



INTRA GROUP SERVICES
OECD GUIDELINES AND MEXICAN FRAMEWORK



Basic Framework

General speaking, Mexican Regulations keep the pace to OECD's Transfer pricing guidelines in most of the basic issues regarding services provided by one or more entities within a Multinational Group (MNG)¹.

There are two main issues regulated by transfer pricing provisions regarding services provided:

- That services have in fact been provided
- That price charged for such intra-group services should be in accordance with the market (arm's length principle)

The first category must be able to go through the Benefits Test that claims that the services rendered must add economic or commercial value. This can be determined by considering whether an independent entity would have been willing to pay for it or would have performed such activities by itself. If the answer is negative in both positions, no intra-group services should be considered.

¹ Mexican Income Tax Law is not abundant on regarding the transfer pricing regulations. Supportive material is contained on Articles 179 and 180. Article 179 refers to the OECD Transfer Guidelines as a main source for proper interpretations.

The second issue focus on the assumption that the amount charged for the services are similar to the amount charged for independent providers under similar circumstances.

There are a wide scope of services provided for members of a MNG: Administrative, Technical, Financial, Commercial, etc., however, many of those services are available externally from independent entities so it is possible to the tax authorities to get enough external information to compare either type of services and pricing.

Transfer pricing guidelines issued on July 2017² aims to offer a more detailed technical argument describing some different types of services and then the best procedure for pricing them. Above we discuss about this topic.

Low Value Services (LVS)

For the first time, OECD Guidelines provide us with a framework about a “low value services” category for applying the “simplified approach”.



LVS are defined as services performed by one or two MNG members which the following characteristics:

² Services is the most audited topic for tax jurisdictions for transfer pricing matters.

1. Are of supportive nature
2. Are not part of the core business of the MNG
3. Do not require the use of unique or valuable intangible
4. Do not involve the assumption of substantial or significant risk for the service provider

In this sense, the following drop list gives us examples of services that likely meet the definition of **LVS**³:

- Accounting and auditing
- Processing and management of accounts receivable and accounts payable
- Human resources activities (staffing, recruitment, training, remuneration services)
- IT services

On the other hand, from OECD perspective, the following activities would not qualify for the simplified approach outlined in this section:

- Services constituting the core business of the MNG
- R&D Services
- Manufacturing and Production services
- Purchasing activities related to raw materials or others used in manufacturing
- **Sales, marketing and distribution activities**
- Financial transactions
- Extraction, exploration or processing natural resources
- Corporate senior management

This simplified approach of pricing **LVS** ends up with a **5% mark-up** applied over the relevant costs. This methodology is quite similar to that used on Mexican Maquiladoras and it is well known as a "Safe Harbor".

³ We must bear in mind that a proper analysis must be made on case by case situation

Although many regulations do not contain a specific ruling about the 5% discussed before, references made by local regulations to such OECD Guidelines and the wide open acceptance of this position by tax authorities may provide us with enforceable legal support in case of its application.

In this regard, services that do not fall within the scope of **LVS** may be charged with a bigger mark-up and, therefore, a deeper functional analysis has to be done to be able to find the best comparable available (internal or external).

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