

Transfer Pricing Country Summary Guatemala

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing was introduced by the Decree 10-2012 of 2012¹. This Decree stipulates that transfer pricing regulation would come into force starting 1 January 2013. However the regulation was suspended in November of 2013 for two years by the Decree 19-2013. The transfer pricing norm was revived and is applied as of 1 January 2015 onwards.

The tax authority of Guatemala is the Superintendencia de Administración Tributaria (SAT). In September 2016 the tax authorities published transfer pricing guidelines² which provide information regarding the content, presentation, and formulas needed to perform an adequate transfer pricing analysis. The new guidelines refer to the BEPS initiatives. However, Guatemala is not a member of the OECD. Still, the transfer pricing provisions in the regulations are based on the OECD guidelines and apply to the transaction between Guatemalan taxpayers and their related parties.

Definition of Related Party

According to Article 56 of Guatemala's Transfer Pricing Regulation Law, two or more entities can be considered as related parties when one of them is a resident of Guatemala and the other is resident in a foreign tax jurisdiction, if one of the following cases applies:

- When one of them directs or controls the other, or holds, directly or indirectly, at least 25% of its capital stock or voting rights, whether a domestic or foreign entity;
- When five physical or corporate entities or less direct or control both related parties, or possess directly or indirectly at least 25% of participation in the capital stock or voting rights of both entities;
- When corporate entity is a member or participant of the other and is related to it in any of the following situations:
 - Holds a majority of voting rights;
 - Has designated the majority of the members of the administrative organ of the enterprise;
 - Has the power to appoint or remove members or through its legal representative to intervene decisively in the other entity;
 - May have, under agreements with other partners, most of the voting rights;
 - Has designated the majority of the members of the administrative organ of the enterprise.
- When a physical or corporate entity has a stake in the capital stock or voting rights, the ownership of the share or shares, directly or indirectly is the spouse or person connected by relationship, by blood relation to the fourth degree or affinity to the second degree. The term

¹See http://www.minfin.gob.gt/images/downloads/leyes_acuerdos/decreto_10_2012.pdf

² See <https://portal.sat.gob.gt/portal/precios-de-transferencia/>

person refers to individuals, corporations and other organizations with or without legal personality;

- When a physical or corporate entity is a distributor or exclusive agent of the other;
- When a physical or corporate entity is a permanent establishment of the other.

Transfer Pricing Scrutiny

The SAT is entitled to perform transfer pricing audits from financial year 2015 onwards. Although transfer pricing audits are part of a tax audit, the SAT uses standard procedures, such as on-site examinations or written requests. During the audit the SAT may request additional information and must be allowed access to the company's accounting records.

The transfer pricing rules put the burden of proof on the taxpayer. The taxpayer is required to substantiate that the transactions with foreign related parties are undertaken on an arm's length basis and in accordance with the transfer pricing rules and regulations.

The likelihood of transfer pricing related audits is high since in 2016 and 2017 the tax authorities requested the 2016 transfer pricing documentation from most taxpayers that had intercompany transactions.

Transfer Pricing Penalties

Based on the provisions of the Tax Code of Guatemala, for taxpayers who have not complied with the provisions outlined above, the SAT will have the ability to assess the value of such transactions by employing market prices used in transfers of similar goods or services between third parties.

Besides that, for not presenting the declaration:

- The first time the penalty is for 5,000 quetzales;
- Before a second requirement the penalty is 10,000 quetzales;
- And for recidivism the penalty is for 10,000 quetzales and 1% of the gross revenues.

In cases when tax is omitted due to incorrect transfer price adjustments the following penalties apply:

- A fine of 100% of the tax due;
- 13.45% late payment interest;
- 100 quetzales as a formal fine for the rectification.

Advance Pricing Agreement (APA)

Taxpayers can request an APA with the Tax Administration, in order to request the valuation of transactions among related parties. It must be accompanied by a proposal of the taxpayer that is based on the value that would have been agreed independent parties in similar operations. The

proposal can be accepted, rejected or modified by the SAT. If the agreement is accepted, it would be valid for a time frame of 4 fiscal periods at the most. If the SAT does not answer in 30 days, the APA was rejected.

Documentation and Disclosure Requirements

Tax Return Disclosures

Since 2015, taxpayers are required to file a transfer pricing return as an appendix "Operations with related parties"³ to the annual income tax return.

Level of Documentation

The taxpayer is obliged to present all the information regarding transactions with its related parties and their corresponding analysis that demonstrates the arm's length price established in transactions between related parties. This documentation will need to be prepared on an annual basis;

Specifically the taxpayers are compelled to :

1. Informative return filling: The Appendix "Operations with related parties" must be submitted together with the income tax return ;
2. TP Study preparation: Article 65 of the Government Agreement 213-2013⁴ states that correct determination of prices, amounts of the consideration or profit margins in transactions with related parties must be demonstrated and justify in a TP study.

Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The Article 47 established for the status of limitation of information for tax returns presenting confusing information, or in case of partial or total lack of tax payment is 4 years for status. When the taxpayer are not register on the Guatemalan Tax Authorities Article 48 established the status of limitation of 8 years.

Language for Documentation

Documentation should be in Spanish; however, some information (e.g. business description of foreign comparables) may be submitted in English. Guatemalan Tax Authorities may require a translation into Spanish of such information.

³ See Guidance to file the appendix <https://portal.sat.gob.gt/portal/precios-de-transferencia/>

⁴ See http://www.minfin.gob.gt/images/downloads/leyes_acuerdos/acuerdogub213_130513.pdf

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for SMEs.

Deadline to Prepare Documentation

Sufficient information and analysis to demonstrate and justify the correct determination of prices between related parties is required at the time of submission of the income tax as this information is necessary to file the TP Return or Appendix "Operations with related parties" which is part of the income tax return.

Deadline to Submit Documentation

The transfer pricing study need to be submitted only upon the tax authorities request. If the TP study is required, the taxpayer must submit it within 20 days after such request.

Statute Of Limitations

The statute of limitation is four years from filing date of the tax return.

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 59 of the Decree 10-2012 specifies the following five transfer pricing methods:

- comparable uncontrolled price method (CUP);
- resale price method (RPM);
- cost plus method (CPM);
- profit split method (PSM);
- transactional net margin method (TNMM); and
- The transfer pricing rules of Guatemala also include a non-OECD method which is the import and export valuation method.

The CUP, resale price and cost plus method take priority over the transactional methods. The import and export valuation method is preferred for transactions involving imports and exports of goods with well-known international market prices.

For commodities, Article 61 of the Decree 10-2012 permits to use the international price in commodities markets, where said commodities are traded.

Comparables

The regulation in Guatemala allows the use of internal and external comparable companies to determine the arm's length range for the evaluation of the transactions carried out by the company. Typically external comparables are used more since there is a lack of financial information on the local level.