



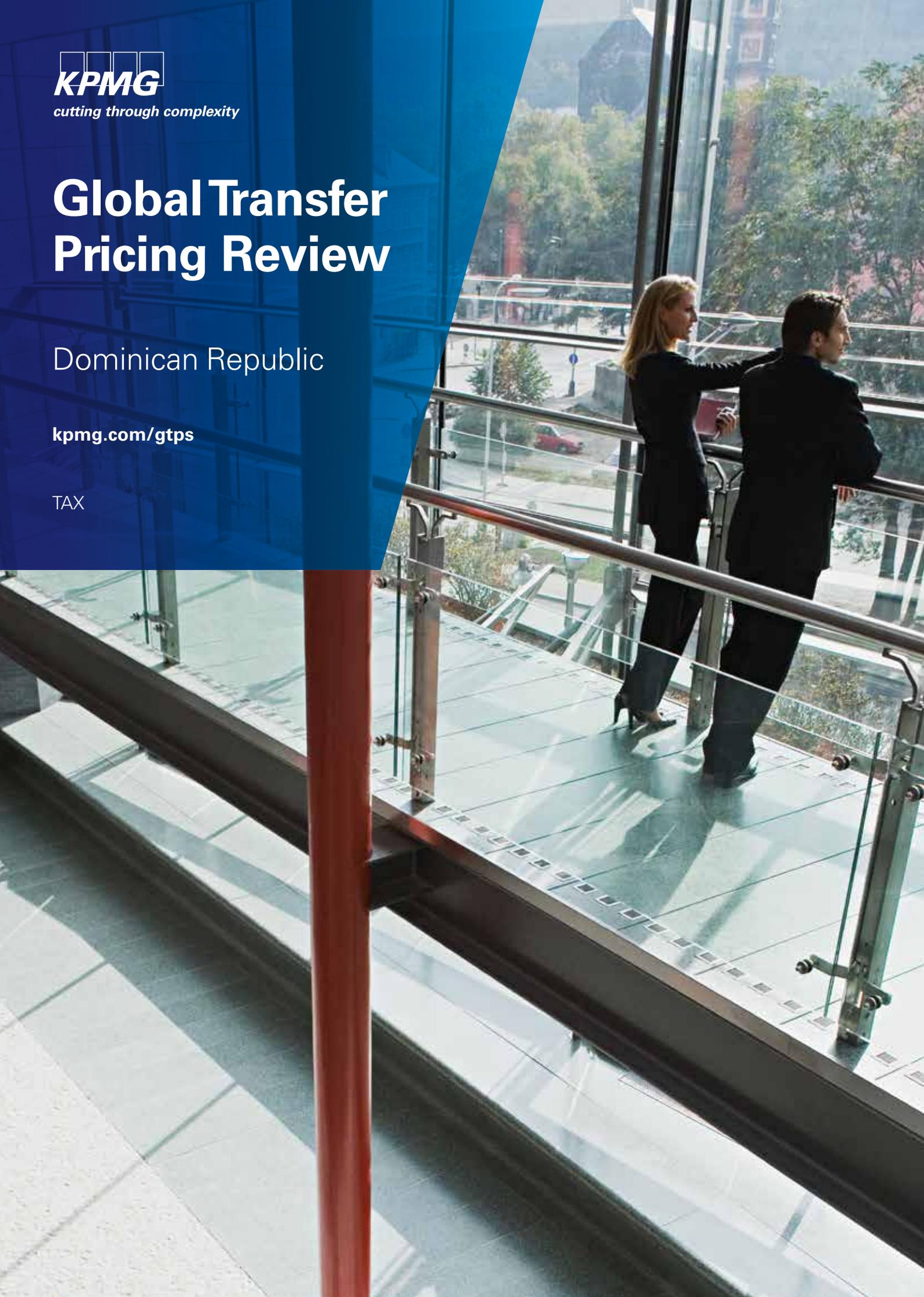
*cutting through complexity*

# Global Transfer Pricing Review

Dominican Republic

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TAX



# Dominican Republic



## KPMG observation

Taxation in the Dominican Republic is governed by Law No. 11–92, which is commonly known as the Dominican Tax Code (“DTC”). The Dominican transfer pricing legislation is mainly set forth in Article 281 of the DTC. The DTC was amended extensively by Law 253–12 which, among other things, strengthened the collection powers of the State.

Following the enactment and approval of Law 253–12, Article 281 of the DTC requires that all companies, regardless of their corporative structure, provide information to the tax authorities on their commercial or financial intercompany operations, to the extent these operations involve: (i) an associated resident; or (ii) individuals or entities incorporated or located in Special Fiscal Regimes. Unless specifically excluded or exempt, every transaction concluded between associated parties should be subject to a transfer pricing analysis.

Even though the transfer pricing legislation is relatively new in the Dominican Republic, these rules are based on international guidelines. The Dominican tax authorities sought advice from different tax authorities in the region and the legislation includes some additional issues that are common in practice but not previously addressed by the transfer pricing legislation in other countries, including, but not limited to:

- the use of multiple years of financial information of the tested party
- the use of adjustments for accounts receivable, accounts payable, inventory, and property, plant, and equipment (PP&E); and
- the definition of a related party includes the use of an exclusive agent, distributor, or dealer for the sale of goods, services, or rights, where the contracts for such arrangement contain ‘preferential’ terms.

Based on informal conversations with the Dominican tax authorities, and as evidenced from the requests of transfer pricing information returns (referred to “DIOR”), the tax authorities will aggressively continue to look at transfer pricing as a source of tax revenue. Accordingly, companies must be ready to defend their transfer prices and file their DIOR.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment		●
Shifts burden of proof		●

## Basic information

### Tax authority name

Dirección General de Impuestos Internos (DGII).

### Citation for transfer pricing rules

- Taxation in the Dominican Republic is governed by Law No. 11–92 commonly known as the Dominican Tax Code (“DTC”), its amendments and regulations.
- Article 281 of DTC - Validity of Legal Acts Between Associated Taxpayers.
- General Standard 04–2011 – Transfer Pricing Rules Applicable to Transactions Between Related Parties (the rules).
- Law No. 253–12 concerning the strengthening of the collection ability and revenue capacity of the State for the Fiscal and Development Sustainability (hereinafter the Tax Reform), introduced significant changes to the scope and application of Article 281 of the DTC with reference to “Related Party Transactions.”

### Effective date of transfer pricing rules

Transfer pricing documentation requirements started for fiscal years ended on 31 March 2011. It is important to note that in the Dominican Republic, taxable years may end only on any of the following dates:

- 31 March
- 30 June
- 30 September; and
- 31 December.

### What is the relationship threshold for transfer pricing rules to apply between parties?

For the taxable years ended between 31 March 2011 and 30 September 2012, the transfer pricing documentation requirements were only applicable to local companies where their foreign capital was greater than 50 percent of their total share capital and conducted related party transactions with:

- foreign related parties; and
- individuals, companies or corporations domiciled in low tax jurisdictions or tax havens or related parties benefiting from the Free Trade Zone Regime.

As a result of the Tax Reform effective 10 November 2012, taxpayers must document the arm’s length nature of their intercompany transactions, regardless of the ownership structure of the organization. Taxpayers must document any commercial or financial operations with:

- a related party
- individuals or legal entities domiciled, incorporated or based in countries or territories with preferential, nil or low tax regime or tax havens, regardless of its composition as related parties.

Therefore, every transaction made between related parties is subject to a transfer pricing analysis.

### Parties are deemed to be related:

- when one directly or indirectly participates in the management, control or capital of the other. (For management: when one party occupies a position of senior management in both companies. For control or capital: having an interest of at least 50 percent of the capital or voting control)
- when one of the parties is a resident in the country has permanent establishments abroad
- when a permanent establishment in the country has its headquarters abroad
- when one of the parties enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights
- when one of the parties agrees to contractual terms with ‘preferred’ conditions
- when one of the parties assumes responsibility for any loss or expense of the other
- when one of the parties receives or transfers 50 percent or more of its production to another company; and
- when a company or business is a decision unit, or when a company is a ‘partner’ of another company.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from the filing date of the tax return, if the taxpayer filed the return, or five years if no tax return was filed.

## Transfer pricing disclosure overview

### Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. All companies must submit the Informative Return for Transactions with Related Parties (DIOR). This informative return must be filed annually electronically, no later than 60 days after the deadline for filing the corporate income tax return.

The deadline for filing the Corporate Income Tax return is 120 days after the fiscal closing date.

### What types of transfer pricing information must be disclosed?

Examples of transfer pricing information that must be disclosed includes but is not limited to:

- related parties with which the transactions were performed
- type of transaction
- amount of the transaction
- documentation supporting the transaction, as well as the methodology used to support the arm’s length nature of the transaction; and
- number of the invoice or document that contains the transaction with related parties.

### What are the consequences of failure to submit disclosures?

If a taxpayer does not file the DIOR, or provide the Dominican Tax authorities with a transfer pricing study when requested, then a fine of 85,000 Dominican Republic Pesos (DOP) to DOP154,740 is applicable (approximately from 2,000 US dollars (USD) to USD4,000).

Other penalties may apply, such as generated interest and late penalties, for the income generated under intercompany transactions not complying with the arm’s length principle.

## Transfer pricing study overview

### Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes. However, a transaction-by-transaction analysis must be conducted.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

The law does not indicate a time frame.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Yes, taxpayers can submit the resolution to an administrative area within the DGII, in order to object to the procedures. Also, taxpayers may appeal to tax court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. However, since the transfer pricing regulations are new in the Dominican

Republic, there is no practical experience on how the authorities will act or interpret its application.

However, general tax penalties, interest and surcharges will apply (interest 1.73 percent monthly and surcharges 10 percent the first month, then four percent on each subsequent month) on the adjustment.

To what extent are transfer pricing penalties enforced?

No experience to date, since legislation only came into force in June 2011.

What defenses are available with respect to penalties?

Same as for tax adjustments, for example, documentation, negotiations.

What trends are being observed currently?

No experience to date, since legislation only came into force in June 2011.

## Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No experience to date, since legislation only came into force in June 2011. However, due to the limited number of local comparables DGII has indicated foreign comparables will be accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

No experience to date, since legislation only came into force in June 2011.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

No experience or knowledge.

What level of interaction do tax authorities have with customs authorities?

High level, but not seen for transfer pricing, since the legislation came into force in June 2011.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No. There are no limitations.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No. There are no limitations.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes, the tax return amounts are based on the DTC while the book numbers are generally based on accounting principles, which may differ.

Other unique attributes?

None.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal, only with Canada and Spain.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience to date.

When may a taxpayer submit an adjustment to competent authority?

No experience to date.

May a taxpayer go to competent authority before paying tax?

No experience to date.

## Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable. No current information due to the fact the transfer pricing regulations have been recently established.

### KPMG in Dominican Republic

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