

# Transfer Pricing Country Summary

## Bolivia

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## 1. Introduction

Bolivia is not a member of OECD or EU. It has not officially accepted OECD TP Guidelines, but its current tax regime is based on that. BEPS Action 13 is not applicable.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

Bolivia's transfer pricing regime is based on the OECD Guidelines, although it is not a member country of the OECD. Regarding the BEPS project, there is no change implemented to the TP legislation of Bolivia. Likewise, tax authorities have not made relevant references to the OECD except the tax havens list.

The legal framework for Transfer Pricing was introduced in 2014, and complementary regulations followed in the sequel. On 4 April 2014, the government issued Law No. 516 introducing the "Law for the Promotion of Investment". The law prescribed that taxpayers must file an informative disclosure of related party transactions with the National Tax Service (SIN) using Form 601. That is followed by Law No. 549 issued on 21 July 2014 (modifying Law No. 843 of 20 May 1986), introducing the TP Regime and providing guidance on TP documentation. Then further rules were enacted via (i) Supreme Decree No. 2227 of 31 December 2014 (Regulation on Transfer Pricing), (ii) Resolution No. 10-0008-15 of 30 April 2015 (Defines applicable procedures for TP compliance concerning "related parties") (iii) Resolution 10-0033-16 of 25 November 2016 (Penalties regulations).

The Bolivian TP regime applies to commercial and/or financial transactions between related companies for Corporate Income Tax (CIT) purposes.

Bolivia's tax authorities issued the Normative Resolution No. 10-0008-15 ruling on 30 April 2015, setting out the requirements for corporate taxpayers to prepare and file a transfer pricing study or complete an information reporting form for transactions with related parties. The rules are effective from the first day following the end of the corporate fiscal year, which depends on the taxpayer's economic activities.

### b) Definition of Related Party

According to article 2 of the Supreme Decree No. 2227 of 31 December 2014, two or more entities can be considered as related parties when one of the following cases applies (i) when one of them owns part of the capital of one another or has a significant influence on the other parties, (ii) natural or legal person operating in national territory doing business or financing directly or indirectly with natural or legal persons domiciled or operating in countries or regions with "low or no taxation" (tax havens), (iii) branch, affiliate or subsidiary operating in the national territory has its headquarters outside the territory or vice versa, (iv) Business operations or financial operations between branches/affiliates/subsidiaries located in another country and outside of the headquarter, or

between a national company and one abroad whose owners, shareholders, partners, managers, or senior staff are related up to the fourth degree of consanguinity and second of affinity.

Moreover, there are definitions of subjects given in Article 2 of Law No. 549 of 21 July 2014 through the Supreme Decree 2227. It prescribes that (i) in transactions with related parties, the price is the same as arm's length for those who conduct transactions with related parties constituted resident, filed resident or located abroad; and falling in Art. No. 45 of Law No. 843, (ii) the related companies have to prepare financial statements separately, and (iii) 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.

### c) Nature of Transfer Pricing Documentation

Taxpayers are required to disclose;

- Transfer Pricing study that must be submitted to the SIN on an annual basis for transactions equal to or exceeding BOB 15 million,
- A sworn statement (Form 601) must be filed for transactions equal to or exceeding BOB 7.5 million,
- Documentation (no filing is required, but the taxpayer must maintain) to demonstrate that the transactions are on arms' length terms or that any necessary adjustments have been made for "related party transactions" under BOB 7.5 million,
- Statutory financial statements.

### d) Tax Havens & Blacklists

Administrative Resolution 10170000001, which offers a reference list of countries/regions designated as "low or no taxation" jurisdictions based on Supreme Decree 2993 criteria, was first authorised by Bolivian legislation on 13 January 2017. That was the first official resolution in which the Bolivian tax authorities referred to OECD. After that, Administrative Resolution 101900000002 was released on 15 February 2019, updating the list of nations and areas deemed "low or no taxation" jurisdictions for tax reasons.

### e) Advance Pricing Agreement (APA)

Not applicable in the current law.

### f) Audit Practice

SIN (The Fiscal Administration of Bolivia) 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. The taxpayer is required to justify 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 values agreed in transactions with related parties do not meet the arm's length standards, the SIN is entitled to make appropriate adjustments when the valuation agreed between the related parties would result in lower taxation.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

Transfer pricing documentation is required by law, so taxpayers must fulfil a transfer pricing report within the Corporate Income Tax (CIT) due dates.

##### 1. TP Informative Return

Article 5 of Resolution No. 10-0008-15 establishes that the TP Informative Return (Form F-601) is mandatory for taxpayers whose intercompany operations during the fiscal year are equal to or greater than an accumulated amount of BOB 7,5 million and less than BOB 15 million. If the referred amount is equal to or greater than BOB 15.000.000, the taxpayer must also submit a TP Study. Form F-601 must be filled in the tax authorities' (SIN) website.<sup>1</sup>

##### 2. Transfer Pricing Study

Article 2 of 549 of 21 July 2014, article 3 of Supreme Decree No.227 of 31 December 2014 and articles 3 and 4 of Resolution No. 10-0008-15 of 30 April 2015 require the preparation of a TP study for taxpayers who enter into transactions with related parties in national territory and abroad.

This obligation must be fulfilled regardless of the income level, and the volume of intercompany transactions entered into by the taxpayer during a fiscal period. Taxpayers must conserve and have the TP study available for the tax authorities in case they require it. However, taxpayers whose intercompany operations during the fiscal year are equal to or greater than an accumulated amount of Bs 15,000,000 are compelled to submit the TP study together with the TP informative return to the tax authorities.

The TP study must be prepared in Spanish, in a hard copy and a digital format, stated in Bolivian currency and signed by the taxpayer's legal representative or the holder of the tax identification number, as applicable. The hard copy must be filed with the Bolivian tax authorities' district offices or large taxpayer offices in the relevant jurisdiction, along with the financial statements for the fiscal year. The electronic version of the transfer pricing study must be submitted through the tax authorities' website.

The transfer pricing study must include at least the following components:

- An index;
- An executive summary that lists the taxpayer's related parties, the nature of the relationships, the transactions carried out and the transfer pricing method selected;
- A functional analysis, with background information on the related parties; a description of the organisational and corporate structure of the group; the business activities conducted by the taxpayer and the markets in which it operates; commercial strategies; and a description of transactions, contracts, etc.;

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<sup>1</sup> The link of the form from SIN website.

- Economic analysis includes a description of the related party transactions consisting of; (i) a description of the valuation methods used and how and why they were selected; (ii) a selection of comparables and the sources of the comparables and, a definition of a range; and (iii) conclusions.

The position that Bolivian tax authorities will take concerning the BEPS action plan is uncertain. In the current law, there is no specification regarding CbC reporting obligation. In this conjuncture, the Transfer pricing documentation should include:

- Information on activities and functions developed;
- Information on risks assumed and assets employed;
- Facts and circumstances used for analyses;
- Details and value of the transactions to be disclosed according to transfer pricing requirements;
- Identification of foreign related parties with which the transactions being declared are carried out;
- Information on the methods used for the calculation of transfer prices and the reasons for considering them the most appropriate methods;
- Identification of the selected comparables;
- 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 inter-quartile range. There is a special formula to determinate the median range;
- Transcriptions 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 information;
- Conclusions.

## b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

## c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

#### e) Choice of Transfer Pricing Method

The methods in Bolivia 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);
- Method of evident price on the transparent markets.

The use of the methods above will be determined by the nature and actual economic context of the transactions under consideration, as well as the specific circumstances of each case (i.e. best method rule). The methods' definitions are based on OECD standards, except for the sixth method based on Argentinian legislation with certain changes. When one of those methods fails to assess the value of a transaction, taxpayers might use additional ways that are appropriate for the transaction's type and actual economic condition.

#### f) Economic Analysis – Benchmark Study

The legislation in Bolivia allows the use of domestic and foreign comparables to determine the arm's length range for the evaluation of related-party transactions.

#### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

#### h) Financial Statements

Financial statements should include related-party disclosures.

#### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists,

and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If "No", it can be filed in English)
<b>Corporate Income Tax</b>	File	Local GAAP	120 days after the FY end: Financial companies (31 December), Industrial companies (31 March), Agriculture businesses (30 June) Mining companies (30 September)	N/A	N/A	Yes
<b>Master File</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local File</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>CbCR</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>TP Study</b>	File	Special format	120 days after the FY end: Financial companies (31 December), Industrial companies (31 March), Agriculture businesses (30 June) Mining companies (30 September)	N/A	Yes	Yes
<b>E-Form 601</b>	File	Special format	120 days after the FY end: Financial companies (31 December), Industrial companies (31 March), Agriculture businesses (30 June) Mining companies (30 September)	N/A	Yes	Yes
<b>Annual Accounts</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Segmented P&amp;L</b>	N/A	N/A	N/A	N/A	N/A	N/A

\* Bolivia has NOT signed the MCAA agreement for the filing of CBCR.

Transfer pricing documentation must be submitted to the Fiscal Administration four months after the close of the fiscal year at the latest. There are specific deadlines for taxpayers with the following business activities while filing CIT returns and other TP disclosures such as:

- For Industrial companies and Oil companies: 31 March,
- For Agricultural and Livestock companies: 30 June,
- For Miners companies: 30 September,
- For Commercial, service, financial and insurance companies: 31 December.

A general statute of limitations applies in Bolivia. Until August 2012, the statute of limitations was four years, calculated from 1 January of the next year the tax payment was due. In September 2012, Act No. 291 was issued. It modified the statute of limitations rules in a way that audits could be subjected back to 2008. The last change of this rule was introduced in June 2016 with Law No. 812, which modifies the statute of limitations to 8 years. During this period, tax authorities can:

- Control, investigate, verify, check and control taxes;
- Determine the tax debt;
- Impose administrative sanctions.

Furthermore, the statute of limitations can be extended for two years if the taxpayer:

- Have not complied with the obligation of registering before the tax authority;
- Registered in a tax system different from the one that corresponds; or
- Incurs in tax or carry out commercial or financial operations in countries with "low or no taxation".

#### **j) Mandatory Language**

Transfer pricing documentation should be in Spanish.

#### **k) Notification Requirement**

Not applicable for Bolivia.

#### **l) Record Keeping**

Records must be kept for five years following the provisions of the Tax Code.

#### **m) Penalties and Interest Charges**

Penalties are described in Annex I (section 3.23 to 3.31) of the Resolution 10-0033-16 of 25 November 2016. Taxpayers, who do not file TP information or tax returns (Form 601) under the Transfer Pricing legislation, will be fined the maximum amount of USD 1.684. If the submitted sworn statement is

incomplete or submitted late, a fine of USD 842 shall apply. The penalties are set out in Chapter IV, Article 12 of the Resolution.

Furthermore, intentionally submitting an inaccurate or too low tax return and neglecting to notify the tax authorities may result in a tax crime. The legal outcomes might vary from (monetary) penalties to imprisonment for 3 to 6 years. If income is reported lower because of gross negligence, the conduct is regarded as tax evasion and is punishable by monetary penalties.