7. International Aspects

7.1. Definitions

7.1.1. Resident and non-resident companies

For the definition of resident companies, see section 1.1.5. There is no definition of non-resident companies. Therefore, resident companies are those that do not fulfil the requirements to be resident.

7.1.2. Permanent establishment

7.1.2.1. Definition under domestic law

Article 69(b) of the LIAG provides that a taxable person is "a commercial, industrial, farming, mining or similar establishment organized as a permanent establishment in Argentina belonging to a legal entity incorporated abroad or to a non-resident individual".

The law does not provide guidelines for determining when a foreign company has a PE in Argentina, except for the above definition.

However, the law provides cases where a resident is deemed to have a PE abroad (article 128 of the LIAG):

- a construction, reconstruction, reparation or assembly site which lasts for more than 6 months; or
- division of immovable property with the purpose of selling the different parts or building as several houses in a condominium.

The MDIT Law provides a more detailed definition of a PE of a non-resident, but this rule only applies for such tax (see section 5.1.).

7.1.2.2. Definition under treaties

As a general rule, the definition of PE provided by the tax treaties concluded by Argentina follows the OECD and UN Model Conventions. However, the treaties in force with Chile and Bolivia do not include a PE concept, as they are based on the source principle of taxation.

7.2. Taxation of resident companies

Argentina has adopted the worldwide principle of taxation. Thus, both foreign-source and domestic-source income derived by a resident company is subject to income tax. An ordinary foreign tax credit system applies.

7.2.1. Taxable foreign income

7.2.1.1. General principles

Any type of foreign-source income derived by a resident company is subject to income tax under general rules. The differences refer mainly to the timing of recognition of the income by the resident company, which is different in the following situations:

- if income is derived directly by a resident company, without a permanent establishment abroad, then the regular accrual method applies;
- if income is derived through (a) a permanent establishment abroad, (b) a foreign subsidiary resident in a low-tax jurisdiction (deriving passive income); or (c) a participation in an entity other than a company, the capital of which is divided by shares (e.g. a partnership), the income must be recognized irrespective of actual distribution; and
- if the income is derived as a dividend distributed by a non-resident company, the capital of which is divided by shares and which is not located in a low-tax jurisdiction, the taxable income is recognized only when the dividends are distributed (i.e. put at the disposal of the resident shareholder).
7.2.1.2. Business profits

The following discussion assumes that business profits are earned through a foreign permanent establishment. The profits of a permanent establishment abroad of a resident company are subject to income tax as a result of the application of the worldwide taxation principle. The profits of the permanent establishment abroad must be recorded separately from those of the head office in Argentina. As a rule, the income derived by a foreign permanent establishment is deemed to be foreign-source income unless the relevant profits are characterized as Argentinian-source income under the income tax law rules.

The Argentinian-source income and expenses of the permanent establishment must be separated from foreign-source income and expenses.

The taxable income of the permanent establishment must be calculated in the currency of the country where the permanent establishment is located. Such profits or losses are then converted into Argentinian currency under specific rules.

The profits of the foreign permanent establishment are attributed to the head office in Argentina in the tax period in which the relevant tax period of the permanent establishment ends, irrespective of whether there has been any distribution to the head office.

The transactions between the local head office and the foreign permanent establishment must be determined as if the permanent establishment and the head office were independent parties in similar transactions. Thus, the arm’s length and separate-entity principles apply in this case.

7.2.1.3. Dividends

Dividends paid by non-resident companies are attributed to the resident shareholder company in the tax period in which the dividends are put at the disposal of the shareholder. The dividends are included in the ordinary taxable income and taxed accordingly.

However, in case of participations in companies whose capital is not divided by shares and partnerships, the profits are subject to tax in the hands of the resident member company on an accrual basis irrespective of the actual distribution.

CFC legislation applies to direct or indirect participations in a non-resident company with its capital divided by shares, provided:
- they are located in a low-tax jurisdiction; and
- their income is mainly derived from passive activities (see section 10.4.).

7.2.1.4. Interest, royalties and other income

Foreign-source interest, royalties and other income, such as service fees and rent, are added to the resident taxpayer’s ordinary taxable income under the accrual method and are subject to income tax accordingly.

7.2.1.5. Capital gains

Foreign-source capital gains are also subject to income tax in the hands of the resident company as ordinary taxable income under the accrual method. The Argentinian income tax system for companies does not distinguish between income and capital gains, as any gain derived by a company is, as a rule, deemed to be ordinary taxable income.

7.2.2. Foreign losses

Foreign losses from activities producing foreign-source income may be offset only against foreign-source income. Such losses may be carried forward for 5 years. There is a separate limitation for foreign-source capital losses from the disposal of shares or other participations (including investment funds or similar entities), as well as foreign-source losses derived from derivatives transactions. Such losses may only be set off against capital gains derived from the same activity.

7.2.3. Other taxes on income

No other taxes on income apply.
7.2.4. Taxes on foreign capital

Assets held abroad by a resident company are, as a rule, also subject to the annual MDIT (see section 5.1.).

There is an ordinary foreign tax credit system for taxes paid abroad, levied on the net worth or asset of the company as a whole, which are similar to the MDIT.

7.2.5. Emigration

There are no specific rules in Argentina on emigration and taxation of a deemed disposal of assets.

7.2.6. Double taxation relief

The income tax law provides an ordinary foreign tax credit system for foreign taxes paid abroad.

Foreign taxes are converted into Argentinian currency at the exchange rate of the National Bank of Argentina on the date of the effective payment. For treaty relief, see section 7.4.1.2.

7.2.6.1. Business profits

The Argentinian head office may take a credit against income tax due in Argentina for similar taxes paid by the foreign permanent establishment on the foreign taxable income (included in the head office’s taxable income).

When the foreign-source taxable income of the permanent establishment giving rise to such credit includes Argentinian-source taxable income according to Argentinian rules, a relevant apportionment must be made in order to exclude the credit attributable to the Argentinian-source taxable income.

If the country where the permanent establishment is located is a signatory to a treaty in force with Argentina, the same treaty provisions on tax relief may apply. If the tax paid abroad is subject to a tax treaty, the credit available in Argentina is the net amount of tax payable in the country where the permanent establishment is located (article 171(4) of the LIAG).

7.2.6.2. Dividends

The LIAG and its regulations provide for a direct and indirect (i.e. the underlying tax paid by the company) tax credit.

The underlying foreign tax credit is granted for the tax paid on the profits out of which the dividends are paid. The credit is limited to the amount of the income tax that would be levied in Argentina on the foreign-source income.

The underlying foreign tax credit is granted for direct and indirect participations under certain conditions. In the case of a direct participation, the following conditions must be met:

- the company distributing the dividends must be a resident of the country in which the tax was paid;
- the resident shareholder must have a participation in the non-resident entity of at least 25% of its capital;
- the foreign tax must have been paid before the deadline for filing the tax return in Argentina for the taxable period in which the dividends are to be included (otherwise, the credit may only be used in the taxable period in which the tax was paid); and
- the relevant documentation acknowledging the payment issued by the foreign tax authority must be made available.

A second-tier underlying foreign tax credit is granted in cases of indirect participation in respect of the tax paid by a foreign company distributing dividends to the foreign company paying the dividends to the resident shareholder in Argentina, provided that the resident shareholder has an indirect participation of at least 15% in the second-tier company and that such company is not located in a low or zero-tax jurisdiction.

7.2.6.3. Interest, royalties and other income

The general rules apply (see section 7.2.1.4.).
7.2.6.4. Capital gains

The general rules apply (see section 7.2.1.5.).

7.2.6.5. Record of related taxpayers and the information regime of operations in the local market

December 19, 2013, the Official Gazette published AFIP’s General Resolution No. 3572, according to which the Record of related taxpayers and an information regime of operations in the local market are created. These requirements apply to tax payers and/or responsible residents in the country which are capital companies, any other type of company, individual companies and trusts which are related to any registered individual, domiciled, based in, or located in Argentina or abroad. The regulation defines a list of assumptions that configure the relationship among the mentioned individuals.

7.3. Taxation of non-resident companies

7.3.1. General

For the definition of non-resident companies and permanent establishments of non-resident companies, see sections 7.1.1. and 7.1.2.

As a general rule, non-resident companies without a permanent establishment in Argentina are subject to income tax on their Argentinian-source income. Non-resident companies that carry out activities through a permanent establishment in Argentina are subject to the general corporate income tax on the portion of income that is attributable to such permanent establishment.

7.3.2. Immigration

There are no particular rules on valuation of assets or the taxable period on immigration.

7.3.3. Taxable domestic income

7.3.3.1. General

There are several rules for determining whether income is considered Argentinian-source income. Argentinian-source income includes, inter alia, income from:

- assets located, placed (i.e. funds) or economically used in Argentina;
- acts or activities carried out within the Argentinian territory;
- facts that have occurred within Argentina (e.g. a fire or natural disaster);
- loans guaranteed with immovable property rights constituted on assets located in Argentina;
- premiums for insurance and reinsurance covering risks in Argentina or when the insured persons are resident in Argentina at the time the agreement is entered into; and
- foreign movies and audio-video transmissions exploited in Argentina.

Argentinian-source income is normally assessed under a notional taxable-income rule. However, there are some situations in which the non-resident taxpayer may pay tax on the actual taxable income or gains. This is the case in relation to, for instance, gains from the disposal of assets situated (e.g. real estate) or economically used (e.g. trademarks) in Argentina or rents from immovable property situated in Argentina.

The notional taxable income is a specific percentage of the gross payment to the non-resident. The percentage depends on the type of income. The effective withholding tax rate is determined by applying the general 35% withholding tax rate to the deemed taxable income. The general deemed taxable income rate (i.e. the residual rate for those cases not specifically foreseen) is 90% of the gross income, in which case the general effective withholding tax rate is 31.5% of the gross payment. For the purposes of this chapter, unless specifically provided otherwise, we refer to the effective tax rate as the withholding tax levied on a non-resident. The withholding tax is final.
Income from import transactions of tangible goods is treated as foreign-source income derived by a non-resident exporter; thus, no withholding tax applies in such cases. Income arising from sales of goods within Argentina after their import is deemed to be wholly Argentinian-source income, whether or not it is connected to a PE situated in Argentina, or to a trade or business carried on therein.

The transfer of goods situated, located or economically used in Argentina but belonging to enterprises or companies organized, established or located abroad is presumed to produce Argentinian-source taxable income representing 50% of the corresponding consideration. The taxpayer, however, may choose to be taxed on actual net income and deduct from gross income (i) expenses incurred in Argentina which are necessary to obtain, maintain or retain the income, and (ii) other deductions authorized by the law under ordinary rules.

Under the law, where comparable prices are available in transparent markets, these prices must be used. The prices may, however, be set in a different way, in which case the burden of proof lies with the taxpayer. If no transparent market between unrelated parties exists, a taxpayer has to provide all of the information required by the tax administration to prove an arm’s length price has been used.

Income from the export of goods produced, manufactured, processed or purchased within Argentina is deemed to be wholly Argentinian-source income. The remittance of such goods by an Argentinian subsidiary, branch or agent of a non-resident to another country (e.g. remittances by a permanent establishment to its head office) is also deemed to be an export. Taxable income is established by deducting from the sales price the cost of goods, freight and insurance expenses necessary for the transportation of the goods to their destination, commission fees and sale expenses, and expenses incurred in Argentina, in so far as they are necessary to obtain taxable income.

### 7.3.3.2. Business profits

A business profit derived by a non-resident normally entails the existence of a permanent establishment in Argentina of the non-resident company.

Where a non-resident derives business profit through a permanent establishment in Argentina, the income attributable to the permanent establishment is subject to income tax according to the rules applied to resident companies.

The relationship between a local permanent establishment and its head office must be the same as that which would exist between independent parties in similar transactions (the separate entity approach), e.g. the transfer of assets between them must be agreed on as if they were independent parties. Transfer pricing regulations apply between the head office and the permanent establishment. Payments made to a head office are not only subject to the transfer pricing rules, but also to a particular rule which requires effective payment of the expenses in order for the permanent establishment to be able to deduct them for income tax purposes.

The permanent establishment of a non-resident company must have records separate from those of its head office in order to determine the taxable income and gains attributable to the permanent establishment.

### 7.3.3.3. Dividends, interest and royalties

Dividends, interest and royalties derived by non-residents through a permanent establishment in Argentina are included in the taxable base of the permanent establishment and subject to tax under the general rules applicable to resident entities.

For withholding taxes on dividends, interest and royalties derived by non-residents without a permanent establishment, see section 7.3.4.

### 7.3.3.4. Other income

Other income derived by non-residents through a permanent establishment in Argentina is included in the taxable base of the permanent establishment and subject to tax under the general rules applicable to resident entities.

For withholding taxes on other income derived by non-residents without a permanent establishment, see section 7.3.4.4.

### 7.3.3.5. Capital gains

There is no special tax treatment of capital gains realized by non-residents through a permanent establishment in Argentina. This is a consequence of the taxation principle according to which income and gains derived by a company or a permanent establishment are deemed to be income subject to tax. Gains from the disposal of shares in Argentinian or non-resident entities are included in the taxable base of the permanent establishment and subject to tax under the general rules.