

Doing Business Guide

# Argentina

1st Edition

**S&A - Auditores y Consultores**

[www.sya-argentina.com](http://www.sya-argentina.com)



An independent member of  
**Morison** International



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# About This Booklet

This booklet has been produced by S&A - Auditores y Consultores for the benefit of its clients and associate offices worldwide interested in doing business in Argentina.

Its main purpose is to provide a broad overview of the various matters that should be taken into account by organisations considering setting up a business in Argentina.

The information provided is not exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend that anyone considering doing business in Argentina or exploring the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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While every effort has been made to ensure the accuracy of the information contained in this booklet, no responsibility or liability as to its accuracy or completeness is accepted.

# Contents

- Introduction: The Republic of Argentina.....2
- The Argentine Economy .....5
- Banking and Finance.....8
- Government Incentives for Investment and Grants.....13
- Legal Structures of Business Organisations.....17
- Labour Force and Employment.....20
- Taxation System.....26
- Statutory Reporting Requirements .....30

# Introduction: The Republic of Argentina

## History

In 1810, Argentina started a process that would lead to its independence in 1816 – although for over 60 years there were internal battles for the control of customs income, monopolised by the Province of Buenos Aires. After this period of civil war, a process of modernisation of the country began in 1880 with the creation of new public institutions and efforts to build a foundation to incorporate the country into the international division of the labour system as a commodity food producer. By the beginning of the twentieth century, Argentina was among the world leaders in agricultural exports, but the period 1930–1983 saw considerable instability with the rotation of civil and military governments.

The Great Depression severely affected the country in the 1930s, essentially due to a drop in trade and exports. In the 1970s, under a new military regime, the country adopted an open economy model, eliminating mechanisms to protect industry.

Once democracy returned in the early 1980s, the country faltered in finding a clear path to growth: as in most Latin American countries, the gross domestic product, (GDP) mostly remained static, with episodes of hyperinflation. Then, at the beginning of the 1990s, Argentina adopted a convertibility plan with a currency board regime; but this approach was abandoned after the economic and social crisis in 2002, in favour of an administered floating rate regime.

Driven by a commodity export process, the first decade of the twenty-first century has seen Argentina's economy flourish rapidly. Its currency is the Argentine peso (AR\$).

## Geography

The Republic of Argentina covers most of the southern portion of the South American continent; its capital is the Autonomous City of Buenos Aires. The Andes separate the country from Chile to the west; Bolivia and Paraguay to the north, and Brazil, Uruguay and the South Atlantic Ocean to the east. Argentina covers 2.8 million km<sup>2</sup>, with an additional 969,000 km<sup>2</sup> on Antarctica.

The continental land extends 3,694 km from north to south and 1,423 km from east to west. The country has access to the South Atlantic Ocean and the South Pacific Ocean through the Magellan Straits.

## Population and language

From the mid-nineteenth century to the 1950s, wave upon wave of European immigrants – mostly Spanish and Italian, joined by groups from the Middle East – immigrated to Argentina. More recent migratory currents originate in neighbouring countries and, to a lesser extent, in Asia (mainly China and Korea).

The outcome of the National Census of Population and Housing, conducted on 27 October 2010, showed that Argentina has just over 40 million inhabitants (with a roughly equal male–

female distribution). The country's demographic profile is relatively young, with an average age of 29.8. Its population growth rate is 1.1%, with an average of 2.16 births per woman; the life expectancy is 76 years.

Spanish is Argentina's official language. English is widely spoken. There is a high rate of literacy (98%).

There is no official religion in Argentina. Though most of the population is Roman Catholic, there is a long tradition of religious diversity in the country and freedom of religion is guaranteed by the Argentine Constitution.

## Climate and natural resources

The climate varies from subtropical to sub-Antarctic, featuring a wide temperate belt between these two extremes. The City of Buenos Aires and most of the other principal cities are situated in this climatic region, where maximum summer temperatures average from 27°C (81°F) and 32°C (90°F), with occasional temperatures of over 38°C (100°F). Winters are mild but snow and frost are rare, except in the western mountainous areas and in the south.

Argentina presents a wide range of climates. It is temperate and humid on the Pampean plains, cold and humid in the extreme west of Patagonia, subtropical in the northern part of Mesopotamia, and warm in the northwest. The area of Tierra del Fuego is the southernmost point and it is cold, with strong winds, fog, rain and frequent snows.

## Form of government and political system

Since 1853, Argentina has adopted a representative, republican and federal form of government. The federal form of government establishes the division of powers between the national government and the provinces, guaranteeing their autonomy.

Argentina's political structure is based on a traditional republican division of powers:

- Executive (headed by the President)
- Legislative (Congress), divided into the Senate and Deputy chambers
- Judicial.

Provincial governments are generally organised along similar lines.

Argentina is divided into 23 provinces and the City of Buenos Aires which has a special autonomous regime, although it is not considered as a province.

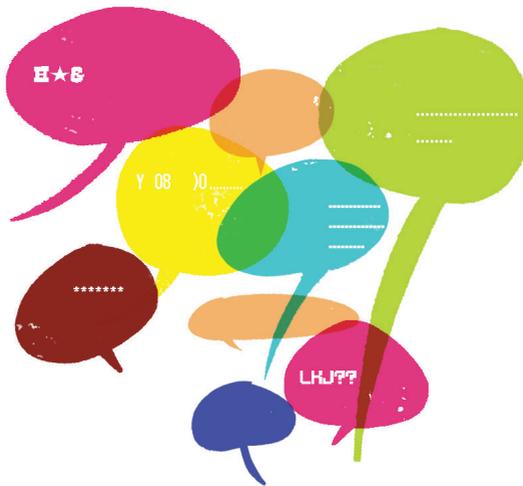
Argentina is a democratic country that has enjoyed an uninterrupted period of institutional stability since 1983, which guarantees both civil liberties and human rights. Argentina's democratic stability is assured by the maturity of its civil society and by the regional framework and institutions set up to safeguard democracy throughout the continent.

## Foreign relations

Argentina is an open economy integrated into the world markets. It is one of the two countries representing South America at the G-20 and is a founding member of the World Trade Organization (WTO) and the Inter-American Development Bank (IDB).

It has been a member of the International Monetary Fund (IMF) at the World Bank since 1956 and has taken part in UN peacekeeping operations for over 35 years. Argentina is also an active member of the Union of South American Nations (UNASUR) and of the Community of Latin America and Caribbean States (CELAC).

Argentina is a full member of the Southern Common Market (MERCOSUR), a customs union formed with Brazil, Paraguay, Uruguay and Venezuela. Associate member countries Chile and Bolivia grant MERCOSUR member countries preferential access to their markets.



# The Argentine Economy

## General outlook

In 1983, Argentina welcomed back democracy, establishing the cornerstones of a new institutional framework that continues to this day.

After 1989, restrictions on transactions in foreign currency were eliminated and government securities were reprogrammed. Subsidies for industrial promotion were suspended and preparations were made for the privatisation of government-owned companies under a framework of future structural reforms, that would be consolidated in the 1990s.

In April 1991, the Convertibility Law was passed, pegging the AR\$ to the US\$ at a rate of AR\$1 = US\$1. This ensured rigorous monetary and fiscal discipline, as it eliminated government financing through issuance by the Central Bank: the monetary base was linked closely to international reserves. Monetisation in AR\$ and US\$ increased significantly, and initially the reappearance of credit benefited production. Inflation slowed, quickly reaching international single-figure levels.

In December 1992, Argentina regulated its situation with foreign commercial banks through the Brady Plan, improving the maturity profile of its public debt; the economy also benefited from an intense flow of capital in a context of high international liquidity. Much of the capital that flowed into Argentina was channelled through direct foreign investment (FDI). The government-owned companies purchased belonged mainly to the industries related to public utility services. Furthermore, sectors such as food and beverage, mining, automobiles, oil and gas benefited from the arrival of multinational companies that invested in Argentina and contributed to the increase in productivity in different sectors.

As of 1 January 1995, Argentina, along with Brazil, Paraguay and Uruguay, formed MERCOSUR, a customs union covering almost 12 million km<sup>2</sup>, with a population of around 246 million inhabitants and an estimated GDP of US\$ 3,025 billion. The countries forming part of the bloc are Chile, Bolivia, Colombia, Ecuador and Peru.

In 1996, a free trade zone was set up with Chile, which allowed for a connection with the Pacific, and in January 1997 the same was done with Bolivia (in the process of becoming a MERCOSUR member country). In 2006, Venezuela joined MERCOSUR, (full membership for Venezuela became effective as of July 2012).

At the Montevideo Summit held in December 2011, the foreign affairs ministers of the four plenary member countries signed a free trade agreement with Palestine. That same year at the MERCOSUR Summit, it was resolved to create a High-Level Commission within MERCOSUR in order to speed up the resolution of disagreements that currently prevent the incorporation of Venezuela. The decision of Ecuadorean authorities to start working towards the incorporation of Ecuador into MERCOSUR is also extremely important.

MERCOSUR aims to consolidate the political, economic and social integration of its member states by:

- Encouraging free circulation of goods, services and productive factors

- Establishing a common external tariff
- Adopting a common trade policy
- Coordinating macroeconomic and sectoral policies
- Harmonising legislation in the pertinent regions.

## Economy structure

Argentina has a highly diversified economy (see Figure 1). The primary sector is internationally renowned for its high productivity levels and use of advanced technologies. The country's well-developed industrial base showcases key sectors such as agro-business, automotive, pharmaceuticals, chemicals and petrochemicals, biotechnology and design manufacturing.

The traditional service sectors are well established in the country, gradually developing niche expertise in the most sophisticated segments of the value chain, with notable growth in software and IT services as well as a wide variety of high added-value professional services.

## Composition of GDP by Economic Activity 2013

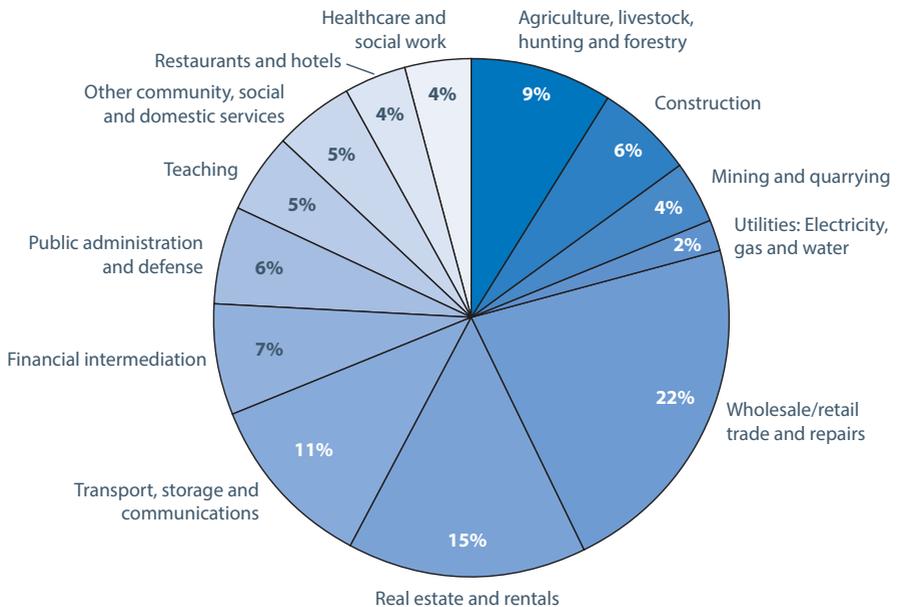


Figure 1. Composition of Argentina's GDP by economic activity, 2012.  
Source: [www.mrecic.gov.ar](http://www.mrecic.gov.ar).

## Trade barriers

Barriers preventing access by foreign investors to certain sectors of the economy have been removed in Argentina, and capital markets have opened up. Along with a sound economic performance, this has attracted numerous FDI projects in various sectors such as manufacturing (34%), oil (20%), utilities (14%), banking (10%), transport and communications (9%), retail and wholesale trade (4%) and mining (1%).

## Regional free trade agreements

Argentina has signed bilateral investment promotion and protection treaties with various countries (including Australia, Bolivia, Canada, Chile, China, Ecuador, France, Germany, Italy, Mexico, Panama, Peru, Poland, Spain, Sweden, Switzerland, the UK, the USA and Venezuela), with the aim of protecting investments and avoiding double taxation.

## Price control

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

## Monetary policies

The Central Bank of Argentina (BCRA) designs and implements a monetary policy that seeks not only monetary and financial stability, but also the promotion of employment and economic development coupled with social equality.

The exchange policy has leaned towards the maintenance of a stable and competitive exchange rate through a floating currency system managed both bilaterally against the USD\$ and multilaterally against a basket of currencies from Argentina's main trading partners. The managed float is one of the pillars of exchange policy designed to diminish the impact of a volatile exchange rate and thus contribute to strengthening the demand for money.

# Banking and Finance

Argentina has entered into various international treaties concerning the recognition and execution of foreign judgments, including:

- 1958 – the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified in 1988)
- 1961 – the Hague Convention of 5 October, Abolishing the Requirement of Legalisation for Foreign Public Documents, was ratified by Argentina in 1987. This international agreement has significantly simplified the formalities set forth by the previous system (1889 and 1940 Montevideo Treaties)
- 1983 – Argentina signed the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention). This recognises foreign judgments provided certain formalities are met: legalisation and translation; other procedural requirements, such as the judge or tribunal rendering the judgment holding international jurisdiction to hear the case and pass judgment on it; and the parties (who must have been appropriately summoned) are granted the opportunity to present their defence, within the limits imposed by the principles and acts of public policy of the state in which recognition or execution is sought.

## Banking system

Banking activities in Argentina are mainly regulated by the Financial Entities Act 1977 (Law No. 21,526), and by several resolutions issued by the Central Bank. The Financial Entities Act states that the Central Bank is responsible for the regulation, control and supervision of the various types of financial entity that may operate in Argentina, and the relevant scope of permitted activities. The Central Bank has discretionary powers to authorise the set-up, merger or consolidation of new financial entities, and the transfer of, or changes to, their banking businesses.

The Central Bank's regulations also contemplate general banking rules, including limits on credit, indebtedness, capital requirement, reserves, liquidity, and net worth requirements. Many of these requirements mirror the risk-weighted criteria provided in the Basel Committee on Banking Supervision guidelines.

The Financial Entities Act provides the regulatory framework for commercial banks, investment banks, mortgage banks and finance companies. It also regulates home savings and loan associations, which generally have limited functions and a smaller impact on the market.

## Financial trusts

The enactment of the Property Finance Law, (Law No. 24,441) in December 1994 introduced a new alternative for the granting of guarantees in Argentina, with the creation of financial trusts. A trust is defined as the situation whereby a person (creator) conveys the trust ownership (fiduciary ownership) of specific properties to another (trustee) that binds itself to hold said property for the benefit of the person specified in the trust agreement (beneficiary)

and to transfer said trust once a specified period of time has elapsed or upon the happening of a certain condition, to the creator, the beneficiary, or the final recipient.

Section 19 of Law No. 24,441 created the financial trust, defined as the trust agreement subject to the general rules of a trust in which the trustee is a financial institution or a business organisation specially authorised by the Argentine Security Exchange Commission (CNV) to act as financial trustee. The beneficiaries are holders of certificates of participation in the ownership of the trust estate or of debt securities backed by the properties so transferred. Such certificates of participation and debt securities shall be deemed securities and may be placed by public offering.

The CNV is the enforcement authority in matters relating to financial trusts, having the power to establish regulations. Pursuant to CNV regulations, the following entities are allowed to act as financial trustees:

- Financial institutions
- Holders of marketable bonds' representatives
- Securities registries
- Corporations registered before the Registry of Financial Trustees held by the CNV.

The issuer of the certificates of participation or debt securities may require authorisation for a public offering to the CNV. The issuer may require authorisation for the implementation of a global programme up to a maximum amount. To obtain authorisation, the issuer must file a prospectus that includes information on the trustee, conditions of issuance, a description of the certificates of participation or debt securities, subscription period, the assets put in trust and the price of subscription.

The main differences between financial trusts and common trusts are:

- The fact that the trustee in a financial trust is a financial institution or a business organisation specially authorised by the CNV
- Certificates of participation and debt securities can be issued only with respect to financial trusts.

## Financial entities

The private banking sector operates mainly through commercial banks and finance companies. Under the terms of the Financial Entities Act, state-owned and mixed banks are comparable to commercial banks; their main objective is to promote regional development and handle government revenues.

In general, commercial banks are organised as corporations; however, some are organised as cooperatives. Only commercial and state-owned banks are allowed to offer cheque accounts, issue drafts and make inter-market transfers. Strictly speaking, commercial banks are the only monetary intermediaries.

## Investment banks and financial and credit companies

Investment banks channel savings and foreign funds to finance investment projects. They may receive term deposits, grant medium-term and long-term credit, invest in securities, lease capital assets, and operate in foreign currency with Central Bank approval. Finance companies deal mainly with short-term credit facilities – as do credit companies, but within a much more limited scope.

Foreign banks operate in Argentina on the same basis as local private banks. Most engage in wholesale and retail activities, and may operate through branches or subsidiaries. A number of them were licensed many years ago. Licences are granted by the Central Bank, mainly on a reciprocal basis.

Since July 2012, financial institutions are required to implement credit lines to fund productive investments. At least 50% of these funds will be allocated to micro, small and medium-sized enterprises to finance investment projects involving the acquisition of capital goods, construction of facilities for goods and services, and trade of goods (excluding inventories), as well as real estate purchase operations, as long as certain requirements are met. The funds may not be used to purchase lands or ongoing companies, or to finance working capital. The lending financial institutions will charge a fixed nominal interest rate of up to 15.01% per year until the loan has been fully paid off.

## 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 economic sector without a local partner. Approvals or special procedures are generally 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 Superintendence of Corporations in the jurisdiction where the Argentine company is located. The government has also adopted a tougher stance towards some new foreign companies – such as by requiring that such firms provide information to the government about their shareholders or their activities and assets abroad.

Foreign investments may be made in:

- Convertible foreign currency
- Capital goods, spare parts, and other components
- Capital or profits in domestic currency belonging to foreign investors, as long as they meet all the legal requirements to be transferred abroad
- Capitalisation of foreign loans in convertible foreign currency
- Intangible assets, according to the specific legislation
- Other forms of contributions contemplated in special or promotional regimes.

The Foreign Investment Law also establishes how temporary contributions and the relationship between controlling and controlled companies are to be handled. The temporary contributions of foreign capital made for the purposes of implementing leases for goods, works or services, or others, fall outside the scope of this law because those contributions are governed by the terms of the respective contracts in compliance with the legal provisions applicable to them. Nonetheless, the owners of these contributions may opt to carry on with their investment within the scope of the Foreign Investment Law.

As to the relationship between controlled and controlling companies, all transactions between a domestic company of foreign capital and its controlling company – direct or indirect – or subsidiary, shall be considered transactions between independent entities when their terms and conditions conform to common market practices between independent parties.

## Exchange controls

Argentina operates a complex foreign exchange control regime. In line with the IMF, the Central Bank defines FDI as the category of international investment that reflects the objective of an entity resident in one economy to obtain a lasting interest in an entity resident in another economy. In practical terms, a direct investment is one in which a foreign investor owns  $\geq 10\%$  of the capital or voting power. Once this threshold has been reached, all additional contributions made by the non-resident investor will be considered FDI, regardless of the amount or percentage.

The transfer of funds into and out of the country must be carried out in accordance with the Central Bank regulations. Restrictions are imposed on inbound and outbound investments and interest, and on other amounts payable in foreign currency. It may be necessary to provide documentation or obtain authorisation from the Central Bank, and 30% of certain inbound loans may be frozen for 1 year as a legal reserve deposit. Loans granted for investments in fixed assets and inventories are exempt from the reserve requirements (although minimum terms are required).

Dividends may be paid without approval out of profits recognised on an audited financial statement. Capital contributions can enter Argentina without restriction, but may not be repatriated without Central Bank authorisation. Residents outside the financial sectors may access the exchange market to purchase foreign exchange up to a monthly ceiling of US\$ 2 million under the Residents Foreign Asset Accumulation scheme.

As of October 2011, prior authorisation from the tax authorities is required to purchase foreign currency.

Payments to professional services, computing services, royalties and trademarks, among others, made to foreign related entities, as defined by the Central Bank; entities located in tax haven jurisdictions, as defined by the income tax regulations; or bank accounts opened in tax havens are subject to Central Bank authorisation. Documentation related to the payment must be furnished to the bank making the transfer.

Other FDI inflows exempt from the mandatory deposit include:

- Income of non-residents used for purchasing real estate
- Foreign funds transferred by non-residents to purchase real estate in instalments while it is still under construction
- Payments in Argentina
- Inflows in the local exchange market from external asset repatriations by residents
- Foreign currency inflows for trust funds created for energy infrastructure development.

There are no restrictions on the remittance of interests, dividends, earnings, royalties or any other form of commercial payment abroad, as long as it is duly supported by the relevant documentation. However, certain formalities are required to transfer foreign currency abroad.

### **Bringing in currency (exports)**

The Central Bank sets a strict regulatory framework for the inflow and outflow of foreign currency, as well as for registration with, and access to the exchange market. Resolution 13/2002 of the Ministry of Economy and Public Finances, as amended and regulated, establishes that exporters must deposit the proceeds from their export operations with the local financial system, depending on the product. The proceeds must be deposited in AR\$ in a cheque or savings account opened with a financial institution.

The Central Bank governs the operations of the exchange market and regulates the entry of currency for exporters, as well as payment of imports that require banking intervention according to the abovementioned resolution.

# Government Incentives for Investment and Grants

Argentina has numerous incentive programmes that are designed to facilitate domestic and foreign investment in the country. These are implemented by the national, provincial and municipal authorities, and include horizontal and sector incentives as well as for relocation, innovation, technological development, employment, investment financing and export promotion. These tax incentives are available for certain activities such as mining, forestry, software production, biotechnology, biofuels production, and capital goods investments for industrial or infrastructure activities. In most cases, prior approval is requested. There is also a tax free zone with special incentives for certain activities (Tierra del Fuego), as well as free trade zones around the country.

## General incentives

- **Reduction in value added tax (VAT):** A reduced VAT rate of 10.5% (the standard rate is 21%) is applied to the purchase and import of finished capital goods and IT/telecommunication products and parts. The additional VAT rate levied on personal property imports is also reduced, generally by 50%
- **Investment incentives for capital goods and infrastructure:** Incentives for investment in capital goods and infrastructure, which establish an accelerated depreciation for income tax purposes and/or the early refund of VAT. This benefit is granted through calls made from time to time
- **Reduction of import duties on capital goods:** An extra-MERCOSUR import duty of 2%, 10% and 14% (as applicable) is established for the import of new capital goods whose tariff classification ('position') in the MERCOSUR Common Nomenclature are included in Decree No. 1026/2012. These goods are also exempt from the so-called 'statistics duty'
- **Incentives for national production of capital goods, IT, telecommunications and agricultural machinery:** Designed to encourage domestic investment in, and production of, capital goods, IT, telecoms and agricultural machinery, this incentive programme provides local manufacturers with a tax refund equivalent to 14% of the value of the goods produced. This refund is made by way of a tax credit that can be applied against VAT, income tax, excise taxes and minimum presumed income tax payments
- **Temporary import of capital goods:** Temporary imports are those where the merchandise imported may remain for a specific purpose and within a fixed term in the customs territory, subject – from the moment of its release – to the obligation of re-export for consumption before expiration of the term. Depending on the operational characteristics of the company, it may be necessary to have capital goods available for a specific period and then return them abroad. This temporary admission system allows the capital goods to enter the country without being subject to import duties and to remain in it for a maximum of 3 years. This period may be extended for an additional term provided it that does not exceed the original term.

## Sector-specific incentives

- **Software industry promotion:** The programme aims to promote the creation, design, development, production, and implementation and fine-tuning of software systems developed as well as their technical documentation, both in terms of basic aspects and applications, including the necessary development to integrate it into different processors (in-house development is excluded)
- **Mining industry promotion:** These incentives encourage investment in mining exploration activities
- **Promotion of the exploration and exploitation of hydrocarbons:** The incentive establishes a 15-year period for the exploration and exploitation of the continental shelf; 12 years for areas in sedimentary basins without production; and 10 years for areas in sedimentary basins with production
- **Audio/visual industry:** The National Institute of Cinema and Audio/visual Arts (INCAA) offer subsidies and credit facilities for film productions.

## Location incentives

### Free trade zones

A free trade zone (FTZ) is an area where goods are not subject to the ordinary customs controls and where no duties or taxes are levied on the goods entering and leaving the country (imports/exports), except for any other applicable service fee or rate that may be established. An FTZ aims to promote trade and export-oriented industries by reducing costs and minimising administrative procedures, as well as offering tax incentives.

There are currently 11 FTZs operating in Argentina, located in the provinces of Buenos Aires (La Plata and Bahía Blanca), Córdoba (city of Córdoba), Chubut (Comodoro Rivadavia), La Pampa (General Pico), Mendoza (Luján de Cuyo), Misiones (Puerto Iguazú), Salta (General Güemes), San Luis (Justo Daract), Tucumán (Cruz Alta) and Entre Ríos (Concepción del Uruguay).

## Incentives for innovation and technological development

- **Argentine Technology Fund (FONTAR)** supports projects geared towards improving the productivity of the private sector through technological innovation. There are a number of financing instruments, which are implemented by means of public calls for tenders or open submissions (no deadline)
- **Software Industry Fiduciary Fund (FONSOFT)** R&D projects related to the activities included in the promotional programme: creation, design, development, production, implementation, and fine-tuning of software systems
- **Fund for Scientific and Technological Research (FONCYT)** supports research projects aimed at creating new scientific and technological knowledge. The fund offers different promotion and financing instruments, awarded through a public tender process

- **Argentine Sector Fund (FONASERC)** supports projects and activities aimed at developing critical capacities in potentially high-impact sectors and their permanent transfer to the productive sector
- **National Science and Technology Council (COFECYT)** promotes the harmonious development of technological, innovative and scientific activities throughout the country
- **Promotion and Encouragement of Technological Innovation (Law No. 23877)** aims to improve productive and commercial activity by promoting and encouraging research and development, technology transfer, technical assistance and other innovative enterprises, giving a hierarchy in society to the tasks carried out by scientists, technologists and innovative entrepreneurs.

## Investment financing

- **Bicentennial Programme for Productive Financing:** A credit facility programme of AR\$ 16 billion, which aims to provide financing for productive investments in all sectors. There is a fixed annual interest rate of 9.9% for AR\$-denominated 5-year loans
- **Credit lines from the Investment and Foreign Trade Bank (BICE):** The BICE offers a range of financing lines in both AR\$ and US\$
- **Credit lines from the Federal Investment Council (CFI):** The CFI runs a series of financial assistance programmes for micro, small and medium-size enterprises in order to promote the development of Argentine regions and provinces.

## Export promotion

- **Drawback:** Exporters are refunded for taxes and import duties, including statistics duty and VAT, paid on imported supplies used to produce goods for export. This programme also covers packaging or the conditioning necessary for the goods to be exported. As with refunds, their payment is monitored by the Customs Office
- **Export refunds:** The total or partial refund of excise taxes paid during the different stages of production and marketing of the merchandise manufactured in Argentina for export, brand new and unused. These rates currently range from 0% to 6%. Payment of this benefit is made by the Customs Office following presentation of the shipping documentation. Additionally, the exporter must have complied with the rules governing the entry of foreign currency related to the operation and must not have any social security or tax debts pending with the Federal Administration of Public Revenue (AFIP). As the benefits are applied to value added locally, they are compatible with the drawback programme
- **Inward processing relief:** Under this programme, the goods imported temporarily for their subsequent processing and re-export, are relieved from the taxes levied on goods imported for consumption. Retributive rates for services are payable, except for statistics duty and ultimate-use verification duty (*tasa de comprobación de destino*). However, the

operations carried out within this framework are governed by the bonds and guarantee system currently in force.

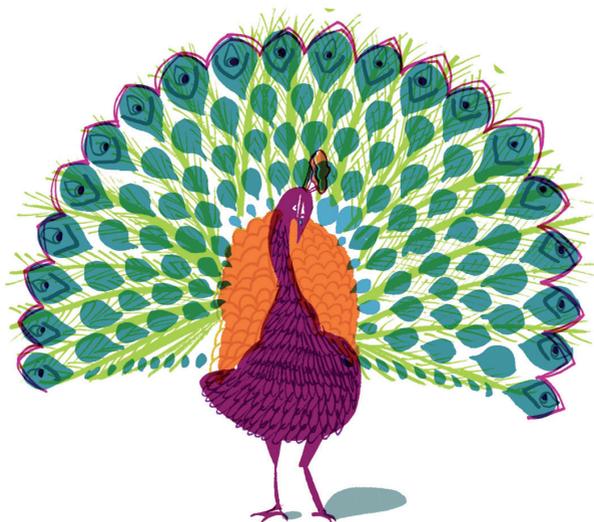
## Investment protection agreements

Local legislation provides foreign investment with protection and an arbitration process for disputes with Argentina. In addition, Argentina has signed bilateral investment treaties (BITs) and is a member of the Multilateral Investment Guarantee Agency (MIGA), the Overseas Private Investment Corporation, and the International Centre for Settlement of Investment Disputes (ICSID).

The trademark legislation (Law No. 22362, and Law No. 24481 and its amendments) provides for the protection of trademarks that have been duly registered with the National Industrial Property Institute (INPI).

Under case law, protection is also granted to *de facto* brands, provided they have been used to such an extent that they have built up a degree of customer allegiance. This registration is subject to the payment of a fee. Protection is granted for a maximum of 10 years each time a trademark is registered, but registration may be renewed indefinitely, provided the trademark has been used in the last 5 years.

Argentina has adopted the international classification of goods and services used by the World Intellectual Property Organization (WIPO).



# Legal Structures of Business Organisations

Three types of legal entity are the most widely used for carrying on commercial activities in Argentina:

- Business corporation (*Sociedad Anónima; SA*)
- Limited liability company (*Sociedad de Responsabilidad Limitada; SRL*)
- Branch of a foreign Company.

These entities are generally regulated by Corporate Law 19,550; most SAs are also regulated by resolutions issued by the National Securities Commission.

## The formalities of setting up a company

The name of the company is first vetted by the Superintendence of Corporations (IGJ) to ensure that no other company has the same name. Registration takes place when the new company submits its notarised contract.

## Registration requirements

### Business corporation (*Sociedad Anónima; SA*)

This type of company (equivalent to a US corporation), is most widely used to operate in Argentina; it allows for shareholders to limit their liability to the nominal value of their shares. A business corporation requires approval of IGJ the agency in charge of the Public Registry of Commerce, where the legal documentation (bylaws) of a SA must be registered to legitimately operate in Argentina. Some of the main aspects related to the constitution of a corporation are listed below.

- Shareholders: A minimum of two shareholders, who may or may not be Argentinean residents (natural or legal persons)
- The minimum capital required by law is AR\$ 100,000, out of which only 25% must be paid in at the moment of the constitution, the difference being paid in within 2 years
- The responsibility of the administration of a SA lies with the board, whose members need not be shareholders or reside in Argentina. However, the Corporations Law, 1972 (*Ley de Sociedades Comerciales*) requires the board to meet at least once every 3 months, and the majority of its members should be present. The Law also establishes that the majority of the members should be domiciled in Argentina
- Persons acting as directors must provide securities in favour of the SA for a total value of at least AR\$ 10,000, in guarantee of the proper performance of their duties, regardless of the corporate purpose or capital, or the duties assigned to or performed by each director. Such guarantee may be submitted through direct incorporation to the SA funds, or through bonds, government securities, bonds or bank guarantees, or surety bonds

- Trustees are legal permanent auditors and have no right to vote. Shareholders may remove trustees at their absolute discretion
- The governing body of a SA, responsible for the adoption of resolutions, is the shareholders' meeting. It is, among other matters, competent to approve the annual balance sheet of the company, to designate and/or remove directors and trustees, and to deal with any issue regarding the ordinary course of the company's business
- The process of registering a SA takes ~10 business days for urgent processing and ~30 business days for regular processing.

### **Limited liability company (*Sociedad de Responsabilidad Limitada*; SRL)**

This type of company allows partners to limit their liability to the nominal value of their shares, subject to joint responsibility, which they may bear for the actual payment of the amounts that the other partners had agreed to subscribe. A SRL must also be registered at the Superintendence of Corporations to legitimately operate in Argentina. To constitute a SRL, the following requirements must be met:

- Partners: A minimum of two and a maximum of 50. Partners may or may not be Argentinean residents (natural or legal persons)
- The company's direction is vested in a manager or a board of managers (when composed of more than one manager). The board members need not be partners, but most must reside in Argentina. Managers should also provide securities in favour of the SRL in guarantee of the proper performance of their duties
- The governing body of a SRL, responsible for the adoption of resolutions, is the shareholders' meeting
- The process of registering a SRL takes c.10 business days for urgent processing and c.30 business days for regular processing.

### **Special requirements a foreign company must meet to become a SA or SRL**

For the purpose of constituting a SA or SRL, the foreign company must prove to the Public Registry of Commerce that it has been incorporated under the laws of their country of origin and must register its bylaws and articles of incorporation and all their amendments, if any.

Companies with the intention of becoming shareholders of a local company must also comply with a series of requirements. One of the objectives of these requirements is to limit and control the existence of offshore companies that carry out their sole or main corporate purpose in Argentina, so preventing the laundering of assets of illicit origin and the breaching of tax laws.

## Branch

Section 118 of the Corporations Law allows for a foreign company to conduct businesses in Argentina by establishing a branch. The main characteristics of a branch are:

- A branch may conduct business operations within the scope and limits set forth for its parent
- There are no minimum capital requirements for a branch. The parent company may or may not assign capital to it
- A branch has no board of directors. Local operations are to be run by one or more duly appointed representatives; no need for a receivership
- With regards to transactions made by the branch, no limitation of liability applies. The law does not recognise that the liability of the parent company is limited to the net assets or capital assigned to the branch, therefore the parent is fully liable for all operations carried out by the branch
- The branch must keep books separately from those of the parent company, so operations must be recorded locally. Also, in the case of a corporation or a LLC, balance sheets must be submitted annually
- From a tax standpoint, the branch is subject to income tax (35%). Profits distributed to the parent company are not affected by other taxes
- The process of registration of the branch takes c.15 business days.

The most important difference between a SA and a SRL lies in the tax treatment given to the profits that a non-resident shareholder or partner faces for the transfer of shares of a corporation or a LLC, as applicable:

- Income arising from the sale of shares of a SA (whether natural or legal) is not subject to income tax for a non-resident shareholder
- In contrast, the transfer of shares of a LLC by a non-resident (whether a natural or legal person) is subject to income tax at an effective rate of 17.5% on the sale price (35% on 50% of the estimated gain) or at least at a rate of 35% on the difference between the purchase price and the sale price, at the option of the taxpayer.

The development of business through a LLC can bear a tax benefit if the foreign company is incorporated in the USA. A SRL can qualify as a 'look-through entity'.

# Labour Force and Employment

## The labour force in Argentina

The Argentine workforce is highly qualified, with almost 20 million people classified as economically active.

## Legal framework for FDI

Foreign investors and the investments they make are protected by Argentine law. A wide range of national and international provisions provide the legal framework that qualifies Argentina as a safe destination for FDI and foreign investors. In its preamble, the Argentine Constitution guarantees locals and foreigners equal treatment; Section 20 establishes that foreigners enjoy the same rights as local people.

## Executive compensation

Executives receive various fringe benefits in addition to salary. Foreign companies usually provide such benefits according to the parent company's policies. The most common benefits are health plans, including ophthalmology and dentistry; life insurance; and the funding of postgraduate studies.

If the employer agrees to include all income tax and social security contributions in the salary, then executive compensation may constitute a significant cost to the employer.

## The labour force and social security system

Argentina's labour law regulates all aspects regarding labour contracts, social security, and organisation and functioning of trade unions. In Argentina, labour relations are governed primarily by the following laws:

- No. 20,744 – Labour Contract Law
- No. 24,013 – National Employment Law
- No. 24,557 – Workers' Compensation Act

In addition to these laws, labour relations are subject to collective bargaining agreements agreed upon between groups and associations representing employers within a given activity or industry and unions representing the workers performing in that same activity or industry. Due to its characteristics, certain activities are subject to individual laws, complementary to or substituting the Labour Contract Law.

## Labour Contract Law (LCT)

The LCT comprehensively regulates all aspects related to the rights and duties of the parties to the employment contract, such as duration of the working day, protection of wages, weekly rest periods, holidays, disciplinary systems, and termination of the employment contract.

The LCT is considered a rule of public policy. This means that an employment contract is inevitably governed by the law, so the parties to it can establish working conditions that may be less beneficial to the employee than those available under the bilateral investment treaty (BIT), but not less beneficial than those established under the LCT.

Employers have an obligation to treat all employees equally under a given situation. Unequal treatment is deemed to exist when there is an arbitrary discrimination based on sex, religion or race, but not when the difference in treatment is based on the common good.

## Employment contract

### General principle

The general principle is that the employment contract remains in force for an indefinite period.

Also, according to the BIT, the employment relationship does not require a formal instrumentation as the provision of services by the employee, and the payment of compensation by the employer is enough to assume the existence of such a relationship.

### Fixed-term employment contract

According to the BIT, an employment contract can be held for a predetermined period of time only when the duration is set explicitly and in writing, or when the rules of the task or activity to be carried out, reasonably assessed, require it.

### Temporary employment agencies

This category is understood as entities having been constituted as legal persons that intend to place industrial, administrative, technical or professional personnel, for a temporary and extraordinary period of time, to perform services or satisfy predetermined requirements and extraordinary transient business for a third-party company, without stipulating a completion date for the contract.

The company hiring this service shall be jointly liable with the agency for compliance with all relevant labour and social security obligations.

Workers of a company hired through temporary employment agencies not registered at the Ministry of Labour and Social Security will be treated as permanent employees of the company contracting the service.

## Statutory working conditions

- **Working conditions:** Working conditions have been established under Labour Contract Law No. 20744, with collective bargaining agreements, and depend on the kind of activity involved. Hygiene and safety conditions are set forth in general terms
- **Salaries and wages:** The salaries and wages for office and plant workers vary from one region of the country to another. Minimum salaries are generally established by collective bargaining agreements, but supply and demand usually greatly influences the salaries of the best-qualified workers

- **Benefits:** Employees receive a compulsory annual bonus called *aguinaldo*, which is an additional month's wage set forth by law, paid in two semi-annual instalments in June and December, each accounting for 50% of the highest salary received in the first half of the year. In the event that the employee had not worked the full 6 months, the annual bonus would be pro-rated
- **Working hours:** Basically, working hours may not exceed 8 hours/day or 48 hours/week. Overtime worked on weekdays involves a surcharge of 50%, while overtime worked on Saturdays from 13:00 onwards, Sundays, and public holidays involves a surcharge of 100% (both percentages calculated on the regular pay). Overtime is paid along with the salary for the period in which the extra hours were worked
- **Paid vacations:** The minimum vacation entitlement is 14 calendar days, and the maximum is 35 calendar days. The LCT ensures that workers are entitled to compensation while enjoying their annual holiday period, the duration of which varies according to seniority, (years of service):
  - <5 years: 14 consecutive days
  - 5–10 years: 21 consecutive days
  - 10–20 years: 28 consecutive days
  - >20 years: 35 consecutive days

To qualify for a full vacation period, the employee must have worked more than half the days of the year. If the employee does not meet the minimum working time required, one vacation day shall be granted for every 20 days worked. In general, collective labour agreements establish additional leave entitlements

- **Equal opportunities:** Employers are required to treat all employees in the same manner in identical situations. Unequal treatment shall be deemed to exist when there is an arbitrary discrimination on the basis of sex, religion or race, but not when the difference in treatment is based on the common good – such as in cases based on greater efficiency, industriousness or dedication to work by the employee
- **Social security system:** The Argentine pension system is financed by employee and employer contributions calculated on the basis of employees' wages. Employees are provided with access to a welfare fund to which they make monthly contributions that account for their future pension. Law 24241 governs the pension applicable to all employees who provide services on an in-house – permanent or fixed-term – basis, and to all self-employed workers in Argentina
- **Dismissal:** The LCT allows the employer to terminate an employment contract with or without cause. The current law allows for employment contracts with a trial period that may be extended for an indefinite period. In case of unfair dismissal at the end of the trial period, the employer is required to provide prior notice and severance, which varies according to seniority. Where the dismissal is without cause, the Labour Contract Law establishes severance to be one salary for each year of service or fraction thereof >3 months. Said salary is determined by the highest ordinary and regular monthly

compensation of the employee over the last year of service, with 1 month's salary set as minimum severance payment. The LCT also contemplates the dismissal of an employee with cause, and includes an exhaustive list of acts of an employee that may be considered legal grounds to justify a dismissal

- **Accidents at work:** Law 24557 (Workers' Compensation Act) introduces special regulations for preventing accidents and a specific procedure to follow in case of an accident and until the employee is able to resume work activities. This law requires personnel to be insured by the Labour Risk Insurance Company (ART), which should provide the medical care and necessary prostheses, and wages and severance pay in case of accident. In addition, subject to specific requirements, employers may be otherwise insured to cover for accidents at work of their employees.

## Retirement age

In Argentina, the eligibility for an old age pension requires individuals to have 30 years of pensionable service to receive benefits in full, and have reached the age of 60 (for women) or 65 (for men). The age requirement may be lower for those who perform dangerous tasks or tasks that imply ill-health conditions. Examples include coal mines and power plants. For the self-employed, the pension is calculated just as under the general scheme, with some peculiarities; self-employed individuals cannot retire before the age of 65, with a required minimum contribution period of 15 years, out of which at least 2 must be within the 8 years immediately prior to the moment of retiring.

Women can choose to stay in the labour market until the age of 65, in return for an improvement in the final retirement benefits, although the increase is not significant. In the regime for self-employed people, there are no gender differences. It should be noted that there are some special laws in relation to professions such as teaching, the judiciary system, the military system, etc. There are also 100 provincial pension schemes. Municipal and professional schemes coexist, and are combined or complement each other within a system of reciprocity.

Employers have the power to give employees above the pension age a year's notice regarding termination of their employment. If after 1 year of the notice the employee has not retired, s/he can be dismissed without compensation. However, many employees, especially in high-paid positions, are reluctant to retire. Some employees may continue working, benefiting from a salary plus retirement benefits.

Traditionally, the system was handled by the national government. In 1994, a new pension scheme was created, leading to a partial privatisation of pensions in Argentina. Workers could choose whether to join the public or private systems. The private system was an investment regime of pension contributions. High fees were charged by fund managers. However, each member had their own system of contributions that would capitalise on the income obtained from the investments made.

In 2008, the private system was abolished, and the Argentine Integrated Retirement System was created. The substance of the reform was the re-nationalisation of the private aspect of

the post-1994 system. In general, the removal of the Pension Fund Administrators (AFJP) was well received by the public, because the private pension system had performed poorly.

## Foreign employees in Argentina

- **Work permits and visa requirements:** Local regulations on immigration establish three types of residence: permanent, temporary, and transitory, with a permanent or temporary residence permit necessary to set up a business in Argentina. There are no restrictions as to the nationality of company directors, but they must have a legal domicile in Argentina.

Foreign investors seeking to obtain permanent residence must demonstrate that they have invested at least AR\$ 100,000, or have made a deposit for that amount.

To be able to hire foreign employees, the employment contract must be in line with the Argentine labour legislation.

- **Tourist visa:** For those who want to enter the country for tourism purposes only. This visa does not entitle the foreigner to do business or to work in Argentina
- **Business visa:** The business visa is designed for short periods (up to 90 days), and enables foreign citizens to travel to Argentina to take part in business meetings, analyse investments in Argentina, and participate in market research initiatives. The holder of a business visa cannot participate in job training or work in other productive activities, including providing advice for compensation or being hired by a company in Argentina
- **Visa for foreign business representatives:** This visa is addressed to those foreign entrepreneurs entering the country as agents or representatives of companies established abroad. It is best suited to cases where there is a branch of foreign company operating in Argentina. These visas are usually granted for periods of up to 1 year (renewable) and authorise the holder to work, obtain a national identity card and driving licence, and bring their household goods into the country
- **Entrepreneur visa:** This is intended for foreigners who are devoted to businesses usually related to trading, economic efforts, risk capital, or those having a significant stake in companies or legal persons performing a given activity and have the intention and ability to establish a base or invest in Argentina. These visas are usually granted for periods of up to 1 year (renewable) and authorise the holder to work, obtain a national identity card and driving licence, and bring their household goods into the country
- **Working visa:** In this category, we include those workers who will be hired by a company as in-house workers in Argentina, or who have an employment relationship with a foreign company
- **Technical visa:** Issued to staff transferred to Argentina, who will remain on the payroll of the foreign company; the technical visa authorises the holder to work, obtain a national identity card and driving licence, and bring their household goods into the

country. Due to some discrepancies between the legislation on migration and labour and social security laws, this kind of visa is recommended only for transfers for periods no longer than 3 months.

- **Temporary working visa:** This visa is for foreigners who are transferred to Argentina for long periods to work as employees in local companies. The beneficiaries of this type of visa can extend their stay for several consecutive years and, after 3 years of residence in the country, may apply for a permanent residence. Holders of a working visa can obtain a national identity card and driving licence, and bring their household goods into the country.
- **Restrictions on employment:** Argentina has no restrictions or quotas for foreign workers, as long as they comply with immigration regulations; and all foreigners hired to work in Argentina must have a work permit and legal residence in Argentina.

All foreigners who have been granted admission or authorisation as permanent residents may develop any paid or lucrative task or activity, under freelance or employment terms, and will be protected by the laws relevant to that matter. Foreigners who have been granted admission or approval as temporary residents may carry out said tasks for the term specified in the residence application.

## Social security contributions made by employers

Contributions to the social security system are processed by the following entities. Amounts payable are calculated based on the salaries of the employees, the business activity of the company, and the annual turnover:

- National Social Security Office for Pensions and Retirement Funds (*Instituto Nacional de Servicios Sociales para Jubilados y Pensionados*)
- National Employment Fund (*Fondo Nacional de Empleo*)
- Integrated Social Security System (*Sistema Integrado Previsional Argentino*)
- Family Allowances Regime (*Régimen de Asignaciones Familiares*)

## Employer's contributions to the national health insurance system

Employers' contributions are supplementary to the contributions to health insurances which, as regards to health services, will be added to the national health system. The rate to health contributions for employers amounts to 6% of the total salary paid.

# Taxation System

In Argentina there are national, provincial and municipal tax authorities, each holding certain limitations with respect to the scope of each jurisdiction.

## National government

### Income tax

Consistent with the Income Tax Law, Argentina pays taxes based on worldwide income standards; so its residents pay taxes upon their total income amounts, which are disclosed by means of affidavits. On the other hand, non-residents pay taxes solely upon the income they generate from Argentine sources, by way of a tax withholding at source system. Argentine legislation allows for computing the equivalent lien upon payment abroad as tax credit.

Regarding application of this law, income exists when the following requisites occur jointly:

- Natural persons – regularity, permanence and authorisation of the income source
- Partnerships – returns, equity, earnings or profits are to be encumbered.

This tax is calculated upon the net revenue base considering the expenditure generated during the fiscal year, which usually corresponds to a calendar year. Nonetheless, it is possible for partnerships to determine their fiscal year closing date at any other given time of the calendar year.

The tax base upon which the rate shall apply shall be the revenue minus the expenditures to necessary obtain, maintain and preserve taxable profits. For partnerships, the tax proportional rate is 35%; natural persons are subject to a rate of 9–35%, based on their taxable net profits.

The legislation regulates the transfer prices control established in transactions executed between related companies, aligned with the dispositions and methodologies set forth by the OECD. In this sense, the companies involved are required to submit, along with the annual income tax statement, a supplementary affidavit specifying the operations performed, and sufficient proof that such prices adhere to the arm's-length principle or, alternatively, the corresponding adjustment.

There are also diverse anti-tax evasion measures applicable to transactions with tax havens, such as determination of transfer prices and interest deduction limitation.

### Tax on estimated minimum income tax

The tax on estimated minimum income charges a 1% tax on partnership's assets, valued in accordance with the dispositions established by the tax law to those effects.

The tax on estimated minimum income is supplementary to the income tax; thus, the latter may be liquidated as payment on account of the former over the same fiscal year. If, after such calculation, there a balance remains on the estimated minimum income tax, it could

be computed as payment on account of the income tax for the next 10 fiscal years and upon their pre-existing amount.

As a rule, in order to determine the tax base, investments in infrastructure and property, plant, and equipment residual values are not subject to calculation for the first 2 years.

## Personal property tax

Property tax is charged on the assets or undivided estates of natural persons domiciled in the country, whether they are actually located within the territory or abroad. For those domiciled abroad, the tax is charged solely upon the assets located in the country. It is not charged on any assets valued, in compliance with the law, at AR\$305,000 or less.

Tax rates are progressive, depending on the total amount of assets charged:

- 0.5% when the taxable assets total amount is higher than AR\$ 305,000 and less than AR\$ 750,000
- 0.75% when the taxable assets total amount is higher than AR\$ 750,000 and less than AR\$ 2,000,000
- 1% when the taxable assets total amount is higher than AR\$ 2,000,000 and less than AR\$ 5,000,000
- 1.25% when the taxable assets total amount is higher than AR\$ 5,000,000.

Natural persons domiciled abroad always pay 1.25% tax on the value of the taxable amounts, submitted by an appointed representative.

Natural persons are not subject to calculations of capital interest at the tax base of any type of partnership regulated by the Commercial Companies Act, 1984 Law No. 19950, whereas such partnerships submit the tax in a substitute manner at a rate of just 0.5%.

## Value added tax (VAT)

VAT shall be charged on:

- The sale of movable property executed by taxpayers within the national territory
- Independent services rendered within the limits of the country
- Import of movable property
- Services rendered abroad, whose effective use or exploitation takes place in Argentina, as long as the users are registered VAT taxpayers.

The export of goods and services is not charged with VAT. Services rendered within the country are considered exports if they are economically exploited outside the country. Goods or services exporters should request VAT returns, compensation or transfer if it was

invoiced, as long as it is linked to the export and has not been used by the requesting party. The general tax rate is 21%; it is reduced by half (to 10.5%) for certain essential consumer goods, and increased to 27% for certain public services.

## Internal taxes

The main characteristic of this type of tax is that they discourage consumption of certain goods like tobacco, alcoholic and non-alcoholic drinks, cars, mobile phones, luxury goods, etc.

A tax is charged on bank transactions (both debit and credit); the general tax rate is 0.6%, and 34% of tax charged on credits may be computed as payment on account of income tax.

This tax also applies to cash flow operations performed by wealthy companies and pay systems that do not involve the use of bank accounts.

## Other taxes

Other taxes are charged on specific activities, such as tax on liquid fuel, natural gas, real estate transfers, gambling and prizes.

## Provincial government

### Stamp tax

This is a provincial, instantaneous tax that, in general terms, is charged on any valuable instrument (contract, purchase order, sales contract, etc.) that has legal influence within a given jurisdiction, independently of where it is executed.

The operations formalised abroad pay for this tax when they have effects upon local jurisdiction.

Every jurisdiction classifies and specifies the treatment to apply according to the different instruments, along with their respective rates. For example, in the City of Buenos Aires, rates fluctuate from 1% to 3.6%.

### Turnover tax

This is a provincial monthly tax, which means every jurisdiction dictates its own fiscal code to regulate this tax, among others.

The taxable event is established as onerous, by ordinary fiscal year and in the corresponding jurisdiction of activities that may include property sale or services or any other activity rendered, for which a tax shall apply in accordance with the regulations set forth by each fiscal code.

Rates are determined according to the legislation of each jurisdiction; they fluctuate between 1 and 6%, 3% being the general rate most widely applied.

## Municipal government

Municipalities rely on several taxes as their revenue source; these vary on their denomination and application, but in general they represent a percentage of the revenue obtained by the companies within the municipal jurisdiction, or fixed amounts based on workforce size, premises size, etc.

Charges most widely applied include street lighting, cleaning and sweeping; safety and hygiene control; and road maintenance, among others.

# Statutory Reporting Requirements

## Accounting records

All business associations domiciled in Argentina are required to keep accounting records of their transactions. Accounting books required by statute include the inventory and financial statements book, as well as the subsidiary books that supplement them.

Stock corporations are required to keep books with the board of directors' meeting minutes and shareholders' meeting minutes, as well as the record of attendance at shareholders' meetings and the shares registered.

These books require binding and pages must be foliated and individualised by the Public Registry of Commerce. However, business associations, cooperatives, non-profit organisations and foundations using mechanised or electronic data processing can request that the appropriate regulatory authorities exempt them from these formal requirements, except for the inventory and financial statements book and the shareholders' and directors' meeting minutes book.

Accounting records other than the inventory and financial statements book may be kept using computerised booking systems with paper printouts (listings on removable sheets of paper), compact discs, other optical discs and microfilms, as long as authorisation has first been obtained from the Superintendence of Corporations (IGJ). To obtain this authorisation, the company must meet a series of requirements, some of which include a technical demonstration showing that the records cannot be altered, which must be supported by administrative and accounting internal controls as well as by other operative or scheduled internal controls applied to data input, processing and output.

Companies keeping accounting records using computerised booking systems should file an independent accountant's certification with the IGJ within the 120-day period after year end, containing:

- An exact description of the system used during the year
- A properly founded opinion on the agreement between the booking system used during the year and the authorised booking system.

If no objections are found, the IGJ will issue a certification that should be added to the inventory and financial statements book. This certification is required for the books to be considered compliant with the law. Furthermore, every 2 years, a technical upgrade report is to be filed with the IGJ concerning the level of obsolescence of the system being used.

The Argentine Commercial Code provides that all businesses are required to prepare, within the first 3 months after each fiscal year end, a balance sheet and an income statement that should be transcribed to the inventory and financial statements book.

The Business Associations Law includes provisions related to the information that must be included in the financial statements. Additionally, regulatory agencies have specific regulations in this regard that supplement the Business Associations Law.

The financial statements of stock corporations and their foreign branches should include a report carried out by an independent certified public accountant on whether those financial statements, taken as a whole, account fairly for the company's financial position and its operation results (and changes in cash flows, as the case may be), in accordance with professional accounting standards.

## Annual return

### Financial reporting standards

In each jurisdiction, a professional council in economic sciences is charged with issuing professional accounting (generally accepted accounting principles) and audit standards. The standards issued by each council are mandatory only for the professionals registered with the respective jurisdiction.

All professional councils in Argentina are members of the FACPCE (Argentine Federation of Professional Councils in Economic Sciences), which coordinates efforts to issue professional accounting and audit standards. To draft these standards, the FACPCE has created the CENCyA, a committee for the issuing of accounting and auditing standards.

To issue standards, the CENCyA prepares a proposal of an accounting and auditing standard (bill), which, once approved by the FACPCE's governing board, is published with a deadline for receiving opinions from interested parties such as professional councils, government control entities, business associations, and graduates in economic sciences. Once this inquiry period has elapsed and the changes approved have been included, the bills become technical resolutions that require the approval of the respective professional councils to come into force in each jurisdiction.

In 1998, the FACPCE's governing board decided to implement a plan to adapt Argentine professional accounting standards to the international standards proposed by the International Accounting Standards Committee (replaced by the International Accounting Standard Board after 2002). This plan included:

- Defining a general framework for Argentine professional accounting standards, including an accounting model consistent with the international accounting standards (IAS)
- Adopting benchmarks or acceptable alternatives contained in certain IAS selected for the first stage of the harmonisation plan, provided they are not significantly inconsistent with the general framework. That is, the purpose of the original plan and the final result was not a direct merging of the two, but rather an approach to make it more similar to the IAS.

On 8 December 2000, the governing board of the FACPCE approved Technical Resolutions Nos. 16–19, completing the first stage of the harmonisation plan, and then continued issuing new technical resolutions; however, there was no update of the protocol to allow for the

introduction of the changes that were quickly incorporated into international standards.

On 20 March 2009, the governing board of the FACPCE approved Technical Resolution (TR) No. 26, 'Adoption of the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB)'. This approval was the result of a common project between the FACPCE and the CNV (Argentine Securities Commission) to adopt IFRS as the only valid standard for preparing the financial statements of entities included in the public offering system, whether through their capital stock or corporate bonds, although certain entities under CNV control were exempted from this mandatory obligation, as explained below. TR 26 also established that IFRS may apply for all entities not covered by, or exempted from, their mandatory application, to the same scope as set forth for entities that apply IFRS mandatorily.

Subsequently (on 3 December 2010), the FACPCE approved TR 29, which made changes to the mandatory application of TR 26 and extended the options to international standards by including the possibility of applying IFRS to small and medium enterprises (SMEs) – issued by the IASB in July 2009 – except in the case of entities publicly required to issue financial reports, for which the option is limited to full IFRS.

All entities not covered by, or exempted from, the mandatory application of IFRS, and which do not apply IFRS or IFRS for SMEs by choice, must apply the professional accounting standards issued by the FACPCE other than TR 26 or any relevant standards that this agency issues in the future.

## **Application of IFRS by TR 26 and its amendment, TR 29**

As a result of the issuing of TRs 26 and 29, the application of IFRS in Argentina involves the following scope and characteristics:

### **Mandatory application scope**

Application of IFRS shall be mandatory for preparing the financial statements of entities included in the public offering system, whether due to their capital stock or corporate bonds, or entities that have requested authorisation to be included in said system, with temporary exemptions set forth for given entities, which include entities authorised by the CNV to maintain the accounting methods of a different regulating body, such as the companies included in the Financial Institutions Law, insurance companies, cooperatives, and civil associations.

The application of IFRS should be carried out fully without any changes, in conformity with the official text in Spanish issued by the IASB. TR 26 includes an exhibit with the list of standards and interpretations issued by the IASB as of the date of the TR's approval and adopted by the FACPCE's governing board. The adoption of new IFRS or amendments to IFRS already adopted is made through IFRS adoption circulars issued by the FACPCE.

### **Optional application of IFRS**

Entities not covered by – or exempted from – the mandatory application of IFRS, have the option of applying IFRS or IFRS for SMEs, to the same scope as set forth for entities that apply IFRS mandatorily. However, IFRS for SMEs cannot be used by entities that are expressly excluded from their application by the IASB – that is, by any entity whose debt or equity instruments are negotiated on a public market or which is in the process of issuing these instruments for trading on a public market, or when one of its main activities is to hold assets as a trusty for a vast group of third parties.

Thus, the possibility of optionally applying IFRS or IFRS for SMEs is subject to the respective corporate regulatory body accepting such application.

### **Financial statements covered by the comprehensive application of IFRS:**

- Consolidated financial statements
- The financial statements of entities that are not required to submit consolidated financial statements.

Stand-alone (individual) financial statements of entities that should submit consolidated financial statements either totally or proportionately shall be prepared by applying IFRS with the sole exception of the measurement of:

- the investments of subsidiaries, jointly-held companies and affiliates
- special-purpose entities that must be qualified to be included in the consolidated financial statements for which the equity method will be implemented instead of the fair value method or the cost method, as required by IFRS.

The purpose of this difference with IFRS, is to ensure that the equity and income of the controlling equity interests (majority interest) in the consolidated financial statements submitted together with the stand-alone financial statements, be the same in both sets of financial statements.

### **Effective date**

For all entities falling under mandatory application of IFRS, the effective date for such application to financial statements is fiscal years beginning on or after 1 January 2012, and interim periods, allowing for the early application of IFRS for fiscal years beginning on or after 1 January 2011 and, where applicable, its interim periods.

The entities not covered by mandatory application of TR 26 can choose to apply IFRS or IFRS for SMEs (with the above-mentioned limitation) to the financial statements for the fiscal years beginning on or after 1 January 2011, provided the relevant corporate regulatory agencies allow it.

Regarding the audit norms, the local norms have compulsorily adopted the audit international norms for listed companies, through the use of the TRs 32, 33, 34 and 35. Likewise, it has harmonised the local regulations with international regulations through the use of TR 37.

Technical Resolutions issued until 31 December 2013, other than TRs 26 and 29, are listed in Table 1.

*Table 1. Technical Resolutions issued and enforced up to 31 December 2013 by the Argentine Federation of Professional Councils in Economic Sciences (FACPCE).*

TR 6:	Financial statements in constant currency.
TR 7:	Audit standards
TR 8:	General regulations for accounting disclosure
TR 9:	Specific standards for accounting disclosure by companies engaging in trade, industrial activities and services
TR 11:	Specific standards for accounting disclosures for non-profit organisations
TR 14:	Accounting information regarding involvement in joint ventures
TR 15:	Standards on the roles of public accountants as statutory auditors
TR 16:	General framework for professional accounting standards
TR 17:	Professional accounting standards: Dealing with generally applicable issues
TR 18:	Professional accounting standards: Dealing with specific issues
TR 19:	Amendments to Technical Resolutions 4, 5, 6, 8, 9, 11 and 14
TR 20:	Derivative instruments and hedge transactions
TR 21:	Equity valuation by the equity method. Consolidating financial statements. Information to be disclosed on related parties
TR 22:	Farming activities
TR 23:	Employee benefits due after termination of the payroll employee relationship and other long-term benefits
TR 24:	Specific aspects regarding accounting disclosure and audit procedures for cooperatives
TR 25:	Amendment to Technical Resolution 11
TR 27:	Partial amendments to other technical resolutions
TR 28:	Impracticability. Financial reporting – comparative information
TR 31:	Introduction to the revaluation of fixed assets except for biological assets
TR 32:	Adoption of International Audit Norms of IAASB of IFAC
TR 33:	Adoption of International Norms for engagements to review financial statements of IAACB of IFAC
TR 34:	Adoption of International Norms for Quality Control and Independence Norms
TR 35:	Adoption of International Norms of assurance engagements and related services of IAASB of IFAC
TR 36:	Sustainability report
TR 37:	Norms for Audit, review, other assurance engagements, certifications and related services

INT 1:	Transactions between related parties
INT 2:	Statement of cash flows
INT 3:	Booking income tax
INT 4:	Applying professional standards to small entities
INT 5:	The auditor's report on figures and information presented for comparative purposes
INT 6:	Audit or review of sustainability report

The accounting model of the Argentine professional accounting standards in effect (other than TR 26) is based on the following pillars:

### Measurement unit

The financial statements are to be stated in constant monetary units of period-end purchasing power whenever there are generalised inflationary or deflationary conditions. The bodies in charge of issuing professional accounting standards have decided that since 1 October 2003, the economic situation in Argentina has been stable; therefore, financial statements are not required to include the effect of changes in the currency's purchasing power taking place from that date on. When the restatement process is interrupted and then resumed, the effects of the inflation or deflation over the period the interruption took place are ignored.

### Measurement methods

The accounting measurements may be based on the following variables.

For assets:

- Historical cost
- Replacement cost
- Net realisation value
- Fair value
- Discounted amount (present value) of cash flow to be collected
- Percentage of equity interest on the accounting measurements of assets or equity.

For liabilities:

- Original amount
- Settlement cost
- Discounted amount (present value) of the cash flow to be disbursed
- Percentage of equity interest on the accounting measurements of liabilities.

The accounting measurement methods must be based on the most appropriate variable depending on the case, keeping in mind the most likely use of the assets and the intention and likelihood of settling liabilities promptly.

The FACPCE established that, for valuation issues not regulated by specific accounting standards and that cannot be resolved by means of specific standards dealing with similar issues, or through the application of accounting measurement standards in general, or through the items included in the Conceptual Framework of Argentine Accounting Standards, then supplementary consideration may be given to develop an accounting policy based on, in order of priority, first, IFRS and the interpretations approved and issued by the IASB and, secondly, on the pronouncement made by other accounting resolutions' setting bodies using a similar conceptual framework for the issuance of accounting standards, industry practices, and accounting jurisprudence.

## Audit standards

In 2003, the FACPCE approved a work plan to adopt the IAS issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC), updated in 2005. This bill has an 8-month inquiry period and sets forth the following:

The IAS issued by the IFAC IAASB to be considered is the one with the issuance date closest to the date of adoption.

The FACPE reserves the right to adopt, totally or partially, the IAS mentioned in the previous section.

The approved text shall include:

- The IAS translated into Spanish, with Argentine terminology to clarify the translation performed or adopted
- The differences introduced by the particularities of the Argentine context
- An IAS application manual for SMEs
- The mechanism for future updates.

The technical bodies dependent on the FACPCE are currently working on completing the tasks listed in the previous paragraph and any others required, and the communication of the IAS adoption plan is expected.

The current norms on financial statements auditing and limited reviews are included in FACPCE TR 7. These norms do not include substantial differences in their basic aspects in relation to international auditing regulations issued by the IFAC.







## The Next Step

Contact S&A to discuss your needs.

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