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This Q&A gives an overview of the key factors affecting inward investment, including information on the jurisdiction's legal system; key laws and regulatory authorities; investment restrictions; and details of international treaties, customs and monetary unions. The guide also provides information on investor individuals; visa permits; restrictions on foreign ownership; transfer pricing and thin capitalisation rules; imports and import duties; safety regulations and standards for commercial goods and services; structuring and tax incentives; investment guarantees; recent developments and proposals for reform.

This Q&A is part of the Investing in... Global Guide. For a full list of contents, please visit [www.practicallaw.com/investingin-mjg](http://www.practicallaw.com/investingin-mjg).

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Inward investment has declined in the past five years because of unfriendly economic policies

rather than any economic fundamental issue. These policies relate to:

Certain foreign exchange restrictions.

A disregard by the Federal authorities of different tariff agreements with utility companies.

A hostile approach towards the rural sector, which is the more relevant in the country.

De facto restrictions include royalties and dividend transfers.

This unattractive scenario has prevented foreign investment in Argentina and has caused interest rates for the country to rise to unbearable levels.

Argentina missed great economic opportunities in the past taking into account that it is a commodity-oriented country and those prices were at unusual high levels for a long period of time.

Infrastructure is needed, as well as mining, oil and gas investments, since there are plenty of proved reserves in those fields. However, erratic government policies have frustrated companies in this sector as well as potential foreign investors.

The country did not attract the same level of foreign investment as nearly all the other countries in the region, except for Venezuela. Even Bolivia had access to the international Capital Markets at less than half the interest rate that Argentina would have had to pay.

## **2. What types of companies are attracting foreign investment into your jurisdiction and what are the most active sectors?**

The country is not enjoying an acceptable level of foreign investment (see [Question 1](#)). However, there are sectors such as mining (that is regulated by a special regime with tax stability) and oil and gas, together with the suppliers of these sectors, which attract a certain amount of foreign investment despite a weak consideration of the rule of law.

## **3. What will be the main factors affecting the market and how do you expect the market to develop?**

The main factors affecting the market are set out in [Question 1](#).

There are Presidential elections in October and two of the main candidates are business-oriented, which has led to increased positivity for the future. Due to the erratic and unfortunate public policies applied in Argentina in the past 12 years, there are now a lot of opportunities in almost every field of business, but especially in infrastructure and energy. The banking sector has also got a lot of potential given the low price of those assets and the low *bancarization* (access to banking services) compared to other countries in the region.

# **Legal system**

## **4. Please briefly outline the government and legal system.**

Argentina has a Federal democratic system of government with the classical three different powers:

**Executive.** The executive power is exercised through a Presidential system.

**Judicial.** The judicial power is led by a Federal Supreme Court. Generally the courts have two instances.

**Congress.** Congress has two chambers (Low House and Senate).

Similarly, the main agencies that enjoy a certain level of independence are the:

Central Bank.

*Comisión Nacional de Valores*, which regulates the capital markets (equivalent to the SEC in the US).

## **5. What are the key laws and regulatory authorities governing foreign investment in your jurisdiction?**

The regulation of foreign investment is governed by Foreign Investment Law 21.832 and Decree 1853/1993. This law establishes that foreign investors that invest capital in the country (while complying with all sections of this law) have the same rights and obligations that local investors have. They can perform their rights at any time to repatriate their capital and remit their liquid earnings and realised profits abroad. It also eliminates the need for prior approval for foreign investments, as established in the previous law.

Regarding the regulatory authority that governs foreign investment, Law 21.832 establishes that the Ministry of Economy must determine which administrative agency is the enforcement authority. Currently, the Under Secretary of Macroeconomic Programming (*Subsecretaría de Programación Macroeconómica*) is the authority that oversees and regulates foreign business and investments.

## **6. What international treaty organisations and/or economic, customs or monetary unions or free-trade areas is your jurisdiction a member of?**

Argentina is a member of the:

UN (United Nations).

WTO (World Trade Organisation).

MERCOSUR (*Mercado Común del Sur*).

ALADI (*Asociación Latinoamericana de Integración*).

OEA (Organisation of American States) (OAS).

IMF (International Monetary Fund).

UNASUR (Union of South American Nations) (USAN).

CELAC (Community of Latin American and Caribbean States) (CLACS).

UNCTAD (United Nations Conference on Trade and Development).

## 7. What other international agreements apply to foreign investment?

The international agreements that apply to foreign investment are:

Multilateral Investment Guaranty Agency (MIGA).

Acuerdo de Complementación Económica No. 14 (Argentina-Brazil).

Memorándum de Entendimiento para Fortalecer la Cooperación entre el Ministerio de Planificación Federal, Inversión Pública y Servicios de la República Argentina y el Ministerio de Comercio de la República Popular China (Argentina-China). Signed and valid from 4 February 2015.

Convenio Internacional entre el Ministerio de Planificación Federal, Inversión Pública y Servicios y La Caixa Económica Federal sobre cooperación para Proyectos que estimulen el desarrollo (Argentina-Brazil). Signed and valid from 31 January 2011.

Acuerdo entre la República Argentina y la República italiana sobre Promoción y Protección de las Inversiones y Protocolo Adicional (Argentina-Italy). Signed on 22 May 1990 and valid from 14 October 1993.

Argentina has also signed the following international agreements in relation to double taxation:

Convenio entre el gobierno de la República Argentina y el gobierno de Australia para evitar la doble imposición con respecto a los impuestos sobre la renta (Argentina-Australia). Signed on 27 August 1999 and valid from 30 December 1999.

Convenio entre la República Argentina y el Reino de Bélgica para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta y sobre el capital (Argentina-Belgium). Signed on 12 June 1996 and valid from 22 July 1999.

Convenio entre el gobierno de la República Argentina y el gobierno de la República de Bolivia para evitar la doble tributación en materia de impuestos sobre la renta, ganancias o beneficios y sobre el capital y el patrimonio (Argentina-Bolivia). Signed on 30 October 1976 and valid from 4 June 1979.

Convenio para evitar la doble imposición y prevenir la evasión fiscal con respecto a los impuestos sobre la renta entre la República Argentina y la República Federativa del Brasil

y su protocolo (Argentina-Brazil). Signed on 17 May 1980 and valid from 7 December 1982.

Convenio entre la República Argentina y Canadá para evitar la doble imposición en relación a los impuestos sobre la renta y sobre el capital (Argentina-Canada). Signed on 29 April 1993 and valid from 30 December 1994.

Convenio entre el gobierno de la República Argentina y el gobierno del Reino de Dinamarca para evitar la doble imposición y prevenir la evasión fiscal con respecto a los impuestos sobre la renta y el capital (Argentina-Denmark). Signed on 12 December 1995 and valid from 3 September 1997.

Acuerdo entre la República Argentina y la República de Finlandia para evitar la doble imposición en materia de impuestos sobre la renta y sobre el patrimonio (Argentina-Finland). Signed on 13 December 1994 and valid from 5 December 1996.

Convenio entre el Gobierno de la República Argentina y el Gobierno de la República Francesa y Protocolo (Argentina-France). Signed on 4 May 1979 and valid from 1 March 1981.

Convenio entre el Gobierno de la República Argentina y el gobierno de la República Federal de Alemania para evitar la doble imposición con respecto a los impuestos sobre la renta y el capital (Argentina-Germany). Signed on 13 July 1978 and valid from 25 November 1979.

Convenio entre la República Argentina y la República Italiana a fin de evitar la doble imposición en materia de impuestos sobre la renta y el patrimonio y de prevenir la evasión fiscal y su protocolo (Argentina-Italy). Signed on 15 November 1979 and valid from 15 December 1983.

Convenio entre la República Argentina y el Reino de los Países Bajos para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta y el capital (Argentina-The Netherlands). Signed on 27 December 1996 and valid from 11 February 1998.

Convenio entre la República Argentina y el Reino de Noruega para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta y sobre el capital (Argentina-Norway). Signed on 8 October 1997 and valid from 30 December 1997.

Convenio entre el gobierno de la República Argentina y el gobierno de la Federación de Rusia para evitar la doble imposición en materia de impuestos sobre la renta y sobre el capital (y protocolo) (Argentina-Russia). Signed on 10 October 2001 and valid from 16 October 2012.

Convenio entre la República Argentina y el Reino de España para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta y el patrimonio (Argentina-Spain). Signed on 11 March 2013 and valid from 23 December 2013.

Convenio entre la República Argentina y el Reino de Suecia para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta y su protocolo (Argentina-Sweden). Signed on 31 May 1995 and valid from 10 May 1995.

Convenio entre el gobierno de la República Argentina y el gobierno del Reino Unido de Gran Bretaña e Irlanda del norte para evitar la doble imposición y prevenir la evasión fiscal con respecto a los impuestos sobre la renta y el capital (Argentina- UK). Signed on 3 January 1996 and valid from 1 August 1997.

## Investor individuals

### **8. Are there any visas, permits or other requirements for foreign individuals entering your jurisdiction for business purposes?**

A business visa is required for doing business in Argentina. The maximum temporary stay granted by the consular offices is 90 days, which can be extended only once (and for the same period of time) by going to any of the delegations of the National Immigration Office (*Dirección Nacional de Migraciones*) before the original term is due. The applicant has to prove the business activity with items such as:

- A letter from the company that he/she works at.

- Bank references.

Where there is an invitation from a physical or juridical person settled or living in Argentina, the applicant must first get approval from the *Dirección Nacional de Migraciones*.

Business visa requirements include:

- Valid passport or any other document accepted by the Argentine Republic.

- Application form (supplied by the Consulate).

- One photograph measuring 4cm by 4 cm.

- Round trip ticket.

- Payment of consular fee.

Foreigners contracted to work in Argentina must have a work visa and legal residence in the country. Local regulations on immigration establish three types of residence:

- Permanent.

- Temporary.

Transitory.

To set up any business in Argentina it is necessary to have permanent or temporary residence.

There are no restrictions on nationality of authorities or members of the company or business, but they must have a legal address in the country. To contract foreign workers, the contract must comply with current labour legislation in all the national territory.

Foreigners with previous work contracts must satisfy the following requirements to get into the country:

Work contract signed by the employer and the contracted foreigner, with the signature certified by public attorney or agent of the National Immigrations Office.

Statutes or company's incorporation contract, duly recorded.

Proof of payment to pension fund by the employer for all employees in the last six months.

Proof of record in the tax system and compliance of the last three due payments.

Tax Revenue Office Form stating payroll at the beginning of the company's activity.

Municipal authorisation to operate (if applicable).

#### **9. Are there any visa waivers or fast-track procedures available for foreign individuals entering your jurisdiction as investors?**

There are no visa waivers or fast-track procedures available for foreign individuals entering Argentina as investors.

#### **10. What are the circumstances under which an individual becomes liable to pay tax in your jurisdiction? Can individuals be liable for tax on foreign-source income?**

Income tax is a federal tax levied on the worldwide income obtained by individuals and legal entities with tax residence in Argentina. Foreign resident individuals or legal entities without a permanent establishment in Argentina are taxed only on their Argentine source income through a withholding system.

There are other taxes in Argentina that do not consider the individual's residence to determine the tax obligation (for example, value added tax). In these cases, the individual must pay the tax if the taxable event is triggered.

## **Investment restrictions**

**11. Are there any restrictions on foreign ownership and investment in specific industry sectors? Do any formalities permit or notification requirements apply?**

According to Law 21.382 of Foreign Investments, foreign investors have the same rights and obligations as Argentine citizens. But Law 26.737 (Regime for Protection of National Domain over Ownership, Possession or Tenure of Rural Land) limits foreign ownership of rural land to a maximum of 15% of all national productive land. Individuals or companies from the same nation cannot hold over 30% of that amount. Individually each foreign individual or company faces an ownership cap of 1,000 hectares (2,470 acres) in the most productive farming areas, or the equivalent in terms of productivity levels in other areas.

**12. Does the government retain and exercise control over certain industry sectors? If so how?**

The government owns or participates in companies in the following sectors:

Civil commercial aviation.

Water and sanitation.

Oil and gas.

Electricity generation.

Transport.

Paper production.

Banking.

Railway.

Shipyard.

Aircraft ground handling services.

Also, in the field of the public utilities (such as, electricity and gas distribution and transport, water provision, transport, telecommunications) there are different regulatory agencies that, with the government control, regulate those industries.

**13. Are there restrictions on foreign ownership or occupation of real estate? Do any formalities permit or notification requirements apply?**

There are two main limitations to ownership of real estate by foreigners.

The first limitation was established by the Rural Lands Act, which sets the limits for the ownership and possession of property located outside the urban areas by foreigners (individuals or legal entities), regardless of its destination. The Act determined a 15% limit to



the ownership or possession of rural land by foreigners within the whole country, and states that foreigners of the same nationality must not exceed 30% of the 15%. In this sense, "foreigners" are defined as:

Foreign individuals, with or without a current address in Argentina (with certain limited exceptions foreseen in the Act).

Foreign or local legal entities whose capital is owned by foreigners (either companies or individuals) in a percentage higher than 51% or in proportions sufficient to form the social will.

Legal entities controlled by any foreign company in a percentage higher than 25% or with enough votes to form the social will.

According to the Act, foreigners can own up to 1,000 hectares of Rural Land in "Central Areas" (to be defined by each jurisdiction) or equivalent area (a certain number of hectares to be determined by each jurisdiction).

The Act also restricts foreigners from acquiring rural land containing or bordering major and permanent water bodies. To obtain an authorisation to own or possess real estate located in rural areas, foreigners must file a request before the Ministry of Justice and Human Rights.

There is also a limitation on foreigners acquiring land in border zones (security zones). For the purpose of acquiring real estate located in border security zones, the request must be filed before the Interior Minister.

These restrictions do not apply to lease agreements.

#### **14. Are there any minimum capital requirements for foreign investment?**

The minimum capital for incorporating a *Sociedad Anónima* (corporation) is ARS100,000.

25% of the amount must be paid at the time of the incorporation and the remaining 75% within two years from the date of incorporation. With

a *Sociedad de Responsabilidad Limitada* (limited liability company), although there is not a minimum capital required, the regulation requires that the amount of corporate capital must be in proportion to the corporate purpose to be developed.

#### **15. Are there any exchange control or currency regulations? Are there any restrictions on the remittance of profits abroad?**

The foreign exchange market is highly regulated and restricted. Transactions in all currencies must be performed subject to the regulation issued by the Argentine Central Bank (BCRA) (and, in certain specific cases, other governmental entities, like the Federal Tax Administration). Basically, these regulations establish that all foreign exchange transactions (that is the conversion of Argentinean Pesos into any foreign currency) and transfers of funds, both in and outside Argentina, must be completed in accordance with BCRA regulations, and observed by Argentine residents, even when the transactions take place abroad.

Any transaction that does not comply with this regime is subject to certain sanctions established by the Criminal Foreign Exchange Regimen Law, ranging from:

Fines up to 10 times the amount involved.

Suspension from operating in foreign exchange transactions.

Imprisonment in certain rare cases, although a preliminary investigation would first be conducted by the BCRA, which has been entrusted with a wide range of powers in regard to areas such as information requirements and inspections.

However, since 2011, in an effort to control the outflow of funds from the country, the government has established a variety of regulations and informal or de facto restrictions that hinder the transfer of funds abroad. These measures have been taken to limit the exit of funds in order to reorganise the balance of commercial payments in the country and in view to stabilising Argentina's stock of internal reserves. As a consequence, foreign exchange transactions in Argentina are currently highly regulated and transfers of funds abroad are subject to various restrictions.

Regarding the payment of dividends and profits, the law allows local companies and subsidiaries to freely transfer dividends or earnings to its quota holders or shareholders. However, as established in Law 19.550 (Corporations Law) the payment of dividends can only be made if the company has profits, after having the corresponding balance sheet approved by an Argentine public accountant and completion of the required corporate documents.

Since 1 February 2013, in order to complete payments of dividends abroad, an anticipated affidavit (*Declaración Jurada Anticipada de Pagos al Exterior*) (DAPE) must be filed before the Argentine Federal Revenue Authority (AFIP). To transfer funds abroad to pay dividends or to transfer funds received locally for payments of dividends (as long as only a short period of time has elapsed from the moment the payment was received) an approved DAPE must be filed before the financial entity that will make the transfer.

For the last few years, the government has informally (that is, not under a written law) instructed local banks to block transfers of funds abroad under the concept of dividends. Therefore, these transfers are discretionally blocked or allowed depending on the decision of certain government officials, although applicable regulation clearly allows for such payments to be completed in foreign currency and transferred abroad.

## Imports

### **16. Are there any restrictions on the importation of commercial goods and services?**

With importation of services there are no customs restrictions and attention must be given to the monetary limitations to pay the supplier abroad.

The situation is different for the importation of commercial goods since there are several

requirements and possible restrictions that a company must take into account before importing, for example:

Registering in the Customs Import or Export Register.

The requirements that the company must fulfil to obtain approval in the pre-import affidavits (DJAI).

The duty rate payable and other fees or charges applicable.

The prior intervention of third organisms that may be required.

The monetary restrictions to pay the supplier abroad.

Even though there are no economic or non-economic prohibitions strictly applicable to any product, there are now a considerable number of non-tariff barriers in force that could seriously affect the possibility of importing the product. Economic prohibitions are those established with any of the following purposes:

Securing an adequate income for the national workforce or fighting unemployment.

Enforcing monetary, exchange rate or foreign trade mandates.

Promoting, protecting or preserving goods or services in domestic production activities, as well as the goods and services themselves and also natural or vegetable resources.

Stabilising domestic prices at advisable levels or keeping an offer volume adapted to the supply needs of the domestic market.

Meeting public finances' needs.

Protecting intellectual, industrial and commercial property rights.

Safeguarding commercial good faith to prevent deceptive practices undermining consumers.

Non-economic prohibitions are those prohibitions established with any of the following reasons:

Assertion of the national sovereignty or defence of the state political institutions.

Foreign policy.

Public safety or national defence.

Public morals and commonly accepted customs.

Public health, food policy or animal or plant health.

Protection of artistic, historical, archaeological or scientific heritage.

Conservation of animal or plant species.

Environmental preservation, natural resources conservation and pollution prevention.

One of the non-tariff barriers is, for example, the pre-import affidavits (DJAI) that affect all classes of goods being imported for consumption.

Also, a non-economic prohibition is the prior intervention of third parties or agencies required to import certain goods for consumption. Each agency has different rules, requirements and procedures for the issuance of the licenses or authorisations. Usually the import destination must indicate the number of authorisations issued by the corresponding party. For example, if the goods imported are an animal derivative, a prior authorisation issued by the Federal Service of Animal Health (SENASA) is required. To obtain this certificate the importer must have been previously registered before SENASA.

Other agencies are the:

National Administration of Drugs, Foods and Medical Technology (SEDRONAR).

National Institute of Foods (INAL).

National Institute of Industrial Technology (INTI) that issues the electrical safety certificate.

Therefore, the times for an import operation are mainly set by the prior interventions that must be fulfilled.

## **17. What import duties apply to commercial goods and services?**

The percentages relating to import duties depend on the tariff code under which the product or goods are classified for import. These percentages must be calculated over CIF (cost, freight and insurance) value of the product and can vary from 0% to 35% according (in general terms) to the added value of the goods or products. 35% is the maximum tax percentage applicable according to the World Trade Organisation (OMC).

Also, imports for consumption are taxed in Argentina by:

Statistical rate fee.

Value added tax (VAT) withholding.

VAT.

Income tax advance.

## **18. Are the safety regulations and standards applicable to commercial goods and**

## **services in your jurisdiction compatible with other standards that are recognised internationally?**

Generally, safety regulations and standards are applicable to commercial goods and services. However, some specific products (for example, electrical devices, toys and batteries) need to be certified under local regulation in order to be commercialised in the domestic market.

## **Structuring and tax**

### **19. How is foreign investment into your jurisdiction typically structured? What forms of legal vehicle are attractive to foreign investors?**

There is no specific legal vehicle for foreign investment. Usually, foreign investors choose between either setting up a new vehicle or acquiring a vehicle already set up/created in Argentina.

There are no incentive schemes for foreign investors.

### **20. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?**

See [Question 10](#).

### **21. What are the main business tax rates?**

Both the government and the provinces can levy taxes. Also, since the amendment to the Constitution in 1994, the municipalities can also levy taxes with the limitations stipulated by the provincial constitutions on the matter.

National or Federal taxes include the following:

**Income tax.** According to the income tax legislation, residents are subject to income tax for their worldwide income. Non-residents are subject to tax only on income from an Argentine source. Income tax is payable on the net income obtained during each fiscal year. Generally, corporate income is allocated to the fiscal year in which it accrues. However, there are certain exceptions to this general rule. The tax due for foreign residents must be withheld by the local payer whenever a payment is made to them. Companies are taxed at a flat rate of 35% on their net income. Foreign residents are taxed at the same rate, usually applicable on the presumed Argentine source income set out by the Income Tax Law.

**Presumptive minimum income tax.** Presumptive minimum income tax is levied on a presumed minimum income obtained by Argentine companies, certain individuals and permanent establishments of foreign entities. The taxable base is the value of the corporate assets, provided that the total value of these assets exceeds ARS200,000, and the applicable rate is 1%. Income tax assessed on a certain year can be used as a tax

credit against presumptive minimum income tax of the same year. The amounts effectively paid for this tax can be considered as a credit against income tax for the following ten years.

**Value added tax (VAT).** VAT is a federal tax that applies mainly to the:

sale of goods located in Argentina;

provision of services within Argentina;

final import of goods and services (services rendered outside Argentina to persons registered as domestic VAT taxpayers that are economically used or exploited inside the country);

services rendered inside Argentina deemed to be used or exploited outside the country are not subject to VAT (export of services) and exports are VAT exempt.

Assignments of rights, in principle, are not subject to VAT (unless they are deemed to be related to the provision of taxable services or considered as a financial service or a commercial or industrial concession). VAT is paid at each stage of the chain of production or distribution of goods or services. The value added at each of the stages of the chain is levied on the difference between the "tax debit" (VAT levied on the goods or services sold or rendered to clients) and the "tax credit" (VAT invoiced in purchases of goods or services received from suppliers). The difference between the tax debit and the tax credit is the due tax. The tax due must be remitted to the Tax Authority on a monthly basis by filing the relevant tax return. The generic tax rate is 21%. However, sales and imports of certain capital goods, local transport, interest on foreign and domestic bank loans, among others, are subject to a rate of 10.5%. Additionally, a higher rate of 27% is levied on the sale of most utility services, for example, metered natural gas, electricity, water and telecommunications.

**Tax on debits and credits on bank accounts.** This tax is levied on debits and credits in bank accounts opened at financial institutions and on other transactions used in replacement of bank accounts. A portion of the paid tax can be used as a tax credit against income tax or presumptive minimum income tax (34% of the 0.6% tax applied on the credits and 17% of the tax applied on the operations subject to the 1.2% rate).

For local taxes there is a turnover tax, which is a provincial tax levied on onerous activities carried out within a province or the City of Buenos Aires. The taxable base is the gross income derived from these activities.

All provinces and the City of Buenos Aires have entered into a Multilateral Agreement that distributes taxable base among them, in accordance with certain parameters (usually, attribution of income or expenses to each jurisdiction), which is relevant for taxpayers that carry out activities in more than one jurisdiction.

The tax is paid on an annual basis (however, usually monthly advance payments must be remitted). Each jurisdiction applies different rates depending on the taxable activity, usually ranging between 1% and 7%. General rates vary between 3% and 4%.

## **22. What is the tax treatment in your jurisdiction of profits from an investee company remitted outside your jurisdiction by an investor?**

Distribution of dividends by companies (corporations or limited liability companies (SRLs)) is subject to income tax at a rate of 10% provided that the stockholder is a local individual or a foreign resident (dividends paid to Argentine companies are not taxed). The remittance of profits abroad by branches and permanent establishments is taxed at the same rate. The local entity that pays those dividends must withhold the due tax when dividends are paid and remit it to the Tax Authority.

In addition to this 10% tax, the payment of dividends or profits arising from income that was not taxed at corporate level can be taxed at the 35% rate by the "equalisation tax" (which is triggered when dividend distributions exceed the amount of the taxable income at the distributing entity level). Equalisation tax may also be applied to dividends paid to Argentine companies.

## **23. What transfer pricing and/or thin capitalisation restrictions may apply to investments into your jurisdiction from elsewhere?**

### **Transfer pricing rules**

The arm's length principle applies to transactions between related parties or when a local entity enters into agreements or operations with a person domiciled in a jurisdiction deemed to be a tax haven. Failure to apply the arm's length principle results in readjustments of profits under one of the following methods:

Comparable uncontrolled price.

Resale price.

Cost plus.

Profit split.

Transactional net margin.

There exists a sixth method that applies to certain commodities, according to which the price of the operation should be the one used in transparent markets.

Tax authorities can request a resident taxpayer to provide information regarding:

Transactions with affiliated companies.

Information concerning the transfer pricing method used.

Details of the activities of the affiliated companies.

## Thin capitalisation rules

According to these rules, interest arising from loans granted by foreign related entities cannot be deductible when the debt-equity ratio exceeds 2:1. The non-deductible interest is deemed to be a dividend (not deductible).

Thin capitalisation rules are not applicable for domestic financial institutions or if the interest is subject to a 35% income tax withholding rate when paid.

## Incentives

### 24. What tax incentive or other schemes exist to encourage foreign investment?

There are no direct schemes designed or aimed at encouraging foreign investments in Argentina. There are certain federal regimens that are relevant, such as Law 19.640 in the Province of Tierra del Fuego, or certain financial instruments (such as *Obligaciones Negociables*) that may have some tax benefits for foreign investors.

### 25. What legal guarantees exist against expropriation and/or provide for appropriate compensation? What is your government's track record in this regard?

Section 17 of the Constitution covers the rights of private property ownership establishing that any expropriation must be authorised by law and be previously compensated. Fair compensation for expropriation is also guaranteed by international treaty obligations, and there is about 54 BIT (bilateral investment treaties) in force. Most of these state that investments must not be expropriated or nationalised except for public purpose on the prompt payment of the fair market value in compensation.

In 2012, the government expropriated 51% of the oil and gas company, YPF, from Spanish-owned Repsol. In 2014, Congress approved a settlement with Repsol.

In October 2008, the government nationalised the private pension funds, which amounted to approximately one-third of total GDP, and transferred the funds to the government's social security agency. In December 2008, Parliament also passed legislation nationalising the Spanish-owned flag air carrier *Aerolíneas Argentinas*.

### 26. Are there any issues in relation to the enforcement of intellectual property rights?

As it is the case in many other countries, the enforcement of patents and trade marks is only possible when the patents and trade marks have been duly registered with the Argentine Patent and Trade Mark Office. However, in very few and exceptional cases, the courts have granted enforcement rights to non-registered trade marks.

Since Argentina is a party to WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention), copyright infringements can be enforced with the



appropriate evidence that the plaintiff is the copyright owner of the infringed material in one of the countries that are also parties to the Berne Convention.

When the plaintiff in a law suit is a foreign company or individual that is not domiciled in Argentina nor has any assets in Argentina, the Code of Procedure grants the defendant the right to require that the court orders the plaintiff to post a bond to ensure that the prevailing party's fees and the court fees and expenses will be fully satisfied in case plaintiff does not prevail.

In 1997, Argentina became a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which enables the judiciary power to "...order prompt and effective provisional measures to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance" (*Article 50, TRIPS*)

Although this provision is fully enforceable when it involves trade marks, it is not so straightforward for the enforcement of patents. Therefore, after the enactment of Law No. 25859, which amended the Patent Law, provisional measures for patent infringements will be granted or denied after an expert appointed by the court determines:

If there is a reasonable possibility that the patent will be declared invalid if the defendant contests its validity.

If there is a reasonable possibility that the patent infringement will continue before the court reaches a final judgment.

The latest judgments from the criminal courts involving trade mark and copyright infringements are showing a relaxation in qualifying punishable conducts. In one of these cases, for example, the court determined that since there could be no doubt that the purchaser of a forfeited product knew that it was not the original one then no offence against the trade mark owner could be argued.

With sanctions for patent, trade mark or copyright infringements, under their different legal frameworks, imprisonment for patent or trade mark offences are very rare, but they are more common in copyright infringements.

## **27. Are there any issues in relation to the gaining and enforcement of judgments and/or arbitral awards?**

Treatment may be different depending on which proceeding is applicable in order to enforce a judgment or arbitral award, but not for being a foreign investor. The proceedings vary depending on the type of dispute involved, depending on whether it is:

A commercial dispute (that is, a commercial dispute among companies in which a foreign investor is involved).

An investment dispute (that is, a dispute raised by a foreign investor against the host state).

With commercial disputes, the proceeding depends on whether the judicial judgment or arbitral award is given by a local or foreign court or tribunal:

If it is local, the proceeding to enforce both judicial judgments and arbitral awards, within the jurisdiction of the City of Buenos Aires is the same, applying the domestic rules provided for enforcement in the National Civil and Commercial Code of Procedure (NCCCP).

With foreign judgments or arbitral awards, the NCCCP establishes a special proceeding called *exequatur* that deals with the enforcement of foreign judgments, whether they are judicial or arbitral (*sections 517 to 519 bis, NCCCP*). The *exequatur* is a declaration by which the foreign judgment or arbitral award is equated to a national judgment. This proceeding only applies if there is no International Treaty applicable to the particular case.

A judicial judgment or arbitral award is enforceable if it complies with the following (*section 517, NCCCP*):

The judicial judgment or arbitral award had been issued by a competent tribunal according to the law, and had been the result of a personal claim, or an *in rem* claim of a moveable asset which is in Argentina.

The defendant had been personally summoned and its right to a defence had been guaranteed.

The judicial judgment or arbitral award complies with the necessary requirements to be considered as such, and must comply with the conditions of authenticity established by the jurisdiction in which it was issued.

The judicial judgment or arbitral award must not affect Argentina's public policy and must not be incompatible with another Argentinean judgment.

With a foreign arbitral award, the arbitral jurisdiction must be valid in the terms of section 1 of the NCCCP and the issues that are the subject matter of the arbitration are not excluded by section 737 of the NCCP.

The *exequatur* procedure is applicable only if there is no International Convention applicable to the case. In relation to this, Argentina has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Consequently, when applicable, the New York Convention will apply instead of the *exequatur*.

As for the enforcement proceedings in the field of investment arbitration, in 1994, Argentina ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). The enforcement of arbitral awards under the ICSID system is regulated by section 54 of the ICSID Convention, which establishes that for the purpose of enforcement, the award given by the arbitral tribunal amounts to a final judgment of the highest court of the State (the Supreme Court). Therefore, an ICSID award must not be submitted to *exequatur* proceedings, but instead, must be enforced as if it were a local judgment issued by the Supreme Court against the State, that is, it must be:

Included in the annual budget which allows for the payment.

Passed by the Legislative Branch.

Finally, where an investment arbitration is subject to another institution rather than the ICSID, then (unless there is a specific proceeding to be followed as regards enforcement) the *exequatur* proceeding established by the NCCCP is applicable, and is enforced as if it were a local judgment against the state.

## Recent developments and proposals for reform

### **28. Have there been any significant recent or proposed legal developments affecting investors?**

On 16 October 2014, the Argentine Central Bank (BCRA) issued Communication "A" 5649 that modifies the regulation applicable to transfer funds abroad for the repatriation of investments done by non-Argentine residents.

According to the Argentine foreign exchange regulation, funds received as capital contributions from foreign shareholders can either be entered into the country and converted into Argentine Pesos (through the local foreign exchange market) or kept abroad in foreign currency, since there is no obligation to bring the funds into Argentina.

Eventually, if the shareholders' investment is to be repatriated (due to the sale of their shares, capital reductions or liquidation of the local company) it is only possible to transfer the corresponding funds from Argentina if the following requirements are met:

Portfolio investments (when a shareholder holds less than 10% of the local company's shares or votes) where:

- the funds must have been previously entered through the local foreign exchange market;

- the investment must have remained in the country for a minimum term of 365 days;

- the amount to be transferred must not exceed US\$500,000 per calendar month.

Direct foreign investments (when the shareholder holds at least 10% of the local company's shares or votes) where:

- the investment must have remained in the country for a minimum term of 365 days;

- for investments made after 28 October 2011, the funds must have been previously entered through the local foreign exchange market, the BCRA's prior approval must be obtain;

- for investments made before 28 October 2011, (or when the payment must be wired to banks accounts or a beneficiary established in a country that is considered a co-

operator on transparency and exchange of information for tax purpose), the BCRA's prior approval must be obtained.

Before Communication "A" 5649 was sanctioned, when the investment was made before 28 October 2011, in order to repatriate the investment, the investment solely must have remained in the country for a minimum of 14 years (the BCRA's prior approval was not required).

In practice, BCRA approvals are extremely rare and difficult to obtain since the BCRA does not have to grant any exception nor answer a requirement in particular deadline. Another reason why BCRA approvals became in practice extremely rare is that since the market has been constrained for some time now and the Government is imposing informal restrictions with the purpose of limiting the exit of funds in order to reorganise the balance of commercial payments in the country with a view to stabilising Argentina's stock of internal reserves.

Therefore, this new regulation (Communication "A" 5649) does not lay down the obligation to enter funds into the country to constitute capital contributions nor to buy local company's shares, although it limits the possibility of accessing the local foreign exchange market to repatriate the investment afterwards when it cannot be credited that the funds were previously brought to Argentina to make the investment.

**29. Are there any planned or on-going treaty negotiations or political developments that could have an impact on your jurisdiction's bilateral relationships with other nations and/or other economic, customs or monetary unions, free-trade areas or markets?**

The most relevant treaties that could have an impact on Argentina's bilateral relationship with other nations are:

The Framework Agreement for Economic and Investment Co-operation between the Government of the Argentine Republic and the Government of the People's Republic of China.

The Complementary Agreement for Infrastructure Co-operation.

The Complementary Agreement for Industrial Investment Co-operation.

These agreements were all signed on 18 July 2014, and were ratified in 2015.

In relation to the Complementary Agreement for Infrastructure Co-operation, the countries established a five year period to develop an integrated plan, which the government, under the provisions of the agreement, must apply the most advantageous award process used in similar co-operation programmes with third countries in connection with the public sector projects provided for in the integrated plan. Therefore, with public sector projects, the government offers Chinese companies with their own finance a direct awarding (the award is made under advantageous quality and price conditions), without any public bidding, as well as for companies from other countries. The priority areas include:

Energy generation.

Telecommunications.

Land.

Transport.

Port infrastructure.

The purpose of the Complementary Agreement for Industrial Investment Co-operation is to plan and promote the industrial investment co-operation between both countries to achieve industrial integration in the medium term (five years) so as to increase the added value in export sectors to promote the dynamic balance in the bilateral economic relationship, since Argentina has suffered a big commercial deficit with China. The priority areas of industrial investment cooperation include, but are not limited to:

Energy.

Minerals.

Manufacture.

Agriculture.

Support systems such as research and development centres and industrial parks.

Considering that neither China nor Argentina signed the Agreement on Government Procurement of the World Trade Organisation, these agreements should be in accordance with international law.

## Main investment organisations

### Inter-American Development Bank (IDB or IADB or BID)

**Main activities.** The IDB is the largest source of development financing for Latin America and the Caribbean. Established in 1959, the IDB supports Latin American and Caribbean economic development, social development and regional integration by lending to governments and government agencies, including state corporations. The IDB has four official languages: English, French, Portuguese, and Spanish.

**W** [www.iadb.org](http://www.iadb.org)

## Online resources

### Invest in Argentina

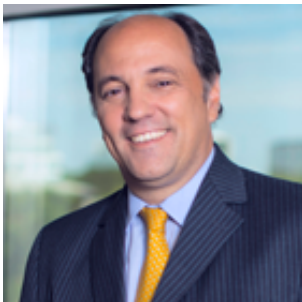
**W** [www.inversiones.gov.ar/en](http://www.inversiones.gov.ar/en)

**Description.** Invest in Argentina is a website of the Ministry of Foreign Affairs and Worship (*Ministerio de Relaciones Exteriores y Culto*) created to promote the development of productive investments in Argentina and support the internationalisation of domestic companies to contribute to Argentina's competitiveness and sustainable development. It also offers an investor's guide in English ([www.inversiones.gov.ar/userfiles/guia\\_del\\_inversor\\_2014\\_-\\_ingles\\_1.pdf](http://www.inversiones.gov.ar/userfiles/guia_del_inversor_2014_-_ingles_1.pdf)). This website provides official information.

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