



cutting through complexity

Global Transfer Pricing Review

Venezuela

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TAX



Venezuela



KPMG observation

The Venezuelan Income Tax Law recently established rules regarding thin capitalization that limit the deduction of interest expenses registered with related parties. The thin capitalization rules require a 1:1 debt-to-equity relationship (i.e. debts with related parties plus debts with non-related parties over equity should be less than or equal to one) to be deductible. In addition, the Tax Administration recently established procedures to calculate the interquartile range and perform transfer pricing.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	●
Protection from penalties	●	●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT).

Citation for transfer pricing rules

Venezuelan Income Tax Law.

Effective date of transfer pricing rules

1 January 2000.

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

A related party shall be any company participating directly or indirectly in the direction, control or capital of another company, or when the same companies

participate directly or indirectly in the direction, control or capital of both companies.

The rules apply to the operations performed through intermediaries that do not qualify as related persons, residing in the Bolivarian Republic of Venezuela, whereby the latter operates with another party abroad qualifying as a related party.

Transactions performed with companies domiciled in tax havens are considered as performed with related parties.

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

The Venezuelan Tax Code establishes a six year statute of limitations. If no tax return is filed the statute of limitations

becomes ten years. The term for lapsing will be calculated from 1 January of the calendar year following that in which the taxable event occurred.

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. An informative transfer pricing return (Form PT99, discussed below) must be submitted six months after year-end. Such declaration contains all the transactions registered by the taxpayer with foreign related parties.

What types of transfer pricing information must be disclosed?

General information to be included in the transfer pricing return (Form PT99) includes:

- type of transaction (code indicated in the form)
- transaction date
- currency of the transaction
- exchange rate
- transaction amount
- tax residence code of the related party (code indicated in the form)
- name of the related party
- transfer pricing method applied for the transfer pricing analysis
- if the transaction generated gain or losses; and
- margin generated in the transaction, Interest rate, royalty fee (percentage), cost plus that applies to the transaction subject to analysis (percentage), among others.

What are the consequences of failure to submit disclosures?

Taxpayers are subject to penalties where they have failed to prepare the transfer pricing analysis or submit the transfer pricing return. The penalty goes from 50 to 150 tax units.

In addition, this situation could trigger a tax audit.

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?

Yes, for all transactions. The Venezuela Income Tax Law established the formal duties that all companies that register transactions with related parties must conserve, this information is according with the Chapter V of the OECD Guidelines.

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 adjustments.

Yes.

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, three 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.

Normally when the SENIAT requests transfer pricing documentation, taxpayers must submit the information requested within three working days.

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

The taxpayer has two options available to solve a dispute: a tax administrative appeal (Tax Administration) or tax litigation appeal (Court).

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

If an adjustment is sustained, the taxpayer is subject to fine from 100 to 1000 percent of the unpaid tax plus interest.

To what extent are transfer pricing penalties enforced?

Frequently.

What defenses are available with respect to penalties?

During an audit review there is the possibility to negotiate with the Tax Administration. In this situation the quality of the documentation and analysis supporting the transactions and rejected comparables are important.

Another defense is the tax administrative appeal or tax litigation appeal, where other factors would be taken into consideration.

What trends are being observed currently?

The Tax Administration has placed special emphasis on transactions such as royalties, technical assistance, export of goods, management fees and interest rates applicable to loans.

Special considerations

Are secret comparables used by tax authorities?

No.

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

No. The Tax Administration requires for the transfer pricing analysis the selection of comparables companies with public information. Venezuela only has two public data bases for banks and insurances companies.

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

The Tax Administration uses a commercial database for comparables, although its use is not a requirement. The taxpayer must use databases with public information of the companies.

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

Yes, always.

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

No.

What level of interaction do tax authorities have with customs authorities?	Other unique attributes?	Is there a filing fee for APAs?
High.	The Tax Law has introduced a thin capitalization rule. This rule limits the deduction of interest payments to related parties. The maximum debt/equity ratio will be one-to-one.	No.
Are there limitations on deductibility of management fees beyond the arm's length principle?	Tax treaty/double tax resolution	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. If the taxpayer in Venezuela is a branch, the expenses for management fees are non-deductible.	What is the extent of the double tax treaty network?	No.
Are management fees subject to withholding?	Venezuela has signed tax treaties with 31 countries.	Are there any difficulties or limitations on the availability or effectiveness of APAs?
Yes.	If extensive, is the competent authority effective in obtaining double tax relief?	Yes. The APA program has not been successful in Venezuela mainly because the APA option established in the Tax Law is a unilateral one and the procedures to access this program are unclear.
Are there limitations on the deductibility of royalties beyond the arm's length principle?	No experience yet.	
Yes. If the taxpayer in Venezuela is a branch, the expenses for royalty fees are non-deductible.	When may a taxpayer submit an adjustment to competent authority?	
Are royalties subject to withholding?	No formal rules exist in this area.	
Yes.	May a taxpayer go to competent authority before paying tax?	
Are taxpayers allowed to file tax return numbers that differ from book numbers?	Venezuela Income Tax Law has rules about the applications of APAs, but till today the Tax Administration has not signed any APAs.	
Yes. An adjustment should be included when the transactions performed between related parties are not arm's length. The transfer pricing adjustment, if required, must be included as a non-deductible item in the income tax return. Likewise, the transfer pricing adjustment is for tax purposes only, therefore, it is not recorded in the financial statements.	Advance pricing agreements	KPMG in Venezuela
	What APA options are available, if any?	Carlos Adrianza Tel: +582122777959 Email: cadrianza@kpmg.com
	Unilateral.	As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015