

Transfer Pricing Country Summary Dominican Republic

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Legislation

Existence of Transfer Pricing Laws/Guidelines

General Norm 04-2011 of 2 June 2011¹, Law No. 253-12 of 8 November 2012² and the Regulatory Decree No. 50-13 of 13 February 2013³ introduced the legal framework for transfer pricing. Regulatory Decree No. 78-14 of 6 March 2014⁴ modified the regime, starting 2014 transactions.

Although Dominican Republic is not a member of the OECD, the Dominican Republic tax authorities, Dirección General de Internos ("DGII"- per its initials in Spanish), generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

Article 281 of the Dominican Republic Tax Code⁵ include positive regulation regarding the Transfer Pricing regime in Dominican Republic. Article 281 ter. describes the cases in which non-compliance with the transfer rules gives rise to penalties.

Definition of Related Party

Related parties are defined in Paragraph IV of article 281. The concept includes situations ranging from statutory to economic dependency and control of companies by individuals (subordination). According to article 2 of Regulatory Decree No. 78-14 of 6 March 2014, individuals or entities, are considered related parties if some of the following assumptions are verified, provided that one of them is a resident or is located in the Dominican Republic:

1. When one of the parties participates directly or indirectly in the direction, control or capital of the other. When the same individual or legal persons or entities participate directly or indirectly in the management, control or capital of said parties;
2. When an individual, legal entity or entity has a permanent establishments abroad;
3. When a permanent establishment located in the country has a parent company resident abroad with respect to another permanent establishment of the same; or an individual or legal person or entity related to it;
4. When an individual, legal entity or resident entity enjoys exclusivity as an agent, distributor or concessionaire of another for the sale of goods, services or rights;
5. When a natural person, legal entity or entity receives, gives or transfers to another fifty percent or more of its production;

¹ See <http://dgii.gov.do/legislacion/normas/Documents/norma04-11.pdf>

² See <http://dgii.gov.do/legislacion/leyesTributarias/Documents/253-12.pdf>

³ See <http://dgii.gov.do/legislacion/reglamentos/Documents/50-13.pdf>

⁴ See <http://dgii.gov.do/legislacion/reglamentos/Documents/78-14.pdf>

⁵ See <http://dgii.gov.do/legislacion/codigoTributario/Documents/Titulo2.pdf>

When an entity is responsible for the expenses of another, for the exploitation and generation of the income or losses of another, in relation to market risks, production or investment risks, and financial risks.

Transactions with residents or physical entities domiciled in tax havens must be analyzed as related parties. Tax haven countries and territories are listed and announced by the DGII with certain periodicity.

Transfer Pricing Scrutiny

Transactions between a resident and a physical, corporate or related entity shall be agreed in accordance with the prices or amounts that would have been agreed between independent parties, in operations comparable and under the same or similar circumstances.

When prices agreed for commercial or financial transactions between companies subject to Article 281, do not meet the values for similar operations that are charged between independent companies, the DGII can refuse them and make appropriate adjustments when valuation agreed between the parties would result in lower taxation in the country or deferred taxation.

Transfer Pricing Penalties

According to Tax Code Article 281 bis., when a taxpayer fails to comply with the provisions relating to transfer pricing documentation within the deadline or when furnishes false or incomplete data clearly it incurs a violation of formal duties and will be subject to up to three times the penalties and fines described in Article 257 of the Tax Code.

Article 257 of the Tax Code states that failure to comply with formal duties shall be punished with a fine of five (5) to thirty (30) minimum wage. In addition to this, Paragraph II of Article 257 states that in cases of non-compliance with formal duties relating to the submission of information to the tax authorities, in addition to the fine provided previously, a penalty of one point zero five percent (0.25%) of the income declared in the previous fiscal period may be applied.

Moreover, Article 250 of the Tax Code states that the violation for tax evasion shall be punished with a fine of up to two (2) times the amount of tax withheld, without detriment to the sanction of closure, if any. In addition, Paragraph I of this article states that in the event in which the amount of taxes evaded might not be determined, the penalty shall be fixed between ten (10) and fifty (50) minimum wages.

Advance Pricing Agreement (APA)

Article 281 bis. of the Tax Code states that taxpayers may request to the DGII a prior agreement on transfer pricing that set the values of the commercial and financial transaction or transactions carried out with related parties, prior to the realization of these and for a determined time. Such request shall be accompanied by a taxpayer's proposal, which will be based on the value that independent parties would have been agreed in similar operation.

Once the APA is approved and subscribed, it takes effect with respect to the current fiscal year and the three subsequent fiscal years. It will also be applicable to the fiscal years that had expired from the application date to the subscription date, with a limit of two fiscal years counted from that date.

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.

Level of Documentation

Taxpayers subject to transfer pricing regulation must submit to the DGII an Informative Return of Operations between related parties (DIOR, for its acronym in Spanish).

The documentation and information that will be part of the DIOR will contain the detail of each transaction and the identification of related parties, including:

- Taxpayer Identification;
- Foreign Tax Identification Number, if any, or the RNC⁶ of the related party;
- Name or business name of the physical, corporate or foreign entity or foreign person not domiciled in Dominican Republic, where appropriate;
- Country of domicile of the related non-domiciled in Dominican Republic (registered or not);
- Linkage criteria;
- Detail of the following transactions with each related:
 - For transactions constituting income, characteristics or concept, value in Dominican peso of each transaction and the date of the operation and customs clearance in the case of exports.
 - For transactions constituting costs and expenses, characteristics or concept indicating the number of operations; value in Dominican peso thereof; the date of payment; data customs clearance when applicable; financing detail (term, assurance, etc.) among others.
- The method of valuation and price ranges or margins.

Taxpayers subject to the transfer pricing regime should have, at the time of submission of the DIOR, a study or report on the process of assessing transfer prices agreed with its related parties, to submit to the DGII when required.

⁶ National Register of Taxpayers (RNC, for its acronym in Spanish).

Language for Documentation

Documentation should be in Spanish.

Small and Medium Sized Enterprises (SMEs)

They will be exempt from the obligation to preparation of the study or report on the process of assessing transfer pricing the following contributors:

- Those whose transactions with related parties together do not exceed, in the fiscal year in question, the sum of ten million Dominican peso (RD \$ 10,000,000.00), adjusted annually for inflation, and do not perform transactions with residents in tax havens or preferential tax regimes;
- Those carrying out transactions with resident related parties, for the part of the operations performed with them exclusively, and provided that there is not tax evasion.

Nevertheless, exempted contributors shall submit their DIOR to the DGII, with the following information, without that, they are limiting:

- Identification of related physical, corporate or entity with indication of his home and his country of residence where applicable;
- Transactions with related parties;
- Type of operation performed;
- Kind of operation;
- Amount in Dominican peso for each transaction.

Deadline to Prepare Documentation

Taxpayers must have, at the time of filing the Income Tax return on the Income the information and sufficient analysis to value its operations with related parties. Information contained in the informative return as well as the supporting documentation must be prepared so as to comply with the deadlines for their submission, within one hundred eighty (180) days after the date of days closure.

Deadline to Submit Documentation

Within one hundred eighty (180) days after the date of days closure.

Transfer Pricing Methods

As mentioned before, transfer pricing legislation in the Dominican Republic follows the OECD Transfer Pricing Guidelines. Therefore the tax administration 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).

In order to establish the most appropriate method of valuation to reflect the economic reality of the operation, will be considered the method that, among others:

- Better corresponds to the line of business, with the business and commercial structure of the physical, corporate entity or unit;
- Has the best quality and quantity of information available to proper implementation and justification;
- Contemplates the most appropriate degree of comparability between parties, transactions and functions; and
- Require the lowest level of adjustments to eliminate the effects of differences existing between the facts considered and the comparable situations.

Transfer Pricing Informative Return

All taxpayers within the scope of the transfer pricing regulations must file the DIOR on an annual basis within the first 180 days after the end of the fiscal year. DIOR requires taxpayers to:

- Summarize transactions by type;
- Report the profit level indicator of the tested party of each transaction;
- Complete the information regarding related parties and transactions on the tax administration's virtual platform

The Transfer Pricing Information Return (DIOR) was introduced on 1 September 2017.

Comparable

The large variety of comparable is available for Transfer pricing in Dominican Republic. They apply as follows:

- 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:
- **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;
- **Negotiated quantities:** The adjustment shall be made on the basis of the use of discounts or bonuses;
- **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;
- **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;
- **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;
- **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.