



## Transfer Pricing News

# Acceptance of comparable companies with operating losses in the Transfer Pricing economic analysis

In December 2020, the OECD published a guidance on the transfer pricing implications of the COVID-19 pandemic that clarifies that there is no overriding rule in the OECD Transfer Pricing Guidelines on the inclusion or exclusion of loss-making comparable companies in the periods under analysis. Consequently, loss-making comparable companies that meet the comparability criteria in a particular case, in our opinion, should not be rejected on the sole basis that they suffer losses in periods affected by the COVID-19 pandemic. Therefore, when performing a comparability analysis for the fiscal years subsequent to those affected by COVID-19, it may be appropriate to include loss-making comparable companies when the accurate description of the transaction indicates that those comparable companies are reliable, such as, when the comparable companies assume similar levels of risk, assets and functions and these have been similarly affected by the pandemic.

In Guatemala, the SAT published a Transfer Pricing Technical Guide in 2016, which indicates in letter d. "Comparables Selected" section vii. "Do not present operating losses (before and after the application of comparability adjustments) in the years under analysis, unless the taxpayer justifies objectively and in detail that such losses are a characteristic of the business, due to circumstances in the market, industry or other comparability criterion affecting the economic activity and irrefutably demonstrates that the conditions that led to the loss are not a consequence of characteristics affecting comparability."

Therefore, we may conclude that loss-making comparable companies should not be excluded just because they have losses. Of course, if applicable, the taxpayer should document within the Transfer Pricing Study an analysis supporting how the industry has been affected, as well as thoroughly document the process for the search, rejection, and selection of comparable companies considering the comparability criteria established in the Tax Update Law in order to support the reliability in the use of loss-making companies in periods affected by COVID-19.



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