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Transfer Pricing and APA in the Dominican Republic

DECEMBER 2019

TRANSFER PRICING

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Dominican Republic Tax Code (1992):

Legal acts between a local company of foreign capital and a natural or legal person domiciled abroad, which directly or indirectly controls it, will be considered, in principle, carried out between independent parties when their provisions conform to normal market practices between independent entities.

2006 Tax Reform (Law No. 495-2006)

For the all-inclusive hotel sector, whose business has links abroad, the Tax Administration may define APAs on the prices or rates that will be recognized based on parameters of comparability by zones, cost analysis, and other impact variables in the all-inclusive hotel business ... The agreements will be published by resolution and will be valid for eighteen (18) months. Subsequent agreements may be valid for up to thirty-six (36) months. In cases where an APA has expired and there is no new agreement, the previous agreement will remain in effect until the new APA is approved.

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2006 Tax Reform (Law No. 495-2006)

These prices or tariffs will be applicable for the purposes of the liquidation and / or determination of the taxable income for the Value Added Tax, and of the operational income for the Income Tax. The Tax Administration may challenge the values declared by the taxpayers reached by the APA, when they do not correspond to the criteria included therein and will apply the penalties established in the Tax Code.

The same treatment could be granted to sectors with processes linked to the outside, such as: Insurance, Energy and Pharmaceutical.

2009 The Tax Administration formally created its Transfer Pricing Department

2011 General Rule 04-2011 on Transfer Pricing

Introduced the obligations of preparing the Transfer Pricing Study, and the presentation of the Informative Statement of Transactions between Related Parties

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2011 General Rule 04-2011 on Transfer Pricing

Also introduced (i) the Transfer Pricing methods that can be used to analyze transactions between related parties, (ii) the Analysis of Comparability and Comparable Operations, and (iii) the considerations for determining whether two entities are related or linked, among others.

2014 Regulation 78-2014 on Transfer Pricing

Includes important aspects, such as (i) authorization for the distribution of corporate expenses and cost sharing agreements, and (ii) APA.

APA

Advance Pricing Agreements

APA

United Nations' Transfer Pricing Manual for Developing Countries

An agreement with respect to certain specific transactions that determine, in advance, the appropriate criteria for determining transfer pricing. The agreement can be made unilaterally between the taxpayer and the Tax Administration, or it can be a bilateral or multilateral agreement that involves the tax administrations of other countries.

APAs allow taxpayers and administrations to have greater certainty in their operations.

In many countries, both administrations and taxpayers prefer to reach agreements with APA rather than enter a litigation processes.

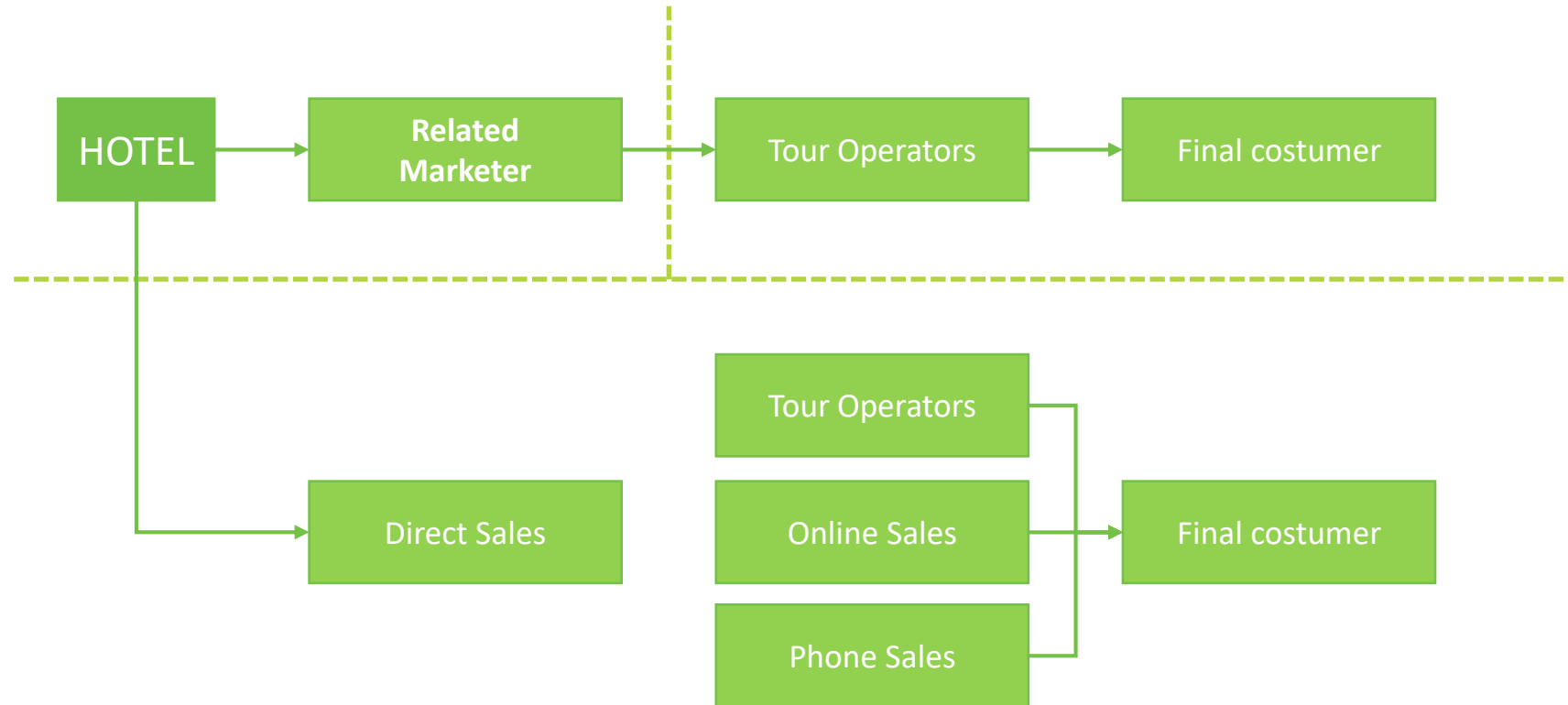
APA

2014 Regulation 78-2014 on Transfer Pricing

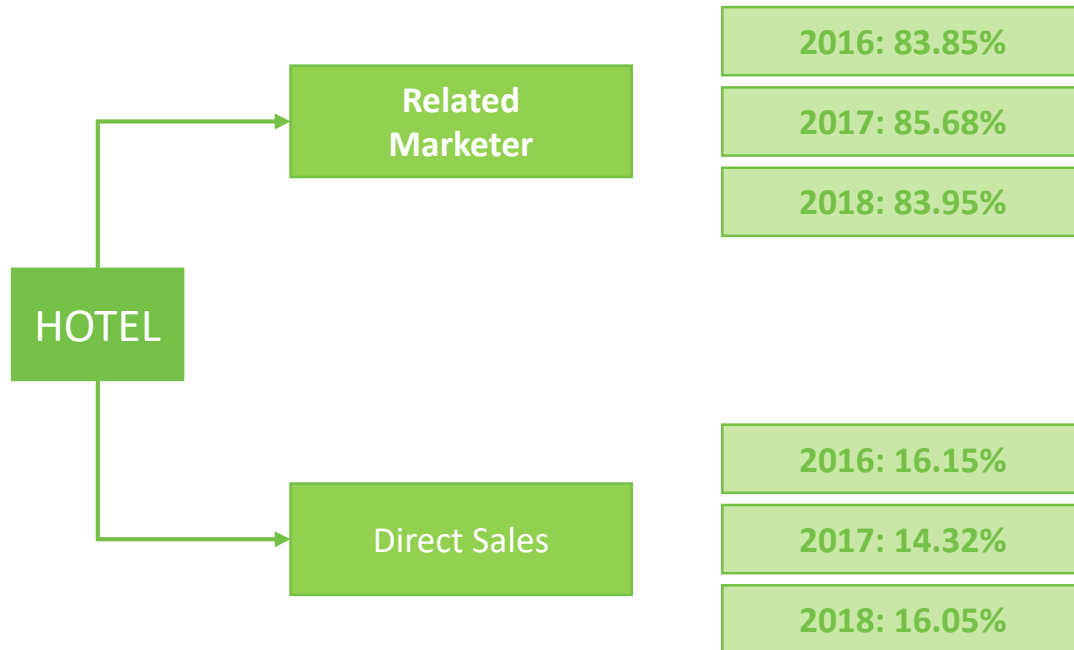
Taxpayers who carry out transactions with their related parties may request in writing to the DGII, within the first three months of the fiscal year, the conclusion of an Advance Pricing Agreement. This agreement may also refer to the financing of the taxpayer with third parties, when the taxpayer could be subject to the deduction of interests.

The documentation and information provided to the Tax Administration for the subscription of the agreements, will only have effects in relation to this procedure and will be used exclusively with respect to this, except when the agreement is revoked or canceled for non-compliance.

APA in the Hotel Sector Structure



APA in the Hotel Sector Sales



APA in the Hotel Sector Methodology

- Net profit margin on operating costs and expenses
- Gross profit margin on operating costs and expenses
- Fixed rate by category and zone
- Effective Tax Rate (TET)
- How to calculate it?

ITBIS (Value Added Tax)		ISR (Income Tax)	
2013	2017	2013	2017
12.00%	14.50%		
20.00%	24.00%		
	10.0% - 15.0%		
		2.00%	2.40%
Stays * Rate		Income * TET	

APA in the Hotel Sector Results

Increase in collections (times vs. 2012)	2013	2014	2015	2016	2017	2018
ITBIS (Value Added Tax)	1.37	1.70	1.83	1.98	2.24	2.46
ISR (Income Tax)	38.33	43.53	61.35	113.15	107.83	129.23

APA

The APAs provide certainty for taxpayers in the impositions of certain multinational transactions and are considered as the safest way to avoid double taxation. Similarly, APA negotiations are friendlier processes than audits that administrations can perform.

APAs are a very useful tool for administrations to develop a deeper understanding of taxpayer business operations. This has also led to an environment of greater trust between taxpayers and the Tax Administration.



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