



## Ecuador

### WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	In 2005, legal regulations were introduced for the documentation of transfer prices.
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Which TP methods may be applied?	1) Uncontrolled Comparable Price Method; 2) Resale Price Method; 3) Cost Method Added; 4) Method of Distribution of Profits; and, 5) Transactional Margins Method of Operational Utility.
Are any TP methods preferred over others?	The Tax Administration analyzes the Petition of APA according to the five current methods.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	No
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	<ul style="list-style-type: none"> <li>• Article not numbered according to article 4.3 of the Internal Tax Regime Law (LRTI).</li> <li>• Second section of chapter 4 of the LRTI.</li> <li>• Article not numbered according to article 22 of the LRTI.</li> <li>• Articles 4 and 84 to 91 of the Regulations for the Application of the Internal Tax Regime Law (RALRTI).</li> <li>• Resolution NAC-DGERCGC15-00000455 (Second Supplement to Official Registry 511, 29-V-2015).</li> <li>• Resolution NAC-DGERCGC16-00000531 (Sixth Supplement to the Official Registry 913, 30-XII-2016)</li> <li>• Resolution NAC-DGERCGC16-00000532 (Sixth Supplement to the Official Registry 913, 30-XII-2016)</li> <li>• Errata s / n, (Supplement to the Official Registry 928, 23-I-2017) "</li> </ul>

<b>2. Master File (MF)</b>	Not implemented
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<b>3. Local File (LF)</b>	Not implemented
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<b>4. Country-by-Country Reporting</b>	Not implemented
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5. TP disclosure in tax return or transfer pricing specific returns	
Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes
What would be the filing deadline?	The Annex of Related Party Transactions and Integral Transfer Pricing Report shall be filed within 2 months of the date of filing of the Income Tax return (June of each year).

When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Intentionally filing an incorrect tax return and failing to inform the tax authorities accordingly constitutes a tax offense. The legal consequences can range from fines (monetary) to imprisonment of up to seven years.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	The legal consequences can range from fines (monetary) to imprisonment of up to seven years.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Form 101 of Corporate Income Tax
What would be the filing deadline?	It is presented from the month of February to the month of April.
What would be the penalties for non-compliance?	Fine up to US\$15,000

**6. Benchmarking**

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	<p>Yes. Reports must be prepared for all transactions. Taxpayers who conduct transactions with related parties within the country have to prepare or submit a transfer pricing study.</p> <p>The transfer pricing report should include the following information:</p> <ul style="list-style-type: none"> <li>I. Executive Summary: <ul style="list-style-type: none"> <li>a. Scope and objective.</li> <li>b. Content.</li> <li>c. Conclusions.</li> </ul> </li> <li>II. Inter-company transactions;</li> <li>III. Features of the operation;</li> <li>IV. Functional analysis: <ul style="list-style-type: none"> <li>a. Background of the multinational group;</li> <li>b. Functions performed by the group;</li> <li>c. Background of the local company;</li> <li>d. Functions performed by the local company;</li> <li>e. Risks assumed;</li> <li>f. Assets used.</li> </ul> </li> <li>V. Contractual terms;</li> <li>VI. Market analysis;</li> <li>VII. Economic analysis; <ul style="list-style-type: none"> <li>a. Operations to be analyzed;</li> <li>b. Selection of analyzed part;</li> <li>c. Selection of method;</li> <li>d. Selection of the profitability indicator;</li> <li>e. Selected comparables;</li> <li>f. Adjustments made;</li> <li>g. Discarded comparables;</li> <li>h. Information of the selected comparables;</li> <li>i. Establishment of the median and range of full competence;</li> <li>j. Financial information;</li> <li>k. Conclusions;</li> <li>l. Additional information.</li> </ul> </li> </ul>
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<p>Is there any local guidance or requirement with regard to the preparation of a benchmark study? (continuation of the previous page)</p>	<p><b>Technical Standards - Applying the Principle of Full Competence</b>            In case of using the resale price method, the cost method added the method of transactional operating profit margins,            1. Profitability indicator;            2. Comparable with losses; and,            3. Use of aggregated third-party data.  <b>Methodology - Applying the Principle of Full Competence</b>            In order to apply the principle of full jurisdiction in the following operations, the following shall be observed:            1. In exports or any other type of disposal of crude oil, direct or indirect, in any modality;            a. The uncontrolled comparable price method shall apply.            b. The comparable price will be the weighted average of the equivalent quality oil exports exported by Petroecuador in the calendar month.            2. In exports or any other type of alienation of gold, silver or copper or other metallic mineral in any state, direct or indirect, in any modality; Y,            a. The uncontrolled comparable price method shall apply.            b. The comparable price for all types of mining regime shall be equal to the international price (IP) established for the calculation of royalties, in accordance with Article 2 of the Audit Instructions, Royalties and Benefits of Metallic Mining Activity.            3. In exports or any other type of banana alienation, direct or indirect, in any modality.            a. The uncontrolled comparable price method shall apply.            b. The comparable price will be equal to the indexed limit established in article 27 of the Internal Tax Regime Law.</p> <p><b>Exemptions</b>            Taxpayers carrying out transactions with related parties shall be exempt from the application of the transfer pricing scheme where:            - Have a tax levied in excess of three percent (3%) of their taxable income;            - Do not carry out operations with residents in tax havens or preferential tax regimes; Y,            - Do not maintain a contract with the State for the exploration and exploitation of non-renewable resources.</p> <p><b>Operations Not Contemplated</b>            For the purposes of calculating the accumulated amount referred to for the presentation of both the annex and the report, the amounts of transactions with related parties will be added, except those corresponding to:            a. Equity contributions in cash, in United States dollars.            b. Compensation or reclassification of accounting accounts of assets, liabilities or equity, provided they do not affect results.            c. Cash payments, in United States dollars, of income from assets (dividends) or liabilities.            d. Income indicated in articles 27 and 31 of the Internal Tax Regime Law, as well as to + M4ctivos, liabilities or expenses of the taxable person, attributable to the activity generating such income.            e. Transactions with Ecuadorian public law entities or public companies in Ecuador.            f. Operations that are covered by a methodology approved through acquittal of prior consultation of valuation. In the case of operations between local related parties, this literal shall apply to both the taxable person who submitted the consultation and to such related parties.            g. Transactions with other local related parties, with reference to the tax period analyzed.</p>
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Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	Yes. •Transfer Pricing Attachment: Taxpayers who carry out cross-border or domestic transactions with related parties for an aggregate amount exceeding USD 3 million during the fiscal year under analysis. • Transfer pricing report: taxpayers who trans- border or domestic transactions with related parties for a cumulative amount exceeding USD 15 million during the fiscal year under analysis.
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	The search for comparables is applied every year taking into consideration the comparables of previous years and in case they are used again or discarded should be justified in the Comprehensive Price Report of Transference. As long as there have been no changes in the factors affecting the transfer prices or the contribution of the value chain.
<b>7. Year-end adjustments</b>	
Are year-end adjustments permissible?	The year-end adjustments tend to be examined by the Ecuadorian tax authorities. Based on our experience, tax authorities tend to accept end-of-year adjustments based on facts and circumstances.
Does the taxpayer have to comply with any specific features or guidance?	No

<b>8. Transfer Pricing Audit and Dispute Resolution Mechanisms</b>	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Intercompany financing, reimbursement of expenses, royalties, technical assistance and operations with tax havens.
Based on your experience, are joint or multilateral audits initiated and carried out?	No. Based on our experience, joint or multilateral audits have been the exception and not the norm until now, but we hope that the Ecuadorian tax authorities will increasingly use this option in the future, at least in cases of price audit.
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes. It is possible for taxpayers to consult with the tax authorities so that a determination can be made as to the correct value of transactions between related parties before actually effecting the transactions and for this to be accomplished: – facts and circumstances underlying the APA agreement; – critical conditions are respected; Y – the tax authorities receive the corresponding financial statements. The Ecuadorian taxpayer must prepare and submit annual APA compliance reports.

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