12.

Argentina

Introduction

Argentine transfer pricing regulations have existed, in some form, since 1932. Prior to 1998, the rules focused on the export and import of goods through application of the wholesale price method, comparing the price of imports and exports with the wholesale price of comparable products in the markets of origin or destination. This methodology was applied unless the parties to the transaction could demonstrate that they were not related parties (Article 8 of the Income Tax Law).

Article 14 of the Income Tax Law reflected the need for all transactions to comply with the arm's-length standard:

> "Transactions between a local enterprise of foreign capital and the individual or legal entity domiciled abroad that either directly or indirectly control such enterprise shall, for all purposes, be deemed to have been entered into by independent parties, provided that the terms and conditions of such transactions are consistent with normal market practices between independent entities, with limits to loans and technical assistance."

However, the rules did not include any methodologies for supporting inter-company transactions or outline any documentation requirements.

On 30 December 1998, pursuant to Law 25,063, Argentina adopted general guidelines and standards set forth by the Organisation for Economic Co-operation and Development (OECD), including the arm's-length standard, and applied it to tax years ending on or after 31 December 1998. With the adoption of the OECD standards, the computation of a taxpayer's income tax liability, including provisions governing the selection of appropriate transfer pricing methodologies for transactions between related parties, could be impacted.

On 31 December 1999, Law 25,063 was updated with Law 25,239, which introduced the special tax return and documentation requirements in relation to inter-company transactions. Under the transfer pricing reform process, the old wholesale price method was only applicable to transactions involving imports or exports of goods between unrelated parties.

On 22 October 2003, Law 25,784 introduced certain amendments to the Income Tax Law that affected transfer pricing regulations. One of the amendments related to one of the points of an anti-evasion programme, with one of its objectives being to control evasion and avoidance in international operations resulting from globalisation. On the one hand, Law 25,784 replaces regulations on the import and export of goods with related and unrelated parties (replacement of Article 8 of the Income Tax Law), eliminating the concept of wholesale price at the point of destination or origin as

a parameter for comparison. Now, in the case of imports or exports of goods with international prices known through commonly traded markets, stock exchanges, or similar markets, the new parameter establishes that those prices will be used to determine net income. On the other hand, a new transfer pricing method is introduced for the analysis of exports of commodities (amendments to Article 15 of the Income Tax Law).

Taxpayers currently have two important transfer pricing-related obligations: to prepare, maintain and file transfer pricing documentation; and to file an information return (special tax return) on transactions with non-resident-related parties. In addition, taxpayers are required to maintain some documentation on import or export of goods between unrelated parties.

On 14 November 2003, Law 25,795 was published in the Official Gazette (modifying Procedural Law 11,683), establishing significant penalties for failure to comply with transfer pricing requirements.

It is important to note that tax authorities are currently conducting an aggressive audit programme, including a number of transfer pricing audits that are under way.

Statutory rules

Effective 31 December 1998, Argentine taxpayers must be able to demonstrate that their transactions with related parties outside of Argentina are conducted at arm's length. Transfer pricing rules are applicable to all types of transactions (covering, among others, transfers of tangible and intangible property, services, financial transactions, and licensing of intangible property). Under Argentine legislation, there is no materiality factor applicable, and all transactions must be supported and documented.

Transfer pricing rules apply to:

- taxpayers who carry out transactions with related parties organised, domiciled, located, or placed abroad and who are encompassed by the provisions of Article 69 of the Income Tax Law, 1997 revised text, as amended (mainly local corporations and local branches, other types of companies, associations or partnership) or the addendum to Clause D of Article 49 of the Income Tax Law (trusts or similar entities)
- taxpayers who carry out transactions with individuals or legal entities domiciled, organised, or located in countries with low or no taxation, whether related or not
- taxpayers resident in Argentina, who carry out transactions with permanent establishments abroad that they own, and
- taxpayers resident in Argentina who are owners of permanent establishments located abroad, for transactions carried out by the latter with related parties domiciled, organised, or located abroad, under the provisions of Articles 129 and 130 of the Income Tax Law.

Related parties

The definition of related party under Argentine transfer pricing rules is rather broad. The following forms of economic relationship are covered:

- 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 with respect to 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 differs 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 relationship to another party, or the existence of which is justified solely in relationship 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.
- 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 company.

Methodology

For the export and import of goods between unrelated parties, the international price is applicable. In the event the international price cannot be determined or is not available, the taxpayer (the exporter or importer of the goods) must provide the tax authorities with any information available to confirm whether such transactions between unrelated entities have been carried out applying reasonable market prices (Article 8 of the Income Tax Law).

For related party transactions, both transactional and profit-based methods are acceptable in Argentina. Article 15 of the Income Tax Law specifies five transfer pricing methods. An additional method has been established dealing with specific transactions.

- Comparable uncontrolled price method (CUP).
- Resale price method (RPM).
- Cost plus method (CP).
- Profit split method (PSM).
- Transactional net margin method (TNMM).

- Specific method for export transactions involving grain, oilseed, and other crops, petroleum and their derivatives and, in general, goods with a known price in transparent markets.

This last method will only be applied when: (1) the export is made to a related party, (2) the goods are publicly quoted on transparent markets, and (3) there is participation by an international intermediary that is not the actual receiver of the goods being sold.

It should be noted that this method will not be applicable when the international intermediary complies with all the following conditions:

- Actual existence in the place of domicile (possessing a commercial establishment where its business is administered, complying with legal requirements for incorporation and registration, as well as for the filing of financial statements).
- Its main activity should not consist of the obtaining of passive incomes or acting as an intermediary in the sale of goods to and from Argentina or other members of its economic group.
- Its foreign trade transactions with other members of the group must not exceed 30% of the annual total of its international trading transactions.

The method consists of the application of the market price for the goods being exported on the date the goods are loaded. This applies regardless of the type of transport used for the transaction and the price that may have been agreed with the intermediary, unless the price agreed with the latter were to be higher than that determined to be the known price for the good on the date of loading. In such a case, the higher of the two prices should be used to determine the profit of Argentine source.

Under the above-mentioned circumstances, the Argentine tax authorities disregard the date of transaction for these types of operations and consider the date of loading, assuming the date of the transactions could be manipulated by the related parties. In addition, they apply the same methodology even when the foreign intermediary was an unrelated party.

Best method rule

There is no specific priority of methods. Instead, each transaction or group of transactions must be analysed separately to ascertain the most appropriate of the five methods to be applied (i.e. the best method must be selected in each case). The transfer pricing regulations provide that in determining the best method to apply in a given circumstance, consideration will be given to:

- the method that is most compatible with the business and commercial structure of the taxpayer
- the method that relies upon the best quality/quantity of information available
- the method that relies upon the highest level of comparability between related and unrelated party transactions, and
- the method that requires the least level of adjustments in order to eliminate differences existing between the transaction at issue and comparable transactions.

Tested party

The regulations established by the tax authority have stated that the analysis of the comparability and justification of prices – when applying the methods of Article 15 – must be made based on the situation of the local taxpayer.

Documentation requirements
The Argentine income tax law requires that the *Administración Federal de Ingresos Públicos* (AFIP) promulgate regulations requiring the documentation of the arm's-length nature of transactions entered into with related parties outside of Argentina. In this regard, the transfer pricing regulations require that taxpayers prepare and file a special tax return detailing their transactions with related parties. These returns must be filed along with the taxpayer's corporate income tax return.

In addition to filing the special tax return, the Argentine transfer pricing regulations require that taxpayers maintain certain contemporaneous supporting documentation (i.e., such documentation must exist as of the filing date of the special tax return). This requirement was applicable to fiscal years 1999 up to fiscal year ended on 30 November 2000.

However, on 31 October 2001, the AFIP issued new regulations regarding information and documentation requirements. This required certain contemporaneous documentation be filed and submitted together with the special tax return. This applies to periods ending on or after 31 December 2000.

Other regulations

Information returns
Import and export transactions between unrelated parties:

- Requirements have been established for information and documentation regarding import and export of goods between unrelated parties (Article 8 of the Income Tax Law) covering international prices known through commonly traded markets, stock exchanges or similar markets, which will be used to determine the net income. A semi-annual tax return must be filed in each half of the fiscal year (Form 741).
- In the case of import and export transactions of goods between unrelated parties for which there is no known internationally quoted price, the tax authorities shall be able to request the information held in relation to cost allocation, profit margins, and other similar data to enable them to control such transactions, if they, altogether and for the fiscal year under analysis, exceed the amount of ARS 1 million. A yearly tax return must be filed for those import and export of goods between unrelated parties for which there is no known internationally quoted price (Form 867).
- In cases of transactions with parties located in countries with low or no taxation, the methods established in Article 15 of the law must be used, and it will be necessary to comply with the documentation requirements described for the transactions covered by transfer pricing rules. The obligation to document and preserve the vouchers and elements that justify the prices agreed with independent parties is laid down, and minimum documentation requirements are established.

Compliance requirements for related party transactions:

- Six-month tax return, for the first half of each fiscal period (Form 742).
- Complementary annual tax return covering the entire fiscal year (Form 743). The return and any appendices must be signed by the taxpayer and by an independent public accountant whose signature must be authenticated by the corresponding professional body. This tax return must be accompanied by both:

- a report containing the information detailed below
- a copy of the financial statements of the taxpayer for the fiscal year being reported.

Additionally, financial statements for the previous two years must be attached to the first tax return presentation.

Contents of the report

- Activities and functions performed by the taxpayer.
- Risks borne and assets used by the taxpayer in carrying out such activities and functions.
- Detail of elements, documentation, circumstances, and events taken into account for the analysis or transfer price study.
- Detail and quantification of transactions performed and covered by this general resolution.
- Identification of the foreign parties with which the transactions being declared are carried out.
- Method used to justify transfer prices, indicating the reasons and grounds for considering them to be the best method for the transaction involved.
- Identification of each of the comparables selected for the justification of the transfer prices.
- Identification of the sources of information used to obtain such comparables.
- Detail of the comparables selected that were discarded, with an indication of the reasons considered.
- Detail, quantification, and methodology used for any necessary adjustments to the selected comparables.
- Determination of the median and the interquartile range.
- Transcription of the income statement of the comparable parties corresponding to the fiscal years necessary for the comparability analysis, with an indication as to the source of the information.
- Description of the business activity and features of the business of comparable companies.
- Conclusions reached.

On 15 June 2011, the Official Gazette published General Resolution No. 3132, amending General Resolution No. 1122/01. This new resolution establishes the obligation for taxpayers to submit a new complementary tax return (F. 969) that includes detailed information about international transactions performed during the fiscal year with related companies located abroad or in countries of low or no taxation. This obligation applies to the companies' fiscal year endings from 31 December 2010.

The due date for the submission of F. 969 will operate 15 days immediately after the due date for filing the income tax return.

General due dates

Form	Period	Due date
741	First six months of fiscal year	Fifth month following the end of the half-year
741	Second six months of fiscal year	General due date for filing income tax return
867	Full fiscal year	Seventh month following the end of the fiscal year
742	First six months of fiscal year	Fifth month following the end of the half-year

Argentina

General due dates		
Form	**Period**	**Due date**
743	Full fiscal year	Eighth month following the end of the fiscal year
969	Full fiscal year	Fifteen days immediately after the due date for filing the income tax return

Legal cases

Since the tax reform introduced in 1998, several cases have been and are currently being discussed before the courts. It is expected that the tax courts will address several issues related to transfer pricing in the coming years. Following are summaries of some of the transfer pricing court cases.

S.A. SIA

The Supreme Court applied Article 8 for the first time in the S.A. SIA, decided on 6 September 1967. The taxpayer, a corporation resident in Argentina, had exported horses to Peru, Venezuela, and the United States. It was stated in the corporation's tax return that these transactions had generated losses because the selling price had been lower than the costs. The tax authority decided to monitor such transactions under the export and import clause, that is according to the wholesale price at the place of destination. The tax authority concluded that, contrary to what had been argued by the taxpayer, such transactions should generate profits. It based this statement on foreign magazines on the horse business, which explicitly referred to the horses of the taxpayer and the transactions involved in this case.

The Supreme Court maintained that because the evidence on which the tax authority based its argument was not disproved by the taxpayer, it had to be deemed that they correctly reflected the wholesale price of the horses. As a result, the adjustment was considered valid.

Eduardo Loussinian S.A.

Loussinian S.A. was a company resident in Argentina that was engaged in importing and distributing rubber and latex. It concluded a supply contract with a non-resident subsidiary of a foreign multinational. Under this contract, the parent of the multinational group, ACLI International Incorporated (ACLI), would provide Loussinian such goods from early January 1974 up to the end of 1975.

After the contract was agreed, the international market price of rubber and latex fell substantially. However, Loussinian kept importing the goods from ACLI despite the losses. The tax authority argued that there was overcharging under the contract and that Article 8 should be applied in this case. As a result, it considered that the difference between the wholesale price of the goods at the place of origin and the price agreed on the contract was income sourced in Argentina that Loussinian should have withheld when it made the payments to ACLI. Both the tax court and the court of appeals upheld the tax authority decision.

The Supreme Court said that despite the fact that the purchasing price was higher than the wholesale price, the latter could not be applied to this case to determine the income sourced in Argentina. This was because it considered that Loussinian had rebutted the presumption under which both parties had to be deemed associated due to this gap between prices.

Laboratorios Bagó S.A.

On 16 November 2006, the members of Panel B of the National Fiscal Court (NFC) issued a ruling in the case Laboratorios Bagó S.A. on appeal – Income Tax. The matter under appeal was the taxpayer's position to an official assessment of the income tax for the fiscal years 1997 and 1998.

Even though the current transfer pricing legislation was not in force during those periods (wholesale price method was applicable in 1997 and 1998), the case was closely related to that legislation. Specifically, the ruling addressed issues such as (1) comparability of selected companies, (2) the use of secret comparables (non-public information) for the assessment of the taxpayer's obligation, and (3) the supporting evidence prepared by the tax authorities.

Laboratorios Bagó S.A., a pharmaceutical company based in Argentina, exported finished and semi-finished manufactured products to foreign subsidiaries. The tax audit was focused on the differences in prices between the markets involved, both international and domestic.

In this case, the taxpayer argued that, with regard to its export transactions, it only performed 'contract manufacturer' activities, focusing its efforts only on manufacturing. Foreign affiliates performed research and development, advertising, sales and marketing activities, among others.

The tax authorities first confirmed the lack of publicly known wholesale prices in the country of destination. Afterwards, they conducted a survey of other similar companies in Argentina, requesting segmented financial information on export transactions. The main purpose of that request was to obtain the profitability achieved by independent companies in the same industry.

Because the taxpayer's results were below the profitability average of independent companies, the tax authority adjusted the taxable basis for income tax purposes.

The ruling focused on four specific issues:

- Validity of the information obtained by the tax authority.
- Use of the so-called secret comparables.
- Nature of the adjustment performed by the tax authority.
- Evidence presented by the parties.

Matters such as comparability adjustments, the application of statistical measures like the interquartile range, and especially the definition of functions, assets, and risks, were mentioned in the ruling but were not material to the decision.

The analysis conducted by the tax authority contained conceptual mistakes that affected the comparability of the transactions (e.g. differences in volume of net sales as well as of export sales, verification of economic relationship or otherwise between the selected companies and their importers, unification of criterion for the different selected companies' allocation of financial information, among others).

It is also remarkable that in this case, the tax court accepted the use of secret comparables, being understood as information obtained by the tax authority through audits or other information gathering procedures.

The taxpayer presented several scenarios and other related evidence that supported its current position.

Eventually, it was the evidence presented by the parties that allowed for the ruling in this case to be favourable to the taxpayer. Specifically, the tax court held in this case that under domestic law, the tax authority has a significant burden of proof when adjusting transfer prices. Because the tax authority did not offer enough evidence to support its position, the tax court ruled in favour to the taxpayer.

DaimlerChrysler Argentina

The case dealt with export transactions for the fiscal period 1998 (i.e. under the old transfer pricing methodology). The members of the Argentine tax court unanimously decided that Section 11 of the regulatory decree establishes a 'different' presumption where 'once the business relationship has been proved', the tax authorities may apply the wholesale price of the country of seller. However, the tax court clearly stated that it is not entitled to issue an opinion on the constitutionality of laws unless the Argentine Supreme Court of Justice had already issued an opinion. Additionally, from the decision of the tax court, we understand that there are elements to consider that the comparability standard is not the most appropriate standard for this case.

Based on that interpretation, the crucial element to be determined is whether the business relationship criteria applies to transactions between Mercedes Benz do Brasil, Mercedes Benz Argentina, and Daimler Benz AG. Quoting traditional case law, and considering the economic reality principle, the tax court ruled that wholesale prices effective in Argentina should be applied.

In terms of the price used in the assessment by the tax authorities, the discounts and rebates granted to local car dealers were important elements. The court adopted a formal approach in this case because it stated that the regulatory decree sets forth that the tax authorities can apply the wholesale price without taking into consideration the impact of the domestic market expenses. Thus, the tax court has not considered that prices in the domestic and foreign market can only be compared if an adjustment is made on the differences in the contractual terms, the business circumstances, functions, and assets and risks in either case. In this situation, the tax court has applied a price to a substantially different operation (and therefore non-comparable).

Volkswagen Argentina SA (Fiscal Year 1998)

The case was conceptually similar to DaimlerChrysler Argentina, with the exception that an independent third party acquired products of the local company (VWA), then sold them, once imported, to Volkswagen do Brasil (VWB).

The court's analysis is based on the export contract executed between VWA and the third party. The court considered that certain clauses evidence the control that VWA and VWB exerted on the third party (i.e. purchase commitments, audit of the costs and expenses of the intermediary, assistance in the import process, among others). As such, the tax court concluded that the operations should be considered as having been conducted between related parties, even when the relationship was not economic, based on the principle of economic reality, according to which substance prevails over form.

The tax court believes that the administrative court ignored Article 8 and applied Section 11 of the regulatory decree without giving any reason for not applying the

wholesale prices in the country of destination (Brazil) and applying that of the country of seller (Argentina). The procedure followed by the tax authorities would have been appropriate if it had proved why prices informed by the Brazilian tax authorities were not valid or if it had applied the provisions of Article 8 (i.e. the determination of the factors of results obtained by third parties conducting activities similar or identical to those of the taxpayer).

Volkswagen Argentina (Fiscal Year 1999) / Aventis Pharma (Fiscal Year 2000)

Even when the companies belong to different industries, there is a common issue related to the burden of proof when discussing transfer pricing issues. The National Tax Courts stated that both parties (taxpayer and the tax authorities) shall support their statements on the process and that the quality of the proof is relevant to both parties. The court considers that the Tax Authority has not proved its own position, which basically consists of discrediting comparability adjustments carried out by the taxpayers in the transfer pricing study.

For example, in case of a selected comparable company with operating losses, the impugnation made by the tax authority is rejected due to lack of a systematic investigation work, so that disqualification has something to be based on.

As a conclusion, the decision points out the importance of preparing and submitting the transfer pricing study because once the taxpayer has met the documentation requirements, the tax authorities shall demonstrate that the analysis performed by the taxpayer is incorrect.

Nobleza Piccardo

In this case, local tax authorities applied the CUP method to analyse the exports of manufactured products using what the tax authorities considered internal comparables (local sales to unrelated customers in a free trade zone). The taxpayer considered that those transactions were not comparable and applied a TNMM.

Again in this case, the National Tax Court considered that proof was a fundamental element to the final decision because the majority of the judges decided that no comparability was observed in the transactions used by the tax authorities as internal comparables.

Alfred C. Toepfer Internacional

This decision, favourable to the tax authorities, remarks the importance of the 'certain date' of the transactions when dealing with products with publicly known prices (commodities). In this case, as the taxpayer was not able to prove the certain date of the transaction, the tax authorities disregarded the prices applied by the taxpayer and compared the price of the exported products with the price at the moment of shipping the goods. It is important to mention that the Income Tax Law was modified in 2003 to include the position adopted by the tax authorities, but the transactions under discussions referred to fiscal year before the law amendment.

Burden of proof

The general rule is that the taxpayer has the burden of proof, as it is obligated to file a report with certain information related to transfer pricing regulations together with the income tax return. If the taxpayer has submitted proper documentation, the

AFIP must demonstrate why the taxpayer's transfer prices are not arm's length and propose an amount of transfer pricing adjustment in order to challenge the transfer prices of a taxpayer. Once the AFIP has proposed an alternative transfer pricing method and adjustment, it is up to the taxpayer to defend the arm's-length nature of its transfer prices.

Tax audit procedures

Selection of companies for audit

The AFIP has a specialised group that performs transfer pricing examinations. This group is part of the *División de Grandes Contribuyentes*, a division of the AFIP that deals with the largest taxpayers. At present, the Argentine tax authorities investigate transfer pricing issues under four main categories:

- In the course of a normal tax audit.
- Companies that undertake transactions with companies located in tax havens.
- Companies that registered any technical assistance agreement or trademark or brand name licence agreement with the National Industrial Property Institute.
- Specific industrial sectors such as the automotive, grain traders, oil and pharmaceutical industries.

Controversial issues include, among others, the use of multiple-year averages for comparables or, for the tested party, the application of extraordinary economic adjustments according to the particular situation of the country (e.g. extraordinary excess capacity, extraordinary discounts, and accounting recognition of extraordinary bad debts).

The audit procedure

The audit procedure must follow the general tax procedure governed by Law 11,683. Transfer pricing may be reviewed or investigated using regular procedures such as on-site examination or written requests. Written requests are the most likely form of audit.

During the examination, the tax authorities may request information and must be allowed access to the company's accounting records. All findings must be documented in writing, and witnesses might be required. In the course of the examination, the taxpayer is entitled to request information, and the audit may not be completed without providing the taxpayer a written statement of findings. Upon receipt of this document, the taxpayer is entitled to furnish proof and reasoning that must be taken into account for the final determination.

Reassessments and the appeals procedure

Additional assessments or penalties applied by the *Dirección General Impositiva* (DGI) may be appealed by the taxpayer within 15 working days of receipt of the notification of assessment. The appeal may be made to either the DGI or the tax tribunal. An unsuccessful appeal before one of these bodies cannot be followed by an appeal before the other, but an appeal before the competent courts of justice may be filed against the findings of either.

If appeal is made before the DGI or the tax tribunal, neither the amount of tax nor the penalty appealed against need be paid unless and until an adverse award is given. For an appeal to be made before the courts of justice, the amount of tax must first be paid (although not the penalties under appeal).

Overpayments of tax through mistakes of fact or law in regular tax returns filed by the taxpayer may be reclaimed through submission of a corrected return within five years of the year in which the original return was due. If repayment is contested by the DGI, the taxpayer may seek redress through either the tax tribunal or the courts of justice, but not both. Overpayments of tax arising from assessments determined by the DGI may be reclaimed only by action before the tax tribunal or the courts of justice. Upon claim for overpayments of tax, interest is accrued from the time when the claim is filed.

Additional tax and penalties

Law 25,795 increases existing penalties and introduces new penalties covering non-compliance by taxpayers in relation to international transactions, as follows:

- Omitted filing of informative tax returns regarding international import and export operations on an arm's-length basis will be penalised with a fine amounting to 1,500 Argentine pesos (ARS) (390 United States dollars [USD]) or ARS 10,000 (USD 2,590) in the case of entities owned by foreign persons. Failure to file returns for the remaining operations will be penalised with a fine of ARS 10,000 (USD 2,590) or ARS 20,000 (USD 5,180) in the case of entities belonging to foreign persons.
- A fine ranging between ARS 150 (USD 40) and ARS 45,000 (USD 11,700) will be set in the event of failure to file data required by AFIP for control of international operations and lack of supporting documentation for prices agreed in international operations.
- A fine ranging between ARS 500 (USD 130) and ARS 45,000 (USD 11,700) has been established for non-compliance with the requirements of AFIP on filing of informative returns corresponding to international operations and information regimes for owner or third party operations. Taxpayers earning gross annual income equal to or higher than ARS 10 million (USD 2.6 million) not observing the third requirements on control of international operations will be fined up to ARS 450,000 (USD 117,000), ten times the maximum fine.
- A fine on tax omission has been established between one and four times the tax not paid or withheld in connection with international operations. In addition, the taxpayer will be liable for interest, currently 2% per month of the additional tax due.

If the tax authorities consider that a taxpayer has manipulated its results intentionally, the fine can climb to 10 times the tax amount evaded, in addition to the penalties established by the Penal Tax Law 24,769. The tax authorities have the discretion to analyse the transfer pricing arrangement(s) by consideration of any relevant facts and application of any methodology they deem suitable.

Use and availability of comparable information

Availability of comparables

Comparable information is required to determine arm's-length prices and should be included in the taxpayer's transfer pricing documentation. Argentine companies are required to make their annual accounts publicly available by filing a copy with the local authority (e.g. *Inspección General de Justicia in Buenos Aires*). However, the accounts would not necessarily provide much information on potentially comparable transactions or operations because they do not contain much detailed or segmented financial information. Therefore, reliance is often placed on foreign comparables.

The tax authorities have the power to use third parties' confidential information.

Use of comparables
To date, there have been several cases where the tax authorities have attempted to reject a taxpayer's selection or use of comparables. Any discussion in this context is focused on the comparability of independent companies, or its condition as independent. In this connection, the tax authority has requested additional information related to the final set of comparables.

Limitation of double taxation and competent authority procedure
Most of the tax treaties for the avoidance of double taxation concluded by Argentina include provisions for a mutual agreement procedure. In Argentina, a request to initiate the mutual agreement procedure should be filed with the Argentine Ministry of Economy. There are no specific provisions on the method or format for such a request.

No information is available on the number of requests made to the Ministry of Economy. It is understood that the competent authority procedure is not well used in Argentina, as there is no certainty for the taxpayer that the relevant authorities will reach an agreement.

Advance pricing agreements (APAs)
There are no provisions enabling taxpayers to agree on APAs with the tax authorities.

Anticipated developments in law and practice
Law
New transfer pricing rules are not expected in the near future.

Practice
The tax authorities are expected to become more aggressive and more skilled in the area of transfer pricing. Transfer pricing knowledge of the 'average' tax inspector is expected to increase significantly, as training improves and inspectors gain experience in transfer pricing audits.

As the number of audits increases, some of the main areas being examined include intercompany debt, technical services fees, commission payments, royalty payments, transfers of intangible property, and management fees.

Liaison with customs authorities
The DGI and the customs authority (*Dirección General de Aduanas*, or DGA) are both within the authority of the AFIP. Recent experience suggests that exchange of information between DGI and DGA does occur. Nevertheless, there is no prescribed approach for the use of certain information of one area in another area (e.g. transfer pricing analysis for customs purposes).

Recently, there has been a change in the customs legislation, and the information that must be provided to the DGA, in relation with foreign trade, is now required in an electronic form. As a result, DGI could have better and easier access to that information.

OECD issues

Argentina is not a member of the OECD. The tax authorities have generally adopted the arm's-length principle and use as guidance the methodologies endorsed by the OECD Guidelines for transfer pricing that give effect to the arm's-length standard.

Joint investigations

Even though there have been some requests for information from other tax authorities (e.g. Brazil) for specific transactions or companies, there is no regular procedure for joint investigations.

Thin capitalisation

The thin capitalisation rules are primarily focused on interest stemming from loans granted by foreign-related parties (entities having any type of direct or indirect control of the borrower). Interest will be deductible considering, at the year-end closing date, the total amount of the liability generating the interest (excluding any liability corresponding to interest whose deductibility is not conditioned) may not exceed two times the amount of the net worth at that date.

In such a circumstance, any excess interest that cannot be deducted will be treated as a dividend.