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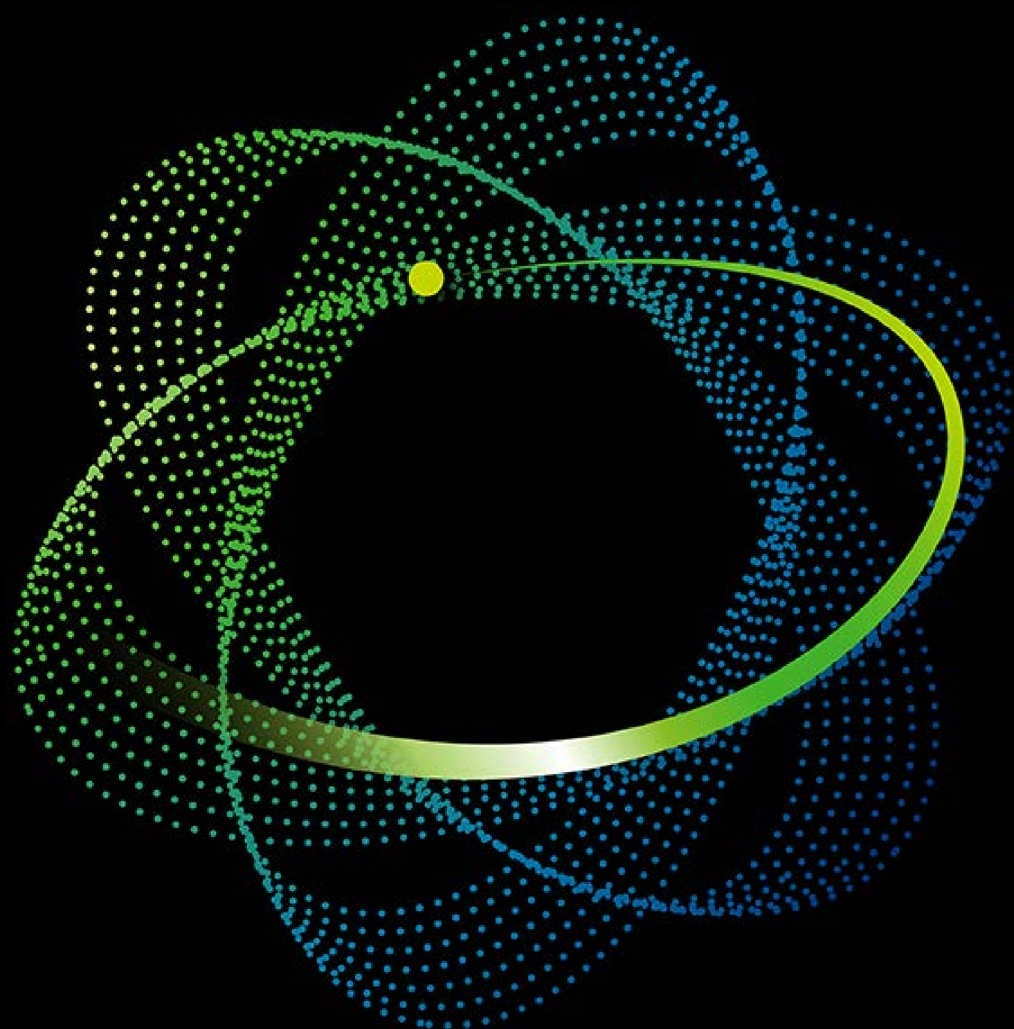

Transfer Pricing News

SAT questions transfer pricing policies for services provided without a profit mark-up

Transfer Pricing is an area that has become increasingly relevant over time for the Superintendency of Tax Administration -SAT-, since just in 2020 adjustments totaling one billion quetzales (USD 150 million) were made. Therefore, at the beginning of 2021, SAT announced its transfer pricing oversight plan for the second half of that year and the beginning of 2022, which among others mentioned the following:

a) Plans by SAT to increase transfer pricing audits by 50%

b) Oversight of taxpayers falling under the Offices of Large and Medium-sized Special Taxpayers

c) Sending of information requests to taxpayers

Consequently, the SAT began to send information requests to taxpayers and even start transfer pricing reviews and audits at the end of 2021 and the beginning of 2022. To that end, SAT has questioned the cases in which Guatemalan taxpayers provide intra-group services to their non-resident related parties without a profit mark-up.

It is common for multinational companies to use an entity that performs the function of a shared services center, in which different types of services are provided to the entities that are members of the multinational group, and that are useful and necessary for carrying out their normal business activities, such as: IT, accounting, administrative, and marketing services, among others. Consequently, these multinational entities determine transfer pricing policies that are aligned with the arm’s length principle in relation to the functions performed, assets used, and risks assumed in each type of service provided.

Therefore, it is important that transfer pricing policies reflect the participation in the generation of the value chain for providing such service, as well as the assets used, functions performed and risks assumed, with the purpose of finding adequate comparables, and thus obtaining an arm's length range for each type of service provided from Guatemala. In addition, SAT takes into consideration the following legal bases:

- Decree 10-2012 Tax Update Law, Article 54. Arm's Length Principle. "(…) price or amount for a specific transaction that independent parties would have agreed upon under conditions of fair competition (…)"
- Decree 10-2012 Tax Update Law, Article 55. Powers of the Tax Administration. The Tax Administration may verify whether the transactions conducted between related parties have been valued in accordance with that set forth in the previous article and make the corresponding adjustments when the valuation agreed upon between the parties results in the payment of fewer taxes in the country or in deferred taxation; for the adjustments made, it shall grant a hearing to the taxpayer which is within the procedure for the determination of the tax obligation by the Administration, established in the Tax Code.
- OECD Guidelines – Intra-group Services (D.2.1): 7.54. As discussed in paragraph 7.6, under the arm's length principle an obligation to pay for an intra-group service arises only where the benefits test is satisfied, i.e. the activity must provide the group member expected to pay for the service with economic or commercial value to enhance or maintain its commercial position.
- D.2.4. Profit mark-up 7.61. In determining the arm's length charge for low value-adding intra-group services, the MNE provider of services shall apply a profit mark-up to all costs in the pool "(…) irrespective of the categories of services. The mark-up shall be equal to 5% of the relevant cost as determined in Section D.2.2. (…)"

Therefore, we can conclude the following:

i. SAT will question and adjust those taxpayers that provide a service from Guatemala to their non-resident related party that has been agreed to without a profit mark-up.
ii. The tax office may determine whether it is a low value-adding intra-group service and accordingly make a transfer pricing adjustment by applying a 5% mark-up to the service provided, considering that such transaction has resulted in the payment of fewer taxes to Guatemala.
iii. The tax office will verify that the remuneration for the service provided from Guatemala is based on the functions, assets, and risks incurred by the local party, and if necessary, verify the comparable companies and calculate an arm's length range, which will adjust the median of the results.

We recommend reviewing the transfer pricing policies for the services provided from Guatemala and ensuring that they include a profit mark-up that corresponds to the functional analysis of the Guatemalan company, as well as having the documentation that supports the transaction: service contract, accounting records, and comparables aligned with the functional analysis of the tested party.

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