

Transfer Pricing Country Summary Nicaragua

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Legislation

Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing was introduced by Law 822 of 2012, Ley de Concertación Tributaria, published in 2012. According to this, transfer pricing assessment is mandatory as of January 1, 2016.

Although Nicaragua is not member of the OECD, their transfer pricing methods are based on the OECD TP 2010 Guidelines, which are expected to be used as a technical reference on this matter.

As for now, Nicaraguan tax authorities have no experience in transfer pricing audit processes.

Definition of Related Party

Related parties are defined in article 94 of Law 822. The definition states that two entities are considered related when:

- One directs or controls the other, or owns, directly or indirectly, at least forty percent (40%) of its capital or voting rights;
- Five or less persons manage or control these two entities, or if they possess together, directly or indirectly, at least forty percent (40%) of capital or voting rights of these two entities
- They are entities that conform a decision-taking unit, where one of them owns shares of the other fulfills one of the following situations:
 - Has the majority of voting rights;
 - Has the faculty of naming or removing the majority of the members of the administrative organ of the entities;
 - Is able to, by internal arrangements between partners, of the majority of voting rights;
 - Has designated the majority of the members of the administrative organ of the enterprise;
 - Most members of the board of the dominated entity are members of the board or senior management of the parent company or another dominated by it;
 - It is also consider that an individual holds a stake in the share capital or voting rights of an entity, when the ownership of participation, directly or indirectly, it is the spouse or person linked by relationship, direct or collateral, consanguinity up fourth degree or by affinity to the second degree;
- They are also considered related parties:
 - In a business cooperation agreement or joint venture, when one of the contractors or associated, directly or indirectly, is involved in more than forty percent (40%) of the profit or utility of the contract or of the activities resulting from the association;
 - A local resident entity and an exclusive distributor or agent of it residing abroad;
 - A local resident who is an exclusive distributor or agent of an abroad entity;
 - A local resident corporation with its foreign permanent establishments;

- A local permanent establishments with its parent establishment

Transfer Pricing Scrutiny

Nicaragua tax authority is entitled to perform transfer pricing audits from fiscal year 2016 onwards. Although transfer pricing audits are part of a tax audit, the procedures doesn't already are published. Law 822 only establishes the faculty of the tax authority to perform scrutiny of the transactions.

The transfer pricing rules put the burden of proof on the taxpayer. The taxpayer is required to substantiate that the transactions with related parties are undertaken on an arm's length basis and in accordance with the transfer pricing rules and regulations. This applies when the related party is foreign entity or is a Nicaraguan resident entity with an special tax regime

Transfer Pricing Penalties

The penalties for the violations to transfer pricing regulations are defined in the Article 126 of the Nicaraguan Tax Code, which establishes violations to infringements in the regulations. A violation is specified as not providing any information on the assessment of taxes which serves to correctly set the income tax. The taxpayer must therefore provide information related sales, revenues, income, expenses, assets, and generally everything related to the taxable income. Article 127 states that these violations are fined with a penalty of between a minimum of seventy to a maximum of ninety "fine units".

Advance Pricing Agreement (APA)

Taxpayers can request APAs with the Tax Administration, in order to request the valuation of transactions among related parties. The proposal can be accepted, rejected or modified by the Tax Administration. If the agreement is accepted, it would be valid for a time frame between 1 and 4 fiscal periods, depending on the agreement that was reached.

Documentation And Disclosure Requirements

Tax Return Disclosures

There is no statutory form for transfer pricing disclosures imposed by law.

Level of Documentation

The taxpayer is obliged to present all the information regarding transactions with its related parties and their corresponding analysis. Specifically the taxpayers will be obligated to present:

- Sufficient information and analysis that demonstrates the arm's length price established in transactions between related parties.
- Any information that the Tax Administration considers deems appropriate.

Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The article 43 indicates that the statute of limitations established to retain tax information is of four years.

Language for Documentation

Transfer pricing documentation should be submitted in Spanish.

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for medium and small Enterprises.

Deadline to Prepare Documentation

The supporting documentation must be prepared in the moment to present the tax return.

Deadline to Submit Documentation

The Tax Authority can require it in any moment from the time that the entity presents the tax return. It must be submitted within 45 days from the requirement made by the Administration.

Statute Of Limitations

There is no legal norm about statute of limitation.

Transfer Pricing Methods

The articles specifying the methods available for performing transfer pricing and comparability analysis are in line with those contained in the OECD Transfer Pricing Guidelines. Article 100 of Law 822 specifies the following five transfer pricing methods:

- comparable uncontrolled price method (CUP);
- resale price method (RPM);
- cost plus method (CPM);

- profit split method (PSM); and
- transactional net margin method (TNMM).

Comparables

There are no local databases of comparable. Article 99 establishes the requirements of the comparability analysis, which are in accordance with the OECD 2010 Guidelines.