

Panama

Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 762-A, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Panama relies on the OECD Transfer Pricing Guidelines (OECD TPG) as a source for the interpretation of the arm's length principle.	Art. 762-D, Código Fiscal de la República de Panamá, modificado según artículo 7 de la Ley No. 52 de 2012
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Article 762-C: Definition of related parties. “For the purposes of this Chapter, two or more persons shall be considered as related parties when one of them participates directly or indirectly in the administration, control or capital of the other, or when a third person or group participates directly or indirectly in the administration, control or capital of these persons.</p> <p>Likewise, it will be considered as related parties of a permanent establishment, the main office or its other permanent establishments, as well as the persons indicated in the previous paragraph and their permanent establishments.</p> <p>A permanent establishment is constituted by the definition contained in article 762-M of this Chapter, or, according to the country in question, in the text of the Treaties or Agreements to Avoid International Double Taxation subscribed by the Republic of Panama.”</p>	Art. 762-C, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010.

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Art. 762-F, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010.</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input checked="" type="checkbox"/> Hierarchy of methods</p> <p><input type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>CUP, Resale Price, Cost Plus</p> <p>When, due to the complexity of operations or unavailability of information, the methods described above cannot be properly applied, then, the TNMM or Profit Split method will be applied.</p>	<p>Art. 762-F, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010.</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>As there are no specific regulations for commodity transactions, any of the methods could be chosen following the hierarchy. If CUP cannot be rejected and is therefore chosen as the most appropriate method, the guidance contained in paragraphs 2.18-2.22 of the TPG could be applicable.</p>	<p>Art. 762-D, Código Fiscal de la República de Panamá, modificado según artículo 7 de la Ley No. 52 de 2012, and</p> <p>Art. 762-F, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010.</p>												

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The TPG are the primary source of interpretation of the arm's length principle when applying the methodology described in the legal framework.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 5, Decreto Ejecutivo No. 390 de 2016
		The legal framework states that when an external (uncontrolled) domestic comparable is available, it will have priority over a foreign comparable.	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 762-F, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010. Art. 9, Decreto Ejecutivo No. 390 de 2016
		The legal framework establishes the use of the interquartile range to determine the arm's length of a related party transaction.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art. 762-E, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010, and Art. 3, Decreto Ejecutivo 390 de 2016
		The legal framework states that comparability adjustments can be made if their application improves the comparability and reliability of the results and it also describes the considerations that a taxpayer have to take into account for making adjustments, including that all adjustments must be documented by the taxpayer.	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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	the pricing of controlled transactions involving intangibles?	Panama's domestic legislation or regulations do not contain specific guidance on transactions involving intangibles and tend to rely on the OECD TPG.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Law no. 69 of 2019 establishes a method for the calculation of income subject to an exemption or special tax treatment for the exploitation or sale of an intangible asset (nexus approach).	Ley No. 69 de 2018
Intra-Group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The deduction of expenses for services received from a related party, such as management, legal or accounting, financial, technical services or any other, will be conditioned to the fact that the services rendered are effective and that it produces or can produce advantage or utility to the recipient. In the case of services provided jointly in favor of several related parties, and whenever it is possible to specify the service received or to quantify the particular elements that are being paid for such service, the expenses shall be charged directly to the recipient. Otherwise, if it is not possible to specify the service received or to quantify the particular elements that are being paid for such service, the expenses shall be distributed among the beneficiaries in accordance to the distribution rules. This criteria will be considered fulfilled when the distribution method is based on a variable that takes into account the nature of the service, the circumstances in which it is provided, as well as the benefits obtained or likely to be obtained by the recipients.	Art. 762-G, Código Fiscal de la República de Panamá, adicionado según artículo 1 de la Ley No. 33 de 2010.
16		<input type="checkbox"/> Yes	

	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> No At the present time, Panama does not have a clear position on this matter.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Panama's domestic legislation or regulations do not contain specific guidance on financial transactions and tend to rely on the guidance provided by the OECD.	
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Panama is currently reviewing interest deductibility limitation based on BEPS Action 4.	
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Panama's domestic legislation or regulations do not contain specific guidance on CCAs and tend to rely on the OECD TPG.	

Transfer Pricing Documentation

21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	<p>Art. 762-I, Código Fiscal de la República de Panamá, modificado según artículo 2 de la Ley No. 114 de 2013,</p> <p>Art. 762-J, Código Fiscal de la República de Panamá, modificado según artículo 9 de la Ley No. 52 de 2012, y</p> <p>Art. 10 y Art. 11, Decreto Ejecutivo 390 de 2016</p> <p>Decreto Ejecutivo No. 46 de 27 de mayo de 2019.</p>
22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>The most relevant requirements are the following:</p> <ol style="list-style-type: none"> 1. Transfer pricing return. The taxpayers that are subject to the transfer pricing legislation must present, annually, a report of the operations carried out with related parties, within six months following the closing date of the fiscal period. 2. Transfer pricing study (local file): The taxpayers that are subject to transfer pricing legislation must also have, at the time of the submission of the transfer pricing return, a transfer pricing study, which must contain the information and analysis of their transactions with related parties as required in the legal framework. This study must be submitted by the taxpayer to the Tax Authority, upon its request, within a period of forty-five (“45”) business days. Upon request. 3. Master File: The taxpayers that are subject to transfer pricing legislation must also have, at the time of the submission of the transfer pricing return, the master file, that will be required in all those cases in which the related parties carry out economic activities with each other. Upon request. <p>All these documents, as well as any information requested by the Tax Authority must be submitted in Spanish.</p>	<p>Art. 762-I, Código Fiscal de la República de Panamá, modificado según artículo 2 de la Ley No. 114 de 2013,</p> <p>Art. 762-J, Código Fiscal de la República de Panamá, modificado según artículo 9 de la Ley No. 52 de 2012,</p> <p>Art. 762-K, Código Fiscal de la República de Panamá, modificado según artículo 9 de la Ley No. 52 de 2012, y</p> <p>Art. 10 y Art. 11, Decreto Ejecutivo 390 de 2016</p>
23	<p>Does your legislation provide for specific transfer pricing penalties</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	

	and/or compliance incentives regarding transfer pricing documentation?	There is a specific penalty for failing to submit the transfer pricing report in time. The penalty is 1% of the amount of aggregated operations (and up to USD 1 000 000) between the taxpayer and its related parties during the period.	Art. 762-I, Código Fiscal de la República de Panamá, modificado según artículo 2 de la Ley No. 114 de 2013,
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	The threshold for submitting the CbCR is 750 million Euro, based on BEPS Action 13.	Decreto Ejecutivo No. 46 de 27 de mayo de 2019.
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Treaties to Avoid International Double Taxation</p> <p>Panama's MAP Profile</p>
		MAPs procedures and guidance are currently being prepared. For further information, please refer to Panama's MAP Profile.	
Safe Harbours and Other Simplification Measures			
26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Artículo 710, Parágrafo 4, Código Fiscal de la República de Panamá, modificado según artículo 5 de la Ley No. 52 de 2012.
		Taxpayers are allowed to rectify their Tax Return Filing only once in case they have committed any mistake. These adjustments are not specific to transfer pricing matters.	
29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Attribution of Profits to Permanent Establishments

30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input type="checkbox"/> Yes <i>In how many tax treaties?</i> In two tax treaties (with the UK and with Israel).	Panama has signed 17 Tax Treaties
		<input checked="" type="checkbox"/> No <i>In how many tax treaties?</i> In fifteen tax treaties.	
31	[NEW] Does y our jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant	The tax administration is currently revising and updating existing transfer pricing regulations, such as requirements for Local File and Master File documentation under BEPS Action 13. Panama is also reviewing interest deductability limitation.	

	<i>aspects not addressed in this questionnaire)</i>	There are also other possible legislations/regulations that may be implemented in the short-term (general rules and transfer pricing rules).	
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For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>