



# **CURRENT TRANSFER PRICING SITUATION IN ARGENTINA**

**Mexico D.F., December 1, 1999**

## **CURRENT SITUATION IN ARGENTINA**

- Current legislation
- Proceedings before the Argentine Chamber of Medicines
- Requirements of the Federal Board of Government Revenues
- Current situation of other laboratories members of the Chamber
- Pricing Study
- Penalties



## **CURRENT SITUATION IN ARGENTINA**

- **RATIFICATION OF THE ARM'S LENGTH PRINCIPLE**
- **APPLICATION OF METHODS SUGGESTED BY THE O.E.C.D.**

## **CURRENT SITUATION IN ARGENTINA**

### **NEW GOVERNMENT'S POLICY**

- **PROMOTE THE ENFORCEMENT OF  
“TRANSFER PRICES”**
- **TRY TO INCREASE TAX COLLECTION**



## **CURRENT LEGISLATION - Law 25.063**

### **SECTION 8:**

- **EXPORTS:**

**When the price has not been determined or the price agreed upon is below the wholesale price in force at the point of destination, the latter shall be taken into account in order to assess the value of exported products. Tax Authorities are able to determine export values.**

## **CURRENT LEGISLATION - Law 25.063**

### **SECTION 8:**

- **IMPORTS:**

**When the sale price for the buyer in this country is higher than the wholesale price in force in the place of origin, the difference shall be a net profit originated in Argentina for the overseas exporter. Tax Authorities are empowered to determine import values.**



## CURRENT LEGISLATION - Law 25.063

### SECTION 15:

- To determine whether transfer prices are consistent with regular market customs among unrelated parties, the ***MOST APPROPRIATE or SUITABLE*** method of those hereinafter mentioned, shall be applied:

## **CURRENT LEGISLATION - Law 25.063**

- **Methods based on comparable transactions:**
  - **Comparable Uncontrolled Price**
  - **Resale Price Method**
  - **Cost Plus Method**
- **Methods based on Comparable Company Profits:**
  - **Profit Split Method**
  - **Residual Profit Split Method**
  - **Transactional Net Margin Method**



## **CURRENT LEGISLATION - Decree 485/99**

- **Decree 485/99 modifies Income Tax Law Regulation:**
  - **For the imports and exports of goods mentioned in section 8 made between related companies, those methods defined in section 15 shall be applied, when no wholesale prices in force at the place of origin or destination may be determined or whenever the merchandise cannot be compared.**

## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Tax Return**

- **SPECIAL TAX RETURN:**
- **Shall be filed by companies engaged in business with related companies located abroad or located in low - taxation jurisdictions.**



## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Tax Return - Enforcement**

#### **DUE DATE FOR THE FILING OF A SPECIAL TAX RETURN:**

- **General Rule**: Together with the Income Tax Return on May 7, 2000
- **Exceptions**: years ended between 12/31/98 and 9/30/99 up to March 7, 2000

## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Records and back - up documentation**

**Until the prescription of the fiscal year under consideration, records and back - up documentation whereby transfer prices included in the tax return, as well as the methods employed for the determination thereof and the comparability criteria used to define that *the most appropriate method* was used, shall be kept.**



## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Records and back - up documentation**

- Main activities performed by each company making up the economic group
- Documentation whereby the shareholding by each company making up the economic group is evidenced, identifying assets and risks assumed.
- Taxpayer's Financial Statements

## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Records and back - up documentation**

- Agreements or Contracts made with foreign related persons (Use of trademarks, distribution, technical assistance)
- Taxpayer's financial data
- Data on environment of the company
- Business Strategies



## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Records and Back - up documentation**

- Cost structure
- Criteria used for the establishment of transfer prices
- Comparable data
- **Foreign Persons reached by similar systems or either, solving controversies**

## **CURRENT LEGISLATION - Gral. Res. 702/99 Economic Relationship**

- **The economic relationship shall be established when at least one of the conditions set forth in General Resolution 702 / 99 is verified.**



## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Most Appropriate Method**

***“THAT WHICH SHOWS THE ECONOMIC SITUATION OF TRANSACTIONS IN THE BEST POSSIBLE MANNER”***

- The best method compatible with business structure
- The best quality and amount of available data
- Includes the most adequate comparability level
- Requires the lowest adjustment level

***THEREFORE, IT SHALL BE JUSTIFIED***

## **CURRENT LEGISLATION - Gral. Res. 702/99**

### **Comparability Criteria**

- Economic circumstances such as geographic location, market, demand and supply level, scope of competition
- Business strategies
- Contractual terms



# PRICING STUDY

## Objective of a Pricing Study

### **Reduce to the maximum extent possible**

- the risk of a transfer pricing adjustment
- double Taxation
- penalties and fines
- expenses related to examination and defense
- financial contingencies

# **PRICING STUDY**

## **Stages of a Pricing Study**

- **Stage One: FUNCTIONAL ANALYSIS**
- **Stage Two: INDUSTRY ANALYSIS**
- **Stage Three: PRICING STUDY**



# **PRICING STUDY**

## **Stage 1: Functional Analysis**

- **Identify transactions subject matter of this study**
- **Identify prospective problems**
- **Determine the wide scope of the study**
- **Revision of tax returns, financial statements and general prospects of the company, related parties and their environment**

# **PRICING STUDY**

## **Stage 1: Functional Analysis**

- **Hold interviews with company officials in order to identify:**
  - **Functions**
  - **Risks**
  - **Assets**
  - **Business strategies**
- **Establish the basis for pricing analysis, selection of method, examined party, joint transactions**
- **Review Intercompany contracts**



# **PRICING STUDY**

## **Stage 2: Industry Analysis**

- **Industry Analysis : provides context to the study and establishes the basis for a pricing analysis**
- **Includes macroeconomic conditions:**
  - **Market structure and industry**
  - **Macroeconomic or microeconomic conditions which may have an effect upon financial results**

# **PRICING STUDY**

## **Stage 3: Pricing Analysis**

- **Selection of the most adequate method**
- **Search for comparable companies**
- **Search for comparable transactions**
- **Comparability adjustments (example: country risk)**



# **PRICING STUDY**

## **Stage 3: Pricing Analysis**

- **Confirmation of results with other methods**
- **Verify that there are no inconsistencies between the functional analysis and the pricing study**

## **PENALTIES**

- **If Tax Authorities consider that the taxpayer has manipulated reported values, fines may reach up to ten times the amount of the evaded tax plus penalties set forth by the Criminal Tax Law.**