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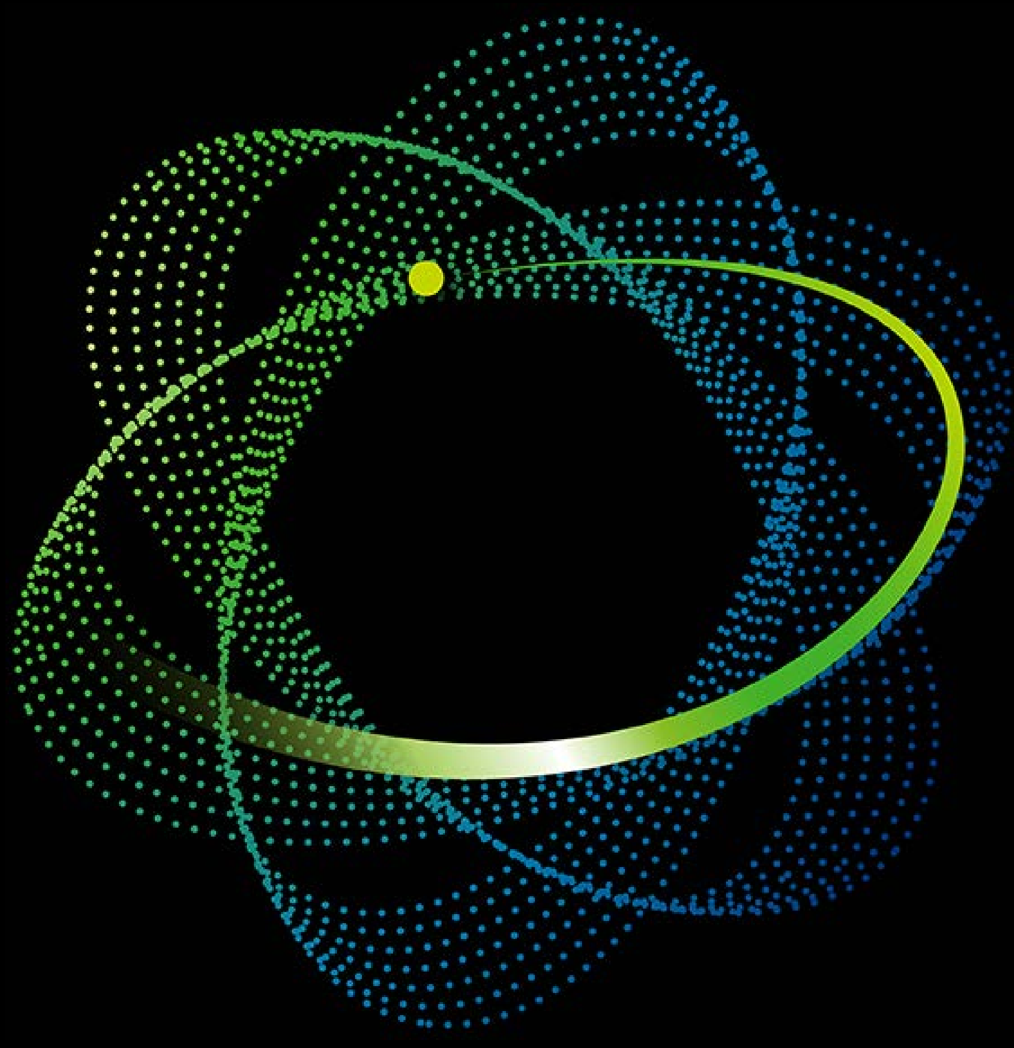

Transfer Pricing News

Aspects to consider in the treatment of intangible assets from a transfer pricing standpoint

While it is true that the international transfer pricing rules published in the Transfer Pricing Guidelines of the Organization for Economic Cooperation and Development -OECD- are not applicable in Guatemala, they can be used as a very important reference in certain transactions, and one of these are transactions with intangibles between related entities.

The OECD guidelines published in 2017, as a result of the OEDC/G-20 Base Erosion and Profit Shifting Project “Aligning Transfer Pricing Outcomes with Value Creation,” indicates a series of steps to follow in order to analyze intangible assets, which will then allow one to determine whether the price of use or exploitation of these intangibles, usually a royalty, meets the arm’s length principle, that is, is stated at fair market value.

These steps can be summarized as follows:

i. Identify the intangibles used or transferred in the transaction with specificity and the specific, economically significant risks associated with the development, enhancement, maintenance, protection , and exploitation of the intangibles;

ii. Identify the terms and conditions of the contractual arrangements, with special emphasis on determining legal ownership of the intangibles, including relevant registrations, license agreements, and the contractual rights and obligations, including contractual assumption of risks in the relations between the associated enterprises;

iii. Identify the parties performing function, using assets, and managing risks related to developing, enhancing, maintaining, protecting, and exploiting the intangibles by means of the functional analysis, and in particular which parties control any outsourced functions, and control specific, economically significant risks;

iv. Confirm the consistency between the terms of the relevant contractual arrangements and the conduct of the parties, and determine whether the party assuming economically significant risks controls the risks and has the financial capacity to assume the risks relating to the development, enhancement, maintenance, protection, and exploitation of the intangibles;

v. Where possible, determine the arm's length prices for these transactions performed by each party, and confirm that they are consistent with each party's contributions of functions performed, assets, used, and risks assumed.

The above is known as a DEMPE (development, enhancement, maintenance, protection and exploitation) analysis. This analysis allows companies to know whether the price of the intangibles (royalty for use or exploitation) is actually associated with the functions, assets and risks.

If you need assistance with reviewing the treatment of your intangible assets in accordance with the OECD guidelines, you can reach out to our contact people. Our team of Transfer Pricing specialists is available to support you with everything you need.

Our experts:

Deloitte offers a range of integrated tax and legal services. Our teams combine technical knowledge, experience and innovation, which allow us to help our clients meet their objectives at the local and global levels.

Mario Coyoy

Centralamerica Transfer Pricing Leader Partner
mcoyoy@deloitte.com

Jovita Jo

Senior Manager
Transfer Pricing
jovita.jo@deloitte.com

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