ISSUING DEPARTMENT Regulatory Direct Taxes Department	**CIRCULAR N°10.-** 300338.2024 GE
ADMINISTRATIVE PUBLICATIONS SYSTEM	**DATE: JANUARY 30, 2025.**
SUBJECT: It Provides instructions on the modifications introduced by Law No. 21.713 to the Article 41 E of the Income Tax Law. It cancels Circular No. 29 of 2013.	**REFERENCE:** Article 41 E of the Income Tax Law, contained in Article 1° of the Decree Law. No. 824 of 1974; Law No. 21.713, published in the Official Gazette on October 24, 2024.

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I INTRODUCTION

Law N° 21.713 was published in the Official Gazette of October 24, 2024, which establishes rules to ensure compliance with tax obligations within the pact for economic growth, social progress, and fiscal responsibility (hereinafter, the "Law").

Among other matters, it introduced several amendments to the transfer pricing rules contained in Article 41 E of the Income Tax Law.

Essentially, and in accordance with these amendments, the "arm's length principle"[1] , was expressly incorporated whereby transactions carried out by taxpayers domiciled, resident or established in Chile with related parties abroad, including corporate reorganizations or restructurings, must be carried out at normal market prices, values or returns, which are deemed to be those that independent parties have or would have agreed or obtained in comparable transactions and circumstances.

In addition, new rules were incorporated to clarify how to make transfer pricing adjustments, expressly including the use of the interquartile range, as well as a new section on self-adjustment of prices, among other important modifications.

Considering that the amendments introduced by the Law have substantially altered the structure of Article 41 E of the Income Tax Law, it has been deemed necessary to repeal the instructions previously issued through Circular No. 29 of 2013, integrating in a single systematic body the updated instructions on the subject in this circular.

It should be added that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereinafter the OECD Guidelines or the Guidelines) have been updated for the last time in 2022, whose text is a reference not only for the countries that are part of the OECD, but also for most of the countries in which this matter is regulated, so they are also cited in this circular.

The updated text of the amended standards is included in the document attached to this circular.

II INSTRUCTIONS ON THE SUBJECT

1. POWERS GRANTED TO THIS SERVICE

With respect to the operations, reorganizations or corporate or business restructurings referred to in Article 41 E (hereinafter, generically "operations"), instructed in this circular, this Service is empowered to:

a) To challenge fixed prices, values or returns.

b) Establish prices, values or returns if they have not been set.

The exercise of these powers requires the concurrence of the following elements:

i) The existence of cross-border operations;

ii) That such cross-border transactions are between related parties; and, that

[1] The arm's length principle is an international standard that is expressly recognized in the transfer pricing guidelines developed by the OECD. This principle requires that cross-border transactions between related parties have been carried out at normal market prices, values or returns. This principle is the one with the greatest international consensus and the one recommended by the OECD, which reflects the importance of its enshrinement in our domestic regulations.

iii) The prices, values or returns of the referred cross-border transactions do not comply with the arm's length principle, that is, they have not been carried out at normal market prices, values or returns.

2. CROSS-BORDER OPERATIONS IN WHICH THIS SERVICE MAY EXERCISE ITS POWERS

This Service may exercise its powers in the following situations:

2.1. Cross-border operations

The Service may review cross-border transactions carried out by taxpayers when the following two conditions are copulatively verified:

2.1.1. The cross-border operation has been carried out between the taxpayer domiciled, resident or established in Chile, with related parties located abroad; and,

2.1.2. The prices, values or returns of the operation do not comply with the arm's length principle; that is, they have not been adjusted or are different from normal market prices, values or returns, or those that could be set by this Service if none have been set by the taxpayer.

Such circumstances must be verified at the time the transaction is entered into and the price, value or profitability of the transaction is established.

On the other hand, for these purposes it is understood by:

2.1.3. "Cross-border transactions" refers to any transaction carried out between a taxpayer domiciled, resident or established in Chile, with another party (or parties) that is not domiciled, resident or established in Chile and provided that there is a relationship between both parties [2].

This is a broad term and is intended to apply the arm's length principle to all types of transactions between related parties, including those involving the transfer all types of functions, assets or risks.

2.1.4. A taxpayer is established in Chile when a natural person with no domicile or residence in Chile and corporations or legal entities incorporated outside the country have in Chile any kind of permanent establishments, such as branches, offices, agents or representatives under the terms provided in Article No 2, No 12, of the Income Tax Law [3].

2.2. Reorganizations or corporate or business restructurings carried out by taxpayers domiciled, resident or established in Chile.

This Service may review corporate or business reorganizations or restructurings carried out by taxpayers domiciled, resident or established in Chile when the following two conditions are copulatively verified:

2.2.1. By virtue of such operations, there has been under any title or even without one, the transfer from Chile to a foreign country or vice versa of functions, assets, risks, goods and/or activities susceptible of generating taxable income in the country, or the termination of conventions, agreements or existing contracts or substantial modification thereof have been carried out; and,

2.2.2. If there has been a transfer of functions, assets, risks, goods, and/or activities, or if existing conventions, agreements, or contracts are terminated or substantially modified, it shall be deemed that the respective reorganization or restructuring does not comply with the arm’s length principle.

[2] For the purposes of this Circular, unless expressly stated otherwise, it will be understood that there is a relationship in the cases established in No. 1 of Article 41 E of the Income Tax Law, situations that are analyzed in No. 3 below of this Circular.

[3] No. 12 of Article 2 of the Income Tax Law provides, in the pertinent part, that "permanent establishment" means a place that is used for the permanent or habitual conduct of all or part of the business, line of business or activity of a person or entity without domicile or residence in Chile, whether or not used exclusively for this purpose, such as offices, agencies, facilities, construction projects and branches. A permanent establishment will also be considered to exist when a person or entity without domicile or residence in Chile carries out activities in the country represented by an agent and in the exercise of such activities said agent habitually concludes contracts proper to the ordinary business of the principal, plays a principal role that leads to their conclusion or negotiates essential elements of them without being modified by the person or entity without domicile or residence in Chile.

3. RELATIONSHIP STANDARDS

One of the requirements for applying transfer pricing rules is that the parties to the transactions are related to each other. For these purposes, the Income Tax Law -in Article 41 E, No. 1- defines what should be understood as related or linked[4], setting out the various scenarios under which a relationship exists.

These hypotheses were partially modified by the Law, eliminating the situation that alluded to natural persons who were spouses, civil partners or who were related by blood or affinity, and the relationship rule is specified in the case of transactions with parties resident, domiciled, established or incorporated in a country, territory or jurisdiction referred to in article 41 H of the Income Tax Law.

According to the current wording, the taxpayer domiciled and resident in Chile is considered to related to the counterparty abroad in the following cases:

3.1. When one of the parties participates directly or indirectly in the management, control, capital, returns or income of the other;

3.2. When the same person or persons participate directly or indirectly in the management, control, capital, returns or income of both parties, being all of them related to each other;

3.3. When the transactions are carried out between an agency, branch or any other form of permanent establishment with its parent company; with other permanent establishments of the same parent company; with related parties of the latter and with permanent establishment of those related parties;

3.4. When, whether or not there is a direct or indirect relationship between the parties, the transactions are carried out with parties resident, domiciled, established or incorporated in a country, territory or jurisdiction referred to in Article 41 H of the Income Tax Law, regardless of whether or not they are part of the same corporate group.

Consequently, for this ground to be configured, it is irrelevant who the other contracting party is, without the need for it to belong directly or indirectly to the same corporate group. It is only sufficient that the operations are carried out with a resident, domiciled, established or incorporated in a country, territory or jurisdiction referred to in article 41 H of the Income Tax Law.

3.5. Between the intervening parties, when a party carries out one or more operations with a third party that, in turn, carries out, directly or indirectly, with a related party of that party, one or more operations similar or identical to those carried out with the first party, regardless of the capacity in which such third party and the parties intervene in such operations.

4. CONCEPT OF NORMAL MARKET PRICES, VALUES OR RETURNS

Normal market prices, values or returns are understood to be those that have been or would have been agreed or obtained by independent parties in comparable transactions and circumstances.

Transactions between related parties and between independent parties are comparable if there is no difference that materially affects the factor chosen to apply the methodology (e.g. price, value or profitability) or if it is possible to make the necessary adjustments to eliminate the material effects caused by such differences.

In order to carry out a comparability test, a series of factors contained in the OECD Transfer Pricing Guidelines, which represent international practice in this area, should be considered, which, in general, clarify that the search for comparables is only one part of the comparability analysis and should not be confused with the analysis itself, nor should it be disassociated from it.

Thus, the search for information on transactions between potentially comparable independent parties depends on the prior analysis of the related party transactions carried out by the taxpayer and the characteristics with economic relevance or the relevant comparability factors, since it must be considered that each case and each taxpayer have particular characteristics that must be analysed in accordance with its economic reality.

It is important to note that the transfer pricing analysis seeks a reasonable approximation of what would be an arm's length result based on reliable information in each particular case.

[4] Related parties, related or associated parties is the term used internationally to define to which taxpayers transfer pricing rules may be applied. Although the OECD has a general concept, each jurisdiction must define in its regulations what is meant by this concept.

5. GENERAL CONSIDERATIONS REGARDING THE ANALYSIS OF RELATED PARTY TRANSACTIONS

Analysis of the related party transaction

According to the OECD Guidelines, related party transactions are those carried out between two companies that are associated with each other[5]. As already indicated, each jurisdiction defines what is to be understood by related parties and in our regulations they are found in Article 41 E, No. 1 of the Income Tax Law.

In order to perform the transfer pricing analysis it is essential to identify the commercial or financial relationships between the related companies, as well as the conditions and circumstances with economic relevance of such relationships in order to precisely define the related transaction, for which the following exhaustive elements should be considered:

a) The contractual terms of the transaction.

b) The functions performed by each of the parties to the transaction, considering the assets used and the risks assumed, by the related parties.

c) The characteristics of the goods transferred or services rendered.

d) The economic circumstances of the parties and of the market in which they operate.

e) The business strategies pursued by the parties.

After the analysis of the related transaction, and when it has been precisely defined, it must be verified that they comply with the arm's length principle[6].

5.1. Comparability analysis

The comparability analysis constitutes the core of the application of the arm's length principle and in general terms is based on a comparison of the terms of a related transaction with those that would be agreed between independent companies carrying out a comparable transaction in comparable circumstances.

The way to carry out this analysis can be summarized as follows[7]:

a) Determination of the years included in the analysis.

b) Analysis of the taxpayer's circumstances as a whole. For this purpose, an analysis of the sector, economic factors, regulations and all factors that may affect the taxpayer's environment must be performed.

c) Understand the transaction or related transactions under analysis, considering the functional analysis that allows determining the most appropriate method for the circumstances of the case, selecting the party under analysis, defining the financial indicator to analyze the transaction (in the case of using a method based on the results of operations), and identifying the important comparability factors to be considered.

d) Regarding the selection of the party to be analyzed, when applying any of the following methods: cost plus, resale price method or transactional net margin method, it must be defined whether the party located in Chile or abroad will be analyzed. The choice must be consistent with the functional analysis of the operation and as a general rule it is suggested that the part to be analyzed is the one to which the Transfer Pricing method can be applied with greater reliability, information is available and it is the one for which there are more solid comparables.

e) Review existing internal comparables, if any.

f) Determination of external comparables and sources of information when necessary.

g) Selection of the most appropriate transfer pricing method.

[5] Glossary OECD Guidelines year 2022.

[6] For more information see the OECD 2022 Guidelines. Chapter I of the Guidelines provides a guideline for identifying commercial or financial relationships between associated enterprises and for precisely defining the controlled transaction, while Chapters II and III provide guidelines for verifying compliance with the arm's length principle.

[7] For more information see paragraph 3.4 of the OECD 2022 Guidelines.

h) Identification of potential comparables.

i) Determination and application of comparability adjustments if necessary. It must be kept in mind that these should only be applied when the differences genuinely affect the comparison, since as established in the OECD Guidelines, the need to make numerous adjustments or very significant adjustments may indicate that the transactions carried out by the third party are not sufficiently similar to be considered comparable. In line with the above, each adjustment should be relevant, quantified and supported by the taxpayers.

j) Determination of the price, value or arm´s length return.

5.2. Evaluation of related-party transactions

In order to achieve the most accurate possible approximation possible to the arm's length conditions, the analysis should be conducted on a transaction-by-transaction basis. however, it is common that the related-party transactions are so closely linked to each other, or their continuity is so marked, that they cannot be adequately valued separately. Ideally the related-party transactions should be analyzed by segments; that is, specific activities, by product lines, contracts, transactions with related parties and independent third parties, etc., but it is a common occurrence that this segmentation cannot be carried out in a relatively accurate manner, so an overall analysis is applied rather than an individual one, but it is a common occurrence that this segmentation cannot be carried out in a relatively precise manner and therefore an overall analysis is applied rather than an individual one, which must be determined in each specific case, in accordance with the information available.

6. TRANSFER PRICING METHODS

The Service, for the purposes of challenging the respective prices, values or returns, or determining them in cases where none have been established, in accordance with Article 41 E of the Income Tax Law, must summon the taxpayer [8] to provide all the background information necessary to prove that its transactions with related parties have been carried out at normal market prices, values or returns. For this purpose, the transfer pricing methods developed in this section have been established.

In this regard, it should be noted that Article 41 E of the Income Tax Law establishes the best method rule, which implies that the taxpayer must use the most appropriate method, considering the characteristics and circumstances of the case.

For this purpose, the advantages and disadvantages of each method must be evaluated; their applicability in relation to the type of operations and the circumstances of the case; the availability of relevant information; the existence of comparable operations; the selection of the party analyzed; the number of years of financial information used; comparability ranges and adjustments and any other background information deemed relevant.

The best method rule implies that there is no priority among them, but that according to the particularities of each case, the most reliable method should be applied, considering the elements already described in this paragraph.

In order to select and apply the most appropriate method to the circumstances of the case, it is necessary to have information on the comparability factors in relation to the reviewed related party transaction and, in concrete, on the functions, assets and risks of all parties involved in the transaction, including the related company or companies located abroad.

6.1. Comparable uncontrolled Price method

This method consists of determining the normal market price or value of the goods or services, considering the price or value that independent enterprises have or would have agreed to in comparable transactions and circumstances.

The price of goods or services transferred in a transaction between associated enterprises is compared with the price of goods or services transferred in a transaction between independent enterprises, under comparable circumstances. The existence of differences between these two prices may be indicative that the conditions agreed by the associated enterprises do not comply with the principle of normal market price or value, which would entitle the Service to adjust the price or value assigned to such operations.

An arm's length transaction between independent enterprises is comparable to an associated enterprises transaction for purposes of applying the comparable uncontrolled price method if any of the following conditions are met:

[8] Pursuant to Article 63 of the Tax Code.

a) None of the differences, if any, between the transactions being compared or between the companies carrying out such transactions can significantly affect the arm's length price.

b) In the event of differences between comparables, it is feasible to make accurate and reasonable adjustments eliminate the effects of such differences.

This method can be applied based on transactions carried out by the taxpayer with independent enterprises ("internal comparables") or based on transactions between other independent enterprises ("external comparables") and it is applicable to all types of transactions. However, the comparability requirement for its correct application is high, since any difference could affect the price of the transaction without the possibility of making precise adjustments to eliminate such differences.

6.2. Resale price method

This method consists of determining the arm´s length price or value of the goods or services, considering the price or value at which such goods or services are subsequently resold or rendered by the purchaser to independent enterprises.

For these purposes, the resale price or value of the good or service must be reduced by the gross profit margin that has been or would have been obtained by a reseller or service provider in comparable transactions and circumstances between independent enterprises.

The gross profit shall be determined by dividing the gross profit by the sales of goods or the provision of services in transactions between independent enterprises. In turn, gross profit shall be determined by deducting the cost of sales of the goods or service from the revenue obtained from sales or services in transactions between independent enterprises.

6.3. Cost plus method

This method consists of determining the arm´s length price or value of goods and services that a supplier transfers to an associated enterprise by adding to the direct and indirect production costs, excluding general and other operating expenses incurred by such supplier, a profit margin on such costs that has been or would have been obtained between independent enterprises in comparable operations and circumstances.

The cost-based profit shall be determined by dividing the gross profit of the transactions between independent enterprises by their respective cost of sales or services rendered.

In Turn, gross profit shall be determined by deducting from the revenues obtained from transactions between independent enterprises, their direct and indirect production, transformation, manufacturing and similar activities, excluding general and other operational expenses.

6.4. Transactional net margin method

It consists of determining the net profit margin, that is, considering administrative and sales expenses including depreciation and amortization, which corresponds to each of the enterprises in the transactions in question, based on the margin that independent enterprises would have obtained in comparable operations and circumstances. For these purposes, operational indicators of profitability or margins based on return on assets, margins on costs or sales revenues, or others that are reasonable, shall be used.

6.5. Transactional profit Split method

It consists of determining the profit attributable to each enterprise in the respective transactions, through the distribution among them of the total combined profits obtained from such operations. For these purposes, the total profit shall be distributed among the parties based on the profit distribution that independent parties have or would have agreed upon or obtained in comparable transactions and circumstances.

6.6. Residual methods

When, given the characteristics and circumstances of the case, it is not possible to apply any of methods mentioned above, the taxpayer may determine the prices or values of its transactions using other methods that reasonably allow determining or estimating the arm´s length prices, values or returns that have or would have been agreed upon by independent enterprises in comparable transactions and circumstances.

Such methodologies are referred to in the Law as "residual methods" and could include, for example, the application of discounted cash flow methods in some business valuation cases or in some situations involving the transfer of intangible assets.

Considering that the application of "residual methods" is of an exceptional nature, the taxpayer in such qualified cases must justify the special characteristics and circumstances of the transactions that do not allow the application of the other methods mentioned above.

7. PROFITABILITY INDICATORS[9]

Profitability indicators represent the different comparison ratios used to determine the arm's length value of the transactions under analysis. In other words, they measure the relationship between the profit obtained and the costs incurred or the resources used to generate that profit.

The most used indicators in transfer pricing along with the methods to which they are most frequently applied, are the following:

Indicator	**Description**	**Formula[10]**	**Method(s) where it is most used**
Gross margin on costs (GMC)	Measures the gross profit generated by an economic activity, after covering cost of goods sold.	$GMC = \frac{GP}{COGS} = \left(\frac{R - COGS}{COGS}\right)$	Cost plus Margin (CM)
Gross Margin on Sales (GMOS)	Measures profitability at the level of gross profit over sales generated by an economic activity.	$GMOS = \frac{GP}{R} = \left(\frac{R - COGS}{R}\right)$	Resale Price (RP)
Operating Margin on Costs and Expenses (OMCE)	Measures the value added by an economic activity, i.e., the profit or operating result obtained from such activity, after covering cost of goods sold and general administrative and operating expenses, in relation to cost of goods sold and operating expenses.	$OMCE = \frac{OP}{TC} = \left(\frac{R - (COGS + OE)}{COGS + OE}\right)$	Transactional Net Margin method (TNM) Profit Splitting Method
Operating Margin (OM)	Measures the result or profit generated, after covering cost of goods sold and general operating and administrative expenses, in relation to sales.	$OM = \frac{OP}{R} = \left(\frac{R - (COGS + OE)}{R}\right)$	Transactional Net Margin (TNM) Profit Splitting Method
Return on assets (ROA)	Measures the performance of an activity in relation to the assets used in it.	$ROA = \frac{OP}{OA} = \left(\frac{R - (COGS + OE)}{OA}\right)$	Transactional Net Margin (TNM) Profit Split Method
Return on Capital Employed (ROCE)	Measures the return on an operation in relation to the capital employed.	$ROCE = \frac{OP}{CEM} = \left(\frac{R - (COGS + OE)}{CEM}\right)$	Transactional Net Margin (TNM) Profit Split Method
Berry Ratio (BR)	Measures the result or gross profit of a transaction in relation to its operating expenses (administrative and selling expenses).	$BR = \frac{GP}{OE} = \left(\frac{R - COGS}{OE}\right)$	Transactional Net Margin (TNM) *Profit Split Method*

[9] The practical application of this information may vary to the extent that international practice undergoes changes as a result of the updating or modernization of the transfer pricing analysis, the information available or the method applied.

[10] Sales for the period (R)
Cost of goods sold (COGS): Includes direct and indirect costs.
Gross profit (GP): Corresponds to sales minus cost of goods sold.
Operating expenses (OE): Administrative and selling expenses including depreciation and amortization.
Total costs (TC): Cost of goods sold + operating expenses.
Operating Profit (OP): Operating profit or operating result.
Operating assets (OA): Total assets minus intangible assets minus permanent investments.
Capital employed margin (CEM): Total assets minus intangible assets minus current liabilities.

8. TRANSFER PRICING STUDIES OR REPORTS

The taxpayer may attach, without prejudice to other information that may be required in the respective audit instance, a transfer pricing study that accounts for the determination of prices, values or profitability of its transactions with associated enterprises.

The application of the methods or the presentation of the studies shall be without prejudice to the obligation of the taxpayer to keep at the disposal of this Service the totality of the supporting information upon which such methods have been applied or such studies have been prepared, whether it be its own supporting information or that of the associated enterprise or enterprises located abroad that are related to the operation being analyzed, in accordance with the provisions of articles 21 and 59, both of the Tax Code.

It should also be noted that the Service may request information from foreign authorities regarding transactions subject to transfer pricing audits.

9. TRANSFER PRICING ADJUSTMENT, TAXATION AND CORRESPONDING TAX ASSESSMENT

When the taxpayer does not prove that the transactions with its associated enterprises have been carried out at normal market prices, values or returns, No. 4 of Article 41 E of the Income Tax Law empowers this Service to determine on a substantiated basis the prices, values or returns established in the respective agreement and to make the tax assessment or the corresponding adjustments on the differences determined.

9.1. Determination of normal market prices, values or returns by the Service

If the taxpayer is unable to prove that the transactions with its associated enterprises have been carried out at normal market prices, values or returns, according to the information and/or reports submitted in the respective audit procedure, upon prior citation, this Service will determine on a substantiated basis, for the purposes of the Income Tax Law, such prices, values or returns, using the evidence provided by the taxpayer and any other information available to it, including those obtained from abroad, by applying the transfer pricing methods established established in No. 2 of Article 41 E of the Income Tax Law and instructed in section 6 of this circular.

Following the rules introduced by the Law, the transfer pricing adjustment may be carried out by determining a single figure, either a price or a comparable profit margin, which will constitute the reference to establish whether a transaction meets the arm's length conditions. In the event that there are two or more prices, values or returns considered comparable, the Income Tax Law provides that an interquartile range[11] must be used.

The interquartile range provides greater certainty to taxpayers on the transfer pricing adjustment made by the Service. This is due to the fact that the extreme values of a given sample are eliminated in order to give greater objectivity to the same, improving the reliability of the analysis and providing greater precision in accordance with the arm's length principle.

Accordingly, if the price, value or margin of the analyzed transaction falls outside the interquartile range, contained between the first and third quartile, it will be considered that the value, price or margin does not meet the of arm´s length conditions.

Likewise, when the taxpayer accepts the Service's transfer pricing analysis and rectifies its annual income tax return, the transfer pricing adjustment will be made by determining a single figure, or a point or value within the interquartile range, as established with the Service. For these purposes, the taxpayer must expressly state its acceptance of the analysis in writing, either electronically or in person, and the officer responsible for the case must keep a copy of the respective document in the audit file.

If the Service issues a tax assessment under Article 24 of the Tax Code or a ruling, as applicable, the transfer pricing adjustment will always be made to the single figure or the median of the interquartile range, depending on the case.

[11] The interquartile range is defined by the OECD as "the distance of the variable between the upper quartile and the lower quartile. This range contains half of the total frequency and provides a simple measure of dispersion that is useful in descriptive statistics." See OECD Statistics Portal, glossary of statistical terms, see: http://stats.oecd.org/glossary/.

9.2. Taxation on the differences that are determined, and tax assessment or transfer pricing adjustments

When this Service establishes the normal market prices, values or returns for the transactions included in the respective citation, and these are different from those used by the taxpayer, such difference will be affected by the single tax established in the first paragraph of Article 21 of the Income Tax Law in the fiscal year in which such transactions were carried out.

Consequently, if as a result of the price, value or profitability adjustments a difference is determined, this will not affect the calculation of the taxpayer's net taxable income of the first category tax (IDPC), but such amount will only form part of the taxable base of the single tax indicated, which, as a single tax, prevents such amounts from being affected with any other tax of the Income Tax Law, whether the taxpayer rectifies his annual income tax return or a tax assessment or resolution is issued, as appropriate.

Such amounts, as they do not form part of the Income Tax Law, are not included in the RAI[12] registry and, consequently, their allocation to this single tax does not cause any impact or reduction of the amounts included or pending taxation contained in the aforementioned registry.

It should also be noted that, according to the final paragraph of No. 4 of Article 41 E of the Income Tax Law, adjustments to prices, values or market returns determined in accordance with transfer pricing rules will not produce effects on other taxes than those established in the Income Tax Law.

This is consistent with Article 92 quater of the Customs ordinance[13] , which states that transfer pricing adjustments or self-adjustments, including those arising from the conclusion of an advance pricing arrangement, shall not have any effect on the values declared in an import or export destination, nor shall it be necessary to modify them.

In accordance with the foregoing, this Service will carry out the following actions:

9.2.1. Issue a tax assessment for the single tax or a resolution, as applicable; or

9.2.2. Authorize the taxpayer to make the respective adjustments in its annual income tax return, when it voluntarily chooses to rectify its tax returns, including the determination of the taxable base of the single tax, in the same terms in which the assessment of the referred tax would have proceeded.

9.2.3. In both of the above cases, it will determine the corresponding adjustments, interest and fines, in accordance with the provisions of Article 72 of the Income Tax Law, and Articles 53 and 97 N° 1 or 2 of the Tax Code, as applicable.

9.2.4. When this Service carries out a tax assessment on the differences determined, a fine equivalent to 5% of the amount of the differences in prices, values or normal market returns will also be applied, unless the taxpayer has duly and timely complied with the delivery of the documentation required by this Service during the corresponding audit, including those required through formal notice.

If this fine is applied, it must be incorporated in the final administrative act issued by the service[14].

9.2.5. In accordance with the foregoing, this fine shall not apply if the taxpayer submits, at a minimum, the documentation referred to in section 9.3 below.

9.3. Minimum documentation the taxpayer must provide in order to avoid the 5% penalty.

The aforementioned fine shall not apply when the taxpayer has duly and timely complied, in the respective audit process, with the submission of the minimum supporting documentation indicated below:

9.3.1. The affidavits referred to in No. 6 of Article 41 E of the Income Tax Law [15] , as well as the background information supporting or accrediting the information provided by means of such affidavits;

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[12] Registration of income subject to final taxes regulated in letter a) of No. 2 of letter A) of Article 14 of the Income Tax Law.
[13] Added by No. 4 of Article 4 of the Law, effective as of November 1, 2024, as provided in the final transitory article of the aforementioned law.
[14] Either a tax assessment or a resolution as applicable.
[15] The transfer pricing affidavits and their particular requirements can be found in the resolutions issued by this Service, which are published on the website www.sii.cl.

9.3.2. Any other documentation required by this Service, for the examination and review of tax returns, as well as of the transactions that must be used for the calculation thereof, considering the particular situation of each taxpayer[16].

For these purposes, the taxpayer shall be deemed to have complied in a timely manner when the documentation is submitted within the deadlines established in the respective request or notifications, or within the time period referred to in Article 63 of the Tax Code when the taxpayer is requested to provide information through a formal notice.

Likewise, it will be understood that it duly complies when it fully delivers the aforementioned information, in the manner requested by this Service through the request for information or the summons, as the case may be, which will be certified in the manner provided in Article 59 of the Tax Code.

10. RULES ON AUDITING, COMPLAINT PROCEDURE AND OBLIGATION TO DECLARE THE INFORMATION REQUIRED BY THIS SERVICE

10.1. General rules in matters of audit

This Service may exercise the inspection powers contained in the Tax Code or in the Income Tax Law to verify that the prices or values agreed in transactions between related parties comply with the arm's length principle.

For these purposes, Article 59 of the Tax Code provides that, within the statute of limitations, this Service may carry out audit procedures. This provision further states that, once an audit procedure has been initiated through a request for information to be submitted by the taxpayer, this Service will have a period of twelve months[17] , counted from the date on which the official in charge of the audit certifies that all the requested documents has been made available to them, to alternatively, issue a request by a formal notice in accordance with the provisions of Article 63 of the Tax Code , issue a tax assessment, a resolution or a tax payment notice, as applicable, or certify, upon the taxpayer´s request, that no discrepancies have been identified as a result of the audit process.

However, in order to challenge the prices, values or returns established or agreed in the respective transactions, or to fix them if none have been established, this Service must first formally require the taxpayer to provide information, through a formal notice issued within a period of twelve months, counted from the time the official in charge of the audit certifies that all the requested information has been made available to them[18].

The taxpayer shall have a term of one month, extendable once, for up to one more month, to respond to such formal requirement, which shall have the effect of extending the statute of limitations[19] with respect to the taxes derived from the prices, values or returns of the transactions whose verification is requested.

In the respective procedure, the taxpayer must duly and timely provide all the information necessary to prove that its transactions with associated enterprises comply with the arm's length principle, according to the transfer pricing methods indicated above.

When this Service determines a difference between the agreed values, prices or return and those corresponding to normal market values, in the manner established by law, the respective tax ruling or a tax assessment or the corresponding adjustments will be issued.

10.2. Information to be provided by taxpayers to this Service

No. 6 of Article 41 E of the Income Tax Law establishes that taxpayers must file annually one or more returns containing the information required by the Service, in the form and within the timeframe established through a resolution [20:] The individuals or entities required to submit such returns are those who:

10.2.1. Are domiciled, resident or established in Chile; and,

10.2.2. Performing cross-border transactions with associated enterprises, including corporate reorganizations or restructurings.

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[16] Always within the framework of a transfer pricing audit procedure, in accordance with the provisions of Article 21 of the Tax Code and within the time limits established in Article 59 of the same law.
[17] The term shall be 18 months when information is required from a foreign authority, in accordance with the provisions of letter e) of the sixth paragraph of Article 59 of the Tax Code.
[18] In accordance with Article 59 of the Tax Code.
[19] Pursuant to the fourth paragraph of Article 200 of the Tax Code.
[20] The transfer pricing affidavits and their specific requirements can be found in the resolutions issued by this Service, which are published on the website www.sii.cl.

These returns must be filed by the taxpayers indicated, whether or not they have entered into an advance transfer pricing arrangement.

Failure to file these returns or submitting them with errors, incompletely, or after the deadline, shall be sanctioned with a fine ranging from 10 to 50 annual tax units. However, such fine may not exceed the greater of the equivalent of 15% of the taxpayer's net equity or 5% of its effective capital[21].

The application of such fine shall be subject to the procedure set forth in No. 1 of Article 165 of the Tax Code.

If the return or returns submitted are fraudulently false, the taxpayer shall be sanctioned with a fine ranging from 100% to 300% of the amount of the evaded tax, and with the maximum term of lesser imprisonment[22].

Lastly, the taxpayer may request, on a one-time basis, an extension of up to three months of the term for submitting the aforementioned return or returns. Such request may be made in the manner established by the Service by means of a resolution. The extension granted extends in the same terms the period of examination referred to in article 59 of the Tax Code.

10.3. Appeals procedure

The taxpayer may file a claim against the resolution or tax assessment in which the prices, values or returns assigned to the transactions in question have been determined and the taxes, readjustments, interest and penalties applied have been determined, in accordance with the general procedure established in Book III of the Tax Code.

11. ADVANCE PRICING ARRANGEMENTS (APA)[23]

11.1. Concept

In order to provide greater legal certainty to taxpayers, No. 7 of Article 41 E of the Income Tax Law allows taxpayers to propose to the Service an APA, through which the normal market price, value or return of transactions to be carried out with associated enterprises is determined and arranged in advance.

An APA is an agreement entered into between a taxpayer and this Service along with the National Customs Service, in the case of the importation of goods, and another or other tax administrations where applicable, for the purpose of determining in advance the prices, values or returns that will apply to cross-border transactions carried out by the taxpayer with associated enterprises abroad, or the transfer of goods or activities capable of generating taxable income in the country in the context of corporate or business reorganizations or restructurings involving associated enterprises abroad, during a determined period of time.

Likewise, the Law incorporated to No. 7 of Article 41 E of the Income Tax Law the possibility that those taxpayers who intend to file an APA may make a prior consultation to the Service that allows them to be aware of the possibility of entering into an APA, without affecting the taxpayer's right to file the request for an advance arrangement.

11.2. Form and content of the prior consultation.

The taxpayer interested in proposing an APA may submit a prior consultation to this Service in the form and opportunity to be determined by resolution, informing the following:

11.2.1. The identification of the persons or entities that will carry out the transactions;

11.2.2. The description of the transactions that are the object of the anticipated arrangement;

11.2.3. The basic elements of the valuation proposal that the taxpayer intends to submit and;

11.2.4. The indication of an e-mail address for communications between the taxpayer and the Service.

In addition, all the documentation required by this Service must be submitted, considering the particular circumstances of each taxpayer, for the correct resolution of the respective prior consultation.

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[21] The concept of tax equity is defined in No. 10 of Article 2 of the Income Tax Law, while the concept of effective equity is contained in No. 5 of the same article.
[22] Pursuant to the first paragraph of No. 4 of Article 97 of the Tax Code.
[23] For purposes of this circular, the acronym APA is used in reference to Advance Pricing Arrangements. The acronym APA is used due to its international use, which is taken from its English name "Advance Pricing Arrangements".

The Service will analyze the prior consultation, and may request the clarifications it deems pertinent, and will communicate to the interested parties the feasibility of the advance transfer pricing arrangement. This communication must be made within two months from the date of submission of the request.

The above communication will be sent to the e-mail indicated by the taxpayer and will refer exclusively to the possibility of filing the advance ruling and not to its outcome. In other words, it is an admissibility examination, but in no case can it mean a pronouncement on the merits of the APA request that in the future may be made by the taxpayer.

If, as a result of the consultation, it is determined that it is not feasible to entering into an APA, the Service's communication shall not be subject to appeal or any other remedy. In such cases, the taxpayer's right to file an APA request under the terms indicated in the following paragraphs will not be affected.

11.3. Form and content of the request to subscribe to an APA and of the decision on the request.

Whether or not a prior consultation has been submitted, taxpayers that carry out transactions with associated enterprises may propose to the Service an advance arrangement as to the determination of the price, value or normal market profitability of such transactions. Such proposal must be made in the form and opportunity established by this Service by means of a resolution.

The interested taxpayer must submit its request with a description of the respective transactions, their prices, values or normal market returns and the period that the arrangement should cover, accompanied by the documentation or background information on which it is based and a transfer pricing report or study in which the methods referred to in paragraph 6 of this circular have been applied to such transactions.

This Service shall pronounce on the taxpayer's request by means of a resolution, and may reject it on a substantiated basis, which shall not be subject to claim, nor shall it admit any appeal. The foregoing is without prejudice to the right to claim or appeal the resolutions, assessment or tax payment notices, readjustments, interest and fines applied by the Service within the framework of a transfer prices audit process. The rejection of the referred request may be in respect of all or part of it, which will be recorded in the same resolution.

If the taxpayer's request is totally or partially accepted, the anticipated arrangement shall be recorded in an agreement, which shall be signed by the Service and a representative of the taxpayer expressly authorized for such purpose and shall include the background information on which it is based, as well as the term or period of its validity.

This Service must decide on the taxpayer's request, either by attending the execution of the respective act or by rejecting it by resolution, within a period of 12 months counted from the time the taxpayer has delivered or made available all the necessary information that has been requested to resolve it. For these purposes, the submission or availability of such documentation shall be recorded in a certification issued by the head of the Service office handling the request the delivery or making available referred to in a certification of the head of the office of the Service that knows the request will be recorded.

If this Service does not pronounce itself within the indicated term, or if the taxpayer does not provide the requested background information within this procedure, the taxpayer's request will be understood to be rejected. This is without prejudice to the taxpayer's right to propose again the subscription of an APA, accompanying new background information that justifies it.

11.4. Term of validity and effects of the APA subscription

Once the APA is signed, it will apply with respect to the operations carried out by the applicant as from the same fiscal year in which it is signed and for the following four fiscal years[24]

Likewise, it may be expressly determined in the APA that its effects reach the operations carried out up to the three fiscal years prior to the execution of the arrangement, without the application of the single tax of the first paragraph of article 21 of the Income Tax Law, nor penal interest or fines, and without producing effects on taxes other than those established in the Income Tax Law [25].

Additionally, the APA may be extended while it remains in force, or renewed when its term has expired, as applicable, subject to a prior written arrangement signed by the taxpayer, this Service and, where applicable, the National Customs Service and any other relevant tax administration.

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[24] It will then have a duration of 5 fiscal years.

[25] In accordance Article 92 quater of the Customs Ordinance, which provides that transfer pricing adjustments or self-adjustments, including those arising from the conclusion of an advance pricing arrangement, shall not have any effect on the values declared in an import or export destination, nor shall it be necessary to modify them.

For such purposes, the taxpayer shall submit a written request to that effect within the term and with the background information indicated in the resolution issued by this Service that establishes the APA procedure.

If this Service does not issue a decision within 12 months after the taxpayer has delivered or made available to the Service all the information necessary to resolve the request for extension or renewal, the request will be considered rejected, without prejudice to the taxpayer's right to propose again the subscription of an APA, accompanying the new information that justifies it.

The term of the extended or renewed APA may be extended for up to the five subsequent fiscal years, without prejudice to the possibility that this Service, in the exercise of its powers and on a substantiated basis may authorize a shorter term. In such cases, the term of validity of the extension or renewal shall be established in the respective arrangements.

Once the APA, its extension or renewal, as applicable, has been subscribed, and remains in force as indicated above, this Service shall not assess tax differences arising from transfer pricing in the transaction covered by the arrangement, provided that the prices, values or returns are those established or declared by the taxpayer in accordance with the terms set forth in the APA, its extension, or renewal.

The foregoing does not, in any case, prevent this Service - within the framework of the exercise of its powers - from verifying that the transactions are carried out in the manner and under the conditions established in the APA. Consequently, No. 7 of Article 41 E of the Income Tax Law does not deprive this Service of the exercise of the powers provided for in the Tax Code and the Income Tax Law to verify that such arrangements, contracts or transactions are executed in the manner indicated in the respective act containing the APA, especially the essential circumstances on which it is based, nor to review whether or not the transactions are contained in the APA signed.

11.5. APA compliance and revocation

11.5.1. Compliance.

The Service will monitor the taxpayer's compliance with the arrangement, for which the taxpayer must prepare an annual report demonstrating the conformity of its transfer prices with the conditions agreed in the APA. Such report shall be submitted in the form and within the term agreed in the act, in accordance with the instructions that this Service will issue by resolution.

If the taxpayer does not submit the report, it will be required to submit it under penalty of termination of the advance arrangement for failure to comply with the obligations of the APA, if it does not submit it 30 business days from the notification of the requirement. The termination of the anticipated arrangement will be in force from the same fiscal year in which the resolution that so establishes it is notified, for the complete fiscal year corresponding to the one in which the taxpayer was required to submit it.

11.5.2. Revocation of the APA.

The Service may, at any time, terminate the APA, as well as its extension or renewal, when it determines the existence of any of the following circumstances, by virtue of which it has accepted the APA request:

a) The taxpayer's request was based on erroneous information; or

b) The taxpayer's application was based on maliciously false information; or

c) There has been a substantial change in the essential background or circumstances that were taken into account at the time of its subscription, extension or renewal; or

d) That the taxpayer fails to comply totally or partially with the arrangement.

To this effect, a revocation resolution will be issued, which must be substantiated based on one or more of the indicated circumstances, specifying how the background information is erroneous, maliciously false, has substantially changed in terms of essential facts or circumstance, or how the arrangement has been breached, as applicable, detailing the evidence that has been considered in order to revoke the arrangement.

The resolution that annuls the anticipated arrangement shall be effective as from its notification to the taxpayer, unless it is based on the malicious false character of the background of the request, in which case it shall be annulled as from the date of subscription of the original act or of its renewals or extensions, considering the opportunity in which such background has been invoked by the taxpayer.

As a consequence of the revocation, this Service may issue the corresponding tax assessments or tax payment notices, readjustments, interest and fines, in relation to the transactions carried out from the effective date of the revocatory resolution, unless the revocation is based on the fraudulent nature of the submitted information.

It should also be borne in mind that the presentation of maliciously false information in a request for an advance arrangement that has been totally or partially accepted by the Service will be sanctioned in the manner established in the first paragraph of No. 4 of Article 97 of the Tax Code.

The resolution that revokes the APA shall not be subject to appeal or any other remedy. This is without prejudice to any claim or remedies that may be brought against the resolutions, assessments or payment orders, interest and penalties issued or applied by this Service as a consequence of the revocation of the APA.

Both the resolution of early termination and the resolution revoking the APA will also be communicated, where applicable, to the National Customs Service and to the other respective tax administrations.

11.6. Waiver of the APA by the taxpayer

The taxpayer may cancel the APA subscribed when the essential background or circumstances that were considered at the time of its subscription, extension or renewal have substantially changed.

For these purposes, the taxpayer must express its will in this sense by submitting a written notice to this Service, in the form to be established by resolution.

In this way, the APA will be without effect from the date of the notice, and from that moment onward, the Service will be able to exercise all of the inspection powers conferred by law with respect to all of the taxpayer's transactions.

Notwithstanding the foregoing, the taxpayer maintains its right to propose the subscription of a new APA, accompanying the new background information that justifies it.

11.7. Publication of criteria and other information by virtue of which an APA was subscribed and public list of socially responsible taxpayers.

Without prejudice to the duty of secrecy that binds the officers of the Internal Revenue Service [26] on the amount or source of income, losses, expenses or any data relating to them that appear in the mandatory returns of the taxpayers, they may authorize this Service, leaving a record of it in the respective agreement, to publish the criteria, economic, financial, commercial and other reasons, as well as the methods by virtue of which the APAs were subscribed.

The taxpayers that grant the aforementioned authorization will be included in a public list of socially responsible taxpayers maintained by this Service, when expressly authorized, which must also be stated in the respective agreement.

The inclusion in the aforementioned list will be maintained as long as the APA is in force, without prejudice to the taxpayer's right to request its exclusion from the list, without giving any reason.

11.8. Exercise of this Service's audit powers during the term of a APA

When, in the exercise of its general auditing powers, this Service detects violations and/or tax differences with respect to the operations included in the APA and during its validity, due to non-compliance with the terms established therein, the taxes owed will be determined, but no penal interest or fine will be applied, even if the respective taxpayer has not authorized its inclusion in the public list of socially responsible taxpayers.

However, in the case of violations susceptible of being punished with corporal punishment, the corresponding penal interest and fine will be applicable in the event that this Service detects violations and/or tax differences during the term of the APA. In this case, the taxpayer will also be immediately excluded from the list of socially responsible taxpayers if they were included therein.

Whatever the case may be, the taxpayer must remedy the infringements committed within the term indicated by this Service, which shall not be less than 30 working days from the notification of the infringement.

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[26] Pursuant to Article 35 of the Tax Code.

Likewise, it must declare and pay the tax differences determined, without prejudice to its right to claim such actions, in accordance with the general rules, as the case may be.

In the event that the taxpayer has not corrected the infraction and/or declared and paid the respective taxes within the corresponding terms, the Service will remit without further procedure the penal interest and fines that were not originally applied, unless the taxpayer has filed a claim with respect to the infractions, assessments or payment notices that have been notified to him.

In the event that a claim has been filed, taxes, adjustments, penalties and interest, as applicable, shall be paid when such claim has not been accepted by an enforceable judgment or when the taxpayer has withdrawn it.

In this case, the statute of limitations of auditing authority of the Service shall be suspended for the entire period in which the Service is prevented making the payment order, in accordance with the provisions of the final paragraph of Article 201 of the Tax Code.

11.9. Involvement of other tax administrations in the underwriting of the APA

The Law expressly establishes that this Service may enter into an APA in which other tax administrations may also participate, if so requested in the taxpayer´s application, in order to determine in advance the normal market price, value or return of the respective transactions.

The participation of other tax administrations may also be required in the case of the extension or renewal of an APA, as applicable, in which case the procedure shall follow the same terms set out above.

When an APA is terminated, whether trough revocation or by waiver, the tax administration involved in the execution, extension, or renewal shall be informed of such circumstance.

11.10. Duty of confidentiality

The APA arrangements and the supporting documentation on the basis of which they have been signed shall be protected by the duty of confidentiality, and any breach thereof shall be sanctioned in accordance with the law[27]

11.11. Penalties for submitting fraudulently false information

The submission of fraudulently false information in an APA request that has been fully or partially accepted by this Service shall be punished with a fine ranging from 100% to 300% of the amount of the evaded tax, and with the maximum term of lesser imprisonment.[29]

The foregoing is without prejudice to the Service´s authority to revoke the respective APA.

12. PRICE ADJUSTMENTS MADE BY OTHER TAX ADMINISTRATIONS[30].

In order to mitigate potential double taxation effects that may arise as a result of transfer pricing adjustments made by other tax administrations, No. 8 of Article 41 E of the Income Tax Law allows the taxpayer, with prior authorization from this Service, to adjust the price, value or return of transactions carried out with associated enterprises affected such adjustments.

The referred adjustment requires the prior authorization of this Service, which will be granted by means of a resolution, when the Service agrees with both the nature and the amount of the transfer pricing adjustment made by the other State and the following requirements are met:

a) The tax administration of another State must have made a transfer pricing adjustment to a taxpayer domiciled or resident in Chile or to an enterprise related to that taxpayer, in connection with transactions in which the Chilean taxpayer was involved. In other words, the taxpayer domiciled or resident in Chile must have been financially affected by the adjustment determined in a transfer pricing audit carried out by the other tax administration;

b) A tax treaty to avoid international double taxation must be in force with the other State, and such treaty must not prohibit the adjustment. The treaty must be in effect both on the date the respective transactions are carried out and at the time the adjustment is requested;

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[27] As established in Article 35 of the Tax Code.
[28] Pursuant to Article 101 of the Tax Code.
[29] Pursuant to the first paragraph of No. 4 of Article 97 of the Tax Code.
[30] See No. 8 of Article 41 E of the Income Tax Law.

c) That, no judicial or administrative remedies or actions have been filed in relation to the adjustments made by the tax administration on the other state, and that the deadlines for filing such remedies are no longer pending;

d) When judicial or administrative appeals or actions have been filed against the adjustments made by the administration of the other State, the corresponding adjustment shall only be authorized when it is deemed final by virtue of the respective judicial sentence or administrative resolution, as applicable.

12.1. General procedure.

Once the aforementioned requirements have been met, the taxpayer may request prior authorization from this Service, in accordance with the procedure established in the resolution issued for that purpose.

This request must be based on the provisions of No. 8 of Article 41 E of the Income Tax Law, and must be accompanied by all supporting documentation, including a copy of the instrument(s) evidencing the adjustment made by the other state.

With respect to these adjustments, the tax administration of the other State must certify that no judicial or administrative actions or appeals have been filed, and that the deadlines established for filing such actions are no longer pending.

In addition, the request must specify the particular authorization sought, the periods and tax returns in which the prices, values or returns adjusted by other tax administrations were reported, the tax differences in favor of the taxpayer and any additional information required under the resolution issued by this service that establishes the procedure to be followed.

The request for rectification and refund, if any, must be filed in the manner established by this Service by resolution, within one year from the date the transfer pricing adjustment is considered final in the other jurisdiction.

The Service must apply the transfer pricing methods established in No. 2 of Article 41 E of the Income Tax Law, with respect to the transactions that are the subject of the rectification authorization request, through a specific audit of such transactions.

When the price adjustment made by another State is deemed incompatible with the provisions of the Income Tax Law, including the incompatibility due to the methods applied, this Service must totally or partially deny, by means of a substantiated resolution, the rectification and/or refund requested by the taxpayer. In such case no administrative or judicial appeal shall be admissible against the resolution denying the request.

In the event that the rectification and/or refund request is totally or partially authorized, the nature and amount of the adjustment, as well as the amount of the refund of the tax difference in favor of the taxpayer, when applicable, must be stated in the resolution issued for such purpose.

Once full or partial authorization from this Service has been obtained, the taxpayer may adjust the price, value or return of the transactions carried out with associated enterprises, based on the information contained in the resolution issued for this purpose.

12.2. Tax differences in favor of the taxpayer

When the corresponding adjustment, previously authorized by this Service, results in a tax difference in favor of the taxpayer, the taxpayer may request a refund within a period of one year from the date the transfer price adjustment is considered definitive in the other jurisdiction, which will be authorized when applicable, according to the general procedure described above, and for the purposes of the refund, it will be readjusted according to the percentage of variation experienced by the Consumer Price Index in the period between the month prior to the month of payment of the tax and the month prior to the date of the resolution ordering the refund.

12.3. SELF-ADJUSTMENT BY THE TAXPAYER

The Law incorporated a new No. 9 to Article 41 E of the Income Tax Law, allowing taxpayers to make self-adjustments of transfer prices, meaning those in which a price, value or return of full competition is determined by the taxpayer itself within the framework of a related transaction, even if such price differs from the amount actually charged between the related companies.

In order to be able to make such self-adjustment, the law establishes as a requirement that it be made prior to a requirement of the Service. For these purposes, any requirement of the Service must be understood as such,

whether or not it is one of those referred to in Article 59 of the Tax Code, which expressly and directly relates to transfer prices.

This self-adjustment may be carried out by determining a single figure, either a price or a comparable profit margin, which will constitute the reference to establish whether a transaction meets the arm's length conditions. In case there are two or more prices, values or return considered comparable, the taxpayer must use an interquartile range, being able to adjust to any point or value within the indicated range.

The adjustment determined must be added [31] to the tax base of the corporate income tax and will only correspond when it implies an increase of the indicated tax base. Consequently, adjustments may not be made to reduce the corporate income tax and determine a lower tax or a higher tax loss.

Likewise, it should be noted that the adjustment will only have effects on the taxes established in the Income Tax Law, in the terms established in section 9 of this circular.

Taxpayers must keep all the information that allows them to prove that the self-adjustment applied to transactions with their related parties has been made considering normal market prices, values or returns.

In the event that the Service determines an adjustment with respect to these operations, this will be subject to the single tax of the first paragraph of article 21 of the Income Tax Law. This implies that only those differences determined over the self-adjustment made by the taxpayer will be taxed with a single tax, without affecting those amounts that were already incorporated to the taxable base of the corporate Income tax by the taxpayer itself.

III VALIDITY OF THE LEGAL AMENDMENTS AND OF THESE INSTRUCTIONS

1. AMENDMENTS TO THE TRANSFER PRICING RULES CONTAINED IN ARTICLE 41 E OF THE INCOME TAX LAW

No. 2 of the second article of the transitory provisions of the Law provides that the amendments introduced to Article 41 E of the Income Tax Law will become effective on the first day of the month following the month of publication in the Official Gazette.

Consequently, transactions entered into between associated enterprises under the terms regulated in the new article 41 E of the Income Tax Law, as of that date will be governed by the new legal rules discussed in this circular.

2. VALIDITY OF THESE INSTRUCTIONS

This circular is effective as from its publication in extract form in the Official Gazette, with respect to transfer pricing determinations to be made as from November 1, 2024.

Greetings to you,

JAVIER ETCHEBERRY CELHAY

DIRECTOR

[31] See letter c) of No. 2 of Article 32 of the Income Tax Law.

ANNEX

Updated legal standard

ARTICLE 41 E.- For the purposes of this Law, the Servicio de Impuestos Internos (Chilean tax authority - SII) can challenge prices, values, or returns set, or establish them if they have not been set, when cross-border transactions and those involving business reorganisations or restructurings carried out by taxpayers domiciled, resident, or established in Chile with related parties abroad do not comply with the arm's length principle, that is, when such transactions have not been carried out at market prices, values, or returns that would have been agreed upon by independent parties under comparable conditions.

The provisions of this Article will be applied with respect to the aforementioned business reorganisations or restructuring when, in the judgement of the SII, as a result of them, the transfer of assets, risks, goods or activities capable of generating taxable income in the country has occurred, for any reason or no reason at all, from Chile to abroad or vice versa; or conventions, agreements or existing contracts, are terminated, or substantial modifications thereto are carried out; and it is estimated that the respective reorganisation or restructuring does not comply with the arm’s length principle.

Arm's length prices, values, or returns will be understood as those that had been or would be agreed upon or earned by independent parties in comparable transactions and circumstances, considering, for example, the characteristics of the relevant markets, the functions, assets and risks assumed by the parties, the specific characteristics, components and determining elements of goods, services, contracts or any other transaction or reasonable relevant circumstances depending on the case under analysis. When such transactions have not been carried out at arm's length prices, values, or returns, the SII can challenge them with grounds, in accordance with the provisions of this Article.

1.- Relationship rules.

For the purposes of this Article, the parties will be considered as related when:
One of the parties participates directly or indirectly in the management, control, capital, profits, or incomes of the other, or
The same person or persons participate directly or indirectly in the management, control, capital, profits, or incomes of both parties, understanding that they are all related to each other.

An agency, branch, or any other form of permanent establishment will be considered related to its parent company; other permanent establishments of the same parent company; related parties of the latter and their permanent establishments.

A relationship will also exist when the transactions are carried out with parties resident, domiciled, established, or incorporated in a country, territory or jurisdiction referred to in Article 41 H, regardless of whether or not they are part of the same multinational enterprise group.

Likewise, a relationship will be considered to exist between the parties involved when one party carries out one or more transactions with a third party which, in turn, carries out, directly or indirectly with an associate of such party, one or more transactions similar or identical to the ones performed with the former, regardless of the capacity in which said third party and the parties participate in such transactions.

2.- Transfer pricing methods.

The SII, in order to challenge the respective prices, values, or returns according to this Article, must summon the taxpayer, in accordance with Article 63 of the Tax Code, to provide all the information to confirm that its transactions with related parties have been carried out at arm's length prices, values, or returns in accordance with any of the following methods:
Comparable uncontrolled price method: This consists of determining the arm's length price or value of goods or services, considering what independent parties had or would have agreed upon in comparable transactions and circumstances.
Resale price method: Consists of determining the arm's length price or value of goods and services by considering the price or value at which such goods or services are subsequently resold or provided by the purchaser to independent parties. For these purposes, the gross profit margin that has or would have been earned by a reseller or supplier in comparable transactions and circumstances between independent parties must be subtracted from the resale price or value of provision. The gross profit margin will be determined by dividing the gross profit by the sales of goods or the provision of services in transactions between independent parties. Meanwhile, the gross profit will be determined by subtracting the cost of sales of goods or services from the income generated from sales or services in transactions between independent parties.
Cost plus method: Consists of determining the arm's length price or value of goods and services that a supplier transfers to a related party by adding a profit margin to the direct and indirect production costs, excluding general expenses or other operational costs incurred by such supplier. This profit margin is one that had or would have been earned between independent parties in comparable transactions and circumstances. The profit margin on costs will be determined by dividing the gross profit of transactions between independent parties by their respective cost of sale or service provision. Meanwhile, the gross profit will be determined by deducting from the income earned in transactions between independent parties their direct and indirect

production, transformation, manufacturing, and similar costs, excluding general expenses and other operational costs.
Profit split method: Consists of determining the profit that corresponds to each party in the respective transactions by dividing the total profits from such transactions between the parties. For these purposes, the total profit will be divided between the parties based on the profit distribution that independent parties had or would have agreed upon or earned in comparable transactions and circumstances.
Transactional net margin method: Consists of determining the net profit margin that corresponds to each party involved in the transactions or operations under consideration. This is based on what independent parties would have earned in comparable transactions and circumstances. For these purposes, operational profitability indicators or margins based on asset performance, margins on costs or incomes from sales, or other reasonable indicators will be used, and
Residual methods: When the characteristics and circumstances of the case do not allow for the application of any of the methods mentioned previously, the taxpayer can determine the prices or values of its transactions using other methods that can reasonably allow for the determination or estimation of the arm's length prices or values that independent parties had or would have agreed upon in comparable transactions and circumstances. In such cases, the taxpayer must justify that the special characteristics and circumstances of the transactions prevent the application of the aforementioned methods.

The taxpayer must employ the most appropriate method considering the characteristics and circumstances of the particular case. For these purposes, the advantages and disadvantages of each method must be considered, as well as the applicability of these methods in relation to the type of transactions and the circumstances of the case; the availability of relevant information; the existence of comparable transactions; the selection of the party under analysis; the number of years of financial information used; the ranges and comparability adjustment and any other background information deemed relevant.

3.- Transfer pricing studies or reports.

Taxpayers can also submit a transfer pricing study, informing the determination of prices, values, or returns for their transactions with related parties.

The application of the methods or the submission of the studies refer to in this Article, does not exempt the taxpayer from the obligation to make available to the SII all the information on which these methods were applied, or the studies were elaborated, whether such background information related to the transaction under analysis, pertains to the taxpayer or to the related party or parties located abroad, this is in accordance with the provisions of Article 59 and followings of the Tax Code. The SII can request information from foreign authorities regarding transactions subject to transfer pricing audits.

4. Transfer pricing adjustments.

If, in the judgement of the SII, the taxpayer fails to demonstrate that its transaction or transactions with related parties were carried out at arm's length prices, values, or returns, the SII will reasonably determine, for the purposes of this Law, such prices, values, or returns using the evidentiary materials provided by the taxpayer and any other available information, including information obtained from foreign sources. For this purpose, the aforementioned transfer pricing methods will be applied.

Once the SII has determined the arm's length prices, values, or returns for the transaction(s) in question, it will proceed to settle the taxes or make the corresponding adjustments, and determine any applicable interest and fines, considering the following: The transfer prices adjustment might be carried out by a single amount determination, whether a comparable price or profit margin, which shall serve as the reference for stablishing whether a transaction meets arm´s length conditions. However, in cases where two or more prices, values or returns are deemed comparables, an interquartile range must be used.
If the price, value or margin of the transaction under analysis falls outside of the interquartile range, contained between the first and the third quartiles, it shall be deemed that the value, price or margin is not at arm´s length. When the taxpayer accepts the SII transfer pricing analysis, and amends its annual income tax return, the transfer prices adjustment will be carried out the single amount determination, or to a point or value within the interquartile range, as agreed with the SII. If the service issued a tax assessment in accordance with article 24 of the Tax Code or a resolution, as applicable, the transfer pricing adjustment shall always be made to either the single amount or the median of the interquartile range, as the case may be.
When a difference is determined as a result of the adjustments to prices, values, or returns referred to in this Article, this amount will be taxed in the corresponding period only with the single tax of the first section of Article 21, whether the taxpayer amends its annual income tax return or a assessment or resolution is issued, as applicable.

In cases where the single tax referred to in the first section of Article 21 is settled, an additional fine equal to 5% of the amount of the difference will also be imposed, unless the taxpayer has duly and timely complied with the submission of the information required by the SII during the audit process. The SII will determine, through a circular, the minimum information that the taxpayer must provide to avoid the application of the fine. Adjustment to prices, values, or returns determined in accordance with this Article shall have not affect on other taxes different than those established under this law.

5.- Claims.

The taxpayer can claim the tax assessment in which the prices, values, or returns assigned to the transaction(s) have been set, as well as the determination of any taxes, interests, and fines imposed, according to the general procedure outlined in Book III of the Tax Code.

6.- Declaration.

Taxpayers domiciled, resident, or established in Chile who carry out transactions with related parties, including the business reorganisations or restructuring referred to in this Article, must annually submit one or more statements containing the information required by the SII, in the manner and timing established through a resolution. In these statements, the SII can request, among other data, that taxpayers provide information about the characteristics of their transactions with related and unrelated parties, the methods applied to determine the prices or values of such transactions, information about their related parties abroad, understanding as such those indicated in numeral 1 of this Article. The failure to submit the corresponding statement, or its submission with errors, incompleteness, or tardiness, will be sanctioned with a fine ranging from 10 to 50 annual tax units. However, this fine cannot exceed the limit of either 15% of the taxpayer's own capital determined in accordance with numeral 10 of the Article number 2 Article 41 or 5% of its effective capital. The application of this fine will be subject to the procedure established in number 1 of Article 165 of the Tax Code. If a statement submitted in accordance with this number is found to be maliciously false, it will be sanctioned in accordance with the provisions of the first section of number 4 of Article 97 of the Tax Code. The taxpayer can request, from the respective Regional Director or the Director of Grandes Contribuyentes (High-Income Taxpayers), as appropriate, a one-time extension of up to three months for submitting the corresponding declaration. The extension granted will extend, in the same terms, the audit period referred to in letter a) of Article 59 of the Tax Code.

7.- Advance pricing arrangements (APA).

Taxpayer intending to submit a request for an advanced arrangement that determines normal market prices, values or returns of transaction carried out with related parties located abroad, may submit a prior consultation to the SII, the content of which shall be as follows:

a) Identification of the individuals or entities that will carry out the transactions.
b) Description of the transactions subject of the advanced arrangement.
c) Basic elements of the valuation proposal the taxpayer intends to submit.
d) Indication of an email address for further communications between the taxpayer and the SII.

The SII will analyse the prior consultation, may request from the taxpayers any clarifications and supporting documentation it deems relevant, and will communicate to the interested parties of the feasibility of the prior valuation arrangement within the two months following the date of the submission of such request. This communication will be sent to the email address indicated by the taxpayer and will be referred exclusively to the possibility of the submission of the advance arrangement, not to its outcome, therefore it does not preclude the taxpayer´s right to submit the request. The SII will determine, by means of a resolution, the manner and timing in which the prior consultation may be submitted.

Whether or not a prior consultation has been submitted, taxpayers who carry out transactions with related parties may propose to the SII an advance agreement regarding the determination of the normal market price, value or return of such transactions for these purposes, in the manner and within the time frame established by the SII by means of a resolution. The taxpayer concerned must submit an application with a description of the respective transactions, their prices, values or normal market returns and the period that the agreement should cover, accompanied by the documentation or background information on which it is based and a report or study of transfer prices in which the methods referred to in this article have been applied to such transactions. The SII, by means of a resolution and at its sole discretion, may reject the request for an advance agreement, which shall not be subject to appeal. In the event that the Service accepts the taxpayer's request in whole or in part, the advance agreement shall be recorded in an agreement, which shall be signed by the SII and a representative of the taxpayer expressly authorized for that purpose and shall state the background on which it is based. The Service may sign advance agreements in which other tax administrations also participate for the purpose of determining in advance the normal market price, value or profitability of the respective transactions, carrying out the necessary coordination for their correct implementation in accordance with the current regulations of each jurisdiction. In the case of the importation of goods, the agreement must be signed jointly with the National Customs Service. The Ministry of Finance will establish by resolution the procedure through which both institutions will decide on the matter.

The advance arrangement, once the agreement have been signed, will apply to transactions carried out by the applicant from the same fiscal year in which the agreement of the advance arrangement are signed and for the following four fiscal years, and may be extended or renewed, subject to an agreement signed by the taxpayer, the SII, the National Customs Service, in the case of imports of goods, and, when applicable , by the other tax administration or administrations. Likewise, it may be determined that its effects will cover transactions carried out up to three business years prior to the arrangement subscription, the single tax of the first paragraph of article 21 will not be applied with respect to said periods, without penal interest or fines, and the provisions of the final paragraph of number 4 of this article will also be applicable.

The SII must issue a decision regarding the taxpayer's request either by signing the respective document or rejecting it by means of a resolution, within a period of twelve months from the time the taxpayer has delivered or made available to the Service all the information it deems necessary to resolve it. In the event that the SII

does not decide within the indicated period, or the taxpayer does not provide the information requested by the Service within this procedure, the taxpayer's request shall be deemed rejected. The taxpayer may resubmit the request to enter into the agreement. For the purposes of calculating the period, the delivery or availability referred to shall be recorded in a certification by the head of the office of the SII handling the request.
The SII may, at any time, render the advance arrangement null and void when the taxpayer's request has been based on erroneous or maliciously false information, if there has been a substantial change in the essential facts or circumstances considered at the time of the agreement's signing, extension, or renewal, or when the taxpayer fails to comply with the agreement in whole or in part. The resolution annulling the advance agreement must be based on the erroneous nature of the background information, on its malicious falsity, on the substantial variation of the background information or essential circumstances by virtue of which the SII accepted the request for an advance arrangement or on the breach of the agreement; it shall indicate how these are erroneous, maliciously false, have varied substantially or has changed substantially, or how the agreement was breached, as applicable, and it must detail the background information considered for such purposes. The resolution that renders the advance agreement null and void shall take effect from the moment it is notified to the taxpayer, except when it is based on the maliciously false nature of the background information in the submission , in which case it shall be rendered null and void from the date of signing of the original agreement or its renewals or extensions, considering the time at which such background information was invoked by the taxpayer. Likewise, the resolution shall be communicated, when appropriate, to the other respective tax administrations. This resolution shall not be subject to appeal, without prejudice to the appeal that may proceed with respect to the resolutions, tax assessment or tax payment notices, interest and fines issued or applied by the SII that are a consequence of having annulled the advance arrangement. For their part, taxpayers may cancel the advance agreement they have signed when there has been a substantial change in the essential background or circumstances considered at the time of its signing, extension or renewal. For these purposes, they must express their will to this effect by means of a written notice to the SII, in the form established by resolution, so that the aforementioned agreement will be rendered null and void from the date of the notice, and the SII may exercise all the powers conferred on it by law with respect to the taxpayer's operations.
Without prejudice to the provisions of the preceding paragraph, the presentation of maliciously false information in an application for an advance arrangement that has been accepted in whole or in part by the SII shall be penalized in the manner established by the first paragraph of section 4 of article 97 of the Tax Code.
Once the advance agreement has been signed, or its extensions or renewals, and while they are in force in accordance with the above, the Internal Revenue Service and the National Customs Service, where appropriate, may not determine tax differences for transfer prices or customs valuation in the operations covered by it, provided that the value of the imports, the prices, values or profitability have been established or declared by the taxpayer in accordance with the terms of the arrangement.
The agreement of the advance arrangements and the background information on the basis of which they have been signed shall be protected by the duty of secrecy established in Article 35 of the Tax Code. Those taxpayers who authorize the Service to publish the criteria, economic, financial and commercial reasons, among others, and methods by virtue of which the advance agreements were signed in accordance with this number, must record the authorization in the respective agreement. If they so authorize, they will be included in a public list of socially responsible taxpayers that the Service will maintain as long as the agreement is in force. Even if they have not authorized their inclusion in the preceding list, no criminal interest or fines will be applied to them for any tax infringements and differences that may be determined during the term of the agreement, unless the infringements are liable to corporal punishment, in which case they will be immediately excluded from the aforementioned list. The above is without prejudice to the taxpayer's duty to rectify the infringements committed within the period indicated by the SII, which may not be less than thirty working days from notification of the infringement; and/or to declare and pay the determined tax differences, and without prejudice to their right to appeal against such actions, as the case may be. When the taxpayer has not remedied the infraction and/or declared and paid the respective taxes within the corresponding deadlines, unless a claim has been filed regarding such infractions, assessments or tax payment notices, the SII will immediately issue the penalty interest and fines that had not been applied originally. In the event that a claim has been filed, the aforementioned tax payment notice shall proceed when it has not been upheld by a final judgment or the taxpayer has withdrawn it.

8.- Corresponding adjustment.

Taxpayers can, subject to prior authorisation from the SII, rectify the price, value, return of transactions carried out with related parties, regarding the nature or amount of the adjustment. This is based on transfer pricing adjustments made by other States with which there is a valid Agreement to prevent double international taxation, provided that such agreements do not prohibit such adjustments, and for which no legal or administrative actions or recourses must have been filed, and there should be no pending deadlines for their filing. Notwithstanding the aforementioned, even if legal actions or recourses have been filed, taxpayers can invoke the provisions of this number as long as the adjustment is considered final due to a legal ruling or administrative resolution. For these purposes, the SII must apply, as set out above, the methods outlined in this Article for the transactions subject to rectification. The request for rectification must be submitted in the form established by the SII by means of a resolution, accompanied by all supporting documentation, including a copy of the instrument evidencing the adjustment made by the other state within one year from the date the transfer pricing adjustment is deemed final in the other jurisdiction.
If the transfer pricing adjustment made by another State is deemed incompatible with the provisions of this Law, the SII must reject, totally or partially, the taxpayer's rectification request. In this case, no administrative

or legal recourse is applicable.
If this adjustment results in a tax difference in favour of the taxpayer, for the refund, it will be readjusted based on the percentage change experienced by the Consumer Price Index in the period between the month preceding the tax payment and the month preceding the date of the resolution ordering its refund.

9.- Self-adjustment of transfer prices by the taxpayer

Taxpayers may adjust their prices, values or returns in transactions carried out with related parties located abroad, considering those that would have been agreed or obtained by independent parties in comparable transactions and circumstances, when in their analysis they determine that their related transactions do not comply with the arm's length principle, for which purpose they must apply the methods referred to in this article.
Consequently, self-adjustment of transfer prices shall be understood to be that carried out by a taxpayer prior to a request from the SII and in which they determine, in their opinion, an arm's length price, value or return in the context of a related party transaction, even if that price differs from the amount actually charged between the related companies.
This self-adjustment may be carried out by determining a single amount, either a comparable price or profit margin, which will constitute the reference for establishing whether a transaction meets the arm's length conditions. In the event that there are two or more prices, values or returns considered comparable, an interquartile range should be used, and may be adjusted to any point or value within the indicated range.
The determined adjustment must be added to the taxable base of the corporate tax and will only proceed when it implies an increase in the indicated taxable base. No adjustments may be made to decrease the corporate net taxable income and determine a lower tax or a greater tax loss. The adjustment shall only have effect on the taxes established in this law, under the terms established in the final paragraph of number four of this article.
Taxpayers must keep all the records that prove that the self-adjustment applied to the transaction(s) with their related parties has been made considering normal market prices, values or returns. In the event that the SII determines an adjustment with respect to these transactions, it will be affected by the single tax of the first paragraph of Article 21 of this law, in accordance with the provisions of number four of this article.