

CHILE

LEGISLATION	
Existence of Transfer Pricing Laws/Guidelines	<p>Article 38 of the Chilean Income Tax Law (CITL) contains six paragraphs (introduced by Article 22 of Law 19,506 published in the Official Gazette on 30 July 1997 and slightly amended by Law 19,840 published in the Official Gazette on 23 November 2002) that form the basic transfer pricing statutes. These paragraphs allow the Chilean tax authorities, Servicio de Impuestos Internos (SII), to conduct audits, request specific information and contest prices charged, paid or accrued between related parties if such prices do not comply with the arm's length principle.</p> <p>Article 64 of the Tax Code empowers the SII to contest transfer prices and to adjust them when these do not comply with the arm's length principle.</p> <p>In 1998, the SII issued Circulars No 3 and 57 that contain the guidelines for the application of the transfer pricing statutes for the tax inspectors.</p> <p>Chile is member of the OECD. Its transfer pricing rules are consistent with the OECD Transfer Pricing Guidelines, which are generally followed by the SII.</p>
Definition of Related Party	<p>Article 38 CITL establishes a broad concept of the notion 'related parties', which includes the following situations:</p> <ul style="list-style-type: none"> • a company incorporated abroad that participates, directly or indirectly, in the management, control or capital of a company established in Chile or vice versa; • a person that participates, directly or indirectly, in the management, control or capital of both a Chilean enterprise and a foreign enterprise; • a branch and its head office or another branch or a related company of the head office; • parties that engage in exclusive agreements, joint performance, preferential treatment, financial or economic dependence, or trust deposit agreements; and • a transaction with an enterprise established in a low tax jurisdiction included in a list enumerated in Article 41 D, No 2 of the CITL.
Transfer Pricing Scrutiny	<p>Tax audits are generally conducted based on a combination of on-site visits and desk audit. The SII uses information from Customs as well as information contained in the monthly VAT returns of the taxpayers. The SII is also allowed to request information from the National Bank of Chile for transfer pricing examinations.</p> <p>There are no specific rules on the burden of proof relating to transfer pricing. However, under the general rules in the Tax Code it is generally considered that the burden of proof lies with the taxpayer. Nevertheless in transfer pricing matters, the burden of proof is generally acknowledged to be with the SII. Article 38 CITL prescribes that the SII can only dispute the prices set by the taxpayer with strong evidence, which it will have to prove.</p> <p>The SII is entitled, based on Article 38 CITL and Article 64 of the Tax Code, to investigate and assess domestic transactions as well.</p> <p>Current audits are being focused on all industries involving imports such as automotives, pharmaceuticals and electronics. Audits are also focused on shipping, mining and some agricultural enterprises.</p> <p>During recent years, the SII has recruited highly qualified personnel and has been carrying out extensive benchmarking, which indicates its intention to intensify transfer pricing audits in the future.</p>

<p>Transfer Pricing Penalties</p>	<p>If the relevant documentation is not available at the time of a tax audit, a minor fine is due. The same fine applies when failing to comply with any and each of the reporting liabilities with regard to cross border payments and revenues.</p> <p>Penalties due to a transfer pricing adjustment are:</p> <ul style="list-style-type: none"> • a fine, ranging from 10 to 60 per cent depending on whether the tax is to be declared or withheld by the taxpayer; • an extra tax (17 or 35 per cent of the increase of the tax base depending upon the circumstances); • the amount of the increase must be restated for inflation reasons; and • late payment interest on the extra tax payable is due.
<p>Advance Pricing Arrangement (APA)</p>	<p>The present Chilean statutes and regulations do not allow taxpayers to conclude an APA with the tax authorities. The latter, however, have expressed their intention to implement an APA procedure in the future.</p>
<p>DOCUMENTATION AND DISCLOSURE REQUIREMENTS</p>	
<p>Tax Return Disclosures</p>	<p>No specific disclosures are required in the tax return.</p>
<p>Level of Documentation</p>	<p>There is no statutory obligation to prepare transfer pricing documentation. However, taxpayers are required to keep on their premises a set of documents that may be reviewed by the SII on the occasion of a tax audit. Such documentation should include copies of contracts, invoices, vouchers, entries into the ledgers and accounting records of all cross border transactions, as well as all other supporting documentation regarding intercompany transactions.</p>
<p>Record keeping</p>	<p>There are no specific statutory provisions, regulations or rules dealing with record keeping for transfer pricing purposes. The general record keeping rules apply.</p>
<p>Language for documentation</p>	<p>There are no specific statutory provisions, regulations or rules dealing with the language of transfer pricing documentation. Documentation should be in Spanish. The business description of foreign comparables may be in English but should be translated in Spanish upon request of the SII.</p>
<p>Small and medium sized enterprises (SMEs)</p>	<p>There are no specific statutory provisions, regulations or rules with regard to small and medium sized enterprises.</p>
<p>Deadline to Prepare Documentation</p>	<p>There is no specific deadline to prepare documentation. However, since documentation should be readily available upon a tax audit, contemporaneous documentation is advisable.</p>
<p>Deadline to Submit Documentation</p>	<p>An informative return on cross-border transactions must be filed by 15 March of the calendar year following the year of payment or revenue realization. The reporting liabilities include information regarding the names, addresses and tax ID of the Chilean taxpayer and the foreign beneficiaries, the amounts paid or credited and the amount and date of the withholding or exemption, as the case may be.</p>

STATUTE OF LIMITATIONS

The SII may conduct audits, make assessments and charge taxes and fines within 3 years from the end of the term in which the taxes are due. The term is 6 years for taxes assessed by means of returns when the return is not filed or is willfully false.

TRANSFER PRICING METHODS

The CITL includes specific references to the CUP method, the resale price method and the cost plus method. It also refers to 'a reasonable profit considering the circumstances of the operation', which the SII's inspectors view as the language adopted by the OECD Transfer Pricing Guidelines to reflect transaction methods including the profit split method and the transactional net margin method.

COMPARABLES

Domestic and international comparables are acceptable. There are a number of cases where the SII has used secret comparables. In most of these cases, the SII has disclosed these comparables.

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