

Tax Newsletter

Timely news and information on national tax issues

Obligation to Present the 2021 Transfer Pricing Study to the Tax Auditor

Taxpayer obligations

Each year, upon the arrival of the month of May, we know we are fast approaching the deadline for the main formal obligation in Transfer Pricing: the submission of the Transfer Pricing Study to the Tax Auditor appointed by the taxpayer.

Article 62-A of the Tax Code (TC) establishes that, for tax purposes, the taxpayers that perform transactions with related parties or tax havens must determine that the prices agreed upon in these transactions correspond to market values. **This obligation is documented through the preparation of a Transfer Pricing Study.**

Obligations of the tax auditor

Furthermore, article 135 letter f) of the same code regulates the following obligation for the Tax Auditor (TA) appointed by the company: *“Present in the Tax Opinion and Report, the tax situation of the taxpayer*

audited, including a note or section indicating that the transactions between related parties or with parties domiciled, established or located in countries, states or territories with preferential tax regimes, of low or zero taxation or tax havens comply with the tax laws and this Code.”

Based on article 134 of the TC, the appointed TA must submit their Tax Opinion and Report to the Tax Administration **no later than the thirty-first of May of the year following the period examined.**

Similarly, article 68 letter i) of the Regulation for the Application of the TC (RATC) mentions that the Tax Report shall contain in addition to the TA’s opinion, the balances and transactions for the operations performed with the taxpayer’s main shareholders, subsidiaries, associates and affiliates.

In this respect, in order to provide guidelines and standardize that regulated in Art. 135 f) of the TC and 68 i) of the RATC, the General Orientation Guide for

Facilitating the Determination of Transfer Prices Established in Article 62-A of the Tax Code and Other Pertinent Provisions (the TP Guide) establishes that, at a minimum, **the Auditor must review and disclose** the following:

- Relationship between the taxpayer and the counterparts, based on Art. 199-C of the TC;
- The amount of the transactions performed between the above parties;
- The amount of the pending balances;
- Provisions for bad debts;
- Expense recognized for bad debts.

In addition, the TP Guide also mentions that the examination of the Auditor with respect to Transfer Pricing obligations must include the following:

- Evaluation of the taxpayer's organizational structure;
- Evaluation of transactions performed with related parties;
- Evaluation of the price agreed upon in the transaction; with respect to this point, the auditor's opinion must include:
 - a) **Determination of Market Prices** based on Art. 62-A of the TC,
 - b) **Filing of Form F-982** as required by Art. 124-A of the TC,
 - c) **Income tax withholdings applied** based on Art. 158 and 158-A of the TC,
 - d) **Non-deductibility of losses with related parties or tax havens** in accordance with Art. 29-A numeral 10) of the Income Tax Law,
 - e) **Other legal deductions** regulated in the article detailed in the preceding point.

Consequences of not submitting the transfer pricing study to the tax auditor

- 1) First, in the event that the taxpayer does not make available to the Tax Auditor the TP Study and Form F-982 duly filed, the TA must issue a **qualified opinion in their Tax Opinion**, based on that regulated in Art. 135 f) mentioned above. In this respect, the Standard for Assurance of Compliance with Tax Obligations (NACOT per its Spanish acronym) establishes the models of the tax opinions that the Auditor should issue in cases of non-compliance with that mentioned above, whether it is a Qualified Opinion or an Opinion of Non-Compliance.

In the event that the TA issues a qualified opinion due to non-compliance with the TP regime, it is highly probable, and almost automatic, that the **Tax Administration will initiate an audit focused on verifying compliance with the TP obligations** mentioned above.

- 2) Consequently, depending on the regulatory and quantitative impact that the failure to prepare and submit the TP Study has for the taxpayer, there is also the possibility that its Financial Auditor would add some disclosure paragraphs to their Financial Report, or **qualify their opinion**.
- 3) If the tax authorities initiate an audit due to the lack of preparation and submission of the TP Study, they would have the power to determine the market prices in the transactions performed by the taxpayer with related parties, and could make the price adjustments they deem pertinent, **resulting in additional payments due to income tax adjustments**. It is important to mention that there are various precedents for these types of adjustments made by the tax authorities in different stages of the audit process.
- 4) Other penalties and fines regulated in articles 244 letter l) and 245 letter d), both of the TC.

Due to the above, it is of great importance that taxpayers that have had transactions with related parties and/or tax havens ensure they have the

Transfer Pricing Study that documents the fact that the prices of such transactions have been agreed upon at market values and, likewise, that they make this study available to their Tax Auditor, in order to avoid having a qualification in the Tax Opinion and Report presented to the tax authorities.



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Tax Calendar

May 2022

The updated 2022 tax calendar is now available on the Tax Administration's website, which includes public holidays and deadlines for all tax obligations.

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



Download the 2022
Obligations Calendar

May 2

Income

- Income Tax Return and Declaration of Special Contribution by Large Taxpayers to the Citizen Security Plan for the 2021 Period (F-11).
- Balance Sheet and Statement of Income for Taxpayers that keep Formal Accounting; Statement of Income and Expenses and Tax Reconciliations 2021 (F-971).
- Report on Capital Gains and/or Losses 2021 Period (F-944).
- Declaration of Real Property 2021 Period (F-30).

May 16

VAT

Declaration and payment of the Tax on the Transfer of Movable Goods and the Rendering of Services (F-07).

Financial Income and Transactions

Monthly declaration of Payment on Account, and Tax Withheld on Income, Financial Transactions, and the Special Contribution for Citizen Security and Coexistence (F-14)

Specific and Ad Valorem Taxes

- Declaration and payment of Specific Taxes, Ad Valorem Taxes and Special Contribution (F-06).

Other Obligations

- Report on Donations (F-960)
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Alcoholic Beverages, Potable Ethyl Alcohol and Beer, Carbonated Beverages, Isotonic Beverages, Fortified Beverages or Energy Drinks, Juices, Nectars, Soft Drinks and Concentrated or Powder Mixtures for the Preparation of Drinks (F-955).
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Firearms, Ammunitions, Explosives and Similar Items, Producers of Tobacco and Producers, Importers and those that clear fuels through customs (F-988)
- Monthly Report of Sales to Producers, Distributors or Retailers of Tobacco and Tobacco Products (F-956).

May 23

VAT

Monthly Report on Withholdings, Collections, or Payments on Account of VAT (F-930).

Printing Presses

Monthly Report on Documents Printed for Taxpayers Registered under the VAT (F-945).

May 31

Other obligations

- Appoint Tax Auditor per the Tax Code and International Services Law for the 2022 fiscal year.
- Tax opinion and report per the Tax Code for the 2021 fiscal year, general type; Tax opinion and report for dissolution and liquidation and transformation process (F-455).
- Semi-annual opinion on compliance with the obligations contained in the International Services Law corresponding to the second half of the 2021 fiscal year (F-455).

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