

Transfer Pricing | 2022

A collection of transfer pricing
summaries of countries in the
Central & South America region





Transfer Pricing | 2022

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“This publication has been prepared for the purpose of quick information dissemination. Its contents should not be used as a basis for advice or formulating decisions under any circumstances.”

ECUADOR

2022 TRANSFER PRICING

1. Transfer prices

In Ecuador, the transfer pricing regime is established, aimed at regulating for tax purposes the transactions carried out between related parties, in the terms defined by the Internal Tax Regime Law, its Application of Regulations and secondary regulations issued by the Revenue Internal Service – RIS. The foregoing is seeking that the considerations between related parties be similar to those between independent parties.

Although Ecuador is not a member of the Organization for Economic Development Cooperation (OECD), it has adopted several of the Guidelines issued by this governing body related to international taxation in its regulations. Indeed, Ecuadorian legislation considers the Guidelines of the Organization for Economic Cooperation and Development - OECD as a technical reference.

The tax regulations to which taxpayers are subjected in this matter must maintain and present the supporting information on the transactions carried out between related parties.

2. Related parties

For tax purposes, natural persons or companies, resident or not in Ecuador, who participate, directly or indirectly, in the management, administration, control or capital of the other, will be considered related parties; or in which a third party, whether a natural person or a company resident or not in Ecuador, participates, directly or indirectly, in the direction, administration, control or capital of these.

Accordingly, the Ecuadorian Law considers that the following are related parties [among others]:

- a. The parent company and its affiliated companies, subsidiaries or permanent establishments.
- b. Affiliated companies, subsidiaries, or permanent establishments, among themselves.
- c. The parties in which the same natural person or company participates directly or indirectly in the management, administration, control or capital of such parties.
- d. The parties in which decisions are taken by governing bodies made up mostly of the same members.
- e. The parties, in which the same group of members, partners or shareholders participate directly or indirectly in their management, administration, control or capital.
- f. The members of the governing bodies of the company with respect to the same, provided that relations not inherent to their position are established between them.
- g. The administrators and commissioners of the company with respect to the same, provided that relationships not inherent to their position are established between them.
- h. A company with respect to the spouses, relatives up to the fourth degree of consanguinity or second degree of affinity of the directors, administrators; or company commissioners.
- i. A natural person or company and the trusts in which they have rights.

2. Related parties (cont)	<ul style="list-style-type: none"> j. When a natural person or company is the direct or indirect owner of 25% or more of the capital stock or own funds in two or more companies. k. Companies in which the same partners, shareholders or their spouses participate directly or indirectly in at least 25% of the capital stock or own funds, or are under a dependency relationship. l. When a natural person or company is the direct or indirect owner of 25% or more of the capital stock or own funds in two or more companies. m. When a natural person or company makes 50% or more of its sales or purchases of goods or services with a natural person or company. In this case, the Tax Administration must inform the taxpayer. <p>Among other cases, taxpayers who carry out transactions with resident companies, incorporated or located in a tax jurisdiction with lower taxation, or in tax havens, will also be considered related parties. For this purpose, the RIS issued a list of the territories of the latter [tax havens].</p> <p>Notwithstanding the foregoing, Ecuador considers as jurisdictions with lower taxation:</p> <ul style="list-style-type: none"> a. To those that have an effective rate of income tax or taxes of an identical or analogous nature lower than (60%) to the one that corresponds in Ecuador (25%) or that mentioned rate is unknown. b. To jurisdictions that allow the exercise of economic, financial, productive or commercial activities not to be carried out substantially within the respective jurisdiction or regime, in order to benefit from the tax benefits of the jurisdiction or regime. c. To jurisdictions in which there is no effective exchange of information in accordance with international transparency standards, such as the availability and access to information by the competent authorities on the ownership of companies, including legal owners and effective beneficiaries, reliable accounting records and bank account information, as well as the existence of mechanisms that imply an effective exchange of information.
3. Transfer pricing methods	<p>To determine the price of transactions between related parties, any of the following methods may be used, in such a way that it reflects the Rank's length principle:</p> <ul style="list-style-type: none"> a. Uncontrolled Comparable Price Method. b. Resale Price Method. c. Added Cost Method. d. Profit Distribution Method; and, e. Method of Transactional Margins of Operational Profit.
4. Comparability analysis	<p>Transactions are comparable when there are no differences between their relevant economic characteristics that significantly affect the price or value of the consideration or the profit margin referred to in the methods established in this section, and if there are differences, that its effect can be eliminated by means of reasonable technical adjustments.</p>

<p>4. Comparability analysis (cont)</p>	<p>To determine if the operations are comparable or if there are significant differences, the following elements will be taken into account, depending on the method of application of the rank's length principle selected:</p> <p>4.1. The characteristics of the operations, including:</p> <ul style="list-style-type: none"> a. In the case of provision of services, elements such as the nature of the service, and whether or not the service involves experience or technical knowledge. b. In the case of use, enjoyment or transfer of tangible goods, elements such as the physical characteristics, quality, and availability of the good. c. In the case that the exploitation is granted, or an intangible asset is transferred, the form of the operation, such as the granting of a license or its sale; the type of asset, be it patent, brand, know-how, among others; the duration and degree of protection and the expected benefits derived from the use of the asset in question. d. In case of disposal of shares, the updated stockholders' equity of the issuing company, equity, the present value of projected profits or cash flows or the stock price recorded in the last transaction carried out with these shares; and, e. In the case of financing operations, the amount of the loan, term, guarantees, solvency of the debtor, interest rate and the economic essence of the operation before its form. <p>4.2. The analysis of the functions or activities performed, including the assets used and risks assumed in the operations, by related parties in related operations and by independent parties in unrelated operations.</p> <p>4.3. The contractual terms or not, with which the transactions between related and independent parties are actually fulfilled.</p> <p>4.4. The economic or market circumstances, such as geographic location, market size, market level, wholesale or retail, level of competition in the market, competitive position of buyers and sellers, the availability of substitute goods and services, the levels of supply and demand in the market, purchasing power of consumers, government regulations, production costs, transportation costs and the date and time of the operation.</p> <p>4.5. Business strategies, including those related to the penetration, permanence and expansion of the market, among others.</p>
<p>5. Advance price agreements (APA)</p>	<p>The Ecuadorian regulation focuses its attention on the alternatives for the solution of divergences presented by the OECD in its applicable transfer pricing guidelines (this is also determined by Art. 89 of the Application Regulations for the Internal Tax Regime Law "...In matters not established by said regulations, the guidelines established as a technical reference in this Regulation shall be considered...")</p>

5. Advance price agreements (APA) (cont)	<p>As solution measures, the OECD proposes in Chapter IV several “Administrative procedures aimed at avoiding and resolving transfer pricing disputes”, these are:</p> <ol style="list-style-type: none"> Practices for the application of the transfer pricing regime. The correlative adjustment and the mutual agreement procedure. Simultaneous tax inspections. Protection regimes. Prior agreements on transfer pricing valuation; and, Arbitration <p>Each of the aforementioned administrative procedures offers its advantages, however, the Ecuadorian tax regulation expressly recognizes the Prior Agreements on transfer pricing valuation as a measure to resolve conflicts and/or risks in the application of transfer pricing.</p> <p>Going deeper into the administrative appeal itself, the Director of the Internal Revenue Service, as the representative of the Tax Administration, is in charge of resolving the administrative act within a period not exceeding two years from the presentation of the prior assessment query. The scope of the acquittal of the query will cover the transactions subject to query for the previous fiscal year, in progress and the three subsequent years.</p> <p>It is very important to mention that the Ecuadorian Tax Administration is very aware that prior assessment consultations have a very high degree of critical and confidential components on the operations carried out by taxpayers. For this reason, it has given these consultations a binding and confidential nature.</p>
6. Annual informative transfer pricing returns	<p>Taxpayers required to pay Income Tax who have carried out operations with related parties abroad (and/or local ones under certain conditions), within the same fiscal period, in an accumulated amount greater than US\$ 3,000,000 must submit to the Internal Revenue Service until the month of June, the Annex of Operations with Related Parties.</p> <p>Those taxpayers who have carried out operations with related parties abroad (and/or local ones under certain conditions), within the same fiscal period, in an accumulated amount greater than US\$15,000,000 must submit until the month of June, in addition to the aforementioned annex, the Comprehensive Transfer Pricing Report.</p>
7. Submission of transfer pricing statements	<p>Taxpayers must submit each of the obligations referred to in the immediately preceding point considering the ninth digit of the tax identification issued by the Tax Administration.</p>
8. Transfer pricing adjustments	<p>When by applying any of the methods established for the application of transfer prices, two or more comparable operations are obtained, the taxpayer must establish the Median and the Range of Full Competition of the prices, amounts of the considerations or profit margins of these operations.</p>

8. Transfer pricing adjustments (cont)

If the price, amount of the consideration or profit margin (hereinafter “Value”) registered by the taxpayer is within the Full Competition Range, said Value will be considered as agreed between independent parties. Otherwise, it will be considered that the Value used by independent parties is the one that corresponds to the Median of the mentioned range.

For this purpose, the following concepts will be used:

- a. Rank’s length range - It is the interval that includes the values that are from the First Quartile to the Third Quartile, and that are considered as agreed between independent parties;
- b. Median - It is the value that is considered to have been used by independent parties in the event that the Value registered by the taxpayer is outside the Full Competition Range; and,
- c. First and third quartile - These are the values that represent the limits of the Full Competition Range.

The median and corresponding quartiles will be calculated based on conventional statistical methods.

Likewise, it is required to apply any type of adjustment to improve comparability between the economic situation of the taxpayer or analyzed segment and comparable companies or segments must be demonstrated qualitatively and quantitatively. The quantitative statement must be in as much detail as possible, indicating the impact on the price or indicator used and, if applicable, the Rank’s length range. All support must be attached as an annex to the report.

9. Period of conservation of information for transfer pricing

The information that supports the operations carried out between related parties, annexes of operations, comprehensive report of transfer prices and supporting documentation, as appropriate, must be kept by the taxpayers, for a minimum period of seven years.

a. Interpretation Sources

For the interpretation of transfer pricing issues, the laws in force in Ecuador and the “Guidelines on Transfer Pricing for Multinational Companies and Tax Administrations”, approved by the Council of the Organization for Economic Cooperation and Development, will apply. (OECD) in force as of January 1 of the corresponding fiscal period, to the extent that they are consistent with the provisions of the Internal Tax Regime Law and with the treaties entered into by Ecuador.

b. Sanctions

The lack of presentation, incomplete delivery, inaccurate, with false data or differences on the operations with related parties, will be sanctioned with a fine of up to \$15,000 USD.

Similarly, failure to comply with local legislation may generate other financial and criminal sanctions [if tax fraud is proven].

Updated
May 2022



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The information published herein is for consultation purposes only. You must contact a professional before taking any action.

GUATEMALA

2022 TRANSFER PRICING

1. Transfer pricing	<p>The valuation of transactions between related parties, or carried out from, to, or through tax havens must be in accordance with the principle of Arm's Length; that is, that the agreed prices are within the price that independent parties to comparable transactions, similar terms and conditions would have agreed.</p> <p>The Tax Administration has the power to adjust the valuation granted for income tax purposes, only when it observes that the non-application of the transfer pricing rules determines a lower tax payable in Guatemala.</p>
2. Linked entities	<p>Two or more persons, companies or entities are considered to be related parties when:</p> <ul style="list-style-type: none"> • One of them participates directly or indirectly in the administration, control or capital of the other party, or, • This same person or group of persons participates directly or indirectly in the administration, control or capital of the entities that take part in the transaction. • The linking will also operate when the transaction is made using interposed persons whose purpose is to cover up a transaction between related parties <p>In addition, the transfer pricing rules establish additional situations in which the parties are considered to be related.</p>
3. Methods for transfer pricing	<p>The Income Tax Law establishes the following methods for determining the price of transactions, as follows:</p> <ul style="list-style-type: none"> • Uncontrolled comparable price method. • Added cost method. • Resale price method. • Transactional net margin method. <p>Companies should apply the most appropriate method with respect to the particular transaction, to determine the market value for income tax purposes.</p>
4. Comparability analysis	<p>Transactions between related parties are comparable to a transaction between independent parties, on equal or similar terms, where at least one of the following two conditions is met:</p> <ul style="list-style-type: none"> • That none of the differences between the transactions under comparison or between the characteristics of the parties performing them may materially affect the price, amount of considerations or profit margin; Or • That even if there are differences between the transactions being compared or between the characteristics of the parties making them, which may materially affect the price, amount of considerations or profit margin, such differences may be eliminated through reasonable adjustments.

4. Comparability analysis (cont.)	<p>In order to determine whether transactions are comparable, account shall be taken of those elements or circumstances that reflect to a greater extent the economic reality of the transactions, depending on the method selected, considering among others, the following elements:</p> <ul style="list-style-type: none"> • The characteristics of the operations. • The functions or economic activities, including the assets used and risks assumed in the operations, of each of the parties involved in the operation. • The contractual terms. • Economic or market circumstances. • Business strategies, including those related to market penetration, permanence and expansion. <p>When, for purposes of determining comparable transactions, local information is not available, taxpayers may use information from foreign companies, having to make the necessary adjustments to reflect the differences in the markets.</p>
5. Advance pricing agreements (APA)	<ul style="list-style-type: none"> • Prior application to SAT • Unilateral. Sat may approve, deny or modify the proposal. • In other jurisdictions there are also bilateral agreements • It takes effect with respect to operations carried out after the approval date. • It takes effect for a maximum of 4 fiscal periods • Administrative silence operates in a negative sense.
6. Informative annual declarations of transfer pricing	<p>Taxpayers whose transactions are subject to transfer pricing rules are also subject to the formal obligation to submit the following annual returns:</p> <ul style="list-style-type: none"> • Informative Affidavit Local Report. • Annex to annual Informative Affidavit (Transfer Pricing). <p>The information contained in the informative affidavits may be used by the Tax Administration for the exercise of its functions and for the exchange of tax information with the competent authority of another State provided for in international treaties or in the decisions of the Community Commission Andean observing the rules of confidentiality and computer security indicated in them.</p>
7. Presentation of the transfer pricing statements	<p>Taxpayers must submit each of the transfer pricing returns based on the last digit of their NIT number and according to the schedule established by the tax administration.</p>
8. Adjustments to transfer pricing	<p>It will only be necessary to adjust the value agreed by the parties when it determines in the country a lower tax than it would correspond by application of the transfer pricing rules. The Tax Administration may adjust the agreed value even if the above assumption is not met, if said adjustment affects the determination of a higher tax in the country with respect to transactions with other related parties.</p>

8. Adjustments to transfer pricing (cont.)	<p>In order to assess whether the agreed value determines a lower tax, the effect that, independently, each transaction or set of transactions, either individually or together, at the time of applying the respective method, generates for Income Tax.</p>
9. Information retention term for transfer pricing	<p>The documentation and information supporting the informative affidavits, as appropriate, must be kept by the taxpayers, duly translated into Spanish, if applicable, for a period of five years or during the limitation period, whichever is greater (the longest period of prescription is five years).</p>
10. Sources of interpretation	<p>For the interpretation of transfer pricing issues, the Income Tax Law and its regulations will be applied according to government agreement 213-2013 and amended by Decree 19-2013 of the Republic of Guatemala.</p>
11. Penalties	<ul style="list-style-type: none"> • Breach of formal duties. • Lack of information delivery. • Adjustment for incorrect valuation of operations subject to transfer pricing . • Omitted tax payment. • 100% fine. • Interests.

MEXICO

2022 TRANSFER PRICING

1. Transfer price study (TPS)

- A. When legal entities enter into transactions with foreign resident-related parties, they must obtain and keep the supporting documentation. This documentation should prove that their income and deductions were determined under the prices or amounts that independent parties in comparable transactions would have used.
- The following legal entities should not comply with this obligation:
- Taxpayers who carry out entrepreneurial activities and their taxable income in the immediate previous year did not exceed \$13 million (Mexican Pesos).
 - Taxpayers who provide professional services and their taxable income in the immediate previous year did not exceed \$3 million (Mexican Pesos).
- B. When legal entities should file financial statements audited by a CPA or obtained taxable income in the immediate previous year of \$842 million (Mexican Pesos) or more, they also must prepare and file the following tax returns:
- Master information no later than December 31 of the next year.
 - Local informative of related parties no later than May 15 of the following year.
 - Informative return (country-by-country) of the multinational business group no later than December 31 of the following year.

2. Related parties

- Two or more persons are considered to be related parties when:
- One of them participates, directly or indirectly, in the other's administration, control, or equity.
 - A person or group of persons participates, directly or indirectly, in the administration, control, or equity of said persons.
 - Members of partnerships are related, as the persons under this paragraph are considered related parties of said members.

3. Comparable operations

Transactions between related parties are comparable to independent parties when no differences significantly affect the price, amount of consideration, or profit margin; if there are significant differences, they should be eliminated by reasonable adjustments.

In determining these differences, the following elements must be taken into account:

3. Comparable operations (cont.)	<p>A. The characteristics of the operations, as follows:</p> <ul style="list-style-type: none"> • In financing operations, capital amount, term, guarantees, debtor solvency, and interest rate are considered. • In providing services, elements such as the nature of the service and whether or not it includes experience or technical knowledge. • Consider the good's physical characteristics, quality, and availability in use or temporary enjoyment of goods and disposal. • Where exploitation is granted, or an intangible good is transmitted, consider whether it is a patent, trademark, trade name, transfer of technology, duration, and degree of protection. • In the transfer of shares, the updated book capital of the issuer, the present value of the projected profits or cash flows, or the stock price of the last fact of the day of the transfer of the station. <p>B. Functions and activities, including the assets used and risks, assumed in the operations.</p> <p>C. The contractual terms.</p> <p>D. Economic circumstances.</p> <p>E. Business strategies.</p>
4. Applicable methods	<p>a. Comparable price not controlled.</p> <p>b. Resale price.</p> <p>c. Added cost.</p> <p>d. Partitioning utilities.</p> <p>e. Utility partition residual.</p> <p>f. Transactional margins of operating profit.</p>
5. Implement- ation of the TPS	<p>The TPS development aims to generate the necessary documentation supporting compliance with the market value principle of transactions between related parties and reduce the possibility of a transfer price adjustment in the tax results obtained.</p> <p>The above study comprises the following phases:</p> <p>Step I:</p> <p>This phase aims to identify the related parties, the transactions under review, and the applicable existing tax provisions.</p> <p>Phase II: Transactional and Functional Analysis</p> <p>Based on the information obtained in Phase II, an economic analysis is carried out whose main objective is to determine whether the operation under study was carried out under the principle of market value. The first step in this phase is the search and identification of comparables. Then, a detailed review of comparable companies' financial and descriptive information or transactions is carried out accordingly to make the necessary adjustments that will increase the analysis's reliability and determine market value compensation for the operation under study.</p>

5. Implement- ation of the TPS (cont.)

The resulting TPS includes the following documents:

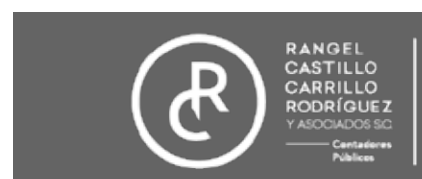
- Description of the company's activities
- Summary of functional analysis;
- Valuation of comparable operations or companies;
- Explanation of reasons to select a particular method;
- Description of the method applied;
- Compliance in terms of the law
- Conclusions;

The TPS developed in this way allows:

- To have the possibility of a penalty reduction up to 50%, when applicable.
- To know the margins range or prices in which trades can be agreed upon.
- To update corporate contracts, assumptions, asset values, and operating and market conditions.
- To validate, question, and even improve the corporate structure of the related parties.

Updated
June 2022

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PANAMA

2022 TRANSFER PRICING

1. Transfer pricing

The principle of free competition

Transactions carried out by taxpayers with related parties shall be valued in accordance with the principle of free competition, i.e. ordinary and extraordinary income and the costs and deductions necessary to carry out that transaction shall determine in the recital the price or amount agreed by independent parties under similar circumstances under conditions of free competition. The value thus determined shall be reflected for tax purposes in the income returns presented by the taxpayer.

Faculties of the Directorate General of Revenue

The Regional Revenue Directorate may verify that transactions carried out between related parties have been assessed in accordance with the provisions of the previous article and shall make the corresponding adjustments where the stipulated price or amount does not correspond to what had been agreed between independent parties in comparable transactions, resulting in lower taxation in the country or deferral of taxation.

2. Linked entities

Definition of related parts

Two or more persons are considered related parties when one of them participates directly or indirectly in the administration, control or capital of the other, or where a person or group of persons participates directly or indirectly in the administration, control or capital of such persons.

They are also considered related parts of a permanent establishment, the main office or other permanent establishments thereof, as well as the persons scribed in the preceding paragraph and its permanent establishments.

As a permanent establishment understand the definition contained in Article 762-M of this Chapter, or, depending on the country concerned, in the text of the treaties or Convention to Avoid Double International Taxation concluded by the Republic of Panama.

3. Methods for transfer pricing

A. In order to determine whether the transactions are in accordance with the principle of free competition, one of the following methods shall apply:

1. Comparable price method not controlled. It consists in assessing the price of the good or service in a transaction between persons relating to the price of the identical good or service or of similar characteristics in an independent transaction in comparable circumstances, making, if necessary, the corrections necessary to obtain equivalence, taking into account the particularities of the transaction.

3. Methods for transfer pricing (cont.)

2. Method of cost of production of a good or service in the usual margin obtained by the taxpayer in identical or similar transactions with independent persons or entities or, if not, in the margin that independent persons or entities apply to comparable transactions making, if price, the corrections necessary to obtain equivalence, taking into account the particularities of the transaction. The percentage representing gross profit relative to sales costs is considered the usual margin.
 3. Resale price method. It consists in subtracting from the sale price of a good or service, the margin applied by the reseller itself in identical or similar transactions with independent persons or entities or, if not, the margin that independent persons or entities applies to comparable transactions, making, if necessary, the corrections necessary to obtain equivalence, taking into account the particularities of the transaction. The percentage representing gross profit for net sales is considered the usual margin.
- B. When, due to the complexity of operations or lack of information, some of the methods in literal A cannot be properly applied, some of the methods described in this literal will apply:
1. Utility partitioning method.
 2. Transaction net margin method.

4. Comparability analysis

For the purpose of determining the price or amount that independent parties would have agreed in circumstances similar under conditions of free competition referred to in Article 762-A, the conditions of transactions between persons relating to other comparable transactions carried out between independent parties shall be compared.

Two or more trades are comparable where there are no differences between them that significantly affect the price or amount, and where such differences exist, they can be eliminated by reasonable adjustments.

In determining whether two or more transactions are comparable, the following elements shall be taken into account respectively in so far as they are economically relevant:

1. Specific characteristics of operations, including:
 - a. In the case of financing operations, elements such as principal amount, term, risk rating, guarantee, debtor solvency and interest rate.
 - b. In the case of the provision of services, elements such as the nature of the service and whether or not the service involves an experience or technical knowledge.
 - c. In the case of granting rights of use or disposal of tangible goods, elements such as physical characteristics, quality, reliability, availability of the good and volume of the offer.
 - d. In the event that the exploitation is granted or an intangible good is transmitted, elements such as the class of the good, patent, trademark, trade name, transfer of technology or know-how, the duration and degree of protection and the benefits that are expected to be obtained from its use.

4. Comparability analysis (cont.)	<p>e. In the case of transfer of shares, the liquid assets of the issuer, the present value of the projected profits or cash flows, or the trading price of the issuer of the last fact of the day of disposal.</p> <p>2. The significant economic functions or activities assumed by the parties in relation to the transactions under analysis, including the risks assumed and weighing, where appropriate, the assets used.</p> <p>The actual contractual terms from which, where appropriate, transactions are derived taking into account the responsibilities, risks and benefits assumed by each contracting party. Market characteristics or other economic factors that may affect operations. Business and business strategies, such as market penetration, permanence or expansion policies, as well as any other circumstances that may be relevant in each case.</p>
5. Informative annual declarations of transfer pricing	<p>Taxpayers must submit, annually, a report of transactions carried out with related parties, within six months of the date of closure of the relevant tax period, in the terms laid down by the regulations to be drawn up for this purpose.</p>
6. Presentation of the transfer pricing statements	<p>Taxpayers must submit each of the transfer pricing returns based on the last digit of their NIT number and according to the schedule established by the tax administration.</p>
7. Sources of interpretation	<p>For interpretation on transfer pricing issues, the Tax Code of the Republic of Panama shall apply in chapter IX, Standard of Adequacy to The Treaties or Conventions to Avoid Double International Taxation.</p>
8. Penalties	<p>Failure to file the report shall be punished with a fine equivalent to 1% of the total amount of transactions with related parties.</p> <p>For the calculation of the fine, the gross amount of operations shall be considered regardless of whether they are representative of income, costs or deductions. The fine referred to in this paragraph shall not exceed one million balboas (B/.1,000,000.00). Data relating to transactions with related parties, as well as their nature or other relevant information, shall be included in the income tax affidavit in the terms available to it.</p>



Updated
June 2022

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PERU

2022 TRANSFER PRICING (IN SOLES)

1. Transfer pricing	<p>The valuation of transactions between related parties, or that are made from, to, or through tax must be in accordance with the Arm's Length principle; that is, that the agreed prices are within the price that independent parties in comparable transactions, similar terms and conditions would have agreed.</p> <p>The Tax Administration has the power to adjust the valuation granted for income tax purposes, only when it observes that due to the non-application of the transfer pricing rules, a lower tax payable in Peru is determined.</p>
2. Linked entities	<p>Two or more persons, companies or entities are considered to be related parties when:</p> <ul style="list-style-type: none"> • One of them participates directly or indirectly in the administration, control or capital of the other party, or, • This same person or group of people participate directly or indirectly in the administration, control or capital of the entities that take part in the transaction. • The linking will also operate when the transaction is made using interposed persons whose purpose is to cover up a transaction between related parties. <p>Additionally, transfer pricing rules establish additional situations in which the parties are considered as related entities.</p>
3. Methods for transfer pricing	<p>The Income Tax Law establishes six methods to determine the price of transactions, as follows:</p> <ul style="list-style-type: none"> • Uncontrolled comparable price method • Resale price method • Increased cost method • Utility partition method • Residual method of profit sharing • Transaction net margin method. <p>Companies must apply the most appropriate method with respect to the particular transaction, to determine the market value for income tax purposes.</p>
4. Comparability analysis	<p>Transactions between related parties are comparable to a performance between independent parties, under the same or similar conditions, when at least one of the following two conditions is met:</p>

4. Comparability analysis. (cont.)

- That none of the differences exist between the operations object of comparison or between the characteristics of the parties that the operations may materially affect the price, amount of consideration or profit margin; or,
- That even when there are differences between the operations object of comparison or between the characteristics of the parties that the operations, which may materially affect the price, amount of consideration or profit margin, differences can be eliminated through reasonable adjustments.

In order to determine whether the transactions are comparable, those elements or circumstances that more closely reflect the economic reality of the transactions will be taken into account, depending on the method selected, considering, among others, the following elements:

- The characteristics of the operations.
- The functions or economic activities, including the assets used and risks assumed in the operations, of each of the parties involved in the operation.
- The contractual terms.
- Economic or market circumstances.
- Business strategies, including those related to market penetration, permanence and expansion.

When, for purposes of determining comparable transactions, local information is not available, taxpayers may use information from foreign companies, having to make the necessary adjustments to reflect the differences in the markets.

5. Advance pricing agreements (APA)

Advance Pricing Agreements are civil law agreements concluded between the Tax Administration and domiciled taxpayers that carry out operations with their related parties or from, to or through countries or territories of low or no taxation.

These agreements are intended to determine the methodology and, if applicable, the price that supports the different transactions that the taxpayer carries out with related parties or from, to or through countries or territories with low or no taxation.

Taxpayers who decide to conclude the aforementioned agreement must submit to the Tax Administration, prior to carrying out operations, a proposal for the valuation of future transactions they carry out with their related parties or from, to or through countries or territories of low or no taxation.

The proposal must provide the necessary information and documentation to explain the relevant facts of the methodology to be used and if it is the case of the determined price and to prove that said transaction or transactions will be carried out under the conditions that independent parties would have used in comparable transactions. The valuation proposal must be signed by all of the related parties involved in the operation.

The APA will apply to the current taxable year in which they have been approved and during the three subsequent taxable years.

6. Informative annual declarations of transfer pricing	<p>Taxpayers whose transactions are subject to transfer pricing rules are also subject to the formal obligation to submit the following annual returns:</p> <ul style="list-style-type: none"> • Informative Affidavit Local Report: If the income earned in the year exceeds US \$ 2,642,298. • Informative Affidavit Master Report: If the income accrued in the year by taxpayers who are part of an economic group exceeds US \$ 22,976,501. • Informative Affidavit Country-by-Country Report: If taxpayers are part of a multinational group and their income earned during the year exceeds US \$ 704,960,835. <p>The information contained in the informative affidavits may be used by the Tax Administration for the exercise of its functions and for the exchange of tax information with the competent authority of another State provided for in international treaties or in the decisions of the Community Commission Andean observing the rules of confidentiality and computer security indicated in them.</p>
7. Presentation of the transfer pricing statements	<p>Taxpayers must submit each of the transfer pricing returns based on the last digit of their RUC number and according to the schedule established by the tax administration.</p>
8. Adjustments to transfer pricing	<p>It will only be necessary to adjust the value agreed by the parties when it determines in the country a lower tax than it would correspond by application of the transfer pricing rules. The Tax Administration may adjust the agreed value even if the above assumption is not met, if said adjustment affects the determination of a higher tax in the country with respect to transactions with other related parties.</p> <p>In order to assess whether the agreed value determines a lower tax, the effect that, independently, each transaction or set of transactions, either individually or together, at the time of applying the respective method, generates for Income Tax.</p>
9. Information retention term for transfer pricing	<p>The documentation and information supporting the informative affidavits, as appropriate, must be kept by the taxpayers, duly translated into Spanish, if applicable, for a period of five years or during the limitation period, whichever is greater (the longest period of prescription is ten years).</p>
10. Sources of interpretation	<p>For the interpretation on transfer pricing issues, the Transfer Pricing Guidelines for Multinational Companies and Fiscal Administrations, approved by the Council of the Organization for Economic Cooperation and Development - OECD, will apply as long as they are not opposed to the approved provisions that regulate this issue.</p>

11. Penalties

Failure to submit the informative affidavits Local Report is subject to a fine equivalent to 0.6% of total net income but not exceeding US \$ 28,721.

Updated
May 2022

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VENEZUELA

2022 TRANSFER PRICING (IN SOLES)

1. Transfer prices

The valuation of the transactions carried out between related parties, or that are carried out from, to, or through tax havens must be in accordance with the Arm's Length principle; in other words, that the agreed prices are within the price that independent parties in comparable transactions, similar terms and conditions would have agreed upon.

The Tax Administration has the power to adjust the valuation granted for Income Tax purposes, only when it observes that a lower tax to be paid in the Bolivarian Republic of Venezuela is determined due to the non-application of the transfer pricing regulations.

2. Related parties

Two or more people, companies or entities are considered related parties when:

- One of them participates directly or indirectly in the administration, control or capital of the other party, or,
- This same person or group of people participate directly or indirectly in the administration, control or capital of the entities that take part in the transaction.
- The relationship will also operate when the transaction is carried out using interposed persons whose purpose is to conceal a transaction between related parties.

Additionally, the transfer pricing rules establish additional situations in which the parties are considered related.

3. Methods for transfer pricing

The Income Tax Law establishes the following methods to determine the price of transactions, as follows:

- The uncontrolled comparable price method,
- The resale price method,
- The added cost method,
- The profit division method and
- The transnational net margin method.

The taxpayer must consider the uncontrolled comparable price method as the first option in order to determine the price or amount of the considerations that they would have used with or between independent parties in transactions comparable to the operations of transfer of goods, services or rights carried out between parties. linked.

The Tax Administration will evaluate whether the method applied by the taxpayer is the most appropriate according to the characteristics of the transaction and the economic activity carried out.

4. Comparability analysis	<p>Transactions between related parties are comparable to one carried out between independent parties, under the same or similar conditions, when at least one of the following two conditions is met:</p> <ul style="list-style-type: none"> • That none of the differences that exist between the transactions being compared or between the characteristics of the parties that carry them out may materially affect the price, amount of consideration or profit margin; or, • That even when there are differences between the transactions being compared or between the characteristics of the parties that carry them out, which may materially affect the price, amount of consideration or profit margin, such differences may be eliminated through reasonable adjustments. <p>In order to determine whether the transactions are comparable, those elements or circumstances that more reflect the economic reality of the transactions will be taken into account, depending on the method selected, considering, among others, the following elements:</p> <ul style="list-style-type: none"> • The characteristics of the operations. • The functions or economic activities, including the assets used and risks assumed in the operations, of each of the parties involved in the operation. • The contractual terms. • Economic or market circumstances. • Business strategies, including those related to market penetration, permanence and expansion. <p>When, for purposes of determining comparable transactions, local information is not available, taxpayers may use information from foreign companies, having to make the necessary adjustments to reflect the differences in the markets.</p>
5. Advance transfer pricing agreements (APA)	<p>The taxpayers of income tax, prior to carrying out the operations, may make a proposal for the valuation of the operations carried out with related parties.</p> <p>The proposal must refer to the valuation of one or more transactions individually considered, with the demonstration that they will be carried out at the prices or amounts that independent parties would have used in comparable operations. Proposals may also be made by natural persons, legal entities or non-resident or non-domiciled entities in Venezuelan territory, who plan to operate in it through a permanent establishment or entities with which they are related. The valuation proposal must be signed by all of the related parties that are going to carry out the operations that are the subject of it.</p>
6. Annual informative returns of transfer pricing	<p>Taxpayers whose transactions are subject to transfer pricing regulations are also subject to the formal obligation to submit the following annual returns:</p>

6. Annual informative returns of transfer pricing (cont.)	<ol style="list-style-type: none"> 1. <u>Preparation of the Informative Declaration of Operations carried out with Related Parties Abroad (Form PT-99)</u>, which must be presented annually in the month of June following the closing date of the fiscal year. Taxpayers who have a fiscal year other than the calendar year, must submit the return within six (06) months following the close of their fiscal year. As part of this point, the special report that supports the presentation of the transfer pricing information statement is included, if required by SENIAT (Integrated National Service of Customs and Tax Administration). 2. <u>2. Preparation of the Study of Local Transfer Prices</u>, for any industrial, commercial or service sector. The Firm's professionals carry out the studies stipulated in the Venezuelan Income Tax Law, applying the basic aspects of comparison and the transfer pricing methods authorized in said Law, according to the specific situation of each company. This allows your company to reduce the risk of a possible tax contingency with the SENIAT Authorities. The transfer pricing study is the ideal document to demonstrate that inter-company operations are agreed at market prices (arm's length). Based on the above, we highly recommend having a Transfer Pricing Study with the following characteristics: <ul style="list-style-type: none"> • That it be developed annually. • That it includes all inter-company operations. • That it be written in Spanish. • That it uses the transfer pricing methodologies established in the LISLR
7. Presentation of the transfer pricing statements	<p>Taxpayers must submit each of the transfer pricing returns based on the last digit of their RUC number and according to the schedule established by the tax administration.</p> <ul style="list-style-type: none"> • Taxpayers must annually submit an Informative Declaration of Operations carried out with Related Parties Abroad. Said declaration must be filed with SENIAT in the month of June following the close of the fiscal year, or six months after the close of the fiscal year if it does not coincide with the calendar year.
8. Transfer pricing adjustments	<p>It will only proceed to adjust the value agreed by the parties when it determines in the country a lower tax than would correspond by application of the transfer pricing rules. The Tax Administration may adjust the agreed value even when the previous assumption is not met, if said adjustment affects the determination of a higher tax in the country with respect to transactions with other related parties.</p> <p>In order to evaluate whether the agreed value determines a lower tax, the effect that, independently, each transaction or set of transactions, either individually or together, at the time of applying the respective method, will be taken into account for Income Tax.</p>
9. Period of conservation of information for transfer pricing	<p>The documentation and information that supports the informative sworn statements, as appropriate, must be kept by the taxpayers, duly translated into Spanish, if applicable, for a period of five years or during the statute of limitations, whichever is longer (the longest limitation period is ten years).</p>

10. Sources of interpretation

For the interpretation of transfer pricing issues, the Transfer Pricing Guidelines for Multinational Companies and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development - OECD, will be applicable, as long as they are not opposed. to the approved provisions that regulate this issue.

11. Sanctions

The following table summarizes the applicable sanctions and offenses:

Illicit Tax				
Description	Article COT	Number	Sancción*	
Not submitting the returns or submitting them with a delay of more than one (1) year.	103	1	150 times the exchange rate	10 days
Failure to present the communications established by the laws, regulations or other administrative acts of general character.	103	2	50 times the exchange rate	-
Submit the returns incompletely or with a delay of less than or equal to one (1) year.	103	3	100 times the exchange rate	-
Submit other communications incompletely or after the deadline.	103	4	50 times the exchange rate	-
Submit more than one replacement return, or the first replacement return after the deadline established in the respective standard.	103	5	50 times the exchange rate	-
Present the declarations in forms, media, formats or places, not authorized by the Administration Tax.	103	6	50 times the exchange rate	-
Failure to submit or submit late the informative return of investments in low tax jurisdictions.	103	7	2000 times the exchange rate	10 days
Failure to submit or submit late the informative return of investments in low tax jurisdictions.	103	7	1000 times the exchange rate	-
Failure to maintain or preserve the documentation and information that supports the calculation of the prices of transfer.	104	12	1000 times the exchange rate	10 days

* "The pecuniary sanctions are applied by the official exchange rate (T / C) of the currency with the highest value, published by the Central Bank of Venezuela"

** "The closure penalty provided for in this article will be applied to all establishments or branches owned by the taxpayer"

**Jiménez
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Rif: 3-31313688-3

Updated
June 2022

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