



## Transfer Pricing

Impact on business management and tax compliance.

### Background

Colombia, through Law 788 of 2002, as amended by Law 863 of 2003, Law 1607 of 2012, and Law 1819 of 2016, introduced into its tax system rules to control transfer pricing issues in transactions of income taxpayers with their foreign affiliates, affiliates located in free trade zones and persons or entities located, resident carrying transactions in tax havens.

Colombian transfer pricing rules require that in case of taxpayers performing transactions with foreign related parties, shall determine ordinary and extraordinary income, costs, deductions,

assets and liabilities, taking into consideration the economic conditions that would have been established by independent parties in comparable transactions, known internationally as the Arm's Length Principle.

Articles 260-5 and 260-9 of the Colombian Tax Code require taxpayers subject to the transfer pricing system to comply with two formal duties, firstly, the preparation and filing of the supporting documentation that proves compliance with the Arm's Length Principle and, secondly, the filing of an annual tax return on transactions carried out with related parties.

Additionally, as established by Article 260-7 of the Colombian Tax Code, and in accordance with the provisions of Regulatory Decrees 1625 of 2016 (amended by Decree 2120 of 2017), and 1966 and 2095 of 2014, taxpayers in Colombia entering into transactions with individuals, corporations, entities or companies located, resident or domiciled in non-cooperating jurisdictions with low or no taxation or preferential tax regimes must also be reported and included within the supporting documentation. ➔



It should also be noted that, according to the provisions of Law 1819 of 2016, taxpayers subject to file their supporting documentation must include within the same a “Master File Report” with the relevant global information of the multinational group of which it is part, in accordance with the Regulatory Decree to the Transfer Pricing Regime.

### Obligated taxpayers

Taxpayers that meet the following conditions are required to comply with the transfer pricing regime:

- Being a taxpayer of income tax and complementary taxes.
- Having related parties located abroad and/or related parties located in free trade zones.
- Performing transactions during the taxable year with:
  - Related parties from abroad.
  - Individuals, corporations, entities or companies located, resident or domiciled in tax havens.
  - Related parties in free trade zone.

### Formal duties

The obligated taxpayers must prepare and file their informative tax return and/or supporting documentation based on:

- **Informative tax return.** Must be filed virtually in Colombia through the available platforms provided by Local Tax Authorities for the taxpayers subject to income tax return and supplementary returns, whose gross equity on the last day of the taxable

year is equal or higher than 100.000 UVT<sup>1</sup> (approximately COP 3.800.400.000 / USD 900,000); or gross revenues of respective year equal or higher to 61.000 UVT (approximately COP 2.318.244.000 / USD 550,000) for those entering into transactions with related parties in accordance to Articles 260-1 and 260-2 of the Colombia Tax Code.

- **Local File (Transfer Pricing Report).** Must be filed virtually in Colombia through the available platforms provided by the Local Tax Authorities by taxpayers celebrating transactions with related parties located in free trade zones, by type of transaction when their annual cumulative amount exceeds the equivalent of 45.000 UVT (approximately COP 1.710.180.000 / USD 406,000); and/or having transactions with companies, resident or located in non-cooperating jurisdictions with low or no taxation or preferential tax regimes, and their annual cumulative amount exceeds the equivalent to 10.000 UVT (approximately COP 380.040.000 / USD 90,000) for the reporting fiscal year. Otherwise, no exemption applies.
- **Master File Report.** Must be filed in Colombia to the Local Tax Authority by taxpayers conforming a Group and being previously required to prepare and submit the Local File Report (Transfer Pricing Compliance) by September 2023. The entities of a Group that are only required to file their Informative Tax Return for Transfer Pricing purposes, will not be subject to submit their Master File Report.

- **Country by Country Report.** Must be filed by Controlling entities of Multinational Groups, understood as those who meet the following criteria: i) are resident in Colombia, ii) entities resident in the national territory or resident abroad with a permanent establishment in the country, which have been designated by the controlling entity of the multinational group resident abroad as responsible for providing the country-by-country report, or iii) entities located in Colombia and belonging to a multinational group who have a share in the consolidated income of the MNE Group equal or greater than 20%, their parent company has not filed this obligation in their country of residence and the consolidated income equals 81.000.000 UVT (approximately COP 3.078.324.000.000 / USD 730 million).

- **Notification for Country by Country Report.** Must be filed in Colombia to the Local Tax Authority by taxpayers as part of a multinational group. This obligation must be carried out with the following considerations: i) through the Transfer Pricing Informative Tax Return – Form 120, by filling in the fields 39 to 45 by those taxpayers subject to the transfer pricing regime; or ii) through an e-mail to the mailbox [preciostransferencia@dian.gov.co](mailto:preciostransferencia@dian.gov.co), identifying the subject as: “Notification - Country by Country Report”, which must be sent by taxpayers who are not required to file the Transfer Pricing Informative Return.

### Deadlines

The Ministry of Finance and Public Credit issued the Decree 2487, which defines the deadlines to declare and pay the contributions for the taxable year of 2022, among the duties aforementioned for Transfer Pricing purposes: Informative Tx Return, Local File Report, Master File Report and Country by Country Report.

In this regard, the following deadlines have been established for the transfer pricing formal duties:

<sup>1</sup> Taxable Unit Value for its acronym in Spanish.



Deadlines for the submission of each of the formal transfer pricing duties

**Informative Tax Return, Notification for Country by Country Report and Local File**

Last digit of the Taxpayer ID (NIT):	Deadline
1	September 7 <sup>th</sup> , 2023
2	September 8 <sup>th</sup> , 2023
3	September 11 <sup>th</sup> , 2023
4	September 12 <sup>th</sup> , 2023
5	September 13 <sup>th</sup> , 2023
6	September 14 <sup>th</sup> , 2023
7	September 15 <sup>th</sup> , 2023
8	September 18 <sup>th</sup> , 2023
9	September 19 <sup>th</sup> , 2023
0	September 20 <sup>th</sup> , 2023

**Master File Report**

Last digit of the Taxpayer ID (NIT):	Deadline
1	December 11 <sup>th</sup> , 2023
2	December 12 <sup>th</sup> , 2023
3	December 13 <sup>th</sup> , 2023
4	December 14 <sup>th</sup> , 2023
5	December 15 <sup>th</sup> , 2023
6	December 18 <sup>th</sup> , 2023
7	December 19 <sup>th</sup> , 2023
8	December 20 <sup>th</sup> , 2023
9	December 21 <sup>th</sup> , 2023
0	December 22 <sup>th</sup> , 2023

**Country by Country Report**

Last digit of the Taxpayer ID (NIT):	Deadline
1 - 2	December 11 <sup>th</sup> , 2023
3 - 4	December 12 <sup>th</sup> , 2023
5 - 6	December 13 <sup>th</sup> , 2023
7 - 8	December 14 <sup>th</sup> , 2023
9 - 0	December 15 <sup>th</sup> , 2023

**Fines and penalties**

Article 260-11 of the Colombian Tax Code establishes the penalties in regard to the Informative Tax Return and/or supporting documentation in case of late filing,

mistakes, non-filing, omission and/or modification related to transactions with related parties.

## How can we help you?

At Deloitte Colombia, we have an experienced and multidisciplinary team that maintains constant communication with our clients, as we support organizations to determine and prepare the supporting documentation for the appropriate allocation of functions, assets and risks in intercompany transactions.

We can advise you in the following areas:

- Transfer Pricing Consulting.
- Assistance in the analysis and preparation of the supporting documentation for intercompany transactions.
- Analysis on the supply chain optimization and risk structuring.
- Assistance in tax and transfer pricing controversies with Tax Authorities.
- Assistance in conducting Advance Pricing Agreements.
- Transfer Pricing Documentation on the arm's length value for assets and enterprises.
- Training related to TP topics and market studies.



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