

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

Name of Country:  MEXICO  Date of profile:  January , 2009

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
1	<b>Reference to the Arm's Length Principle</b>	<b>Income Tax Law. Article 215.-</b> Corporate taxpayers executing operations with related parties residing abroad, shall be obligated for purposes hereof to determine their taxable revenues and authorized deductions by considering for said purposes the prices and amounts of compensation that would have been used by or between independent parties in comparable operations.
2	<b>Reference to the OECD Transfer Pricing Guidelines (if any)</b>	<b>Income Tax Law. Article 215.-</b> 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 said Guidelines (to the extent that they are congruent 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.
3	<b>Definition of related parties</b>	<b>Income Tax Law. Article 215.</b> Two or more persons shall be deemed related parties when one participates directly or indirectly in the administration, control or capital stock of the other(s). The persons integrating a joint venture and all persons deemed hereunder as related parties with such integrators shall be deemed related parties in such relationship
4	<b>Transfer pricing methods</b>	<p>Note: According to <b>Mexican Income Tax Law</b> taxpayers are required to use the CUP method in their transfer pricing analysis. The use of methods described below in II, III, IV, V and VI are allowed only when the CUP method has been discarded as appropriate for verifying the arm's length principle.</p> <p><b>Income Tax Law, article 216.</b> For the purposes of article 215 hereof, taxpayer may apply the following methods:</p> <p>I. Comparable Uncontrolled Price method, which consists of considering the price or amount of compensation covenanted by or between independent parties in comparable operations.</p> <p>II. Resale Price method, which consists of determining the acquisition price of an asset or of the rendering of a service or the compensation for any other operation between related parties by multiplying the resale price or that for which the service is rendered or that of such operation by the result determined by subtracting from unity the percentage of gross profit which would have been covenanted by or between independent parties in comparable operations. The percentage of gross profit shall be</p>

computed for purposes of this Section by dividing gross profit by net sales.

III. Cost Plus method, which consists of determining the sales price of an asset or of the rendering of a service or the compensation for any other operation between related parties by multiplying the cost of the asset, service or operation by the result determined by adding to unity the percentage of gross profit which would had been covenanted by or between independent parties in comparable operations. The percentage of gross profit shall be computed for purposes of this Section by dividing gross profit by net sales

IV. Profit Split method, which consists of assigning the operating profit obtained by related parties, in the proportion in which it would had been assigned by or between independent parties, in accordance with the following:

a) The aggregate operating profit shall be determined as the sum of the operating profits obtained by each of the related parties involved in the operation,

b) Aggregate operating profits shall be assigned to each of the related parties, in due consideration of elements such as the assets, costs and expenses of each relative to the operations between them.

V. Residual method of partition of profits, which consists of assigning the operating profits obtained by related parties in the proportions in which they would have been assigned by or between independent parties, as follows:

a) Aggregate operating profits shall be determined by adding the operating profit obtained by each of the related parties involved in the operation.

b) The aggregate operating profit shall be assigned as follows:

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 Section I, II, III, IV and VI of this Article, with no account taken of the use of significant intangibles.

2. The residual profit shall be determined, by subtracting the minimum profit referred to in subsection 1, above, from aggregate operating profit and distributing it among the related parties involved in the operation, in the proportion in which it would had been distributed by or between independent parties in comparable operations, with due account taken (among other elements) of the significant intangibles used by each.

		<p>VI. The method of transactional operating profit margins, which consists of determining, in transactions between related parties, the operating profit that would had been obtained by independent companies or parties in comparable operations, with basis on profit factors in which account is taken of variables such as assets, sales, cost, expenses and cash flows.</p>
<p><b>5</b></p>	<p><b>Transfer pricing documentation requirements</b></p>	<p><b>Income Tax Law, Article 86</b></p> <p>XII. In cases of taxpayers executing operations with related parties residing abroad, obtain and conserve evidentiary documents showing that the amount of their revenues and deductions were made in accordance with the prices or the amounts of compensation which would have been used by independent parties in comparable operations, and setting forth the following data:</p> <p>a) The name, corporate name, domicile and residence for tax purposes of the related persons with whom such operations are executed, and documents evidencing the direct or indirect participation as between said related parties;</p> <p>b) Information relative to functions or activities, assets used and risks assumed by the taxpayers for each type of operation.</p> <p>c) Information and documents relative to operations with parties in a relationship, and the amount thereof, by each party in a relationship and by each type of operation, in accordance with the classification and with the data provided for in Article 215 hereof;</p> <p>d) The method applied pursuant to Article 216 hereof, including information and documents on comparable operations and enterprises, for each type of operation;</p> <p>(2) Taxpayers not bound to comply Taxpayers engaging in business activities whose revenues in the next preceding fiscal year did not exceed MXP 13,000,000.00 and taxpayers whose revenue in said fiscal year from the rendering of professional services did not exceed MXP 3,000,000.00 shall not be bound to comply with the obligation established in this Section unless they are in the case referred to in the penultimate paragraph of Article 215 hereof.</p> <p>(3) Powers to evidence The powers to evidence compliance of the obligation provided in this Section shall only be exercised in respect of concluded fiscal years.</p> <p>(4) Accounting The documents and information referred to this Section shall be</p>

		<p>registered in accounting and identified therein as dealing with operations with related parties residing abroad.</p> <p>XIII. Filing jointly with the return for the fiscal year, on the official form approved for the purpose by the tax authorities, information on all operations performed in the next preceding fiscal year with related parties residing abroad.</p>
6	<p><b>Specific transfer pricing audit procedures and / or specific transfer pricing penalties.</b></p>	<p>Transfer pricing audit procedures can be found mainly in:</p> <p><b>Federal Fiscal Code:</b></p> <p><b>Article 52-A, Article 42 and Article 46</b></p> <p><b>Article 46-A</b> establishes that the notice of proposed adjustment has to be finished at the latest 24 months after the audit started.</p> <p>Transfer pricing penalties:</p> <p>Federal Fiscal Code:</p> <p><b>Article 76:</b> 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% - 37.5% of the omitted quantity. In the case of loss, 15% - 20% of the difference between the reported and the real loss. However, if there is no TP documentation that supports the determination of taxable income the penalty will be 55%-75% of the omitted quantity.</p> <p><b>Articles 81-XVII and 82-XVII:</b> Whenever the taxpayer fails to inform about its operations with related parties as stated on Article 86 of Income Tax Law, a penalty of MXP 47,640 to MXP 95,280 is imposed.</p> <p><b>Articles 83-XV and 84-XIII:</b> Whenever the taxpayer fails to identify operations with foreign related parties and report them accordingly to Article 86 of Income Tax Law in its accounting records, a penalty of MXP 1120 to MXP 3370 is imposed for each operation.</p>
7	<p><b>Relevant regulations on Advance Pricing Arrangements</b></p>	<p><b>Federal Fiscal Code Article 34-A</b></p> <p>Tax authorities may solve consultations submitted by taxpayers related to the transfer pricing methodology used in their operations with related parties according to Article 215 of Income Tax Law, as long as taxpayer provides the information, data and documentations needed for issuing a resolution. The resulting decision may arise from an agreement with the competent authority of a country with whom Mexico has a double tax treaty</p>

		<p>in place.</p> <p>Resolutions issued by the authority as signalled 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 is part. The validity of the resolution may be bound to the fulfilment of requirements that prove that the operations were performed according to the arm's length principle.</p> <p><b>Income Tax Law, article 216-Bis.</b> Foreign residents with maquiladoras may exempt PE if they obtain an APA.</p>
<b>8</b>	<b>Link to relevant Government Internet sites</b>	<a href="http://www.sat.gob.mx">http://www.sat.gob.mx</a>
<b>9</b>	<b>Other relevant information</b>	<b>Income Tax Law, article 32-XXVI.</b> Thin capitalization provisions.

## 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.