

Transfer Pricing Country Summary El Salvador

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing was introduced by Decree 233 of 29 December 2009 on the Tax Code¹ in the Articles 62-A, 124-A, 125, 199-A, 199-B, 199-C, 199-D and 244. The normative stipulates that transfer pricing regulation would come into force starting 1 January 2010. Later the Decree 763 of 31 July 2014² was reformatted the norms of transfer pricing.

Although El Salvador is not a member of the OECD, the Salvadoran tax authorities, Dirección General de Impuestos Internos (DGII) or Tax Authority, generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

El Salvador issued a Transfer Pricing Orientation Guide on March 2018 ([DG-001/2018](#)) available only in Spanish language, in order to facilitate the determination of transfer pricing according to article 62-A of the tax code

Definition of Related Party

According to Article 199-C of Salvadoran's Transfer Pricing Regulation Law, two or more entities can be considered as related parties:

- 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

¹ See http://www.oas.org/juridico/spanish/mesicic3_slv_tributario.pdf

² See <http://www.diariooficial.gob.sv/diarios/do-2014/07-julio/31-07-2014.pdf>

relationship, by blood relation to the fourth degree or affinity to the second degree. The term person refers to individuals, corporations and other organizations with or without legal personality;

- When in a union of persons, company event or business cooperation contract or joint venture agreement, when any of the contractors or partners participates directly or indirectly in more than 25 percent of the profit of the contract activities resulting from the association;
- When a physical or corporate entity is a distributor or exclusive agent of the other;
- When a person domiciled in the country and its supplier abroad, when the resident in the country make purchases, and the volume thereof represents more than 50 percent;
- When a physical or corporate entity is a permanent establishment of the other;
- When commercial or financial transactions have are being carried out between local physical or corporate entities and entities located in tax havens.³

Transfer Pricing Scrutiny

The DGII is entitled to perform transfer pricing audits from financial year 2010 onwards. Although transfer pricing audits are part of a tax audit, the DGII uses standard procedures, such as on-site examinations or written requests. During the audit the DGII 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.

Transfer Pricing Penalties

Based on the provisions of the Tax Code of El Salvador, for taxpayers who have not complied with the provisions outlined above, the DGII 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 present the declaration or present later the DGII may levy a fine of 0.5 percent over the assets or equity shown on the taxpayer's balance sheet the revaluation surplus of assets unrealized, which shall not be less than 3 minimum salaries.

Advance Pricing Agreement (APA)

There are no special considerations for APA.

³The entities that are not taxed abroad, those who compute income tax on income or net income or taxable, less than 80 percent of income tax that would be caused in El Salvador – those classified by the OECD and the Financial Action Task Force.

Documentation And Disclosure Requirements

Tax Return Disclosures

Taxpayers must declare the amounts at the end of the fiscal period of loans contracted with local or abroad-related entities. In addition, they must declare the financial expenses for loans contracted with local or abroad related entities in which they incurred over the fiscal period.

The preparation of a transfer pricing report is required when:

- The taxpayers have an transactions with related parties or parties domiciled, incorporated or located in countries, states or territories with preferential tax regimes, low or no taxation jurisdictions or tax havens;
- Taxpayers are also required to submit a transfer pricing information return disclosing specific information of cross-border and domestic intra-group transactions when such transactions (either individually or jointly) equals or exceeds USD 571,429.

Level of Documentation

Article 62-A established that taxpayer is obliged to present all the information regarding transactions with its related parties and their corresponding analysis. Taxpayers are compelled to file or prepare sufficient information and analysis that demonstrates the arm's length price established in transactions between related parties. This documentation must include the information that the taxpayer used to determine the arm's length nature of the intra-group transactions. This documentation will need to be prepared on an annual basis. Taxpayers are compelled to file or prepare the following TP documentation:

- 1) Informative Return: Form 982 must be filled within the 3 months following the end of the fiscal year.
- 2) TP Study: Article 62-A of the Tax Code establishes that taxpayers who enter into transactions with related parties are compelled to determine the prices and amounts of consideration, considering market prices used in transfers of goods or services of the same kind among independent parties for those operations. Likewise, taxpayers must determine at market prices the transactions or transactions entered into with subjects domiciled, constituted or located in countries, states or territories with preferential tax regimes, low or no taxation or tax havens. Prices must be agreed according onarm's lengthand the determination of such prices and reasonable documentation must be supported in a TP study.

Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The article 147 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 10 years for status

Language for Documentation

According to article 139 of Tax Code, documentation language is Spanish; however, some information (e.g. business description of foreign comparables) may be submitted in English. Salvadorian Tax Authorities may require a translation into Spanish of such information.

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for SMEs.

Deadline to Prepare Documentation

The transfer pricing documentation study must be ready 3 months after the end of the tax year.

Deadline to Submit Documentation

The transfer pricing information return (Form 982) must be filed by 31 March

Statute Of Limitations

The statute of limitations is three years from filing date of the tax return, but transfer pricing documentation must be maintained for 10 years.

Transfer Pricing Methods

The articles specifying analysis with market prices used in transfers of similar goods or services between third parties. Guía de Orientación N° DG 001/2012 introduces the transfer pricing methods stipulated in the OECD Guidelines, which include:

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

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

Comparables

The Article 199-D established:

- When there are internal that do not require adjustments, these shall be used for the comparability analysis;
- When there are comparable that meet similar characteristics in terms of availability, reliability, identification, etc., the comparable requiring minor adjustments shall be used;
- In order to eliminate differences through reasonable adjustments between operations being compared, in order to achieve a greater reliability in the analysis, should be taken into account, among others, and if applicable, the following:
 - a) **Payment Term:** The difference in payment terms will be adjusted considering the value of the interests according to the time allowed for the payment of the obligations, the interest rate of applied, the commissions, administrative expenses and any other amount included in the financing;
 - b) **Negotiated quantities:** The adjustment shall be made on the basis of the use of discounts or bonuses;
 - c) **Advertising and publicity:** When the price of the goods or services of one particular operation involves a charge for promotion, publicity or advertising, the price may exceed that of the other party that does not assume that spending, up to the amount paid, per unit of output and for this concept;
 - d) **Cost of intermediation:** When used in the comparability analysis data from a company that incurs in intermediation expenses in the purchase of goods, services or rights, and which price turns out comparable to other operating that is not subject this charge, the price of the good, service or right of the first may exceed that of the latter, up to amount for that charge;
 - e) **Conditioning, freight and insurance:** For purposes of comparison, the prices of the goods should be adjusted for differences in costs of materials used in the conditioning of each and freight and insurance that affect each case;
 - f) **Physical and content nature:** In the case of comparable goods, services or rights prices should be adjusted for costs related to the production of the good, the service execution or the costs related to generation of the right.