



Overview

Bruchou & Funes de Rioja, Taxand Argentina

Bruchou & Funes de Rioja is a legal advisory firm based in Buenos Aires which offers a full range of legal services. With respect to tax services, and in particular with transfer pricing services, the team can assist in every aspect of transfer pricing advisory. This includes, among others, compliance and reporting requirements, analysis, planning, strategy, disputes, and controversy resolutions.

Transfer Pricing Framework

Transactions subject to transfer pricing rules are governed by Argentine Income Tax Law, its Regulatory Decree, and General Resolutions of Fiscal Tax Authority ("FTA").

Taxpayers subject to transfer pricing regulations are: i) those who have transacted with "related" individuals or related legal entities domiciled abroad, ii) those who have transacted with individuals or legal entities established or located in non-cooperative or low-tax jurisdictions, iii) Argentine residents who entered into transactions with their permanent establishments located abroad, iv) Argentine residents who are owners of permanent establishments located abroad, in relation to the transactions that those permanent establishments enter into with individuals or other kinds of related parties domiciled, established or located abroad, and v) Taxpayers that carry out import and export operations between independent parties.

The Arm's length methods listed in Argentine regulations are the same as those in the OECD Transfer Pricing Guidelines, except for the specific method regarding exports of goods at known price in transparent markets (commodities).

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Argentine regulations, however most of the Argentine rules are based on the OECD Transfer Pricing Guidelines. The work of the OECD in this field and the provisions of the aforementioned Guideline may constitute useful tools for interpreting and applying the transfer pricing rules.

In determining transfer prices, the most appropriate method regarding the type of transaction being examined and which reflects its economic reality shall be used. For such purposes, the following considerations should be taken into account when choosing the method: i) it is the most compatible method for the business and commercial structures; ii) it has the best quality and quantity information available for suitable justification and application; iii) it considers the most suitable level of comparability of the related and non-related transactions and of the companies involved in such comparison; and iv) it requires the lowest number of adjustments for the purposes of eliminating the existing differences between the facts and the comparable situations.

Additionally, Argentine regulations provide for the application of a method that consists in the obligation of the importing

or exporting agent, located in Argentina, to register with the FTA all contracts executed regarding imports or exports of goods with market quotation (commodities) that involve an international intermediary and where at least one of the following conditions exist: i) the international intermediary is related to the local agent, or ii) the exporting or importing agent is related to the local agent; or when the international intermediary is located in a non-cooperative or low-tax jurisdiction. The registration should include the relevant features of contracts, the comparability difference with the market quotation, or the discounts agreed upon the amount of which are above the market quotation.

If the taxpayer fails to submit the contract registration, the income will be based on the quoted value of the goods on the shipment loading date (including the corresponding comparability adjustments if applicable), rather than the contract date.

Transfer Pricing Documentation Requirements

Taxpayers subject to transfer pricing rules must submit certain sworn statement such as the Local Report/Transfer Pricing Study, Master File Report, information regimes and CbCR, as follows:

- i) Report/Transfer Pricing Study: This Report describes the taxpayer's structure, its activities, strategies, customers, related parties or entities in non-cooperative jurisdictions, and their operations, as well as their analysis.
- ii) Information Regime Form 2668: Includes taxpayers who engage in transactions with related parties or entities located in low or non-tax jurisdictions, when in the last two fiscal periods prior to the period being reported, they were required to submit information on international transactions, and thresholds are exceeded.
- iii) Master Report: Taxpayers or entities linked to MNEs must submit this report to provide general information about the MNEs group's composition, if the total consolidated annual income of the MNEs group exceeds ARS 4,000,000,000 (approx. USD 4,761,905 at the Official Exchange Rate "OER" as of 12.19.2023) in the fiscal year preceding the submission, and thresholds are exceeded.
- iv) CbCR: Consists of an annual information regime regarding the entities described as MNEs, as well as the fiscal jurisdictions in which they operate. MNEs whose total consolidated annual revenues are less than EUR 750,000,000 are excluded from this regime.
- v) Information Regime on resident entities in Argentina which are part of MNEs groups: The information to be provided includes, among others, the following details regarding the last ultimate controlling entity (or the reporting entity, if it is not the same as the last ultimate controlling entity): Tax Identification Number, entity type, fiscal and legal address, place, and date of incorporation.



In addition to the Transfer Pricing Study, the taxpayer must keep the following documentation, among others: invoices, working papers (which allow for the identification of the operations under analysis and justify the transfer prices method), the comparison criteria used, the amounts of consideration, and the profit margins reported in the sworn statement and in the Transfer Pricing Study.

With respect to the import or export operations between independent parties, the taxpayers must keep, among other, the following documentation: a) regarding the resident subject in the country: their identifying information, activities performed, and organizational structure of the business; b) regarding independent individuals or entities abroad the country: their last name and first names, trade name or legal name, Tax Identification Number in the country of fiscal residence, fiscal address, and country of residence; c) description and characteristics of the operations, methods and execution, amount or price or agreed compensation, currency and form of payment used, and guarantees or coverages assumed.

Local Jurisdiction Benchmarks

Argentine regulations establish a preference for domestic comparable over foreign comparable. In this sense, domestic comparable, if any, should be considered as a priority in the analysis, to the extent that there are no significant differences between the comparable elements of the sample or that, if any, they do not affect the conditions analyzed, or adjustments can be made that allow their elimination and optimize the comparison.

In relation to accepted methods in Argentina, FTA generally prefers the application of CUP and TNMM.

Argentine regulations establish that when there is more than one appropriate method regarding the type of transaction being examined, it should be assessed by interquartile range and median of the prices.

In these cases, if the consideration amount set falls within the interquartile range, such prices will be considered as agreed upon between independent parties. Otherwise, the price will be considered as arranged between independent parties if it is equal to the median.

There are many cases of transfer pricing being litigated before Argentine Courts (Among others, Supreme Court, Tax court). These cases generally involve the services of pharmaceutical sector, commodities exports sector, and automotive sector.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Argentine regulates the APA rules and the possibility of the taxpayer requesting its application to FTA. However, regulations are still pending.

Transfer Pricing Audits

Transfer Pricing audits are not common in Argentina because there are few specialists in these matters in the FTA. However, when these do occur, tax audits performed by the FTA generally involve pharmaceutical, automotive and commodities (especially agricultural) operations/sectors more frequently than other types of operations.

Transfer Pricing Penalties

❖ Formal penalties

Failure to comply with filing Transfer Pricing Study, Master Report, Information Regime Form 2668 and CbCR will result in the application, among others, of the following penalties:

- Up to ARS 200,000 (approx. USD 238 at OER): a) omission to report the membership in one or more MNEs, b) omission to report the identifying information of the designated reporting entity for the CbCR, indicating the capacity in which the entity acts, c) failure to report the submission of the CbCR by the designated reporting entity in the foreign tax jurisdiction.
- ARS 600,000 (approx. USD 714 at OER) to ARS 900,000 (approx. 2,586 at OER) for the omission to report the CbCR or its late/incomplete filing.
- Up to ARS 300,000 (approx. USD 357 at OER) for failure to comply with the requests made by FTA for supplementary information about the CbCR.
- Up to ARS 20,000 (approx. USD 24 at OER) for not filling the reports covered by Transfer Pricing Rules.
- Up to ARS 45,000 (approx. USD 53 at OER) for failure to comply an information request made by the FTA in connection with international transactions, keep documentation to justify the price, and for failure to comply with requests made by FTA to submit the Transfer Pricing Tax Return.
- Up to ARS 450,000 (approx. USD 536 at OER) when gross revenues are higher than ARS 10 million and the taxpayer fails to comply with three requirements made by the FTA to submit transfer pricing returns.

❖ Transfer Pricing Adjustments

In the event of deficiency assessment (total or partial non-payment) of transfer pricing regulations, a compensatory interest at the rate of 5.91% per month will be applied.

In case of the omission of taxes (due to failure to file a tax return) the applicable penalty will be 200% of the amount of the omitted tax. When fraud is committed, a penalty of up to 600% may be applied. Additionally, the FTA might file criminal action against the directors of the company which can result in imprisonment of between 2 and 9 years.

ARGENTINA



Local Hot Topics and Recent Updates

We highlight the following Hot Topics that have been discussed in Argentina:

- 1) Cases related to commodities, and specially the presence of intermediaries in their transactions, or the application/selection of transfer pricing methods.
- 2) The FTA has challenged the criteria of taxpayers for using multiple fiscal years to select the comparable of the transfer pricing report method. We emphasize that Argentine regulations do not provide for a certain criterion of years to make the report.
- 3) The FTA has challenged the differences in prices between locally sold products and those exported to affiliated foreign companies, to whom products were sold at a lower price than the local market. To make this audit, the FTA has based on the results of certain local entities, which were used to obtain comparable regarding the export prices challenged. In this regard, taxpayers have objected to being compared to the local entities.
- 4) Argentine Regulations establish a preference for domestic comparable over foreign comparable.

Documentation threshold

Master file	Transactions with related parties which collectively exceed ARS 3,000,000 (approx. USD 3,571 at the OER) or individually ARS 300,000 (approx. USD 357 at the OER) ("The Thresholds"); and The total consolidated annual income of the MNEs Group exceeds ARS 4,000,000,000 (or USD 4,761 at the OER) in the fiscal year preceding the filing.
Local file	Transactions with related parties or located in low/non-tax jurisdictions when they exceed The Thresholds.
CbCR	Includes those MNEs whose total consolidated annual revenues are more than EUR 750,000,000.

Submission deadline

Master file	Within 12 months after the closing of the tax period.
Local file	Within 6 months after the closing of the tax period.
CbCR	Within 12 months after the closing of the tax period of the ultimate parent entity.

Penalty Provisions

Documentation – late filing provision	Up to ARS 20,000 (approx. USD 24 at OER).
Tax return disclosure – late/incomplete/no filing	Up to ARS 45,000 (approx. USD 53 at OER) non or incomplete filing. This fine is cumulative with the late filing penalty.
CbCR – late/incomplete/no filing	Up to ARS 200,000 (approx. USD 238 at OER) failing to meet the CbCR obligations. Up to ARS 900,000 (approx. USD 1,071 at OER) for late or incomplete filing of CbCR. Up to ARS 300,000 (approx. USD 357 at OER), or ARS 450,000 (approx. USD 536 at OER) if thresholds are exceeded, for failing to answer FTA requests for additional information regarding CbCR.



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