



## Tax Alert

### Institutional Tax Opinion No. 2-2022 “Correlation of costs with revenue. Application of costs and expenses in the determination of the tax obligation.”

The Tax Administration published on its website Institutional Tax Opinion No. 2-2022, which refers to the procedure and considerations that this entity applies in the cases in which, by virtue of its office, it determines the tax obligation when taxpayers omit revenue from their income tax returns.

The opinion states that when the tax office determines the revenue omitted under the income tax, the costs of such revenue subject to tax are not attributed. Therefore, upon collecting the omitted tax, plus fines and interest, it exceeds 100% of the omitted revenue, which is illogical and may violate constitutional provisions.

Therefore, applying the principles of legality, tax equity and justice, and capacity of payment, in the cited institutional opinion the Tax Administration establishes that in the exercise of its oversight and collection duties, it must recognize the costs and expenses when determining a taxpayer's obligation, to accurately determine the taxable income subject to income tax.

For such purpose, the Tax Administration will consider, but not be limited to, the following as a guide:

- 1 Documentation of the purchases of the audited taxpayer.  
.....
- 2 Verification that the supplier has paid the VAT and income tax.  
.....
- 3 Third-party information.  
.....
- 4 General profitability indices.  
.....
- 5 Average percentages of gross and net profit.  
.....
- 6 Verification of the payment of wages, and compliance with the requirements to pay employer and employee contributions.  
.....
- 7 In cases of special invoices, verification that the corresponding VAT and income tax withholdings were made.  
.....
- 8 If suppliers did not comply with their obligation, providing of the necessary evidence so that the Tax Administration can seek criminal prosecution.

## Our experts:

Deloitte offers a range of integrated tax and legal services. Our teams combine technical knowledge, experience and innovation, which allow us to help our clients meet their objectives at the local and global levels.



**Walter Martínez**

Tax, Global Trade and BPS Partner  
[wmartinez@deloitte.com](mailto:wmartinez@deloitte.com)



**Gerardo Arana**

Tax Manager  
[gearana@deloitte.com](mailto:gearana@deloitte.com)

# Deloitte.

Deloitte refers to Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, its network of member firms and their related entities, each of which is a legally separate and independent entity. Please see [www.deloitte.com](http://www.deloitte.com) to learn more about our global network of member firms.

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory and tax & legal services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 330,000 professionals are committed to making an impact that matters.

As used in this document, Deloitte Guatemala, S.A., which have the exclusive legal right to engage in, and limit its business to, providing auditing, consulting, tax consultancy, legal, risk and financial advisory respectively, and other professional services, under the name "Deloitte".

This presentation contains general information only and Deloitte is not, by means of this document, rendering advice or accounting, commercial, financial, investment, legal, tax or other services.

This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. No representation, warranty or promise (either explicit or implicit) is provided regarding the accuracy or completeness of the information in this communication and Deloitte will not be responsible for any loss suffered by anyone who relies on this presentation.