT is higher than the amount of VAT due on output, said excess, can be credited against future VAT liabilities.

Other sales tax to be taken into account is the "Turnover tax" :

Each of the 24 jurisdictions into which Argentina is divided imposes a tax on gross revenues from the sale of goods and services.

Exports of goods are exempt from this tax. Rates are determined locally by each Provincial government being the rate a 5% average.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff. This kind of benefits are allowed by Argentine laws, however there

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are a small number of approved option plans in the country.

It is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Argentina.

How else can we compensate our employees?

Argentina has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Argentine businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to “spend” their benefits allowance; which can range from “purchasing” additional holiday entitlement to obtaining full family medical cover.

Foreign Trade and Exchange Market

Income of funds in the Domestic Exchange Market:

- **Exporting goods:** There is a requirement to liquidate the money deriving from the collection of their exports in the domestic exchange market, within a period which shall depend on the kind of product shipped, which vary between 60 and 360 days.
- **Exporting services:** There is a requirement to liquidate in the exchange market the export of services, for the totality of the amount effectively received in foreign exchange, net from withholdings or discounts made abroad by the client. The exports of services provided by residents in foreign exchange shall be liquidated abroad or in the country or be credited in accounts abroad.
- **Principals:** Making up deposits non remunerated is set forth for the 30 % of the total amount of the transactions of income in foreign exchange aimed at investment and financing. Exceptions: Direct Investments, Purchase of real property and financial indebtments as long as they are aimed at investment in non financial assets or at those got or cancelled in an average term no less than two years.

Outcome of Funds from Domestic Exchange Market.

- **Cancellation of Exports:** Import of goods can only be made by own cheque or debit in local accounts of the client. Whichever the case might be, it shall be necessary to show the nationalization of the goods within 365 days as of advance payment or within 90 days as of making a payment on demand. There are no restrictions whatsoever for payments abroad of services rendered by non residents, whichever the concept might be.
- **Restrictions to the purchase of foreign currency:** The requirements established

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concerning access to the single and free foreign exchange market to purchase foreign currency and travelers checks on account of "tourism and travels" were removed.

At present, no prior BCRA authorization is required to purchase foreign currency. Purchases exceeding USD 500 per calendar month should be made by debiting the amount from a bank demand account opened in Argentine banks in the client's name or by transferring the funds via MEP or through a payment with a check from the client's own account. The monthly cap per client stands at USD 2 million.

Administered Foreign Trade

Communiqué "A" 5274, updated the reorganization of the regulations applicable to access the single and free foreign exchange market to pay for Argentina's goods imports. This regulation includes different ways to make payments abroad for imported goods through the single and free foreign exchange market: -

- **Comprehensive Import Monitoring System (SIMI)**, Is an affidavit to be filed and needs to be approved by agencies that join or have joined the one-stop foreign trade services counter based on their competence (VUCE).
The term for providing evidence of the customs entry of the goods will comprise 90 calendar days as from the date of approval. –
- **Payment of Services:** Argentine residents can access the single and free foreign exchange market to make transfers abroad to pay services provided by nonresidents pursuant to the terms agreed-upon by the parties, under applicable regulations. They must submit the documentation evidencing the authenticity of the transaction in terms of the description of the transaction, the provision of the service to the nonresident to the resident and the amount to be transferred abroad (Communiqué "A" 5377). If the nature of the service that is to be paid does not have a direct relationship with the activity's core business, the entity authorized to trade foreign currency must demand certain documents.
- **Sectored motivators:** Investments in infrastructure and capital goods, automobile business and spare parts business, Software industry, Modern Biotechnology, Bio fuels, motorcycles and motor spare parts, Mining activity, Electrical Energy (renewable sources of energy), motivators to innovation and technological developments, motivators to employment.
- **Financing:** There are several lines of credit bearing attractive rates in order to promote productive investments.
- **Promotion of exports:** Draw back, reimbursements to exports, temporary imports for industrial improvement, "Turn key" Plants' exports, Factoria Customs' Regime (RAF), Domicile Customs' Regime, PROArgentina, Exportar Foundation, Argentina Trade Net.

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