BaseFirma
Your Smart Transfer Pricing Alternative

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Transfer pricing

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in transfer pricing.

Mexico

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Omar López is a partner at BaseFirma's international transfer pricing group in México City (BaseFirma México SC). He is a transfer pricing expert certified by Federación de Economistas, Mexican Tax Authorities (SAT) and the Centro Interamericano de Administraciones Tributarias (CIAT). He has participated as a speaker at international transfer pricing events such as TP Minds, Miami 2019. He is an active member of the International Fiscal Association (IFA) and he has collaborated on articles published by the International Bureau of Fiscal Documentation (IBFD).

Q. In your opinion, do companies pay enough attention to the challenges and complexities of maintaining compliant transfer pricing policies?

LÓPEZ: There is a growing concern regarding transfer pricing regulations, nevertheless local companies still have a lot of work to do to be fully compliant with transfer pricing rules.

Q. To what extent have the tax authorities in Mexico placed greater importance on the issue of transfer pricing in recent years, and increased their monitoring and enforcement activities?

LÓPEZ: In recent years the Mexican tax authority, *Servicio de Administración Tributaria* (SAT), has published updated transfer pricing regulations included in the local miscellaneous tax resolutions and as part of the non-binding criteria. In addition, SAT has access to a significant amount of taxpayers' digital information. Taxpayers in Mexico are required to send digital invoices to their customers, keep digital accounting books and digitally file annual tax returns and disclosure forms. The challenge for SAT is to improve the use of the data it has already collected. SAT is in the process of implementing a risk assessment tool to analyse the collected data and to identify potential taxpayers for a transfer pricing audit. That will allow SAT to focus its resources on auditing taxpayers with major transfer pricing issues.

Q. What steps should companies take if they become the subject of a tax audit or investigation?

LÓPEZ: In general, transfer pricing audits cover the previous four or five years. In some cases, additional information is requested by Mexican tax authorities that is no longer available or the employees who prepared the transfer pricing study are no longer working for the company. At the start of an audit, we would recommend companies undertake a deep review of their transfer pricing policies, as well as the financial information available, and explore different scenarios and questions that may arise during the audit. In those cases, it is very important to be one step ahead of tax authorities. If an audit is already in progress and the scenarios are not favourable for the taxpayer, we would recommend negotiating with the tax authorities. In 2011, a tax ombudsman – *Procuradoria de la Defensa del Contribuyente* (Prodecon) – was created for the purpose of offering specialised tax services to Mexican taxpayers, including free advice, consultation, advocacy and representation, as well as following up on complaints or claims against the Mexican tax authority's audits. This alternative is called a conclusive agreement. The main purpose of this agreement is to involve Prodecon as a mediator between the taxpayer and the Mexican tax authority, as well as to prevent any legal confrontation and provide a more beneficial resolution for both parties. In cases when scenarios are favourable to the taxpayer, but the tax authority is exceeding its requirements or its interpretation of the Mexican Income Tax Law or transfer pricing guidelines, we would recommend companies commence litigation. Another important solution is requesting a mutual agreement procedure (MAP). Mexico has several tax treaties that contain a MAP like that in Article 25 of the Organisation for Economic Co-operation and Development's (OECD's) Model. Therefore, depending on the country, it is important to evaluate whether the taxpayer is allowed to access a MAP and evaluate the time and costs of this process before making any decision.

Q. What kinds of challenges arise in calculating appropriate transfer prices, both for tangible and intangible assets? How crucial is it to have consistent supporting documentation?

LÓPEZ: The main challenge is establishing access to good quality information. Most multinationals have their headquarters abroad, with subsidiaries in Mexico. In some cases, it can be difficult to obtain information on how headquarters allocated service charges across its subsidiaries, how the sale of a product is calculated and the development, enhancement, maintenance, protection and exploitation (DEMPE) efforts of each related party. Another challenge is the lack of comparables. Unfortunately, in Mexico there are not many public companies that can be used in transfer pricing analysis, therefore transfer pricing advisers are obliged to consider foreign companies from different markets as comparable companies. Once the transfer pricing advisers have good quality information, they can perform an accurate economic analysis.

Q. Have you seen an increase in transfer pricing disputes between companies and tax authorities in Mexico?

LÓPEZ: Due to the application of the arm's length principle, there is scope for discussion in every transfer pricing analysis. Those discussions and negotiations applied to a taxpayer with potential transfer pricing problems have become good business for the tax authorities. In recent years, transfer pricing has become one of the most successful areas for the SAT.

Q. Could you outline the role and influence of the Organisation for Economic Co-operation and Development (OECD) on transfer pricing regulation in Mexico, including the latest developments on base erosion and profit shifting (BEPS)?

LÓPEZ: As a member of the OECD, Mexico is completely aligned with its transfer pricing regulations. In fact, Mexico was one the first countries in the world to include BEPS Action 13 into its legislation.

"Since the introduction of BEPS, transfer pricing practice is more complex, audits are more detailed and the Mexican tax authorities are more demanding."

Q. In general, what advice would you give to companies on reviewing and amending their transfer pricing policies and structures?

LÓPEZ: Since the introduction of BEPS, transfer pricing practice is more complex, audits are more detailed and the Mexican tax authorities are more demanding. Arguably, an annual transfer pricing study is not enough to make sure that taxpayers are meeting all their transfer pricing requirements. The study must be challenged every year and reviewed with all the necessary supporting documentation. Having said that, a second opinion revision of a transfer pricing study would help taxpayers to identify some potential risks and areas of opportunity. ■

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BaseFirma is a team of experienced international economists, MBAs, tax lawyers and accountants, here to help companies with all of their transfer pricing needs and related international tax issues. The firm offers efficient, top quality, extremely price-competitive services, while guaranteeing personalised, on-the-spot attention.