



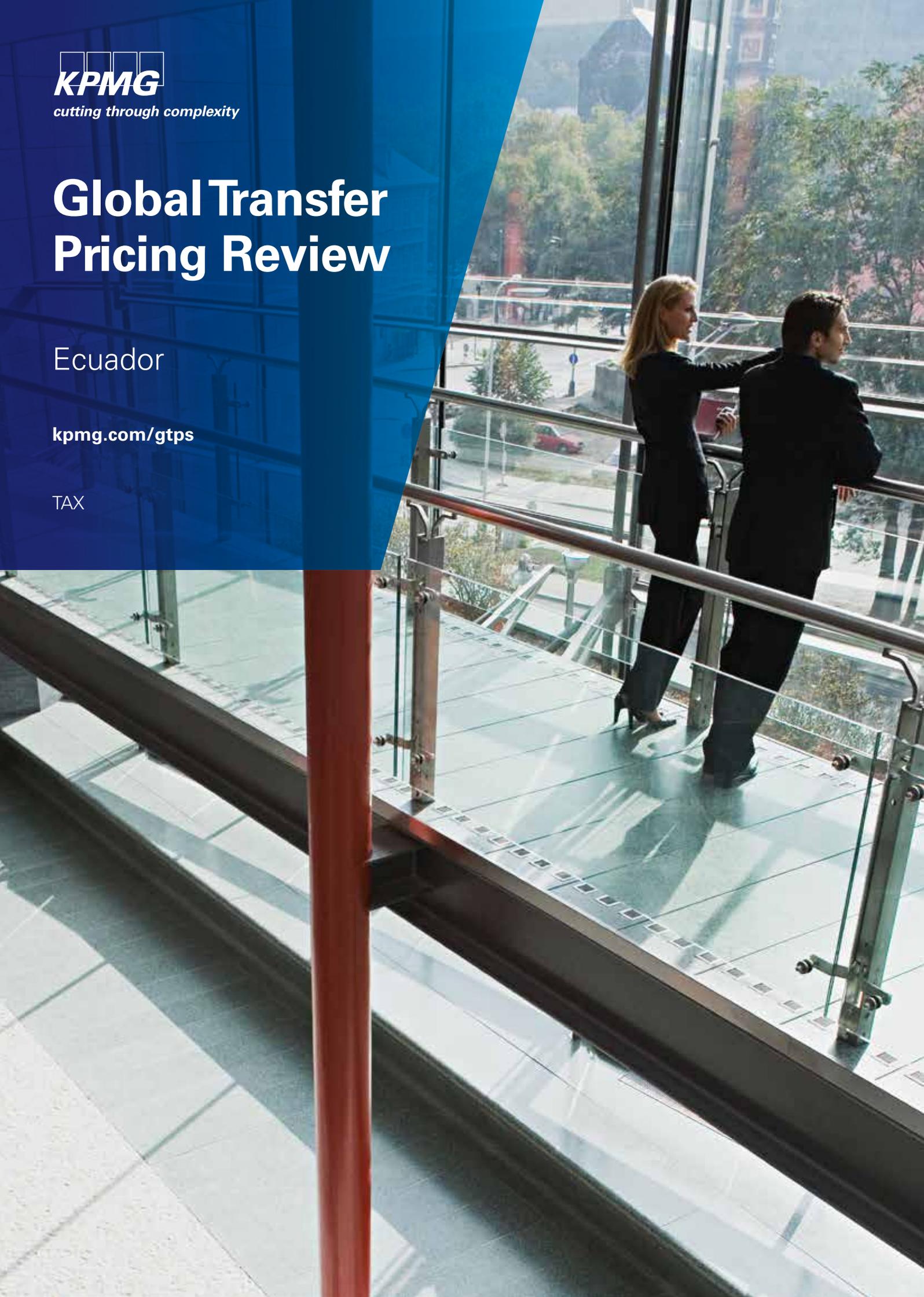
cutting through complexity

Global Transfer Pricing Review

Ecuador

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TAX



Ecuador



KPMG observation

On 27 May 2015, the Ecuadorian Tax Authority published the resolution No. NAC-DGERCGC15-00000455 on transfer pricing, which establishes new content requirements for taxpayers' transfer pricing studies.

The following is a summary of the main changes:

- A study should no longer consider arrangements with an independent party that accounts for over 50 percent of total purchases and sales. In addition, domestic related parties do not need to be considered, provided that they meet certain conditions.
- The transfer pricing filing requirements and associated thresholds for a taxpayer are:
 - OPR Annex, if operations with related parties exceed 3 million US dollars (USD)
 - Transfer Pricing Report, if operations with related parties exceed USD15 million.
- In relation to a taxpayer's economic analysis, only the current tax year should be considered for identifying comparable companies.
- For tax year 2015 only, the filing date for transfer pricing disclosures (OPR Annex and Transfer Pricing Report) is in September. Thereafter, the filing date will be in June.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Submission to tax authority required
Legal requirements	●	●
Protection from penalties	●	●
Reduce risk of adjustment	●	●
Shifts burden of proof	●	●

Basic information

Tax authority name

Servicio de Rentas Internas (SRI).

Citation for transfer pricing rules

Resolution of the SRI No. NAC-DGERCGC15-00000455 of 27 May 2015.

Effective date of transfer pricing rules

1 January 2005.

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

The following, among others, are considered related parties:

- the head office and its subsidiaries, affiliates or permanent establishments
- the branches, subsidiaries or permanent establishment among them
- the parties in which the same natural person or society, participate

indistinctly, directly or indirectly in the management, administration, control or capital of such parties

- the parties in which the decisions are made by governing entities consisting of mostly the same members
- the parties in which the same member group, partner or stockholder, participate indistinctly, directly or indirectly in the administration, management, control or capital of these

- members of governing bodies of the companies in respect of the same, as long as it is established among them that those relations are non-inherent to their position
- the administrators and commissioners of the society in respect of the same, as long as it is established among them that relations are non-inherent to its position
- a society in respect of the spouse and relatives until the fourth degree of blood relation, or second degree of affinity of the executives, administrators, or commissioners of the society
- a natural person or society, and trusts in which they have rights
- when a natural person or society is a direct or indirect holder of 25 percent or more of the social capital or equity capital in another society
- the societies in which the same partners, stockholders or their spouses/husbands or their relatives until the fourth degree of blood relation or second degree of affinity participate directly or indirectly in at least 25 percent of the social capital, or own funds or have commercial transaction, provide services or are in a dependent relationship
- when a natural person or a company is a direct or indirect holder of 25 percent or more from the common stock or own funding in two or more companies
- when a natural person or a society, whether domiciled or not in Ecuador, performs 50 percent or more of its sales or purchases of goods, services or another type of operations, with a natural person or society, whether domiciled or not in the country.

The tax authority may presume there is a relationship between the parties when their transactions do not follow the arm's length principle. Related parties are also considered to include those parties carrying on transactions with companies located in low-tax jurisdictions or tax havens.

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

The SRI can determine transfer pricing adjustments up to three years from the return date.

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. Taxpayers who have cross-border or domestic transactions with related parties, for an accumulated amount exceeding USD3 million during the fiscal year under analysis, must prepare and submit to the tax administration a Transfer Pricing annex. If the accumulated amount exceeds USD15 million during the fiscal year under analysis, the taxpayer must instead prepare and submit both a transfer pricing annex and transfer pricing report.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- taxpayers must include in their annual income tax return the total amount of transactions performed with related parties abroad differentiated between tax haven and other regimes disaggregated as follows: assets, liabilities, income, and expenses
- in addition, the amount of transactions with local (under certain conditions) and foreign related parties must be included in the compliance tax report that is submitted to the tax authorities
- transfer pricing report
- transfer pricing annex.

What are the consequences of failure to submit disclosures?

If the taxpayer does not submit either a transfer pricing annex or a transfer pricing report, the Internal Tax Regulations state that a penalty of USD15,000 will be assessed.

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, for all transactions.

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, with some exceptions. In import and export transactions involving products traded on transparent markets, stock markets or the like, there is a presumption that prices on such markets would be used in comparable uncontrolled price (CUP) analysis, except where it could be shown they are not appropriate. This also applies to imports and exports transactions involving brokers.

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?

Yes, 60 days.

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

Normal practice is to expect documentation within two months upon request.

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

Yes, a taxpayer may challenge the adjustment in the respective fiscal court.

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

Yes, but the calculation for assessment is not known.

To what extent are transfer pricing penalties enforced?

Penalties are frequently enforced to the extent that there is no submission, or incorrect or missing.

What defenses are available with respect to penalties?

The only defense available is to have proper documentation of the transactions performed.

What trends are being observed currently?

Since the transfer pricing regime came into force, the tax authority has primarily focused on controlled transactions of international business groups.

Special considerations

Are secret comparables used by tax authorities?

Yes.

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

No, due to the lack of local information.

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

No, the tax administration uses Compustat North America and global databases but it is not required in practice because other databases can also be used.

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

Yes, sometimes.

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

The Tax Authority can challenge the methodology used in each operation.

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

High, since customs provide information to the SRI when it is required by this organization.

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

Yes. Provided the fees are used to obtain, maintain, and improve income of an Ecuadorian source. Additionally, and with the purpose of ensuring the expense deductibility, the SRI demands the

existence of the economic substance and clear confirmation that the service was provided.

Are management fees subject to withholding?

Yes.

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

Yes. An analysis for royalties should be made through the CUP method which is based on a contract. The SRI challenges the rate for assessing the operation.

Are royalties subject to withholding?

Yes.

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

No.

Other unique attributes?

Safe harbor – taxpayers that carry out operations with related parties will be exempt from the application of the transfer pricing regulations provided that:

- the tax incurred is greater than three percent of total taxable income
- they do not carry out operations with residents in tax havens or preferential tax regimes
- they do not maintain an agreement with the State for exploration or exploitation of non-renewable resources.

Additionally, regulations allow the tax authority to use secret comparables for the establishment of the arm's length principle. The tax authority could use all of its information, as well as from third parties, as set forth in the tax code and the LRTI.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

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

Frequently.

When may a taxpayer submit an adjustment to competent authority?

This depends on the timeframe allowed by the tax treaty.

May a taxpayer go to competent authority before paying tax?

No.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

Not applicable.

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. Local regulations allows taxpayer to negotiate an APA with the tax authorities, nevertheless the tax authority haven't provided any guidelines to the taxpayer for their practical application. Due to the lack of guidelines, taxpayers haven't relied on APAs.

KPMG in Ecuador

Gino A. Erazo

Tel: +59342290698

Email:gerazo@kpmg.com

Gabriela Cervantes

Tel: +59342290698

Email:gcervantesgarzon@kpmg.com

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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