



Overview

Gómez Pinzón Abogados, Taxand Colombia.

Taxand Colombia is a comprehensive advisory firm located in Bogotá and Medellín, offering a wide spectrum of legal services, which encompass tax advisory services for various client categories, such as individuals, local private entities, estate entities, multinational corporations, and private equity firms. Taxand Colombia's dedicated team is proficient in handling all facets of transfer pricing services, including:

- ❖ **Compliance and Reporting:** This involves preparing transfer pricing informative returns, master files, and local file documentation, which can be customized to suit your specific needs. We can assist with local filings and reviewing files prepared by foreign global advisors, ensuring that your functional and financial data is presented comprehensively. Additionally, we offer support for Country-by-Country reporting.
- ❖ **Analysis and Planning:** Our services extend to optimizing the value chain, facilitating business restructuring, providing comprehensive assistance in devising your transfer pricing strategy and policy, or simply offering a thorough review and sustainability analysis to avoid penalties or litigation.
- ❖ **Strategy:** We offer guidance in transfer pricing audits and help in preventing or resolving tax disputes, ensuring that your tax matters are managed effectively and efficiently.

General : Transfer Pricing Framework

Chapter XI of the Colombian Tax Code ("CTC"), specifically articles 260-1 to 260-11 (introduced by means of Laws 788 of 2002 and 863 of 2003, subsequently modified by Law 1607 of 2012 and Law 1819 of 2016), along with Decree 3030 of 2013, which was amended by Decree 2120 of 2017 and compiled under Title 2 of the General Tax Decree (GTD), serve as the prevailing legal framework in Colombia governing transfer pricing matters.

Per Article 260-2 of the CTC, individuals and entities subject to income tax in Colombia, who engage in transactions with foreign related parties, tax heavens, low taxation or preferential regimes ("Special Tax Regimes"¹) and/or local free trade zones, must comply with the arm's-length principle and the general documentation requirements, if they have a gross income equal or greater than 61.000 Tax Units² (2023: COP\$2.587.132.000 – Approx. USD\$631.000) or gross assets equal or greater than 100.000 Tax Units (2023: COP\$4.241.200.000 – Approx. USD\$1.035.000)

Accepted Transfer Pricing Methodologies

Article 206-3 of the CTC determines the transfer pricing methods that are available in the Colombian legislation. Under this legislation, the taxpayer is required to substantiate why the selected method is appropriate, considering the

relevant facts and circumstances. The CTC acknowledges the five primary methods recognized by the OECD: (i) CUP Method, (ii) resale price method, (iii) Cost Plus Method, (iv) Transactional Net Margin Method, and (iv) profit split method.

1. Comparable

While the CUP method is the preferred approach in principle, it is often challenging to find comparable uncontrolled transactions. Consequently, the TNMM method is also commonly used as a transfer pricing method in practice.

Notwithstanding, except for commodity transaction which must be analyzed under the CUP method, Taxpayers are allowed to apply other methods as long as they can demonstrate that such methods result in an arm's length outcome.

Transfer Pricing Documentation Requirements

The CTC imposes a set of formal obligations on taxpayers engaged in transactions with foreign related parties, provided they meet specific criteria. Under this regulation, taxpayers subject to income tax in Colombia, whose stand alone gross assets on the last day of the year are equal to or exceed 100,000 Tax Units or whose gross income exceeds 61,000 Tax Units, are required to submit an informative return detailing all transactions with foreign related parties, Special Tax Regimes, and/or local free trade zones.

Additionally, taxpayers must prepare and submit supporting documentation, which comprises a Master File containing relevant global information of the multinational group, and a Local File containing information related to each type of transaction carried out by the taxpayer, demonstrating the proper application of transfer pricing rules. It's important to note that the Master File requirement only applies if the taxpayer belongs to a multinational group; otherwise, it is not necessary. A Local File, however, is still required

Transactions conducted by taxpayers with individuals, companies, or entities located, resident, or domiciled in Special Tax Regimes are subject to the transfer pricing regime and require the submission of supporting documentation, including both the Master File and Local File.

However, it's worth noting that, according to Article 1.2.2.1.2. of the GTD, there is no obligation to prepare and submit the Local File or master file if the annual cumulative amount of each operation does not exceed the equivalent of 45.000 Tax Units (2023: COP\$1,908,540,000 – Approx USD\$466.000) for the year or taxable period relevant to the supporting documentation. If the transaction is conducted with (or jointly with) a Special Tax Regime, this threshold is reduced to 10,000 Tax Units (COP\$424.120,000 – Approx. USD\$103.000).

Furthermore, taxpayers belonging to a multinational group with consolidated gross earnings exceeding 81,000,000 Tax Units (2023: COP\$3,435,372,000,000 – Approx. USD\$838,000,000) must submit a Country-by-Country report if they are the parent company of the

1. Transactions with these regimes will be subject to the same rules as transactions with related parties.

2. Tax Unit for 2023: 42.412 – Approx. 10,5 USD



multinational group or if they have been designated by the parent company as a substitute to file the Country-by-Country Report. If these requirements are not met, but the multinational company is subject to the Country-by-country report, a country-by-country notification must be filed in the informative transfer pricing return.

This notification should include details such as the name of the multinational group, the entity responsible of filing the country-by-country report, and the domicile of said entity. On the other hand, the report itself should contain information regarding the global allocation of income and taxes paid by the multinational group, along with specific indicators related to its global economic activity.

Local Jurisdiction Benchmarks

The Colombian Tax Authority accepts global or local benchmarks, provided that they meet comparable search strategy standards set by the Colombian Tax Authority; however, please consider that if there are internal comparables, the taxpayer must prioritize them when conducting the transfer pricing analysis. Under Colombian regulation a financial update is to be conducted every year.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Tax Administration is vested with the authority to enter into agreements with taxpayers subject to income tax, whether they are of national or foreign origin. These agreements are designed to determine the prices or profit margins of various transactions carried out by taxpayers with their related parties.

The determination of prices through such agreements will be based on the methods and criteria applicable to transfer pricing operations. These agreements can take effect in the year they are signed, the immediately preceding year, and up to three taxable periods following the agreement's signing.

To initiate this process, taxpayers must formally request the conclusion of the agreement in writing. Upon receiving this request, the Tax Administration has a maximum period of nine months from the date of the unilateral agreement request to conduct necessary analyses, seek modifications and clarifications, and accept or reject the request. For bilateral or multilateral agreements involving two or more states, the timeframe will be determined jointly by the competent authorities.

In cases of unilateral agreements, the entire process must be completed within two years from the date of acceptance of the request. If this timeframe expires without the signing of the advance pricing agreement, the proposal may be deemed rejected.

Once the advance pricing agreement is signed, the taxpayer may request its modification if they believe that significant changes have occurred in the assumptions considered at the time of its conclusion during its validity period. The Tax

Administration has two months to accept, reject, or deny the modification request, as per the regulations.

Should the Tax Administration determine significant changes in the assumptions considered when the agreement was signed, they will inform the taxpayer. The taxpayer has one month from the knowledge of the report to request the modification of the agreement. If this deadline expires without the corresponding request, the Tax Administration will cancel the agreement.

If the Tax Administration finds that the taxpayer has failed to comply with any of the conditions agreed upon in the signed agreement, it will proceed to cancel the agreement. Furthermore, if the Tax Administration discovers that the taxpayer provided inaccurate information at any stage of the agreement process or during its validity period, the agreement will be revoked and rendered ineffective from the date of its signing.

The taxpayer who enters into such an agreement is obligated to submit an annual report on the transactions covered by the agreement in accordance with the regulations.

It's important to note that there are no appeals allowed against acts issued during the stages prior to the signing of the agreement or during the process of analyzing a modification request for an agreement. However, against resolutions by which the Tax Administration unilaterally cancels or revokes the agreement, the an appeal is admissible, which must be filed before the official who made the decision within fifteen days following its notification. The Tax Administration then has two months from the filing to resolve the appeal.

Transfer Pricing Audits

The Colombian tax authorities have the authority to carry out two types of audits, which are conducted randomly:

- 1. Formal Audits:** Formal audits involve a review of the submitted documentation to ensure that all aspects of the files are completed and that all required annexes have been provided. These audits are primarily concerned with verifying the completeness and adherence to formal requirements of the documentation related to transfer pricing and related party transactions. Formal audits can be conducted within the three years following the submission of the documents.
- 2. In-Depth Audits:** In-depth audits, on the other hand, go beyond the formality check and involve a thorough examination of the functional and economic analysis. The purpose of these audits is to assess whether the transactions in question comply with the arm's length principle. These in-depth audits can be conducted at any time before the statute of limitations for the income tax return applies, which is currently set at five years.

It's noteworthy that while formal audits have historically focused on verifying the completeness of documentation, there has been a recent shift towards conducting more in-depth audits, especially for large multinational groups.

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This shift signifies an increased emphasis on evaluating the economic substance and pricing of transactions between related parties to ensure compliance with transfer pricing regulations.

Transfer Pricing Penalties

Colombian law establishes three primary types of penalties concerning transfer pricing issues: (i) failure to file documentation, (ii) delayed filing of documentation, (iii) omission of information, and (iv) inclusion of incorrect information in the documentation. Each of these penalties is subject to specific calculations and thresholds.

Additionally, the Colombian Tax Authority has the authority to modify the income tax return if the transfer pricing documentation does not align with the arm's length principle. In such cases, amending the return can result in a penalty for inaccuracies, which may be as high as 100% of the greater

tax amount owed or the lesser balance in favor, as determined by the tax authority.

Local Hot Topics and Recent Updates

The most recent ruling issued by the Administrative Supreme Court (the State Council) in transfer pricing matters addresses the question of whether it is appropriate to make adjustments in the comparability analysis between the controlled operation/part and the comparables within the transfer pricing regime.

This ruling examines the practice of making adjustments to the financial data of comparable transactions or companies when conducting a transfer pricing analysis. These adjustments are often made to align the financials of the comparables more closely with those of the controlled operation or party, thereby enhancing the accuracy of the arm's length pricing determination.

Documentation threshold

Master file	COP\$1,908,540,000 – Approx USD\$466.000
Local file	COP\$1,908,540,000 – Approx USD\$466.000
CbCR	COP\$3,435,372,000,000 – Approx. USD\$838,000,000

Submission deadline

Master file	December of each year
Local file	September of each year
CbCR	December of each year

Penalty Provisions

Documentation – late filing provision	N/A (a more complex rule)
Tax return disclosure – late/incomplete/no filing	N/A (a more complex rule)
CbCR – late/incomplete/no filing	N/A (a more complex rule)



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