

# Transfer Pricing Country Summary

## Peru

July 2018

## Legislation

### Existence of Transfer Pricing Laws/Guidelines

The legal frameworks for transfer pricing are Articles 32 and 32-A of the Peruvian Income Tax Law (PITL) and Chapter XIX of the PITL Regulation.

Chapter V Article 32 of the PITL indicates that in the cases of sales, capital contributions of goods and other transfers of property, service provision and any other type of transaction in any capacity, the value assigned to goods, services and other benefits, for tax purposes, will be the market one. If the assigned value differs from the market value, either by overvaluation or undervaluation, the National Superintendency of Tax Administration - SUNAT will proceed to adjust it for both the acquirer and the transferor. Section 4 of the same Article determines that for transactions between related parties or that are made from, to or through of countries or territories with low or no taxation, the prices and amount of economic compensation that have been agreed with or between independent parties in comparable transactions, under the same or similar conditions, according to the established in Article 32 ° -A.

Article 32-A of the PITL establishes that market value, for transactions between related parties or made from, to or through countries or territories with low or zero taxation, shall be the prices and amount that would have been agreed with or between independent parties in comparable transactions, under the same or similar conditions.

To define the market value of intercompany transactions, Article 32-A of the PITL (incorporated by Article 22 of Legislative Decree 945, published on 23 December 2003) set forth the guidelines regarding the legislation scope, definition of related parties, adjustments to be made, comparability analysis, transfer pricing methods, APAs and formal obligations. It also refers to the OECD Transfer Pricing Guidelines as a source of interpretation of transfer pricing analysis, as long as they do not contradict the PITL.

Chapter XIX (Articles 108 to 119) of the PITL Regulation was incorporated in Article 3 of Supreme Decree 190, published on 31 December 2005. It contains the regulations for the correct application of Article 32-A, and sets the following transfer pricing provisions:

- Article 108 sets forth several conditions to be considered for related parties and listed the countries or territories with low or no taxation;
- Article 109 states the primary, corresponding and secondary adjustments to be made;
- Article 110 specifies elements or circumstances that determine whether transactions are comparable or not, such as characteristics of the operations, functions and economic activities, the contractual terms, economic circumstances and business strategies;
- Article 111 sets out the factors that should be taken into account in order to eliminate differences between the transactions being compared, through reasonable adjustments;

- Article 112 states that the market value should be determined transaction by transaction, and the article also provides exceptions to this rule;
- Article 113 specifies the appropriate method to reflect the economic reality of each transaction, based on the type of business, the quality and quantity of information available, the degree of comparability and the level of adjustments required;
- Article 114 and 115 refer to the price range, the determination of the interquartile method and the calculation of the median;
- Article 116 stipulates the documentation and information that may support the transfer price calculation;
- Article 117 refers to the information to be included in the Transfer Pricing Study (TPS);
- Article 118 states the conditions and characteristics of the APA procedure;
- Article 119 refers to deductible expenses in countries with low or no taxation.

The Legislative Decree 1312 published on 31 December 2016, modified several articles of the PITL with the intention of adapting national legislation to the international standards and recommendations issued by the Organization for Economic Cooperation and Development (OECD) on the exchange of information for tax purposes, international taxation, erosion of tax bases, prices of transfer and combat against tax avoidance. The main changes are:

It modified article 32-A (g) of PITL in order to adopt the three-tiered approach to transfer pricing documentation (Master file, Local file and Country-by-country report). According to the provisions given in the Article 32°-A, subsection g) of the PITL, the SUNAT may exclude taxpayers to the obligation to submit the informative affidavits Local Report, Master Report and/or Country-by-Country Report.

Modification of subsection g) of article 32 ° -A of the PITL: sworn statements and other formal obligations. Beginning in fiscal year 2016, taxpayers subject to the scope of the transfer pricing rules, whose income accrued in the taxable year exceeds 2,300 UIT (\*) PEN 9,315,000, approximately USD 2.9 million, must submit annually the affidavit of the Local Report, regarding the transactions that generate taxable income and/or deductible costs or expenses for the determination of the tax. Notwithstanding the foregoing, SUNAT may demand compliance with the aforementioned obligation for other operations that do not generate taxable income and/or deductible costs or expenses. As of fiscal year 2017, taxpayers who are part of a group whose income accrued in the taxable year exceeds 20,000 UIT PEN 81,000,000, approximately USD 25.3 million, must submit annually, according to the provisions of the regulations, the informative affidavit Master Report that Contains, among others, the organizational structure, the description of the business or businesses and the transfer pricing policies on intangibles and financing of the group and its financial and fiscal position. Likewise, taxpayers who are part of a multinational group must submit annually, according to what the regulations indicate, the informative affidavit Country-by-Country Report that contains, among others, information related to the global distribution of income, taxes paid and business activities of each of the entities belonging to the multinational group that develop their activity in a specific country or territory. It should be noted that these regulatory changes refer to the formal obligations of the fiscal year 2017, which will be declared during the year 2018. In effect, although for that year there

will no longer be the Transfer Pricing PDT 3560 and the TPS. As such, these will be replaced by the Local Report and the other reports, which in essence will contain the information that is being collected in said documents and the supporting documentation. The formal obligations referred to 2015 and previous years (PDT 3560 and Technical Transfer Pricing Study) will be prepared and declared in the same way that the statements were made in previous years, that is, in the tax period corresponding to the month of May which is declared during the month of June according to the last digit of the taxpayer's ID (RUC) number.

It modified numeral 1 of subsection e) of article 32 ° -A of the PITL related to Comparable Uncontrolled Price Method, when applied to commodities (the so-called: "sixth method")

Comparable Uncontrolled Price Method for commodities ("Sixth Method"). Modification introduced with Legislative Decree 1312 has simplified the scope of the previous definition, especially when it refers to the import and/or export of commodities, limiting the space so that in the handling of these operations, a situation of lower tax revenue could be presented. The Market Value will be determined considering the date of the quotation value as the term of the shipment of exported goods or the disembarkation of imported goods. The regulation will indicate the list of goods included, the market or the characteristics of the market from which the price is obtained, the quotation to be considered from said market, and the adjustments that are accepted to reflect the characteristics of the asset and the modality of the operation.

Incorporation of numeral 7 to subsection e) of article 32 ° -A of the Law: Incorporation of Other Methods. This modification refers to the methods used in the determination of the market value for transactions between related parties or that are made from to or through countries or territories with low or no taxation. In particular, it adds the possibility of considering other methods to the six established in the standard, when the application of any of these methods is not appropriate due to the nature and characteristics of the activities and transactions. The conditions for its use will be established in the regulations.

Incorporation of subsection i) of article 32 ° -A of the Law: Services Management This incorporation is adding some details for the treatment of the Services traded between related parties and / or from to or through countries or territories with low or no taxation. It asks the taxpayer, without prejudice to the other requirements of the transfer pricing regulations, that in the case of services the benefit test is fulfilled, that is to say that the service provided provides economic or commercial value to the recipient of the service, such as if it had occurred between unrelated parties. In addition, you must provide the documentation and information requested, as necessary conditions for the deduction of the cost or expense. This requirement would demand that the reception of the service be analyzed, not only from the point of view of a taxpayer's expenditure, but also from the income for its related part, requiring the calculation of the Net Cost plus Margin NCPM (Operating Profit / Sum of Costs and Expenses). Likewise, a cap is being placed on the NCPM obtained by the service provider, in the case of low added value services, since it cannot exceed five percent (5%) of the costs and expenses incurred. Those services that meet the following characteristics are considered as low value-added services: (i) they are of an auxiliary or support nature; (ii) they do not constitute principal activities of

the taxpayer or the multinational group, as applicable; (iii) do not require the use of unique and valuable intangibles, nor do they lead to the creation of unique and valuable intangibles; and (iv) they do not involve assuming or controlling a high or significant level of risk, nor do they generate a significant level of risk for the service provider. The PITL regulation may indicate in a referential manner the services that qualify as low value added and those that do not. The benefit test is being required starting in year 2017.

(\*) UIT = Taxation Unit 2017: PEN 4,050 approximately USD 1,266. Exchange rate: PEN 3.2 per USD

Supreme Decree No. 333-2017-EF, published on November 2017 modified Article 116 of the RITL related to the obligation to submit the sworn informative declarations of the Local Report, Master Report and Country by Country Report.

## Definition of Related Party

According to Article 32-A of the PITL, 2 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 group of persons participate, directly or indirectly, in their administration, control or capital.

It also establishes that the use of third parties (intermediaries) for transactions between related parties is not allowed for transfer pricing purposes.

Article 24 of the PITL Regulation defines related party as:

- a natural or legal person owns, directly or indirectly, more than 30 percent of the capital of another legal person;
- the same natural or legal person owns, directly or indirectly, more than 30 percent of the capital of two or more legal persons;
- in any of the above situations, when that same proportion of capital belongs to spouses or individuals linked up to the second degree of consanguinity or affinity;
- the capital of two or more companies that makes up of more than 30 percent of their common partnership;
- legal persons or entities that have one or more common directors, managers, administrators or executives with decisive power in financial, operational or commercial matters;
- 2 or more natural or legal persons consolidate financial statements;
- there is a business cooperation agreement with independent accounting;
- there is a business cooperation agreement without independent accounting;
- there is a joint venture agreement in which any of the associated parties, directly or indirectly, share more than 30 percent of the results or profits of one or more businesses of the managing associated; in which case the managing associated and each of its associated parties will be considered as related parties;
- a non-domiciled company has one or more permanent establishments in a country, in which

case there will be entailment between non-domiciled company and each of its permanent establishments;

- a company based in Peruvian territory has one or more permanent establishments abroad;
- a natural or legal person having a dominant influence over the management decisions of one or more legal persons or entities;
- a natural person, company or entity, during the fiscal year preceding the one under analysis, sells goods or renders services to an unrelated company or group of associated companies, which account for at least 80 percent of its total annual income and at least 30 percent of the total annual cost of the buyer during the same fiscal year;
- Parties located in a low tax jurisdiction are deemed as controlled, and transactions with such parties fall within the scope of the transfer pricing regulations. The Annex of the PITL Regulation, referred to in Article 86, includes the following 43 countries or territories with low or no taxation: Alderney, Andorra, Anguilla, Antigua and Barbuda, Netherlands Antilles, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Cyprus, Dominica, Guernsey, Gibraltar, Granada, Hong Kong, Isle of Man, Cayman Islands, Cook Islands, Marshall Islands, Turks and Caicos Islands, British Virgin Islands, Virgin Islands of the United States, Jersey, Labuan, Liberia, Liechtenstein, Luxembourg, Madeira, Maldives, Monaco, Montserrat, Nauru, Niue, Panama, Samoa, St. Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Seychelles, Tonga, Vanuatu.

Legislative Decree 1120 introduced Chapter XIV of the International Tax Transparency Regime, applicable to domestic taxpayers who are subjected to Peruvian tax law, and owners of entities which are not domiciled, incorporated a particular definition of controlled entities as well as the attribution of income. This decree is effective as of the fiscal year 2013.

## Transfer Pricing Scrutiny

The Peruvian tax authority is the Superintendencia Nacional de Administración Tributaria (SUNAT). SUNAT has issued required information with regard to related parties and transfer pricing methodology for general tax audits. During the audit, the taxpayer may informally clarify issues, present evidence to support facts and discuss issues.

The burden of proof lies with the taxpayer. However, a challenge by the SUNAT requires supporting from the taxpayer in order for them to pass a court trial test.

Legislative Decree 1124 introduced amendments of the PITL and Tax Code, effective as of fiscal year 2013, modifying the first and second paragraph of subsection c) of Article 32-A of the Act, as follows:

- Only proceed to adjust the value agreed between the parties when SUNAT determines lower tax in a particular country than it would apply by implementing the transfer pricing rules;
- SUNAT can adjust the agreed value even without complying with the above assumption, if this has an impact on the determination of a greater tax in the country in transactions

with other related parties;

- This evaluation should be considered for each transaction or group of transactions, according to the assessment that was made when applying the respective method.

## Transfer Pricing Penalties

According to numerals 2, 4 and 8 of article 176 of the Peruvian Tax Code, it is a punishable offense:

- Not to submit informative affidavit within the established deadlines. The penalty is a fine equivalent to 0.6 percent of net income, which cannot be less than 10 percent of a UIT (USD 125 approximately) or more than 25 UIT (USD 31,250 approximately);
- Submit the informative affidavit incompletely or with nonconforming information. The penalty is a fine equivalent to 30 percent of UIT (USD 375 approximately);
- Failure to file the informative affidavit without taking under consideration the guidelines and terms establish by SUNAT. It is punishable with a fine equivalent to 30 percent of a UIT (USD 375 approximately);
- Furthermore, new penalties have been approved by virtue of Legislative Decree N° 1311, published on 31 December 2016 that modified numeral 27 of article 177 of the Tax Code;
- Failure to show or to file the documentation and information referred to in subsection g) of article 32-A of the PITL; which, among others, support the informative affidavits Local Report, Master Report and/or Country by-Country Report, is a punishable offense with a fine equivalent to 0.6 percent of the net income, which cannot be less than 10 percent of a UIT or more than 25 UIT.

## Advance Pricing Agreement (APA)

The consultations binding regulated in article 95-A of the Tax Code in the event of a consultation on the transfer price law application such response shall be binding on SUNAT.

The PITL explicitly sets forth the possibility of APAs. The conditions and characteristics are detailed in chapter XIX of the PITL Regulations. APAs are available for cross-border transactions only.

Under the APA procedure, the taxpayer must file a request containing the proposed transfer pricing method, the comparable transactions or enterprises, the supporting data including the years analyzed, the adjustments to the selected comparables, the exact price or range of prices, the amount of compensation or profit margin, and the hypotheses used.

The SUNAT has 12 months to review the request; during the period the taxpayer can modify the request. In case the Peruvian Tax Authority does not make a decision within the 12 months, the request is rejected.

APAs apply to the fiscal year of approval of the request and the 3 subsequent years.

Supreme Decree 258 introduced amendments into the PITL regulation, effective as of fiscal year 2013; the term that the Tax Administration is required to examine the APA proposal submitted by the taxpayer is extended from 12 to 24 months and may be extended for another 12 months. Furthermore, taxpayers who sign such agreements shall submit, together with their transfer pricing declaration, an annual report that describes the steps and demonstrates compliance with the terms of the agreement, pending approval of the forms and conditions of this report.

## Documentation And Disclosure Requirements

### Tax Return Disclosures

In January 2018, the Resolution of Superintendency No. 014-2018 / SUNAT approved the rules for the presentation of the Local Report (Virtual Form No. 3560), thus establishing a form, term and conditions for compliance with the aforementioned obligation.

The type of reports to be filed will depend both on the amount of earned income in the fiscal year and the amount of executed transactions with related parties and or from, through or to low or nil tax territories. The amount of executed transactions will be calculated considering:

To the sum of the numerical amounts agreed between the parties, without distinguishing positive or negative sign, for the concepts mentioned below that correspond to transactions with related parties and those made from, to or through countries or territories with low or no taxation:

- (i) The income accrued in the year that generate taxable income and
- (ii) Acquisitions of goods and / or services and any other type of transactions made in the year that:
  - (ii.1) Result in deductible costs or expenses for the Determination of Income Tax.
  - (ii.2) Not being deductible for the determination of Income Tax, income taxable from a Peruvian source for one of the parties.

In the case of transfers of property for free, the amount of the computable cost of the property must be considered.

The following transactions are subjected to declaration in the Local Report:

- (i) revenues earned in the year that generate taxable income; and,
- (ii) procurements of goods and/or services in the year:
  - (ii.1) whenever they are costs or expenses deductible in determining the income tax;
  - (ii.2) is not deductible in determining the income tax, but results in taxable income from Peruvian sources.

**Partial Local Report.** Taxpayers within the scope of the transfer pricing regulation are required to present the declaration with registration information in the local report detailed in Annex I - Section I (input of 31 fields) of the report (related party or low or null tax jurisdiction), data of the transaction

and data of third parties involved in the transaction, when in the fiscal year to which the statement corresponds:

- (i) When earned income has exceeded 2,300 UIT \* PEN 9,315,000 approximately USD 2.9 million; and
- (ii) Executed transactions within the scope of the transfer pricing rules, whose amount of transactions is  $\geq 100$  UIT PEN 405,000 approximately USD 126,563, and  $< 400$  UIT PEN 1,620,000 approximately USD 506,250.

**Complete Local Report.** Taxpayers within the scope of the transfer pricing standard are required to submit the declaration with registration information in the local report detailed in Annex II - Section II (input of 46 fields), with the information record (related party or low or null tax jurisdiction), data of the transaction and data of third parties involved in the transaction as well as the information indicated in Annexes III, with the descriptive structure of the Local Report (pdf file) and IV (worksheets in Excel with formulas according to the applied method) and financial statements used), the latter of which must be prepared and attached as indicated in these annexes, when in the fiscal year to which the statement corresponds:

- (i) When earned income has exceeded 2,300 UIT PEN 9,315,000 approximately USD 2.9 million; and
- (ii) They would have made transactions within the scope of application of the transfer pricing rules, whose amount of operations is  $\geq 400$  UIT PEN 1,620,000 approximately USD 506,250.

Regardless of the amount of transactions corresponding to transactions within the scope of transfer prices, and even if this is less than one hundred 100 UIT PEN 405,000 approximately USD 126,563), they are obliged to present the declaration as provided in the preceding paragraph. Taxpayers whose income accrued in the fiscal year to which the statement corresponds exceeds 2,300 UIT PEN 9,315,000 approximately USD 2.9 million, when such transactions consist in the sale of goods whose market value is lower than the computable cost.

Transactions with related parties and those that are made from, to or through countries or territories with low or zero taxation that, individually, are less than 2.5 UIT PEN 10,125 do not require the taxpayer to present the information related to the Transfer pricing analysis that is detailed in annexes II, III and IV.

On 29 June 2018, the National Superintendency of Customs and Tax Administration (SUNAT) approved the rules for the presentation of informative affidavits. Master Report (Virtual Form No. 3561) and Country by Country Report (Virtual Form No. 3562), in order to regulate the obligated parties, the form, term and conditions for their presentation, receiving comments until 13 June 2018.

The taxpayers who are members of a group in the fiscal year to which the statement corresponds when their income accrued exceeds twenty thousand (20,000) UIT PEN 81 million approximately USD 25.3 million, and when made transactions within the scope of application of transfer pricing rules,

whose amount of operations is equal to or greater than four hundred (400) UIT PEN 1.62 million approximately USD 506,250. It defines the group and the multinational group and its members, the obligated parties, as well as the content of the declarations and their form of presentation. The Master Report 2017 will be declared by exception in the second and third week of the month of November 2018. For the following years, the deadline for the presentation will be during the second and third week of the month of October of each year.

The subjects obligated to present the Country-by-Country Report are those multinational groups whose income accrued in the fiscal year prior to which the declaration corresponds, according to the consolidated financial statements that the parent company of the multinational group must formulate, are greater than or equal to two thousand seven hundred million soles PEN 2,700,000,000 (approximately USD 843.75 million). In the case of country-by-country reports, the Parent of the Multinational Group domiciled in the country or, in its absence, the Designated Parent in Peru will declare them. The deadline for the presentation of the Country by Country Report 2017 will also be by exception in the second and third week of the month of November 2018. For the following years, the deadline for the presentation will be during the second and third week of the month of October. Every year.

## Level of Documentation

Until year 2015 taxpayers that have carried out transactions with related parties and from, to or through tax havens in excess of PEN 200,0000 (approximately USD 62,500) have to declare them, using the telematic declaration platform suite (PDT) through the module PDT 3560 (information basis only, no analysis).

The preparation of a Transfer Pricing Study (TPS) is necessary every fiscal year until year 2015 when:

- the taxpayer presents an annual turnover in excess of PEN 6 million (approximately USD 1,875,000) and has carried out transactions with related parties and from, to or through tax havens in excess of PEN 1,000,0000 (approximately USD 312,500); and/or
- the taxpayer has transferred goods to related parties and/or from, to or through tax havens, of which market value is less than its book value.

The TPS can only be prepared until year 2015 and declared in PDF form using the telematic declaration platform suite (PDT) through the module PDT 3560.

For the following years the TPS and the PDT 3560, have been replaced by the Local Report using the virtual form 3560, the Master File, virtual form 3561 and the Country by Country Report, virtual form 3561 accessing using a password through the SUNAT Online Declaration (SOL) portal.

The tax payer is required to prepare the following transfer pricing documentation:

- Master file consistent with Annex I to Chapter V of the OECD Transfer Pricing Guidelines;

- Local file consistent with Annex II to Chapter V of the OECD Transfer Pricing Guidelines;
- Country-by-country report consistent with Annex III to Chapter V of the OECD Transfer Pricing Guidelines.

### **Master file**

Threshold: accrued group income exceeds the 20000 UIT (approximately USD 25.3 million). Timing for submission: yearly. The Master file first filing obligation will be required in 2018 and corresponds to exercise 2017.

### **Local file**

Threshold: accrued income exceeds the 2300 UIT (approximately USD 2,875,000). Timing for submission: yearly. The Local file first filing obligation is required in 2017 and corresponds to exercise 2016.

### **Country-by-country report**

Threshold: PEN 2,700,000,000 (approximately USD 843.75 million). Timing for submission: yearly. The Country-by-country report first filing obligation will be required in 2018 and corresponds to exercise 2017.

## **Record Keeping**

Records must be kept for 4 years from 1 January of the year in which the income tax declaration is due (generally 31 March of the year following the taxable period). This term is extended to 6 years if no income tax declaration was filed.

## **Language for Documentation**

Documentation should be drafted in Spanish. It is currently not clear whether the SUNAT accepts that English presentation of some parts of the documentation (e.g. business description of foreign comparables) or those should be translated into Spanish. This issue normally arises during audits and there is yet no clear stand on this.

## **Small and Medium Sized Enterprises (SMEs)**

Regardless the amount of their transactions with related parties and/or low tax territories in a fiscal year, Taxpayers with a total income below 2,300 UIT do not have to prepare a Local Report, but may be obliged to substantiate the arm's length conditions of their controlled transactions in the event of a transfer pricing audit. They should nevertheless comply with the transfer pricing rules and regulations and be able to support the applied transfer prices with sufficient documentation and information.

Taxpayers with a total income above 2,300 UIT and transactions with related parties and/or low tax

territories in a fiscal year, of which the total value is above 100 UIT but below 400 UIT have to file a Partial Local Report.

Taxpayers with a total income above 2,300 UIT and transactions with related parties and/or low tax territories in a fiscal year, of which the total value is above 400 UIT file a Total Local Report.

### Deadline to Prepare Documentation

The Local File must be prepared at the end of the fiscal year. Considering that an average standard time to prepare transfer pricing documentation is two months, deadline to start preparing the files should be the deadline of the presentation less sixty days. If the taxpayer is obliged to prepare a Partial Local Report, only to flat files are needed (control and flat). If the taxpayer is obliged to prepare a Full Local Report, besides the two flat files, a PDF version of the Local Report and the Excel with the worksheets containing the search strategy, the database outputs and the financial information of the tested party are also necessary. The required must be uploaded in order and with pre-defined names, using the corresponding virtual form 3560, after entering with a password in the Sunat Online Operations (SOL) environment. Taxpayer will receive on its inbox either a rejection letter with the motives (normally attributable to mistakes in the flat files) or a confirmation letter. Taxpayers failing to declare might be subjected to two fines: (1.) for not presenting the transfer pricing declaration and (2.) for not having the Local File. SUNAT can ask for this study from this point in time as well as during an audit.

### Deadline to Submit Documentation

Based on the last digit of his tax ID, the tax payer is required to submit the Local file in June of the following year (ruling N° 014-2018/SUNAT of 18 January 2018). Likewise, the filing of the Master Report and Country-by-country Report is October 2018 (ruling N° 163-2018/SUNAT 29 June 2018).

#### Deadlines BEPS Reports Peru. Fiscal Years 2016 and 2017

TAX ID LAST DIGIT	Local Report 2016 (*)	Local Report 2017 (**)	Master File and CbC Report 2017 (***)
0	April 13, 2018	June 14, 2018	November 15, 2018
1	April 16, 2018	June 15, 2018	November 16, 2018
2 y 3	April 17, 2018	June 18, 2018	November 19, 2018
4 y 5	April 18, 2018	June 19, 2018	November 20, 2018
6 y 7	April 19, 2018	June 20, 2018	November 21, 2018
8 y 9	April 20, 2018	June 21, 2018	November 22, 2018
Good Taxpayers	April 23, 2018	June 22, 2018	November 23, 2018

#### Notes

(\*) Legal Basis: RS No. 014 -2018 / SUNAT. First Transitory Complementary Disposition. Does not require a Benefit Test

(\*\*) Legal Basis RS No. 014 -2018 / SUNAT. Article 9 and RS No. 341 -2017 / SUNAT. If you require Benefit Test

(\*\*\*) Legal Basis RS No. 163 -2018 / SUNAT. Unique Transitory Complementary Provision. Following years filing will be in October

## Statute Of Limitations

The standard statute of limitations for an income tax assessment is 4 years from 1 January following the year in which the income tax declaration is due (generally 31 March of the year following the taxable period). This term is extended to 6 years if no income tax declaration was filed (Articles 87-7 and 43 of the Tax Code).

## Transfer Pricing Methods

According to Article 32(A) of the PITL 6 methods are acceptable:

- CUP method; with the exception made to CUP applied to commodities (see above).
- resale price method;
- cost plus method;
- profit split method;
- residual profit split method;
- transactional net margin method.

According to Article 32-A, subsection e), the prices of transactions subject to the scope of this article shall be determined in accordance with the internationally accepted methods establishes in this law, for which purpose it should be considered to be the most appropriate to reflect the economic reality of the transaction.

According to the PITL, the prices of the transactions subject to the scope of the application of transfer pricing are determined in accordance with the most appropriate method to reflect the economic reality of the transaction. Likewise, the regulation of the law mentioned above has provisions to establish the most appropriate transfer pricing method according to the certain criteria:

- Compatibility with the business or commercial structure of the company or entity;
- Be provided with the best quality and quantity of information available for a proper application and justification;
- The most appropriate degree of comparability between parties, transactions and functions;  
and
- Require a lower level of adjustment in order to eliminate the differences between facts and comparable situations.

Exceptionally if none of the referred methods can be applied due to special characteristics or nature, other reasonable methods will be allowed. Legislative Decree N° 1312, published on 31 December 2016 introduced the possibility of applying other methods.

## Comparables

The jurisdiction largely follows the guidance on comparability analysis outlined in Chapter III of the OECD Transfer Pricing Guidelines.

There is a preference for domestic comparables over foreign comparables. Local industry-specific information can be obtained from a number of industry associations. Another reference is the financial statements which listed companies file with the Peruvian Securities and Exchange Commissions (SMV). However, public information on local comparable transactions is available only to a narrow extent, as a consequence, foreign comparables are 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 authorize the SUNAT to use secret comparables. However, such interpretation would not pass a court trial test on the basis of an argument of violation of the constitutional rights of due process and defense.

Supreme Decree 258 introduced amendments to Article 110-A° of the PITL Regulation, concerning the use of comparables, effective as of fiscal year 2013; a transaction is not considered comparable when one of the parties owns more than 5% of the capital of the other party; or when the parties involving in the transaction are joint ventures or in other types of associated contracts, in which the parties transfer goods and services for an identical price to another party in the same entity.

This document was updated in cooperation with Luis Ugarelli, [Market Facilitators](#), Peru