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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Guatemala

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TAX



Guatemala

KPMG observation

Transfer pricing documentation requirements were published in 2012. However, the first year taxpayers in Guatemala must comply with transfer pricing documentation requirements is 2015.

Basic information

Tax authority name

Superintendencia de Administración Tributaria.

Citation for transfer pricing rules

Decree No.10-2012 published in the Central America Official gazette (amendment by Decree No.19-2013).

Effective date of transfer pricing rules

1 January 2015.

What is the relationship threshold for transfer pricing rules to apply between parties?

Two entities can be considered related parties when one of them is a resident of Guatemala and the other is resident in a foreign tax jurisdiction, if one of the following cases applies:

1. when one of them directs or controls the other, or holds, directly or indirectly, at least 25 percent of its capital stock or voting rights, whether a domestic or foreign entity
2. when five or fewer people direct or control both related parties, or possess directly or indirectly at least 25 percent of participation in the capital stock or voting rights of both entities
3. legal entities resident in Guatemala or abroad belonging to the same corporate group are considered

to be part of the same business group if one of them is a member or participant of the other and is related to it in any of the following situations:

- holds a majority of voting rights
- has the power to appoint or remove members or through its legal representative to intervene decisively in the other entity
- may have, under agreements with other partners, most of the voting rights
- has appointed exclusively by their votes to the majority of the members of the board
- a majority of the members of the governing body of the legal entity are ombudsmen, managers or members of the board of the related party or other one dominated by it.

When two companies comprise a decision group with respect to a third company, all these companies are considered a business group.

It is also considered that an individual has a stake in the capital stock or voting rights when the owner of the share or shares, directly or indirectly is the spouse or person connected by relationship, by blood relation to the fourth degree or affinity to the second degree. The term person refers to individuals, corporations and other organizations with or without legal personality.

Also considered related parties are the following:

- a resident of Guatemala and a distributor or exclusive agent of a foreign territory
- a distributor or exclusive agent resident in Guatemala of an entity resident abroad and the latter
- a resident of Guatemala and abroad its permanent establishments
- a permanent establishment located in Guatemala and its foreign parent company, another permanent establishment of the same company or a person associated with it

What is the statute of limitations on assessment of transfer pricing adjustments?

Four years from filing date of the tax return.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

The transfer pricing information return must be completed. Taxpayers should, however, be able to support the arm's length nature of the intra-group transactions at the moment of filing the income tax return. The transfer pricing documentation must include

the information that the taxpayer used to determine the arm's length nature of the intra-group transactions. This documentation will need to be prepared on an annual basis.

What types of transfer pricing information must be disclosed?

Along with the Income Tax return, an appendix that summarizes the main information must be attached, but the form is not available.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The burden of proof is shifted to the tax authority when a company has transfer pricing documentation. Also, having documentation will reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties.

According to the Fiscal Code, there is no specific penalty for not preparing supporting transfer pricing documentation; however, if a taxpayer does not comply with the transfer pricing documentation requirements, Guatemala tax authorities might deny the deduction of expenses resulting from the intra-group transactions with foreign related parties, or modifying the reported income in intra-group transactions. They may also conduct an appropriate analysis to determine the arm's length nature of the intra-group transactions and make adjustments accordingly. Documentation for all intercompany transactions is required. No exception applies.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation study must be ready 3 months after the end of the fiscal year.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

Not as of today.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes. However, the following methodologies will need to be considered (or disregarded) before applying methods outlined in Chapter II:

- market value in transferring goods or services abroad: the price established by other entities (non-related with the tested party) that sell the same products or render the same services from Guatemala to the same country abroad
- import market price: the price established for the same goods and services between third parties within the country in which the product or service is going to be acquired plus the freight charges if it the case.

Is there a priority among the acceptable methods?

Whenever appropriate data exists the comparable uncontrolled price (CUP), cost plus (CPLM) or resale price methods (RPM) should be used. When not applicable due to the complexity of operations, lack of publicly available information, or other factors such that there is an inexistence of comparable

data, the following methods should be applied: profit split or transactional net margin method (TNMM). This order must always be observed.

If there is no priority of methods, is there a "best method" rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer has 20 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes. Taxpayers can submit the resolution to an administrative area within the tax authorities in order to object to the procedures. Also, taxpayers may appeal to the tax court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties apply.

To what extent are transfer pricing penalties enforced?

Not yet known.

What defences are available with respect to penalties?

None.

What trends are being observed currently?

The transfer pricing requirements are very recent in Guatemala. The first legislation was published in 2012 and applicable in 2015. Therefore, as of yet there have been no transfer pricing audits.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Based on experience in Guatemala, North American comparable companies are used for benchmarking purposes.

Do tax authorities have requirements or preferences regarding databases for comparables?

Not yet known.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes. However, taxpayers must support the fact that intra-group services have been rendered before a deduction is taken. That is, the taxpayer must demonstrate that the services (1) were actually rendered, (2) provided a benefit to the taxpayer and (3) were not duplicative services. If no support can be provided, then the tax authority will consider them non-deductible.

Are management fees subject to withholding?

Yes.

Are year-end transfer pricing adjustments permitted?

Yes. However, it is important that the year-end adjustments are accounted for before the end of the fiscal year to make sure tax and accounting figures are consistent. It is advisable to conduct periodic reviews in order to avoid significant year-end adjustments. Customs issues must also be taken into account.

Other unique attributes?

Mutual agreement procedures (MAPs) are not available.

Other recent developments

The first legislation was published in 2012 and the first year of application of the transfer pricing documentation requirements is 2015.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Not applicable.

If extensive, is the competent authority effective in obtaining double tax relief?

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What Advance Pricing Agreement (APA) options are available, if any?

The APA should be submitted before the intra-group transaction takes place. The APA has effect with respect to the transactions carried out after the date of approval and is valid during the period of time agreed in that agreement, but shall not exceed four periods subsequent

to the date of approval. The effect of the APA will be valid for the operations carried out in the current period.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not clear yet as APAs are new.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

No experience yet.

Language

In which language or languages can documentation be filed?

The Guatemala tax authorities require all documentation to be in Spanish.

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