



cutting through complexity

Global Transfer Pricing Review

Argentina

kpmg.com/gtps

TAX



Argentina



KPMG observation

When documenting transfer pricing in Argentina, careful consideration must be given to the tested party rule, since the local tax legislation – the Administración Federal de Ingresos Públicos (AFIP) General Resolution (RG 1122) – requires that the tested party always be the Argentinean entity.

In terms of audits and transfer pricing scrutiny, there is an increasing tendency for the AFIP to challenge transfer prices for taxpayers that present systematic losses beyond a specific fiscal year, mainly among resellers. There are no particular types of transactions under scrutiny and AFIP has initiated audits in different industries. The AFIP does pay special attention to the analysis criteria applied to the different fiscal years, mainly with respect to the use of multi-year periods for the tested party. They also require that financial information used in the analysis of comparables is checked against the relevant data sources. Lack of supporting information may cause the exclusion of the comparable from the analysis by the AFIP.

KPMG in Argentina believes the AFIP requirements vis-à-vis the transfer pricing annual returns have increased the burden of proof on the taxpayer. The information that must be included in the annual form (F969) is complementary to that required by the transfer pricing annual form (Form F743). Both annual forms are mandatory, the first includes a specific detail of the intercompany transactions and the second adds the transfer pricing methodology used in the analysis of the transactions.

Even though Argentina is not an Organisation for Economic Co-operation and Development (OECD) member, the local transfer pricing rules are based on the main concepts of OECD Guidelines. Nevertheless, to date there have been no specific comments from the Argentinean Tax Authorities with respect to the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Submission to tax authority required
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Administración Federal de Ingresos Públicos (AFIP).

Citation for transfer pricing rules

Income Taxes Act Articles 14–15 and supplementary regulations.

Effective date of transfer pricing rules

December 1998.

What is the relationship threshold for transfer pricing rules to apply between parties?

Based on voting power, share capital or other. The rules do not discriminate among different thresholds; rather they apply equally to all levels of ownership. Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships to which the transfer pricing rules apply, such as functional or other kinds, whether contractual or otherwise, that influence the decision-making power to direct or define the activities of the operations. Also, transactions with countries or territories that are not included on the white list – i.e., jurisdictions considered to be tax havens – are subject to transfer pricing scrutiny.

The AFIP has provided the white list of cooperating jurisdictions.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from 1 January of the year after the filing date. Law 26.476 states that for fiscal years 2003 to 2007 the statute of limitations is six years from 1 January of the year after the filing date.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Transfer pricing documentation is required to be submitted.

The transfer pricing study, the Certified Public Accountant (CPA) Certification, the transfer pricing return (Form F743) and a copy of the Statutory Financial Statement of the fiscal year under analysis must be filed with the fiscal authorities within 14 days of the eighth month subsequent to year-end.

General Resolution was published on 10 April 2013 introducing certain changes in the transfer pricing compliance rules, establishing the formalities and other requirements that must be complied with by those taxpayers subject to transfer pricing regulations. It is noted that this Resolution will be effective for filing obligations corresponding to fiscal years ended from 31 December 2012.

In this sense, taxpayer will prepare the transfer prices return – F. 4501 for filing the transfer pricing study and the CPA Certification, which shall bear three digital signatures (i) the taxpayer (ii) the CPA involved and (iii) the representative of the professional association where the CPA has been licensed.

Additionally, prior to fiscal year-end, taxpayers must file with the tax authorities a transfer pricing mid-term form (Form F742).

On 15 June 2011, the Argentine tax authorities published a new resolution that established the need to file an additional annual transfer pricing return containing data about transactions with related parties abroad (Form F969). The deadline for filing this form is 15 running days after the income tax return deadline. This is applicable for fiscal years ended from 31 December 2010 onwards.

In addition to the above obligations regarding transactions with related parties abroad, taxpayers must also disclose on an annual basis (Form F867) information involving the import from, and export to, unrelated parties abroad of tangible goods, with the exception of commodities, with non-related parties, provided that the amount exceeds one million Argentine pesos (ARS) during the fiscal year. In the case of the import from, and export to, unrelated parties abroad, of commodities, companies must file a mid-term form (Form F741) per each semester, taking account of the fiscal year-ended.

What types of transfer pricing information must be disclosed?

Business description/overview; functional analysis; risk analysis; description of controlled transactions; method selection; rejection of alternative methods; identification of comparables; economic analysis; identification of the foreign counterparty with whom the transactions had been conducted. Determination of the median and the interquartile range. Transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information. Description of the corporate activity and the characteristics of the business carried out by the

comparable companies. Rejection matrix with criteria followed to reject companies as comparables and the conclusions obtained.

What are the consequences of failure to submit disclosures?

The taxpayer is subject to penalties imposed by the tax authorities in case of failure to file the transfer pricing report and the corresponding transfer pricing returns.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for certain transactions. Even though Argentina is neither an OECD member nor do its regulations make explicit reference to the OECD Guidelines, the content of the transfer pricing study to be prepared for local purposes mostly includes those items mentioned in Chapter V of the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

Yes.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. The local transfer pricing rules are based on the main concepts of OECD Guidelines. Additionally, the local transfer pricing regulations prescribe a specific method for export of commodities.

It is important to mention that the local transfer pricing rules require that, no matter what the circumstances, the tested party used in the analysis should always be the Argentinian entity.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 15 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Documentation to be provided in the course of a Tax Authority audit are normally expected to be responded to within 15 days of the request. Tax authorities might extend such timeframe for an additional 15 day period.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

The taxpayer can appeal to different Justice Court instances. The order of appeal for an adjustment proposed by the tax authorities is as follows:

- first level: National Tax Court
- second level: National Court of Appeals
- third level: Supreme Court of Justice.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Compliance penalties: Taxpayer's failure to file the required returns and documentation in a timely way, is subject to a fine of ARS10,000 (approximately 1,250 US dollars (USD)), which increases to a fine of ARS20,000 (approximately USD2,500) for foreign-owned entities.

Material penalties: The transfer pricing tax adjustment is subject to a fine that ranges from one to four times the unpaid tax amount. To determine the fine within such range, the tax authorities will take into account the taxpayer's compliance with transfer pricing returns and documentation. In case of fraud the penalties will increase from two-to-ten times the unpaid tax amount.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

The filing of transfer pricing documentation required by the tax authorities, as described in the Transfer Pricing Disclosure Overview.

What trends are being observed currently?

An increase in the activities of the AFIP in terms of transfer pricing scrutiny is being observed. There is a tendency by the AFIP toward increasing audits in all industries (as opposed to the initially-targeted industries like the automobile, pharmaceutical and agribusiness).

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. As a consequence of the absence of local comparables, the tax authorities have accepted the use of foreign comparables mainly from the American market. In this sense, it is important to have the support of the relevant documentation. Additionally, in some cases, European or Asian comparables might be used; however, the lack of supporting information about these comparables may cause their exclusion by the tax authorities.

Do tax authorities have requirements or preferences regarding databases for comparables?

No preferences in the use of databases are observed by the tax authorities.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not applicable.

What level of interaction do tax authorities have with customs authorities?

Medium.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes, Three percent of sales or five percent of investment for technical services in absence of tax treaty and they must be paid.

Additionally, the Argentine entity must show that the management fees were carried out in order to obtain, maintain, and preserve profits assessed by Argentine tax. In addition, there should be sufficient proof that such expenses relate to the Argentine entity's operations. In this regard, the company should obtain a certificate supporting its expenses or a detailed report of the imputed amount providing a level of accuracy sufficient to determine the local expenses.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes, 20 percent of trademark royalties paid abroad are not deductible.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. Under an evaluation of the transfer pricing policy the taxpayer could apply an adjustment. However, it should take into account the impact of the adjustment on other taxes, particularly those related to custom issues.

Other unique attributes?

An additional method included in the Local Income Tax Law establishes that in case of exports to related parties of commodities and, in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, it shall be deemed as the best method for the purpose of determining the export's Argentine-source income, the highest of the good's quotation in the transparent market on the date of shipment or the price that would have been agreed with the international

broker. This methodology does not have to be followed provided the international broker complies with certain requirements.

Moreover, careful consideration must be given to the tested party rule since Argentinian Regulations (General Resolution (RG 1122)) requires that, no matter what the circumstances, the tested party should always be the Argentinian entity.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

No formal rules.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

KPMG in Argentina

Marcelo A. Castillo

Tel: +54 11 4316 5834

Email: macastillo@kpmg.com.ar

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

kpmg.com/socialmedia



kpmg.com/app



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015