Introduction

In addition, the Chilean tax authority (Servicio de Impuestos Internos – SII) issued Circulars No. 3 and 57, both in 1998. These circulars contain the guidelines for the application of the rules by the tax inspectors.

On 30 April 2012, the President of the Republic of Chile sent to the Parliament a tax bill that includes Article 41 E to the Income Tax Law. Said article introduces specific transfer pricing legislation.

Statutory rules
General
In general, Chilean transfer pricing rules are consistent with the Organisation for Economic Co-operation and Development (OECD) Guidelines. There is a specific interpretation of the application of the CUP method, which is described below.

Scope of the rules
The rules apply to all types of transactions, including, among others, the following transactions:

- Sale of goods.
- Provision of services.
- Transfer of technology.
- Use of patents and trademarks.
- Financing transactions (interest, commissions and other payments).

The proposed transfer pricing legislation would allow the Chilean tax authority to challenge prices, values or profitability on transactions under the following circumstances:

- Transactions carried out with foreign related parties.
- Transactions derived from business restructurings and reorganisations that imply the shift to tax havens or preferential tax regimes of goods or activities able to generate taxable income.
• Transactions carried out with entities resident in countries included in a list of tax havens or preferential tax regimes, with whom Chile has not entered into an exchange of information agreement.

Concept of a related party
The rules establish a broad concept of ‘related parties’, which includes the following:

• The branch or agency and its parent company, or another agency or related company of the parent company.
• A company incorporated abroad that participates, directly or indirectly, in the management, control or capital of a company established in Chile or vice versa.
• A person that participates, directly or indirectly, in the management, control or capital of both a Chilean enterprise and a foreign enterprise.
• When there is an agreement for exclusivity, joint performance, preferential treatment, or economic, financial dependence or deposits of trust.
• When the transaction is performed with an enterprise established in a tax haven or low-tax jurisdiction under the OECD.
• In some other cases where Circular 3 considers the transaction not entered into between independent parties.

Under the proposed transfer pricing legislation entities are considered as related parties when: a) an entity participates directly or indirectly in the management, control, capital, profits or revenues of the other entity; and b) when one person or the same persons participate directly and indirectly in the management, control, capital, profits or revenues of the other entity. Agencies, branches or any other form of permanent establishment are considered related parties of: their head office, other permanent establishments of the head office, related parties of the head office and, permanent establishments of the head office’s related parties. Likewise, proposed transfer pricing rules establish that there is relationship between the parties when an entity carries out a transaction with a third party that, in turn, carries out a similar/identical transaction with a related party of that entity.

Methods
The tax authority is allowed to use the following methods:

• A reasonable profitability given the nature of the transaction.
• The resale price, meaning the resale price to third parties of goods acquired from a related company, less the profit margin earned in similar transactions among independent companies.
• The cost plus a reasonable profit margin.
• The international market value for which data from the national customs service and the Central Bank of Chile can be used.

Local taxpayers can apply the CUP method as a methodology for testing the arm’s-length principle; however, the Chilean SII would not be entitled to use it as a tool to determine an eventual transfer pricing adjustment on the same cross-border transaction.

There is no best-method rule.

The proposed transfer pricing legislation does not explicitly mentions the adoption of the methods established in the OECD Guidelines, but the methods included are in line
Chile

with such guidelines. The proposed rules also adopt a most appropriate method rule and would allow the use of other unspecified methods when the methods described in the Chilean Income Tax Law are deemed not to be appropriate to determine an arm’s-length nature of the inter-company transactions.

Other regulations
Neither the law nor the tax authority requires preparation of a transfer pricing study or compliance with reporting requirements. There is no transfer pricing documentation requirement. However, when conducting a transfer pricing examination, the tax authority welcomes transfer pricing studies voluntarily prepared by the taxpayer to support their pricing.

The Chilean tax authorities request certain Chilean taxpayers to report their transactions with non-resident taxpayers. The transactions must be reported on oath on a form provided by the Chilean tax authorities. The information to be disclosed includes: (1) identification of the Chilean taxpayer; (2) identification of and information about the non-resident taxpayer, including name, tax identification number, country of residence and type of relationship with the Chilean taxpayer (if any); (3) type of transaction; (4) method used to price the transaction; (5) amounts received or paid as a consideration for these transactions; and (6) profit or loss margin from these transactions.

Pursuant to the proposed transfer pricing legislation, taxpayers will be required to keep all the information that supports the application of a transfer pricing method allowed by the proposed article 41 E of the Chilean Income Tax Law. Transfer pricing documentation must be contemporaneous with the tested transactions since it should be available to the Chilean tax authority within 30 days of it being requested. Additionally, the bill introduces the obligation to file an annual sworn statement requiring the following specific information:

- Summary of the transactions carried out with related and unrelated parties.
- Methods applied to verify the arm’s-length nature of the inter-company transactions.
- Information about the foreign related parties, such as country of residence and tax identification number.

The tax bill also includes the possibility of performing transfer pricing corresponding adjustments, but those have to be authorised by the Chilean tax authority and will only be allowed if cases involve a country with whom Chile has a valid double taxation treaty. The Chilean tax authority can consent the corresponding adjustments only when the date for administrative appeals court procedures is not due. Moreover, the adjustment must be based on the application of one of the transfer pricing methods allowed in the Chilean Income Tax Law, among other requirements.

Cases
At present, there is no administrative guidance or judicial precedence.

Burden of proof
There are no specific rules on the burden of proof relating to transfer pricing. However, under the general rules in the Tax Code, it is generally considered that the burden of proof lies with the SII.
**Tax audit procedures**
The tax authority has a specialised group that performs transfer pricing examinations. This group is part of the International Tax Inspection Department (*Departamento de Fiscalización Internacional*).

There is evidence of transfer pricing examinations into mining companies, retailer companies, and pharmaceuticals groups.

**Advance pricing agreements (APAs)**
At present, there are no provisions enabling taxpayers to obtain APAs with the tax authority. However, the tax authority has expressed its intention to implement APAs in the future.

The proposed transfer pricing legislation includes the possibility to enter into APAs (unilateral or multilateral). The Chilean tax authority can reject, totally or partially, the request and such decision would not be subject to an administrative appeal procedure. APAs would be valid for four years and are subject to renewal or extension. The Chilean tax authority or the taxpayers can invalidate an APA when there is a significant change in the circumstances under which the APA is granted.

**Anticipated developments in law and practice**
It is expected that transfer pricing examination activity will increase in the near future. It is also expected that the tax inspectors will become more skilled in this area, due to increasing training and experience.

The head of the Chilean SII has revealed in several seminars and interviews that the SII will attack tax evasion in Chile via the auditing of transfer pricing issues in key industries.

**Liaison with customs authority and Central Bank of Chile**
The tax authority is allowed to request information from the customs authority and Central Bank of Chile for transfer pricing examinations.

**Tax treaty activities**
It is interesting to note that Chile has been very active in the area of treaties, expanding its tax treaty network and concluding free-trade agreements with the European Union and the US.

**OECD issues**
On 11 January 2010, Chile became a member of the OECD, although the local transfer pricing regulations do not expressly recognise the standards set by the OECD Guidelines. However, the tax authority has generally adopted the arm's-length principle, and tax inspectors use the OECD Guidelines as general guidance.