28 May 2020

Global Tax Alert

News from EY Americas Tax and Transfer Pricing

Argentina issues long-awaited transfer pricing regulations

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On 15 May 2020, the Argentine Federal Tax Authorities (AFIP – Administración Federal de Ingresos Públicos) published, in the *Official Gazette*, General Resolution No. 4717 (GR 4717), containing the long-awaited regulations implementing the transfer pricing (TP) provisions enacted as part of the tax reform in December 2017. These rules mainly cover the TP compliance obligations for fiscal years ended December 2018 and onwards (including due dates and the creation of new returns). Those compliance obligations include the filing of the TP report (local file) and master file. Additionally, the regulations introduce definitions and requirements that will impact existing and future intercompany transactions involving Argentine companies. Multinational companies doing business in Argentina should review the new regulations and assess their intercompany transactions.

Compliance obligations and due dates

The TP report and master file were due beginning the week of 18 May 2020. GR 4717 extends the filing due dates for Form 2668, TP report, and the master file as follows:

- For tax years ending December 2018 to May 2019, the due date is from 10 June to 14 June 2020.
- For tax years ending June 2019 to November 2019, the due date is from 10 August to 14 August 2020.
- For tax years ending December 2019 to April 2020, the due date is from 10 October to 14 October 2020.

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After 2020, the filings will be due as follows:

- Form 2668 and the TP report will be due from the 23rd to the 27th of the sixth month following the year-end.
- The master file will be due from the 23rd to the 27th of the 12th month following the year-end.

Taxpayers will have to report:

- Cross-border transactions between Argentine residents and foreign related parties
- Transactions between Argentine residents and independent parties located in "non-cooperating" jurisdictions or "low or no tax" jurisdictions
- Import and export transactions conducted with independent parties for values exceeding ARS10 million (approximately US$143k) per tax year

The regulations include several rules to determine which transactions need to be reported and the information required for each of them. To determine whether a transaction has to be reported, taxpayers should consider certain factors, such as the amount of the transactions (stand-alone and aggregated) and whether they belong to an economic group subject to the filing of a master file or the country-by-country (CbC) report. Because of the low thresholds established in GR 4717 and the interaction of various regulations, it is highly likely that most Argentine entities conducting transactions with foreign related parties will be required to perform at least one of the following TP filings:

- Form 2668 (including Form 4501 with the electronic signatures of the taxpayer's representative, the Certified Public Accountant or economist authenticated by the local body governing the professional registry)
- TP report
- Master file

Filings related to the CbC report continue to be regulated through AFIP's General Resolution 4130/2017.

Definitions and concepts applicable to the analysis of cross-border transactions

In addition to the general framework for TP compliance, GR 4717 introduces fundamental definitions and requirements that will impact the planning and implementation of intercompany transactions involving Argentine companies. Specifically, GR 4717 requires taxpayers to perform a segmented analysis for each business line and an analysis based on accounting information adjusted for inflation (according to Argentine GAAP). It also requires taxpayers to follow the local tested-party rule.

Additionally, GR 4717 provides specific criteria for the analysis of:

- Intragroup services
- Financial operations
- Transactions involving intangible assets
- Research and development activities, including contract R&D
- Exports of goods with public prices

GR 4717 allows taxpayers to use "other TP methods" in certain instances, such as:

- Operations involving unique, valuable and specific goods or rights that do not have comparables or are difficult to assimilate to other goods or rights
- Transfers of shares or participations in companies that are not listed in stock exchange markets
- Transfers of intangible assets

For transactions involving international traders, GR 4717 establishes:

- New characteristics that shape the definition of international traders
- Requirements for performing a functional analysis of international traders
- Requirements for documenting arm's-length remuneration obtained by international traders
- The information to be obtained and kept regarding international traders

It also defines business restructurings and the minimum information that should be included in the TP report, as well as the local requirements for filing the master file.

Implications

Companies should carefully assess the obligations with which they must comply and consider implementing alternative processes for intercompany transactions in light of the new definitions and specific criteria established for different issues. Failure to comply with this new legislation may result in penalties and increase the probability of being audited by the tax authorities.

This Tax Alert only presents an initial overview of the main developments contained in GR 4717, but the resolution could have significant implications for companies doing business in Argentina. Companies may have to perform a detailed analysis of financial operations, service provisions and transactions involving intangibles or intermediaries, among others.

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EYG no. 003574-20Gbl

1508-1600216 NY
ED None

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