

Investing in ARGENTINA

Legal Framework

Foreign Investment
Migration Regulations
Company Legal Structure
Tax Law
Labor Law

➔ FOREIGN INVESTMENTS

FOREIGN INVESTMENT LAW

Legislation

Law N° 21,382/ 1993 –Foreign Investments
Regulatory Decree N° 1,853/ 1993

Purpose

Foreign investors can make investments in the country without any need of prior approval and under the same conditions as those investors domiciled in the country.

Aimed at

Foreign investors making capital investments for:

- . the promotion of economic activity, or
- . the expansion or improvement of the existing activities.

Advantages

Foreign Investors can:

- . Transfer abroad the obtained and net profits coming from their investments, as well as to repatriate their investments at any time.
- . Make use of any and all of the legal entity formations allowed by Argentine business law.
- . Local companies of foreign capital can access to the internal credit with the same rights and under the same conditions as local companies of national capital can.

INVESTMENT BILATERAL TREATIES WITH SEVERAL COUNTRIES

Argentina has signed bilateral treaties of investment with several countries, such as: , Armenia, Australia, Austria, Bolivia, Bulgaria, Canada, Chile, China, Croatia, Cuba, Denmark, Ecuador, Egypt, Germany, Finland, France, Holland, Hungary, Indonesia, Israel, Italy, Jamaica, Luxembourg, Malaysia, Morocco, Peru, Poland, Portugal, Romania, Senegal, South Korea, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United State of America, Venezuela, and Vietnam with the purpose of protecting investments and avoiding double taxation criteria.

MEMBER OF ICSID, MIGA AND OPIC

Argentina is member, among others, of the Multilateral Investment Guarantee Agency (MIGA), the Overseas Private Investment Committee (OPIC) and the International Center for Settlement of Investment Dispute (ICSID).

→ MIGRATION REGULATION

Local Regulations about migration establish three types of residence: permanent, temporary and transitory. In case of any restriction on nationality of the Company directors, they shall be domiciled in Argentina, otherwise Section 256 ("*Ley de Sociedades Comerciales*- Law of Business Associations) establishes that the absolute majority of the Board of Directors, included the temporary directors, shall have a domicile in the country. In case of foreign directors, their domicile in the country shall be accredited by means of a residence certificate issued by the corresponding authority.

When hiring foreign workers, the contract of employment shall be in accordance with the Argentine labor legislation in force.

→ LEGAL STRUCTURE OF COMPANIES

The business organizations most used by foreign investors in Argentina are the corporations (*sociedades anónimas*), limited liability companies (*sociedad de responsabilidad limitada*) and the branches of foreign companies. Likewise, the use of joint ventures, as well as franchise agreements have become increasingly frequent during the last years.

In any case, it is mandatory for foreign companies working in Argentina to appoint individuals legally responsible, as well as to keep accounting records separately for their Argentine operations.

CORPORATIONS (*SOCIEDADES ANÓNIMAS*)

Corporations shall have at least two shareholders and shares may be owned by private shareholders or quoted publicly. This is the unique type of business association authorized to quote shares publicly.

The liability of shareholders is limited by the capital contribution. The minimum capital for the organization of a corporation is \$ 100,000 (U\$S 6,250.)

The Board of Directors is responsible for the management of the company. Directors are elected in the annual meeting of shareholders. Directors are personally liable for their actions.

All and any corporation is subject to supervision and control by government entities:

- . Publicly held corporations are controlled by the *Comisión Nacional de Valores* - equivalent to the Securities Exchange Commission (SEC) in the USA.
- . Banks are supervised by the *Banco Central de la República Argentina* - Argentine Central Bank, and private corporations by the *Dirección de Personas Jurídicas* - Registry of Legal Entities.

LIMITED LIABILITY COMPANY (*SOCIEDAD DE RESPONSABILIDAD LIMITADA*)

This type of business association has several characteristics similar to those of the corporation except:

- . It cannot be listed on the stock Exchange
- . The number of partners cannot be more than 50.
- . A corporation cannot be one of the partners.
- . Changing a partner in a LLP means to modify the corresponding articles of organization of the Company.

BRANCH OF FOREIGN COMPANIES (*SUCURSAL*)

In order to conduct business legally, a Company branch shall prove the existence of the parent Company abroad; register the parent company's articles of incorporation or

articles of organization with the *Registro Público de Comercio* – Public Register of Commerce; and appoint representatives, registering them likewise.

Company branches are subject to permanent control by the corresponding business organization control entity and they shall comply with all the aspects belonging to the same requirements corporations have and are subject to such control.

Company branches shall keep accounts separately from those maintained by the head Company, and they shall file financial statements before the business organization control entity.

Joint Ventures

There are different types of joint ventures, among which the most common are the *agrupaciones de colaboración* and the *unión transitorias de empresas* – UTE.

. *Agrupaciones de Colaboración* (Association of Companies in Cooperation)

The purpose of this type of business association consists of rendering mutual assistance in the development of certain stages of their business, to improve or increase the business production.

. *Uniones Transitorias de Empresas* (U.T.E.) (Temporary Association of Companies)

The *UTE* is a joint venture created to fulfill a specific purpose and its duration is limited. Both types of joint ventures enjoy the same characteristics:

- . They are not separate legal entities. Thus, joint venture members are unlimitedly liable for the venture obligations and they shall operate by themselves.
- . Joint venture members may be businessmen resident in the country, locally constituted entities, or nonresident companies with a registered branch or other type of presence in Argentina.
- . Agreements shall be registered with the *Registro Público de Comercio* – Public Registry of Commerce, including purpose, term of duration, business name, and other information related to the partners' liability, financial contributions and legal implications.

Franchise

The Argentine Commerce Code acknowledges and protects franchise agreements.

→ TAXATION

In Argentina, taxes are collected by the National Government, provinces and Municipal authorities.

NATIONAL TAXES

. Income Tax

a) Companies

Any and all profits, including capital gains, are taxable.

All the companies that are resident in Argentina pay taxes on worldwide income. However, all the equivalent tax amounts not exceeding the foreign income tax increase paid abroad may be considered a payment on account. The rate applied to the taxable income is 35%.

A nonresident Company without a branch or other permanent enterprise in Argentina shall pay taxes only on income and profit capital of Argentine source. The tax is levied as a withholding payment, fulfilled by the paying agent in Argentina, at different effective rates, depending on that income type. The resulting rate is equivalent to 35 percent on the presumed income set forth in the income tax act.

b) Individuals

Individuals that are resident in Argentina shall pay income tax at progressive rates on their worldwide income. Rates vary between 9 percent and 35 percent in accordance with the income type.

Nonresident individuals are taxed on their Argentine source income only. The tax is levied as a withholding tax, at different effective rates depending on the income type.

. VALUED ADDED TAX (VAT)

VAT is the tax applied to the purchase price of goods and services within the different trade stages, and the same tax payments levied in prior stages may be considered credit. VAT is also applied to definitive imports with the same local goods and service

rates. VAT general rate is 21 percent, however, certain services such as electricity, natural gas and water provision for non-dwelling premises increases to a 27-percent rate. The sale of capital goods, transport (excepting international trips,) newspapers, magazines, journals, brochures, pre-paid health insurance, and the interests paid on foreign loans and on local bank loans pay 10.5 percent. VAT is not applied on exports. Exporters may claim the reimbursement of the VAT payed on their purchases.

. Import Duties

Import duties levels are currently ranging between 0 percent and 35 percent, except for certain cases where minimum particular duties are applied or they refer to goods with specific tax treatment. In general, goods coming from ALADI member countries are subject to preferential percentages. As regards the Mercosur, import duties for the intra-zone trade have almost been eliminated. At the same time, a common external tariff has been established for products coming and made in the Mercosur extra-zone. There is a minimum term for the foreign currency remittance abroad in accordance with the imported product.

Other taxes payed by importers are Statistical tax (*Tasa de Estadística*) and in certain cases a tariff of proof of destination (*Tasa de comprobación de destino.*) Imports are also subject to VAT payment (21 percent or 10.5 percent in some specials cases,) and VAT collection at source (usually 10 percent,) and Income Tax (usually 3 percent in most cases.)

. Export Duties

Current rates of export duties are 5 percent or 20 percent.

Exports of merchandise under certain manufacturing process (following an Argentine statistical criterion of farm and industry origin manufacturing category – “MOA” and “MOI”) shall pay 5 percent, while primary product (non-manufactured) pay 20 percent. There is a minimum term for the incoming of foreign currency in accordance with the exported merchandise.

. Other taxes

– Taxes on Debits and Credits in Checking Accounts

All credits and debits in bank checking accounts opened with financial institutions are subject to tax. The general aliquot is 1.2 percent and the 34 percent of credits may be imputed to the payment of income and minimum presumptive income tax.

– Tax on Assets (Minimum Presumptive Income)

A tax of 1 percent is levied on the worldwide assets of Argentine companies, with a minimum exempt from \$ 200.000. The payment of this tax, as well as that of income tax may mutually be compensated in a term that has been extended from 4 to 10 years.

– Domestic Taxes

This tax is levied on certain consumer goods and specific services at different rates and is paid by the first consumer or importer.

Main taxable products are tobacco, alcoholic beverages, fuel and lubricants, wine, luxury articles, and furs among others.

– Tax on Personal Assets

It is mandatory for individuals residing in the country to annually pay this tax as a percentage from 0,75 % on their personal assets -located in the country and abroad- exceeding the value of \$ 800,000.

Nonresident individuals pay taxes for their assets located in the country.

- Tax on transfer of real property

The transfer of title to properties located in Argentina that are owned by individuals or undivided estates are taxable with 1.5 percent, provided this transaction is not subject to income tax.

PROVINCIAL AND Y MUNICIPAL TAXES

. Turnover Tax

This tax is levied on every commercial transaction lacking any and all fiscal credit for the taxes payed in prior stages. Tax rate varies between 1.5 percent and 4 percent, according to the activity and the province legislation – primary and industrial activities are generally exempted.

. Stamp Tax

This tax is levied on documents supporting legal transactions. The most common rate is 1 percent. Some jurisdictions have revoked this tax for certain transactions.

. Real Estate Tax

Provinces and Municipalities tax real estate properties located in their corresponding jurisdictions. Real Estate Tax is different in each jurisdiction.

. Municipal Rates on Services

As regard service rendering of industrial security, hygiene and similar ones, Municipalities tax according to their income or to fix parameters such as the number of employees and driving power capability among others.

➔ LABOR LAW

TERM OF THE EMPLOYMENT CONTRACT

Employment Contracts are presumed to have a certain working term except otherwise provided by any specific legislation. The Law establishes a trial period of three months that may be extended for six months by means of the Collective Labor Agreement. In the case of Small and Medium Size Companies (*PyMes*), the probation contract may have a term of six months and be extended for 12 months by means of the Collective Labor Agreement. During this period, the employee may be fired without any compensation.

ANNUAL STATUTORY BONUS (*AGUINALDO*)

Workers and employees under a contract of employment receive a legal extra salary as bonus ("*aguinaldo*".) This bonus is paid in June and in December as two semi-annual bonuses, each of which is equivalent to 50 percent of the highest monthly wage received by the employee during the previous six-month period.

WORKING DAY

The maximum working day is 8 hours with a maximum of 48 hours per week.

Hours of work in excess of the basic working schedule are paid along with a 100 percent surcharge on the normal wage, in case those hours are worked after 1.00pm on Saturdays, or on Sundays or on holidays. The rest of the days, the surcharge is 50 percent of the normal wage.

SEVERANCE PAYMENT

Severance pay is equivalent to one twelfth of the employee's highest basic monthly wage received during the last year or during the worked time if it is shorter, multiplied by the number of worked months or a fraction greater than 10 days. The highest base wage cannot be higher than three times the monthly average corresponding to all the wages considered within the Collective Labor Agreement applied to the employee in question. The minimum compensation cannot be less than two twelfth of the employee's highest basic monthly wage received during the last year of service.

Workers are entitled to receive a notice 15 days before the dismissal in case their seniority is between 15 days and 3 months; 1 month in case of a seniority between 3 and 5 years; and 2 months in case they have worked for more than five years.

HOLIDAY

The minimum holiday period is 14 calendar days and a maximum of 35 calendar days (upon labor agreement.)

SOCIAL SECURITY SYSTEM CONTRIBUTION

Employers and employee pay to the social security system according to monthly wages. The employees' contribution reaches 17 percent -approximately - of their gross salary; and employers' contribution is approximately 22 percent.

There are competitiveness agreements entered into the State and certain production sectors upon which, among other benefits, the contribution payed to the social security system can be computed as tax credit for the VAT payment.