

PERU

LEGISLATION	
Existence of Transfer Pricing Laws/Guidelines	<p>The rules governing Peruvian transfer pricing are set forth in:</p> <ul style="list-style-type: none"> • Articles 32 and 32(A) of the Peruvian Income Tax Law (PITL), effective as of 1 January 2001. Legislative Decrees 945 and 953 introduced amendments into the PTIL and Tax Code with effect as of fiscal year 2004; and • Article 24 and chapter XIX (Articles 108 to 119) of the PITL, effective as of 1 January 2006, detail the applicable transfer pricing rules. <p>Articles 32 and 32 (A) of the PITL establish the principle of arm’s length pricing and set forth the obligations for qualifying taxpayers. The PTIL furthermore states that the transfer pricing rules must in principle also be applied to the value added taxes (VAT) and the selective consumption (excise) taxes. The transfer pricing rules, however, do not apply to customs valuation, where World Trade Organisation regulations apply.</p> <p>Chapter XIX of the PITL Regulations deals in article 118 with the conditions and characteristics of the APA procedure.</p> <p>The Peruvian tax authorities are the Superintendencia Nacional de Administración Tributaria (SUNAT).</p> <p>Although Peru is not an OECD member, the PITL refers to the OECD Transfer Pricing Guidelines as a source of interpretation of transfer pricing analysis, as far as they do not contradict the PTL.</p>
Definition of Related Party	<p>Two or more individuals, companies or entities are considered related if one of them participates, directly or indirectly, in the administration, control or capital of the other, or if the same person or groups of persons participate, directly or indirectly, in their administration, control or capital.</p> <p>The use of intermediary third persons to disguise a transaction between related parties is denied for transfer pricing purposes.</p> <p>The PITL Regulations specify, among others, the following forms of economic relationship:</p> <ul style="list-style-type: none"> • a natural person or company owns, directly or indirectly, more than 30 per cent of the capital of another company; • the same natural person or company owns, directly or indirectly, more than 30 per cent of the capital of two or more other companies; • two or more companies have one or more managers, directors or executives with decision power in financial or commercial matters, in common; • two or more companies with consolidated financial statements; • a natural person, company or other entity who, during the fiscal year preceding the one under analysis, sells goods or renders services to an unrelated company or group of companies being related themselves, which represent 80 per cent or more of his total annual income and 30 per cent or more of the total annual cost of the buying company(y)ies during the same fiscal year; • a natural person, company or other entity having or exercising a dominant influence over the management decisions of one or more companies; and • a head office and its permanent establishment. <p>Parties located in a low tax jurisdiction are deemed related and transactions with such</p>

	<p>parties fall within the scope of the transfer pricing regulations.</p> <p>In order to avoid profit shifting between domestic parties, the PTIL stipulates that the transfer pricing regulations also apply to transactions between domestic parties when:</p> <ul style="list-style-type: none"> • one of them is either an exempted taxpayer (with the exception of the Public Sector), subject to a beneficial tax treatment such as an exoneration from income tax, or subject to a special income tax regime (e.g. entities in the jungle region); and • at least one of them has had tax losses in one of the past six fiscal years.
<p>Transfer Pricing Scrutiny</p>	<p>The SUNAT has issued information requests with regard to related parties and transfer pricing methodology on the occasion of general tax audits. The taxpayer may during the audit informally clarify issues, produce evidence to support facts and discuss issues.</p> <p>The burden of proof lies with the taxpayer. A challenge by the SUNAT requires, however, some supporting evidence to be produced from their side in order to pass a court trial test.</p>
<p>Transfer Pricing Penalties</p>	<p>Transfer pricing penalties are expressed in Tributary Tax Units (Unidad Impositiva Tributaria (UIT). A UIT equals PEN 3,460 (approximately USD 1,110 on 13 January 2009). The following will attract a transfer pricing penalty:</p> <ul style="list-style-type: none"> • not filing the transfer pricing informative return by the required deadline: a fine of 0.6% of the taxpayer's net income, with a minimum of 10 per cent of a UIT and a maximum of 25 UITs; and • not offering the transfer pricing technical study or documentation and information: a fine of 0.6% of the taxpayer's net income, with a minimum of 10 per cent of a UIT and a maximum of 25 UITs. <p>The fines due in the two above cases may be subject to reduction under certain conditions.</p> <p>Furthermore, increase of the taxable income due to transfer price adjustments may cause income misstatement penalties which can be up to 50 per cent of the additional income tax due.</p>
<p>Advance Pricing Arrangement (APA)</p>	<p>The PITL explicitly sets forth the possibility of APAs. The conditions and characteristics are detailed in chapter XIX of the PITL Regulations.</p> <p>APAs are available for cross-border transactions only.</p> <p>Under the APA procedure, the taxpayer files a request containing the proposed transfer pricing method, the comparable transactions or enterprises, the supporting data including the years analysed, the adjustments to the selected comparables, the exact price or range of prices, the amount of compensation or profit margin, and the hypotheses used.</p> <p>The SUNAT has a 12-month term to review the request and can approve, approve after modification or reject it. If the SUNAT does not take a decision within the 12-month term, the request is rejected.</p> <p>APAs apply to the fiscal year of approval of the request and the 3 subsequent years.</p> <p>APAs cannot be modified or unilaterally terminated, except in case of condemnation of one of the related parties for tax or customs crimes or of non compliance with the terms of the APA.</p>

DOCUMENTATION AND DISCLOSURE REQUIREMENTS	
Tax Return Disclosures	<p>From fiscal year 2006, taxpayers are required to file a transfer pricing informative return if they have carried out transactions with related parties for a total value of at least PEN 200,000 (approximately USD 60,000) during a fiscal year. Total value means the sum of income accrued (outgoing transactions) and of investment/ expenses of goods and services acquired (incoming transactions), without netting between transactions with the same related party. The transfer pricing informative return has to be filed as well for all transactions with parties in a low tax jurisdiction, irrespective of the total value of such transactions.</p>
Level of Documentation	<p>From fiscal year 2006, taxpayers must perform a transfer pricing technical study if they have transactions during a fiscal year:</p> <ul style="list-style-type: none"> • with a party in a low tax jurisdiction (irrespective of the value of the transactions and the total income of the taxpayer); or • with foreign related parties for a total value exceeding PEN 1,000,000 (approximately USD 300,000) and the total income of the taxpayer exceeds PEN 6,000,000 (approximately USD 2 million). <p>The transfer pricing technical study must contain documentation and information regarding the method used and criteria applied in determining the transfer prices, as well as any other element relevant to the transactions.</p> <p>In cases where a transfer pricing technical study is not required, the taxpayer must nevertheless be able to sustain the applied transfer prices (including these of transactions with domestic related parties) by sufficient documentation and information.</p>
Record keeping	<p>Records must be kept during such a period as to allow the SUNAT to assess income tax liabilities during the term determined by the statute of limitations, i.e. four years from 1 January following the year in which the income tax return is due (generally 31 March of the year following the taxable period). This term is extended to six years if no income tax return was filed.</p> <p>Other disciplines (VAT, commercial law) could foresee in a longer record keeping term obligation.</p>
Language for documentation	<p>Documentation should be drafted in Spanish. It is presently not clear whether the SUNAT accepts that some parts of the documentation (e.g. business description of foreign comparables) may be presented in the English language or should be translated in Spanish.</p>
Small and medium sized enterprises (SMEs)	<p>Taxpayers with transactions with related parties in a fiscal year below the total value threshold of PEN 200,000 (approximately USD 60,000) and without any transactions with a party in a low tax jurisdiction in this fiscal year, do not have to file a transfer pricing informative return.</p> <p>Taxpayers with transactions with foreign related parties for a total value not exceeding PEN 1,000,000 (approximately USD 300,000) or a total income not exceeding PEN 6,000,000 (approximately USD 2 million) and without transactions with a party in a low tax jurisdiction do not have to prepare a transfer pricing technical study.</p> <p>They should nevertheless comply with the transfer pricing rules and regulations and be able to sustain the applied transfer prices by sufficient documentation and information.</p>
Deadline to Prepare Documentation	<p>The transfer pricing technical study must be prepared by the end of the fiscal year. The SUNAT can ask this study as of this point in time as well as during an audit.</p>

Deadline to Submit Documentation	The transfer pricing informative return has to be filed yearly in July following the fiscal year. The filing takes place electronically.
STATUTE OF LIMITATIONS	
The standard statute of limitations for an income tax assessment is four years from 1 January following the year in which the income tax return is due (generally 31 March of the year following the taxable period). This term is extended to six years if no income tax return was filed (Articles 87-7 and 43 of the Tax Code).	
TRANSFER PRICING METHODS	
According to Article 32(A) of the PITL six methods are acceptable: the CUP method, the resale price method, the cost plus method, the profit split method, the residual profit split method and the transactional net margin method. The same article prescribes that the most appropriate method to reflect the economic reality of a transaction should be applied. Article 113 of the PITL Regulations provides guidelines for selecting the most appropriate method.	
COMPARABLES	
Local industry-specific information can be obtained from a number of industry associations. Another possibility is to use the data of the financial statements which publicly quoted companies have to file with the Agency of the National Supervisory Commission for Business and Securities. Notwithstanding this, the public information on local comparable transactions is nevertheless available to a smaller degree. Foreign comparables are in consequence frequently used. Article 32 of the PITL explicitly allows this practice, provided the necessary adjustments are made to reflect market differences. A specific interpretation of the Tax Code could authorise the SUNAT to use secret comparables. However, such interpretation would not pass a court trial test on basis of the argument of violation of the constitutional rights on due procedure and defence.	
<i>Date: 20 January 2009</i>	