Transfer Pricing Country Summary

Argentina

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1. Introduction

Since 2017, Argentina has formal transfer pricing documentation requirements to submit the master file, country-by-country reporting and local file along with other local TP forms.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Transfer pricing legislation is based on the Income Tax Law (ITL) and ITL Regulations. The Arm's Length Principle is referenced in Articles 9, 16 to 20, 126 and 127 of the ITL.[1] Additionally, transfer pricing legislation is supplemented by the Argentine Internal Revenue Service (Administración Federal de Ingresos Públicos, AFIP) Regulatory Decree N°862/2019 and General Regulation N° 4717/2020 (as amended by several regulations) (documentation requirements). Under the law of Argentina, the OECD rules are taken as recommendations and used for interpretation of the local rules.

b) Definition of Related Party

The Related Party definition as set in Article 18 ITL, Article 3, GR N° 4717/2020 of AFIP and its amendments, and Article 14 Decree 862 t.o 2019 of the government as follows:

- One party that owns all or a majority of the capital of another;
- Two or more parties that share: (a) one common party that possesses all or a majority of the capital of each; (b) one common party that possesses all or a majority of the capital of one or more parties, and possesses significant influence over the other or others; and (c) one common party that possesses significant influence over the other parties;
- One party that possesses the votes necessary to control another;
- One or more parties that maintain common directors, officers, or managers/administrators;
- One party that enjoys exclusivity as agent, distributor or licensee concerning the purchase and sale of goods, services and intangible rights of another;
- One party that provides the technological/intangible property or technical know-how that constitutes the primary basis of another party's business;
- One party that participates with another in associations without a separate legal existence pursuant to which such party maintains significant influence over the determination of prices;
- One party that agrees to preferential contractual terms with another that differ from those that would have been agreed to between third parties in similar circumstances, including (but not limited to) volume discounts, financing terms and consignment delivery;
- One party that participates significantly in the establishment of the policies of another relating to general business activities, raw materials acquisition and production/marketing of products;
- One party that develops an activity of importance solely in relation to another party, or the existence of which is justified solely in relation to such other party (e.g. sole supplier or customer);
- One party that provides a substantial portion of the financing necessary for the development of the commercial activities of another, including the granting of guarantees of whatever type in the case of third party financing;
- One party that assumes responsibility for the losses or expenses of another;
- The directors, officers, or managers/administrators of one party who receive instructions from or act in the interest of another party; and

[1] Law No. 20,628 t.o. 2019.

The management of a company is granted to a subject (via contract, circumstances, or situations) who maintains a minority interest in the capital of such a company.

Transfer pricing requirements also apply to transactions carried out with entities in tax havens. It is important to mention that there is a new process to determine "tax havens" with transfer pricing and other tax implications. In the Article 24 of the Decree 862 t.o 2019, the Argentine Government established a new list including countries, jurisdictions, territories and tax systems which are considered as "non-cooperative for fiscal transparency purposes" and those not listed will be deemed to be a cooperative country.

c) Nature of Transfer Pricing Documentation

AFIP issued a new resolution (General Resolution 5.010) on 18 June 2021 about a simplified transfer pricing regime. The resolution is aimed at the taxpayers who enter into insignificant intercompany cross-border transactions. There are certain conditions explained thoroughly in the rule[2] in order to be eligible for the simplified procedure. The procedure provides relief from filing a transfer pricing study or the affidavit statement reported under Form 2668. The new rule is applicable from the publication date, including the filing requirements relevant to FY 2020.

d) Tax Havens & Blacklists

As mentioned above, AFIP established a list including countries, jurisdictions, territories and tax systems that are considered as "non-cooperative for fiscal transparency purposes" and now be considered as "tax havens" for transfer pricing and other tax treatments. Those not listed are deemed to be cooperative countries.

e) Advance Pricing Agreement (APA)

There are no provisions enabling taxpayers to agree APA's with the tax authorities.

f) Audit Practice

There is a very high risk of transfer pricing audits. To date, the AFIP has reviewed transfer pricing during general tax audits, during specific transfer pricing audits; as well as during the revision of the registered technical assistance agreements or trademark license agreements registered in the National Institute of Intellectual Property (INPI) or of the transactions settled by entities located in Argentina with entities located in tax havens. The AFIP transfer pricing team has been specialising throughout the years. It has conducted transfer pricing audits in previously selected industrial sectors: automotive, pharmaceutical and commodities sectors. However, any multinational with international related party dealings and incurring losses or low profits can expect to be scrutinised by the AFIP at some point. Nowadays, AFIP is paying special attention to foreign trade transactions through intermediaries, and it is expected that these transactions will continue to be scrutinised.

3. Transfer Pricing Documentation

a) Level of Documentation

A Transfer Pricing Report must include:

- information on activities and functions developed;
- information on risks assumed and assets employed;
- facts and circumstances are taken into account for the analysis;
- details and quantification (amount in historical value) of the transactions that should be disclosed according to the transfer pricing requirements;
- identification of the foreign related parties with which the transactions being declared are carried out;

[2] Biblioteca Electrónica (afip.gob.ar)

- information on the methods employed for the justification of the transfer prices taken stating the reasons for considering them the best methods;
- identification of the comparables selected;
- identification of the sources used for the selection of comparables;
- details and justification of the comparables rejected;
- details and justification of the comparability adjustments performed;
- the median and inter-quartile range;
- transcription of the income statement of the comparable parties corresponding to the fiscal years necessary for the comparability analysis, with an indication of the source of information;
- a description of the characteristics and activities of the comparables; and
- conclusions.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given. In the case of Argentina, in addition to the industry analysis, it is also recommended to include a macroeconomic analysis of the country.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

Key competitors and customers.

For FY2020 and FY2021, it is also required to provide the details of any financial support received from the government (e.g. refund of payment of salaries and wages).

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

The choice of method is explained in Article 17 ITL, Article 29 of Decree 862/2019, and Articles 34 and 35 of GR No. 4,717/2020 (AFIP). In general, the transfer pricing methods specified in the Argentine transfer pricing regulations are the same as in the OECD Guidelines: CUP, Resale Price, Cost Plus, Profit Split, and TNMM. It should be noted that, when applying the selected method, the use of the inter-quartile range is mandatory.

There is an additional method specified by Argentine transfer pricing regulations for settling the prices of the exports of commodities to related entities performed through an international trader (so-called "sixth method"). In case of the nature of the transaction prevents the valuation of its assets, risks or functions, the sixth method may apply to certain transactions as long as the applied method becomes a better option and sufficient documentation should be provided.

According to the Article 30 of Decree 862/2019, the most appropriate method must be applied in each case. However, in the case of commodities exports when performed through an international intermediary agent

who is not the ultimate recipient of the goods, the sixth method is mandatory, which implies taking the value of the goods on the respective transparent market on the day the goods are loaded for shipment or the agreed-upon price, if higher. This method may not apply if the local exporter can prove the substance of the operations following certain specific tests included in the regulations.

f) Economic Analysis – Benchmark Study

The legislation of Argentina (Article 17 ITL and between Articles 30-34 of the Decree No. 862/2019) follows the guidance of OECD in general. Moreover, in accordance with Article 38 of Regulatory Decree 862/2019, if there is internal comparables data, it should be initially considered for the analysis as long as there are no important differences between the comparable elements.

The tested party must always be the local entity. Argentine companies are required to make their annual accounts publicly available by filing a copy with the local authority (i.e., Inspección General de Justicia in Buenos Aires). However, sometimes this information is unavailable, or the accounts would not provide much information on potentially comparable transactions or operations since they do not contain much detailed or segmented financial information. Therefore, reliance is often placed on foreign comparables using international databases. Foreign comparables have been informally accepted when tax authorities review the annual transfer pricing reports, and there is some preference for pan-American comparables. Under transfer pricing scrutiny, AFIP has required that financial information used in comparables analysis should be checked against the relevant data sources. And the lack of supporting information may cause the exclusion of the comparable from the analysis by the AFIP.

For FY2020 and FY2021, it is recommended to use financial information of the comparables from the same fiscal period of the tested party (i.e. in principle, multi-year analyzes will not be acceptable).

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept.

h) Financial Statements

Since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept, parties need to also make sure their conduct is in line with what is reported in their accounts. The Audited Financial Statements of the local entity should include amounts adjusted by inflation.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold * (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Local requirements	May, or later, depending on the taxes to be paid	NA	NA	Yes
Master File	File	Special format. Similar to OECD format.	Between the 23rd and the 27th day of the twelfth month following the end of the fiscal year.	NA	Yes	Yes
Local File	File	Special format	Between the 23rd and the 27th day of the sixth month following the end of the fiscal year.	NA	Yes	Yes
CbCR (F.8097)	File	OECD Guidelines 2017	12 months after the financial year-end	The last day of the third month after the financial year-end	Yes	Yes
Local form	File	Special format	Between the 23rd and the 27th day of the sixth month following the end of the fiscal year.	NA	Yes	Yes
Annual Accounts	Prepare	IFRS	120 days after the end of the financial year	No	Yes	No
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	No

* Argentina has signed the MCAA agreement for the filing of CBCR.

* There are no specific provisions regarding the documentation requirements for small and medium sized enterprises.

Transfer pricing requirements in Argentina state the obligation of the taxpayers to submit the following:

(i) Informative Tax Returns:

- Form 2668: for transactions with related entities located in foreign countries or companies located in non-cooperative countries for the entire fiscal year, on the sixth month from the end of the fiscal year;
- Form 4501: used for filing the required Transfer Pricing Report and the certification by an independent certified public accountant (CPA), to be submitted every year in the sixth month after the end of the fiscal year, and it should contain three digital signatures: the taxpayer, the CPA involved, and the representative of the professional association where the CPA has been licensed;

Taxpayers must submit these TP Tax Returns and documentation electronically through the AFIP´s website. The Income Tax Return is due 5 months after the end of the fiscal year.

The general statute of limitations for federal tax matters is 5 years, which consequently applies for transfer pricing. This period begins on 1 January of the year following the year in which the tax return is due. The taxpayer must keep the transfer pricing documentation for up to 5 years after the period established by the statute of limitations.

j) Mandatory Language

The Transfer Pricing Report to be submitted to the Tax Authorities must be in Spanish. If the Transfer Pricing Report contains information in a foreign language, there is a need to attach a translation into Spanish by a national public translator, which signature must be certified by the institution of Argentina in which the translator is enrolled.

k) Notification Requirement

There is a notification requirement for CBC reporting in Argentina. This requirement consists of two stages. The first notification requirement explains in which country and which entity will carry out the reporting requirement. The deadline is the last business day of the third month at the end of the FY. The second notification must be submitted at the end of the two months at the latest after the CbCR deadline. For FY 2021, the first notification must be submitted on 31 March 2022, and the second notification must be submitted on 28 February 2023 at the latest.

l) Record Keeping

Contemporaneous documentation is required.

m) Penalties and Interest Charges

Pursuant to Article 57 GR 4717/2020, Article 15 GR 4130-E, Article 38 of the Argentinian Tax Code, andthe legislation N° 25.795 of 2003, the applicable penalties in relation to international transactions are:

- the taxpayer may be fined between amounts of ARS 10.000 and ARS 20.000 for non-filing or delayed filing of transfer pricing return,
- a penalty of ARS 45.000 is imposed if the tax authorities have served a request to file the transfer pricing return for each failure to comply with a request. Up to ARS 450.000 additional penalty may be imposed for the taxpayers with more gross revenue than ARS 10.000.000 after the third filing request.
- a penalty from ARS 80.000 to ARS 200.000 will be applied for the non-filing or delayed or inaccurate filing of the information related to the membership of a local taxpayer to a multinational group;
- a penalty from ARS 600.000 to ARS 900.000 will be applied for the non-filing or delayed filing or inaccurate filing of the F.8097 form regarding CBCR;
- a penalty from ARS 180.000 to ARS 300.000 will be applied for non-compliance with a requirement made by the tax authorities.

If an omission is detected in the abovementioned circumstances, the taxpayer is considered to be monitored in the increased risk category.

In addition, the following penalties will be applied in the case of an adjustment of the transfer prices settled with foreign parties:

- A fine on tax omission between 1 and 4 times the tax not paid or withheld;
- Interests on the additional tax due.