

Transfer Pricing Colombian Profile
 (to be posted on the OECD Internet site www.oecd.org/taxation)
Name of Country: COLOMBIA **Date of profile:** March 2012

| No. | REFERENCE | REFERENCE CONCEPT |
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| 1 | Reference to the Arm's Length Principle | <p>Article 260-1 of the TAX CODE (TC): Taxpayers in Colombia are obliged to carry out transactions with foreign related parties based on the Arm's Length Principle, i.e., considering prices or margins that would have been used in transactions with or between independent parties.</p> <p>For purposes of applying transfer pricing rules, related parties are defined under 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.</p> <p>Paragraph 2 of Article 260-2 of the TC states the application of any method may provide a range of prices or profit margins whenever two or more comparable transactions exist. The most appropriate statistical tool for evaluating the application of the Arm's Length principle is the inter-quartile range.</p> |
| 2 | Reference to the OECD transfer pricing guidelines | <p>Even though the Colombian transfer pricing rules do not contain express reference to the OECD guidelines, some regulations were incorporated in the TC in accordance with the criteria issued by the OECD. Additionally, taxpayers can use the OECD guidelines as technical reference when preparing transfer pricing documentation to support their transactions with non-resident related parties.</p> |
| 3 | Definition of related parties | <p>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 make reference to the concept of related parties.</p> <p>Article 260 of the Code of Commerce defines related parties as follows: An enterprise shall be deemed subordinated or controlled when its decision-making process is subject to the will of others that are parent or controlling company (ies). Directly, (in those cases companies are called affiliates) or indirectly, through the subordinates of the parent company (in those cases companies are called subsidiaries).</p> <p>Article 261 of the Code of Commerce defines subordination as follows:</p> <ol style="list-style-type: none"> 1. When more than 50% of the capital is owned by the parent company, either directly or through or with the participation of its subordinate entities. 2. When the parent company and the subordinates have, jointly or by themselves, the right to issue votes constituting the minimum decisive majority. 3. When the parent company, either directly or with the participation of subordinates, in connection with a reason or an act or business with the controlled company or with its partners, exercises dominant influence in the decision-making process. 4. When the control according to the assumptions foreseen is exercised by one or several non-partnership individuals or companies, either directly or with the participation of entities where they own more than 50% of capital, or configure the minimum majority to make a decision process or exercise dominant influence in the direction or a company decision-making process. 5. When the control of it is exercised with the participation of any or some of the preceding mentioned entities. |

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| | | <p>Article 450 of the TC indicates the cases of related party relationship:</p> <ol style="list-style-type: none"> 1. When the transaction, subject to the tax, occurs between a parent enterprise and its subordinate. 2. When the transaction subject to the tax, occurs between two subordinates of the same parent company. 3. When the transaction is carried out between two enterprises whose capital directly or indirectly belongs in a fifty percent (50%) or more to the same individual or legal entity, whether or not domiciled in the country. 4. When the transaction is carried out between two enterprises, one of which directly or indirectly owns a fifty percent (50%) or more of the other's capital. 5. When the transaction takes place between two enterprises whose capital belongs in a fifty percent (50%) or more to persons related themselves for marriage or kinship until to the second degree of consanguinity or affinity. 6. When the transaction takes place between the company and the partner, shareholder or joint owner who owns fifty percent (50%) or more of the company's capital. 7. When the transaction takes place between the enterprise and the partner or partners, shareholders or joint owners having right to administer it. 8. When the transaction is carried out between two enterprises whose capital belongs directly or indirectly by fifty percent (50%) or more to the same individuals, their spouses or relatives within the second degree of consanguinity or affinity. 9. When the producer sells to the same enterprise, or to related enterprises amongst them, fifty percent (50%) or more of its production, in which case each of the enterprises is considered as economically related. <p>Article 451 of the TC shows the cases when an enterprise is considered as subordinate.</p> <ol style="list-style-type: none"> 1. When fifty percent (50%) or more of the capital belongs to the parent company, either directly or together with its subsidiaries or affiliates or subsidiaries. 2. When those companies have, individually or jointly, the right to issue the votes constituting the quorum for decisions to appoint or hire a legal representative. 3. When two or more companies participate in fifty percent (50%) or more of the profits of one company, where economic bonding exists. <p>Article 452 of the TC establishes related party relationship, when transactions occur between economically related parties through third parties.</p> |
| 4. | Obligated Tax Payers | <p>According to Article 1 of Regulatory Decree No. 4349 of December 22nd of 2004, the following conditions must be considered to determine taxpayers that must comply with formal transfer pricing obligations in Colombia:</p> <ol style="list-style-type: none"> 1. Net Worth (equity) greater than 100,000 UVT¹ (COP 2.604.900.000 or USD 1.450.000, approx.). |

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

| | | <p>1. in the last taxable year. OR</p> <p>2. Gross revenues greater than 61,000 UVT (COP 1.588.989.000 or USD 880.000, approx.). 2. in the last taxable year.</p> <p>Additionally, taxpayers must carry out transactions with foreign related parties and parties residing in low or no-tax jurisdictions.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| 5. | Transfer Pricing Methods | <p>Article 260-2 of Tax Code establishes and describes the six methods used to determine the price or profit margin of transactions with related-parties, following OECD criteria. The acceptable methods are:</p> <p>Traditional transaction methods:</p> <ul style="list-style-type: none"> - Comparable uncontrolled price (CUP) - Resale price - Cost plus <p>Transactional profit methods:</p> <ul style="list-style-type: none"> - Profit split - Residual profit split - Transactional net margin <p>Colombia does not have a best-method rule. Transfer pricing methods must be applied considering the characteristics of the transactions under analysis, and the most appropriate to reflect the economic reality of the transactions.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. | Transfer Pricing Obligations | <p>Colombian taxpayers have three main transfer pricing obligations:</p> <ol style="list-style-type: none"> 1. Settle intercompany transactions at arm's length values. 2. File an Annual Information Return: <p>According to Article 260-8 of the TC, taxpayers must prepare and file an Information Return disclosing the transactions carried out with foreign related parties. Taxpayers that carry out any intercompany transaction must prepare and file the return, even if the transactions must not be analyzed in the documentation.</p> <p>According to Decree 4907 of December 26 of 2011, deadlines to file the 2011 annual information return are as follows:</p> <table border="1" data-bbox="619 1473 1326 1758"> <thead> <tr> <th>Last Digit of Tax ID#</th> <th>Deadline</th> <th>Last Digit of Tax ID#</th> <th>Deadline</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>10 July 2012</td> <td>6</td> <td>17 July 2012</td> </tr> <tr> <td>2</td> <td>11 July 2012</td> <td>7</td> <td>18 July 2012</td> </tr> <tr> <td>3</td> <td>12 July 2012</td> <td>8</td> <td>19 July 2012</td> </tr> <tr> <td>4</td> <td>13 July 2012</td> <td>9</td> <td>23 July 2012</td> </tr> <tr> <td>5</td> <td>16 July 2012</td> <td>0</td> <td>24 July 2012</td> </tr> </tbody> </table> <p>Deadlines to file the 2011 Consolidated Annual Information Return are:</p> <table border="1" data-bbox="769 1877 1174 2033"> <thead> <tr> <th>Last Digit of Tax ID#</th> <th>Deadline</th> </tr> </thead> <tbody> <tr> <td>1, 2, 3, 4 and 5</td> <td>24 July 2012</td> </tr> <tr> <td>6, 7, 8, 9 and 0</td> <td>25 July 2012</td> </tr> </tbody> </table> <p>Annual Information Returns must be filed electronically, and the</p> | Last Digit of Tax ID# | Deadline | Last Digit of Tax ID# | Deadline | 1 | 10 July 2012 | 6 | 17 July 2012 | 2 | 11 July 2012 | 7 | 18 July 2012 | 3 | 12 July 2012 | 8 | 19 July 2012 | 4 | 13 July 2012 | 9 | 23 July 2012 | 5 | 16 July 2012 | 0 | 24 July 2012 | Last Digit of Tax ID# | Deadline | 1, 2, 3, 4 and 5 | 24 July 2012 | 6, 7, 8, 9 and 0 | 25 July 2012 |
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| | | <p>main information they must contain is the following:</p> <ul style="list-style-type: none"> - 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 <p>The information return must be signed by the taxpayer's legal representative.</p> <p>3. Prepare an annual transfer pricing study: Article 260-4 of Tax Code and Regulatory Decree 4349 establish the obligation of preparing and maintaining, for a period of 5 years, all documentation demonstrating the application of the arm's length principle in intercompany transactions. Documentation must be prepared for transactions with related parties abroad that exceed 10,000 UVT (COP 260.490.000 or USD 145.000, approx.).</p> |
| 7. | Specific transfer pricing audit procedures and/or specific transfer pricing penalties | <p><u>Audit Procedures</u> General audit procedures applicable to tax and transfer pricing audits include the following:</p> <ul style="list-style-type: none"> - <i>Notification Letter (Auto de Verificación o Cruce de Información, in Spanish)</i>: This is the first approach made to taxpayers where they receive notice they will be under an audit. - <i>Initial information request (Requerimiento Ordinario, in Spanish)</i> : Basic information is requested for analysis <ul style="list-style-type: none"> o <i>Request for further information</i>: Additional information is requested, if necessary - <i>Filing Summon (Emplazamiento, in Spanish)</i>: Document - <i>Special requirement (Requerimiento Especial, in Spanish)</i>: Official proposal of adjustment and applicable penalties. - <i>List of charges (Pliego de Cargos, in Spanish)</i>: Proposes a penalty based on administrative analysis. - <i>Penalty Settlement (Resolución Sanción, in Spanish)</i>: Resolution where a penalty is applied to the taxpayer. - <i>Official liquidation.</i> - <i>Reconsideration appeal.</i> <p><u>Penalty Regime</u> Transfer Pricing Penalties in Colombia are stipulated in Article 260-10 and 260-11 of the TC.</p> <p><i>Penalties applicable to Documentation</i></p> <ul style="list-style-type: none"> - 1% of the total value of intercompany transactions during the relevant tax year in case of extemporaneous filing, with errors, not corresponding to what was requested or not allowing to verify the application of transfer pricing - 1% of the total value of intercompany transactions that were not documented <p>The aforementioned penalties cannot exceed 15,000 UVT.</p> <p><i>Penalties applicable to Information Returns</i></p> <ul style="list-style-type: none"> - 1% of the total value of intercompany transactions during the relevant tax year in case of extemporaneous filing, for each month (or part-month) of extemporaneous filing - If the taxpayer is summoned, twice the penalty specified in the previous bullet |

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| | | <ul style="list-style-type: none"> - 1% of the total value of intercompany transactions during the relevant tax year in case of amendments. <p>The aforementioned penalties cannot exceed 20,000 UVT</p> |
| 10. | Relevant regulations on advance pricing arrangements (APA's) | <p>Article 260-9 of the TC describes Advance Pricing Agreements. Additionally, Decree 4349 specifies the APA request process.</p> <p>DIAN may celebrate APAs with taxpayers to determine prices or profit margin for the different transactions carried out by Colombian taxpayers with related parties abroad.</p> <p>Taxpayers should consider the following:</p> <ul style="list-style-type: none"> - Taxpayers must file a written APA request. - The effects of the APA can be valid from the period it is requested and up to the three following years. - DIAN has 9 months from the date of the request, to accept or reject it. - Taxpayers must file an annual report to demonstrate compliance with the agreed conditions. - If the taxpayer fails to comply with the APA conditions, DIAN may unilaterally cancel the APA. - APAs can be terminated by mutual consent. <p>Actually, DIAN is modifying some Articles of Decree 4349 relative to APA procedures. Once the Decree modification is in place, this Country Profile will be updated.</p> |
| 11. | Links to relevant government sites | <ul style="list-style-type: none"> - Colombian Presidency http://www.presidencia.gov.co/ - DIAN – Colombian Tax Office www.dian.gov.co - Tax Code Articles relating to transfer pricing regime in Colombia (spanish version) http://www.secretariassenado.gov.co/senado/basedoc/codigo/estatuto_tributario_pr011.html - Transfer Pricing Annual Information Return Booklet http://www.dian.gov.co/descargas/Formularios/2011/precios_2011v.pdf - Software to validate transfer pricing information returns for taxable years 2009-2010 http://www.dian.gov.co/ - Transfer Pricing Information Return Form http://www.dian.gov.co/dian/15servicios.nsf/b74362344743008605256ee80068f662/d48f4d4c981bcba60525797d006c284e?OpenDocument |
| 12. | Other relevant information | |