

LEX MUNDI  
PUBLICATION



**TAX PRACTICE GROUP  
Multi-Jurisdictional Survey**

**TAX DESK BOOK**

**CONTACT INFORMATION**

**Nicolás Rossi**  
**Marval O Farrel & Mairal**  
**Av Alem 928, City of Buenos Aires**  
**011 4310 0100**  
**NRB@marval.com.ar**

**ARGENTINA**

**Introduction**

- 1. Please give a brief overview of the types of taxes imposed in your jurisdiction (i.e., direct and indirect taxes and their components.)**

Direct Taxes

I) Income Tax: Income Tax is payable upon the net income obtained during a given fiscal year. As a general rule, income is allocated to the fiscal year in which it accrues. Argentine residents are taxed upon their worldwide income and foreign residents are tax upon the Argentine source income. In principle, all ordinary and necessary expenses incurred in earning taxable income are tax deductible (i.e.: interest, salaries, taxes, etc.). Expenses, as income, are generally allocated to the fiscal year in which they accrue.

Losses incurred during any fiscal year may be carried forward and set off against taxable income obtained during the following five fiscal years.

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

**LEX MUNDI**  
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

II) Presumed Minimum Income Tax: This tax applies to all assets of Argentine companies and other entities such as Argentine trusts (“fideicomisos”) organized under Law No. 24,441, common investment funds and Argentine permanent establishments of foreign entities.

The tax only applies if the total value of the assets exceeds A\$ 200,000 at the end of the entity’s financial year. In this case, the total value of the assets will be taxed at the rate of 1%.

Normal corporate income tax is allowed as a payment on account of this tax’s liability. Notwithstanding this, if in a given fiscal year, the taxpayer has to pay this tax (i. e. because the payment on account is not sufficient), this tax could be used, under certain circumstances, as a payment on account of future income tax liability in the following 10 fiscal years.

III) Personal Assets Tax: The Personal Assets Tax Law No. 23,966, as amended, provides that all individuals domiciled in Argentina are subject to a tax upon their worldwide assets. Individuals not domiciled in Argentina are only liable for this tax upon their assets located in Argentina. Shares, negotiable obligations and other securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina.

In general, the tax on personal assets only applies when the value of the total assets owned by the taxpayer as of December 31 of each relevant fiscal year exceeds A\$305,000.

IV) Other direct taxes: there are other taxes applicable on assets, such as the tax on immovable property levied by the Provinces.

#### Indirect Taxes

I) Value Added Tax: This tax is regulated by Law No. 20,631 and applies to the sale of goods, the provision of services and the importation of goods.

Under certain circumstances, services rendered outside Argentina which are effectively used or exploited in Argentina, are deemed rendered in Argentina and are therefore subject to VAT.

VAT is paid at each stage of the production or distribution of goods or services upon the value added during each of the stages. Thus, this tax doe

## **INCOME TAXES – AS APPLIED TO BUSINESS ENTITIES AND INDIVIDUALS**

### **Calculation of Income/ Profit Taxes**



## 2. How is the taxable base determined?

The taxable base for residents is made up of income derived from all sources, foreign and domestic, less deductions for costs incurred, which are necessary for earning such income and gains.

There are allowed deductions that are not necessary for generating taxable income, such as interest arising from loans used to acquire real estate property (devoted to living of the taxpayer) secured by mortgages. This deduction is only available to individuals.

Afterwards, if the result is a gain, losses from previous years are deducted. However, losses from foreign source are not deductible from gains from Argentine source, whereas losses from Argentine source can be deducted from income from foreign source. Losses can be carried forward for five years. There are other specific losses that are only deductible from gains arising from the same kind of activity or transaction.

Individuals can make further deductions that are not related to the generation of taxable income. Such deductions are allowed, for instance, when the taxpayer has a son, and, also, to determine a minimum income not subject to tax.

On the other hand, foreign residents are taxed by way of withholding upon the income from Argentine source. The taxable base, upon which a withholding rate of 35% is applied, is determined by percentages of presumed net income, which vary according to the type of income.

Exceptionally, income for Argentine residents is also determined by way of presumptions.

## 3. What revenues are included?

In the case of individuals, in principle, only the income that is obtained in a habitual manner is subject to tax.

In the case of legal entities, in principle, all earnings are subject to income tax, save where an exemption applies, a treaty establishes that Argentina has no power to tax, or other exceptional rule applies.

## 4. What deductions are allowed?

In principle, all expenses are deductible provided that they are necessary to obtain taxable income or to keep or maintain its source. However, there are certain rules that

specify which deductions are disallowed or under which circumstances expenses that are normally allowed become disallowed. Moreover, there are "expenses" that although they have no connection with the earning of income, its deduction is specifically allowed by Income Tax Law. An example of such deductions is the one arising from gifts granted to non profit organizations, provided that the requirements established in Income Tax Law are fulfilled.

As stated previously, expenses are deductible as long as they are necessary to obtain taxable income or to keep or maintain its source. Where expenses are related to both taxable and non taxable income, they must be allocated to taxable or non taxable income, either by direct attribution or following a pro-rata rule. Interest has a special rule regarding allocation to taxable or non taxable income.

## **5. What are the major expenses that are not deductible?**

Some of the expenses that are not deductible are the following: i) Depreciation of trademarks and similar assets; ii) losses arising from illegal activities; iii) gifts granted in favor of non profit organizations that do not comply with the requirements established by Income Tax Law; iv) fees in consideration of technical assistance services paid abroad in excess of the limits established by Income Tax Regulatory Decree. Same prohibition applies to fees paid to off shore directors. Moreover, royalties paid in consideration of technical assistance that falls under the scope of the Technology Transfer Law, are entirely not deductible if the contract is not registered before a government office; v) the Income Tax; vi) the royalties paid in consideration of the license of trademarks, in excess of the limits established by Income Tax Regulatory Decree; etc.

## **6. What are the applicable federal rates?**

Income Tax: 35% for corporations. Individuals are taxed by rates that go from 9% to 35%.

VAT: 21% (general rate). There is also a 10.5% and a 27% rate for certain transactions.

Presumed Minimum Income: 1%.

Personal Assets Tax: 05.% to 1.25% for individuals domiciled in Argentina. Individuals domiciled abroad are taxed at a 1.25% rate.

Tax on Debits and Credits (financial transactions): 0.6% or 1.2% (in cases in which there has been a substitution for the use of a checking account).

**7. What are the applicable state and/ or other local rates?**

Where Turnover tax is concerned, the rates varies according to each jurisdiction and type of activity. However, usually, agricultural, cattle breeding and mining activities are taxed at a 1%, industrial activities, trade or services in general, at a 3% rate and 5% on financial activities.

The Stamp Tax general rates also vary according to each jurisdiction. They usually range from 0.8% to 1%.

Municipal taxes ("tasas") vary according to the municipality.

**8. What are the applicable capital gains rates and base, if different and concessional tax treatment in case of business re-organization such as amalgamation, slump sale, demerger, etc?**

There is no separate rate for capital gains. Reorganizations are either subject to the general Income Tax rules, or are tax free, when they comply with the requirements provided in Income Tax Law.

**9. How are operating losses handled?**

Operating losses can be carried forward for five years and can be deducted from the income of any of such fiscal years, with the exeptions explained previously.

**10. How are capital losses handled?**

Same as 15.

**Territorial Rules****11. What are the residence rules?**

Very briefly, the residence rules are the following:

Individuals:

- i) of Argentine nationality that have not lost their resident status;
- ii) of foreign nationality who have obtained permanent residence in Argentina;

iii) of foreign nationality who have not obtained permanent residence in Argentina, and have lived in Argentina with temporary authorizations in accordance with applicable regulations on immigration for twelve months. However, if they can prove that they have no intention of staying in the country, in principle, they will not be considered residents, even if they have stay in the country for more than 12 months.

iv) Under certain circumstances, foreign individuals that live in Argentina due to labour reasons will not be considered residents (not taxed upon foreign source), even if they have lived in Argentina for 12 months, provided they do not stay in Argentina for more than five years.

There are also rules regarding the loss of resident status and double residence.

Legal entities incorporated (or other entities treated for tax purposes as corporations) in Argentina and permanent establishments located in Argentina are considered to be Argentine residents.

## **12. Is worldwide income taxed?**

It is for Argentine residents.

## **13. Tax credits - Are there tax credits relating to legal dispositions other than provisions in Double Taxation Treaties, on the possibility of deducting taxes paid abroad, or any others?**

Yes there are.

## **Withholding Taxes**

### **14. What are the rates on dividends for withholding taxes?**

In principle, dividends distributed by local companies are not subject to tax, except if the profits distributed have not been taxed at the corporate level. In such a case, only the profits that have not been taxed at the corporate level are subject to withholding. The withholding tax rate is 35% (according to Income Tax Law).

### **15. What are the rates on royalties for withholding taxes?**

Withholding rates for royalties can vary according to the origin of the income. For instance, royalties paid in consideration for services that qualify as transfer of technology can be subject to a withholding rate of 21% or 31.5% (subject to

compliance with registration requirements). Royalties paid in consideration of trademark license can be subject to a withholding rate of 28% or 31.5%.

Tax treaties provide ceiling on these withholding rates, that in many cases are of 10%.

Please see answer to question 24.

#### **16. What are the rates on interest for withholding taxes?**

Interest is subject to a 15.05% or 35% withholding rates. Tax treaties provide ceiling on these withholding rates, that in many cases are of 10%, and in some exceptional cases are reduced to 0%.

#### **17. What are the rates of withholding tax on profits realized by a foreign corporation?**

In principle, any income subject to Income Tax, deemed by the ITL to arise from an Argentine source, obtained by a non-resident individual or a foreign legal entity without a permanent establishment in Argentina, is subject to tax by way of withholding upon payment of the income. Payment is defined to comprise many different situations that do not qualify as payment from a strictly legal point of view. Whenever the local payer assumes the obligation to pay the tax for the non-resident recipient, the net amount payable must be grossed-up.

The applicable withholding rates vary according to the type of income. Please see answer to question 24.

#### **18. Please list any other rates on withholding taxes that we should be aware of.**

Withholding rates (plus grossing up) established by Income Tax Law:

- i) amounts paid pursuant to technical assistance agreements, engineering or consulting services that the authorities consider unavailable in Argentina, provided such agreements are registered in compliance with the Transfer of Technology Law: 21% (26.58%);
- ii) amounts paid pursuant to agreements registered in compliance with the Transfer of Technology Law and not included among those mentioned in (i) above: 28% (38.89%);
- iii) copyright royalties paid pursuant to agreements which comply with the requirements of the Copyright Law: 12.25% (13.96%);

iv) interest on loans obtained abroad: 35% (53.85%). If the lender is a bank or financial institution incorporated or located in a jurisdiction not deemed to be a low tax jurisdiction or in a jurisdiction that has entered into exchange of information agreements with Argentina and, besides, is a jurisdiction where bank secrecy, secrecy pertaining to stock exchange transactions or of other kind cannot be alleged in accordance with its local provisions upon a request by the respective tax authority (i.e. financial entities under the supervision of the relevant Central Bank or equivalent agency): 15.05% (17.72%);

v) payments due to work on a temporary basis in Argentina for a period not exceeding six months: 24.5% (32.45%);

vi) rental payments on moveable property: 14% (16.28%);

vii) rental payments on real estate: 21% (26.58%);

viii) proceeds from the sale of any type of property: 17.5% (21.21%); and

ix) other income not specifically mentioned above: 31.5% (45.99%).

In cases (vii) and (viii), and with the authorization of the tax authority, the foreign beneficiary may elect to pay the tax at the rate of 35% on net income, which is calculated by deducting the expenses incurred in obtaining the taxable income from the gross amount.

## **Tax Returns and Compliance**

### **19. What is the taxable reporting period?**

Income and Presumed Minimum Income Tax: one year.

Value Added Tax: one month.

Personal Assets Tax: one year.

Turnover Tax: monthly and a final tax return yearly.

Stamp Tax: upon taxable execution of public or private instruments.

Debits and Credits Tax: withheld by Banks mostly. Does not require filing of tax return and is collected, mainly, by way of withholding.

### **20. What are the due dates for the filing of tax returns?**

Income Tax, Personal Assets Tax and Presumed Minimum Income: around May of the following year.

Value Added Tax: filing is done on a monthly basis and is usually due after the 15th of the following month.

Turonover Tax: around the 15th of the following month.

## **21. What are the key compliance requirements?**

There are several compliance requirements. Among the key information obligations are the ones regarding international operations and transfer pricing study.

The information requirements related to international operations with unrelated parties is applicable to all legal entities involved in exports and imports. The information has to be submitted either on a yearly basis or each semester. The information is, briefly, the following: i) identifying information of the non resident, such as name, activity, etc; ii) description of the transactions, their amount, currency, etc; iii) if the product is traded in international markets, details of such markets and sources of the information of the price of the transaction; iv) banking operations related to the imports and exports; v) in some cases, working papers related with the export operations have to be filed.

If the transaction is entered with a related party or with an entity resident in a tax haven, which has to be determined according to the list of Section 21.7 of Income Tax Regulatory Decree, two reports have to be filed, one related to the first semester and the other related to the whole fiscal year.

The second report should be filed together with a transfer pricing report and a copy of the accounting records of the fiscal year and of the previous two fiscal years.

Other compliance requirements that are important are: i) withholding of Income Tax and social security taxes arising from wages; ii) filing due to withholding upon payments made to domestic and local residents.

## **22. Are there any other requirements that we should be aware of regarding tax returns and compliance?**

There are not other substantial requirements.

## **INDIRECT TAXES**

### **23. Are there any indirect taxes in your jurisdiction?**

Yes. The most important are VAT and Turnover Tax. Another tax that could qualify as indirect is the Internal Tax, but it has a very limited scope. It is applicable mostly upon the sale of certain products, such as cigarettes, alcoholic beverages, etc.

### **24. How does it operate? Is it a VAT or a sales tax?**

#### VAT

VAT is paid at each stage of the production or distribution of goods or services upon the value added during each of the stages. Thus, this tax does not have a cumulative effect.

The tax is levied on the difference between the so-called "tax debit" and the "tax credit".

The "tax debit" is the tax corresponding to sales made or services rendered by the taxpayer. It is obtained by applying the tax rate to the price of such sales or services.

The "tax credit" is the tax indicated in the invoices of the suppliers of goods or services contracted by the taxpayer.

The difference between the "tax debit" and the "tax credit", if positive, constitutes the amount to be paid to the tax authority. The current general rate is 21%. Sales and imports of capital goods, and interest payment to foreign financial institutions, among others, may be subject to a 10.5% tax rate.

Since exports of goods are subject to VAT at a 0% rate, exporters may utilize the VAT charged to them as a "fiscal credit", if such VAT is actually connected to any stage of the production or sale of the exported goods.

#### Turnover Tax

Turnover tax is a local tax levied on gross income. The tax is levied on the amount of gross income resulting from business activities carried on within the respective provincial jurisdictions, save some exceptions, such as, commonly, exports and sale of fixed assets.

The provinces have entered into an agreement ("Multilateral Agreement") to avoid the double taxation of activities performed in more than one jurisdiction. Under this agreement, gross income is allocated between the different local jurisdictions

applying a formula based on the place where income is obtained and expenses incurred.

## 25. How is the taxable base determined?

VAT: The tax is levied on the difference between the so-called "tax debit" and the "tax credit".

The "tax debit" is the tax corresponding to sales made or services rendered by the taxpayer. It is obtained by applying the tax rate to the price of such sales or services, less discounts granted at the moment of the sale or the time when the services has to invoiced.

The "tax credit" is the tax indicated in the invoices of the suppliers of goods or services contracted by the taxpayer.

The difference between the "tax debit" and the "tax credit", if positive, constitutes the amount to be paid to the tax authority. If negative, it can be carried forward to the following monthly periods and deducted from the difference of Tax Debits and Tax Credits arising from any such periods.

The current general rate is 21%. Sales and imports of capital goods, and interest payment to foreign financial institutions, among others, may be subject to a 10.5% tax rate.

Turnover Tax: gross income, save some exceptions, such as income arising from exports, sale of fixed assets.

## 26. What are the applicable rates?

VAT: the general rate is 21%. There are exceptional rates of 10.5% and 27%.

Turnover Tax: each one of the provinces and the City of Buenos Aires apply different tax rates; however, most provinces apply a 1% rate on agricultural, cattle breeding and mining activities, 3% on industrial activities, 3% on trade or services in general, and 5% on financial activities.

## 27. Are there any exemptions?

Yes. Both VAT and Turnover tax law provide for many exemptions. In the case of Turnover Tax, each jurisdiction establishes different exemptions, although many of them coincide.

**28. Are there any other taxes such as debit or financial transactions taxes enforced in you jurisdiction?**

Yes.

This tax is levied upon debits and credits in bank accounts and upon other transactions which, due to their special nature and characteristics, are similar or could be used in substitution for a checking account, such as payments on behalf of or in the name of third parties, procedures for the collection of securities (“valores”) or documents, drafts and transfers of funds made by any means, when these transactions are performed by entities regulated by the Financial Entities Law No. 21,526.

Transfers and deliveries of funds also fall within the scope of this tax, regardless of the person or entity that performs them, when those transactions are made through organised systems of payment in substitution for checking accounts.

**PARAFISCAL CONTRIBUTIONS**

**29. Are there any parafiscal contributions (i.e. social security, science and/or technology)?**

Yes.

**30. How do they operate?**

Pursuant to Argentine labour law, employers and employees have certain obligations to make social security contributions for family allowances, medical services, pensions and unemployment benefits. In addition, pursuant to many collective bargaining agreements, union dues of 1% to 2.5% of salaries may be withheld from employee salary payments for employees who are covered by those agreements.

Furthermore, the employer will also be required to withhold amounts due in respect of income tax payable by the employee.

**31. How is the taxable base determined?**

Withholdings and contributions are calculated as a percentage of the individual employee’s salary, which must be deposited in the relevant accounts which the Argentine Tax Administration (AFIP, “Administración Federal de Ingresos Públicos”) maintains in most banks in Argentina.

The taxable base is the employee's gross remuneration. In case of employee's social security payments, the base to calculate them is capped at 8,711 pesos. Employer's contributions have no cap, and therefore must be calculated over the whole employee's remuneration.

### **32. What are the applicable rates?**

Employer contribution: 23 or 27%. Employee withholding: 17%.

### **33. Are there any exemptions?**

There are exemptions for directors that also qualify as employees and for expatriates, under certain circumstances.

## **INHERITANCE AND GIFT TAXES**

### **34. Are there inheritance taxes, gift taxes or any other taxes like Wealth Tax, etc.?**

Yes

### **35. If you answered yes to the question above, please describe what triggers the requirement for the tax, what the rate of tax is, and what is included in the taxable base.**

There is a tax on personal wealth called Personal Assets Tax. It is applicable to all individuals domiciled in Argentina upon their worldwide assets. Individuals not domiciled in Argentina are only liable for this tax upon their assets located in Argentina. Shares, negotiable obligations and other securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina.

In general, the tax on personal assets only applies when the value of the total assets owned by the taxpayer as of December 31 of each relevant fiscal year exceeds A\$305,000. Depending on the value of the total assets, tax rates vary from 0.5% up to 1.25%. Individuals domiciled abroad are subject to a fixed tax rate of 1.25%.

**OTHER MATTERS****36. Are there any tax incentives granted for various matters such as research and development, investment in certain industries/ areas, etc.?**

Yes

**37. If so, please indicate if there are any of the following: anti-deferral regimes; transfer pricing provisions; tax avoidance measures like legislated General Anti-Avoidance Rules, etc.; controlled foreign companies regulations; thin capitalization rules****I) Transfer Pricing Provisions**

Transfer pricing practices are considered to take place when an Argentine company enters into business transactions with:

- (i) a related company located abroad, or
- (ii) a non-related company located in a low tax jurisdiction, and the prices agreed upon in such transactions do not reflect normal market practices (i.e. are not at arm's length).

Pursuant to the transfer pricing provisions, any of these transactions are deemed not to be at arm's length, unless evidence to the contrary is provided. The Argentine taxpayer is only able to deduct payments made to a related company located abroad or to an unrelated company located in a low tax jurisdiction, to the extent that it can establish that the price paid is one that would have been paid in an arm's length transaction. If the taxpayer cannot prove the foregoing, the tax authorities may make transfer pricing adjustments to the income and expenses allocated between the parties.

In order to establish that the terms of the transaction are arm's length, the Argentine taxpayer must submit special reports containing detailed information and supporting documentation related to the transactions.

The ITL allows the taxpayer to prove arm's length compliance through different methods (i.e. comparing prices, margins, levels of profit, etc.) in line with OECD guidelines. As a general rule, taxpayers are required to use the method that best fits each transaction.

However, in the export of commodities (i. e. cereals, oil seeds, hydrocarbons or other goods with a known price in transparent markets), the ITL sets forth that the Argentine-source income must be assessed by applying the quotation value of the goods in the transparent market on the day the goods are loaded unless it can be proved to the contrary.

## II) Thin Capitalization Rules

These rules apply if: i) the creditor controls the debtor (in terms of Section 15.1 of ITL); ii) the creditor has its tax residence abroad; iii) the interest is one upon which the applicable withholding rate is not 35% (established in point 2, Subsection c, Section 93 of ITL); iv) interest arising from debt exceeds twice the net worth. The considered debt is only the one that arises from financial debts not including the debt that comes from the acquisition of assets or from leases or rendering of services related with the business.

## III) CFC Rules

Where a stock company is located in a low-tax jurisdiction, the Shareholder must include the taxable income derived from passive investment obtained by the company, regardless of whether such passive income has been distributed as a dividend, plus all passive income obtained by entities organized by the first tier company in a low-tax jurisdiction. The rule is applicable if the passive income exceeds 50% of the income resulting from commercial or industrial activities. Such passive incomes will be directly attributed to the Shareholder, even if such income has not been distri

**38. List the countries in which there are tax treaties. This could impact the withholding taxes on various distributions and to the extent possible, please itemize them below. Please include the impact upon withholding on compensation, interest, dividends or other distributions for each country listed.**

Argentina is part of different tax treaties currently in force with the following countries: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Norway, Spain, Sweden, Switzerland, The Netherlands and The United Kingdom. These treaties are based, other than those with South American countries, upon the OECD model and particularly seek to avoid double taxation.

The following table sets out the maximum rates at which interest, dividends and royalties may be taxed in Argentina when the recipient is a resident of one of the countries listed below and the rest of the requirements under the relevant treaty are met. The other countries with which Argentina has entered into tax treaties but which are not mentioned in the table below do not set specific limits on taxes but establish (to avoid double taxation) which country has jurisdiction to impose taxes in certain circumstances:

Country	Interest	Dividends	Royalties
Australia	12%	15%	15%
Austria*	12.5%	15%	15%
Belgium	12%	15%	15%
Canada	12.5%	15%	15%

<b>Country</b>	<b>Interest</b>	<b>Dividends</b>	<b>Royalties</b>
Denmark	12%	15%	15%
Finland	15%	15%	15%
France	20%	15%	18%
Germany	15%	15%	15%
Italy	20%	15%	18%
Norway	12.5%	15%	15%
Spain	12.5%	15%	15%
Sweden	12.5%	15%	15%
Switzerland	12%	15%	15%
The Netherlands	12%	15%	15%
The United Kingdom	12%	15%	15%