Transfer Pricing Colombian Profile
(to be posted on the OECD Internet site www.oecd.org/taxation)
Name of Country: _COLOMBIA_ Date of profile: _June 2013_

No.	REFERENCE	REFERENCE CONCEPT
1	Reference to the Arm's Length Principle and Transactions between Related Parties	**Article 260-2 of the TAX CODE (TC)**: The concept of the Arm's Length Principle (ALP) has been introduced into the Colombian Law. The ALP is defined as the situation where a transaction between related parties satisfies the conditions that may have been used in comparable transactions with or between unrelated parties. As from 2013, taxpayers in Colombia are obliged to carry out transactions with foreign related parties, with related parties located in free trade zones, with permanent establishments and with entities in Low Tax Jurisdictions based on the Arm's Length Principle, in order to determine, for tax purposes, their revenues, costs, expenses, assets and liabilities in accordance with the ALP.
2	Reference to the OECD transfer pricing guidelines	Even though the Colombian transfer pricing rules do not contain express reference to the OECD transfer pricing guidelines (TPG), some regulations were incorporated in the TC in accordance with the criteria issued by the OECD. Additionally, taxpayers can use the OECD TPG as technical reference when preparing transfer pricing documentation to support their transactions with non-resident related parties. However, the new law contains OECD principles and guidance within the different articles regarding transfer pricing. For example, the new law defines the Arm's Length Principle, includes 5 TP methods rather than 6, includes 5 comparability factors, among other.
3	Definition of related parties	**Article 260-1 of the TAX CODE (TC)**: Different economic bonding criteria has been defined for transfer pricing purposes: Related parties exist in the following cases: - Subordination - Agencies - Branches - Permanent establishments - Other bonding criteria including management, control or capital The recent tax reform introduced the concept of Permanent Establishments based on the OECD Model Tax Convention. Articles 260, 261, 263 and 264 of the Code of Commerce, Article 28 of Law 222 of 1995, and articles 450 and 452 of the TC that made reference to the concept of related parties in the previous law, are no longer valid for Transfer Pricing purposes.
4.	Obliged Taxpayers	Taxpayers in Colombia must comply with three main transfer pricing obligations: 1. Carry out all intercompany transactions at Arm's Length. 2. Prepare and file transfer pricing documentation. 3. Prepare and file a transfer pricing information return. According to Article 1 of **Regulatory Decree No. 4349** of 22 December 2004, the following conditions must be considered to determine taxpayers that must comply with formal transfer pricing obligations in Colombia:

		1. Net Worth (equity) equal or greater than 100,000 UVT[1] (COP 2.604.900.000 or USD 1.400.000, approx.) in the last taxable year. OR 2. Gross revenues equal or greater than 61,000 UVT (COP 1.588.989.000 or USD 900.000, approx.) in the last taxable year. Taxpayers that carry out any intercompany transaction must file a transfer pricing information return. Documentation must be prepared for types of transactions with related parties abroad that exceed 10,000 UVT (COP 260.490.000 or USD 140.000, approx.).
5.	Transfer Pricing Methods	**Article 260-3 of Tax Code** Methods are classified according to the OECD guidelines, as follows: 1. Comparable uncontrolled price method (CUP) 2. Resale price method; 3. Cost plus method; 4. Transactional net margin method; and 5. Profit split method. The most appropriate transfer pricing method must be selected according to the following criteria: i) the facts and circumstances of the controlled transactions, based on a functional analysis, ii) the availability of reliable information, particularly of transactions between independent parties, iii) the degree of comparability between the controlled and independent transactions and iv) the reliability of comparability adjustments that may be necessary to eliminate the material differences between controlled and independent transactions.
6.	Transfer Pricing Obligations	As mentioned previously, taxpayers in Colombia must comply with three main transfer pricing obligations: 1. Carry out all intercompany transactions at Arm's Length. 2. Prepare and file transfer pricing documentation. Taxpayers must prepare annual transfer pricing documentation. **Article 260-5 of the TC** and Regulatory Decree 4349 establish the obligation of preparing and maintaining, for a period of 5 years, all documentation demonstrating the application of the ALP in intercompany transactions. Documentation must be prepared for transactions with related parties abroad that exceed 10,000 UVT (COP 260.490.000 or USD 140.000, approx.). Additionally, financial and accounting information used for the preparation of the TP documentation must be certified by the public accountant. 3. Prepare and file a transfer pricing information return. According to **Article 260-9 of the TC**, taxpayers must prepare and file an Information Return disclosing the transactions carried out with foreign related parties. For fiscal year 2013, taxpayers must prepare and file an Information Return disclosing the transactions carried out with foreign related parties, related parties in free trade zones and permanent establishments and entities in low tax jurisdictions. Taxpayers that carry out any intercompany transaction must prepare and file the information return, even if the transactions must not be analyzed in the TP documentation.

[1] UVT stands for Tax Value Unit (*Unidad de Valor Tributario*, in Spanish). 1 UVT = COP 26.049 (USD 14, approx.).

According to Decree 2634 of 17 December 2012, deadlines to file the 2012 annual information return are as follows:

Last Digit of Tax ID#	Deadline	Last Digit of Tax ID#	Deadline
1	09 July 2013	6	16 July 2013
2	10 July 2013	7	17 July 2013
3	11 July 2013	8	18 July 2013
4	12 July 2013	9	19 July 2013
5	15 July 2013	0	22 July 2013

Deadlines to file the 2012 Consolidated Annual Information Return are the following. However, for taxable year 2013 the Consolidated Return disappears and will no longer have to be filed by taxpayers.

Last Digit of Tax ID#	Deadline
1, 2, 3, 4, or 5	24 July 2013
6, 7, 8, 9, or 0	25 July 2013

Annual Information Returns must be filed electronically, and the main information they must contain is the following:

- List of foreign related parties with which transactions were carried out.
- List of types of transactions carried out with foreign related parties, and value in Colombian pesos.
- Transfer Pricing method and profit level indicator used.
- Results of the calculation of the interquartile range.
- Types of adjustments performed to the tested party and / or comparables.
- Tested party.

Finally, the information return must be signed by the taxpayer's legal representative.

NOTE: Transfer Pricing Documentation must be filed electronically. Deadlines to file the 2012 annual study are the same as the information return, i.e., between 09-22 July, 2013.

7. Specific transfer pricing audit procedures and/or specific transfer pricing penalties

Audit Procedures

General audit procedures applicable to tax and transfer pricing audits include the following:

- *Notification Letter (Auto de Verificación o Cruce de Información, in Spanish):* This is the first approach made to taxpayers where they receive notice they will be under an audit.
- *Initial information request (Requerimiento Ordinario, in Spanish)* : Basic information is requested for analysis
  - *Request for further information*: Additional information is requested, if necessary
- *Filing Summon (Emplazamiento, in Spanish):* Document
- *Special requirement (Requerimiento Especial, in Spanish):* Official proposal of adjustment and applicable penalties.
- *List of charges (Pliego de Cargos, in Spanish):* Proposes a penalty based on administrative analysis.
- *Penalty Settlement (Resolución Sanción, in Spanish):* Resolution where a penalty is applied to the taxpayer.
- *Official liquidation.*
- *Reconsideration appeal*.

Penalty Regime

Transfer Pricing Penalties in Colombia are stipulated in Article 260-11

		of the TC. The transfer pricing penalties are related to documentation and to informative return. Now is stipulated that those penalties have a gradual approach, which means that the amount of penalties will depend, generally, on the type of the infraction and the value of the intercompany transactions carried out. Furthermore these penalties are related to delay in filing (days or months), omitted transactions with related parties, omitted transactions with parties in low tax jurisdictions, errors/inconsistencies in disclosed transactions and amendments, among others.
8.	Relevant regulations on advance pricing arrangements (APA's)	**Article 260-10 of the TC describes Advance Pricing Agreements. Additionally, Decree 4349 specifies the APA request process.** Taxpayers may celebrate APAs with DIAN to determine prices or profit margin for the different transactions carried out with related parties abroad. Taxpayers should consider the following: - Taxpayers must file a written APA request. - The effects of the APA can be valid from the tax year in which the agreement is approved, the previous tax year and the three following tax years (Rollback provision). - For Unilateral APAs, DIAN has 9 months from the date of the request, to accept or reject the APA request. In case of bilateral or multilateral APAs, the time to accept or reject the APA request will be defined between Competent Authorities of the participating states. - Taxpayers must file a simplified annual report to demonstrate compliance with the agreed conditions within the APA. - If the taxpayer fails to comply with the APA conditions, DIAN may unilaterally cancel the APA. - APAs can be terminated by mutual consent.
9.	Links to relevant government sites	- Colombian Presidency www.presidencia.gov.co/ - Colombian Ministry of Finance www.minhacienda.gov.co - DIAN – Colombian Tax Administration www.dian.gov.co - DIAN – Colombian Tax Administration (*English Version*) www.dian.gov.co/contenidos/ingles/presentation.html - DIAN - Transfer Pricing Section www.dian.gov.co/contenidos/servicios/ptransferencia.html
12.	Other relevant information	Law 1607 of 26 December 2012 introduced relevant changes to the Tac Code, including transfer pricing provision. There are other provisions related to transfer pricing: - **Article 118-1** introduces the concept of Thin Capitalization, specifying a 3:1 debt-to-equity ratio for intercompany and independent debt transactions.

		- **Article 869**, provides for an General Anti-Abuse Rule (GAAR) for tax matters. - **Article 260-7** specifies the criteria to define tax havens or low tax jurisdictions and special obligations taxpayers must comply with when carrying out transactions with low tax jurisdictions. Particularly, when taxpayers perform payments to people, societies, organizations or enterprises located, resident or domiciled in a low tax jurisdiction, those taxpayers must document and demonstrate the details of the functions performed, assets used, risks assumed and all costs and expenses incurred by the person or company located, resident or domiciled in the low tax jurisdiction for the performance of the activities that generated those payments. In case taxpayers fail to provide such information, such payments will be treated as non-deductible.