

BENEFIT TEST: SUNAT INTENSIFIES REVIEW OF INTRAGROUP SERVICES

In the last months, SUNAT has intensified the review over the intragroup services. If your company receives services from related parties, this article is for you.

CURRENT LANDSCAPE

During the last month, the Tax Administration has launched a massive campaign to send communications to taxpayers who reported services received from related parties in the Local File Informative Tax Return. These notifications, in the form of tax compliance letters and CP2000 Notices, look for clarifications regarding the omission of the Benefit Test in the Informative Tax Return.

Key fact: Reviews cover transactions since 2019, period that remains open to audit.

WHY IS BENEFIT TEST IMPORTANT?

The Benefit Test application is crucial to support the deductibility of costs and expenses in transactions involving services received from related parties. Its implementation is a requirement for deduction under current regulations, contributes to substantiating the causality and veracity of the transactions, and prevents tax contingencies.

In addition, the Test allows verification of the necessity and added value of the services for the company, supporting tax planning in compliance with regulations.

IDENTIFIED ISSUES ALERT

Three aspects stand out in the current process:

First, SUNAT performs a cross-check of information between annexes II and III of the Local File, showing that although transactions involving services received from related parties are reported, information regarding the Benefit Test is not exposed. This could lead to the conclusion that the taxpayer does not count with such test.

Second, the procedure suggests that SUNAT issues tax compliance letters and CP2000 Notices based on the transaction codes reported in annex II of the Local File. However, it is possible that no prior verification is conducted regarding the transactions' nature detailed in annex III of the aforementioned File.

Third, this situation creates risks for taxpayers, from sanctions for formal non-compliance to potential exhaustive audits.

The current approach shows a trend towards generalization in requests for information regarding the Benefit Test, characterized by the absence of a detailed analysis of the services' nature and the lack of differentiation in the transactions classified as services, according to the Tax Administration's own rulings. This highlights the importance of conducting a preventive analysis of the services received from related parties and properly documenting the nature of these services, ensuring technical-legal support in the event of potential requests from SUNAT.

LEGAL FRAMEWORK: WHAT YOU NEED TO KNOW

The first paragraph of section i) of article 32-A of the Income Tax Law establishes the Benefit Test application for **services received from related parties**.

Article 118-A of the Regulation, incorporated by Supreme Decree No. 337-2018-EF, **determines** that a service complies with the test **when it provides economic or commercial value to the recipient**, verifiable when independent parties would satisfy such need.

Report No. 000070-2024-SUNAT/7T0000 **specifies** that transactions considered as services involve **doing rather than giving services**, which **excludes transactions such as the leasing of goods and brand usage licenses**. However, these excluded transactions remain subject to other provisions of article 32-A.

Benefit Test in the Local File:

Supreme Decree No. 333-2017-EF, published on November 17, 2017, modified the Regulation of the Income Tax Law by **incorporating into the structure of Annex III of the Local File Informative Tax Return** information regarding the Benefit Test.

The rule establishes that, when reporting transactions related to services received, the taxpayer must include the following information in Annex III of the Local File: the consideration, the criteria adopted for the costs and expenses allocation, as well as the agreed markups. Additionally, relevant information regarding the Benefit Test must be provided and, if applicable, the reasons why such services are not considered low-value-added services.

This requirement implies that the taxpayer must have performed the Benefit Test before filing the Local File.

RECOMMENDATIONS BY ROLE

Internal Accountants

- Implement a checklist for the documentation of services received, which will facilitate the tracking of transactions.
- Maintain an up-to-date contracts database.
- Validate payments with the finance department and register the receipt of deliverables to ensure rigorous control and minimize potential discrepancies.
- Verify that the service complies with the Benefit Test before its deduction in the Annual Income Tax Return.

Managers and/or administrators

- Establish communication procedures with providers.
- Inform the related party about the need to count with information regarding the service from the service provider.
- Define response strategies for audits to manage risks effectively.
- Counting with specialized advice is a good practice to address any concerns.

Accounting Advisors

- Implement an alert system for transactions involving services received from related parties to maintain effective control.
- Indicate that the service must comply with the Benefit Test before its deduction in the Annual Income Tax Return.
- Perform monthly document validations and maintain a record of the transactions.

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Important: Effective communication between all parties is key to the success of the process.

COMMON ERRORS AND HOW TO AVOID THEM

Taxpayers often make critical errors when documenting intragroup services in the Local Report. The omission of the structure defined in the regulations and the inadequate description of the services received are the main shortcomings observed in practice.

The Local File requires a detailed and structured presentation of services received from related parties. However, taxpayers often submit general or incomplete descriptions that do not comply with the requirements set by SUNAT. This situation is exacerbated when the information provided is inconsistent with what is stated in the Benefit Test, creating discrepancies that may be challenged during an audit.

Another critical aspect is the lack of prioritization in the Benefit Test preparation. Unlike other tax obligations, the Benefit Test does not have a specific due date. This apparent flexibility leads taxpayers to postpone its preparation, prioritizing obligations with defined due dates. However, this practice is detrimental, as the late test documentation may omit relevant aspects or lack contemporaneous support for the service provided.

The absence of a specific due date does not exempt the taxpayer from having the Benefit Test at the time of deducting the expense. On the contrary, the regulation establishes that the test must be conducted prior to the deduction. Late test documentation could lead to questions regarding the veracity and timeliness of the analysis performed.

These deficiencies in documentation and the lack of prioritization of the Benefit Test expose the taxpayer to significant contingencies. The Tax Administration could challenge the deductibility of expenses, impose fines for formal non-compliance, and initiate more exhaustive audit processes. Preventing these situations requires a shift in the approach of taxpayers, prioritizing the timely and proper preparation of the Benefit Test.

The Most Common Traps:

- Generic descriptions
- Documentary inconsistencies
- Late documentation

Advice: The documentation must be contemporaneous with the service, not subsequent.

CONCLUSIONS

Recent audit actions by SUNAT regarding the Benefit Test reveal the need for a more rigorous approach to its implementation. The analysis conducted highlights three key aspects that taxpayers must consider:

First, the Benefit Test documentation must be treated as a substantial element, not merely a formal requirement. The absence of a specific submission due date should not be interpreted as flexibility in its preparation, but rather as a need for an analysis contemporaneous with the service provision.

Second, the consistency between the Local File and the Benefit Test is critical. The information presented in both documents must maintain coherence and sufficiency in the description of the services received, avoiding discrepancies that could lead to challenges during an audit.

Finally, the involvement of specialized advisors becomes essential to ensure proper compliance with this obligation. The technical complexity of the analysis and recent regulatory interpretations, such as Report No. 000070-2024-SUNAT/7T0000, require specialized knowledge.

The current situation requires taxpayers to adopt a proactive stance regarding the Benefit Test, implementing recommendations based on their role in the organization and maintaining a preventive approach in the intragroup services documentation. Only by doing so can they effectively mitigate the risks associated with this tax obligation.



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