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Global Tax Alert

News from EY Americas Tax

Ecuador modifies transfer pricing rules

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The Ecuadorian Tax Administration issued Resolution No. NAC-DGERCGC20-00000046, which modifies the transfer pricing rules to comply with the arm's-length principle in transactions involving exports of bananas and to prevent transfer pricing abuse. In addition, it includes the technical standards for the implementation of the transfer pricing regime and the hierarchy of the transfer pricing methods to comply with the arm's-length principle.

Technical and methodological measures to prevent transfer pricing abuse

The Resolution modifies Resolution No. NAC-DGERCGC16-00000531, which establishes the procedures for calculating comparable prices for transactions involving exports of bananas and other musaceae to related parties.

The new Resolution establishes procedures for calculating the monthly comparable price for banana box type 22XU, which depends on the country of destination, and is calculated as of 15 March of the tax year following the year under analysis.

The comparable price for transactions involving exports of banana box type 22XU must be calculated according to (1) the country of destination and (2) the calendar month of the transaction. The comparable prices must be calculated with information available up to 15 March of the tax year following the year under analysis.

The export destinations of the banana box type 22XU¹ are:

- ▶ The Russian Federation²
- ▶ European Union member countries³
- ▶ All other countries⁴

The Ecuadorian Tax Administration must publish on its website the comparable prices for each month within the year under analysis. The Tax Administration must do so up to 31 March of the tax year following the year under analysis.

For the types of musaceae other than banana packed in boxes type 22XU, the comparable price is calculated by multiplying the calculated comparable price for banana box type 22XU (per country of destination) by the minimum price of the specific type of musaceae, and then dividing the result by the minimum price of the banana box type 22XU.

For exports or any other type of direct or indirect transactions involving bananas and other musaceae, the date of the comparable prices will be (1) the calendar month of the shipment date recorded in the databases of the Ecuadorian Customs Service or (2) the calendar month of the transaction, as the case may be.

In exports or any other type of transaction involving bananas and other musaceae, the comparable price per invoice is obtained by multiplying the comparable price per kilogram (set out in numeral 3, Article 3 of the Resolution NAC-DGERCGC16-00000531) with the amount, in kilograms, of the fruit shipped. This value may be adjusted only with freight and insurance costs associated with that invoice in the case of comparable cost, insurance and freight (CIF) prices, provided that the taxpayer proves with documentation that these values were established at arm's length.

The free-on-board (FOB) price of the export recorded on the invoice must be subtracted from the comparable price, to determine the difference in the prices on each invoice. Subsequently, the differences from each invoice for the same tax period corresponding to the same comparable price established for the three types of destination, in accordance with numeral 3, Article 3 of the Resolution NAC-DGERCGC16-00000531, must be added while maintaining its positive or negative sign. The result of the sum of the differences will be a positive or negative number. If the result is a positive number, then this value must be considered as a transfer pricing adjustment.

Technical standards for implementing the transfer pricing regime and the hierarchy of the transfer pricing methods to comply with the arm's-length principle

Numeral 3 of Article 2 of Resolution No. NAC-DGERCGC16-00000532, as amended by Resolution No. NAC-DGERCGC17-00000617, has been modified.

New provisions

Taxpayers must calculate the profit-level indicator with the financial information as of the end of the accounting year for the year under analysis. For this purpose, the taxpayer must consider the latest financial information of independent third parties available before submitting the tax form for the year under analysis.

In the absence of such financial information, the information of the immediately preceding year (with an accounting year-end date after 31 August) may be used, provided the conditions are the same for both periods.

When applying the methods based on margins, the local entity should not necessarily be considered the tested party for developing the transfer pricing analysis. Therefore, to support the selection of the tested party when applying the methods based on margins, the criteria for availability and quality of information must be applied.

Effective date

This Resolution went into effect on 1 July 2020.

Endnotes

1. Banana box type 22XU refers to premium Cavendish variety bananas packed in boxes or cases known as 22XU.
2. <http://stat.customs.ru>.
3. <https://ec.europa.eu/eurostat/data/database>.
4. <https://apps.fas.usda.gov/gats/default.aspx>.

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