



# Argentina

## WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	1998
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	No. The OECD Transfer Pricing Guidelines do not represent a binding law in Argentina. There are certain differences between the OECD Transfer Pricing Guidelines and Argentinean transfer pricing rules regarding the possibility of choosing the tested party and the method applicable to commodity export transactions. In the aspects not covered by the local regulations, the OECD Guidelines could be considered as a soft law.
Does your country apply the arm's length standard?	Yes
Which TP methods may be applied?	Art. 15 of the ITL states the methods to control transfer pricing. Under the wording of that norm, the diagram of applicable methods can be divided into two types; the methods that match those in the OECD Guidelines and the method contemplated only in the Argentine legislation. In the first group, are the methods of the Comparable Uncontrolled Price (CUP) Method, the Resale Price (RP) Method, Cost Plus (CP) Method, Profit Split Method and Transactional Net Margin (TNM) Method. In the second group is the Quotation Price at the Shipment Date Method,
Are any TP methods preferred over others?	No. The best method rule applies.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR implemented; No MF/LF
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	Articles 8, 14, 15, 129 and 130 of the Income Tax Law. Regulatory Decrees of the Executive Branch: 485/99, 290/00, 1037/00, 916/04, 589/13. General Resolutions of AFIP: 1122/01, 1633/04, 1918/05, 3132/11 and 3579/13.
2. Master File (MF)	
	Not implemented
3. Local File (LF)	
	Not implemented
What is the threshold requirement for the obligation to prepare a LF?	There is no threshold established. The LF in line with OECD BEPS 13 has not been implemented. The answers provided refer to local transfer pricing documentation requirements.
As from which year does this obligation exist?	Since 1999
When does the LF need to be available?	It must be filed with the ARS within eight months after the closure of the fiscal year.
When does the LF need to be submitted?	TP Report must be filed with the ARS within eight months after the closure of the fiscal year.
How and where should the LF be filed?	It must be filed through the ARS web site.
Does the LF have to be prepared in the relevant local language?	Yes. It must be prepared in Spanish.
Or is documentation in English permissible?	No

What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	No
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	<p>The Argentinean Local File must include the following information:</p> <ul style="list-style-type: none"> <li>• Activities and functions performed by the taxpayer.</li> <li>• Risks borne and assets used by the taxpayer in carrying out such activities and functions.</li> <li>• Detail of elements, documentation, circumstances, and events taken into account for the analysis or transfer price study.</li> <li>• Detail and quantification of all transactions performed (no matter materiality).</li> <li>• Identification of the foreign parties with which the transactions being declared are carried out.</li> <li>• Method used to justify transfer prices, indicating the reasons and grounds for considering them to be the best method for the transaction involved. (Tested party must always be the Argentinean company)</li> <li>• Identification of each of the comparables selected for the justification of the transfer prices.</li> <li>• Identification of the sources of information used to obtain such comparables.</li> <li>• Detail of the comparables selected that were discarded, with an indication of the reasons considered.</li> <li>• Detail, quantification, and methodology used for any necessary adjustments to the selected comparables.</li> <li>• Determination of the median and the interquartile range.</li> <li>• 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.</li> <li>• Description of the business activity and features of the business of comparable companies.</li> <li>• Conclusions reached.</li> </ul>

<b>4. Country-by-Country Reporting</b>	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	750 -Argentina has joined the OECD / G20 BEPS Project. This is why the AFIP is expected to provide rules towards the need to produce a Country by Country Report and the automatic exchange of information as soon as possible.
Euro Equivalent	EUR 750,000,000
As from which year does this CbCR obligation exist?	From the year following the year that the threshold is met
When and how do the tax authorities need to be notified who the reporting entity is?	Until the second month after the end of the fiscal year of the reporting entity
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	Until the twelfth month after the end of the fiscal year of the reporting entity
Where is the CbCR to be submitted ?	Through the AFIP website (afip.gov.ar): option "Country-by-Country Information Regime" / "Presentation Report ". As evidence of the filing, the system shall issue the affidavit form F-8097.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	Filing the information requested through the AFIP website (this hasn't been implemented yet)
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes

Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	AFIP General Resolution 4130-E regulates information to be submitted to the Fiscal Authority in the CbC Report. Although this information does not substantially differ from that required by the OECD, in cases where the parent company has designated a substitute company to perform the reports on its behalf the Argentine rules request full details about the parent company and the substitute company.
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	First, double tax treaties in general, especially those framed after the OECD Model Tax Convention, article 26, which protect public policy in each country in general terms. This much applies, for example to the treaties with Australia, Belgium, Canada, Chile, Denmark, United Arab Emirates, Spain, Finland, France, Italy, México, Norway, The Netherlands, United Kingdom, Russia, Sweden, Switzerland. Secondly, the OECD tax information exchange framework, including to the Multilateral Competent Authority agreement for the automatic exchange of Country-by-Country reports ("CbC MCAA"), which was signed by Argentine in 2016.
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

### 5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Intentionally submitting an incorrect / too low tax return and failing to inform the tax authorities accordingly constitutes a tax crime. Legal consequences may range from (monetary) fines to imprisonment.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	Intentionally submitting an incorrect / too low tax return and failing to inform the tax authorities accordingly constitutes a tax crime. Legal consequences may range from (monetary) fines to imprisonment but are reduced as/if it is only a participation in the tax fraud of the taxpayer.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Form 742, Form 743, Form 969.
What would be the filing deadline?	F-742 must be filed with the ARS within eleven months after the opening of the fiscal year. F-969 must be filed 15 days after the Income Tax Return. F-743 must be filed with the ARS within eight months after the closure of the fiscal year.

<p>What would be the penalties for non-compliance?</p>	<p>The law punishes the failure to submit on due time the transfer pricing obligations (transfer pricing returns along with the transfer pricing report and financial statements of the taxpayer for the fiscal year under study) with a fine arising to AR \$ 20.000 when the taxpayer is a company of foreign capital and AR\$ 10.000 for domestic companies. Additionally, in cases of failure to comply with the due dates established, and when the ARS specifically requires the filing of the mentioned returns and there was also failure to comply with the deadline given for the special term, the fines described above are combined with another adjustable between AR\$ 500 and AR\$ 45.000. Finally, in cases of repeated requests by the fiscal authority, the fine is increased to at least AR\$ 90.000 and a maximum of AR\$ 450.000 if the taxpayer (i) does not answer the third requirement of the ARS, and (ii) has gross annual income equal to or greater than AR\$ 10,000,000. It is provided that this fine accumulates with those previously applied.</p>
--	--

**6. Benchmarking**

<p>Is there any local guidance or requirement with regard to the preparation of a benchmark study?</p>	<p>Yes. The Annex II of General Resolution 1122/01 states specifications the Transfer Pricing Report must comply with. Among this specifications are the following:          Identification of the method used for the justification of transfer prices, indicating the reasons for which it was considered as the best method for the transaction under analysis.          Identification of each of the comparables selected for the justification of the transfer prices.          Identification of the sources of information from which the comparable were obtained.          Details of the selected comparables that were discarded with indication of the reasons that were taken into account.          The detail, quantification and methodology used to make the necessary adjustments to the selected comparables.          The determination of the median and interquartile range.          The transcription of the income statement of the comparable corresponding to the business years that are necessary for the analysis of comparability, indicating the source of information.</p>
<p>Are there any materiality thresholds that apply for the requirement to have a benchmark study available?</p>	<p>No</p>
<p>Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?</p>	<p>No</p>

**7. Year-end adjustments**

<p>Are year-end adjustments permissible?</p>	<p>No</p>
--	-----------

**8. Transfer Pricing Audit and Dispute Resolution Mechanisms**

<p>What are currently the main TP areas of scrutiny by the tax authorities in your country?</p>	<p>In the Latin American region, Argentina probably conducts the most tax audits and imposes the largest number of tax assessments related to transfer pricing matters. Currently, more than a hundred cases are being litigated before the Tax Court, the Federal Justice of the First Instance and the Federal Court of Appeals. These transfer pricing cases involve industrial manufacturing, the pharmaceutical industry and the commodity export sector. In addition, a number of transfer pricing adjustments made by the ARS were challenged as being in violation with the Brazilian, Chilean, Swiss, Dutch and Spanish Tax Treaties. All of these challenges motivated Competent Authority proceedings. Another case of note is one related to allocation of profits in mining ventures in the Argentine-Chilean border, which was resolved for the first time in the Argentine tax history by a bilateral agreement between the Chilean and the Argentine treaty competent authorities.</p>
<p>Based on your experience, are joint or multilateral audits initiated and carried out?</p>	<p>No</p>
<p>Does the taxpayer have the option to apply for bilateral or multilateral APAs?</p>	<p>No</p>

**Your contact person:**

Mr. Cristian E. Rosso-Alba  
 crossoalba@rafyalaw.com  
 T: +5411 4877 7000/7006