

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/taxation)

Name of Country: MEXICO Date of profile: January, 2014

| No. | Item | Reference to and wherever possible text of the provisions; Wherever needed and possible, a translation into one of the OECD official languages would be welcome |
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| 1 | Reference to the Arm's Length Principle | <p>Income Tax Law. Article 76-XII.- When legal entities enter into transactions with related parties, they shall determine their taxable revenues and authorized deductions by considering for such purposes the prices and amounts of compensation that would have been used with or between independent parties in comparable transactions. For such purposes, they shall apply the methods set forth in Article 180 of this Law, in the order indicated therein.</p> <p>Income Tax Law. Article 179, first paragraph.- Corporate taxpayers entering into transactions with related parties residing abroad, shall be obligated for purposes hereof to determine their taxable revenues and authorized deductions by considering for such purposes the prices and amounts of compensation that would have been used with or between independent parties in comparable transactions.</p> <p>* The Arm's Length Principle is also referred to in Articles 76-IX and 90 of the Income Tax Law.</p> |
| 2 | Reference to the OECD Transfer Pricing Guidelines (if any) | <p>Income Tax Law. Article 179, eight paragraph.- The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Board of the Organization for Economic Cooperation and Development in 1995, or those substituting for such Guidelines (to the extent that they are consistent with the provisions hereof and with treaties entered into by Mexico) shall be applicable for interpretation of the provisions of the chapter devoted to multinational enterprises.</p> |
| 3 | Definition of related parties | <p>Legal Entities General Provisions:</p> <p>Income Tax Law. Article 179, fifth and sixth paragraphs.- Two or more persons shall be deemed related parties when one of them participates directly or indirectly in the management, control or capital of the other(s). Members of joint ventures shall be deemed related parties, and also the persons that under this paragraph are considered related parties of such members.</p> <p>Likewise, permanent establishments and their parent companies shall be deemed related parties, and also the</p> |

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| | | <p>persons referred in the previous paragraph with their permanent establishments.</p> <p>Unless proven otherwise, it is assumed that transactions performed by residents in Mexico with companies or legal entities subject to preferential tax regimes are performed between related parties considering prices and amounts of compensation that differ from those which would have been used by or between independent parties in comparable transactions.</p> <p>Individuals General Provisions:</p> <p>Income Tax Law. Article 90, tenth paragraph.- Two or more persons shall be deemed related parties when one of them participates directly or indirectly in the management, control, or capital of the other(s), or when a person or group of persons participate, directly or indirectly, in the management, control, or capital of such persons, or when there is a link between these persons in terms of the Customs Law.</p> |
| 4 | Transfer pricing methods | <p>Note: According to Article 180, third paragraph of the Mexican Income Tax Law taxpayers are required to use the CUP method in their transfer pricing analyses. The use of methods described below in Sections II, III, IV, V and VI is allowed only when the CUP method is not appropriate to determine the arm's length nature of a transaction.</p> <p>Income Tax Law. Article 180, first paragraph.- For the purposes of article 179 hereof, taxpayers may apply the following methods:</p> <p>I. Comparable Uncontrolled Price method, which consists of considering the price or amount of compensation agreed with or between independent parties in comparable transactions.</p> <p>II. Resale Price method, which consists of determining the purchase price of a good, the rendering of a service or the compensation for any other transaction between related parties by multiplying the resale price, the price for the provision of the service, or the price for the referred transaction by the difference between one (1) and the gross profit percentage that would have been agreed by or between independent parties in comparable transactions. For purposes of this Section, gross profit percentage will be calculated by dividing gross profit by net sales.</p> <p>III. Cost Plus method, which consists of determining the sale price of a good, the rendering of a service or the</p> |

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| | <p>compensation for any other transaction between related parties by multiplying the cost of the good, the service, or the referred transaction by the result determined by the aggregate of one (1) plus the gross profit percentage that would had been agreed by or between independent parties in comparable transactions. For purposes of this Section, gross profit percentage will be calculated by dividing gross profit by net sales</p> <p>IV. Profit Split method, which consists of assigning the operating profit obtained by related parties, in the same proportion that would had been assigned by or between independent parties, as follows:</p> <p>a) Aggregate operating profit shall be determined by adding the operating profits obtained by each of the related parties engaged in the transaction,</p> <p>b) Aggregate operating profits shall be assigned to each related party in due consideration of elements such as the assets, costs and expenses of each related party, regarding the transactions performed between them.</p> <p>V. Residual profit split method, which consists of assigning the operating profit obtained by related parties, in the same proportion that would have been assigned by or between independent parties, as follows:</p> <p>a) Aggregate operating profit shall be determined by adding the operating profits obtained by each of the related parties engaged in the transaction.</p> <p>b) Aggregate operating profits shall be assigned as follows:</p> <p>1. The minimum profit, if any, corresponding to each of the related parties shall be determined through application of any of the methods referred to in Sections I, II, III, IV and VI of this Article, not considering the use of significant intangibles.</p> <p>2. The residual profit shall be determined, by subtracting the minimum profit referred to in subsection 1, above, from aggregate operating profit. Such residual profit will be allocated among the related parties engaged in the transaction based on, among other factors, the significant intangibles used for each related party, in the same proportion that would had been distributed by or between independent parties in comparable transactions.</p> <p>VI. Transactional operating profit margin, which consists of determining, in transactions between related parties, the</p> |
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| | | <p>operating profit that would have been obtained by comparable companies or independent parties in comparable transactions, based on profitability factors that consider variables such as assets, sales, costs, expenses and cash flows.</p> |
| <p>5</p> | <p>Transfer pricing documentation requirements</p> | <p>Income Tax Law. Article 76-IX, first paragraph:</p> <p>Taxpayers entering into transactions with related parties residing abroad, are required to obtain and keep supporting documentation, demonstrating that the amount of their revenues and deductions were determined in accordance with the prices or amounts of compensation that would have been used by independent parties in comparable transactions. Such documentation must contain the following information:</p> <ul style="list-style-type: none"> a) Name, corporate name, address and residence for tax purposes of the related persons with whom such transactions are executed, and support documentation demonstrating the direct or indirect participation among such related parties; b) Information regarding the functions or activities performed, assets used and risks assumed by the taxpayer for each type of transaction. c) Information and supporting documentation regarding transactions entered into with related parties, and the amounts thereof, for each related party and for each type of transaction, in accordance with the categorization and data set forth in Article 179 hereof; d) The method applied pursuant to Article 180 hereof, including information and documentation on comparable transactions and enterprises, for each type of transaction; <p>Income Tax Law. Article 76-IX, second paragraph & Tax Miscellaneous/Temporary Regulation I.3.8.3 (DE MINIMIS RULE):</p> <p>Taxpayers engaging in business activities whose income in the immediately preceding fiscal year did not exceed MXN \$13,000,000.00 and taxpayers which income from the provision of professional services did not exceed MXN \$3,000,000.00 shall not be bound to comply with the obligation set forth in this Section, except those taxpayers referred to in the penultimate paragraph of Article 179 hereof.</p> <p>Income Tax Law. Article 76-IX, fourth/last paragraph (ACCOUNTING):</p> <p>The supporting documentation and information referred to in</p> |

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| | | <p>this Section must be recorded in accounting records, and transactions with related parties residing abroad must be identified therein.</p> <p>Income Tax Law. Article 76-X (TRANSFER PRICING INFORMATION RETURN):</p> <p>XIII. In conjunction with their annual return, taxpayers are required to submit the information regarding transactions entered into with related parties residing abroad, throughout the immediately preceding calendar year. To this end, they will use the official forms approved for such purpose by the tax authorities.</p> |
| 6 | <p>Specific transfer pricing audit procedures and / or specific transfer pricing penalties.</p> | <p>Transfer pricing audit procedures can be found mainly in:</p> <p>Federal Fiscal Code:</p> <p>Article 42, Article 46 and Article 52-A.</p> <p>Article 46-A.- Sets forth that the notice of proposed adjustment must be finished at the latest 24 months after the audit started.</p> <p>Transfer pricing penalties:</p> <p>Article 76.- Penalty on omitted tax whenever it is unveiled by the tax authority and as long as the taxpayer has TP documentation that supports its determination of taxable income: 27.5% or 37.5% of the omitted amount.</p> <p>In the case of losses: 15% - 20% of the excess of the reported over the real losses.</p> <p>However, if there is no TP documentation that supports the determination of taxable income the penalty will be 55% or 75% of the omitted amount, and 30% or 40% of the excess of the reported over the real losses, respectively.</p> <p>Articles 81-XVII and 82-XVII.- Whenever the taxpayer fails to inform about its transactions executed with related parties as set forth in Article 76 of Income Tax Law, a penalty of MXN \$61,000 to MXN \$122,010 is imposed.</p> <p>Articles 83-XV and 84-XIII.- Whenever the taxpayer fails to identify transactions executed with related parties residing abroad and report them accordingly to Article 76 of Income Tax Law in its accounting records, a penalty of MXN \$1,380 to MXN \$4,150 is imposed for each transaction.</p> |

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| 7 | Relevant regulations on Advance Pricing Arrangements | <p>Federal Fiscal Code. Article 34-A:</p> <p>Tax Authorities may solve consultations submitted by taxpayers related to the transfer pricing methodology used in their transactions entered into with related parties according to Article 179 of the Income Tax Law, as long as taxpayer provides the information, data and documentation needed for issuing a resolution. The resulting decision may arise from an agreement with the competent authority of a country with which Mexico has a double tax treaty in place.</p> <p>(SECOND PARAGRAPH) Resolutions issued by the Tax Authority as set forth in this article, may be applicable for the year of submission, for the previous year and also for the following three years after the submission. This period may be extended if the resolution arises from a Mutual Agreement Procedure conducted under the terms of an international treaty of which Mexico be part.</p> <p>(THIRD PARAGRAPH) The validity of the resolution may be bound to the fulfillment of requirements that prove that the transactions were performed according to the arm's length principle.</p> <p>Income Tax Law. Article 182: Foreign residents with maquila operation may exempt PE for this activity if the related Mexican Maquiladora Company applies to the Safe Harbor provisions or obtains an APA.</p> |
| 8 | Link to relevant Government Internet sites | http://www.sat.gob.mx |
| 9 | Other relevant information | <p>Income Tax Law. Article 28-XXVII.- Thin capitalization provisions.</p> <p>Income Tax Law. Article 182.- Safe Harbour provisions for the maquiladora industry are set forth in this Article.</p> |

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.