



# **Transfer Pricing Country Summary**

## **El Salvador**

June 2022

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## 1. Introduction

Although El Salvador is not a member of the OECD, the Salvadoran tax authorities, Dirección General de Impuestos Internos (DGII) or Tax Authority, generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

El Salvador issued a Transfer Pricing Orientation Guide on March 2018 (DG-001/2018) available only in Spanish language, in order to facilitate the determination of transfer pricing according to article 62-A of the tax code.

## 2. Laws & Regulations

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

The legal framework for transfer pricing was introduced by Decree 233 of 29 December 2009 on the Tax Code in the Articles 62-A, 124-A, 125, 199-A, 199-B, 199-C, 199-D and 244. The normative stipulates that transfer pricing regulation would come into force starting 1 January 2010. Later the Decree 763 of 31 July 2014 was reformatted the norms of transfer pricing. Although El Salvador is not a member of the OECD, the Salvadoran tax authorities, Dirección General de Impuestos Internos (DGII) or Tax Authority, generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

El Salvador issued a Transfer Pricing Orientation Guide on March 2018 (DG-001/2018) available only in Spanish language, in order to facilitate the determination of transfer pricing according to article 62-A of the tax code.

### b) Definition of Related Party

According to Article 199-C of Salvadoran's Transfer Pricing Regulation Law, two or more entities can be considered as related parties:

- When one of them directs or controls the other, or holds, directly or indirectly, at least 25% of its capital stock or voting rights, whether a domestic or foreign entity;
- When five physical or corporate entities or less direct or control both related parties, or possess directly or indirectly at least 25% of participation in the capital stock or voting rights of both entities;
- When corporate entity is a member or participant of the other and is related to it in any of the following situations:
  - Holds a majority of voting rights;
  - Has designated the majority of the members of the administrative organ of the enterprise;
  - Has the power to appoint or remove members or through its legal representative to intervene decisively in the other entity;
  - May have, under agreements with other partners, most of the voting rights;
  - Has designated the majority of the members of the administrative organ of the enterprise;
- When a physical or corporate entity has a stake in the capital stock or voting rights, the ownership of the share or shares, directly or indirectly is the spouse or person connected by relationship, by blood relation to the fourth degree or affinity to the second degree. The term person refers to individuals, corporations and other organizations with or without legal personality;
- When in a union of persons, company event or business cooperation contract or joint venture agreement, when any of the contractors or partners participates directly or indirectly in more than 25 percent of the profit of the contract activities resulting from the association;
- When a physical or corporate entity is a distributor or exclusive agent of the other;

- When a person domiciled in the country and its supplier abroad, when the resident in the country makes purchases, and the volume thereof represents more than 50 percent;
- When a physical or corporate entity is a permanent establishment of the other;
- When commercial or financial transactions have are being carried out between local physical or corporate entities and entities located in tax havens

#### c) Nature of Transfer Pricing Documentation

The tax administration published a Transfer Pricing Guide in March 2018, which serves as a basic orientation for taxpayers who must follow the TP laws. The OECD techniques for transfer pricing analysis, the comparability analysis procedure, and guidelines for generating the TP paperwork are all included in this handbook.

The transfer pricing rules in El Salvador are not entirely consistent with the OECD principles. Despite the fact that the OECD recommendations were included in the July 2014 article 62-A reform, the higher courts struck down such reform (*Constitutional Hall of El Salvador's Supreme Court of Justice May 2018*). These reforms included references to the OECD Guidelines.

#### d) Tax Havens & Blacklists

The Ministry of finance has published the General Guide DG-02/2020 that includes a list of countries and jurisdictions that are considered tax havens for tax purposes, for the FY 2020. Transactions within these jurisdictions are subjected to a WHT tax of 25%. The Guide contains 2 lists. First, one specifies the low tax jurisdictions, whilst the second one stipulates the no-tax territories.

The **low-tax jurisdictions** are: Albania, Andorra, Azores Island (Portugal), Barbados, Bosnia and Herzegovina, Botswana, Bulgaria, Cyprus, Czech Republic, Estonia, Georgia, Gibraltar, Hong Kong, Hungary, Iceland, Ireland, Kazakhstan, Kuwait, Kyrgyzstan, Labuan (Malaysia), Latvia, Lebanon, Liechtenstein, Lithuania, Macau, Macedonia, Maldives, Malta, Mauritius, Moldova, Montenegro, Oman, Palau, Paraguay, Poland, Qatar, Romania, San Marino, Saudi Arabia, Serbia, Singapore, Slovenia, Switzerland, Taiwan, Texas (U.S.), Timor-Leste (East Timor), Turkey, Turkmenistan, Uzbekistan, and Washington (U.S.).

The **No-tax jurisdictions** are: Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Brunei, Campione d'Italia (Italy), Cayman Islands, Cook Islands, Curacao, Delaware (U.S.), Dominica, Florida (U.S.), Grenada, Guernsey, Isle of Man, Jersey, Liberia, Marshall Islands, Monaco, Montserrat, Nauru, Nevada (U.S.), Norfolk Islands, Qeshm (Iran), Samoa, Seychelles, South Dakota (U.S.), Saint Helena and Tristan da Cunha, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sint Maarten, Turks and Caicos, U.S. Virgin Islands, United Arab Emirates, Vanuatu, and Wyoming (U.S.).

#### e) Advance Pricing Agreement (APA)

There are no special considerations for APA.

#### f) Audit Practice

The DGII ( El Salvador Tax Authority) is entitled to perform transfer pricing audits from financial year 2010 onwards. Although transfer pricing audits are part of a tax audit, the DGII uses standard procedures, such as on-site examinations or written requests. During the audit the DGII may request additional information and must be allowed access to the company's accounting records. The transfer pricing rules put the burden of proof on the taxpayer. 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.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

El Salvador has not incorporated into TP legislation the documentation proposed by the OECD TP Guidelines, to this date. In practice, the Master and local file are considered to be the most efficient tp documentation method, nonetheless, there are additional local regulations. These regulations, if they are left out they can cause tax issues of non-compliance to the taxpayer. Moreover, as indicated above, the definition of related parties is much broader in El Salvador than other countries.

#### 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 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 at paragraph 1.51.

#### e) Choice of Transfer Pricing Method

Article 62-A established that taxpayer is obliged to present all the information regarding transactions with its related parties and their corresponding analysis. Taxpayers are compelled to file or prepare sufficient information and analysis that demonstrates the arm's length price established in transactions between related parties. This documentation must include the information that the taxpayer used to determine the arm's length nature of the intra-group transactions. This documentation will need to be prepared on an annual basis. Taxpayers are compelled to file or prepare the following TP documentation:

- 1) Informative Return: Form 982 must be filled within the 3 months following the end of the fiscal year.
- 2) TP Study: Article 62-A of the Tax Code establishes that taxpayer who enter into transactions with related parties are compelled to determine the prices and amounts of consideration, considering market prices used in transfers of goods or services of the same kind among independent parties for those operations. Likewise, taxpayers must determine at market prices the transactions or transactions entered into with subjects domiciled, constituted or located in countries, states or territories with preferential tax regimes, low or no taxation or tax havens. Prices must be agreed according onarm's lengthand the determination of such prices and reasonable documentation must be supported in a TP study.

#### f) Economic Analysis – Benchmark Study

A benchmark study is required in order to assess whether the relevant intra-company transactions are in accordance with the arm's length principle.

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

Although an Inter-company legal agreement formalizes 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

Taxpayers are required to disclose intra-company transactions in their Financial Statements.

#### 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. 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) |
|-----------------------------|------------------|------------|----------|------------------------|----------------------|---|
| <b>Corporate Income Tax</b> | File             | Local GAAP | 31 March | No                     | No                   | No  |
| <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>Local form X</b>         | N/A              | N/A        | N/A      | N/A                    | N/A                  | N/A   |
| <b>Local form Y</b>         | N/A              | N/A        | N/A      | N/A                    | N/A                  | N/A   |
| <b>Local form Z</b>         | N/A              | N/A        | N/A      | N/A                    | N/A                  | N/A   |
| <b>Annual Accounts</b>      | N/A              | N/A        | N/A      | N/A                    | N/A                  | N/A   |

|   |     |     |     |     |     |     |
|---|-----|-----|-----|-----|-----|-----|
| <b>Segmented<br/>P&amp;L</b>  | N/A | N/A | N/A | N/A | N/A | N/A |
| * El Salvador has signed the MCAA agreement for the filing of CBCR.   |     |     |     |     |     |     |
| * El Salvador does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises. |     |     |     |     |     |     |

#### j) Mandatory Language

According to article 139 of Tax Code, documentation language is Spanish; however, some information (e.g., business description of foreign comparables) may be submitted in English. Salvadorian Tax Authorities may require a translation into Spanish of such information.

#### k) Notification Requirement

The transfer pricing information return (Form 982) must be filed by 31 March. From that date on, it must be available in case the DGII conducts an edit.

#### l) Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The article 147 established for the status of limitation of information for tax returns presenting confusing information, or in case of partial of total lack of tax payment is 10 years for status

#### m) Penalties and Interest Charges

Based on the provisions of the Tax Code of El Salvador, for taxpayers who have not complied with the provisions outlined above, the DGII will have the ability to assess the value of such transactions by employing market prices used in transfers of similar goods or services between third parties. Besides that, for not present the declaration or present later the DGII may levy a fine of 0.5 percent over the assets or equity shown on the taxpayer's balance sheet the revaluation surplus of assets unrealized, which shall not be less than 3 minimum salaries.