



# Taxation of cross-border mergers and acquisitions

**Argentina**

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KPMG International



# Argentina

## Introduction

From 2004 to 2006, the Latin American economy grew at a rate not seen since the late 1970s. The 2008 crisis contracted that growth but, since 2010, the rate of growth has recovered and economic strength is returning.

The Argentine Republic imposed tight controls on its foreign exchange market as of 2011, limiting the outflow of foreign currency through formal and informal regulations.

## Recent developments

A new government took office in December 2015, and it is adopting important measures to normalize and boost the Argentine economy. The strict currency controls, trade protectionism and heavy taxes introduced by the former government from November 2011 to protect the country's low foreign reserves are being changed due to the following measures:

- Export duties were eliminated, except for certain products.
- No prior approval from the Tax Authorities will be needed to make cross-border transfers of funds.
- From 17 December 2015, a single exchange rate applies to all cross-border transactions, allowing the Argentine peso (ARS) to float with the intervention of the Central Bank.
- Restrictions on the ability to make transfers from Argentina to pay liabilities and investments abroad were reduced/eliminated. Commercial debt stock accumulated in these last 4 years may be paid off under a program set forth by the Central Bank. The government also announced that it might issue a bond to cancel such commercial debt stock.
- Currency arising from new financial loans granted by non-residents to Argentine residents can be kept abroad.

- Principal loans transferred to Argentina can be repaid within 120 days after the transfer.
- The 30 percent mandatory deposit on foreign currency inflows was removed.
- No limits will apply to amounts to be repatriated from foreign portfolio investments. However, such amounts will need to be invested in Argentina for a period of time.
- No limits will apply to the repatriation of foreign direct investment.

In theory, international acquisitions of Argentine entities may take the form of either the purchase of an equity participation in a target resident company or the purchase of the company's assets. In practice, most acquisitions by foreign corporations take the form of purchases of equity in the target resident company, so tax due diligence is an essential part of the due diligence process.

In Argentina, investors must bear in mind that merger and acquisition (M&A) transactions are evaluated according to anti-trust law as well as taxation rules. In addition, Argentine laws establish control mechanisms on actions or events that threaten free competition.

This report focuses on M&A-related issues that should be taken into account by parties entering M&A transactions in Argentina.

## Tax treaties

Argentina and Spain signed a new tax treaty that entered into force retroactively as of 1 January 2013.

A new tax treaty with Switzerland entered into force retroactively for withholding tax at source as of 1 January 2015.

New tax treaties with Chile and Mexico were agreed and are pending of approval.

## Asset purchase or share purchase

An acquisition in Argentina usually takes the form of a purchase of the shares of a company, rather than its business and assets. An asset purchase is subject to income tax (and other taxes, such as valued added tax (VAT) and turnover tax). The purchasers are jointly and severally liable, along with the tax debtors, for prior tax liabilities.

### Purchase of assets

The acquisition of assets results in a stepped-up basis of the assets to the buyer. However, the step-up is limited to the market value of the assets. The sale price is allocated to the assets, tangible and intangible, net of liabilities. Any additional consideration is attributed to goodwill, which is not deductible for tax purposes.

The asset purchase establishes a limit on the co-responsibility of purchasers for non-declared fiscal and social security liabilities, as long as they comply with the requirements in Law No. 11867 to report the transaction to the national fiscal authority. In practice, sellers rarely agree to report the asset transfer because such notification may prompt the tax authorities to subject the seller to a tax examination.

Thus, it is advisable to perform due diligence on the owner of the asset to be sold to estimate the contingencies that could transfer to the purchaser. In defining the scope of the tax due diligence process, bear in mind that the statute of limitations for tax liabilities is generally 5 years.

However, there is no statute or regulation that limits the tax authorities' power to examine open periods, even those already examined, so the tax due diligence process should cover all open tax years, whether or not examined.

### Purchase price

For tax purposes, it is necessary to apportion the total consideration among the assets acquired. It is generally advisable for the purchase agreement to specify the allocation. Normally, this allocation is acceptable for tax purposes, provided it is commercially justifiable. The purchase price of inventories and fixed assets should be calculated based on their market value. It is advisable that such valuation should be prepared by an independent valuations professional.

### Goodwill

Generally, the tax treatment of intellectual property and other intangible assets is aligned with their accounting treatment. Amortization of goodwill, trademarks and similar intangible assets is not deductible.

At the taxpayer's option, reorganization costs may either be deducted in the year incurred or capitalized and amortized over a period not exceeding 5 years.

## Depreciation

Depreciation of buildings used to generate taxable income may be deducted at a 2 percent annual rate on the cost of the buildings. Other depreciation rates may be used if they are technically supported.

Annual depreciation of all other depreciable assets used to generate taxable income is determined by dividing the acquisition cost of the asset by its estimated years of useful life. The tax law does not include standard depreciation rates.

Other depreciation methods, such as those based on units of production or time of use, may be used where they are technically justified.

### Tax attributes

Tax losses and other tax attributes (e.g. industrial promotional benefits) are not transferred on an asset's acquisition. They remain with the seller because the law does not permit their transfer unless the asset deal is organized as a tax-free operation (i.e. transfer of assets among the same economic group, subject to certain legal requirements). See the section on tax losses on share purchases later in this report.

### Value added tax

VAT is levied on a large number of goods and services, although goods and services exported from Argentina are zero rated. The seller charges VAT (output VAT) to the buyer on the transfer of inventories, fixed assets and movable goods. The buyer can use the input VAT as a fiscal credit to offset future VAT charged to customers on domestic transactions, as long as the buyer is registered for VAT purposes in Argentina.

The standard VAT rate is 21 percent. A reduced rate of 10.5 percent applies to the sale of certain capital goods. Although goodwill is not subject to this tax, it may be taxed where it is tied to taxable services rendered as part of the general transaction.

Transfers of goods are exempt from VAT in the case of a tax-free reorganization.

The transfer of a business as a going concern could be treated as VAT-free, provided the transfer is organized as a VAT-free transfer within the same economic group and certain legal requirements are met. Professional advice should be sought where buildings are being sold because complications may arise if the sale occurs within 10 years of acquisition (or completion of construction). Section 11 of the VAT Law prescribes that tax credits computed on time will be refunded.

### Transfer taxes

The sale of assets may trigger a turnover tax for the seller. Generally, the tax applies to the transfer of inventories. Transfers of accounts receivable, fixed assets and intangible

assets are not usually subject to turnover tax in the same way as transfers of goods when a tax-free reorganization treatment applies (see reorganizations).

The turnover tax is a state tax collected by the city of Buenos Aires and other provinces. However, there is the equivalent of a tax treaty among all local jurisdictions to avoid double taxation.

The turnover tax base is similar to that of VAT, but the turnover tax does not generate a tax credit. Turnover tax rates vary among the provinces, ranging from 2.5 percent to 4.0 percent. A reduced rate of 1.5 percent or an exemption may apply in a province where a factory is located.

The stamp duty is a provincial tax levied on legal transactions expressly provided for by statute. Such transactions are documented with public or private instruments. Generally, the stamp duty is assessed at a rate of 1 percent and is applied on the economic value involved in the transaction. The parties signing the agreement/instrument are jointly liable for the payment of the tax.

Transfers of assets are generally subject to the stamp duty when the transfer is completed with a written agreement.

### **Purchase of shares**

Shares in a resident Argentine corporation may be purchased through an existing or newly created local subsidiary of the foreign acquiring corporation. The acquisition may be financed by the subsidiary's own funds or through loans from the parent foreign corporation or a third party, such as a bank.

Generally, a foreign entity acquires a target Argentine company directly. The deductibility of interest on acquisition debt may be in doubt when a resident holding company structure is used.

Purchasers of stock in an Argentine company cannot obtain a step-up in the tax basis of the assets purchased.

### **Tax indemnities and warranties**

Most acquisitions in Argentina are stock purchases.

In a stock purchase, purchasers become fully liable for the tax liabilities of the target company until the end of the statute of limitations period. It is customary for the purchaser to initiate a due diligence exercise, which normally incorporates a review of the target's tax affairs.

In defining the scope of the tax due diligence process, bear in mind that the statute of limitations for tax liabilities is generally 5 years. As noted, however, there is no statute or regulation that limits the tax authorities' power to examine open periods, even those already examined. The tax due diligence process should cover all open tax years, whether or not examined.

The party acquiring the shares of a company usually requests a guarantee that, by buying its shares, the buyer is also inheriting the company's tax history. As a result, after the due

diligence process — with a subsequent purchase audit — an escrow account generally is opened on the buyer's behalf in case of contingencies. The Argentine tax authorities do not grant clearance certificates stating that a particular taxpayer has no tax outstanding.

### **Tax losses**

Net operating losses may not be carried back but may be carried forward for up to 5 years.

Foreign-source losses are subject to an additional limitation as they may offset only foreign-source income. A similar restriction applies to losses on sales of shares and certain derivatives transactions.

Changes in the shareholder do not remove the possibility of offsetting the tax losses with taxable earnings of the entity that owns the tax losses.

Under a tax-free reorganization, tax attributes, such as loss carry forwards, can be conveyed from the predecessor company to the surviving company. Tax loss carry forwards (and unused tax exemptions/promotional benefits) are only transferable to the surviving company or companies when the holders of record of the predecessor company or companies retained at least 80 percent of their capital contributions in these companies (unless the shares are traded under self-regulated stock markets) for at least 2 years prior to the date of the reorganization.

### **Transfer taxes**

The stamp duty is a provincial tax levied on legal transactions expressly provided for by statute. Such transactions are documented with public or private instruments. Generally, the stamp duty is assessed at a rate of 1 percent of the economic value of the transaction. The parties signing the agreement/instrument are jointly liable for the payment of the tax.

Transfers of shares or interests held in business organizations (e.g. limited liability companies — SRL) are subject to the stamp duty, provided generally that the transfer is completed with a written agreement.

## **Choice of acquisition vehicle**

The purchase of shares in a resident Argentine corporation may be made through either an existing or newly created local subsidiary of the foreign acquiring corporation. Tax factors often influence this choice.

There is no stamp tax on the introduction of new capital into an Argentine entity.

### **Local holding company**

An Argentine company could be used where the purchaser already owns another entity located in Argentina.

However, capital gains arising from the disposal of shares of an operating company are taxable at the level of the resident holding company, and the deductibility of interest on acquisition debt may be in doubt where a resident holding company structure is used.

## Rules and consequences for foreign shareholders

### Supervisory Board of Companies

General Resolution No. 7/2015, issued by the Supervisory Board of Companies (IGJ), is intended to prohibit the registration of foreign companies that do not effectively conduct business or own assets outside of Argentina but whose sole purpose is to conduct business activities in Argentina. The resolution may require non-Argentine companies to incorporate as Argentine companies before registering them with the IGJ as shareholders of Argentine corporations domiciled in the city of Buenos Aires.

Incorporation as an Argentine company is required where the foreign investor cannot prove that the value of its non-Argentine non-current assets is significant when compared to the value of its ownership interest in the Argentine company.

Note that there must be a minority shareholder holding at least 5 percent of the Argentine company or the company can be re-classified as a branch. In addition, the new Civil and Commercial Code in force since August 2015 allows the incorporation of company with a single shareholder.

### Special-purpose vehicles

Special-purpose vehicles (SPV) that do not strictly comply with Resolution No. 7 may still be registered as foreign, provided they can demonstrate that the ultimate controlling company of the group complies with the resolution (i.e. has significant assets outside Argentina).

The SPV must submit a certificate stating that its sole purpose in seeking registration is to serve as an SPV of the controlling company. The certificate must be accompanied by documents issued by the boards of directors, management or governing bodies of the SPV and the controlling company. For this purpose, an affidavit executed by the legal representative of the SPV is required with:

- a corporate organizational chart of the chain of companies that control the SPV
- certain information about the shareholders of the SPV and the SPV's parent.

### Equalization tax

Dividends are non-taxable where the amount distributed does not exceed the cumulative taxable income. Any excess is subject to a withholding of 35 percent as a one-off final payment. Stock dividends are not subject to withholding.

Under the Income Tax Law, when individuals and taxable entities such as corporations, branches and partnerships pay dividends or distribute earnings, in-cash or in kind exceeding Argentine taxable income accumulated at the end of the fiscal year before the payment or distribution thereof, 35 percent of the excess amount will be withheld as one-off payment.

Additionally, a 10 percent withholding tax (WHT) applies on gross dividends paid to Argentine individuals or foreign shareholders.

### Tax-efficient shareholders

It is essential to structure the acquisition of a target company in Argentina so as to minimize taxes applicable to cash exchanges between the Argentine target company and the foreign-related companies.

Currently, Argentina has tax treaties in force with 16 countries: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, the United Kingdom and Russia.

The treaties grant various tax benefits to the foreign beneficiary generating Argentine-source income, such as reduced income tax withholding on the payment of dividends or interest. The treaties also establish rules for determining the deductibility of such payments by the local taxpayer.

### Non-resident intermediate holding company

If the foreign country taxes capital gains and dividends received from overseas, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with Argentina. However, the purchaser should be aware that Argentine treaties contain treaty-shopping provisions that may restrict the ability to structure a deal in a way designed solely to obtain tax benefits.

### Local branch

As an alternative to an Argentine holding company, a foreign purchaser may structure the acquisition through an Argentine branch. Argentina does not impose additional taxes on branch profits remitted to an overseas head office. Argentine branches and corporations are taxed similarly at the national and provincial levels.

If the Argentine operation is expected to make losses initially, a branch may be advantageous. Subject to the tax treatment applicable in the head office's country, a timing benefit could arise from the ability to consolidate losses with profits of the head office.

### Joint venture

Joint venture structures are not commonly used in Argentina.

## Choice of acquisition funding

A purchaser using an Argentine vehicle to carry out an acquisition for cash needs to decide whether to fund the vehicle with debt or equity. The principles underlying these approaches are discussed later in this report.

## Debt

The principal advantage of debt is the potential tax-deductibility of interest (see deductibility of interest).

### Leveraged buy-outs

In a leveraged buy-out, a new holding company, the acquiring company, typically does not have sufficient capital to acquire the target company, so it arranges to take out a loan from a financial institution or related party.

Where the transaction is limited to the acquisition of capital stock or the merger of the new holding company with the target company, and the acquiring company's indebtedness is transferred to the target company, then the transaction is characterized as a leveraged buy-out merger. In these circumstances, the target company seeks the interest deduction for the loan, provided that the target has high and stable cash flows. However, the tax authorities have determined that interest arising from loans taken out to finance the purchase of shares is not tax-deductible.

The Argentine tax laws do not have special provisions on financial leverage or leveraged buy-outs. The current provisions on the deduction of interest apply. As a general rule, interest is deductible to the extent that it is related to the generation of taxable income. There are also capitalization rules applicable to loans granted by foreign-related entities under certain conditions.

In Opinion No. 62/03, the tax authorities considered interest accrued in connection with the purchase of the majority of the capital stock of a company that was then absorbed (leveraged buy-out merger). The tax authorities concluded that the purchase was not a part of the merged company's activities (operating activities) and that the interest was not deductible.

In a later decision, the National Special Tax Court held that "interest accrued from loans taken out to acquire the aggregate capital stock of a company before the merger of such company is an expense which is not necessary to obtain income or maintain the source of income of the company. Therefore, any such interest is not deductible. It is an investment made by the shareholder and, thus, it is the shareholder who will be subject to any applicable tax consequence."

### Thin capitalization rules

Thin capitalization rules only apply to interest on loans granted by foreign related financial institutions to local companies. Interest is not deductible where the debt-to-equity ratio of the local company exceeds a 2:1 ratio. Interest that is not deductible as a result of this rule should be re-characterized as a dividend and treated accordingly. In the case of a treaty country intercompany loan, the thin capitalization rules may not apply, even where the 2:1 equity ratio is exceeded. However, opinions differ on this issue.

Although not necessarily a proper practice, the Argentine tax authorities have previously sought to apply a regulatory decree stating that interest (other than on loans subject to the 35 percent WHT rate) is not deductible when the debt-to-equity ratio exceeds a 2:1 ratio and should be re-characterized as a dividend. As a result, interest generated by a treaty country intercompany loan may be subject to thin capitalization rules where the 2:1 equity ratio is exceeded.

Based on the above, leverage can be introduced to a target Argentine company by borrowing capital from lenders in treaty countries and also in non-treaty countries, as long as the 35 percent domestic WHT rate can be claimed as a tax credit in the foreign non-treaty country.

### Deductibility of interest – temporary limitation

Under section 18 of the Argentine Income Tax Law, interest payments are expenses incurred by local companies holding foreign capital. Such expenses become Argentine-source taxable income for a foreign company that participates, either directly or indirectly, in its capital, control or management, and/or for an entity located in a tax haven. Therefore, the relevant recording in the financial statements for tax purposes can only be made when the expenses are paid within the term fixed for the filing of the tax return of the fiscal year in which the corresponding disbursement accrued (5 months following year-end date).

Hence, where an Argentine holding company does not pay the interest within such term, the interest is not deductible in the financial statements for tax purposes (otherwise, it is deductible in the year paid).

### General Instruction Number 747

With this instruction, the Argentine tax authorities attempted to challenge the deductibility of interest and exchange gains/losses arising from loans in foreign currency between companies located in Argentina and foreign companies. Reasons for these challenges included the lack of a formal agreement between the parties, failure to state the terms for the repayment of principal and/or interest, and failure to include an interest rate in the loan agreement.

In addition, it is important to meet the formal requirements discussed above in the event of leveraged buy-outs to avoid the possibility that the tax authorities may challenge the exchange gains/losses and interest derived from these loans.

### Payment of withholding tax

A failure to pay WHT implies that the expenses (interest) are not tax-deductible.

### Transfer pricing

Under transfer pricing provisions, interest on borrowings between a local company and a foreign-related company must conform to normal market practices on an arm's length basis.

## **Withholding tax on debt and methods to reduce or eliminate it**

A WHT is imposed on payments of interest to non-residents at the following rates:

- 15.05 percent where the borrower is a local financial entity, the loan is related to the financing of capital goods imports, or the foreign creditor is a financial or banking institution located in a country that either a) is not considered a low-tax jurisdiction, or b) has a treaty with Argentina that contains an exchange of information clause that has no local restrictions regarding information exchange between revenue services
- 35 percent for all other cases.

However, interest from the following portfolio investments is not taxed if paid to non-residents:

- obligations of the Argentine government
- obligations (bonds) issued by resident corporations and other non-government entities through a public offer.

The existing tax treaties may stipulate that lower WHT rates apply in the case of payments to recipients in the relevant countries.

To obtain WHT relief under a treaty, the foreign beneficiary should submit an affidavit demonstrating that it is a foreign resident, according to General Resolution 3497. The related foreign tax authorities must certify the data in the affidavit, and it must be in line with the Hague Apostille regime.

## **Checklist for debt funding**

- The tax authorities have determined that interest on loans taken out to finance the purchase of shares cannot be deducted for tax purposes.
- The use of bank debt may avoid thin capitalization and transfer pricing problems.
- Meet formal requirements of loans to avoid a possible tax authority challenge regarding the exchange gains/losses and interest derived from these loans.
- Deductibility of interest from related companies is conditional on the effective payment of such interest.
- Thin capitalization rules only apply to interest on loans granted by foreign-related financial institutions to local companies and other loans where the applicable WHT rates are less than 35 percent.

## **Equity**

Foreign companies usually structure inbound investments into Argentina by using a portion of debt and a portion of equity.

Stamp tax is not applicable to new shares and/or to capital contributions.

## **Reorganizations**

Tax-free reorganizations may be structured under an Argentine law that allows tax attributes, such as loss carry forwards, to be conveyed from the predecessor to the surviving company.

Tax loss carry forwards and unused tax exemptions are only transferable to the surviving company or companies where the holders of record of the predecessor company or companies held at least 80 percent of their capital contributions in these companies (unless the shares are traded under self-regulated stock markets) for at least 2 years prior to the date of the reorganization.

Argentine law defines 'reorganization' as:

- the merger of pre-existing enterprises
- the division of an enterprise into another or others that continue, together, the operation of the first enterprise
- the sale or transfer of one entity to another that, although being legally independent, constitute the same economic whole.

For a reorganization to qualify for tax-free treatment, certain requirements must be satisfied. For example, the holder(s) of record of the predecessor company must retain an investment in the surviving company equal to the investment in the predecessor company for at least 2 years from the date of the reorganization. The reorganized companies must have had the same or related activities during the 12 months preceding the merger, and each company must have existed for at least 18 months before the reorganization. The surviving entity must continue its activities for at least 2 years after the date of the reorganization, so that the goods and/or services the surviving company or companies produce and/or trade have characteristics similar to those of the predecessor company or companies.

The reorganization must be communicated to the tax authorities within 6 months of the reorganization date.

M&A transactions are evaluated according to anti-trust laws where they involve economic concentrations through mergers, going-concern transfers, acquisitions of interests in other companies that confer control over them, and transfers of assets that also confer control or a dominant influence on decision-making.

## **Hybrids**

Hybrids, which are instruments treated as equity in the accounts of one party and as debt in the accounts of the other, are not applicable for Argentine income tax purposes.

## **Discounted securities**

No special Argentine tax benefits arise in connection with the issuance of securities issued at a discount.

## **Other considerations**

### **Labor issues**

Where a business is transferred by whatever means, all the obligations arising from the employment contract between the transferor and the worker at the time of the transfer are transferred to the transferee or purchaser, including those resulting from the transfer itself. The employment contract remains in full force and effect with the transferee or purchaser, and the worker retains the rights vested in all the years of service

with the transferor. The transferor and the transferee of a business are jointly and severally liable for the related obligations arising from the employment contract at the moment of the transfer.

### **Sale of shares of stock corporations or quotas of limited liability companies**

Under the tax reform enacted on 23 September 2013, capital gains derived by non-residents from the sale of shares or quotas are subject to either a 15 percent tax on gross proceeds or a 13.5 percent tax on net proceeds (at the taxpayer's option). Where net proceeds are chosen, the Argentine tax authorities should validate the costs.

The buyer is responsible for collecting the tax. However, regulations for the collection mechanism are still pending.

### **Sale of interest in limited liability company**

The sale of an interest in a limited liability company is treated the same way as a sale of shares.

### **Company law and accounting**

Mergers are regulated by Corporations' Law 19,550 (ACL), and acquisitions of shares/quotas are regulated by the Civil and Commercial Codes.

ACL foresees two types of mergers: a pure or simple merger where two or more companies are dissolved (without liquidation) in order to create a new one, and an absorption merger where an existing company incorporates one or more other companies that are dissolved without being liquidated.

To effect a merger, several steps must be performed:

- preparation of special merging financial statements
- board of directors' meeting approving the merger
- signing of a preliminary merger agreement (*v.gr. Compromiso Previo de Fusión*)
- extraordinary shareholders' meeting
- publication of legal notices in the Official Gazette and other main newspapers
- signing of the definitive merger agreement (*v.gr. Acuerdo Definitivo de Fusión*)
- registration before the respective Public Registry of Commerce of Buenos Aires City.

ACL allows mergers of different types of companies. It is possible to merge corporations with limited liability companies or commercial and civil entities.

The practical advantage of carrying out a reorganization procedure (merger) rather than an acquisition of shares/quotas is that the companies involved do not need liquidity to merge. When acquiring shares/quotas, the purchaser must either have liquidity or obtain financing.

To effect a merger, special merging financial statements must be prepared, which must be audited by a local certified public accountant (CPA). Legal notices and accounting documents must also be prepared.

Third parties and creditors are specially protected by ACL. Before signing the definitive merger agreement, creditors could oppose the merger procedure and request their debts be paid, and corresponding judicial recourses are available to them.

Once all requirements have been fulfilled, the documents must be filed before the respective Public Registry of Commerce of Buenos Aires City. Once registered, third parties can still oppose the merger.

Where a merger (or acquisition of shares/quotas) amounts to an abuse of a dominant position in a specific market (or is alleged to do so), the operation (merger or acquisition of shares/quotas) must be submitted to and approved by the Anti-Trust Commission in advance. Failure to request such authorization could lead to fines or the prohibition of the merger or acquisition of shares/quotas.

Where shares/quotas are acquired, a purchase agreement must be entered into by the parties and the vendor must notify its participants so that they can modify and update their registrations.

Where quotas of a limited liability company are acquired, the purchase agreement must be registered with the Public Registry of Commerce of the relevant jurisdiction and a legal notice must be published in the Official Gazette.

Foreign companies participating in a merger or acquisition procedure must be registered with the Public Registry of Commerce of the relevant jurisdiction under section 123 of the ACL (foreign entity registered to participate as a shareholder/partner of a local company) or section 118 of the ACL (branch of a foreign company) under the penalty of not registering the acts of the participating local companies. Every local jurisdiction also has administrative requirements for foreign companies.

From an accounting viewpoint, it is necessary to distinguish transactions between unrelated parties (business combinations) from transactions within the same economic group (corporate reorganizations) because the accounting treatment depends on this distinction.

In the case of a business combination, both assets and liabilities are stated at fair market value. If there is a difference between fair market value and the price paid, positive or negative goodwill arises. If the useful life of goodwill is indefinite, it is not amortized but annual recoverability analysis is required.

In the case of a corporate reorganization (within the same economic group), assets and liabilities are added to the book value and no goodwill arises.

### **Group relief/consolidation**

Consolidated filing is not permitted. Each entity, even where it belongs to the same owner or affiliated group, must file a separate tax return.

## Transfer pricing

Argentina's transfer pricing regulations are broadly comparable with Organisation for Economic Co-operation and Development (OECD) guidelines.

There is, however, no hierarchy for the application of the OECD's accepted transfer pricing methods in Argentina. The selection of the appropriate method depends primarily on the availability of information and the number and magnitude of the adjustments necessary to achieve comparability.

Under these provisions, compensation for services between a local company and a foreign-related company must conform to normal market practices on an arm's length basis. If not, the tax authorities may make appropriate adjustments, by applying methods and procedures prescribed by the law, to the tax return of the local company, and thus increase its taxable base.

The transfer pricing return (i.e. report certified by a CPA) must be filed 8 months after year-end. Under section 15.1 of the Income Tax Law, failure to file the tax returns and related transfer pricing analyses with the tax authorities may result in fines of up to 6,000 US dollars (USD) for each tax return not filed.

## Foreign investments of a local target company

For resident corporations, worldwide income is taxable, including the income of foreign branches and subsidiaries, even where such income is not repatriated. Income of foreign subsidiaries is taxable only to the extent of dividends actually paid. However, where the subsidiary is organized in a tax haven country, the Argentine company is taxed on its allocated share of the subsidiary's income, regardless of whether a dividend is paid.

## Comparison of asset and share purchases

### Advantages of asset purchases

- Limits the co-responsibility of purchasers for non-declared fiscal and social security liabilities, as long as they comply with Law No. 11867 and report the transaction to the tax authorities.
- The purchase price, or a portion of it, can be depreciated or amortized for tax purposes.
- Possible to acquire only part of a business.

### Disadvantages of asset purchases

- Higher transfer taxes apply (VAT, turnover tax, etc.).
- Benefits of cumulative tax losses incurred by the seller remain with the seller, because the law does not permit their transfer.

### Advantages of share purchases

- May benefit from tax losses of seller's company.
- Lower transfer taxes apply to the operation (no VAT, no turnover tax, etc.) compared to asset purchases.
- Lower capital payments compared to asset purchases.

### Disadvantages of share purchases

- Purchaser assumes all the tax and social security history of the company.
- Purchaser remains liable for any claims or previous liabilities of the entity, including tax, social security and labor obligations.



## KPMG in Argentina

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