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# Global Transfer Pricing Review

Colombia

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TAX



# Colombia



## KPMG observation

In 2013, Colombia received an invitation from the Organisation for Economic Co-operation and Development (OECD) to become a member of the organization. Consequently, changes in both transfer pricing and tax legislation were carried out, taking into account the OECD Guidelines. The Base Erosion and Profit Shifting (BEPS) Action Plan has been mentioned by the Colombian government as a key tool to ensure that multinational entities are contributing their fair share of taxes with regard to the activities they carry out in Colombia.

The Colombian Tax Authorities continue to scrutinize multinational entities' transfer pricing and are closely reviewing the Informational Transfer Pricing Returns of taxpayers.

They have assessed fines on those returns that have been filed incorrectly or contain inaccurate information. Additionally, they have changed the requirements for taxpayers that are obliged both to prepare and file transfer pricing documentation. The Tax Authorities have continued transfer pricing audits based on red flags detected in the informational return and the transfer pricing studies. It is expected that there will be more detailed audits and assessments going forward due to the experience gained by the Colombian Tax Authority.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	Submission to tax authority required	Thresholds apply/exist
Legal requirements	●		●	●	●
Protection from penalties	●				
Reduce risk of adjustment	●				
Shifts burden of proof		●			

## Basic information

### Tax authority name

Dirección de Impuestos y Aduanas Nacionales, (DIAN – National Administration of Taxes and Customs).

### Citation for transfer pricing rules

- Tax Code, Chapter XI, Sections 260–1 to 260–11
- Economic Sanctions, Tax Code Sections 260-11 and 647
- Decree 3030 of 2013
- tax havens, Decree 1966 of 2014; and

- deadlines, according to an annual decree, issued at the end of the respective taxable year.

### Effective date of transfer pricing rules

1 January 2004.

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

- ownership of greater than 50 percent, based on voting power, share capital, and under common control

- even when an entity does not have a capital relationship, it is considered a related party when it is entitled to receive directly or indirectly more than 50 percent of the profits of a company

- when an operation takes place between two subordinates, which are owned directly or indirectly by more than 50 percent by the same individual or corporation or non-corporate entities; and
- when there are consortiums, temporary unions, account

participations, and one of the entities carries out a transaction with any of its related parties or any of the members of the group in favor or on behalf of the consortium, joint venture or venture accounts.

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

The statute of limitations for transfer pricing adjustments is in accordance with the statute of limitations of the income tax return.

In case of not filing the transfer pricing informative return and the supporting documentation, the tax administration has five years to challenge the taxpayer and to impose the relating penalties.

Moreover, Tax Code Article 260–5 and the Ruling Decree states that taxpayers which are obliged to prepare and file transfer pricing documentation have to keep the documentation within their records for a period of at least five years, together with all the supporting documentation that proves compliance with the transfer pricing rules in Colombia.

### **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 disclosure takes place through the informative TP return as well as the TP Documentation, both are submitted to the revenue authority annually, in a virtual way (through web).

#### **What types of transfer pricing information must be disclosed?**

Colombian taxpayers are required to file an annual Informational Transfer Pricing Return and/or supporting transfer pricing documentation which contain information related to their intra-group transactions including the amounts, related parties, type of transactions, methods used to evaluate the compliance with the arm's length principle, interquartile ranges, amongst other information.

#### **What are the consequences of failure to submit disclosures?**

The transfer pricing penalties are included within Section 260–11 of the Tax Code.

### **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. The transfer pricing study content must follow the requirements of the Colombian Tax Code and the regulatory decree, i.e. executive summary, functional analysis per controlled transaction (general information of the company/activity and other specific information), industry analysis and economic analysis (the selection of method, description of comparables and conclusions, among others) and annex information. However, it is important to highlight that local transfer pricing regulation mirrors 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.

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, 15 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.

Taxpayers need to submit the documentation within dates established by the national government. However,

if a request is issued by the tax authorities, taxpayers have 15 days to provide the required information.

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

The taxpayer can dispute the adjustment of the tax authorities under administrative appeal and regular tax litigation.

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

There are not any specific transfer pricing penalties other than those mentioned in Section 260–11 of the Tax Code (such as late filing, inaccuracy in the transfer pricing informative return and/or supporting documentation). Nevertheless, there are income tax penalties linked to a transfer pricing adjustment. Those penalties can be up to 160 percent of the underpayment in tax, plus additional penalties and interests.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Litigation and settlements.

What trends are being observed currently?

Tax authorities have begun to perform audits in a more substantive way. The main challenges to taxpayers relate to transfer pricing on expenses for technical assistance, technical services, intragroup services and royalties.

### **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.

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

No. Tax authorities expect the taxpayer to provide sufficient information regarding identification and

determination of comparable parties used, information sources, inquiry dates and indication of the rejection criteria of rejected comparable entities.	Are management fees subject to withholding? Yes.	May a taxpayer go to competent authority before paying tax? Yes.
It is also important to present technical adjustment descriptions and, when needed, a generic description of the principal differences between Colombian accounting rules and the rules in those countries where the comparable parties are located.	Are there limitations on the deductibility of royalties beyond the arm's length principle? Yes. These payments are subject to withholding tax, therefore without it, tax deduction is not allowed. In addition, in some specific cases if royalties are related to technology, the respective agreement should be registered within the tax authority to take the deduction.	What APA options are available, if any? Unilateral, bilateral, multilateral.
<b>Does the tax authority generally focus on the interquartile range in a TNMM analysis?</b>	<b>Are royalties subject to withholding?</b> Yes.	<b>Is there a filing fee for APAs?</b> No.
Yes, always.	Are taxpayers allowed to file tax return numbers that differ from book numbers? Yes. The transfer pricing rules are silent upon this matter, therefore it is difficult to say whether they are permitted or not.	Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums? No.
<b>Does the tax authority have other preferences in benchmarking? If so, please describe.</b>	<b>Other unique attributes?</b> When management fees do not contain a technical component or elements that might be considered as advisory, payments do not require the application of withholding tax, all other payments usually have a 10 percent withholding tax rate.	Are there any difficulties or limitations on the availability or effectiveness of APAs? Not applicable. As of 31 December, 2014, one APA had been signed.
According to Colombian transfer pricing regulations, the analysis should be preformed using data from the year under assessment for both the taxpayer and the comparable companies. If updated comparable data is not be available, it is mandatory to state the specific date when the analyses were performed as well as the update of the databases. Furthermore, if it is necessary to consider several periods for the analysis, the analysis and explanations to justify the use of such information should be included in the report.		
<b>What level of interaction do tax authorities have with customs authorities?</b>	<b>Tax treaty/double tax resolution</b>	
High. Customs and tax authorities are part of the same organization (DIAN). Therefore, the officials of DIAN oversee both audits.	What is the extent of the double tax treaty network? Extensive. Currently there are treaties with Canada, Mexico, Chile, Spain, Switzerland and the member countries of the Andean Community (CAN).	
<b>Are there limitations on deductibility of management fees beyond the arm's length principle?</b>	If extensive, is the competent authority effective in obtaining double tax relief? Sometimes.	
Yes. Deductibility of management fees paid are subject to the limitation applicable to all expenses paid abroad and not subject to withholding tax. If such fees or expenses do not exceed 15 percent of the taxable income, they can be taken as a deduction.	When may a taxpayer submit an adjustment to competent authority? No formal rules exist in this area.	

## KPMG in Colombia

### Myriam Stella Gutierrez

Tel: +57 618 8000  
Email: msgutierrez@kpmg.com

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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