

Transfer Pricing Country Summary Panama

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Panama was the first country in Central America to introduce transfer pricing legislation. The legal framework for Panama started through tax reform by Law 33 of 30 June 2010¹, which entered into effect in July 1, 2010. Afterwards in 2012, law 52 of 28 August 2012² modified the already existing legislation (law 33-2010); entering into effect in August 29, 2012. Finally Decree 958 of 13 August 2013³ introduced certain elements clarifications to the transfer pricing legislation..

Although Panama is not part of the Organization for Economic Cooperation and Development (OECD), Panamanian authorities, Income General Direction (Dirección General de Ingresos or DGI), generally accept the OECD Transfer Pricing Guidelines as a specialized technical reference, additionally its transfer pricing legislation is based on the OECD Transfer Pricing Guidelines.

Transfer Pricing Legislation is contained in in Chapter IX, Articles 762-A to 762-N of the Tax Code of Panama⁴. In addition, Decree 390 of 24 October 2016⁵ which regulates the arm's length principle.

Definition of Related Party

Related parties are defined in Article 762-C of the Panamanian Tax Code as follows: two or more physical or corporate entities are considered related parties if one of them participates directly or indirectly in the management, control or stock of the other entity, or when a physical or corporate entity or group of entities, participate directly or indirectly in the management, control or stock of another entity.

Additionally, this article defines the related parties of a permanent establishment located in Panamá as its principal or main offices and other permanent establishments of these principal offices, as well as any other physical or corporate entity that complies with the abovementioned characteristics.

¹ See <http://www.tribunaltributario.gob.pa/marco-normativo/leyes-y-decretos/36-ley-33-del-30-de-junio-de-2010/file>

² See http://gacetas.procuraduria-admon.gob.pa/27108_2012.pdf

³ See http://gacetas.procuraduria-admon.gob.pa/27347-A_2013.pdf

⁴ See <https://panama.eregulations.org/media/codigo%20fiscal.pdf>

⁵ See http://gacetas.procuraduria-admon.gob.pa/28146-B_2016.pdf

Transfer Pricing Scrutiny

The DGI's automated system detects automatically transactions with related parties, by using several spaces of the income tax return, which makes up a list of taxpayers obliged to present the transfer pricing informative return (Form 930).

For the year 2013, all entities identified in this list that did not submit the transfer pricing return, were sanctioned and notified automatically with the corresponding sanction detailed further ahead. Additionally, a big percentage of these entities were asked for their respective transfer pricing study.

At the beginning of 2015, the tax administration executed the first transfer pricing audit since transfer pricing legislation entered into force in 2010.

In April 2018, Panama modified Form No. 930 (V1.0), *Transfer Pricing Informative Return* (the new form is Form No. 930 V2.0 (Form 930)).

Changes include:

1. The addition of new cells in the main tab of Form 930 related to the adjustments made in the related-party transactions analyses;
2. The addition of an "Intangible Annex," for reporting intangible transactions (an Excel file may be uploaded with the information requested in this annex);
3. The addition of a "Comparable Companies Annex," for reporting the name, type, location and country of the comparable, as well as the selected profit level indicator and the financial information of each one of them (an Excel file may be uploaded with the information requested in this annex)
4. A new section with "Questions related to the taxpayer" and "Questions related to the multinational enterprise (MNE)," where some of the questions are related to the information required in Article 11 of Executive Decree 390, published on 24 October 2016 (regarding the Master File)

Taxpayers should use Form No. 930 (V1.0) for reporting the information corresponding to fiscal years before 2018.

Transfer Pricing Penalties

The penalty for not presenting the obligatory transfer pricing return is equal to 1% of the total amount of transactions with related parties. For the calculation of this penalty, the gross amount of the transactions with related parties will be considered regardless of whether these are representative of revenues, costs or deductions.

Additionally, omission or deliberate misuse of the spaces regarding transactions with related parties when submitting the income tax return can result in several penalties, according to the Panamanian tax code.

In accordance with the provisions of Article 762-I of the Panamanian Tax Code, failure to comply with the filing of Form 930 may result in a penalty of 1% of the total amount of related-party transactions. When calculating the penalty, the gross amount of the transactions should be included in the penalty calculation, regardless of whether the transaction amounts are income, expenses or deductions. The penalty must not exceed 1 million Balboas (B/.1,000,000).

Advance Pricing Agreement (APA)

The current transfer pricing regulation does not include any articles referring to Advanced Pricing Agreements. However, the DGI has presented the draft bill to incorporate Article 762-L to the Tax Code, that includes the APA figure, which may be valid for up to three fiscal years.

Documentation and Disclosure Requirements

Tax Return Disclosures

Six months after the end of the tax period, taxpayers must submit a transfer pricing informative return where all annually transactions with related parties are revealed, as well as the total amounts corresponding to those transactions, method of analysis and reported values for every transaction.

Level of Documentation

In order to submit the above-mentioned transfer pricing return, the taxpayer must have performed a transfer pricing study that should contain the corresponding information and analysis that allow the taxpayer to assess and document their transactions with related parties. According to Article 762-J, the transfer pricing study must contain:

- Identification of the taxpayer and its related parties:
 - Name, identification number, country of tributary residence;
- Information regarding the economic group related to the taxpayer:
 - Description of the group's organization at a legal, organizational and operational point of view, as well as any change in this structure;
- All information used to determine the valuation of the performed transactions:
 - Quantification of the transactions;
 - Detailed description of the characteristics and the nature of the transactions;

- Comparability Analysis containing:
 - The operation's specific characteristics:
 - In financial operations, main capital, maturity, risk, guarantees, interest rate;
 - In services transactions, the nature of the service and technical knowledge needed to perform the service;
 - In cases of transactions regarding tangible property, physical characteristics, quality, reliability, availability and supply volumes;
 - In cases of intangibles and intellectual property, classification, patent, brand, commercial name, know how, duration, level of protection, territory, benefits of using the intangible;
 - In cases of stock sales, the company's equity, present and future value of the company's profits or the stock valuation of the issuing company;
 - Functions and economic activities carried out by the different parties involved in the transactions performed by the company. These must include the risks involved in the transaction and the assets used to do it;
 - Contractual terms of transactions with related parties, including the risks, benefits and liabilities of each of the parties involved in it;
 - Characteristics of the regional market and other economic factors that may have an effect in the operations of the analyzed company;
 - Business and market strategies used by the company, such as entering, retention and expanding strategies, or similar circumstances that may affect the operation of the company;
- Transfer pricing method selection, as well as the complete process to determine arm's length ranges used in the study.

Record Keeping

According to Article 737 of the Panamanian Tax Code, income tax information prescribes after 7 years, counted from the last day of the year in which the tax regarding a specific year should have been paid.

Language for Documentation

The transfer pricing return, the transfer pricing study, and any other additional information requested by the tax administration, must be submitted in Spanish.

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for medium and small Enterprises.

Deadline to Prepare Documentation

If the tax administration requires any transfer pricing related information such as the transfer pricing study, it must be prepared and submitted in the following 45 days.

Deadline to Submit Documentation

The obligatory transfer pricing informative return must be submitted within the following six months after the end of the fiscal year of the company according to article 762-I of the Tax Code.

Statute of Limitations

There is no legal norm regarding the statute of limitation.

Transfer Pricing Methods As mentioned before, Panama's transfer pricing legislation 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).

Additionally, the statute specifies the use of statistical tools such as the use of percentiles in order to determine arm's length ranges to evaluate the transfer pricing complying condition of the company.

Comparables

Article 762-E of Chapter IX of the Tax (regulated by Article 4 of Decree 390 of 2016), establishes the following criteria that must be considered when searching for and selecting comparables:

- The specific characteristics of the operations;
- The functions, assets and risks assumed by the parties involved in the operation analyzed;
- The actual contractual terms, taking into account the responsibilities, risks and benefits of the parties;
- The characteristics of the markets or other factors that could affect.

It also establishes that preference will be given to the use of "internal comparables" on the use of external comparables provided that the internal ones exist and comply with the requirements of

comparability. In case external comparables are used, the taxpayer should try to use external comparables of Panama whenever they are available. Taxpayers must record all the steps and search efforts made in order to achieve potential comparables.

BEPS

Panama has added regulations to its transfer pricing legislation that follows BEPS Action 13 recommendations (although is not expressly mentioned). Thus, article 11 of Decree 390 of 2016 has empowered the DGI to request from the taxpayer the following information and documentation:

- Organizational, legal and operational structure of the multinational group to which the taxpayer belongs;
- The transfer pricing policies of the group;
- The group's generators of benefits;
- A description of the value chain and the main products or services of the business group;
- The consolidated financial statements;
- A list and description of the intercompany agreements;
- A list of intangible assets as well as information on the ownership of these assets;
- Information on financial transactions, advance price agreements of transfer and detail on restructuring and transfer of intangibles.