



Significant tax reform approved by Congress

The Senate of Argentina approved on December 27th a significant reform to the country's tax system (published on Official Gazette on December 29th). The law includes changes that affect the taxation of both residents and nonresidents, and lowers the corporate tax rate on undistributed profits from 35% to 25% by 2020. The reform is aimed at fostering investment, making Argentina globally competitive and facilitating quality employment, while also increasing fairness in the tax system, reducing tax evasion and promoting the development of the Argentine economy.

The main changes affect the following areas:

Corporate income tax

- The current 35% corporate income tax rate is reduced to 30% for 2018 and 2019, and to 25% as from 2020. The change aims to reduce the tax burden on undistributed profits, to foster reinvestment.
- A withholding tax on dividends paid by an Argentine entity is imposed at 7% for 2018 and 2019, increasing to 13% as from 2020, so that the overall income tax burden on distributed profits would reach approximately 35%.
- The "equalization tax" is eliminated for income generated as from 2018. This withholding tax currently applies to dividends paid to a nonresident that exceed the Argentine payer company's accumulated taxable income, after certain adjustments.



- The imposition of tax on capital gains on the sale of shares of Argentine companies derived by nonresidents as from 23 September 2013 would be retroactively affirmed. Although such transactions have been subject to tax as from that date, the tax authorities did not issue rules on how the tax should be paid where both the purchaser and the seller are nonresidents until 18 July 2017, so it is likely that some transactions escaped taxation. A resolution issued on 20 July 2017 suspended the effective date of the rules for 180 days, reportedly due to concerns relating to transactions carried out on a stock exchange. The law provides a tax exemption for shares traded on a stock exchange if the broker did not apply the applicable withholding tax.
- An exemption is introduced for capital gains derived by nonresidents on the sale of publicly traded shares or certificates of deposit for such securities (i.e. ADRs). The exemption for interest and capital gains from public and corporate bonds, financial trusts with a public offering and certain mutual funds with a public offering is retained, but Central Bank Letters (LEBACs) become taxable.
- The taxation of certain digital content at a 17.5% rate is clarified.
- Indirect sales of certain Argentine assets (shares of Argentine entities, Argentine permanent establishments (PEs) and other assets such as real estate located in Argentina) that are carried out through the sale of shares or other participations in a nonresident entity become subject to tax.
- The current tax transparency rules is replaced by broader rules that would be triggered in more situations, and “deemed dividends” figures is introduced.
- A definition of a PE is introduced (currently, the concept of a PE exists without a specific definition). In addition, a limited “force of attraction” rule is introduced that could subject certain revenue of the head office of a PE to tax in Argentina, but a deduction for expenses incurred by the head office also is allowed.
- The timing for the deduction of remediation and similar expenses relating to mining, oil and gas and other activities that may incur similar expenses (generally accelerating the deduction) is clarified.
- The thin capitalization rules are replaced by rules limiting the deductibility of interest on loans with resident and non-resident related companies to 30% of EBITDA (earnings before interest, depreciation and amortization). (Until now, only certain non-resident related-party interest is subject to the thin capitalization rules, based on a 2:1 debt-to-equity ratio.) Certain exceptions apply in the case of highly leveraged economic groups. Foreign exchange losses are also limited by the new rules.

Transfer pricing

- The “sixth method” (a variation of the comparable uncontrolled price method that currently must be used in certain cases) is modified and limited to specific situations (to be determined under secondary rules). However, transactions structured using an intermediate entity under certain circumstances could be subject to TP scrutiny (not only exports and commodities, but also imports and any type of goods).

- New definitions of related entities subject to the transfer pricing rules are introduced.
- The scope of the transfer pricing rules is expanded to apply to transactions with low-tax jurisdictions, in addition to transactions with non-cooperative jurisdictions.

Value added tax (VAT)

- An early refund system is implemented for investment in capital assets, subject to the future generation of output VAT, to avoid increasing the financial cost of investments.
- Digital content (i.e. music, videos, etc.) provided by nonresidents becomes taxable.

Social security

- A portion of an employee’s monthly salary (approximately equivalent to USD 650) will be exempt from the employer’s social security contribution. A unified employer contribution rate of 19,5% will apply (instead of the current rates that range between 17% and 21%), but the portion of the contribution currently creditable against the VAT would be eliminated. These modifications will be implemented gradually and will be fully in force as from 2022.

Excise taxes

- The threshold for the application of excise taxes on vehicles and motorbikes is increased, so that only “high-end” cars, sport utility vehicles and motorbikes will be subject to tax.
- The excise tax on fuels is set at fixed amounts connected with CO2 emissions, to reduce the impact of fuel price fluctuations and foster ecologically friendly energy.
- The excise tax on is increased for certain alcoholic beverages.

Individual income tax

- The tax on real estate transfers is eliminated for newly acquired immovable property, but a capital gains tax on the sale of real estate by individuals is introduced at a 15% rate.
- Individuals become subject to tax on interest arising from local bank fixed-term deposits and public bonds, as well as capital gains arising from such instruments, at a rate of 5% for ARS-denominated instruments and 15% for other instruments.

Tax on debits and credits to bank accounts

- Authorizes the Executive to instrument the required changes for the tax on financial transactions that is levied on debits and credits to current accounts, at a rate of 0.6% per transaction, to gradually become 100% creditable against the income tax.

Tax administration

- An advance pricing agreement (APA) mechanism is introduced to provide certainty in transactions with related companies.
- A mutual agreement procedure (MAP) mechanism is introduced to handle the resolution of disputes relating to the application of tax treaties.