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Transfer Pricing *News*

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Good practices when preparing a transfer pricing study: An interview with the SAT

The SAT introduced the transfer pricing annex to the annual income tax return, which must be completed by taxpayers that perform any transactions with nonresident related companies during the tax year.

In June 2021, Deloitte Guatemala partner Mario Coyoy was invited by the Transfer Pricing Commission of the Guatemalan Institute of Certified Public Accountants and Auditors (IGCPA) to interview a representative of Guatemala's Superintendency of Tax Administration (SAT) to inquire about and share good practices in the preparation of transfer pricing studies.

Between 2016 and 2020, the SAT made transfer pricing adjustments totaling over USD 400 million.

In 2016, the SAT published a technical guide detailing how transfer pricing studies should be prepared, based on the regulations in Government Agreement 213-2013 and the legislation in Decree 10-2012. Also in 2016, the SAT introduced the transfer pricing annex to the annual income tax return, which must be completed by taxpayers that perform any transactions with nonresident related companies during the tax year.

The good practices that the SAT representative recommended are summarized as follows:

- Companies are advised to perform a detailed and well-supported functional analysis in which the company is classified and the functions, assets, and risks used in each analyzed transaction are specified with as much detail as possible.
- The profitability indicator in the economic analysis should not always be the same, but rather should depend on the method selected and the nature of the transaction being analyzed. Additionally, as a good practice, companies should not use the tested transaction as a denominator.
- There is no predetermined method that is applicable to all transactions. Therefore, it is necessary to analyze the economic circumstances and the available information to justify the rejection of some methods, considering that these should be prioritized in the order provided in article 59 of Decree 10-2012 and its amendments. Although the transactional net margin method is the one most used in national and regional practice, it is always

necessary to perform an adequate selection process that takes into account the details of the transaction.

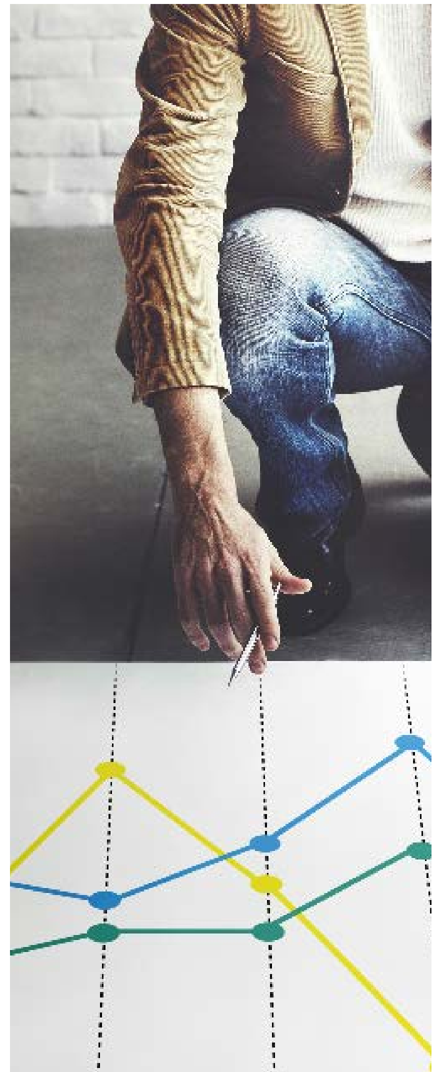
- If the transactions between related companies are linked with each other, a global analysis may be performed. However, if it is possible to segment these transactions, more information may be available for their valuation and the taxpayer may be in a better position to demonstrate compliance in each of the transactions. The segmentation of financial statements should be done with great detail and justification so that the transfer pricing analysis may accurately value the transaction being analyzed and can be defended in the event of a tax audit.

- One of the main reasons the SAT has made adjustments in the last few years has been issues with the selection of comparable companies. Therefore, it is good practice to present a comparability analysis in the transfer pricing study detailing the similarity of functions, assets, and risks between the tested party and the comparable companies. In addition, it is important to verify that the financial information of the comparable companies is correct and complete, and that it is public information, indicating in detail the sources used.

- It is good practice to include the strategy used to search for comparable companies, with support for the qualitative and quantitative criteria used to accept or reject each potentially comparable company.

- The transfer pricing annex should contain the same information as the transfer pricing study. It is important to mention that, if the income tax return is amended, it is necessary to recertify the filing of the transfer pricing annex. Furthermore, if the taxpayer amends the transfer pricing annex but the income tax return does not need to be amended, the statute of limitations will not be interrupted, according to the SAT representative.

- All transactions with related companies, including transactions between local companies, must comply with the arm's length principle. In this respect, the SAT is considering proposing legislation so that the transfer pricing rules would apply not only to transactions between a



> Guatemalan taxpayer and a foreign related party, but also between related companies residing in Guatemala. Therefore, it is important to anticipate and analyze compliance with the arm's length principle in local transactions.

It seems that the SAT is quite focused on continuing its oversight of transfer pricing practices. Therefore, taxpayers should take proper care in transfer pricing matters by justifying and documenting their pricing and profitability with related companies so as to support their positions in the event of a future SAT review.

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