

Transfer Pricing Country Summary

Ecuador

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1. Introduction

Ecuador's Transfer Pricing legislation is established in the articles following Art. 15 of the Internal Tax Regime Law, as well as in Arts. 84 to 91 of the respective Regulation. Furthermore, the Internal Revenue Service is constantly updating the Technical Sheet for the Standardization of Transfer Pricing Analysis, in which parameters for the form of presentation, content, calculation, economic analysis, and other supporting documentation of related party operations are defined.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Transfer pricing regulations were introduced by Executive Decree No. 2430, published in the Supplement to the Official Gazette No. 494 of 31 December 2004 and applied from the financial year 2005 onwards. This Executive Decree modifies articles 4 and 66.1 to 66.6 of the Income Tax Law.

Although Ecuador is not a member of the OECD, the Servicio de Rentas Internas (SRI) considers the OECD Transfer Pricing Guidelines as a technical reference for analysing inter-company transactions. The SRI was published on 29 May 2015 Resolution No. NAC-DGERCGC15-00000455 abolishes Resolution 464 (2008), setting a new content requirement for the Transfer Pricing documentation.

b) Definition of Related Party

In general, the concept of related parties is defined according to the OECD Model's article 9(1). The Ecuadorian concept of related parties encompasses relationships between parent companies and subsidiaries, head offices and branches, permanent establishments, and all possible combinations of these entities; it also encompasses multiple boards of directors, emphasising shareholders' family ties. When taxpayers' transactions do not follow the arm's length principle, the SRI may use a notional related-party concept. When the parties' transactions do not meet the arm's length principle, the SRI may assume that they have a relationship. Parties undertaking transactions with corporations based in low-tax jurisdictions or tax havens are also deemed "related parties."

The burden of proof resides at the taxpayers' level in case of any request/questions directed to a company. Additionally, according to the Resolution NAC-DGERCGC15-00000052 published on 3 February 2015, any transaction made with a client/provider residing in a country established as a tax haven should be considered a related party for tax purposes.

c) Nature of Transfer Pricing Documentation

Ecuador has not implemented or adopted the BEPS Action 13. Therefore, documentation requirements like Master file Local file and CbC reporting do not exist in Ecuador.

Transactions with related parties must be disclosed on Form 101 for the annual income tax settlement return. Also, an independent CPA must sign a tax compliance report who should comment on the methodology and adjustments in transfer pricing charged by the taxpayer.

According to Article 84 of the Internal Tax Regime Law (LRTI) and Resolution No. NAC-DGERCGC15-00000455, taxpayers who are not exempt from the Transfer Pricing regime must submit the Annex of Operations with Related Parties if they have had transactions with related parties in an accumulated amount exceeding USD 3,000,000 in a fiscal period (AOPR). If the value is larger than USD 15,000,000, the indicated taxpayers must also submit the Comprehensive Transfer Pricing Report in addition to the AOPR.

The taxpayer must provide the information within two months of the Income Tax return's date becoming enforceable.

d) Tax Havens & Blacklists

SRI has issued Resolution No. NAC-DGERCGC17-00000433, which changes the terms of Resolution No. NAC-DGERCGC17-00000433, setting the list of tax havens and the standards that govern the qualifying of lower-tax countries and preferential tax regimes.

e) Advance Pricing Agreement (APA)

Taxpayers may ask the Tax Administration to value activities carried out between related parties before they are carried out. This request will be accompanied by a submission based on the arm's length principle assessment.

If the time for filing a CIT return has not passed, the taxpayer's inquiry will take effect on activities carried out after the day it is authorised, and it will be valid for the three following fiscal periods, the current fiscal year, and the prior period.

Information on the operations carried out in the tax period in which the methodology, prices, or profit margins are applied, as well as a description of the circumstances that occurred, justification for compliance with the methodology's assumptions, and a description of the methodology's application to the fiscal year's results must be provided.

f) Audit Practice

The SRI has a dedicated transfer pricing team responsible for verifying taxpayers' compliance with the rules and regulations. Given the mandatory submission of the transfer pricing informative return and the transfer pricing report by the taxpayers, the SRI has an initial control tool. The SRI tries to consolidate all taxpayers' information to create its database in view of identifying possible contingencies and issues to be audited.

Transfer pricing issues are audited as part of a regular tax audit. Tax audit-related inspections are first carried out as desk reviews based on the detailed information provided by the taxpayers and subsequently at the taxpayer's premises.

The obligation to draft and submit a transfer pricing return and transfer pricing report implies that the burden of proof, in practice, lies with the taxpayer.

3. Transfer Pricing Documentation

a) Level of Documentation

The TP regime is a component of the corporate income tax (CIT) enacted by the Tax Law (Ley Orgánica de Régimen Tributario Interno, or LRTI), and LRTI governs its application, tax administration resolutions and communications, and a technical guidelines document prepared by the SRI which is available on its website.

Taxpayers performing transactions in a given taxable period with resident and non-resident related parties must submit different reports according to the following transaction amounts:

- For an aggregate amount exceeding USD 15 million, taxpayers must submit a transfer pricing report and informative return (Annex) to the SRI;
- For transactions between USD 3 million and USD 15 million, an informative return (Annex) must be filled. Regarding transactions with residents, these should not be taken into account if these transactions refer to operations of selling bananas or related to international transportation.

NOTE: The SRI could ask any taxpayer whether their transactions are with non-residents or residents or the amount of the transaction if the prices on such transactions comply with the arm's length principle.

- Transfer pricing informative return

The transfer pricing informative return must be uploaded to SRI's web and must contain the following items: identification of the taxpayer, including the taxpayer's identification number and fiscal year; completion of the standard questionnaire regarding the international transactions of the taxpayer; identification of the foreign related parties, including name, address and fiscal residence, identification number in the country of fiscal residence and description of the nature of the relationship; description of the transactions with the foreign-related parties, including the type of transactions, the amount of the consideration and the method used to comply with the arm's length principle; and differences, if any, between the applied consideration and the amount of the consideration resulting from the transfer pricing method(s) applied to comply with the arm's length principle.

- Transfer pricing report

The transfer pricing report must substantiate the analysis made for all transactions mentioned in the transfer pricing informative return and must address the following items: the activities and functions performed by the taxpayer; the assets used and risks assumed when carrying out the activities and functions; an explanation of the elements documentation, circumstances and facts taken into consideration for the analysis; details and amounts of the performed transactions subject to analysis; details of the foreign related parties with whom the taxpayer performed the transactions subject to the analysis; method(s) used to support the transfer prices and explanation why the selected method(s) ha(s)ve been retained; identification of the searched comparables to substantiate the

transfer price and the information sources used to obtain the comparables; criteria to withhold or reject the searched comparables; methodology used and quantification of the adjustments applied to the selected comparables; median and inter-quartile range; Profit and loss statement of the selected comparable entities for the financial years considered for the comparability analysis with inclusion of the information source; description of the activities and characteristics of the business of the selected comparable companies; other relevant information; and conclusion.

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 statutes and regulations accept the CUP method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method.

Since January 2016, there has been no specific order to accept the methods. Still, since Ecuador follows the OECD Guidelines for Multinational Enterprises and Tax Authorities, companies should consider the most appropriate transfer pricing method.

The SRI resolution 531, December 2016, states techniques and methodologies to avoid abuse of transfer pricing policies in crude oil, banana, gold, copper, silver, and any other metallic mineral transactions. This document states that the CUP method must be applied to evaluate the arm's length principle.

f) Economic Analysis – Benchmark Study

Ecuadorian companies must publish their annual accounts by filing them with the local authority. However, these accounts do not contain sufficiently detailed or segmented financial information to be used as comparable. Therefore, foreign comparables are often used and accepted by the SRI in practice.

In addition, the tax authorities recently published Resolution No. NAC-DGERCGC16-00000531 defines methods for determining comparable prices for transactions involving sales of bananas and other musaceae to related parties. It went into effect on 1 July 2020.

The new Resolution specifies methods for determining the monthly comparable price for banana box type 22XU, which is computed as of 15 March of the tax year following the year under review and is dependent on the country of destination.

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

The following are defined as basic financial statements in the standards:

- The balance sheet
- Profit and loss statement
- Statement of equity changes
- Cash flow statement

These statements should include explanatory footnote disclosures that describe the accounting policies used as well as other information required by accounting standards and specific regulations issued by the authorities. The financial statements must be accompanied by comparative financial statements for the previous year.

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)
Corporate Income Tax	File	Form 102	Depends on the tax ID of company	N/A	N/A	Yes (Spanish)
Annex of Operations with Related Parties (AOPR)	File	N/A	2 months from the CIT deadline	N/A	Total related-party transaction more than \$ 3 M	Yes (Spanish)
AOPR + Comprehensive TP report	File	N/A	2 months from the CIT deadline	N/A	Total related-party transaction more than \$ 15 M	Yes (Spanish)
Master File	N/A	N/A	N/A	N/A	N/A	N/A
Local File	N/A	N/A	N/A	N/A	N/A	N/A
CbCR	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	File	Local IAS	begin on April 9 and last until April 28	N/A	N/A	Yes (Spanish)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Ecuador has NOT signed the MCAA agreement for the filing of CBCR.						

* There are no specific rules or regulations for small and medium sized enterprises.

According to the LRTI, taxpayers who engage in transactions with related parties are excluded from the Transfer Pricing regime's application if they:

- Have a tax burden equal to or greater than 3% of their taxable income.
- Transactions with inhabitants of tax havens or advantageous tax regimes should be avoided.
- Do not get into a contract with the government to explore and exploit non-renewable resources.

There is no specific deadline to prepare documentation. The exact filing deadline for the specific TP regime responsibilities that taxpayers must fulfil is determined by the ninth digit of their tax identification number.

When the tax authority notifies the taxpayer who carries out non-compliance or late submission of the TP Report and TP Annex, the deadline will be set between five and twenty business days, depending on the discrepancies in the taxpayer's declarations or annexes.

The transfer pricing report and informative return (Annex) should be submitted within two months following the income tax return filing date (normally in April of the calendar year following the financial year).

The statute of limitations is three years from the date of filing of an accurately filled out and timely filed income tax return. This term is extended to six years in case of inaccurate completion or late filing.

j) Mandatory Language

Documentation should be drafted in Spanish. It is currently unclear whether the SRI accepts that some parts of the documentation (e.g. business description of foreign comparables) may be presented in the English language or translated into Spanish.

k) Notification Requirement

There is no notification requirement for the filing of the CbC reporting.

l) Record Keeping

There are no specific rules or regulations with regard to record-keeping. The rules of the tax legislation and other disciplines should be complied with.

m) Penalties and Interest Charges

Ecuador has an unordinary TP penalty system. If taxpayers fail to submit the TP Report or the TP Annex, or if errors, mistakes, discrepancies, a lack of information, or incorrect data are discovered, penalties of up to USD 15,000 will be imposed.

Also, the tax administration published a document used to calculate the penalty amount based on the severity of the error or misdemeanour (late delivery or incomplete or incorrect information submitted by local taxpayers). Based on this guide, late filing might result in a penalty of up to USD 333.