

Mexico

Transfer Pricing Country Profile

December 2021

		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	Articles 76 (section XII) and 179 of the Mexican Income Tax Law (MITL) Articles 51 and 53 of the Hydrocarbons Revenues Law
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD TPG are specifically referenced in the Mexican legislation and are used for guidance and interpretation in transfer pricing-related issues.	Article 179 of the MITL and Article 30 of the Hydrocarbons Revenues Law
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 Regarding corporations and for income tax purposes, two or more persons are considered to be related parties when one of them participates, directly or indirectly, in the administration, control or equity of the other, or when a person or group of persons participates, directly or indirectly, in the administration, control, or equity of such persons; members of partnerships are considered to be related, as are the persons who in accordance with this paragraph are considered related parties of such members. Similarly, the head office or other permanent establishments thereof are considered related parties of a permanent establishment, as are the persons indicated in the preceding paragraph and the permanent establishments thereof.	Article 179 of the MITL

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><input checked="" type="checkbox"/></td> <td><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 type="checkbox"/>	<p>Article 180 of the MITL</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>Article 180 of the MITL states that taxpayers must first apply the method set forth in (I) of such Article (i.e. the CUP), and may only use the methods indicated in (II), (III), (IV), (V) and (VI) (i.e. Resale Price, Cost Plus, Profit Split, Residual Profit Split and TNMM, respectively) thereof when the method set forth in (I) is not appropriate for determining if the transactions were performed at arm's length.</p> <p>Mexico's approach to method hierarchy is not in conflict with "the most appropriate method" approach of the TPG, given that it considers applying the guidance in paragraph 2.2 of the TPG, which inherently implies making an applicability test for each method taking into account several factors, among other tests.</p>	<p>Article 180 of the MITL</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 checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input checked="" 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 type="checkbox"/> Other (<i>if so, please explain</i>)</p>	<p>Article 51 and 53 of the Hydrocarbons Revenues Law</p>												

		<p>According to articles 51 and 53 of the Hydrocarbons Revenues Law, when an Exploration/Extraction Assignment Holder transfers hydrocarbons (Oil, Natural Gas, Condensates, Natural Gas Liquids or Methane Hydrates) to related parties, they shall consider for such transactions, the prices and amounts of the considerations they would have used with or between independent parties in comparable transactions, applying to that end the CUP method.</p> <p>Regarding other commodities, no specific guidance is contained in the domestic legislation as of the date of this questionnaire, but through the reference to the TPG in the MITL, the commodities guidance is applicable.</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	Article 179 MITL
		Through the reference to the OECD TPG in the MITL, the guidance on comparability analysis is applicable.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		Although in principle there is a preference for local comparables, it must be mentioned that Mexico has limited local comparables, and in practice, foreign comparables are relied upon.	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Federal Fiscal Code , articles 46 and 69
		Any information to which the tax authority has access may be used. However, the use of secret comparables is case-specific (only to on-site visits/audits). References are contained in articles 46, IV and 69 of the Federal Fiscal Code.	
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	Article 180 of the MITL MITL Regulations Article 302
		The use of the interquartile range is required.	

11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Article 179 of the MITL states that transactions or enterprises are considered comparable when there are no differences among them that significantly affect the price or consideration amount or the profit margin referred to in the methods set forth in Article 180 of the MITL, or when any such differences that do exist are eliminated through reasonable adjustments.</p>	<p>Article 179 of the MITL</p>
Intangible Property			
12	<p>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Article 179, section I, d) of the MITL includes guidance related to comparability in transactions between related parties that involve intangibles. Additionally, through the reference to the OECD TPG in the MITL, the intangibles-related guidance is applicable.</p>	
13	<p>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>No specific guidance is contained in the MITL as of the date of this update, but through the reference to the OECD TPG in the MITL, the HTVI guidance is applicable. Further, as indicated above, Article 179, section I, d) of the MITL includes guidance related to comparability in transactions between related parties that involve intangibles.</p>	<p>Article 179 of the MITL</p> <p>HTVI Implementation Questionnaire</p>
14	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>No specific guidance is contained in the MITL as of the date of this update, but through the reference to the TPG in the MITL, the intra-group services guidance is applicable. Nonetheless, Article 179, section I, b) of the MITL includes guidance related to comparability in transactions between related parties that involve services.</p>	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 28, section XVIII of the MITL Miscellaneous rule 3.3.1.27
		<p>Pro-rata expenses paid to foreign parties/service providers are deductible from a Mexican tax standpoint only if the information specified in the Miscellaneous rule 3.3.1.27 is provided. As such, and in general terms, taxpayers must have evidence, as well as information demonstrating that the services (i) were actually rendered, (ii) provided a benefit to the Mexican taxpayer, (iii) were not duplicative services, and (iv) the amount for the consideration was at arm's length.</p>	

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	Article 179 of the MITL
		<p>No specific guidance is contained in the MITL as of the date of this update, but through the reference to the TPG in the MITL, the financial transactions guidance is applicable. Nonetheless, Article 179, section I, a) of the MITL includes guidance related to comparability in financial transactions between related parties.</p>	
19	[NEW] Are there any other rules outside transfer pricing rules that are	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 28, sections XXVII and XXXII of the MITL

	relevant for the tax treatment of financial transactions?	<p>In line with BEPS Action 4, Mexico has implemented measures that limit interest deductions that exceed 30% of EBITDA, with no changes to this percentage foreseeable in the coming years, applicable only to taxpayers with interest expenses exceeding MXN 20 000 000 in a given fiscal year.</p> <p>Additionally, Mexico has thin capitalization rules in order to limit interest deductions.</p>	
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		No specific guidance is contained in the MITL as of the date of this update, but through the reference to the TPG in the MITL, the CCA's guidance is applicable.	
Transfer Pricing Documentation			
21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <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>Regarding corporations and for income tax purposes, article 76 (sections IX, X, and XII) of the MITL</p> <p>Article 76-A of the MITL</p> <p>Miscellaneous rules 3.9.11. to 3.9.17.</p>
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The documents associated with the three-tiered approach of TP documentation (i.e. Master file, Local File and CbC Report) must be filed by December 31st of the succeeding required year, and the contents of these documents are in line with BEPS Action 13 Report/TPG Chapter V. Furthermore, according to Miscellaneous Rule 3.9.15., the Master File can be submitted in English.</p> <p>Specific TP informative return must be filed in conjunction with the annual tax return or statutory tax report as of March 31st of the succeeding required year.</p>	<p>Article 76 (section X) of the MITL</p> <p>Article 76-A of the MITL</p> <p>Miscellaneous rules 3.9.11. to 3.9.17.</p>

23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Article 32-D (IV) - The public sector will not contract with taxpayers that failed to submit a tax return. This section is applicable to Article 76-A of the MITL.</p> <p>Article 76 - Penalty on omitted tax whenever it is unveiled by the tax authority: 55% or 75% of the omitted amount.</p> <p>The penalty of 30% or 40% applied to the exceeding amount reported as a fiscal loss over the real losses.</p> <p>Articles 81-XVII and 82-XVII - Whenever the taxpayer fails to inform about its transactions performed with related parties as set forth in Article 76 of Income Tax Law, a penalty of MXN 86 050 to MXN 172 100 is imposed.</p> <p>Articles 81-XL and 82 XXXVII - Whenever the taxpayer fails to submit the related parties informative returns as set forth in Article 76-A of Income Tax Law, or such returns are inaccurate, a penalty of MXN 172 480 to MXN 245 570 is imposed.</p> <p>Articles 83-XV and 84-XIII - Whenever the taxpayer fails to identify transactions executed with related parties residing abroad and reports them accordingly to Article 76 of Income Tax Law in its accounting records, a penalty of MXN 1 950 to MXN 5 860 is imposed for each transaction.</p> <p>*Due to inflation effects, the amounts of the above penalties may change.</p>	<p>Federal Fiscal Code, Articles 32-D, 76, 81 (sections XVII and XL), 82 (sections XVII and XXXVII), 83 (section XV), 84 (section XIII)</p>
24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>Taxpayers engaging in business activities whose income in the immediately preceding fiscal year did not exceed MXN 13 000 000 and taxpayers which income from the provision of professional services did not exceed MXN 3 000 000 shall not be bound to prepare transfer pricing documentation, except those taxpayers:</p> <ul style="list-style-type: none"> - That enter into transactions with entities in low tax jurisdictions; - Taxpayers that are contract or assignation holders in terms of the Hydrocarbons Revenues Law <p>Taxpayers that do not meet the following requirements are not bound to prepare the Master File and Local file:</p> <ul style="list-style-type: none"> - Taxpayers that in the immediately preceding fiscal year reported in their annual return revenue equal to or exceeding MXN 708 898 920 (approximately USD 38 000 000. This amount is updated every year), - Companies included in the Mexican optional tax regime for groups, - State-owned companies, or 	<p>Article 76 section IX, second paragraph of the MITL</p> <p>Article 76-A of the MITL and Federal Fiscal Code, Article 32-H</p> <p>Miscellaneous rule 3.9.5.</p>

		- Foreign resident legal entities with a permanent establishment in Mexico.	
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 checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>):</p> <p>Administrative or statutory dispute settlement/resolution process</p>	<p>Federal Fiscal Code, Articles 34, 34-A, 69-C to 69-H</p> <p>Miscellaneous rules 2.1.32., 2.11.8. and 3.3.1.28.</p> <p>Mexico's MAP Profile</p>
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 checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The use of safe harbor rules are limited to a targeted industry (i.e. Maquiladora).</p> <p>The safe harbor mechanism consists in determining the tax profit base as the maximum value that results from applying 6.9% on the total value of the assets and 6.5% on the total amount of costs and expenses.</p>	<p>Article 182 of the MITL</p>

27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 Periodical adjustments (i.e., during the year), as well as year-end adjustments, are allowed when registered in the accounts before the end of the fiscal year to make sure that tax and accounting figures are consistent, and compliant with miscellaneous rule 3.9.1. Adjustments have to be reflected in Form 76 (Relevant Transactions), which is required through Article 31-A of the Federal Fiscal Code.	Federal Fiscal Code , Article 31-A Miscellaneous rules 3.9.1.1 to 3.9.1.5
29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No A secondary adjustment is the adjustment that results from the application of a contribution, in accordance with the applicable tax legislation, after having determined a transfer pricing adjustment to a transaction, which is generally characterized as a presumed dividend. An adjustment is considered a secondary adjustment when applying the provisions contained in articles 11, section II, 140, sections III and VI and 164, section I of the MITL	Miscellaneous rule 3.9.1.1., Section V.
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 <input checked="" type="checkbox"/> No Mexico's reservations to Article 7 contained in the commentary to said article apply to the whole treaty network.	
31	[NEW] Does your jurisdiction follow also another approach?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

		Mexico reserves the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update of the Model Tax Convention.	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	N/A	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>