

*tax notes international*SM

Volume 25, Number 6



11 February 2002

MULTINATIONAL ORGANIZATIONS

Barbados Earns Removal From OECD's Tax Haven Blacklist	547
EU Official Assures Member States of Sovereignty Over Tax Policy	550
EU VAT Directive Raises Compliance Issues	568
OECD Reviews Tax Systems in Italy, the Netherlands	581, 585

TAX LEGISLATION & BUDGETS

Chilean Government Presents Tax Package to Parliament	565
Denmark's Budget Proposal Contains Corporate Tax Incentives	567
Japanese Diet Expected to Approve New Tax Reforms	548
U.K. Delays Introduction of Next Budget	596

TAX ADMINISTRATION

Canadian Provinces Lose Out on Revenues Due to Accounting Error	563
Israel Defends Retention of Palestinian Tax Proceeds	580
Russia Announces New Installment Rules for Profits Tax	589

COMMENTARY & ANALYSIS

An Argentine Perspective on Consumption Taxes and E-Commerce	653
Attribution of Profits to Permanent Establishments	629
Canada's New Tax Rules for Foreign Spin-Offs	647
Effects of India's Tax Treaties on Transfer Pricing Rules	624
Evidence Suggests European Tax Havens Are Soaking Up U.S. Capital	551
Germany's Taxation of Foreign Investment Funds	611

The Consumption Tax and E-Commerce Transactions — An Argentine Perspective

by Silvia Guadalupe Catinot

Silvia Guadalupe Catinot is a legislative advisor with Argentina's Revenue Service (Administración Federal de Ingresos Públicos).
E-mail: scantinot@afip.gov.ar

While it goes without saying that e-commerce began with telephone sales and by catalog through CD-ROM, e-commerce really soared with the explosion of the Internet, producing changes in the organization and form of global commerce. Among those changes has been the disappearance of geographical barriers in electronic business, the elimination of multiple elements that participate in traditional commerce, an increase in the competitiveness of vendors of products and net services, the reduction and elimination of distribution channels, the reduction of production and marketing costs of goods, the appearance of new business opportunities (online information services, directory services, and contact services), and an improvement in the quality of customer service.

The new commerce presents numerous opportunities and challenges for the taxpayer and tax authority. This article explores the tax treatment of e-commerce transactions in Argentina, as well as the problems it produces and the steps the Argentine tax administration (Administración Federal de Ingresos Públicos — AFIP) is developing to address the phenom-

I. General Principles

E-commerce is generally understood to mean commercial and financial transactions carried out through the processing and transmission of information, including text, sound, and image. This information can be the main object or a related element of e-commerce. Obviously, this definition is quite broad and includes any type of business transaction in which the parties interact electronically instead of through tangible transactions. Negotiating electronically includes contacting customers, exchanging information, selling, providing customer service, making electronic payments, and distributing products.

This phenomenon is commonly known as direct or indirect e-commerce. Indirect e-commerce is when marketed goods are sent through traditional distribution channels (for example, through courier services). Direct e-commerce is when the order, payment, and transmission of intangible goods or services take place through a Web page (for example, software, information services, etc.).

Whatever the precise definition of "e-commerce," broad or restrictive,¹ and regardless of its relationship with the information society,

far. Nevertheless, it is necessary to point out that e-commerce transactions can be carried out between different players, as discussed below.

ELECTRONIC TRANSACTIONS

Elements:

- (1) To enter Internet.
- (2) To design a Web page.
- (3) To install the page in the server.
- (4) To contract for services with an Internet Service Provider (ISP)

E-commerce is a subgroup of the information society in which new technologies, particular the use of the Internet, are applicable to commercial transactions of different content between enterprises, private consumers, and public consumers.

E-COMMERCE ACTORS

- ✓ Between enterprises or "business to business" (B2B).
- ✓ Between enterprises and consumers or "business to consumers" (B2C).
- ✓ Between enterprises and administrations or "business to administrations" (B2A).
- ✓ Between consumers and administrations or "consumers to administrations" (C2A).
- ✓ Between consumers or "consumers to consumers" (C2C).
- ✓ Between consumers or "consumers to consumers" (C2C)

- Business-to-Business (B2B)
B2B e-commerce can occur between users (buyers and sellers)

¹If the e-commerce transaction is one in which all its parts are carried out through

or between providers of tools or support services (financial institutions, Internet service providers, etc.)

- Business-to-Consumers (B2C)

B2C e-commerce is when an enterprise sells its products and provides services through a Web site to customers who are the ultimate users of the product or service.

- Consumers-to-Consumers (C2C)

It is possible for customers to carry out transactions with each other, for example, as with the online sale of goods cheaply. This is referred to as C2C e-commerce.

- Consumers-to-Administrations (C2A)

With C2A e-commerce, citizens interact with tax administrations to file a tax return, pay taxes, obtain information, or utilize other services.

- Business-to-Administrations (B2A)

In B2A e-commerce, public administrations act as regulator agents and promoters of e-commerce, as well as users of it.

II. Current E-Commerce Situation in Argentina

CURRENT SITUATION

- In 1997 US \$3.3 million goods were sold by e-commerce in Argentina
- The expectation is that the volume will rise to US \$638 million in 2002.

E-commerce activity has rapidly increased in Argentina. In 1997, US \$3.3 million of goods and services were sold this way, primarily through B2B transactions. For the year 2002, the government expects the volume of electronic transactions to increase to US \$638 million.

The following chart illustrates the growth of e-commerce in Argentina:

E-commerce (in millions of US \$)	1997	1998	1999	2000	2001	2002
B2B	2.8	9.9	31.4	83.5	202	445
B2C	0.5	2.9	8.5	28.0	82.8	193.2
Total	3.3	12.8	39.9	111.8	284.4	638.7

Source: Morgan Stanley Dean Witter

The following chart illustrates the growth of the use of the Internet in Argentina:

PC's and Internet	1997	1998	1999	2000	2001	2002
1. Millions of personal computers	1.6	1.9	2.3	2.7	3.2	3.9
2. Percentage of PC penetration in Argentina	4.6	5.4	6.3	7.3	8.6	10.2
3. Internet Users	0.2	0.4	0.7	1.3	1.8	2.4
4. Internet penetration %	0.7	1.1	2.0	3.6	4.9	6.2
5. Internet subscribers	0.1	0.2	0.4	0.9	1.2	1.7
6. Subscription growth	0	76	85	103	40	33

Source: Clarín, 9 July 2000

III. Consumption Tax and E-Commerce in Argentina

The ability to quickly obtain information that produces cyber-commerce facilitates and stimulates cross-border transactions, which increases a business's mobility and capital. At the same time, however, this fact limits where the economic activity can be developed and who are the final addressees of goods and services. It also has an effect on determining what jurisdiction possesses the taxing power over cross-border transactions.

The OECD has correctly emphasized that authorities must ensure e-commerce doesn't affect the government's ability to collect revenue via taxation.² The OECD has also stressed that tax principles governing traditional commerce should be adapted for use with e-commerce.

Understanding the relationship between a tax jurisdiction and e-commerce is not as simple as one might imagine, because the term e-commerce includes many different transactions with different parties and means of

execution. Transactions can be concluded and carried out through personal Web sites or even off-line.

In Argentina, e-commerce is subject to those taxes that integrate the Argentine tax system, including the VAT.

A. History

By the middle of 1998, the Working Group on E-commerce and Outside Commerce was created within the Economy Ministry. Members of the group consisted of people from different sectors of the government connected with e-commerce. For example, the group was represented by the following departments: foreign and local commerce, banks and insurance, and tax policy. After the group concluded its first meeting, it was invited to participate with other government entities that were also dealing with the issue, including the

²CLAT Technical Conference, Porto, Portugal, Sept. 1999.

External Relationships Ministry and International Commerce, the Justice Ministry, the Communications Secretary, the Public Function Secretary, the Small and Middle Enterprise Secretary, and the Central Bank of Argentina.

The working group's objective was to examine the implications of the different modalities of e-commerce in Argentina and the effects on the public. The group was also instructed to operate on the premise that the tax principles applied to traditional commerce — neutrality, efficiency, security, simplicity, effectiveness, impartiality, and flexibility — should so apply to electronic commerce.

The group was divided into five subgroups: commercial, legal, tax, financial, and technological. The tax-related subgroup was tasked with analyzing the impact the advent of e-commerce has had on government revenues. In its first meeting, the subgroup studied tax evasion and avoidance as a distortion factor of e-commerce, as well as the tax and customs situation of intangible goods and services. The subgroup's analysis operated within current domestic legislation and international policy.

The entire working group submitted its first report in September 1998, which the Economy Ministry approved in Resolution No. 412/99.³ Discussed within the report was the concept, scope, characterization, and potential of e-commerce in electronic cross-border transactions. The group later released a second report, which the Economy Ministry approved on 19 October 1999 by Resolution No. 1.248.⁴ This report supplemented the first report. In the second report, the tax subgroup emphasized that it is very important to distinguish between direct and indirect e-commerce. The former involves intangible goods transmitted by the Internet, while the latter is no different from telephone sales.

In this regard, the report stated, it's necessary to analyze the

contracts involved to determine applicable taxes. It is also necessary to determine whether the buyer is an individual or an enterprise. If the buyer is an individual and he will be the ultimate consumer of the digital product, the transaction will be deemed a provision of services, which may or may not be subject to VAT:

- If the transaction has a foreign provider, it is not subject to VAT.
- If the transaction has a local provider and a nonresident buyer, it is subject to VAT but at a zero rate.
- If the transaction has a local provider and a resident buyer, it is subject to VAT.

If one party to a transaction is an enterprise, the contract must be analyzed for tax purposes. In particular, the following cases can be presented:

INTANGIBLE GOODS

Concept: Includes the rights for the use of industrial assets as patents, trademarks, etc., but also incorporates the literary and artistic property, the intellectual property — as the "know-how" — and the industrial and commercial secrets.

Classification:

- (1) Intellectual property rights.
- (2) Industrial property rights.

INTELLECTUAL PROPERTY RIGHTS

Example: The delivery of digital information (music, books, etc.)

We have to distinguish the contract object to establish if we are in the presence of a:

- ✓ **Licence for use:** The transaction will be treated in the same way as the service provisions.
- ✓ **Licence for economic use:** The transaction will be treated in the same way as the use of intellectual property rights.

INDUSTRIAL PROPERTY RIGHTS

Includes the intangible good used in the development of economic activities.

Classification:

- (1) Marketing intangibles.
- (2) Industrial intangibles.

MARKETING INTANGIBLES

Manners of transfer:

- ✓ **Sale:** is assimilated to the transfer of goods or services.
- ✓ **Licence contract:** the transaction is treated in the same way as the licence for economic use.
- ✓ **Franchising contract:** the transaction is treated in the same way as the services.

1. Software Transmissions

For transactions involving the transmission of software, one must ascertain the object of the contract to determine whether the transaction involves a license of use or a license of economic use. The former will be treated as a provision of services, while the latter will be treated as the economic exploitation of an author's rights.

A license of use can be subject to different VAT consequences. Transactions carried out with a foreign provider are subject to tax in Argentina if the user of the rights is tax-exempt or not subject to tax in the foreign country. Transactions carried out with a local provider are subject to VAT.

³From the Economy Ministry.

⁴The resolution can be found at <http://www.mecon.gov.ar>.

LICENCE FOR USE
<p>Value Added Tax:</p> <p>✓ Foreign provider: In this case the transaction will be taxed, only if the purchaser is a VAT taxpayer for other economic activities in Argentina.</p> <p>✓ Local provider: The transaction is subject to VAT.</p>

On the other hand, if the transaction is a license of economic use, the transaction is not subject to VAT and the rule contained in the last paragraph of article 3 of the VAT law would not apply. This paragraph states that taxable transactions include the transfer or termination (and their related services) of the use of intellectual, industrial, and commercial property rights, even when these services or rights are tax-exempt or not subject to tax (an exception exists for literary or music rights).

2. Transmission of Digital Information (Music, Books, Access to Data Bases)

As with the transmission of software, it is necessary to distinguish the destination of a product to determine the VAT consequences of a transmission of digital information. Transmissions involving use will be a service provision, while transmissions involving the reproduction of goods will be a transfer of an author rights.

3. Transfer of Technical Information (Plans and Formulas)

Transfers of technical information, regardless of the intangible's destination, will be deemed transfers of technology, which are not subject to VAT.

4. Lease of Advertising Space on the Internet

The working group's report pointed out that another business that can be exploited through the net is the lease of advertising space on Web sites. Once an owner has developed a Web site, it can lease advertising space to enter-

prises interested in advertising their products or carrying out institutional publicity. This new form of business is similar to publicity through usual means of communication.

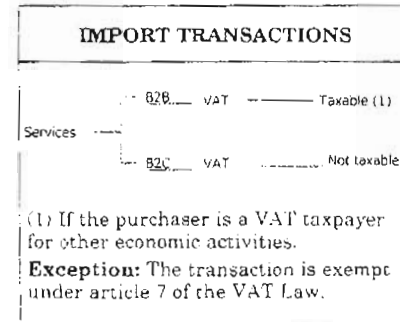
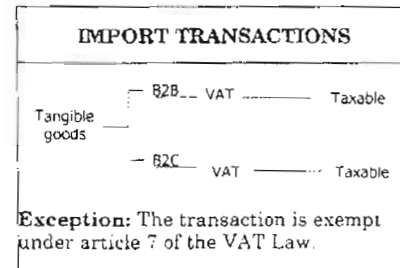
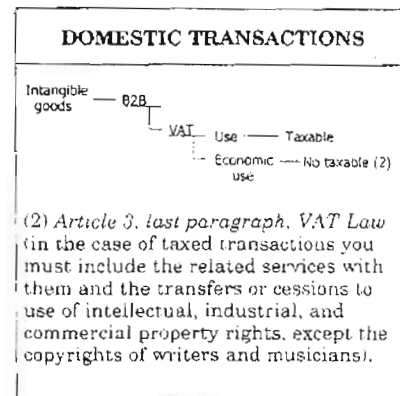
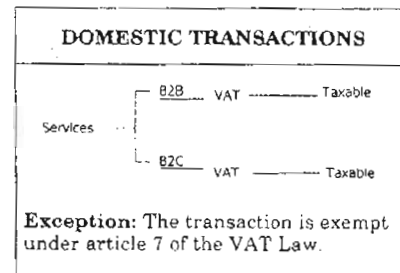
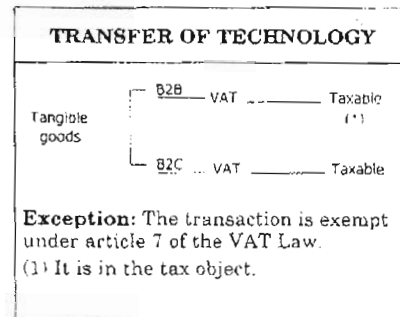
Article 1(b) of the Value Added Tax Law taxes "service provisions . . . carried out in the territory of the Nation." International telecommunications "will be considered carried out in the country when the retribution will be attributable to an enterprise located in it." As discussed within its report, the working group believed this article could be broadened to include provisions carried out through Web sites, to establish when they would be considered exports or imports of services. To this end, if a service is used economically in Argentina as a necessary step to incorporate an entity in Argentina and it is presumed that services will be provided in Argentina, the service will constitute "an export of service."

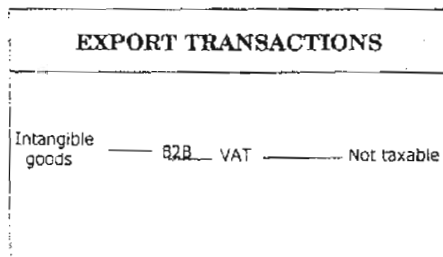
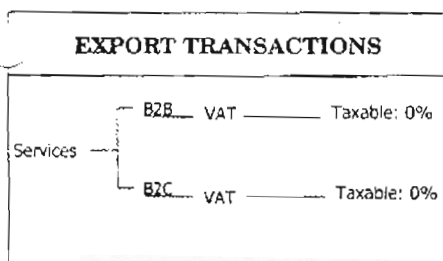
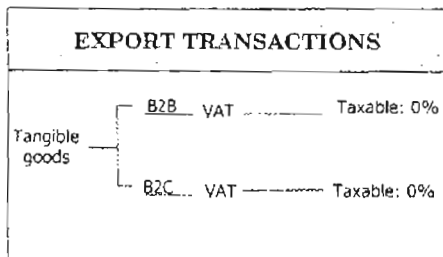
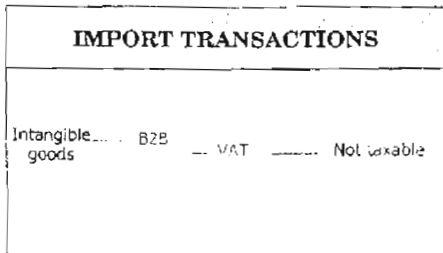
Finally, the report concludes with affirming that the normal VAT rules and regulations can be applied to electronic transactions. The report does note, however, that some unanswered questions remain. Members of the tax subgroup suggested that the law be amended to specify when an electronic transaction becomes subject to tax and to specify its taxable VAT base. As for the lease of advertising space on the Web, the report provides potential legal text relating to the use of the services for VAT purposes.

As of the writing of this article, the tax subgroup is still at work analyzing this topic.

IV. VAT on E-Transactions: Examples

The charts below illustrate the different VAT treatment of various transactions.





V. Conflicts Relating to Consumption Tax

E-COMMERCE: PROBLEMS AND IMPLICATIONS IN THE CONSUMPTION TAX

- ✓ The localization of the taxable activity. Where is it happening? In which jurisdiction?
- ✓ Intangible goods vs. service provisions.
- ✓ Who are the parties of the transaction? What is their character in the VAT? (Taxpayer, not a taxpayer, exempt person, etc.).
- ✓ No middlemen in the transactions or a least number of them.

The e-commerce transactions discussed above all present new business forms and big problems for tax administrators, as well as for businesses. As for consumption taxes, especially the VAT, the following are some of the primary problem areas: locating the taxable event, distinguishing between the transfer of intangible goods and service provisions, identifying or locating parties to the transaction, and suppressing or reducing the middleman in the marketing chain.

E-commerce makes it difficult to determine what jurisdiction a marketed product will be consumed or wasted in. For indirect taxes, taxing jurisdictions are governed by the principle of "destination country" or "origin country." Under the first principle, the origin country, exporter, or seller would not tax the exported goods, and the importer country, buyer, or receiver would ensure the goods are subject to the same tax treatment as applicable to goods originating from other countries and that is consistent with domestic law.

It should be emphasized here that the application of this principle requires the existence of different tax jurisdictions that apply the concept of "adjustment in opposite" — that is, the export country must offer a refund or exemption of taxes that had an impact on the integral products of the marketed goods, while the import country must apply a similar tax regime as is applicable to goods produced domestically.

To apply the principle of origin country, one must consider where the seller or exporter is located. It is unnecessary to adjust tax systems in this case, but it is necessary to ensure the application of similar tax regimes doesn't produce tax or economic distortions.

Argentina, like most jurisdictions, applies the imposition approach in destination, so as not to harm the competitiveness of its

products in the international market. Again, under the principle of the destination country, the importer country has the power to tax the entrance of products into its jurisdiction or services performed outside for its residents. This concept is perfectly easy to apply to tangible goods, but it is extremely complicated to apply to services.

On this issue, it should be borne in mind that an international provision of a service can be carried out through one of the following manners:

- the consumer moves to the producer's country;
- the service moves to the consumer's country;
- the information inherent in a service provision is sent to the consumer's country;
- the producer moves to the consumer's country;
- the good the service is incorporated within moves to the consumer's country; or
- the consumer uses the service in a jurisdiction that is different from the one that he is resident of or where his business is located.

Consequently, it is of vital importance to determine where the provision of service occurs and where the service is consumed, because the resulting tax consequences will vary depending on the following combination of facts:

- if the service is provided and economically used in the country;
- if the service is provided and economically used outside the country;
- if the service is provided inside a country but economically used outside; or
- if the service is provided outside a country but used within the country.

To make this determination, it's necessary to define the concept of

"permanent establishment." The PE issue is one of the most important problems in international tax law. A PE is the principle criterion that must be present to determine whether one country has jurisdiction to tax a nonresident entity's transactions in that country. The PE concept is discussed in article 5 of the OECD model tax treaty and defined as a fixed place of business through which an enterprise performs all or part of its activities. If a Web page installed in a server constitutes a PE and it is located in the same country as the recipient of the service, there is no doubt the service is subject to VAT in that country because it is a transaction carried out entirely within the country's boundaries. Also, in direct transactions, it is difficult to establish the intrinsic nature of operations and the rights and products that are transmitted because the transactions do not involve objects or goods. What was a sale and purchase of a book until that moment, with the rising delivery of an intangible good, now becomes a simple service provision.

The commercial rules associated with business transactions will also play a tax-related part. Compare, for example, the exploitation of an intellectual property right with a mere service provision. With the property right, an economic use of the transmitted right will exist that gives the grantee the right to reproduce the transmitted work; in this case, the transaction will be not subject to tax. On the other hand, for a service provision, the borrower's intent will be the consumption or use of the service, making the provision subject to tax.

A note should be made about the provision of services related to the computer sector, as well as the appearance of new provisions — such as online provisions, online information services, and directory services. It is necessary to point out that the identification of parties and their locations produce problems for indirect tax purposes.

These problems are exacerbated with the reduction and suppression of middlemen in the marketing chain. Tax administrators usually deem middlemen to be retention or information agents.

VI. Tax Administration

In Argentina, the regulation of e-commerce is in its early stage. The development of computer networks, primarily the Internet, offers tax authorities remarkable opportunities to create a modern administration for taxpayers. The use of computerized procedures has improved the tax authority-

The appearance of e-commerce has produced new difficulties for the collection of cross-border transactions.

taxpayer relationship, optimizing the ability of tax authorities to provide services that facilitate tax compliance and reduce its associated costs.

A. Digital Signature

The Argentina National Public Administration is quite advanced with allowing the use of digital signatures. Decree No. 427/98 established the procedures for the use of digital signatures that can be used for public purposes, giving digital signatures the same effect as holographic signatures.⁵ Decree No. 427/98 permitted the use of

digital signature for public administration purposes.

The regulations of Decree No. 427/98 were supplemented by Resolutions No. 45/97⁶ and No. 212/97,⁷ issued by the Public Function Secretary. The resolutions introduced new norms for incorporating the technology of digital signatures in the information processes of the public sector, and the certifications politics for the license of the certificate authorities, the standards of license and the operation of the certificate authorities of the National Public Administration, respectively.

B. Tax Procedures

Law No. 11.683 of Tax Procedures allows enterprises to use computer systems for accounting purposes. It also allows the use of magnetic filings whenever the conditions specified in article 36 are fulfilled. These rules are consistent with amendments made to the Society Law by article 61 of Law No. 22.903. Article 61 allows companies to maintain books and records on computers or through other magnetic or mechanical means, except for the inventories and balance sheets, as authorized by the Commercial Public Registration.

The AFIP, through several resolutions, has established the requirements for the use by legal persons of computer systems relating to the submission of documents.⁸

⁵See <http://www.pki.gov.ar/PKIdocs/Dec427-98.html> and <http://infoleg.mecon.ar/txtnorma/50410.htm>.

⁶See <http://www.pki.gov.ar/PKIdocs/Res45/97> and <http://www.sfp.gov.ar/res45.html>.

⁷See <http://ol.pki.gov.ar/policy/actual.html> and <http://infoleg.mecon.ar/txtnorma/55346.htm>.

⁸For example, article 24, *et seq.* of R.G. No. 3419.

C. Tax Returns

At the beginning of 1999, the AFIP created, through General Resolution No. 474,⁴ an optional regime that allows taxpayers to file tax and social security returns electronically. The resolution provides rules about the selection of security keys, personal identifications, and the presentation of tax returns transmitted remotely under contracts with a bank system. The regime facilitates compliance with tax obligations by allowing taxpayers to file returns 24 hours a day, 365 five days a year. The regime also ensures that security mechanisms are in place that preserve data in tax returns presented.

Before Resolution No. 474, the tax administration years had already implemented a new system, called "OSIRIS," that allowed for the magnetic receipt of payments and tax returns (General Resolution No. 191).

D. Taxpayer Services

The FAPI has a Web page (in Spanish) on the Internet at

<http://www.afip.gov.ar/> through which taxpayers can access different information, including information about compliance with tax obligations, legislation and tax provisions in force, answers to technical and administrative questions, and information about VAT.

VII. Conclusion


In Argentina, transactions through electronic means are addressed in legislation. However, the appearance of this phenomenon has produced new difficulties for the taxation of cross-border transactions, such as in collecting and inspecting for VAT purposes. While Argentina's current tax rules can be appropriately applied to the new technology, there is still room for the government to offer specific guidance. Any rules issued should be consistent with international organizations that are also struggling with the issue.

As for tax administration, the government will clearly have to create new rules that take into consideration the form of e-trans-

actions that have materialized. In this regard, the AFIP is developing audit routines dedicated specifically to controlling transactions carried out through electronic means.

On the other hand, transactions that are purely electronic — for example, the sale of digital products — present more difficulties. In this context, control procedures will have to focus on payments made by parties involved in a transaction, particularly emphasizing information regimes that act as middlemen for payments — financial entities and credit cards, among others. ♦

⁴From 3 Aug. 1999, Bolet. 10/3/99.



**Stay Current,
Connected,
and Informed!**

Tax Analysts' Transfer Pricing Service!

To learn more about this product please call us at 800.955.3444 (703.533.4400 in the Washington, D.C., area and outside the U.S.), e-mail us at sales@tax.org, or visit <http://transfer.tax.org/> to order online.

WP2-01