

Transfer Pricing Country Summary

Uruguay

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1. Introduction

Since 2017, Uruguay has formal transfer pricing documentation requirements to prepare the master file, country-by-country reporting and transfer pricing report along with other local TP forms.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Transfer pricing legislation was implemented in 2007, with the "Tax Reform Law". In 2009, the official framework on Transfer Pricing was introduced with the Decree 56/2009 and the Resolution 2084/009. Later, Decree 392/009, Resolution 818/010 and 819/010 were published. Recently on 26 October 2018, Decree 353/018 was published by Uruguay's Ministry of Economy and Finance (MEF), which governs the transfer price documentation requirements laid down in Law 19,484 of 5 January 2017. The Decree specifies definitions for the CbC report and Master File's production and presentation.

The DGI published Resolution 94/019 on the provisions for CbC reports on 4 January 2019. The Resolution contains instructions for reporting entities and information to be reported, notification procedures, and dates for reporting. The Resolution is retrospectively effective for reporting periods beginning on or after 1 January 2017.

b) Definition of Related Party

The definition regarding related parties is set in Article 1 of the Decree 56/009. Therefore, a related party relationship for tax purposes is considered between:

- Those who conduct transactions with related parties constituted resident, filed resident or located abroad; and falling in Art. No. 3 of Title No. 4 Ordered Text 1996;
- Those who obtain income from personal services outside the dependency ratio reached by the Income Tax of Economic Activities by option or mandatory inclusion according to the provisions of Art. No. 5 of Title No. 4 Revised Text 1996, and conduct transactions with related parties constituted resident, filed resident or located abroad;
- 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. They are included in the provisions of these literal transactions with entities operating in customs enclaves, including those based on national territory, and benefit from a regime of low or no taxation.

According to Resolution 2084/009, two or more entities can be considered as related parties when one of the following cases applies:

- When one of them owns at least 10 % of the capital of another;
- When one of them owns significant influence over the others parties;
- Two or more parties that share:
 - o one common party that possesses at least 10 % of the capital of each;

- one common party that possesses at least 10 % of the capital of one or more parties and possesses significant influence over the other parties;
- one common party that possesses significant influence over the other parties;
- Two or more entities that have common directors, officers or managers administrators;
- One entity has the technology property that underlies activities for the other entities;
- One party that possesses the votes necessary to control another;
- One party that agrees to preferential contractual terms with another that differ from those that would have been agreed to between third parties in similar circumstances, (but not limited to) volume discounts, financing terms and consignment delivery;
- One party that develops an activity of importance solely in relationship to another party, or the existence of which is justified solely in relationship to such other party (e.g. sole supplier or customer);
- One party that provides a substantial portion of the financing necessary for the development of the commercial activities, including the granting of guarantees of whatever type in the case of third party financing.
- One party that enjoys exclusivity as agent, distributor or licensee with respect to the purchase and sale of goods, services and intangible rights of another;
- One party that participates with another in associations without a separate legal existence pursuant to which such party maintains significant influence over the determination of prices;
- One party that participates significantly in the establishment of the policies of another relating to general business activities, raw materials acquisition and production/marketing of products;
- One party that assumes responsibility for the losses or expenses of another;
- The directors, officers, or managers/administrators of one party who receive instructions from or act in the interest of another party; and the management of a company is granted to a subject (via contract, circumstances, or situations) who maintains a minority interest in the capital of such company.

c) Nature of Transfer Pricing Documentation

Taxpayers undertaking transactions with related parties located abroad are required to fill in Form 3001, file a transfer pricing report, and present the necessary statutory financial statements.

d) Tax Havens & Blacklists

The Tax Authority published Resolution No. 001/2020 (the Resolution) on 3 January 2020, creating a list consisting of 40 countries with low or no-tax jurisdictions and special regimes. The list unites different listings of low- and no-tax nations and jurisdictions for transfer pricing, corporate income tax, non-resident income tax, individual income tax, and net wealth tax that had previously been published individually.

The Resolution states that nations and jurisdictions may be removed from the list if (i) exchange of information on request is fully applicable, and (ii) Uruguay's Ministry of Economy and Finance has initiated an automatic exchange of financial account information for tax purposes bilaterally.

e) Advance Pricing Agreement (APA)

Decree 392/009 in Article 7 previews the Advance Pricing Agreement. The DGI can celebrate APA with the taxpayers, who must be signed before the realisation of transactions and may not exceed 3 fiscal years. The DGI establishes the conditions and formalities required to sign such agreements.

f) Audit Practice

The DGI (The Fiscal Administration of Uruguay) 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 substantiate 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 value agreed in transactions with related parties do not meet the arm's length standards, the DGI is entitled to make appropriate adjustments, as the valuation agreed between the related parties would result in lower taxation in Uruguay.

The DGI has a department of International Tax performing the transfer pricing audits.

3. Transfer Pricing Documentation

a) Level of Documentation

The taxpayer is required to prepare the following transfer pricing documentation:

- Master file consistent with Annex I to Chapter V of the Transfer Pricing Guidelines;
- Transfer Pricing Report according to local legislation;
- Country-by-country report consistent with Annex III to Chapter V of the Transfer Pricing Guidelines;
- Specific transfer pricing returns (separate or annexed to the tax return).

A Transfer Pricing Report must include:

- Information on activities and functions developed;
- Information on risks assumed and assets employed;
- Facts and circumstances are taken into account for the analysis;
- Details and quantification of the transactions that should be disclosed according to the transfer pricing requirements;
- Identification of the foreign related parties with which the transactions being declared are carried out;

- Information on the method employed for the justification of the transfer prices taken, stating the reasons for considering them the best methods;
- Identification of the comparables selected;
- 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 median and inter-quartile range;
- The transaction of the income statement of the comparable parties corresponding to the fiscal years is necessary for the comparability analysis, with an indication of the source of information.

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 Uruguay 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).

There is an additional method (the 6th method) for settling the prices of the imports or exports of commodities to related entities performed through an international trader based on international prices in commodities markets.

As a general principle, the method to determine the prices of the transactions under analysis is that considered most appropriate for the type of transaction being made. In the case of commodity transactions, the CUP method is mandatory.

f) Economic Analysis – Benchmark Study

From a practical point of view, although there is no specific guidance on how a comparability analysis should be done, the general guidance on comparability analysis outlined in Chapter III of the OECD Transfer Pricing Guidelines is followed. For the comparability analysis and justification, "comparable transactions" are defined as those which do not show differences affecting price, profit margin or the amount of the consideration, or only differences that can be adjusted for with a substantial degree of reliability.

There is no express treatment regarding foreign or domestic comparables. From a practical point of view, both are accepted, depending on the facts and circumstances of the case under analysis. Considering the availability of information regarding domestic transactions, domestic comparables could be preferable in certain cases.

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) 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. This 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	Local legislation	Within 4 months	N/A	N/A	Yes (Spanish)

			after the FY-end			
Master File	Prepare	N/A – TBD	Within 12 months after the FY-end	N/A	N/A – TBD	Yes (Spanish)
Local File (Form 3001)	File	Local legislation	Within 9 months after the FY-end	N/A	50 million units (± USD 6 million)	Yes (Spanish)
CbCR	File	XML format	Within 12 months after the FY-end	Last day of the FY of MNE	EUR 750 million	Yes (Spanish)
Annual Accounts	Prepare	IFRS	180 days after the end of the financial year	No	Yes	Yes (Spanish)
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	Yes (Spanish)

* Uruguay has signed the MCAA agreement for the filing of CbCR on 30 June 2016.

* When the aggregate transactions subject to transfer pricing rules undertaken during the fiscal year are not more than 50 million indexed units (approximately USD 5 million), taxpayers are exempt from TP documentation obligations. However, these transactions must equally comply with the arm's length principle.

There is no formal provision to prepare transfer pricing documentation. However, in general, the documentation needs to be prepared by the filing date of the annual income tax return. The deadline to submit the income tax return is within 4 months of the end of the accounting period.

The documentation must be submitted to the Fiscal Administration up to the ninth month after the close of the fiscal year.

The statute of limitation is 5 years, starting at the close of the fiscal year.

i) Mandatory Language

All information provided to the tax authorities must be in the Spanish language. If it is necessary to submit information from abroad, it must be duly translated into the Spanish language and legalised.

j) Notification Requirement

Taxpayers subject to the CbC reporting requirements must notify the DGI once a year, before the end of the MNE's fiscal year of reporting, providing the following information about MNEs:

- the identification and fiscal residence of the entity that will file the CbC report on behalf of the group;
- the identification and fiscal residence of the group's ultimate parent entity; and
- the identification of other group entities in Uruguay.

Even if there were no changes in the current fiscal year, the notification must be submitted regardless of the reporting entity's domicile or the jurisdiction where the CbC report is filed.

k) Record Keeping

Records must be kept in accordance with the provisions of the Tax Code for 5 years or 10 years in certain cases.

l) Penalties and Interest Charges

Non-compliance with formal obligations (such as failure to file a sworn declaration or to file the presentation of the transfer pricing documentation report) is punished with a fine for contravention (according to the seriousness of the infringement), apart from other sanctions that may apply depending on the facts and circumstances of the case. Article 46 bis of Title 4 (introduced by article 315 of Law 18,996) provided that in the case of any formal infringements related to the transfer pricing regime, the fine for an infringement shall be applicable gradually according to the seriousness of the infringement (until a thousand times the fine of contravention, as a maximum). There are no compliance incentives.