

Resolution 64 EXEMPT

SETS PROCEDURE TO RESOLVE ADVANCE TRANSFER PRICING ARRANGEMENTS REQUESTS CONCERNING THE IMPORT OF GOODS, IN ACCORDANCE WITH No. 7 OF ARTICLE 41 E OF THE INCOME TAX LAW

MINISTRY OF FINANCE

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SETS PROCEDURE TO RESOLVE ADVANCE TRANSFER PRICING ARRANGEMENTS REQUESTS CONCERNING THE IMPORT OF GOODS, IN ACCORDANCE WITH No. 7 OF ARTICLE 41 E OF THE INCOME TAX LAW

No. 64 exempt.- Santiago, 9th March 2016.

Whereas:

The provisions of No. 7 of Article 41 E of the Income Tax Law, contained in Article 1 of DL No. 824 of 1974; Articles 6, letter A) No. 1 and 60 of the Tax Code, contained in Article 1 of DL No. 830 of 1974; the provisions established in Articles 1 and 7 of the Servicio de Impuestos Internos Organic Law, contained in Article 1 of DFL No. 7 of 1980 of the Ministry of Finance; the provisions of Articles 1, 64, 81, and 82 of DFL No. 30 of 2004, of the Ministry of Finance, which sets the consolidated, coordinated and systematised text of the Customs Ordinance; Articles 1 and 4 of DFL No. 329 of 1979, of the Ministry of Finance which approved the Servicio Nacional de Aduanas Organic Law; Articles 5 and 6 of DFL No. 31 of 2004, which approved the consolidated, coordinated and systematised text of Law No. 18,525, which establishes rules on the import of goods to the country, and Law No. 19,880 of 2003, which establishes the basis for the administrative procedures that govern the acts of the State Administration.

Considering:

1. That No. 7 of Article 41 E of the Income Tax Law establishes that taxpayers engaging in transactions with related parties abroad may propose an advance pricing arrangement to the Servicio de Impuestos Internos (Chilean tax authority - SII) regarding the determination of arm's length prices, values, or returns for such transactions, for the purposes of the provisions of such law.
2. That the same legal provision mentioned in the previous consideration establishes that such advance pricing arrangement concerning the import of goods must be jointly signed by the Servicio de Impuestos Internos and the Servicio Nacional de Aduanas (National Customs Service), hereinafter referred to as "the Services", who will resolve the matter according to the procedure set by the Ministry of Finance through a resolution.
3. That from the aforementioned is concluded that although the Servicio de Impuestos Internos and the Servicio Nacional de Aduanas have, in accordance with the legislation that governs them, the powers to challenge, tax, or determine, as appropriate and for the purposes established by such legal rules, the price, value, or return of imported goods, the legal system has foreseen that in the import of goods, and in the specific case when the taxpayer requests the entering

of an advance pricing arrangement, this must be carried out jointly by both Services. The evident purpose is that the competent public bodies act in the exercise of their faculties with due coordination.

4. That the legal provision mentioned also seeks to avoid that, regarding the same import of goods, and as a consequence not only of the intervention of different State Services but of the application of legal rules regarding customs valuations and the determination of transfer prices for the purposes of the Income Tax Law, substantially different prices, values, or returns are determined for the same taxpayer. In this sense, the setting of a procedure for the aforementioned Services to jointly resolve such requests will allow, by applying the laws that govern them, the concurring of criteria that strengthen the necessary legal certainty, both for the tax and customs administration as well as for the taxpayers, in addition to making the action of the State more efficient.

5. That Article 1 of Law No. 19,880, on the basis for the administrative procedure for the acts of the State Administration, stipulates that when the law establishes special administrative procedures, the mentioned legal text will be applied in a supplementary manner. According to its Article 2, "the provisions of this Law will be applicable to the ministries, intendancies, governments, and public services created for the fulfilment of the administrative function". On the other side, Article 3 of the mentioned law establishes that the written decisions adopted by the administration will be expressed through administrative acts, understood as such the formal decisions issued by the bodies of the State Administration that contain declarations of will, carried out in the exercise of public power. In this sense, Article 41 E of the Income Tax Law authorises both the Servicio de Impuestos Internos and the Servicio Nacional de Aduanas to concur in the signing of an agreement in which, at the request of the taxpayer, the prices, values, or returns of the import of the referred goods are set in advance, with the corresponding purposes in customs and internal tax matters.

It is resolved:

1st The requests for the entering of advance pricing arrangements on prices, values, or returns concerning import transactions of goods with related parties, in accordance with No. 7 of Article 41 E of the Income Tax Law, must be submitted to the Servicio de Impuestos Internos, which will forward them to the Servicio Nacional de Aduanas for the purposes of both Services jointly resolving them in accordance with the pertinent legal provisions and the procedure established by this resolution.

The interested parties must submit their request in writing and Spanish at the office or offices determined by the Servicio de Impuestos Internos through a resolution. Said request may be submitted in means other than paper, provided that it can be read through technological systems and provided that the Services referred to in this resolution have enabled this submission method through a joint resolution.

The request must contain, at least:

a) Name or business name of the requestor, Tax Identification Number and domicile, identification of the representative(s) signing the request with express mention of the document that grants them such authority, domicile, phone, and e-mail. The representative(s) must be expressly authorised to sign the advance pricing arrangement referred to in No. 7 of Article 41 E of the Income Tax Law.

b) Description of the respective transactions, their arm's length prices, values, or returns and the period that the respective advance pricing arrangement should cover, which shall not exceed the period outlined in resolved number 7.

c) Expressly state if it authorises the Servicio de Impuestos Internos to publish the criteria, economic, financial, and commercial reasons, among others, and the methods that will serve as a basis for an eventual agreement, for the purposes of the provisions of the final paragraph of No. 7 of Article 41 E of the Income Tax Law.

d) Declare that the related parties referred to in such transactions are aware of and accept their terms and consequences for the purposes of Chilean law.

e) Must include the documentation or information on which it is based, in accordance with resolved number 2.

2nd The requestor, along with its request, must provide the following information:

a) An authorised copy of the instrument stating the mandate or delegation of the representative(s) and a certificate of validity of such power. The document indicating the representation must expressly state the representative's authority to sign the advance pricing arrangement.

b) Identification of the individuals or entities related to whom the transactions referred to in the request will be carried out.

c) Description of the business group to which the enterprise belongs, including, among others, parent companies, controlling entities, subsidiaries, agencies, branches, offices, or other forms of permanent establishments.

d) Eight-column General Balance Sheet at the sub-account level, on numbered paper, stamped by the Servicio de Impuestos Internos and signed by the legal representative of the entity requesting the arrangement, corresponding to the two fiscal years preceding the submission of the request.

e) Audited financial statements and their explanatory notes from the entity requiring the agreement, if issued and audited in due time, for the two fiscal years preceding the submission of the request.

f) Copies of contracts for transactions with related parties abroad that are relevant to the advance pricing arrangement request. The Servicio de Impuestos Internos or the Servicio Nacional de Aduanas may request, if deemed necessary, a simple translation into Spanish of such contracts, if applicable.

g) Identification of the holders of intellectual property rights of patents, trademarks, or other intangible assets directly or indirectly related to the import transactions of goods referred to in the request.

h) Information regarding any other advance pricing arrangements or mutual agreement procedures entered into in Chile or abroad, or currently in progress involving entities of the group, and directly or indirectly related to the transactions referred to in the request.

i) Information on the import prices of identical or similar goods carried out by the requester, corresponding to a period of up to six months prior to the date of the request, if available.

j) Supporting documents for the import transactions mentioned previously.

k) A transfer pricing report or study that must contain:

i) A detailed description of the transactions subject to the request, the functions or activities performed, the assets used, and the risks assumed by the various related parties in the import transactions of goods subject to the request. Additionally, a description of the main activities carried out by the enterprises within the group to which it belongs, including the place(s) where the activities take place, where the goods are located, or where the risks are assumed.

ii) A description and information supporting the assumptions and economic conditions of the request, indicating aspects such as estimated sale volumes, relevant market(s) conditions, terms of international exchange, exchange rates, interest rates, and any other relevant circumstance or information for the purposes of the proposal.

iii) A description of the group's policy regarding customs valuation or transfer prices that includes the method(s) used by the requestor, justifying their alignment with the current legal provisions on customs valuation and determination of transfer prices.

iv) An explanation regarding the selection of the customs valuation and transfer pricing method and, if applicable, the profitability indicator that are proposed to be applied for the purposes of the agreement, including the reasons that supported their selection. v) The criteria for selecting comparable transactions or enterprises, the ranges of prices, values, or returns of comparable transactions or enterprises, and the comparability adjustments made.

v) The proposed value, price, or return for the transactions of the request.

vi) If the proposal involves a transfer of functions, assets, or risks between related parties, the commercial or economic benefits that the Chilean entity will obtain as a result of it, and the valuation of the functions, assets, and risks transferred must be specified.

vii) Any other aspect that the requestor considers relevant. 3rd The Servicio de Impuestos Internos, within 10 business days following the receipt of the request, will send a copy of the request and its accompanying information submitted by the requestor to the Servicio Nacional de Aduanas.

4th The Services, through a joint resolution, must establish the coordination instances and their respective procedures and deadlines for resolving the request. During the procedure, the requestor may be required to provide relevant clarifications as well as any other data, report, or information related to the request.

5th The Services must respond to the request, either by entering into the respective arrangement agreement or by rejecting it through a joint resolution, within the 6-month period from when the requestor has provided or made available all the information deemed necessary to resolve it. If these Services do not respond within the specified period, the request will be deemed rejected, allowing the requestor to propose the entering of a new agreement. For the purposes of calculating the deadline, the referred submission or availability will be recorded through a certification from the Head of the Office of the Servicio de Impuestos Internos aware of the request, which must also include the certification issued by the competent officer of the Servicio Nacional de Aduanas confirming the submission or availability of all the information that said Service deems necessary to resolve it. The mentioned Services will mutually communicate such certifications through the most expeditious means determined by joint resolution.

6th The Services, through a joint resolution, may accept or reject, at their exclusive judgement, the advance pricing arrangement request on the import of goods. In the event that they fully or partially accept the taxpayer's request, the advance pricing arrangement will be recorded in an agreement, which will be signed by the Services and a representative of the taxpayer expressly authorised for this purpose and must include the information on which it is based.

7th Once the agreement is signed, the advance pricing arrangement will be applied to the transactions involving goods carried out from the same fiscal year as the request and for the three following fiscal years, with the possibility of being extended or renewed upon prior written agreement by the requestor, the Servicio de Impuestos Internos, the Servicio Nacional de Aduanas and, when appropriate, the foreign tax administration(s) involved. The extension request must

be submitted at least 6 months in advance of the termination of the validity of the originally subscribed agreement. The processing of the extension or renewal request will be governed by the same procedure set for the entering of the advance pricing arrangement.

8th The Servicio de Impuestos Internos and the Servicio Nacional de Aduanas may, at any time through a joint resolution, nullify the advance pricing arrangement on goods when the taxpayer's request was based on erroneous or maliciously false information or if there has been a substantial change in the essential information or circumstances upon which the agreement was based at the time of its entering, extension, or renewal. The resolution nullifying the advance pricing arrangement must be based on the erroneous or maliciously false nature of the information or the substantial change in the essential information or circumstances by virtue of which both Services accepted the advance pricing arrangement request. It must specify how the information is erroneous, maliciously false, or has substantially changed, as appropriate, and detail the information considered for such purposes. The resolution nullifying the advance pricing arrangement will become effective upon its notification to the taxpayer unless it is based on the maliciously false nature of the information provided in the request. In such case, it will be ineffective from the date of entering the original agreement or its renewals or extensions, considering when such information was invoked by the interested party. Furthermore, the resolution will be communicated, when appropriate, to the other corresponding tax administration(s). This resolution cannot be claimed or subject to any recourse, notwithstanding any claims or recourses that may apply regarding the acts of both Services that are a consequence of the advance pricing arrangement's nullification.

9th The interested party may nullify the advance pricing arrangement they have entered into when the essential information or circumstances considered at the time of its signing, extension, or renewal have substantially changed. To do so, the taxpayer must express their intention through a written notice addressed to either the Servicio de Impuestos Internos or the Servicio Nacional de Aduanas. Both Services must reciprocally communicate this situation within 10 business days following the date of the notice, including a copy of the submission. The agreement will cease to be effective from the date of the notice, enabling both Services to fully exercise their powers under the law concerning all of the taxpayer's transactions.

10th The provisions of this resolution will not apply to cases of import transactions that do not involve goods.

11th This resolution shall come into effect upon its publication in the Official Gazette. The Services must issue the joint resolution referred to in number 4 of this resolution within the 60 following days from its entry into force.

Record, communicate, publish, and archive.- Rodrigo Valdés Pulido,
Ministry of Finance What I transcribed to you for your knowledge.- Yours faithfully,
Alejandro Micco Aguayo, Undersecretary of Finance