



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.



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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*.