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TITLE: TRANSFER PRICING IN THE UNITED STATES AND LATIN AMERICA

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TEXT:

This article summarizes and compares the transfer pricing regimes of the United States and each of those Latin American countries that have enacted comprehensive transfer pricing legislation: Argentina, Brazil, Chile, Mexico, Peru, and Venezuela. n4

With the exception of Brazil and Venezuela, which have adopted a formulary approach (using profit margins determined by the government), all of the other Latin American countries have adopted the arm's-length principle followed by the OECD. n5

United States regulations on transfer pricing are much more extensive than those of other countries, and generally provide detailed descriptions and examples on how to apply the general statutory and regulatory transfer pricing principles and methods, as well as special rules that are either not included or not fully developed in the other countries. In contrast, the Latin American countries work within the civil law tradition and, accordingly, their statutory and regulatory transfer pricing framework will not include detailed descriptions or examples that might assist in the application of the general rules.

The first part of the following article sets forth the basic methods and principles applicable in the United States, Mexico, Argentina, Chile, and Peru (which employ an arm's-length approach) and the second part sets forth the methods and principles applicable to the countries of Brazil and Venezuela (which employ a formulary approach).

ARM'S-LENGTH APPROACH REGIMES (UNITED STATES, MEXICO, ARGENTINA, PERU, AND CHILE)

In the arm's-length approach regimes, the arm's-length nature of a transaction between related parties is tested by comparing the characteristics of the transaction in question with the characteristics of comparable transactions entered into between unrelated parties. n6

Transactions and Parties Subject to Regulation

The transfer pricing regulations are generally applicable to all imports or exports of goods, services, and intangible property rights between related parties. There are differences between countries, however, particularly with regard to the definition of a related party and, in the case of some countries, the application of the regime to transactions with unrelated parties in certain low tax jurisdictions.

United States. The regulations in the U.S. apply to organizations, trades, or businesses owned or controlled directly or indirectly by the same interests.

Mexico. The transfer pricing rules apply to related resident and nonresident juridical entities and individuals, permanent establishments, and fixed bases established in Mexico by nonresidents, activities carried out through trusts, and Mexican taxpayers carrying out transactions with entities located in certain low tax jurisdictions. (See Exhibit 1 for a list of these low tax jurisdictions.)

Chile. The Chilean Income Tax Law ("CITL") provides that the transfer pricing rules shall apply to agencies and branches of foreign entities operating in Chile (permanent establishments), as well as to any Chilean business that is under common ownership or common control with a foreign business. For Chilean income tax purposes, the term "Chilean business" includes taxpayers that are subject to the Chilean corporate income tax of 15% (mostly juridical entities and individuals who carry out commercial activities).

Chilean administrative regulations explicitly provide that the transfer pricing regulations shall apply to marketable goods, services, interest, transfers of technology, and licensing of patents and trademarks. It is unclear whether this list is restrictive and whether transactions involving intangibles other than patents and trademarks are subject to the transfer pricing rules.

Argentina. Argentine regulations apply to transactions between related parties (including nonprofit organizations and trusts) and to transactions with unrelated parties that are located in certain low tax jurisdictions. (See Exhibit 2 for a list of these low tax jurisdictions.) Individuals are not subject to the transfer pricing regulations.

In addition, Article 8 of the Argentine Income Tax Law ("AITL") provides pricing rules to be followed by unrelated parties for purposes of determining the gain obtained in the export and import of goods. Pursuant to this provision, the Argentine Tax Authorities ("AFIP") are empowered to adjust the price agreed to by unrelated parties, if such price is lower than the wholesale price of the destination country (for export transactions) or higher than the wholesale price in Argentina (for import transactions), unless the affected taxpayer can show that the price charged was in fact an arm's-length price.

It is unclear whether payments made for the use of trademarks and patents in Argentina are subject to the transfer pricing rules. These payments are subject to income tax withholding in Argentina and their deductibility is limited to 80% of the payment, provided that the agreement is registered with the relevant authorities in Argentina.

Peru. The transfer pricing regulations apply to transactions between related parties and to transactions with entities located in certain low tax jurisdictions. (See Exhibit 3 for a list of these low tax jurisdictions.)

Related Parties

All of the countries have embraced the traditional definition of relatedness, which is based on ownership and control. However, there are differences in the applicable thresholds of ownership and control that will lead to related party treatment for transfer pricing purposes. Some of the countries have developed additional standards for relatedness that go beyond the traditional definition, as set forth below.

United States. U.S. transfer pricing regulations apply only if the contracting entities are owned or controlled directly or indirectly by the same interests. The U.S. regulations define "controlled" as follows:

-- "Controlled" includes any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose. It is the reality of the control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

None of the Latin American countries include any such presumption of control arising from arbitrarily shifted income or deductions, nor do they expressly include any reference to the common goal or purpose principle.

Mexico. According to the Mexican Income Tax Law ("MITL") two or more parties are related when one party participates directly or indirectly in the management, control, or ownership of the other, or when one party or group of parties participates directly or indirectly in the management, control, or ownership of others.

The Mexican definition is broader than the one included in the U.S. regulations and in principle could extend the transfer pricing regulations to companies or individuals that hold a small equity stake in a Mexican company. Additionally, the definition is sufficiently broad that the regulations might also extend to two parties in an exclusive distributorship relationship if the authorities can demonstrate that one effectively controls the other, even if such parties are otherwise unrelated.

Chile. Two or more businesses are considered related when one of the businesses abroad participates directly or indirectly in the management, control, or ownership of the Chilean business, or when those same persons (both juridical and individuals) participate directly or indirectly in the management, control, or ownership of others. Pursuant to Circular 3 (1998) issued by the Servicio de Impuestos Internos ("SII"), in order to be considered a related entity through ownership, the controlling entity must: (i) hold, directly or indirectly, at least 10% of the equity of the controlled entity; or (ii) have the right to elect one board member or the manager of the company.

Argentina. The scope and definition of the term "related party" in Argentina is much broader than in any of the other countries analyzed. In general, two parties will be considered related parties when the parties are subject directly or indirectly to the control of the same individual or legal entities, or when these entities have the capacity to orient or determine the activities of the company based on ownership participation, the level of indebtedness, functional or other influence, contractual or not (e.g., exclusive agents and single customer relationships). The transfer pricing regulations set forth the following additional factors that will result in the determination that two parties are related:

-- Whether one party provides the other with proprietary and technological information, or with technical knowledge that is fundamental for the conduct of the latter's business activities.

-- Whether one party exclusively enjoys the power and capacity to act as agent, distributor, or concessionaire of the second party.

-- Whether one party agrees to contractual terms with the second party that are better than those agreed to with third parties under similar circumstances.

-- Whether one party plays a significant role in the setting of the business, trading, production, or marketing policies of the second one, or in the latter's policies for the supply of raw materials.

-- Whether one party carries out a relevant activity only with the second party, such as in the context of a single supplier/vendor or a single customer relationship.

-- Whether one party furnishes substantial economic support to the second party through the granting of below market loans or via the granting of guarantees of any sort.

-- Whether one party bears the losses or expenses of the second party.

Peru. Two or more parties are related when a party (or group of parties) participates directly or indirectly in the management of the other or a party (or group of parties) owns directly or indirectly more than 30% of the equity of the other. In addition to this definition based on common control, the Peruvian legislation treats two parties as related when 50% of the goods or services of a party are sold to another party or to two related parties during a 12-month period, or one is a consortium maintaining separate books and the other is a member of the consortium.

Income tax treaties. Some income tax treaties contain separate definitions of a "related party." Therefore, it is important to always confirm whether there is a treaty definition that would apply in connection with transactions entered into between residents of such treaty countries. The United States has treaties in force only with Mexico and Venezuela, and is currently in negotiations with Chile.

Methods

In each of the countries following the arm's-length approach, the arm's length nature of a transaction between related parties (a controlled transaction) is tested by comparing the pricing, terms, and other characteristics of the transaction in question with the pricing, terms, and other characteristics of comparable transactions entered into between unrelated parties (an uncontrolled transaction).

This section of the outline describes the different methods available, the best method rule to be used in order to choose among the results arising from the application of more than one method, and the need to confirm results by the application of an additional method.

Methods Available

United States. The U.S. transfer pricing regulations provide for the following methods:

-- Comparable Uncontrolled Price (CUP) Method. Under the CUP method, the arm's-length price of property sold in a controlled transaction is equal to the price paid in comparable uncontrolled transactions. An uncontrolled transaction includes both prior sales by one of the related parties to an unrelated party and sales between other unrelated parties. The CUP method is applicable to transfers of goods or other tangible property.

-- Resale Price Method. Under the Resale Price Method, the arm's-length price for a sale between controlled parties is the price at which the goods are resold by the related buyer to unrelated persons, reduced by an appropriate gross profit amount comparable to that earned by a comparable uncontrolled distributor in comparable circumstances. Thus, the Resale Price Method determines the arm's-length value of the distribution function and subtracts it from the distributor's resale price, to arrive at the appropriate arm's-length transfer price between the related parties. The Resale Price Method is applicable to transfers of tangible property.

-- Cost Plus Method. Under the Cost Plus Method, the cost of the company selling to the related party is first determined and then an appropriate gross profit margin determined from uncontrolled transactions is added to this amount, to arrive at the appropriate arm's-length price on the sale between the controlled parties. The Cost Plus Method is applicable to transfers of tangible property and can also be applied to the provision of services.

-- Comparable Profits Method. Under the Comparable Profits Method, profit level indicators derived from uncontrolled taxpayers that engage in similar transactions with other uncontrolled taxpayers are applied to the controlled transaction. If the operating profits of uncontrolled taxpayers engaged in similar activities as the tested party deviate from those of the tested party, the consideration for the controlled transactions must be adjusted to yield operating profits in line with the profit level indicators derived from the uncontrolled taxpayers. Applicable profit level indicators are generally those financial ratios that measure the relationship between profits, costs incurred, and resources deployed. The Comparable Profits Method is applicable to both tangible and intangible property.

-- Profit Split Method. Under the Profit Split Method, the profitability of a related company group is allocated among members of the group in accord with their economic contributions to the enterprise. The aim of this method is to estimate an arm's-length return by comparing the relative economic contributions that the parties make to the success of a venture, and dividing the returns from that venture between them on the basis of the relative value of such contributions. The Profit Split Method is applicable to transfers of both tangible and intangible property.

-- Comparable Uncontrolled Transaction (CUT) Method. Under the CUT method, the arm's-length consideration for a transfer of intangible property between controlled parties is equal to the consideration charged in a comparable uncontrolled transaction. The Comparable Uncontrolled Transaction Method is only applicable in the case of a transfer of intangibles.

-- Unspecified Methods. Where appropriate, alternative unspecified methods may be used to evaluate whether the amount charged in a controlled transaction is arm's length.

Argentina and Mexico. The methods employed in these two countries are similar and their laws do not make any distinction between methods to determine taxable income in the case of the transfer of tangibles and intangibles, nor do they provide for the possibility of using any unspecified methods. The allowable methods are as follows:

-- The CUP Method, the Resale Price Method, the Additional Cost Method (similar to the Cost Plus Method), the Profit Split Method, the Transactional Profit Margin Method ("TPMM"), and the Residual Profit Split Method (only in Mexico).

-- TPMM. The TPMM is currently the most frequently used method in Mexico. It is very similar to the Comparable Profits Method under the U.S. regime.

-- CUT Method. The Argentine and Mexican regimes do not include the CUT method, but the CUP method as applied to intangibles is essentially the equivalent.

Article 15 of the AITL provides that when Argentine source income cannot be clearly determined due to the type of transactions or the way a certain business is organized, the AFIP may determine the tax profit subject to taxation through margins or coefficients established for this purpose, based upon results obtained by independent entities that carry on similar activities. It is unclear how this provision would interact with pricing determined under the general transfer pricing rules in cases where the results might conflict.

Chile. Currently, there are no general codified substantive transfer pricing regulations in Chile. However, the SII is empowered to challenge pricing agreed to between a local entity and its foreign related party by applying the following factors:

-- Reasonable return taking into consideration the characteristics of the operation. There is no definition of what "reasonable return" means. In searching for a reasonable return standard, the SII could apply any of the existing methods established by foreign regimes.

-- Production costs plus a reasonable profit margin. This standard is similar to the Cost Plus Method as defined in the American, Mexican, and Argentine regulations.

-- Resale price less a reasonable profit margin. This standard is applicable to prices charged by a foreign-related party to a local entity.

The CITL contains additional provisions to tax the Chilean income of a Chilean permanent establishment (branches or agencies of foreign entities) in all cases in which these entities have not maintained adequate accounting records to accurately determine Chilean source net income. In cases where a Chilean branch or agency (a permanent establishment) of a foreign entity has not maintained adequate accounting records to show Chilean source income, the Chilean regime contains provisions that recompute the taxable income of the permanent establishment by determining the percentage of the parent's net income to its gross receipts or its total assets, and then applying such percentage to Chilean gross receipts or total assets, as the case may be. In no case, however, may taxable income be less than (i) 10% of the Chilean permanent establishment's net assets or (ii) a percentage of the sales made during a given taxable year, determined by taking into account historical records, average percentages obtained through this approach, or average percentages obtained by other taxpayers engaged in similar activities.

Peru. The Peruvian transfer pricing regulations provide for the Cost Plus Method, the Resale Price Method, and the Profit Margin Method (similar to the U.S. Profit Split Method based on contributions). The law allows the government to establish other transfer pricing methods. The definition of these methods are similar to the definitions adopted in the other Latin American jurisdictions. As is the case of the other jurisdictions, the law does not make any distinction between methods to determine taxable income in the case of the transfer of tangibles and intangibles, nor does it provide for the possibility of using any unspecified methods.

Best Method Rule

United States. Under the best method rule, the controlled parties cannot simply choose the method that gives them the most beneficial result. Instead, the best method rule requires that the arm's-length result of a controlled transaction must be determined under the method that, under the facts and circumstances, provides the most reliable measure of an arm's-length result. In determining the most reliable measure of an arm's-length result, the U.S. regulations state that the factors to take into account are the degree of comparability between the controlled transaction (or taxpayer) and any uncontrolled comparables, the completeness and accuracy of the underlying data, the reliability of the assumptions used in the analysis, and the sensitivity of results under the applicable method to deficiencies in the data and the assumptions.

Mexico. The MITL, in contrast to the U.S. regime, does not provide for a best method rule. Based on the current MITL regulations, the potential applicability of all specified methods need not be considered when preparing transfer pricing documentation. The exception to this rule is that taxpayers requesting advance pricing agreements must include specific information regarding the method or methods proposed, including the objective analysis of all the elements that have lead them to conclude that the proposed method is the best method for a given transaction or company.

Chile. The Chilean transfer pricing rules do not include a best method rule. The CITL does not require special reporting or preparation of transfer pricing documentation. Only in those cases in which the SII can show that the pricing agreed between controlled entities does not follow the arm's-length standard can they challenge the respective transactions and assign other pricing, based upon the standards established in the CITL.

Argentina. The Argentine regulations do provide a best method rule. The AITL provides that the best method is the one that best reflects the economic reality of the transaction, to be determined by giving preference to the method that provides the best quality and quantity of information, that requires the least adjustment to the comparables, that best matches the characteristics of the taxpayer's business, and that provides the greatest degree of comparability.

Peru. Although the Peruvian regime does not expressly provide for a best method rule to be complied with by Peruvian taxpayers, the law establishes that the tax authorities are empowered to apply the method that in their view best reflects the economic substance of the transaction. In addition, there are guidelines as to which method and comparables should be used to ascertain the arm's-length price for specific types of transactions:

-- Inventories. The arm's-length price as reflected by the company's third party comparables, or if there are not any, the price agreed to by two unrelated parties under similar circumstances.

-- Fixed Assets. The law provides for two different arm's-length prices depending on whether the fixed assets are frequently traded in the market or not. If frequently traded, the arm's-length price is the same as for inventories. If not, the arm's-length price is the appraisal value determined by an independent expert.

-- Services. (i) The company's third party comparables excluding any transactions entered into with companies located in low tax jurisdictions, (ii) the price obtained from the application of the Cost Plus Method, excluding any transactions entered into with companies located in low tax jurisdictions, and (iii) the price obtained from the application of the Resale Price Method, excluding any transactions entered into with companies located in low tax jurisdictions. For purposes of determining the arm's-length price for services, the regulations establish that comparable transactions are those in which the differences between the transactions or the companies that are being compared do not substantially affect the price or the profit margin or where the existing differences can be eliminated through the use of adjustments.

-- Securities sold over the exchange. The price resulting from transactions over the exchange.

-- Securities not sold in the exchange. In the case of stock, the price assessed by the taxpayer at the time of the transfer, based on the most recent financial statements available that are no older than six months. In all other cases, the price will be determined by an independent appraiser.

Confirmation of Results by Another Method

Under the U.S. regime, if two or more methods produce inconsistent results, the best method rule must be applied to select the most reliable measure of an arm's-length result. However, if the best method rule does not clearly indicate which method should be selected, an additional factor that may be taken into account in selecting a method is whether any of the competing methods produce results that are consistent with the results obtained from the appropriate application of another method.

Unlike the United States, none of Argentina, Mexico, Chile, and Peru requires confirmation of the use of a particular method through the application of a best method rule.

Comparables and Comparability

The concept of comparability is applicable where a controlled transaction is compared to uncontrolled transactions, because uncontrolled transactions are only useful in arriving at an arm's-length price for the controlled transaction if the transactions are truly "comparable." The factors that must be considered in order to evaluate the degree of comparability between controlled and uncontrolled transactions are essentially the same in all of the countries. All regimes refer to factors such as the characteristics of the services or products transacted, functions performed by the parties, risks under-taken, contractual terms and economic conditions in effect, and any special circumstances that should be taken into account.

United States. The U.S. regulations include a detailed description of the relevant definitions, examples, and conditions for the application of each of the relevant comparability factors. For example, in the case of the CUP method, the U.S. regulations specify that the most important comparability factor is the similarity of products. In the case of the Resale Price Method, comparability is particularly dependent on the similarity of functions performed, risks borne, and applicable contractual terms, unless adjustments are made to account for these differences. Other regimes do not provide such detailed guidance.

Argentina, Mexico, and Peru. Mexico and Argentina have each embraced similar comparability standards as the United States, in order to ensure the reliability of each method. Both the Mexican and Argentine systems provide for adjustments when there are differences between comparable transactions or companies. The Argentine regulations include some adjustment mechanisms (to be applied so as to eliminate differences resulting from the application of the comparability standards) that are not specifically included in the Mexican regulations (e.g., payment terms, amounts and volumes of trading, advertising and publicity, intermediary costs, packaging freight and insurance costs, physical nature and other characteristics of the contents, and different dates of the business transactions).

One of the key problems that Argentine, Mexican, and Peruvian taxpayers are facing is the lack of adequate comparables. Taxpayers currently obtain comparables from: (i) internal sources; (ii) the stock exchange; and (iii) public company databases. If no comparables are found in these sources of information, taxpayers are using foreign databases, such as from the United States and Europe, and are making price adjustments to take into account the specific characteristics of their domestic market.

Chile. The Chilean approach is unique in that it is the authorities, and not the taxpayer, who are responsible for the analysis of the different elements of a transaction in order to evaluate the degree of comparability between the controlled transaction and uncontrolled transactions; the taxpayer is not required to collect and maintain documentation on comparables at the time of setting its pricing. The CITL does not include any definition of comparable transactions or comparable entities, nor does it include any rules regarding the way to treat differences in prices or the applicability of adjustments. When defining the authority of the SII to make adjustments, Circular 3 (1998) only makes reference to any similar transactions entered into by independent parties, and to identical or similar profit and resale margins from independent parties, all of which serve as a basis for making comparisons between the controlled and uncontrolled transactions.

If the SII is unable to find adequate domestic comparables (e.g., internal comparables and comparables from independent parties engaged in identical or similar activities), the CITL empowers the SII to use as a reference pricing used in the international market for the same or for similar products or services. In such cases, the SII is using mostly Canadian, Argentine, and Mexican sources. For this purpose, the SII can request information from the National Customs Service, the Central Bank, or any other entity that could have the relevant information.

Secret Comparables

The laws of certain countries allow the use of confidential third-party comparables in transfer pricing audits. Although there is no provision for the use of secret comparables in the United States, Chile, or Peru, the Mexican and Argentine regimes do provide for their use. This raises concerns regarding the confidentiality of pricing and other secret information submitted to the authorities. However, there are Mexican regulations that require that confidential information obtained by the officers of the SAT during transfer pricing procedures remain confidential, and provide for penalties in the case of improper disclosure.

Allocations and Recharacterizations

Each regime empowers its respective tax authority to make allocations (i.e., to adjust the price and reallocate income between the related parties) whenever the transactions entered into between controlled taxpayers do not follow the arm's-length standard.

Collateral Adjustments. The U.S. regulations include provisions that allow for collateral adjustments as a result of allocations by the tax authorities. Collateral adjustments are either correlative allocations (allocations to other related parties), conforming adjustments (where there are internal reallocations or recharacterizations to conform a taxpayer's internal accounts to reflect allocations made by the taxing authorities under the transfer pricing rules) and setoffs (where other transactions during the same taxable year by the party subject to the allocation are taken into account and may serve as a counterbalance or "setoff" to the original proposed allocation amount).

The non-U.S. regimes do not include any description of how and when to carry out collateral adjustments, but do give the regulatory authorities the power to allocate geographic sources of income and make transfer pricing adjustments. In addition, the non-U.S. regimes allow for the recharacterization of certain types of income, including the following:

-- Mexico. Article 66 of the MITL includes a list of conditions that can lead to a recharacterization of interest derived from loans made or secured by related parties to Mexican entities, permanent establishments, or fixed bases, as a deemed dividend.

-- Argentina. The AITL establishes that those transactions entered into by local subsidiaries or permanent establishments opened in Argentina that do not: (i) comply with the arm's-length standard; or (ii) do not keep comprehensive or clear accounting records, will be partially recharacterized. In any of these cases, expense deductions for any excess over market prices will be disallowed to the local subsidiary or permanent establishment.

Arm's-Length Range

Frequently, the application of a method will produce multiple comparables. Under the concept of an arm's-length range, the taxpayer's price will not be subject to adjustment if such price falls within a given range covering a portion of the full range of comparables. This range is generally referred to as the arm's-length range.

United States. In the United States, the arm's-length range falls between the 25th to 75th percentile (the interquartile range) of the full range of comparables. The United States regulations provide that if a controlled transaction falls outside of the arm's-length range, the government may make allocations to adjust the pricing to the median of the interquartile range.

Argentina and Mexico. Argentina and Mexico have also embraced the concept of an interquartile arm's-length range. In cases where the controlled transaction falls outside of the arm's-length range, the adjustment will generally be made to the median of the interquartile range.

Chile and Peru. Chile and Peru do not employ the concept of an arm's-length range.

Certain Transaction-Specific Rules

Financing Transactions

The U.S. regulations apply both to loans and/or advances, as well as to any indebtedness arising in the ordinary course of business from sales, leases, the rendition of services and any other similar extension of credit. The U.S. regulations include specific rules regarding the periods during which interest is not required to be charged on indebtedness arising in the ordinary course of business between related parties from sales, leases, rendition of services and others, when not evidenced by a written agreement.

In Mexico, the transfer pricing rules apply only to money financing transactions and not to indebtedness arising in the ordinary course of business from sales, leases, and the rendition of services. None of the other countries analyzed includes any special transfer pricing rules applicable to interest transactions.

Services

Under the U.S. regime, an arm's-length charge for services rendered by one company group member to another shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts.

However, in the case of services which are not an integral part of the business activity of either the member rendering the services or the member receiving the benefit of the services, the arm's-length charge is deemed to be equal to the costs or deductions incurred with respect to such services by the member or members rendering such services, unless the taxpayer establishes a more appropriate charge.

Where an arm's-length charge for services rendered is determined with reference to costs or deductions and a member has allocated and apportioned costs or deductions to reflect arm's-length charges by employing, in a consistent manner, a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, such method will not be disturbed. The appropriate way to allocate costs or deductions to a member of a controlled company group is by apportioning the full cost among members, not the incremental cost. In other words, even though the marginal cost of providing services to additional members may be low, every member must bear his appropriate share of the full cost of providing the service.

In the case of services provided for the joint benefit of various members of a company group of controlled entities, the allocations among such members shall be made in accord to the relative benefits to the different members intended from the services.

None of the other countries analyzed includes any special transfer pricing rules applicable to service transactions.

Advance Pricing Agreements

An Advance Pricing Agreement ("APA") is an agreement between the taxpayer and the taxing authority that binds the taxpayer to a defined transfer pricing methodology and that provides that if the conditions of the agreement are satisfied, the taxing authority will not subsequently challenge whether the transactions between the taxpayer and a related party covered by the agreement were conducted at arm's length. The APA identifies the taxable entities, transactions, product lines, and time periods that are covered by the agreement. The agreement may be unilateral (involving only the taxpayer and its home jurisdiction's taxing authority), bilateral (i.e., involving the taxpayer, the taxpayer's affiliate, the home and a foreign taxing authority), or multilateral (i.e., involving the taxpayer, the taxpayer's affiliate, the home and more than one foreign tax authority).

Both the United States and Mexico provide for unilateral and bilateral APAs. Bilateral APAs involve the U.S. and Mexican competent authorities in the APA process. With competent authority consideration, the process of reaching an agreement is likely to involve separate and joint conversations between the taxpayer, the IRS, and the Tax Administration Service.

United States. The IRS established its APA program, headed by the APA Director, in 1991 within the Office of the Associate Chief Counsel (International). For each APA, the APA Director appoints a team leader who heads the APA team that includes field personnel and, if the APA is bilateral, a representative from the U.S. competent authority. In 1996, the IRS updated its original procedures with the release of *Rev. Proc. 96-53,* n7 which provides taxpayers with instructions on how to apply for an APA and what to expect in the processing of the case. Since its inception in 1991 through the end of fiscal year 2000, the IRS has concluded over 295 APAs. Roughly one quarter of these APAs have been bilateral.

Mexico. The Mexican government Committee was created in 1998 to approve APA resolutions. The current APA regulations empower the Government Committee to approve APAs for the effective year requested, as well as for one prior year and three subsequent years. However, although forward looking APAs are allowed for in the regulations, most APAs issued to date are for prior years.

Peru. The Peruvian regime allows for the issuance of APAs. As of today, no regulations have been issued.

Argentina and Chile. These regimes do not expressly provide for APAs.

Information and Documentation Requirements

The U.S., Mexican, and Argentine regimes require the taxpayer to keep documentation, in order to substantiate its application of the transfer pricing rules to specific pricing. In all of these countries, the documentation required must be prepared prior to the filing of the return.

Mexico. Mexican taxpayers must have the documentation ready at the time they file their tax return. In addition, the taxpayer will need to conduct a transfer pricing study and provide an opinion by its public accountants that the taxpayer has complied with the formal requirements of the transfer pricing rules.

Argentina. The documentation and information requirements in Argentina are similar but more extensive than in Mexico. The Argentine regime provides that those taxpayers that are subject to the transfer pricing rules must file annual and semi-annual statements on designated forms containing comprehensive information on intercompany transactions. In addition, the taxpayer must file a transfer pricing report with its annual tax return.

Peru. The Peruvian rules require that related and unrelated taxpayers maintain the information and documentation related to the methods used to determine the price of their transactions, indicating the criteria and objective elements that were taken into account.

Chile. There are no special documentation and information requirements in Chile.

Penalties

United States. The regulations contemplate specific penalties for any underpayment attributable to a substantial valuation misstatement pertaining to either a transaction between persons described in the transfer pricing regulations (the transactional penalty) or a net transfer price adjustment (the net adjustment penalty). The penalty is 20% of the underpayment for a substantial valuation misstatement and is increased to 40% in the case of a gross valuation misstatement. The transfer pricing penalty is not imposed, however, on any portion of the penalty base attributable to transactions for which the taxpayer demonstrates reasonable cause and good faith in setting its transfer prices.

None of the other countries specifies fines for transfer pricing adjustments, as such. However, the general penalties for a resulting underpayment of tax may be applicable, as follows:

Mexico. Mexican penalties range from 50% to 100% of the unpaid tax. Mexico provides for an automatic reduction of 50% of the original fines imposed if the taxpayer complies with the documentation requirements.

Argentina. Argentine penalties range from 50% to 100% of the unpaid tax, plus interest. Failure to file the required "declaracio[acute]n jurada" by taxpayers subject to transfer pricing regulations will also be subject to specific fines. The law provides for a reduction of penalties if the taxpayer complies with the information and documentation requirements. In the case of late filing of the tax return, for example, the law provides for an automatic reduction of one third of the original fine if the taxpayer voluntarily (without prior notice from the tax authorities) complies with the requirements.

Chile. Chilean penalties range from 5% to 20% of the unpaid tax, plus interest.

Peru. Peruvian penalties range from 10% to 100% of the unpaid tax, plus interest.

Maquiladoras

A maquiladora is a foreign-owned (generally by U.S. companies) Mexican assembly or manufacturing operation, producing goods mainly for export. Mexican law allows these operations to bring in most of their capital equipment and machinery from abroad. In order to avoid permanent establishment status, which might expose their foreign parents to additional tax liability and double taxation, maquiladoras have the following options available to them:

-- Negotiate an APA with the tax authorities.

-- Fall within a safe harbor whereby the tax profit obtained in a given taxable year represents at least 6.9% of the maquiladora's assets and foreign-owned assets used by the maquiladora or at least 6.5% of total costs and expenses of the maquiladora enterprise, computed under Mexican GAAP, including foreign-owned machinery, equipment, and inventory.

Maquiladoras that comply with the above rules will be eligible for an asset tax waiver on the foreign-owned assets used in the maquiladora operations, provided no sales are made into the Mexican market. Those maquiladoras that sell to the Mexican market must compute the assets tax on foreign-owned assets on a proportionate basis, based on total output and the portion destined for trade in Mexico. In addition, the United States has agreed to accept deductions from income for the payments made to a maquiladora, to the degree that such payments are required to meet the safe harbors set forth above.

However, the question of the appropriate methods to be employed in both unilateral and bilateral maquiladora APAs is one that has recently been the subject of lengthy discussions between the United States and Mexico. As a result of such discussions, Mexican officials have proposed new APA standards that would use the Comparable Profits Method, with return on capital serving as the profit level indicator and with an additional adjustment that would allocate a portion of the return on U.S.-owned assets to the maquiladora.

FORMULARY APPROACH REGIMES (BRAZIL AND VENEZUELA)

The term "formulary approach" should not imply that there is no arm's-length element to the approach. In fact, just as in the arm's-length approach regimes, the formulary approach regimes do rely on arm's-length comparisons between controlled transactions and uncontrolled transactions. However, unlike the approach employed in the United States, Argentina, Mexico, and Chile (as well as other "arm's-length approach" countries), the formulary approach regimes rely heavily on mandated profit margins that are subtracted or added to the outcome of uncontrolled transaction comparables. n8

Transactions and Parties Subject to Regulation

As in the case of the arm's-length approach regimes, the transfer pricing rules in Brazil and Venezuela are generally applicable to all imports or exports of goods, services, and rights between related parties and to the respective taxpayers of Brazil and Venezuela carrying out transactions with entities located in countries considered to be low tax jurisdictions. (See Exhibits 4 and 5 for the lists of low tax jurisdictions in Venezuela and Brazil, respectively.) There are some differences, however, particularly with regard to the application of the transfer pricing regulations to certain types of transactions and with regard to the definition of a related party.

Transactions

Brazil. The Brazil transfer pricing rules do not apply to payments by a Brazilian resident of royalties or fees for technical, scientific, administrative, and other similar kinds of services when the agreements providing for the payments are registered with the National Institute of Intellectual Property (the national patent and trademark authority). In addition, the payments may not exceed the specific limit (of up to 5% of the net sales of the Brazilian resident) set by law for the applicable industry of the registrant. Fees by a Brazilian resident for technical, scientific, administrative, and similar services that are not registered are subject to the general transfer pricing regulations.

The Brazilian regime provides for special rules regarding exports made to related parties with the purpose of entering new markets. These transactions will not be subject to scrutiny under the transfer pricing rules provided that: (i) the goods and services exported were not previously sold in the country of destination by the exporter or any related party; (ii) the goods and services exported are sold in the country of destination for less than other identical or similar goods and services; and (iii) an export plan submitted to the Brazilian tax authorities is previously approved, in which, among other specific conditions, it is demonstrated that the related party in the country of destination is not deriving profits from such transactions.

Venezuela. As in the case of Brazil, the Venezuelan transfer pricing rules do not apply to payment of royalties and fees for technical, scientific, administrative, and other similar kinds of services. Additionally, the law disallows the deduction of fees for technical assistance or technological services paid to companies outside Venezuela if such services were then rendered or could be rendered by companies in Venezuela. The deduction is not disallowed if the services are provided by permanent establishments of foreign companies or by their domestic affiliates in Venezuela.

Parties

In both the Brazilian and the Venezuelan regimes the definition of related parties is generally broader than the definition endorsed by the other Latin American countries (other than Argentina). In addition to the typical related party definition based on common control, the transfer pricing regulations in these two countries treat as a related party: (i) any party who, in relation to another party, has exclusive rights as its agent, distributor, licensee, royalty owner, or concessionaire for the purchase or sale of goods, services, or rights; and (ii) a nonresident individual or company associated with a Brazilian or Venezuelan company in a consortium or condominium, as this term is defined under Brazilian or Venezuelan law respectively.

There is an important difference in connection with the equity ownership that will lead to related company treatment: Venezuela uses a 50% ownership threshold, while Brazil uses a 10% ownership threshold.

Methods

As in the case of those countries following the arm's-length approach, in Brazil and Venezuela a controlled transaction is tested by comparing the pricing, terms, and other characteristics of the transaction in question against the pricing, terms, and other characteristics of uncontrolled transactions. Both regimes provide for different methods for import and export transactions, but in contrast to countries following the arm's-length approach, under the formulary approach, the methods require that fixed profit margins be deducted or added to the uncontrolled figures. In the case of Brazil, these margins are fixed by law and, in the case of Venezuela, by government regulations. In March of 2001, the Venezuelan government released profit margin guidelines applicable on a sector-by-sector basis.

Imports

The Brazilian and Venezuelan transfer pricing regulations provide for the following import related methods:

-- Comparable Uncontrolled Price Method ("CUP"). This method, which is based on OECD standards, requires the calculation of the average price of identical or similar goods, services, or rights in the internal market or in the markets of other countries in transactions with similar payment conditions. The Brazilian CUP for imports is called the Comparable Independent Price Method ("PIC").

-- Resale Price Less Profits Method. This method requires the calculation of the average amount of the resale prices of comparable goods, services or rights, produced by the controlled party, less: (i) discounts granted not subject to conditions; (ii) sales taxes (and in Brazil, social contributions levied on gross income derived from sales); (iii) commissions and broker fees paid; and (iv) the mandated profit margin. In the case of Brazil, domestic companies have to deduct a 60% profit margin calculated on the resale price, if the imported goods are directly used by the Brazilian company for the production of other goods or services, or a 20% profit margin calculated on the resale price in all other cases.

-- Production Cost Plus Profits Method. This method requires the calculation of the average cost of production of identical or similar goods, services, or rights, produced by the controlled party or by independent parties in the country of original production, plus: (i) the export taxes of the country of origin and; (ii) in the case of Brazil, a 20% profit margin.

-- Transactional Profit Margin Method. This method, which is also based on OECD standards and is only applicable in Venezuela, consists of determining, in transactions between related parties, the profit of the operation that comparable companies or independent parties would have obtained in comparable operations, based on profitability factors that take into account variables such as assets, sales, costs, expenses, or cash flows.

Exports

The Brazilian and Venezuelan regulations provide for the export-related methods listed below. The earnings out of export sales will be determined by the methods mentioned below, should the average price obtained from export sales in transactions entered into with related parties be lower than 90% of the average price of the sale of the same goods, services, or rights in the Brazilian or Venezuelan market under similar conditions between unrelated parties, once the allowed adjustments are made.

-- Comparable Uncontrolled Price Method ("CUP"). This method, which is based on OECD standards, consists of the determination of the average price of the exports made by the same company for other clients, or by another national exporter of identical or similar goods, services or rights, during the same tax year in similar payment conditions. The Brazilian CUP for exports is called the Exports Sales Price Method ("PVEX").

-- Wholesale Price in the Destination Country Less Profits Method. This method consists in calculating the average sales price of identical or similar goods applied in the wholesale market of the country of destination, with similar payment conditions, less: (i) the taxes included in the price, as applied in the country of destination; and (ii) in the case of Brazil, a 15% profit margin on the wholesale sales price.

-- Retail Price in the Destination Country Less Profits Method. This method consists in calculating the average sales price of identical or similar goods, applied in the retail market in the country of destination, with similar payment conditions, less: (i) the taxes included in the sales price, applied in the country of destination; and (ii) in the case of Brazil, a 30% profit margin on the retail sales price.

-- Cost Plus Taxes and Profits Method. This method consists in calculating the average cost of purchase or of production of goods and services or rights which are exported plus: (i) the taxes charged in the importing country related to the activity; and (ii) in the case of Brazil, a 15% profit margin over the total cost plus taxes.

-- Transactional Profit Margin Method. This method, which is based on OECD standards, and which is only applicable in Venezuela, consists in calculating in transactions between the related parties the operating profit that would have been obtained by comparable companies or independent parties in comparable operations based on profit factors that take into account variables such as assets, sales, costs, expenses, or cash flows.

The Venezuelan transfer pricing rules allow the use of other profit margins, provided that they are based on publications, market research, or reports prepared in compliance with accepted methods of appraisal and are contemporaneous with the tax period in question.

Brazilian rules provide for the use of a consultation process through which companies can ask authorization to use margins different from those originally designated. The Finance Ministry can change such margins per sector, segment, or individually.

Taxpayer Convenience Rule

Unlike some of the arm's-length approach countries, neither the Brazilian nor the Venezuelan regimes contain a best method rule, nor do they provide rules related to confirming the application of methods. Both regimes provide a taxpayer convenience rule: for import-related methods, if more than one method is used the highest value obtained will be allowed as a deduction, but the deduction may not exceed the purchase price of the imported products. The portion of the costs and deductions that exceed this acquisition value shall be added to the net income for income tax purposes.

In the case of the export-related methods, the transfer pricing laws of both countries provide that where more than one method is used the lowest value will be accepted, provided that if such amount exceeds the value registered by the taxpayer in its invoice, the excess will be added back to determine the taxable income.

Comparability Standards

As in the case of the arm's-length approach regimes, the formulary approach regimes also embrace comparability standards. The factors that must be considered in order to evaluate the degree of comparability between controlled and uncontrolled transactions are essentially the same in Brazil and Venezuela, although the Brazilian rules are more extensively developed than those of Venezuela.

Under the Brazilian regime, two or more goods are similar when they: (i) are of the same type and have the same function; (ii) may substitute each other mutually in their intended function; and (iii) have equivalent specifications.

Brazil allows adjustments when differences between comparable transactions or companies exist. In contrast to the other Latin American systems, Brazil includes a list of the adjustments allowed and detailed instructions on how to apply each adjustment both in the case of import costs and export income.

Determination of Comparables

Each regime provides guidelines regarding the type of comparables that are permitted. In the case of comparable costs, pricing, and profit margins, comparables may be obtained from:

-- Internal company documents.

-- Government publications or reports of the country of origin on the seller or purchaser or declaration from the tax authorities if the country has a tax treaty in force with Brazil or Venezuela, as the case may be.

-- Market research performed by a recognized institution or technical publisher.

-- In the case of Brazil, official reports from foreign countries, studies prepared by independent third parties, and research by the OECD and the World Trade Organization, as well as data published by commodities exchanges.

For import transaction methods, both the Venezuelan and the Brazilian laws expressly provide that for purposes of the application of the Resale Price and the CUP methods, only unrelated party prices will be accepted as comparables. The rules do not disallow the use of related party prices in the case of the Production Cost Plus Profits Method.

For export transaction methods, both the Venezuelan and the Brazilian regulations expressly provide that for purposes of the application of the export-related methods, only prices between the taxpayer and unrelated parties or between domestic companies and unrelated parties will be allowed as comparables.

Special Transfer Pricing Rule for Interest

Both Brazil and Venezuela impose limits related to interest paid or credited to related parties: interest paid or credited to related entities can only be deducted from the taxable income up to the LIBOR for six-month dollar deposits increased by an annual spread, as set forth below. A resident lender shall recognize the amount determined above as income in an outbound intercompany loan.

In the case of Brazil, this rule only applies for related-party loan agreements not registered with the Central Bank. If the agreement is registered with the Central Bank, the interest rate provided in the contract will be accepted.

The current annual spread for Venezuela is LIBOR plus 7%, the annual spread for Brazil is LIBOR plus 3%.

Arm's-Length Range

As is the case for most other Latin American countries, the Brazilian regime also takes into account the likelihood that the application of a certain transfer pricing method may yield more than one result. Accordingly, when the variance from the taxpayer's registered price on import or export documents is not greater than 5%, the registered price used by the taxpayer will be acceptable. In such case, no price adjustment will be required for income tax purposes.

The Venezuelan regime has not yet embraced the concept of an arm's-length range.

Safe Harbor

The Brazilian regime provides three safe harbor rules with respect to export-related transactions.

Under the first safe harbor, there will be no transfer pricing adjustment when the average export price is at least 90% of the average sale price in Brazil for the same products and under similar payment conditions.

Under the second safe harbor, Brazilian residents that recognize pre-tax book profits from export sales to related companies equivalent to a minimum of 5% of the total gross income from exports may rely on the actual prices recorded in the books of the company for purposes of the transfer pricing rules.

Under the third safe harbor, Brazilian residents that recognize pre-tax book profits derived from export sales equivalent to 5% or less of the total pre-tax net income are also allowed to rely on its actual prices.

The new regulations issued by the Brazilian government in March of 2001 establish that, for purposes of calculating the 5% limit provided in the third safe harbor rule, all sales to individuals and entities located in low tax jurisdictions will be taken into account. The new regulations also provide that the 5% safe harbor does not apply with respect to transactions entered into with entities located in low tax jurisdictions.

Venezuela only provides the 90% safe harbor rule mentioned above.

Information and Documentation Requirements

Brazilian residents have to report information about imports and exports on their tax returns, grouping transactions according to their nature (i.e., characteristics of the goods and services being imported or exported), in order to substantiate their application of the transfer pricing rules.

There are currently no reporting requirements in Venezuela.

Penalties

As is the case of the other Latin American countries, Brazil does not provide specific fines for transfer pricing adjustments, as such. However, if a transaction does not comply with transfer pricing regulations, the general penalty for a resulting underpayment of tax is applicable. Under the current regulations, the tax authorities may assess additional taxes, interest equivalent to the interest paid by the federal government ("SELIC") for its debt (currently approximately 19% per annum), plus a 75% penalty.

In the case of Venezuela, if a transaction does not comply with the transfer pricing methodologies, the tax authorities may assess additional taxes, interest at a rate equal to the maximum rate charged by banks in each of the months involved (increased by a certain percentage), plus fines that will vary depending on the nature of the violation.

Neither Brazil nor Venezuela provide any specific penalties for noncompliance with documentation requirements. However, the lack of proper documentation may allow the authorities to make assessments based on other available documents using the methods provided by law.

Advance Pricing Agreements

Brazil makes no provision for Advance Pricing Agreements. The Brazilian tax regime does make provision for advance letter rulings. Some practitioners believe that such advance letter rulings could be used in the transfer pricing arena to provide taxpayers certainty as to whether their transfer pricing will be respected by the authorities. Even if such rulings could be obtained, it is doubtful that they would provide all of the protections, including guarantees of confidentiality, that would be provided within a formal APA program.

Venezuela, on the other hand, provides for unilateral and bilateral APAs. Taxpayers may request an APA from the tax authorities before entering into transactions with related parties to cover one or more transactions, each separately considered. Additionally, nonresidents or non-domiciled parties intending to operate in Venezuela through either a permanent establishment or a Venezuelan related party may also request APAs from the Venezuelan tax authorities. The methods set forth in the APAs may differ from those set forth in the Venezuelan income tax law, provided that they are based on internationally accepted methodologies.

Exhibit 1
Low Tax Jurisdictions (Mexico)

Albania
Andorra
Angola
Anguilla
Antigua
Aruba
Ascension Island
Azores
Bahamas
Bahrain
Barbados
Belize
Bermuda
Brunei
Campione D'Italia
Canary Islands Special Zone
Canary Islands
Cape Verde
Cayman Islands
Christmas Island
Cocos (Keeling) Islands
Cook Islands
Costa Rica
Cyprus
Djibouti
Dominica
Dutch Antilles
Falkland Islands
French Polynesia
Gibraltar
Greenland
Grenada
Guam
Guernsey, Jersey, Alderney, Great Isle, Sark, Herm, Little Sark, Brechou, Jethou, Lithou (Channel Islands)
Guyana
Honduras
Hong Kong
Isle of Man

Maldives
Malta
Marshall Islands
Mauritius
Monaco
Montserrat
Nauru
Nevis
Niue Island
Norfolk Island
Oman
Ostrava Free Trade Area
Pacific Islands
Palau
Panama
Pitcairn Islands
Puerto Rico
Qatar
Qeshm Island
Saint Helena
Saint Kitts and Nevis
Saint Lucia
Saint Pierre and Miquelon
Saint Vincent and the Grenadines
Samoa (American)
Samoa (Western)
San Marino
Seychelles
Solomon Islands
Sri Lanka
Svalbard Archipelago
Swaziland
Tokelau
Tonga
Trieste
Trinidad and Tobago
Tristan da Cunha Group
Tunisia

Exhibit 1
Low Tax Jurisdictions (Mexico)

Jordan
Kiribati
Kuwait
Labuan Island
Liberia
Liechtenstein
Luxembourg n9
Macao
Madeira

Turks and Caicos Islands
Tuvalu
United Arab Emirates
Uruguay
Vanuatu
Virgin Islands (UK)
Virgin Islands (U.S.)
Yemen

Exhibit 2
Low Tax Jurisdictions (Argentina)

Albania
Andorra
Angola
Anguilla
Antigua
Aruba
Ascension Island
Azores
Bahamas
Bahrain
Barbados
Belize
Bermuda
Brunei
Campione D'Italia
Cape Verde
Cayman Islands
Channel Islands
Christmas Island
Cocos (Keeling) Islands
Cook Islands
Cyprus
Djibouti
Dominica
Dutch Antilles
French Polynesia
Gibralter
Greenland
Grenada
Guam
Guyana
Hong Kong
Isle of Man
Jordan
Kiribati
Kuwait
Labuan Island
Liberia
Liechtenstein
Luxembourg
Macao
Madeira
Maldives
Malta
Marshall Islands
Mauritius
Monaco
Montserrat
Nauru
Nevis
Niue Island
Norfolk Island
Oman
Ostrava Free Trade Area
Pacific Islands
Palau
Panama
Pitcairn Islands
Puerto Rico
Qatar
Qeshm Island
Saint Helena
Saint Kitts and Nevis
Saint Lucia
Saint Pierre and Miquelon
Saint Vincent and the Grenadines
Samoa (American)
Samoa (Western)
San Marino
Seychelles
Solomon Islands
Sri Lanka
Svalbard Archipelago
Swaziland
Tokelau
Tonga
Trieste
Trinidad and Tobago
Tristan da Cunha Group
Tunisia
Turks and Caicos Islands
Tuvalu
Uruguay (Regime Applicable to Financial Corporations)
United Arab Emirates
Vanuatu
Virgin Islands (UK)
Virgin Islands (U.S.)
Yemen

Exhibit 3

Low Tax Jurisdictions (Peru)

Alderney
Andorra
Anguilla
Antigua
Aruba
Bahamas
Bahrain
Barbados
Belize
Liberia
Liechtenstein
Luxembourg
Madeira
Maldives
Marshall Islands
Monaco
Montserrat
Nauru

Bermuda
Cayman Islands
Cook Islands
Cyprus
Dominica
Dutch Antilles
Gibraltar
Grenada
Guernsey
Hong Kong
Isle of Man
Jersey
Labuan Island
Niue Island
Panama
Saint Kitts and Nevis
Saint Vincent and the Grenadines
Samoa (Western)
Turks and Caicos Islands
Virgin Islands (UK)
Virgin Islands (U.S.)
Saint Lucia
Seychelles
Tonga
Vanuatu

Exhibit 4
Low Tax Jurisdictions (Venezuela)

Albania
Andorra
Angola
Anguilla
Antigua
Aruba
Ascension Island
Bahamas
Bahrain
Belize
Bermuda
Botswana
Brunei
Cameroon
Campione D'Italia
Canary Island Special Zone
Cape Verde
Cayman Islands
Channel Islands
Christmas Island
Cocos (Keeling) Islands
Cook Islands
Costa Rica
Cyprus
Djibouti
Dominica
Dominican Republic
Dutch Antilles
El Salvador
Falkland Islands
French Polynesia
Gabon
Gibraltar
Greenland
Grenada
Guam
Guatemala
Guinea
Guyana
Honduras
Luxembourg
Macao
Maldives
Malta
Marshall Islands
Mauritius
Monaco
Montserrat
Morocco
Namibia
Nauru
Nevis
Nicaragua
Niue Island
Norfolk Island
Oman
Ostrava Free Trade Area
Pacific Islands
Palau
Panama
Paraguay
Pitcairn Islands
Puerto Rico
Qatar
Qeshm Island
Saint Kitts
Saint Pierre and Miquelon
Saint Vincent and the Grenadines
Samoa (American)
Samoa (Western)
San Marino
Santa Helena
Senegal
Seychelles
Solomon Islands
South Africa
Sri Lanka
Svalbard Archipelago
Swaziland
Tokelau

Exhibit 4
Low Tax Jurisdictions (Venezuela)

Hong Kong	Tonga
Isle of Man	Tristan da Cunha Group
Ivory Coast	Tunisia
Jamaica	Turks and Caicos Islands
Jordan	Tuvalu
Kiribati	United Arab Emirates
Kuwait	Uruguay
Labuan Island	Vanuatu
Lebanon	Virgin Islands (UK)
Liberia	Virgin Islands (U.S.)
Libya	Yemen
Liechtenstein	Congo (Zaire)
Lithuania	Zimbabwe

Exhibit 5
Low Tax Jurisdictions (Brazil)

Andorra	Liechtenstein
Anguilla	Madeira
Antigua	Malta
Bahamas	Marshall Islands
Bahrain	Mauritius
Barbados	Monaco
Belize	Montserrat
Bermuda	Nauru
Cayman Islands	Niue Island
Channel Islands	Panama
Cook Islands	Saint Kitts and Nevis
Costa Rica	Saint Lucia
Cyprus	San Marino
Djibouti	Saint Vincent and the Grenadines
Dominica	Samoa
Dutch Antilles	Seychelles
Gibraltar	Tonga
Grenada	Turks and Caicos Islands
Isle of Man	Vanuatu
Labuan Island	Virgin Islands (UK)
Liberia	Virgin Islands (U.S.)

FOOTNOTES:

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n5 Of the countries analyzed, Mexico and the United States are the only members of the OECD.

n6 The principal statutory and regulatory sources of the transfer pricing rules for the arm's-length approach countries are as follows. Argentina: Articles 8, 14, 15, 129, and 130 of the Argentine Income Tax Law (Law 20,628); Articles 10, 11, 19, 20, and 21 of the Decreto Reglamentario (Decree 1344); General Resolution 1122, 2001. Chile: Article 38 of the Chilean Income Tax Law; Circular 61 of 1997; Circulars 3 and 57 of 1998. Mexico: Articles 64-A, 65, 65-A, and 66 of the Mexican Tax Law; Articles 2.11.3, 2.12.2, 3.10.1, and 3.33.1 through 3.33.7 of the Resolucio[acute]n Miscelanea. Peru: Article 32 of the Peruvian Income Tax Law; Articles 19, 19-A, 19-B, and 24 of the Reglamento. United States: Internal Revenue Code § 482; Regs. §§ 1.482-1 through 1.482-8.

n7 *1996-2 C.B. 375.*

n8 The principal statutory and regulatory sources of the transfer pricing rules for the formulary approach countries are as follows. Brazil: Articles 18 through 24 of Law 9.430 of 1996; Instruc[cedil]a[tilde]o Normativa 32 of March 2001. Venezuela: Articles 112 to 117 of the Venezuelan Income Tax Law; Resolution 401of 2001, and the Organic Fiscal Code.

n9

Luxembourg will be considered a Low Tax Jurisdiction until the income tax treaty between Mexico and Luxembourg enters into force.

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