Mayo, 2019
Newsletter 30

International Legal Partners

Actualidad Legal / Legal News

Chile • Ecuador • Germany • Mexico • Peru • Spain

Chile:
Transfer Prices

In order to perfect the current tax system in Chile, adjusting it to international standards and the guideline of the Organization for Economic Cooperation and Development (OECD), Law N° 20.630 of 2012, included within the provisions of Income Tax Law (ITL), Article 41 E regarding transfer prices.

Read more | 6 minutes

Chile:
Precios de Transferencia

Con el fin de perfeccionar el sistema de tributación vigente en Chile, ajustándolo a las normas internacionales y las directrices de la Organización para la Cooperación y el Desarrollo Económico (OCDE), la Ley N°20.630 de 2012, incluyó dentro de las disposiciones de la Ley de Impuesto a la Renta (LIR), el artículo 41 E referido a precios de transferencia.

Leer más | 6 minutos

Spain:
How to draft an Info-Memo

Read more | 5 minutes

España:
Como preparar un Cuaderno de Venta

Leer más | 5 minutos

Germany:
Germany after one year of application of the European Data Protection Regulation. Errors about consent in data protection. Do I have to give my consent for everything?

Read more | 2,5 minutes

Alemania:
Alemania Tras un año de aplicación del Reglamento Europeo de Protección de Datos.
Los errores sobre el consentimiento en protección de datos. ¿Tengo que dar mi consentimiento para todo?

Leer más | 2,5 minutos

Peru:
A new way of protection to the lessor: The Express Eviction

Read more | 2,5 minutes

Perú:
Una nueva forma de protección al arrendador: El Desalojo Express

Leer más | 2,5 minutos

Mexico:
Labor Reform

Read more | 3 minutes

México:
Reforma Laboral

Leer más | 3 minutos

Chile:
Transfer Prices

Estudio Jurídico Otero
Chile

In order to perfect the current tax system in Chile, adjusting it to international standards and the guideline of the Organization for Economic Cooperation and Development (OECD), Law N° 20.630 of 2012, included within the provisions of Income Tax Law (ITL), Article 41 E regarding transfer prices. Likewise, and in the same line of action, the Chilean Internal Revenue Service (Servicio de Impuestos Internos - SII) has made efforts to supervise cross-border operations, demanding a greater degree of information from taxpayers, through different tax returns.

According to the OECD, transfer prices are "the prices at which a company transfers physical goods and intangible property, or provides services to associated companies". The essential basis for the guidelines of the OECD, which are set out in the Chilean transfer pricing regulations, are framed within the principle of "arm´s length". Under this principle, related companies must carry out transactions between them as if they were independent entities, and therefore commercial relations between them must maintain the same principle of Independence as those comparable relationships between unrelated parties. In this line, Art. 41 E ITL establishes that the SII may challenge the fixed prices, values or profitability when cross-border transactions carried out with related parties have not been carried out at normal market prices, values or returns.

The main purpose of the rules on transfer pricing is precisely to promote tax neutrality between related companies in order to avoid distortions based on the arbitrariness that can arise between companies that belong to the same business group.

• Intra-Group Services

Within the framework of transfer prices from a prism, we felt that it would be interesting for the scope of this article to invite **Javier Nuñez**, specialist partner of the consultancy Arm´s Length, to write this in common. **He points out that:**

> it is usual to find within a supply chain of a multinational group operations of goods and services (as services of an administrative, financial and/or computer services) between the related parties of this group, and in this case we must ask ourselves whether those operations have been carried out under market conditions. The costs associated with the provisions of services can be assumed by any member of the group, as well as by the parent company".

In this sense, he notes that it must be taken into account that, in a globalized market, an independent company that requires any type of service in the supply chain, can obtain it from a specialized service provider or can generate it internally. The typical scenario presented by members of a multinational group is that they require services, both from independent companies (*legal services*) as from related parties (*financing such as loans*) within a multinational group.

It is important to note that the OECD guidelines pay special attention to the cases of centralized groups, in the sense that the board of directors and the regional management of the parent company make more important decisions related to the activities of the subsidiaries, and in addition, said parent company performs a large amount of the marketing, human resources, treasury management, administrative services, computer systems, legal and accounting services, advertising, management and protection of intangible assets functions. In the case of decentralized groups these functions can be carried out by a holding Company or service center, or there can be at least a division of such functions between various entities of the group.

In line with the above, we must emphasize that the guidelines of the OECD include the minimum recommendations regarding the provision of services between related parties.

- ✓ Proof of the effective service provision
- ✓ Determination of the remuneration of the service
- ✓ Most appropriate method to determine the remuneration
- ✓ Need to apply a margin on costs

• Annual return on transfer prices

Within the context of transfer pricing regulations, and of the intra-group transactions previously described, the SII requires taxpayers to submit three tax returns related with the matter:

a) the annual tax return on transfer prices (1907 DJ= declaración jurada or tax return), which expires on the last business of the month of June of each year, regarding the transactions carried out during the immediately preceding commercial year;

b) the annual tax return of global tax characterization (1913 DJ) that is submitted together with Form 22 (of annual tax return); and,

c) the annual tax return on the Country by Country Statement (1937 DJ), that is presented as an annex to DJ 1907.

Our coauthor points out that, "in this sense the 1907 DJ focuses on the presentation of information that certain taxpayers must provide, regarding cross-border transactions carried out by them with related parties located abroad in accordance with the provisions of Art. 41 letter E ITL".

In this context, we have to note that the taxpayers who are obliged to submit the 1907 DJ are:

1) Taxpayers who, as of December 31st of the year reported, belong to the segments of medium-sized companies or large companies and have carried out transactions in that year with related parties that have no address or residence in Chile, pursuant to the rules set out in Article 41 E TIL;

2) Taxpayers who, not being included in the segments indicated in letter a) above, have carried out transactions in the reporting period with related parties without address or residence in Chile for amounts exceeding $ 500,000,000 (Chilean pesos), or their equivalent according to the exchange rate parity between the national currency and the foreign currency with which those transactions were carried out, in force as of December 31st of the reporting period, according to the publication of the Central Bank of Chile;

3) Taxpayers not classified in the previous segments that have operations with persons domiciled or residing in a territory or jurisdiction with a preferential tax regime to which Article 41 H, TIL, refers to (the so-called "tax havens").

This year we highlight that the 1907 DJ must be submitted no later than July 1st, 2019, unless the taxpayer requests an extension and it is granted by the SII. In this sense, it must be taken into account that the non-submission of this tax return or its erroneous, incomplete or untimely submission will be sanctioned with a fine of 10 to 50 annual tax units (the annual tax unit of May 2019 is $583,140 Chilean pesos).

Some aspects that should be taken into consideration for the 1907 DJ to submit for this year 2019, are the following:

✓ Country by country report (1937 DJ):

a specific section has been added concerning the Country by Country report, in which the taxpayer is required to inform the SII through the 1907 DJ if the group to which he belongs is obliged to submit this document in Chile or in another jurisdiction (in the latter case, it must also inform the corporate name of the entity that will report it and its country of residence).

✓ Financing Transactions:

The description of the codes related to these operations refers to amounts "accrued" (not paid), and it is also required to detail the transaction even if it has not accrued interests during the commercial year that is reported. The purpose of this change is for taxpayers to provide more detail of their financing operation, which did not have to be declared previously because they did not accrue interests. gar intereses.

✓ Transfer Pricing Report:

Javier Nuñez points out that, according to Chilean tax regulations, the Company may keep at the disposal of the SII a transfer pricing report supporting the method developed and the information submitted in the 1907 DJ of each relevant tax year.

Prepared jointly by
Estudio Jurídico Otero and Javier Nuñez

Spain:
How to draft and Info-Memo

ILP Abogados

Spain

An informational memorandum (info-memo) is a document that highlights the most important aspects and opportunities that your investment offers. An info-memo should include analysis, projections, and explanations that are too time consuming to disclose during a meeting with potential investors. Essentially it is a document that markets your investment, in the sense that it should motivate investors to want to invest in the company. However, it needs to refrain from exaggeration or omission, and provide a complete disclosure of all the material facts.

Format:

1 Letter from the Director

- Summarize the business and future ambitions of the company.
- This is the most personal part of the memo where it is important to inspire the investor by introducing your vision for the business and any relevant skills and past experiences.

2 Investment Highlights

- Bullet pointed list about what makes your company special and any highlights of the investment.
- The investment highlights are usually the first thing that an investor reads, which is why it should be simple and convincing in order to persuade them to keep reading.

3 Resumen ejecutivo

- One or two-page summary that includes: background of the company, market opportunity, unique features of the business, track record, financial projections and necessary funding.
- The executive summary acts as a succinct summary of the business plan which is why it is important to only include the most significant points of your plan.

Tip: Use headings to correspond to sections of your Info-memo so that investors can easily refer to certain points.

4 Company History with Milestones

- Include the date of incorporation, phases of development, current shareholders, major agreements, employee expansion, and prior financial performance metrics.
- It is important for investors to see the progression of your company because it helps them to ensure that your aspirations are in alignment with theirs.

5 Expansion Plan

- Give a conservative estimate as to where your company should be in the next few years.
- Set goals supported by reasoning for the next few years, for example: Increased investment, increased number of employees, expanding product lines, etc.
- It is important to be specific about which aspects of your business you plan to expand but also re-

main conservative in your estimates.

6 Market Overview

- Provide market size, target segment, and issues, growth potential, competition, SWOT analysis.
- t is extremely important to know all the facets of the market you plan to enter, because it proves to the investor that you have done the research and understand where and how your company fits into the market.

7 Key Success Factors

- Concrete data that can represent performance and benchmark success for investors.
  - Acquisition Metrics
  - Retention Metrics
  - ROI
  - Awareness
- The concrete metrics are important for investors to know what results they should expect in the near future.

8 Risks

- Potential risks from the market, industry, and government as well as mitigating strategies to ensure success.
- Address the assumptions made throughout the Info-memo and list the risks in order of significance and likelihood of occurrence.

9 Business Team

- Pictures and bios of the business team as well as any relevant skills, connections, or experience.
- Especially for startups in the early growth stages, investors will look at the team within and surrounding your company as well as the skills and knowledge they provide in order to ascertain the probability of a start-up's success.

10 Financial Information

- Include previous financial records, projected growth (with target revenues and customers), and assumptions used to calculate or estimate these figures.
- The projections or assumptions within the financial summary should be supported by the strategies previously mentioned throughout your Info-memo.

11 Investment Offer

- Company valuation, necessary capital, source of funding, plans for the investment, and time to actualization.
- It is important to have confidence in your offer because it should be supported by the research and figures within your Info-memo, however being open to negotiation is equally as important when it comes to closing the financing round.

12 Other Information

- Any remaining relevant information (legal statements, financial statements, data)
- It is important for your Info-memo to stand alone, therefore it's wise to include anything additional you believe investors could want to see.

Conclusion

Regardless of the quality of your pitch, as soon as you leave the room your Info-memo is how you're going to be remembered. When investors are considering your project, the only information they have to review is what you give them after your pitch is completed. The document should be succinct, realistic, and most of all well-organized, so possible investors know exactly where to look in order to obtain the necessary information for them to make a decision.

Germany after one year of application of the European Data Protection Regulation. Errors about consent in data protection. Do I have to give my consent for everything?

ILP Global Mertens Thiele

Germany

On 25 May, it is one year since the European Data Protection Regulation came into force and many things have changed. German companies are more concerned about the security of the data they work with, contracts with employees and service providers are updated and there is greater concern about the security of data processing. There is increased awareness of the protection of personal data.

Citizens also pay more attention to this issue. The Germans have realized the importance of their data and are concerned about not giving data that is not necessary, about finding out how companies use their data, for what purposes and how they protect it.

In this year in Germany, more than 200,000 cases have been reported to data protection agencies, and 65,000 of these complaints are self-reporting by companies whose data advisor have seen errors, security breaches and have reported to themselves.

But one mistake is becoming more common. Many people think that the only way they can use their personal data is with their express consent and nothing could be further from the truth.

It is now almost common to hear phrases like:

> " I have to sign my consent everywhere, otherwise I am not cured or I am not served"

> " My neighbor has denounced me and has given my data without my permission"

> "Company X has subcontracted a parcel service to send me a product and has not asked for my permission to give them my data"

This is a big mistake, the legal basis by which a company can work with the data of a person is not only, not even mainly, the express consent of the person concerned but the consent is only one of the six legal possibilities to make a legitimate processing of personal data.

The legal bases for the legitimate processing of data are:

- The consent of the data subject
- The performance of a contract
- The performance of a task carried out in the public interest
- The protection of the data subject's vital interests
- The fulfilment of a legal obligation of the data con troller and the balancing of interests between the interest of the data controller and that of the data subject

Thus, in order to be able to comply with a contract for the sale of a product, a company must be able to send the product to the buyer. These companies have a contractual relationship with the company that offers the products where the processing of the data

to which they have access is regulated and in turn the company has a contract of sale of a product with the interested party. In order to execute the contract, the services of the shipping company are necessary and therefore the company can receive the data without the need for the interested party to give consent based on the contractual relationship.

The same applies to a doctor's clinic. Once the patient agrees to be treated by the doctor, he has the right to access the health data he deems necessary to treat and cure the patient without asking for consent.

Or in the case of lawyers, once there is a mandate, the lawyer can have access to the data of the interested party and even to the data of third parties, which are necessary to be able to carry out the defence without the need to ask for their consent at each step.

The consent provides very little security in the working activity of companies as it can be revoked by the interested party at any time. Therefore, companies prefer to work with contracts or based on the balancing of interests. Which are the most common ways to carry out the processing of personal data.

Peru:
A new way of protection to the lessor:
The Express Eviction

Estudio Laos, Aguilar, Limas & Asociados

Peru

For several years, one way to invest with an attractive rate of return has been the purchase of real estate for subsequent lease to third parties; Proof of this there are the new virtual applications that allow access to the rental of properties around the world, reducing high transaction costs, generating healthy competition that benefits the real estate market. As a correlate of this development, in our country economic growth has given way to the resurgence of the real estate boom and the expansion of the supply of housing leases.

Besides the private sector, the State has been a principal actor in its promotion, as it has been promoting a series of programs to facilitate access to housing. Recently, the "Renta Joven" program has been approved by law, which is based on a subsidy system aimed at people under 40 years of low income. Through it, the Peruvian State grants a bonus of up to S /. 500.00 Soles for the lease of real estate not exceeding a value of S /. 1,500.00 per month. This type of subsidy can be extended up to a period of five years.

Currently, the real estate sector has expanded during the year 2018 due to various factors such as economic growth, greater access to credit, reduction of interest rate and a greater boost in the placement of credits by social programs promoted by the Peruvian State. All this generates a favorable climate for investment, mainly by foreigners who see this sector as a good niche for the placement of surplus capital.

However, despite the profitability that can be appreciated in this market, a disincentive factor for the lease of real estate has been the uncertainty and long-term procedures for the eviction of delinquent tenants, which increased transaction costs. Until very recently, the only way to recover the possession of real estate leased, illegally occupied by a delinquent tenant, was the beginning of a judicial process that could last up to 04 years, generating a series of costs for the owner as they were taxes, attorney's fees, maintenance of the property, among others.

However, through a recently approved amendment, a **new law allowing "express eviction"** has been enacted. By means of this formula, it is allowed to evict the tenant within a maximum period of 15 days, through a notarial procedure in which it must be proven that the lease is expired or unpaid. To enforce this procedure, it will be necessary to stipulate a clause in the lease agreement and legalize the signatures before a Notary Public.

As we see, this new procedure becomes a new form of protection for landlords, who were often affected by the indefinite occupation of tenants who decided not to pay and live for free in the rented properties. With this new formula, greater predictability is generated for investments related to leases as well as a better and efficient procedure for eviction cases in the event of non-payment or termination of the lease contract.

Mexico:
Labor Reform

Bitar Abogados

Mexico

The past May 1 of 2019, was published in the Official Gazette of the Federation the decree by which are reformed various provisions of the Federal Labour Law and other secondary legislation.

The most relevant points of the reform are:

i) Labour disputes are to be settled before the Labour courts, federal and local, dependent on the Judicial power, and which is expected to be a much more effective procedure, so will disappear the conciliation and arbitration boards.

ii) The Federal Center for conciliation and labour record - with their respective local representations - which will play a conciliatory role, required step to initiate proceedings before the labour courts will be created.

iii) The term of prescription to present the corresponding demand, will be suspended from the date of the submission of the request for conciliation, and will resume the following day the conciliatory authority issuing the record of no conciliation.

iv) The Federal Center for conciliation and labour registry will also function to keep the record of all collective labour agreements, as well as the Interior and take control and registration of trade union organizations.

v) Local conciliation centres and courts the power Judicial from the entities Federation will initiate activities within a maximum period of three years. The Federal Center for conciliation and labour registry will start its functions in the field of collective registration of unions and contracts of work within one period not exceeding two years from the entry into force of the Decree.

vi) With regard to agricultural workers, the employer shall be obliged to carry out a special census of workers hired by periods, in order to compute their labor old.

vii) In addition, domestic workers must be registered with the Mexican Institute of Social Security, and the employer must pay the corresponding fees.

viii) Guaranteed freedom of Association for workers, who may decide whether belonging or not to a Trade Union, as well as the election of union leader by voting personal, direct, free and secret. These provisions will begin its term within a period of 240 days from the entry into force of the decree and trade union organizations within that term will adapt its statutes.

ix) Freedom of Association also will include the possibility of voting in terms of strikes; unions can locate strike, provided they have as, at least 30% of the votes of the workers. They can also vote regarding the modification of collective employment contracts.

Finally, the reform does not apply to any modification

to the figure of *outsourcing*; However, is expected to be discussed and regulated by secondary legislation later.

It is important to mention that the proceedings that are pending before federal and local conciliation and arbitration boards will be concluded by those authorities.

The decree includes additional reforms to the Federal Labour Act, such as the organic law of the Judicial power, the Federal Public Defender law, law the Institute of the National Housing Fund for workers and the Social Security Law.

The Decree shall enter into force the day after its publication in the Official Gazette of the Federation (May 1, 2019); However, transient articles establish different deadlines for its actual application and four years for full implementation.