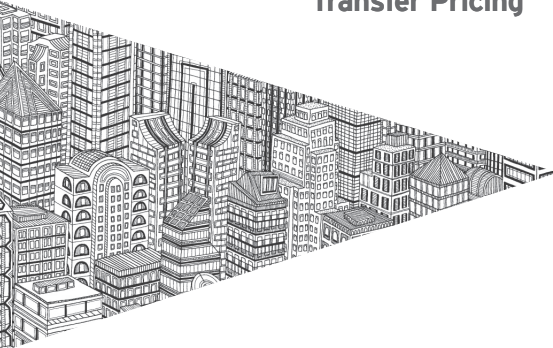


# International Tax Alert

News and views from  
Transfer Pricing



## Venezuela release new transfer pricing rules

New Venezuelan transfer pricing rules address the determination of the arm's length range using interquartile statistical method

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Administrative Order SNAT/2010/L0090, issued by the National Integrated Service of the Customs and Tax Administration (SENIAT), was published in Official Gazette N°39,557 of 20 December 2010, establishing the procedure for the calculation and use of the arm's length range when the implementation of the transfer pricing methods, set forth in the Venezuelan Income Tax Law, results in more than one price, compensation amount or profit margin.

### Main effects on transfer pricing

#### Definition of the arm's length range

The Ruling establishes in Article 2 that the arm's length range includes only the values found between the first and third quartiles. The range excludes the minimum and maximum values in a sample of margins or prices comparable to the intercompany transactions of the taxpayer. Through this ruling, only values within the interquartile range are considered by SENIAT to be values to which independent third parties would agree.

#### Establishment of the adjustment procedure applicable by the taxpayer, when the intercompany prices or margins are outside the arm's length range

Article 7 of this Ruling provides that when the determined price, compensation amount or profit margin is not within the arm's length range, the taxpayer must make an adjustment to the median value of the sample. This method of adjustment represents a punitive measure (similar to the internal transfer pricing legislation in Colombia and Ecuador) that might have a material impact on the determination of the tax base for

calculating income tax. The Ruling eliminates the possibility for the taxpayer to make an adjustment that situates the intercompany results to a point anywhere between the first and third quartile, which is defined as the arm's length range.

However, Article 7 represents a regulatory excess that violates the legal principle, due to its contradiction with Articles 132 and 133 of the Income Tax Law, which define the arm's length range as the total interval of the values observed in the sample of prices or comparable margins; not limiting the range to its median when the taxpayer is not located within the observed values.

#### **Criteria for the application of adjustments**

For practical purposes, taxpayers subject to the transfer pricing regime whose prices or margins

are not located within the arm's length range, must evaluate the application of adjustments to the median of the range, taking into consideration the adopted transfer pricing method.

In this sense, the more indirect the analysis methods (as in the case of the transactional profit methods applied), the more questionable the adjustment to the range median will be, since, according to the OECD Guidelines, there are many factors other than transfer pricing that may affect the taxpayer's profit margins.

#### **Effective date**

According to the Ruling, it will become effective on the day following its publication, i.e., from 21 December 2010.

In this regard, and given that the Ruling determines the amount of the tributary liability (a regulatory

excess, as previously described) when determining the arm's length range, we believe it will be effective for the fiscal years beginning under the rule of this law, in accordance with the provisions of Article 8 of the Tax Code.

However, considering the objective of the Ruling and the government's increasing need for tax revenue in order to comply with the 2010 National Budget, we encourage taxpayers subject to these rules to review the prices or margins from their operations with related parties abroad that took place during the fiscal period at the time of the publication of this Ruling. This evaluation will indicate the potential risks from an audit the Tax Authority, and likewise, possible corrective measures to comply with the Ruling.

For additional information with respect to this Alert, please contact the following:

#### **Ernst & Young LLP, International Tax Services, Transfer Pricing, Miami**

▶ Katherine Pinzon-Romero + 1 305 415 1765 katherine.pinzon@ey.com

#### **Mendoza, Delgado, Labrador & Asociados, Caracas**

▶ Jose Antonio Velazquez +58 212 905 6659 jose.velazquez@ve.ey.com

## Transfer Pricing

- ▶ **Global Transfer Pricing**, Germany  
Thomas Borstell, +49 211 9352 10601
- ▶ **Americas**, United States  
Bob Ackerman, +1 202 327 5944  
Purvez Captain, +1 713 750 8341
- ▶ **EMEA**, Germany  
Thomas Borstell, +49 211 9352 10601
- ▶ **Asia Pacific**, Shanghai  
Luis Coronado, +86 21 2228 3366
- ▶ **Japan**, Tokyo  
Kai Hielscher, +49 89 14331 16711
- ▶ **Global Markets**, United Kingdom  
John Hobster, +44 207 951 6438
- ▶ **TESCM**, Amsterdam  
Victor Bartels, +31 88 4071378

▶ <b>Argentina</b>	Carlos Casanovas	+54 11 4318 1619
▶ <b>Albania</b>	Alexandros Karakitis	+355 4 24 19 574
▶ <b>Australia</b>	Paul Balkus	+612 9248 4952
▶ <b>Austria</b>	Andreas Stefaner	+43 1 211 70 1041
▶ <b>Belgium</b>	Herwig Joosten	+32 02 774 9349
▶ <b>Brazil</b>	Gil Mendes	+55 11 2112 5466
▶ <b>Bulgaria</b>	Laszlo Szaka	+359 2 8177 141
▶ <b>Canada</b>	Sean Kruger	+1 416 941 1761
▶ <b>Chile</b>	Osiel Gonzales	+56 26 761 141
▶ <b>China</b>	Luis Coronado	+86 21 2228 3366
▶ <b>Colombia</b>	Gustavo Pardo	+1571 651 2210
▶ <b>Costa Rica</b>	Rafael Sayagues	+1 212 773 4761
▶ <b>Croatia</b>	Denes Szabo	+36 1 451 8209
▶ <b>Czech Republic</b>	Libor Frýzek	+420 225 335 310
▶ <b>Denmark</b>	Thomas Bjerre	+45 3 587 2901
▶ <b>Ecuador</b>	Javier Salazar	+1 593 2 255 5553
▶ <b>Egypt</b>	Tobias Lintvelt	+02 417 4400
▶ <b>Estonia</b>	Ranno Tingas	+372 611 4578
▶ <b>Finland</b>	Kennet Pettersson	+358 40 556 1181
▶ <b>France</b>	Franck Berger	+33 4 78 63 17 10
▶ <b>Germany</b>	Oliver Wehnert	+49 211 9352 10627
▶ <b>Greece</b>	Aggelos Benos	+30 210 288 6 024
▶ <b>Hong Kong</b>	Patrick Cheung	+852 2846 9905
▶ <b>Hungary</b>	Zoltan Liptak	+36 1 451 8638
▶ <b>India</b>	Vijay Iyer	+91 98 1049 5203
▶ <b>Indonesia</b>	Carlo Navarro	+62 21 5289 5000
▶ <b>Ireland</b>	Dan McSwiney	+353 1 221 2094
▶ <b>Israel</b>	Lior Harary-Nitzan	+972 3 623 2749
▶ <b>Italy</b>	Davide Bergami	+39 02 851 4409
▶ <b>Japan</b>	Kai Hielscher	+81 3 3506 1356
▶ <b>Kazakhstan</b>	Roman Yurtayev	+87 727 258 5960
▶ <b>Kenya</b>	Geoffrey Karuu	+254 20 2715300
▶ <b>Korea</b>	Rap Choi	+82 2 3770 1001
▶ <b>Latvia</b>	Ilona Butane	+371 704 3836
▶ <b>Lithuania</b>	Leonas Lingis	+370 5 274 2279
▶ <b>Luxembourg</b>	Paul Leyder	+352 42 124 7240
▶ <b>Malaysia</b>	Janice Wong	+6 03 7495 8223
▶ <b>Mexico</b>	Jorge Castellon	+52 81 81521829
▶ <b>Netherlands</b>	Danny Oosterhoff	+31 88 40 71007
▶ <b>New Zealand</b>	Mark Loveday	+64 9 300 7085
▶ <b>Norway</b>	Marius Leivestad	+47 24 00 23 86
▶ <b>Peru</b>	Marcial Garcia	+151 1 411 4424
▶ <b>Phillipines</b>	Romulo Danao	+63 2 894 8392
▶ <b>Poland</b>	Aneta Blazejewska-Gaczynska	+48 22 557 8996
▶ <b>Portugal</b>	Paulo Mendonca	+351 21 791 2045
▶ <b>Romania</b>	Alexander Milcev	+402 1402 4000
▶ <b>Russia</b>	Henrik Hansen	+7 495 648 9608
▶ <b>Singapore</b>	Jesper Solgaard	+65 6309 8038
▶ <b>Slovak Republic</b>	Gunter Oszwald	+421 2 333 39610
▶ <b>Slovenia</b>	Denes Szabo	+36 1 451 8209
▶ <b>South Africa</b>	Karen Miller	+27 21 443 0200
▶ <b>Spain</b>	Ramón Palacín	+34 915 727 485
▶ <b>Sweden</b>	Mikael Hall	+46 8 520 592 35
▶ <b>Switzerland</b>	Edvard Rinck	+41 58 286 4250
▶ <b>Taiwan</b>	George Chou	+86 21 2228 8888
▶ <b>Thailand</b>	Anthony Loh	+662 264 0777
▶ <b>Turkey</b>	Feridun Gungor	+90 212 368 5204
▶ <b>Uruguay</b>	Martha Roca	+59 82 902 3147
▶ <b>United Kingdom</b>	Tim Steel	+44 20 7951 1149
▶ <b>United States</b>	Bob Ackerman Purvez Captain	+1 202 327 5944 +1 713 750 8341
▶ <b>Venezuela</b>	Katherine Pinzon	+1 305 415 1765
▶ <b>Vietnam</b>	Nitin Jain	+84 8 832 45252

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