

**LEX MUNDI INTERNATIONAL TAX DESKBOOK**

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The material places emphasis upon the type of tax or levy or contribution rather than upon the entity being taxed.

**INTRODUCTION**

Argentina is a country with three levels of government and taxation. The Federal government is the principal revenue raiser while the local governments (i.e. the provinces and the City of Buenos Aires) and the municipal authorities are significantly dependent upon transfers of revenue from the Federal government.

The Federal government's tax base encompasses both direct and indirect taxes. Taxation of income provides the principal tax base. Aside from Income Tax, there are other taxes, such as Value Added Tax (*Impuesto al Valor Agregado*), Minimum Presumed Income Tax (*Impuesto a la Ganancia Mínima Presunta*), Personal Assets Tax (*Impuesto sobre los Bienes Personales*), Excise Taxes (*Impuestos Internos*), etc.

The local governments' primary taxation is focused on the performance of economic activities through the so-called Turnover Tax (*Impuesto sobre los Ingresos Brutos*), the instrumentation of written agreements, through the so-called Stamp Tax (*Impuesto de Sellos*) and real estate taxes (*Impuestos Inmobiliarios*).

Lastly, the municipalities focus their taxation as a way of funding the services they provide.

All the customs duties related to international transactions are levied by the Federal government.

The Federal Tax Administration (*Administración Federal de Ingresos Públicos – "AFIP"*) functions under the scope of the Ministry of Economy (*Ministerio de Economía*). The AFIP has day-to-day administrative responsibility for collecting taxes and ensuring general compliance with taxation law. The AFIP has various branch offices in each province and in the City of Buenos Aires. The AFIP maintains a website at [www.afip.gov.ar](http://www.afip.gov.ar).

Income tax is administered primarily on a self-assessment basis combined with extensive auditing by the AFIP.

Taxpayers have the right to request binding and non binding rulings to the AFIP. The right to request a ruling from the AFIP is granted by the Argentine Constitution and by the Tax Procedural law and its regulatory decree. Binding rulings may only verse on Federal taxes and social security. Taxpayers' requests for rulings must be based on actual cases or investment projects on which taxpayers can show a particular and direct interest. The AFIP will not issue binding rulings on matters (a) governed by conventions for the avoidance of double taxation, (b) that relate to the application of payments on account of future obligations (*percepciones*) and withholding regimes, and (c) that are being assessed at the time of the request and the taxpayer is already notified of the existence of that procedure. Taxpayers have the right to appeal the rulings to the Ministry of Economy (*Ministerio de Economía y Producción*), but such appeal does not suspend the effects of the ruling. The AFIP itself can modify its rulings, but any change thereof will only have effect as of the date of said change. The tax authority can revise, modify or revoke its rulings at any time.

The main and only source of tax should be the law, at all three levels of taxation. At a federal level, laws are enacted by the National Congress, at a local level, by the congress of each jurisdiction and at a municipal level, by the Counsel (Consejo Deliberante) of each municipality.

## INCOME TAXES

### AS APPLIED TO BUSINESS ENTITIES AND INDIVIDUALS

The most common types of organizations to carry out businesses in Argentina are:

#### **Corporations (Sociedades Anónimas - "S.A.")**

The S.A. must be registered with the Public Registry of Commerce of the jurisdiction of its legal domicile (i.e. the City of Buenos Aires or any of the provinces).

At least two shareholders, which can be either corporate entities or individuals, are required to set up an S.A.

The minimum capital is AR\$12,000 (twelve thousand pesos). However, the Public Registry of Commerce of the City of Buenos Aires (*Inspección General de Justicia* - "IGJ") may require a higher amount depending on the activity to be carried out.

The capital of the S.A. is divided into shares which must be in registered form and denominated in Argentine currency. Argentine law does not permit companies to issue bearer shares. Shares may be either registered non-endorsable shares or book-entry shares. Share certificates may represent one or more shares. An S.A. may have different

classes of shares with different rights attached to each class which in turn may be common (“*acciones ordinarias*”) or preferred (“*acciones preferidas*”).

The S.A. may be managed by a single director or by a board of directors elected at a shareholders’ meeting. A minimum of 3 directors is required if the company’s capital exceeds the sum of AR\$10,000,000. The directors and even the President of the company may be foreigners; however, the majority of the members of the board of directors must be Argentine residents. Directors need not be shareholders. The president, elected from amongst the members of the board, has full powers to act on behalf of the company.. Board of Directors must meet at least once every three months.

Ordinary shareholders’ meetings must be called at least once a year to consider the following matters: (i) financial statements, annual reports and distribution of profits; (ii) appointment and removal of directors and statutory supervisors and performance and liabilities of the same.

A shareholder of an S.A. is only liable for the obligations incurred by the company to the extent of the shareholders’ capital commitments or contributions.

Shareholders may at their annual meeting elect one or more statutory supervisors (“*síndicos*”). Statutory supervisors must be Argentine residents and must be attorneys or accountants duly registered to practice, or partnerships with joint liability exclusively formed by such professionals. However, an S.A. whose capital exceeds the sum of AR\$10,000,000 must appoint at least one statutory supervisor and one alternate statutory supervisor.

### **Limited Liability Companies (“S.R.L.”)**

S.R.L.’s may be formed with a minimum of two and a maximum of fifty partners, who may be individuals or corporate entities (other than SAs or Argentine limited liability partnerships with share capital (*Sociedades en Comandita por Acciones*)). Partners enjoy limited liability up to the amount of capital that they have subscribed in the SRL.

The capital of an SRL is divided into “quotas” (“*cuotas*”), which must be expressed in Argentine currency. Quotas must be of equal par value AR\$ 10 (ten Pesos) or multiples thereof and entitle the holder to one vote each.

There is no minimum capital required to set up an SRL; however, the IGJ may require an amount consistent and adequate with the activity to be carried out.

Since quotas are not represented physically by certificates, holdings of quotas arise directly from the articles of incorporation.

As with the SAs, SRLs must be registered with the Public Registry of Commerce of the jurisdiction of its legal domicile.

Partners may appoint one or more managers to manage and represent the SRL. The majority of the managers must be Argentine residents, regardless of their nationality. Managers may be partners, employees of the SRL or third parties.

In practice, by-laws of SRLs rarely provide for the appointment of statutory supervisors. The appointment of statutory supervisors is not mandatory except in the event the SRL's capital exceeds the sum of AR\$ 10,000,000, in which case at least one statutory supervisor ("sindico") and an alternate one must be designated.

### **Branch of a foreign entity**

Any company duly organized and existing in accordance with the laws of its country of origin can set up a branch in Argentina. In principle, no minimum capital is required. However, registration of foreign off-shore companies in the City of Buenos Aires has now been restricted by the IGJ.

The branch must keep separate accounting records in Argentina and file annual financial statements. The branch must also comply with a number of obligations related to the external supervision of the IGJ:

(i) Inform and submit evidence of whether there is any legal restriction to carry out any of their principal activities in their jurisdiction of incorporation; and

(ii) Prove their operations outside of Argentina, at the time the request for registration is filed with the IGJ. If foreign entities do not evidence the foregoing, the IGJ may deny the request for registration of the applicable resolution, unless the foreign company shows that it belongs to an economic group that fulfills the requirement.

Furthermore, branches registered with the IGJ must annually submit an accountant's certificate showing the composition and the value of its current and non-current assets located outside Argentina.

The parent corporation is liable for all the liabilities of the branch, as they are not considered to be separate entities. The legal representative of the branch is subject to the same liabilities as a corporate director.

### **Partnerships:**

Partnership refers to an association of persons or an unincorporated company formed by two or more persons. Each Partner is, jointly and severally, personally liable for debts and taxes of the partnership. Profits are shared equally amongst the partners. A partnership agreement, however, will usually provide for the manner in which profits and losses are to be shared.

The most common form of partnership is the General Partnership (*Sociedad Colectiva*)

### **Sole proprietorship:**

Sole proprietorship (*Empresa Unipersonal*) refers to an individual who carries out an economic activity directly.

### **Joint Ventures (UTE)**

The joint venture vehicle most commonly used in Argentina is the *Unión Transitoria de Empresas* ("UTE").

The UTE is a specific type of joint venture governed by the Argentine Companies Law. A non-resident corporation may be a member of an Argentine UTE if it complies with the same kind of registration proceedings with the Public Registry of Commerce as that applicable to a branch of a foreign company.

All UTEs and their representatives must be registered with the Public Registry of Commerce of the jurisdiction of incorporation.

A UTE is best adapted for temporary associations such as the development of specific works or services (e.g.: oil and gas exploration and drilling operations and public works). Decisions in UTEs are made only by the unanimous vote of their members, unless the UTE agreement provides otherwise. UTEs are not treated as independent legal entities, although they are treated as such for certain purposes including labor law, social security contributions and for value added and turnover tax. With respect to other taxes, such as income tax and the tax on assets, UTEs are considered as transparent entities, and such taxes are therefore payable by the members. Members of an UTE are not subject to joint and several liability unless otherwise provided for by the UTE agreement.

### **Trusts (*Fideicomisos*)**

Law No. 24,441 establishes that a trust will be created upon the transfer of certain goods by one person ("the settlor") to another person ("the trustee"), who undertakes to exercise the rights attributable to ownership of such goods for the benefit of a person designated in the relevant agreement as the beneficiary ("the beneficiary") and to transfer the property, upon the expiration of the trust term or upon fulfillment of a certain condition, to the settlor, beneficiary or trustee.

Any individual or legal entity may be appointed as a trustee of an ordinary trust. The law however contains specific regulations regarding financial trusts. Financial trusts are those trusts in which the trustee is a financial entity or a company expressly authorized by the Securities Commission ("*Comisión Nacional de Valores*") to act as a financial trustee and the beneficiaries are the holders of the certificates of participation in the assets of the trust or holders of debt securities guaranteed by the trust assets.

If the property given in trust is inscribed in a public registry, the relevant public registrars will record the properties in the trustee's name.

Pursuant to Argentine law, goods held in trust form a separate estate from the estates of the trustee and the settlor. They therefore will not be affected by any individual or joint actions brought by the trustee's or settlor's creditors, except in the case of fraud by the

settlor. The beneficiary's creditors may exercise their rights over the proceeds of the goods held in trust and be subrogated in the beneficiary's rights.

The beneficiaries are the holders of certificates evidencing a trust ownership interest or of debt securities secured by the assets held in trust. Such interest certificates and debt securities are deemed securities and may be publicly offered.

## **I. CORPORATIONS**

### **1. What tax returns must be filed**

Every corporation has to file an income tax return on a yearly basis. Furthermore, If the company enters into transactions in which it has to practice income tax withholdings to foreign beneficiaries and other local taxpayers, they are also required to file monthly returns.

Returns for companies are completed on a standard Form and require the disclosure of income, credits, loss transfers, deductions, and other information deemed necessary in the calculation of the tax liability.

#### **A. The filing dates**

The filing dates of the tax returns are determined by the Tax Authorities for the corresponding taxable year in accordance with the taxpayer's identification number (*Código Único de Identificación Tributaria – CUIT*). The annual tax return is due within five months after the end of the company's fiscal year.

#### **B. Where and with whom filed**

Where and with whom the returns must be filed depends on the classification of the taxpayer, as follows:

- Large National Taxpayers (*Grandes Contribuyentes Nacionales*) report directly to the Large Taxpayers National Agency for their tax liabilities. Tax returns must be filed electronically through the AFIP's website and tax payments must be made through wire transfers.
- Large Taxpayers reporting to an Office of the Tax Authorities (*Grandes Contribuyentes de Agencia*) report to the office where they are registered. Tax returns must be filed electronically through the AFIP's website and tax payments must be made through wire transfers.
- Ordinary Taxpayers can fulfill most of their tax-related obligations at any so-authorized banking institution. However, they may make the payments and file their tax returns electronically.

### **C. When must taxes be paid**

Income tax must be paid at the filing dates determined by the Tax Authorities for the corresponding taxable year. Corporations are required to make 10 monthly advance payments of their annual income tax which are calculated based on a percentage of the previous year's income tax.

#### **(1) Estimated**

The income tax must be paid on definite net taxable income and not on estimated net income. The tax law establishes that taxpayers must calculate their tax liability, deduct any income tax withheld, advance payments and pay any balance due.

#### **(2) Installments**

The AFIP issued Resolutions 984 and 1966 allowing taxpayers to pay their income tax liability in installments.. Over such installments the corresponding interests must be included.

### **2. Calculation of income/profit taxes**

#### **A. How is the taxable base determined?**

For corporations, taxable base is determined by deducting from gross income all ordinary and necessary expenses incurred to obtain, maintain and preserve the taxable income.

##### **(1) What revenues are included?**

Corporations must include all the income (i.e. income from the sale of goods, from rendering of services, from the sale of depreciable assets, shares or real estate, from interest, royalties, fees, foreign exchange gains, etc.) which is not exempted.

##### **(2) What deductions allowed?**

As a general rule all ordinary and necessary expenses incurred in earning taxable income are tax deductible, such as:

- (i) Salaries paid during the calendar year.
- (ii) Bad debts provided that certain conditions are met (i.e. cases of debtor's bankruptcy, initiation of legal actions, etc.).
- (iii) Amortization and depreciation of depreciable assets used to generate taxable income.
- (iv) Donations, up to the limit of 5% of the net taxable income determined by the corresponding year.

- (v) Research and development expenses (these can be deducted when incurred or over a period not exceeding five years).
- (vi) Directors' fees may be deducted (i) up to 25% of the accounting profits of the corresponding year or (ii) up to the sum resulting from AR \$12.500 for each director, whichever is higher.
- (vii) Interest paid or accrued during the tax period. The Income Tax Law contains thin capitalization rules which establish certain limits to deduct interest (please see below our comments on thin capitalization rules).. Furthermore, if interest is payable to a foreign related entity, it will only be deducted to the extent it is paid before the term established for filing the tax return for the year in which the interest has been accrued.

Note that expenses incurred between related parties which imply Argentine source income for the foreign beneficiary can only be deducted if they are paid within the term established for filing the tax return for the year in which the related expense has been accrued, otherwise, they will be deductible in they year in which they are paid.

### **(3) What are major expenses that are not deductible?**

As a general rule expenses are not tax deductible when they are not incurred to generate taxable income.

Tax Law expressly forbids deductibility of, among others, the following expenses:

- (i) The income tax itself.
- (ii) The profits destined to capital increases or to reserves of the company which deduction is not allowed by the Law.
- (iii) The amortization of goodwill, trademarks and similar intangible assets.
- (iv) Tax losses arising from illegal activities.

In addition, there are certain expenses which are deductible with certain limitations:

- (i) Payments for technical assistance from abroad are deductible up to 3% of sales on which the fees are based or 5% of the investment made as a result of the assistance.
- (ii) Only the 80 % of trademark or patent royalties paid to non-residents is deductible.
- (iii) The amortization or the rent/lease payment related to automobiles are deductible up to AR \$ 20.000 (VAT excluded).

### **(4) What, if anything, is included concerning national investment? Abroad?**

Foreign source income received by residents is subject to income tax in Argentina. Corresponding deductions for expenses incurred in deriving this income are also allowed. However, if such deductions exceed the foreign income during a given tax year, the resulting foreign loss must be only offset against foreign income (Please see our comments on tax losses below).

#### **B. Applicable rates.**

Company tax is levied by the Federal Government at a flat rate of 35%.

#### **C. Company losses.**

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

Some specific losses such as those arising from the sale or other disposal of stock and other forms of equity may only be set off against capital gains arising from the disposal of these same type of assets; and foreign-source losses may only be set off against foreign-source income.

#### **D. Transfer pricing rules**

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, transactions between related companies or unrelated companies located in low-tax jurisdictions described in (i) and (ii) above 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. To the extent that the taxpayer cannot prove the foregoing, the tax authorities can make transfer pricing adjustments to the income and expenses allocated between the parties.

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

The law provides for different methods (i.e. such as comparing prices, margins, levels of profit, etc. with transactions between unrelated parties in line with OECD guidelines that can be used by the Argentine taxpayer to establish "arm's length compliance". Taxpayers are required however to employ the method that best reflects the economic reality of each transaction.

However, the export of cereals, oil seeds, ground products, hydrocarbons or other goods with a known price in transparent markets, where an international intermediary that is not the effective receiver of the goods participates in the transaction, the best method deemed to assess the Argentine-source income is the quotation value of the good in the transparent market on the day the goods are loaded, without considering the price agreed with the international intermediary. If the price agreed with the intermediary were higher, this price must then be used. This method can be disregarded if some requirements are met. This method could be also applicable to other exports of goods if the international intermediary does not fulfill certain requirements.

#### **E. Consolidated returns for affiliated corporations.**

Income tax returns may not be consolidated by Argentine resident companies and affiliates since in Argentina, legal corporations, even if they belong to the same corporate economic group, have to file independent returns.

However, the Income Tax Law requires that that Argentine partners of foreign partnerships report as taxable income in the corresponding fiscal year, the proportion of income resulting from the ownership interest, irrespective of whether or not such income is distributed. Therefore, in this case, the income obtained by Argentine companies must be consolidated with non resident partnerships income's for income tax purposes.

### **3. Territorial Rules**

#### **A. Corporate residence.**

A company will be considered resident in Argentina if: (i) it is incorporated in Argentina or (ii) it is not duly incorporated but carries out business in Argentina.

#### **B. Taxation of worldwide income**

Resident corporations are taxed on their worldwide income, including the income of foreign branches and subsidiaries.

#### **C. Treatment of branch income**

Argentine investors who own **foreign branches** including Argentine partners of foreign partnerships (not stock corporations) must report as taxable income in his/her/it corresponding fiscal year, the proportion of income resulting from the ownership interest, irrespective of whether or not such income is distributed.

#### **D. Controlled Foreign Corporations.**

In the case of Argentine shareholders of **foreign corporations** in which equity is represented by shares and it is not located in foreign low or null tax jurisdictions, the income is recognized by the shareholder when dividends are paid.

If an Argentine resident owns an interest in a low or null tax jurisdiction entity, they must currently recognize their pro rata share of income of those tax heaven companies, even if the profits of those companies had not been remitted to them, if at least 50% of the total income from such entity is considered passive. Passive income includes income resulting from interest, dividends, royalties or lease payments.

#### **E. Treatment of Tax Credits.**

According to Argentine Income Tax Law, foreign taxes paid will be allowed as a tax credit against the Argentine tax liability to the extent the foreign tax does not exceed the Argentine tax.

### **4. Withholding Taxes**

#### **A. Dividends**

Dividends paid to shareholders (local or foreign) are not subject to any withholding tax, unless the amount distributed exceeds the taxable income. The excess will be subject to a withholding of 35% (“equalization tax”).

Tax Treaties entered into by Argentina can reduce the above mentioned domestic rates.

#### **B. Royalties**

Withholding tax on royalties depends on the nature of the service. The Income Tax Law establishes the following effective withholding tax:

- For copyright payments 12.25%
- For international news 3.5%
- Trademarks, patents: (i) 28% if the agreement complies with the Law of Transfer of Technology and is registered with the INPI (National Institute of Intellectual Property); (ii) 31.50% if the above conditions are not met.
- Technical assistance: (i) 21% if the agreement complies with the Law of Transfer of Technology and is registered with the INPI and provided such assistance is not available in Argentina; (ii) 31.50% if the above conditions are not met.
- For foreign means of reproduction, transmission or broadcasting of images or sounds 17.50%
- In all other cases: 31.50%.

Tax Treaties entered into by Argentina can reduce the above mentioned domestic rates.

#### **B. Interest**

- Interest payments are subject to a rate of 15.05% in the following cases: (i) if the borrower is an Argentine financial institution, or (ii) if the lender is a banking or financial entity and it is not located in a tax low jurisdiction or in a jurisdiction that has executed a treaty of information exchange with Argentina and thus, according to the application of its local rules it can not refuse to provide the information based on bank, stock exchange and other type of secrecy or (iii) if the interest is for financing the importation of movable depreciable assets – other than automobiles – so long as the financing is granted by the supplier of the assets.
- In all other cases a 35% withholding rate is applicable.

Tax Treaties entered into by Argentina can reduce the above mentioned domestic rates.

#### **C. Rates of withholding tax on profits realized by a foreign corporation**

The Income Tax Law establishes the following withholding rates on income realized by foreign corporations:

- The income from the sale of any type of property located in Argentine territory owned by foreign companies is subject to a withholding rate of 17.50% on gross income or 35% on net income (the foreign beneficiary is entitled to elect which criteria to follow).
- General withholding rate for income not specifically established by the Law is 31.50%

Tax Treaties entered into by Argentina can reduce the above mentioned domestic rates.

#### **D. Other**

- For rental payments on real estate the applicable withholding rate is 21%
- For rental payments on movable property the applicable withholding rate is 14%

### **5. Any other matter which might have some impact upon the corporate tax situation.**

*Minimum Presumed Income (Impuesto a la Ganancia Mínima Presunta)*

This tax applies to all assets of Argentine companies and other entities, such as Argentine trusts (“*fideicomisos*”); common investment funds; and permanent establishments of foreign entities and individuals in Argentina.

The Minimum Presumed Income Tax must be paid to the extent it is higher than Income Corporate Tax or if during a given tax year there were tax losses.

The tax applies if the total value of the assets exceeds AR\$ 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%.

Any tax payable hereunder is allowed as a credit towards the corporate income tax. Furthermore, to the extent that this tax cannot be credited against corporate income tax, it may be carried forward as a credit for the following ten years.

### *Capital Gains*

Gains from sales of shares, bonds or other type of marketable securities are exempt from income tax for foreign beneficiaries.

### *Thin Capitalization*

Argentine Income Tax Law provides thin capitalization rules which establish certain limits to deduct interest. Interest on debts (except the ones that, in general terms, have a withholding rate of 35%) for loans granted to Argentine companies (except from financial entities subject to Law No. 21,526) with non-resident individuals or entities that are related to them shall not be deductible in the proportion corresponding to the debt in excess of twice the net worth of the Argentine company as of that date. Amounts of interest not subject to deduction are deemed to be dividends.

### *Tax free reorganizations*

Mergers, spin offs and transfer within an economic group are considered to be tax free reorganizations if they comply with the requirement expressly set forth by the Income Tax law (i.e. continuance of the activity for at least two years, maintenance of a percentage of the capital for at least two years, etc.)

### *Roll-overs*

Where roll-over relief applies, a fixed asset will be treated as if it had not been disposed of for tax purposes, in relation to the transfer for which the relief is available. The relief is a form of tax deferral since the gain from the sale of the fixed asset is computed against the cost of the new replaced good and such good will be amortized over such reduce basis.

## **II. PARTNERSHIPS AND LIMITED LIABILITY COMPANIES**

For Limited Liability Companies we refer to the aspects included in I. above.

## **1. What tax returns must be filed**

For partnerships, each partner must annually report as taxable income in his/her corresponding fiscal year, the proportion of income resulting from the ownership interest in the partnership, irrespective of whether or not such income is distributed.

### **A. Filing dates**

We refer to the aspects included in I. above.

### **B. Where and with whom filed**

We refer to the aspects included in I. above.

### **C. If taxes are levied against the entity, when must they be paid?**

Partnerships and sole proprietorships do not pay per se since taxes must be paid by the partners.

## **2. Calculation of income for income tax purposes**

### **A. If the entity is taxable, identify the basis of the taxation**

We refer to the aspects included in I. above.

### **B. Identify how the income is allocated to the partners, members or beneficiaries.**

The profits obtained by partnerships shall be considered to be fully allocated to the partners, irrespective of whether or not such income were distributed. Therefore, each partner must annually report as taxable income in his/her corresponding fiscal year, the proportion of income resulting from the ownership interest.

## **III. JOINT VENTURES, ASSOCIATIONS AND FOUNDATIONS**

Joint Ventures (*Unión Transitoria de Empresas*):

Joint Ventures *per se* are not liable for the tax. Their profits must be attributed to each partner according to their ownership interest in the Joint Venture.

Joint Ventures do not file returns, each partner must file an income tax return on an annual basis reporting the profits according to their ownership interest in the joint venture.

Associations and Foundations:

Income obtained by associations, foundations, and civil entities whose purpose is social welfare, public health, charity, education, scientific, literary, artistic, etc. and may be

exempted, provided their income and assets are destined to achieve their goals and that they do not distribute them among their members.

Associations and foundations must file their returns on an annual basis.

#### **IV. INDIVIDUALS**

Resident individuals may have four categories of income in Argentina:

- a) Income derived from real estate (i.e. rental income).
- b) Income derived from capital investments (i.e. interests, royalties, dividends, etc.)
- c) Income derived from carrying out an economic activity (i.e. sole proprietorship)
- d) Compensation for services rendered as an employee (i.e. remunerations, salaries).

##### **1. Filing of returns and Paying of Taxes.**

In general, filing and paying rules applicable to corporations are also applicable to individuals..

##### **2. Calculation of income taxes**

###### **A. Determination of tax base**

The tax base applicable to individuals is calculated in a similar manner to that described above in relation to companies, in respect to both, income and deductions. However, there are certain rules applicable exclusively to individuals.

###### **(1) Revenue and deductions**

In calculating the taxable basis the revenues obtained by the four categories must be included. In estimating taxable income, some deductions are allowed (i.e. special deduction for dependent workers of spouse and children). The amount of such deductions varies depending on the amount of the taxable income of the employee.

Expenses incurred to obtain taxable income may be deducted.

###### **(2) Exemptions**

The most relevant exemptions are the following:

- (i) Interest originated in savings accounts (*cajas de ahorro*), fixed-term deposits (*depósitos a plazo fijo*) and interest from other type of deposits;
- (ii) severance payments;
- (iii) gains from shares, bonds and other type of securities issued by the government;
- (iv) gains from sale of shares if the individual does not perform such type of transactions on a regular basis (according to most of authors' opinions).

### **(3) Major non deductible expenses**

Tax Law expressly forbids to deduct, among others:

- (i) The income tax itself.
- (ii) Private expenses incurred by the taxpayer or by her/his family.

In addition, there are limits imposed by Income Law for deduction of expenses such as:

- (i) Payments for interests related to mortgage loans are deductible up to AR \$ 20.000 per year for loans taken from 01/01/2001.
- (ii) Medical insurance payments (*cobertura médico-asistencial*) are deductible up to 5% of the net taxable income.
- (iii) A deduction for medical and sanitary services (*honorarios por asistencia sanitaria y médica*) not subject to reimbursement is also available up to certain limits.

### **(5) Stock options, profit sharing plans, savings plans, etc.**

Any compensation (in kind or cash) received by an Argentine resident employee from his/her employer for the performance of any activity under the employment relationship, regardless of whether such compensation is paid directly by the employer or through a third party, is subject to Argentine income tax.

Income derived from employment is taxed at the moment of payment of compensation. The cash-basis method (*percepción*) is broadly defined under section 18 of the Income Tax Law, as embracing payments whether in cash or in kind. Likewise, it is deemed to occur when funds are available and have been credited to the account of the taxpayer. Also when with her/his express or implied authorization monies derived therefrom have been reinvested, accumulated, capitalized, reserved or placed in an amortization or insurance fund, whatever its denomination, or have been disposed of in any other form.

Regarding the Argentine tax treatment of a standard stock option plan can be summarized as follows: (i) in general, the granting of an option to the employee does not trigger income tax; (ii) the exercise of the option triggers taxable income for the employee (the income is quantified by the difference between the market value of the stock at that time, or the pro-rata net equity value thereof and the acquisition cost); (iii) the gain derived from the sale of shares by Argentine resident individuals is not subject to income tax to the extent the individual does not perform this kind of transactions on a permanent basis; and (iv) dividends arising from shares of non-Argentine companies are subject to the Argentine income tax for Argentine-residents.

### **B. Applicable rates**

Income tax applies at the rate of 9% to 35%, depending on the amount of taxable income resulting at the end of the fiscal year, as described in the following chart:

<b>Total Taxable (Annual Amount)</b>	<b>Amounts to be paid</b>	<b>Plus</b>	<b>Over the excess of</b>
From 0 to \$10,000	_____	9%	0
Over \$10,000 to \$20,000	\$900	14%	\$ 10,000
Over \$20,000 to 30,000	\$2,300	19%	\$20,000
Over \$30,000 to \$60,000	\$4,200	23%	\$30,000
Over \$60,000 to \$90,000	\$11,100	27%	\$ 60,000
Over \$90,000 to \$120,000	\$19,200	31%	\$90,000
Over \$120,000 onwards	\$28,500	35%	\$120,000

### **C. How are losses handled?**

Please see our comments on above regarding corporations.

## **3. Territorial Rules**

### **A. Where is the individual subject to tax?**

Individuals residing in Argentina are subject to tax on both, Argentine and foreign source income. Non residents are taxed only on Argentine-source income.

### **C. Expatriates**

Non-residents individuals working in Argentina under duly accredited working contracts for periods of five years or less are not considered residents for tax purposes. However, these individuals may be taxed as residents on their Argentine source income, but are not subject to tax on their worldwide income.

Non-residents working six months or less are subject to a 24.5% withholding tax on compensation for services rendered.

#### 4. Withholding Taxes

##### A. Is salary subject to withholding tax at the source; what is the treatment of residents as compared to non-residents?

###### *Employer contributions and employee withholdings*

The following table sets out the current mandatory social security contributions and withholdings calculated on the employee's monthly salary. Employee's withholdings are calculated on the first A\$ 4,800 of the monthly salary. Regarding employer's contributions for family allowances, unemployment fund and pension, there is no such ceiling.

	Employer	Employee
- Family Allowance	17% or 21%	--
- Unemployment Fund		--
- Pension		10% or 14%
- Medical Care	6%	3%

In the case of employers whose main activity is commerce and/or the provision of services and have annual invoicing of more than AR \$ 48,000,000, the percentage for employer's contributions is 21%, while for other companies such percentage is 17%.

Regarding non residents working in Argentina please see our comments on C. above.

#### **ALL OTHER TAXES, CONTRIBUTIONS OR TRANSFER REGIMES**

##### **OTHER THAN INHERITANCE AND GIFT TAXES AND LEVIES**

#### **I. List of other relevant taxes**

##### 1. Value Added Tax ("VAT")

This tax 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 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 by the taxpayer or services rendered by him/her. 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 it is positive, constitutes the amount to be paid to the Tax Authority. The current general rate for this tax is 21%. Sales and imports of capital goods are however subject to VAT at a lower tax rate of 10.5%.

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.

## 2. Turnover Tax (Tax on Gross Income)

Turnover tax is a local tax levied on gross income. Each of the provinces and the Federal District of Buenos Aires apply different tax rates; however, most provinces apply a 1% rate on agricultural, cattle raising and mining activities, 1.5% on industrial activities, 3% on trade or services in general, and 5.5% on financial activities. The tax is levied on the amount of gross income resulting from business activities carried on within the respective provincial jurisdictions. The provinces have signed an agreement ("Multilateral Agreement") to avoid the double taxation of activities performed in more than one province. Under this agreement, gross income is allocated between the different provinces applying a formula based on income obtained and expenses incurred in each province.

## 3. Stamp Tax

Stamp tax is a local tax levied on public or private instruments, executed in Argentina or when executed abroad, when their effects are produced in one or more relevant jurisdictions within Argentina. The definition of "effects" varies in the different local tax codes. However, most codes include within the definition acceptance, protest, negotiation of the agreement, performance and the institution of enforcement proceedings for compliance. In general, this tax is calculated on the economic value of the agreement.

## 4. Personal Assets Tax

The Personal Assets Tax Law No. 23,966, as amended, provides that all individuals residing in Argentina are subject to a tax upon their worldwide assets. Individuals not residing 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 is 0.5% of the value of the assets in excess of AR\$ 102,300 owned by the taxpayer on 31 December of each relevant fiscal year, which rate is increased to 0.75% where the value of the assets subject to the tax exceeds A\$ 200,000.

## 5. Tax on Credits and Debits in Bank Accounts

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 of February 1977.

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

The tax law and its regulations provide several exemptions to this tax. For example, it does not apply to debits and credits relating to salaries, to retirement and pension emoluments credited directly by banking means and withdrawals made in connection with such credits, to credits in checking accounts originating from bank loans, and to transfers of cheques by endorsement.

The general rate of the tax is 0.6%. An increased rate of 1.2% applies in cases in which there has been a substitution for the use of a checking account. Decree No. 534/2004 provides that the owners of bank accounts subject to the general rate of the tax of 0.6% may consider 34% of the tax paid upon credits to such bank accounts as a tax credit. The taxpayers that are subject to the tax at the rate of 1.2% may consider 17% of all tax paid under this heading as a credit. Such amounts can be utilized as a credit for Income Tax and the Tax on Minimum Presumed Income. The amount considered as a credit is not deductible for income tax purposes.

## **II. Registration Duties for business entities and, if relating to their formation, identify whether it is a local or national regime or both for the formation. Are there:**

### **1. Registration duties due upon the incorporation of a company.**

The incorporation of corporations and limited liability companies must be registered in the public registry of commerce in order to consider those business entities as regular companies. Companies must pay a registration fee in order to be registered, which depends on the jurisdiction in which the company will be registered. In the City of Buenos Aires, the fee is about US\$ 30.

There are additional charges to be paid during the incorporation and registration proceeding of a company, such as notary public’s fees and publications in the Official Gazette, among others

### **2. Registration duties due upon an increase in capital**

Corporate capital increases must be registered before the public registry of commerce of the company's jurisdiction. There is no tax due but it is necessary to pay a registration fee. The amount depends of the jurisdiction in which the company is registered. In the City of Buenos Aires, the fee is about US\$ 30.

### **3. Registration duties due upon the transfer of the company's shares**

Transfers of shares of a corporation are not registered in the public registry of commerce. However, in the case of limited liability companies the transfer or assignment of quotas must be registered before the public registry of commerce. The amount depends on the jurisdiction in which the company is registered. In the City of Buenos Aires, the fee is about US\$ 18.

### **4. Registration duties due upon a transfer of corporate asset**

There is no need to register the transfer of corporate asset with the public registry of commerce. The transfer of corporate assets is reflected in the accountant books and documents of companies.

### **5. Any other registration duties due**

The appointment and removal of managers and directors of companies must be registered before the public registry of commerce of the company's jurisdiction.

In addition, any By-Laws amendment must be also registered.

For such registrations the public registry of commerce collects a fee. The amount depends of the jurisdiction in which the company is registered. In the City of Buenos Aires, the fee is about US\$ 18 for the registration of managers and directors and US\$ 30 for the registration of amendments to the Company's By-Laws.

### **6. If there are registration duties due on any of the above, set out the method of determining the duty, the returns which must be filed and when, where and to whom the duties must be paid**

The fees mentioned in 1 to 5 above are provided in a General Resolution issued by corresponding authority (i.e.: public registry of commerce). Fees are usually expressed as fixed amounts and they must be paid at the beginning of the registration proceeding at the corresponding entity.

## **INHERITANCE AND GIFT TAXES**

In Argentina there are no inheritance or gift taxes.

## **OTHER MATTERS**

## **I. Tax incentives**

The most important tax incentives are the following:

### ***Tax benefits in the software industry***

The regime is available to resident individuals and legal entities incorporated in Argentina, who are primarily active in the software industry. Eligible persons will have to be registered with the relevant registries.

The activities to which the regime applies are the creation, design, development, production and implementation, and modification of existing software systems. The self-development of software is excluded from the regime.

The tax benefits under the regime are:

- Fiscal stability for 10 years. Fiscal stability means that individuals/companies which are subject to the present regime will not have an increase of the tax burden as consequence of any tax increase, except for import and export duties or export reimbursements.
- Taxpayers who carry out certain activities will be able to obtain a non-transferable credit certificate in respect of 70% of the social security contributions paid. These contributions may be set off against certain other taxes, e.g. VAT.
- Tax relief of 60% of income tax due for each tax period. This will apply to taxpayers who can prove that they have incurred expenditure on research and development or on obtaining quality certificates, or have exported software in the quantities established by the competent authorities.

### ***Capital goods and works of infrastructure***

The regime grants fiscal benefits for investment in new capital assets that are used for industrial activities and public work of infrastructure. It is available to resident individuals and legal entities which are incorporated in Argentina or authorized to carry out production activities in Argentina.

The fiscal benefits available under the regime primarily consist of either:

- Accelerated depreciation for machinery, equipment, and infrastructure works destined for investment projects.
- Refund of VAT paid on the purchase of goods destined for use in investment projects. All VAT not offset will be refunded in cash three months after purchase.

The benefits are only available together in respect of investment projects which are intended exclusively for the export market.

### *Investments in forest farming*

The fiscal benefits available under the regime consist of:

- **Fiscal Stability:** the investments included in this regime will be entitled to fiscal stability for 30 years from the date when the projects were approved by the corresponding Authorities. Fiscal stability means that individuals/companies which are subject to the present regime will not have an increase of the tax burden as consequence of national, provincial or municipal tax increase, except for Value Added Tax.
- The Value Added Tax corresponding to the purchase or definitive import of goods and rendering of services destined to a forest investment project will be refunded within 365 days from the day the invoice was issued.
- 60% of the value of the investments, construction work and machinery destined to the project can be amortized during the fiscal period when the project were qualified and the remaining 40% can be amortized in equal parts over the following two years.
- **Fiscal Revaluation:** the increment of the annual value corresponding to the growing of forest plantations can be registered by increasing their inventory value for accountancy purposes. Such increase will not have effects for tax purposes.

### *Mining*

The fiscal benefits available under the regime consist of:

- **Tax Stability:** the incentive scheme provides for 30-year tax stability with regard to taxes in force at the time the feasibility report is submitted.
- **Deductibility Benefits:** each year beneficiaries may deduct from their income tax statement 100% of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works performed for the purpose of determining the technical and economic feasibility of the project.
- **Accelerated Depreciation Benefits:** investments made by beneficiaries in respect of housing, transportation, construction of plant and equipment or the necessary infrastructure for the mining activity may be depreciated over three years.
- **Income Derived from Capital Contributions:** income derived from the mines and mining rights, which are utilized as payment for the subscription of shares of registered beneficiary companies is exempted from income tax.

- Import Regulations: beneficiaries are exempted from all import duties and other charges in relation to the import into Argentina of (i) capital goods and (ii) other goods
- Stamp Tax: some provinces have eliminated the stamp tax on agreements concerning the following stages of a mining project: (i) prospection; (ii) exploration; and (iii) development.

## II. Exchange control regimes

Since the reinstatement of foreign exchange controls in December, 2001, the Argentine Central Bank (the “Central Bank”) has enacted several regulations imposing restrictions on the ability of Argentine and non-Argentine residents to purchase and sale foreign currency in the *Mercado Único y Libre de Cambios* (the Argentine Foreign Exchange Market or “MULC”) and obligations to repatriate foreign currency proceeds resulting from foreign trade transactions and foreign financings.

### 1. Limitations on profit remittances aboard by foreign investment

Under current foreign exchange regulations, non-Argentine residents may purchase foreign currency in the MULC and transfer it abroad up to the amount of US\$5,000 per month without requiring prior Central Bank approval.

The Central Bank has established certain exemptions to the above limitation, particularly relating to the sale and liquidation of certain investments. Accordingly, non-Argentine residents will not require Central Bank prior approval to purchase foreign currency in the foreign exchange market and transfer it abroad:

- a) Without limitation: for the amounts collected in Argentina: (i) by International Organizations and Official Export Credit Agencies included in the list provided by the Central Bank (*i.e.*, BANCOMEXT, ECGD, ECIC, EDC, EXIMBANK), (ii) by diplomatic and consular delegations in connection with the performance of their duties, (iii) by local Representation of Courts, Authorities, Offices or Commissions created under International Treaties in connection with the performance of their duties, (iv) import transactions paid on demand, (v) foreign commercial debts under imports of goods and services and foreign financial debts, (vi) payments of interest of Government Securities and guaranteed loans denominated in local currency, (vii) credits recovered in local bankruptcies and reorganization proceedings, provided that the foreign creditor has filed its credit verification request in the relevant proceedings, (viii) inheritances, (ix) benefits granted by the Argentine Government under Laws No. 24,043, 24,411 and 25,914,<sup>1</sup> (x) certain export collections under the Reciprocal Payment and Credit Agreements (*Convenios de Pagos y Créditos Recíprocos*), (xi)

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<sup>1</sup> These regulation grant benefits to individuals illegally arrested by military governments, their relatives and children.

repatriation of direct investments<sup>2</sup> in the non-financial private sector maintained for at least 365 days for the following concepts: sale, final liquidation of the direct investment in Argentina, capital reduction and reimbursement of capital contributions by the local entity (the last two subject to compliance with certain requirements).

- b) Up to the amount of US\$ 500,000 per calendar month: for the amounts collected under portfolio investments (including interest) and/or resulting from the sale of such portfolio investments (i.e. stock portfolio and participation in local companies, investment in mutual investment funds and local trusts, purchases of bank credit portfolios, investments in local bonds issued in pesos and purchases of other local credits). The non-Argentine resident will be required to provide evidence that the investment has been maintained in Argentina for the 365 days.

The entities described in a) (i), (ii) and (iii) above (except for Export Credit Agencies) will not require prior Central Bank approval for the acquisition of foreign currency, checks and travelers' checks required to perform their duties in Argentina.

The above exemptions are subject to compliance with the following requirements:

- The non-Argentine resident will need to file with the financial entity executing the sale and transfer of foreign currency documentation evidencing the type of investment declared.
- In the case of a) (iv) and (v), evidence that the Argentine resident would have had access to the foreign exchange market for the amounts and concepts paid to the non-Argentine resident.
- Sworn statement of not having made any prior transfer for the same transaction.
- Evidence that the funds were not applied to a different investment than the one declared.
- Any amounts in foreign currency received from the sale of the investment or collection of the credit must be first sold for pesos in the foreign exchange market.
- In the case of collections in Argentina of financial debts, the debt must have been duly informed under Communication "A" 3,602, and validated by the Central Bank.
- In the case of a) (xi) above, additional information on the repatriation of the direct investment must be provided (i.e., documentation on the identity of the shareholder, minutes of the corresponding shareholders' meetings approving the reimbursement of the capital contribution or capital reduction and the corresponding accounting certificates)
- Evidence of compliance with any other foreign exchange regulation in force.

Authorization for the purchase of any amounts in excess of the above limits can be requested to the Central Bank (addressed to the "*Gerencia de Exterior y Cambios*") by

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<sup>2</sup> The concept "direct investment" includes any participation of 10% or more in the capital stock of a company, which reflects a long term interest in the company and its activities.

filing a request through an authorized financial entity using specific forms set forth in Central Bank regulations.

Finally, in connection with payments of principal and interest under foreign currency denominated Government Securities and other securities issued by Argentine residents in foreign currency payable abroad, non-Argentine residents may collect the funds: (i) in foreign currency in Argentina in cash or account deposit, or (ii) through repatriation thereof to an account abroad. Foreign exchange regulations in force applicable to portfolio investments of non-Argentine residents in Argentina will apply in the event that the non-Argentine resident exchanges the amounts collected in foreign currency for Pesos.

## **2. Limitations to the free possession of foreign currency by residents**

Under foreign exchange rules, Argentine residents –both individuals and legal entities– may purchase foreign currency in the MULC and transfer it abroad to make investments outside Argentina up to the higher of the aggregate amount of US\$ 2,000,000 per calendar month or the aggregate amount paid as export duties plus three times the amount paid to the tax authorities as tax on debits and credits during the immediately preceding calendar month. Any purchase in excess of such limit requires prior authorization from the Central Bank.

The concept “investment” includes, *inter alia*, real estate investments made abroad, portfolio investments (including bank deposits, and purchases of shares, bonds or other financial investments made abroad), capital contributions and other investments made abroad by Argentine residents, and loans granted to non-Argentine residents. The US\$ 2,000,000 limit does not apply to each of the above individual items, as they must be computed jointly.

In order for an Argentine resident to have access to the MULC for investment purposes, it must not register foreign debts (commercial or financial) due and unpaid to foreign creditors. Moreover, the Argentine resident will need to file a sworn statement with the financial entity transferring the funds abroad and provide evidence of compliance with the foreign debt information regime set forth by Communication “A” 3,602, if applicable.<sup>3</sup>

## **III. Are there any anti-deferral regimes**

### **1. Such as tax provisions that create current taxation of income of foreign entities owned by residents of your country**

Please see our comments on section I point 3 above regarding CFC rules.

## **IV. Tax Treaties.**

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<sup>3</sup> Pursuant to Communication “A” 3,602 of the Central Bank, Argentine residents must report such information on a quarterly basis, unless the debt is incurred and cancelled in the same quarter.

**1. List the countries with which there are tax treaties. This could impact the withholding taxes on various distributions and to the extent possible, they should be itemized.**

Argentina has tax treaties presently in force with the following countries: Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Norway, Spain, Sweden, Switzerland, Russia, 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. Presently, there is no tax treaty between Argentina and the United States.

The following table sets out the maximum rates at which interest, dividends and royalties may be taxed in Argentina where the recipient is a resident of one of the countries listed below:

<b>Country</b>	<b>Interest</b>	<b>Dividends</b>	<b>Royalties</b>
Australia	12 %	15%	15%
Austria	12.5%	15%	15%
Belgium	12 %	15%	15%
Bolivia	No limit	No limit	No limit
Brazil	No limit	No limit	No limit
Canada	12.5%	15%	15%
Chile	No limit	No limit	No limit
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%
Russia	15%	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%