

Transfer Pricing Services

We are specialists

Sala & Serra is a Spanish independent firm established in 1997 and formed by specialists committed in providing value added services in taxation, business law and litigation for corporations.

Among our services, we offer a wide range of global transfer pricing services - planning, risk assessments, benchmarking, documentation studies and dispute resolution.

We are the unique Spanish middle-market firm that integrates specialist with proven experience in transfer pricing. Our team includes professionals with Big4's experience (Deloitte, E&Y, PwC). From our technical abilities and years of experience comes a comprehensive understanding of major transfer pricing issues, from the arm's length pricing of tangible goods and services to the transfer of intangible assets and group financing issues.

We have the experience to offer you solutions that will improve your business.

We know the market and have the experience to help you grow!

Our experience:

- Transfer pricing consulting and compliance for multinational groups;
- Design and implementation of centralized services and R&D agreements; cash pool strategies, loans, profit participative loans and other treasury operations;
- Valuation of IP property, trademarks, assets and business as part of fiscal strategies ;
- Negotiation of Anticipated Price Agreements (APAs)
- Adaptation of group documentation to local requirements;
- Due diligences and auditory services.
- Dispute resolutions and inspections.

Spanish Transfer Pricing Regime: A brief summary (actualized at 03/2011)

Regulatory Framework	<ul style="list-style-type: none"> • Ley 4/2004 (Corporate Income Tax Law, or "CIT Law") • Ley 36/2006, de 29 de Noviembre ('L36/2006'); • Real Decreto 1793/2008, de 3 de Noviembre ('RD1793/2008'); • Subsequent updates.
Reference to multilateral guidelines	<ul style="list-style-type: none"> • OECD Transfer Pricing Guidelines as source of interpretation (L36/2006 - commented on preamble); • European Union Joint Transfer Pricing Forum (JTPF) (RDL1793/2008 - commented on preamble).
Reference to Arm's Length Principle	<p>"The transactions between associated persons or entities should be assessed at their arm's length price, being this understood as the price which would have been agreed between unrelated parties in free market conditions." (A16.1 L36/2006)</p>
Definition of related parties	<p>It is deemed to be associated:</p> <ul style="list-style-type: none"> • Two parties that share ownership (directly or indirectly), control or management; • An entity and its owners, members of board of directors, administrators or related family (first-degree relative); • A foreign entity and their permanent establishments in Spain (and vice versa); • Direct relationship is deemed by at least the 5% of the equity (or 1% if shares are carried out on regulated markets.) In case of indirect relationship, 25% of equity; (Please review the complete definition at A16.4 L36/2006).
Methods	<ul style="list-style-type: none"> • Accepted methods by OCDE Guidelines (A16.4 L36/2006); • Hierarchy between direct (CUP, C+, R) and indirect methods (TNMM, PS).
Economic Adjustments	<ul style="list-style-type: none"> • Primary and secondary adjustment applies
Formal Obligations	<ul style="list-style-type: none"> • Formal obligation of maintaining contemporary transfer pricing documentation. • Documentation prepared by non-spanish group is acceptable if (i) satisfies local requirements; and, (ii) is kept by the resident party; • Annual related transactions statement ('Modelo 200'). Figures declared should match the supported by documentation.
Documentation requirements	<ul style="list-style-type: none"> • Documentation requirements after the European Union Joint Transfer Pricing Forum (A18, 19 y 20 RDL1793/2008); • Master File/Local File Structure; • Documentation must be available once presented tax return; • Partial exceptions to groups with international total consolidated turnover lesser than € 10 Million.
Additional requirements	<ul style="list-style-type: none"> • Service transactions (A16.5 L36/2006): The expenses in Spain will be deductible only if it is proven a benefit (willingness to pay); <ul style="list-style-type: none"> • If there are centralized services, direct allocation methods are preferable over indirect ones. The cost allocation key employee has to be rational and stable on time; • Cost sharing agreements (A16.6 L36/2006): Expenditures will be deductible in Spain only if these comply with specific formal and functional requirements.
Transactions affected	<p>All related party transactions are subject to documentation requirements, with the exception of the following:</p> <ul style="list-style-type: none"> • Between entities that integrates a spanish fiscal consolidation group; • Between UTE and AIE (Spanish joint ventures types) and its members; • Transactions that involve securities in public offering; • When the whole intercompany transactions do not exceed €100,000 and when the assumptions in the A108 CIT Law are satisfied (group with international total consolidated turnover lesser than €10 millions); • When the sum of the transactions amounts with the same related party do not exceed €250,000 during the same tax year, with certain exceptions: <p>MNE relevant: transactions with residents on tax heavens; sale and transfer of shares, real estate and intangibles assets/IP property (including royalties). For the complete exception list, please review A18.4 RD897/2010.</p>
Penalties and fines	<ul style="list-style-type: none"> • Transfer pricing regime in Spain establishes important fines due to improper documentation (A16.10 L36/2006). Penalties will be applied according to the following schema: <ul style="list-style-type: none"> • € 15,000 per set of data: RD1793/2008 (articles 19 and 20) establishes nine descriptive information requirements known as 'sets of data' (ie. functional analysis is considered one set of data); • € 1,500 per data: RD1793/2008 (articles 19 and 20) establishes five different groups of information requirements defined as 'data', but each one of these is composed by countable information (ie. each relevant controlled transaction will be considered a single data (related party, amount, description)). • If there are primary and secondary adjustments, a surcharge of 15% of the total amount corrected will be applied, with a minimum of twice the fine for non-compliance. • Please be aware that in case of not documentation, fines will be up to € 135,000 (nine set of data) plus 1,500€ per individual data missed (the number will vary according to complexity of the business), even at arm's length!
Advance Price Agreements	<ul style="list-style-type: none"> • Possibility of negotiate a bilateral and unilateral APA (A16.7 L36/2006) • Application requirements in A22 and followings RD 1793/2008.

Our Team



Alberto Casale

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With ten years of experience in transfer pricing forming part of PwC and E&Y, Alberto had full experience in Spanish TP regime. At the moment of join Sala & Serra, he was associated of E&Y Madrid TP Team and was in charge of pretty much

all Financial Services Transfer Pricing (FSTP) projects. He had participated in the design and documentation of transfer pricing policies for multinational companies around the world, specially in financial sector (from banks to venture capital), energy sector (from oil to renewables), construction and facilities management, assemblers and OEM suppliers, pharma, mass consumption and luxury goods, among much others. He is a economist with a Master in Industrial Economics. While not at office, he likes the scuba diving, paint, draw and spent time with his family, and he also finds time to teach transfer pricing in a well known Spanish business school and to write articles about taxation. Although his corporative profile, deep down he likes to consider himself as a traveler: he had stamps of more than 30 countries in his passport and a great passion for Asia. He is fluent in Spanish and English and also is a learner of Portuguese (Bem-vindo Alberto).

We offer the value of our experience



Antonio Pedraza

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Antonio had more than six years doing transfer pricing consulting and compliance for Deloitte Touche Tohmatsu (but he still remains as fresh and passionate than the first day). He join us as a Senior Consultant, and since then has

transmitted us all his energy and new ideas. He has done transfer pricing for leader MNE and has plenty of experience in coordinating global and complex projects, participating actively in the design and documentation of transfer pricing policies and tax strategies, valuation of trademarks, assets and enterprises for groups in Mexico, Europe and USA. He has also participated in the negotiation of APAs and in transfer pricing audits. Antonio has a BA Of Economics by the Tecnológico de Monterrey (México). He also posses a Figure 1 Certification on investment funds, consequence of his 'track record': previously, Antonio was a financial advisor for a recognized brokerage firm. He also played soccer professionally in México, until an injury makes him change their industry; no matter he does not plays soccer anymore, he plays constantly in pachangas around Madrid, where his "goals" are becoming rapidly famous. He is fluent in Spanish and English.

Our current clients do business in:

- Financial services (venture capital, private banking, investment funds)
- Transport and logistics
- Renewables
- Manufacturing and distribution groups
- OEM Suppliers and assemblers
- Internet and TMT



Marcel Trias

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Marcel is the 'little finger' of our transfer pricing team, but he is working hard to be the future leader and guru of our practice. He has completed a productive year working with us and learning about everything: OCDE guidelines, how to benchmark and how to prepare a functional analysis. Even he describes himself as 'the learner', we refer him as 'the future': he had more experience in transfer

pricing than the 99% of the Spanish lawfirms, all together. He had participated in several projects, including venture capital and assets management firm, transport and logistics groups, mass consumption and assemblers. He is a economist and held an MBA from a recognized Estonian business school (Estonia?). When not benchmarking, he likes to walk around Madrid and getting in troubles. He is fluent in Spanish, English and Catalanian, but he did not learn anything of Esti.

We believe transfer pricing is not just about preparing documentation to avoid penalties; transfer pricing is the opportunity to identify different ways to add value, from the defense of a simple expense deduction to the total restructure of your business.



Our transfer pricing team is fully backed by the expertise and wisdom of **David Fernandez** (davidfernandez@sala-serra.com), Managing Partner and officially, the Propelling Force of Sala & Serra, who is a recognized tax and business consejleri in Spain with plenty of experience in international tax planning, business (and debt) restructuring and general strategies (and capable of running a

marathon in 3 hours!), and also with **Clara Sanchez** (clarasanchez@sala-serra.com), who reinforce us when dealing with any issue related to direct and indirect taxation (our VAT heroine!)

