



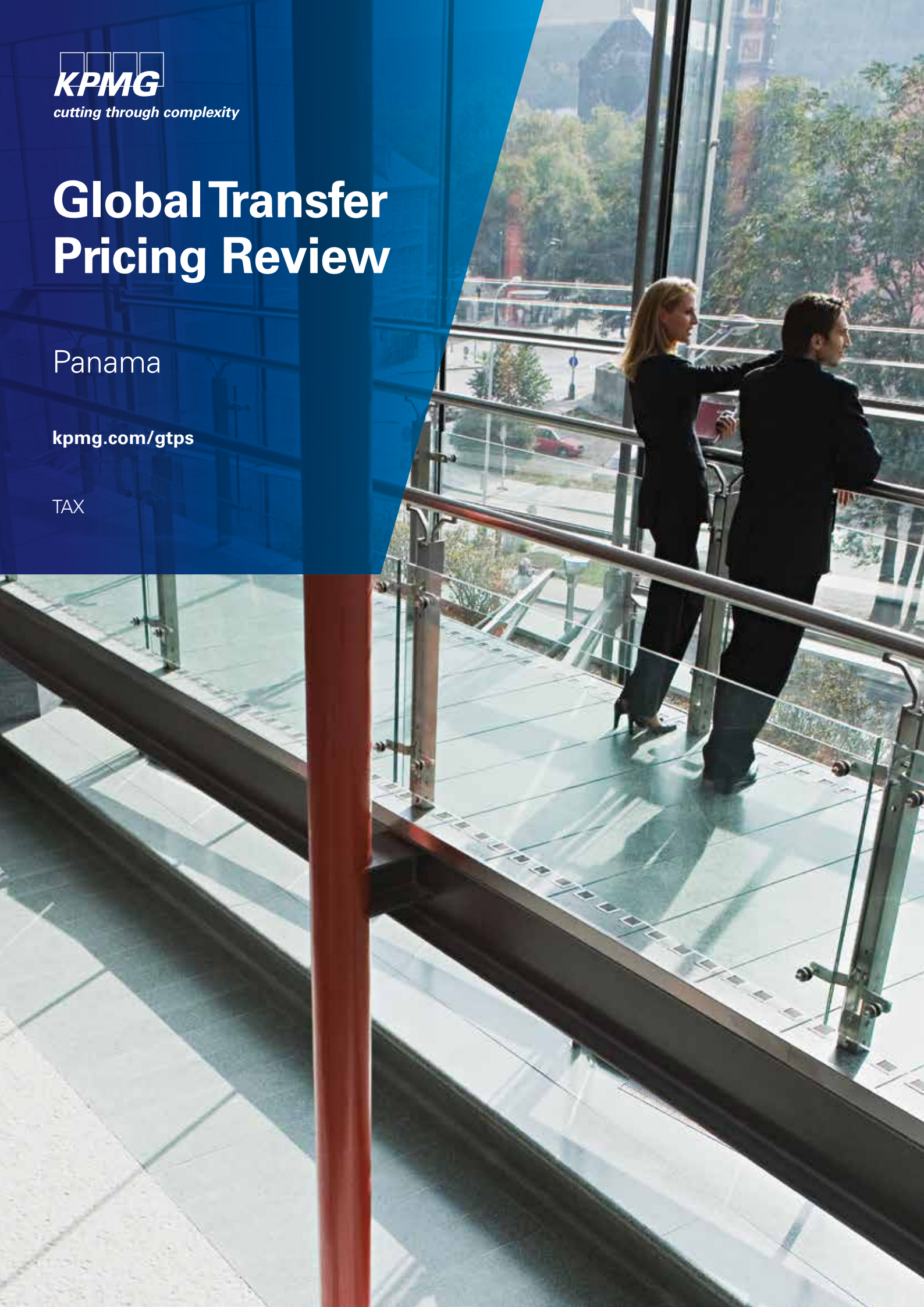
*cutting through complexity*

# Global Transfer Pricing Review

Panama

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TAX



# Panama



## KPMG observation

In the process of the implementation of Panama's international tax policy, transfer pricing legislation was enacted in 2010. Originally, the scope of the legislation was limited to operations among related parties located in countries with which Panama had entered into agreements to avoid double taxation. However, on 28 August 2012, by means of Law No. 52 of 2012, Panama approved legislation widening the scope of its transfer pricing provisions, to include all taxpayers that carry out transactions with related parties abroad. The Law became effective beginning with fiscal year 2012.

On 7 August 2013 Panama's Finance Ministry (Ministerio de Economía y Finanzas) issued a decree that regulates transfer pricing documentation and studies. The transfer pricing documentation rules in Panama are based on the Organisation for Economic Co-operation and Development (OECD) Guidelines. According to Panama's transfer pricing legislation, the OECD Guidelines are to be considered the technical reference for purposes of interpreting of its transfer pricing rules and provisions.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

## Basic information

### Tax authority name

Dirección General de Ingresos (DGI).

### Citation for transfer pricing rules

Law No. 33, published in the Official Gazette No. 25,566-A of 30 June 2010, Articles 762-A through 762-N in the Panamanian Fiscal Code. Modified by Law No. 52 published in the Official Gazette No. 27,108 of 28 August 2012, Articles 7 through 14, and Executive

Decree No. 958 published in the official gazette No. 27,347 of 7 August 2013.

### Effective date of transfer pricing rules

Transfer pricing rules have been in place since 1 July 2010 but were mandatory only for certain taxpayers (i.e. those benefiting from the application of a tax treaty). The current scope of application to all intra-group operations with foreign based related parties is effective as of FY 2012.

### What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e., even if there is a one percent ownership of the shares, the entities are considered related).



### What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from the filing date of the income tax return.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, the taxpayer must submit a transfer pricing return (i.e. Form 930) within the six months following the fiscal year-end.

### What types of transfer pricing information must be disclosed?

The information must include the name of the related parties with which the transactions were entered into, country of residence of such related parties, type of transactions, whether the transactions were income or expenses, nature and amounts of the transactions with related parties. Likewise, information regarding the transfer pricing analysis must be disclosed, such as, whether grouped or individual analysis was performed, transfer pricing method selected, entity selected as tested party (i.e., the taxpayer or the related party) type of margin used in the analysis (i.e., gross or operating), and percentage of profit, loss or rate obtained in the transaction.

### What are the consequences of failure to submit disclosures?

In the Article 8 of Law 52 (modified Article 762-I of Law 33) it is established the sanction of one percent of the total operations carried out with related parties in the event that the taxpayer failed to submit Form 930.

The Law 114 enacted on December 10, 2013 modified the article 762-I of the Fiscal Code establishing the maximum amount for this penalty at 1 million US dollars (USD).

## Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 45 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

45 days.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Yes, taxpayers can submit the resolution to an administrative review before the DGI. Subsequently, taxpayers may appeal before the Tax Court. Finally, taxpayers are allowed to submit the case for judicial review before the Supreme Court of Justice (Third Chamber).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

There is a surcharge of 10 percent of the difference in taxes paid due to the adjustment. Additionally, interest of about one percent per month is also applied on the same amount.

To what extent are transfer pricing penalties enforced?

The tax authorities are actively auditing transfer pricing documentation. It is customary that penalties are enforced.

What defenses are available with respect to penalties?

The taxpayer can initiate a controversy process with the tax authority in order to establish its criteria, seeking to modify the tax administration's position.

What trends are being observed currently?

The tax administration is currently reviewing the FY 2013 studies. However, few assessments had been issued so far.

It is likely that the tax administration will leverage on the transfer pricing documentation in order to develop its fiscal policies.

## Special considerations

Are secret comparables used by tax authorities?

There is no evidence that the tax administration is utilizing secret comparables.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

The transfer pricing decree expressly states that in searching for external comparables, taxpayers can use reliable commercial databases created by public information companies. If these commercial databases contain no information on Panamanian companies or with respect to comparable transactions within Panama, taxpayers can use information available to companies in other countries.

Do tax authorities have requirements or preferences regarding databases for comparables?

No formal rules exist in this area.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

**Does the tax authority have other preferences in benchmarking? If so, please describe.**

Currently, there is no sufficient experience on how the Tax Administration will handle this issue.

**What level of interaction do tax authorities have with customs authorities?**

Tax and customs authorities are separate entities. We are not aware of an active coordination between the two entities on transfer pricing issues.

**Are there limitations on deductibility of management fees beyond the arm's length principle?**

Yes, the taxpayer should provide evidence that the services had been actually rendered and that are connected with the generation of taxable income in Panama.

**Are management fees subject to withholding?**

Yes.

**Are there limitations on the deductibility of royalties beyond the arm's length principle?**

Yes, it is a requirement that the royalties are necessary for the production of taxable income. It is important to mention that if the taxpayer is established in a special regime the royalties may not be deductible.

**Are royalties subject to withholding?**

Yes.

**Are taxpayers allowed to file tax return numbers that differ from book numbers?**

No.

**Other unique attributes?**

None.

## **Tax treaty/double tax resolution**

**What is the extent of the double tax treaty network?**

Panama has 17 signed tax treaties.

**If extensive, is the competent authority effective in obtaining double tax relief?**

Panama applies the exemption method for alleviating double taxation.

**When may a taxpayer submit an adjustment to competent authority?**

No formal rules exist in this area. Depends on the time frame allowed by the tax treaty.

**May a taxpayer go to competent authority before paying tax?**

Permitted after the assessment. There is no requirement to pay the assessment before going to the competent authority.

## **Advance pricing agreements**

**What APA options are available, if any?**

None.

**Is there a filing fee for APAs?**

Not applicable.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

Not applicable.

**Are there any difficulties or limitations on the availability or effectiveness of APAs?**

Not applicable.

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