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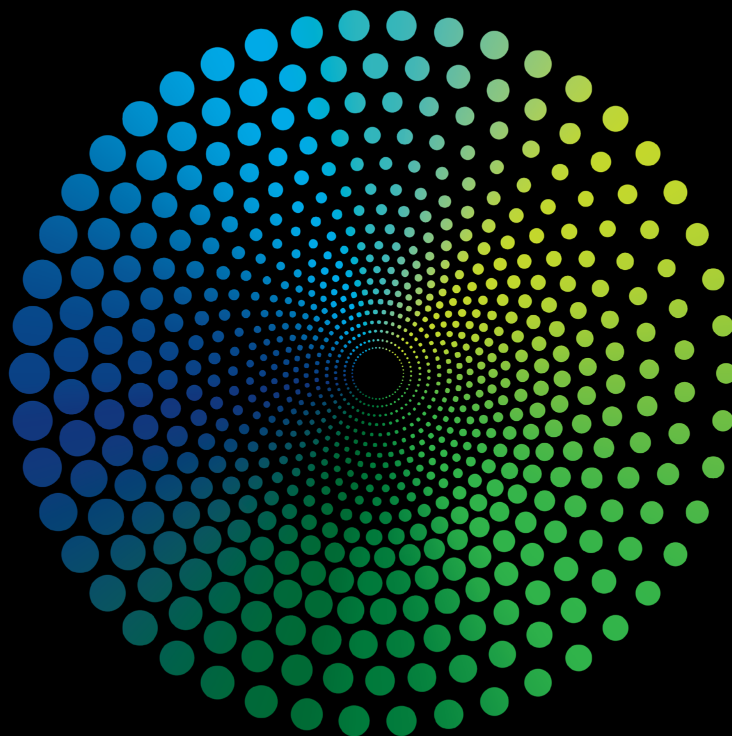

How do you know whether it is necessary to make a transfer pricing adjustment prior to the 31 December 2018 accounting close, in order to comply with the regulations?

Transfer Pricing Newsletter

During the last year, Transfer Pricing regulations have been the most relevant tax issue for companies that operate internationally.

As a result, upon performing the accounting close as of 31 December 2018, the Chief Financial Officer –CFO– must consider whether it will be necessary to adjust the operations that the entity has with related parties. So that by making such adjustment, it is ensured that the accounting close will be in line with a favorable conclusion in the Transfer Pricing analysis and in the Income Tax provision.

A Transfer Pricing adjustment is considered to be any modification to the prices, amounts of considerations or profit margins corresponding to the transactions performed by the taxpayer with its related parties, that is made in order to consider that the taxable income or deductible costs and expenses resulting from these transactions were determined by taking into consideration the prices or amounts of the considerations that would have been used with or between independent parties in comparable transactions, even when there is no exchange of cash or other material resources between the parties.

Consequently, making a preliminary Transfer Pricing analysis, using figures form partial closings, focused on reaching the economic conclusion of the transactions made can be a tool for the CFO and the taxpayer's management that provides a good indication of the company's compliance with the Transfer Pricing regulations in cases of reviews or visits made by the external auditors prior to the accounting close, when preparing the Transfer Pricing Study and when calculating and filing the Income Tax return.

In practice, we have seen that transfer pricing adjustments can be actual adjustments when they constitute an actual change to the price that will be paid to / collected from the non-resident related party, and have an effect on the tax and accounting areas. On the other hand, it is said that these adjustments are virtual when they only have an effect on the tax area, and more specifically, on the tax basis in the Income Tax return without affecting the actual price paid and the financial statements. These adjustments may have the following variations:

Types of adjustments

Voluntary or Compensating:	This is the adjustment that the taxpayer of the country of residence or the foreign country makes prior to filing the annual return so that a transaction with a related party is considered as having been determined under the same conditions as with or between independent parties in comparable transactions
Primary:	These adjustments are the ones made to comply with the obligation to determine the value of the taxable income and authorized deductions at market value. The primary adjustment can be self-determined or simply determined; self-determined are the ones established by the taxpayer and can be made at any time, and determined are the ones applied by the authorities using their oversight powers.
Correlative:	This arises because of a primary adjustment made to the related party abroad, provided that there is a tax treaty in the country of the counterpart.
Secondary:	It is made with the purpose of achieving a degree of consistency between the profits affected by a primary adjustment and the profits actually obtained by the related party that applied the primary adjustment.

Based on the economic analysis performed for documenting the Transfer Pricing Study, there are two possible scenarios in which the taxpayer may decide to make a transfer pricing adjustment in order to comply with the regulations established in Decree 10-2012.

Adjustments determined prior to the accounting close

If the taxpayer performs a preliminary analysis and based on that analysis determines that their prices are below or above the arm's length range, the taxpayer may make an accounting adjustment to correct this situation, and thus be within the interquartile arm's length range. Consequently, the taxpayer's annual Income Tax Return and accounting would now match.

It is recommended that taxpayers verify with their tax advisors the possible tax implications of making these adjustments, as well as the supporting documentation, since these adjustments could also affect indirect taxes such as the Value Added Tax.

If the adjustment is a modification to the price of an imported or exported good, it is also recommended to consult with your customs advisors, since it would be necessary to modify the import or export clearance documents, as applicable.

Adjustments determined after the accounting close and prior to an audit by the SAT

When the taxpayer has identified the need to make an adjustment, but the accounting close has already occurred, there are two possible scenarios. The first scenario consists of making the adjustment at the tax return level prior to the filing deadline. In this scenario, there will be a difference between what is reported in the tax return and what is reported in accounting. However, the purpose is to correct the tax payment and not undermine the tax payable.

The second scenario occurs when the Income Tax return has already been filed and the taxpayer identifies the adjustment after its filing. In this scenario, the taxpayer must rectify the Income Tax return and correct the line affected by the transfer pricing adjustment.

Experience of Deloitte

The Transfer Pricing team has solid expertise in providing the necessary services for addressing all the stages of implementation and the timely recording of an adjustment that complies with the legal obligations and requirements of the country.

- Pharmaceuticals
- Consumer products
- Services
- Agriculture
- Energy
- Information Technology

In Guatemala, Deloitte prepared itself and has been assisting clients since 2012, first on a preventive basis (before the Transfer Pricing regulations went into effect by performing Diagnoses), and now in the compliance phase by preparing the Transfer Pricing Studies for the first year of application that was in 2013. Deloitte has done this by developing a multidisciplinary team trained in the performance of Transfer Pricing Diagnoses and Studies that allow companies to know well in advance whether the documentary support and valuation of their transactions with related parties are adequate in light of the Tax Update Law that contains the new Income Tax law and Transfer Pricing regulations applicable since January 2013.

Recommendation

Taxpayers can receive support from their transfer pricing advisors in performing a preliminary economic analysis of the transactions prior to the end of the fiscal year, and avoid last-minute surprises close to the filing deadline for the Income Tax return. It is also recommended that the taxpayer obtain comprehensive advice from the Tax and Customs Teams in order to be aware of all the tax and customs implications related to making the adjustments.

Therefore, we invite you to be a part of our global network of clients: please contact us and give us the opportunity to provide you with a proposal that best fits the needs and expectations of your multinational company.

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.

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