

**Transfer Pricing Country Profile**  
(to be posted on the OECD Internet site [www.oecd.org/ctp/tp/countryprofiles](http://www.oecd.org/ctp/tp/countryprofiles))

**Name of Country: Chile Date of profile: January 2013**

Law 20,630 was published in the Official Gazette on 27 September 2012. This law includes a new article 41 E of the Income Tax law which deals with the new Chilean transfer pricing rules. The main issues covered by article 41 E are as follows:

**1. Reference to the Arm's Length Principle**

Cross-border operations between related parties must be carried out at arm's length values. It will be understood to be arm's length the value agreed between independent parties in comparable operations and circumstances, taking into account the characteristics of the goods or services transferred, the functions performed by the parties, the economic circumstances of the parties and any other relevant circumstances.

**2. Reference to the OECD Transfer Pricing Guidelines (if any)**

**3. Definition of related parties**

Under the new legislation two parties are considered to be related for transfer pricing purposes as follows:

- Where a company participates directly or indirectly in the management, control, capital or profits of a company incorporated in Chile or vice versa;
- Where the same persons participate directly or indirectly in the management, control, capital or profits of an enterprise incorporated in Chile and in a company incorporated abroad.
- A permanent establishment and its head office. Likewise, there will be relationship between a permanent establishment and the related parties of its head office.
- A relationship will be deemed where operations are carried out by Chilean residents with a company resident in a country or territory included in the list referred to in Article 41D N°2 of the Income Tax Law (Tax havens), unless such country has concluded with Chile an agreement providing for exchange of information.
- Individuals carrying out operations with relatives, including marriage and up to fourth degree of consanguinity or affinity kinship.
- Same relationship will be deemed where a cross border operation carried out between a Chilean company and an unrelated foreign party is replicated abroad by such party with a related party of the Chilean company.

#### **4. Transfer pricing methods**

Upon request from the Internal Revenue Service, taxpayers must demonstrate that their operations with related parties have been made at arm's length values, which shall be demonstrated by applying some of the following methods: Comparable Uncontrolled Price Method, Resale Price Method, Cost Plus Method, Profit Split Method and Transactional Net Margin Method. Exceptionally if none of the referred methods can be applied 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.

For the purpose to select the most appropriate method it should be taken into account the respective strengths and weaknesses of each method, the appropriateness of the method in relation to the relevant operation, the availability of relevant information on comparables and the reliability of comparability adjustments.

#### **5. Transfer pricing documentation requirements**

Taxpayers carrying out operations with related parties abroad shall submit annually to the Internal Revenue Service a sworn statement regarding such operations, according to the information and format established by the Internal Revenue Service. Likewise, the Internal Revenue Service may request taxpayers to provide information regarding their related parties abroad.

In case of non-compliance, delay, or incomplete or erroneous submission of the annual transfer pricing statement a specific penalty equivalent to 10 to 50 UTA may be applicable. (To date 1 UTA is equivalent to 1.023 US dollars)

#### **6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties**

If the Internal Revenue Service considers that the taxpayer has not proved that his operations have been made at arm's length values the Internal Revenue Service shall determine such value, using the information delivered by such taxpayer and any other information under its power, applying the referred methods. Upon determination of an arm's length value the adjustment will be subject to taxation in accordance with Article 21 of the Income Tax Law. Regular interests and fines will apply accordingly.

An additional transfer pricing fine of 5% of the transfer pricing adjustment will be applied unless the taxpayer has timely submitted the documentation required by the Internal Revenue Service during the relevant audit.

#### **7. Relevant regulations on Advance Pricing Arrangements**

Taxpayers carrying out operations with related parties will be entitled to request an advanced pricing arrangement (APA) with the Internal Revenue Service. To request an APA, taxpayers must deliver all the documentation requested by the Internal Revenue Service which will be available in a specific regulation. 3

A taxpayer may request a bilateral or multilateral APA with other tax administrations.

Where the operations related to the APA involves import of goods the Customs Agency should concur to the agreement.

An APA will apply from the date of its signing and will last for the following three commercial years. A renewal may be requested.

Once the APA is signed, the Internal Revenue Service will not be able to determine price differences regarding the operation concerned thereon. However, if at any moment the main circumstances taken in consideration for agreeing the APA change substantially, both the taxpayer and the Internal Revenue Service are entitled to an early termination based on such circumstances. Likewise, the Internal Revenue Service may terminate an APA where it determines that the documents delivered by the relevant taxpayer at the moment of the request of an APA were false or erroneous.

#### **8. Link to relevant Government Internet sites**

<http://home.sii.cl/>

#### **9. Other relevant information**

Taxpayers are entitled to request from the Internal Revenue Service a corresponding adjustment where a transfer pricing adjustment has been made by a State with which Chile has a double tax convention in force and provided that in such convention a clause stipulating such a corresponding adjustment exists. In order to proceed with such adjustment the Internal Revenue Service must agree both in principle and in the amount of the adjustment concerned. Taxpayers have five years to request from the Internal Revenue Service a corresponding adjustment, which will be counted from the due date to declare in Chile the relevant income.