

# Transfer Pricing Country Summary

## Chile

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## 1. Introduction

Chile is a member of the OECD and since 1998 it has transfer pricing rules. In the recent years, Chile has been introducing changes in the national legislation in order to adapt its standards to the OECD requirements. As a member of the OECD, its transfer pricing rules are consistent with the OECD Guidelines.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

In Circular No. 29 of 14 June 2013, there are explicit references to the transfer pricing guidelines regarding methods, comparability analysis, and use of ranges and definition of transfer prices. Accordingly, Article 41-E of the Chilean Income Tax Law (CITL), lastly amended in 2020, contains the basic transfer pricing statutes. It prescribes the arm's length principle application between related parties. This article allows the Chilean tax authority, "*Servicio de Impuestos Internos*" (SII), to conduct audits, request specific information and challenge the prices charged, paid, or accrued between related parties if such prices do not comply with the arm's length principle. Article 41 E follows, in general, the OECD guidelines.

Chile has recently introduced the Master file (TP Form 1950) and Local File. Also, the Chilean tax authorities published an External Resolution (No. 126) on 27 December 2016, which updates the current annual transfer pricing return (affidavit) requirements to introduce the Country-by-Country reporting (CbCR).

### b) Definition of Related Party

Article 41-E of CITL and Circular 29/2013 establishes a broad concept of the notion "related parties", which includes the following situations:

- 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;
- transactions with "fictitious" resellers in foreign countries (covert relationships);
- operations among relatives;
- a transaction with an enterprise established in a low tax jurisdiction is included in a list enumerated in Article 41 D, No. 2 of the CITL unless a covenant for exchanging fiscal information between those states is in force.

The amendment, which came in force in January 2015, clearly specifies that transfer pricing legislation is applied to transactions and business activities between a foreign entity and a local one, eliminating all the previous speculations that transfer pricing regulation is valid only for activities with tax havens.

### c) Nature of Transfer Pricing Documentation

Every year, pursuant to Article 41-E paragraph 6 of the CITL, taxpayers who carry out cross border operations subject to transfer pricing regulations must submit a sworn statement to the SII<sup>1</sup>, with the information that such institution requires, including but not limited to; (i) information on the characteristics of the operations carried out with related and unrelated parties, (ii) the methods applied to determine the prices and values of these operations, (iii) information on the taxpayers' related parties domiciled abroad, (iv) and general information on the Corporate Group to which the taxpayer belongs.

### d) Tax Havens & Blacklists

Since 2003, Chile has been employing a blacklist of tax havens originating from the 1998 OECD Report. The criteria Chile utilises to create a list was reshaped lastly in 2014 by Article 41-H of the Tax Reform Law 20.780. According to the provisions, a territory or jurisdiction is considered to be a preferential tax regime if it meets 2 or more of the following conditions (that do apply to OECD member countries)<sup>2</sup>:

- The countries whose tax rates on foreign-sourced income with an effective tax rate lower than 17,5% (50% of the income tax rate specified in Article 58 of CITL);
- The countries who did not enter into an agreement with Chile that allows the exchange of information for tax purposes;
- The countries that do not have transfer pricing rules or such rules do not comply with OECD or UN standards;
- The countries who do not meet the conditions to be considered compliant or substantially compliant of OECD standards on transparency and exchange of information for fiscal purposes;
- The countries having one or more preferential regimes for fiscal purposes according to a qualification made by the OECD;
- The countries that only impose tax on income from local sources (territorial source principle of taxation).

Once a territory or jurisdiction is considered a preferential tax regime in Chile, certain provisions are relevant to be applied to them. These requirements/conditions are:

- Reporting obligations regarding investments in jurisdictions with a preferential tax regime;
- Under transfer pricing rules, an entity resident of a jurisdiction with a preferential tax regime is considered a related party;
- Under thin capitalisation rules, the resident of a preferential tax regime jurisdiction is considered a related party;
- Under CFC rules, an entity resident of a jurisdiction with a preferential tax regime is considered a controlled entity, and all of its income is considered passive income;

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<sup>1</sup> Declaración jurada N°1907

<sup>2</sup> The most recent list of tax havens is shown in the following link: [reso55\\_anexo2.pdf \(sii.cl\)](#)

- Under withholding tax rules, the tax rate on royalties and fees for the provision of services is increased to 30% and 20% in each case.

#### e) Advance Pricing Agreement (APA)

The new Chilean statutes and regulations allow taxpayers to conclude an APA with the tax authorities, based on article 41-E Number 7 of CITL. Unilateral, bilateral and multilateral agreements are available. APA's apply from the date of their signing and will last for the following three commercial years. A renewal may be requested. The filing fee for an APA is not specified by the tax authorities yet. The detailed procedures and further information on fees are expected to be published in subsequent regulations.

#### f) Audit Practice

The SII established a highly qualified Transfer Pricing Unit and has been carrying out intensive tax audits. Based on Article 41-E CITL and recent reforms, the SII requires the taxpayers (medium and large) all the information about their operations above 200 million Chilean pesos with related parties. Other taxpayers (large taxpayers who submit CbCr) must file information about their operations above 500 million Chilean pesos. Moreover, based on both Article 41-E and Article 64 of the Tax Code, the SII is also entitled to investigate and assess domestic transactions.

Current audits are being focused on all industries involving imports, such as automotive, pharmaceuticals and electronics. Audits are also focused on shipping, mining, and some agricultural enterprises.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

The Transfer Pricing Return (Form 1907); needs to be filled by medium and large taxpayers, entities with intercompany transactions exceeding 500 million Chilean Pesos and entities that made transactions with entities established in low tax jurisdictions.

The Global Sworn Return (Form 1913); which is Chile's first step in implementing the OECD's BEPS Action 13, consists of a questionnaire that collects qualitative information from the company established in Chile and the non-domiciled companies that make up the economic group to identify the large taxpayers and the company profiles more efficiently.

Master File as Annual Affidavit No. 1950; is the form that must be submitted by all companies who are also obliged to submit CbCR. These companies can be amongst others (i) parent/controlling companies of MNE groups who are tax-residents in Chile if their consolidated income exceeds € 750 million, (ii) tax-resident entities of Chile belonging to the MNE's, who is designated to file CbCR (Form 1937) by the parent or controlling entity.

Local File as Annual Affidavit No. 1951; is the form that must be submitted by the companies who meet these conditions cumulatively; (i) it belongs to the "large companies" segment that is determined

every year by the tax authorities, (ii) it has either a parent entity or controlling MNE who has submitted CbCR to the SII or any other tax authority in global extend (iii) it has carried out foreign transactions with related parties that are concerning more than 200 million pesos.

Since the requirements mentioned above (for forms 1950 and 1951) are different from the requirements of Form 1907 (Transfer Pricing Return), taxpayers subject to the submission Form 1907 must separately consider whether they are also obliged to submit Local File (Form 1951).

Regarding CbcR (Form 1937), the requirements apply to MNE's headquartered in Chile with annual consolidated group revenue equal to or exceeding €750 million in the previous year. Form 1937 (CbCr) comprises the following 7 sections:

- Section A: Taxpayer Identification,
- Section B: Data referred to group or business holding,
- Section C: Data referring to business reorganisation,
- Section D: Data referring to financial instruments and/or derivatives contracts,
- Section E: Data referred to result before of tax,
- Section F: Data referring to capital assets and,
- Section G: Data referring to international operations.

#### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

### e) Choice of Transfer Pricing Method

Article 41-E of CITL includes specific references to the (i) CUP method, (ii) the resale price method and (iii) the cost-plus method. Additionally, the tax reform includes the traditional (iv) transactional net margin method, (v) profit split, and (vi) residual profit split, adopting the OECD Transfer Pricing Guidelines.

If none of the transactional or profit-based methods are applicable due to special circumstances and this is duly justified, other reasonable methods will be allowed.

To determine which method is to be applied in each particular case, the taxpayer must apply the most appropriate method to reflect an arm's length value considering the circumstances of the case.

### f) Economic Analysis – Benchmark Study

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

### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

### h) Financial Statements

Companies listed on the stock market exchange and financial institutions should include a note in the financial statements regarding the transactions between related parties. The report must contain: the transaction amount, the relationship between the related parties and other relevant financial information<sup>3</sup>.

### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

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<sup>3</sup> <https://www.bcn.cl/leychile/navegar?i=1064048>

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If "No", it can be filed in English)
<b>Corporate Income Tax</b>	File	Local requirements	30 April, or later, depending on the taxes to be paid	No	NA	Yes
<b>Master File (Form 1950)</b>	File	OECD Guidelines 2017	The last business day of June (can be extended 90 days only once a year)	No	Yes	Yes
<b>Local File (Form 1951)</b>	File	OECD Guidelines 2017	The last business day of June (can be extended 90 days only once a year)	No	Yes	Yes
<b>CbCR (Form 1937)</b>	File	OECD Guidelines 2017	The last business day of June (can be extended 90 days only once a year)	Yes	Yes	Yes
<b>TP Return (Form 1907)</b>	File	Local requirements	The last business day of June (can be extended 90 days only once a year)	No	Yes	Yes
<b>Annual Accounts</b>	Prepare	IFRS	90 days after the end of the financial year	No	Yes	No
<b>Segmented P&amp;L</b>	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	No
* Chile has signed the MCAA agreement for the filing of CBCR.						
* There are no specific statutory provisions, regulations or rules with regard to SME's (small and medium sized enterprises).						

Transfer pricing documentation must be submitted no later than 6 months after the last day of the Reporting Fiscal Year of the MNE Group.

If a tax authority requests a taxpayer's transfer pricing documentation, the deadline for a taxpayer to submit its documentation to authorities is 30 days. This period may be extended by 30 days more on request.

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 through returns when the return is not filed or is willfully false.

#### j) Mandatory Language

Documentation should be in Spanish. The business description of foreign comparables may be in English but should be translated into Spanish upon request of the SII.

#### k) Notification Requirement

In Chile, notification regarding the CbC Reporting must be submitted 30 days before the deadline of the CbC Reporting itself. Since the deadline of the CbCR is no later than 6 months after the last day of the reporting FY of the MNE group, the notification should be made no later than 31 May.

#### l) Record Keeping

There are no specific statutory provisions, regulations or rules dealing with record-keeping for transfer pricing purposes. The general record-keeping rules apply.

#### m) Penalties and Interest Charges

Circular 31 of 12 May 2016 establishes the penalties for failure on submission or inaccurate, incomplete, or untimely submission of the Transfer Pricing Sworn Statement (Form 1907). The failure to submit the TP forms, or its inaccurate, incomplete, or untimely presentation, shall be sanctioned with a fine of between 10 and 50 annual tax units (one annual tax unit is equivalent to approximately CLP650,000 or 800 USD). Nevertheless, this fine can never exceed 15% of the taxpayer's equity capital or 5% of the total of its effective capital. If the submitted TP form is intentionally false, the fine shall amount from 50 to 300 per cent of the tax due. Furthermore, criminal sanctions may be incurred thereon.

It must be noted that the taxpayer may ask one time for the extension of up to 3 months of the time limit to file the statement.

The penalty prescribed by article 97(1) of the Tax Code applies in case of failure in submission or late submission of the TP Form. Penalties for late filing vary from 0.2 monthly tax unit to 30 annual tax unit (CLP11,000 to CLP195MM approximately).

In case, in the SII's opinion, the taxpayer cannot prove that the operation(s) with its related parties have been carried out at arm's length prices, the SII will determine them.

In case there has been an adjustment in transfer pricing documentation, and a proposed adjustment is sustained, in that case, tax authorities can impose a 35% penalty tax instead of the income taxes on the adjustment. The additional items such as inflation adjustments, interest, and a five per cent penalty according to the amount adjusted can also be imposed. Consequently, the taxpayer will have to pay a special tax of 40% on the difference. Furthermore, a fine of 5% more might be applied if the taxpayer does not provide the SII with the documentation requested for review by the latter in a timely manner.