



## Transfer Pricing News

# How could “local transfer pricing” help bring greater legal certainty in Guatemala?

One of the most noteworthy topics in recent months has been the possible tax amendments to transfer pricing regulations in Guatemala.

Perhaps, the most discussed aspect of these amendments is the inclusion of transfer pricing between local related companies. In some cases, there was a question about

why these regulations should be applied between local companies, considering that the purpose of transfer pricing regulations is that the income tax is paid in its corresponding jurisdiction and that the tax base is not eroded by taking profits away from the country. The response to this question has been found in the recent oversight actions

taken by the Superintendency of Tax Administration – SAT – over business groups where there is invoicing between local related companies.

En estas fiscalizaciones, la misma autoridad tributaria ha observado una cantidad importante de facturaciones entre compañías relacionadas locales, en donde se utilizan los diferentes regímenes fiscales (Simplificado sobre ingresos y sobre utilidades) con la intención de disminuir la carga tributaria en el grupo empresarial. Sin embargo, el no contar con normativa de precios de transferencia local que demuestre que una transacción entre compañías relacionadas se encuentra a precio de mercado, podría generar dudas de que este tipo de estrategias, tienen como único objetivo pagar menos Impuesto Sobre la Renta, lo cual a criterio del fisco, en algunas ocasiones podría inclusive interpretarse como una posible defraudación tributaria. Este último término no es del agrado de ningún contribuyente, tomando en consideración que la defraudación tributaria tipificada en nuestro Código Penal en el artículo 358 A, tiene otro tipo de consecuencias.

Dado lo anterior, es posible que con la incorporación de una normativa de precios de transferencia local, permita a los contribuyentes demostrar a la Administración Tributaria que las transacciones con compañías relacionadas locales son efectuadas de acuerdo con el principio de libre competencia, y así tener certeza jurídica de que las operaciones no intentan producir menoscabo en la recaudación impositiva. El Estudio de Precios de Transferencia local permitiría a los contribuyentes contar con un medio de prueba y de defensa ante la SAT.

Al día de hoy, que las reformas no han sido aprobadas aún, recomendamos a los contribuyentes realizar un análisis/diagnóstico de las transacciones realizadas con compañías relacionadas locales, para asegurarse que las mismas están pactadas a precio de mercado y al mismo tiempo prepararse para la entrada en vigencia de las posibles reformas.



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