

**SERVICIO DE IMPUESTOS INTERNOS
SUBDIRECCIÓN DE FISCALIZACIÓN
DEPARTAMENTO DE FISCALIZACIÓN INTERNACIONAL**

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**IMPARTS INSTRUCTIONS ON THE PROCEDURE
FOR ENTERING ADVANCE PRICING
ARRANGEMENTS IN ACCORDANCE WITH No. 7
OF ART. 41 E OF THE INCOME TAX LAW.**

SANTIAGO, 21st June 2013.-

Today, the following has been resolved:

SII EXEMPT RESOLUTION No. _68.-___/

WHEREAS:

The provisions of Articles 6, letter A) No. 1 and 60 of the Tax Code, contained in Article 1 of Decree-Law 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 the D.F.L. No. 7 of 1980 from the Ministry of Finance; and the provisions established in Article 41 E of the Income Tax Law, contained in Article 1 of the D.L. No. 824 of 1974, added by No. 16, letter e) of Article 1 of Law No. 20,630, published in the Official Gazette on 27th September 2012, and

CONSIDERING:

1st That the SII is responsible for the application and audit of all internal taxes currently established or that may be established, whether fiscal or of any other nature in which the tax authorities have an interest and whose control is not specifically assigned by Law to a different authority.

2nd That Article 41 E of the Income Tax Law grants the Servicio de Impuestos Internos (Chilean tax authority - SII) the power to challenge the prices, values, or returns set, or to 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 have not been conducted at arm's length prices, values, or returns.

3rd That No. 7 of the aforementioned legal rule establishes that taxpayers engaging in transactions with related parties may propose an advance pricing arrangement to the SII regarding the determination of arm's length prices, values, or returns for such transactions. This rule further stipulates that, for these purposes, it is the responsibility of the SII to establish, through a resolution, the manner and timing in which the interested party must submit a request including a description of the respective transactions, the arm's length prices, values, or returns, and the period that the agreement would cover. It must be accompanied by the documentation or information on which it is based, and a transfer pricing report or study in which the methods referred to in the legal rule have been applied to such transactions.

4th That, in light of the above, it is incumbent upon the SII to impart instructions regarding the manner and timing in which the interested taxpayer must submit the request referred to in Article 41 E No. 7 of the Income Tax Law.

IT IS RESOLVED:

1st Taxpayers engaged in transactions with related parties, for the purposes outlined in Article 41 E No. 7 of the Income Tax Law, must submit a request containing a description of the respective transactions, their arm's length prices, values, or returns, and the period that the respective advance pricing arrangement would cover. Additionally, the taxpayer must expressly state in the request whether it authorises the SII to publish the criteria, economic, financial, and commercial reasons, among others, and the methods that will serve as a basis for a potential agreement. This request must be submitted in writing to the Oficina de Partes (Records Office) of the Dirección Nacional (National Directorate) of the SII and addressed to the Departamento de Fiscalización Internacional (International Audit Department) under the Subdirección de Fiscalización (Audit Sub-Directorate).

The referred request must be accompanied by the documentation or information on which it is based, in accordance with the provisions mentioned in the 2nd resolved of this resolution, and a transfer pricing report or study applying the transfer pricing methods contemplated by Chilean law to such transactions. Additionally, in such request, the interested party must explicitly state that the related parties involved in such transactions are aware of and accept its terms and consequences for the effects of Chilean law.

2nd Information that must be included with the request. In particular, the requestor, along with its request, must provide the following information:

- a) Identification of the related persons or entities who will engage in the transactions specified in the respective request.
- b) Specification of the period that the agreement would cover.
- c) Corporate structure of the business group to which the enterprise belongs, including parent companies, controlling entities, subsidiaries, agencies, or directly or indirectly related parties abroad.
- d) An 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, covering the two fiscal years preceding the submission of the request.
- e) Audited financial statements and their explanatory notes from the entity seeking the agreement, if issued and audited in due time, for the two fiscal years preceding the submission of the request.
- f) Copies of the contracts for transactions with related parties abroad that are relevant to the arrangement request, along with a simple translation into Spanish if applicable. These may involve the distribution, production, use and licensing of intangible assets, financial transactions, and service provision, among others.
- g) Identification of the holders of intellectual property rights such as patents, trademarks, or other intangible assets that directly or indirectly affect the transactions related to the advance pricing arrangement request.
- h) Information regarding any other advance pricing arrangements or mutual agreement procedures entered into or in progress concerning entities within the group that directly or indirectly relate to the transactions specified in the advance pricing arrangement request.

3rd Content of the transfer pricing report or study. For the purposes outlined in this resolution, the transfer pricing report or study accompanying the respective request must include:

- i) A detailed description of the transactions subject to the request, the functions or activities performed, the assets, and the risks assumed by the various related parties involved in the arrangement's transactions. Additionally, if the taxpayer is part of a multinational enterprise group, a description of the main activities conducted by the enterprises within that group, including the location(s) where these activities take place.
- ii) A description and justification of the economic assumptions and conditions of the proposal, including aspects such as estimated sales volumes, market conditions, terms of international exchange, exchange rates, and any other relevant circumstances or information for the proposal.
- iii) A description of the group's transfer pricing policy, including the method(s) for setting prices adopted by the group, and the rationale for their alignment with the arm's length principle.

- iv) An explanation regarding the selection of the transfer pricing method chosen in the

proposal and the profitability indicator, if applicable, including a description of the reasons that supported their selection.

- v) The criteria for selecting comparable transactions or enterprises, price, value, or return ranges of comparable transactions or enterprises, and the comparability adjustments made.
- vi) The proposed value, price, or return for the transactions under consideration.
- vii) If the proposal involves a transfer of functions, assets, or risks between related parties, the commercial or economic benefits that the Chilean entity will derive from such transfer must be specified.
- viii) Any other aspect that the taxpayer considers relevant for the analysis of the transactions included in the arrangement.

4th Certification. The Head of the Departamento de Fiscalización Internacional, under the Subdirección de Fiscalización, will certify the delivery or availability of all the aforementioned information. This certification will be issued for the purpose of calculating the 6-month period within which the SII will respond to the taxpayer's request.

5th Processing of the request. The SII will analyse the request and may require relevant clarifications from the taxpayer during the processing of the arrangement, as well as any other data, reports, or information related to the request. Moreover, through the Departamento de Fiscalización Internacional under the Subdirección de Fiscalización, the SII may request the interested party to hold meetings to clarify aspects related to the arrangement request.

6th Period for the processing of the request. The SII must respond to the taxpayer's request within a period of 6 months from the date the taxpayer has submitted or made available to the SII all the necessary information for its resolution. The response can either approve the request, leading to the signing of the corresponding agreement or reject it through a resolution.

If the SII does not respond within the legal period, the taxpayer's request will be deemed rejected, allowing the taxpayer to submit a new proposal for an arrangement.

7th Resolution of the request and entering of the arrangement agreement. In the event that the SII accepts, totally or partially, the taxpayer's request based on the information provided, the advance pricing arrangement, or in the case that the taxpayer accepts the proposal of the SII elaborated in accordance with the following paragraph, an arrangement agreement will be signed by the SII and the requestor. This arrangement will apply to transactions carried out by the requestor from the same fiscal year of the request and for the following three fiscal years, and can be extended or renewed by a prior written agreement signed by the taxpayer, the SII and, if applicable, other tax administration(s).

Notwithstanding the aforementioned, for the purposes of the correct resolution of the request, the SII may propose to the interested party, for their consideration, before the 6-month period counted from the certification mentioned in the 4th resolved, an alternative proposal to the one submitted with respect to the transactions subject to the request. Such proposal will be made in writing and will indicate the transactions covered, a determination of the arm's length price, value or return for such transactions, the methodology used for their determination, as well as the declaration of the essential information or circumstances that were considered for the proposal and whose substantial change can nullify the respective arrangement, in accordance with the provisions of the 11th resolved of this resolution.

8th Content of the arrangement agreement. The arrangement agreement that will be entered into in accordance with the previous resolved, must comply with the following requirements:

- a) Place and date of its formalisation.
- b) Name and surnames or full business name and tax identification number of the taxpayers referred to in the arrangement.
- c) Acceptance by the taxpayer of the content of the arrangement.
- d) Description of the transactions referred to in the arrangement.
- e) Indication of the essential information or circumstances taken into account in the arrangement ("critical assumptions") and whose modification would terminate the arrangement.
- f) Indication of the arm's length price, value, or return accepted in the arrangement, along with the method and comparables used to determine them.

- g) Periods to which the arrangement will apply and its effective date.
- h) Record of the taxpayer's authorisation to the SII for the publication of the criteria, economic, financial, and commercial reasons, among others, and the methods under which the agreement was established.

9th Advance pricing arrangements with foreign tax administrations. Requests for advance pricing arrangements involving foreign tax administrations will be governed by the rules outlined in this resolution.

To include foreign tax authorities in the advance pricing arrangement, the requestor must expressly request it in its application. In such cases, the taxpayer must provide all the documentation listed in the 1st and 2nd resolved of this resolution, as well as any documentation that may have been provided to foreign tax authorities as part of the request process.

Once all the relevant documentation has been received, the SII will analyse the proposal and its merits. If deemed necessary, the SII will communicate with the respective foreign tax administrations to arrange meetings and discuss the advance pricing arrangement.

If deemed appropriate, the total or partial acceptance of the taxpayer's request will lead to the signing of an arrangement agreement, which must meet the same requirements outlined in the 8th resolved of this resolution. The SII will then inform the corresponding tax administrations about the signing of the arrangement.

10th Extension and renewal of advance pricing arrangements. The advance pricing arrangement can be extended or renewed, subject to a prior written agreement signed by the taxpayer, the SII, and, when applicable, the involved foreign tax administrations. For this purpose, the taxpayer must submit a written extension request to the Oficina de Partes of the Dirección Nacional of the SII, addressed to the Departamento de Fiscalización Internacional, under the Subdirección de Fiscalización, at least 6 months prior to the termination of the originally signed arrangement.

This request must be accompanied by the same documents outlined in the 1st and 2nd resolved of this resolution, as they provide the reasons or justifications for its approval.

11th Termination of advance pricing arrangements. In accordance with the provisions of section 4 of No. 7 of Article 41 E of the Income Tax Law, the SII can nullify the advance pricing arrangement at any time through a reasoned resolution if 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 arrangement was based at the time of its approval, extension, or renewal.

The resolution nullifying the advance pricing arrangement will be notified to the interested party by the SII in accordance with the general rules.

Regarding the arrangements referred to in the 9th resolved, the resolution nullifying an advance pricing arrangement will be communicated, when applicable, to the foreign tax administrations through the most expeditious means.

The aforementioned resolution will become effective upon its notification to the taxpayer when the request was based on erroneous information or when the essential information or circumstances considered at the time of its entering, extension, or renewal have substantially changed.

If the revocation is based on the maliciously false nature of the information provided in the request, the advance pricing arrangement will become ineffective from the date of signing the original agreement or its renewals or extensions, when such information was invoked by the taxpayer on this last request.

Resolutions issued in accordance with the instructions outlined in this resolved cannot be claimable or subject to any recourse, notwithstanding any claims or recourses that may apply to the resolutions, tax settlements or bills, interests, and fines issued or applied by the SII as a result of the advance pricing arrangement's nullification.

12th Termination of advance pricing arrangements at the request of the interested party. In accordance with the provisions of section 4 of No. 7 of Article 41 E of the Income Tax Law, the requestor can nullify the advance pricing arrangement they have entered into with the SII if the

essential information or circumstances considered at the time of its entering, extension, or renewal have substantially changed. To do so, the taxpayer must express their intention in writing by submitting a notice to the Oficina de Partes of the Dirección Nacional of the SII, addressed to the Departamento de Fiscalización Internacional, under the Subdirección de Fiscalización.

The taxpayer's notice must include a detailed explanation of the changes in the essential information or circumstances referred to in the preceding paragraph, which justify the nullification of the advance pricing arrangement, its extension, or renewal. The SII will communicate this situation, when appropriate, to the other foreign tax administrations involved in the arrangement. The arrangement will cease to be effective from the date of the notice, enabling the SII to fully exercise its powers under the law concerning all of the taxpayer's transactions.

13th The submission of maliciously false information in a request for an advance pricing arrangement that has been partially or fully accepted by the SII will be sanctioned in accordance with the first section of number 4 of Article 97 of the Tax Code.

14th This resolution will come into effect upon its publication, in excerpt, in the Official Gazette.

RECORD, COMMUNICATE AND PUBLISH IN EXCERPT

**(SIGNED) JULIO PEREIRA GANDARILLAS
DIRECTOR**

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