

THE APPLICATION OF TRANSFER PRICING ADJUSTMENTS

ENRIQUE MARTÍN DÍAZ TONG

THE APPLICATION OF TRANSFER
PRICING ADJUSTMENTS

Foreword by Félix Vega Borrego

PALESTRA EUROPA
MADRID – LIMA – 2026

THE APPLICATION OF TRANSFER PRICING ADJUSTMENTS
Enrique Martín Díaz Tong

First edition, June 2026

© 2026: ENRIQUE MARTÍN DÍAZ TONG

© 2026: Palestra Jurídica S. L.

Calle Sepúlveda, 135 - Bº Iz, 28011, Madrid, España

Tel. (+34) 691626018

europa@palestraeditores.com

www.palestra.europa.es

© 2026: PALESTRA EDITORES S. A. C.

Plaza de la Bandera 125, Pueblo Libre, Lima, Perú

Príncipe de Vergara 33 / 5º IZDA. 28001, Madrid, España

Tel. (+511) 6378902 - 6378903

palestra@palestraeditores.com / www.palestraeditores.com

© Translation: CARLA ARÉVALO

Printing and Binding:

IVERSO IMPRESIÓN

Febrero, 2026

Copy Editing:

JESÉ DAVID ARIAS ÁGUILA

Layout and Typesetting:

JOHN PAOLO MEJÍA GUEVARA

Legal Deposit: M-XXXX-2026

ISBN: 979-13-87545-XX-X

Print Run: 500 ejemplares

Impreso en España – *Printed in Spain*

We believe that high-quality legal scholarship is an essential tool for transforming our societies. Every copy that reaches your hands contributes to building a more critical, rigorous, and inclusive academic community. By acquiring this book, you support the work of authors and editors committed to the development of legal thought and contemporary legal scholarship. From **Palestra Europa**, we thank you for your support of independent publishing and the dissemination of legal knowledge.

FOR REPRODUCTION RIGHTS, COPYING, OR SCANNING OF EXCERPTS, PLEASE CONTACT CEDRO (CENTRO ESPAÑOL DE DERECHOS REPROGRÁFICOS) THROUGH WWW.CONLICENCIA.COM OR BY CALLING +34 917 021 970 / +34 932 720 447.

To my wife, Janeth Toledo, and my beloved late mother,
Marina Tong de Díaz (fondly known as “apo” to her grandchildren).

To Ramiro, Micaela, Flavia, and Rafaela:
never stop striving to achieve your dreams.

CONTENIDO

FIGURE LIST	10
TABLE LIST	15
LIST OF CASE LAW.....	21
LIST OF APPENDICES	22
FOREWORD	23
ABSTRACT	27
RESUMEN	29
INTRODUCTION.....	31
CHAPTER 1: UNDERSTANDING TRANSFER PRICING.....	33
1.1. Arm's length principle and economic approach	33
1.2. The Role of the OECD Transfer Pricing Guidelines	38
1.3. Scope of application.....	47
1.3.1. Related party transactions	48
1.3.1.1. International transactions.....	51
1.3.1.2. National transactions	52
1.3.2. Transactions conducted from, to, or through low-tax, non-tax, or non-cooperative jurisdictions.....	56
1.3.2.1. Transactions conducted from a low or zero-tax territory or country.....	57
1.3.2.2. Transactions conducted to a low or zero-tax territory or country	60
1.3.2.3. Transactions conducted through a low or zero-tax territory or country.....	62

CHAPTER 2: TRANSFER PRICING METHODS	67
2.1. Traditional Methods.....	70
2.1.1. Comparable uncontrolled Price	70
2.1.2. Resale Price Method.....	125
2.1.3. Cost Plus Method	133
2.2. Profit-Based Methods.....	139
2.2.1. Transactional Profit Split Method	140
2.2.2. Transactional Net Margin Method	149
2.3. Special Transfer Pricing Methodology.....	158
2.3.1. Business Valuation for Transfer Pricing Purpose	158
2.3.2. Transactions Involving Intangibles for Transfer Pricing Purposes	163
2.4. Financial Approach to Transfer Pricing Adjustments	164
2.4.1. Primary Adjustments.....	164
2.4.2. Bilateral Adjustment	168
2.4.3. Secondary Adjustment	170
2.4.4. Corresponding adjustment.....	174
2.5. Tax burden and Transfer Pricing.....	182
CHAPTER 3: THE APPLICATION OF TRANSFER PRICING ADJUSTMENTS UNDER THE OECD GUIDELINES	187
3.1. Transfer Pricing Adjustments under the OECD Guidelines	187
3.1.1. Primary and Compensating Adjustments	188
3.1.2. Corresponding Adjustment	191
3.1.3. Secondary Adjustment	197
3.1.4. Comparability Adjustment.....	202
3.2. OECD Guidelines on Transfer Pricing Adjustments.....	203
3.2.1. Early guidelines and amendments	203
3.2.2. Analysis of Paragraph 3.62 of the Guidelines, regarding Transfer Pricing Adjustments.....	211
3.3. Scenarios Not Contemplated in Paragraph 3.61 of the Guidelines	228

CONTENIDO

3.3.1. Conceptual Framework.....	228
3.3.2. Examples of scenarios not contemplated	249
3.3.2.1. Expenses or costs deemed non-deductible for corporate income tax purposes.....	249
3.3.2.2. Non-Deductible Interest	263
3.4. Summary of identified issues	273
3.5. Proposal to modify and incorporate a paragraph into the OECD Guidelines.....	274
3.5.1. Proposed amendment to paragraph 3.61	274
3.5.2. Proposal for the incorporation of paragraph 3.63	286
3.6. Future Developments.....	287
3.6.1. Analyzing cases of adjustments for the sale of goods	287
3.6.2. Mechanisms to Avoid Double Taxation	288
CONCLUSIONS	293
APPENDICES	297
BIBLIOGRAPHY	303

FIGURE LIST

Figure No. 1. Sales transaction between related parties	35
Figure No. 2. Import scenario where the importer is a distributor, agent, or party to an exclusivity agreement.....	50
Figure No. 3. Sale of goods between related parties domiciled in the same country with differing corporate income tax rates.....	53
Figure No. 4. Provision of services to an independent third party	54
Figure No. 5. Provision of services between related parties domiciled in the same country, where one entity is exempt from or not subject to corporate income tax.....	55
Figure No. 6. Import case from a low or zero-tax territory or country	57
Figure No. 7. Importation of products with and without an intermediary located in a tax haven	58
Figure No. 8. Importation of products with an intermediary located in a tax haven, accounting for customs duties	59
Figure No. 9. Importation of products with an intermediary located in a tax haven, accounting for customs duties and criminal fraud in the sale of the product	60
Figure No. 10. Export scenario from a low or zero-tax territory or country.....	61
Figure No. 11. Income statement of a company importing from a tax haven and shifting profits to that jurisdiction	61
Figure No. 12. Import case involving the shipment of goods through a low or zero-tax territory	62
Figure No. 13. Import case with invoicing from a low or zero-tax territory or country	63
Figure No. 14. Import case with payment collection conducted from a low or zero-tax territory or country	65

Figure No. 15. Classification of transfer pricing methods based on their degree of comparability	67
Figure No. 16. Comparable Uncontrolled Price Method: Sales to a related party and to an independent third party	70
Figure No. 17. Comparable Uncontrolled Price Method: Export to a non-resident related party at a price higher than the price agreed upon with an independent third party	71
Figure No. 18. Comparable Uncontrolled Price Method: Export to a non-resident related party at a price lower than the price agreed upon with an independent third party	72
Figure No. 19. Comparable Uncontrolled Price Method: Import from a non-resident related party and from an independent third party	73
Figure No. 20. Comparable Uncontrolled Price (CUP) Method: Import from a non-domiciled related party at a price lower than that agreed with a third party	74
Figure No. 21. Comparable Uncontrolled Price (CUP) Method: Import from a non-domiciled related party at a price higher than that agreed with a third party	75
Figure No. 22. Comparable Uncontrolled Price (CUP) Method: Export to a non-domiciled related party with multiple prices agreed upon with independent third parties	76
Figure No. 23. Interquartile Range: Normal Distribution. Gaussian Curve (Bell Curve)	77
Figure No. 24. Comparable Uncontrolled Price (CUP) Method: Export to a non-domiciled related party with multiple prices agreed upon with independent third parties applying the interquartile range	78
Figure No. 25. Export case to a related party with multiple prices agreed upon with third parties (application of the coefficient of variation)	81
Figure No. 26. Pricing trend of product sales to independent third parties	91
Figure No. 27. Pricing trend of products sold to independent third parties	92

Figure No. 28. Three general scenarios presented in any interquartile range.....	93
Figure No. 29. Median of the interquartile range of rates calculated by SUNAT, Luxembourg financial market rate, and agreed-upon rates.....	107
Figure No. 30. Case of loans granted to a related party.....	111
Figure No. 31. Gold price volatility from 01/02/2019 to 01/02/2024.....	120
Figure No. 32. Gold price volatility by 14/11/2023	120
Figure No. 33. Gold price volatility from 02/01/2019 to 02/01/2024.....	121
Figure No. 34. Graphical explanation of the resale price method.....	126
Figure No. 35. Explanation of the Resale Price Method with formulas	126
Figure No. 36. Explanation of the Resale Price Method with multiple purchases from independent third parties.....	129
Figure No. 37. Graphical explanation of the cost plus method	134
Figure No. 38. Explanation of the Cost Plus Method with formulas.....	134
Figure No. 39. Explanation of the Cost Plus Method with multiple sales to independent third parties	137
Figure No. 40. Profit Split Method: Example of a catalog sales company	142
Figure No. 41. Profit Split Method: Example of a catalog sales company operating in two countries.....	143
Figure No. 42. Graphical explanation of the profit split method.....	144
Figure No. 43. Explanation of the Profit Split Method using financial statements	145
Figure No. 44. Graphical explanation of the residual profit split method.....	146
Figure No. 45. Explanation of the residual profit split method with financial statements	147
Figure No. 46. A company sells shares it holds in another company to a related party.....	159

Figure No. 47. Of a company selling their shares to a related party.....	160
Figure No. 48. Asiatic Petroleum Co. Vs Commissioner.....	162
Figure No. 49. Case of an export to a non-resident affiliate at a price lower than that agreed upon with a third party	164
Figure No. 50. Application of the primary corporate income tax adjustment for “Latam Co.”	165
Figure No. 51. Case of a sale to a domestic related party at a price lower than that established with an independent third party	169
Figure No. 52. Income Statement for a Company Selling Real Estate to a Shareholder and Distributing Earnings	172
Figure No. 53. Case Study: Real Estate Disposal to a Shareholder of Company X at a Price Below the Arm’s Length Rate Established with Independent Third Parties.....	173
Figure No. 54. adjustment. Implementation of a Primary Adjustment: Real Estate Disposal to a Shareholder of Company X Peru	173
Figure No. 55. Export to a Non-Resident Related Party at a Price Below the Arm’s Length Rate Established with an Independent Third Party.....	174
Figure No. 56. Prior to the implementation of the corresponding adjustment.....	175
Figure No. 57. After the implementation of the corresponding adjustment.....	176
Figure No. 58. Case Study: Export to a Related Party with Multiple ... Comparable Uncontrolled Prices	178
Figure No. 59. Interquartile Range and Application of the Coefficient of Variation in the Analysis of an Export Transaction.....	179
Figure No. 60. Initial screenshot: S&P Capital IQ	223
Figure No. 61. Screenshot of company selection: S&P Capital IQ	225
Figure No. 62. Example of a service transaction between related parties arising from expenses or costs deemed non-deductible for corporate income tax purposes	251

CONTENIDO

Figure No. 63. Companies in S&P Capital IQ: Example for a service-providing company	251
Figure No. 64. Companies in S&P Capital IQ: Example for a distribution company	257
Figure No. 65. Intra-group loan transaction	265

TABLE LIST

Table No. 1. Summary of scenarios from Figure 1	37
Table No. 2. Comparative chart of examples concerning transactions that could qualify as being conducted through a low or zero-tax country or territory.....	65
Table No. 3. Interquartile range of prices agreed upon with independent third parties.....	79
Table No. 4. Explanation of the coefficient of variation	80
Table No. 5. Comparable Uncontrolled Price (CUP) Method: Interquartile range of prices with the application of the coefficient of variation.....	82
Table No. 6. Sales vs. Cash Sales. Data	83
Table No. 7. Discounted Price Sales	84
Table No. 8. Sales vs. Cash Sales. Adjusted for Payment Period	84
Table No. 9. Interquartile range of prices paid by third parties with an adjustment for credit sales	85
Table No. 10. Seafood products sold to related parties and third parties.....	85
Table No. 11. Interquartile range of unit prices agreed upon with third parties.....	87
Table No. 12. Comparable volumen.....	87
Table No. 13. Price and weight comparison of fish fillets: related party vs. third parties.....	87
Table No. 14. Interquartile range of unit prices agreed upon with third parties.....	88
Table No. 15. Classification of customers by purchase volume	88
Table No. 16. Expert Opinion – Diefenthal Case.....	95
Table No. 17. Characteristics: “Deposits” in effect during the 2008 fiscal year.....	103

Table No. 18. Market Average Lending Rate in Foreign Currency (TAMEX).....	104
Table No. 19. Calculation of the adjustment	106
Table No. 20. Values of the agreed-upon rates, Luxembourg rate, and SUNAT rate	107
Table No. 21. Calculation Parameters.....	108
Table No. 22. Interest Rate Parity and Inflation Factor.....	109
Table No. 23. Interquartile range of active lending rates (2008) in euros.....	109
Table No. 24. Interquartile range of active lending rates (2008) adjusted to US Dollars	110
Table No. 25. Case rates.....	112
Table No. 26. Independent third-party rates.....	112
Table No. 27. Interquartile range	113
Table No. 28. Categories and products within the Bloomberg database.....	119
Table No. 29. Resale Price Method: Data for hardware products purchased from a related party and an independent third party.....	127
Table No. 30. Price Method: Data for hardware products sold to a related party and various independent third parties.....	128
Table No. 31. Resale Price Method: Interquartile range of market margins obtained from independent third parties	130
Table No. 32. Cost Plus Method: Export data for wool coats to a related party and an independent third party	135
Table No. 33. Plus Method: Export data for coats to a related party and various independent third parties	136
Table No. 34. Cost Plus Method: Interquartile range of gross markups on sales made to independent third parties	138
Table No. 35. Graphical explanation of the profit split method.....	140

CONTENIDO

Table No. 36. Graphical explanation of the profit split method with segmentation of financial statements	141
Table No. 37. Margin Method (TNMM): Initial set of potentially comparable companies	151
Table No. 38. Net Margin Method (TNMM): Final set of comparable companies	155
Table No. 39. Importance of applying the transactional net margin method at the operating margin level rather than the gross margin level	157
Table No. 40. Resale Price Method: Adjustment to the Median.....	166
Table No. 41. Resale Price Method: Adjustment to the Most Favorable Quartile.....	167
Table No. 42. Adjustment to the median.....	168
Table No. 43. Adjustment to the most favorable quartile.....	168
Table No. 44. Prior to performing the bilateral adjustment	169
Table No. 45. After performing the bilateral adjustment	170
Table No. 46. Case of real estate sale to a shareholder of Latam Peru	171
Table No. 47. Uncontrolled Sales under Comparable Circumstances	177
Table No. 48. Calculation of the Adjustment to the Most Favorable Quartile Based on a Negotiated Quantity of 1	180
Table No. 49. Price and Corporate Income Tax Adjustments.....	180
Table No. 50. Calculation of the Adjustment to the Most Favorable Quartile Based on a Transacted Quantity of 100,000 Units	181
Table No. 51. Calculation of the Adjustment to the Median for a Transaction Volume of 100,000 Units	181
Table No. 52. Transfer Pricing and Corporate Income Tax Adjustments.....	182
Table No. 53. Tax-to-GDP Ratios: OECD Member Countries vs. Latin America and the Caribbean	183

Table No. 54. Definition of “Primary Adjustment.” Glossary of the OECD Transfer Pricing Guidelines (2022).....	189
Table No. 55. Definition of “Compensating Adjustment” in the Glossary of the OECD Transfer Pricing Guidelines (2022).....	191
Table No. 56. Definition of “corresponding adjustment” in the Glossary of the OECD Transfer Pricing Guidelines (2022).....	196
Table No. 57. Definition of “secondary transaction” and “secondary adjustment.” Glossary of the OECD Transfer Pricing Guidelines (2022)	200
Table No. 58. Paragraph 4.68 of the OECD Guidelines (2022)	201
Table No. 59. Definition of “comparability analysis.” Glossary of the OECD Guidelines. (2022)	202
Table No. 60. Evolution of paragraphs 1.48, 3.60, 3.61, and 3.62 of the OECD Guidelines (English)	204
Table No. 61. Comparison of paragraph 1.48 (1995/2009 versions) and paragraph 3.60 (2010, 2017, and 2022 versions) of the OECD Guidelines (English – Spanish)	206
Table No. 62. Amendments to OECD Guidelines: Paragraphs 1.48 and 3.61.....	206
Table No. 63. Comparison of the Determination of Transactional Adjustments.....	207
Table No. 64. Amendments to the OECD Guidelines: Paragraphs 1.48 and 3.62.....	208
Table No. 65. OECD Guidelines, paragraph 3.55.....	209
Table No. 66. OECD Guidelines, paragraph 3.56.....	210
Table No. 67. OECD Guidelines, paragraph 3.57.....	210
Table No. 68. OECD Guidelines, paragraph 3.6.....	211
Table No. 69. Tax and Transfer Pricing Forms Across Various Jurisdictions.....	212
Table No. 70. Comparison of amendments to the current Article 18 of the Spanish Corporate Income Tax Act, concerning related-party transactions.....	214

CONTENIDO

Table No. 71. Paragraph 55.1 of the Commentaries on the OECD Model Tax Convention: 2017 vs. 2025 Version (English - Spanish).....	229
Table No. 72. Paragraph 55.2 of the Commentaries on the OECD Model Tax Convention: 2017 vs. 2025 Version (English - Spanish).....	230
Table No. 73. Paragraph 55.5 of the Commentaries on the OECD Model Tax Convention: 2017 vs. 2025 Version (English – Spanish).....	232
Table No. 74. Paragraph 55.6 of the Commentaries on the OECD Model Tax Convention: 2017 vs. 2025 Version (English – Spanish).....	233
Table No. 75. Expert Witness Report of the Tax Administrative Tribunal of Panama. Pharmaceutical Company. Panama. 2021.....	238
Table No. 76. Adjustments by the Tribunal	238
Table No. 77. Corporate Income Tax assessments for the 2012 fiscal year	244
Table No. 78. Assessments (SUNAT amount vs. Tax Tribunal amount).....	245
Table No. 79. Outcome of the assessment	247
Table No. 80. Example of tax versus financial income statements: Non-deductible expenses.....	250
Table No. 81. PLI (NCP) Profitability Indicators of the Comparable Companies to the Service Provider	252
Table No. 82. of financial and tax treatments for the provision of services subject to transfer pricing adjustments	254
Table No. 83. Paragraph 2.2 of the Guidelines	256
Table No. 84. Comparable companies in the distribution company example.....	257
Table No. 85. Comparison of financial and tax treatments for the provision of services subject to transfer pricing adjustments.....	260
Table No. 86. PLI (OM) Profitability Indicators of the Comparable Companies for the Distribution Company.....	261

CONTENIDO

Table No. 87. Comparative analysis of the financial and tax treatment of services subject to transfer pricing adjustments	262
Table No. 88. Income Statement	265
Table No. 89. Income Statement	266
Table No. 90. Income Statement with EBT and EBITDA calculation	266
Table No. 91. Income Statement with EBT calculation	267
Table No. 92. Comparative Income Statement: Financial vs. Tax	268
Table No. 93. Calculation of Earnings Before Interest (EBT) and the EBITDA Limit	268
Table No. 94. Determination of Taxable Base and Net Income	269
Table No. 95. Financial Profit and Taxable Base with Adjustments (Cap 1)	270
Table No. 96. Paragraph 55.3 of the Commentaries on the OECD Model Tax Convention: 2017 vs. 2025 Versions (English – Spanish)	271
Table No. 97. Paragraph 3.61 of the OECD Guidelines (English – Spanish)	275
Table No. 98. Proposed amendment to paragraph 3.61 of the Guidelines (English – Spanish)	276
Table No. 99. Proposal for the incorporation of paragraph 3.63 (English – Spanish)	286
Table No. 100. Proposed amendment to paragraph 3.61 (English – Spanish)	294
Table No. 101. Proposal for the incorporation of paragraph 3.63 (English – Spanish)	295

LIST OF CASE LAW

EDT Case Law No. 1. Diefenthal v. United States. United States. 1973.....	94
EDT Case Law No. 2. A company domiciled in Peru making a deposit/loan to its related party in Luxembourg. Peru. 2024.....	96
EDT Case Law No. 3. McKesson vs The Queen. Canadá. 2013.....	114
EDT Case Law No. 4. Mining company. Peru. 2019	123
EDT Case Law No. 5. Sundstrand Corporation v Commisioner. United States. 1991	131
EDT Case Law No. 6. Industries vs Commissioner. United States.....	132
EDT Case Law No. 7. Westreco Inc. Vs Commissioner. United States. 1992.....	138
EDT Case Law No. 8. Corporation of America vs Commissioner. United States. 1980	148
EDT Case Law No. 9. Asiatic Petroleum Co. Vs Commisioner. United States of America. 1935	161
EDT Case Law No. 10. Unilever de Centroamérica S.A. Costa Rica. 2024	219
EDT Case Law No. 11. Pharmaceutical Company. Panama. 2021	236
EDT Case Law No. 12. Beverage Company. Peru. 2018	239
EDT Case Law No. 13. Cosmetics Company. Peru. 2022	241
EDT Case Law No. 14. Cosmetics Company. Peru. 2024	243
EDT Case Law No. 15. Pharmaceutical Company. Spain. 2021.....	278
EDT Case Law No. 16. IT Products and Services Company. Spain. 2023	280
EDT Case Law No. 17. Transalliance. Spain. 2022	282
EDT Case Law No. 18. Biomerieux S.A. Spain. 2021	289

LIST OF APPENDICES

Appendix No. 1: Canada Flowchart	297
Appendix No. 2: Flowchart of Spain	298
Appendix No. 3: United States Flowchart.....	299
Appendix No. 4: Flowchart Of Panama.....	300
Appendix No. 5: Flowchart of Peru	301
Appendix No. 6: Flowchart of Costa Rica	302