



Overview

Bruchou & Funes de Rioja, Taxand Argentina

Bruchou & Funes de Rioja is a legal advisory firm based in the City of 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 ("TP Rules") are governed by Argentine Income Tax Law, its Regulatory Decree, and General Resolutions issued by the Federal Tax Authority ("FTA").

Taxpayers subject to TP Rules are: (i) those who enter into transactions with non-Argentine related parties and (ii) those who enter into transactions with entities, among others, with companies domiciled, registered or located in low-tax or null-tax jurisdictions (whether or not related to the Argentine entities). Other specific transactions could also be subject to TP Rules (e.g., import and export operations with unrelated parties).

Argentine regulations not only establish the Transfer Pricing Methods ("TP Methods") included in the OECD Transfer Pricing Guidelines, but also regulates an additional method (the so-called "Sixth Method") that applies for certain transactions related to the export of quoted commodities.

Accepted Transfer Pricing Methodologies

Although the OECD Transfer Pricing Guidelines are not incorporated in Argentine regulations, they are used as recommendations or guidelines which may serve as source of interpretation.

For the purposes of conforming to the arm's length principle, the most appropriate TP Method should be used, understood as the one that best reflects the economic reality of the transaction under analysis. To such end, it should be considered the TP Method that: (i) has better compatibility with the business and commercial structures; (ii) has the best quality and quantity information available for its justification and application; (iii) considers the most appropriate degree of comparability of the related and unrelated transactions, and of the companies involved in such comparison; and (iv) requires the lowest number of adjustments to eliminate the differences between the facts and the situations compared.

Additionally, Argentine regulations provide for the application of the Sixth Method for transactions that involve (i) the import or export of quoted commodities; and (ii) the participation of an international intermediary that: (a) is related to the local agent; (b) is domiciled, registered or located in a non-cooperative or low-tax or null-tax jurisdiction; or (c) even if the international intermediary does not comply with (a) or (b), the export or import operation of commodities is entered

into with related parties. The Sixth Method requires taxpayers to comply with the obligation of registering with the FTA all the agreements related to such operations. This registration should include the relevant characteristics of the agreements as well as, if applicable, the comparability differences that generate divergences with the relevant market quotation for the delivery date of the goods, or the elements considered for the formation of the premiums or discounts agreed upon over the quotation.

If the taxpayer fails to comply with such registration or the information in the agreement is not sufficient or not consistent, the Argentine source income will be determined considering the quoted value of the goods on the shipment loading date (including the corresponding comparability adjustments if applicable), rather than the quoted value of the date of the agreement.

Finally, it is noted that the obligation to register these agreements applies to certain quoted commodities export operations entered into related and unrelated parties, regardless of the participation of an international intermediaries or not.

Transfer Pricing Documentation Requirements

Taxpayers subject to TP Rules must submit the following tax returns:

- 1) Transfer Pricing Study (Local File):** This Report includes the justifications for the analysis of the operations subject to the TP Rules carried out.
- 2) International Operations Reporting Regime (Form 2668):** This Report should be submitted by taxpayers who were obliged to submit information related to international or transfer pricing operations in any of the two fiscal periods prior to the period being reported and to the extent certain thresholds are exceeded.

A simplified International Operations Reporting Regime is also available for those taxpayers that are obliged to file the Transfer Pricing Study and/or Form 2668, to the extent certain requirements are met.
- 3) Master File:** This Report must be submitted by taxpayers that are part of MNEs, when (i) the total consolidated annual income of the MNE group exceeds ARS 100,000,000,000 (approx. USD 66,666,666) in the fiscal period preceding to the one of the submission and (ii) the transactions entered into foreign related parties exceed, globally during the fiscal period, ARS 150,000,000 (approx. USD 100,000), or individually, ARS 15,000,000 (approx. USD 10,000). This Report includes general information about the MNEs group's composition.



4) Country by Country Report ("CbC Report"): Consists of an annual informative regime regarding the entities that are part of Multinational Enterprise ("MNE") Groups, as well as the fiscal jurisdictions in which they operate. MNE Groups whose total consolidated annual revenues are less than EUR 750,000,000 are excluded from this regime.

5) Argentine resident entities that are part of MNE Groups Reporting Regime: The Report includes information about the Ultimate Parent Company, the annual consolidated income obtained by the MNE Group, among other information.

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 TP Methods in Argentina, it is generally preferred the application of CUP and/or TNMM method.

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

In these cases, if the consideration amount set falls within the interquartile range, such price will be considered as at arm's length.

There are many cases of transfer pricing being litigated before Argentine Courts. These cases generally involve the services of pharmaceutical, agro-export and automotive industries.

Focus on Financial Transactions

Under Argentine transfer pricing regulations, intercompany financial transactions must be analyzed by reference to the accurate delineation of the transaction and the arm's length principle. In particular, the Argentine rules require consideration of the conduct of the parties, the terms of the transaction, the underlying commercial and financial relationships, and the circumstances that best reflect the economic reality of the financing arrangement. For financial transactions, the local or tested party must be able to support, depending on its position, that the lender has the economic and financial capacity to grant the financing and control the associated risks, and that the borrower has the financial capacity to repay principal and interest and, where relevant, to obtain guarantees and comply with other obligations.

Argentine regulations also contain specific provisions on implicit group support and cash pooling or centralized financing arrangements. Where comparability is affected by implicit group support, the group's credit rating may be used as a reference to price the financial transaction where the

required information is not otherwise available. However, a mere improvement in creditworthiness arising from group membership, absent a specific documented guarantee, should not give rise to remuneration for the related party. In cash pooling or centralized financing arrangements, the taxpayer must justify the need for the arrangement and the origin of the cash surplus, and the relevant financial transactions may need to be analyzed as closely linked.

Finally, the transfer pricing analysis operates alongside Argentine income tax rules on interest deductibility. Interest on financial debt, related updates and expenses arising from the creation, renewal or cancellation of the debt are deductible to the extent they comply with the arm's length principle as well as with the applicable statutory limits and conditions on interest deductibility (certain exceptions may apply as the case may be).

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 so common in Argentina. However, when they occur, the FTA generally carries out close examination over the pharmaceutical, automotive and agro-export industries.

The Burden of Proof in Transfer Pricing: Theory versus Practice

The allocation of the burden of proof is pivotal in determining the outcome of disputes. In Argentina, the burden of proof in transfer pricing matters is, in principle, straightforward: the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. If a taxpayer fails to meet certain documentation obligations, or if the documentation is not sufficient or adequate, the burden of proof may shift to the taxpayer. Argentine law prescribes that taxpayers must maintain sufficient documentation to substantiate their transfer prices as well as comply with transfer pricing-related tax reporting regimes. The reversal of the burden of proof should only occur in cases of significant non-compliance, where the absence of key documentation constitutes a fundamental breach of administrative obligations.

Although transfer pricing tax audits are not so common in Argentina, in practice, rather than providing substantive evidence, the Argentine tax authorities often rely on assertions and positions that taxpayers must rebut. That is why Argentine taxpayers must ensure that their transfer pricing documentation is both robust and comprehensive. This also includes fulfilling the tax reporting regimes related to transfer pricing.



While the OECD guidelines emphasize reasonableness and caution in making transfer pricing adjustments, the practical reality in Argentina demonstrates the necessity of taxpayers having high-quality documentation not only for fulfilling a compliance requirement but also as a strategy to minimize the risk of an unfavourable sentence before the Courts.

Transfer Pricing Penalties

Formal penalties

Failure to comply with TP tax returns filings could result in the application, among other types of penalties, of the following ones:

- Up to ARS 15,000,000 (approx. USD 10,000) for reporting filings related to information about the MNE Group to which the entity is part as well as to inform the date in which the CBC Report has been filed by the designated entity.
- Up to ARS 67,500,000 (approx. 45,000 at OER) for the failure to submit the CbC Report or its late/incomplete filing.
- Up to ARS 22,500,000 (approx. USD 15,000) for failure to comply with the FTA's demands for provision of complementary information about the CbC Report.
- Up to ARS 22,000,000 (approx. USD 14,666) for failure to comply with tax reporting regimes (including, the Local File, the International Operations Reporting Regime and Master File).
- Up to ARS 35,000,000 (approx. USD 23,333 at OER) for failure to comply with the FTA's demands for compliance with tax reporting obligations related to international operations. This fine could be increased up to 10 times of the maximum amount when taxpayers whose annual gross income is equal or greater than ARS 10,000,000,000

(approx. USD 6,666,666) fail to comply with the third of the FTA's demands.

Transfer Pricing Adjustments

In the event that the deficiency assessment of TP Rules results in the non-payment (total or partial) of taxes, the FTA could claim the omitted taxes plus compensatory interest (currently, the monthly compensatory interest rate is fixed at 2.75%).

In the case of non-payment of taxes, the applicable penalty could be assessed at 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 charges against the directors of the company, which can result in imprisonment for between 2 and 9 years.

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 globally during the fiscal period exceed ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000); and The total consolidated annual income of the MNE Group exceeds ARS 100,000,000,000 (or USD 66,666,666) in the fiscal year preceding to the one the filing is made.
Local file	Eligible transactions exceed, globally during the fiscal period, ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000)..
CbCR	Includes those MNEs whose total consolidated annual revenues are EUR 750,000,000 or more.



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.
CbC Report	Within 12 months after the closing of the tax period of the UPE.

Penalty Provisions

Documentation – late filing provision	Up to ARS 22,000,000 (approx. USD 14,666) for late filing of tax reporting regimes (including, the Local File, the International Operations Regime and Master File).
Tax return disclosure – late/incomplete/no filing	This fine is cumulative with another fine of ARS 35,000,000 (approx. USD 23,333) that applies to each failure to comply with the FTA's demands for compliance with informative regime. The last fine could be increased up to 10 times of the maximum amount when taxpayers whose annual gross income is equal or grates than ARS 10,000,000,000 (approx. USD 6,666,666) fail to comply with the third of the FTA's demands.
CbC Report – late/incomplete/no filing	Up to ARS 15,000,000 (approx. USD 10,000) failure to comply with the reporting filings related to information about the MNE Group to which the entity is part as well as to inform the date in which the CBC Report has been filed by the designated entity. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing. Up to ARS 67,500,000 (approx. USD 45,000) for late or incomplete filing of CbC Report. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing. Up to ARS 22,500,000 (approx. USD 15,000) for failure to comply with FTA's demands for provision of complementary information related to the CBC Report.



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