



# Colombia

<b>Taxing Authority and Tax Law</b>	<p>Dirección de Impuestos y Aduanas Nacionales (DIAN). Law 788 enacted in 2002, and Law 863, enacted in December 2003, established the transfer pricing practice in the Tax Code, articles 260-1 to 260-10.</p> <p>The definition of related parties is found in articles 450 and 452 of the Tax Code, articles 260, 261, 263 and 264 of the Commercial Code, and article 28 of Law 222 of 1995.</p> <p>Regulatory Decree 4349 published on December 2004, provides the transfer pricing guidelines applicable in Colombia, including, the contents of the statutory transfer pricing documentation, use of financial data, and APA program.</p>
<b>Regulations and Rulings</b>	<p>Regulatory statements were published in December of 2004. Resolution 5015 of 2003 created the DIAN group for transfer pricing matters.</p>
<b>Priorities/Pricing Methods</b>	<p>Regulatory Decree 4349 establishes the selection of the best method. The law stipulates six methods that can be applied according to operation features. These methods are CUP, Resale Price, Cost Plus, Profit Split, Residual Profit Split and TNMM. Local company information is available and should be used for benchmark analyses.</p>
<b>Transfer Pricing Penalties</b>	<p>For partial non-compliance with the transfer pricing documentation the taxpayers faces penalties of 1% of the total value of the operations carried on with related parties during the corresponding tax year and 0.5% of the taxpayer's net worth or estate reported in the income tax return of the same tax year or in the last tax return filed. Penalties cannot exceed U.S. \$254,000, but taxpayer. Additionally, there may be disallowance of cost and deductions of the controlled transaction, when the taxpayer does not present the required documentation. Regarding the 'Transfer Pricing Transactions Declaration,' penalties for late-compliance are calculated in the same manner as penalties for non-compliance with the transfer pricing documentation requirement but for every month of delay. Regarding income understatement following a transfer pricing determination by the tax authorities, the taxpayer faces a penalty of 160% of the amount of unpaid taxes.</p>
<b>Reduction in Penalties</b>	<p>Regarding transfer pricing studies, penalties are reduced by 50% if the omission, mistake or weakness is repaired before sanction notification, or reduced by 25% if they are repaired within two months after sanction notification. A deduction penalty is applicable in the latter case. A deduction penalty can be avoided if the taxpayer repairs the omission before settlement revision notification is issued. Regarding the 'Transfer Pricing Transactions Declaration,' if the taxpayer presents the declaration within the prescribed time limit sanctions could be reduced by 25% of the amount estimated by DIAN, which must be settled and paid when related party transactions declaration is presented.</p>
<b>Documentation Requirements</b>	<p>Taxpayers must prepare and keep, for a five-year period, the documentation supporting that each transaction with related parties is conducted according to the arm's length principle. Documentation is not required for transactions that in the fiscal year do not exceed 500 in minimum wages (approximately 68,000 USD). Regulatory Decree 4349 outlines the information to be included in transfer pricing documentation.</p>
<b>Categories of Documentation Required</b>	<p>DIAN requires a 'Transfer Pricing Transaction Declaration' for each year which is due between June 17 to June 23, 2005 for the previous fiscal year. For each transaction, documentation should identify the related parties, transfer pricing methodology, analyze the factors determining comparability, and include other specific information.</p>
<b>Deadline to Prepare Documentation</b>	<p>Taxpayers must prepare documentation by June 30 for the previous fiscal year. After this date, tax authorities can request transfer pricing documentation. Transfer pricing rules apply as of 2004. DIAN may audit companies from 2005 (for FY04).</p>
<b>Deadline to Submit Documentation</b>	<p>Transfer pricing documentation is only to be presented to the tax authorities upon request. In such an event, documentation should be provided upon request as of June 30.</p>
<b>Statute of Limitations</b>	<p>The taxpayer must keep transfer pricing documentation for 5 years. DIAN may review the transfer pricing assessments during this period.</p>

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# Colombia (continued)

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<b>Return Disclosure-Related Party Disclosure</b>	The obligation to disclose related parties exists in the law, and the format has been published by the Colombian Tax Authorities. The transfer pricing information return must be submitted to tax authorities from June 17 to June 23, 2005 (for FY04) following the taxable year.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	Tax authorities have suggested that audits will start in 2005 and that their strategy may involve collecting transfer pricing documentation in order to learn about transfer pricing. The possibility of taxpayers being requested to submit documentation is high.
<b>APA</b>	<p>The tax reform enacted in 2003 established APA regulations regarding the following:</p> <ul style="list-style-type: none"><li>■ Formality for presenting solicitude could be approved for a 4 year period</li><li>■ Terms to solve</li><li>■ Possibility of renegotiation</li></ul> <p>For the time being only unilateral APAs are available (no double- taxation treaties exist). Regulations for transfer pricing establish that the Tax Authorities would be negotiating APAs from fiscal year 2006.</p>

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