

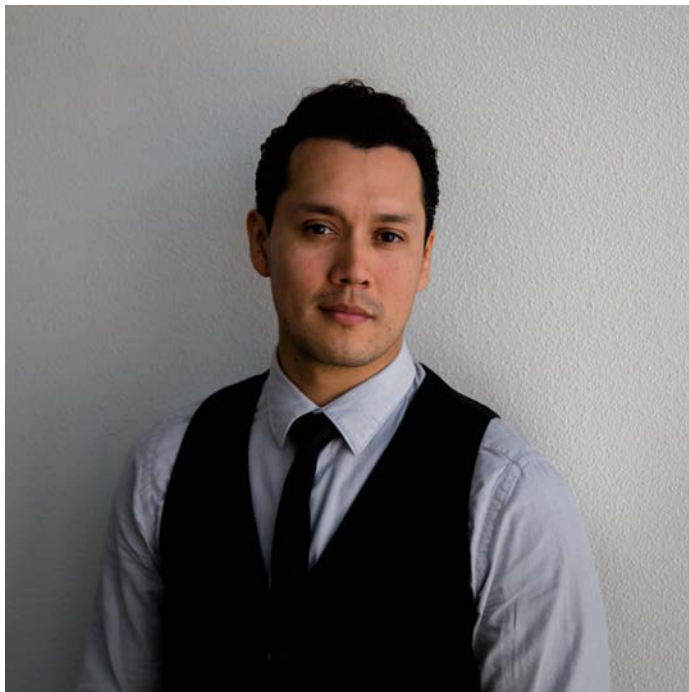
# Shaping the tax future of MNEs with operations in LATAM and the Caribbean

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# A presentation by

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Initiated as an advisor in the banking industry in the U.S. to then start a career in transfer pricing 8 years ago, having worked in Mexico, the U.K. and now in The Netherlands, Heberth's experience in the LAC region includes reducing MNCs' compliance costs for preparing transfer pricing documentation for their LAC operations, ensuring that intercompany arrangements are sustained by economic, financial/accounting and legal arguments, and simplifying the reporting to the MNC's top management of transfer pricing/tax related matters with respect to the LAC operations.

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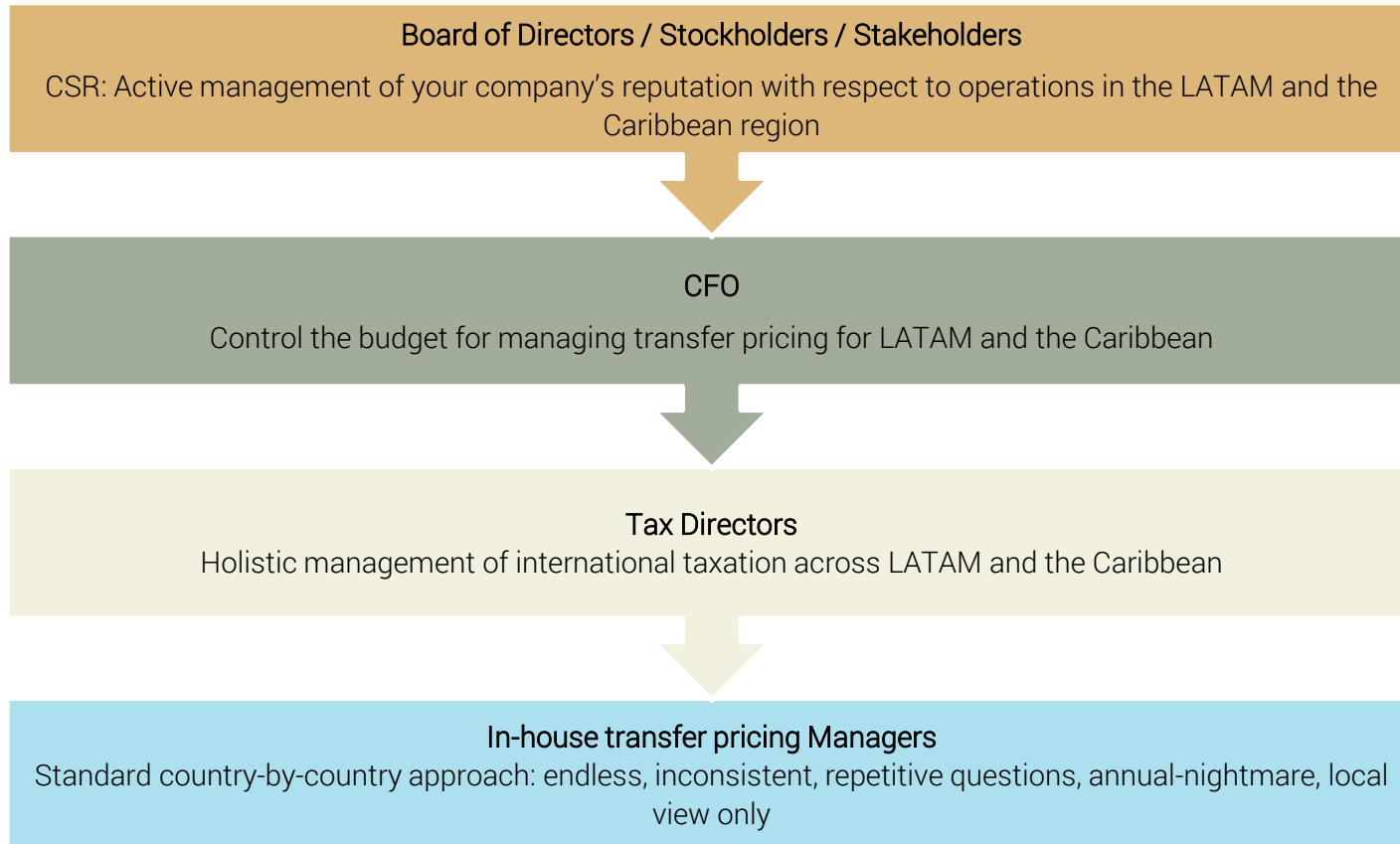
Purpose & Benefits of this presentation

The awakening of the 'Banana Republic'

How TPA Global will help MNEs shape their own future for LATAM & Caribbean operations

# Purpose & Benefits of this presentation

# Why is this presentation relevant to you?



# Purpose & Benefits of this presentation

- Not focused on discussing technical concepts
  - No detailed information on methodologies/databases will be covered
- Holistic approach to the LATAM and the Caribbean market (regional, political, economical, administrative factors)
- Shape your future with respect to operations in LATAM and Caribbean market by providing you:
  - the back ground on the '**raw materials**' to be shaped
  - the '**tools**' to shape them
  - the '**technique**' to shape it
- Control your future by: **Regional** solutions + **reduce** administrative expenses + **focus** on key countries + **consistency** in the legal / economic (TP) / financial and accounting reality of your company

# The awakening of the 'Banana Republic'

## 26 LATAM and Caribbean countries

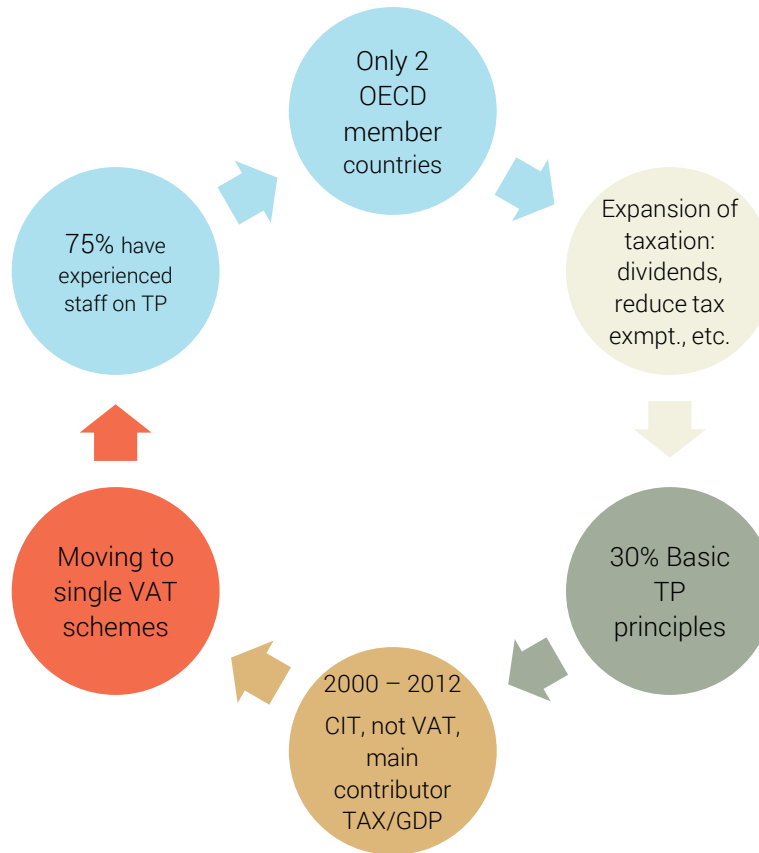
Brazil**	Uruguay	Puerto Rico (USA)
Mexico*	Bolivia	Guadeloupe (FR)
Colombia	Dominican Republic	Martinique (FR)
Argentina*	Honduras	French Guiana
Peru	Paraguay	Saint Martin (FR)
Venezuela	El Salvador	Saint Barthélemy (FR)
Chile	Nicaragua	Cuba
Ecuador	Costa Rica	Haiti
Guatemala	Panama	



# Framework of preconditions – a solid TP system

- Economic and political preconditions
  - E.g., economic growth and diversification, open economy, FDI
- Legal preconditions
  - E.g., comprehensive income tax law, tax treaty network, existing TP legislation
- Tax administration
  - E.g., specialisation in the area of (international) transfer pricing

# Framework of preconditions – Understanding the LATAM approach



# What motivated the awakening?

- Competition with other regions (i.e., Asia)
- Evolution of transfer pricing and taxation in other developing countries (e.g., India, China)
- Evolution of globalisation / financial instruments / technology / business structures /
- Tax fraud even within the same State (domestic intercompany transactions)
- Declarations of the G20 countries with respect
  - More effective tax systems
  - Prevent erosion of national tax revenues

# Where in LATAM and the Caribbean are the real risks?

- Clear TP system?
- History of TP audits + Experienced team of TP auditors?
- Publicly available data for assessing market prices in LATAM
- OECD vs UN vs other Guidelines?
- Have the formalities been met? (registration of contracts, index of the TP documentation, others)
- Annual documentation / all transactions?
- Stricter deductibility requirements
- Corresponding and secondary adjustments?

# Process of TP Integration in LATAM and the Caribbean

Argentina / Mexico / Brazil (pioneers) – 20+ years

Colombia / Chile / Ecuador / Venezuela (substantial progress) – 10+ years

Dominican Republic / Costa Rica / Peru / Uruguay (strengthening legislation) – 5 to 10 years

Nicaragua / El Salvador / Guatemala / Honduras / Panama (in process of development) – 5 years or less

Bolivia / Jamaica / Paraguay / Trinidad & Tobago (without TP rules)

# Can I rely on the OECD Guidelines?

<b>OECD as reference</b>	<b>OECD and country as reference</b>	<b>Own criteria</b>
<ul style="list-style-type: none"><li>•Chile</li><li>•Colombia</li><li>•Costa Rica</li></ul>	<ul style="list-style-type: none"><li>•Argentina</li><li>•Ecuador</li><li>•El Salvador</li><li>•Guatemala</li><li>•Honduras</li><li>•Mexico</li><li>•Panama</li><li>•Peru</li><li>•Dominican Republic</li><li>•Uruguay</li><li>•Venezuela</li></ul>	<ul style="list-style-type: none"><li>•Brazil</li></ul>

# Submit vs prepare TP documentation

Countries where TP documentation must be annually submitted to the Tax Authorities (non exhaustive list)
Argentina
Brazil
Chile
Colombia
Ecuador
Peru
Uruguay

# Taxpayer makes the first move – Burden of proof

<b>Tax administration</b>	<b>Taxpayer</b>
Chile	Argentina
Costa Rica	Brazil
Panama	Colombia
Uruguay	Ecuador
	El Salvador / Honduras / Guatemala / Dominican Republic
	Mexico
	Peru
	Venezuela



# No more one-sided stories – Field audits

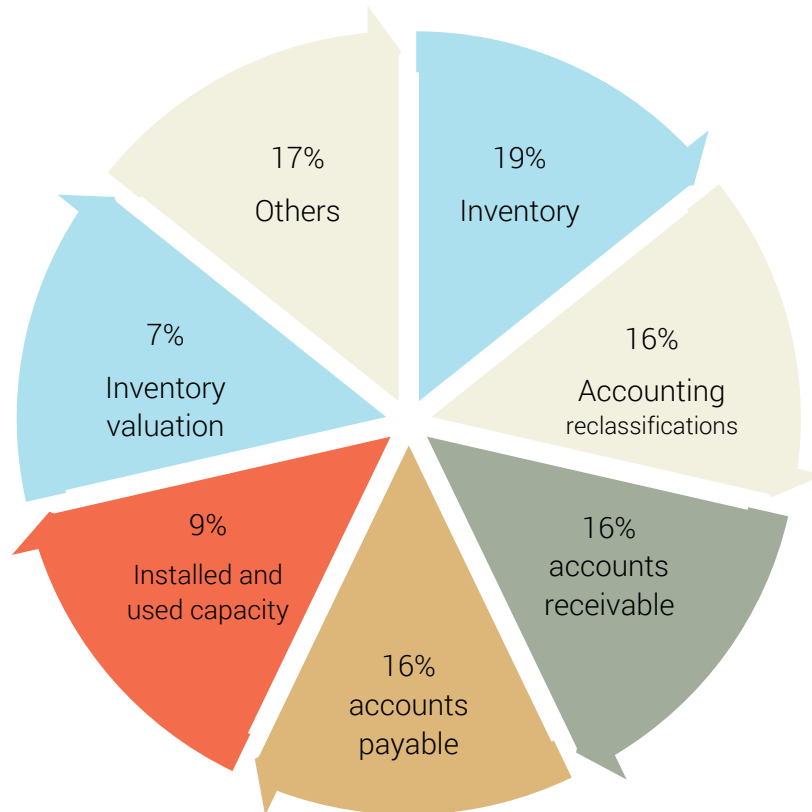
## Carry out field inspections

- Argentina
- Chile
- Colombia
- Costa Rica
- Ecuador
- Honduras
- Mexico
- Peru
- Dominican Republic
- Uruguay
- Venezuela

## No field inspections are undertaken

- Panama

# Localising comparables – TP adjustments



# My way or the highway – Information exchange

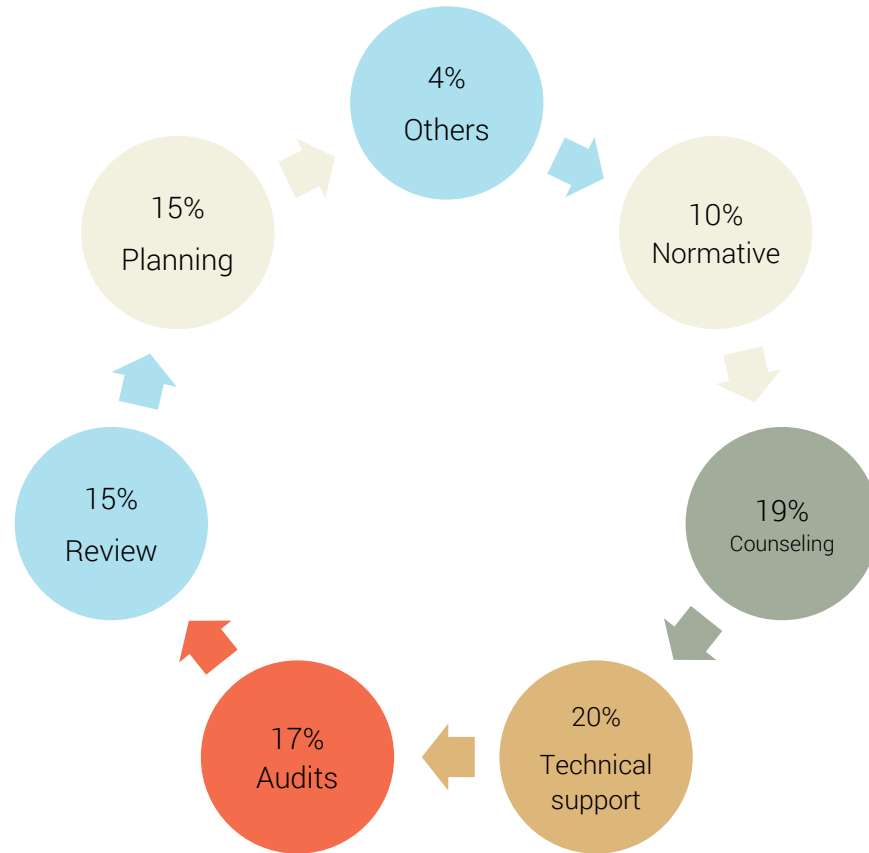
## Usually send requests

- Argentina
- Chile
- Colombia
- Costa Rica
- Mexico
- Peru

## Do not send requests

- El Salvador
- Ecuador
- Guatemala
- Honduras
- Panama
- Uruguay
- Venezuela

# Allocation of time and resources by Tax Authorities



# Number of officials



# Which industries carry a higher risk of being audited?

Pharmaceutical

Manufacturing

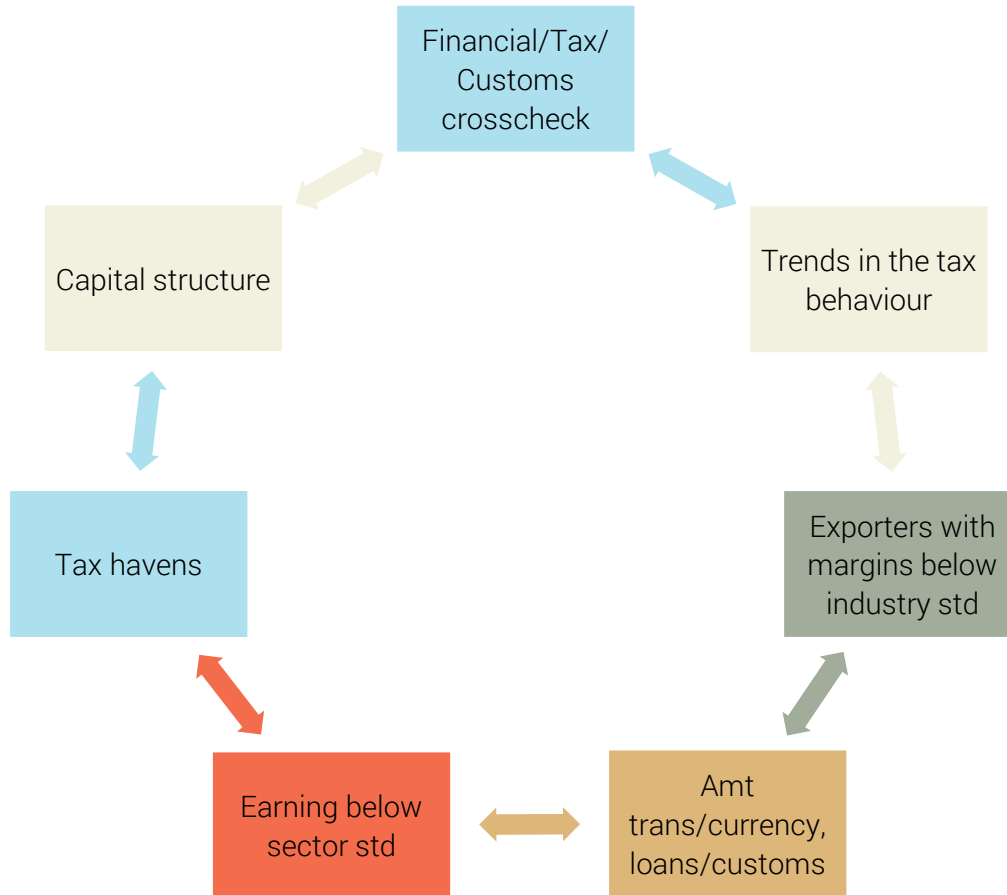
Agricultural

Mining

Oil

Automotive

# Is there a way to hide? – Screening process



## How bad can it be? – Dispute

Country	2007 – 2012 (in favour of the Tax authorities)	2007 – 2012 (in favour of taxpayer)	Number of cases at courts (2011)
Argentina	3	5	29
Mexico	15	10	80
Dominican Republic	8	0	22
Totals	26	15	131



# Where are the real opportunities?

- Common language for preparing documentation (exc. Brazil)
- Similar functionality and risk profile (e.g., mfg./dist./comm./proc.)
- TP rules leveraged from either Argentina or Mexico (exc. Brazil)
- Majority of countries not abide to a hierarchy of methods
- Similar economic, market and political structures/cycles
- Uniform databases used for benchmarking purposes
- OECD as key basis
- Lack of experience in assessing certain transaction (+ / -)

# How to shape your own future for LATAM & Caribbean operations

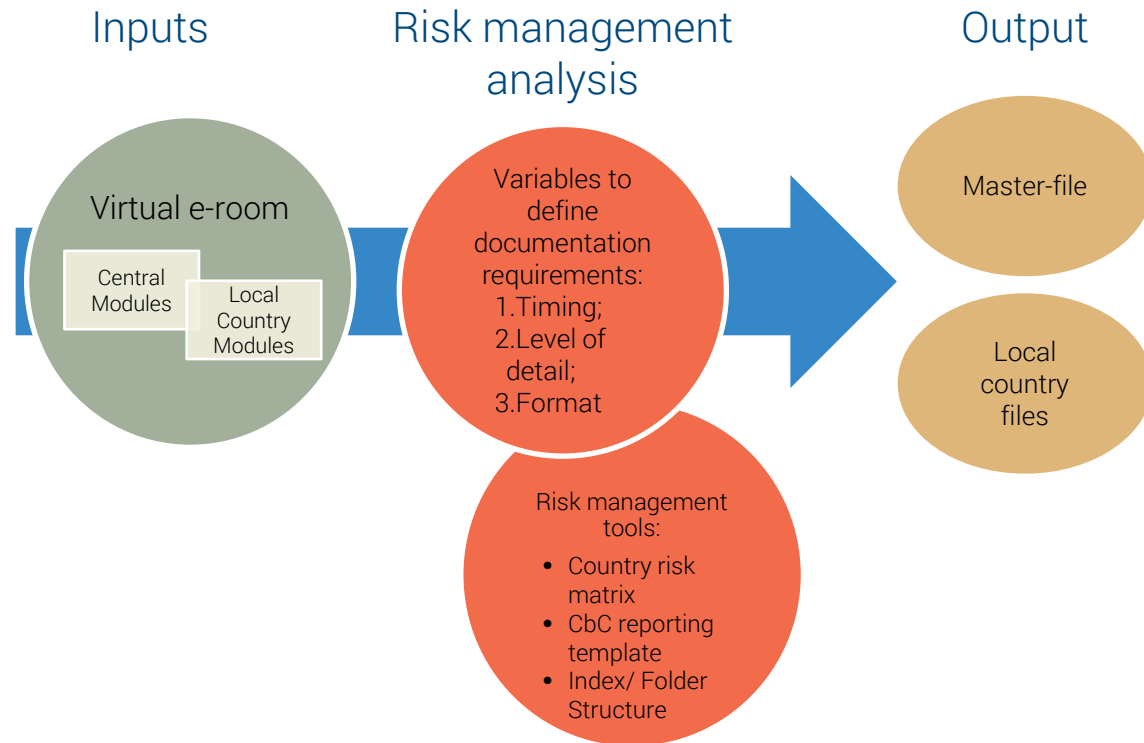
# Conclusions

- Argentina, Brazil , Mexico (Colombia, Ecuador) as high risk LATAM countries.
- The majority of the tax authorities in LATAM and the Caribbean are not strong in the area of (international) transfer pricing.
- Careful with being too sophisticated: tax authorities in LATAM and the Caribbean are less experienced in the analysis of financial and/or intangible type of transactions (e.g., licenses, CCAs, guarantee fees).
- Carry a field audit: consistency between the HQ's view and the local view
- Economic and political / legal / tax administration preconditions: the majority are the same across LATAM and the Caribbean.
- Disputes: Chances for winning a case? Either you loose all or the lowest possible.

# Introducing the Pan-LATAM Masterfile solution

- *Economically significant\** intercompany transactions (including transactions amongst LATAM companies).
  - transaction amount and the potential risk of being audited.
- TP audits in LATAM have a tendency to focus on:
  - 'tangible goods', further investigate their interplay with customs;
  - 'intercompany services'.
- Countries to serve as main reference: Argentina and Mexico (and Brazil)
- One source of reference for preparing local documentation, administered at a central level but with true application at a local level.

# How it works?



# Benefits

- Reducing the costs for preparing the local transfer pricing country files.
- Disclosing an homogenous and consistent description of the Group's F.A.R.s and of the transfer prices applicable to the Group's operations in LATAM.
- Applying an standardise approach to assessing the arm's length nature.
- Focus on countries representing a higher risk (Argentina, Brazil, Venezuela, Colombia, others)
- Identifying, assessing and addressing on a regional basis (LATAM region) any potential tax and transfer pricing issues,
  - with specific attention to their interplay with customs, withholding taxes, deductibility requirements.

# Q&A

## Web event materials:

- Event recording and presentation available within one week at [www.tpa-global.com](http://www.tpa-global.com)
- Contact Heberth for a one-on-one session at [h.guevara@tpa-global.com](mailto:h.guevara@tpa-global.com)

## If you have questions:

- Feel free to type in your questions in Q&A box, send to **both Host and Presenter**

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# Sources

- Inter-American Center of Tax Administrations
- International Tax Compact
- International Cooperation Agency of the Federal Republic of Germany
- Inter-American Development Bank
- World Bank
- International Monetary Fund
- Central American Institute of Fiscal Studies
- OECD/Economic Commission for Latin America and the Caribbean/Inter-American Center of Tax Administrations (2014) Revenue Statistics in Latin America, OECD Publishing
- EuropeanAid – Implementing the Tax and Development policy agenda – Transfer pricing and developing countries (implemented by PwC) - 2011
- CIAT member countries:
  - Argentina/Bolivia/Brazil
  - Chile/Colombia/Costa Rica
  - Ecuador/El Salvador
  - Guatemala/Honduras
  - Jamaica/Mexico/Nicaragua
  - Panama/Paraguay/Peru
  - Dominican Republic
  - Trinidad and Tobago
  - Uruguay/Venezuela



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