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LATIN AMERICA  
**DOING BUSINESS  
IN ARGENTINA**





## DOING BUSINESS IN ARGENTINA

# COMPANY FORMATION IN ARGENTINA

## MAIN FORMS OF COMPANY/BUSINESS IN ARGENTINA

According to the law there are six types of companies that, at the moment of setting up a business in Argentina, can be established in the country:

- Sociedad Anónima (SA), which is tantamount of the British private companies limited by shares.
- Sociedad de Responsabilidad Limitada (SRL), is a private company limited by guarantee. It limits the liability of its members up to their capital contribution in the company. The equity is divided into equal stakes (can't be called "shares"), each one of which represents a percentage of the company and that can't be traded on the stock exchange. Their bylaws are regulated by law N° 19550[15] and the commercial partnership is limited to a maximum of 50 partners.
- Sociedad en Comandita Simple (SCS), which are partnerships limited by guarantee. A limited partnership (LP) is a form of partnership similar to a general partnership, except that where a general partnership must have at least two general partners (GPs), a limited partnership must have at least one GP and at least one limited partner.
- Sociedad en Comandita por Acciones (SCA), partnerships limited by shares.
- Sociedad en Nombre Colectivo (SNC), in which all the members share risks and capitals on unlimited basis.
- Sociedad de Capital e Industria (SCeI)
- Sociedad del Estado (SE), is a legal entity that undertakes commercial activities on behalf of an owner government.
- Sociedad de Garantía Recíproca (SGR)
- Sociedad Cooperativa (SC), free associations of members with a common social, economic and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise (cooperative).

Argentine law is complex and changing. It is strongly recommended that legal advice be taken before incorporating a business in Argentina or entering into any contractual arrangement.

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

In Argentina, revenue is raised by the national, provincial and municipal governments, mainly through taxes levied on income, assets, and consumption.

At a national level, the Federal Administration of Public Revenues (AFIP for its acronym in Spanish), an autarchic entity that reports to the Ministry of Economy and Public Finance, is responsible for tax levy, collection and monitoring. At a national level, the main taxes levied include: Income Tax, Value Added Tax, Minimum Presumed Income Tax, Excise Tax, Personal Assets Tax, and Taxes on Debits and Credits in Bank Accounts and Other Operations.

At the provincial level, taxes are collected and administered by the provincial revenue agencies working under the respective provincial ministries of economy. The main provincial taxes are Gross Income Tax (or Turnover Tax), Stamp Tax and Real Estate Tax.

Municipalities raise revenue through rates and special contributions.

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Foreign investments in Argentina are regulated by a framework of international treaties and Argentine laws that establish the norms for choice of law and jurisdiction, legal treatment of foreign investors, monetary policy and foreign exchange.

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require prior government approval except for regulated areas or for general applicable regimes such as antitrust regulations.

However, if a foreign company's investment consists of holding equity of an Argentine company, the foreign company must register with the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and comply with certain periodic reporting requirements.

Foreign investments are governed by the Argentine Foreign Investments Law No. 21,382 enacted in 1976, which has subsequently been the subject of considerable amendment, with a view to liberalizing the regime applicable to them.

The law states, as a general principle, that foreigners investing in economic activities in Argentina enjoy the same status and have the same rights that the Constitution affords local investors. Both are entitled to select any legal organization permitted by law, and to have free access to domestic and international financing.







## DOING BUSINESS IN ARGENTINA

### CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY / OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

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Argentines differ from one another. Geography might have an influence on the characteristics of people you may be in contact with. For instance, people from a metropolitan city, such as Buenos Aires, are generally more informal and direct than people from towns and provinces of the interior of the country.

Generally speaking, Argentines are open-minded and outgoing. All issues can be addressed in a conversation. However, at first contact religion and political issues should be avoided or addressed politely and with some restraint.

Work styles differ between workplaces but it is important to be clean and punctual. Argentines pay extreme attention to dressing, both in summer and winter.

People are expected to meet deadlines in the workplace, although there is often some degree of flexibility.

Work schedules differ from one workplace to another. A tendency to be accountable for results is more used in private sector than in public sector.

Sometimes personal relationships increase opportunities to do business. Argentines are usually committed to personal values, and friendship and family occupy a central place in Argentine society. In Buenos Aires, it is very common to go for coffee after work in one of the city's many cafes. To invite somebody for coffee and indeed talk about business outside of the office is a valuable way to get in contact with others.





## DOING BUSINESS IN ARGENTINA

# PERMANENT ESTABLISHMENT IN ARGENTINA: BRANCH OR SUBSIDIARY?

## DEFINITION OF A PERMANENT ESTABLISHMENT

The expression used by the law of income tax in Argentina, as regards establishments organized as a stable company, has similarity with the known in international tax law as a permanent establishment. As for the characterizing features of such establishment, permanent establishment, subject it reads as follows: a) establishment implies a home and an activity performed in it or from it (commercial, industrial, agricultural, mining, servicing or otherwise); b) in the form of business organization: it implies the existence of an address, an organizational structure and equity; c) stability: implies the intention of continuity, to endure.

## DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

**Branch of a Foreign Entity** - In Argentina, the Corporations Law ("LGS") considered a branch (the "Branch") as a decentralization of the parent company (the "Parent Company" or the "Company"). The Branch is governed by the laws of the country of its headquarters and therefore is authorized to perform all acts that are allowed him to its headquarters. As a result of the established relationship between the Head Office and the Branch, the former is indirectly responsible for the operations performed by the Branch. While the Branch has no limitations to possess own assets, it is not required to have a specific share capital. However, you must take your separate from the Headquarters accounting and submit financial statements annually to Public Registry of Commerce of the City of Buenos Aires (the "PRC"). Branch operations do not generate much administrative control, since it should not be carried out meetings of members, shareholders or directory, nor need to keep track of records. However, the Branch must comply with certain administrative collections, such as registration in the PRC and to social security agencies and tax authorities. Also, annually and together with the presentation of the financial statements, the Branch must inform the RPC any changes that may occur.

**Subsidiary** - A subsidiary is a separate entity, independent of the Head Office (the "Subsidiary"). It has its own duties and obligations, and given its own capital and its own administrative and governing body. The Subsidiary is liable to third parties with its own assets, and therefore, in principle, the parent company is not responsible for the operations carried out by the Subsidiary. However, this shield has recently been questioned by some local courts.

## TAX AND ACCOUNTING OBLIGATIONS

**Income Tax** - Income Tax Law No. 20,628, as amended ("ITL"), establishes a federal tax on the worldwide income obtained by Argentine-resident individuals, legal entities incorporated in Argentina and Argentine branches of foreign entities. As regards income earned by Argentine residents from activities performed abroad, any payment of foreign taxes will be allowed as a credit against payment of the applicable Argentine tax. However, the credit may only be applied to the extent the foreign tax does not exceed the Argentine tax. Non-resident individuals or legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources. Pursuant to the ITL, income arising from: assets located, placed or used in Argentine territory, the performance of any act or activity in Argentina that produces an economic benefit, and events occurring in Argentina will be considered Argentine-source income. There are special rules regarding source of income in the case of certain specific activities such as international transport, telecommunications and technical assistance provided from abroad. Income tax is payable upon the net income obtained during a given fiscal year.

**Transfer Pricing Provisions** - Transfer pricing practices are considered to take place when an Argentine company enters into business transactions with: (i) a related company located abroad, or (ii) a non-related company located in a low tax jurisdiction, and the prices agreed upon in such transactions do not reflect normal market practices (i.e. are not at arm's length). Argentine businesses must submit special reports containing detailed information including data and supporting documentation.

**Withholding Tax on Non-Residents - General Rule** - In principle, any income or gain deemed by the ITL to be from an Argentine source, obtained by a nonresident individual or a foreign legal entity without a permanent establishment in Argentina is subject to withholding tax.

**Tax Exemptions for Foreign Entities** - Non-resident corporations are entitled to all of the tax exemptions provided in the ITL, provided they file a certificate with the Argentine tax authorities evidencing that the exemption will not result in liability to taxation in a foreign jurisdiction.

**Tax on Presumed Minimum Income** - This tax applies to all assets of Argentine companies and other entities. The tax only applies if the total value of the assets exceeds A\$ 200,000 at the end of the entity's financial year. In this case, the total value of the assets will be taxed at the rate of 1%.

**Value Added Tax (VAT)** - This tax applies to the sale of goods located in Argentina, the provision of services and the importation of goods.



## DOING BUSINESS IN ARGENTINA

VAT is paid at each stage of the production or distribution of goods or services upon the value added during each of the stages. Thus, this tax does not have a cumulative effect. The tax is levied on the difference between the so-called "tax debit" and the "tax credit".

Personal Assets Tax - Provides that all individuals domiciled in Argentina are subject to a tax upon their worldwide assets. Individuals not domiciled in Argentina are only liable for this tax upon their assets located in Argentina. Shares, other equity participations and other securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina. The tax applicable on shares and other equity participations in local companies is paid by the local company itself.

Tax on Credits and Debits in Bank Accounts - This tax is levied upon debits and credits in bank accounts and upon other transactions which, due to their special nature and characteristics, are similar or could be used in substitution for a bank account, such as payments on behalf of or in the name of third parties. Tax law and regulations provide for several exemptions to this tax.

Tax Treaties - Argentina has tax treaties presently in force with some countries. In general, these treaties are based, other than those with South American countries, upon the OECD model and particularly seek to avoid double taxation.

Turnover Tax (Tax on Gross Income) - Turnover tax is a local tax levied on gross income. Each of the provinces and the City of Buenos Aires apply different tax rates to different activities. The tax is levied on the amount of gross income resulting from business activities carried on within the respective local jurisdictions. The provinces and the City of Buenos Aires have entered into an agreement to prevent double taxation of activities performed in more than one jurisdiction.

Stamp Tax - Stamp tax is a local tax levied on public or private instruments, executed in Argentina or, if executed abroad, to the extent that those instruments are deemed to have effects in one or more relevant jurisdictions within Argentina. In general, this tax is calculated on the economic value of the agreement.

## REGISTRATION FORMALITIES

To set up a subsidiary, a foreign company must first register in Argentina under the terms of Article 123 of the LSC, this is the sole purpose of participating as a shareholder or partner in a local company, regardless of whether the latter is a SA or SRL. The procedure for registering a foreign company for this purpose is similar to that applicable to a branch.

Establishment of a foreign company in Argentina - When establishing a foreign company in Argentina should consider what type business partnership will develop. Foreign companies can operate in the country either through registration in the Public Registry of Commerce (the "PRC"), a branch or a subsidiary. The subsidiaries are created by the constitution of a commercial company. The most common types are the company ("SA") and Limited Liability Company ("SRL"). Both, the branch and the subsidiary, are subject to the same tax regime. It is also important to have information about how dividends distributed and capital is repatriated to headquarters.

Conditions for registration of foreign shareholders, in order to establish or participate in Corporations in Argentina - First, in order to establish a company, the foreign shareholder who so orders must enroll in the PRC in terms of Article 123 of the Law ("LSC") Corporations to participate as a shareholder of the local society. In this regard, it shall file with the specified documentation. Finally, we record that, not having the time required for the registration of company shareholders can enroll other shareholders of provisional way, who, once the foreign company registered in the PRC in terms of art. 123 LSC, the shares transferred to them.

## STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

The information contained in the definition of branch and subsidiary, as well as registration formalities include the legal aspects to consider. Please see the information described above. Others important aspects to consider are the *Anti-Money Laundering Regulations*, *Dividends of local societies and the repatriation of capital from one branch to its parent company as the Argentina legislation and the Exchange regulations*.



## DOING BUSINESS IN ARGENTINA

# HOW TO HIRE MY FIRST EMPLOYEE IN ARGENTINA

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Before registering the employment relationship, the employer must have their Tax Identification (CUIT) and also be registered as an employer. Both procedures are carried out at the offices of the Federal Public Revenue Administration (AFIP). If the worker does not have its Labor Identification Number (CUIL) shall apply to the National Social Security Administration (ANSES).

The employer shall record and report all matters relating to worker informing the hires and dismissals, as applicable. Thus, by the registration system "Simplification REGISTRY" the employer, through a single procedure, inform the hiring of the worker in the social security system and in the insurance and work injury system; communicate the applicable collective labor agreement and the corresponding category, data on family ties of the worker and other important data on the employment relationship.

The process can be realized through the Internet by accessing the institutional site of the Federal Administration of Public Revenues - AFIP ([www.afip.gob.ar](http://www.afip.gob.ar)) or in person to the delegation of the AFIP in which the employer is enrolled by filing Form 885 / A- duplicate, the text can be obtained from the website of the AFIP.

You must also register the worker with the relevant data of the employment relationship, in the Special Book of Salaries and Wages, established by Article 52 of the Law of Labor Contract No. 20,744, which must be previously signed by the local labor agency and it must be carried in the same conditions as trade books. During the term of the employment relationship the employer shall inform, by filing with the AFIP a monthly tax return (Form. AFIP 931), the data of workers has under its control and paid salaries, calculating and entering the System Social security contributions and contributions that apply.

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

### REGIME OF EMPLOYMENT CONTRACT LAW

The employment relationship is where a person voluntarily develops tasks to another individual or company under its control receiving remuneration in return.

The Law of Labor Contract No. 20744 is presumed if the above conditions are met, so even if the worker parties and employer does not conclude an employment contract in writing, there will be a working relationship generated for both parties all the rights and obligations under it. Whenever there is provision of work under conditions of dependency or subordination exist employment contract, being indifferent to the type of contract and the duration of the connection. Not all types of contracts require the existence of a written contract.

### Modes of Recruitment: *Typical forms of contracts*

#### Indefinite period

The employment relationship lasts until one particular case prevents its continuation. This type of contract does not require the existence of a written contract between the parties. It is the most used mode of recruitment.

#### Of fixed-term contract work

This type of contract is characterized by the existence of a specific duration of at most 5 (five) years. The contract duration time must be in writing, establishing expressly.

#### Seasonal work contract

Article 96 of the LCT determines that a seasonal employment contract exists when tasks correspond to the normal course of business and which by their very nature should be developed only during certain times of the year and are subject to repeated in each cycle under type activity.

#### Casual labor contract

When the work performed is required by the employer to meet the performance of unusual tasks the current activities of the company (ex.: renovation of an industrial establishment; presenting their products in a business event) or tasks without being outside the normal work of the company surpass in quality or quantity (ex.: replace a worker who is absent or meets higher demand for labor) may use any form of contract work.



## DOING BUSINESS IN ARGENTINA

# HOW TO READ FINANCIAL STATEMENTS IN ARGENTINA

### MODELO S.A.

Estado de Situación Patrimonial (o Balance General) al.../.../... comparativo con el ejercicio anterior.

	Actual	Anterior	
<b>ACTIVO</b>			ACTIVE
<b><u>Activo Corriente</u></b>			Current asset
Caja y Bancos (nota...)			Cash and banks
Inversiones Temporarias (anexo... y nota...)			Temporary investments
Créditos por Ventas (nota...)			Accounts Receivable
Otros Créditos (nota...)			other Receivables
Bienes de Cambio (nota...)			Exchange realty
Otros Activos (nota...)			other Assets
<b>Total de Activo Corriente</b>			Total Current Assets
<b><u>Activo No Corriente</u></b>			Non Current Assets
Créditos por Ventas (nota...)			Accounts
Otros Créditos (nota...)			other Receivables
Bienes de Cambio (nota...)			Exchange realty
Bienes de Uso (anexo... y nota...)			Fixed Assets
Participaciones permanentes (anexo... y nota...)			Equity Investments
Otras Inversiones (anexo... y nota...)			other Investments
Activos Intangibles (anexo... y nota...)			Intangible assets
Otros Activos (nota...)			other Assets
<b>Subtotal de Activo No Corriente</b>			Subtotal Non
Llave de negocio (nota...)			Goodwill
<b>Total del Activo No Corriente</b>			Total Non Current
<b>Total del Activo</b>			Total Assets
	Actual	Anterior	
<b>PASIVO</b>			LIABILITIES
<b><u>Pasivo Corriente</u></b>			Current liabilities
<b>Deudas:</b>			Debts
Comerciales (nota...)			business
Préstamos (nota...)			loans
Remuneraciones y cargas sociales (nota...)			Salaries and social security
Cargas fiscales (nota...)			taxation



## DOING BUSINESS IN ARGENTINA

Anticipos de Clientes (nota...)			Customer advances
Dividendos a Pagar (nota...)			Pay Dividends
Otras Deudas (nota...)			other Debt
<b>Total de Deudas</b>			Total Debt
Previsiones (nota...)			
<b>Total de Pasivo Corriente</b>			Total Current Liabilities
<b>Pasivo No Corriente</b>			Forecasts
<b>Total de Deudas</b>			Total Debt
Previsiones (nota...)			Forecasts
<b>Total de Pasivo No corriente</b>			Total Current No Liabilities
<b>Total del Pasivo</b>			Total Liabilities
<b>Patrimonio Neto</b> (según estado correspondiente)			Equity (corresponding)
<b>Total del Pasivo, y Patrimonio Neto.</b>			Total liabilities, and equity





## DOING BUSINESS IN ARGENTINA

**MODELO S.A.**  
**Estado de Resultados al.../.../... comparativo con el ejercicio anterior.**

	<b>Actual</b>	<b>Anterior</b>
Ingresos por Servicios / Services revenue	--	--
Costo de Ventas (Anexo II) / Sales cost	--	--
Resultado Bruto / Gross result	--	--
Gastos de administración (Anexo V)/ Administrative expenses	--	--
Gastos de Comercialización (Anexo V)/ Selling Expenses	--	--
Otros Ingresos Financieros (Nota 3.f)/ Other financial income	--	--
Otros Egresos Financieros (Nota 3.f)/ Other Financial Expenses	--	--
Impuesto a las ganancias / Income tax	--	--
(Ganancia)/Perdida del ejercicio / (Gain ) / loss for the year	--	--