

## Transfer Pricing News

# The Superintendency of Tax Administration is requesting supporting documentation when using the non-resident related party as the tested party for the transfer pricing study

At the beginning of 2021, the Superintendency of Tax Administration -SAT- announced its oversight plans for transfer pricing matters for the second half of the year, which include among others:

- a) SAT's plan to increase transfer pricing audits by 50%
- b) Oversight of taxpayers classified as Special Large and Medium-Sized Taxpayers
- c) Sending of information requests to taxpayers

Consequently, SAT has already started sending information requests to taxpayers, and specifically requesting supporting documentation when the "tested party" or "party subject to analysis" (per the OECD) in the transfer pricing study is not the Guatemalan entity, but rather the non-resident entity.

For such purpose, it will be important to define who the tested party or party subject to analysis is. According to the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017, the tested party is defined as follows: "... The choice of the tested party should be consistent with the functional analysis of the transaction. As a general rule, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found, i.e. it will most often be the one that has the less

complex functional analysis." In conclusion, the tested party is the entity that during the Transfer Pricing process will be subject to financial analysis.

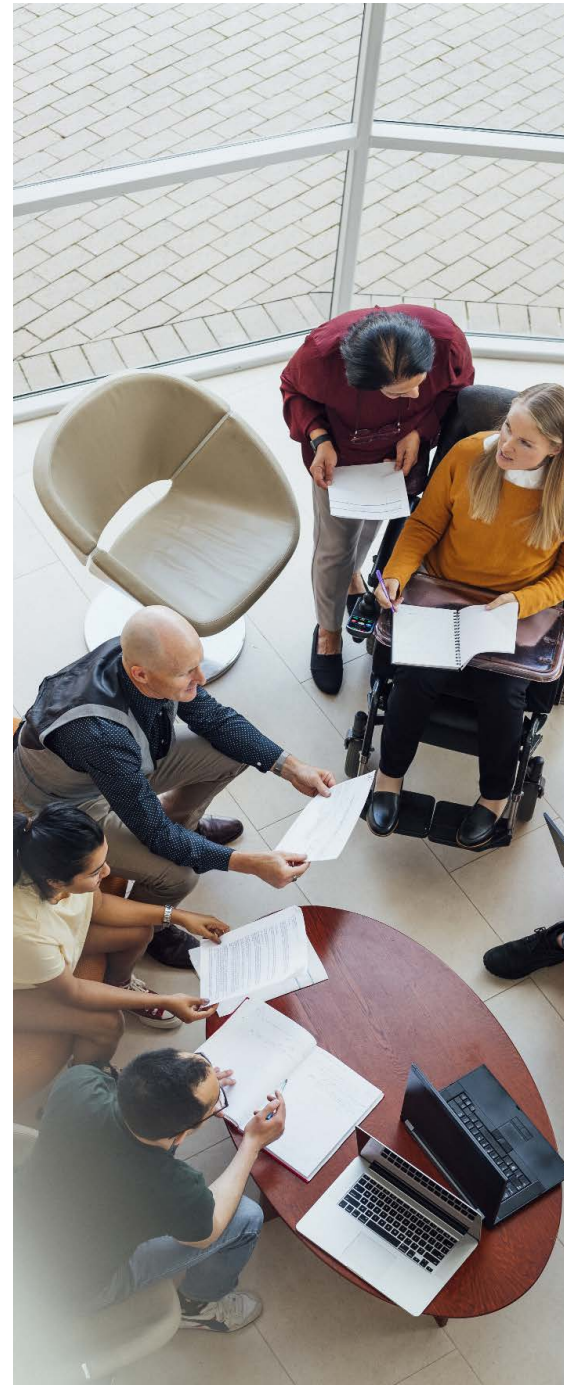
For example, we can observe that indicated above in the providing of services between related parties. Usually, if the service is provided by a foreign related party, it is such party that has sufficient information for understanding the conditions in which the price or profitability of this service is being agreed upon. The foreign related party knows the basis, the margin, and the conditions of the service. In other words, according to the OECD, in order to have an objective analysis that demonstrates compliance with the arm's length principle, the entity that provides the service should be used as the tested party, since it is the entity for which there is information on the assets, functions, and risks that are directly related to the activity subject to analysis.

With respect to the above, the Guatemalan tax office is requesting information that includes among others:

- ✔ Providing the financial statements and balance sheet of the non-resident related party selected as the “tested party,” as well as annual reports or equivalent annual reports, and supporting documentation and accounting records.
- ✔ Submitting a detail of how the income, costs, and expenses attributable to the transaction subject to analysis are segmented, and the financial information of the non-resident related party (tested party), which should match the total reported by both entities according to the Transfer Pricing Study, as well as submitting the supporting documentation.
- ✔ Submitting a justification, signed and stamped by the accountant and endorsed by the Legal Representative and by the firm that prepared the Transfer Pricing Study, of the legal and technical basis for not using the Guatemalan entity as the tested party.

As can be observed, the tax office is requesting extensive and detailed information on the non-resident related party used as the “tested party” in the Transfer Pricing Study, with the purpose of verifying that the profitability being reported aligns with the arm’s length principle.

Therefore, if your transfer pricing study was documented using the non-resident related party as the “tested party,” we recommend having all of the supporting documentation readily available, since because Guatemala has no current agreement for sharing information with other tax administrations, it will be imperative to have all the documentary support available for sharing it with the tax office in the event of an audit.



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