Transfer Pricing News | Guatemala
January 2024

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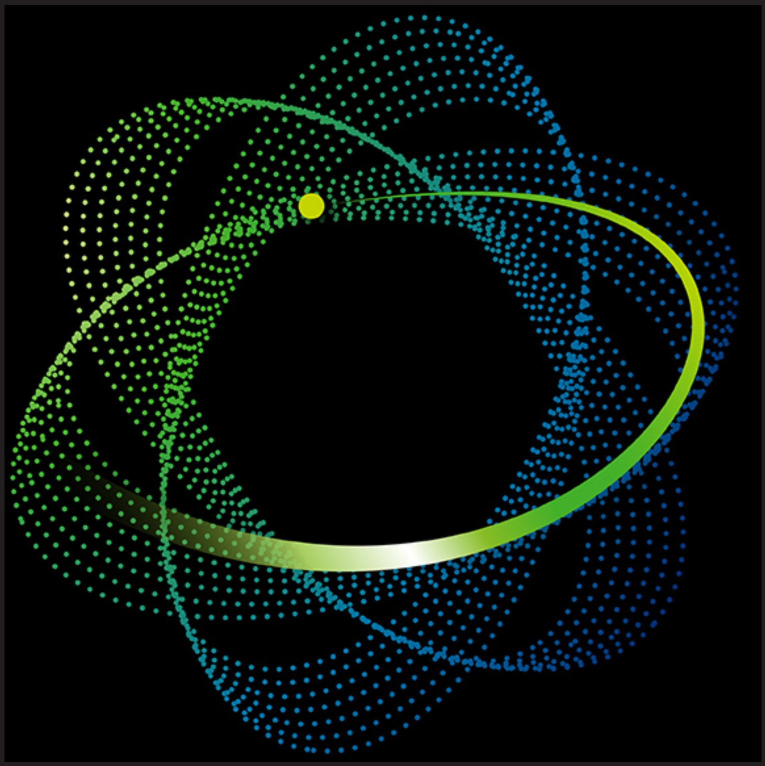

How can the local Transfer Pricing analysis help to not be classified as taxpayers with low or zero taxation?

Recently, the Superintendency of Tax Administration (SAT) explained its constant use of mathematical, statistical, and data analysis models, in coordination with the Tax Collection and Oversight Intendencies, for performing analyses of taxpayer tax-customs behavior that allow it to identify taxpayers with low or zero taxation.

Through measurement tools such as the Tax Pressure Index (TPI) and the Effective Income Tax Rate (EITR), SAT has been able to make a comparative sectoral analysis of what taxpayers' tax behavior should be, classifying them by economic sector and using as measurement components the Income Tax regime under which taxpayers may be registered, the economic activity they perform, the size of the taxpayer, their geographic location, their management classification (large, medium, or regional), and their characteristics (tax incentives), among others. Taxpayers whose TPI and/or EITR are lower than those observed in their economic sector will be the taxpayers that SAT would select for oversight actions, since they represent a potential risk based on the measurement components used in its analysis.

It is worth mentioning that among the types of situations resulting in the identification of low or zero taxation in certain taxpayers, the main ones are the following:

Invoicing between related entities to erode the tax base

According to SAT, the registry of Special Taxpayers consists of 7,080 companies, of which 1,149 are registered under the Simplified Optional Regime over Income from Lucrative Activities, and the remaining 5,931 are registered under the Regime over Profits from Lucrative Activities. Within its analysis, SAT has identified relationships between Guatemalan companies in which there is massive invoicing by a company registered under the Simplified Optional Regime to another company registered under the Regime over Profits from Lucrative Activities, with the purpose of reducing the tax burden for the business group.

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Compliance with the arm's length principle is not observed in taxpayers that reflect a lower economic performance in their transactions with foreign related companies compared to the economic sector they belong to.

All these efforts by SAT to identify taxpayers with low or zero taxation result in the need to assess whether the practices currently used by Guatemalan companies in their local transactions are in agreement with the sectors and economic activities that they are classified under.

Therefore, it is increasingly more important to evaluate economic transactions with local related entities, such that taxpayers can demonstrate to the Tax Administration that these transactions are performed in accordance with the arm's length principle, and thus have legal certainty that the transactions do not have any influence on having low or zero tax collection. A local Transfer Pricing analysis would allow taxpayers to have evidence and a defense before SAT.

Although there is no current obligation to evaluate economic transactions conducted with local related entities, based on our experience as Transfer Pricing consultants in the recent discussion of active cases related to this type of situations resulting in the identification of low or zero with SAT, we recommend that taxpayers perform an analysis/diagnosis of these transactions to ensure that they have been agreed upon at market prices, with the purpose of getting ahead of the possible entry into force of amendments to the Transfer Pricing regulations.

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