

Transfer Pricing Country Summary Honduras

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Transfer pricing first regulations in Honduras were introduced through Agreement 027 of 6 May 2015¹.

Later, on December 2016 Honduras enacted a new Tax Code (Decree No. 170-2016²) which article 113 modifies transfer pricing regulations from fiscal year 2017, establishing that companies and individuals with related parties within the Honduran territory are not subject to transfer pricing study ("TP Study"). This rule is not applicable if the national related party belongs to a special regime or has tax benefits.

Although Honduras is not a member of the OECD, the Honduras tax authorities, Dirección Ejecutiva de Ingresos ("DEI" - per its initials in Spanish) or Executive Direction of Income, generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

Definition of Related Party

According to Article 3.3 of Honduras' Transfer Pricing Regulation Law, two or more entities can be considered as related parties when:

- A physical or corporate entity, legally (and properly documented) participates directly or indirectly in the control or capital of another physical or corporate entity;
- A physical or corporate entity, legally (and properly documented) participates directly or indirectly in the control or capital of said two or more physical or corporate entities;
- They are entities that conform a decision-taking unit, where one of them owns at least 50% of the other and is related with the second entities in one of the following situations:
 - Has the majority of voting rights, or has the faculty of naming or removing the majority of the members of the administrative organ of the enterprise;
 - Is able to, by internal arrangements between partners, of the majority of voting rights;
 - Has designated the majority of the members of the administrative organ of the enterprise;
- Commercial or financial transactions are being carried out between local physical or corporate entities and entities located in tax havens (at this moment, there is no official list that indicates the tax havens, but it is soon expected to be published);
- A local resident corporation has foreign permanent establishments.

Transfer Pricing Scrutiny

¹See <http://www.sefin.gob.hn/?p=69223>

² See <http://www.sefin.gob.hn/?p=73415>

The transfer pricing rules put the burden of proof on the taxpayer. The taxpayer is required to substantiate that the transactions with related parties are undertaken on an arm's length basis and in accordance with the transfer pricing rules and regulations.

Transfer Pricing Penalties

The penalties for the violations to transfer pricing regulations are defined in articles 18 and 19 of the transfer pricing regulation law, these are described below:

- In case of lack of compliance in supplying the required information or supplying incomplete information, as per requested by the DEI. **Penalty: US\$10,000**
- Declaring a lower taxable income than the one determined by two independent parties in comparable situations. **Penalty: 15% of the tax difference.**
- Committing the two previous mentioned violations. Penalty: 30% of the tax difference or US\$20,000, whichever is the highest will be the sanction.
- Any additional infringements of the transfer pricing regulation law. **Penalty: US\$5,000.**

Advance Pricing Agreement (APA)

Taxpayers can request an APA with the Tax Administration, in order to request the valuation of transactions among related parties. The proposal can be accepted, rejected or modified by the Executive Direction of Income. If the agreement is accepted, it would be valid for a time frame between 2 and 5 fiscal periods, depending on the agreement that was reached. APA procedures do not have a special rule; it is roughly specified in article 13 of the Decree 232-2011.

Documentation and Disclosure Requirements

Tax Return Disclosures

Honduran companies are not required to provide a transfer pricing study regarding their transactions with related Honduran companies that are not established under a special regime.

Taxpayers must declare the amounts of loans contracted with local or abroad-related entities at the end of the fiscal period. 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 taxpayers need to present the declaration if:

- Taxpayers undertaking transactions with related parties where the transaction amounts equal or exceed on the gross equity \$500,000,00 at the end of the year;

- Taxpayers undertaking transactions with residents or persons domiciled in a low tax jurisdiction, irrespective of the amount of their gross equity or gross income, also need to annually file TP informative return;
- If categorized as Large or Medium taxpayers.

Level of Documentation

The taxpayer is obliged to present a TP informative return as well as to prepare a TP Study that comprises all the information regarding transactions with its related parties and their corresponding analysis. The regulations indicating the declaration obligations of the taxpayer will be published afterwards through regulation. Specifically the taxpayers will be obligated to present:

- Sufficient information and analysis that demonstrates the arm's length price established in transactions between related parties;
- Any information that the Tax Administration considers deems appropriate.

Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The article 136 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.

Language for Documentation

Documentation should be in Spanish; however, some information (e.g. business description of foreign comparables) may be submitted in English. Furthermore, Honduras tax authorities may require a translation into Spanish of such information.

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for the SMEs

Deadline to Prepare Documentation

The supporting documentation must be prepared upon request, onward the Transfer pricing Declaration.

Deadline to Submit Documentations

The deadline to submit the TP informative return is from 1 January to 30 April of the following year that is being reported. If taxpayers have an special fiscal year, the deadline within the next 3 months after the closing of the fiscal year.

The DEI can require the transfer pricing study in any moment from the time that the entity presents the declaration. The transfer pricing study must be prepared for the presentation of the TP informative Return. Therefore, it must be ready before 30 April of each year.

Statute Of Limitations

There are no regulations regarding the statute of limitations.

Transfer Pricing Methods

The regulations specifying the methods available for performing transfer pricing and comparability analysis are in line with those contained in the O.E.C.D. Transfer Pricing Guidelines. Article 8 of the transfer pricing regulation law 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).

Additionally, as defined in Section 6 of article 8, the taxpayer is free to use a different methodology to determine an arm's length retribution for transactions between related parties, as long as it can demonstrate that none of the first five methods are reasonably applicable to the analyzed transaction.

For the commodities, Article 10 of the transfer pricing regulation law allows the use the international price in commodities markets, where said commodities are traded.

Comparables

There are no statutory comparables enacted for transfer pricing. Therefore the OECD Guidelines are applicable.