

# Transfer Pricing Country Summary

## Dominican Republic

May 2022

|  |   |
|--|---|
| 1. Introduction .....  | 3 |
| 2. Laws & Regulations .....  | 3 |
| a) References to OECD/EU/Local Rules .....   | 3 |
| b) Definition of Related Party .....   | 3 |
| c) Nature of Transfer Pricing Documentation .....                                    | 4 |
| d) Tax Havens & Blacklists .....   | 4 |
| e) Advance Pricing Agreement (APA) .....   | 4 |
| f) Audit Practice .....  | 4 |
| 3. Transfer Pricing Documentation.....   | 5 |
| a) Level of Documentation .....  | 5 |
| b) Industry Analysis .....   | 5 |
| c) Company Analysis .....  | 5 |
| d) Functional Analysis .....   | 6 |
| e) Choice of Transfer Pricing Method.....  | 6 |
| f) Economic Analysis – Benchmark Study.....  | 6 |
| g) Inter-company (IC) Legal Agreement.....   | 7 |
| h) Financial Statements.....   | 7 |
| i) Production Process for TP Relevant Returns, Documents, Forms and Financials ..... | 7 |
| j) Mandatory Language .....  | 9 |
| k) Notification Requirement .....  | 9 |
| l) Record Keeping .....  | 9 |
| m) Penalties and Interest Charges .....  | 9 |

## 1. Introduction

The Dominican Republic joined the Organization for Economic Cooperation and Development's Inclusive Framework of Base Erosion and Profit Shifting (BEPS) project in October 2018. As a result, the Dominican Republic committed to implementing the BEPS minimum standards in tax transparency, one of which was Action 13. (Transfer Pricing Documentation).

## 2. Laws & Regulations

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

General Norm 04-2011 of 2 June 2011, Law No. 253-12 of 8 November 2012 and the Regulatory Decree No. 50-13 of 13 February 2013 introduced the legal framework for transfer pricing. Regulatory Decree No. 78-14 of 6 March 2014 modified the regime later. Also, the Dominican Republic's Tax Administration (DGII) issued Decree 256-2 on 21 April 2021, which amended Articles 5, 7, 10, and 18 of Decree No. 78-14 and created the transfer pricing requirements. The Decree took effect on 1 January 2021. The modifications change current transfer pricing requirements, requiring taxpayers to file a country-by-country report and the relevant notifications, as well as a master file and a local file.

Although Dominican Republic is not a member of the OECD, the Dominican Republic tax authorities, Dirección General de Internos ("DGII"- per its initials in Spanish), generally accepts the OECD Transfer Pricing Guidelines as a specialised technical reference but not as a supplementary source of law interpretation.

Article 281 of the Dominican Republic Tax Code include positive regulation regarding the Transfer Pricing regime in the Dominican Republic. Article 281 describes the cases in which non-compliance with the transfer rules gives rise to penalties.

### b) Definition of Related Party

Related parties are defined in Paragraph IV of article 281. The concept includes situations ranging from statutory to economic dependency and control of companies by individuals (subordination). According to article 2 of Regulatory Decree No. 78-14 of 6 March 2014, individuals or entities are considered related parties if some of the following assumptions are verified, provided that one of them is a resident or is located in the Dominican Republic:

- When one of the parties participates directly or indirectly in the other's direction, control, or capital. When the same individual or legal persons or entities participate directly or indirectly in the management, control or capital of said parties;
- When an individual, legal entity or entity has a permanent establishment abroad;
- When a permanent establishment located in the country has a parent company resident abroad with respect to another permanent establishment of the same; or an individual or legal person or entity related to it;
- When an individual, legal entity or resident entity enjoys exclusivity as an agent, distributor or concessionaire of another for the sale of goods, services or rights;

- When a natural person, legal entity or entity receives, gives or transfers to another fifty per cent or more of its production;

Transactions with residents or physical entities domiciled in tax havens must be analysed as related parties. Tax haven countries and territories are listed and announced by the DGII with a certain periodicity.

### c) Nature of Transfer Pricing Documentation

Taxpayers must declare the amounts at the end of the fiscal period of loans contracted with local or abroad-related entities. 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.

Moreover, all taxpayers within the scope of the transfer pricing regulations must file the DIOR, which was introduced on 1 September 2017, on an annual basis within the first 180 days after the end of the fiscal year. DIOR requires taxpayers to:

- Summarise transactions by type;
- Report the profit level indicator of the tested party of each transaction;
- Complete the information regarding related parties and transactions on the tax administration's virtual platform.

### d) Tax Havens & Blacklists

Tax haven countries and territories are listed and announced by the DGII with a certain periodicity. In the latest instance, The Dominican Republic's tax authority released Resolution No DDG- AR1-2021-00002, which announced a number of tax problems, including new transfer pricing thresholds and modifications to the country's tax haven list.

### e) Advance Pricing Agreement (APA)

Article 281 bis. of the Tax Code states that taxpayers may request to the DGII a prior agreement on transfer pricing that set the values of the commercial and financial transaction or transactions carried out with related parties before the realisation of these for a determined time. Such request shall be accompanied by a taxpayer's proposal, which will be based on the value that independent parties would have been agreed on in a similar operation.

Once the APA is approved and subscribed, it takes effect with respect to the current fiscal year and the three subsequent fiscal years. It will also apply to the fiscal years that had expired from the application date to the subscription date, with a limit of two fiscal years counted from that date.

### f) Audit Practice

Transactions between a resident and a physical, corporate or related entity shall be agreed in accordance with the prices or amounts that would have been agreed between independent parties, in operations comparable and under the same or similar circumstances.

When prices agreed for commercial or financial transactions between companies subject to Article 281 do not meet the values for similar operations that are charged between independent companies, the DGII can refuse them and make appropriate adjustments when valuation agreed between the parties would result in lower taxation in the country or deferred taxation.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

Taxpayers subject to transfer pricing regulation must submit to the DGII an Informative Return of Operations between related parties (DIOR, for its acronym in Spanish).

The documentation and information that will be part of the DIOR will contain the detail of each transaction and the identification of related parties, including; taxpayer identification, details of income constituting transactions, details of costs/expenses constituting transactions, method of valuations and price margins.

Taxpayers subject to the transfer pricing regime should have, at the time of submission of the DIOR, a study or report on the process of assessing transfer prices agreed with its related parties to submit to the DGII when required.

Taxpayers who are related parties under the transfer pricing regulations must submit the master file in electronic format within 180 days of the filing date of the transfer pricing information return. Among other things, the master file would need to include information on the organisation's structure, operations, intangible assets, financial activity, and current advanced pricing agreements.

For the Local File, it would need to include detailed information about the taxpayer and its intercompany transactions, the amounts of those transactions, functional and economic analyses used to determine transfer prices, and financial information, among other things.

#### 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

As mentioned before, transfer pricing legislation in the Dominican Republic 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).

In order to establish the most appropriate method (pursuant to Transfer Pricing Decree, Article 7) of valuation to reflect the economic reality of the operation, will be considered the method that, among others:

- Better corresponds to the line of business, with the business and commercial structure of the physical, corporate entity or unit;
- Has the best quality and quantity of information available to proper implementation and justification;
- Contemplates the most appropriate degree of comparability between parties, transactions and functions; and
- Require the lowest level of adjustments to eliminate the effects of differences between the facts considered and the comparable situations.

#### f) Economic Analysis – Benchmark Study

A large variety of comparable is available for Transfer pricing in the Dominican Republic. Also, through Decree 256-21, the Government amended/improved Art. 5 on comparables. It provided (i) requirements relating to the comparability analysis; (ii) economically relevant criteria in the delineation of transactions with related parties; and (iii) processes to be followed in consideration of the parties' risks.

The modifications would require the delineation of the transaction to be carried out based on the parties' conduct where the economically relevant features differ from the written contractual conditions and the taxpayer's additional documentation.

### 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<sup>1</sup>

Since July 2009, the Dominican Republic's Instituto de Contadores Publicos Autorizados de la Republica Dominicana (Dominican Republic's Institute of CPAs, or ICPARD) has had the legal authority to establish accounting standards in accordance with Article 31 of Law 479-08. The ICPARD passed two resolutions in February 2010:

- Listed companies. The ICPARD established the mandatory use of IFRSs in Resolution 001 for companies whose shares are traded on the Bolsa de Valores de la Republica Dominicana (BVRD, the Stock Exchange of the Dominican Republic). The resolution calls for a two-step implementation of IFRSs, with some standards becoming mandatory in 2010, while others become mandatory in 2014. Companies that are already using IFRSs will continue to do so. Furthermore, the resolution allows companies that currently prepare financial statements in accordance with US GAAP to do so until 2014, when they must use IFRSs. Companies should follow US GAAP if IFRSs do not address an accounting question.
- Government-regulated businesses. Resolution 001 states that such businesses must adhere to the requirements of the government regulatory body.
- Other businesses. The ICPARD established the mandatory use of IFRS for SMEs in Resolution 002 for all companies whose shares are not quoted on the BVRD (other than government-regulated companies). The resolution calls for a two-step implementation of the IFRS for SMEs, with some sections becoming mandatory in 2010, while others become mandatory in 2014. Furthermore, the resolution allows companies that currently prepare financial statements in accordance with US GAAP to do so until 2014, when they must use the IFRS for SMEs. If the IFRSs for SMEs do not address an accounting issue, companies should use full IFRSs, followed by US GAAP.

### 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.

---

<sup>1</sup> <https://www.iasplus.com/en/jurisdictions/americas/dominican-republic>

|  | 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 (IR-2)</b>   | File             | US GAAP                | Within 120 days after the tax FY end             | No                     | No   | No   |
| <b>Master File</b>   | File             | Electronic             | Within 180 days after TP return deadline         | No                     | No   | No   |
| <b>Local File</b>  | File             | Electronic             | Within 180 days after TP return deadline         | No                     | No   | No   |
| <b>CbCR</b>  | File             | OECD Guidelines 2017   | 12 months after the previous FY                  | No                     | DOP 38.8 billion (approximately USD 679 million) | No   |
| <b>Local form X</b>  | N/A              | N/A                    | N/A  | N/A                    | N/A  | N/A  |
| <b>Annual Accounts</b>   | File             | Local IFRS and US GAAP | six months after the end of the accounting year. | No                     | No   | Yes (Spanish)  |
| <b>Segmented P&amp;L</b>   | N/A              | N/A                    | N/A  | N/A                    | N/A  | N/A  |
| * Dominican Republic has NOT signed the MCAA agreement for the filing of CBCR. |                  |                        |  |                        |  |  |



SME's will be exempt from the obligation to the preparation of the study or report on the process of assessing transfer pricing the following contributors:

- Those whose transactions with related parties together do not exceed, in the fiscal year in question, the sum of ten million Dominican pesos (RD \$ 10,000,000.00), adjusted annually for inflation, and do not perform transactions with residents in tax havens or preferential tax regimes.
- Those carrying out transactions with resident related parties, for the part of the operations performed with them exclusively, provided that there is no tax evasion.

Nevertheless, exempted contributors shall submit their DIOR to the DGII with the following information:

- Identification of related physical, corporate or entity with the indication of his home and country of residence where applicable.
- Transactions with related parties.
- Type of operation performed.
- Kind of operation.
- Amount in Dominican peso for each transaction.

Taxpayers must have the information and sufficient analysis to value their operations with related parties when filing the Income Tax return on the income. Information contained in the informative return and the supporting documentation must be prepared to comply with the deadlines for their submission within one hundred eighty (180) days after the date of days closure.

#### j) Mandatory Language

Documentation should be in Spanish.

#### k) Notification Requirement

If a multinational group has multiple entities domiciled in the Dominican Republic for tax purposes, the multinational group must designate one of the entities to submit the report.

#### l) Record Keeping

Accounting records should be kept in Spanish and should include two bound books of account, a daily journal (libro diario), and an inventory (libro de inventarios) book, as required by the Commercial Code . These books should be kept for a minimum of ten years.

- Accounting books/records can be kept in a variety of ways, either digitally or manually.
- These methods meet the formal requirements of the Commercial Code.

#### m) Penalties and Interest Charges

According to Tax Code Article 281 bis., when a taxpayer fails to comply with the provisions relating to transfer pricing documentation within the deadline or when furnishes false or incomplete data clearly,

it incurs a violation of formal duties and will be subject to up to three times the penalties and fines described in Article 257 of the Tax Code.

Article 257 of the Tax Code states that failure to comply with formal duties shall be punished with a fine of five (5) to thirty (30) minimum wage. In addition to this, Paragraph II of Article 257 states that in cases of non-compliance with formal duties relating to the submission of information to the tax authorities, in addition to the fine provided previously, a penalty of one point zero five per cent (0.25%) of the income declared in the previous fiscal period may be applied.

Moreover, Article 250 of the Tax Code states that the violation of tax evasion shall be punished with a fine of up to two (2) times the amount of tax withheld, without detriment to the sanction of closure, if any. In addition, Paragraph I of this article states that if the amount of taxes evaded might not be determined, the penalty shall be fixed between ten (10) and fifty (50) minimum wages.