



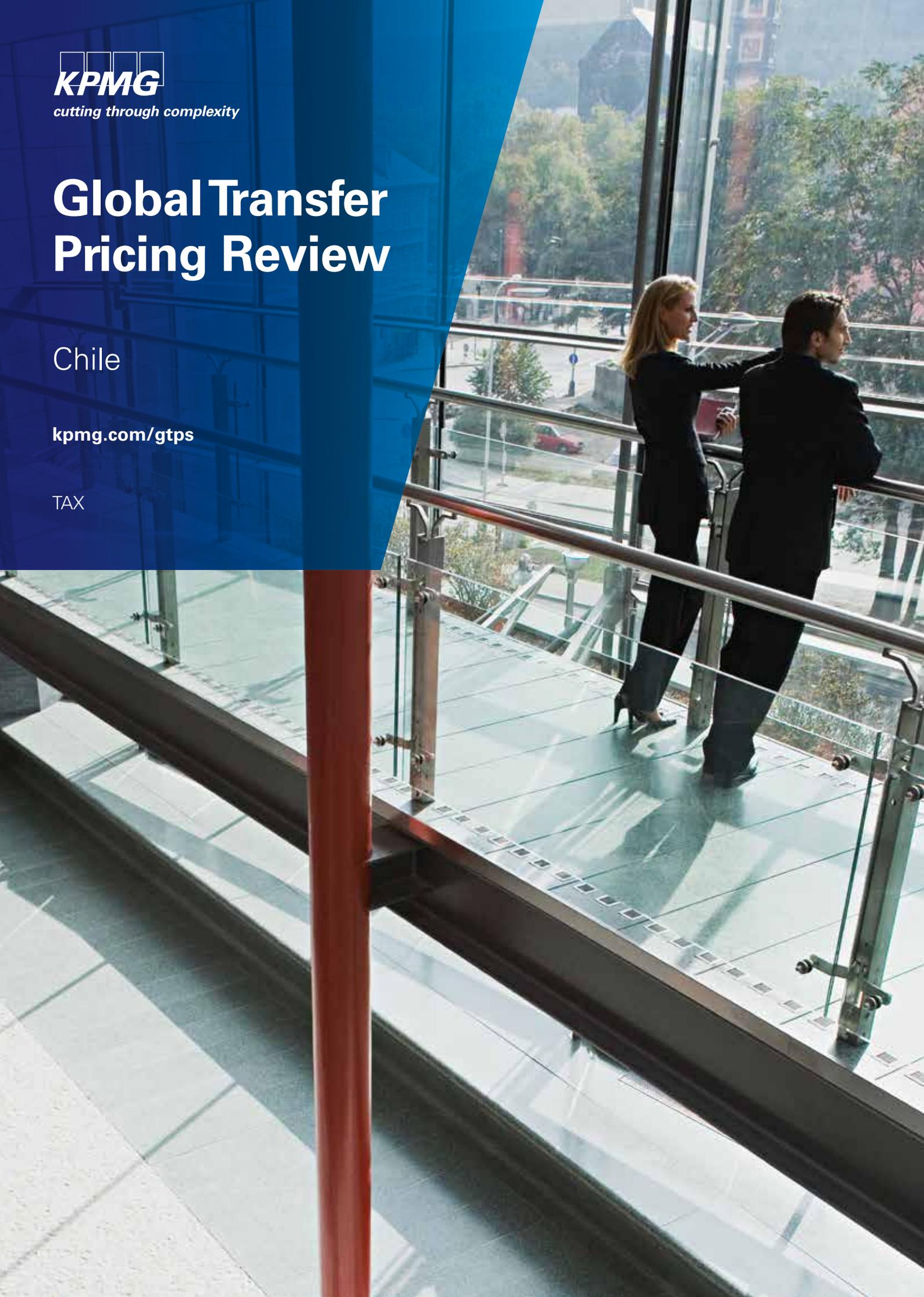
*cutting through complexity*

# Global Transfer Pricing Review

Chile

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TAX



# Chile



## KPMG observation

The 2012 Chilean tax reform was enacted with the objective of aligning local rules with Organisation for Economic Co-operation and Development (OECD) Guidelines. Accordingly, the Chilean tax authority is closely following the OECD's Base Erosion and Profit Shifting (BEPS) action plan and, although no actions have been taken in Chile yet, actions are expected when BEPS concludes.

Aside from BEPS, it is very important to highlight that cross-border intercompany transaction-related expenses, incurred from 2015 onwards, and subject to withholding tax (WHT) according to article 59 of the Chilean Income Tax Law (royalties, interest, services, etc.), will only be deductible as an expense in the year in which the expense has been paid and the WHT has been declared and paid to the Treasury, provided that general requirements to be considered as an expense necessary to produce income are met.

While a transfer pricing study is not mandatory per se, taxpayers are required to keep all documentation deemed necessary to support the arm's length nature of intra-group transactions. It must be noted that in recent audit procedures, the information required by Chilean tax authorities has been similar to that commonly included within a transfer pricing study. Furthermore, taking into consideration deadlines applied in audit procedures, it has been observed that those taxpayers already possessing a transfer pricing study prior to the start of the audit tend to be able to better cope with its demands and obtain a favorable outcome.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Not applicable	Applicable	Required to be contemporaneous
Legal requirements	●		
Protection from penalties		●	●
Reduce risk of adjustment		●	●
Shifts burden of proof		●	●

## Basic information

### Tax authority name

Servicio de Impuestos Internos (Chilean Internal Revenue Service, or SII).

### Citation for transfer pricing rules

Article 41 E of the Chilean Income Tax Law, contained in Decree Law No. 824 as amended.

### Effective date of transfer pricing rules

1 January 1998 and 27 September 2012 for changes incorporated by the latest tax reform act.

### What is the relationship threshold for transfer pricing rules to apply between parties?

Parties are related when there is participation (direct or indirect) from one

party in management, control, capital, profits or income of the other party. It is presumed parties are related when they enter into exclusive or joint action agreements, preferential treatment or the parties are economically or financially dependent. Also any kind of agency, branch or permanent establishment of any entity of the group is considered a related party with its

head office as well as with any other group member entity.

Similarly, it follows that when a party performs one or more transactions with a third party which, in turn, carries out, directly or indirectly, identical or similar transactions to those performed with the first party all the parties are considered related. Entities located in a jurisdiction listed as a tax haven are presumed related where there are transactions.

### What is the statute of limitations on assessment of transfer pricing adjustments?

The applicable general rule for the statute of limitation is three years, starting from the latest date at which the tax should have been paid.

Regarding taxes for which returns must be filed, this period extends to six years, in the case when a return has not been presented, or in cases of tax fraud.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The obligation to annually (in form and time) file a sworn statement is incorporated in Article 41 E of the Chilean Income Tax Law, where the taxpayer, subject to transfer pricing rules, must itemize the transactions conducted with its related parties.

What types of transfer pricing information must be disclosed?

On 31 January 2013, the SII released an official pronouncement specifying the filing instructions. The required information includes:

- the methods used for calculating prices, profitability rates or returns
- the features of such transactions (for example, amounts, type of transaction, currency used)
- related party information (for example, address and taxpayer identity number)
- general information on the corporate group

- information regarding financial transactions, intra-group services, royalties and commissions, among others
- information informing any business restructuring of the taxpayer's operation in Chile.

The deadline for filing this Transfer Pricing Affidavit is the last business day of June.

What are the consequences of failure to submit disclosures?

Fines for filing the sworn return in an untimely, incorrect or incomplete manner may range from 10 to 50 annual tax units UTA1 (one UTA is equivalent to approximately 980 US dollars (USD)).

## Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

No. There is no specific requirement. However, it should at least include a functional analysis, industry analysis, company overview, and support for selection of method and a description of comparables, as well as a list of all supporting documentation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. It must be noted that the usage of additional (residual) methods is permitted only when none of the transactional or profit based methods are applicable. Where an alternative

method is used, the taxpayer has to justify its use.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

One month (or two if extended) from the date the taxpayer receives legal notice of commencement of a tax audit.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

In the case of transfer pricing adjustments, taxpayers are entitled to submit a tax claim on the charges and to start the regular litigation procedure.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. In the case of adjustment, a 35 percent penalty tax is applicable in lieu of income taxes on the adjustment, plus inflation adjustments, interest and a five percent penalty over the amount adjusted.

To what extent are transfer pricing penalties enforced?

The application of penalties has increased in recent years. Considering the growth in the number of transfer pricing audits and the recent tax reform, it is expected the application of penalties will intensify in future.

What defenses are available with respect to penalties?

During a transfer pricing audit, the tax authority requests relevant documents from the taxpayer, which the taxpayer has the obligation to provide. At this stage, it is highly recommended to

also present a transfer pricing study, as evidence to demonstrate the compliance with the arm's length principle of the intra-group transactions under review.

If a taxpayer does not agree with the determination of tax due, the taxpayer may ask the Chilean IRS to reconsider (via the administrative process) the determination. If a reconsideration request is presented and rejected, the taxpayer may interpose a claim before the Tax Court.

If no reconsideration or appeal is presented, the tax authority issues a payment order, which is the amount of outstanding taxes, inflation-linked adjustments, interest, and fines and issues an order to pay.

Taxpayers can exercise the right to appeal when they are in disagreement with the determinations of tax due and other administrative determinations made by the tax authority.

However, because the 35 percent penalty tax applies in lieu of income taxes on the transfer pricing adjustment, having a transfer pricing study, contemporaneous documentation or other mechanisms does not provide protection against the application of this penalty.

### What trends are being observed currently?

The strategy followed by the tax authority in the audit process is to notify the four or five leading companies of an industry, to make a selection following a comparison among them for transfer pricing contingencies and then conduct a deeper review. It is important to note that many of the transfer pricing audits have been targeted at symbolic companies (with important global brands). Even when a transfer pricing study is not a formal requirement, the level and detail of information required by tax authorities in legal notifications is basically the content of a transfer pricing study, including information such as:

- description of the main business units of the company, specifying if these products are manufactured or just distributed by the company
- list of the principal suppliers and clients specifying for each supplier and client information such as name of the company, country of residence,

amount of all purchases or sales, currency used, type of products, incoterm used, credit days and if the company is a related or a third party

- corporate structure of the group to which the company belongs to, internal organization charts of the company, audited financial statements and all contracts with related parties
- segmented financial statements for multi-business entities
- sworn return for all transactions with related parties
- sworn return regarding the functions performed and risks assumed by the company in its operations
- detailed information on any form of intra-group financing arrangements or structures.

From 2013 onwards, the Chilean IRS is able to use an extensive database containing all of the relevant taxpayers' information as submitted automatically by the taxpayer through the online submission of transfer pricing returns.

## Special considerations

### Are secret comparables used by tax authorities?

Not officially, but secret comparables have been used in some transfer pricing audits.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

To date there is insufficient evidence to determine whether there is any preference by the tax authority.

### Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authority has not issued an official position on this matter.

### Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

### Does the tax authority have other preferences in benchmarking? If so, please describe.

There are no stated preferences.

### What level of interaction do tax authorities have with customs authorities?

Increasing. Many of the recent transfer pricing audits have been supported with information provided to the tax authority by the customs authority. Furthermore, new APA regulations support the simultaneous involvement of the Chilean IRS and the customs authorities in the case of APAs covering merchandise imports.

### Are there limitations on deductibility of management fees beyond the arm's length principle?

No. Management fees can be deducted if these comply with the general requirements of the Income Tax Law.

### Are management fees subject to withholding?

Yes.

### Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. The payments made abroad for royalties are deductible as an expense necessary to produce income when related to the line of business up to a maximum of four percent of net income for sales or services of the line of business, during the respective year. This would apply, if the country of domicile of the beneficiary of the income, the income is taxed at the income tax rate equal to or greater than 30 percent.

### Are royalties subject to withholding?

Yes.

### Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes.

### Other unique attributes?

None.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Chile has signed 25 tax treaties that are currently in effect and three signed treaties waiting for Congressional ratification.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

Taxpayers may, with the authorization of the tax authorities, both on the nature and the amount of the adjustment, correct the price, value or profitability of the transactions carried out with related parties, on the basis that transfer pricing adjustments have been made in the other country, with which Chile has entered into an agreement for the avoidance of double taxation that does not prohibit such adjustments. An application for rectification shall be filed, accompanied by all documents supporting the adjustments, including evidence the adjustment was made by the other country, within five years from the expiration of the statutory period in which the country should declare the transactions whose prices, values or profits are intended to be rectified.

May a taxpayer go to competent authority before paying tax?

Unclear.

## Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Not applicable. Tax authorities have stated that all the detailed procedures of the APA program will be released in subsequent regulations. These regulations should specify whether a filing fee will be required.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable. So far, there is no evidence on how successful the APA program is. However, tax authorities are very optimistic regarding the success of the program.

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Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015