

# Doing Business in Argentina

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Argentina.



## Background

### Brief description of Argentina

Argentina is a democratic republic; it is divided into 23 provinces and the Autonomous City of Buenos Aires, where the Federal Government is established. The President is elected every four years.

In Argentina, there are 43 million inhabitants, a third of whom live in Buenos Aires City and its suburbs. Buenos Aires Province is the most important province in terms of population and economic activity, followed by Cordoba, Santa Fe, and the City of Buenos Aires. This city has a population of 3 million people in 200 km<sup>2</sup>.

Spanish is the official language and around 80% of the population is catholic.

### Argentine economy

Argentina has traditionally based its economic structure on the magnificent natural resources it has in many areas of the country, and a highly qualified manpower.

Its 'agro' products have been for many decades been the sole source of its export policy and the mainstay of the economy. Fishing, forestry and mining, and agriculture and livestock represent more than 12% of the GDP. Industry has become increasingly important since World War II, and currently represents over 18% of the GDP. Major manufacturing industries include agro-industries and food processing, automobiles and trucks, chemicals, machinery and equipment, metallurgy (including steel and aluminum), petrochemicals, paper, cellulose, and textiles. Since 2002, the industrial sector

has had, in the areas of exports and substitution of imports, a significant opportunity to regain both activity and profitability levels. Also, it is important to include activities like Commerce, Hotels, and Restaurants, and Finance, Insurance and Real Estate, that represent 13,5 % and 15% of the GDP respectively. The GDP total is estimated as USD 964 billion (2015).

The official currency is the Argentine Peso and the reference currency is the US dollar.

### Infrastructure

The main commercial ports are Buenos Aires, Bahía Blanca, Quequén, Rosario and Paraná. Over 90% of the Argentine foreign trade is carried out by sea. But the Argentine ports have some disadvantages: high taxes, low depth, and limited infrastructure. There is no deep-water port, except for Madryn, which is outside of the commercial area.

Railways have developed in the last decades by through private companies, and freeways and routes by private companies and the government.

There has been a great advance in digital communication networks, that allows communication with the rest of the world at high speed.

From 2015, the country has started a plan to develop railroads for short and middle-distance transportation. Likewise, from 2016, the new administration is opening airplane routes to "low cost" companies.

## Choice of Legal Form



Business in Argentina may be conducted by incorporated companies, partnerships, individuals, and branches of foreign constituted enterprises. In all cases pertinent information must be registered with the Public Registry of Commerce.

Foreign investors generally choose either the form of a Corporation, Limited Liability Company or a Branch to start operations in Argentina. The former may be a Sociedad Anónima (Corporation) or a Sociedad de Responsabilidad Limitada. The Branch has certain advantages, especially in the initial investment. It is mandatory for foreign companies operating in Argentina to name legally responsible individuals and to keep separate accounting records for their Argentine operations.

### Corporación (Sociedad Anónima - S.A.)

This form is the most commonly used for doing business in Argentina. There must be at least two shareholders and the shares may be either privately held or quoted publicly. The minimum capital is \$100.000. Their operation is governed by statutes in which the name, object, duration, capital, election and powers of the Board of Directors, and all other rules are established. The Board may have one or more directors but the absolute majority must be domiciled in Argentina.

The responsibility of the shareholders is limited to the amount of their contribution, with the exception of the legal representative or the members of the Board of Directors and the Board of Oversight (Sindicatura).

**General Partnership – Unlimited responsibility (Sociedad Colectiva)**

The partners acting as legal representatives or members of the Board of Directors have unlimited liabilities for the corporation or subsidiary.

**Limited Liability Partnership (Sociedad de Responsabilidad Limitada- S.R.L.)**

These companies are similar in all aspects to corporations except that:

The number of partners may not exceed 50, a corporation may not be a partner, they are always privately held, formation procedures are simplified and greater flexibility is permitted in the deed.

Managers have the same rights and duties as the directors of corporations. Partners are responsible up to the amount of their contribution unless they are part of the Board of Directors or the Board of Oversight. In recent years, local subsidiaries of US companies have preferred this form, and former corporations have changed to this one.

**Limited Partnership (Sociedad en comandita)**

A limited partnership is subject to the Commercial Code, and has two categories of partners: “silent” partners (“comanditarios”), whose liability to third parties is limited to the capital subscribed by them, and “active” partners (“comanditados”), who do not enjoy a similar limitation of liability.



There are two classes of limited partnerships: “sociedad en comandita por acciones” where the capital subscribed by the “silent partners” is divided into nominative shares of equal value, and “sociedad en comandita simple” where the capital is proportionally divided, but shares as such may not be issued. The appropriate description must be shortened to S.C.A. and S.C.S. respectively.

#### Non-commercial General Partnerships

General partnerships not engaging in commercial activities (“sociedad civil”) are subject to the Civil Code. A “sociedad civil” is a matter of private agreement between the persons involved, and is generally found among professional groups.

#### Societies with only one partner

It is prohibited in Argentina to form societies with only one partner. It is strongly recommended that one partner holds no more than 80%.

#### Joint Ventures

Two types of contractual joint ventures are recognized by law: temporary partnerships (“agrupaciones de colaboración”) and temporary union of companies (“uniones transitorias de empresas - U.T.E.”).

Temporary partnerships embody joint organizations for renewable periods up to a maximum of ten years, to provide or develop certain stages of the business activity of their partners, or to improve and develop their mutual activities.

Temporary unions of companies are allowed to develop or execute a specific task, service or supply, and/or any extension thereof, both locally and abroad. Their duration is therefore limited to that particular task or service. In this contract, the bankruptcy of the members or the disability or death of the individual entrepreneurs does not in itself lead to the extinguishment of the U.T.E. contract.

Both types of joint ventures must have the following characteristics:

- They are not separate legal entities in their own right.
- Agreements are entered through private or public deeds.
- Agreements must be registered in the Public Registry of Commerce and must include their objectives, term of duration, name and other information on their partners’ responsibilities, financial contributions and other legal implications.

Joint ventures may also exist under private agreements not registered in the Public Registry of Commerce when they are not one of the two types mentioned above. Such joint ventures enjoy similar rights and obligations and have the same tax requirements as those described above.

#### Foreign Corporations

Foreign corporations that carry out occasional transactions in the country do not need to be registered.

Since 2003, the Public Registry of Commerce has announced several resolutions that must be followed by foreign corporations in order to comply with the framework of the Act 19550-Business Associations.

Foreign corporations registered in tax havens are subject to additional conditions and parameters. The same applies with foreign corporations that are used only as a vehicle by other companies that control them directly or indirectly and together with them form an economic foreign group.

### Branch of a Foreign Corporation

A registered branch of a foreign corporation may perform all the acts its head office is authorized to perform. Therefore, operations are carried out

under the responsibility of the head-office, through its nominated legal representative, who is liable to the extent of the corporation's subscribed capital. The legal representative must apply for the registration of the branch, together with the necessary documentation, duly authenticated by a public notary in the country of origin, then recognized by an Argentine consul or with the Haya's Apostille, and finally translated locally by an Argentine public translator.

The tax burden is similar to that of an S.A. As the branch is managed by its legal representative through a power of attorney, his attributes may be limited accordingly. On the other hand, as the parent is wholly responsible for the branch's liabilities, it may be easier to deal with financial institutions and other suppliers locally.

## Audit Requirements

It is mandatory that every "Sociedad Anónima"'s financial statements be audited by accountants registered in the Accounting Council, and filed in the Public

Registry of Commerce. This requirement is applied to almost every company and its branches.

## Taxation



### Corporation tax

Corporation tax applies to all net profits obtained by local tax payers in Argentina and worldwide. For local taxpayers, the rate is 35%. Additionally, it applies to net profits obtained by non-residents in many cases.

S.A. and S.R.L., amongst other type of societies, are taxed at this rate.

For other payments from a resident to a non-resident person, withholding tax rate varies from 15.05% to 53.846%, depending on two factors:

- a) Class of profit paid (e.g. royalties 21% or 28%, rents 21%, interests 15.05% or 35%, salaries 24.5%)
- b) If the local company assumes the payment of the profit plus the withholding tax (grossing up).

For example, the tax rates on rent rises to 26.582%.

Tax allowances and deductions: Some special rules are applied, e.g. there are limits on deducting car expenses and their depreciation. For companies, every deduction made in the tax liquidation should have supporting documentation (an invoice, a receipt, a bill, etc.). Net losses can be offset against the profits up to a maximum of 5 years.

### Small companies rate

For small companies, called PYMEs (Pequeñas Y Medianas Empresas), there are to be some benefits applicable in 2018, including the possibility of deferring VAT payments for 90 days and the possibility of offsetting 100% of the tax paid on banking debits and credits.

### Income tax

Income tax is applied to individuals. Tax rates vary from 9% to 35% depending on the amount earned in the fiscal year. Some allowances are made for covering basic family expenses. For example, an employee in charge of a spouse and two children pays income tax when net salary is greater than ARS40,000 per month.

As from 2016, dividends are tax free. Capital gains derived from stock sales are exempt.

### VAT: (Value added tax)

The general tax rate is 21%, applied to sales (goods or services) and importations. 27% is applied to public services and 10.5% to some machinery.

The following must be considered:

- A VAT payer will charge the tax always when the service is rendered or is going to have effect in Argentina, even if A FOREIGN COMPANY is the party invoiced. In this case A FOREIGN COMPANY adds a cost to operations here in Argentina, because ARGENTINA has to deposit the VAT invoiced. ARGENTINA will invoice \$ 100 + 21 = 121, the foreign company will pay \$121, and only \$100 will stay in the group.
- Services rendered outside of the country but to be consumed in Argentina are subject to VAT. The local importer must calculate and pay the VAT debit and can claim the VAT credit in the following month.

- Exports (both for goods and services) are tax free, and all the VAT credits contained in related purchases can be deducted from other debits or reimbursed.
- Imports: When entering the country, the AFIP will charge VAT on goods imported. VAT is also applied on import of services.

### Sales tax

Provincial Tax. The usual tax for services is about 4%. In some cases it could be 6%. Payment and tax returns are required monthly or bimonthly. No allowances are admitted.

### Tax on minimum presumed income (IGMP)

This tax is calculated as an annual 1% on assets and must be paid when it's higher than corporate income tax. Only those with assets greater than \$ 200,000 are subject to this tax.

### Tax on banking debits and credits

Since March 2001 every debit and credit made in current accounts, saving accounts and similar are taxed at a rate of 0,6% that is directly debited in that bank account. 34% of tax on credits may be applied as credit to income tax, corporate income tax or IGMP.

### Tax treaties

Argentina has signed tax treaties with many countries, including Italy, Spain, Brazil, Chile and Switzerland. These treaties reduce withholding tax rates in many cases. Argentina has recently been leaving these treaties and starting conversations to produce new types of treaties, to include exchange of information.

### Transfer pricing

Since 31/12/98 transfer pricing analysis is required to value operations between related parties.

In many cases, sales of shares are imposed if the company is not listed in the stock exchange and the seller is a resident or a non-resident holding company established in a country that only permits it to operate outside the country. The rate for non-residents is 17.5% or 35% on net profit of the sale.

Tax return must be filed annually (in the 5th month after the end of the fiscal year). Some payments in advance could be required (equivalent to a monthly 9% of the last year's tax).

### Capital gains

In general, an individual's capital gains are not subject to income tax, except those derived from sales of shares and participations in companies. In these cases, the rate applied to individuals is 15% on net income.

### Taxation of individuals

Individuals resident in Argentina are liable for Income tax at gradual rates on their worldwide income. Non-resident individuals are liable for Argentine income tax only on their Argentine-sourced income, on which tax is levied as a final and lump-sum withholding tax at various effective rates, depending on the type of income

Argentine-sourced dividends are not usually subject to income tax but may be subject to withholding taxes at the moment of payment, under certain circumstances.

## Allowances



Argentina has several regimes designed to promote productive development and investments. The treatment of these is the same for both foreigners and domestic investors. Some of these regimes must be granted by the authority.

### Initial cost of investment reduction

#### Accelerated depreciation

This is for machinery, equipment, and infrastructure works destined for investment projects. Capital goods purchases may be depreciated in the balance sheets for three years after purchase and infrastructure project depreciation will be reduced by 50% vis-à-vis the usual depreciation period. The purpose of accelerated depreciation is to allow companies to reduce the tax burden during the first years of the project.

### Refund of VAT

VAT paid in the purchase of goods destined for use in investment projects can be refunded. All VAT not offset will be refunded in cash three months after purchase.

### Import regime for large industrial investments

Zero tariffs are imposed on imports of brand new capital goods destined to autonomous production lines of tangible goods.

Environmental equipment, necessary to eliminate pollution or contaminating elements from the air, soil, or water in a production plant, may also be imported under this regime. A 20 percent minimum of domestic suppliers is required. Spare parts may also be imported duty free

provided their value does not exceed five percent of the total value of the imported equipment. Goods imported under this regime may not be transferred nor re-exported for a period of two years from the date of importation.

The import duty for a broad range of new capital goods is zero percent and it applies only to imports of new equipment.

### VAT reduction on capital goods

VAT reduction (10.5%) applies on locally purchased and imported capital goods (finished goods) and information and telecommunication goods (including their parts and components).

### Export promotion incentives

#### Free trade zones (FTZ)

In these zones imports are free of customs duties, statistics rate, and VAT, as is the equipment needed to build operations there. The purchasing of supplies and raw materials from third countries is also exempt from duties or taxes so manufacturers can produce for export at a lower cost.

Goods may remain in the zone for a maximum period of five years, meaning that they do not need to be released until a purchaser is found, thereby delaying payment of duties and taxes (free zone customers pay the duties and taxes on goods sold and leaving the

zone). Industries exporting through FTZs benefit from incentives available in the Argentine Territory, avoid VAT, and save by not paying internal taxes on basic supplies such as electricity, gas, water, and telephone services.

Currently, there are free trade zones in Buenos Aires, Córdoba, Chubut, La Pampa, Mendoza, Misiones, Salta and San Luis.

### Drawback

The drawback mechanism was established to refund various import charges. The following charges are rebated: import tariffs; the statistical fee on imports (0.5%); and the value-added tax of 21% (10.5% in the case of capital goods). To benefit from this mechanism, the imported raw materials must be substantially transformed or embodied in the production of goods for export.

### Temporary admission regime

This mechanism allows duty free admission for those goods substantially transformed or embodied in the production of goods for export. The exports must be completed within the stipulated time, as set by customs, in accordance with the type of imported inputs. Failure to re-export goods will result in a fine. The transfer of property, possession, or use is not permitted. A bond will be needed to cover the value of import charges for the goods, which is cancelled when the goods are re-exported.

### Customs at factory

This mechanism can be used by manufacturing companies, allowing the temporary entry of goods for transformation and re-export, without paying import-related tariffs and duties until final goods are exported. Temporary entry raw materials, parts, components, auxiliary material, and packaging material used in the process of industrial transformation or production for their subsequent exportation concludes when a definitive export with transformation, re-export without transformation, or importing for consumption within the company occurs. The regulation provides different timeframes depending on the final destination of the products. Another advantage of the system is that it allows Argentine importers to compensate the VAT due on definitive imports made through this regime with their favorable fiscal balance.

### Reimbursement regime on exports

Total or partial reimbursement up to 6% of indirect taxes paid on exports outside MERCOSUR, especially for those products that incorporate technology, develop trademarks, and foster regional economies.

### Bilateral investment treaties (BITs)

The BITs promote stable and market-oriented policies towards foreign investment through non-Discriminatory Treatment, because the investment of each contracting party shall, at all times, be accorded fair and receive equitable

treatment in the territory of the other contracting party. Each contracting party guarantees to an investor of the other party the unrestricted transfer of investments and returns. Each contracting party also guarantees the unrestricted transfer of funds in repayment or loan directly related to a specific investment, the proceeds of the total or partial liquidation of any investment, and wages and other remuneration accruing to a citizen of the other contracting party. BITs establish clear limits on the expropriation of investments and provide for payment of prompt, adequate and effective compensation when expropriation takes place. In case of disputes between the contracting parties, BITs give investors from both parties the right to submit an investment dispute with the treaty partner's government for international arbitration.

### Small and medium size companies (PYMEs)

As well as the benefits described under taxation, a new reform grants further benefits for PYMEs such that they can receive a tax credit on investments on fixed assets.

## Employment



The following points must be considered when dealing with employees.

**Salary:** Government rules a minimum salary for workers, currently \$8.060.

**“Aguinaldo”:** Annual complementary salary or “thirteenth salary” is to be paid in two halves in June and in December. It is equivalent to 50% of the best salary of each calendar semester.

**Vacations:** Must be pre-paid before they are taken. Every employee with at least 6 months in payroll has the right to take a minimum of 14 days.

**Termination package:** When firing an employee, the employer must pay compensation equivalent to one month’s salary for each year of work plus some benefits.

### Social security system

Both employers and employees have to contribute to the pension and retirement system, and to the health care system. Employees or the self-employed can also choose to contribute to the public or private system. In the first case, employees contribute 14% of their salary, and the 10% in the latter. Employees contributions are calculated within the maximum limit of ARS 73.000.

Employers’ contributions to Social Security depend on the activities carried out by the company. In the case of the rendering of services the contribution is 21%, while the usual rate is 17%. These payments of Social Security taxes contributed by employers include payments to the pension and retirement fund, to the family allowances system, and to the Federal fund for unemployment

Independent or self-employed workers (“trabajadores autónomos”) have to contribute to the retirement system with a fixed amount that is related to the estimated income they earn and depending on the type of activities carried out. Companies’ members of the Board of Directors are required to become affiliated to the retirement system for independent workers. Directors may choose to contribute also to the payroll or regular employees’ retirement system, provided that they also perform administrative or technical activities for the company.

Argentina has signed international agreements on social security matters with Brazil, Chile, Greece, Italy, Peru, Portugal, Spain and Uruguay. Given the reciprocal nature of provisions in those agreements, they allow for the mutual recognition of services rendered in one or the other of the signatory countries.

### Employment of foreign personnel

Argentina places no restrictions on the employment of foreign workers beyond compliance with standard immigration regulations. Expatriates may work in foreign-owned businesses as long as they hold a valid resident permit. Argentina maintains agreements with Uruguay, Brazil, Chile, Italy, Paraguay, Greece, Portugal, and Spain: foreign professionals employed in Argentina are exempt from being subject to payroll taxes for a period of 2 years. Companies that have foreign scientists, professionals, or technicians under contract may apply for an exemption from most employer

social security contributions, but only for contracts of less than two years’ duration. Such exemptions considerably reduce payroll costs.

### Health care system

The medical system is managed between national and provincial government, and private companies. Every employee is covered through social security payments. Companies usually pay an additional medical insurance to get better coverage for their employees.

On salaries, 3% and 6% (up to certain limits) must be paid by employees and employers. These rates are intended to cover the obligatory medical plan (PMO).

## Withholding Taxes



Withholding taxes apply in many circumstances:

- a) Withholding tax applies on payments made by a resident to a non-resident.
- b) Withholding tax for individuals: When a local company pays salaries over a minimum, income tax is retained.
- c) Withholding tax on other payments is considered as paid in advance of some taxes, e.g. income or corporate income tax, VAT, sales tax and social contributions.

Money withheld must be transferred to the fiscal authority (AFIP - Administración Federal de Ingresos Públicos) twice a month.

- d) Argentine sourced income taxes are imposed for non-residents.

### Interest

Interest paid to non-residents is imposed when funds are used in activities in Argentina. The tax rates applied varies between 15.05% and 35%. Grossing up is required when a local payer assumes withholding as a cost.

### Royalties

Withholding tax reaches 21% or 28% depending on the technical service rendered. If the service cannot be obtained within Argentina, 21% is applied. Grossing up is required too, under conditions described above.

### Dividends

Dividends paid from local companies are tax free, according to the integration system adopted by our corporate income tax, where income tax is applied only on corporations (including S.A. and S.R.L.).

## Miscellaneous



As mentioned, dividends are tax free according to the integration system of income between companies and physical persons. All income is subject to tax in companies' top level, and is tax free when it flows to shareholders (or partners in case of S.R.L.) as dividends.

However, an equalization tax is applied when the amount of dividend paid is higher than the accumulated taxable income. Equalization tax rate is 35%.

### **Restrictions on transferring foreign currency in to and out of Argentina**

Banco Central de la República Argentina, or Central Bank, is designated to manage foreign currency negotiation. Importers must acquire from the Central Bank the foreign currency to pay abroad, and

exporters are obliged to sell – subject to certain due dates – foreign currency obtained through their exports, to obtain pesos.

Transfers of capital from other countries are obliged to constitute a time deposit for 360 days with no interest, equivalent to 30% of the currency received. This rule has some exceptions, e.g. transfer of currency to acquire participations in local companies.

Transfers out of the country must have a certain origin, permitted by the Central Bank. Otherwise, the Central Bank rejects selling foreign currency.

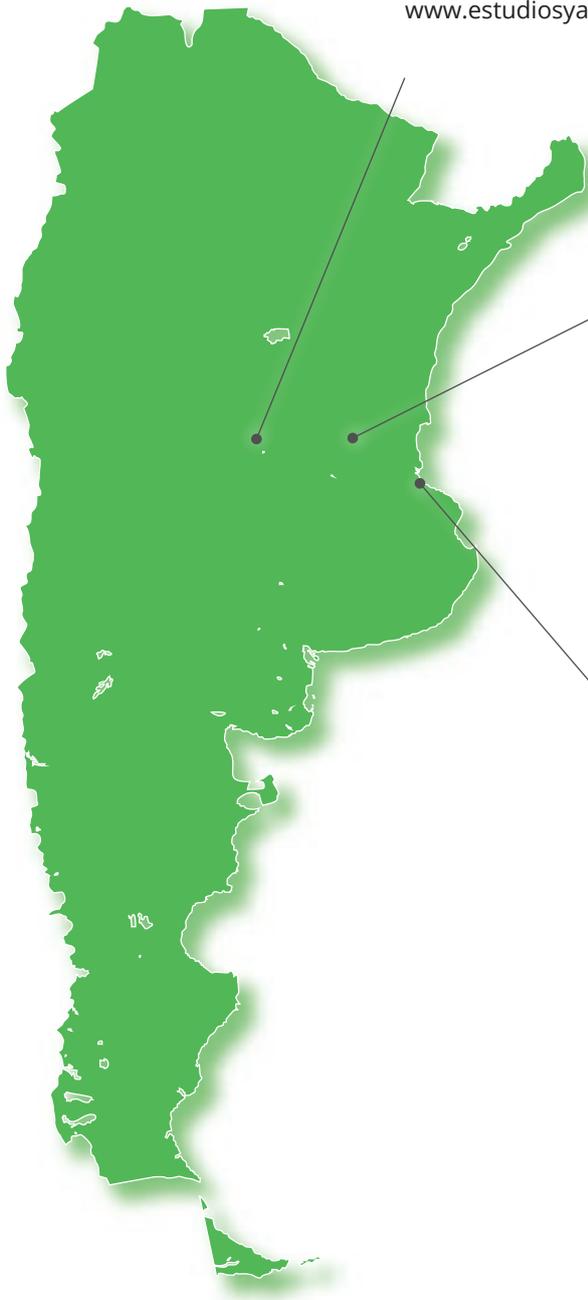
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Cordoba

Estudio Vocos R. y Asociados  
Javier A. Vocos Remorino  
vocossdfk@arnet.com.ar  
+54 (0)3514 214113  
www.estudiosya.com.ar

Sante Fe

Estudio Ilharrescondo y Asociados  
Gustavo Ilharrescondo  
gilharrescondo@fibertel.com.ar  
+54 (0)3414 258920  
www.estudiosya.com.ar

Buenos Aires

Estudio Sambuccetti y Asociados  
Gabriel Sambuccetti  
gos@estudiosya.com.ar  
+54 (0)9116 9114894  
www.estudiosya.com.ar