



## Transfer pricing rules revised

Executive Order No. 390 (decree), published in Panama's official gazette on 25 October 2016, amends the transfer pricing rules in the tax code, in particular, the provisions relating to the arm's length principle to bring the rules in line with the internationally agreed standards generally reflected in Panama's tax treaties. The decree, which repeals certain articles of Executive Order 958 (dated 7 August 2013), includes measures that clarify the requirements for a comparability analysis and sets out detailed rules on transfer pricing documentation. The decree applies to fiscal years beginning on or after 1 January 2017.

**"The Executive Order repeals sections 1, 2, 3, 4, 5, 6, 7 and 8 of Executive Decree No. 958 of August 7, 2013."**

## Details of changes

- The decree confirms that transactions with related parties generally should be analyzed individually and according to the valuation methods set forth in article 762-F of the tax code. However, two or more transactions can be grouped together for purposes of the analysis when they are integrated economically or follow immediately after each other.
- The decree emphasizes that financial information from other periods can be used only when it adds value to the transfer pricing analysis. Likewise, multi-year data relating to relevant economic cycles and the life cycle of comparable products may be used when they improve the reliability of the analysis.
- The decree provides that adjustments may be made to increase the accuracy of country risk comparability and to account for differences in geographic markets.
- The decree confirms the five factors (set forth in article 762-E of the tax code) that must be taken into account in a comparability analysis.
- The definition of an "external comparable" is modified to comprise transactions carried out between independent parties in comparable circumstances. Similarly, the taxpayer may identify market operations or publicly traded companies, not only on the basis of reliable data, but also based on recognized publications or official sources of information.
- The decree emphasizes that Panamanian comparables will have priority over foreign comparables.
- New definitions are introduced for the application of the comparable uncontrolled price method, the cost plus method, the resale price method and the transactional net margin method, as set forth in article 762-F of the tax code.
- A definition of "full-range competition" is added, which involves a comparison of the prices or margins of unrelated transactions with the margin price of the related transaction. The range will comprise the first quartile (lower limit) up to the third quartile (upper limit), with the median being the second quartile value.
- The reporting and documentation requirements for a transfer pricing study are increased to include additional information requirements, to the extent that it is economically relevant with regard to the facts and circumstances of the transactions.
- The decree confirms that the transfer pricing study and any additional information requested by the General Directorate of Revenue (DGI) must be presented in Spanish.

- The decree also incorporates related requirements into article 762-K of the tax code on the information and documents to be prepared in relation to the taxpayer's business group, to support the adequacy of its transfer pricing analysis, to the extent the information is economically relevant:
  - A description of factors generating benefits for the MNE group;
  - A general description of the value chain of the five main products and/or services offered by the MNE group, as well as a description of the geographical markets where it operates;
  - The financial statements of the MNE group, or an equivalent report on the last fiscal year;
  - A list and brief description of the agreements for services among MNE group members that have an impact on the transactions with the taxpayer's related parties, including the transfer pricing policy for the attribution of costs and the fixed pricing policy for intragroup services;
  - A list of intangibles, or groups of intangibles, of the MNE group that have an impact on the taxpayer's transactions, and the related parties that hold legal ownership of the intangibles;
  - An overview of the transfer pricing policies of the MNE group related to financing arrangements and/or leverage between related parties that have an impact on the taxpayer's transactions with related parties;
  - A list of previous advance pricing agreements on transfer prices concluded by the members of the MNE group related to transactions in which the taxpayer participates;
  - Detailed information on whether the taxpayer has been part of a corporate restructuring or affected by a corporate restructuring process and how the aspects of these transactions affected the taxpayer;
  - An itemized list of transfers of intangibles in which the taxpayer has participated, and an explanation of how aspects of these transactions affected the taxpayer;
  - A general description of the nature and value of related party transactions in which the taxpayer participates; and
  - A description of the functions, assets and risks of group companies, to the extent they affect the related party transactions carried out by the taxpayer.

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