

We fairly reviewed and studied in detail the Draft Handbook on Transfer Pricing Risk Assessment (hereinafter referred to as “The Document”) and after our scrutiny process we hereby provide our comments as follows:

- The Document refers in its Chapter 3 paragraph 37, about risk factors: *1) taxpayer engages in recurring related party cross border transactions that have the potential to erode the local country tax base, 2) large or one time transactions such as the transfer of intangibles or certain business restructurings and 3) inadequate taxpayer attention to general transfer pricing compliance.* In this sense, we believe recurrent transactions must not be understood as a risk, taxpayers majorly celebrate recurrent transactions and this is not related to risky situations but to its business activity. In addition, and referring to numeral 2, what should be considered as “large”? And why a one-time transaction should be considered as risky? In a day-to-day business one-time transactions usually happen. We think the aforementioned statements are stricter than they should be.
- We consider The Document in its Chapter 3, Section 3.2.1.1 “Profitability” as highly fussy and strict. What about entities experiencing losses due to startup costs or depressed markets? Losses not always mean evidence of mispricing and may not necessarily be the result of transfer pricing manipulation.
- The Document must be considered seriously, as some countries in Latin America are starting to include Transfer Pricing rules in its local legislations and they take into account OECD’s documents accurately. This is a serious responsibility OECD carries on its shoulders as Tax Administrations in those countries could start a Transfer Pricing audit process based on the statements mentioned in The Document.
- In chapter 3, after paragraph 36, we recommend the addition of the following paragraph: “In any case, the isolated existence of any of the risk indicators listed below does not necessarily imply a transfer pricing risk to warrant initiating an audit. First, to determine whether this risk exists, as a fundamental principle the transaction must have potential to move income to other jurisdictions that cause erosion of the local tax base. If this is true, then the set of two or more risk indicators could lead to a possible transfer price risk to warrant the initiation of an audit of the taxpayer.”

- With regard to the risk indicators on recurring losses, recurring low profits, or recurring low ROI referred to in section 3.2.1.1.3., it is recommended to define the term "recurrent" depending on the type of industry or sector in which the taxpayer carries out its activity.
- As for the risk indicator on excessive debt referred to in section 3.2.1.6., we recommend to define when it is considered that the taxpayer has incurred in excessive debt, without losing sight of the type of industry or sector in which the taxpayer operates. Additionally, it is suggested to limit the scope of the concept of debt, in order to include interest debt only.
- As regards intangibles, we suggest deleting the last sentence of paragraph 44 of the section 3.1.2. transcribed below: "Indeed, uncertainties around valuation with regard to such transactions can raise important transfer pricing questions even if there is no evidence of avoidance or minimization of tax payments.". This, in line with the aforementioned definition of transfer pricing risk.
- We suggest including in chapter 3 of the report that Tax Administrations make public the transfer pricing risk indicators that will be considered to develop the risk profile of its taxpayers. We believe this transparency rule will encourage taxpayers to avoid transactions considered as risky, or they will be aware that carrying out such transactions will represent high possibilities of a tax audit.
- We recommend incorporating to chapter 4 of the report that in the process of transfer pricing risk assessment or in the tax audit process, Tax Administrations avoids requesting the taxpayer documentation that is owned by its foreign related parties, since the local taxpayer is not obliged to have this documentation and even in practice obtaining such information it out of reach.

- We will appreciate to add in chapter 6 of the report that whenever a Tax Administration decides an audit process must be conducted for a specific transfer pricing risk indicator and finally there is no issue to pursuit, Tax Administration must not begin a hunting process and must preserve a professional attitude by closing the audit process immediately.

We stay at your disposal should you have any queries.

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