

Practice and legislation on Transfer Pricing



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Outline

- Legal Framework
- Some Tourism Industry Facts
- Some All Inclusive Hotels Facts
- Sector Audits Strategy
 - Tax Base
 - Procedure
 - Results
- Future of Transfer Pricing

Legal Framework

1992

- Arm's Length Principle

2006

- Faculty of the Tax Administration
- APA's
- Interest payed and cost distributed between related parties

2011

- Related Party definition
- Comparability Analysis Criteria
- Methods
- Adjustment to comparable transaction
- Documentation
- Others

Legal Framework

“In the case of the hotel sector of all inclusive, whose business has particular links with related parties overseas, the Tax Administration may define advance pricing agreements (APA) about the prices or rates that will be recognized on the basis of parameters of comparability by areas, analysis of costs and other variables of impact in the hotel business in all inclusive. For the signing of the APA, the sector will be represented by the National Association of Hotels and Restaurants (ASONAHORES). The agreements will be published by resolution and its validity shall be eighteen (18) months. The subsequent agreements may have a lifespan of up to 36 months. In cases that an Advance Pricing Agreement (APA) have expired, and there is not a new agreement, the previous agreement shall continue in force until approved the new APA (Advance Pricing Agreements)...”

Legal Framework

- Principle of the Substance
- Determination Ex–oficio

Tax Code allow to discard the Affidavits that did not deserve faith, because are not reliable or accurate, and in turn, empower the Tax Administration, in such cases, proceed to determine the tax obligation, even though the taxpayer has an organized accounting with books and accounting records up to date.

Tourism Industry Facts

- Dominican Republic is the 4th Tourism exporter in Latin America and the Caribbean (Surpassed by Brazil, Mexico and Argentina)
- The Foreign Direct Investment is around 1/3 of the total FDI
- As a percentage of the GDP, the tourism industry represent about 10% of the GDP

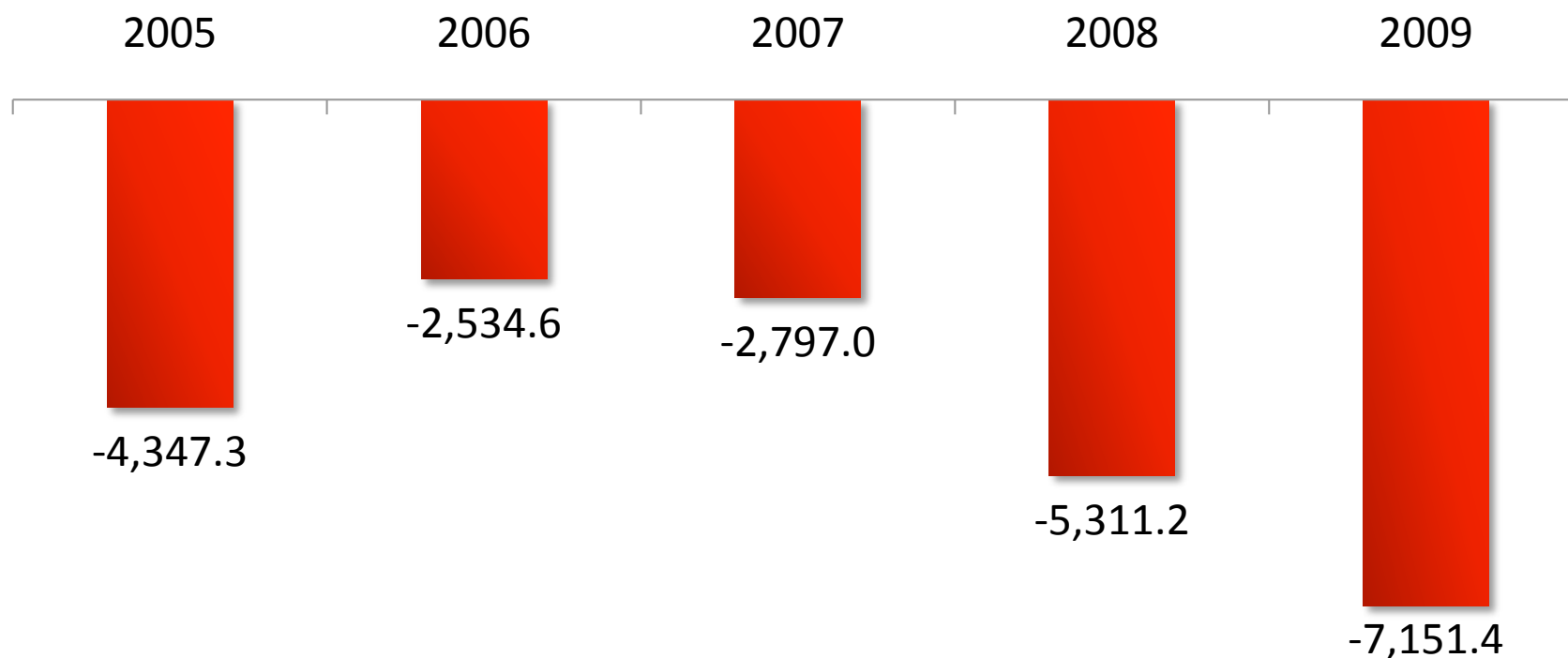
	2007	2008	2009	2010
Valor Agregado (millones USD)	4,393.3	4,627.8	4,419.7	4,758.5
% Producto Interno Bruto	10.7%	10.1%	9.5%	9.2%

All Inclusive Hotels Facts

- 93% foreign investment
- Tax incentives regime (Import IVA, Local taxes, IVA, etc)
- At least 80% of the hotel room are sell to a related party located in a tax heaven.
- The unit income (per room price) lower than the unit cost.
- Per room rate lower than the one published in many booking webpage and Tour Operator catalog.

All Inclusive Hotels Facts

- Declared losses repeatedly, for more than 10 years.



Sector Audit Strategy

Tax Base: based on the **hotel rate** at which the guest or final consumer overseas pay per night;

Sector Audit Strategy

Procedure:

1. Find the Per night rate pay by tourist oversea, in a 7 nights packages, discounting the transportation.
2. The rates were segmented according to the category of the hotel, location and season
 - 5 categories were identified in each zone. ASONAHORES submitted these categories.
 - 2 Seasons were identified, high and low season.
 - 3 different region, A, B, and C. A for the expensive one, C for the cheapest.

Sector Audit Strategy

Procedure:

3. 10% of mandatory Tip and 16% of IVA was discounted.
4. The margin of 20 and 25%, as a markup was discounted. This margin is it supposed to be the profit margin the tourism intermediaries get for the commercialization service.

Sector Audit Strategy

Results:

Audits by fiscal year 2005-2010

Tax Period	Quantity
2005	1
2006	1
2007	16
2008	3
2009	32
2010	20
Total	73

Fiscal period audited 2005-2010

Audited Periods	Taxpayers
1 period	5
2 periods	14
3 periods	12
4 periods	1
Total	33

Sector Audits Strategy

Results:

Judgments from the Supreme Administrative Court, sustains and confirms the action as legal and correct, in both form and substance, and therefore, confirming the amounts of the estimates contained in the resolutions of determination of tax.

Future of TP

- Creation of a Transfer Pricing Unit in March 2011. Since 2009 the TA focused on selecting and training a team.
- Subsequently the Tax Administration began an open discussion (Tax intermediaries, business association and tax law firms) to include in the Transfer Pricing legislation some clarifying rules for its application, giving as a result a normative based on the OECD Guidelines.
- Since last year, taxpayers began to submit their Transfer Pricing documentation for the 2011 fiscal period.



THANK YOU!