

Transfer Pricing Country Summary Venezuela

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Transfer pricing legislation in Venezuela was introduced through a modification to the Income Tax Law (“LISLR”, per its initials in Spanish)) published in the Official Gazette No. 5.390 on 22 October 1999¹. The Transfer Pricing regulation was amended in 2001 and later in 2007, thin capitalization rules were incorporated in Article 118 of the LISLR limiting the deductibility of interest paid to related companies. It was applied as of the fiscal year 2008 to Venezuelan taxpayers as well as to Permanent Establishments.

Regarding Transfer pricing ruling, through Administrative Order No SNAT/2010/0090, issued by the SENIAT and published on 20 December 2010, the regulations regarding arm’s length range are introduced. By this means, the use of the interquartile range is used to set the arm’s length range.

On December 30th 2015, a tax reform of the Income Tax Law was introduced through Official Gazette No. 6.210², however the Transfer Pricing rules have not been modified.

Definition of Related Party

Two or more legal entities are associated when one of them participates directly or indirectly in the management, control or capital of the other, or if the same individuals or legal entities participate directly or indirectly in the management, control or capital of both legal entities.

Taxpayers also are deemed to be related parties when they undertake transactions with entities located in low-tax jurisdictions.

Transfer pricing regulations will also apply to any entity acting as an independent intermediary (i.e. non-related party to the Venezuelan entity) when the transactions are carried out by the intermediary on behalf of a Venezuelan company and its related foreign company.

Transfer Pricing Scrutiny

Transfer Pricing rules were introduced in 1999, however in 2002 was created the Transfer Pricing and Advance Agreements Unit through the Administrative Providence No. SNAT / 2002/914 published in Official Gazette No. 37,423 of 15 April 2002.. The first transfer pricing audits focused in the energy,

¹ See <https://www.bolsadecaracas.com/eng/pdf/gacetas/5.390E/5.390E.pdf>

² See <http://www.bod.com.ve/media/97487/GACETA-OFICIAL-EXTRAORDINARIA-6210.pdf>

mass consumption and automotive industry and were performed through Pilot Operations focused on the review of formal duties foreseen in articles 166, 167 and 168 of the LISLR.

The SENIAT has been given special attention to transfer pricing audits, irrespective of industry. Therefore, tax payers are highly recommended to keep a contemporaneous Transfer pricing documentation and fill in the TP informative return Form PT-99. Mainly, companies with inconsistency between transfer pricing documentation and tax income return are targeted for audit, but also entities with the profit level below the interquartile arm's length range or with lower operating margins than in the prior years. Also, if the financial information is not updated or the Transfer pricing information return has been filled after the deadline, these can also trigger a transfer pricing audit.

Transfer Pricing Penalties

According to the amendment of the Master Tax Code published by Decree No. 1.434 on the Extraordinary Official Gazette No. 6152 of 14 November of 2014, the following sanctions apply upon failure to comply with transfer pricing regulations:

- The penalties for not complying with the transfer pricing methodology: closure of the establishment for 10 continuous days and 1000 tax units;
- Penalty for failure to file TP informative return or to file it with a delay of more than one year: closure of the establishment for 10 continuous days and 150 tax units;
- Penalty for incompleteness in the TP informative return or file them with a delay of not more than one year: 100 tax units;
- The illegitimate reduction of taxable income due to omission by the taxpayer carries a penalty between 100% and 300% of the tax omitted;
- Failure of compliance within the established terms to provide tax administration with information regarding transactions with related parties, carries a penalty of 100 tax units;
- Providing the tax administration with erroneous information carries a penalty of 100 tax units;
- Fraud carries a jail sentence ranging between 6 months and 7 years;
- Failure to file the return to report investments in low-tax jurisdictions carries a penalty of closure of the establishment for ten continuous days and 2000 tax units; and
- Late filing of the return to report investments in low-tax jurisdictions carries a penalty of 1,000 tax units.

Note that as of 25 February 2015, through Ruling No, SNAT/2015/0019, the tax unit = Bs. 150.00.

Advance Pricing Agreement (APA)

Unilateral APAs are available under the Venezuelan tax regulations. Procedures to obtain APAs are set forth in the Income Tax Act. When granted an APA, taxpayers must file a report regarding its application which must be enclosed to the annual income tax return. The latter must be filed within three (3) months after closing of each tax year. Any change related to the economic circumstances and the

method of application must be disclosed in this report. APAs apply to the fiscal period in which they are approved by the tax administration and during the following three (3) fiscal years.

Bilateral APAs are available under the Venezuelan tax regulations with those countries with which Venezuela has signed tax treaties. (See Income Tax Act articles 143 to 167 and Master Tax Code chapter III, articles 230 to 239).

The tax authorities have a period of twelve (12) months from the moment the APA request is received to decide on the application of the proposal. If no response is given within this period, the request is deemed rejected.

Documentation and Disclosure Requirements

Tax Return Disclosures

A controlled party's information return must be filed during the following six months, immediately after the closing of each tax year. Transfer pricing requirements in Venezuela state the obligation of the taxpayers to submit Form (PT-99) with the following information: related party name and country of residence, type of intercompany transaction, dates on which the transactions took place, country with which the transactions were performed, amount of each type of transaction, transfer pricing method applied and the gross or operating margin result per type of transaction. Further appendices require the taxpayer to disclose a related and unrelated party segmentation of the P&L statement.

Level of Documentation

Transactions and arrangements with foreign related parties must be reported to the tax authorities through an informative return (PT-99). The Venezuelan rules also require an extensive list of formal duties on TP (background documentation), which includes, among others, the following items:

- An analysis of fixed assets and the commercial and financial risks related to the transaction including documentation to support the acquisition and use of assets.
- An organizational and functional overview of the taxpayer including information about the relevant departments and/or divisions, strategic associations and distribution channels.
- Information regarding the foreign related parties including type of business, main clients and shareholdings in group companies.
- An overview of the controlled transactions including activities carried out, dates, prices paid or charged and the applicable currency.
- Information on the main activities carried out by each of the relevant group companies as well as data on any changes affecting the group as a whole, such as capital increases or mergers.

- Financial statements for the taxpayer's fiscal year, prepared according to generally accepted accounting principles including balance sheet, income statement, stockholders equity statement and statement of cash flow.
- Agreements, conventions or treaties entered into between the taxpayer and foreign related parties including agreements related to distribution, sales, credits, guarantees, licenses, know-how, and use of trademarks, copyrights, industrial property, cost allocation, research and development, advertising, trusts, stock participation, investments in securities and other transfers of intangible assets.
- The method or methods used to set the transfer prices, indicating the criteria and objective elements considered to determine the proper application of the selected method.
- Information regarding the operations of the uncontrolled comparable companies.
- Specific information about whether the related parties abroad are, or were, subject to a TP audit, or if they are involved in procedures by the TP competent authority or a court. In that case a resolution shall be issued by the competent authorities and a copy of the findings must be filed.
- Information regarding the inventory controls.
- Information related to functional analysis and TP calculations.
- Any other information that may be deemed relevant or required by the Tax Administration.

Record Keeping

Effective as of 2002, taxpayers are required to prepare and maintain supporting and extensive contemporaneous documentation.

Language for Documentation

All documentation required must be kept in Spanish.

Small and Medium Sized Enterprises (SMEs)

There are no special considerations for SMEs.

Deadline to Prepare Documentation

Contemporaneous documentation is required for taxable years beginning after 22 October 1999. Transfer pricing analysis must be conducted at the filing of the tax return and the complete documentation should be available six months, immediately after the closing of each tax year.

Deadline to Submit Documentation

In accordance with article 166 of the LISLR, taxpayers subject to the transfer pricing obligation must submit the Informative Return on Transactions entered to with Related Parties Abroad (Form PT-99) within the following six months after the close of the entity fiscal year.

The taxpayer must submit the background documentation upon request by SENIAT during a transfer pricing audit. Regarding the income tax return, it must be submitted within three months after the end of the fiscal year.

Statute Of Limitations

As of November 2014, according to the amended Article 55 of the Master Tax Code, the statute of limitations is six years for: (i) tax audits and the determination of the income tax; (ii) imposition of different penalties; (iii) the payment of tax debts and strong sanctions; and (iv) the right to credit recovery and return of overpayments.

The statute of limitation is set for ten years in the cases of: (i) inspecting and determining the tax liability and imposing, other than imprisonment, penalties when any of the aggravating circumstances provided in the standard are present; and (ii) imposing restrictive sentences.

Fraud and the failure to file advances by withholding or collection agents will not have a statute of limitations. Administrative actions arising from the verification procedures, customs control or processing and decision of administrative appeals are incorporated as means to interrupt the statute of limitations.

Transfer Pricing Methods

Venezuelan transfer pricing regulations follows the OECD Transfer Pricing Guidelines: CUP, resale price method, cost plus method, profit split method, and the TNMM. Priority is given to the CUP method. Any of the approved methods may be applied.

Comparables

Information on local comparables is available from various sources and best efforts should be made to rely upon them when appropriate. However, comparables from other jurisdictions may be used if properly analyzed.