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**“INTERNATIONAL TAXATION ASPECTS THAT AFFECT MANAGEMENT
OF THE TAX ADMINISTRATIONS”**

Topic 2

“CONTROL OF TRANSFER PRICING”

CIAT

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I- Introduction

The purpose of this presentation is to disseminate some of the main results of the Study on “The control of transfer pricing manipulation in Latin America and the Caribbean” prepared by CIAT, GIZ¹ and BMZ² within the framework of the “International Tax Compact” (ITC³) initiative and published in December 2012.

The reason why the aforementioned institutions joined, within the framework of ITC, was the need to count on a single document that would provide detailed legal and administrative aspects regarding the control of abusive transfer pricing manipulation in the Latin American and Caribbean countries.

Prior to this study, the CIAT Directorate of International Cooperation and Taxation published a working document on the main legal aspects of transfer pricing control which, even though it has been very useful up till now, it did not deal with administrative aspects.

Another relevant aspect of this document is the collaboration of the Latin American and Caribbean countries that allowed us to obtain not only administrative data; but also to get to know, validate and update legal data. Such collaboration is evidenced in the quality of the data published.

Likewise, several institutions interested in this subject matter: the World Bank, ICEFI, Inter-American Development Bank and International Monetary Fund have made comments regarding their vision of transfer pricing control in the Latin American and Caribbean countries, for which reason we were able to present a document with more objective opinions on the subject.

Thus, this study constitutes “unpublished material for the international tax community.

The information in the Study is updated through November 2012 and covers a group of Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela; as well as two Caribbean countries: Jamaica and Trinidad and Tobago.

1 GIZ is the International Cooperation Office of the Government of Germany.

2 BMZ is the Federal Ministry of Economic Cooperation and Development of the Government of Germany.

3 ITC is an initiative promoted by the Governments of Germany, Spain and France; aimed at strengthening tax policy and administration in developing countries, in order to promote the mobilization of their domestic resources and their tax sustainability.

II- Heterogeneous region

In the countries of Latin America and the Caribbean there has been disparity in the evolution of transfer pricing control.

If we classify the countries by taking into consideration a series of indicators, such as the years of existence of their legislations, progress in control/auditing and human resources related aspects, we could separate them into five groups:

- A **first** group formed by those countries that have been implementing regulations for over a decade, as is the case of Argentina, Brazil and Mexico;
- a **second** group of countries that have subsequently implemented legislations, but which have managed substantial progress, as is the case Chile, Dominican Republic, Ecuador and Venezuela.

In all the countries that are part of these two first groups, the legislations cover all or most of the aspects dealing with transfer pricing control, in addition to having units exclusively devoted to such control, documentation obligations, auditing, as well as court cases.

- a **third** group consists of countries that have strengthened their transfer pricing legislations and have created, or are in the process of developing specialized units, as is the case of Colombia, Peru and Uruguay.
- In a **fourth** group of countries their regulations are in a more premature stage of development. Although their legislations have been promulgated, some have only recently entered into force, or have not yet entered into force. Likewise, their transfer pricing units are being developed. In this group we may find El Salvador, Guatemala, Honduras and Panama.
- The **fifth** group includes those countries that have not yet introduced regulations. These are Bolivia, Costa Rica, Jamaica, Nicaragua, Paraguay and Trinidad and Tobago. However, all of the aforementioned countries, except for Jamaica and Bolivia, are currently formulating their systems for transfer pricing control.

The heterodoxy in the region is evidenced in the use of the method described in the Argentine regulations, specially designed for the export of agricultural “commodities”⁴, methods for determining the prices of all-inclusive hotels and jeopardy assessments in the Dominican Republic; “protection regimes” or “*safe harbors*” for the maquila companies in Mexico and the simplified Brazilian methods that have been the source of significant discussions in international tax forums.

⁴ Paragraph Six of article 8 of the Profit Tax Law

Undoubtedly there has been significant learning, replication of best practices and experiences in the countries of the region. For example, five of the countries analyzed (Brazil, Ecuador, Guatemala, Peru and Uruguay) benefitted from Argentina’s experience and implemented similar measures to those of paragraph Six of Article 8 of the Profit Tax Law to determine the value of goods with quotation in transparent markets or “commodities”, *when* there is participation of an intermediary located abroad.

The following Table shows a schematic view of the comments made in the above paragraphs:

Countries	Consider legislation	Legislation prior to 2002	Verification in process	Cases in Courts	Use of data base	Transfer Pricing area in the TA	Groups
Argentina	Yes	Yes	Yes	Yes	Yes	Yes	I
Bolivia	No	No	No	No	No	No	V
Brazil	Yes	Yes	Yes	Yes	Yes	Yes	I
Chile	Yes	Yes	Yes	No	Yes	Yes	II
Colombia	Yes	Yes	No	No	Yes	Yes	III
Costa Rica	No	No	No	No	No	Yes	V
Ecuador	Yes	No	Yes	Yes	Yes	Yes	II
El Salvador	Yes	No	No	No	No	Yes	IV
Guatemala	Yes	No	No	No	No	Yes	IV
Honduras	Yes	No	No	No	No	No	IV
Jamaica	No	No	No	No	No	No	V
Mexico	Yes	Yes	Yes	Yes	Yes	Yes	I
Panama	Yes	No	No	No	No	Yes	IV
Nicaragua	No	No	No	No	No	No	V
Paraguay	No	No	No	No	No	No	V
Peru	Yes	Yes	Yes	No	Yes	Yes	III
Dominican Republic	Yes	No	Yes	Yes	Yes	Yes	II
Trinidad and Tobago	No	No	No	No	No	No	V
Uruguay	Yes	No	Yes	No	No	Yes	III
Venezuela	Yes	Yes	Yes	No	Yes	Yes	II

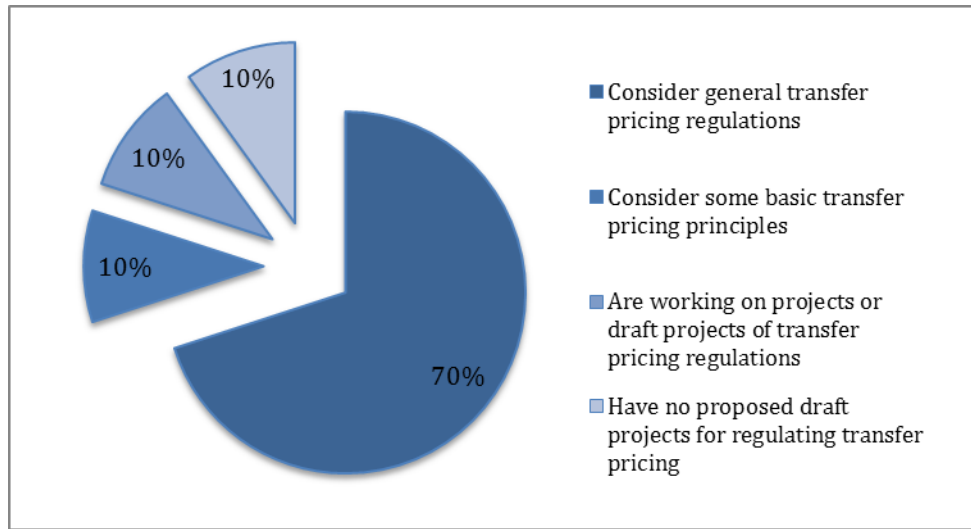
Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

III- Legislations for controlling the abusive transfer pricing manipulation

Starting in the nineties, some Latin American countries, namely: Mexico, Brazil and Argentina, among others, introduced the first legislative reforms. The purpose, among other things, was to include therein principles and methodologies for preventing abusive transfer pricing manipulation.

On observing the Latin American countries that have adopted regulations for transfer pricing control or countries working on a draft or bill for regulating this type of transactions, it is evidenced that of the 20 countries comprising Latin America, 14 have regulations for preventing harmful transfer pricing manipulation.

The following graph shows the regulatory situation of the Latin American countries:



Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ e ITC. Published in December 2012.

This graph shows that 90% of the Latin American and Caribbean countries have recognized the importance of implementing transfer pricing legislation.

Shown below are the countries that have introduced regulations for controlling harmful transfer pricing manipulation, classified according to the periods of their promulgation:

1992 – 1997	1998 – 2002	2003 – 2007	2008 – 2012
Brazil Mexico Chile	Argentina Venezuela Peru Colombia	Dominican Republic Costa Rica ^{1/} Ecuador Uruguay	El Salvador Bolivia ^{1/} Panama Honduras Guatemala

^{1/}Countries that have established basic principles on transfer pricing.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012

The tax administrations of the Latin American countries that have adopted general transfer pricing regulations have included the arm’s length principle. The countries that have established basic transfer pricing principles apply the principle of economic reality. Worth noting is the specific case of Brazil, whose transfer pricing system is based on objective methods determined according to fixed margins.

The Caribbean countries do not have have transfer pricing legislation. Their regulatios include general principles that could be useful for controlling transfer pricing. For example, Trinidad & Tobago’s current legislation is based on the “*Artificial Transactions*”⁵ legal provision stipulated in section 67 of its Income Tax Act, while Jamaica provides for the arm’s length principle in its Tax Code.

The following table shows the situation of two countries that have no anti-abusive transfer pricing regulations in Latin America and the Caribbean:

Countries having no transfer pricing regulations – Current situation (As of November 2012)	
Nicaragua	Paraguay
A transfer pricing analysis and bill has been developed since 2004 and it includes the information of the proposed transfer pricing law model for Central America. It is deemed tha the latter will be introduced as Administrative Regulation (General Resolution).	Is in the process of developing a Transfer Pricing Bill. The State Undersecretariat of Taxation is currently working on a draft Regulatory Decree of Article 16 of Law 125/91.
Provision whereby the tax administrations handle the transfer pricing cases or risks	
Market prices are applied internally for making risk analyses.	Wholesale price: Article 16 of Law 125/91 and interpretation of the generating event: Article 247 of Law 125/91.

Source: Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

Costa Rica and Trinidad & Tobago are in the process of preparing specific bills for the transfer pricing system. The first country is expected to promulgate an Administrative Regulation (General Resolution). In Trinidad & Tobago, it would be introduced in its legislation under the figure of a Code.

IV- Principle and methods for transfer pricing control

The basic principle mainly accepted is the “arm’s length principle”. The predominant criteria when establishing transfer pricing control systems are those provided by the OECD guidelines. Nevertheless, in most of the countries analyzed there have been variations in these criteria.

⁵ “*Artificial Transactions*” within the context of the legislation, refers to transactions which are not actually intended to be carried out; in other words, it is a fictitious transaction.

Shown below is the status of the aforementioned countries:

OECD Criteria	OECD and country's own criteria	Own criteria
Chile	Argentina	Brazil ^{1/}
Colombia	Ecuador	
Costa Rica ^{2/}	El Salvador	
	Guatemala	
	Honduras	
	Mexico	
	Panama ^{3/}	
	Peru	
	Dominican Republic	
	Uruguay	
	Venezuela	

1/ Brazil adopted the fixed margin methodology through the "Cost Plus" and "Resale Price" methods.

2/ Criteria applied more in practice than as provided in the legislation.

3/ Official Gazette, Tuesday, August 28, de 2012 – No 27108: Law 52, which amends the Fiscal Code and issues other tax provisions being in force since January 1st, 2013. It is observed that its criteria are similar to those established by the OECD.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

V- Transactions subject to the transfer pricing system

The implementation of these principles calls for determining their scope of application; that is, the individuals and commercial and/or financial transactions that will be subject to the transfer pricing regulation.

The common criteria established in Latin America for transactions subject to transfer pricing are described in the following table:

Countries	All transactions with related parties	Transactions with individuals established in "Tax Havens"	Another additional condition
Argentina	X	X	
Brazil	X	X	Provided tht the prices agreed are lower than 90% of the price established in the local market.
Chile	X	X	
Colombia		X	Economically linked or related parties from abroad, whose gross net worth at December 31, 2010 was equal to or above 100,000 Tax Value Units (TVUs) or whose gross revenues are equal to or above TVUs
Costa Rica	X	X	
Ecuador	X	X	
El Salvador	X		
Guatemala	X		
Honduras	X	X	
Mexico	X		
Panama	1/		A taxpayer carries out transactions with related parties that are fiscal residents of countries that may have entered into Treaties or Conventions to Avoid Double

Countries	All transactions with related parties	Transactions with individuals established in "Tax Havens"	Another additional condition
			Taxation
Peru	X	X	
Dominican Republic	X	X	
Uruguay	X	X	
Venezuela	X	X	

1/ Official Gazette, Tuesday, August 28, 2012 – No 27108: Law 52, which amends the Fiscal Code and issues other tax provisions, being in force since January 1st, 2013 will be applicable to any transactions carried out with a related party.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

VI- Related party concept

In order for two companies to be considered related or associated, one should influence the other. To determine the existence of associated and/or related parties for transfer pricing purposes the regulations must indicate the assumptions that define the level of relationship.

Usually, a typical regulation poses legal-type criteria determined by direct or indirect participation in management, control or capital stock in another company, and of a factual or operational nature as, for example: when there is exclusiveness as agent, distributor or concessionaire for the purchase-sale of goods, services or rights by another; when one company assume the losses or expenses of the other, etc.

The relationship assumptions considered in the legislations of the countries examined are shown in the following table:

Relationship Assumption	Countries																
	A R G	B O L	B R A	C H I	C O L	C R C	E C U	E S A	G U A	H O N	M E X	P A N	P A R	P E R	D O M	U R U	V E N
Parent company and its affiliates, subsidiaries and permanent establishments	X		X	X	X	X	X	X	X		X	X	X	X	X	X	
Affiliates, subsidiaries and permanent establishments, among themselves	X		X	X	X		X	X	X	X				X	X	X	
Direct or indirect participation in management, administration, control or capital	X	X	X	X	X		X	X	X	X	X	X		X	X	X	X
Same members, partners or stockholders participating in board of directors or decisionmaking	X		X	^{1/}	X		X	X	X	X	X			X	X	X	
Through kinship or affinity up to a certain level with the directors or administrators	X		X	^{1/}	X		X	X	X					X	X		
For rights maintained in a trust (the company with the trust)					X		X										
Distribution of profits			X		X		X									X	
Actual management			X		X		X							X	X	X	

Relationship Assumption	Countries															
	A R G	B O L	B R A	C H I	C O L	C R C	E C U	E S A	G U A	H O N	M E X	P A R	P E R	D O M	U R U	V E N
Proportion of transactions	X		X		X		X						X	X	X	
Price mechanisms used between the parties				X	X		X								X	
Companies domiciled in tax havens or preferential tax regimes	X		X	X	X		X	X			X		X	X	X	X
Others	X						X	X	X	X	X			X		

^{1/} Included in Amendment to Law 20630 dated September 27, 2012, which enters into force on January 1st, 2013.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

Every country may regulate or establish additional criteria for delimiting the taxpayer universe or transactions subject to the transfer pricing system. The following table describes other relationship assumptions:

Relationship Assumption	COUNTRIES											
	BOL	BRA	CHI	COL	ECU	ESA	GUA	HON	MEX	PER	DOM	URU
Direct or indirect participation in stock	50% or more	20% or more		50% or more	25% or more	25% or more	25% or more	50% or more		30% or more	50% or more	10% or more
Decisionmaking or control	50% or more	50% or more	X ^{1/}		25% or more						50% or more	
Presumed relationship due to domicile in tax haven or preferential tax regime			X		X						X	
Proportion in transactions (e.g. sales, purchases, etc.)					50% or more	50% or more					50% or more ^{2/}	
Exclusive Agent			X ^{1/}				X				X	
Consanguinity and/or affinity			X ^{1/} , ^{3/}		X ^{4/}				X ^{4/}		X ^{5/}	

^{1/} Included in Amendment to Law 20630 dated September 27, 2012, which enters into force on January 1st, 2013.

^{2/} Included in amendment to Law 253-12 of November 9, 2012.

^{3/} Up to fourth degree of consanguinity

^{4/} Up to fourth degree of consanguinity and second degree of affinity

^{5/} Up to second degree of consanguinity or due to affinity.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

In most of the cases shown in the foregoing table, the relationship criterion is based on a maximum or minimum percentage of the capital stock. Collaterally, this will help the tax administrations to reduce the number of taxpayers subject to the regulation as well as to be more precise in the control of transactions between related parties.

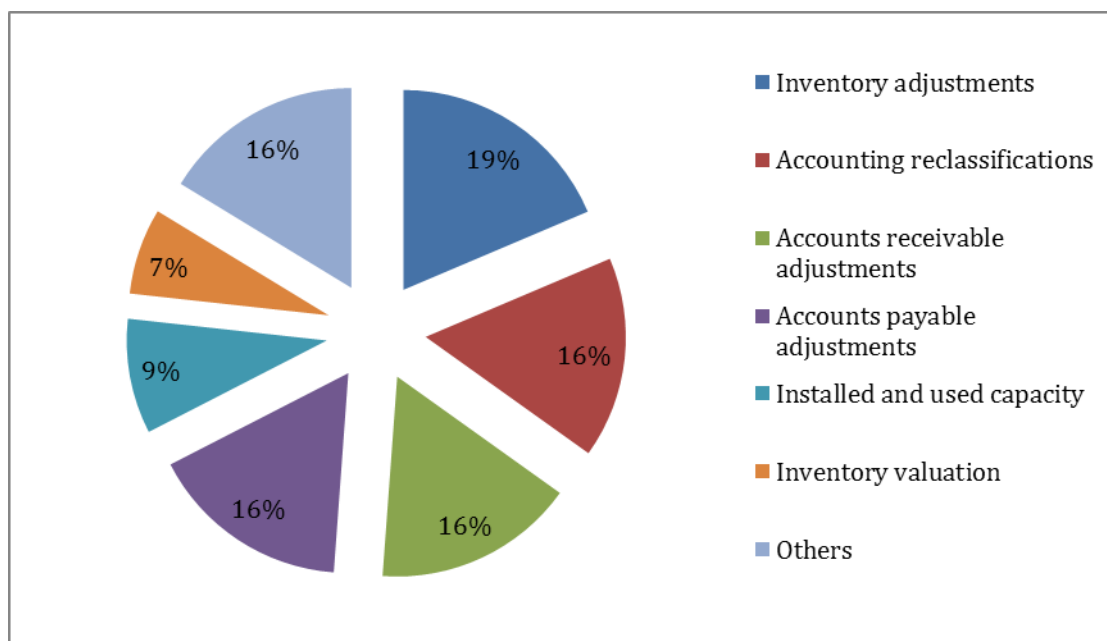
VII- Comparability adjustments

Adjustments are possible in order to increase or improve the comparability levels within the framework of the transfer pricing analysis. Shown below are the adjustments observed by the tax administrations for improving the comparability analysis in transfer pricing:

Adjustments	ARG	CHI	COL	CRC	ECU	MEX	PER	URU	VEN
Monetary correction									X
Accounting reclassifications	X	X			X	X	X	X	X
Inventory valuation			X			X			X
Monetary Assets									X
Accounts receivable adjustments	X	X	X		X	X		X	X
Nonmonetary Assets									X
Deferred taxes									X
Installed and used capacity	X		X			X			X
Capitalized financig costs									X
Adjustment for payment of tariffs									X
Inventory adjustments	X	X	X		X	X	X	X	X
Accounts payable adjustments	X	X	X		X	X		X	X
Freight				X					

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

The following graph allows for observing in an aggregate manner, what has been described in the table above.



Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

The inventory adjustment is the one mainly used by the taxpayers and analyzed by the tax administrations for their evaluation. It is usually made when there are differences in the inventory valuation methods, as well as when there is difference in the valuation of accounts receivable and payable, mainly in the establishment of the terms for collecting or paying, respectively.

It was observed that the accounting reclassifications that originate the accounts receivable and payable adjustments, likewise tend to be adjustments that are frequently made and which the tax administrations take into account when designing their procedures and performing their analyses.

The aforementioned comparability adjustments may be applied to the taxpayers, the comparables or both, which will directly depend on the methodology or criterion determined for carrying out said adjustments.

The following are among the main reasons for rejecting a comparability analysis:

- a. They do not improve the comparability.
- b. Inappropriate idle capacity.
- c. Excessive or defective intermediation costs.
- d. The adjustment has no economic justification and/or the adjustment does not correspond to reality.
- e. The adjustment is not reasonable.
- f. The adjustment is not based on documentary evidence.
- g. There are mathematical and fundamental errors in the formulas.
- h. The implicit interest rates of the capital adjustments are incorrect.

Comparability adjustments are necessary to the extent they fulfill the objective of improving the analysis made between the parties and they are given due use, ensuring that the transactions and their comparables are as similar as possible.

VIII- Burden of proof

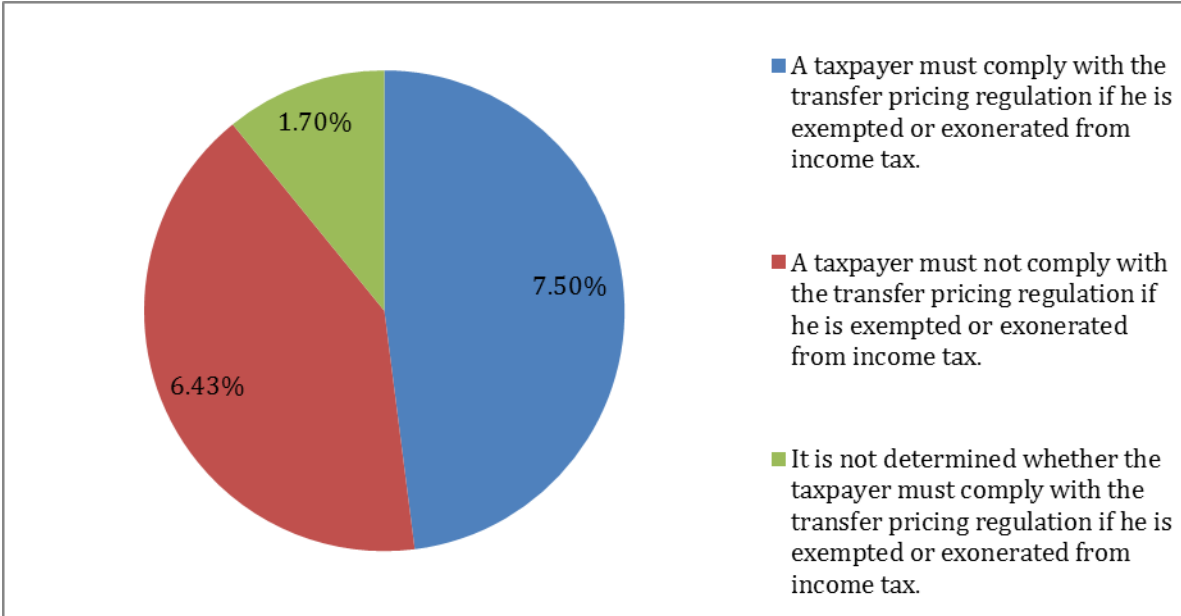
In four of the countries analyzed, the burden of proof falls on the tax administrations, while in the eleven remaining it is established that the taxpayers are responsible for providing the proving elements. The following table shows the countries in which the burden of proof falls on the Tax Administration and those where it falls on the Taxpayer:

Tax Administration	Taxpayer
Chile	Argentina
Costa Rica	Brazil
Panama	Colombia
Uruguay	Ecuador
	El Salvador
	Guatemala
	Honduras
	Mexico
	Peru
	Dominican Republic
	Venezuela

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

IX- Income tax exemption vs TP Systems

When a taxpayer is exempt or exonerated from income tax, the obligation to request information and the valuation of transfer prices would seem not to make great sense. Nevertheless, there are different conceptions in the Latin American countries: 6 countries (Argentina, Brazil, Colombia, Ecuador, El Salvador and Dominican Republic) understand that while they are exempt from the income obligation, they need not comply with the requirements for information, while 7 countries understand that they must do so. These latter countries are Chile, Guatemala, Mexico, Panama, Peru, Uruguay and Venezuela.



Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

X- Penalties and sanctions for noncompliance

As of November 2012, approximately 80% of the countries with transfer pricing systems had considered therein sanctions or penalties for noncompliance with the obligations thereon. The establishment of sanctions and penalties with significant amounts for taxpayers that fail to comply with the regulation allows for exercising pressure for the correct application of the regulation and its timely compliance. Otherwise, by virtue of the costs associated with compliance with the transfer pricing system, among other aspects, the taxpayer could be tempted to not comply or manipulate the regulation.

Seventy nine per cent of the countries impose specific penalties for violations resulting from international transactions, while 21% applies the general regimes.

In addition, with respect to the specific penalties related to noncompliance with the transfer pricing systems, a brief detail may be observed in the following tables:

	Formal violations			Substantial violations
	Nonfiling or incorrect filing of return / technical study	Not providing information / Methodology	Failure to keep documents	
Argentina	\$150-20.000 or \$500-45.000	\$150-450.000	\$150-450.000	100-400% of omitted tax
Brazil	20% adequate tax or min. of R\$500	Method	Method	N/A
Chile ^{1/}	10 to 50 tax units	N/A	N/A	N/A
Colombia	Table III- 16 Violations established in the Colombian legislation			
Ecuador	Up to US\$ 15.000	Up to US\$ 15.000 / closing	US\$ 30 to 1.000	Up to US\$ 15.000
El Salvador	N/A	N/A	Not deducted from payments to related parties	N/A
Mexico	35,000 - 70,000 pesos updated	N/A	Not deducted from payments to related parties	50-100% of the omitted contribution
Dominican Republic	RD\$85,000 – RD\$154,000	N/A	N/A	N/A
Panama	N/A	N/A	N/A	N/A
Peru	0.6% for net revenues, between the range of 10% of 1 TU and 25 TUs	N/A	N/A	Up to 50% of omitted tax
Uruguay	N/A	N/A	N/A	N/A
Venezuela	Incomplete or out of term: 5 to 25 TUs nonfiling: 10 to 50 TUs	300 to 500 TUs (methodology)	300 to 500 TUs (methodology)	25 to 200% of omitted tax Prison: 6 months to 7 years

^{1/} Included in Amendment to Law 20630 dated September 27, 2012, which enters into force on January 1st, 2013.

Source: Comparative study on the current situation of transfer pricing legislation in Latin America. Legal and Administrative Aspects. Isaác Gonzalo Arias Esteban. Published in November 2011.

The penalties provided in the Colombian legislation may be seen in the following table:

DOCUMENTARY EVIDENCE (STUDY ON TP)	SANCTIONS ON INFORMATION RETURN	REDUCTIONS
<p>Out-of-term filing, with errors, which does not allow for verifying the Transfer Pricing application</p> <p>General rule: 1% OV up to 15.000 TVUs (C\$377M) The base cannot be determined: 0.5% of net revenues. There are no revenues: 0.5% of gross net worth up to C\$500 mill</p>	<p>For late filing</p> <p>General rule: 1% OV up to 20.000 TVUs The base cannot be determined: 0.5% of net revenues. There are no revenues: 0.5% of gross net worth up to C\$700 mill</p>	<p>At 50%: If the irregularity is rectified prior to notifying application of the sanction.</p> <p>At 75%: If the irregularity is rectified within 2 months of notification of the sanction.</p>
<p>Nonprovision of documents</p> <p>General rule: 1% OV up to 20.000 TVUs + rejection of costs and deductions for nondocumented OV The base cannot be determined: 0.5% of net revenues. There are no revenues: 0.5% of gross net worth up to C\$700 mill</p>	<p>For filing the return after the request</p> <p>Double the sanctions anticipated in these cases: - The base cannot be determined - There are no revenues</p> <p>For correction of the return</p> <p>General rule: 1% OV up to 20.000 TVUs (it is increased 30% if the sanction is not paid)</p>	

Source: Comparative study on the current situation of transfer pricing legislation in Latin America. Legal and Administrative Aspects. Isaac Gonzalo Arias Esteban. Published in November 2011.

XI- Simplification Measures

Many countries have implemented simplified system in order to afford taxpayers greater juridical security, better focus the tax administration's resources in specific sectors and reduce the cost of taxpayer compliance. These measures have become a fast and efficient manner for controlling transfer pricing.

Of the twenty countries analyzed, 5 of them, regardless of the level of experience in the implementation of transfer pricing legislation, indicate that they have some type of simplified measure in their legislation and in practice. These are: Brazil, Colombia, Ecuador, Mexico and Uruguay. In the case of this latter country, its legislation⁶ empowers the Executive Body to establish special general useful systems, but nothing has yet been regulated in this respect⁷.

Among the most common simplification measures there are those that provide for fixed margins for economic sectors, simplifications with respect to the rate of interest, exemptions in relation to small transactions and/or small businesses, simplified transfer pricing methods, exemptions with request to provision of information and exemptions to transfer pricing rules. The following table shows the situation of these measures in the countries of the region:

⁶ Article 44 of Chap. VII of Title 4 of TO 1996.

⁷ Law No. 253 of November 2012 recently approved in the Dominican Republic allows the Tax Administration the possibility of establishing Protection Systems for specific economic sectors or activities.

Measure	Number	Countries
Exemption from transfer pricing system	3	Brazil, Colombia and Mexico
Exemption from documentary evidence	3	Colombia, Mexico and Ecuador
"Safe harbour" methods	3	Mexico and Brazil
"Safe harbour" type of interest	2	Brazil and Bolivia

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

With respect to the first measure, **Exemption from transfer pricing system**, in the countries where it is available, it is applicable to small and medium enterprises (S&MEs). In determining the S&MEs concept, usually the countries set a maximum threshold based on gross revenues or net worth, whereby all taxpayers below said threshold would not be subject to the regulations provided in each country's regulations. The scope of these measures is shown below:

Country	Detail of measure	Beneficiaries	Year of introduction
Brazil ⁸	Exemption	Taxpayers who declare the price at a value of 90% of the national market.	1997
Colombia ⁹	Exemption to S&MEs	Taxpayers who do not exceed 100.000 TVUs of Gross Net Worth or 61.000 TVUs of Gross Sales.	2004
Mexico	Exemption to S&MEs	Individuals whose revenues from business activities and interest do not exceed 2 million Pesos.	2002

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

The **exemption from documentary evidence**, releases the taxpayer from the obligation to undertake analyses for transfer pricing valuation and any other type of related documentation.

The detail of benefits by country is broken down in the following table:

Country	Detail of measure	Beneficiaries ^{1/}	Year of introduction
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⁸ Exemption from transfer pricing control when the price is applied at a value of 90% of the national market.

⁹ Taxpayers who do not exceed 100.000 TVUs of Net Worth or 61.000 TVUs of Gross Sales are not subject to the TP system

Colombia	Exemption of documentation of small transactions	Types of transaction that do not exceed 10,000 TVUs	2004
Ecuador	Exemption of documentation for tax incurred	Individuals or businesses with TET ^{2/} above 3%	2009
Mexico ^{3/}	Exemption of documentation S&MEs	- Individuals whose income in the previous period did not exceed MEX \$ 13,000,000. - Businesses with income from business activities not exceeding MEX \$13,000,000; and income from professional services not exceeding MEX \$ 3,000,000	2002 & 2012

1/ In all cases the exemption is not applicable if the transaction was carried out with persons domiciled in Tax Havens. In the case of Ecuador, it is not applicable to companies having an exploitation contract with the State.

2/ Tax incurred over total taxable revenues

3/This same exemption was promulgated on November 12, 2012 for transactions with national related parties in Mexico.

Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

The countries that use “**Safe Harbours**” in the region (Mexico and Brazil), estimate margins based on parameters as indicators of profitability for the industry. In Mexico, the “*safe harbour*” is exclusively intended for companies devoted to the maquilas¹⁰ operation. These taxpayers will determine their taxable profit based on predefined ratios according to total assets or total costs and expenses, whichever is greater.

Technically, the “*safe harbour*” is the application of the Transactional Net Margin Method using as indicators of the profitability level, the operational margin and the return on assets. Companies carrying out maquila operations that opt for this measure are exempt from the obligation to obtain and preserve the transfer pricing documentary evidence. Nevertheless, they must submit before the tax authorities a writ stating that the taxable profit of the period represented at least the larger amount resulting from applying the “*safe harbour*”, at the latest, within the three months following the date on which said period ends. This system is described in greater detail in chapter III, section B.

In the case of Brazil, the simplification measures are in force since 1997 and are based on pre-determined margins beginning with the transfer pricing methods: the Resale Method and the Cost Plus Method. The assigned margin depends on whether the taxpayer is an exporter or importer. It is worth noting that Brazil’s entire transfer pricing system is determined on the basis of fixed margins and presumptive income.

Below is a description of the scope of these measures:

Country	Method	“ <i>Safe harbour</i> ” margin or price
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¹⁰ Maquilas refer to companies devoted to the production of manufactured goods for export.

Brazil	RPM/ Resale Method	Fixed margins: Import: 40%; 30% and 20% Export: 15% and 30%
	CPM/ Cost Plus Method	Fixed margins: Import: 20% - Export: 15% and 30%
Mexico	TNMM/ Transactional Net Margin Method	6.9% over total value of assets or 6.5% over total amount of costs and expenses.

Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

In the case of Brazil, other treatments given to international transactions are shown in the following table:

Export to related individuals				
Transaction	Condition		Consequence	Support
Net Profit from exports to related party	Percentage	Calculation base	Show compliance with Transfer Pricing	Documents proving the transaction
	At least 5%*	On export sales to obtain net profit		
*This calculation is based on the annual average of the current year and two previous years.				
Corporations				
Transaction	Condition		Consequence	Support
Net profit from exports (One calendar year)	Percentage	Calculation base	Show compliance with Transfer Pricing	Documents proving the transaction
	Not exceed 5%	On net profits of the same period		

Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

In Ecuador and Mexico, taxpayers to whom one of the simplified systems is applied and is adhered thereto, is exempt from the obligation of sending transfer pricing information. In the specific case of Ecuador, they do not comply with the formal duties such as the filing of the Transfer Pricing Report or Annex, while in Mexico, taxpayers are exempt from the obligation to undertake a transfer pricing analysis for the transactions subject to the simplification system.

“Safe harbour” type of interest. As simplified measure, the legislation of some countries provides for the type of interest that complies with the arm’s length principle, which must be used in financing transactions with related parties abroad, as is the case of Brazil. The rate of interest to be considered is the “*London Interbank Offered Rate – LIBOR*”, for deposits in dollars of the United States of America with a six-month term, increased by a percentage margin. Any additional amount will be considered as amount in excess.

Since Bolivia does not have transfer pricing regulations in force, it provides that the interest paid for capital invested in loan to the company by the owners or partners

thereof will not be deductible to the extent that such interest exceeds the value of the Libor rate plus 3% in transactions abroad and in local transactions. Shown below are other provisions regarding interest rates:

Country	Description of measure
Costa Rica	The only restriction with respect to deductibility of interest expense is that the rate cannot be greater than the usual market rates and the rates registered in the Central Bank are used as reference.
Ecuador	The legislation provides for a maximum referential rate determined by the Central Bank which cannot be exceeded.
El Salvador	Interest paid is considered nondeductible when applied to the amount of the debt, it exceeds the percentage of active interest of the Central Reserve Bank plus four additional points.
Paraguay	In no case may such loans or placements earn interest at rates lower than the nominal passive average rates corresponding to time deposits at the bank level, for similar periods in force in the month prior to carrying out the transaction.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

XII- Administrative aspects

a) Auditing

Progress in the Latin American and Caribbean region is observed not only in the implementation of legislation, but also in the audit and control practices. There are 10 tax administrations that have begun transfer pricing examination procedures.

From the experience compiled by several tax administrations, it has been verified that the auditing procedures are not exclusive of countries with broad and complete regulations, but also of countries whose regulation only covers basic principles, as is the case of Costa Rica.

The following table shows the tax administrations of the Latin American countries that have begun procedures in this respect in November 2012:

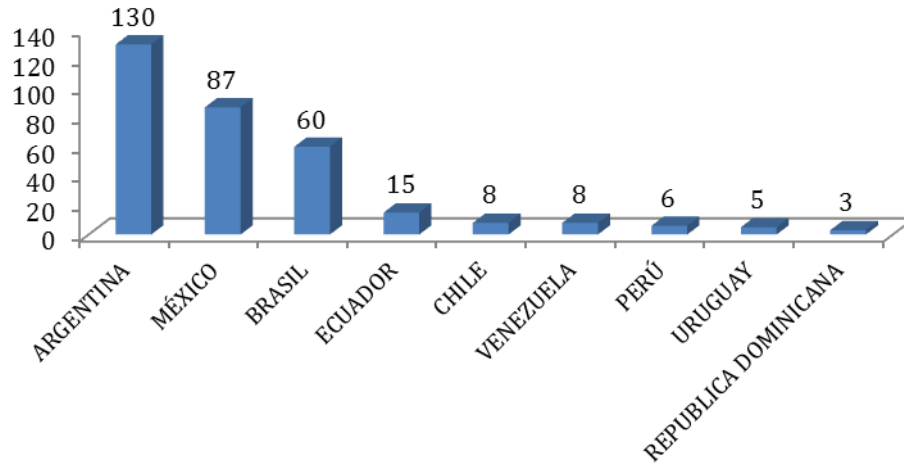
Countries with general transfer pricing regulations	Countries that have begun transfer pricing examination procedures
Argentina	Yes
Brazil	Yes
Chile	No
Colombia	Yes
Ecuador	Yes
El Salvador	No
Guatemala	No
Honduras	No
Mexico	Yes
Panama	No
Peru	Yes
Dominican Republic	Yes
Uruguay	Yes
Venezuela	Yes
Bolivia	No
Costa Rica	Yes

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

As transfer pricing measures move forward, the tax administrations increase their controls in this respect. It is for this reason that by the date of this study, 64% of the tax administrations of countries with general transfer pricing regulations, in implementing their review and control procedures, they evaluate statistical data and the collection behavior of taxpayers that carry out transactions with related parties.

In addition, a verification has been made of transfer pricing tax examination or assessment cases that have been in execution in a calendar year.

The following graph shows data corresponding to 2011 in a selection of Latin American countries:



Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

As may be observed, tax administrations of such countries like Argentina, Mexico and Brazil, which throughout the years have acquired significant transfer pricing experience, have achieved a larger number of control processes in the region.

With respect to the average time required for carrying out audits in each of the tax administrations of the countries diagnosed, as well as the existence of an administrative instance for a subsequent review of the audit, the average time for a transfer pricing audit ranges between 4, 9, 12 and 24 months.

Country	Time
Argentina	24 months
Chile	12 months
Costa Rica	4 months
Ecuador	12 months
Mexico	24 months
Peru	4 months
Uruguay	9 months
Venezuela	24 months

Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

As for the statute of limitations for carrying out actions related to the control of transfer pricing manipulation, in their great majority the regulations of the Latin American and Caribbean countries provide for terms between 3 and 5 years. There are only two cases that do not abide by the criteria identified in the region being analyzed. In Colombia the statute of limitations is 2 years, while in Honduras there is no statute of limitations.

Most of the tax administrations of the countries in this study daily face several problems for carrying out transfer pricing examinations. In this respect, the main barriers were analyzed and as a result, access to information was determined as the main obstacle to effective transfer pricing control. The following table shows the main barriers identified:

Identify comparable transactions.
Lack of information on transactions carried out with related parties.
Identify and obtain information from abroad.
Identify and determine comparables.
Prove association with related parties, when it has not been declared.
Access to taxpayer information.
Lack of local data bases of national or regional companies that show their information.
Lack of information relative to companies that comprise multinational groups.
Lack of a wider network of instruments for tax information exchange.
Lack of information for carrying out comparability analyses.
Lack of comparable price bases.
Lack of regulations providing for the clear (transparent) preparation and dissemination of taxpayer accounting records.
Information presented in languages other than the official one adopted by a country.
Availability of specialized human resources.

Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

From the foregoing it follows that an important component for transfer pricing control by the tax administrations is found in technological developments.

b) Risk areas

The main economic sectors showing abusive transfer pricing manipulation risks according to the information provided by the tax administrations consulted for purposes of the diagnoses carried out by CIAT, CAPTAC-DR and the IDB for the Latin American countries and this study are the following (Nº 1: most important; Nº 6: less important):

1. Pharmaceutical
2. Manufacturing industry
3. Agricultural (cereals – flowers – cattle – others)
4. Mining
5. Oil
6. Automotive

Also identified were other sectors that were not as recurrent in the diagnosis made of the tax administrations, but which show transfer pricing risks and are accordingly, of significant importance:

1. Distribution and trade

2. Manufacturing of cleaning and hygiene products
3. Financial
4. Hotel
5. Fishing
6. Transportation and telecommunications

Also analyzed was the concentration by the tax administrations of Latin America and some of the Caribbean in the control processes of economic sectors with transfer pricing risks. In other words, the question was: What proportion of the total control processes carried out is concentrated in a specific sector of the economy? In this respect, the sectors with the highest concentration; that is, with over 40% of the control processes devoted to each of these sectors are the following (Nº 1, highest concentration):

1. Pharmaceutical
2. Hotel
3. Food industry

The sectors with lower concentration; that is, less than 15% are the following:

1. Mining
2. Financial
3. Automotive industry
4. Transportation
5. Fishing
6. Services

The sectors of the economy show a different transfer pricing risk according to the relevance of the activities in each of the countries. Therefore, it is possible that there may be differences in the concentrations diagnosed when analyzing each country individually. However, one may observe sectors that are relevant in most of the countries analyzed, due to the existence of multinational companies that carry out similar activities in different countries. This is one of the fundamental reasons of the practical regulations for transfer pricing control.

c) Transfer pricing office

The structure of the tax administrations of Latin America and the Caribbean vary significantly. One of the most important elements that determine the success of the work carried out by the tax administrations is the human resource that is part of said

structure. In this sense, this study endeavors to determine the human resource situation in the sphere of transfer pricing control in the tax administrations of the Latin American and Caribbean countries. Thus, it has been observed that there are important differences, ranging from the structure and composition of the teams, up to the training, recruitment and compensation mechanisms.

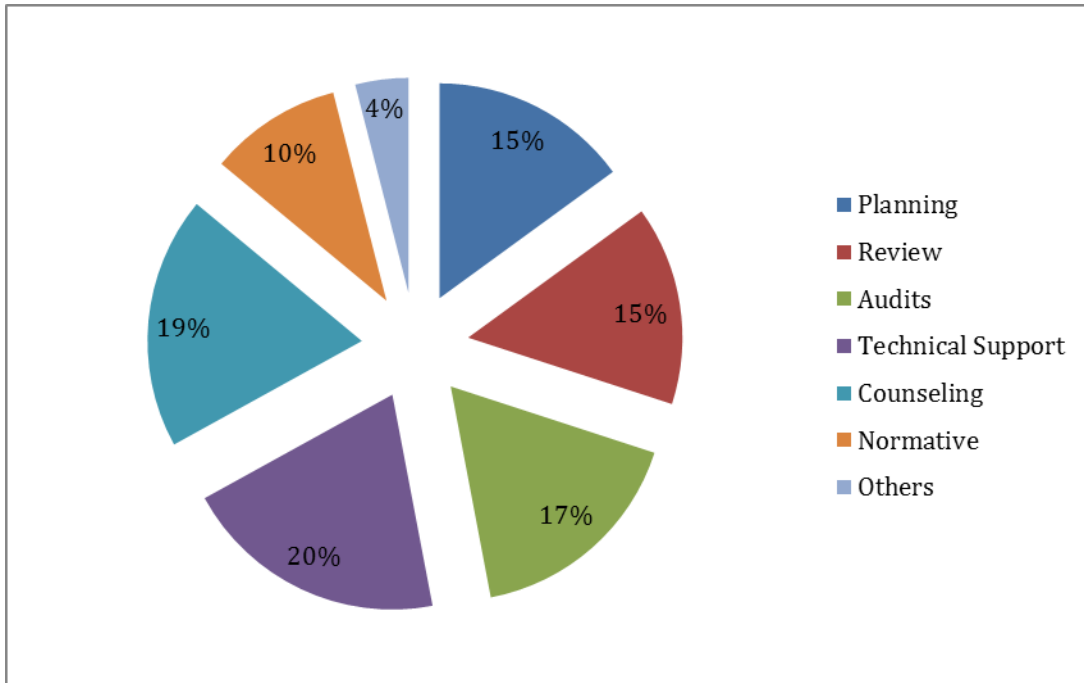
Most of the administrations in the study have departments, areas or teams specialized in international taxation. Seventy five per cent of the Latin American administrations analyzed and a selection of countries from the Caribbean have specialized teams in international taxation issues. Only the remaining 25% of the administrations (five) do not have such teams. It is important to point out that transfer pricing has developed differently in the region. In other words, there are tax administrations with many years of experience and specialized teams, while on the other extreme, there are others that are considering their creation or incorporation.

To conclude, one may say that in the Region, most tax administrations have an entity specialized in international issues and in particular, transfer pricing. The table appearing below lists the entities existing in the countries analyzed.

Most of the tax administrations being analyzed have decentralized organizational structures; that is, they have central offices and regional or zone entities that are in charge of the different tasks of the tax administration¹¹. Within these organizational structures one may find units specialized in international tax issues. Each organizational structure has different schemes for handling these international matters that range from the decentralization of the international taxation teams, as is the case of Ecuador, or the centralization of the work of these teams in the main offices of the administration, as is the case of Mexico.

Although with different names or denominations, as one may verify in the previous table, most of the tax administrations have an area, department, unit, management office or división in charge of international and/or transfer pricing issues. In order to consider these units in greater depth, several aspects of the tax administrations of 20 Latin American and Caribbean countries were analyzed: planning, review, auditing, technical support, counseling, normative functions, among others. Commonly, the transfer pricing units carry out audit, technical support and counseling functions. The following graph shows the proportion of the different functions that are carried out by the transfer pricing units in the tax administrations.

¹¹ "State of the Tax Administrations of Latin America: 2006-2010. CIAT-IDB-CAPTAC-DR". Institutional Aspects Section" <http://www.ciat.org/index.php/es/productos-y-servicios/ciatdata/administraciontributaria.html>



Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

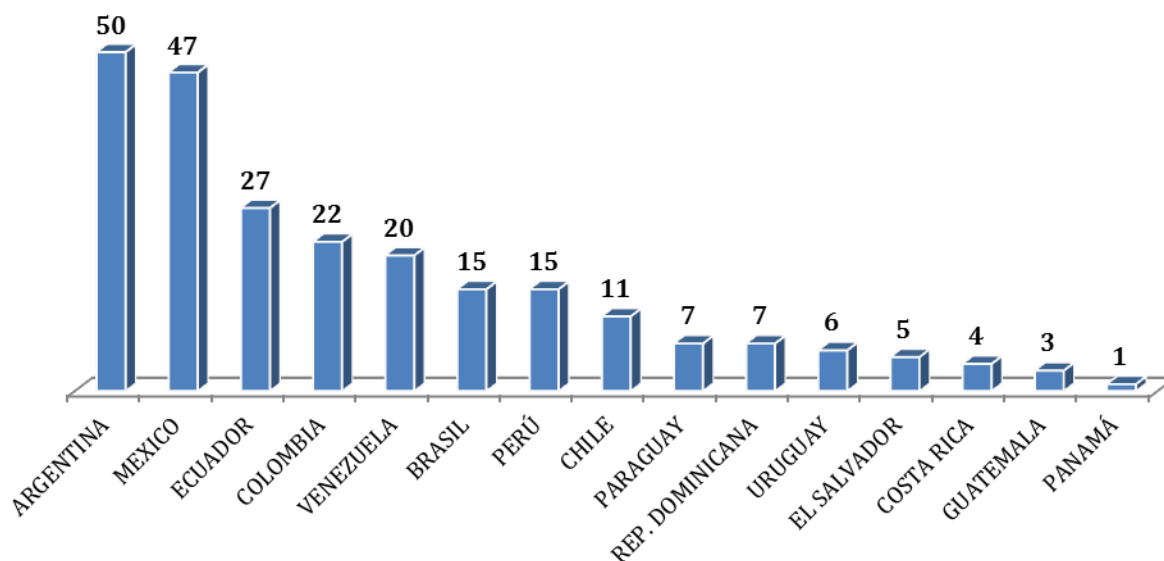
In Mexico, the transfer pricing entity is also in charge, for example, of Advance Pricing Arrangements (APAs) and Multilateral Advance Pricing Arrangements (MAPAs).

Success in transfer pricing control is due, among other aspects, to the organizational structure and, in particular, the staff’s characteristics. In this sense, the investigation sought to find out about the training given to the officials of the transfer pricing units. It was determined that only 30% of the Latin American tax administrations and a group from the Caribbean do have in their tax administrations special training plans for the team in charge of transfer pricing.

In some countries of the Region, even though they may lack a training plan for transfer pricing officials, efforts are made to provide lectures, courses, workshops, etc., on the subject. These activities, including the plans, are mainly developed every one or two years; while a few countries hold them every three or six years. It is observed that the training processes in the tax administrations lack the speediness shown by the large businesses and taxpayers in general. The training plans should be adapted to the speed with which businesses and taxpayer actions evolve and develop vis-a-vis transfer pricing.

The training given to officials of the transfer pricing units of the tax administrations analyzed are 34% of an international nature, 29% national, 29% internal –within the very tax administration – and 8% is provided through Internet or on-line. The aforementioned training covers participation in workshops, lectures, courses and/or seminars conducted from the private as well as public sectors.

A survey also referred to the number of officials in the transfer pricing units. In the following graph one may observe the distribution of officials in each tax administration for handling these matters.



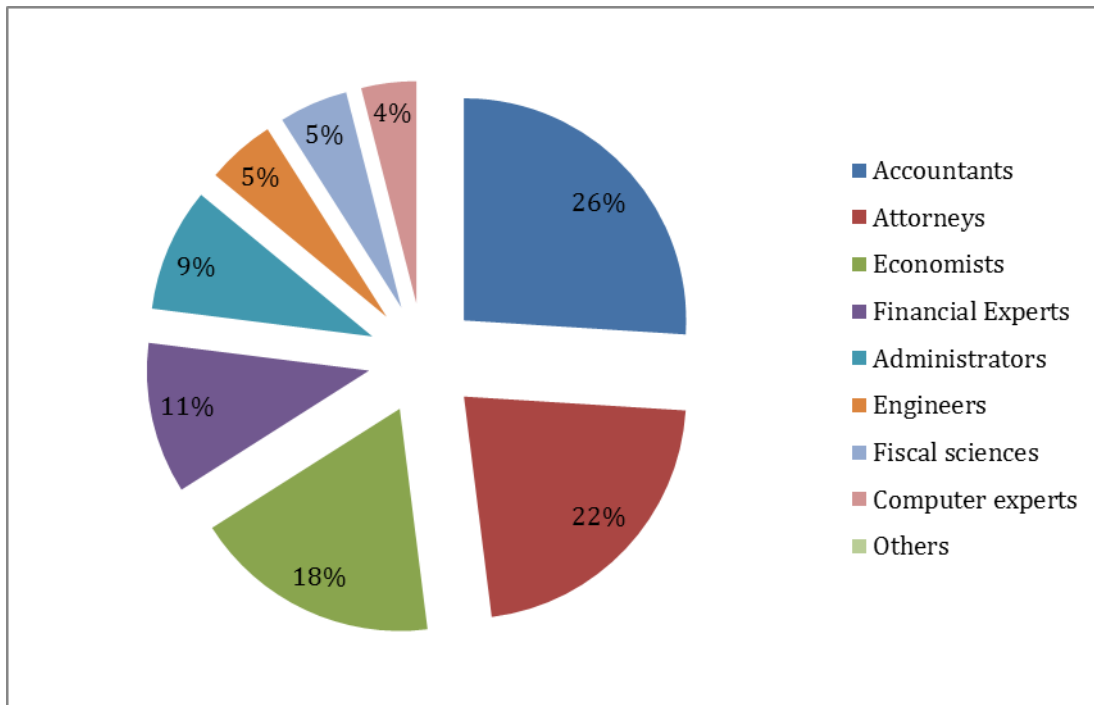
Argentina: of the 50 officials reported, 10 are involved in Information Exchange tasks.

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

Additionally, to complement the data shown in the above graph, it is important to learn about the composition of those teams; that is, determine the profile of their members. This information could be of interest to the tax administrations that are just beginning to consider this matter and which are designing or redesigning their human resources strategies in order to structure multidisciplinary teams capable of providing optimum results in their control processes.

The composition of multidisciplinary teams is an important factor for achieving success in transfer pricing control. According to the information provided by the twenty countries examined, 65% of them have multidisciplinary teams that comprise the transfer pricing units, while the remaining 35% do not have this type of teams. There are tax administrations that resort to experts and technical reports from other State organizations, which is a valid alternative to make up for the lack of a multidisciplinary team.

The following graph shows the profiles and proportion of recurrence of each in the composition of transfer pricing teams in the different tax administrations. Profiles such as that of accountant, attorney and economist are the most recurrent ones in the transfer pricing units.



Source: Study on “The Control of transfer pricing manipulation in Latin America and the Caribbean”. CIAT, GIZ, BMZ and ITC. Published in December 2012.

d) Advance pricing arrangements

The Advance Pricing Arrangements (APAs) are measures for solving disputes and simplification used by the tax administrations on the basis of provisions in agreements or in their internal legislations. The definition of APA conceived in the DTTs, allows two or more contracting states to discuss and establish mechanisms to avoid double taxation. When APAs are signed between two countries they are considered bilateral; when more than two countries intervene they are considered multilateral. On the other hand, when by means of internal legislation it is possible to request an APA between the taxpayer and the local tax administration, it would be a unilateral agreement.

A unilateral APA may be defined as a contract signed between a taxpayer and the tax authority in order to agree, prior to holding transactions between related parties, the criteria for the valuation of such transactions. In particular, it involves the methods for estimating the market prices or margins, correction adjustments, determination of comparable companies and transactions, goods or services subject to the transfer pricing methodology and other analysis elements in order that both parties may be certain regarding compliance with the arm’s length principle. The unilateral APAs have acquired great importance in recent years due to their administrative facility and greater speediness to be formalized, as compared to the bilateral and multilateral ones and, of course, their lower processing cost.

In general, the following are some of the advantages of the APAs:

1. They reduce the compliance costs of the transfer pricing systems for the taxpayers as well as the tax administrations. An APA may avoid the taxpayers and tax administrations fiscal costs and auditing times as well as litigations;
2. They afford greater juridical security to the taxpayer. According to the OECD guidelines, the APAs may assist taxpayers in eliminating uncertainty by increasing assurance of tax treatment for international transactions. Thus, a taxpayer may be in a better position to predict his tax liabilities, thus allowing a favorable fiscal environment for investment;
3. They allow the tax administration to focus resources on other taxpayers or risk areas.

Given the advantages of the APAs, the vision of the countries analyzed is to make good use of them. Evidence of this is the fact that nine of the countries analyzed consider in their internal regulations the possibility for negotiating this type of instrument.

Several countries of the region have mainly opted for including unilateral APAs in their legislations. A case that stands out in the analysis is that of the Dominican Republic, wherein the internal law defines sectorial APAs. Under this scheme, the taxpayers of the sector and the tax administration will agree on the prices, margins or amount of compensations that comply with the arm's length principle. The legislation of this country does not allow a taxpayer to enter into agreements with the tax authority, unless it is through the Association representing the sector and jointly with the other members¹².

According to the Brazilian Law there is the possibility that the taxpayers request the Ministry of Finance for modifications in the fixed margins. This request must be made under justified circumstances which may be proven by means of technical publications, investigations or reports. The Secretariat of Finance of the Ministry may disqualify the act if it considers that the information submitted by the taxpayers is of ill reputation or inconsistent. This Law also provides that the change of margins may be done officially, as published on September 17, 2012.

It is worth mentioning that the countries having internal regulations regarding bilateral and multilateral APAs are those wherein some of the DDTs signed include clauses regarding APAs; this being the case of Mexico and Ecuador.

With respect to the term of enforcement of the APA, this varies among countries, ranging between 18 and 60 months. The following table shows the term of enforcement according to each country's legislation.

After the term of enforcement of the APA has expired, in some countries, the taxpayer may request its extensión. This is the case of Ecuador, Mexico, Dominican Republic

¹² Article 281 of the Dominican Tax Code, Paragraphs II and IV.

and Venezuela¹³ where the regulation provides for the extension of an APA for an additional period. The time frame allowed for extending an APA is 36 months in Mexico and the Dominican Republic and 36 months or more in Ecuador. In some countries there is the possibility that upon expiration of the term, the same continues in force until a new one is approved¹⁴.

The negotiation of an APA in most cases and according to the experiences of the countries⁷, tends to be long. This is so for many reasons, such as, for example, the need to collect detailed information that may allow for analyzing the historical documents of the taxpayer, comparable companies and the transactions. A joint study is undertaken (taxpayer-treasury) regarding the viability of processing the agreement, its scope, the methodologies to be used and the documents required by the tax administration. Although desirable, not all the countries provide specific guidelines in their internal regulations that may direct the entire process. Only the regulations of 6 countries specify the procedure to be followed for requesting an APA. These are: Colombia, Guatemala, Mexico, Peru, Venezuela and Chile, in the latter introduced in a law dated September 27, 2012.

According to the legislation of these countries, the taxpayers must submit to the tax administration their APA proposal, which should be based on a transfer pricing study or other document proving that the valuation of the transaction or transactions with their related parties has been agreed under the transfer pricing guidelines, in keeping with the legislation in this respect. Generally, the request must be accompanied, although not limited to, the following information:

1. General information on the taxpayer and the related company;
2. Description of the contents of the agreement to be formulated, describe each of the types of operation to be covered;
3. Description and justification of the fundamental assumptions of the agreement (for example, economic conditions, quota and market conditions, sales volumen and final selling price, rate of exchange and rate of interest);
4. Detailed explanation of the proposed transfer pricing methodology, specifying for the current period and the periods of enforcement of the agreement, the most appropriate valuation method, the selection of comparable companies or transactions, the adjustments to the selected comparables, determination of the price or margin or range thereof, or amount of compensation;
5. Generic information regarding this type of agreements, conventions or valuation proposals approved or in process before tax administrations of other states;

¹³ Article 165 of the Income Tax Law. "Advance transfer pricing arrangements shall be applied to the fiscal period underway on the date it is signed and for three (3) subsequent fiscal periods. The term may be greater when derived from a friendly procedure, in the terms of an international treaty of which the Republic may be a party".

¹⁴ i.e. Dominican Republic

6. Generic identification of other types of transaction carried out between the related entities or parties that will not be covered by the agreement;
7. Basic hypotheses or critical assumptions on which the proposal is formulated.

Other administrative aspects in relation to APAs refer to the term in which the tax administrations must respond to the APA requests. According to the regulations of the countries, the time frame ranges between 23 and 24 months.

The preparation of an agreement is technically complex; it requires time and effort on the part of the taxpayer and the tax administration. Besides, when the APAs are bilateral or multilateral, they involve tax administrations abroad, for which reason additional costs are incurred for their negotiation. In this respect, the tax administrations could request the taxpayers the payment of a fee to cover expenses resulting from this procedure. At present, only Mexico and Venezuela have provided for the corresponding payment to process an APA. In the particular case of Mexico, the amount required is 905 Pesos (approximately USD\$90 according to quotation of the month of October 2012). Venezuela has not yet determined the amount to be paid by the taxpayer.

An important challenge for the tax administrations as regards the APAs is the availability of qualified staff for managing them. Nevertheless, very few tax administrations in the region count on a team exclusively devoted to handling advance pricing agreements. Only Colombia, Mexico and Uruguay have a team devoted to their control and administration.

Likewise, according to the investigation undertaken in the countries being analyzed, as of October 2012, only Mexico and Uruguay have signed APAs. Uruguay signed its first APA in 2012. On its part, Mexico has a long history in the negotiation of APAs, with a total of 291 to date. Forty three per cent of these APAs (126 APAs) have been agreed with the manufacturing industry.

d) Situation of the courts

Shown below is the number of transfer pricing cases which the countries analyzed above dispute before the courts of justice:

Country	Number of cases
Argentina	29
Costa Rica	3
Ecuador	22
Mexico	80
Dominican Republic	22

Source: Study on "The Control of transfer pricing manipulation in Latin America and the Caribbean". CIAT, GIZ, BMZ and ITC. Published in December 2012.

Likewise of a total of 20 countries analyzed, 40% have specialized courts, 25% do not and 35% did not provide information in this respect.

The following are the countries with courts specialized in tax issues:

- Argentina
- Chile
- Colombia
- Ecuador (judicial)
- Guatemala
- Mexico
- Peru
- Dominican Republic
- Panama (administrative)

Brazil has no justice courts specialized in tax issues. However, the main laws originate in a mixed administrative court formed by representatives of the taxpayers and the Treasury called: CONSELHO ADMINISTRATIVO DE RECURSOS FISCAIS (CARF) (Administrative Tax Resources Council).

Although it is important to count on courts specialized on tax issues, it is also very important that they are familiar with transfer pricing. In this respect, through the analysis carried out it was determined that the countries that have specialized courts only a few of them have sound transfer pricing knowledge. In percentage terms, of the 40% of countries with specialized courts, only 35% have acquired knowledge on the subject. If we refer to such actions as exchange of knowledge and training between tax administrations and specialized courts, this latter percentage diminishes to 25%.

XIII- Conclusions

1. There is a great interest in transfer pricing on the part of the Latin American tax administrations. Of the twenty countries of the region, fourteen have regulations to prevent abusive transfer pricing manipulation. Likewise, Nicaragua and Paraguay are working in projects for introducing transfer pricing regulations. This leads us to conclude that an approximate 85% of the Latin American countries have attributed importance and are working in the development of this tax control measure.
2. In the Caribbean Region, Trinidad and Tobago is working on a regulation for the transfer pricing system, while Jamaica anticipates in its legislation the arm's length principle, according to what has been provided in its Code.
3. Approximately 90% of the countries with transfer pricing regulations have totally or partially adopted the OECD criteria.
4. More than 80% of the countries with transfer pricing regulations have determined that all transactions with related parties should be regulated. However, by specifying the relationship criterion in the regulation, it is possible to reduce the number of taxpayers subject thereto and afford greater precision when orienting the control of transactions between related parties.
5. It is necessary to expressly establish the transactions subject thereto, the relationship criteria, the taxpayer obligations and the sanctions to be applied in the transfer pricing sphere.
6. More than 70% of the countries with transfer pricing regulations have specific sanctions in this respect.
7. More than 80% of the countries with methods for transfer pricing valuation have established some hierarchical criterion for their use in the evaluation of transactions between related parties.
8. Of the methods established for transfer pricing valuation, the transactional net margin method is the one mostly used. This, without disregarding the fact that there may be cases where there are mainly methods developed by the country itself, for example, those implemented by Brazil, Argentina and the Dominican Republic.
9. When determining the comparability between goods, services, transactions or businesses and the adjustments for increasing it, the adjustments of inventories and accounting reclassifications are in a greater proportion those used by the taxpayers. Given that its use is ever more frequent and it is responsible for a relevant number of differences with the tax administrations, it is imperative that the respective criteria be delimited.

10. More than 70% provide in the regulation that the burden of proof in transfer pricing falls on the taxpayers, and thus they are the ones who must initially demonstrate the arm's length principle.
11. More than 70% of the countries analyzed in this study carry out these inspections, in order to determine and identify the functions, assets and risks that are actually assumed by the verified taxpayers. Likewise, Argentina, Brazil and Mexico are the countries with greater experience in transfer pricing examination processes.
12. More than 60% of the countries provide in their regulations for the presentation of a transfer pricing report. On the other hand, more than 70% have provided for filing a transfer pricing information return.
13. More than 70% of the countries observed have provided in their regulations for the possibility of applying the market /interquartile ranges.
14. It is necessary for tax administrations to count on greater local or regional information that may allow a better use of comparables for transfer pricing analysis. The lack of adequate local or regional information becomes one of the greatest obstacles for the effective implementation of transfer pricing in the region.
15. More than 70% of the tax administrations observed in this study have an entity specialized in international issues and in particular, transfer pricing.
16. Fifty per cent of the tax administrations of countries with transfer pricing regulations have regulations for advance arrangements. Only 25% of the Latin American tax administrations have experience in the application of simplified transfer pricing measures.