



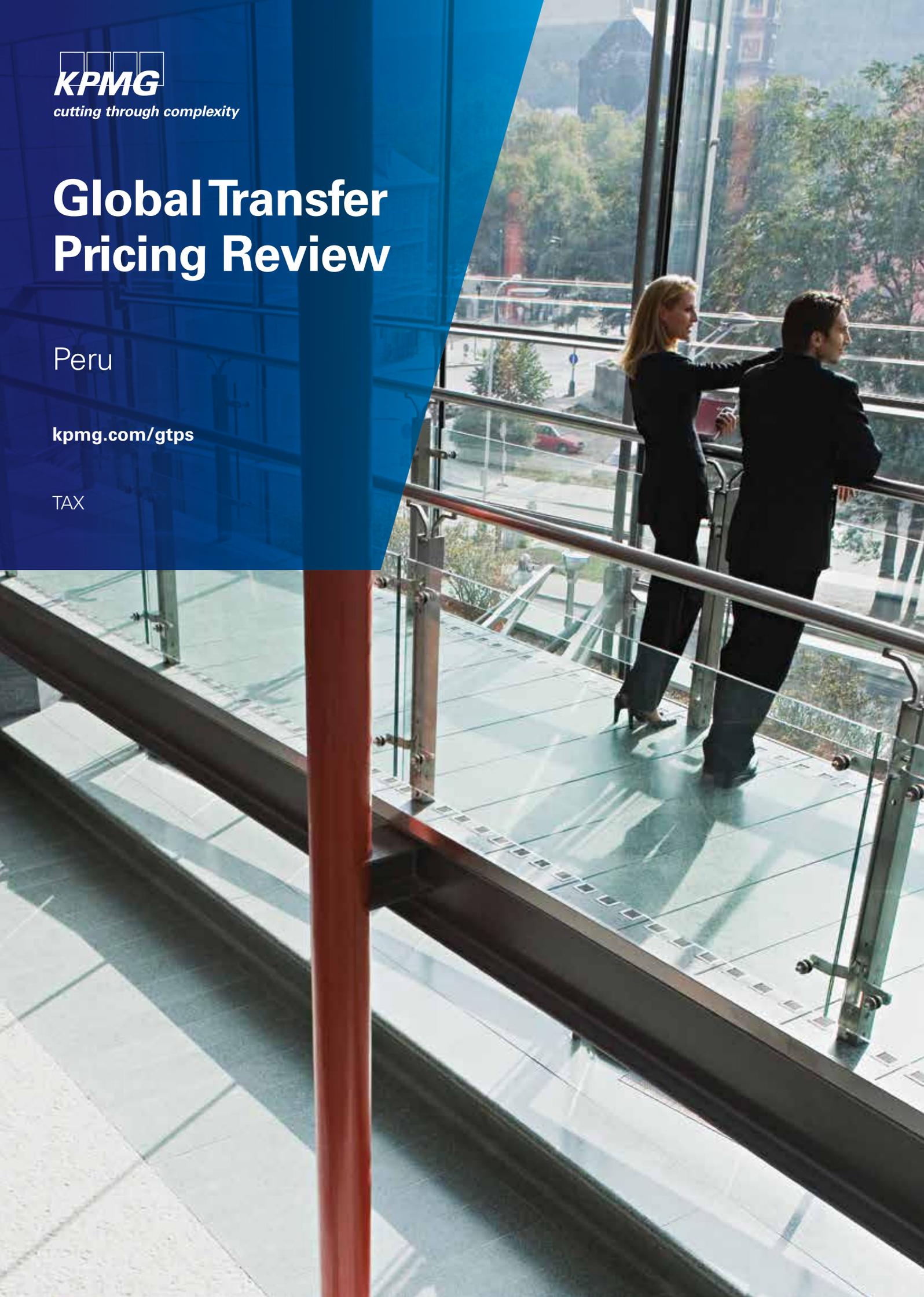
*cutting through complexity*

# Global Transfer Pricing Review

Peru

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TAX



# Peru



## KPMG observation

The tax authority in Peru is well informed about the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan, and has internal initiatives to be aligned with this plan, as Peru is pursuing a possible admission into OECD in the future.

The Peruvian tax authorities were very active in 2014 with respect to transfer pricing audits. These audits have focused on primary industries and important local groups. In KPMG's experience, audits are very thorough and it appears that audit teams are focused on gaining experience.

Audits have been triggered by a number of factors — for example, transaction size, continuous losses, and industry analyses. The information provided by taxpayers in their transfer pricing return is also used to select taxpayers to be inspected.

A taxpayer's annual transfer pricing return and transfer pricing study need to be presented to the Peruvian tax authorities in June of the following year.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

|                           | Applicable | Not applicable | Required to be contemporaneous | Submission to tax authority required | Thresholds apply/exist |
|---------------------------|------------|----------------|--------------------------------|--------------------------------------|------------------------|
| Legal requirements        | ●          |                | ●                              | ●                                    | ●                      |
| Protection from penalties |            | ●              |                                |                                      |                        |
| Reduce risk of adjustment | ●          |                | ●                              | ●                                    |                        |
| Shifts burden of proof    | ●          |                | ●                              | ●                                    |                        |

## Basic information

### Tax authority name

Superintendencia Nacional de Administración Tributaria (SUNAT) (National Superintendency of Tax Administration).

### Citation for transfer pricing rules

- Market value and transfer pricing rules are defined in Articles 32 and 32-A of Income Tax Law.

- More specific regulations are included in Articles 108 to 119 of Income Tax Law Rulings.
- Penalties are defined in Article 176, numbers 2) and 4); Article 177, numbers 25) and 27); and Article 178 number 1) of the Tax Code.
- Thresholds and exceptions issued with Superintendency Resolutions N° 175-2013-SUNAT.

- Advance Price Agreement rules are defined by Superintendency Resolution N° 377-2013-SUNAT.

### Effective date of transfer pricing rules

January 2001.

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

Direct or indirect ownership greater than 30 percent of capital. Companies can also be considered related if they share common directors, managers or executives with decision power. Additional criteria for determining economic relationships also exist.

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

Four years, counting from 1 January of the year following the date of presentation of the Income Tax Return.

## 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. A transfer pricing return is required for taxpayers based on certain thresholds (revenues and amounts transacted with related parties and/or existence of transactions with tax havens). The transfer pricing return is not submitted with the Income Tax Return, but it is submitted in June of the year following the fiscal year under analysis.

The transfer pricing study is required to be attached to the transfer pricing return.

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

The transfer pricing return has two main sections:

- The first section reports the identification of the taxpayer, the related parties with which transactions exist, and the types and amounts of transactions.
- The second section must be completed when the taxpayer passes the thresholds and is required to have a transfer pricing study. In this second section, the taxpayer must report the methodologies used in the transfer pricing analysis and the adjustments made, if applicable.

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

In case the taxpayer fails to file its transfer pricing return, a fine of approximately 30,000 US dollars (USD) is applicable. In addition, failure to present the transfer pricing return may trigger an audit by the tax authority on the taxpayer.

## 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?

No. Peruvian legislation is very specific on the issues a transfer pricing study should contain. Even though most of the issues are similar to what is outlined in Chapter V of the OECD Guidelines, the taxpayer is required to follow the more specific requirements detailed in Peruvian legislation.

### 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. However, Peruvian transfer pricing legislation considers six methods instead of five. The difference is Peruvian legislation differentiates the profit split method and the residual profit split method as independent methodologies.

In addition, Peruvian transfer pricing legislation includes a special way of applying the comparable uncontrolled price method when the transaction under analysis is the purchase or sale of commodities. In this case, the arm's

length price needs to be estimated based on the international price of the commodity.

## 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, 5 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.

Formally, transfer pricing documentation needs to be provided within five working days of request. Nevertheless, the tax authority could set a time limit of one to two weeks, or more, depending on the complexity of the information requested and the stage of the inspection process.

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

Once an adjustment is proposed by the tax authority, it can be challenged by the taxpayer through an administrative process within the same tax authority. After that, the case can be taken to a specialized fiscal court outside the jurisdiction of the tax authority. And after that, if there is still conflict with the decision, the case can be taken to regular Peruvian courts.

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

Yes. 50 percent of the tax omitted, plus interest counting from the moment the tax should have been paid.

### To what extent are transfer pricing penalties enforced?

There is little experience but some companies have already been assessed, adjusted and charged with penalties.

### What defenses are available with respect to penalties?

The main defense is the documentation i.e. the transfer pricing study. Related documentation, such as intra-group contracts, invoices, or other documents, can also be useful as a means of defense.

Penalties can also be reduced if, during an audit from the tax authority, the taxpayer agrees that the transfer pricing adjustment suggested by the tax authority during its review is correct and accepts to pay the omitted tax without further discussion. In this case, the penalties arising from having omitted tax payments can be reduced to 50 percent or more, depending on the timing of the payment.

In addition, penalties can be avoided if the taxpayer negotiates an Advance Pricing Agreement (APA) with the tax authority.

### What trends are being observed currently?

Over the last year, the Peruvian Tax Authority has significantly increased the number of specific requests to taxpayers to present transfer pricing studies and related documentation. The number of transfer pricing audits has also increased, resulting in adjustments and penalties for some taxpayers.

Currently, the principal of SUNAT is a specialist in transfer pricing, and the transfer pricing team of SUNAT has been hiring professionals with experience in transfer pricing. In addition, changes to the transfer pricing regulations have been issued during the last two years, and it is expected that further changes will be issued soon, in order to increase transfer pricing enforcement.

It is expected that audits will focus on the imports/exports of commodities such as mineral, agricultural and other similar products. Intra-group services and financial transactions are also expected to be audited.

## Special considerations

### Are secret comparables used by tax authorities?

Secret comparables may be used to determine which taxpayers should be inspected. Nevertheless, there is no evidence that the tax authority uses secret comparables to perform adjustments.

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

Yes, there is a preference, but information about local comparables is scarce, so international comparables are also accepted.

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

The tax authority has a specific database, but does not require that taxpayers use the same database for their studies.

### 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.

Use of interquartile range, when applying TNMM, is mandatory according to Peruvian transfer pricing legislation.

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

Tax and customs authorities are part of the same institution (SUNAT). Currently, the customs team usually reviews the transfer pricing reports in order to see if there are potential customs issues.

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

Yes, some. It is necessary to have documentation to support that the services have really been rendered and that the value is reasonable.

### Are management fees subject to withholding?

Yes.

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

Yes. It is necessary to have documentation supporting that the royalties paid are related to an intangible necessary for the business.

### Are royalties subject to withholding?

Yes.

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

Yes. There is no explicit prohibition in the legislation about this. However, these differences need to be carefully analyzed in each case, in order to evaluate whether it would be accepted or not by the tax authority.

### Other unique attributes?

Transactions with local related parties fall into the scope of transfer pricing rulings.

The tax authority usually expects the transaction to be tested against same-year data. In addition, complete information about comparable companies, including complete annual reports or 10-K's are necessary for the company to be regarded as a valid comparable.

Transactions involving commodities need to be analyzed taking into account the international price of the commodity, following specific rules detailed in Peruvian transfer pricing legislation.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Minimal. Peru currently has double tax treaties with Brazil, Canada, Chile, Mexico, the Andean region and Korea. This network is expected to grow in the short and medium term, including countries such as China, Finland, Portugal, Spain, Switzerland and others.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

## Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

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 APAs have been filed yet, but taxpayers are expected to be interested in APAs. In 2013, the tax authority published the Superintendency Resolution N° 377-2013-SUNAT with specific rules about APAs.

### KPMG in Peru

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