The control of transfer pricing manipulation in Latin America and the Caribbean

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Message and acknowledgments from the working team

Throughout the course of our activities as professionals in the sphere of international taxation, we have been searching through different means for information on the status of legislations for controlling transfer pricing and their application in the Latin American and Caribbean countries. Following many consultations in public as well as private data bases, it became evident that there is much information on the subject, although very scattered or without the necessary level of detail for undertaking an in-depth although not a considerable time consuming analyses.

In recent years, the CIAT Directorate of International Cooperation and Taxation has developed many working documents on the evolution of the Latin American countries in this sphere. However, although these documents have been very valuable it is deemed that updated and even more detailed information should be made available to the international community.

Thus, it is our intention to fill this gap through the development of this paper.

Likewise, we wish to express our gratitude to all those who have been promoting this work, to "International Tax Compact (ITC)1" as well as the Office of International Cooperation (GIZ) of the Federal Republic of Germany, in addition to providing the necessary financial resources for its preparation; to the Inter-American Development Bank, the World Bank, the International Monetary Fund, the Central American Institute of Fiscal Studies (ICEFI) who have provided us their ideas and opinions on the subject; to all the authorities and officials of the tax administrations that provided information: AFIP of Argentina, SIN of Bolivia, SRF of Brazil, SII of Chile, DIAN of Colombia, DGT of Costa Rica, SRI of Ecuador, DGII of El Salvador, SAT of Guatemala, DEI of Honduras, TAJ of Jamaica, SAT of Mexico, DGI of Nicaragua, DGI of Panama, SET of Paraguay, SUNAT of Peru, DGII of the Dominican Republic, IRD of Trinidad and Tobago (IRD), DGI of Uruguay and SENIAT of Venezuela.

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1 "International Tax Compact" is an initiative promoted by the governments of Germany, Spain and France, for strengthening tax policy and administration in developing countries, to promote the mobilization of their local resources and the latter's fiscal sustainability.

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I. Introduction

The purpose of this paper is to make available to the international tax community the main legislative and administrative aspects in the field of transfer pricing in Latin America and a selection of countries of the Caribbean and is intended for tax administrations and specialists.

The globalization process is not only here to stay, but has also been exponentially promoted. Tax administrations need to consider the necessary bases for handling the risks and advantages appearing in the current scenario, whose characteristics are the internationalization of production and trade decisions, advances in technology and international transportation, the new business modalities and financial instruments, the agendas of international organizations and initiatives, among others.

According to this line of thought, international tax planning is no longer the patrimony of a group of multinational businesses. Small producers or service providers have easy access to different markets as well as to international tax information.

The need for transfer pricing rules arises from the nonexistence of a market reference price, thus requiring the establishment of calculation rules. It is a matter of interest to all public and private actors and is not necessarily linked to the issue of legality or not.

The intention of collaboration among States and the role of regional and international organizations and initiatives have been expressed by numerous tax fora. It has recently acquired momentum as a result of the Declarations of the G20, which urge the international community to develop more effective tax systems, as well as to prevent the erosion of national tax revenues.

Latin American and Caribbean countries have likewise paid greater attention to this problem, resulting from the abusive manipulation of transfer pricing by taxpayers operating globally or in various markets. Emerging countries have become aware that control in the manipulation of transfer pricing is not the exclusive patrimony of the more developed countries, where the tax burden from direct taxes is significantly greater than in the average of developing countries.

Nevertheless, when they began considering this matter, the governments of the Latin American and Caribbean countries noted that through these practices, many taxpayers and not only the transnational companies were affecting their tax bases in the pursuit for low or null taxation jurisdictions.

In response to this situation, approximately some 10 years ago, these States gradually began implementing tools (internal rules, tax agreements, etc.) and developing the tax administrations' for avoiding the loss of tax resources arising from this practice.

Accordingly, that which a decade ago was of interest to the more developed tax administrations of the world and involved only the large multinational companies, at present it is a priority matter for tax administrations of countries that even adopt territorial income taxation systems and involve smaller taxpayers and corporations.

Likewise, transfer pricing has also been an issue in local agendas, inasmuch as fraud cases have been generated, even within the very States, when different local jurisdictions may incorporate direct taxes, special systems or there are the so-called "free zones".

There is a high level of heterogeneity in the structure and context of the tax administrations of the Latin American and Caribbean countries, for which reason, it is complex to consider a standard plan that may be adapted to the practical needs and possibilities of all the States of the region.

The need for transfer pricing rules arises from the difficulty for fully determining intragroup transactions as well as for establishing a fair share of benefits to every agent involved in the transaction. Therefore, transfer pricing rules have been designed in such a way that each company within the business group may be treated as an independent entity acting under market conditions. The nonexistence of a reference market price calls for establishing calculation rules. It is a matter of interest to all public and private actors, and is not necessarily linked to the issue of legality or not.

Through this study, it may be observed that, although there is certain consensus at the doctrinal and practical levels for applying the "free market" or "full competency" or, as stated in English, the "arm's length principle, such consensus is nonexistent when it comes to determining the criteria and methods for applying the aforementioned principle.

At present, emerging states have achieved significant progress. For example, with respect to the control of abusive transfer pricing manipulation, 70% of the Latin American countries abide by general rules, 10% of these countries abide by basic principles, 78% have specialized offices or teams and 73% carry out field inspections.

Likewise, tax information exchange actions have become important. Many emerging countries have adopted the latest version of Article 26 of the OECD or UN Model Convention; administrative agreements have been signed based on the OECD and CIAT models, as well as on particular models such as the Central American or Andean ones. In addition ever more countries are adhering to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The challenge lies in achieving the effective exchange of tax information.

Finally, countries with greater expertise have begun renegotiation processes to evaluate the impact of the agreements on direct foreign investment and collection. By means of these agreements, such as those who have adopted similar articles to Article 9 of the OECD model and that relative to the "Mutual Agreement procedure" important aspects dealing with the control of abusive transfer pricing manipulation are also regulated.

A. Methodology

A significant amount of the information obtained was provided in the month of May 2012 by the member tax administrations of the Inter-American Center of Tax Administrations (CIAT) and organizations involved in taxation, in particular the subject matter of this study. Likewise, legislative and administrative innovations occurring until November 2012, in addition to various aspects arising from the doctrine and international practice have been taken into consideration.

Two questionnaires have been developed for standardizing, comparing, classifying and analyzing the information. One deals with legislative, administrative and operational aspects of transfer pricing control and is intended for the tax administrations and the other has allowed for obtaining the viewpoints and criteria of international organizations. Thus, 20 tax administrations from Latin American and Caribbean countries, namely: Federal Administration of Public Revenues of Argentina (AFIP), National Tax Service of Bolivia (SIN), Secretariat of Federal Revenues of Brazil (SRF), Internal Revenue Service of Chile (SII), Directorate of National Taxes and Customs of Colombia (DIAN), General Directorate of Taxation of Costa Rica (DGT), Internal Revenue Service of Ecuador (SRI), General Directorate of Internal Taxes of El Salvador (DGII), Superintendency of Tax Administration of Guatemala (SAT), Executive Directorate of Revenues of Honduras (DEI), Tax Administration of Jamaica (TAJ), Tax Administration Service of Mexico (SAT), General Directorate of Revenues of Nicaragua (DGI), General Directorate of Revenues of Panama (DGI), State Undersecretariat of Taxation of Paraguay (SET), National Superintendency of Customs and Tax Administration of Peru (SUNAT), General Directorate of Internal Taxes of the Dominican Republic (DGII), General Directorate of Public Finance of Trinidad and Tobago (IRD), General Directorate of Taxation of Uruguay (DGI) and National Integrated Customs and Tax Administration Service of Venezuela (SENIAT). Collaboration was also provided by four (4) organizations dealing with taxation: the Inter-American Development Bank (IDB), the World Bank, International Monetary Fund (IMF) and the Central American Institute of Fiscal Studies (ICEFI) contributed their viewpoints on transfer pricing in Latin America and the Caribbean.

B. Transfer pricing in Latin America and the Caribbean

There has been a disparity in the evolution of transfer pricing control in the Latin American and Caribbean countries. If countries were to be classified based on a series of indicators, such as the time when the legislations were issued and implemented, progress in control/auditing and human resources related aspects, five groups could be determined. The first group would consist of those countries that have been implementing regulations for over a decade, as is the case of Argentina, Brazil and Mexico; a second group of countries that have subsequently implemented legislations, but which have achieved substantial progress, as is the case of Chile, Dominican Republic, Ecuador and Venezuela. In all the countries included in the first two groups the legislations cover all or most of the aspects that allow for controlling transfer pricing and have units exclusively devoted to their control, documentation obligations, audits, as well as cases in courts.

A third group consists of countries that have strengthened the transfer pricing legislation and have created or are in the process of establishing specialized units, such as Colombia, Peru and Uruguay.

A fourth group of countries is still in an earlier stage of development of the rules since, even though their legislations have already been published, these have recently or have not yet entered into force. Likewise, their transfer pricing units are still in the process of development. The countries in this group are El Salvador, Guatemala, Honduras and Panama.

The rest of the countries analyzed, which comprise the fifth group, are those which, to date, have not introduced any rules. These are Bolivia, Costa Rica, Jamaica, Nicaragua, Paraguay and Trinidad and Tobago. However, all of the aforementioned countries, except for Jamaica and Bolivia, are in the process of formulating systems for the control of transfer pricing

Most of the tax administrations of the countries of the region have carried out audits for the control of transfer pricing, although in some cases, as a result of the rules adopted, without considering the international guidelines set by the Organization for Economic Cooperation and Development (OECD). The heterodoxy in the region is observed in the use of the method described in the Argentine rules[1], methods for the assessment of hotels and jeopardy assessments in the Dominican Republic; "protection systems" or *"safe harbors*" for assembly plants (maquiladoras) in Mexico and the Brazilian simplified methods which have generated extended discussions within the main international tax forums, and have set international guidelines and responses for the countries that have adopted them, when it comes to counteracting abusive planning of transfer pricing.

Undoubtedly, a school of learning and replication of best practices and experience has been developed in the countries of the region. For example, five countries (Brazil, Ecuador, Guatemala, Peru and Uruguay) drew from Argentina's experience and implemented similar measures to those of paragraph six of its rules for the appraisal of goods with quotation in transparent markets or "commodities", when there is an intermediary located abroad.

To begin this Study we may observe the previously described situation in the following table:

[2] Article 8 of the Profit Tax Law

Table I-1 Main transfer pricing aspects in countries of Latin America and the Caribbean

Countries	Considers legislation	Legislation prior to 2002	Examination in process	Cases in Courts	Use of data base	Transfer Pricing Areas in the Tax Administration	Groups
Argentina	Yes	Yes	Yes	Yes	Yes	Yes	I
Bolivia	No	No	No	No	No	No	V
Brazil	Yes	Yes	Yes	Yes	Yes	Yes	I
Chile	Yes	Yes	Yes	No	Yes	Yes	II
Colombia	Yes	Yes	No	No	Yes	Yes	III
Costa Rica	No	No	No	No	No	Yes	V
Ecuador	Yes	No	Yes	Yes	Yes	Yes	II
El Salvador	Yes	No	No	No	No	Yes	IV
Guatemala	Yes	No	No	No	No	Yes	IV
Honduras	Yes	No	No	No	No	No	IV
Jamaica	No	No	No	No	No	No	V
Mexico	Yes	Yes	Yes	Yes	Yes	Yes	I
Panama	Yes	No	No	No	No	Yes	IV
Nicaragua	No	No	No	No	No	No	V
Paraguay	No	No	No	No	No	No	V
Peru	Yes	Yes	Yes	No	Yes	Yes	III
Dominican Republic	Yes	No	Yes	Yes	Yes	Yes	II
Trinidad and Tobago	No	No	No	No	No	No	V
Uruguay	Yes	No	Yes	No	No	Yes	III
Venezuela	Yes	Yes	Yes	No	Yes	Yes	II

Source: Tax administrations consulted.

II. Practical considerations for implementing transfer pricing policies

A. Related parties: Definition

The term "related parties" has a connotation that goes beyond taxation. Related parties may have economic, legal, accounting-financial definitions, among others.

In economic terms, a related party would be defined according to the business relationship that may exist between the parties. For example: a company that acts as exclusive distributor of the other, has a particular level of relationship and probably very differentiated from another company that only sells a small proportion of the products of its supplier. Therefore, the different circumstances of a business define or could define in a special or particular manner, the relationship between two companies. Variables such as exclusiveness, availability and timeliness could especially define the relationships between suppliers and consumers. For example, a company that has a unique position as distributor in the market could probably arouse great interest in other companies wishing to enter said market. Thus, the distributing company could influence the determination of prices and the relations between the parties. On the other hand, the situation of a company not having such feature and which turns out to be a distributor with a low or moderate participation in the market would be very different. To conclude, the example shows that related parties can also be defined or have a connotation from the standpoint of the commercial or business (economic) relations of the parties involved.

Likewise, there is a definition from the legal standpoint. That is, the civil legal or corporate rule defines what is understood as related party. For example, the definition of a branch or subsidiary and the treatment which every rule gives it in different countries, thus defines the rules of the game thereof and their relationships.

The international financial reporting standards have given a definition to what is understood as related parties. The international accounting standard (IAS) 24 clearly explains what is meant by a related party.

On its part, tax conceptualization nourishes from different sources (such as those previously mentioned, experiences and risks identified in the auditing tasks by the administrations) to represent them in the rules, either through law or regulation. There are tax legislations that have provided definitions with a limited scope; while other countries have in their tax legislations extensive definitions of greater scope in terms of the number of assumptions of relationships considered.

To conclude, the definition of related parties for the tax administrations may go in hand with its control strategies and the definitions which various sources may have. A definition of related parties with greater scope or circumstances that define a relationship will allow the tax administrations a greater control of transactions and taxpayers. It may also imply objections by the taxpayers.

B. Transfer pricing methodology

The transfer pricing concept has been adopted by tax administrations of developed as well as developing countries. The basis for determining prices between related parties is the principle of "full competency" or its English equivalent: *"Arm's Length".*

The arm's length principle endeavors to regulate transactions between related companies, in order to ensure that these transactions be carried out as if by independent companies in similar circumstances. To carry out this complex task the Organization for Economic Cooperation and Development (OECD) included in its document: "*Transfer Pricing Guidelines for Multinational Companies and Tax Administrations*", a series of methodologies that would lead to determining whether the arm's length principle was being complied with or not.

According to the work presented by the OECD and its Guidelines, and in keeping with the evolution of the complexity of transactions carried out between the companies, the document includes two groups of methodologies: the so-called traditional and nontraditional methods. Basically, the Guidelines imply that the transaction-based or traditional methods prove compliance with the arm's length principle based on a direct analysis of the prices of goods or services transacted between related parties. On the other hand, the results-based or nontraditional methods seek to prove compliance with the arm's length principle by indirectly analyzing the price and focusing on the profitability margins of transactions carried out with related parties.

The implementation of these methodologies calls for: obtaining information, human resources training, legal framework, among others, which have become a challenge for the tax administrations and taxpayers of the world. Although the application of this methodology implies a challenge or difficulty for the tax administrations and taxpayers of the region, it must be noted that it is also the most complete reference framework that has ever been developed. Such methodology endeavors to provide standards for considering and implementing compliance with the arm's length principle and controlling the risk of abusive manipulation of transfer pricing in a harmonized manner.

Some tax administrations of the region have taken the OECD Guidelines and included in their rules the methods proposed by them. However, others have gone even further and have added, to the methods provided in the Guidelines, additional ones which are based or originate from their experiences and realities. Throughout this study it may be observed that some countries of the Region, since they are main exporters and suppliers of raw materials at the world level have taken the initiative to generate methodologies or mechanisms in line with their particular situations. Also worth noting is the case of Brazil which has developed its own methodology for controlling transfer pricing and which is a very interesting that will be analyzed in this study.

Finally, the application and compliance with the arm's length principle includes the development and implementation of analysis methodologies. These methods generated and designed by a group of member countries in the sphere of the OECD have served and continue to serve as reference at the world level, when it comes to implementing rules for the control of transfer pricing and applying them from the viewpoint of multinational companies as well as of the tax administrations. According to the particular circumstances of the region, the implementation of these methodologies has involved a particular complexity.

C. Adjustments that facilitate transfer pricing comparability

Within the context of each method, different adjustments may be made for increasing or improving the comparability within the framework of a transfer pricing analysis. These adjustments are made for reducing differences that could exist between prices and margins (gross or net) used by the party being tested and the prices or margins established in the market.

These differences may be adjusted or corrected through a transfer pricing analysis, in such a way that the parties being compared will have similar or equal conditions for comparability purposes. These adjustments should be carried out, upheld and documented by those who bear the burden of proof. In most cases the taxpayers and their advisers are the ones who must bear the burden of proof and thus, the analysis of adjustments and accordingly, their acceptance or rejection for comparability analysis purposes remain within the sphere of the tax administrations.

An adjustment that may facilitate comparability must always endeavor to correct situations or circumstances wherein the compared parties differ, in order to set bounds to the gap existing between both parties. The party being tested, in general, could be the most simple to analyze or, at some time, it could be the part from which more information may be obtained for the analysis. Thus, it could be the one with least adjustments when carrying out the comparability analysis. However, only the functional analysis may determine the circumstances for making the adjustment that may ultimately turn out to be the most appropriate one.

The functional analysis allows for determining where the adjustment is required. On many occasions, the functional analysis will depend on the adjustment that should be made, or on the information available for carrying it out. As in all phases of the analysis, it is important to have all the information available documented and sustained in order to carry out the respective adjustment, but above all, the purpose and basis for carrying out said adjustment.

Whenever an adjustment fails to be reasonable and precise, it shall be liable to rejection by the competent authority, it definitely being the essential aspect to be evaluated by a tax authority that is faced with an adjustment for increasing comparability. To the extent the two aforementioned elements are duly proven and documented, there is greater feasibility that a tax authority may accept the adjustment.

There are adjustments that are made with greater frequency than others and have even been included as examples in the OECD Guidelines; these being the capital adjustments. They facilitate comparability and since they are frequently used by the taxpayers, they are the most evaluated by the tax administrations. In addition, accounting reclassifications may be part of the adjustments for increasing comparability, for which reason they must be analyzed within the framework of these adjustments.

A common adjustment could occur when adding or eliminating those elements that are distorting the prices to be compared under the application of the comparable uncontrolled price method. This would be the case of freight, where, for example, if the price to be compared does not include the amount of freight, but the price obtained from an independent third party does include it, this will certainly be an adjustment to be made in order to place the compared prices in equal conditions. This will be thus, either by adding the amount of freight to the price being analyzed, or reducing it from the price shown by the independent third party. All will depend on the information available for making the adjustment.

On the other hand, it is necessary to observe the need for adjustments and whether they contribute to the objective of increasing comparability. When there are contradictions between the comparability analysis and the comparability adjustments made, both are highly questionable and accordingly, liable to rejection by the tax authority. It is essential to undertake a coherent transfer pricing analysis, from the figure analyzed up to the point in the range or interquartile where these figures are usually located.

Finally, it is important to bear in mind that the adjustments for increasing comparability must always be reviewed, analyzed and discussed by the tax authority, in order to verify that they are consistent in all their aspects and necessary for improving the comparability of prices or margins compared.

D. The transfer pricing procedure

The determination of transfer prices is a practice with a significant level of subjectivity, for which reason the opinions of the taxpayers tend to differ from those of the tax administrations and vice versa. The relevance, adequacy and reliability of the documents provided by the taxpayers, would contribute to avoid disputes and reduce the times for solving them. Relevance involves sending the documents on time and in an adequate manner; adequacy has to do with the level of detail with which the information is provide and reliability implies that the information must be trustworthy inasmuch as the source of the information may be validated and the respective standards for each type of information are fulfilled. For example, when we refer to contracts, the latter should be legalized, certified by a notary or registered in some chamber or registry, as provided in the country's commercial or tax legislation.

Information requirements for determining transfer prices tend to be exhaustive. According to the OECD Guidelines, the taxpayers and the treasury must necessarily be committed to close cooperation. On the one hand, taxpayers must make an effort to compile and provide the information; but, at the same time, the tax administrations must refrain from requesting information or rendering flexible the requests for information, whenever the taxpayer may not have access to it or must incur excessive costs. Chapter 5 of the OECD Guidelines explicitly refers to the taxpayers' obligation to prepare substantiating documents and to the responsibilities which the tax administrations must assume.

The substantiating documents must be the necessary ones for justifying that each of the transactions carried out by the taxpayer with its related parties have been appraised according to the specific guidelines of each internal legislation, whether or not agreed according to the principle of free competition or a similar one established in the legislation. The documentation required within the framework of systems for controlling transfer pricing may be considered standard at the world level, especially in the countries that follow the OECD Guidelines. According to it, the documents that may be requested, although not in a limiting manner, are the following:

1. That relative to each associated company participating in the related transaction subject to review, such as:

   i. general description of the company;
   ii. organizational structure of the business group;
   iii. combination of the property within the multinational group;
   iv. volume of sales and results of the operation in the preceding years closer to the operation under analysis;
   v. level of the taxpayer's transactions with associated foreign companies; for example, the amount of sales of inventoried assets, the rendering of services, the lease of important assets and the use and transmission of intangible assets and loan interests.

2. Information on price fixing, including the commercial strategies and other special circumstances of the case;

3. Description of the circumstances of the transactions between related parties and the comparables:

4. Analysis of the taxpayer's general situation from the commercial or industrial standpoint; as well as the information relative to the company's environment and the changes anticipated, the influence of these foresights in the sector wherein the taxpayer operates, the market's dimension, the competition conditions, the legal framework, the technological progress and the foreign exchange market.

5. Information regarding the functions carried out (bearing in mind the assets used and risks assumed);

6. Financial information.

Remittance of the aforementioned information tends to be obligatory, for which reason it must be included in the internal rules for regulating transfer pricing. It may be that the tax administrations could likewise need other information that would be requested by them when carrying out the substantiating or determining analyses. In addition to the information they may receive from the taxpayers, the administrations may also have access to information from other tax administrations through the use of the information exchange clauses included in the agreements or through specific agreements for such purposes.

Considering the experience of the countries of the region, the information may be included in an information return or in an annex to the Income Tax returns. In this latter case, a summary by type of operation and the results of the assessment for each related company may be requested on the one hand; while on the other, a study must be performed with all the information relevant to the transaction, the related parties, the comparables, the application of the assessment methodology, the functional analysis and all the information that may be pertinent for the transfer pricing determination. Said study is generally known as the "transfer pricing study".

E. Burden of proof

An element closely related to the document is the burden of proof. The legislations in different countries may adopt different approaches with respect to who bears the obligation and is responsible for proposing, preparing and providing the evidence in the application of the internal rules. When the burden of proof bears on the tax administration, in principle, the latter is the one who must provide the substantiating elements that may allow for calculating the taxable income, if it is proven that the taxpayer did not act in good faith. If on the other hand, the taxpayer has the burden of proof, the latter must provide the necessary evidence, since otherwise he could be subject to a severe sanction if he fails to do so.

In the transfer pricing literature it is understood that the burden of proof bears on the taxpayer when the latter is imposed regulations as regards the remittance of documents.[2] However, the burden of proof could be inverted toward the tax administration when the latter would want to counteract the taxpayer's position and submits arguments and data which prove that the price fixed or determined is not adjusted to the arm's length principle or the internal rules that govern transfer pricing application.

The fact that the burden of proof bears on the tax administration for purposes of transfer pricing evaluation does not exempt the taxpayer from the obligation of providing documents that may facilitate the examination. The taxpayer must be willing to cooperate and provide the documents that may allow for assessing the transfer prices since in many countries they are obliged to do by law.

[2] See United Nations Organization (UNO) Working Draft, Documentation page 12.

It is important that through internal or specifically transfer pricing legislation one may determine who has the burden of proof and thus avoid the taxpayer unfavorable consequences due to juridical uncertainty, as could be the case, for example, of double taxation. Given that the administrations may perform jeopardy assessments based on indexes and indicators, it could be that, for transfer pricing purposes, the rules for the tax administrations be based on transfer pricing guidelines, when the burden of proof bears on them. In this respect, the OECD Guidelines propose a valid point and that is, that when the burden of proof bears either on the tax administration or the taxpayer, it be proven that the prices have been assessed based on the arm's length principle. In this respect we quote paragraph 4.16 of the OECD guidelines:

> "*In practice, neither countries nor taxpayers should misuse the burden of proof in the manner described. Because of the difficulties with transfer pricing analyses, it would be appropriate for both taxpayers and tax administrations to take special care and to use restraint in relying on the burden of proof in the course of the examination of a transfer pricing case. More particularly, as a matter of good practice, the burden of proof should not be misused by tax administrations or taxpayers as a justification for making groundless or unverifiable assertions about transfer pricing. A tax administration should be prepared to make a good faith showing that its determination of transfer pricing is consistent with the arm's length principle even where the burden of proof is on the taxpayer, and the taxpayers similarly should be prepared to make a good faith showing that their transfer pricing is consistent with the arm's length principle regardless of where the burden of proof lies.*"

The truth is that in the countries of the region, although only in the minority of cases, the application of transfer pricing is not always based on the arm's length principle, for which reason there could situations that could not be solved in abidance with the arm's length principle but which could, instead generate double taxation.

F. Sanctions

In order that the taxpayer may comply with the requirements set by the rules in each country, there are specific sanctions to dissuade him from not complying with the transfer pricing rules. In theory, sanctions must be established in amounts that may exceed or be equivalent to transfer pricing compliance costs because if they are insignificant the taxpayer would be tempted not to comply. Perhaps that is the reason why many countries establish differentiated and specific sanctions for the transfer pricing system.

Sanctions may be established with respect to nonprovision or incomplete provision of information, nonfiling in due term, incomplete returns, for not applying the arm's length principle, or whichever one may be in force for transfer pricing valuation, among others. The amount of the specific sanctions may be established as an amount above the transactions with their related parties or the adjustment or could be calculated on the basis of a percentage thereof.

Practical considerations for implementing transfer pricing policies are undoubtedly points of interest to be reviewed by the tax administrations, especially those working on projects for including regulations or whose regulations are about to be implemented, without disregarding those tax administrations with experience in the application of regulations. The implementation of transfer pricing in the countries will be the one to determine correct compliance with the regulations established.

III. Main aspects of legal rules for controlling abusive manipulation of transfer pricing, adopted and being discussed by Latin American and Caribbean countries

A. Evolution of legislations that regulate transfer pricing in Latin American and Caribbean countries.

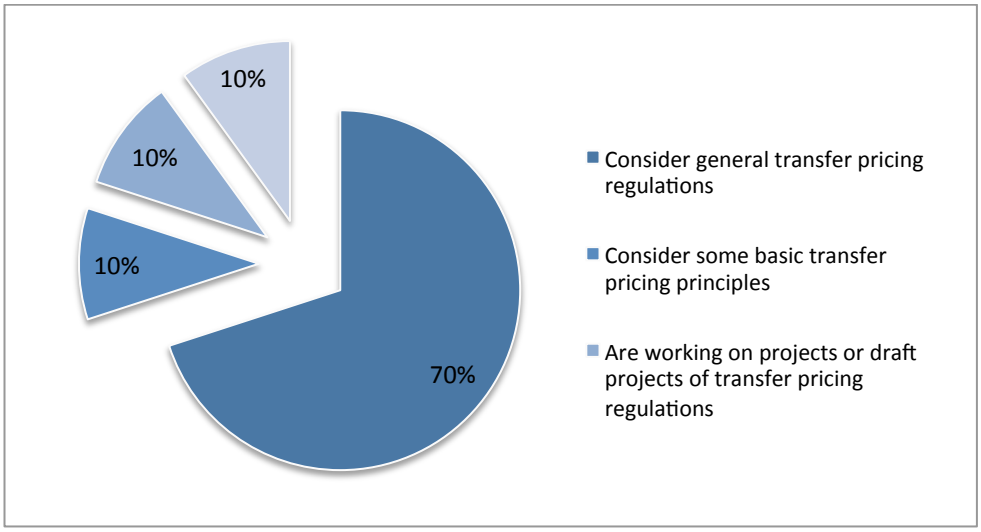
When dealing with Transfer Pricing, one must necessarily consider the economic, technological, social and cultural process of globalization in which all Latin American and Caribbean countries are involved. Such phenomenon in turn leads to analyzing transactions of and between this type of companies and their micro and macroeconomic effects.

Within the framework of the aforementioned globalization process and in tune with the activities of multinational companies one must observe the easy and speedy transfer of goods and services from one jurisdiction to another. Then, it is worth asking: What happens with taxes in this cross-border movement?

Starting in the nineties, the first reforms were introduced in the legislations of some Latin American countries such as: Mexico, Brazil, Argentina, among others, for the purpose of including therein the principles and methodologies for preventing abusive transfer pricing manipulation. Hereunder we will analyze the current situation in Latin America as well as in a selection of Caribbean countries in relation to this matter.

On observing the Latin American countries that have included regulatory provisions on transfer pricing or the countries that are currently working on a draft or bill for regulating this type of transactions, it was determined that of the twenty Latin American countries, fourteen had regulations for preventing abusive transfer pricing manipulation. The following graph shows the regulatory situation of the Latin American countries.

Graph III-1 Legislations that provide for or establish transfer pricing regulations in Latin America



Source: Working team carrying out this Study.

In graph III-1 it may be observed that 90% of the Latin American and Caribbean countries have recognized the importance of implementing transfer pricing legislation.

Shown below are the countries that have introduced rules for regulating abusive transfer pricing manipulation, classified according to the periods when they were published:

Table III-1 Countries that have adopted transfer pricing regulations

1992 – 1997	1998 – 2002	2003 – 2007	2008 – 2012
Brazil			
Mexico			
Chile			
	Argentina		
	Venezuela		
	Peru		
	Colombia		
		Dominican Republic	
		Costa Rica[1/]	
		Ecuador	
		Uruguay	
			El Salvador
			Bolivia[1/]
			Panama
			Honduras
			Guatemala

1/ Countries which have established some basic principles in relation to transfer pricing.

Source: Tax administrations consulted.

The tax administrations of Latin American countries having general transfer pricing regulations have included the arm's length principle. The countries which have established basic transfer pricing principles apply the economic reality principle. Worth highlighting is the specific case of Brazil, whose transfer pricing system does not abide by the region's regulation, but is rather based on objective methods determined on the basis of fixed margins.

Latin American countries that have adopted general transfer pricing rules have introduced them through the General Law, except for El Salvador, Panama and the Dominican Republic which included them in their Tax Codes. In this sense, 78.57% of the countries use the General Law, while 21.43% apply it through the Tax Code. In addition, Nicaragua has issued an Administrative Rule for regulating transfer pricing.

The Caribbean countries have no transfer pricing legislation. Their regulations include general principles that could be useful for controlling transfer pricing. For example, Trinidad & Tobago's current legislation is based on the "*Artificial Transactions*"[3] legal provision included in section 67 of its Income Tax Act and Jamaica provides for the arm's length principle in its Tax Code.

Table III-2 shows the Latin American and Caribbean countries' transfer pricing anti-abusive regulations.

Table III-2 Current situation of countries with transfer pricing project

Countries without transfer pricing regulations – Current situation (Through November 2012)	
Nicaragua	**Paraguay**
There is an analysis and transfer pricing bill since 2004, as well as the information included in the proposed transfer pricing model law for Central America. It is believed that the latter will be introduced as an Administrative Rule (General Resolution).	The development of a Transfer Pricing bill is in process. The State Undersecretariat of Taxation is currently working on a draft Decree for Regulating Article 16 of Law 125/91.
Provision used by the tax administrations to handle transfer pricing cases or risks	
Market prices are applied internally to carry out risk analyses	Wholesale price: Article 16 of Law 125/91 and interpretation of generating event: Article 247 of Law 125/91.

Source: Tax administrations consulted.

It is important to point out that Costa Rica and Trinidad and Tobago are preparing specific bills for the transfer pricing system. It is expected that the first country will publish a regulation in the current year 2012, as an Administrative Rule (General Resolution). Trinidad and Tobago would be introducing it in its legislation, as a Code, within an approximate two-year period.

[4] "*Artificial Transactions*" within the context of the legislation refers to transactions which are not meant to be carried out; in other words, a fictitious transaction.

1. Regulatory framework

Latin America is in a continuous and dynamic process involving transfer pricing. There are different country categories: those who are working on bills, others who are in the process of implementing and introducing rules and those who have experience in examination processes.

The legal reference of the arm's length principle or the basis for sustaining transfer pricing in the countries of the region are shown in the following table:

Table III-3 Section of the transfer pricing rules

Countries	Rule
Argentina	LIG (Law 25.063/25.239/25.784) Articles. 8, 10, 11, 14 and 15, 15.1, 19 to 21, 129 and 130. Decree. 1037/00. RGs AFIP 1296/02, 1339/02, 1590/03, 1670/04, 1918/05, 1508/03, 1517/03, 1524/03, 1530/03, 1122/01, 1007/01.
Brazil	Articles. 18 to 24-B, of Law N° 9.430 of December 27, 1996. Administrative Rule: IN SRF N° 243 of November 11, 2002.
Bolivia	No specific rule.
Chile	Article 38 of the Income Tax Law (LIR), included in Decree-law N° 824, of 1974. Amendment in Law 20630 made on September 27, 2012, which becomes effective starting on January 1st, 2013.
Colombia	General Law: Articles 260-1 through 260-11 of the Tax Statute. Regulation: Decree 4349 of 2004.
Costa Rica	Guideline of the DGT N° 20-03. (Interpretative guideline: 20-03).
Ecuador	LRTI: Articles. 15. RALRTI: Articles. 84-91: Res: N° NAC-DGER2008-0464 and NAC-DGERCGC11-00029.
El Salvador	Tax Code, decree 230: Articles. 62-A, 124-A, 135 paragraph f), 199-B, 199-C, 199-D, 244 paragraph l).
Guatemala	Tax Updating Law, Volume I, Income Tax Law, Chapter VI, Articles 54 through 67.
Honduras	Decree Nº 232-2011, of December 10, 2011.
Mexico	Code: Articles 21, 34-A, 46, 46-A, 48, 70, 76, 81 fraction XVII, 82 fraction XVII, 83 fraction XV, and 84 fraction XIII of the Fiscal Code of the Federation. Articles 2, 32 fraction XXVI, 86 fractions XII, XIII and XV, 106, 133 fractions X and XI, 134 fraction III, 215, 216, 216-Bis, 217 of the Income Tax Law. Articles 68 and 110 of the Customs Law. Articles 53-G and 53-H of the Federal Rights Law. Articles 3 fraction VI and 18 fraction III of the Single Rate Corporate Tax Law. Article 276 of the Income Tax Law Regulation. Administrative Rules: Miscellaneous Rules I.2.1.19., I.2.14.4., I.2.15.10., I.3.3.1.12., II.2.8.4.1, II.2.8.4.2, II.2.10.2, II.3.5.2, and II.3.5.3 of the 2012 Fiscal Miscellaneous Resolution, in general. Miscellaneous Rules I.3.19.1., I.3.19.2., I.3.19.3., I.3.19.4., I.3.19.5., I.3.19.6., I.3.19.7., I.3.19.8., I.3.19.9., I.12.3.1, and I.12.7.1 of the 2012 Fiscal Miscellaneous Resolution, related to the maquila company system.
Panama	Articles 762-A to 762-Ñ, Chapter IX of Title I of Volume IV of the Fiscal Code of the Republic of Panama. Law 52, of August 28, 2012: Articles 7 to 14.

Countries	Rule
Peru	Income Tax Law Articles 32° and 32°-A. Regulation: 24°, 108° through 116. Amendment made on July 18 and 23, 2012. Legislative Decree N° 1112, 1120 and 1124, which becomes effective on January 1st, 2013.
Dominican Republic	Tax Code: Articles 281, 281 Bis, 281 Ter and 281. General Rule No.04-2011
Uruguay	General Law Nº 18.083: Articles 38 through 46 Chapter VII Title IV t.o. 1996. Regulation: Decrees 56/009 and 392/009. Resolutions DGI 2084/009, 2098/009 and 819/010.
Venezuela	Tax Code: Article 99 to 107. Articles 220 through 235. (Advance Agreements). Income Tax Law Articles 111 through 170. Administrative Order Nº SNAT/2003/2424 y Administrative Order Nº SNAT/2010/0090.

Source: Tax administrations consulted.

Three elements must be combined in order that a tax administration may evaluate transfer pricing. First, the transaction must take place; second, the parties involved must be related and third, they must be under different jurisdictions or tax systems, without discarding the fact that there may be legislations providing for local transfer pricing, related companies with domicile in the same country, as provided in Mexico and Ecuador.

The countries develop legislations that may allow them to control the income at the source or residence, according to their particular economic reality. The most widely accepted basic principle is the "arm's length principle". With respect to the application of the aforementioned principle, the region being analyzed is not the exception as regards its adoption, although one may point out other cases where another principle has been used or else it does not fully abide by the internationally accepted definition of the arm's length principle.

The following table shows how the arm's length principle is established in the legislations of the different countries analyzed:

Table III-4 Arm's length principle

Countries	Independent operator principle
Argentina	Transactions between related parties will be considered, for all purposes, as carried out between independent parties when the considerations and conditions are adapted to the normal market prices between independent parties. (Article 8, fourth paragraph and Article 14, third paragraph of the profit tax law. - Law N° 20628, text ordered in 1997 and its amendments).
Chile[1/]	Normal market prices, values or profitabilities that are agreed or obtained between independent parties in comparable transactions and circumstances. (Law 20630, Article 41-E)
Colombia	Determination of taxpayers and the independent operator or arm's length principle. (Subsection 1, Article 260-1, Tax Statute).

Countries	Independent operator principle
Ecuador	Is that whereby, when conditions between related parties are established or imposed in their commercial or financial transactions, which differ from this which would have been stipulated with or between independent parties, the earnings which would have been obtained by one of the parties if such conditions did not exist, but which, due to the application of those conditions were not obtained, will be subjected to taxation. (Internal Tax System Law: Article 15).
El Salvador	Provides that the prices of transactions carried out with related parties or parties domiciled in preferential tax systems, will be determined by using the prices and amounts of the considerations, taking into account for such transactions the market prices used in the transfer of goods or rendering of services of the same species, between independent individuals. (First subsection of Article 62-A of the Tax Code).
Guatemala	The price or amount for a specific operation which the independent parties had agreed under conditions of the arm's length principle in transactions comparable to those carried out. (Tax Updating Law, Article 54).
Honduras	Is the one that deals with commercial and financial transactions between related parties, as if they would operate as independent companies in a comparable situation, thereby offering an equitable tax treatment between multinational and independent companies. (Decree Nº 232-2011: Article 3, paragraph 5).
Mexico	Taxpayers entering into transactions with related parties must determine the amount of their cumulative revenues and their authorized deductions,"… *considering for those transactions the prices and amounts of considerations they would have used with or between independent parties in comparable transactions*..." (Article 86, fraction XII first paragraph and fraction XV, 106 next to last paragraph, and 215 first paragraph of the Income Tax Law. Article 18 fraction III of the Single Rate Corporate Tax Law).
Panama	Transactions carried out by taxpayers with related parties must be valued according to the arm's length principle; that is, regular and extraordinary income and costs and deductions necessary for carrying out those transactions must be determined by considering the price or amount that would have been agreed by independent parties under similar circumstances in arm's length conditions. (Article 762-A, Chapter IX of Title I of Volume IV of the Fiscal Code of the Republic of Panama).
Peru	In cases of sales, contributions of goods and other property transfers, rendering of services and any other type of transaction in any capacity, the value assigned to the goods, services and other considerations for purposes of the Tax, will be the market value. (Income Tax Law, Article 32).
Dominican Republic	It is provided that the juridical acts carried out between a local foreign capital company and an individual or corporation domiciled abroad, which may directly or indirectly control it, shall be considered, in principle, as carried out between independent parties when their provisions are adapted to the normal market practices between independent entities. However, in no case will deduction be

Countries	Independent operator principle
	admitted of payments made by the permanent establishments to its controller abroad, if the thirty percent (30%) withholdings have not been paid[4]. (Article 281 of the Tax Code).
Uruguay	The transactions which taxpayers subject to this tax carry out with individuals or related entities, will be considered for all purposes, as carried out between independent parties when their considerations and conditions abide by the normal market practices between independent entities, regardless of the cases in which limitations to the deduction of expenses for determining the net income have been established. (Article 38 of Law Nº 18.083).
Venezuela	Taxpayers carrying out transactions with related parties are obliged, for tax purposes, to determine their revenues, costs and deductions, considering for such transactions, the prices and amounts of considerations they would have used with or between independent parties in comparable transactions. (Article 111 of the Income Tax Law).

1/ Amendment in Law 20630 made on September 27, 2012, which entered into force on January 1st, 2013. Until 31/12/12 it had been established as follows: Market prices or values between unrelated parties in similar transactions. (Subsection three of article 38 of the ITL).

Source: Tax administrations consulted.

Brazil, on its part, treats transfer pricing according to its own criteria. To consider that a transaction has been determined at values which a third independent party would have agreed under similar conditions, an analysis is made of costs, expenses and charges for goods, services and fees included in the import or acquisition documents, in transactions between related parties, but will only be deductible in determining the tax base by an amount that does not exceed the price determined by one of the methods established in the Law.

The predominant criteria when establishing systems for transfer pricing control are those stipulated by the OECD. Nevertheless, most of the countries analyzed have considered variations to these criteria. The following table shows the countries grouped according to the criteria used in their legislations.

[5] While this document was being concluded, the Dominican Republic approved amendments to its Tax Law which include modifications to the transfer pricing system. The current amendments to the Law have given way to constant protests and pressures for their annulment and thus, the recent amendments are included as footnotes whenever applicable.

The independent operator definition was modified according to Law Nº 253-12, of Friday, November 9, 2012 and hereinafter shall read as follows: *"Transactions between a resident and an individual, corporation or related entity must be agreed according to the prices or amounts that would have been agreed between independent parties, in comparable transactions and under equal or similar circumstances."*

Table III-5 Criteria used in the country legislations

OECD Criteria	OECD and country's own criteria	Own criteria
Chile	Argentina	Brazil[1/]
Colombia	Ecuador	
Costa Rica[2/]	El Salvador	
	Guatemala	
	Honduras	
	Mexico	
	Panama[3/]	
	Peru	
	Dominican Republic	
	Uruguay	
	Venezuela	

1/ Brazil adopts the fixed margins methodology through the "Cost Plus" and "Resale Price" methods.

2/ Criteria applied more in practice than what is provided in the legislation.

3/ Official Gazette, Tuesday, August 28, 2012 – No 27108: Law 52, which amends the Fiscal Code and issues other tax provisions, becoming effective on January 1st, 2013. It is observed that their criteria are similar to those established by the OECD.

Source: Tax administrations consulted.

The implementation of these criteria calls for determining the scope of their application. That is, the taxpayers and the commercial and/or financial transactions that will be subjected to the transfer pricing regulation. The table below shows the scope of application of the systems for transfer pricing control in the different countries analyzed:

Table III-6 Description of the regulations for transactions subject to transfer pricing

Countries	Transaction
Argentina	International transactions of any nature, with related persons or entities abroad or with individuals or corporations domiciled, established or located in countries with low or null taxation, in this latter assumption, whether there is a relationship or not, regardless of the amount of the transactions carried out are subject to the aforementioned transfer pricing regulation.
Brazil	All imports between related companies and the exports between those companies when the prices agreed are lower than 90% of the price established in the local market.
Chile	All transactions between a local taxpayer and a related party abroad.
Colombia	The income taxpayers that are subject to complying with the formal Transfer Pricing obligations are those carrying out transactions with economic related parties or related parties abroad whose gross net worth, as of December 31, 2010 was equal to or above 100,000 Tax Value Units (TVU) or whose gross income may be equal to or above 61,000 UVT, as well as those taxpayers who regardless of the maximum amounts indicated, carry out transactions with residents or persons domiciled in tax havens.
Costa Rica	Any transaction would be subject to the system. The law does not provide for any threshold, as of which there is an obligation to comply.

Countries	Transaction
Ecuador	All commercial or financial transactions with: related parties, parties located in tax havens or with an indirect economic interest.
El Salvador	Comprises all operations or transactions carried out with related parties or parties domiciled in preferential tax systems, without any distinction.
Guatemala	The valuation regulations of transactions between related parties are applied to any transaction between a party resident in Guatemala and the other party resident abroad, and which may have effects in the assessment of the tax base in the period in which the transaction is carried out as well as in subsequent periods.
Honduras	All transactions carried out between related parties.
Mexico	All taxpayers carrying out transactions between related parties, except for individuals considered small taxpayers according to the terms of Title IV, of the general provisions of the Income Tax Law for individuals, are subject to the transfer pricing system.
Panama	Any transaction which a taxpayer may carry out with related parties that are fiscal residents of other jurisdictions, provided that such transactions may have effects on their revenues, costs or deductions for the assessment of the tax base, for income tax purposes, in the tax period when said transaction is declared or carried out. [1/]
Peru	Transactions between related parties or carried out from, to or through countries or territories with low or null taxation, where the prices and amounts of the considerations that would have been agreed with or between independent parties in comparable transactions, under equal or similar conditions and the valuation agreed would have determined an income tax payment in the country, lower than that which would have corresponded from the application of the market value.
Dominican Republic	All transactions carried out between local foreign capital companies with another individual or corporation domiciled abroad. [2/]
Uruguay	All the transactions carried out between taxpayers of the Income Tax on Economic Activities and related entities abroad.
Venezuela	All transactions with a related party are subject thereto.

[1/] According to the Official Gazette of March 28, 2012 - No 27108: Law 52, which amends the Fiscal Code and issues other fiscal provisions becoming effective on January 1st, 2013. The provision until December 31, 2012: Is applicable to any transaction which a taxpayer may carry out with related parties that are fiscal residents of countries that may have entered into Treaties or Agreements to Avoid Double Taxation and which may have effects such as revenues, costs or reductions in the assessment of the tax base for Income Tax purposes.

[2/] Amended according to Law No 253-12, of Friday, November 9, 2012: Transactions carried out between a resident and a local or foreign individual, corporation or related entity and when a resident carries out commercial or financial transactions with (i) a related resident; or with (ii) individuals, corporations or entities domiciled, established or located in States or territories with preferential fiscal systems, of low or null taxation or tax havens whether or not the latter are related.

Source: Tax administrations consulted.

The following table shows the common criteria established in Latin America for transactions subject to transfer pricing:

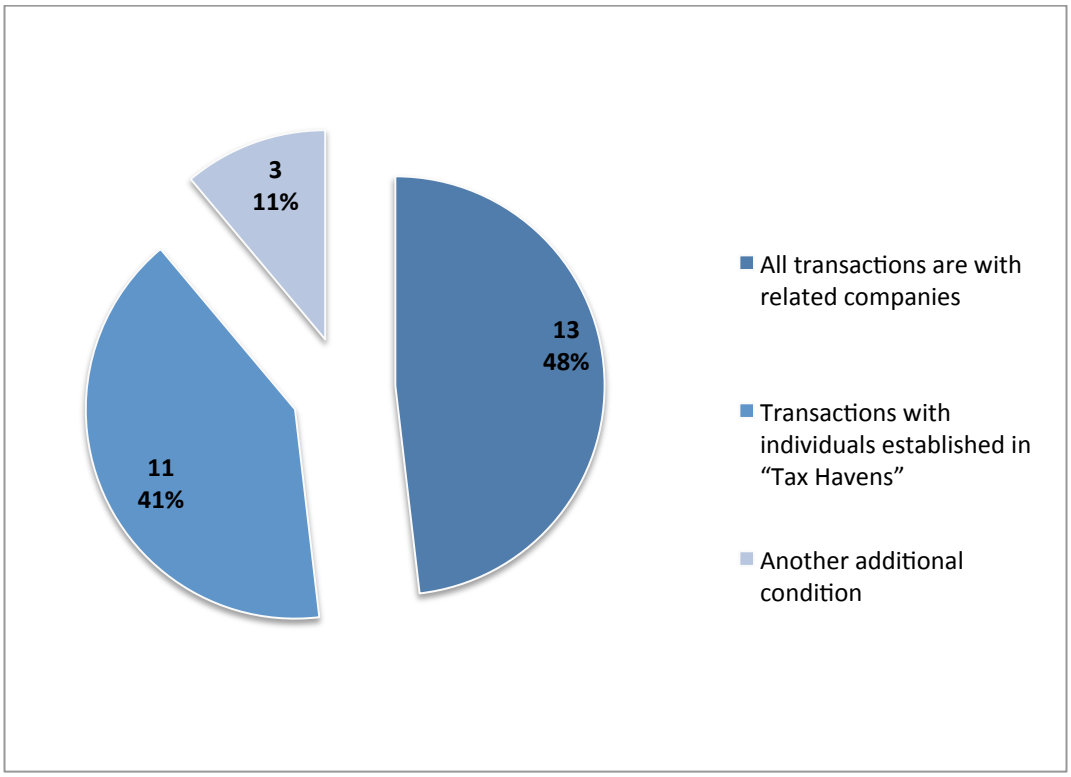
Table III-7 Table of transactions subject to transfer pricing

Countries	All the transactions with related parties	Transactions with individuals established in "Tax Havens"	Another additional condition
Argentina	X	X	There is no other condition for the transactions.
Brazil	X	X	When prices agreed are lower than 90% of the price established in the local market.
Chile	X	X	There is no other condition for the transactions.
Colombia		X	Economically related or related parties from abroad whose gross net worth through December 31, 2010, is equal to or above 100,000 Tax Value Units (TVU) or whose gross income is equal to or above 61,000 UVT
Costa Rica	X	X	There is no other condition for the transactions.
Ecuador	X	X	There is no other condition for the transactions.
El Salvador	X		There is no other condition for the transactions.
Guatemala	X		There is no other condition for the transactions.
Honduras	X	X	There is no other condition for the transactions.
Mexico	X		There is no other condition for the transactions.
Panama	1/		A taxpayer Graph carries out transactions with related parties that are fiscal residents of countries that have entered into Treaties or Agreements to Avoid Double Taxation.
Peru	X	X	There is no other condition for the transactions.
Dominican Republic	X	X	There is no other condition for the transactions.
Uruguay	X	X	There is no other condition for the transactions.
Venezuela	X	X	There is no other condition for the transactions.

1/ Official Gazette, Tuesday, August 28, 2012 – No 27108: Law 52, which amends the Fiscal Code and issues other tax provisions, becoming effective on January 1st, 2013, will be applied to any transaction carried out with a related party.
Source: Tax administrations consulted.

The description of these regulations may be seen graphically as follows, including the change in the Panamanian legislation that will enter into force on January 1st, 2013:

Graph III-2 Graph on transactions subject to transfer pricing



Source: Working team carrying out this Study.

After having determined the regulation, the use of the independent operator, the criteria used, as well as the transactions subject to analysis, it is necessary to establish who bears the burden of proof.

In four of the total countries analyzed, the burden of proof is on the tax administrations, while in the eleven remaining ones, it is established that the taxpayers are responsible for providing the evidentiary elements:

Table III-8 Burden of proof in transfer pricing

Tax Administration	Taxpayer
Chile	Argentina
Costa Rica	Brazil
Panama	Colombia
Uruguay	Ecuador
	El Salvador
	Guatemala
	Honduras
	Mexico
	Peru
	Dominican Republic
	Venezuela

Source: Tax administrations consulted.

When there are clear transfer pricing rules, taxpayers will have greater juridical security for carrying out their transactions, avoiding likewise, problems of interpretation and abusive use of regulations. However, the way in which regulations are established will depend on each country's situation when introducing them. To the extent the tax administrations and taxpayers move forward in applying and developing this issue, the result of their experiences will be the ones to establish the guidelines for implementing the necessary regulatory modifications.

2. Associated or related parties

In order that two companies may be considered related or associated, one of them should exercise influence over the rules must propose the assumptions that determine the level of relationship.

Usually, a typical rule, considers criteria of a juridical nature determined by direct or indirect participation in management, control or capital stock in another company or of a factual or operational nature, such as, for example: when there is exclusiveness as agent, distributor or concessionaire for the purchase-sale of goods, services or rights by the other; when a company assumes the losses or expenses of the other, etc.

The relationship assumptions considered in the legislations of the countries being analyzed are shown in the following table:

Table III-9 Criteria for determining associated or related parties

	Countries																
Relationship Assumption	**ARG**	**BOL**	**BRA**	**CHI**	**COL**	**CRC**	**ECU**	**ESA**	**GUA**	**HON**	**MEX**	**PAN**	**PAR**	**PER**	**DOM**	**URU**	**VEN**
Parent company and its branches, subsidiaries and permanent establishments	X		X	X	X	X	X	X	X		X	X	X	X	X	X	
Branches, subsidiaries and permanent establishments among themselves	X		X	X	X		X	X	X	X	X			X	X	X	
Direct or indirect participation in the management, administration control or capital	X	X	X	X	X		X	X	X	X	X	X		X	X	X	X
Same members, partners or stockholders participate in the board of directors or decision-making	X		X	1/	X		X	X	X	X	X			X	X	X	
Through kinships or affinity with managers or administrators up to a certain level	X		X	1/	X		X	X	X					X	X		
Through rights maintained in a trust (the association with the trust)					X		X										
Distribution of profits			X		X		X									X	
Actual management			X		X		X							X	X	X	
Proportion of transactions	X		X		X		X							X	X	X	
Price mechanisms used between the parties				X	X		X									X	
Corporations domiciled in tax havens or preferential tax systems	X		X	X	X		X	X			X			X	X	X	X
Others	X						X	X	X	X	X				X		

1/ Included in the Amendment to Law 20630 carried out on September 27, 2012, which enters into force on January 1st, 2013.

Source: Tax administrations consulted.

Every country may regulate or establish additional criteria for determining the universe of taxpayers or transactions subject to the transfer pricing system. The following table shows other relationship assumptions adopted by the countries analyzed:

Table III-10 Additional conditions for determining associated or related parties

Countries	Additional condition for determining associated or related parties
Bolivia	The related party is understood to be the local foreign capital company having 50% of the capital and/or the corresponding decision-making power, directly or indirectly, as well as the individuals or corporations domiciled or established outside the country.
Brazil	The capital related party holds twenty per cent (20%) of the capital with the right to vote. Participating in control as a related party requires having over fifty per cent (50%) of the stock with a right to vote.
Chile	Ten per cent (10%) is considered related, as per SII instructions in Circular N° 3 of 1998. In the case of corporations domiciled in tax havens or preferential tax systems, it refers to the economic relationship or joint action agreements, except for those tax havens which sign an agreement that may allow the exchange of relevant information for purposes of applying the tax provisions. [1/]
Colombia	The related party should have more than fifty per cent (50%) of stock.
Ecuador	The related party must have fifty per cent (50%) or more of total purchases or sales of goods, services or other type of transactions. To be considered related according to capital or control it must have it must have twenty five per cent (25%9 or more of the stock capital.
El Salvador	The related party must have at least twenty five per cent (25%) of the capital stock. They should be exclusive distributors and purchases from suppliers abroad should be greater than fifty per cent (50%) of total purchases.
Guatemala	The related party should have at least twenty five per cent (25%) of the capital stock. 1) A resident in Guatemala and an exclusive distributor and agent thereof as resident abroad. 2) An exclusive distributor and agent resident in Guatemala from a resident entity abroad.
Honduras	The related party should have more than 50% of stock.
Mexico	For individuals, if there is civil kinship; through legitimate or natural consanguinity without limitation of level in direct, collateral or transversal line within the fourth level; through affinity in direct or transversal line up to the second level; as well as between spouses.
Paraguay	It is established by defining that a subsidiary (branch or dependent) will be every entity controlled by the other with the power to direct the financial and operational policies of the subsidiary for the purpose of obtaining benefits from its activities.
Peru	The related party must have over thirty per cent (30%) of the stock.
Dominican Republic	The related party must have at least fifty per cent (50%) of the stock.
Uruguay	The related party must have at least ten per cent (10%) of the stock.

[1/] The exception is included in the Amendment to Law 20630 made on September 27, 2012, which will enter into force on January 1st, 2013

Source: Tax administrations consulted.

The following table shows the above statements in a more schematic and dynamic manner:

Table III-11 Additional conditions for determining associated or related parties

	COUNTRIES											
Relationship Assumption	**BOL**	**BRA**	**CHI**	**COL**	**ECU**	**ESA**	**GUA**	**HON**	**MEX**	**PER**	**DOM**	**URU**
Direct or indirect stock participation	50% or more	20% or more		50% or more	25% or more	25% or more	25% or more	50% or more		30% or more	50% or more	10% or more
Decision-making or control	50% or more	50% or more	X[1/]		25% or more						50% or more	
Presumption of relationship through domicile in tax haven or preferential tax system			X		X						X	
Proportion in transactions (e.g. purchases, sales, etc.)					50% or more	50% or more					50% or more[2/]	
Exclusive Agent			X[1/]				X				X	
Consanguinity and/or affinity			X[1/, 3/]		X[4/]				X[4/]		X[5/]	

[1/] Included in the Amendment to Law 20630 of September 27, which will enter into force on January 1st, 2013.
[2/] Included in the amendment to Law 253-12 of November 9, 2012.
[3/] Up to fourth level of consanguinity
[4/] Up to fourth level of consanguinity and second level of affinity
[5/] Up to second level of consanguinity or through affinity.
Source: Tax administrations consulted.

In most of the cases shown in the above table, the relationship criterion is determined according to a maximum or minimum percentage of capital stock. Collaterally, this helps the tax administrations to reduce the number of taxpayers subject to the regulation as well as to be more precise in controlling transactions between related parties.

3. Taxpayer obligations

The legislations of the countries shown in table III-12, provide for presenting a transfer pricing report. This report includes relevant information for transfer pricing analysis, since it endeavors to prove compliance with the arm's length principle by a company. In addition, annex VII-1 describes the rule that requires the presentation of the transfer pricing report in each of the countries analyzed.

The rule stipulates the frequency with which the report should be produced and the respective deadline for its presentation. Shown below are the characteristics of the informative systems of the countries analyzed, with respect to the transfer pricing report:

Table III-12 Presentation of the transfer pricing report

Countries	Frequency	Deadline
Argentina	Annual	The eighth month immediately following the closing of the fiscal period.
Brazil	Annual	In June of each year.
Chile[1/]	Annual	In June of each year.
Colombia	Annual	On June 30th of each year.
Ecuador	Annual	Two months after the deadline for filing the income tax return.
El Salvador	Annual	Three months after conclusion of the fiscal period.
Guatemala	Annual	On March 31 of each year.
Panama[2/]	Annual	Forty five days after receiving the request from the Tax Administration.
Peru	At the request of the Tax Administration.	According to the term granted by the Tax Administration.
Dominican Republic[3/]	Annual	Two months after the deadline for filing the income tax return.
Uruguay	Annual	On the ninth month immediately following the closing of the fiscal period.

1/ Included in the Amendment to Law 20630 of September 27, 2012 which will enter into force on January 1st, 2013.
2/ Official Gazette, Tuesday, August 28, 2012 – No 27108: Law 52, which amends the Fiscal Code and issues other tax provisions and becoming effective on January 1st, 2013.
3/ The taxpayer is not obliged to submit a transfer pricing study, but should have it ready when thus requested, two months after the date of filing of the Income Tax return.
Source: Tax administrations consulted.

In the same manner, the legislations may provide for the filing of a transfer pricing return describing in detail the information on transactions with connected or related parties subject to analysis. Most of the countries analyzed have provided for the filing of an information return; for example: Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Mexico, Panama, Peru, Dominican Republic, Uruguay and Venezuela. For additional details on what has been provided by these countries, see annex VII-2.

The following table shows the main items included in the transfer pricing returns implemented by the countries analyzed:

Table III-13 Main items of the transfer pricing return

Detail	ARG	CHI	BRA	COL	ECU	ESA	MEX	PAN	PER	DOM	URU	VEN[1/]
Asset transactions	X		X	X	X	X			X	X		
Liability transactions	X		X	X	X	X			X	X		
Income transactions	X	X	X	X	X	X	X[2/]	X	X	X	X	X
Disbursement transactions	X	X	X	X	X	X	X	X	X	X	X	X

1/ Transactions carried out with their related parties, Annex A.

2/ Specifically, cumulative revenues and authorized deductions.

Source: Tax administrations consulted.

Other information required from the taxpayers through a sworn return has to do with international transactions, distinguishing between those carried out with related and unrelated parties. In Latin America, only Argentina, El Salvador, Mexico and the Dominican Republic request the disaggregation within the return, of transactions between related and unrelated parties. In the case of Guatemala, as of November 2012, no criteria had been established for the filing of the sworn return.

In general, the legislation requires the preservation of evidentiary documents corresponding to the transfer pricing analysis. The following table shows which countries require the preservation of said information, how long it should be maintained and if any other document is require to support the transactions carried out between related parties.

Table III-14 Documents required by the countries

Country	Time	Other documents
Argentina	10 years[1/]	The rules in force do not specify the information in this respect.
Brazil	5 years	By means of an examination process the taxpayer may be required to submit any document proving his transactions.
Chile	3 or 6 years	Keep an individualized file of the persons with whom such transactions are carried out, in addition to the documents that may account for such transactions.
Colombia	5 years	Information in this respect is not specified in the rules in force.
Ecuador	7 years	Clarifications to the information provided in the transfer pricing report, detail of calculations, comparables, etc.
El Salvador	10 years	Information in this respect is not specified in the rules in force.
Guatemala	4 years	Export policies, articles of incorporation, notarial certificate of the legal representation, contracts, invoices, financial statements, documents supporting cost and expenses transactions and others depending on the line of business.
Mexico	5 years	Information on the taxpayer's accounting system and banking accounts.
Peru	4 years	Information in this respect is not specified.

Country	Time	Other documents
Dominican Republic	10 years	Audited financial statements, Customs import, clearance and receipts, copies of checks with their supporting documents, distribution of Dividends, if any, financial information of Branches, if any, copies of payrolls, copies of loan contracts (financial, related and other institutions), among others.
Uruguay	Until the date of statute of limitation of taxes	All other documents deemed pertinent for auditing purposes (balances, contracts, etc.)
Venezuela	Until the date of statute of limitation of taxes.	All the documents are stipulated in article 169 of the Income Tax Law, as well as any other which the Tax Administration may request the taxpayer.

1/ The documents and vouchers of transactions must be kept for a longer term when they deal with transactions or acts whose knowledge may be essential for the determination of the tax base.
Source: Tax administrations consulted.

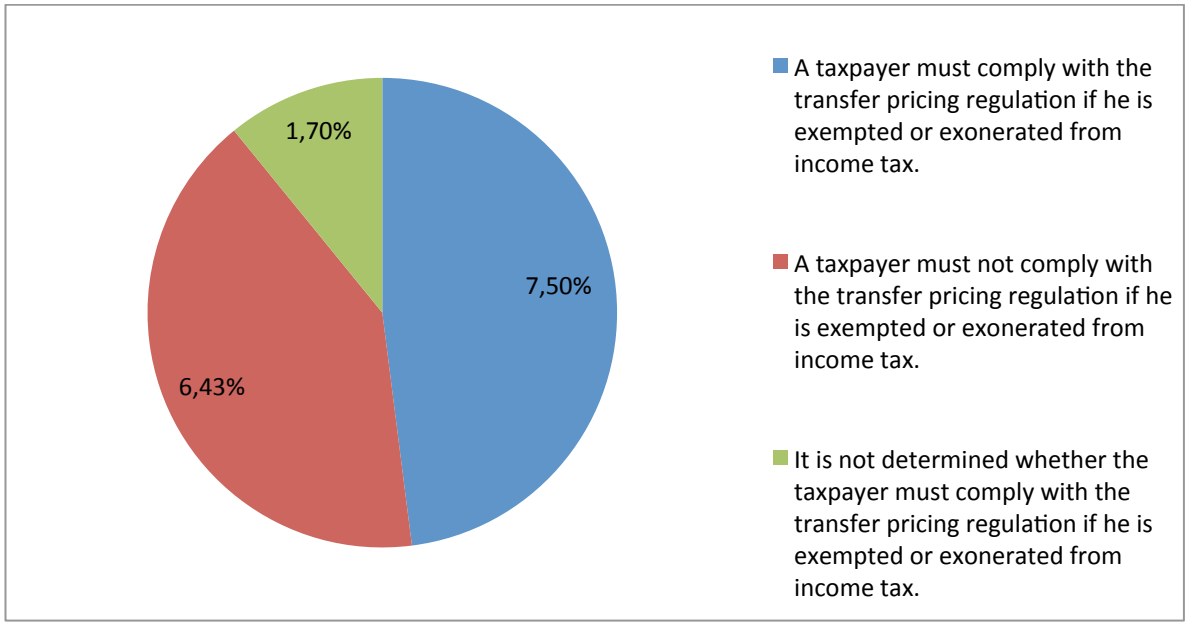
It is important to point out that the countries shown in the foregoing table provide that transactions must be declared and listed according to the instructions of each rule. In Colombia, in order to comply with the transfer pricing obligations, taxpayers must include in the information return all of the transactions carried out with related parties abroad. However, only those transactions which according to type exceed 10,000 TVUs, will subject to analysis of the substantiating documents.

In addition, Mexico published a resolution[5] pointing out an option for not obtaining and retaining substantiating documents on transfer pricing for those transactions entered into between related parties in the Mexican territory. The amendment deals mainly with extending the benefit of not retaining substantiating documents which was held by those taxpayers who entered into transactions with related parties that were residents abroad.

In accordance with the above, when a taxpayer is exempt from income tax, the obligation to request information and transfer pricing valuation would seem not to make any greater sense. However, there are different conceptions in the countries of Latin America. Six (6) countries (Argentina, Brazil, Colombia, Ecuador, El Salvador and Dominican Republic) understand that on being exempt from income tax, they need not comply with the information requirements, while there are 7 countries that believe they should do so; the latter being Chile, Guatemala, Mexico, Panama, Peru, Uruguay and Venezuela

[6] On November 12, 2012, published through the Official Gazette of the Federation, the Fourth Resolution amending the Miscellaneous Resolution for 2012.

Graph III-3 Income tax exemption and compliance with the transfer pricing rules



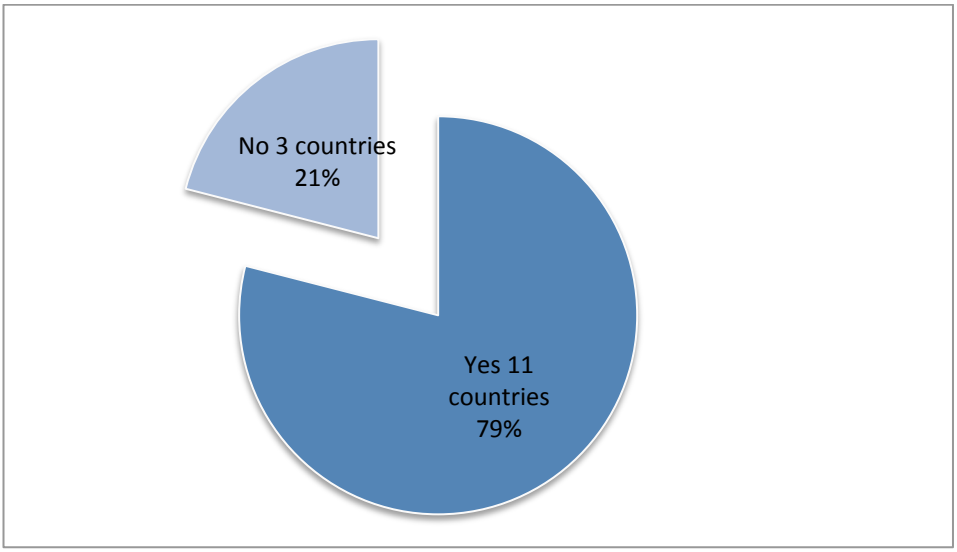
Source: Working team carrying out this Study.

Among the countries that consider that income tax exempt taxpayers must comply with the transfer pricing system we find Brazil, Chile, Ecuador, El Salvador, Peru, Uruguay and Venezuela. On the other hand, Argentina, Colombia, Mexico, Guatemala, Panama, Dominican Republic, this category of taxpayers do not apply the transfer pricing system.

4. Penalties and sanctions for noncompliance

By November 2012, approximately 80% of the countries with transfer pricing systems have considered therein, sanctions or penalties for noncompliance with the obligations on the subject. The establishment of sanctions and penalties involving significant amounts for taxpayers who fail to comply with the rule allows for exercising pressure for the correct application of the rule and its respective timely compliance. Otherwise, depending on the costs associated to compliance with the transfer pricing systems, among other aspects, the taxpayer could be tempted not to comply or manipulate the rule.

Graph III-4 Transfer pricing penalties



Source: Working team carrying out this Study.

In addition, with respect to the specific penalties related to noncompliance with the transfer pricing systems, a brief description is provided in the following tables:

Table III-15 Transfer pricing violations

	Formal violations			Significant violations
	Nonfiling or incorrect filing of return / technical study	Not providing information / Methodology	Not retaining documents	
Argentina	$150-20.000 to $500-45.000	$150-450.000	$150-450.000	Omission of 100-400% of tax
Brazil	20% adequate tax or minimum of R$500	Method	Method	N/A
Chile[1/]	10 to 50 tax units	N/A	N/A	N/A
Colombia	Table III- 16 Violations provided in the Colombian legislation			
Ecuador	Up to US$ 15.000	Up to US$ 15.000 / closing	US$ 30 to 1.000	Up to US$ 15.000
El Salvador	N/A	N/A	Not deducting payments to related parties	N/A
Mexico	35,000 - 70,000 pesos which may be updated	N/A	Not deducting payments to related parties	Omission of 50-100% of contribution
Dominican Republic	RD$85,000 – RD$154,000	N/A	N/A	N/A

	Formal violations			Significant violations
	Nonfiling or incorrect filing of return / technical study	Not providing information / Methodology	Not retaining documents	
Panama	N/A	N/A	N/A	N/A
Peru	0,6% for net income, between the range of 10% of 1 TU and 25 TU	N/A	N/A	Up to 50% of omitted tax
Uruguay	N/A	N/A	N/A	N/A
Venezuela	incomplete or out-of-term: 5 to 25 TU non-filing: 10 to 50 TU	300 to 500 TU (methodology)	Idem	25 to 200% of omitted tax Imprisonment: 6 months to 7 years

[1/] Included in the Amendment to Law 20630 of September 27, 2012 which will enter into force on January 1st, 2013.

Source: Comparative Study on Current Situation of Transfer Pricing in Latin America. Legal and Administrative Aspects. Isaác Gonzalo Arias Esteban. Published in November 2011.

The penalties provided in the Colombian legislation may be observed in the following table:

Table III-16 Violations provided in the Colombian legislation

SUPPORTING DOCUMENTS (TP STUDY)	SANCTIONS REGARDING INFORMATION RETURN	REDUCTIONS
Out-of-term filing with errors, that does not allow for verifying the application of Transfer Pricing	**For late filing**	At 50%: If the irregularity is corrected prior to the application of the sanction. At 75%; If the irregularity is corrected within the 2 months of notification of the sanction.
General rule: 1% OV up to 15.000 TVU (C$377M) **The base cannot be established:** 0.5% of net revenues. **There are no revenues:** 0.5%of gross net worth up to C$500 million	**General rule:** 1% OV up to 20.000 TVU **The base cannot be established:** 0.5% of net revenues. **There are no revenues:** 0.5% of gross net worth up to C$700 million	
Not providing the documents	**For filing the return after the request**	
General rule: 1% OV up to 20.000 TVU + rejection of costs and deductions for non-documented OV **The base cannot be established:** 0.5% of net revenues. **There are no revenues:** 0.5% of gross net worth up to C$700 million	Double the sanctions anticipated in the cases: - The base cannot be established - There are no revenues	
	For correction of the return	
	General rule: 1% OV up to 20.000 TVU (there is a 30% increase if sanction is not paid)	

Source: Comparative Study on Current Situation of Transfer Pricing in Latin America. Legal and Administrative Aspects. Isaác Gonzalo Arias Esteban. Published in November 2011.

5. Functional analysis

The functional analysis of transfer pricing is based on determinant factors of comparability, where the characteristics of the goods or services, functional analysis, contractual clauses, economic circumstances, and business strategies play a fundamental role. This analysis is the basis of comparability of a transaction subject to transfer pricing. The OECD has proposed a methodology in this respect, whose conception is oriented toward the application and analysis of transfer pricing[6].

Nevertheless, every country could adapt and adopt the methodology according to its considerations and needs. In the case of Brazil, given certain features in the methodology adopted and which are explained further on in subsection B of this chapter, the functional analysis is not applied. On its part, the functional analysis is not applied when use is made of the methodology described in the aforementioned subsection B.

The criteria applied for the countries that do consider this analysis are shown in the following table:

Table III-17 Criteria established for the functional analysis

Applied criterion	Country
OECD	Chile, Colombia, Costa Rica, El Salvador, Mexico, Panama, Dominican Republic, Uruguay and Venezuela
Combined (OECD and other criteria)	Ecuador[1/], Honduras, Guatemala and Peru[2/],
According to the very rule	Brazil and Argentina

1/ In another comparability factor different from the Functional Analysis, specifically the Characteristics of (financial) Transactions there are different elements from those of the OECD Guidelines and the draft UNO documents.
2/ According to the amendment made on July 18 and 23, 2012, Legislative Decree N° 1112, 1120 and 1124, which becomes effective on January 1st, 2013.
Source: Tax administrations consulted.

The combined criteria in the cases of Guatemala, Honduras and Peru, consists of adding to the OECD criteria which serve as basis of the legislation, their own criteria with some specific features, either for the first time, which is the case of the first two countries, or through a reform, as in the case of the third country. For example, these countries have added the sixth paragraph of the Argentine rule to the country's rule, in order to evaluate the transactions which may undergo the application of this method.

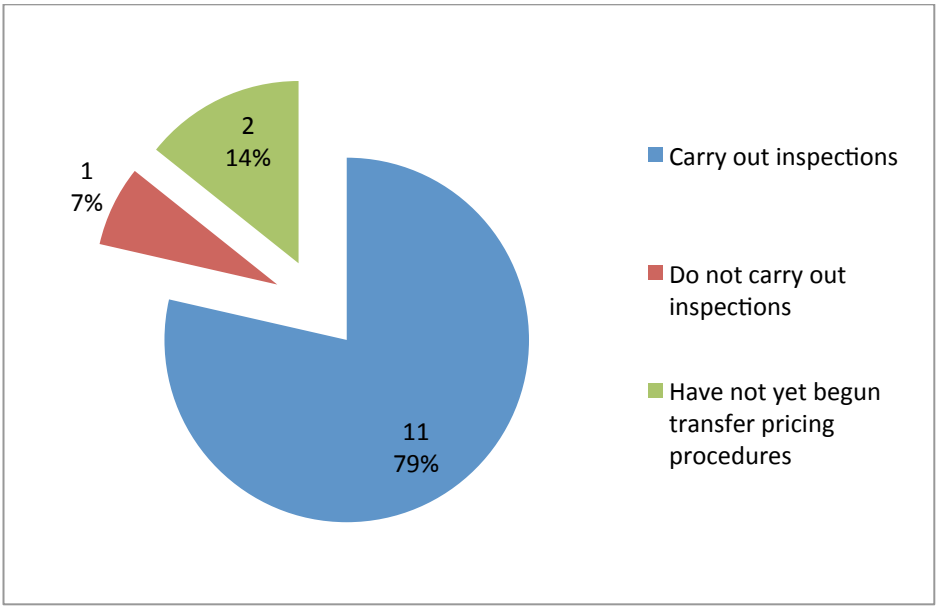
In the foregoing table we observe that 60% of the Latin American countries analyzed prefer to use the OECD criteria in their functional analyses; while those using the combined criteria represent an additional 25%.

[7] (see *OECD, OECD guidelines on transfer pricing applicable to multinational companies and tax administrations, Chapter I: The Arm's Length Principle. Section D. Guidance for applying the arm's length principle)*

For comparability purposes, field inspections are an important factor to be taken into consideration by the tax administrations when undertaking examination actions. Of the countries analyzed, 73% carry out these inspections in order to determine and identify the functions, assets and risks that are actually assumed by the taxpayers subject to examination.

The following graph shows in absolute and percentage terms the number and proportion of countries that apply these field inspections.

Graph III-5 Field inspections



Source: Working team carrying out this Study.

The table below describes what has been previously pointed out in the graph:

Table III-18 Field inspections

Applied criterion	Country
Carry out inspections	Argentina, Chile, Colombia, Costa Rica, Ecuador[1/], Honduras, Mexico, Peru, Dominican Republic, Uruguay, Venezuela
No inspections are carried out	Panama
No procedures have yet begun with respect to transfer pricing	Guatemala[2/], El Salvador

1/ Field inspections are normally carried out within the audits (previous analyses or assessments), which we consider necessary but not sufficient for determining and identifying the functions and risks that are actually assumed by the taxpayer.
2/ The Law will enter into force on January 1st, 2013.
Source: Tax administrations consulted.

Another factor which tax administrations may consider when carrying out a functional analysis is the possibility of obtaining information from other States. The following table shows the countries that use this procedure:

Table III-19 Request for information from other countries

Applied criterion	Country
Usually send requests	Argentina, Chile, Colombia, Costa Rica, Mexico and Peru
Do not send requests	El Salvador, Ecuador[1/], Guatemala[2/], Honduras, Panama, Uruguay, Venezuela

1/ On some occasions have requested information to other treasuries, but it is not a common practice.
2/ Do not carry out information exchanges, because they have not begun the examination procedures. However, there are already seven (7) information exchange agreements signed with Nordic countries.
Source: Tax administrations consulted.

All those elements that may be taken into consideration for a correct functional analysis should be included in the documents used for applying the transfer pricing methodology. This information is useful for correctly selecting the method to be used. In other words, it is important to know that the information available must lead to the method and not vice-versa.

6. Methods

To determine whether the conditions imposed on commercial or financial transactions between related companies reflect those that are required for complying with the arm's length principle it is necessary to determine the prices or margins of comparable goods, services or companies, respectively.

The method to be applied will be selected according to the characteristics of the transaction, the information originating therefrom and its respective functional analysis:

Table III-20 Methods established

	Countries														
Methods	**ARG**	**BRA**	**CHI**	**COL**	**CRC**	**ECU**	**ESA**	**GUA**	**HON**	**MEX**	**PAN**	**PER**	**DOM**	**URU**	**VEN**
Comparable Uncontrolled Price	X	X	X	X		X		X	X	X	X	X	X	X	X
Resale Price	X	X	X	X		X		X	X	X	X	X	X	X	X
Cost Plus	X	X	X	X		X		X	X	X	X	X	X	X	X
Profit Split	X		X	X		X		X	X	X	X	X	X	X	X
Residual Profit Split			X	X		X		X		X	X	X	X		X
Transactional Net Margin	X		X	X		X		X	X	X	X	X	X	X	X
Others	X[1/]	X[2/]	X[3/]		X[4/]	X[5/]	X[6/]	X[7/]				X[8/]		X[9/]	

1 Quotation value of *commodities* on the date of shipment (sixth paragraph of the Argentine rule regarding transfer pricing).

2 Price Quoted in Goods and Futures Exchanges. In Law No. 12.715 of September 2012, which becomes effective on January 1st, 2013.

3 Other reasonable methods when it is not possible to apply any of the above.

4 If they are not specified in the rule, the OECD guidelines are applied.

5 Export and import with known prices with or without international intermediary.

6 Determination of average market price (Article 199-B). Likewise, even though the rule does not provide for the use of the OECD methods, the taxpayer may use them if the inapplicability of the method established in Article 199-B is proven.

7 Assessment method for imports or exports of goods.

8 According to the modification made on July 18 and 23, 2012, Legislative Decrees N° 1112, 1120 and 1124, which becomes effective on January 1st, 2013, the sixth Argentine method has been included.

9 Public and well known international price through transparent markets, stock exchanges or the like.

Source: Tax administrations consulted.

Most of the countries establishing other methods have included the method shown in the sixth paragraph of the Argentine regulations. This method which will be described in subsection B of this paragraph, has been included in the regulations of Brazil, Ecuador, Guatemala, Honduras, Uruguay and Peru; this latter one in accordance with the reform carried out on July 18 and 23, 2012. On its part, Brazil included it recently in the amendment made to Law No. 12.715, published on September 18, 2012. Likewise, the Dominican Republic included it in the recent amendment to its legislation through Law No. 253-12.

With respect to the selection of methods, it is possible that the legislation may establish some type of hierarchy regarding their use or that the “best method rule” be applied.

The table below shows the criterion applied by each country regarding the use or selection of the methods:

Table III-21 Hierarchy or preference of the methods

Criterion applied	Countries
Best method rule	Argentina, Chile[1/], Colombia, Costa Rica, Honduras, Panama, Peru, Uruguay, Venezuela.
Hierarchy or preference of methods	Brazil, Ecuador, Guatemala, Mexico, Dominican Republic.
No hierarchy or priority criterion is established	El Salvador.

[1/] According to the Modification in Law 20630 of September 27, 2012, which becomes effective on January 1st, 2013.

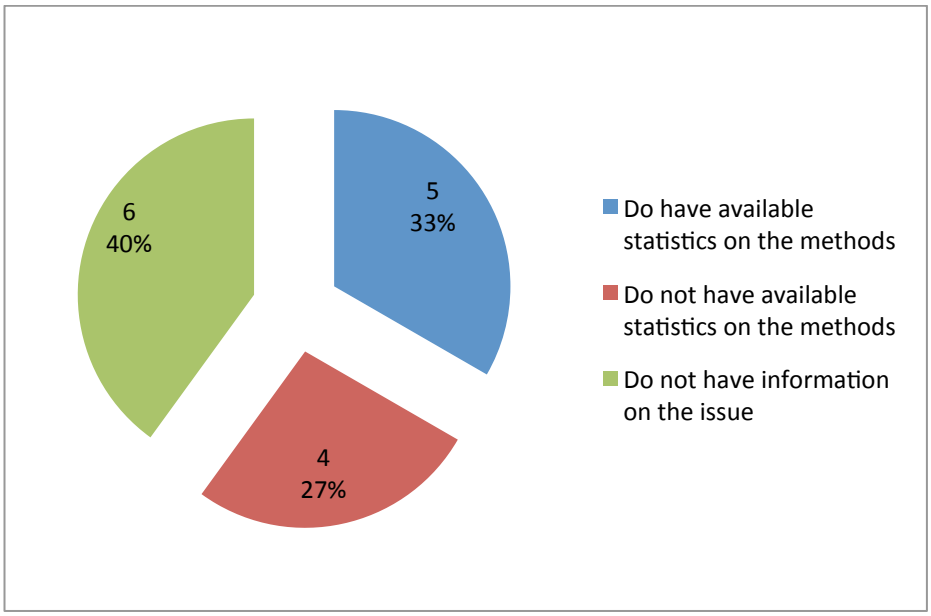
Source: Tax administrations consulted.

In cases wherein the legislation includes the hierarchy or priority of methods, criteria are established for determining, first of all, the method under which the transactions should be evaluated. If such method cannot be applied due to well-grounded reasons, one should continue to the following method in hierarchy or priority and so on, until arriving at the application of a method.

Some tax administrations have available statistics on the level of use of the different methods. Such situation on many occasions, respond to the type of industry being developed in the country or the economic situation it is undergoing.

One may observe below in absolute and percentage terms, the number of tax administrations that have statistics on the use of each of the methods by the taxpayers:

Graph III-6 Statistical proportions on the use of methods in the tax administrations



Source: Working team carrying out this Study.

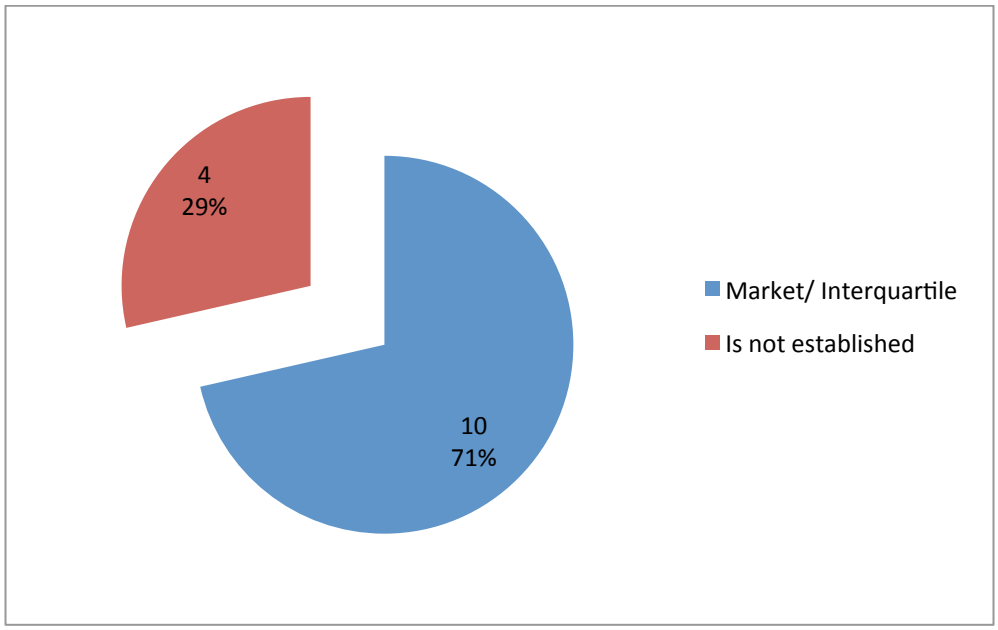
The tax administrations of Argentina, Colombia, Mexico, Peru, Uruguay and Venezuela, have observed that the method most widely used by taxpayers is the **transactional net margin method**. Other administrations recognize that their own methodology is the one mainly used, for example, as in the case of the Dominican Republic that has established the method based on indexes for different sectors.

7. Indicators

The financial indicator most frequently used when reviewing transactions carried out by taxpayers with their related parties is the **Operational Margin**. The foregoing is observed in en Argentina, Colombia, Costa Rica, Mexico, Uruguay and Venezuela. This indicator is used in the application of the transactional net margin and is calculated as: Operational Profit between Net Sales.

When applying the transfer pricing method and when there is more than one comparison data, it is common to use a market range, by establishing in said range the maximum and minimum or quartile values.

Graph III-7 Establishment of range



Source: Working team carrying out this Study

The foregoing graph shows that 71% of the countries provide in their regulations for the possibility of applying the interquartile ranges. The table below shows how the market range and point of adjustment is established in every country.

Table III-22 Establishment of range and its point of adjustment

Countries	Range	Point of adjustment
Argentina	Interquartile	Median of more or less 5%.
Brazil	Does not establish it	Margins are established by law
Chile	Has not been established	
Colombia	Interquartile	Median
Ecuador	Interquartile	Median
El Salvador	Is not established	Average market price
Guatemala	Interquartile	Median
Honduras	Has not been established	
Mexico	Interquartile	Median and most similar by observation
Panama	Interquartile	Has not been established
Peru	Interquartile	Median
Dominican Rep	Interquartile	Median
Uruguay	Interquartile	Median
Venezuela	Interquartile	Median

Source: Tax administrations consulted.

Argentina has established the median diminished by 5% as point of adjustment in case the price or margin obtained may be less than the corresponding value for the first quartile, or the median increased by 5% in case the price or margin obtained may be greater than the value corresponding to the third quartile. Subsequently, these new values will substitute the initial ones.

In general, when calculating the interquartile range, in addition to delimiting the values that comprise the market range and which serve as basis of the arm's length principle, the interval for making adjustments is indicated. When the values being analyzed are outside the established interquartile range, the regulations provide for the mechanism or statistical measures of adjustment.

In addition to this table, Annex VIII-3, shows the regulations which provide for the range criterion and the point of adjustment.

8. Adjustments for increasing comparability

In order to increase or improve the levels of comparability, it is possible to make adjustments within the framework of the transfer pricing analysis. Shown below are the adjustments observed by the tax administrations for improving the transfer pricing comparability analysis:

Table III-23 Comparability adjustments observed by the Tax Administration

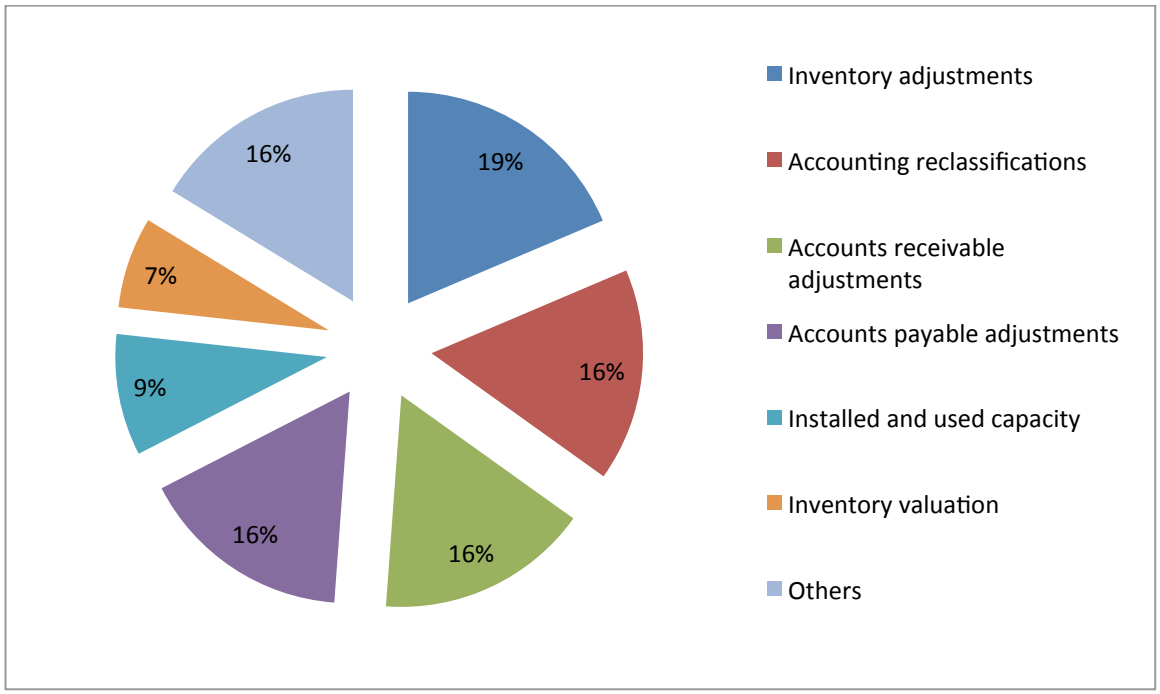
Adjustments	ARG	CHI	COL	CRC	ECU	MEX	PER	URU	VEN
Monetary correction									X
Accounting reclassifications	X	X			X	X	X	X	X
Inventory valuation			X			X			X
Monetary Assets									X
Accounts receivable adjustments	X	X	X		X	X		X	X
Nonmonetary assets									X
Deferred taxes									X
Installed and used capacity	X		X			X			X
Capitalized financing costs									X
Adjustment for payment of tariffs									X
Inventory adjustments	X	X	X		X	X	X	X	X
Accounts payable adjustments	X	X	X		X	X		X	X
Freight				X					

Source: Tax administrations consulted.

The following graph shows what has been described in the table above:

Graph III-8 Comparability adjustments observed by the tax administration

(Proportions according to countries that make adjustments)



Source: Working team carrying out this Study

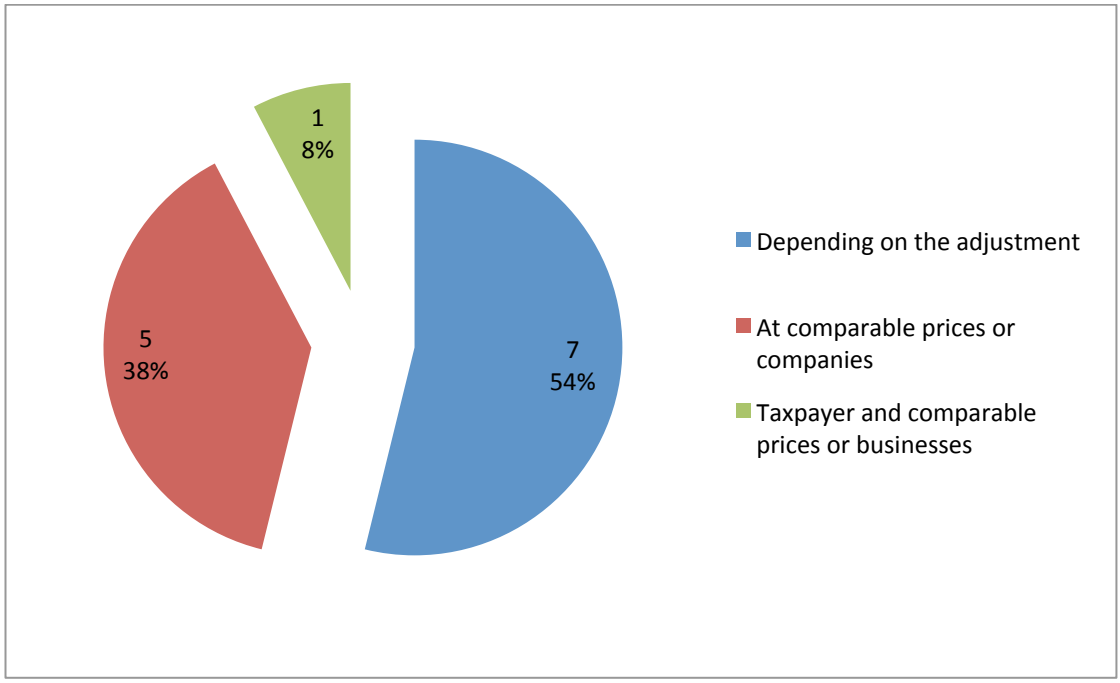
It was observed that the inventory adjustment was the one mainly used by the taxpayers and analyzed by the tax administrations in their evaluation. The inventory adjustment is usually carried out when there are differences in the inventory valuation methods, as well as when there are differences in valuation of accounts receivable and payable, mainly in the establishment of terms for their collection or payment, respectively. The adjustment should be made according to the criteria established in the analysis.

It was observed that accounting reclassifications that originate adjustments in accounts receive and payable, likewise tend to be adjustments frequently made and which the tax administrations take into account when designing their procedures and carrying out their analysis.

The aforementioned comparability adjustments may be applied to the taxpayers, the comparables or both, which will directly depend on the methodology or criterion determined for carrying out said adjustments.

The graph below proportionally shows the adjustment application criterion; that is, to whom should the adjustment be applied:

Graph III-9 Application of the adjustment



Source: Working team carrying out this Study

In the reviews and/or examinations by the tax administrations of the analysis performed by the taxpayers, one observes with a great level of detail the adjustments for increasing the comparability, which may be rejected by the authorities. The main reasons for rejecting a comparability adjustment are mentioned below:

a. They do not improve comparability.
b. Inadmissible idle capacity.
c. Excessive or lack of intermediation costs.
d. The adjustment has not economic justification and/0r the adjustment does not correspond with reality.
e. The adjustment lacks justification.
f. The adjustment has no supporting documents.
g. There are mathematical and underlying errors in the formulas.
h. The implicit rates of interest of capital adjustments are incorrect.

Comparability adjustments are necessary to the extent they fulfill their objective of improving the analysis made between the parties and are given due use, ensuring that the transactions and their comparables are as similar as possible, in order to make the correct comparisons between the transactions that are the subject of adjustment.

9. Correlative or corresponding and secondary adjustments

The purpose of the correlative or corresponding adjustment is to maintain symmetry in the transactions. In other words, it is applied to keep the condition of equity of the transactions when they are corrected by some tax authority, with this correction being known as "primary adjustment". In principle, the secondary adjustment seeks to correction the situation as if the situation that caused the "primary adjustment" would not have existed. In this way, State B making the "secondary adjustment" could benefit one of its taxpayers, on considering the price adjusted by State A as a result of the "primary adjustment" made to the same or related taxpayer in its territory.

The table below shows the countries of Latin America that anticipate this type of adjustments and the respective provision in the regulations:

Table III-24 Correlative and secondary adjustments provided in the legislations

Countries	Anticipated adjustment	Regulation
Argentina	Correlative	The Agreements to Avoid International Double Taxation.
Chile[1/]	Correlative	Article 41-E item 8 of Law 20630, of 09/27/2012
Colombia	Correlative	Article 260-5 of the Tax Statute.
Costa Rica	Correlative	Not in a specific law, based on the Guideline of the General Directorate of Taxation N° 20-03.
Ecuador	Correlative and secondary	The correlative is provided by Article 9 of the Agreements to Avoid Double Taxation in force. The secondary is to be stipulated in the provisions of the agreements to Avoid Double Taxation in force.
El Salvador	Correlative	Is provided only in the Agreement (DTA) entered into with Spain
Mexico	Correlative	Article 217 of the Income Tax Law.
Peru	Correlative and secondary	Subsection c) of Article 32-A of the Income Tax Law and article 109 of the Regulations of the Income Tax Law.
Venezuela	Correlative	Article 114 of the Income Tax Law

[1/] Included in the Modification to Law 20630 of September 27, 2012, which becomes effective on January 1st, 2013.

Source: Tax administrations consulted.

According to Costa Rica, Peru and Venezuela the correlative adjustment should be made by the taxpayer. In Ecuador and Mexico, the Tax Administration should make said adjustment. In Argentina, it may be either the taxpayer or the tax administration, while Colombia has not yet decided who should make said adjustment.

The importance of these adjustments results in the need to arrive at the essential purpose of the regulations for transfer pricing control, which is to facilitate adequate tax control for arriving at the appropriate distribution of the tax bases. However, if there is no agreement between the countries. However, if there is no agreement between the countries where taxpayers carrying out the transactions operate, there could be the risk of double taxation of the same transaction. In this sense, the most appropriate scenario for avoiding double taxation is when the States sign agreements with provisions that allow for making correlative adjustments, as well as secondary adjustments, if necessary.

B. Selected experiences from legislative practices for transfer pricing control in Latin America and the Caribbean.

Transfer pricing regulations of the Latin American and Caribbean countries analyzed have been recently implemented, as compared with other countries such as Great Britain (1915) and the United States (1917). Nevertheless, many of the countries analyzed have achieved substantial progress and developed innovative responses to harmful transfer pricing practices.

In this section we will evaluate the experiences of the countries of the region as regards nonconventional practices (considering those that are deviated from the methods provided in the OECD guidelines) for transfer pricing control. On this occasion we have considered mainly the experiences of Argentina and Brazil. We will likewise consider the practices in the Dominican Republic and Venezuela.

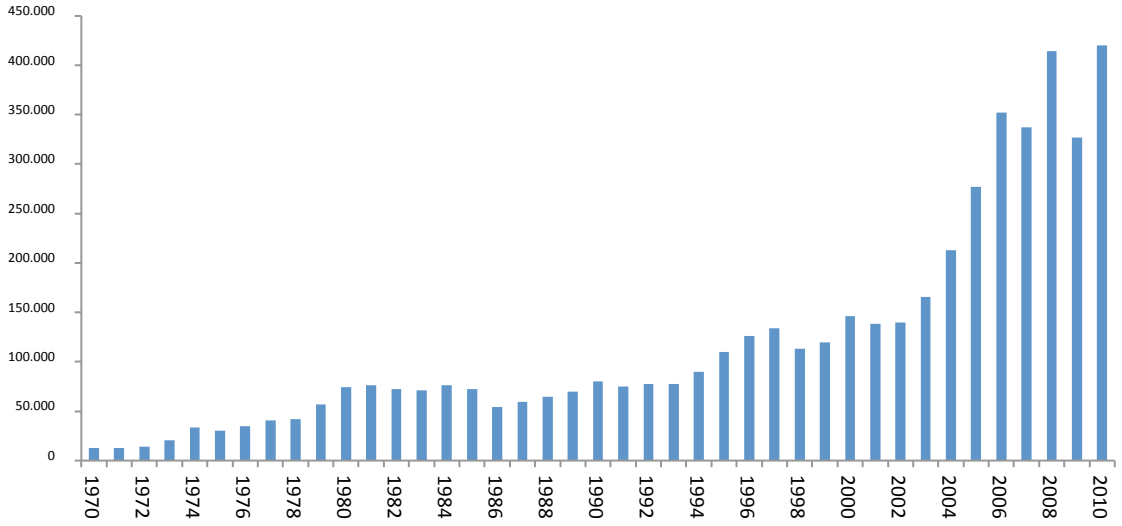
1. Sixth paragraph of the Argentine regulation

Latin America and the Caribbean constitute a region with a strong presence of bulk commodities in their economies. In 2010, according to ECLAC[7] data, Latin America and the Caribbean exported over 420 billion dollars in raw materials. The following graph shows the historical evolution of exports in the Region.

[8] ECLAC: Economic Commission for Latin America

Graph III-10 Exports of raw materials in Latin America and the Caribbean

In millions of dollars



Source: ECLAC statistics:
http://webSie.eclac.cl/Sisgen/ConsultaIntegrada.asp?idAplicacion=6&idTema=119&idIndicador=1912&idioma=e

Within the Latin American and Caribbean context, raw material suppliers are important for the more developed economies of the world. Thus, tax administrations have taken measures in their legislations to ensure that transactions related to these exports are taxed correctly.

Some tax administrations have developed special methodologies in order to face this reality as commodity exporting countries. One of these methodologies is one developed by Argentina, as pioneer, as a variation of the comparable uncontrolled price method included in the OECD Guidelines for multinational companies and tax administrations.

Argentina is a country with an economy strongly dependent on the exports of commodities, especially those of an agricultural nature such as, for example, cereals. In view of the need to control taxpayer transactions with such goods, especially those with related intermediaries abroad and because conditions agreed between these parties considerably affected the prices agreed, it established in its legislation a new transfer pricing analysis and valuation methodology for this type of transactions. This methodology is included in articles 8 and 15 of the Profit Tax Law, for determining the income from Argentine source and the valuation of prices of commercial and financial transactions agreed between related companies.

For income originating from exports, the procedure described in their legislation is the following:

*"**Article 8.-** Profits originating from the export of goods produced, manufactured, processed or purchased in the country are fully of Argentine source, with their shipment being carried out through subsidiaries, branches, representatives, purchasing agents or other intermediary individuals or entities from abroad.*

The net profit will be determined by deducting from the selling price the cost of such goods, transportation and insurance expenses up to the place of destination, the commission, selling and other expenses incurred in the Republic of Argentina, to the extent necessary for determining the taxed profit."

In the case of imports:

"On their part, the profits obtained by exporters from abroad for the simple introduction of their products in the Republic of Argentina are of foreign source.

…

When, in accordance with the foregoing provisions it is the case of transactions involving the import or export of goods with respect to which the international price –publicly known- may be established through transparent markets, stock exchanges or the like, unless there is proof to the contrary, such prices will be used for purposes of determining the net profit from Argentine source."

Up to this point, these provisions had been used by different countries to determine the origin of the income for exports and imports. The innovative element of the Argentine regulation for determining the income originating from the export of goods is the use of the international market price on the date of shipment of the goods. According to its legislation, the method is applied as follows:

"… in the case of exports to related individuals, such as cereals, oleaginous products, other products from the earth, hydrocarbons and their by-products and, in general, goods with quotations known in transparent markets, with an international intermediary who is not the actual addressee of the goods, the one considered as the best method for determining the income from export of Argentine source will be the quotation value of the good in the transparent market on the day of loading of the goods –regardless of the means of transportation- without considering the price that would have been agreed with the international intermediary.

In spite of that stated in the foregoing paragraph, if the price agreed with the international intermediary were greater than the quotation price in force on the aforementioned date, the first of them will be taken to assess the transaction."

This method would not be applied if the taxpayer can provide reliable evidence that the transaction has been really agreed. For such purpose, he must provide information proving that the intermediary abroad jointly complies with a series of requirements such as the following:

a) *Be actually present in the territory of residence, and have therein a commercial establishment where his business is administered and fulfill the legal requirements of constitution, registration and filing of accounting statements. The assets, risks and functions assumed by the international intermediary must be in keeping with the volume of negotiated transactions;*

b) *His main activity should not consist of obtaining passive income, nor intermediation in trading goods from or to the Republic of Argentina or with other members of the economically related group; and*

c) *His international trade transactions with other members of the same economic group cannot exceed thirty per cent (30%) of the total annual transactions agreed with the foreign intermediary.*

One of the aspects highlighted in the application of this methodology is that, since these are exports of a certain type of products, if the price with the international intermediary is less than the price of the transparent market, the valuation of the good should be made when loading the good according to the price indicate in the transparent market.

The main objective of this methodology is the valuation of the transactions between related parties that fulfill the conditions provided by the regulations, by applying for such purpose the price in force on the date of shipping of the goods. In other words, regardless of the date on which the contract between the related parties is carried out or agreed (main risk), the value of the good in the transparent market on the date it is actually shipped should be used for determining the amounts to be taxed.

The main advantage of this methodology is that it allows for the strict control of the risk existing in transactions between related parties using intermediaries, which may be domiciled or are being used for directing the profits obtained from the transaction with the goods to lower taxation jurisdictions.

However, the main disadvantage of this methodology is precisely its strictness, since its application requires public information regarding the goods in transparent markets and that such valuation is effective on the days the goods are shipped.

To conclude, this methodology is a step forward in the design of control measures, which based on the OECD Guidelines, are adapted to or correspond to the reality of the economies of the Region, characterized by the production of commodities.

It is for this reason that the method developed in Argentina has been implemented in the same terms or with certain variations, by the countries of the region. This has been particularly so in those countries greatly dependent on agricultural products or nonrenewable natural resources, in order to protect the tax base in the relevant sectors of their economies, such as Ecuador, Uruguay and recently Peru; this latter country according to the modification enacted on July 18 and 23, 2012. Likewise, this method is being evaluated by other countries with similar characteristics in other regions of the world.

2. Brazilian methods

The rules on transfer pricing control in Brazil differ significantly from those implemented in the other countries of the region. Its system is based on the determination of fixed market margins on income from imports and exports carried out with related companies abroad.

The Brazilian method also establishes maximum amounts for the deduction of expenses. In general, all the transactions between a Brazilian company with its related parties abroad, tax havens and preferential regimes, although the latter may not be related, would be subject to the transfer pricing legislation. Nevertheless, there are transactions that are excluded from these controls, such as:

i. Payments or charges for royalties and technical assistance, scientific, administrative or similar services.
ii. Interest paid, if the corresponding agreement has been registered at the Central Bank of Brazil.

The Brazilian legislation is included in Articles 18 to 24-B of Law N° 9.430 of December 27, 1996, in Administrative regulation IN SRF N° 243 of November 11, 2002 and in Law No. 12.715 of September 2012, which amends some aspects of the previous legislation. The recent reform includes:

- Modification in the fixed margins of the Resale Price Method (RPM);
- Includes the Method of Price Quoted in Commodities and Futures Exchanges (PCI) – for imports of commodities subject to the price in C&F Exchanges;
- Includes the Method of Price Quoted in Commodities and Futures Exchanges (PECEX) – for exports of commodities subject to quotation in C&F Exchanges.
- The taxpayer is not allowed to use the most convenient or best method for the taxpayer rule in transactions with commodities – cases in which the PCI and PECEX methods are obligatory starting in 2013.
- New differentiated margins are determined for income from the import of goods for resale and industrialization. The new margins are 20%, 30% and 40% depending on the sector.
- The interest on loans to related parties even though registered at the Central Bank of Brazil will be deductible only up to one rate of interest equal to the FOB rate in dollar of the United States of America, for six-month loans plus a 3% annual spread, prorated according to the period to which the interest refers. This percentage may be reduced by the Ministry of Finance.

The atypical part of the Brazilian transfer pricing system is in the methodology for determining the prices or margins that would be in keeping and compatible with the transfer pricing legislation. In principle, the applied price should be compared with the comparable reference price obtained through any of its methods. The following is established in order to determine the applied price and the comparable or reference price:

i. *Applied price:* one should consider the average price applied to all transactions between related parties.
ii. *Comparable or reference price*: Refers to the price verified through the application of one of the methods provided in the transfer pricing legislation, beginning with the analysis of the average prices applied between independent parties or their production costs.

The Brazilian legislation adopts different direct and indirect comparability methods to verify those which would be comparable prices according to the transaction carried out, as summarized in the following table:

Table III-25 Brazilian transfer pricing methods

	Methods for imports	Methods for exports
Direct comparison	PIC – Independent comparable price	PVEx – Exports selling price
	PIC –Price Quoted in Commodities and Futures Exchanges	PECEX – Price Quoted in Commodities and Futures Exchanges
Indirect comparison (Resale)	PRL – Resale Price less profit (20%, 30% y 40%)	PVA – Wholesale price in country of destination, less 15% profit;
		PVV – Resale Price in country of destination less 30% profit
Indirect comparison (Production)	CPL – Cost of Production plus 20% margin	CAP – Cost of acquisition or production, plus 15% taxes and profits

Source: Tax administrations consulted.

Import methods:

In the case of imports, four methods are used for calculating comparable prices in the acquisition of assets, goods, services and fees. The first of these is the ***comparable price between independent parties method*** and it is the result of the average prices of goods, service and fees verified in independent companies in Brazil or abroad, in similar purchase and sales transactions and under similar payment conditions. The use of transactions of the taxpayer with third parties for purposes of using the PIC method shall only be acceptable to the extent the comparable transactions are equivalent to 5% of the tested transactions.

A variation of this method is the ***"commodities"method – PCI,*** which is exclusively applied to the import of commodities.

The ***Resale Price method*** of the Brazilian methodology corresponds to the OECD's Resale method with the variation that the profit margins are previously determined. This method is applicable to the import of finished products for resale or products that will be subjected to industrialization. The margins are determined in accordance with the industry and range between 20 and 40 per cent.

Table III-26 Margins of the resale method for imports

Margin	Sector
40%	Pharmochemicals and pharmaceuticals Tobacco products Optical, photographic and cinematographic equipment; Instruments, apparatus and equipment for dental, medical and hospital use; Oil and natural gas; Oil byproducts.
30%	Glass and glass products; Chemical products; Pulp, paper and paper products; Metallurgy.
20%	Other economic sectors not specified in the Law

Source: Tax administrations consulted and Clair Maria Hickmann (2012) – International round table, Buenos Aires, October 9 and 10, 2012.

The price will then be the weighted average of the price of comparable goods, services or rights once the following deductions have been made:

- Discounts.
- Taxes and contributions charged to the sale.
- Intermediation commission.
- The profit margins, as appropriate.

Production Cost plus margin Method. The price will be calculated according to the average of production costs of similar assets, properties and services in the country where they were originally produced with an addition of a 20% margin on the costs plus export taxes that are charged in the country of origin. In addition to these direct costs, other indirect costs may also be taken into consideration, such as: costs of goods, services, or rights used or consumed in the production process, reasonable losses of the process, depreciation and lease and maintenance expenses related to the production process.

The previously described methods have a great similarity with some of the OECD methods. In the case of the first Brazilian method mentioned in table V-1, the comparable price of independent parties method would be similar to the Comparable Uncontrolled Price Method (CUP) of the OECD Guidelines. The Resale Price method corresponds to the OECD Resale method, while the Cost of production method would resemble the Cost Plus method.

Methods for exports:

There are two processes in the methodology for assessing exports according to the Brazilian methodology. On the one hand, there are provisions that release the taxpayer from certain transfer pricing obligations, which constitute their *"Safe Harbours"* regime and the specific methods for exportable goods. As for the methods, the following are determined:

Selling price of exports: The comparable price is defined as the mathematical average of the prices allocated in export transactions involving goods, assets, services or equal or similar rights by a Brazilian company to independent businesses.

- ***Price quoted in commodities and futures exchanges***: this method is similar to the previous one and it is exclusively applied to exports of "*commodities*" that quote in open markets.

- ***Wholesale price in the country of destination less profit***: This method results from the weighted average of wholesale prices of equal or similar assets or goods in the country of destination, when carried out under similar conditions. It is admissible in this method to discount the sales taxes applied in those countries, as well as the 15% profit margin over the gross selling price.

- ***Resale price in the country of production less benefit***: The comparable price under this method is the result of a weighted average of retail selling prices of equal or similar products or assets in the country of destination, in transactions carried out under similar conditions. The price thus obtained will be subject to a discount of sales taxes in that country and the gross resale margin of 30%.

- ***Cost of acquisition or production plus taxes and profit***: the transfer price is the weighted mathematical average of the cost of acquisition of inputs for the production associated to assets or goods, services or rights to be exported plus the corresponding taxes in Brazil and the profit margin of 15% over the total exported amount.

In general, in the previously described methods, as regards imports as well as exports, in order to select comparable transactions in any of these methods, use is made of the average amount of transactions involving assets, goods, services or rights between unrelated parties in Brazil or in other countries. As in the OECD methodology, the Brazilian scheme allows adjustments for increasing comparability between transactions. These adjustments, according to article 9 of Regulation SRF 243 of 2002, include: the terms of payment, amounts transacted, guarantee terms offered, related advertising and marketing costs, costs dealing with the maintenance of quality and control standards, storage costs, freight and insurance.

Safe harbours

In compliance with certain requirements, the Brazilian legislation could exempt taxpayers from complying with the general transfer pricing requirements, as regards assessment and information. The "safe harbour" system in force in Brazil is applicable under the following conditions:

- The taxpayer who has a net profit originating from export sales to related parties prior to profit tax in an amount equivalent to at least 5% of said sales, does not need to make transfer pricing adjustments;
- When the taxpayer has net export income within a regular year, equal or less than 5% of its total net income, he is not subject to the control of transfer pricing rules;
- When the average export price of transactions between related parties is equal or greater than 90% of the average selling price in transactions with nonrelated parties in the Brazilian market.
- Special rules for conquering new markets. In the case of export transactions aimed at conquering new Brazilian goods and services markets, when previously adapted to specific conditions they are not subject to transfer pricing rules.

These rules are not applicable when exports are made to countries considered to have favorable taxation, according to the definition of the internal Law.

3. Dominican method for all-inclusive hotels.

The Dominican Republic has achieved substantial progress in auditing businesses in the hotel activity area, specifically all-inclusive service hotels, which sector represents 2.0% of its GDP and 7% of its revenues from exports.

To protect the tax base of Dominican source of this industry, in 2006 this country introduced in its internal legislation the guidelines for transfer pricing control of the sector. According thereto, the Tax Administration would determine the arm´s length rates to subsequently sign a sectorial Advanced Pricing Arrangement; that is, by the taxpayers from the all-inclusive service hotel sector.

> *"In the case of the all-inclusive hotel sector, whose business has particular relationships abroad, the Tax Administration may determine Advanced Pricing Arrangements (APAs) regarding prices or rates that will be recognized according to comparability parameters by zones, cost analyses and other variables that impact the all-inclusive hotel business. In the signing of the APA, the sector will be represented by the National Association of Hotels and Restaurants (ASONAHORES). The agreements will be published through resolution and will be in force for eighteen (18) months. The subsequent agreements may be in force up to 36 months. In case an Advance Pricing Arrangement (APA) would have expired and there were no*

new agreement, the previous agreement will continue in force until the approval of the new APA (Advance Pricing Arrangement).[8]*"*

The same legislation established the parameters for the rates that would be determined based on the comparability analysis according to zones, cost analysis and other variables that impact the all-inclusive hotel business. The determination of the transfer price was based on the nightly rate paid by the guest or customer abroad; of 7-night packages discounting transportation, for selected dates, according to: (a) the category of the establishment, (b) the area of location and (c) the season, high or low.

This method considers the price of end consumers in their market of destination and discounts the margins obtained by wholesalers and retailers for marketing the rooms. The transfer price is determined as follows:

PT = Average public rate of markets of destination – Intermediation margin

Where the **average public rate of the market of destination**, is the average of rates at which the all-inclusive night of accommodation is sold in the countries of origin of the end consumer/tourist. This rate was obtained by means of surveys.

The **intermediation margin** is the sum of marketing margins of the tourist intermediaries as Tour Operators or wholesaler and retail travel agents and the marketing margin would be the sum of these. This free competition margin for marketing obtained by independent companies was 20% and 25%.

This price was the base for determining the revenue from Dominican source, for the Income Tax (IT) as well as for the Tax on the Transfer of Industrialized Goods and Services (similar to the Value Added Tax – VAT).

This methodology became the "*Benchmark*" of the audits made to the companies of this sector, and by way of "Safe Harbour" for the taxpayers, who in periods following those examined, may apply the prices determined by the Tax Administration for assessing the revenues of Dominican source.

As a result of this procedure 50% of the multinational companies rendering the service were audited. Their revenues represent 83% of the revenues of the activity.

4. Other experiences: transfer pricing tax audits in Venezuela

In 2006, the National Integrated Service of Tax and Customs Administration (SENIAT) began transfer pricing examination procedures. The first examination notified was directed at the energy sector, specifically to Shell Venezuela, S.A., for the period ended in 2005. The figure reported at the time of notification was 38.1 billion Bolivars.

[9] In a recent modification of the Dominican Tax Code, the subsection on sectorial APAs was eliminated. The new modification to the legislation allows the use of Advance Pricing Arrangements and the protection system.

This first examination dealt with the verification of revenues, costs, and expenses of import and export transactions between related companies. It involved determining the financing interest between the related entities for purposes of the Venezuelan legislation. In 2007, Shell Venezuela, S.A., abided by the tax objection and paid the indemnity.

On the basis of this examination and in order to promote tax control of transfer pricing in Venezuela, in 2007, a Transfer Pricing and Advance Arrangements division was established, thereby reorganizing the Transfer Pricing Unit that was attached to the Economic Tax Studies Management Office. This Division is currently part of the Examination Management Office.

Among other functions, the division is in charge of *"Supervising and coordinating counseling at the Operational Level*[9] *in audits dealing with transfer pricing,* given that the examination function is carried out through the Regional Management offices. Thus, it is a function of the abovementioned division to counsel and analyze the information required for these examinations, among other established functions.

Since then, and until October 2012, the Venezuelan Tax Administration has an exclusive division for avoiding the harmful manipulation of transfer pricing. It has thus scheduled, controlled and assisted in all examinations carried out by SENIAT, it being observed that one of the problems faced in the reviews is the use of historical figures or figures adjusted according to inflationary effects, given that the Venezuelan legislation does not provide for any specific criteria in this respect.

This has been a topic of discussion and analysis for the Tax Administration, Taxpayers and Advisers in General, for several years and has acquired importance upon the entry into force in Venezuela of the International Financial Reporting Standards. Nevertheless, it is a topic considered complex in view of the various factors that need to be taken into consideration; with one of the most important ones being the very Income Tax Law which stipulates its own methodology for recognizing the inflationary effects.

In Venezuelan practice it has been determined that transfer pricing analyses are of a financial nature not shown in the books and must express the reality of the market wherein the transactions that are subject to the system are carried out. Given the above, the effects of exposure to inflation should be considered. Nevertheless, there are obstacles of a theoretical nature that prevent the use of said figures in audits carried out by the Venezuelan tax administration. There is a criterion issued by the General Juridical Service Management Office in June 2011, which states that the historical value of a transaction is the one that better reflects the amount of the transaction, turning it into the ideal value for making comparisons for transfer pricing purposes.

[10] Operational Level: are those SENIAT levels with the necessary competencies for carrying out examination functions, specifically the Regional Management Offices.

In this respect, there have been several discussions, but according to the Venezuelan practice all transfer pricing examinations are carried out at historical or nominal values, unlike practices established by other countries such as Mexico, for example, which recognizes the inflationary effect in its audits. However, the transfer pricing analysis could result in the analysis being based in one or other figures, depending on the functional analysis carried out during the transfer pricing review process, instead of the simple establishment of a specific criterion on the subject.

Currently, the Tax Administration has carried out several audits on the subject, establishing criteria as the aforementioned one for the control of transfer prices in Venezuela. Likewise, it has focused itself and set strategies for detecting and sanctioning taxpayers who fail to comply with their duties in relation to the subject, by applying actions for the verification of formal duties established in the Venezuelan Income Tax Law and organic tax code.

Undoubtedly, through time and practice it is possible to determine essential aspects within transfer pricing and it shall only be to the extent the tax administration reviews, audits, examines and technically assists that better methodologies may be developed for facing realities, in particular, the economic ones, in order to take actions for transfer pricing analysis.

IV. Aspects of the administrative structures for applying regulations to control abusive transfer pricing manipulation.

A. Transfer pricing units: internal administrative structure for controlling transfer pricing.

The Latin American and Caribbean tax administrations vary significantly in structure. One of the most important elements that determine the success of the work carried out by the tax administrations is the human resource that is part of said structure. In this sense, this study endeavored to determine the status of human resource in the sphere of transfer pricing control in the tax administrations of the Latin American and Caribbean countries. It has been observed that there are significant differences ranging from the structure and composition of the teams, up to the training, recruitment and compensation mechanisms.

Most of the administrations in the study have departments, areas or teams specialized in international taxation. Seventy five percent t of the administrations analyzed from Latin America and a selection of Caribbean countries have teams specialized in international taxation issues; only the remaining 25% of the administrations (five) do not have such teams. It is important to point out that that transfer pricing issue has been developed in a disparate manner in the region. In other words, there are tax administrations with many years of experience and specialized teams, while on the other extreme there are those considering its creation or incorporation.

To conclude, it may be said that in the region, most tax administrations do have an office specialized in international issues, in particular, transfer prices. The table below lists the offices existing in the countries analyzed.

Table IV-1 Office dealing with international tax issues

Country	Office	To whom does the office report
Argentina	International Technical Management and Evaluation Department	Deputy General Directorate of Examination
Brazil	Examination Division N° 1 (Transfer Pricing area)	Large Taxpayers Examination Office
Chile	Transfer Pricing and Valuation Area	International Examination Department
Colombia	Deputy Directorate of International Examination Management	Examination Directorate
Costa Rica	International Taxation Directorate and Transfer Pricing Advance Arrangements Deputy Directorate	Taxation Directorate
Ecuador	Large Taxpayers and International Taxation Department	Tax Auditing (Regional Directorates)/ Tax Management (National Directorate)
El Salvador	Transfer Pricing Department	Large Taxpayers Deputy Directorate / Examination Directorate

Country	Office	To whom does the office report
Guatemala	Transfer Pricing Examination Department	Examination Intendance
Honduras[1/]	Not yet determined	Administration Directorate
Mexico	Administration of Transfer Pricing Examination	Central Administration of Transfer Pricing Examination
Panama	Transfer Pricing Department	Deputy Directorate of International Taxation
Peru	International Examination and Transfer Pricing Management Office	National Tax Compliance Intendance
Dominican Republic	Transfer Pricing Department	Large Taxpayers Management Office
Uruguay	International Examination Department	Large Taxpayers Division
Venezuela	Transfer Pricing and Advance Arrangements Division	Examination Management Office

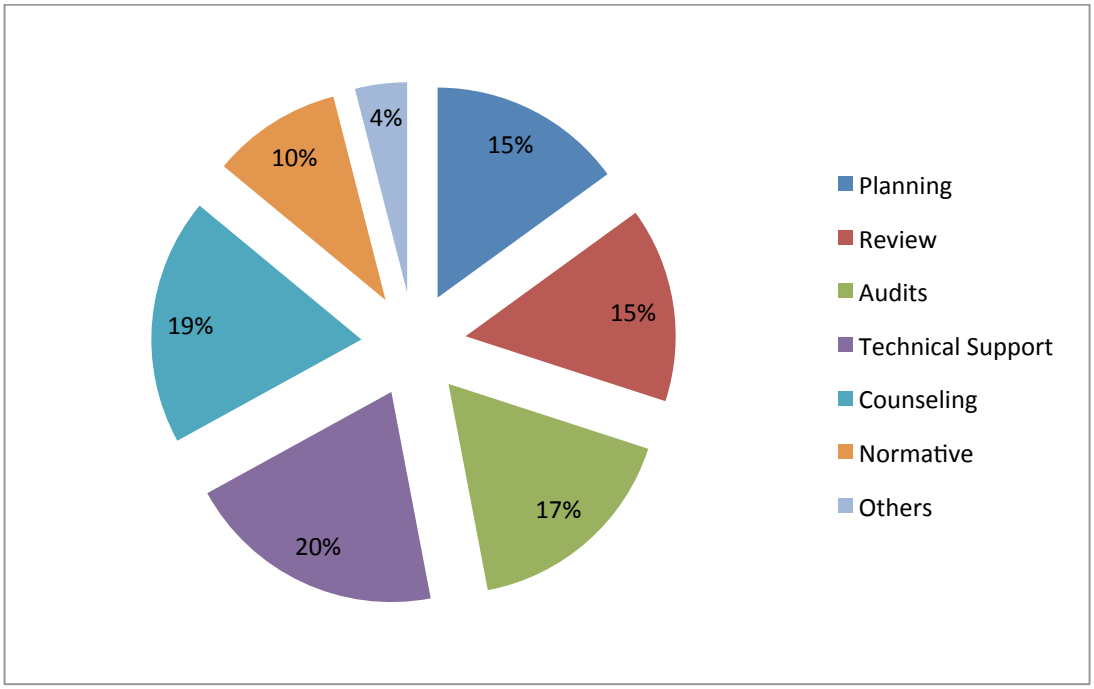
1/In process, to be determined within the structure of the Executive Directorate of Revenues.
Source: Tax administrations consulted

Most of the tax administrations under analysis show decentralized organizational structures. In other words, they have central offices and regional or zone sections or offices that are in charge of the different tasks of the tax administration[10]. Units specialized in international tax issues are found within these organizational structures. Each organizational structure has different schemes for handling international affairs that range from decentralization of the international taxation teams, as is the case of Ecuador or centralization of the work of these teams at the main offices of the administration as is the case of Mexico.

Although with different names or designations, as is seen in the above table, most tax administrations have an area, department, unit, management office or division in charge of international issues and/or transfer pricing. The following aspects in tax administrations of 20 countries from Latin America and the Caribbean were considered in order to examine these units in greater depth: planning, review, auditing, technical support, counseling, normative functions, among others. Generally transfer pricing units carry out audit, technical support and counseling functions. The graph below shows the extent to which the different functions are carried out by the transfer pricing units in the tax administrations.

[11] "Status of Tax Administrations in Latin America: 2006-2010. CIAT-BID-CAPTAC-DR". Institutional Aspects Section" http://www.ciat.org/index.php/es/productos-y-servicios/ciatdata/administraciontributaria.html

Graph IV-1 Functions carried out by the transfer pricing units



Source: Working team carrying out this Study.

In Mexico, the transfer pricing office is also devoted, for example, to the issue of Advance Pricing Arrangements (APAs) and Multilateral Advance Pricing Arrangements (MAPAs).

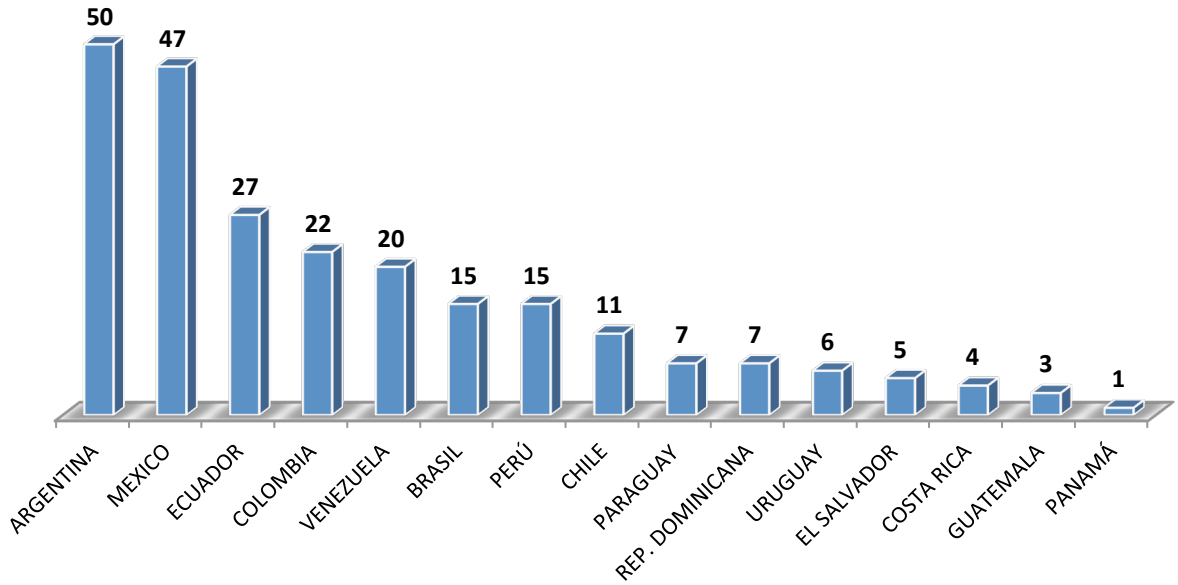
The success in developing transfer pricing control, among other aspects, in addition to the organizational structure is due to the characteristics of the staff. In this respect, the research work seeks to find out about the plans regarding training given to the officials of the transfer pricing units. It has been determined that only 30% of the tax administrations of Latin America and a group from the Caribbean, do have in their tax administrations special training plans for the team in charge of transfer pricing.

In some countries of the Region, although there may not be any training plan for transfer pricing officials, efforts are made to provide them lectures, courses, workshops, etc., on the subject. These activities, including the plans, are carried out mainly every one or two years; while a few countries carry them out every three or six years. The dynamism in the training processes observed in the tax administrations is likewise not fragile vis-à-vis the dynamics of the transfer pricing issue and the different actions of the taxpayers in this respect. Training plans must be in keeping with the speed with which businesses and taxpayer actions evolve and are developed in relation to transfer pricing.

The training provided to officials of the transfer pricing units of the tax administrations analyzed are 34% of an international nature, 29% national and 29% internal –within the tax administration - and 8% is provided via Internet or on-line. The training activities mentioned include attendance to workshops, lectures, courses and/or seminars given by the private as well as public sectors.

An analysis was also made regarding the number of officials in the transfer pricing units. The following graph shows the distribution of officials available in each tax administration for taking care of these matters.

Graph IV-2 Number of officials in transfer pricing units by country



Argentina: of the 50 officials reported, 10 carry out information exchange tasks.

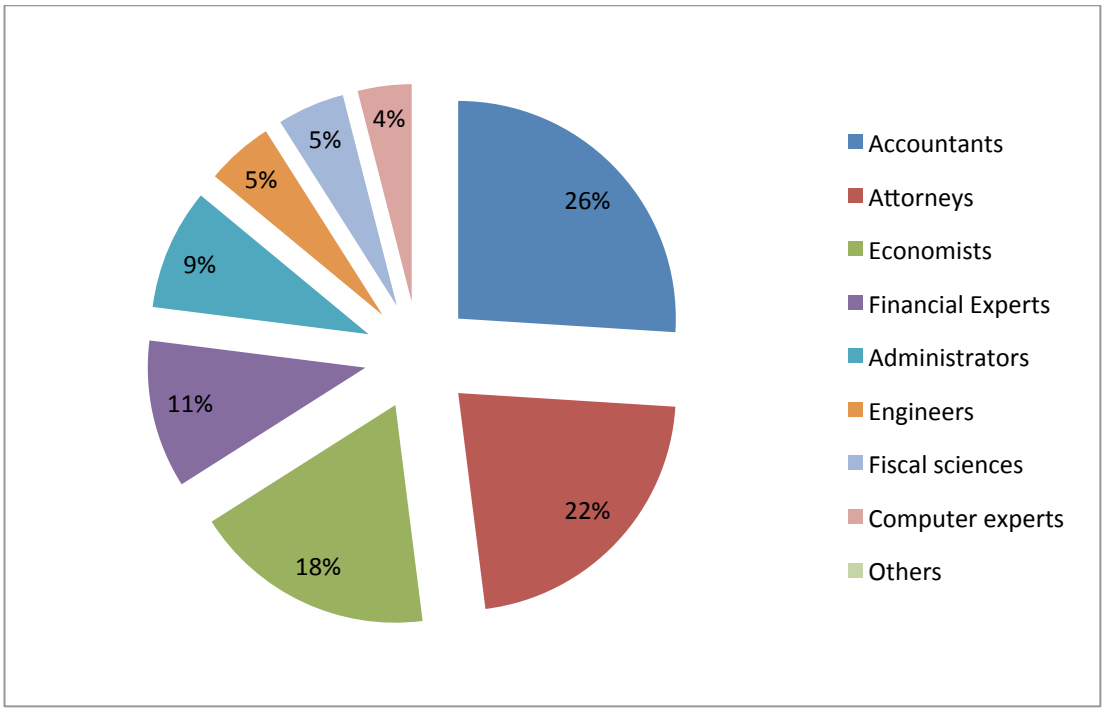
Source: Working team carrying out this Study

Additionally, and as a complement to the data shown in the previous graph, it is important to be aware of the composition of these teams, that is, find out the profile of its members. This is important information since it helps tax administrations, especially those that are beginning to work in this area, to design their human resource strategies in order that they may structure multidisciplinary teams capable of providing optimum results in their control processes.

The composition of multidisciplinary teams is an important action for achieving success in transfer pricing issues. According to the information provided by the twenty countries in the study, 65% of them have multidisciplinary teams that comprise the transfer pricing units, while the remaining 35% does not have this type of teams. There are tax administrations that count on the support of experts and technical reports from other State organizations, which is a valid alternative for lack of a multidisciplinary team. The previously mentioned tasks provide the necessary alternative information for developing the control processes under the transfer pricing analysis.

The following graph shows the profiles and proportion of recurrence of each of them in the composition of the transfer pricing teams in the different tax administrations. Such profiles as those of accountant, attorney and economist are the most recurrent in the transfer pricing units.

Graph IV-3 Career profiles of the members of the transfer pricing teams



Source: Working team carrying out this Study.

As for the remuneration of the officials of the transfer pricing units in the different administrations, there is a great disparity linked to the particular characteristics of the country (such as cost of living), of the tax administration (the most important being an autonomous budget) and the human resources systems (at the national or specific level of the tax administration). That is, there is a significant gap between the operational and managerial functions.

In order to provide comparative data the monthly salaries reported by the tax administrations have been transformed into U.S. dollars. We have thus determined that the lowest remuneration is around US$ 870 and the highest amounts to US$ 13,328. In annex VII-4, one may observe in detail, the minimum and maximum remunerations of the tax administrations classified by country and type of function in the currencies of the countries of origin.

Likewise, annex VII-5, shows the remunerations for a junior auditor in the Latin American tax administrations for 2010. This information may be used as reference to know the approximate minimum and maximum remuneration that a transfer pricing auditor may receive. Usually, the tax administrations have their own categories or they may also be aligned with the State's salary regimes, which could generate difficulties when providing differentiated conditions to transfer pricing specialists. Some countries wishing to afford better conditions to this type of experts, who are scarce in the labor market and highly trained, resort to the contracts system, but they are unable to integrate them in their payroll as permanent staff members.

With respect to the existence of teams specialized in information exchange, either exclusively devoted to it or as an additional function, 60% answered positively; that is, they have specialized information exchange teams, while the remaining 40% do not.

1. Transfer pricing control practice in Latin America and the Caribbean

The diagnosis of the current situation in the tax administrations regarding transfer pricing implementation and development covers the analysis of the risk areas and challenges in the effective transfer pricing implementation.

In relation to the statute of limitations for carrying out actions linked to the control of abusive transfer pricing manipulation, the regulations of most of the countries analyzed provide for terms that range from 3 to 5 years. There are only two cases that do not abide by the criteria identified in the region that is the subject of the study. In Colombia the statute of limitations is two years, while in Honduras there is none.

As far as the average time for carrying out the audits in each of the countries observed and the administrative proceedings for carrying out a subsequent review of the audit, the situation is the following: The average time for carrying out a transfer pricing audit varies from 4, 9, 12 and 24 months.

a) Sectors

The main economic sectors with transfer pricing risks according to the diagnosis of tax administrations carried out by CIAT, CAPTAC-DR and the IDB for the Latin American countries and pointed out by the tax administrations within the framework of this study are the following, in descending order of importance:

1. Pharmaceutical
2. Manufacturing industry
3. Agricultural (cereals – flowers – cattle – others)
4. Mining
5. Oil
6. Automotive

Other sectors that were not as recurrent in the diagnosis made to the tax administrations, but which likewise show transfer pricing risk and are of great importance were also identified:

1. Distribution and trade
2. Manufacturing of cleaning products
3. Financial
4. Hotel
5. Fishing
6. Transportation and telecommunications

An analysis was also made of the concentration of the control processes by the tax administrations of Latin America and the Caribbean in the economic sectors with transfer pricing risks. In other words, of total control processes what proportion is focused on a specific sector of the economy? In this respect, the sectors with over 40% of the control processes devoted to each of these sectors are the following:

1. Pharmaceutical
2. Hotel
3. Food industry

The sectors with lower concentration, that is, less than 15% are the following:

1. Mining
2. Financial
3. Automobile industry
4. Transportation
5. Fishery
6. Services

The sectors of the economy show different transfer pricing risks in keeping with the relevance of the activities in each of the countries. That is why there may be differences in the concentrations diagnosed when analyzing each country individually. However, one may observe sectors that are relevant in most of the countries analyzed, given the existence of multinational companies that carry out similar activities in different countries; which is the fundamental reason for practical regulations for transfer pricing control.

b) Taxpayers

According to the parameters determined in each country's tax regulations, there is a significant variation in the universe of taxpayers that are subject to the transfer pricing regime. In addition, the size and peculiarities of their economies contribute to emphasize the aforementioned variations or differences. For example, in the case of Argentina, between 2007 and 2010, the number of taxpayers that were obliged to provide transfer pricing information to the Tax Administration exceeded 3,000 per year. For example, in 2010 there were 3,429 taxpayers obliged to provide said information. That same year, those obliged were 1,756 in Colombia, 519 in Ecuador, 5,686 in Peru, 137 in Uruguay and 1,014 in Venezuela. (See Annex VII-6).

Some countries, along with the obligation of filing information on transactions involving transfer pricing, also control or review compliance with formal obligations. In 2011, Argentina carried out 3,500 controls, Ecuador 177, Mexico 93, Uruguay 8 and Venezuela 50[11].

c) Control planning

Determining the taxpayers that are to be controlled requires considerable efforts and resources for developing the planning processes. In these processes for planning and selecting taxpayers to be audited, information is the main input and within it, that which the taxpayers provide in their returns. After analyzing among the tax administrations of Latin America and the Caribbean the sources of information used in the processes for selecting transfer pricing cases, it was verified that Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Mexico, Peru and Venezuela use the information provided by their taxpayers within the framework of transfer pricing information systems.

The study undertaken in the tax administrations showed that they use the following criteria for selecting taxpayers to be subject to transfer pricing control through their annual programs or plans:

Table IV-2 Chart on taxpayer selection criteria

Criteria
Financial, tax and customs information crosscheck.
Evaluation and trends in the tax behavior of the taxpayer.
Identification of exporting taxpayers with earning margins below the general one for their industry.
Amounts declared in transactions with related companies, outgoing currency, loans abroad and customs valuation.
Models designed by the Tax Administration.
Review of earnings lower than the general ones for the sector.
Transactions with tax havens.
Taxpayers' capital structure.

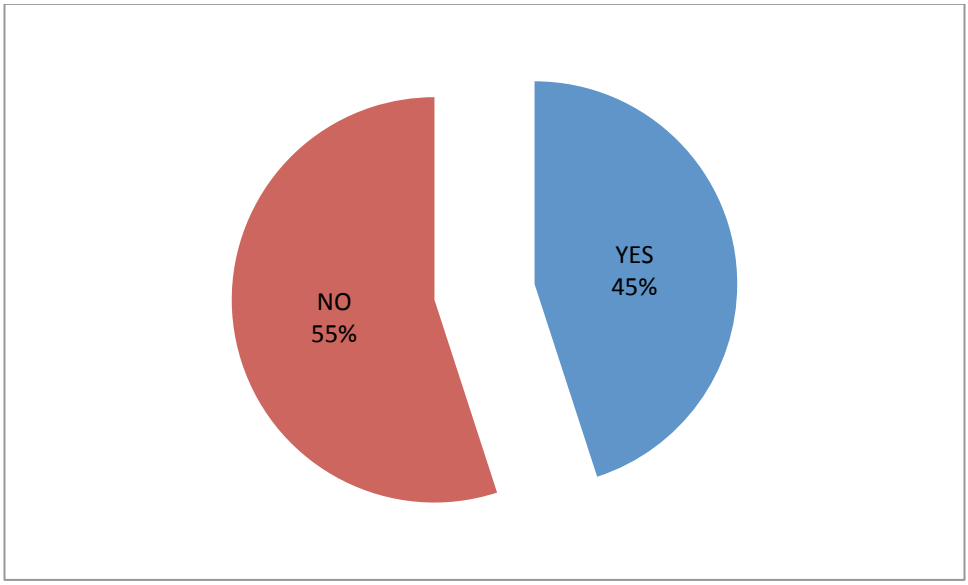
Source: Tax administrations consulted.

The large volume of taxpayers which the tax administrations must control has led to controls by sampling, based on risk criteria. For this reason many taxpayers who fail to comply with their tax obligations may be left outside the scope of the tax administration. Therefore, an analysis was made regarding the existence in the tax administrations of processes or measures taken to detect transfer pricing nonfiling taxpayers. The results obtained are shown below:

[12] Source: CIAT 2012 Study on transfer pricing

Graph IV-4

Percentage of tax administrations with measures for detecting transfer pricing nonfiling taxpayers



Source: Working team carrying out this Study.

From the percentage of tax administrations that actually have measures for controlling nonfilers and which were shown in the above graph, an analysis was made of the most effective measures taken for detecting nonfilers. The results obtained were the following:

Table IV-3 Effective measures for controlling nonfilers

Type of measure
Data crosscheck with Customs versus returns on international transactions.
Crosscheck of corporate tax returns versus Transfer Pricing Studies (TPS).
Central Bank Crosschecks (services, royalties, interest, etc.) versus the presentations of the TPS.
Deviations of economic/financial indicators with respect to economic sector.
Crosschecks of the National Institute of Industrial Property versus the TPS presentations.
Transactions agreed with countries of low or null taxation not declared in the International Transactions bases.
Comparison of the fiscal opinion versus the information return.
Review of the information of the financial transactions tax.
Review of the single customs returns.

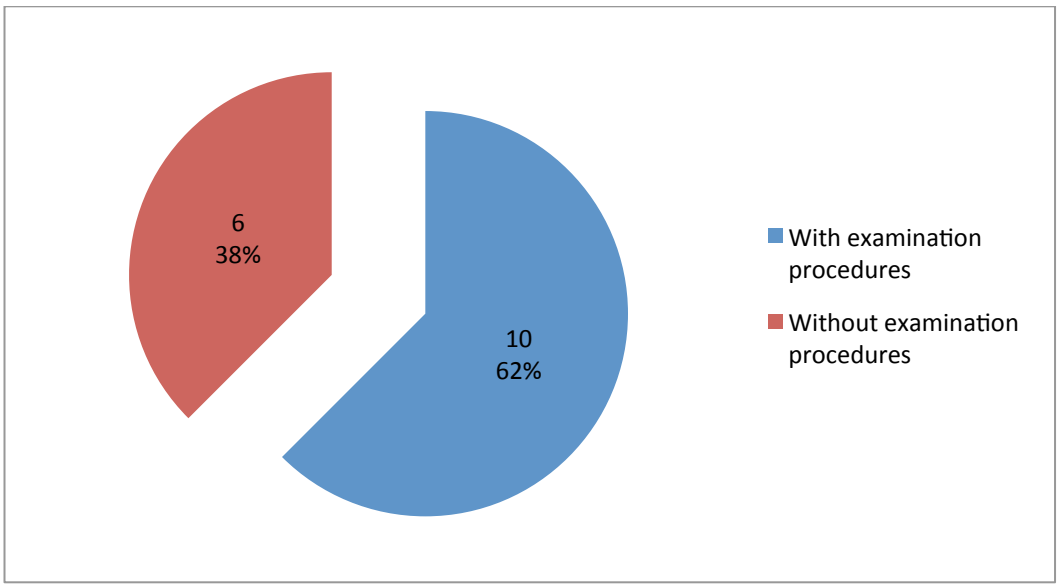
Source: Tax administrations consulted.

As previously stated, the tax administrations, depending on several factors, much control numerous taxpayers subject to transfer pricing systems. For this reason, an analysis was made of the application of massive control procedures to international transactions. In this respect it was determined that 30% of the countries subjected to the analysis, apply control procedures that include a large number of taxpayers.

2. Transfer pricing audits

Progress in the Latin American and Caribbean region is observed not only in the implementation of legislation, but also in audit and control practices. There are 9 tax administrations that have undertaken transfer pricing examination procedures.

Graph IV-5
Countries that have applied transfer pricing examination procedures



Source: Working team carrying out this Study.

From the experience gathered by several tax administrations, it has been verified that the audit procedures are not exclusive of countries with broad and complete regulations, but also of countries whose regulations only cover basic principles, as is the case of Costa Rica. The following table shows the tax administrations of the Latin American countries that have undertaken procedures on the subject:

Table IV-4 Countries that have applied transfer pricing examination procedures (November 2012)

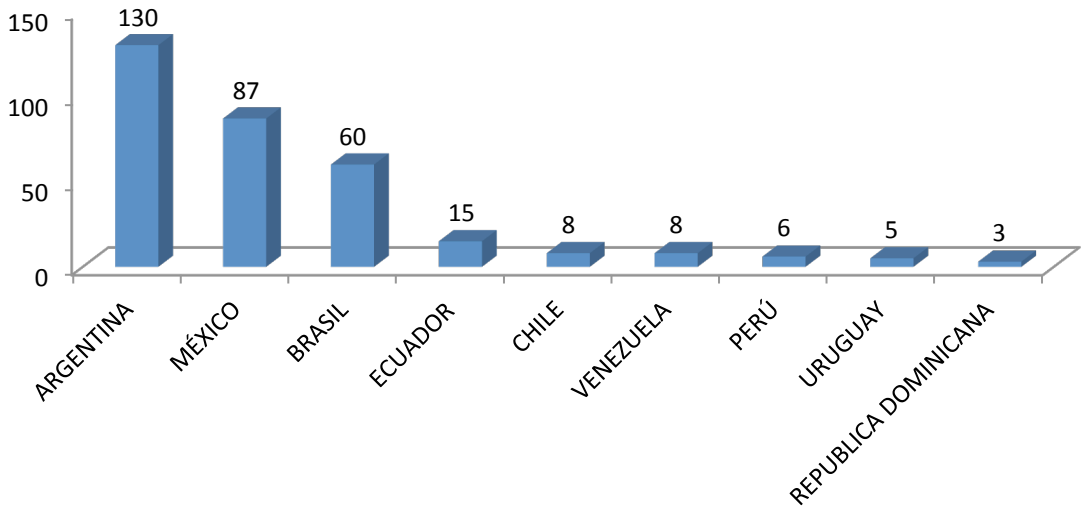
Countries with general transfer pricing regulations	Have initiated transfer pricing examination procedures?
Argentina	Yes
Brazil	Yes
Chile	No
Colombia	Yes
Ecuador	Yes
El Salvador	No
Guatemala	No
Honduras	No
Mexico	Yes
Panama	No
Peru	Yes
Dominican Republic	Yes
Uruguay	Yes
Venezuela	Yes
Bolivia	No
Costa Rica	Yes

Source: Tax administrations consulted.

To the extent the transfer pricing practices continue, the tax administrations increase their controls in this respect. That is why by the date of the table, in their review and control procedures, 64% of the tax administrations of the countries with general transfer pricing regulations evaluate statistical data and the collection behavior of taxpayers carrying out transactions with related parties.

In addition, there have been examinations or tax assessments of transfer pricing executed in a calendar year. The following graph shows the data that correspond to a selection of Latin American countries:

Graph IV-6 Transfer pricing examination processes during the course of a year (2011) by country



Source: Working team carrying out this Study.

As may be observed, tax administrations of countries like Argentina, Mexico and Brazil, which throughout the years have gathered significant experience in transfer pricing, have achieved a larger number of control processes in the region.

In relation to the average time for carrying out audits in each of the tax administrations of the countries diagnosed and the existence of an administrative instance for a subsequent review of the audit, the average for a transfer pricing audit varies between 4, 9, 12 and 24 months.

Table IV-5 Detail by country of average time for carrying out a transfer pricing audit

Country	Time
Argentina	24 months
Chile	12 months
Costa Rica	4 months
Ecuador	12 months
Mexico	24 months
Peru	4 months
Uruguay	9 months
Venezuela	24 months

Source: Tax administrations consulted.

With respect to the statute of limitation for carrying out actions for controlling the abusive handling of transfer pricing, most of the regulations of the Latin American and Caribbean countries provide for terms between 3 to 5 years. There are only two cases that do not abide by the criteria identified in the region being analyzed. In Colombia, the statute of limitations is 2 years, while in Honduras there is no statute of limitation.

Table IV-6 Average time of the review following a transfer pricing audit; by country

Country	Time
Brazil	6 to 12 months in each case
Colombia	6 months
Costa Rica	3 months
Ecuador	6 months
Paraguay	3 months
Venezuela	2 years

Source: Tax administrations consulted.

Definitely, transfer pricing control may vary in statistical data, but there will always be common aspects to be considered by the tax administrations, thereby promoting that the effective exchange of information between the different countries may be a frequent solution.

3. Access to information: data bases

In general, the great majority of tax administrations of the countries considered in this study face daily various problems when undertaking transfer pricing examinations. In this respect, the main obstacles were analyzed and the access to information was identified as the main obstacle for effective transfer pricing control. The other problems identified were the following:

Table IV-7 Main problems in the examination process faced by the Latin American and Caribbean tax administrations

Problems
Identify comparables transactions.
Lack of information on transactions carried out with related parties.
Identify and obtain information abroad.
Identify and determine comparables.
Prove relationship with related parties when it has not been declared.
Access to the taxpayer's information.
Lack of local data bases of national or regional companies that may show their information.
Lack of information relative to companies that comprise multinational groups.
Lack of a larger network of instruments for the exchange of tax information.

Problems
Lack of information for carrying out comparability analyses.
Lack of comparable price bases.
Lack of regulations that call for disseminating and preparing with clarity (transparency) the accounting records of the taxpayers.
Information submitted in languages other than the official one adopted by a country.
Availability of specialized human resources.

Source: Tax administrations consulted.

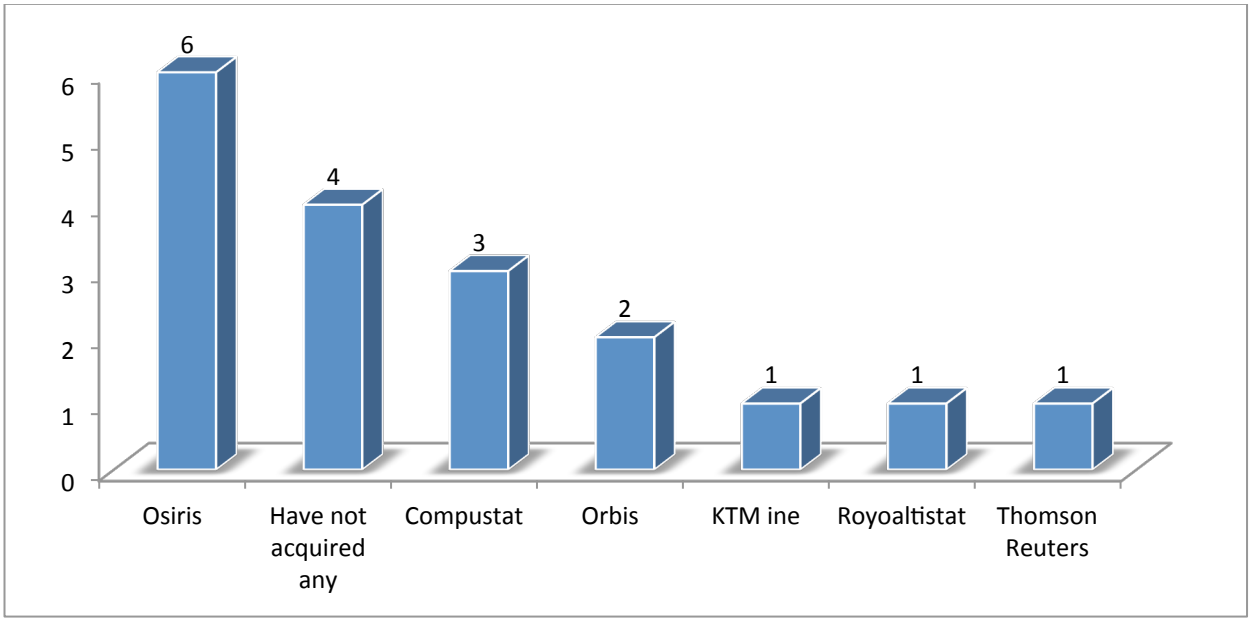
It is implied from the foregoing statement that the technological resources they may have available are an important component for the development of transfer pricing within the tax administrations. Shown below are the findings from the diagnosis made to the tax administrations of the member countries of the Inter-American Center of Tax Administrations (CIAT) from Latin America and the Caribbean which were chosen for this study.

The research began by asking the countries whether they had some electronic data base with the taxpayers subject to the transfer pricing system. Forty five per cent of the 20 countries surveyed answered affirmatively; while 40% do not have one and 15% did not provide information. These data bases may also be used to generate transfer pricing statistics. The tax administrations were consulted and of the 45% that answered they had electronic data bases, 100% generates statistical data from them.

In addition to the electronic data bases which the tax administrations have, there are others of a private nature which help in identifying useful information for transfer pricing analyses and controls. In the market there are also private data bases which assist in the search for comparable businesses for carrying out transfer pricing studies.

Graph IV-7 Use of private data bases

Number of tax administrations per data base



Source: Working team carrying out this Study.

The following have been identified among the main advantages in using the aforementioned data bases:

- Access to world information,
- Support in risk analysis,
- Verification of data which the companies provide in their transfer pricing studies,
- Access to homogeneous data,
- Access to simple search engines that extract information in a flexible and timely manner,
- Access to comparables for the control processes,
- Since they are the data bases most used by the taxpayers, the same parameter for comparison is general for data validation,
- One may develop ranges of benefits by sectors.

Some of the disadvantages are:

- They do not have sufficient information on Latin American and Caribbean companies
- This information cannot be considered as evidence at courts in many legislations since it is "nonpublic" information.
- They are not available in the official languages of the countries, for which reason the translation may be a barrier in examinations.
- They represent a high cost for several tax administrations.

The most representative transactions in Latin America and the Caribbean are those carried out between related parties, which involve commodities. In this respect it was determined to have available a data base in the tax administrations for obtaining the prices of commodities, royalties and rates of interest. The latter constitute the comparable value for intangibles and financial services.

In this respect, the following was verified among the countries considered: 25% of those surveyed had a data base for the prices of these goods and/or services; while the remaining 75% did not. Some of these data bases are: Bolsa de Cereales de Buenos Aires, Statistics Center of the ROFEX market, Data Base of the International Monetary Fund, Transfer contracts of the Instituto Nacional de Propiedad Intelectual (Argentina), KTMine, Chicago Board of Trade (CBOT), Base EDGAR and USDA from the United States and Royaltystat.

Inquiries were made regarding transactions that involve intangibles. In this regard the statistics showed that most of the tax administrations do not have data bases to assist in the analysis of this type of transactions. Only 15% stated that they had this type of data bases.

An inquiry was also made regarding the availability of data bases with information on local businesses. This is an important aspect inasmuch as it allows the tax administration the possibility of finding comparables more in keeping with the reality of taxpayers under control or verification. Only 20% of the twenty countries said they had available data bases with local companies. The countries having this information are shown below:

Table IV-8 Country and data base with information on local companies

Country	Source or Data Base
Argentina	Bolsa de Comercio de Buenos Aires http://www.bcba.sba.com.ar/home/index.php
Colombia	SIREM (www.supersociedades.gov.co)
Mexico	Bolsa Mexicana de Valores
Peru	Information by the Superintendencia de Banca, Seguros y AFP http://www.sbs.gob.pe/0/home.aspx / La Superintendencia de Mercado de Valores http://www.smv.gob.pe

Source: Tax administrations consulted.

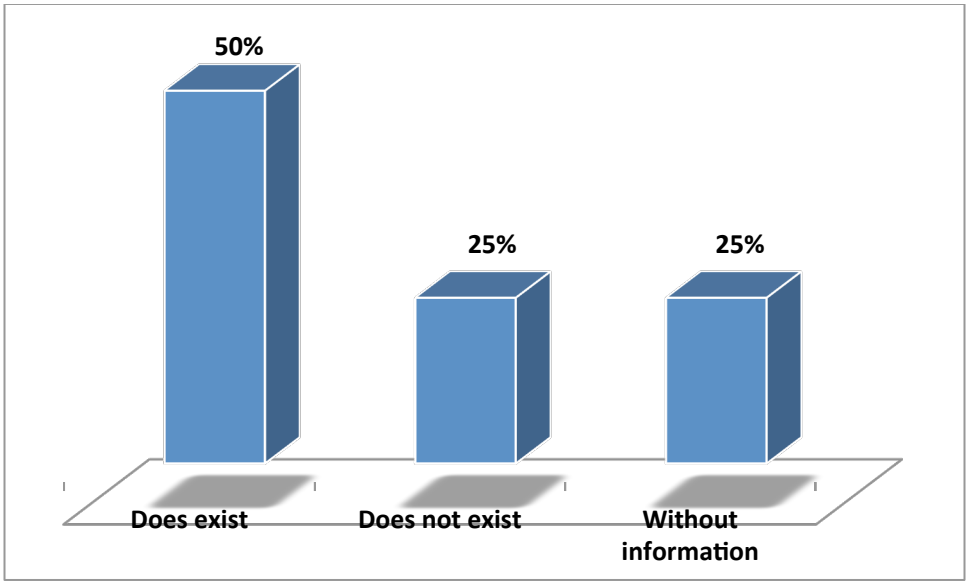
In sum, the tax administrations of Latin America and the Caribbean do not have sufficient access to local or regional information that may allow for a better use of comparables for transfer pricing analyses, thereby also affecting the taxpayers of the region. The access to said information is limited by the technological resources and the null or scarce availability of said information at the public level. One of the main shortages in the region has to do with the availability of data bases with prices of commodities and intangibles. Therefore, it is important and necessary for the tax administrations of the region to coordinate among themselves in order to make up for these weaknesses.

4. Administrative and higher level processes for making tax claims

a) Administrative levels

Upon concluding the tax audit, in most cases, as may be seen in the following graph, there is an additional level in the sphere of the tax administrations which review the auditing process.

Graph IV-15 A subsequent level following examination



Source: Working team carrying out this Study.

The examination levels following the audits vary according to the country and have the following characteristics:

Table IV-9 Levels following examination by country

Country	Level
Brazil	1st. level – Regional Judgment Delegation 2nd. Level - CARF – Fiscal Resources Council
Colombia	Assessment Division
Costa Rica	Claims Department
Ecuador	Claims Department (at the taxpayer's option), appeals for review.
Mexico	Appeal for Annulment (Legal action area of the Tax Administration)
Paraguay	Legal Department (Proceedings)
Dominican Republic	Reconsideration Department
Venezuela	Administrative Proceeding

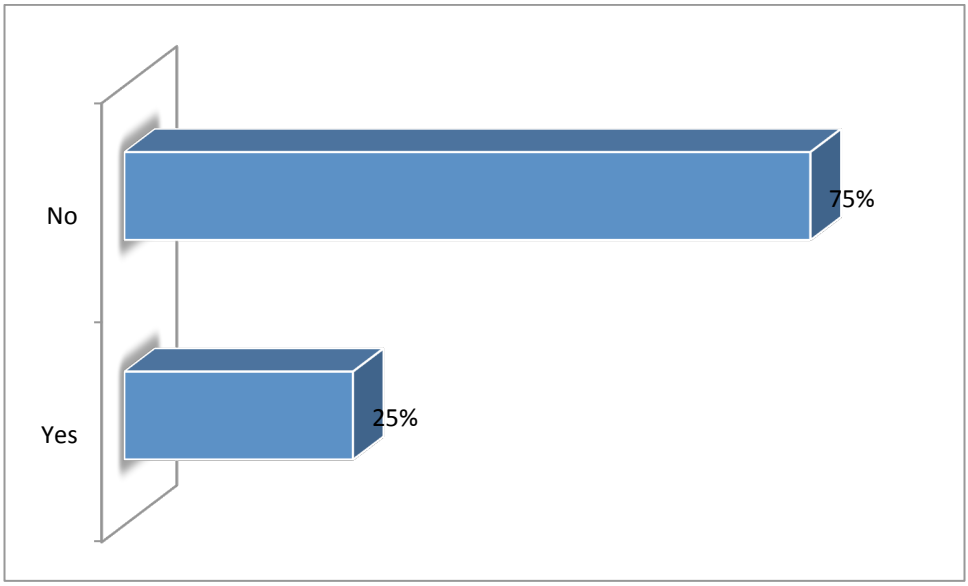
Source: Tax administrations consulted.

The time available for the levels indicated in table IV-9, according to the information provided by the tax administrations, ranges between 3 and 6 months; except for Venezuela, which has up to 2 years for deciding at the second level within the tax administration.

b) Higher levels

The Latin American and Caribbean tax administrations have been acquiring experience, some several years ago and others recently in transfer pricing control through massive and/or intensive processes (examinations). Based on the experience of some tax administrations, an analysis has been made of jurisprudence that could serve as guide to other tax administrations. The following graph shows in an aggregate manner the situation of the countries analyzed.

Graph IV-8 Jurisprudence on transfer pricing in the countries analyzed



Source: Working team carrying out this Study.

Shown below are the transfer pricing cases which the countries analyzed have in dispute before the justice courts.

Table IV-10 Transfer pricing cases at courts, according to country

Country	Number of cases
Argentina	29
Costa Rica	3
Ecuador	22
Mexico	80
Dominican Republic	22

Source: Tax administrations consulted.

Based on the experience which the tax administrations have had regarding the analysis, the number of cases in which the decision has been favorable and against the tax administrations was determined. The following table shows some results.

Table IV-11 Cases with a decision in favor or against the tax administrations

	Argentina		Mexico		Dominican Republic	
	Nº of decisions in favor of the Administration[1/]	Nº of decisions against the Administration	Nº of decisions in favor of the Administration	Nº of decisions against the Administration	Nº of decisions in favor of the Administration	Nº of decisions against the Administration
2007			1	0		
2008			3	2		
2009	1	1	4	1		
2010	1	3	3	2		
2011	1	1	4	5		
2012					8	0

1/ Decisions issued in 2009 and 2010 in Argentina, were partially in favor of the Administration
Source: Tax administrations consulted.

Complementing the previously presented information, a research was made regarding the existence in the countries being analyzed of courts specialized in tax issues. The work of the tax administrations is supported and strengthened with this type of specialized courts, especially in the sphere of transfer pricing.

Thus, from a total of 20 countries analyzed, 40% have specialized courts, 25% do not and 35% did not provide information in this respect.

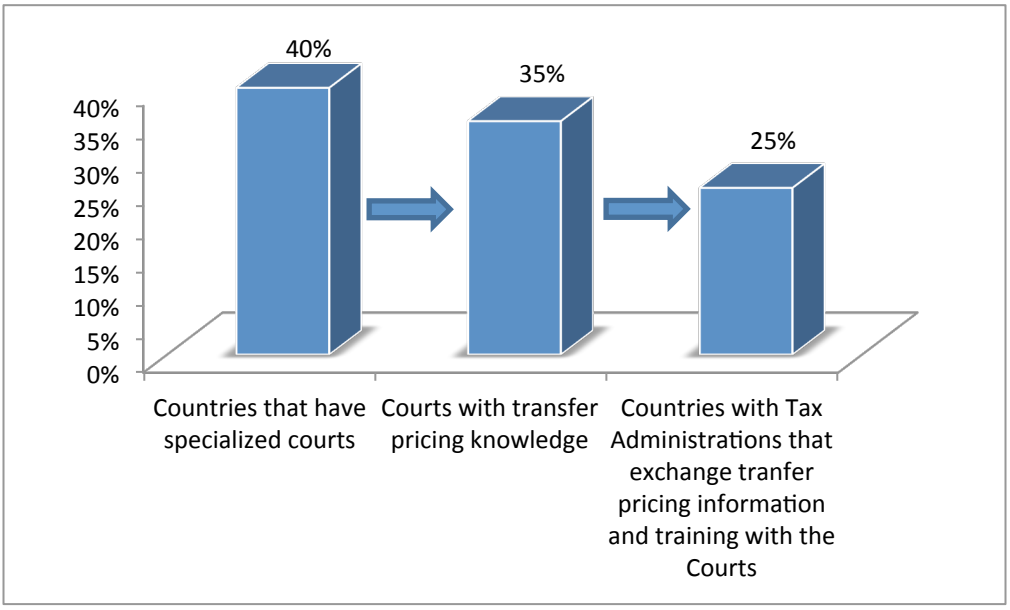
Below is a list of countries with specialized courts in tax issues:

- Argentina
- Chile
- Colombia
- Ecuador (judicial)
- Guatemala
- Mexico
- Peru
- Dominican Republic
- Panama (administrative)

Brazil has no justice courts specialized in tax issues. However, the main laws generated are from a mixed administrative court formed by representatives of the taxpayers and the Finance Ministry called: FISCAL RESOURCES ADMINISTRATIVE COUNCIL (CARF).

In addition to being important to count on courts specialized on tax issues, it is also very important that they be aware of transfer pricing issues. In this sense, the diagnosis made to the tax administrations showed that of the countries having specialized courts, only a few of them were aware of transfer pricing issues. That is, of the 40% of countries having specialized courts, only 35% had acquired knowledge on the subject. If we refer to actions involving exchange of knowledge and training between the tax administrations and specialized courts, this latter percentage diminishes to 25%.

Graph IV-9 Status of courts in relation to tax issues and transfer pricing



Source: Working team carrying out this Study.

B. Mechanisms for preventing and solving disputes

1. Agreements for avoiding double taxation (DTTs) and tax evasion.

In the international tax sphere, the term *double taxation* refers to a precise concept; namely: to the application of two taxes to the same tax base or taxpayer. According to the OECD, double taxation is defined as that resulting from *the application of similar taxes in two or more States to the same taxpayer, with respect to the same tax base and for the same period of time*[12]

[13] Organization for Economic Cooperation and Development (OECD), 1997

At the practical level, this situation arises when an investment is made in another country and the income obtained from the investment activity may be subjected to taxation in the country of origin, as well as in the country of residence.

To avoid or mitigate these effects Double Taxation Agreements (DTTs) may be signed and/or unilateral measures may be introduced in the tax laws of each country. On their part, agreements seek to correct double taxation in multinational groups by establishing mechanisms under the "win-win" scheme between the signatory states and ensuring legal certainty to the taxpayers. These agreements determine the rules to be used for avoiding double taxation, as well as the guidelines for affording collaboration between the tax administrations.

According to what has been observed in the preparation of the document, the situation in the region as regards the signing of agreements has been very irregular. On the one hand, there are countries that have been very active in entering into this type of agreements, as is the case of Mexico (44), Venezuela (31), Brazil (28) and Chile (24), while other countries like Guatemala, Honduras, Nicaragua and El Salvador have not entered into any agreement.

Table IV-12 Double taxation agreements signed and in force; by countries

Country	Number of agreements[1/]	Signatory countries
Argentina[2/]	29	Andorra, Australia, Bahamas, Bermuda, Belgium, Bolivia, Brazil, Cayman Islands, Canada, Chile, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Guernsey, Italy, Jersey, Mexico, Monaco, Norway, Netherlands, People's Republic of China, Peru, Spain, San Marino, Sweden and United Kingdom.
Bolivia	10	Germany, Argentina, Colombia, Ecuador, Spain, France, Peru, United Kingdom, Sweden and Venezuela
Brazil	28	Argentina, Austria, Canada, Chile, China, Korea, Denmark, Ecuador, Spain, Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Czech Republic, Slovak Republic, Sweden, South Africa and Ukraine.
Chile	24	Argentina, Belgium, Brazil, Canada, Colombia, Korea, Croatia, Denmark, Ecuador, Spain, France, Ireland, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, United Kingdom, Sweden, Switzerland and Thailand
Colombia	7	Bolivia, Chile, Ecuador, Spain, Peru, Switzerland, and Venezuela
Costa Rica	3	Germany, Spain and Switzerland
Ecuador	14	Germany, Argentina, Belgium, Bolivia, Brazil, Colombia, Canada, Chile, Spain, France, Italy, Mexico, Peru, Romania and Switzerland
El Salvador	1	Spain

Country	Number of agreements[1/]	Signatory countries
Jamaica	14	Germany, Canada, China, CARICOM (Barbados, Trinidad & Tobago, St. Lucia, Guyana, St. Kitts & Nevis, Antigua & Barbuda, Belize, St. Vincent & The Grenadines), Grenada, Denmark, Spain, United States, France, Israel, Norway, United Kingdom, Sweden and Switzerland
México	44	Germany, Argentina, Australia, Austria, Bahrain, Barbados, Belgium, Brazil, Canada, Korea, Chile, China, Denmark, Ecuador, Spain, USA, Finland, France, Greece, Hungary, India, Indonesia, Ireland, Iceland, Israel, Italy, Japan, Luxembourg, Norway, New Zealand, Netherlands, Panama, Poland, Portugal, United Kingdom, Czech Republic, Slovak Republic, Romania, Russia, Singapore, South Africa, Sweden, Switzerland and Uruguay
Panama	7	Barbados, Spain, Netherlands Luxembourg, Mexico, Qatar and Singapore
Paraguay	6	Germany, Argentina, Belgium, Chile, China and Uruguay
Peru	6	Brazil, Canada, Chile, Bolivia, Ecuador, Colombia
Dominican Republic	1	Canada
Trinidad & Tobago	17	Germany, Brazil, Canada, CARICOM (Barbados, Jamaica, St. Lucia, Guyana, St. Kitts & Nevis, Antigua & Barbuda, Belize, St. Vincent & The Grenadines), China, Denmark, Spain, United States, France, India, Italy, Luxembourg, Norway, Sweden, Switzerland, United Kingdom and Venezuela
Uruguay	5	Germany, Spain, Hungary, Mexico and Switzerland
Venezuela	30	Germany, Austria, Barbados, Belarus, Belgium, Canada, Korea, Cuba, China, Denmark, Spain, United Arab Emirates, United States, France, Indonesia, Iran, Italy, Kuwait, Malaysia, Norway, Netherlands, Portugal, Qatar, United Kingdom, Czech Republic, Russia, Sweden, Switzerland, Trinidad & Tobago and Vietnam.

1/ When the agreements signed are multilateral, every signatory country is counted.
2/ The agreement signed with Switzerland was temporarily interrupted since January 1st, 2012. The agreement with Russia is awaiting the communication between the countries for its entry into force. The agreements with Chile and Spain were denounced and accordingly cease to be effective as of January 1st, 2013. However, on that same date the OECD-EU multilateral convention entered into force in Spain. The agreement with Mexico deals with double taxation in international transportation.
Source: Tax administrations consulted.

Several important aspects may be derived from the foregoing table: Mexico, an OECD member country since 1994 has been most active in the signing of double taxation agreements. Most of them have been signed with member countries from that same organization which represent the largest economies and have a greater level of relative development, as well as a long-standing experience in the signing of agreements. This could possibly be due to focusing on policies for encouraging the flow of investments.

On the other hand, a second group of countries have shown some progress since 2010. The OECD's tax transparency project, the developed and emerging countries (G20) and the international community in general, have strongly promoted the transparency and information exchange practices among many countries considered non-cooperative countries by the OECD. In the past two years, Panama, Uruguay and Costa Rica have signed a total of 14 agreements and negotiated 11 other agreements that must be ratified (5 in the case of Panama -Italy, Portugal, Korea, France and Ireland – and 6 in the case of Uruguay -Ecuador, Finland, Korea, Liechtenstein, Malta and Portugal).

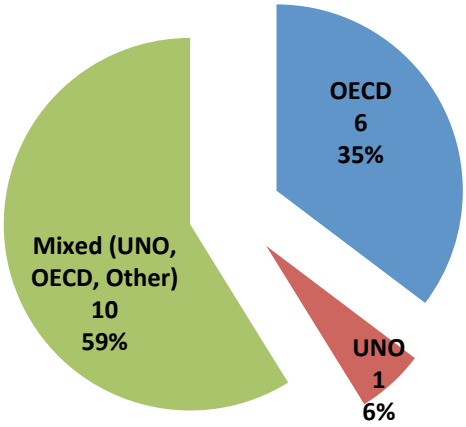
The model agreements are mainly developed by international organizations and constitute a guide which sets the starting point in the negotiation, as well as a common basic structure for the contracting countries, which allows or at least facilitates a common interpretation and application by the States. In most of the agreements signed by the countries, there prevail mixed criteria taking as basis the OECD model and introducing UNO elements and other criteria, as is the case of the countries belonging to the Andean Community (Peru, Ecuador, Colombia and Bolivia)[13] which have developed the "Andean Pact Model", based on the principle of location of the income producing source.

There is a similar situation in the Caribbean countries members of CARICOM (Barbados, Jamaica, St. Lucia, Guyana, St. Kitts & Nevis, Antigua & Barbuda, Belize, St. Vincent & The Grenadines and Trinidad & Tobago), which have signed double taxation agreements with criteria that differ from those of the conventional UNO and OECD models. In the case of CARICOM, for example, the free circulation of capitals is promoted, for which reason the dividends paid by a company of one State to another company of another State are not taxed either at the source or in the residence state.

The purpose of this study is not to evaluate each of the Agreements signed by the countries being analyzed; nevertheless, it is possible to assert that the agreements signed have adopted mixed criteria.

[14] Venezuela retired from the Andean Community in 2011

Graph IV-10 Models of double taxation agreements that have been considered by the countries



Source: Working team carrying out this Study.

It is important to point out that it is difficult to establish drastic differences in the model agreements, since the existing models have been based on the one developed by the OECD. The substantial difference between the UNO model and the OECD model is that the UNO mo0del affords greater recognition to income in the source country, thereby benefitting net capital importing countries, as is the case of the countries of the region. In addition, the UNO model allows the possibility of "*Tax Sparing*[14]". Nevertheless, even though the UNO model may be more beneficial for the countries of the region, it has been used as negotiating basis in a minimum number of cases.

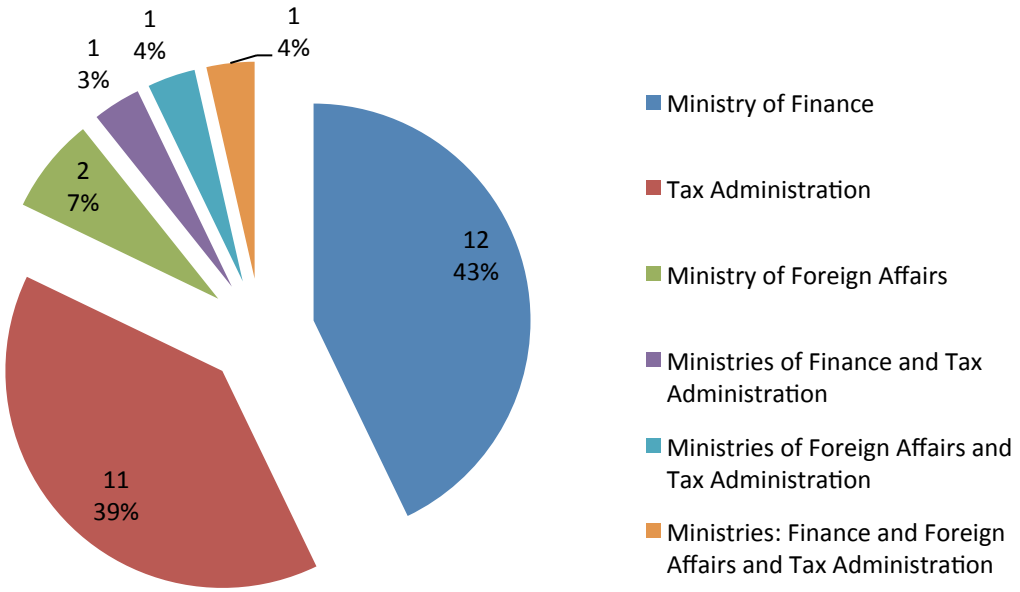
In general, all the agreements for avoiding double taxation offer advantages as well as disadvantages which must be evaluated by the States prior to and during the negotiating process, as well as during their execution. In general, part of the tax base is waived in order to promote foreign investment. However, these agreements also allow promoting cooperation between two or more countries for combatting tax evasion.

[15] The **"tax sparing"** clause is a specific mechanism for **applying the deduction for double international taxation** which allows a resident company or entity in a State to deduct in said country unpaid taxes *("spared taxes")* in another State, with the limitation that it does not exceed what the entity would have paid in the state of residence if the income would have been obtained in said state.

As disadvantage, the signing of an Agreement implies waiving tax resources, especially in the source country, which may affect the status of public finances. For this reason, entering into agreements requires throughout the process, since the negotiation stage up to its application, a level of experience that is generally distributed among different actors; from the Ministry of Treasury or Finance, Ministry of Foreign Relations and the Tax Administration. Generally, the responsibility for its negotiation is attributed to the Ministry of Finance, which theoretically has competency over the fiscal policy. Thus, the negotiation stage is understood to be a tax policy strategy, wherein income tax is usually affected.

In 8 of the 16 countries analyzed and which have signed the agreements, the responsibility for the negotiation falls on the Ministry of Foreign Relations. There are cases wherein the negotiation of the DTAs is shared between two of these Organizations and in the case of Bolivia, the three Organizations share responsibility in negotiating these Agreements. Hereunder, we will observe it graphically:

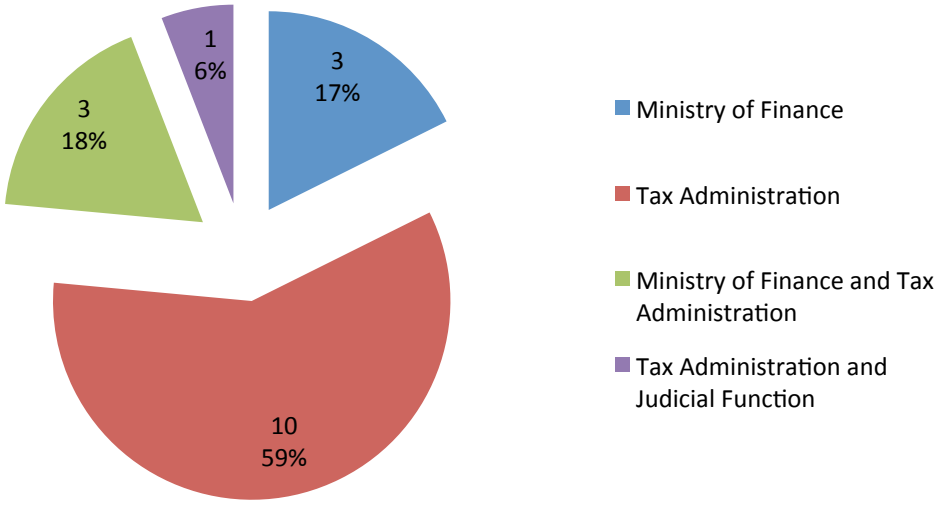
Graph IV-11 Competency for interpreting agreements for avoiding double taxation



Source: Working team carrying out this Study.

In most cases, the interpretation and application of these agreements falls on the Tax Administration. In some countries, the interpretation may be shared among several government entities. In Argentina there is a "Double Taxation Agreements Evaluating and Reviewing Committee", which is chaired by the Federal Administrator of the Federal Administration of Public Revenues (AFIP) and formed by officials from the Ministry of Economy and Production, the Ministry of Foreign Relations and Cult and AFIP. Said Committee is specifically responsible for the analysis and evaluation of the DTAs in force or which have been proposed, as well as for the follow-up and proposal for their substitution or modification. In Ecuador, the judicial function may perform an autonomous interpretation.

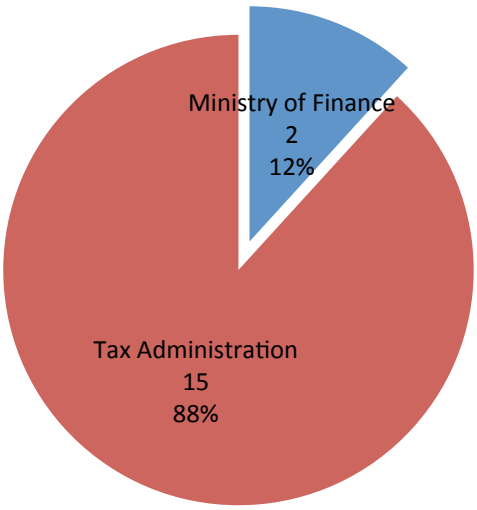
Graph IV-12 Competency for Interpreting DTAs



Source: Working team carrying out this Study

With respect to the administration of the DTAs, there are only two countries in the region where the competency falls on the Ministry of Finance. These are: Costa Rica and El Salvador, while in the other cases the competency falls on the Tax Administration.

Graph IV-13 Competency for the administration of agreements



Source: Working team carrying out this Study

The following chart shows the status of the negotiation, interpretation and administration of Agreements to Avoid Double Taxation in each of the countries analyzed:

Table IV-13 Competency for the negotiation, interpretation and administration of DTAs

Country	Negotiation	Interpretation	Administration
Argentina	Ministry of Finance	Ministry of Finance and Tax Administration	Tax Administration
Bolivia	Ministry of Finance, Tax Administration and Ministry of Foreign Affairs	Ministry of Finance y Tax Administration	Tax Administration
Brazil	Tax Administration	Tax Administration	Tax Administration
Chile	Tax Administration	Tax Administration	Tax Administration
Colombia	Ministry of Finance and Tax Administration	Ministry of Finance and Tax Administration	Tax Administration
Costa Rica	Ministry of Finance	Ministry of Finance	Ministry of Finance
Ecuador	Tax Administration and Ministry of Foreign Affairs	Tax Administration and Judicial Function	Tax Administration
El Salvador	Ministry of Foreign Affairs	Ministry of Finance	Ministry of Finance
Jamaica	Tax Administration	Tax Administration	Tax Administration
Mexico	Ministry of Finance	Tax Administration	Tax Administration
Panama	Ministry of Finance	Tax Administration	Tax Administration
Paraguay	Ministry of Foreign Affairs	Tax Administration	Tax Administration
Peru	Ministry of Finance	Tax Administration	Tax Administration
Dominican Republic	Ministry of Finance	Tax Administration	Tax Administration
Trinidad & Tobago	Ministry of Finance	Tax Administration	Tax Administration
Uruguay	Ministry of Finance	Ministry of Finance	Tax Administration
Venezuela	Tax Administration	Tax Administration	Tax Administration

Source: Tax administrations consulted.

2. Specific Information Exchange Agreements

The agreements to avoid double taxation are appropriate elements in transfer pricing because they eliminate or at least try to eliminate double taxation; however, in order to prevent international tax evasion and fraud, specific agreements for the exchange of information seem to be the most strongly recommended. Although DTAs with broad clauses for the exchange of information (for example, latest update of Article 26 of the OECD's Model Convention) are also effective, the information exchange agreements have certain advantages over them. For example, a State wishing to exchange tax information with another, might not be interested in signing an Agreement to Avoid Double Taxation, after evaluating the costs and benefits involved therein.

Of the countries of the region that have been analyzed, 12 have signed specific information exchange agreements: Argentina, Brazil, Chile, Costa Rica, Ecuador, Jamaica, Mexico, Panama, Peru, Dominican Republic, Trinidad & Tobago and Uruguay.

Table IV-14 Information exchange agreements signed and in force, by countries

Country	Number of agreements	Signatory countries
Argentina	10	Bermuda, Brazil, Chile, China, Ecuador, Spain Guernsey, Jersey, Monaco and Peru
Costa Rica	7	Argentina, France, El Salvador, United States, Guatemala, Honduras and Nicaragua
Ecuador	1	Argentina
Jamaica	8	Denmark, United States, Faeroe Islands, Finland, Greenland, Iceland, Macao and South Africa.
Mexico	23	Aruba, Netherlands Antilles, Bahamas, Bahrein, Belize, Bermuda, Canada, Costa Rica, United States, Gibraltar, Cayman Islands, Isle of Man, Cook Islands, Guernsey Islands, Jersey Islands, Marshall Islands, British Virgin Islands, Liechtenstein, Monaco, Samoa, Saint Lucia, Turks and Caicos Islands and Vanuatu
Panama	1	United States
Dominican Republic	1	United States
Peru	3	Argentina, Ecuador and United States
Trinidad & Tobago	1	United States
Uruguay	1	France

Source: Tax administrations consulted.

The Tax Information Exchange Agreements signed according to the CIAT model are those between Argentina and the following countries: Brazil, Chile, Spain, and Peru.[15]

In general, double taxation agreements provide for at least one clause on information exchange, and the fact that such clause is included ensures compliance with the objective, which is to avoid double taxation. There are few agreements that do not include information exchange clauses, one of them being the one agreed between Ecuador and Switzerland.

[15] www.ciat.org/index.php/es/productos-y-servicios/ciatdata/tratados.html

3. Friendly procedure for solving disputes

For the tax administrations as well as for multinational groups, international taxation involves important risks and complexities. The multinational group, due to the volumes and diversity of transactions it manages in different countries, faces double taxation risks and high costs of compliance. In addition, the complexity results from the increase in transfer pricing adjustments carried out by the tax administrations, which situation is further worsened when these regulations differ significantly between countries. On their part, the tax administrations are forced to bear high administrative costs in the implementation and execution of control regimes.

Given these situations, it is imperative that countries make effective use of practical mechanisms for solving the disputes originating from transfer pricing and other international taxation aspects, be they unilateral or bilateral. On the bilateral side, in the DTA models there is an article[16] concerning "friendly procedure" which empowers the pertinent authorities of the contracting parties to reach agreements for solving disputes. This clause includes the "*Mutual Agreement Procedures*" (MAPs) and the "*Advance Pricing Arrangements*" (APAs). The first ones serve as a dispute resolution mechanism and the second for their prevention. According to the OECD Model Convention, the text of the clause reads as follows:

> *Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.*
>
> *The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.*
>
> *The competent authorities of the Contracting States shall endeavor to resolve by mutual agreements any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.*

[16] These issues are included in article 25 of the UN as well as OECD model conventions.

MAPs and APAs are appropriate mechanisms for ensuring the legal certainty of the taxpayers and solving conflicts dealing with double taxation that originate when a State has audited a company whose income could also have been taxed in another State, or when, as a result of the audit, the person considers that the assessed tax is not in keeping with that provided in the Agreements.

a) Mutual agreement procedures

Mutual agreement procedures are exclusive of agreements for avoiding double taxation and may result from their interpretation and application. To this end, and as a general rule, it is necessary that the taxpayer request in the State wherein he lives, the solution to a problem that implies or may imply double taxation, as well as reaching a mutual agreement with the other State involved. Argentina, Ecuador and Mexico are the countries of the region which to date, have generated experience in the negotiation or signing of mutual agreement procedures.

b) Advance transfer pricing arrangements

The Advance Pricing Arrangements are a measure for solving disputes and simplification put into practice by the tax administrations on the basis of provisions in the agreements or in their internal legislations. The definition of APA as provided in the DTAs, allows two or more contracting states to discuss and establish mechanisms to avoid double taxation. When APAs are signed between two countries, they are considered bilateral, but when there are more than two intervening, they are considered multilateral. On the other hand, when the internal legislation allows for requesting an APA between the taxpayer and the local tax administration, we would be faced with a unilateral agreement.

A unilateral APA may be defined as a contract signed between a taxpayer and the tax authority, for the purpose of agreeing, prior to entering into transactions between related parties, on the criteria for the assessment of said operations. This is especially so with respect to methods for estimating prices or market margins, correction adjustments, determination of comparable companies and transactions, goods or services subject to the transfer pricing methodology and other elements of the analysis, in order that both parties may assured of compliance with the full competency principle. Unilateral APAs have acquired great significance in recent years due to their ease of administration and greater speediness in being formalized, as compared to the bilateral and multilateral and of course, their low processing cost.

In general, some of the good things about APAs are the following:

1. They reduce the transfer pricing system compliance costs for the taxpayers as well as the tax administrations. An APA may avoid fiscal costs and audit times, as well as lawsuits for the taxpayers and the tax administrations;

2. They afford greater legal security to the taxpayer. According to the OECD guidelines, APAs may help taxpayers eliminate uncertainty on increasing the security of tax treatment for international transactions. Thus, a taxpayer may be in a better position to predict his fiscal debt, thereby allowing a favorable fiscal environment for investment;
3. They allow the tax administration to focus resources on other taxpayers or risk areas.

Given the advantages of the APAs, good use is made of them by the countries analyzed. Evidence thereof is the fact that nine countries consider in their internal regulations the possibility of negotiating with this type of instrument.

Table IV-15 Scope of the APAs according to the internal legislation

Country	Type of APAs
Chile[1/]	Unilateral, bilateral and multilateral
Colombia	Unilateral
Ecuador	Unilateral, bilateral and multilateral
Guatemala	Unilateral
Honduras	Unilateral
Mexico	Unilateral, bilateral and multilateral
Peru	Unilateral
Dominican Republic	Sectorial[2/]
Uruguay	Unilateral
Venezuela	Unilateral

1/According to Amendment to Law 20630 made on September 27, 2012, which entered into force on January 1st, 2013.
2/ It was recently modified in the reform of the internal legislation, Law 253 of November 9, 2012. The possibility of Sectorial APAs was eliminated and the unilateral and bilateral APAs were included.
Source: Tax administrations consulted.

It follows from the foregoing table that the countries of the region have opted mainly for including the unilateral APAs in their legislations. A case which stands out in the analysis is that of the Dominican Republic, where the internal law provides for sectorial APAs. Under this scheme, the taxpayers of the sector and the tax administration will agree on the prices, margins or amount of considerations that comply with the principle of free competition. The legislation of this country does not allow a taxpayer to enter into agreements with the tax authority, unless it is through the Association representing the sector and jointly with the other members[17].

[17] Article 281 of the Dominican Tax Code, Paragraphs II and IV.

Likewise according to the Brazilian Law[18] the taxpayers may request the Ministry of Finance the change of fixed margins. This request must be made under justified circumstances and should be shown through technical publications, research works or reports. It will be up to the Secretariat of Finance of the Ministry to disqualify the act, if the information provided by the taxpayers is inappropriate or inconsistent. This law also provides that the change of margins may be done officially, as was published on September 17, 2012.

It is worth mentioning that countries having internal regulations on bilateral and multilateral APAs are those wherein any of their DTAs signed include clauses on APAs, this being the case of Mexico and Ecuador.

As for the duration of the APA, this varies among countries and ranges from 18 to 60 months. The following table shows the duration according to each country's legislation.

Table IV-16 Duration of APAs, according to countries since their first issuance

Country	Duration
Chile [1/]	The fiscal year plus 36 months
Ecuador	36 months or more
Guatemala	48 months
Honduras	No more than 5 fiscal periods
Mexico	60 months
Peru	48 months
Dominican Republic[2/]	18 months
Uruguay	36 months
Venezuela	36 plus the remaining months of the current fiscal year

1/According to Amendment to Law 20630 made on September 27, 2012 which entered into force on January 1st, 2013.
2/ Amended through Law 253 of 2012, hereinafter the duration of the APA will be the current fiscal year and the three subsequent fiscal years.
Source: Tax administrations consulted.

Upon expiration of the duration of the APA in force, in some countries, the taxpayer may request its extension. This is the case of Ecuador, Mexico, Dominican Republic and Venezuela[19] where the regulation provides for the extension of an APA for an additional period. The time frame for extending an APA is 36 months in Mexico and the Dominican Republic and 36 months or more in Ecuador. In some of these countries, there is the possibility that upon expiration of the term, it may continue in force until a new one is approved[20].

[18] Law 9.430 of 1996 (amended through Law N° 9.959 and N° 2.000 law 12.715 of September 17, 2.012). Articles 20 and 21.
[19] Article 165 of the IT Law. "*The advance transfer pricing arrangements will be applied to the fiscal period in force on the date it is entered into and during the three (3) subsequent fiscal periods. The duration may be greater when they are derived from a friendly procedure, according to the terms of an international treaty of which the Republic may be a part*".
[20] i.e. Dominican Republic

The negotiation of an APA in the great majority of cases and according to the country experiences tends to be long. This is due to various reasons, such as, for example: the need to compile detailed information for analyzing the taxpayer's historical documents, of the comparable companies and of the transactions. A joint analysis is undertaken (taxpayer-treasury), the viability of processing the agreement, its scope, the methodologies to be used and the documents required by the tax administration. Although desirable, not all the countries provide in their internal regulations for specific guidelines to conduct the entire process. The regulations of only six countries specify the procedure to be followed in requesting an APA. These are: Colombia, Guatemala, Mexico, Peru, Venezuela and Chile; in this latter country it was introduced through legislation of September 27, 2012.

According to the legislation of these countries, the taxpayers must submit to the tax administration their APA proposal, which should be based on a transfer pricing study or other document proving that the assessment of the transaction or transactions with their related parties have been agreed according to the transfer pricing guidelines and in keeping with the respective legislation. Generally, the request must be accompanied, although not limited, to the following information:

1. General information on the taxpayer and related company;

2. Description of the contents of the agreement to be formulated, listing each of the types of operation to be covered;

3. Description and justification of the fundamental assumptions of the agreement (for example, economic conditions, market quota and conditions, sales volume and final selling price, rate of exchange and rate of interest);

4. Detailed explanation of the proposed transfer pricing methodology, specifying for the current period and the periods in which the agreement will be in force, the most appropriate assessment method, the selection of comparable enterprises or transactions, the determination of the price or margin or range thereof, or amount of the consideration;

5. Generic information with respect to this type of agreements, conventions or assessment proposals approved or in process before the tax administrations of other states;

6. Generic identification of other types of transactions carried out between the related entities or parties that will not be covered by the agreement;

7. Basic hypothesis or critical assumptions on which the proposal will be formulated.

Other administrative aspects in relation to the APAs and which were included in the questionnaire refer to the term in which the tax administrations must respond to the APA requests. According to the regulations of the countries this time frame ranges between 3 and 24 months.

Table IV-17 Response time to an APA request; by country

Country	Time
Chile[1/]	6 months
Colombia	9 months
Ecuador	24 months
Guatemala	12 months
México	8 months
Peru	12 months
Uruguay[21]	3 months
Venezuela	12 months

[1/] According to Amendment to Law 20630 of September 27, 2012, which enters into force on January 1st, 2013.

Source: Tax administrations consulted.

The preparation of an agreement is technically complex, requires time and effort from the taxpayer and the tax administration. In addition, when APAs are bilateral or multilateral, tax administrations abroad are involved, for which reason additional costs would be incurred. In this respect, the tax administrations could request taxpayers for a payment to cover the expenses arising from this procedure. Currently, only Mexico and Venezuela have established the corresponding payment for processing an APA. IN the particular case of Mexico, the amount is 905 Pesos (approximately US$ 90 according to quotation of the month of October 2012). In Venezuela, the amount to be paid by the taxpayer has not yet been determined.

Requests for information are exhaustive during the negotiation stage, but once concluded the APA ensures a relief for the taxpayer during the periods covered, as regards the documentation obligation and other transfer pricing requisites. Nevertheless, obligations do not stop here. It is necessary, on the one hand, that the tax administrations guarantee the taxpayer that they will make no adjustment for the years covered; but, on the other, it shall be so, if the taxpayer complies with the obligations provided in the agreement. To verify compliance with the APA, the legislation in Uruguay and the Dominican Republic provide for conducting taxpayer review, but this is not so in Mexico.

[21] The regulations in Uruguay do not provide a term for responding, by practice or administrative measure the Tax Administration responds to these requests within a 3-month term.

Similarly, the administrations may request the remittance of information to verify compliance with the APA. In the specific case of Colombia, simultaneously with the presentation of the transfer pricing information return, taxpayers who may have entered into an advance pricing arrangement, must submit a report showing conformity of its transfer prices with the conditions provided in the agreement. The report should include:

- The transaction to which the agreement has been applied and that they have been carried out in the tax period referred to in the information return;
- The prices, amounts of consideration or profit margins at which the types of transaction mentioned in the previous item have been carried out, as a result of the application of the agreement;
- The types of transaction carried out in the tax period, similar to those referred to in the approved proposal, but which are not included in the agreement;
- The prices, amounts of consideration or profit margins at which they have been carried out;
- A description of differences existing between all of them.

On the other hand, as an alert mechanism that may allow for identifying taxpayers who fail to comply with that provided in the APA, in Mexico, upon conclusion of the term originally agreed for its self-correction; that is, to comply with that provided in the APA according to the methodology agreed, an analysis is made of previous and subsequent annual returns, to ensure that they abide by the APA methodology.

An important challenge for the tax administrations with respect to the APAs is the availability of qualified staff for their management. Very few administrations in the region count on a team exclusively devoted to advance pricing arrangements, this being the case of Colombia, Mexico and Uruguay which have a team devoted to their control and administration.

Likewise, according to research carried out among the countries being analyzed, through October 2012, only Mexico and Uruguay had entered into APAs. Uruguay signed its first APA in 2012. On its part, Mexico has been negotiating APAs for a long time, with a total of 291 to date, of which the manufacturing industry has 126 APAs in force; that is, 43% of the total that have been negotiated.

Table IV-18 Advance transfer pricing arrangements entered into by Mexico, by sector

Sector	Number
Manufacturing Industry	126
Retail trade	15
Wholesale trade	9
Support to businesses, waste disposal and repair services	5

Sector	Number
Real estate services and lease of properties and intangibles	4
Transportation, Mail and Storage	3
Professional, scientific and technical services	2
Mining	2
Financial and insurance services	1
Others	124
Total	**291**

Source: Tax administrations consulted.

C. Simplified systems for taxing international transactions.

The effective implementation of regulations for avoiding abusive transfer pricing manipulation, especially when based on the application of the arm's length principle, frequently results in significant costs for the tax administrations as well as for the taxpayers. In order to reduce this effect, countries introduce regulations for simplifying compliance requisites. These measures which may consist of the simplification of the assessment methods, the determination of ranges or fixed margins for certain sectors or taxpayers, exemption from the remittance of documentation and/or exemption from assessing transactions between related parties, when these do not exceed a certain pre-established amount have become a speedy and efficient manner for controlling transfer prices between related parties.

When a price or margin is fixed through a simplified regime, either on the basis of transfer pricing methods or not, or a predetermined arm's length range for an economic sector or activity or for transactions, such as royalties, for example, or for interest on loans, they are generally known as protection regimes or "*safe harbours*".

A large number of countries, developed as well as developing, have included simplified measures in the design of their transfer pricing legislation. Their acceptance is based on the fact that (i) they afford the taxpayers greater juridical security, (ii) allow the tax administration to focus its resources toward some other sectors, other transfer pricing transactions and other types of risks and (iii) they reduce the taxpayers' compliance costs, especially with the *"safe harbour"* regime, since they are exempt from, or the requirements for providing the tax administration documents on the assessment of their transactions with related parties are reduced, given that the threshold of prices or margins that would correspond to the beneficiary country have been previously determined .

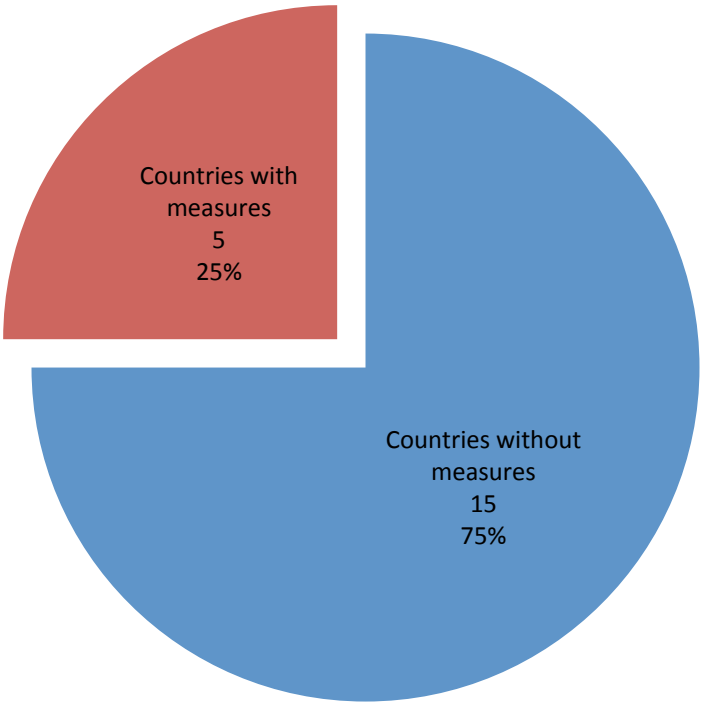
As an additional advantage, "*safe harbours*" may be beneficial for small taxpayers, inasmuch as they release them from the obligation of obtaining information to justify the transfer prices, which generates a considerable cost. Under this protection system, the information burden is passed on to the tax administrations.

Some arguments against the use of this procedure are the following:

- The subjacent high risk of double taxation;
- It promotes inequity and tax planning, inasmuch as it does not take into consideration the individual characteristics of each transaction or the specific or inherent situations in the different companies involved. On disregarding this latter aspect, one may allow, on the one hand, for a higher price or margin than that which the taxpayer could obtain under market conditions. Likewise, the opposite could occur when the resulting price in the protection system were lower, thereby allowing greater space for tax planning.

Of the twenty countries analyzed, 5 of them, regardless of the level of experience in the implementation of the transfer pricing legislation state that they have in their legislation and in practice, some type of simplified measure. These are: Brazil, Colombia, Ecuador, Mexico and Uruguay. In the case of this latter country, its legislation[22] empowers the Executive Body to establish, in general, special useful systems, but still nothing has been regulated in this respect[23].

Graph IV-14 Existence of simplified transfer pricing measures



Source: Working team carrying out this Study

[22] Article 44 of Chapter VII of Title 4 of TO 1996.
[23] Law No. 253 of November 2012, recently approved in the Dominican Republic, allows the Tax Administration to establish Protection Systems for specific sectors or economic activities.

These measures have been introduced by means of laws in most of the analyzed countries that have adopted them, except for Colombia, where the simplified system was issued through regulation and Brazil, which in addition to having incorporated them in the Law, has dealt with them in the respective administrative regulation. Table IV-19, shows the means by which these measures have been introduced in each country:

Table IV-19 Legal base of the simplification measures

Country	Measure
Brazil	Law, Administrative regulation
Colombia	Regulation
Ecuador	Law
México	Law
Uruguay	Law

Source: Tax administrations consulted.

Some of the most common simplification measures are those that set fixed margins for economic sectors; namely: simplifications with respect to the rate of interest, exemption with respect to small transactions and/or small businesses, simplified transfer pricing methods, exemptions with respect to requirements for providing information and exemptions regarding the transfer pricing rules. The following table shows the situation of these measures in the countries of the region:

Table IV-20 Simplification Measure; by type

Measure	Number	Countries
Exemption from transfer pricing system	3	Brazil, Colombia and Mexico
Exemption from supporting documents	3	Colombia, Mexico and Ecuador
"*Safe harbour*" methods	3	Mexico and Brazil
"*Safe harbours*" rate of interest	2	Brazil and Bolivia

Source: Tax administrations consulted

With respect to the first measure, ***Exemption from transfer pricing system,*** in those countries wherein it is available, it is applied to small and medium enterprises (SMEs). To determine the SME concept, usually the countries set a maximum threshold based on gross revenues or net worth, and whenever taxpayers are below such level, they would not be subject to the regulations provided in each country's laws.

Table IV-21 Scope of the simplified measures: Exemption from transfer pricing system

Country	Detail of measure	Beneficiaries	Year of implementation
Brazil[24]	Exemption	Taxpayers declaring the price at a value of 90% of national market.	1997
Colombia[25]	Exemption for SMEs	Taxpayers not exceeding 100.000 UVT of Gross Net Worth or 61.000 UVT of Gross Sales.	2004
Mexico	Exemption for SMEs	Individuals whose revenues from business activities and interest do not exceed 2 in millions of Pesos.	2002

Source: Tax administrations consulted.

The **Exemption from supporting documents** does not oblige them to carry out studies for the assessment of transfer pricing and of any other type of related document. The details of benefits per country are broken down in the following table:

Table IV-22 Scope of the simplified measures: Exemption from supporting documents

Country	Detail of measure	Beneficiaries[1/]	Year of implementation
Colombia	Exemption of documents for small transactions	Types of transactions not exceeding 10,000 UVT	2004
Ecuador	Exemption of documents on tax incurred	Individuals or businesses with TET[2/] exceeding 3%	2009
Mexico[3/]	Exemption of documents for SMEs	- Persons whose income in the preceding fiscal period does not exceed 13,000,000 Pesos. - Companies with income from business activities that do not exceed MEX $13,000,000; and income from professional services that do not exceed MEX $ 3,000,000	2002 and 2012

1/ In all cases the exemption is not applicable if the transaction has been carried out with persons domiciles in Tax Havens. IN the case of Ecuador, this is not applicable to businesses having an exploitation contract with the Government.
2/ Tax incurred over total of taxable revenues
3/ On November 12, 2012 this same exemption was enacted for transactions with national related parties in Mexico.
Source: Tax administrations consulted.

[24] Exemption of transfer pricing control when the price is set at a value of 90% of the national market.
[25] Taxpayers who do not exceed 100.000 UVT of Gross Net Worth or 61.000 UVT of Gross Sales are not taxpayers of the transfer pricing system.

The countries that use the "***Safe Harbours"*** **transfer pricing method** in the region, Mexico and Brazil, estimate margins based on parameters as profitability indicators for the industry. In Mexico, the "*safe harbour*" is exclusively intended for companies devoted to the maquila[26] operation and whereby these taxpayers determine their taxable earnings based on predetermined ratios according to total assets or based on total costs and expenses, whichever is greater.

Technically, the "*safe harbour*" is the application of the Transactional Net Margin Method, using as indicators of the level of profitability, the operational margin and the return on assets. Companies carrying out maquila operations that opt for this measure are exempt from the obligation to obtain and preserve documentary transfer pricing evidence. However, they must submit to the tax authorities a document stating that the taxable earnings of the fiscal period represented at least the larger amount resulting from the "*safe harbour*" application, at the latest, three months after the date of expiration of said fiscal period.

In the case of Brazil, the simplification measures are in force since 1997 and are based on predetermined margins beginning with the Resale Price Method and Cost Plus Method. The assigned margin depends on whether the taxpayer is an exporter or importer. It is worth noting that the entire transfer pricing method in Brazil is determined on the basis of fixed margins and presumptive income. (See chapter III, section B for more details).

Table IV-23 Scope of the simplified measures: "*Safe harbours*" transfer pricing method

Country	Method	"*Safe harbour*" margin or price
Brazil	RPM/ Resale Price Method	Fixed margins: Imports: 40%; 30% and 20% Exports: 15% and 30%
	CPM/ Cost Plus Method	Fixed margins: Import: 20% - Export: 15% and 30%
Mexico	TNMM/ Transactional Net Margin Method	6.9% over total value of assets or 6.5% over total amount of costs and expenses.

Source: Tax administrations consulted.

In the case of Brazil, the following are other procedures applied to international transactions:

1. Export transactions to related parties: The taxpayer showing net profit (prior to income tax and social contribution in adjusted income) originating from exports to related parties, in an amount equivalent to at least 5% over such sales, must show compliance with the transfer pricing regulations, by presenting the transaction documents. The minimum 5% net profit on export sales is calculated based on the annual average of the current year and the two preceding years.

[26] Maquilas refer to companies producing goods for export.

2. The corporation whose net profit from exports in the calendar year does not exceed 5% of total net profits in that same period must show the application of the prices on those exports, exclusively with the documents related to the transaction.

The above statements are shown in a more schematic manner hereunder:

Table IV-24 Simplified Measures: "*Safe harbours*" Brazil: International transactions

Export to related parties				
Transaction	Condition		Consequence	Support
Net Profit from exports to related party	Percentage	Calculation base	Show compliance with transfer pricing	Documents showing the transaction
	At least 5%*	Over export sales to obtain the net profit		
*This calculation is based on the annual average of the current year and the two preceding years.				
Corporations				
Transaction	Condition		Consequence	Support
Net profit from exports (One calendar year)	Percentage	Calculation base	Show compliance with Transfer Pricing	Documents showing the transaction
	Does not exceed 5%	Over net profits of the same period		

Source: Tax administrations consulted.

Simplified measures tend to be attractive to taxpayers inasmuch as they exempt them from, or reduce the obligation to send information to the Tax Administration. Ecuador and Mexico are examples wherein taxpayers to whom one of the simplified systems is applied and to which they are adhered, are exempt from the obligation to provide transfer pricing information. In the specific case of Ecuador, they do not comply with the formal presentation of the Transfer Pricing Report or Annex, while in Mexico taxpayers are exempt from the obligation from the obligation to carry out a transfer pricing analysis in the case of transactions subject to the simplified system.

In relation to double taxation risks generated by the application of *"safe harbor"* simplified systems, Mexico and Brazil recognize that their measures as well as those implemented in other States have resulted in double taxation of taxpayers with tax obligations in their country and in other countries.

"*Safe harbours*" rate of interest. As simplified measure, the legislation of some countries provide for the rate of interest that complies with the arm's length or market principle, which should be used in financial transactions with related parties abroad, as is the case of Brazil. The rate of interest to be considered is the "*London Interbank Offered Rate – LIBOR*", for deposits in U.S. dollars with a six-month term, increased by a percentage margin. Any additional will be considered as excessive amount.

Since Bolivia has no transfer pricing regulations in force, it provides that the interest paid on capital invested as loan to the company by its owners or partners will not be deductible to the extent such interest exceeds the value of the LIBOR rate plus 3% in transactions abroad and in local transactions.

Table IV-25 Other provisions on rate of interest

Country	Description of measure
Costa Rica	The only restriction with respect to deductibility of the interest expense is that the rate cannot be greater than the usual market rates, using as reference the rates registered in the Central Bank.
Ecuador	The legislation provides for a maximum referential rate set by the Central Bank which cannot be exceeded.
El Salvador	Interest paid is considered as nondeductible expense, when upon application to the amount of the debt it exceeds the percentage of active interest of the Central Reserve Bank plus four additional points.
Paraguay	In no case may such loans or placements earn interest at rates lower than the nominal passive average rates corresponding to time deposits at the banking level, for similar periods in force in the month prior to the transaction.

Source: Tax administrations consulted.

D. Other measures for controlling international transactions between related parties

In addition to specific transfer pricing regulations, the countries introduce other mechanisms in their internal legislations to control transactions between local companies and related entities abroad, as well as companies in tax havens. The purpose of these measures, as a whole is to avoid taxpayers from omitting tax obligations arising in their jurisdictions, or abusing the regulation in order to reduce, avoid or defer the tax. These are the ones generally known as anti-abuse or anti-avoidance measures which include, but are not limited to anti- thin capitalization or undercapitalization rules, the principle of economic essence or essence regarding the form and anti-tax haven rules. Together, these measures allow the tax administrations to judicially face abusive tax planning schemes.

The article on economic essence is probably the most common among the legislations of the countries analyzed. In addition, the countries provided information on undercapitalization and anti-haven rules which is analyzed hereunder.

1. Undercapitalization

The countries that are in the most advanced stage of transfer pricing development have also included in their legislations regulations that endeavor to regulate undercapitalization. For the rest of the countries, it is still a pending challenge. This type of anti-abuse measure restricts the incentives of multinational companies to use indebtedness for transferring benefits to the companies within the group. The countries that have these regulations in force are: Argentina, Brazil, Chile, Ecuador, El Salvador, Mexico, Peru, Dominican Republic[27] and Venezuela.

[27] Introduced through Law 253 of November 2012.

As common criterion in the undercapitalization rule, these countries show homogeneity, inasmuch as all legislations are based on a ratio of debt to capital, to patrimony, or to net worth. In most of these countries, the anti-undercapitalization rules only cover indebtedness between related companies; nevertheless, the case of Brazil is highlighted, where it is also applicable to loans in general of a Brazilian company with businesses or persons domiciled or established abroad and in any country or dependency with favored taxation or privileged tax regime[28].

Table IV-26 Anti-undercapitalization rules

Country	Rule
Argentina	2:1 Net worth
Brazil	Indebtedness should not exceed 30% of the company's net worth.
Chile	3:1 - patrimony
Ecuador	3:1 patrimony – For corporations For individuals the debt / assets ratio cannot exceed 60%.
El Salvador	3:1 accounting capital
Mexico	3:1 accounting capital
Peru	3:1 net worth
Dominican Republic	3:1 accounting capital
Venezuela	3:1 net worth

Source: Tax administrations consulted.

2. Anti-tax haven rules

The countries of the region also regulate transactions with tax havens, for which reason in many transfer pricing regulations it is presumed that transactions between a local company with other companies domiciled in a tax haven are considered as if between related parties, thus being liable to transfer pricing controls. Countries having anti-tax haven regulations are Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Honduras, Mexico, Peru, Dominican Republic, Uruguay and Venezuela.

Tax havens and preferential regimes are harmful inasmuch as they promote international tax avoidance through an opacity promotion scheme that does not allow access to the transactions of individuals or corporations domiciled therein and where tax rates tend to be null or very low. The mains risks detected by the administrations of the region which involve the use of tax havens are:

a) Triangulation of goods import and/or export transactions through intermediaries located in said jurisdictions, in cases in which the absence of real functions or activities carried out by the company in the tax haven can be proven;

[28] Law No. 12.249 of June 11, 2010, Articles 24 and 25

b) Triangulation and undervaluation of export services;
c) Carrying out financial transactions and the rendering of services with the participation of individuals established in said jurisdictions. It frequently involves payments (for example, payments for services, intangibles, technical assistance, interest on unnecessary loans) without economic substance;
d) Payment by way of royalties derived from the use or enjoyment of intangible assets migrated to tax havens, but which were created, developed and totally deducted in the country;
e) Invoicing which may correspond to an overvaluation or undervaluation, whether it is import or export transactions, respectively;
f) Loans supported by financial institutions in tax havens ("*back-to-back*"),
g) Distribution of expenses from the parent company located in tax havens to the branches.

Basically, the planning schemes that involve tax havens are focused on the triangulation of export/import transactions and the transfer of expenses that cannot be proven.

The definition of tax haven varies from country to country. In some cases, tax havens are defined as those countries or jurisdictions wherein the income tax rates are a certain percentage lower than the income tax rate in force, for similar types of income. In the case of El Salvador, if a country has an income tax rate that is 80% lower than its rate, that country is considered a tax haven. The same occurs in Mexico when the income tax rate in the other country is 75% lower and in Ecuador, if it is 60% lower. Another criterion considered is if the rate is lower than a determined value. For example, for Venezuela and Brazil, a State with an income tax rate lower than 20% would be considered a tax haven.

Another additional condition, commonly used by the countries of the region that have anti-haven legislation, is the existence of Information Exchange Agreements with them and/or that the legislation does not allow them access to information on the corporate composition of the companies, their legal entitlement or the identification of the true beneficiary of profits attributed to nonresidents.

Other countries adopt lists determined by international organizations, such as, for example, the OECD's "black list". This is the case of El Salvador. Likewise, other countries, regardless of whether they count or not on a definition of "tax haven", use lists specifically determined through regulations and the general standards of the administration, as is the case of Argentina and Ecuador. One exception to the rule is that a country be guided by a list of organizations such as FATF[29]. That is unusual given that FATF focuses on other matters that partly respond to different criteria.

[29] The Financial Action Task Force on money laundering (FATF) is an intergovernmental organization whose purpose is the development and promotion of policies, at the national and international levels, to combat money laundering and the financing of terrorism.

Given that the main problem with "tax havens" lies in the access to information, as soon as there is an instrument that may allow the exchange of information for tax purposes based on international standards, the signatory countries should exclude themselves from their respective "black lists" and/or withdraw the title of "tax haven".

An additional requisite to the latter, which has to do with the aforementioned international standards is that through application of internal regulations, it would not be possible to allege bank, exchange or other type of secrecy, vis-à-vis the request for information from the respective Treasury. The list of countries considered as tax havens may be as long as including 89 or 88 countries or States, as is the case of the list of Ecuador and Argentina, respectively.

Table IV-27 List of tax havens in the countries that are part of the study

Country	Country considered as tax haven
Argentina	Anguilla, Antigua and Barbuda, Netherlands Antilles, Aruba, Ascension Island, Bahamas, Barbados, Belize, Bermuda, Brunei, Dar es Salaam, Campione D'Italia, Gibraltar, Dominica, United Arab Emirates, Bahrain, Grenada, Puerto Rico, Kuwait, Qatar, Saint Christopher and Nevis. **System applicable to holding companies:** Luxembourg, Greenland, Guam, Honk Kong, Azores, Channel Islands (Guernsey, Jersey, Alderney, Great Sark Island, Herm, Little Sark, Brechou, Jethou Lihou), Cayman Islands, Christmas Island, Cocos or Keeling Island, Cook Islands, Isle of Man, Norfolk Island, Turks and Caicos, Pacific Islands, Solomon Islands, Saint Pierre and Miquelon Island, Qeshm Island, British Virgin Islands, U.S. Virgin Islands, Kiribati, Labuan, Macao, Madeira, Montserrat, Niue, Patau, Pitcairn, French Polynesia, Andorra, Liechtenstein, Monaco. **System Applicable to corporations:** Uruguay, Kingdom of Tonga, Jordan, Swaziland, Albania, Angola, Cape Verde, Cyprus, Djibouti, Guyana, Panama, Trinidad and Tobago, Liberia, Seychelles, Mauritius, Tunisia, Republic of Maldives, Marshall Islands, Sri Lanka, Vanuatu, Yemen, Malta, Saint Helena, Saint Lucia, Saint Vincent and the Grenadines, American Samoa, Western Samoa, San Marino, Oman, Svalbard Archipelago, Tuvalu, Tristan da Cunha, Trieste, Tokelau, Ostrava.
Chile	Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrein, Barbados, Belize, Bermuda,British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Republic of Liberia, Malta, Mauritius, Montserrat, Netherlands Antilles, Niue, Republic of Panama, Samoa, Republic of San Marino, Saint Christopher and Nevis, Saint Lucia, Seychelles, Saint Vincent and the Grenadines, Liechtenstein, Monaco, Marshall Islands, Nauru, Vanuatu, Turks and Caicos, U.S. Virgin Islands.
Ecuador	Anguilla, Antigua and Barbuda, Netherlands Antilles, Svalbard Archipelago, Aruba, Ascension Island, Barbados, Belize, Bermuda, Brunei, Dar es Salaam, Campione D'Italia, Gibraltar, Bahamas, Dominica, United Arab Emirates, Grenada, Kuwait, Qatar, Puerto Rico, Saint Christopher and Nevis, Luxembourg, Greenland, Guam, Hong Kong, Cocos Island, Cook Island, Isle of Man, Norfolk Island, Saint Pierre and Miquelon Island, Qeshm Island, Azores Islands, Cayman Islands, Christmas Island,

Country	Country considered as tax haven
	Channel Islands (Guernsey, Jersey, Alderney, Great Sark Island, Herm, Little Sark, Brechou, Jethou, Lihou), Pacific Island, Solomon Islands, Turks and Caicos, British Virgin Islands, U.S. Virgin Islands, Kiribati, Labuan, Macao, Madeira, Montserrat, Myamar, Nigeria, Niue, Palau, Pitcairn, French Polynesia, Liechtenstein, Monaco, Andorra, Swaziland, Tonga, Jordan, Guyana, Albania, Angola, Cape Verde, Cyprus, Djibouti, Marshall Islands, Liberia, Maldives, Malta, Mauritius, Nauru, Panama, Seychelles, Trinidad and Tobago, Tunisia, Vanuatu, Yemen, Sri Lanka, American Samoa, Western Samoa, Saint Vincent and the Grenadines, Saint Helena, Saint Lucia, San Marino, Oman, Tokelau, Trieste (Italy), Tristan Da Cunha (Saint Helena), Tuvalu and Ostrava Free Zone.
El Salvador	Albania, Andorra, Anguilla, Bahamas, Bahrein, Bermuda, Cyprus, Campione D'Italia, Delaware (USA), Dominica, United Arab Emirates, Grenada, Herm, Qeshm, Isle of Man,Norfolk Island, Azores Island, Cayman Islands, Cook Island, Maldives, Marshall Island, Mauritius, Mariana Islands, Turks and Caicos, British Virgin Islands, Labuan, Liberia, Liechtenstein, Lebanon, Macao, Micronesia, Monaco, Montserrat, Nauru, Nie, Nevada (USA), Paraguay, Samoa, Saint Christopher and Nevis, Saint Vincent and the Grenadines, Saint Helena and Tristan Da Cunha, Saint Lucia, Seychelles, Singapore, Switzerland, Uruguay, Vanuatu, Wyoming (USA).
Uruguay	Anguilla, Aruba, Bahrein, Belize, Cayman Islands, Cyprus, Antigua and Barbuda, British Virgin Islands, Cook Island, Bahamas, Bermuda, Dominica, Gibraltar, Grenada, Isle of Man, Malta, Montserrat, Netherlands Antilles, Panama, San Marino, Saint Lucia, Saint Vincent and the Grenadines, U.S. Virgin Islands, Samoa, Niue, Guernsey Island, Vanuatu; Turks and Caicos, Saint Kitts and Nevis, Seychelles, Jersey Island, Mauritius, Nauru.
Venezuela	Anguilla, Antigua and Barbuda, Svalbard Archipelago, Aruba, Ascension Island, Belize, Bermuda, Brunei, Campione D´ Italia, Dominica, Bahamas, United Arab Emirates, State of Bahrein, State of Kuwait, Qatar, Western Samoa, Puerto Rico, Gibraltar, Luxembourg, Grenada, Greenland, Guam, Hong Kong, Cayman Islands, Christmas Island, Norfolk Island, Saint Pierre and Miquelon, Isle of Man, Qeshm, Cook Island, Cocos or Keeling Island, Chanel Islands (Guernsey, Jersey, Aldemey, Great Sark, Herm, Little Sark, Brechou, Jehou and Lihou), Falkland Islands, Pacific Islands, Solomon Islands,Turks and Caicos, British Virgin Islands, U.S. Virgin Islands, Kiribati, Labuan, Macao, Malta, Montserrat, Niue, Palsu, Piscaira, French Polynesia, Andorra, Liechtenstein, Monaco, Swaziland, Jordan, Dominican Republic, Gabon, Lebanon, Albania, Angola, Cape Verde, Cyprus, Djiboati, Guyana, Honduras, Marshall Islands, Libe, Mauritius, Nauru, Panama, Seychelles, Tunisia, Vanuatu, Yemen, Uruguay, Sri Lanka, American Samoa, Saint Vincent and the Grenadines, Saint Helena, San Marino, Oman, Tokelau, Tristan de Cunha, Tuvalu, Special Canary Zone and Ostrava Free Zone.

Source: Tax administrations consulted.

V. Transfer pricing: a glance from Organizations involved in taxation.

The Inter-American Development Bank (IDB) International Monetary Fund (IMF), the Central American Institute of Fiscal Studies (ICEFI) and the World Bank (WB) have given their opinion with respect to a series of questions we will raise in the development of this chapter.

Transfer pricing management is a complex matter for the countries that are in the initial stage of implementation of their transfer pricing legislations, as well as for those with a higher level of progress in their experiences on the subject. The commercial strategies of companies for taking advantage of the economies of scale on the one hand, and the sophistication of tax planning strategies, force tax authorities of the countries to develop wide scope regulations that may consider all, or at least most of the harmful international tax evasion and avoidance schemes, requiring, in addition, constant review in order to adapt them to the new requirements that may arise.

Fortunately, the experience of developed economies has served as basis of the transfer pricing normative referential framework. Organizations such as the OECD and the UN have endeavored to compile the best practices on the subject. The OECD has introduced guidelines for their effective valuation, administration and control. On its part, the UN is currently developing the Transfer Pricing Manual for developing countries. Both the UN and OECD model conventions include the basic provisions for the transfer pricing control.

It is expected that the manual being developed by the UN together with the OECD Guidelines become one of the main consultation documents for developing countries that expect to make progress in this subject. Both guidelines are based on the application of the arm's length principle. The OECD guidelines consider such aspects as comparability analysis, methods, documentation, among others, while that of the UN includes aspects regarding the requirements for implementing transfer pricing in developing countries. These guidelines do not seem to oppose, but rather complement each other.

Although these guides and documents developed by international organizations involved in taxation have a great value and are used a subject reference, many countries have developed methodologies and criteria adapted to their economic and juridical reality that have allowed them to efficiently face the harmful transfer pricing schemes.

From the standpoint of organizations involved in taxation who have contributed with appreciations to this study (ICEFI, IDB, WB and IMF), in order to face abusive transfer pricing manipulation in the region, they coincide in that the most adequate methodology should include a combination of UN and OECD criteria, but without disregarding the mechanisms already implemented by other countries and those that could be developed by them based on their own criteria and according to the conditions of their economic and taxation systems.

Many Latin-American and Caribbean countries have had significant progress in the area of transfer pricing, by facing and giving innovative and effective responses for controlling abusive schemes used by the multinational companies. In this regard, the IDB recognizes the importance of developing the sixth Argentine method, or the sixth amendment method, which has been used to modify the business model of large agro exporting companies for protecting the Income Tax Base.

For this reason, several organizations involved in taxation have suggested that the OECD Guidelines which have become the international standard mainly accepted for transfer pricing management, at present, should be adapted to the requirements and the reality of the countries without damaging the international community. Thus, the OECD Guidelines should be used as guides and not as a premanufactured recipe for the region since they had only been primarily discussed and reviewed by the OECD members. In the region, only Mexico and Chile are members of this Organization.

On the other hand, an aspect emphasized by the IMF is that the OECD Guidelines do not cover all the situations that could occur in transfer pricing, especially in developing countries. Therefore, the countries of Latin America and the Caribbean could require special guidelines to complement the current OECD guidelines for considering particular transfer pricing aspects, which should be in keeping with the arm's length principle.

Some of the reasons why these organizations consider that guidelines that may be more flexible and in keeping with the region should be reviewed and developed are the following:

- The cost of implementation;
- Their application by the countries is complex;

These opinions given by the Organizations emphasize the lack of economic and human resources in the countries' tax administrations.

With respect to the problems faced by the countries of the region for combating abusive manipulation of transfer pricing, the IMF and the World Bank coincided in the lack of capabilities for managing transfer pricing. On its part, ICEFI considered the costs for the tax administrations as the greatest problem. In the organization's opinion, "effective tax control is very burdensome and is not a short-term collection measure".

The region is not free from the main tax planning schemes faced by the tax administrations in other regions; such as the restructuring of businesses, acquisition and marketing services provides from tax havens, indebtedness, management or administration commission, free transfer of intangibles. The detection of these schemes requires great capacity for compiling data, which is not always available (IMF).

The control of exports of raw materials and tourism, important items in the economies of the region, represent an important challenge (IDB). The aggressive restructuring of companies with large and well established subsidiaries have had a severe impact on fiscal revenues. The perverse use of tax havens as intermediaries in the sale of raw materials in the world market is also harmful (IMF).

The barriers for the transfer pricing control faced by the tax administrations of the region should not constitute a justification for not implementing legislations and specialized structures on the subject. To that end, the consulted organizations recommend the use of simple and appropriate methodologies in keeping with the reality of the countries and the creation or consolidation of specialized units. A valid option, in these cases, in the opinion of organizations involved in taxation are the Advance Agreements and the "*Safe Harbours*", inasmuch as both represent a reliable measure for the taxpayer as well as for the tax administrations.

For purposes of this study, the organizations involved in taxation have provided some recommendations and comments that are valuable for the effective implementation of transfer pricing and which could serve as starting point for countries that are in the initial stage or have not yet begun, such as:

IDB	1. Create or consolidate an ad hoc Unit, integrated or coordinated with examination. 2. Create or consolidate information exchange. 3. Maintain constant dialogue with the multinational companies.
IMF[30]	1. Prepare detailed administrative guides to implement the new regulations, for their standard application, while at the same time affording transparency and predictability. 2. Take the necessary time to train the auditors and make known the new regulations to the private sector. 3. Consider a phase for approaching the taxpayer. Begin with the structuring of the data base of taxpayers with transfer pricing risk and then carry out preliminary review to verify the documents ad transfer risks. In conducting comprehensive transfer pricing audits, it would be practical to begin with relatively "easy" cases such as intra-group loans and services.
ICEFI	1. Implementation of pilot plans, 2. Search for methodologies that may be appropriate for each country and 3. Specialized units.
World Bank[31]	1. Begin in a simple manner, by focusing only on the main sectors where transfer pricing problems have been perceived. 2. Use a methodology that may be easy to understand. 3. Consider Simplified Systems ("*Safe Harbours*").

Source: Organizations involved in taxation that were consulted.

[30]Original text in English. Spanish translation by the authors of this study.
[31] Original text in English. Spanish translation by the authors of this study.

The main support provided by the International Organizations is technical assistance which is structured according to the transfer pricing needs they may have observed and diagnosed in each country. This way of promoting the development of transfer pricing in Latin America and the Caribbean is very beneficial.

From the perspective of the International Organizations the main challenges faced by the tax administrations in the effective implementation of transfer pricing controls and/or regulations are the following:

IDB	The comparable human resource and data base
IMF[32]	One of the priorities is the training of a group of experts in transfer pricing which comprises experienced tax auditors, accountants, economists, attorneys and engineers (computers, mining, chemicals, etc.). Design and supervise the implementation plan, the group of tax auditors, and control all transfer pricing cases. However, a duly operating Large Taxpayers Office (LTO) is a previous requisite for the adequate and effective application of the transfer pricing regulations.
ICEFI	Practical training of staff and a well-designed pilot plan.
World Bank[33]	Promote training.

Source: Organizations involved in taxation that were consulted.

All the organizations involved in taxation coincide that human resource training and development is the greatest challenge faced by the tax administrations in Latin America and the Caribbean, as regards the effective implementation of transfer pricing controls and/or regulations. The urgent need to count on a highly qualified staff, in order to combat abusive transfer pricing manipulation is the main approach, given their high value and the cost which the tax administrations must incur for providing transfer pricing training to their staff.

ICEFI, IDB and the IMF coincide in the importance of having a highly trained and multidisciplinary human resource. For example, the IMF points out some professional disciplines that may be part of a transfer pricing team; among them, attorneys, economists and accountants.

The technological resource is also of great importance and entails the availability of data bases. The IDB and World Bank (WB) coincide on the need to have available data bases as key factors for the successful implementation of transfer pricing in a tax administration.

Additionally, the IMF points out that the development of legislation is one of the bases of success in the implementation of the transfer pricing regime. That is, although the previously mentioned resources (technology and data bases) are important for their success, their use must be based on an adequate and balanced legislation that may control abuses.

[32] Original text in English. Spanish translation by the authors of this study.
[33] Original text in English. Spanish translation by the authors of this study.

One of the aspects discussed with the International Organizations that contributed to this research work is the level of knowledge about transfer pricing of the Latin American and Caribbean countries, from their perspective. The organizations perceive a high level of knowledge in relation to other regions of the world. With respect to knowledge among countries, the organizations also believe that the level of knowledge and progress varies among countries.

Finally, the IDB ICEFI and IMF coincided in the heterogeneity of the experience of the tax administrations of Latin America and the Caribbean.

Lines of action of the international organizations with respect to transfer pricing

Each of these Organizations is currently working actively for strengthening transfer pricing in Latin America and the Caribbean. Among the measures in keeping with the Latin American context on which greater emphasis has been placed, the following may be highlighted:

IDB	Development of regulations; Creation and strengthening of Transfer Pricing or Similar units 6th method; Control of tourism in the English-speaking Caribbean.
IMF[34]	The IMF's Technical Assistance (TA) is based on demand and the technical assistance that could be provided in transfer pricing ranges from preparation to implementation. Counseling is also provided on transfer pricing from broader perspectives, such as general tax policy or tax administration.
ICEFI	Alternate methodologies or approaches to those of the OECD which may be cost-effective and adapted to the Central American reality.
World Bank[35]	The application of the legislation, evaluation of risks, development of individuals' capabilities, implementation of *Safe Harbours* and APAs.

Source: Organizations involved in taxation that were consulted.

[34] Original text in English. Spanish translation by the authors of this study.
[35] Original text in English. Spanish translation by the authors of this study.

VI. Conclusions

1. Transfer pricing legislations are a tax control measure for the purpose of avoiding abusive manipulation of prices between related companies. Their main objective is the search by the tax administrations for the fair portion of revenues obtained from multinational transactions and accordingly, the respective tax payment.

2. The Latin American tax administrations have a great interest in transfer pricing. This is evidenced by the fact that, of the twenty countries of the region, fourteen have regulation for preventing the abusive manipulation of transfer pricing (Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, Uruguay and Venezuela). Likewise, Nicaragua and Paraguay are working in projects for introducing transfer pricing regulations. This leads us to conclude that approximately 85% of the Latin American countries have attributed importance and are working in developing this tax control measure.

3. In the Caribbean region, Trinidad and Tobago is working on a transfer pricing regulation system and Jamaica anticipates in its legislation the arm's length principle, according to what has been provided in its Code. It is thus necessary to enact these legislations in order to analyze and observe their implementation and benefits for these States.

4. Approximately 90% of countries with transfer pricing regulations use the OECD criteria.

5. Over 80% of countries with transfer pricing regulations have regularly established all transactions with related parties. Likewise, specifying in the regulation the relationship criterion, which is common in the legislations of the region, will help the tax administrations to reduce the number of taxpayers subject to the regulation and accordingly that the countries may more precisely control transactions between related parties.

6. It is necessary to expressly provide in the transfer pricing regulation the transactions, relationship criteria, taxpayer obligations and sanctions to be regulated. This will result in a correct practice for controlling abusive transfer pricing manipulation by the tax administrations. Only through practical application will it be possible to make the pertinent corrections in the regulations established by each country. Likewise, the experience of other countries in implementing the regulation may serve as support. In addition, the application of representative or strong sanctions for formal or significant noncompliance by taxpayers carrying out transactions subject to transfer pricing is essential to avoid income tax evasion, given the importance and magnitude of these transactions.

7. Over 70% of countries with transfer pricing regulations have specific sanctions.

8. Over 80% of the countries that have established transfer pricing valuation methods, have determined some hierarchical criterion for their use in evaluating transactions between related parties.

9. Of the methods established for transfer pricing valuation, the transactional net margin method is the one determined by the tax administrations of Latin America as the one most used by the taxpayers, without disregarding the fact that there may be cases where the methods developed by the country itself may be observed. This is the case, for example, of those implemented by Brazil, Argentina, and Dominican Republic as observed in Chapter III- section B.

10. When determining the comparability between goods, services, transactions or businesses and the adjustments for increasing it, the adjustments to inventories and accounting reclassifications are mainly the ones carried out by the taxpayers. Given that its use is ever more frequent and it is responsible for a significant number of differences with the tax administrations, it is imperative to determine criteria in this respect.

11. Over 70% provide in the regulation that the burden of proof in transfer pricing will bear on the taxpayers, for which reason they are the ones who should initially demonstrate the arm's length principle.

12. Over 70% of the countries analyze in this study carry out these inspections for determining and identifying the functions, assets and risks that are actually assumed by the taxpayers examined. Likewise, Argentina, Brazil and Mexico have greater experience in transfer pricing examination processes.

13. Over 60% of the countries provide in their regulations for the filing of a transfer pricing report. On the other hand, over 70% have provided for filing a transfer pricing information return.

14. Over 70% of the countries observed provide in their regulation for the possibility of applying the market/interquartile ranges.

15. It is necessary that tax administrations count on more local or regional information that may allow for a better use of comparables for transfer pricing analyses. The lack of adequate local or regional information becomes one of the greatest obstacles to the effective implementation of transfer pricing in the region. Access to said information is limited by technological resources and the null or scarce public availability of said information.

16. Examinations are necessary and essential as a determinant of risk perception in the control of abusive transfer pricing manipulation. From there also follows the importance of keeping the tax administration staff duly trained. In an issue as dynamic and whose complexity represents a challenge for the taxpayers as well as the tax administrations, a trained staff makes the difference in the successful implementation of transfer pricing policies in a country.

17. Undoubtedly, the cost is a characteristic that may be a highly difficult barrier when implementing these control measures. This is due to the need for investing in initial training of the staff, development of the regulation, computerized systems, among others. It would also be advisable to promote the exchange of information between countries.

18. Tax administrations should have capabilities for obtaining and analyzing statistical data that may allow the a greater and better control of transfer pricing, so that in this way they may establish projections of any nature on the subject, as well as the respective recommendations for changing, improving or expanding the regulations existing in their countries. Likewise, over 70% of the tax administrations observed in this study have a unit specialized in international issues and in particular, transfer pricing. Thus, in equal proportion the tax administrations have the capacity for carrying out the different necessary transfer pricing procedures; that is, from implementing the regulation up to defending it at different levels, mainly in the courts.

19. Fifty per cent of the tax administrations of countries with transfer pricing regulations also have regulations on advance arrangements. Only 25% of the tax administrations of Latin America have experience in the application of simplified transfer pricing measures.

20. The support of organizations with tax involvement in the tax administrations for developing improvements and innovations to avoid abusive transfer pricing manipulation is vital and important inasmuch as they complement the work of the tax administrations and on some occasions unify criteria in the Region, since the tax administrations must face the fact that there are not many alternatives or training and/or technical assistance offers in the market.

21. The Region faces different obstacles to the effective control of abusive transfer pricing manipulation that range from the drafting of projects, regulations, etc., going through their implementation, examination and modification and even finally up to establishing unique criteria for the different sectors that may govern the economy of a country. But it will be only through practice and support of the regulation that one may achieve the essence of transfer pricing implementation; that is, the fair portion of revenues for the countries involved which is derived from multinational transactions and, accordingly, their respective income for payment of the tax, thereby avoiding the manipulation of transfer pricing for moving earnings from one tax jurisdiction to another.

VII. Annexes

Table Annex VII-1 Regulation regarding the filing of transfer pricing report

Countries	Regulation
Argentina	Article 6 and Annex II of General Resolution (AFIP) N° 1122, its amendments and complements.
Brazil	Law Nº 9.430, of 1996, Article 60; Law Nº 9.779, of 1999, Article 2 RIR/1999, Arts. 146 to 150; IN SRF nº 179, of 1987, items 2 and 5; IN SRF nº 31, of 2001, Article 1º PN CST Nº 15, of 1986; and AD SRF Nº 2, de 2000.
Chile[1/]	Law 20630 of 27/09/2012, Article 41-E. Item 6.
Colombia	Regulatory Decree 4349 of 2.004, Article 7.
Ecuador	Resolution 464.
El Salvador	Code: 124-A.
Guatemala	Tax Updating Law, Volume I, Income Tax article 65.
Honduras	Decree Nº 232-2011, of December 10, 2.011, Article 17.
Panama	Articles 762-I to 762-K.
Peru	Income Tax Law: section g) and article 117° of the Regulations of the Income Tax Law.
Dominican Republic	General Regulation 04-2.011, Article 9.
Uruguay	Number 11° Resolution DGI 2084/009.

[1/] Included in the Amendment to Law 20630 of September 27, 2012, which entered into force on January 1st, 2013.

Source: Tax administrations consulted.

Table Annex VII-2 Regulation for filing transfer prices

Countries	Filing form	Filing and Frequency	Form of presentation
Argentina	Sworn returns: F. 742 (biannual), F. 743 (Annual complementary) and F. 969 (Annual informative). The Transfer Pricing study must be filed together with transfer pricing sworn return, signed by the taxpayer and certified Public Accountant. In this latter case it is required that the signature be certified by the Professional Council.	Corresponding to the first semester of the annual commercial period or calendar year, as appropriate in accordance with the termination of the CUIT. Annually and biannually.	On-line and at the facilities of the Tax Administratio n
Brazil	In the same DIPJ.	6 months after the closing of the fiscal period. Annually	On- line
Chile[1/]	Return with the information which the Chilean Service may determine.	Annually	N/D

Countries	Filing form	Filing and Frequency	Form of presentation
Colombia	Individual Transfer Pricing Information Return	Approx. 6 months after closing of the fiscal period. Annually	On- line
Ecuador	Annex of transactions with related parties abroad which is filed via Internet.	6 months after the closing of the fiscal period. Annually	On- line
El Salvador	Report on Transactions with Related Parties (F-982).	3 months after the closing of the fiscal period. Annually	Face-to-face
Guatemala	The form is created in the Regulation that will be applied to transfer pricing.	6 month after closing of the fiscal period. Annually	On-line and face-to-face
Mexico	Annex 9 of the Multiple Information Return.	As a general rule, when filing the annual return for the fiscal period, at the latest (March of the following year). Taxpayers who file a report on their financial statements may do so on the date of filing the report (June of the following year). Annually	On-line
Panama	Form 920, Transfer Pricing Report.	6 months after the closing of the fiscal period. Annually	On-line
Peru	Annual transfer pricing information return – electronic format	6 months after the closing of the fiscal period. Annually	Face-to-face
Dominican Republic	Information return on transactions carried out with related parties	Must be filed 60 days after the date of economic closing. Annually	On-line
Uruguay	Information Return N° 3001	Ninth month. Annually	Face-to-face
Venezuela	Information of Transactions carried out with Related Parties Abroad (Form PT-99)	6 months after the closing of the fiscal period. Annually	Face-to-face

[1/] Included in the Amendment to Law 20630 of September 27, 2012 which entered into force on January 1st, 2013.

Source: Tax Administrations consulted.

Table Annex VII-3 Regulation that provides for the transfer pricing range and point of adjustment.

Countries	Regulation
Argentina	Fifth article without number incorporated after article 21 of regulatory Decree of the profit tax law – text according to Decree N° 916/04 (B.O.: 23/07/04).
Colombia	Article 260-2 of the Tax Statute, and Article 9 of Regulatory Decree 4349.
Ecuador	Article 87 of the Regulations of the Law of the Internal Tax System.
El Salvador	Article 199-B. Tax Code.
Mexico	Article 216, second paragraph of the Income Tax Law and Article 276 of the Regulations of the Income Tax Law.
Panama	Fiscal Code of the Republic of Panama. Law 52, next to last paragraph of section B of Article 762-F.
Peru	Article 114 of the Regulations of the Income Tax Law.
Dominican Rep.	Regulation 04-2011.
Uruguay	Article 8 Decree Nº 56/009.
Venezuela	Administrative Order Nº SNAT/2010/0090 of December 21, 2010.

Source: Tax administrations consulted.

Table Annex VII-4 Detail of remunerations received by different officials of transfer pricing units by country in U.S. dollars

	BRAZIL		COSTA RICA		ECUADOR		EL SALVADOR		MÉXICO		PANAMÁ		PERÚ		REPUBLICA DOMINICANA		URUGUAY		VENEZUELA	
	US Dollars *		US Dollars		US Dollars		US Dollars		US Dollars**		US Dollars		US Dollars		US Dollars***		US Dollars		US Dollars****	
	Min.	Max.	Min.	Ma.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Tax Analyst	3,920	6,860																	2,150	3,600
Tax Auditor	6,860	9,800	2,200	2,200																
Chief Auditor			2,600	2,600																
Expert – Chief					2,000	2,000	1,400	1,400												
Specialist – Auditor					1,700	1,700	1,200	1,200												
Analyst					1,300	1,300														
Central Administrator									10,313	13,328										
Area Administrator									3,683	9,807										
Area Deputy Administrator									1,798	4,986										
Head of Department									1,294	2,186									3,300	3,800
Liaison									1,086	1,329										
Price Analyst											1,500	2,500								
Professional													2,500	2,500			4,000	4,000		
Supervisor													2,900	2,900						
Manager													4,000	4,000						
Official in charge															2,981	2,981				
Analyst															870	1,483				
Attorney															1,023	1,023				
Auditor															1,113	1,675				

* 1 USD = 2,02 Reales (quotation at 24-08-2012)

** 1 USD = 13,17 Mexican Pesos (quotation at 24-08-2012)

*** 1 USD = 39,10 Dominican Pesos (quotation at 24-08-2012)

**** 1 USD = 4,30 Venezuelan Bolivar (quotation at 24-08-2012)

Min.	870
Max.	13,328

Source: Tax administrations consulted.

Table Annex VII-5 Remunerations of a Junior Auditor in 2010.

Countries	Type	Annual Remuneration (Local currency)		T.C. [1]/ average 2010	Annual Remuneration (US$)		GDP per capita US 2010	GDP per capita (PPP) US 2010	Annual Remuneration (Times with respect to GDP per capita)		Annual Remuneration (Times with respect to GDP per capita PPP)	
		From	Up to		From	Up to			From	Up to	From	Up to
Argentina (AFIP)	Gross	234,000.0	257,400.0	3.90	60,057.1	66,062.8	9,138.18	15,901.24	6.6	7.2	3.8	4.2
Bolivia (SIN)		n.a.		7.02	n.a.		1,858.14	4,603.53	n.a.		n.a.	
Chile (SII)	Gross	14,139,879.0	27,143,896.0	510.25	27,711.7	53,197.3	11,827.96	15,039.89	2.3	4.5	1.8	3.5
Colombia (DIAN)		n.a.		1,898.57	n.a.		6,273.37	9,592.91	n.a.		n.a..	
Guatemala (SAT)		n.a.		8.06	n.a.		2,887.64	4,906.53	n.a.		n.a.	
Honduras (DEI)	Net	115,000.0	120,000.0	18.90	6,086.2	6,350.9	2,015.58	4,194.35	3.0	3.2	1.5	1.5
Nicaragua (DGI)	Net	96,000.0		21.36	4,495.1		1,126.55	3,036.90	4.0		1.5	
Paraguay (SET)		n.a.		4,735.46	n.a.		2,885.79	5,207.70	n.a.		n.a.	

[1]/ Average rate of exchange of U.S. dollar in the year 2010

Source: "Status of the tax administration in Latin America" CIAT - CAPTAC-DR - IDB. Available in the CIAT portal: http://www.ciat.org/index.php/es/productos-y-servicios/ciatdata/administraciontributaria.html

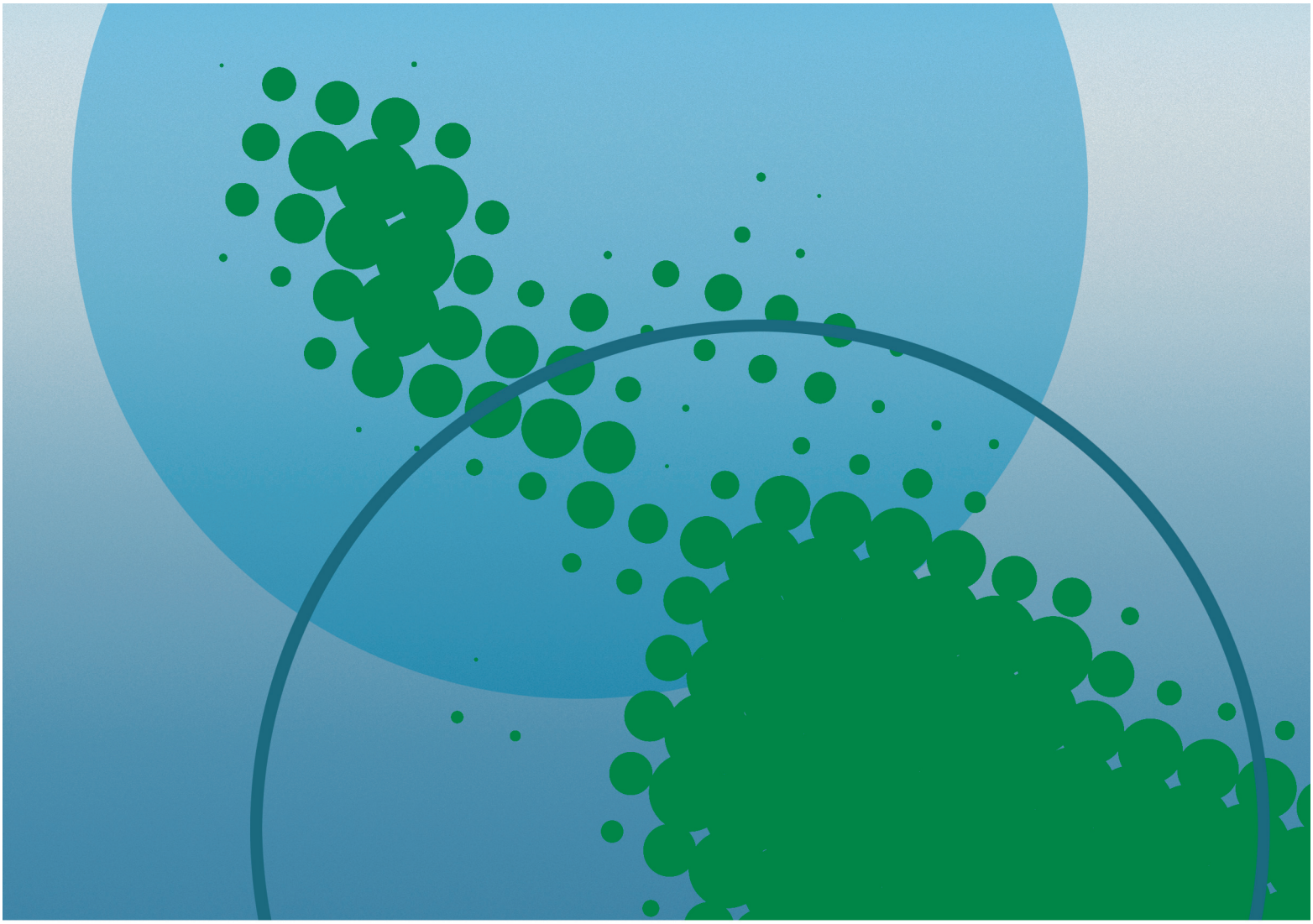
Table Annex VII-6 Number of taxpayers in the transfer pricing system in each country.

	ARGENTINA	COLOMBIA		ECUADOR	PERU	DOMINICAN REPUBLIC	URUGUAY	VENEZUELA
	Taxpayers	Return	Documentation	Taxpayers	Taxpayers	Taxpayers	Taxpayers	Taxpayers
2007	3,767	1,690	110	495	5,074	-	-	785
2008	3,724	1,917	1,703	624	5,627	-	-	822
2009	3,553	2,025	1,723	607	5,951	-	111	1,049
2010	3,429	2,100	1,756	519	5,686	-	137	1,014
2011	814 (partial)	-	-	-	-	734	20	Data in process

Source: Tax administrations consulted

VIII. Glossary

APA	Advance Pricing Arrangement
IDB	Inter-American Development Bank
WB	World Bank
CAN	Andean Community
CARICOM	Caribbean Community
DTAs	Double Taxation Agreements
IMF	International Monetary Fund
FATF	Financial Action Task Force on Money Laundering.
ICEFI	Central American Institute of Fiscal Studies
MAPs	Mutual Agreement Procedures
Arm's length principle	Prices set at market values and which an independent third party would have accepted for a commercial transaction.
OECD	Organization for Economic Cooperation and Development.
UNO	United Nations Organization.



international tax compact

initiative to strengthen international cooperation with developing countries to fight tax evasion and tax avoidance