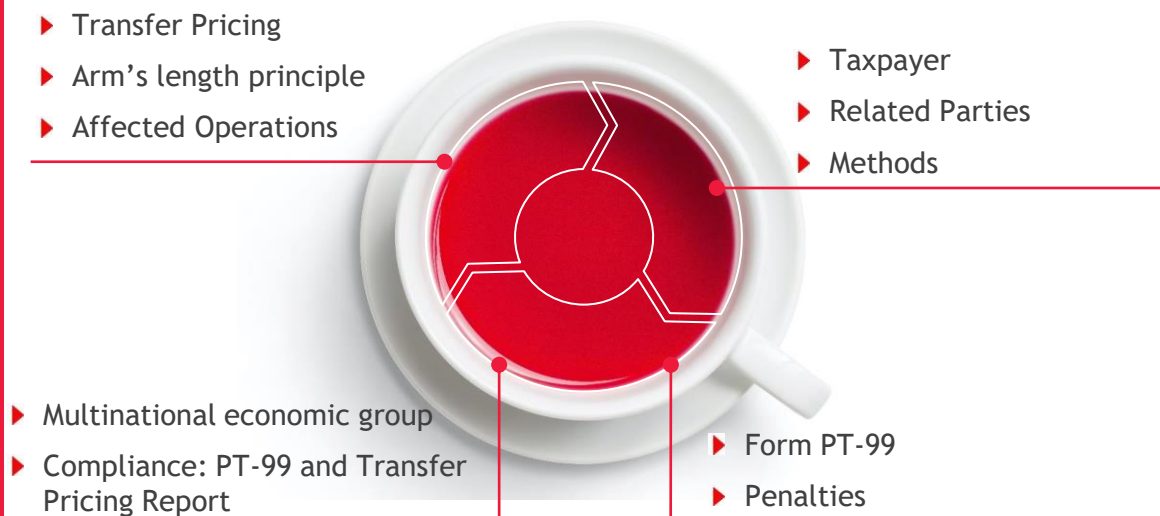


TRANSFER PRINCING



The deadline to submit the informative return of operations carried out with foreign related parties PT-99 expires on June 30, 2021.

► **What is transfer pricing?**

It is a set of legal norms that regulate the tax implications of transactions between related parties.

► **What is the arm's length principle or the independent operator?**

The price and conditions of the transactions between related parties must not differ from the price or the conditions that have been agreed between unrelated parties, who participate in the same transactions or similar transactions, under the same or similar conditions, in the open market.

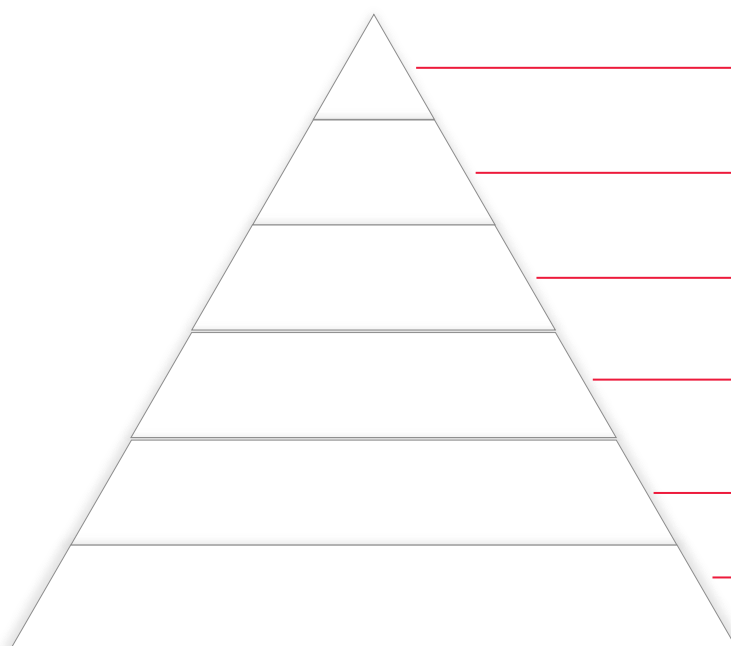
► **What happens if the price or the conditions of the transaction do not respect the arm's length principle?**

The income (or expenses) generated by the transaction can be adjusted in order to comply with the arm's length principle;

Taxpayers can be forced to reverse the economic consequences of the transaction that broke the arm's length principle;

In the context of two Contracting States in an Agreement to Avoid Double Taxation, payments made by breaking the arm's length principle will lose the benefits of the Agreement.

► **Which operations are affected by transfer pricing?**



► **What is understood by related parties?**

When a company participates directly or indirectly in the management, control or capital of another or when an entity or group of companies participates directly or indirectly in the management, control or capital of other companies (Art. 114 LISLR).

When a company, unless proven otherwise, carries out operations with entities located in jurisdictions with low taxation (Art. 117 LISLR).

Administrative Ruling SNAT / 2004/0232 dated April 24, 2004 published in Official Gazette No. 37,924 on April 26, 2004, considers operations in low tax jurisdictions (JBIF) those carried out with legal entities where the taxation that is levied on the total income is zero or with a low aliquot (less than or equal to 20%).

► **What is the liability of entities that carry out operations with related parties?**

They must inform the Tax Administration of the operations carried out with related parties, through an informative return, in accordance with the provisions of the Income Tax Law (LISLR) published in Official Gazette No. 6,210 Special Issue dated December, 30, 2015.

► **Who is required to file the return?**

Taxpayers who carry out operations with related parties abroad.

For tax purposes, these taxpayers are obliged to calculate their income, costs and deductions considering for those operations the prices and amounts of remuneration that they would have used with or between independent parties in similar operations (Art. 109 LISLR).

► **When must the informative return of Operations Carried Out with Related Parties Abroad (Form PT-99) be submitted?**

According to Venezuelan regulations, operations with related parties carried out during the year must be reported to the Tax Administration through an informative statement, which will be submitted in the month of June following the close of the fiscal year (Art. 166 LISLR).

► **What standard does establish the conditions, requirements and instructions for filing the PT-99 return?**

Administrative Ruling SNAT-2003-2424 dated December 26, 2003, which indicates that the return must be submitted to the Tax Administration Office corresponding to the taxpayer's tax address. Taxpayers that have been classified as special must submit the informative return to the corresponding Tax Administration Office in accordance with their status as a special taxpayer. The form for filing the declaration is available on the official website of SENIAT (www.seniat.gov.ve).

► **What is understood by Multinational Economic Group?**

It is a set of entities related through direct or indirect ownership or control, which are obliged to prepare consolidated financial statements, according to applicable accounting principles and standards established by the comptroller authority, or which could be so if equity shares were negotiated of any of the entities in a public stock market.

► **What are the methods provided by the Income Tax Law to calculate prices between related parties?**



The LISLR provides the following methods:

- ✓ Comparable uncontrolled price method (CUP).
- ✓ Resale Price Method (MPR).
- ✓ Added Cost Method (MCA).
- ✓ Profit Division Method (MDB).
- ✓ Transactional Net Margin Method (MMNT).

The taxpayer has to consider the uncontrolled comparable price method as the first option in order to calculate the price or amount of the remunerations that they would have used with or between independent parties in transactions comparable to the operations of transfer of goods, services or rights carried out between related parties (Art. 140 LISLR).

For everything that is not provided by the LISLR, the guidelines on transfer pricing for multinational companies and tax administrations, approved by the Council of the Organization for Economic Cooperation and Development (OECD) in 1995 (Art. 113 LISLR).

► What documentation must be kept on file by taxpayers in order to support PT-99?

The Venezuelan regulation establishes the obligation to maintain the documentation and information related to the calculation of the PT-99 declaration during the period provided by the Law, (prescription) duly translated into Spanish (Art. 167 LISLR).

► What information must the transfer pricing study contain at least?

► What would be the penalty for not filing the return?

In accordance with the provisions of the Organic Tax Code (COT), it is an illegal act, in the field of formal tax liabilities, not to file returns.

Article 103 COT. The following are formal tax offences related to the duty to submit declarations and communications:

Failure to file the returns or submit them with a delay of more than one (1) year ... Omissis ...

Whoever incurs in the illicit act described in paragraph 1 will be penalized with the closure of the office, premises or establishment, in case of having it, for a period of ten (10) continuous days and **a fine equivalent to one hundred and fifty (150) times the type official exchange rate of the highest value currency**, published by the Central Bank of Venezuela.

When the illicit act is done by a taxpayer qualified as special by the Tax Administration, the penalty will be increased by 200% in accordance with article 108 of the COT:

Article 108 COT ...Omissis...

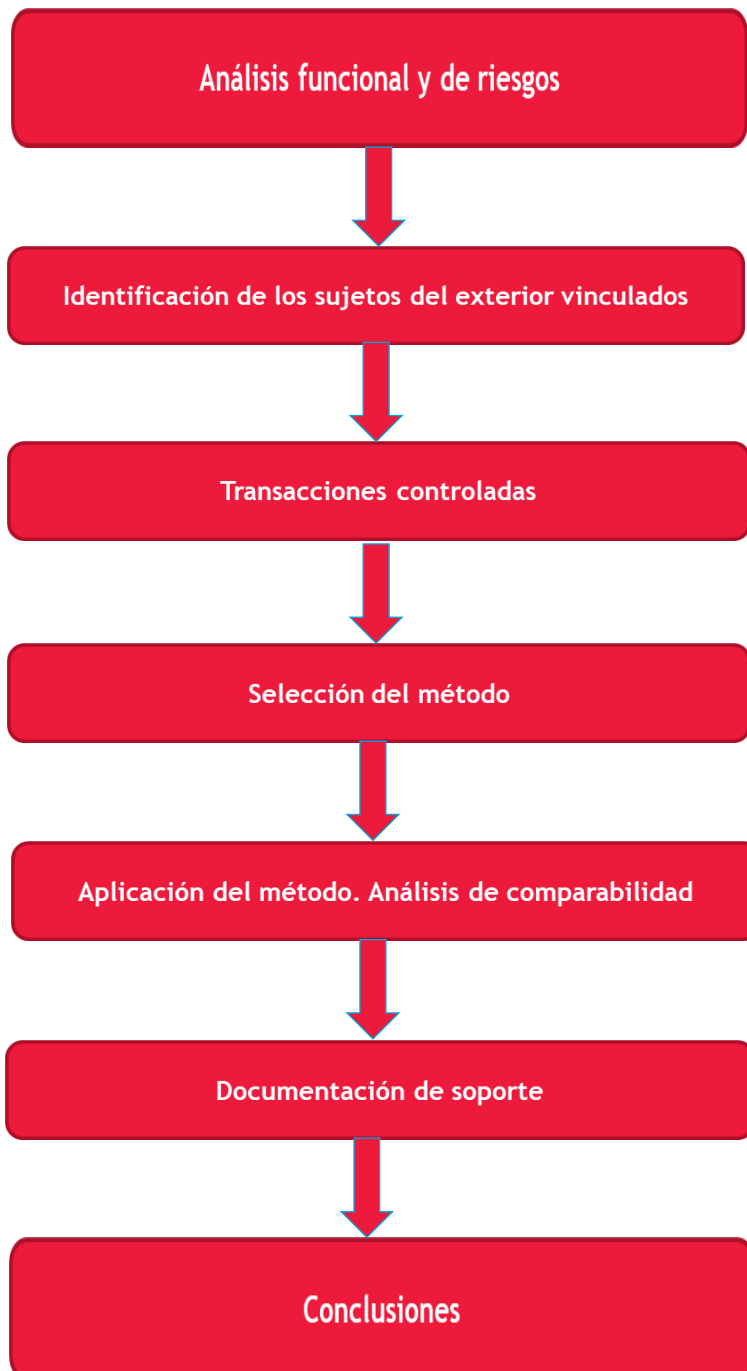
When the formal offences provided by this Chapter are committed by taxpayers classified as special by the Tax Administration, **the applicable pecuniary penalties will be increased by two hundred percent (200%)**.

What would be the penalty for not having the transfer pricing study?

Article 104 COT. The following are formal tax offences related to the fulfillment of the duty to allow the control of the Tax Administration:

12. Failure to maintain or preserve the documentation and information that supports the calculation of transfer prices ...Omissis...

Whoever incurs in the illicit act provided by paragraph 12 will be penalized with the closure of the office, premises or establishment for ten (10) continuous days, in case of possessing it, and **a fine of the equivalent of one thousand (1000) times the official exchange rate of the highest value currency**, published by the Central Bank of Venezuela.



Low Taxation Jurisdiction
Administrative Ruling No. SNAT/2004/0232 dated April 24, 2004
Official Gazette No. 37.924 dated April 26, 2004

1	Anguilla	43	Montserrat
2	Antigua and Barbuda	44	Niue
3	Svalbard Islands	45	Palau
4	Aruba	46	Pitcaim
5	Ascension Island	47	French Polynesia
6	Belize	48	Principality of Andorra
7	Bermuda	49	Principality of Liechtenstein
8	Brunei	50	Principality of Monaco
9	Campione D' Italia	51	Kingdom of Swazilandia
10	Commonwealth of Dominica	52	Hashemite Kingdom of Jordan
11	Commonwealth of The Bahamas	53	Dominican Republic
12	United Arab Emirates (UAE)	54	Gabonese Republic
13	State of Bahrain	55	Libanese Republic
14	State of Kuwait	56	Republic of Albania
15	State of Qatar	57	Republic of Angola
16	Independent State of West Samoa	58	Republic of Cabo Verde
17	Free Associated State of Puerto Rico	59	Republic of Chipre
18	Gibraltar	60	Republic of Djibouti
19	Great Duchy of Luxemburgo	61	Republic of Guyana
20	Granada	62	Republic of Honduras
21	Greenland	63	Republic of the Marshall Islands
22	Guam	64	Republic of Liberia
23	Hong Kong	65	Republic of Mauricio
24	Cayman Islands	66	Republic of Nauru
25	Christmas Island	67	Republic of Panama
26	Norfolk Island	68	Republic of Seychelles
27	Island of Saint Peter and Miguellinus	69	Republic of Tunez
28	Man Island	70	Republic of Vanuatu
29	Qeshm Island /	71	Republic of Yemen
30	Cook Island	72	Eastern Republic of Uruguay
31	Islands of Cocos or Kelling	73	Socialist Democratic Republic of Sri Lanka
32	Channel Islands (Islands Guernsey, Jersey, Alderney, Great Sark, Herm, Little Sark, Brechou, Jethou and Lihou)	74	American Samoa
33	Malvinas Islands	75	Saint Vincent and the Granadines
34	Pacific Islands	76	Saint Helena
35	Salomon Islands	77	The Most Serene Republic of Saint Marino
36	Turks and Caicos Islands	78	Sultanate of Oman
37	British Virgin Islands	79	Tokelau
38	Virgin Islands of the United States of America	80	Tristán da Cunha
39	Kiribati	81	Tuvalu
40	Labuan	82	Canaria Special Zone
41	Macao	83	Ostrava Free Zone
42	Malta		

Breach to comply with tax liabilities within the terms provided by the Calendar of Special Taxpayers and other tax provisions will be penalized in accordance with the Organic Tax Code. Ask our experts about the periodic review service of compliance with formal tax duties, and avoid the risks of tax contingencies due to financial penalties and measures to close establishments, in the event of a possible inspection procedure by the Tax Administration.



CONSULT OUR ADVISORS

We build lasting relationships, that is why our commitment is to provide an exceptional service to our client. Contact us.

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