

Transfer Pricing Country Summary Uruguay

25 August 2015

Legislation

Existence of Transfer Pricing Laws/Guidelines

Transfer pricing legislation was implemented in 2007, with the “Tax Reform Law”. The rules includes the Chapter VII of the Income Tax (IRAE), Tittle 4, legislation 1996 (Impuesto a las Actividades Económicas, Título 4 del Texto Ordenado 1996, Spanish).

In 2009, the official framework on Transfer Pricing was introduced with the Decree 56/2009 and the Resolution 2084/009. Later, was published the Decree 392/009, the Resolution 818/010 and 819/010.

Definition of Related Party

The definition regarding related parties is set in the Article 1 of the Decree 56/009. Therefore, a related party relationship for tax purposes is considered between:

- Those who conduct transactions with related parties constituted resident, filed resident or located abroad; and falling in Art. No. 3 of Title No. 4 Ordered Text 1996;
- Those who obtain income from personal services outside the dependency ratio reached by the Income Tax of Economic Activities by option or mandatory inclusion according to the provisions of Art. No. 5 of Title No. 4 Revised Text 1996, and conduct transactions with related parties constituted resident, filed resident or located abroad;
- Those who perform transactions constituted resident, filed residing or located in countries with low or no taxation or benefiting from a special scheme for low or no taxation entities. They are included in the provisions of these literal transactions with entities operating in customs enclaves, including those based on national territory and to benefit from a regime of low or no taxation.

According the Resolution 2084/009, two or more entities can be considered as related parties when one of the following cases applies:

- When one of them owns at least 10% of the capital of another;
- When one of them owns significant influence over the others parties;
- Two or more parties that share: a) one common party that possesses at least 10% of the capital of each, b) one common party that possesses at least 10% of the capital of one or more parties, and possesses significant influence over the other parties c) one common party that possesses significant influence over the other parties;
- Two or more entities that have common directors, officers or managers administrators;
- One entity has the technology property that underlies activities for the other entities;
- One party that possesses the votes necessary to control another;
- One party that agrees to preferential contractual terms with another that differ from those that would have been agreed to between third parties in similar circumstances, (but not limited to) volume discounts, financing terms and consignment delivery;

- One party that develops an activity of importance solely in relationship to another party, or the existence of which is justified solely in relationship to such other party (e.g. sole supplier or customer);
- One party that provides a substantial portion of the financing necessary for the development of the commercial activities of another, including the granting of guarantees of whatever type in the case of third party financing.
- One party that enjoys exclusivity as agent, distributor or licensee with respect to the purchase and sale of goods, services and intangible rights of another;
- One party that participates with another in associations without a separate legal existence pursuant to which such party maintains significant influence over the determination of prices;
- One party that participates significantly in the establishment of the policies of another relating to general business activities, raw materials acquisition and production/marketing of products;
- One party that assumes responsibility for the losses or expenses of another;
- The directors, officers, or managers/administrators of one party who receive instructions from or act in the interest of another party; and the management of a company is granted to a subject (via contract, circumstances, or situations) who maintains a minority interest in the capital of such company.

Transfer Pricing Scrutiny

DGI (The Fiscal Administration of Uruguay) is entitled to perform Transfer Pricing audits to test whether transactions carried out between related parties have been agreed in accordance with the arm's length principle.

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.

When prices or value agreed in transactions with related parties do not meet the arm's length standards, the DGI is entitled to make appropriate adjustments, as the valuation agreed between the related parties would result in lower taxation in Uruguay.

The DGI have a department of International Tax, performing the Transfer Pricing audits.

Transfer Pricing Penalties

The penalties are included in the Law of Accountability, Article 315. Incorporated that those who violate the formal duties established under the Transfer Pricing legislation, will be sanctioned in graduated form according to the seriousness of the violation, with a fine of up to 1.000 times the maximum fine for violation referred to above, which can reach up to approximately USD 230.000.

Moreover, when a taxpayer is in default, a fine of 20% of the tax underpaid and interest will be charged on such tax underpaid, calculated from the original due date. In some cases, this fine can be reduced.

Advance Pricing Agreement (APA)

Decree 392/009 in Article 7 previews Advance Pricing Agreement. DGI can celebrate APA with the taxpayers who must be signed prior to the realization of transactions and may not exceed three fiscal years. DGI establish the conditions and formalities required for the signing of such agreements.

In Uruguay three APA were signed in 2014.

Documentation And Disclosure Requirements

Tax Return Disclosures

Taxpayers undertaking transactions with related parties located abroad are required to fill in the Form 3001, to file a Transfer pricing report and present the necessary statutory financial statements.

Level of Documentation

A Transfer Pricing Report must include:

- Information on activities and functions developed;
- Information on risks assumed and assets employed;
- Facts and circumstances taken into account for the analysis;
- Details and quantification of the transactions that should be disclosed according to the transfer pricing requirements;
- Identification of the foreign related parties with which the transactions being declared are carried out;
- Information on the method employed for the justification of the transfer prices taken stating the reasons for considering them the best methods;
- Identification of the comparables selected;
- Identification of the sources used for the selection of comparables;
- Details and justification of the comparables rejected;
- Details and justification of the comparability adjustments performed;
- The median and inter-quartile range;
- The transcription of the income statement of the comparable parties corresponding to the fiscal years necessary for the comparability analysis, with an indication of the source of the information.

Record Keeping

Records must be kept in accordance with the provisions of the Tax Code, for a period of five years.

Language for Documentation

Documentation should be prepared in Spanish language.

Small and Medium Sized Enterprises (SMEs)

There are no special transfer pricing rules for small and medium-sized enterprises deviating from the general transfer pricing regime.

Deadline to Prepare Documentation

There is no formal provision to prepare Transfer pricing documentation. However, in general, the documentation needs to be prepared by the filing date of the annual income tax return. The deadline to submit the income tax return is within four months of the end of the accounting period.

Deadline to Submit Documentation

The documentation must be submitted to the Fiscal Administration up to the ninth month after the close of the fiscal year.

Statute Of Limitations

The statute of limitation is five years starting the close of the fiscal year.

Transfer Pricing Methods

The methods in Uruguay are the same as in the OECD Guidelines

- Comparable uncontrolled price method (CUP);
- Resale price method (RPM);
- Cost plus method (CPM);
- Profit split method (PSM); and
- Transactional net margin method (TNMM).

There is an additional method (the 6th method), for settling the prices of the imports or exports of commodities to related entities performed through an international trader based on international prices in commodities markets.

Comparables

The legislation in Uruguay 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.