

BEPS in Latin America

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Currently, most countries in Latin America have transfer pricing legislation within their tax laws that require companies who carry out transactions with related parties to obtain and retain support documentation that demonstrates that the transactions in question were carried out at consideration prices or amounts that would have been agreed between independent parties in comparable transactions. In countries like Bolivia, Guatemala, Honduras, Nicaragua, Argentina and Panama, the transactions only need to be documented if they are carried out with a foreign related party. Paraguay is the only country that has no rules or guidelines regulating related party transactions.

As a result of the Base Erosion and Profit Shifting (BEPS) project headed up by the Organization for Economic Cooperation and Development (OECD), more and more tax administrations are requiring taxpayers to submit the documents described in the BEPS Action 13 report, namely, the Local File, Master File and Country-by-Country Report.

As of January 12, 2018, sixty tax authorities in the world have incorporated the Country-by-Country Report into their laws as a requirement for multinational enterprises, and the countries in Latin America are no exception. Despite the fact that, out of all of the countries in Latin America, only Argentina, Chile and Mexico are members of the OECD, the following eight administrations have included the Country-by-Country Report as a statutory obligation: Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Peru and Uruguay.

BEPS Action 13 requires companies to be prepared to submit current documentation supporting their transfer pricing policies to the tax authorities, as well as more detailed information on their global transactions and taxation in order to increase the tax transparency of multinational enterprises.

In the Local File, taxpayers must provide more detailed information on their intercompany transactions than is now required under current transfer pricing study. The additional information required is data that is relevant for the transfer pricing analysis of the transactions between the local taxpayer and related parties that operate in different countries, and it provides information that is important in the context of the local country's tax system. The Local File must include, among other information, relevant financial information on these specific transactions, a comparability analysis and the selection and application of the most appropriate transfer pricing method.

BEPS Action 13 establishes that the Master File must provide an overview of the business of the multinational group, the nature of its global business transactions, its general transfer pricing policies and its global revenue allocation and economic activity, among other information. However, in some countries, like Mexico, the local laws include additional or different requirements. The general purpose of the Master File is to provide a description that makes it possible to identify the transfer pricing practices of the multinational group in its global economic, legal, financial and tax context.

With respect to the Country-by-Country Report, the report must contain information on the global revenue allocation and taxes paid, as well as indicators of the location of the economic activity of the tax jurisdictions where the multinational group operates in order to provide a clear overview of the location of the benefits and show the potential tax risks of all of the companies of the multinational group. The report must also include a list of all of the entities of the group, including their tax jurisdiction and the nature of their primary business activities.

With regard to the Master File, this requirement has been included as one of the transfer pricing obligations in the following five countries in Latin America: Colombia, Costa Rica, Mexico, Peru and Uruguay. It is important to point out that in the case of Costa Rica, the Master File is not submitted to the tax authority unless expressly requested.

As for the Local file, this requirement has been adopted by Colombia, Costa Rica, Mexico, Panama and Peru. However, in Costa Rica, as with the Master File, the Local file is not submitted to the authority except at its express request.

In the case of Brazil, the current transfer pricing documentation required is very similar to the documentation required by the Local file and in Uruguay and Venezuela, the transfer pricing study itself is considered to be the Local File.

Another significant aspect of application of BEPS in Latin America is the OCDE Multilateral Instrument (MLI), which is used to implement the measures related to tax agreements to prevent BEPS. The MLI has been signed by eight Latin American countries, which is an important step in the international efforts towards updating the existing network of bilateral tax agreements and reducing the opportunities for tax evasion by multinational enterprises. The following table shows the countries that have signed the MLI, and their signing date.

Country	Signing date of the MLI
Argentina	06/07/2017
Chile	06/07/2017
Colombia	06/07/2017
Costa Rica	06/07/2017
Mexico	06/07/2017
Panama	24/01/2018
Peru	27/06/2018
Uruguay	06/07/2017

We can currently see that some Latin American countries have incorporated the BEPS Action 13 into their legislation, while others are gradually implementing it; therefore, we consider that, over the next few years, most taxpayers in Latin America will be required to submit the Local File, Master File and Country by Country Report.

Bibliography:

http://www.eyboletin.com.mx/eyseite2/pdf/comentarios_2841.pdf

<https://www.oecd.org/tax/beps/beps-accion-13-guia-sobre-el-uso-apropiado-de-la-informacion-contenida-en-los-informes-pais-por-pais.pdf>

Signatories and parties to the multilateral convention to implement tax treaty related measures to prevent Base Erosion and Profit Shifting. Status as of 23 July 2018

EY Global Tax Alert, May 25 2018

2017-18 EY Worldwide Transfer Pricing Reference Guide

Action 13: 2015 Final Report. Transfer Pricing Documentation and Country by Country Reporting. OECD / G20 Base Erosion and Profit Shifting.

<https://www.oecd.org/ctp/beps-resumen-informativo.pdf>

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