



Transfer Pricing News

# From a transfer pricing standpoint, may I use my related party that is not a resident of Guatemala as a tested party?

To better understand the impact that this question may have on a Transfer Pricing analysis, it will be important to delve into the meaning of each of the variables.

First, we should understand that for purposes of the Guatemalan legislation, a related party is a foreign legal entity that has any type of relationship with a Guatemalan company. To learn more about these relationships, see article 56 of Decree 10-2012 and its amendments.

Next, it is important to define what a tested party, or analyzed party, is. Thus, we can say that the tested party is the entity that will be subject to financial analysis during the Transfer Pricing process.

Common practice under both international and Guatemalan regulations is that the tested party is the local taxpayer that is performing the analysis. However, there are cases in which using the related party as the tested party may end up being more objective and reasonable; and without trying to benefit the taxpayer, of course.

A clear example where we can observe this is in the providing of services between related parties. Usually, if the foreign related party provides the service, then such party is the one that has sufficient information to understand the conditions under which the price or profitability for this service is being agreed. The foreign related party knows the basis of the service, as well as the margin and conditions. Otherwise, if the Guatemalan taxpayer would like to demonstrate that it pays for a service that meets the arm's length principle, and it does not have information on the margin that the foreign company charges, the Guatemalan taxpayer would have to make a more subjective analysis, analyzing the profitability of its normal business activity, and then claiming that the service is reasonable. However, this may not be objective since the circumstances of the transaction may be so good that they do not allow the payment of the service to generate a loss.





Therefore, in this scenario, the ideal would be to use the margin charged by the foreign company, or in other words, use the foreign company as the tested party.

Since Transfer Pricing analysis seeks to show that the tested transaction reflects objectivity, fairness, and certainly, compliance with the arm's length principle, under no circumstances should it be limited to establishing who specifically the tested party should be.

This is why, for Guatemalan purposes, an objective and fair transfer pricing analysis does not differentiate between whether the tested party is the Guatemalan taxpayer or its foreign related party, as long as the analysis allows the taxpayer to evidence the proper application of the arm's length principle.

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