



# **Transfer Pricing Country Summary**

## **Honduras**

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## 1. Introduction

Honduras is not a member of the OECD. The OECD Guidelines can be relied upon for interpretation of the rules, as long as they do not contradict the Honduran tax system.

## 2. Laws & Regulations

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

Regarding the TP regulations and the effective date of applicability:

- Decree No. 232-2011, effective from 1 January 2014, establishes Transfer Pricing Law, Articles 1 to 22
- Executive Decree No. 027-2015, effective from 18 September 2015, contains regulations on TP, Articles 1 to 40
- Communication-DEI-SG-004-2016 · Article 113 of Tax Code.

### b) Definition of Related Party

According to Article 3.3 of Honduras' Transfer Pricing Regulation Law, two or more entities can be considered as related parties when:

- A physical or corporate entity, legally (and properly documented) participates directly or indirectly in the control or capital of another physical or corporate entity;
- A physical or corporate entity, legally (and properly documented) participates directly or indirectly in the control or capital of said two or more physical or corporate entities;
- They are entities that conform a decision-taking unit, where one of them owns at least 50% of the other and is related with the second entities in one of the following situations:
  - o Has the majority of voting rights, or has the faculty of naming or removing the majority of the members of the administrative organ of the enterprise;
  - o Is able to, by internal arrangements between partners, of the majority of voting rights;
  - o Has designated the majority of the members of the administrative organ of the enterprise;
- Commercial or financial transactions are being carried out between local physical or corporate entities and entities located in tax havens (at this moment, there is no official list that indicates the tax havens, but it is soon expected to be published);
- A local resident corporation has foreign permanent establishments.

### c) Nature of Transfer Pricing Documentation

Transfer pricing first regulations in Honduras were introduced through Agreement 027 of 6 May 2015<sup>1</sup>. Later, on December 2016 Honduras enacted a new Tax Code (Decree No. 170-2016<sup>2</sup>) which article 113 modifies transfer pricing regulations from fiscal year 2017, establishing that companies and individuals with related parties within the Honduran territory are not subject to transfer pricing study ("TP Study"). This rule is not applicable if the national related party belongs to a special regime or has tax benefits. Although Honduras is not a member of the OECD, the Honduras tax authorities, Dirección Ejecutiva de Ingresos ("DEI" - per its initials in Spanish) or Executive Direction of Income, generally accepts the OECD Transfer Pricing Guidelines as a specialized technical reference but not as a supplementary source of law interpretation.

### d) Tax Havens & Blacklists

This section is not applicable.

#### 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. The proposal can be accepted, rejected or modified by the Executive Direction of Income. If the agreement is accepted, it would be valid for a time frame between 2 and 5 fiscal periods, depending on the agreement that was reached. APA procedures do not have a special rule; it is roughly specified in article 13 of the Decree 232-2011.

#### f) Audit Practice

The transfer pricing rules put the burden of proof on the taxpayer. The taxpayer is required to substantiate that the transactions with 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

The taxpayer is obliged to present a TP informative return as well as to prepare a TP Study that comprises all the information regarding transactions with its related parties and their corresponding analysis. The regulations indicating the declaration obligations of the taxpayer will be published afterwards through regulation. Specifically, the taxpayers will be obligated to present:

- Sufficient information and analysis that demonstrates the arm's length price established in transactions between related parties;
- Any information that the Tax Administration considers deems appropriate.

#### 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 regulations specifying the methods available for performing transfer pricing and comparability analysis are in line with those contained in the O.E.C.D. Transfer Pricing Guidelines. Article 8 of the transfer pricing regulation law 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).

Additionally, as defined in Section 6 of article 8, the taxpayer is free to use a different methodology to determine an arm's length retribution for transactions between related parties, as long as it can demonstrate that none of the first five methods are reasonably applicable to the analysed transaction.

For the commodities, Article 10 of the transfer pricing regulation law allows the use of the international price in commodities markets, where said commodities are traded.

#### f) Economic Analysis – Benchmark Study

There are no statutory comparables enacted for transfer pricing. Therefore, the OECD Guidelines are applicable.

#### 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

Not applicable.

#### 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	Taxpayers must file the return between 1 January and 30 April	No	No	Yes
<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 P&amp;L</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
* Honduras has NOT signed the MCAA agreement for the filing of CBCR.						
* Honduras 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

Documentation should be in Spanish; however, some information (e.g. business description of foreign comparables) may be submitted in English. Furthermore, Honduras tax authorities may require a translation into Spanish of such information.

#### k) Notification Requirement

This section is not applicable.

#### l) Record Keeping

Records must be kept in accordance with the provisions of the Taxation Code. The article 136 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.

#### m) Penalties and Interest Charges

The penalties for the violations to transfer pricing regulations are defined in articles 18 and 19 of the transfer pricing regulation law, these are described below:

- In case of lack of compliance in supplying the required information or supplying incomplete information, as per requested by the DEI. Penalty: US\$10,000
- Declaring a lower taxable income than the one determined by two independent parties in comparable situations. Penalty: 15% of the tax difference.
- Committing the two previous mentioned violations. Penalty: 30% of the tax difference or US\$20,000, whichever is the highest will be the sanction.
- Any additional infringements of the transfer pricing regulation law. Penalty: US\$5,000.