



# **Transfer Pricing Country Summary**

## **Guatemala**

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## 1. Introduction

Since 2012, Guatemala has formal transfer pricing documentation requirements to submit Transfer Pricing Study. However, the Action 13 BEPS initiative has not been fully implemented in the Central American country.

## 2. Laws & Regulations

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

The legal framework for transfer pricing was introduced by the Decree 10-2012 dated 2012. This Decree stipulates that transfer pricing regulation would come into force starting 1 January 2013. However, the regulation was suspended for two years and revived for application as of 1 January 2015 onwards.

The tax authority of Guatemala is the Superintendencia de Administración Tributaria (SAT). In September 2016 the tax authorities published transfer pricing guidelines which provide information regarding the content, presentation, and formulas needed to perform an adequate transfer pricing analysis. The new guidelines refer to the BEPS initiatives. However, Guatemala is not a member of the OECD.

### b) Definition of Related Party

According to Article 56 of Guatemala's Transfer Pricing Regulation Law, two or more entities can be considered as related parties when one of them is a resident of Guatemala and the other is resident in a foreign tax jurisdiction, if one of the following cases applies:

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; or 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 a physical or corporate entity is a distributor or exclusive agent of the other.
- When a physical or corporate entity is a permanent establishment of the other

### c) Nature of Transfer Pricing Documentation

Since 2015, taxpayers are required to file a transfer pricing return, "Operations with related parties", as an appendix to the annual income tax return.

### d) Tax Havens & Blacklists

Guatemala does not have a Tax Haven list available. As a side note, Guatemala was regarded as a "non-cooperative jurisdiction" by some countries. For example, in 2019 France removed Guatemala from its Tax Haven list, after the central American country showed commitment to the international exchange of tax information.

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

Taxpayers can request an APA with the Tax Administration, in order to request the valuation of transactions among related parties. It must be accompanied by a proposal of the taxpayer that is based on the value that would have been agreed independent parties in similar operations. The proposal can be accepted, rejected, or modified by the SAT. If the agreement is accepted, it would be valid for a time frame of 4 fiscal periods at the most. If the SAT does not answer in 30 days, the APA was rejected.

#### f) Audit Practice

The SAT is entitled to perform transfer pricing audits from financial year 2015 onwards. Although transfer pricing audits are part of a tax audit, the SAT uses standard procedures, such as on-site examinations or written requests. During the audit the SAT 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.

The likelihood of transfer pricing related audits is high since in 2016 and 2017 the tax authorities requested the 2016 transfer pricing documentation from most taxpayers that had intercompany transactions.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

The taxpayer is obliged to present all the information regarding transactions with its related parties and their corresponding analysis that demonstrates the arm's length price established in transactions between related parties. This documentation will need to be prepared on an annual basis;

Specifically, the taxpayers are compelled to:

- Informative return filling: The Appendix "Operations with related parties" must be submitted together with the income tax return,
- TP Study preparation: Article 65 of the Government Agreement 213-2013 states that correct determination of prices, amounts of the consideration or profit margins in transactions with related parties must be demonstrated and justify in a TP study.

#### 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

The articles specifying the methods available for performing transfer pricing and comparability analysis are in line with those contained in the OECD Transfer Pricing Guidelines. Article 59 of the Decree 102012 specifies the following five transfer pricing methods:

- Comparable Uncontrolled Price Method (CUP);
- Resale Price Method (RPM);
- Cost Plus Method (CPM);
- Profit Split Method (PSM);
- Transactional Net Margin Method (TNMM); and
- The transfer pricing rules of Guatemala also include a non-OECD method which is the import and export valuation method.

The CUP, resale price and cost plus method take priority over the transactional methods. The import and export valuation method is preferred for transactions involving imports and exports of goods with well-known international market prices.

For commodities, Article 61 of the Decree 10-2012 permits to use the international price in commodities markets, where said commodities are traded.

#### f) Economic Analysis – Benchmark Study

The regulation in Guatemala allows the use of internal and external comparable companies to determine the arm's length range for the evaluation of the transactions carried out by the company. Typically external comparables are used more since there is a lack of financial information on the local level.

#### 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) 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	NA	31 March for the previous FY	N/A	N/A	Yes (Spanish)
<b>Master File</b>	Prepare	Specific format	12 months from end of FY	N/A	N/A	Yes (Spanish)
<b>Local File</b>	Prepare	Specific format	31 March for the previous FY	N/A	N/A	Yes (Spanish)
<b>CbCR</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Annex about Related parties (CIT return)</b>	File	NA	31 March for the previous FY	N/A	N/A	Yes (Spanish)
<b>Annual Accounts</b>	Prepare	IFRS	90 days after the end of the financial year	No	Yes	Yes (Spanish)
<b>Segmented P&amp;L</b>	Prepare	Excel/Other	Ready upon filing CIT/TP documents	No	No	Yes (Spanish)

\* Guatemala has NOT signed the MCAA agreement for the filing of CbCR.

\* In Guatemala, there are no special considerations for SME's.

Sufficient information and analysis to demonstrate and justify the correct determination of prices between related parties is required at the time of submission of the income tax as this information is necessary to file the TP Return or Appendix "Operations with related parties" which is part of the income tax return.

The transfer pricing study needs to be submitted only upon the tax authority's request. If the TP study is required by the Tax Authority, then the taxpayer must submit it within 20 days after such request.

The statute of limitation is four years from filing date of the tax return.

#### i) Mandatory Language

Documentation should be in Spanish. However, some information (e.g. business description of foreign comparables) may be submitted in English. Guatemalan Tax Authorities may require a translation into Spanish of such information.

#### j) Notification Requirement

Guatemala is not a member of the Inclusive Framework yet and does not have CbC Reporting legislation and requirement in force. Therefore, there is no notification obligation.

#### k) Record Keeping

Records must be kept in accordance with the provisions of the Article 47 of Taxation Code. It establishes that in case of the tax returns presenting confusing information or in case of partial or total lack of tax payment, the status of limitation is 4 years. When the taxpayer is not registered on the Guatemalan Tax Authorities, Article 48 establishes the status of limitation as 8 years.

#### l) Penalties and Interest Charges

Based on the provisions of the Tax Code of Guatemala, for taxpayers who have not complied with the provisions outlined above, the SAT 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 presenting the declaration:

- The first time the penalty is for 5,000 quetzales;
- Before a second requirement the penalty is 10,000 quetzales;
- And for recidivism the penalty is for 10,000 quetzales and 1% of the gross revenues.

In cases when tax is omitted due to incorrect transfer price adjustments the following penalties apply:

- A fine of 100% of the tax due;
- 13.45% late payment interest;
- 100 quetzales as a formal fine for the rectification.