



## Venezuela

### WTS Global Country TP Guide

Last Update: December 2017

<b>1. Legal Basis</b>	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2003
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Which TP methods may be applied?	CUP, RPM, CPM, PSM, TNMM (Income Tax Law. Articles 134 to 139).
Are any TP methods preferred over others?	Best method rule, with priority for CUP (Income Tax Law art. 140).
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	No CbCR/MF/LF
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	No documentation or other form of authority has been issued to date. No official statements from the competent authorities on the matter.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	Master Tax Code (Executive Decree Nr. 1.434, Official Gazette Extraordinary Nr. 6.152, Section Twelve, Chapter III, Title IV - latest amendment effective February 18, 2015) . Income Tax Law (ITL) (Executive Decree No. 2.163. Official Gazette Extraordinary No. 6.210, Chapter III, Title VII -latest amendment effective December 30, 2015). SENIAT Ruling (Providencia) No. SNAT-2003-2424, Information Return on transactions with overseas related parties, dated February 13, 2004 (effective from date of issuance). SENIAT Ruling (Providencia) Nr. SNAT-2010-0090 which establishes the procedure for computing and applying the TP arm's length range or interval, dated 20 December 2010 (effective from date of issuance).
<b>2. Master File (MF)</b>	
Not implemented	
<b>3. Local File (LF)</b>	
Not implemented	
What is the threshold requirement for the obligation to prepare a LF?	No. OECD Guidelines Local File rules. Reference to OECD Guidelines is not sufficient authority for SENIAT to request the same. In any case, there is a requirement for local filing of a return covering for all related-party transactions (PT-99).
<b>4. Country-by-Country Reporting</b>	
Not implemented	
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No

## 5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Intentionally submitting an incorrect / too low tax return and failing to inform the tax authorities accordingly constitutes a tax crime. Legal consequences may range from (monetary) fines to imprisonment from 6 months up to 7 years.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	None for tax advisor or accountant. In the case of the filing company's administrator, management and directors, the same can be held jointly liable with the company, only to the extent they have directly participated, and they managed assets or the business of the company.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Information Statement on transactions entered with overseas related parties - PT 99.
What would be the filing deadline?	Must be filed within six months following the end of the fiscal year.
What would be the penalties for non-compliance?	The penalty for failure to file the transfer pricing return or file it with a delay of more than one year is temporary closure of the office, local or establishment, if its exist, for 10 days and a fine of 150 tax units. The penalty for failure to file the communications established by the law or administrative rules is 50 tax units. (Tax Code art. 103, numeral 1 and 2).

## 6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No. In Venezuela there is no legal limitation on using foreign comparable transactions (as such foreign databases may be used), nor as to which is going to be the reviewed party to the TP transaction.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No

## 7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. An adjustment should be included when the transactions performed between related parties are not arm's length. The transfer pricing adjustment, if required, must be included as additional income/gain or as a non-deductible item in the income tax return. The transfer pricing adjustment is applied for tax purposes only; therefore it is not recorded in the financial statements. There are no rules as to secondary adjustments.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	In Venezuela there are no specific areas of scrutiny by the tax authorities. In light of the size of the businesses, the tax authorities tend to focus on oil and gas, consumer goods and automotive industry.
Based on your experience, are joint or multilateral audits initiated and carried out?	No
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	<p>The Master Tax Code and the Income Tax Law enable the tax authority to approve or reject APAs and establish the formal rules governing APA application procedures. The same includes a list of the numerous documents that must be produced along with a taxpayer's application. Venezuelan transfer pricing establish the following aspects regarding this topic:</p> <ul style="list-style-type: none"> <li>- The taxpayer should present a proposal to the tax authorities for the valuation of one or more transactions, providing evident that such transactions comply with the arm's length standard.</li> <li>- The proposal should be prepared by the taxpayer and should be based on an accepted transfer pricing methodology.</li> <li>- The tax authorities can determine the format of the documents to be provided by the taxpayer in the proposal.</li> <li>- The APA process must be concluded by the end of the third year after the year of application. This may be extended if the APA is being negotiated through a competent authority procedure under a double tax treaty.</li> <li>- Either party may terminate the APA application process if commercial or operational changes occur in the assets, functions or risks of the relevant parties.</li> <li>- The tax authority may terminate the APA at any time if it concludes that fraud was committed or false information was provided in the APA proposal. Also may terminate the APA in the event of non-compliance with the agreed terms and conditions.</li> <li>- If the tax authority rejects an APA application, a taxpayer cannot seek any of the administrative remedies included in the Master Tax Code or other laws; the only course of action available is to initiate a new APA application.</li> </ul>

**Your contact person:**

Mr. Juan Carlos Garantón-Blanco  
 jgaranton@tpa.com.ve  
 T: +582129050239