



Transfer Pricing
Country Summary

Venezuela

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1. Introduction

Venezuela is not a member of OECD, but its legislation states that for anything not foreseen, the 1995 OECD Guidelines or their later versions can be applied. Venezuela has not adopted BEPS.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Venezuela does not adopt OECD Guidelines or BEPS, but everything not foreseen can apply OECD Guidelines.

Authoritative Arrange No. SNAT/2010/0090, issued by the SENIAT, was distributed within the Official Newspaper No. 39,557 of 20 December 2010. It builds up the strategy for the calculation and utilize of the arm's-length run for TP purposes. The primary contemplations are as follows: · The utilize of the interquartile run is said as the arm's-length range. · In case the cost or sum or benefit edge is inside the interquartile extend (arm's-length run), the assess administration will regard it as agreed-to by free parties. If, be that as it may, it isn't inside the interquartile extend, the citizen must take the middle of the run as the arm's-length price.

In February 2007, a fractional change of the Salary Charge Law (ITL) and rules on lean capitalization were distributed within the Official Gazette No. 38.628. The thin-capitalization rules apply, as of FY2008, to Venezuelan citizens or Venezuelan lasting establishments holding obligation (controlled obligation) of companies or individuals who are considered related concurring to Title VII, Chapter III of the ITL. The most considerations are as follows: · Citizens will have the constrained plausibility of deducting interest costs coming about from related parties' advances when the normal sum of obligation (with related and unrelated parties) surpasses the normal sum of value for the particular monetary year. · The sum by which the obligation surpasses the taxpayer's equity will be treated as value for pay assess purposes.

b) Definition of Related Party

Two or more legal entities are associated when one of them participates directly or indirectly in the management, control or capital of the other, or if the same individuals or legal entities participate directly or indirectly in the management, control or capital of both legal entities.

Taxpayers also are deemed to be related parties when they undertake transactions with entities located in low-tax jurisdictions.

Transfer pricing regulations will also apply to any entity acting as an independent intermediary (i.e. nonrelated party to the Venezuelan entity) when the transactions are carried out by the intermediary on behalf of a Venezuelan company and its related foreign company.

c) Nature of Transfer Pricing Documentation

Venezuela is not a member of OECD, but its legislation states that for anything not foreseen, the 1995 OECD Guidelines or their later versions can be applied. Venezuela has not adopted BEPS. Thus, Venezuela only has domestic TP rules and TP documentation has to be prepared annually.

d) Tax Havens & Blacklists

Not applicable.

e) Advance Pricing Agreement (APA)

Unilateral APAs are available under the Venezuelan tax regulations. Procedures to obtain APAs are set

forth in the Income Tax Act. When granted an APA, taxpayers must file a report regarding its application which must be enclosed to the annual income tax return. The latter must be filed within three months after closing of each tax year. Any change related to the economic circumstances and the method of application must be disclosed in this report. APAs apply to the fiscal period in which they are approved by the tax administration and during the following three fiscal years.

Bilateral APAs are available under the Venezuelan tax regulations with those countries with which Venezuela has signed tax treaties. (See Income Tax Act articles 143 to 167 and Master Tax Code chapter III, articles 230 to 239).

The tax authorities have a period of twelve months from the moment the APA request is received to decide on the application of the proposal. If no response is given within this period, the request is deemed rejected.

f) Audit Practice

Transfer Pricing rules were introduced in 1999, however in 2002 was created the Transfer Pricing and Advance Agreements Unit through the Administrative Providence No. SNAT / 2002/914 published in Official Gazette No. 37,423 of 15 April 2002..The first transfer pricing audits focused in the energy, mass consumption and automotive industry and were performed through Pilot Operations focused on the review of formal duties foreseen in articles 166, 167 and 168 of the LISLR.

The SENIAT has been given special attention to transfer pricing audits, irrespective of industry. Therefore, tax payers are highly recommended to keep a contemporaneous Transfer pricing documentation and fill in the TP informative return Form PT-99. Mainly, companies with inconsistency between transfer pricing documentation and tax income return are targeted for audit, but also entities with the profit level below the interquartile arm's length range or with lower operating margins than in the prior years. Also, if the financial information is not updated or the Transfer pricing information return has been filled after the deadline, these can also trigger a transfer pricing audit.

3. Transfer Pricing Documentation

a) Level of Documentation

Transactions and arrangements with foreign related parties must be reported to the tax authorities through an informative return (PT-99). The Venezuelan rules also require an extensive list of formal duties on TP (background documentation), which includes, among others, the following items:

- An analysis of fixed assets and the commercial and financial risks related to the transaction including documentation to support the acquisition and use of assets.
- An organizational and functional overview of the taxpayer including information about the relevant departments and/or divisions, strategic associations and distribution channels.
- Information regarding the foreign related parties including type of business, main clients and shareholdings in group companies.
- An overview of the controlled transactions including activities carried out, dates, prices paid or charged and the applicable currency.
- Information on the main activities carried out by each of the relevant group companies as well as data on any changes affecting the group as a whole, such as capital increases or mergers.
- Financial statements for the taxpayer's fiscal year, prepared according to generally accepted accounting principles including balance sheet, income statement, stockholders equity statement and statement of cash flow.

- Agreements, conventions or treaties entered into between the taxpayer and foreign related parties including agreements related to distribution, sales, credits, guarantees, licenses, know-how, and use of trademarks, copyrights, industrial property, cost allocation, research and development, advertising, trusts, stock participation, investments in securities and other transfers of intangible assets.
- The method or methods used to set the transfer prices, indicating the criteria and objective elements considered to determine the proper application of the selected method.
- Information regarding the operations of the uncontrolled comparable companies.
- Specific information about whether the related parties abroad are, or were, subject to a TP audit, or if they are involved in procedures by the TP competent authority or a court. In that case a resolution shall be issued by the competent authorities and a copy of the findings must be filed.
- Information regarding the inventory controls.
- Information related to functional analysis and TP calculations.
- Any other information that may be deemed relevant or required by the Tax Administration.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

Venezuelan transfer pricing regulations follows the OECD Transfer Pricing Guidelines: CUP, resale price method, cost plus method, profit split method, and the TNMM. Priority is given to the CUP method. Any of the approved methods may be applied.

f) Economic Analysis – Benchmark Study

Territorial comparable companies are acknowledged. Be that as it may, experience tells us that the charge organization inclines toward comparables found within the Joined together States and Canada.

There's an inclination for both single-year and multiyear analysis. Be that as it may, Article 132 of the ITL builds up that information from past a long time may be utilized in deciding the exchange prices to relieve the impacts of macroeconomic factors on the comes about gotten. The charge organization inclines toward the utilize of multiple a long time. It is vital to take note that the comparison is between a single year of the company against three of the comparable set.

There's an inclination for a weighted normal for arm's-length analysis.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

Not applicable.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If "No", it can be filed in English)
Corporate Income Tax	Prepare	Local Form	March, 31 st .	No	No	Yes
Master File	N/A	N/A	N/A	N/A	N/A	N/A
Local File	Prepare	Form PT99	June 30 th - advised to have it prepared before filing CIT Form at the latest.	No	Yes	Yes
CbCR	N/A	N/A	N/A	N/A	N/A	N/A
Local Form	File	Form PT99	June, 30 th .	No	Yes	Yes
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N.A

Segmented P&L	N/A	N/A	N/A	N/A	N/A	N.A
*Venezuela has NOT signed the MCAA agreement for the filing of CBCR.						
* Venezuela does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

All documentation required must be kept in Spanish.

k) Notification Requirement

Not applicable.

l) Record Keeping

Effective as of 2002, taxpayers are required to prepare and maintain supporting and extensive contemporaneous documentation.

m) Penalties and Interest Charges

According to the amendment of the Master Tax Code published by Decree No. 1.434 on the Extraordinary Official Gazette No. 6152 of 14 November of 2014, the following sanctions apply upon failure to comply with transfer pricing regulations:

- The penalties for not complying with the transfer pricing methodology: closure of the establishment for 10 continuous days and 1000 tax units;
- Penalty for failure to file TP informative return or to file it with a delay of more than one year: closure of the establishment for 10 continuous days and 150 tax units;
- Penalty for incompleteness in the TP informative return or file them with a delay of not more than one year: 100 tax units;
- The illegitimate reduction of taxable income due to omission by the taxpayer carries a penalty between 100% and 300% of the tax omitted;
- Failure of compliance within the established terms to provide tax administration with information regarding transactions with related parties, carries a penalty of 100 tax units;
- Providing the tax administration with erroneous information carries a penalty of 100 tax units;
- Fraud carries a jail sentence ranging between 6 months and 7 years;
- Failure to file the return to report investments in low-tax jurisdictions carries a penalty of closure of the establishment for ten continuous days and 2000 tax units; and
- Late filing of the return to report investments in low-tax jurisdictions carries a penalty of 1,000 tax units.

Note that as of 25 February 2015, through Ruling No, SNAT/2015/0019, the tax unit = Bs. 150.00.