TPA Global

Transfer Pricing

# Country Summary

## Peru

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## 1. Introduction

Peru's transfer pricing regulations refer to the contractual and economic conditions which establish the cost, price, or rate for transactions between legally related parties for the transfer of services, goods, or loans, or other such exchanges.

The SUNAT maintains a transfer pricing control department dedicated to reviewing the validity of such processes, based on relevant legislation.

Peru's transfer pricing regulations have been applicable since 2006, however, it became necessary to include far more extensive information about the organization overseeing a transfer following a legislative decree in 2016.

That modification was implemented in support of Peru's attempt to join the Organization for Economic Cooperation and Development (OECD).[1]

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

The legal frameworks for transfer pricing are Articles 32 and 32-A of the Peruvian Income Tax Law (PITL) and Chapter XIX of the PITL Regulation.

Chapter V Article 32 of the PITL indicates that in the cases of sales, capital contributions of goods and other transfers of property, service provision and any other type of transaction in any capacity, the value assigned to goods, services and other benefits, for tax purposes, will be the market one. If the assigned value differs from the market value, either by overvaluation or undervaluation, the National Superintendency of Tax Administration - SUNAT will proceed to adjust it for both the acquirer and the transferor. Section 4 of the same Article determines that for transactions between related parties or that are made from, to or through of countries or territories with low or no taxation, the prices and amount of economic compensation that have been agreed with or between independent parties in comparable transactions, under the same or similar conditions, according to the established in Article 32 ° -A.

Article 32-Aof the PITL establishes that market value, for transactions between related parties or made from, to or through countries or territories with low or zero taxation, shall be the prices and amount that would have been agreed with or between independent parties in comparable transactions, under the same or similar conditions.

To define the market value of intercompany transactions, Article 32-A of the PITL (incorporated by Article 22 of Legislative Decree 945, published on 23 December 2003) set forth the guidelines regarding the legislation scope, definition of related parties, adjustments to be made, comparability analysis, transfer pricing methods, APAs and formal obligations. It also refers to the OECD Transfer Pricing Guidelines as a source of interpretation of transfer pricing analysis, as long as they do not contradict the PITL.

Chapter XIX (Articles 108 to 119) of the PITL Regulation was incorporated in Article 3 of Supreme Decree 190, published on 31 December 2005. It contains the regulations for the correct application of Article 32-A, and sets the following transfer pricing provisions:

- Article 108 sets forth several conditions to be considered for related parties and listed the countries or territories with low or no taxation;
- Article 109 states the primary, corresponding and secondary adjustments to be made;

[1] Understanding Peru's Transfer Pricing Regulations - Biz Latin Hub

- Article 110 specifies elements or circumstances that determine whether transactions are comparable or not, such as characteristics of the operations, functions and economic activities, the contractual terms, economic circumstances and business strategies;
- Article 111 sets out the factors that should be taken into account in order to eliminate differences between the transactions being compared, through reasonable adjustments;
- Article 112 states that the market value should be determined transaction by transaction, and the article also provides exceptions to this rule;
- Article 113 specifies the appropriate method to reflect the economic reality of each transaction, based on the type of business, the quality and quantity of information available, the degree of comparability and the level of adjustments required;
- Article 114 and 115 refer to the price range, the determination of the interquartile method and the calculation of the median;
- Article 116 stipulates the documentation and information that may support the transfer price calculation;
- Article 117 refers to the information to be included in the Transfer Pricing Study (TPS);
- Article 118 states the conditions and characteristics of the APA procedure; - Article 119 refers to deductible expenses in countries with low or no taxation.

The Legislative Decree 1312 published on 31 December 2016, modified several articles of the PITL with the intention of adapting national legislation to the international standards and recommendations issued by the Organization for Economic Cooperation and Development (OECD) on the exchange of information for tax purposes, international taxation, erosion of tax bases, prices of transfer and combat against tax avoidance.

The main changes are: It modified article 32-A (g) of PITL in order to adopt the three-tiered approach to transfer pricing documentation (Master file, Local file and Country-by-country report). According to the provisions given in the Article 32°-A, subsection g) of the PITL, the SUNAT may exclude taxpayers to the obligation to submit the informative affidavits Local Report, Master Report and/or Country-by-Country Report.

Modification of subsection g) of article 32 ° -A of the PITL: sworn statements and other formal obligations. Beginning in fiscal year 2016, taxpayers subject to the scope of the transfer pricing rules, whose income accrued in the taxable year exceeds 2,300 UIT (*) PEN 9,315,000, approximately USD 2.9 million, must submit annually the affidavit of the Local Report, regarding the transactions that generate taxable income and/or deductible costs or expenses for the determination of the tax. Notwithstanding the foregoing, SUNAT may demand compliance with the aforementioned obligation for other operations that do not generate taxable income and/or deductible costs or expenses.
As of fiscal year 2017, taxpayers who are part of a group whose income accrued in the taxable year exceeds 20,000 UIT PEN 81,000,000, approximately USD 25.3 million, must submit annually, according to the provisions of the regulations, the informative affidavit Master Report that Contains, among others, the organizational structure, the description of the business or businesses and the transfer pricing policies on intangibles and financing of the group and its financial and fiscal position.
Likewise, taxpayers who are part of a multinational group must submit annually, according to what the regulations indicate, the informative affidavit Country-by-Country Report that contains, among others, information related to the global distribution of income, taxes paid and business activities of each of the entities belonging to the multinational group that develop their activity in a specific country or territory. It should be noted that these regulatory changes refer to the formal obligations of the fiscal year 2017, which will be declared during the year 2018. In effect, although for that year there will no longer be the Transfer Pricing PDT 3560 and the TPS. As such, these will be replaced by the Local Report and the other reports, which in essence will contain the information that is being collected in said documents and the supporting documentation. The formal obligations referred to 2015 and previous years (PDT 3560 and Technical Transfer Pricing Study) will be prepared and declared in the same way that the statements were made in previous

years, that is, in the tax period corresponding to the month of May which is declared during the month of June according to the last digit of the taxpayer's ID (RUC) number.

It modified numeral 1 of subsection e) of article 32 ° -A of the PITL related to Comparable Uncontrolled Price Method, when applied to commodities (the so-called: "sixth method").
Comparable Uncontrolled Price Method for commodities ("Sixth Method"). Modification introduced with Legislative Decree 1312 has simplified the scope of the previous definition, especially when it refers to the import and/or export of commodities, limiting the space so that in the handling of these operations, a situation of lower tax revenue could be presented. The Market Value will be determined considering the date of the quotation value as the term of the shipment of exported goods or the disembarkation of imported goods. The regulation will indicate the list of goods included, the market or the characteristics of the market from which the price is obtained, the quotation to be considered from said market, and the adjustments that are accepted to reflect the characteristics of the asset and the modality of the operation.

Incorporation of numeral 7 to subsection e) of article 32 ° -A of the Law: Incorporation of Other Methods. This modification refers to the methods used in the determination of the market value for transactions between related parties or that are made from to or through countries or territories with low or no taxation. In particular, it adds the possibility of considering other methods to the six established in the standard, when the application of any of these methods is not appropriate due to the nature and characteristics of the activities and transactions. The conditions for its use will be established in the regulations.

Incorporation of subsection i) of article 32 ° -A of the Law: Services Management This incorporation is adding some details for the treatment of the Services traded between related parties and / or from to or through countries or territories with low or no taxation. It asks the taxpayer, without prejudice to the other requirements of the transfer pricing regulations, that in the case of services the benefit test is fulfilled, that is to say that the service provided provides economic or commercial value to the recipient of the service, such as if it had occurred between unrelated parties. In addition, you must provide the documentation and information requested, as necessary conditions for the deduction of the cost or expense. This requirement would demand that the reception of the service be analyzed, not only from the point of view of a taxpayer's expenditure, but also from the income for its related part, requiring the calculation of the Net Cost plus Margin NCPM (Operating Profit / Sum of Costs and Expenses). Likewise, a cap is being placed on the NCPM obtained by the service provider, in the case of low added value services, since it cannot exceed five percent (5%) of the costs and expenses incurred.
Those services that meet the following characteristics are considered as low value-added services:

(i) they are of an auxiliary or support nature;
(ii) they do not constitute principal activities of the taxpayer or the multinational group, as applicable;
(iii) do not require the use of unique and valuable intangibles, nor do they lead to the creation of unique and valuable intangibles; and
(iv) they do not involve assuming or controlling a high or significant level of risk, nor do they generate a significant level of risk for the service provider. The PITL regulation may indicate in a referential manner the services that qualify as low value added and those that do not. The benefit test is being required starting in year 2017.

(*) UIT = Taxation Unit 2017: PEN 4,050 approximately USD 1,266. Exchange rate: PEN 3.2 per USD.

Supreme Decree No. 333-2017-EF, published on November 2017 modified Article 116 of the RITL related to the obligation to submit the sworn informative declarations of the Local Report, Master Report and Country by Country Report.

## b) Definition of Related Party

According to Article 32-A of the PITL, 2 or more individuals, companies or entities are considered related if one of them participates, directly or indirectly, in the administration, control or capital of the other, or if the same person or group of persons participate, directly or indirectly, in their administration, control or capital.

It also establishes that the use of third parties (intermediaries) for transactions between related parties is not allowed for transfer pricing purposes.

Article 24 of the PITL Regulation defines related party as:

- a natural or legal person owns, directly or indirectly, more than 30 percent of the capital of another legal person;
- the same natural or legal person owns, directly or indirectly, more than 30 percent of the capital of two or more legal persons;
- in any of the above situations, when that same proportion of capital belongs to spouses or individuals linked up to the second degree of consanguinity or affinity;
- the capital of two or more companies that makes up of more than 30 percent of their common partnership;
- legal persons or entities that have one or more common directors, managers, administrators or executives with decisive power in financial, operational or commercial matters;
- 2 or more natural or legal persons consolidate financial statements;
- there is a business cooperation agreement with independent accounting;
- there is a business cooperation agreement without independent accounting;
- there is a joint venture agreement in which any of the associated parties, directly or indirectly, share more than 30 percent of the results or profits of one or more businesses of the managing associated; in which case the managing associated and each of its associated parties will be considered as related parties;
- a non-domiciled company has one or more permanent establishments in a country, in which case there will be entailment between non-domiciled company and each of its permanent establishments;
- a company based in Peruvian territory has one or more permanent establishments abroad;
- a natural or legal person having a dominant influence over the management decisions of one or more legal persons or entities;
- a natural person, company or entity, during the fiscal year preceding the one under analysis, sells goods or renders services to an unrelated company or group of associated companies, which account for at least 80 percent of its total annual income and at least 30 percent of the total annual cost of the buyer during the same fiscal year;
- parties located in a low tax jurisdiction are deemed as controlled, and transactions with such parties fall within the scope of the transfer pricing regulations. The Annex of the PITL Regulation, referred to in Article 86, includes the following 43 countries or territories with low or no taxation: Alderney, Andorra, Anguilla, Antigua and Barbuda, Netherlands Antilles, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Cyprus, Dominica, Guernsey, Gibraltar, Granada, Hong Kong, Isle of Man, Cayman Islands, Cook Islands, Marshall Islands, Turks and Caicos Islands, British Virgin Islands, Virgin Islands of the United States, Jersey, Labuan, Liberia, Liechtenstein, Luxembourg, Madeira, Maldives, Monaco, Montserrat, Nauru, Niue, Panama, Samoa, St. Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Seychelles, Tonga, Vanuatu.

Legislative Decree 1120 introduced Chapter XIV of the International Tax Transparency Regime, applicable to domestic taxpayers who are subjected to Peruvian tax law, and owners of entities which are not domiciled, incorporated a particular definition of controlled entities as well as the attribution of income. This decree is effective as of the fiscal year 2013.

### c) Nature of Transfer Pricing Documentation

The following are some important TC rulings regarding the prices for transactions:

- In the case of Lamitemp SA (a company specialising in the sale of glass), the TA considered there was an undervaluation of sales in two of the company's business lines due to the fact that the cost of sales for some months was above the sales value and because there were discounts of 40% granted to a single client. The TC decided that market value does not necessarily have to be above the cost, a situation that can derive from technological factors, higher financial costs in comparison with other companies, and access to market of raw materials, amongst others. Thus, what should have been done is to prove that market value was above that considered by the company. Finally, in order to deny the discounts granted, the TC stated that the TA should have verified that these were not granted to other clients, that it was not a usual practice or that they did not correspond to the volume of items bought or payment conditions. Therefore, it cannot be argued that the discounts do not comply with current legislation.
- In a case against Aceros Arequipa SA (a company dedicated to the smelting and commercialisation of steel), the TC confirmed the adjustment made to discounts granted to clients for achieving certain volume goals. The TC stated that for such discounts to be valid, they must be offered to clients complying with certain criteria (general principle) and should be granted uniformly. However, the company did not grant the discounts to certain clients that did meet their criteria but did grant them to other clients that did not. Thus, the deduction of all discounts was denied.
- The Peruvian TA, based on a valuation report found during the audit process, pointed out that the company Hotel Macchu Picchu SA had undervalued the sales price agreed for the transfer of the right to use the hotel unit, which included assets and/or furniture. The company argued that the transfer value used corresponded to the valuation report with a minimum reduction of 1.1564%. The TC considered that the company should have used the value set forth in the valuation report with no adjustments.
- In a case against a company dedicated to the renting of helicopters, the TA challenged the comparables selected in the transfer pricing study. The company rendered transport services to its related party and to an independent party, so the TA considered that an internal comparable existed. The company's counterargument was that the services were not similar, due to the differences in the types and heights of the flights performed with the related and the third party. The TC is still evaluating the case.
- In the case against a company that distributes technology products, the TA disqualified the reclassifications of accounts made by the company in order to analyse the imports from related parties. The company maintained its position obtained a report from a third party accounting expert to support it. Additionally, the TA modified the sample of comparable companies, as they did not agree with the qualitative filters applied.
- In a case against a glass distributor, the TA questioned the TP method used for the analysis of imports of glass from related parties. They considered that the RPM should be applied. Nevertheless, the company argued that the appropriate method was the TNMM as a gross profit evaluation would require some adjustments to account for the differences in the classification of costs and expenses between the company and the comparable companies.

### d) Tax Havens & Blacklists

On 30 December 2018, Peru's Minister of Economics issued Supreme Decree 340-2018-EF, which contains regulations that include Peru's black list of countries and jurisdictions that are considered tax havens or non-cooperative jurisdictions, as well as conditions for being added or removed from the list. The regulations also include the requirements for a country or jurisdiction to be considered a preferential tax regime for Peruvian tax purposes. The Supreme Decree went into effect on 1 January 2019.

A country or jurisdiction may be included on the black list if one of the following requirements is met:

- There is no information exchange agreement or double tax treaty containing a clause for the exchange of information in force with Peru.
- There is no transparency at a legal, regulatory or administrative level.
- The corporate income tax (CIT) rate is zero or lower than 17.7% (60% of the current CIT rate in Peru, which is 29.5%).

A country or jurisdiction may be excluded from the list if one of the following requirements is met:

- The country is a member of the Organisation for Economic Co-operation and Development (OECD).
- There is a double tax treaty in force with Peru that includes a clause for the exchange of information.
- The country effectively exchanges information with Peru without limitation based on domestic legislation or administrative practice.

Inclusions or exclusions apply as of 1 January of the year following the inclusion/exclusion.

A jurisdiction is a preferential tax regime if at least two of the following requirements are met:

- An information exchange agreement or double tax treaty containing a clause for the exchange of information is not in force with Peru.
- There is no transparency at a legal, regulatory or administrative level.
- The CIT rate is zero or lower than 17.7% (60% of the current CIT rate in Peru, which is 29.5%).
- Tax benefits are available for nonresidents, but not residents.
- The OECD considers the jurisdiction to be a harmful jurisdiction due to the lack of a requirement that there be a substantive local presence, real activities or economic substance.

Under the Supreme Decree, the transfer pricing rules apply to transactions entered with entities subject to preferential tax regimes. Previously, the transfer pricing rules only applied to transactions with related parties or residents of tax havens.

### e) Advance Pricing Agreement (APA)

The consultations binding regulated in article 95-A of the Tax Code in the event of a consultation on the transfer price law application such response shall be binding on SUNAT.

The PITL explicitly sets forth the possibility of APAs. The conditions and characteristics are detailed in chapter XIX of the PITL Regulations. APAs are available for cross-border transactions only.

Under the APA procedure, the taxpayer must file a request containing the proposed transfer pricing method, the comparable transactions or enterprises, the supporting data including the years analysed, the adjustments to the selected comparables, the exact price or range of prices, the amount of compensation or profit margin, and the hypotheses used.

The SUNAT has 12 months to review the request; during the period the taxpayer can modify the request. In case the Peruvian Tax Authority does not make a decision within the 12 months, the request is rejected.

APAs apply to the fiscal year of approval of the request and the 3 subsequent years.

Supreme Decree 258 introduced amendments into the PITL regulation, effective as of fiscal year 2013; the term that the Tax Administration is required to examine the APA proposal submitted by the taxpayer is extended from 12 to 24 months and may be extended for another 12 months. Furthermore, taxpayers who sign such agreements shall submit, together with their transfer pricing declaration, an annual report that describes the steps and demonstrates compliance with the terms of the agreement, pending approval of the forms and conditions of this report.

### f) Audit Practice

The Peruvian tax authority is the Superintendencia Nacional de Adminstración Tributaria (SUNAT). SUNAT has issued required information with regard to related parties and transfer pricing methodology for general tax audits. During the audit, the taxpayer may informally clarify issues, present evidence to support facts and discuss issues.

The burden of proof lies with the taxpayer. However, a challenge by the SUNAT requires supporting from the taxpayer in order for them to pass a court trial test.

Legislative Decree 1124 introduced amendments of the PITL and Tax Code, effective as of fiscal year 2013, modifying the first and second paragraph of subsection c) of Article 32-A of the Act, as follows:

- Only proceed to adjust the value agreed between the parties when SUNAT determines lower tax in a particular country than it would apply by implementing the transfer pricing rules;
- SUNAT can adjust the agreed value even without complying with the above assumption, if this has an impact on the determination of a greater tax in the country in transactions with other related parties;
- This evaluation should be considered for each transaction or group of transactions, according to the assessment that was made when applying the respective method.

## 3. Transfer Pricing Documentation

### a) Level of Documentation

Until year 2015 taxpayers that have carried out transactions with related parties and from, to or through tax havens in excess of PEN 200,0000 (approximately USD 62,500) have to declare them, using the telematic declaration platform suite (PDT) through the module PDT 3560 (information basis only, no analysis).

The preparation of a Transfer Pricing Study (TPS) is necessary every fiscal year until year 2015 when:

- the taxpayer presents an annual turnover in excess of PEN 6 million (approximately USD 1,875,000) and has carried out transactions with related parties and from, to or through tax havens in excess of PEN 1,000,0000 (approximately USD 312,500); and/or
- the taxpayer has transferred goods to related parties and/or from, to or through tax havens, of which market value is less than its book value.

The TPS can only be prepared until year 2015 and declared in PDF form using the telematic declaration platform suite (PDT) through the module PDT 3560.

For the following years the TPS and the PDT 3560, have been replaced by the Local Report using the virtual form 3560, the Master File, virtual form 3561 and the Country-by-Country Report, virtual form 3561 accessing using a password through the SUNAT Online Declaration (SOL) portal.

The tax payer is required to prepare the following transfer pricing documentation:

- Master file consistent with Annex I to Chapter V of the OECD Transfer Pricing Guidelines;
- Local file consistent with Annex II to Chapter V of the OECD Transfer Pricing Guidelines;
- Country-by-country report consistent with Annex III to Chapter V of the OECD Transfer Pricing Guidelines.

**Master file**

Threshold: accrued group income exceeds the 20000 UIT (approximately USD 25.3 million). Timing for submission: yearly. The Master file first filing obligation will be required in 2018 and corresponds to exercise 2017.

**Local file**

Threshold: accrued income exceeds the 2300 UIT (approximately USD 2,875,000). Timing for submission: yearly. The Local file first filing obligation is required in 2017 and corresponds to exercise 2016.

**Country-by-country report**

Threshold: PEN 2,700,000,000 (approximately USD 843.75 million). Timing for submission: yearly. The Country-by-country report first filing obligation will be required in 2018 and corresponds to exercise 2017.

### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

### e) Choice of Transfer Pricing Method

According to Article 32(A) of the PITL 6 methods are acceptable:

- CUP method; with the exception made to CUP applied to commodities (see above).
- resale price method;
- cost plus method;
- profit split method;
- residual profit split method;
- transactional net margin method.

According to Article 32-A, subsection e), the prices of transactions subject to the scope of this article shall be determined in accordance with the internationally accepted methods establishes in this law, for which purpose it should be considered to be the most appropriate to reflect the economic reality of the transaction.

According to the PITL, the prices of the transactions subject to the scope of the application of transfer pricing are determined in accordance with the most appropriate method to reflect the economic reality of the transaction. Likewise, the regulation of the law mentioned above has provisions to establish the most appropriate transfer pricing method according to the certain criteria:

- Compatibility with the business or commercial structure of the company or entity;
- Be provided with the best quality and quantity of information available for a proper application and justification;
- The most appropriate degree of comparability between parties, transactions and functions; and
- Require a lower level of adjustment in order to eliminate the differences between facts and comparable situations.

Exceptionally if none of the referred methods can be applied due to special characteristics or nature, other reasonable methods will be allowed. Legislative Decree N° 1312, published on 31 December 2016 introduced the possibility of applying other methods.

### f) Economic Analysis - Benchmark Study

The jurisdiction largely follows the guidance on comparability analysis outlined in Chapter III of the OECD Transfer Pricing Guidelines.

There is a preference for domestic comparables over foreign comparables. Local industry-specific information can be obtained from a number of industry associations. Another reference is the financial statements which listed companies file with the Peruvian Securities and Exchange Commissions (SMV). However, public information on local comparable transactions is available only to a narrow extent, as a consequence, foreign comparables are frequently used. Article 32 of the PITL explicitly allows this practice, provided the necessary adjustments are made to reflect market differences.

A specific interpretation of the Tax Code could authorize the SUNAT to use secret comparables. However, such interpretation would not pass a court trial test on the basis of an argument of violation of the constitutional rights of due process and defence.

Supreme Decree 258 introduced amendments to Article 110-A° of the PITL Regulation, concerning the use of comparables, effective as of fiscal year 2013; a transaction is not considered comparable when one of the parties owns more than 5% of the capital of the other party; or when the parties involving in the transaction are joint ventures or in other types of associated contracts, in which the parties transfer goods and services for an identical price to another party in the same entity.

### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept.

### h) Financial Statements

On October 14, 2010 the Peruvian Securities regulator issued resolution CONASEV N° 102-2010-EF/94.01.1 (later amended by Resolución de Superintendencia N° 00043-2012) by which public filers in the local Stock Market must prepare financial statements under IFRS as issued by the International Accounting Standard Board (IASB) since 2012.[2]

[2] peru financial statements - Search (bing.com)

On June 25 2011, the Peruvian Congress enacted Ley N° 29720 requiring all private companies to file with the SMV financial statements prepared in conformity with IFRS as issued by the IASB following endorsement of those standards by the standard-setter for non-listed companies (Consejo Normativo de Contabilidad, CNC). This was followed on 27 April 2012 by resolution N° 011-2012-SMV/01 issued by the SMV requiring non-public filers in the local Stock Market to prepare financial statements under IFRS as issued by the International Accounting Standard Board (IASB) in phases as follows:

(a) companies with total assets and/or net revenues higher than US$ 40 million (this is an approximate conversion of the 30,000 taxable units mentioned in the resolution) should have audited financial statements prepared under IFRS as issued by IASB for for fiscal years ended December 31, 2013 with early application being optional;

(b) companies with total assets and/or net revenues higher than US$ 4 million (this is an approximate conversion of the 3,000 taxable units mentioned in the resolution) should have audited financial statements prepared under IFRS as issued by IASB for fiscal years ended December 31, 2014 with early application being optional.

### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

| | Prepare or File? | Format | Deadline | Notification Deadline* | Threshold* (Yes/No) | Local Language (Yes/No)*(If "No", it can be filed in English) |
|---|---|---|---|---|---|---|
| **Corporate Income Tax** | File | Local IFRS | First week of April. | No | No | Yes |
| **Master File** | File | Form 3561 | October, 15th. | No | Yes | Yes |
| **Local File** | File | Form 3560 | June, 15th. | No | Yes | Yes |
| **CbCR** | File | Form 3562 | October, 15th. | Yes | Yes | Yes |
| **Local Form** | N/A | N/A | N/A | N/A | N/A | N/A |
| **Annual Accounts** | Prepare | Local IFRS | June, 30th. | N/A | No | Yes |
| **Segmented P&L** | N/A | N/A | N/A | N/A | N/A | N/A |

| |
|---|
| * Peru has signed the MCAA agreement for the filing of CBCR. |
| * Peru does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises. |

## j) Mandatory Language

Documentation should be drafted in Spanish. It is currently not clear whether the SUNAT accepts that English presentation of some parts of the documentation (e.g., business description of foreign comparables) or those should be translated into Spanish. This issue normally arises during audits and there is yet no clear stand on this.

## k) Notification Requirement

There is no notification requirement.

## l) Record Keeping

Records must be kept for 4 years from 1 January of the year in which the income tax declaration is due (generally 31 March of the year following the taxable period). This term is extended to 6 years if no income tax declaration was filed.

## m) Penalties and Interest Charges

According to numerals 2, 4 and 8 of article 176 of the Peruvian Tax Code, it is a punishable offense:

- Not to submit informative affidavit within the established deadlines. The penalty is a fine equivalent to 0.6 percent of net income, which cannot be less than 10 percent of a UIT (USD 125 approximately) or more than 25 UIT (USD 31,250 approximately);
- Submit the informative affidavit incompletely or with nonconforming information. The penalty is a fine equivalent to 30 percent of UIT (USD 375 approximately);
- Failure to file the informative affidavit without taking under consideration the guidelines and terms establish by SUNAT. It is punishable with a fine equivalent to 30 percent of a UIT (USD 375 approximately);
- Furthermore, new penalties have been approved by virtue of Legislative Decree N° 1311, published on 31 December 2016 that modified numeral 27 of article 177 of the Tax Code;
- Failure to show or to file the documentation and information referred to in subsection g) of article 32-A of the PITL; which, among others, support the informative affidavits Local Report, Master Report and/or Country by-Country Report, is a punishable offense with a fine equivalent to 0.6 percent of the net income, which cannot be less than 10 percent of a UIT or more than 25 UIT.