

Colombia's Transfer Pricing Regime Overcomes Two Court Cases and Introduces the Most Elaborate Regulations in Latin America

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Colombia joined a number of Latin American countries in adopting transfer pricing provisions. These new transfer pricing provisions follow the OECD model. As such, Colombia adopts these changes without making extensive deviations in transfer pricing methodologies, as was the case in the Brazilian situation.

Colombia enacted these transfer pricing provisions as Article 260, which is within Law 788, the comprehensive tax bill enacted on December 27, 2002. The original provisions were amended and extended with Law 863, enacted on December 29, 2003, which adopted the transfer pricing penalty regime. Most recently, Decree 4349, effective January 1, 2005, introduced comprehensive documentation regulations, transfer pricing information returns, and APAs.

Parameters of the Transfer Pricing Methodology

The Colombian transfer pricing provisions delineate the arm's length principle and the responsibilities of the taxpayer and the tax administration¹ in Article 260-1. The Colombian provisions apply to two types of relationships:

1. Business affiliates, which appear to include subsidiaries, branches, joint venture organizations and the like, termed by the Colombian legislation as economically-bound parties. In this respect, the Colombian transfer pricing regulations appear to be more specific than the U.S. transfer pricing regulation, which give entities other than legal entities short shrift. The Code of Commerce makes specific reference in defining economically-bound parties.
2. Related parties, such as where the relationship is based on kinship, marriage, or otherwise. The Colombian transfer pricing regulations are less specific than the Venezuelan transfer pricing provisions, which specifically address degrees of kinship and mistress relationships.

Law 788 originally contemplated that provisions would apply to all kinds of transactions carried out by covered taxpayers regardless of the fact that some would be purely domestic transactions. However, Law 863 clarified that the transfer pricing regime applies only to cross border transactions. Furthermore that statute examined rules for the determination of assets and liabilities between obliged taxpayers.

¹ Direccion de Impuestos y Aduanas Nacionales