



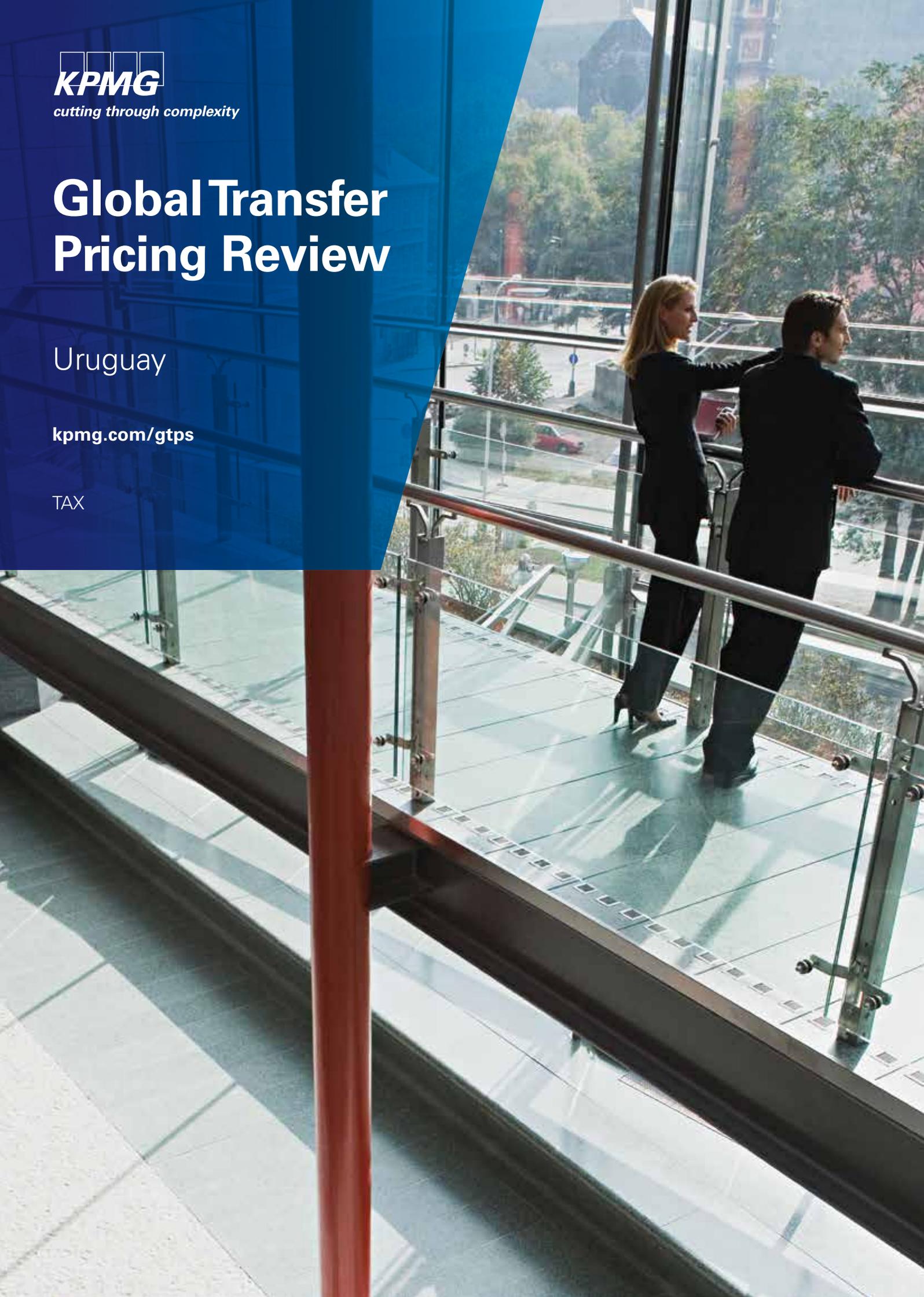
cutting through complexity

Global Transfer Pricing Review

Uruguay

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TAX



Uruguay



KPMG observation

After transfer pricing rules were introduced in Uruguay in 2007 in the context of a global tax reform, and the enactment of other rules during 2009, the tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increasing attention to transfer pricing during tax audits. An Advance Pricing Agreement (APA) regime has recently been implemented, allowing for unilateral APAs, and the first APAs have already been executed.

Transactions under the scope of the transfer pricing regulations include those with certain low tax jurisdictions listed by the Decree as well as with free trade zones (even those located in Uruguay). Additionally, the regulations include a specific methodology to measure the taxable income derived from import or export transactions involving “commodities”.

No types of transactions have yet been identified as subject to special scrutiny by the Dirección General Impositiva (DGI). In 2011, the first transfer pricing audits commenced and, initially, attention was focused on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices. In the current audit environment, the focus of the tax authorities continues to be on transfer pricing issues, with a strong emphasis on transparency (e.g. through the exchange of information provisions contained in an increasing network of international tax treaties).

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Dirección General Impositiva (DGI).

Citation for transfer pricing rules

Income Taxes Act Articles 38–46 and supplementary regulations.

Effective date of transfer pricing rules

1 July 2007.

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

Based on voting power, share capital and other. The law does not discriminate

between different thresholds; rather they apply equally to all levels of ownership (a DGI Resolution establishes 10 percent of capital). Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships for which transfer pricing rules apply, such as functional or other kinds, whether contractual or otherwise, that influence the decision power to

direct or define the activities of the operations. Transactions with unrelated companies located in low tax jurisdictions are subject to increased transfer pricing scrutiny.

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

Five years from 1 January of the year after the filing date (can be extended to 10 years in certain cases, including fraud).

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 must submit an annual declaration (Transfer Pricing Return) and a transfer pricing documentation report when any of the following conditions are met:

- the value of the transactions is higher than 50 million Unidades Indexadas (UI) (approximately 6 million US dollars (USD) in the corresponding fiscal period; or
- if notified by the DGI.

Although not all taxpayers are required to file the Transfer Pricing Return and the transfer pricing documentation report, the ones with no obligation to submit information must prepare and maintain the documentation that supports the correct pricing determination.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- business description/overview
- functional analysis
- risk analysis
- description of controlled transactions
- method selection
- rejection of alternate methods
- identification of comparables
- economic analysis; and
- identification of the foreign counterparty for the intercompany transaction
- determination of the median and the interquartile range

- transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information
- description of the corporate activity and the characteristics of the business carried out by the comparable companies
- rejection matrix with criteria followed to discard companies as comparables; and
- conclusions obtained, and the Transfer Pricing Return indicating the different related party transactions, the transaction amount, and other general information.

What are the consequences of failure to submit disclosures?

Taxpayers that fail any of the formal duties established under the transfer pricing regime provisions is graded according to the severity of the violation and other circumstances and a fine levied of 6,090 Uruguayan pesos (UYU) to a maximum of UYU6,090,000 (approximately USD250).

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. Even though Uruguayan regulations do not make direct reference to the Guidelines, the transfer pricing study to be prepared for local purposes mostly takes into account the general content of Chapter V.

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. The regulations includes a special methodology to measure the taxable income derived from import or export involving commodities transactions.

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, 10 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.

Responses to tax authority requests are normally expected to be submitted within 10 days of the request.

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

In order to appeal the adjustment proposed by the tax authorities, the taxpayer must first appeal administratively against the Tax Office itself and the Ministry of Economy. After that stage the taxpayer will be able to appeal to a specialized court (Tribunal de lo Contencioso Administrativo).

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

The transfer pricing tax adjustment is subject to the general penalties regime (fines and surcharges/interest). In the case of fraud, the penalties will range from one to 15 times the unpaid tax amount. The statute of limitations period is 5 years, which can be extended to 10 years in certain cases, including tax fraud.

To what extent are transfer pricing penalties enforced?

Although the application of the transfer pricing regime is fairly recent, if irregular situations are detected, penalties will be applied.

What defenses are available with respect to penalties?

In principle, documentation.

What trends are being observed currently?

The tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increased attention to transfer pricing during tax audits. Since the 2011 audits, special attention is placed on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices.

The tax authorities are also working on the implementation of an APA regime.

Special considerations

Are secret comparables used by tax authorities?

The possibility of using transfer pricing information from one taxpayer in another taxpayer's audit is available for the Tax Office, however, it is not clear whether this facility is actually being used.

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

In principle, no, however the regime is recent in Uruguay and administrative practices may change.

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

Although the Tax Office uses an international database, as far as we know in relation to taxpayers it does not have special requirements or preferences on the subject.

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.

Not applicable.

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

Medium.

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

Yes. For fees to be considered deductible, the Uruguayan entity must show that the management fees were paid in order to obtain, maintain and preserve profits assessed by Uruguayan tax. In addition, there should be sufficient proof that such expenses relate to the Uruguayan entity's operations. Additionally, the deductible amount will depend on the percentage of income tax applicable to non-residents in Uruguay and the income tax paid abroad by the non-residents.

Are management fees subject to withholding?

Yes.

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

Yes. For royalties to be considered deductible, the Uruguayan entity must show that royalties were paid in order to obtain, maintain and preserve profits assessed by Uruguayan tax. In addition, there should be sufficient proof that such expenses relate to the Uruguayan entity's operations. Additionally, the deductible amount will depend on the percentage of income tax applicable to non-residents in Uruguay and the income tax paid abroad by the non-residents.

Are royalties subject to withholding?

Yes.

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

Yes. It is not explicitly stated in the regulations, but under an evaluation of the transfer pricing policy, the taxpayer could consider an adjustment. However, the impact of the adjustment in the

financial statements, other taxes, custom issues, documentation and others should be considered.

Other unique attributes?

An additional method included in the Uruguayan Income Tax Law establishes that in the case of imports and exports of commodities to related parties and in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, the best method for the purpose of determining the export's and import's Uruguayan sourced income will be the goods' quotation in the transparent market on the date of a registered contract or the bill of lading date for non-registered contracts. This methodology could be left out providing that the international broker complies with certain requirements.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

At the moment Uruguay has 23 treaties in force, with others additional ones in the process of approval.

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

No experience currently.

When may a taxpayer submit an adjustment to competent authority?

No formal rules have currently been established.

May a taxpayer go to competent authority before paying tax?

No formal rules have currently been established.

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?

The first APAs have been executed and others are in progress.

KPMG in Uruguay

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