



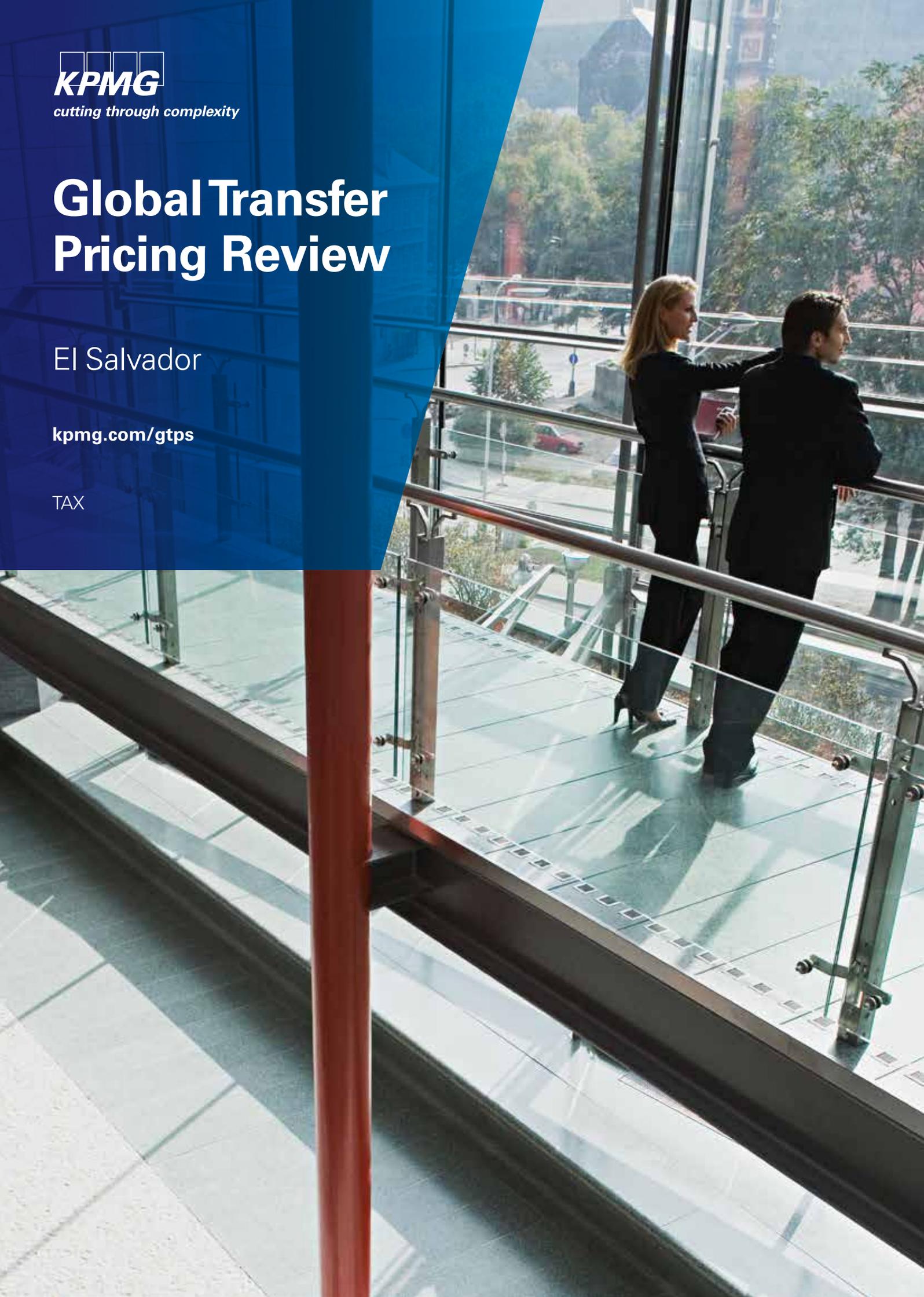
cutting through complexity

Global Transfer Pricing Review

El Salvador

kpmg.com/gtps

TAX



El Salvador



KPMG observation

Transfer pricing rules were introduced into the Tax Code in El Salvador in 2010. The rules require Salvadorian taxpayers to document the arm's length nature of intra-group transactions conducted with domestic and foreign related parties, or with companies resident in low tax jurisdictions. The regulations require taxpayers to produce transfer pricing documentation.

Failure to comply with the arm's length principle enables the Salvadorian tax authority to make adjustments and apply penalties.

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

Ministerio de Hacienda de El Salvador – Dirección General de Impuestos Internos.

Citation for transfer pricing rules

- Art. 62-A of the Tax Code – Determination of prices
- Art. 124-A and Art. 147 e) of the Tax Code – Transfer Pricing Documentation Requirements
- Art. 135 f) of the Tax Code – Obligations of the Certified Public Accountant (CPA)
- Art. 199-A of the Tax Code – Tax authority power to determine

adjustment if the transactions are not conducted in accordance with the arm's length principle

- Art. 199-B of the Tax Code – Definition of arm's length principle
- Art. 199-C of the Tax Code – Definition of Related Party
- Art. 199-D of the Tax Code – Comparability Analysis and Adjustments; and
- Orientation Guide DG-001/2012.

Effective date of transfer pricing rules

- 1 January 2010
- Reform Art. 62-A of the Tax Code in July 2014 – Use Guides of OECD.

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

Related parties are defined as follows:

- when one person or company directs or controls the other, or holds, direct or indirectly, at least 25 percent of its capital stock or voting rights
- when five or fewer persons direct or control both persons, or possess, direct or indirectly, at least 25 percent of participation in the capital stock or voting rights of both persons
- when companies belong to the same unit or business group decision. Specifically, two companies are part of the same unit or business group

decision if one of them is a member or participant of the other and it is related to it in any of the following situations:

- holds a majority of voting rights
- has the power to appoint or remove the majority of the members of the board of directors
- can dispose, under agreements with other partners of the majority of the voting rights
- has appointed only with its votes the majority of the members of the board of directors; and
- most members of the board of directors of the acquired company are members or managers of the board of directors of the other company.
- when two companies are part of each unit or business group decision in a third company, all companies will be integrated into a decision unit or business group
- it is also considered that a person possess participation in the capital stock or voting rights, when the ownership direct or indirect belongs to the spouse or person
- connected by relationship in direct or collateral, by consanguinity to the fourth degree or by affinity to the second degree
- in a union of persons, company event or business cooperation contract or joint venture agreement, when any of the contractors or partners participates directly or indirectly in more than 25 percent of the profit of the contract activities resulting from the association
- a person resident in the country and an exclusive distributor or agency thereof residing abroad
- a distributor or exclusive agent domiciled in the country of an entity domiciled abroad
- a person domiciled in the country and its supplier abroad, when the resident in the country make purchases, and the volume thereof represents more

than 50 percent a person domiciled in the country and its permanent establishment abroad

- a permanent establishment located in the country and its parent company located abroad, another permanent establishment of the same or a person associated with it; and
- taxpayers must also document the arm's length nature of the transactions carried out with entities domiciled, incorporated, or located in countries, states or territories with preferential tax regimes, low or no taxation jurisdictions, or tax havens. Entities in preferential tax regimes, low or no taxation jurisdictions, or tax havens are those that meet any of the following requirements:
 - entities that are not taxed abroad, those who compute income tax on income or net income or taxable, less than 80 percent of income tax that would be caused in El Salvador
 - those classified by the Organisation for Economic Co-operation and Development (OECD) and the Financial Action Task Force.

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

Three years from filing date of the tax return but transfer pricing documentation must be maintained for 10 years.

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 are required to provide specific information in the transfer pricing studies to be prepared by taxpayers resident in El Salvador documenting the arm's length nature of the domestic and cross-border intra-group transactions. In addition, taxpayers must file the transfer pricing information return.

What types of transfer pricing information must be disclosed?

The transfer pricing information return requires disclosing the following information.

Taxpayer's information:

- identification number
- legal name; and
- fiscal year (start and end date of the fiscal year).

Detail of the controlled transactions:

- legal name of the related parties
- tax identification number of the related party
- specification if the company is domiciled or not in El Salvador
- code of the country of residence of the related party
- relationship code (reason why the taxpayer in El Salvador and the related party are considered to be related parties and why the intra-group transaction is being documented)
- code of the transaction
- amount of the transaction in US dollars (USD)
- specification if the determination of the market value took into account the following comparability criteria: characteristics of the transactions, functional analysis, assets and risks, contractual terms, micro and macro-economic situation, and business strategies specifications if the transfer pricing adjustments included: payment term, freight and insurance; and
- transfer pricing method used.

What are the consequences of failure to submit disclosures?

If the taxpayers in El Salvador fail to comply with the requirement of preparing the transfer pricing study, tax authorities will conduct appropriate analysis to determine the arm's length nature of the intra-group transactions and apply the appropriate adjustments.

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.

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.

In practice, the taxpayer has five business days but can request a 20-day extension.

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 Ministry of Finance, in order to object to the procedures. In addition, 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. General tax penalties apply.

To what extent are transfer pricing penalties enforced?

Penalties are enforced in full by the Commissioner General and where a court process is preferred; the sanctions imposed by the court would subsist.

What defenses are available with respect to penalties?

No experience yet.

What trends are being observed currently?

The transfer pricing rules are fairly recent and therefore there are no specific information about the target of audits. However, according to the law, the tax authority may estimate the taxable income if the prices or amounts of compensation do not comply with market value in accordance with the established methodology.

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.

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

No.

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?

Low.

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

Yes. Taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, taxpayers must demonstrate that the services:

- were actually rendered
- provided a benefit to the taxpayer and
- were not duplicative services.

If no support can be provided, then the tax authority will consider them non-deductible.

Are management fees subject to withholding?

Yes.

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

Yes. Taxpayers must support the fact that royalties have been rendered before a deduction is taken. That is, taxpayers must demonstrate that the royalties:

- were actually rendered
- provided a benefit to the taxpayer; and
- have appropriated documentation.

If no support can be provided, then the tax authority will consider them non-deductible.

Are royalties subject to withholding?

Yes.

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

Yes. However, it is important that the year-end adjustments are accounted for before the end of the fiscal year to make sure tax and accounting figures are consistent. It is advisable to conduct periodic reviews in order to avoid significant year-end adjustments.

Customs issues must also be taken into account.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal, only with Spain.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

Advance pricing agreements

What APA options are available, if any?

None.

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?

Not applicable.

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

Not applicable.

KPMG in El Salvador

Flor de María Jaime

Tel: +503 2213 8415

Email: fjaime@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.

kpmg.com/socialmedia



kpmg.com/app



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015