MOORE

TRANSFER PRICING BRIEF

May 2021

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INTRODUCTION

Welcome to this issue of Moore Global's Transfer Pricing Brief, with a special focus on the Latin American Region.

A foreword from Alberto Viale, Moore Peru.

If we are to discuss post-pandemic opportunities in the region, we should perhaps look to achieving sustainable growth no earlier than the second half of 2022 or early 2023. Our countries are now experiencing a modest trend towards opening up our economies after a slow vaccine-rollout procedure, but businesses will be affected for several months ahead and we are not able yet to close this chapter and begin our recovery.

Evidently, neither can our firms yet look to close this chapter. We are all aware of this critical environment and should adapt our organisations to this new reality. Adapting our organisations also means adapting to our clients' needs. The lack of liquidity affects not only our firms, but also our clients' businesses and we should therefore be ready to consider renegotiating the terms and conditions of our engagements and tenders, if necessary, to preserve if not also to expand our portfolio.

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INTRODUCTION *(CONT.)*

Our region was badly hit by the pandemic over a year ago and if we could name a common term to describe the last 14 months of the COVID crisis, that term would be uncertainty. Companies could not forecast or prevent the negative effects of the pandemic; nor could they rearrange their commitments.

Each month brought new challenges and even now, we are still not sure what is going to happen. That uncertainty makes our countries and companies weak. Stakeholders are faced with increased risk when they cannot accurately foresee cash-flow returns. Imagine how complicated it is now to maintain financial stability when we cannot with any certainty predict the coming months.

In the majority of cases, companies ended last year in a weaker position than in the preceding year and will probably do so again this year. This will surely be reflected in our own firms' outcomes and presents us with the challenge of rebuilding our service-line strategy. In a few cases, we could perhaps maintain our pricing policy but in the great majority of cases, we should engage with our clients to understand their current situation and reschedule our commercial cooperation with them.

Our recovery to sustainable growth in our region during the second half of 2022 or early 2023 should arrive after a conservative scenario for the following months of government-guarantee programmes, rescheduling of bank loans with grace periods, and tax-support measures for small and mid-sized companies, all mainly aimed at injecting fresh cash into the system.

All these measures should continue for the next few months and I believe that our main duty as business advisers during this COVID crisis is to guide our clients to take advantage of the environment to profit from opportunities in terms of debt renegotiation, commercial restructuring and finance at low international interest rates.

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MOORE LATAM REGION – AN INTRODUCTION TO OUR TRANSFER-PRICING TEAM

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He has been a transfer-pricing manager at Deloitte Chile, spent five years as an adviser in the transfer-pricing department at the Chilean Tax Authority and 11 years as a broker in one of the largest stockbrokers nationwide.

He has degrees in Business Administration, Financial Engineering and an MBA. Professor of Finance and Transfer Pricing at several universities.

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Public Accountant, specialising in management and tax administration.

She has international accreditation in IFRS for SMEs issued by the Institute of Chartered Accountants in England and Wales.

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Public Accountant, specialising in finance and tax. She also has international accreditation in IFRS for SMEs issued by the Institute of Chartered Accountants in England and Wales. Management of the accounting programs SIIGO, SAP, AS400. Ginna has more than 18 years of work experience, and currently acts as Outsourcing Supervisor. Experience in a variety of sectors, including communications, incorporation and merger of companies, and the preparation of management and financial reports to headquarters companies.

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Juan graduated with a Bachelor's degree in Public Accounting in April 1996 from the University of El Salvador. Accredited as a Facilitator in Accounting and Tax Regulations by INSAFORP in July 2018.

Registered in the CVPCPA professional registry as an accountant and as an auditor. Knowledge of tax issues and transfer pricing, with training received from the international organisations CIAT, CEDDET and OECD.

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Jaime is Partner-Director of the firm and is a Certified Public Accountant. He graduated from the University of El Salvador, with a Master's degree in finance at the Jose Simeón Cañas University and a career in Legal Sciences.

Juan has more than 25 years of experience in the strategic planning, execution and management of audit and due-diligence services provided to national and international companies in a broad variety of sectors.

With extensive experience in the areas of tax and transfer pricing, he has teaching experience as a tenured professor at the University of El Salvador in the area of auditing. He has also participated in the conversion and implementation of IFRS International Financial Reporting Standards.

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Luis Fernando Díaz is a Certified Public Accountant, has a Master's degree in Tax Administration and Public Finance from the National University of Education of Madrid and a Diploma in Transfer Pricing from the Inter-American Center of Tax Administrations, CIAT. Luis Fernando has served as Director of Inspection, Vice-Director for Large Taxpayers, Adviser to the Director-General of Tax and as a member (from 2004 to 2018) of the Tax Reform Committee of the Tax Administration.

His experience includes the design and implementation of the Supervision Plans and Strategies for Large, Medium and Small Taxpayers, as well as the creation and implementation of the International Taxation and Transfer Pricing Unit in the Tax Administration. He was in charge of the tax audits carried out jointly by the General Directorate of Internal Taxes and Customs General Directorate.

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Public accountant and auditor with a specialism in finance, Rodrigo graduated from the Francisco Marroquín University and has international accreditation in IFRS from the ACCA (Association of Chartered and Certified Accountants). He has had a working relationship with Moore Díaz Reyes & Asociados for more than seven years and is in charge of the transfer-pricing department, where he has had the opportunity to supervise and carry out more than 100 transfer-pricing studies at the Central American level, responding to the requirements of information from the tax administration and participating in taxpayer representation before the tax administration. In addition, Rodrigo is in charge of carrying out valuations and financial models within the firm. He is currently pursuing a Master's Degree in Business Intelligence at the Universidad Del Valle de Guatemala.

CHILE

ADVANCE PRICING AGREEMENTS IN CHILE

The OECD Transfer Pricing Guidelines define advance pricing agreements (APAs) as 'an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time'.

Characteristics of APAs are that:

- The arrangement is concluded between a taxpayer and the tax administration
- The object of the arrangement is the methodology for determining transfer pricing
- The scope of the arrangement can be extended to certain cross-border transactions between related companies
- The arrangement has a time limit and is binding for a certain specific period going forward and with some reference back to the past
- This arrangement can be revoked where the taxpayer's request has changed or is based on incorrect information.

There are three types of APA:

- Unilateral (between the taxpayer and its tax authority)
- Bilateral (between the taxpayer, a related party and both relevant tax authorities)
- Multilateral (between three or more entities in conjunction with their tax authorities)

In Chile, APAs were introduced in 2012. Until June 2019, after the law had been in force for seven years, only six APA procedures had been initiated, of which four were unilateral and two bilateral. No multilateral procedure was initiated and none have been concluded.

Stages in concluding an APA

1. An application is submitted to the Chilean tax authority, *Servicio de Impuestos Internos* (SII), with a description of the respective operations, their prices, normal market returns or values and the period that the arrangement should cover [1]
2. SII must inform the taxpayer within six months whether it accepts or rejects the request
3. SII may in writing wholly or partly approve the request or in the other scenario, it may reject the request at its discretion.

Advantage of APAs

An arrangement of this type improves the certainty and predictability of tax treatment for a taxpayer during its term of validity. Bilateral and multilateral APAs substantially reduce the risk of double taxation. APAs can reduce the costs of compliance with transfer-pricing regulations during the period of the arrangement and, additionally, the taxpayer's pricing methodology is not subject to an annual audit.

In addition to all the above, it is important to mention how APAs help in planning strategies in companies due to the level of certainty that they ensure, and as concerns the tax authorities, they avoid long and costly tests and audits.

Disadvantages of APAs

Segregating by type of APA, a unilateral agreement is not capable of ensuring elimination of double taxation and is therefore is less beneficial than the other two. Preparing the required documentation can be costly and last but not least, the exchange of existing information in the APA application process can leave the taxpayer vulnerable if the application is rejected and generate audits of past or future transactions arising from the information provided to the tax authority, particularly in Chile.

Recommendation

As has been shown in much of the world, these agreements are effective in preventing disputes between taxpayers and tax authorities, generating benefits in both directions. In Chile, efforts should be made to strengthen these types of agreement, particularly bilateral and multilateral APAs, which may bring better economic benefits than a simple tax reform, creating short-term and lasting solutions.

One way to enhance them would be by attacking the main disadvantage of the agreement, which is the level of vulnerability to which the taxpayer is subjected, creating a request for an agreement that ensures confidentiality, or requesting only the information the tax authority needs for the decision to approve the APA and nothing extraneous.

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1). Source: *Los acuerdos anticipados de precios en Chile*, Álvaro Benavides Sánchez

IMPLEMENTING BEPS IN CHILE

Amendments made to Chile's tax legislation by Resolution on 31 August 2020 provided for two new transfer-pricing forms, Nos 1950 and 1951, to be filed annually by taxpayers who are members of a multinational group of companies (an 'MNC group') and who meet the relevant criteria. The Chilean tax authority, the SII, has also created an electronic file on the personal page of each taxpayer on its site (www.sii.cl). The effect of the Resolution is to align Chilean law more closely with the OECD Guidelines.

As a result, there are now four returns that the relevant taxpayers have to consider.

- **Form No 1907 – Transfer-Pricing return:** Required from all taxpayers who are: Chilean-resident medium-sized or large companies; companies or persons who have carried out transactions with persons domiciled or resident in a territory or jurisdiction considered to be a preferential tax regime under the Income Tax Law (ITL); and taxpayers who have carried out transactions with foreign related parties for amounts exceeding CLP 500 million (approx. USD 700 000 or EUR 593 166).
- **Form No 1937 – Country-by-Country Report:** Required from taxpayers who are: the Chilean-resident parent or controlling entity of an MNC group with turnover in the previous financial year exceeding EUR 750 million (approx. CLP 650 000 million); or a Chilean-resident entity that is a member of an MNC group and is designated by the parent or controlling entity of that group for that purpose.
- **Form No 1950 – Annual Master-File return:** Required from taxpayers who are: the Chilean-resident parent or controlling entity of an MNC group with turnover in the previous calendar year greater than EUR 750 million (approx. CLP 650 000 million).
- **Form No 1951 – Annual Local-File return:** Required from taxpayers who are: large companies; and Chilean-resident companies that are members of an MNC group whose parent or controlling entity has been required to submit a Country-by-Country report by the Chilean or other tax authority and which have carried out transactions in the previous financial year with foreign related parties amounting in total to more than CLP 200 million (approx. USD 280 000 or EUR 237 250).
- In cases where Form No 1950 and/or Form No 1951 must be submitted, taxpayers must also submit an **Annex to Form No 1950 – Descriptive Information on the Annual Master-File Report and/or Form No 1951 – Descriptive Information on the Annual Local-File Report,** respectively, and all the documents in the corresponding formats established in Annexes No 3 and 7 to the Resolution.

All these reports and returns take the form of sworn statements or affidavits (*declaraciones juradas*).

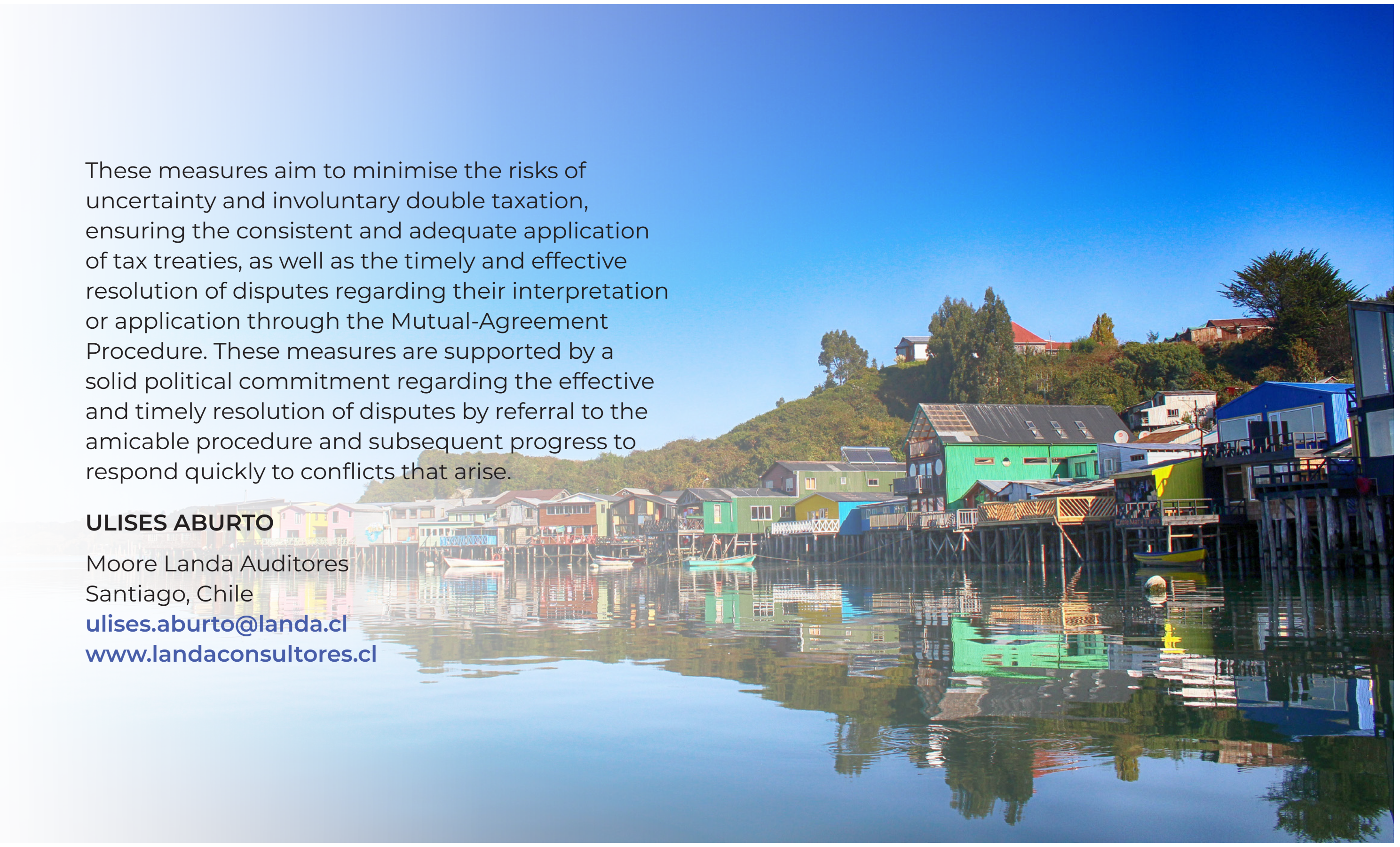
The OECD guidelines represent a general framework that requires legislation, regulations, and standards at the national level to enforce the arm's length principle in domestic law. Hence Chilean law requires the relevant taxpayers to file a modified Form No 1907, including a question as to whether or not the group to which the taxpayer belongs is required to submit a CbC report in Chile or another jurisdiction. If the answer is yes, the taxpayer must also provide the name of the reporting entity and the country code of the country of residence of the reporting entity.

Laws, albeit based on OECD guidelines and BEPS action plans and however precise, are always subject to interpretation. In many cases, these differences can be resolved by agreement between the tax authority and the taxpayer. However, there are cases that proceed to litigation.

The BEPS Action Plan seeks to address the entire range of transactions that may effectively erode the tax base and shift profits. In terms of transfer pricing, the most important of these are actions 8 (transfer pricing of intangibles); 9 (transfer pricing: risk and capital); 10 (transfer pricing: other high-risk transactions); 13 (country-by-country reporting); and 14 (mutual-agreement procedure).

Affected taxpayers must ensure that the results of their operations are aligned with the creation of value, i.e. that their operations are duly justified or supported by evidence, by contracts, quotes, purchase orders and e-mails; and, where relevant, by advance pricing agreements (APAs).

On the other hand, the measures developed within the framework of Action 14 of the BEPS Action Plan are aimed at making dispute-resolution mechanisms more effective by reinforcing the effectiveness and efficiency of procedures.



These measures aim to minimise the risks of uncertainty and involuntary double taxation, ensuring the consistent and adequate application of tax treaties, as well as the timely and effective resolution of disputes regarding their interpretation or application through the Mutual-Agreement Procedure. These measures are supported by a solid political commitment regarding the effective and timely resolution of disputes by referral to the amicable procedure and subsequent progress to respond quickly to conflicts that arise.

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EL SALVADOR

PREFERENTIAL TAX REGIMES AND THEIR CONTROL THROUGH TRANSFER PRICES

When we speak of a preferential tax regime, we mean a jurisdiction (country, state or territory) that is characterised by applying a tax regime that is especially favourable to citizens and non-resident companies, thereby encouraging individuals and businesses to locate in that jurisdiction as a means of attracting capital and investment. Typically, these advantages consist of a total exemption from most forms of tax or a very significant reduction in the rates at which those taxes are payable, in contrast to the situation in their countries of origin.

Preferential tax regimes are one of the instruments most used by individuals and companies engaged in tax avoidance.

Under the Tax Code of El Salvador, a preferential tax regime is considered to exist in a jurisdiction:

- In which there is zero income tax (a 'no-tax regime') or
- In which there is a rate of income tax on net or taxable income which is less than 80% of the income tax that the respective taxpayer would pay in the same circumstances in El Salvador (a 'preferential low-taxation regime') or
- Classified as low-tax or non-cooperating by the Organisation for Economic Cooperation and Development (OECD) or the Financial Action Task Force (FATF) (a 'tax haven').

Each year, no later than September, the Salvadoran Tax Administration must publish a list of the jurisdictions that fall within these three categories, which will be in force for the fiscal year following its publication. The most recent Guide containing this list was published in September 2020, its validity corresponding to fiscal year 2021. In it, 41 jurisdictions are listed as no-tax regimes and another 50 as a preferential low-taxation regime. The fact that no jurisdiction is listed as a tax haven is due to the fact that the classification parameters of the OECD and FATF do not establish whether the tax regime in a particular regime is or is not favourable with respect to income tax. The OECD currently classifies jurisdictions as cooperating and non-cooperating, while the FATF is more focused on money laundering, terrorist financing and other threats related to the integrity of the international financial system.

According to Salvadoran tax legislation, the transfer-pricing regime is applicable not only to transactions with related parties but also to transactions carried out between Salvadoran taxpayers and parties located in preferential tax regimes, regardless of whether or not the counterparty participates in the management, control or capital of the Salvadoran taxable person or vice versa. It is enough that the counterparty is located in a jurisdiction classified as preferential in the Tax Administration's list.

The transfer prices in all such affected transactions must therefore be determined under the arm's length principle by reference to the market price that would prevail in transfers of goods or services of the same kind between independent parties.

This determination requires an analysis considering the five comparability factors and elements for adjustments mentioned in the Tax Code, as well as the internationally recognised transfer-pricing methods.

Where transactions carried out with preferential tax regimes are concerned, additional tests must be carried out prior to determining the market value, as specified by the Transfer Pricing Guide DG-01/2018 issued in March 2018 by the Salvadoran Tax Administration.

These tests are as follows:

- That the transactions carried out by the taxpayer have economic substance, i.e. that they are real and not fictitious transactions
- That each particular transaction is useful and necessary for the taxpayer's economic activity or business line. In the case of costs and expenses and other deductions, they must comply with all the requirements that the Income Tax Law and the Tax Code stipulate for their deductibility
- That the operation is duly documented
- That the operation is duly registered
- That the correct amount of withholding tax has been deducted, if applicable.

Likewise, something important to consider with Salvadoran tax legislation is the exclusion of referential tax regimes as 'comparable' in transfer-pricing studies, as article 199-D of the Tax Code explicitly provides as follows: 'Transactions with individuals domiciled, constituted or located in countries, states or territories with preferential tax regimes, low or no taxation or tax havens, do not constitute transactions between independent parties'.

In conclusion, although it is clear that transactions carried out with parties in preferential tax regimes do not necessarily entail avoidance – in some cases what is sought is to take advantage of the economic advantages offered in these jurisdictions – the tax treatment of all such transactions must nevertheless comply with El Salvador's transfer-pricing rules.

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HOW TRANSACTIONS BETWEEN RELATED PARTIES ARE TREATED

El Salvador has had statutory transfer-pricing rules since 2009, in the form of provisions regulating transactions between related parties.

Determination of prices

Taxpayers who carry out transactions with related parties are required to determine the amount of the consideration as it would apply on the open market in a transaction between independent parties ('the arm's length principle'). The same rule applies to transactions with persons resident, constituted or located in jurisdictions with preferential tax regimes and low- or no-tax jurisdictions.

Report of transactions with related parties

All taxpayers who carry out operations with related parties, with values equal to or greater than USD 571 429 (SVC 5 million) must report details of those transactions on Form 982 within the first three months after the end of the fiscal year.

Duty to keep and preserve information and evidence

Companies carrying out transactions with related parties must keep and preserve all the documentation supporting those operations in good order and condition for a period of ten years from the date of issue or reception.

The supporting documentation for transactions (purchases, sales, payments for services, payments of interest etc.) with related parties must demonstrate that those transactions were carried out on the same terms as if they had been carried out between independent parties.

A transfer-pricing study is one of the most suitable ways of documenting that transactions between related parties have been carried out on arm's length terms, that is, at prices in circumstances similar to those that would have applied in transactions between independent parties.

Withholding of income tax on non-resident financing services

Payments (i.e. loan interest) for financing services provided between related parties must be made under a withholding tax of 20%.

Services received from related parties

Where services are received from persons resident, incorporated or located in jurisdictions with preferential tax regimes and low- or no-tax jurisdictions, 25% income tax must be withheld from payments for those services.

Non-deductible costs and expenses

Losses arising from acts or transactions carried out between related parties are not deductible for the purposes of income tax.

Non-deductible interest

Interest paid on a loan obtained from a related party will not be deductible where:

- The lender is a resident related party and has not declared the interest as taxable income in the year or tax period of its accrual
- The lender is a related party and the rate of interest exceeds the average active lending rate on credits plus four additional points
- The lender or provider of insurance or reinsurance services is a related party and the indebtedness for credit, insurance or reinsurance operations exceeds three times the value of the equity or average shareholders' equity of the borrower.

Failure to file the related-party transactions report

The penalty for failing to file the related-party transactions report (see above) or for filing it out of time is 0.5% of shareholders' equity as recorded on the company's balance sheet, minus any revaluation reserve, which may not be less than three times the monthly minimum wage.

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COLOMBIA

TRANSFER PRICING IN COLOMBIA

Colombia's accession to the OECD

By confirming Colombia as a member of the Organisation for Economic Cooperation and Development (OECD) on 28 April 2020, the number of member countries of the OECD grew to 37. Colombia is the third OECD member country in the Latin American and Caribbean region, the others being Mexico and Chile.

The benefits that Colombia perceives from becoming an OECD member are an improvement of its image to foreign investors, obtaining better economic support, and finally, better managing the fight against corruption, as the OECD is a group of countries with high corporate-governance standards on the management of public affairs, statistical transparency and best practices that are important for the country's growth in the long term.

Prior to its admission to the OECD, Colombia had already been performing a role with significant implications as a member of the inclusive framework on the OECD's BEPS (Base Erosion and Profit Shifting) initiative by implementing Action Plan 13 on CbC (country-by-country) reporting, alongside the OECD's Transfer Pricing Guidelines, which require affected taxpayers to prepare a Local File and Master File, documenting and justifying their transfer-pricing practices. As regards CbC reporting, those taxpayers who are not required to file CbC reports but who have carried out transactions with related parties during the tax period must file a CbC Notice.

Colombia's commitment with respect to transfer pricing, and particularly that of the Government, the Congress and the country's tax authority (DIAN), is that in preparing the next phase of tax reform they must aim to eliminate double taxation by implementing the arm's length principle in transfer-pricing matters, in accordance with the OECD Guidelines.

Similarly, Colombia must continue implementation of other aspects of the BEPS Action plan, to adapt local tax provisions on transfer prices to the parameters proposed by OECD and the G20.

Another challenge for DIAN is the implementation of an information system that allows taxpayers to provide information electronically, and which thus serves as a first-hand tool for the tax authorities for preventing erosion of the taxable base and the transfer of economic benefits, evasion and tax fraud.

Oversight of transfer pricing in Colombia

Transfer-pricing rules in Colombia were first given statutory force in 2004 in order to avoid the manipulation and the artificial management of prices, and thereby decrease the negative impacts on the country's tax base. Taxpayers subject to the transfer-pricing regime are those that carry out transactions with:

- related parties abroad
- individuals, partnerships or companies located in non-cooperating jurisdictions with low or no taxation and
- related parties in free-trade zones.

The first oversight programmes in Colombia had a didactic approach. DIAN's transfer-pricing oversight team aimed at proving the existence of a new stage in the history of transfer prices in Colombia by strengthening its programmes with interdisciplinary professionals who, based on their experience and knowledge, enabled investigation into the evidence or absence thereof of manipulation of prices or of their artificial management.

During the last few years, as a direct consequence of the tax-collection goal set by DIAN, a higher interest has been evident in the oversight processes relating to obligations rin connection with the transfer-pricing regime.

However, what has happened is that DIAN, by using an extremely onerous sanctions regime related to the formal and simple oversight on the delivery of the informative tax return and evidentiary documentation (Local Report, Master Report, CbC Report and/or CbC Notice), has set aside the true essence of the transfer-pricing regime, which is to prevent the manipulation of profits and the artificial management of prices. This ought to be the core premise managed by the administrator at the beginning of an oversight process.

Similarly, in the few cases where DIAN has found that the evidentiary documentation indicates the taxpayer is out of the adjusted range due to various reasons, instead of asking for the taxpayer's explanations in addition to those submitted through that documentation (Local Report), it has simply rejected them, thus requiring the taxpayer to correct its tax return and adjust prices within the inter-quartile range based on erroneous premises in a large number of cases.

The sanctions imposed by DIAN in transfer-pricing matters depend on the documentation and type of report, as follows.

Evidentiary Documentation

(Local Report – Master Report – CbC Report)

Evidentiary-documentation penalties range from 0.05% to 4% of the amount analysed and depend on the lateness of filing, correction of errors and/or information omission. Such amount may vary from UVT 5000 to 20 000 [1]

Informative return and Country-by-Country Notice

Penalties in connection with the informative return and CbC Notice range from 0.02% to 4% of the transactional value depending on the lateness of filing, inconsistencies, information omission and failure to file. Such amount may vary from UVT 3000 to UVT 6000.

Where the taxpayer amends returns before prompting by the tax authority, penalties may be reduced, as follows. In the case of returns amended for inconsistencies or omissions, the penalty may be reduced to 50% of the amount determined by the official calculation.

Taxpayers may also amend their transfer-pricing informative return within two years of the filing date. Where they accept the amendments proposed by the tax authority, the penalty imposed may reduce to 10% of its original value.

In view of the onerous nature of this penalty regime, multinational companies should, in addition to reviewing their internal structuring to achieve more efficient business models, also perform a thorough analysis on the information reported to the Colombian tax authority, as the imposition of a penalty may even give rise to a cause for winding-up.

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1). UVT = *Unidad de valor tributario* (tax-value unit). For 2020, UVT 1 = COP 35 607 (approx. USD 9.74 or EUR 8.14)

GUATEMALA

TRANSFER PRICING IN GUATEMALA

It was in 2012 that Guatemala first introduced statutory transfer-pricing rules. Subsequently, in May 2013, Government Agreement 213-2013, which provides for the transfer pricing regulations ('the Regulations'), was issued.

Transfer-Price Study

The Regulations provide that sufficient information and analysis to demonstrate and justify the correct determination of prices and the amount of consideration or profit margin in related-party transactions must be contained in a single report called the 'Transfer-Price Study'.

Taxpayers affected

The scope of the Guatemalan rules for the valuation of related-party transactions extends to any transaction between a Guatemalan-resident person and the non-resident related party abroad and has effect on the determination of the taxable amount for the period in which the operation is carried out and in the following periods.

Definition of related party

Parties are related where:

1. One of them directs or controls the other, or holds, directly or indirectly, at least 25% of the capital or voting rights in the other
2. Five or fewer persons direct or control both related parties, or jointly, directly or indirectly, hold at least 25% of the share capital or voting rights in both parties
3. In the case of legal persons, wherever resident, they are members of the same group of companies. Companies are considered to be members of the same group where one of them ('Company A') is a partner or participator in the other ('Company B') and any of the following applies:
    a. Company A holds the majority of voting rights in Company B
    b. Company A has the power to appoint and dismiss members of the executive board of Company B.
    c. Company A is entitled under agreements concluded with other partners, to the majority of voting rights in Company B
    d. Company A has by its votes alone appointed the majority of the members of the executive board of Company B.
    e. The majority of members of the supervisory (governing) board of Company B are officers or members of the board of Company A or of another company controlled by Company A.

The following are also considered to be related parties:

1. A person resident in Guatemala and an exclusive distributor or agent of the same resident abroad
2. An exclusive distributor or agent resident in Guatemala of an entity resident abroad and that entity
3. A person resident in Guatemala and its permanent establishments abroad
4. A permanent establishment located in Guatemala of a non-resident company and that company and any other permanent establishment of that company or a person related to it.

Information statement

Taxpayers who state in their annual income tax return that they carry out transactions with related parties abroad must attach to the return a transfer-pricing report by way of an annex, with the information prescribed by the Guatemalan tax authority (*Superintendencia de Administración Tributaria* – SAT). It is important to note that this form was first published by SAT in early 2016.

Preparation of documentation

The legislation does not establish a specific date on which the transfer-price study should be prepared. However, this documentation is needed to complete the information statement, which is filed in conjunction with the annual tax return, for which the due date is 31 March of the following year.

Penalties

Failure to comply with reporting and documentation obligations in matters with related parties gives rise to penalties under the provisions of the Tax Code relating to non-compliance with formal obligations. These impose a penalty for the first occasion of failure to file of GTQ 5000 (approx. USD 650 or EUR 540). The second occasion of failure results in a penalty of GTQ 10 000 and the third or subsequent failures to a penalty of GTQ 20 000 plus the equivalent of 1% of the gross income obtained by the taxpayer during the last financial year to which the non-declared income applies.

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SUMMARY OF TRANSFER-PRICING RULES IN LATIN AMERICA

Country	Application OECD Guidelines	Formal Obligations		The Transfer Price Study to be attached	Due date for filing the TP Report	Maximum Non-Filing Penalty in USD	Applies to	
		TPS	TP Report				Distance Selling Threshold	Intra-Community Acquisitions Threshold
Bolivia	Yes	Yes	Yes	Yes	1. Mining companies: 28 January 2. Banking, commercial, services and others: 29 April 3. Industrial and oil companies: 31 March 4. Gomeras, chestnut, agricultural, livestock and agro-industrial enterprises: 30 June	1492	Yes	Yes
Brazil	No	No	Yes, in conjunction with income tax return and accounts	No	30 September	No	Yes	No
Chile	Yes	No	Yes	Non-Compulsory	30 June for all three returns: the TP report, CbC report and Master File	Non-filing penalty: 42 701 (50 UTA) Inaccuracy penalty: 34 160 (40 UTA)	Yes	No
Colombia	Yes	Yes	Yes	These are two distinct affidavits: information and documentation-checking (ETPT)	July	303 000	Yes	No
Costa Rica	Yes	Yes	Yes	No	Last business day in June	76 000 for failure to file within the prescribed timeframe.	Yes	Yes
Ecuador	Yes	Yes	Yes	Separately on the same date	June	15 000	Yes	Yes, if specific requirements are met

Country	Application OECD Guidelines	Formal Obligations		The Transfer Price Study to be attached	Due date for filing the TP Report	Maximum Non-Filing Penalty in USD	Applies to	
		TPS	TP Report				Distance Selling Threshold	Intra-Community Acquisitions Threshold
El Salvador	Yes (They apply additionally, as recommended by the Tax Administration in the Transfer Pricing Guide)	Yes	Yes (if related transactions are equal to or greater than 571 429)	No	31 March	0.5% of equity for not filing related-party transactions report, with a minimum of 3 x minimum wage (minimum wage is 300).	Yes	Yes
Guatemala	Yes	Yes	Yes	No, but effectively required by legislation	By 31 March, the corresponding period and on an annual basis.	Up to 1% of gross income declared in the previous year	Yes	No
Honduras	Yes	Yes	Yes	No	30 April	20 000	Yes	Yes
Nicaragua	Yes	Yes	Not available	n/a	n/a	n/a	Yes	Yes
Panama	Yes	Yes	Yes	On request	30 June	1 000 000	Yes	No
Peru	Yes	Yes	Yes	Yes	Second week of June	30 000	Yes	No
Uruguay	Yes	Yes	Yes	Yes	The ninth month after the end of the taxpayer's fiscal year	250 000	Yes	Only if they operate in duty-free zones and benefit from a low- or no-taxation regime

Review by the Latin America Transfer Pricing Team

Based on the book *Transfer Prices in Iberoamerica* by Thomson Reuters.

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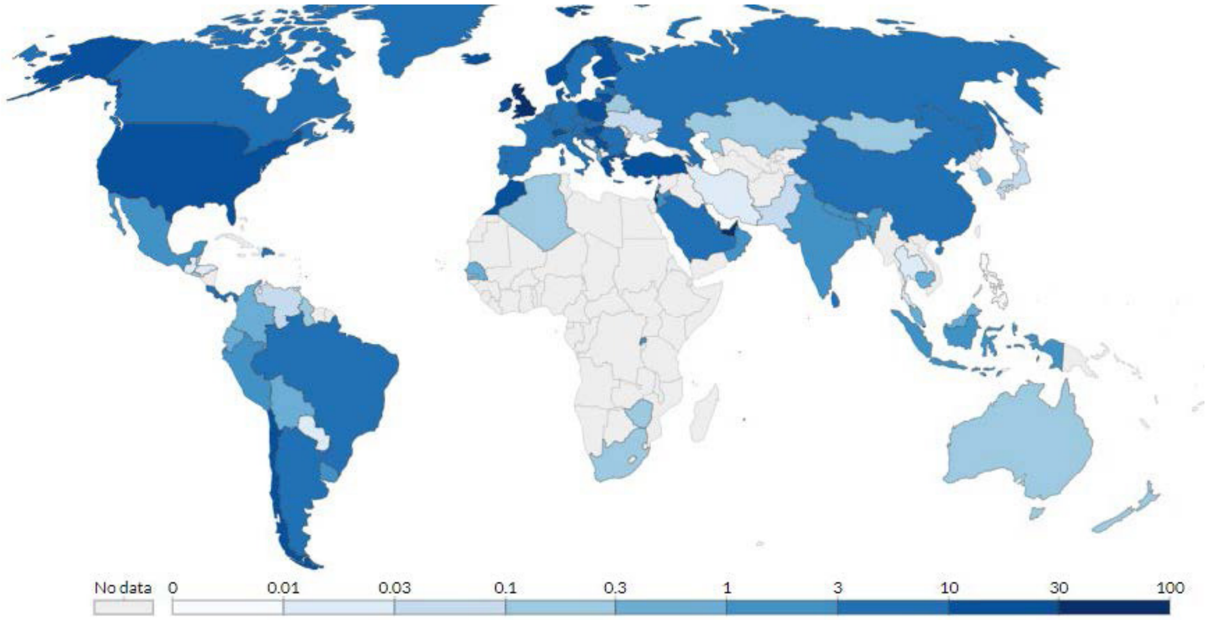
THE IMPORTANCE OF DOCUMENTATION IN PREPARING TRANSFER-PRICE STUDIES IN 2020 AND 2021

After a year of the disruption caused by the pandemic, it's time to get organised and start planning for the future. In the world of financial compliance one of the main competitive advantages is planning. In 2020 no-one planned for a global pandemic that would stop day-to-day operations around the world. With partial and total closures of people's normal activities, businesses were forced to reinvent their operations. This was the daily reality in 2020, constantly having to adapt to change and uncertainty. 2021, however, presents us with a new problem, which is the pace of global reopening.

In relation to compliance with transfer-pricing rules in Latin America, we are faced with a significant limitation on external comparable markets in the sector, due to the relatively underdeveloped state of financial markets in Latin America. Most of the time, therefore, we have to use comparables from more developed financial markets that have more reliable information to create inter-quartile ranges of profitability for compliance.

At the beginning of the pandemic, uncertainty was global and restrictions on travel and movement the norm, and limitations on businesses' day-to-day transactions were the new normal. Normality was not whether these limitations affected taxpayers but when and how. Therefore, for 2020, comparisons between the results obtained from companies and the results of comparable external companies may have been consistent, as the pandemic affected them all. However, in 2021, external comparables may pose a problem, since not all countries are recovering at the same pace.

According to the portal Ourworlindata.com, there are significant differences between the rate of vaccination in Latin American countries and countries with major financial markets.



This means that in preparing for 2021 reports, Latin American companies must be aware that the interquartile ranges of comparable external companies are moving upwards and to avoid having tax contingencies or transfer price defaults, it is necessary to start documenting the restrictions to which they are subject.

Companies must have documented evidence from the time they began to incur extraordinary expenses to comply with these restrictions to the time the restrictions are removed. This documentation becomes vital to be able to segment the ordinary business operations of those extraordinary events caused by the pandemic. Companies must create a dossier with the restrictions that they were obliged to follow and annex the documentation of the costs to which the companies should became subject. Not only should the extra expenses that were assumed for compliance with the restrictions be included, but also those that remained during this extraordinary period such as wages and labour benefits that continued to be paid to their workforce even though the points of sale or production were closed. With the correct documentation it can be argued that the low profitability in a global analysis is due to factors originating from the pandemic and are not derived from commercial activities with related parties or as mentioned above can be used to be able to present only a segmentation of commercial operations by removing the effect of the pandemic.

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