

Importance of integrating a *defense file* regarding the Benefit Test prior to the closing of the fiscal year

October 2023



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Section 01:
Introduction

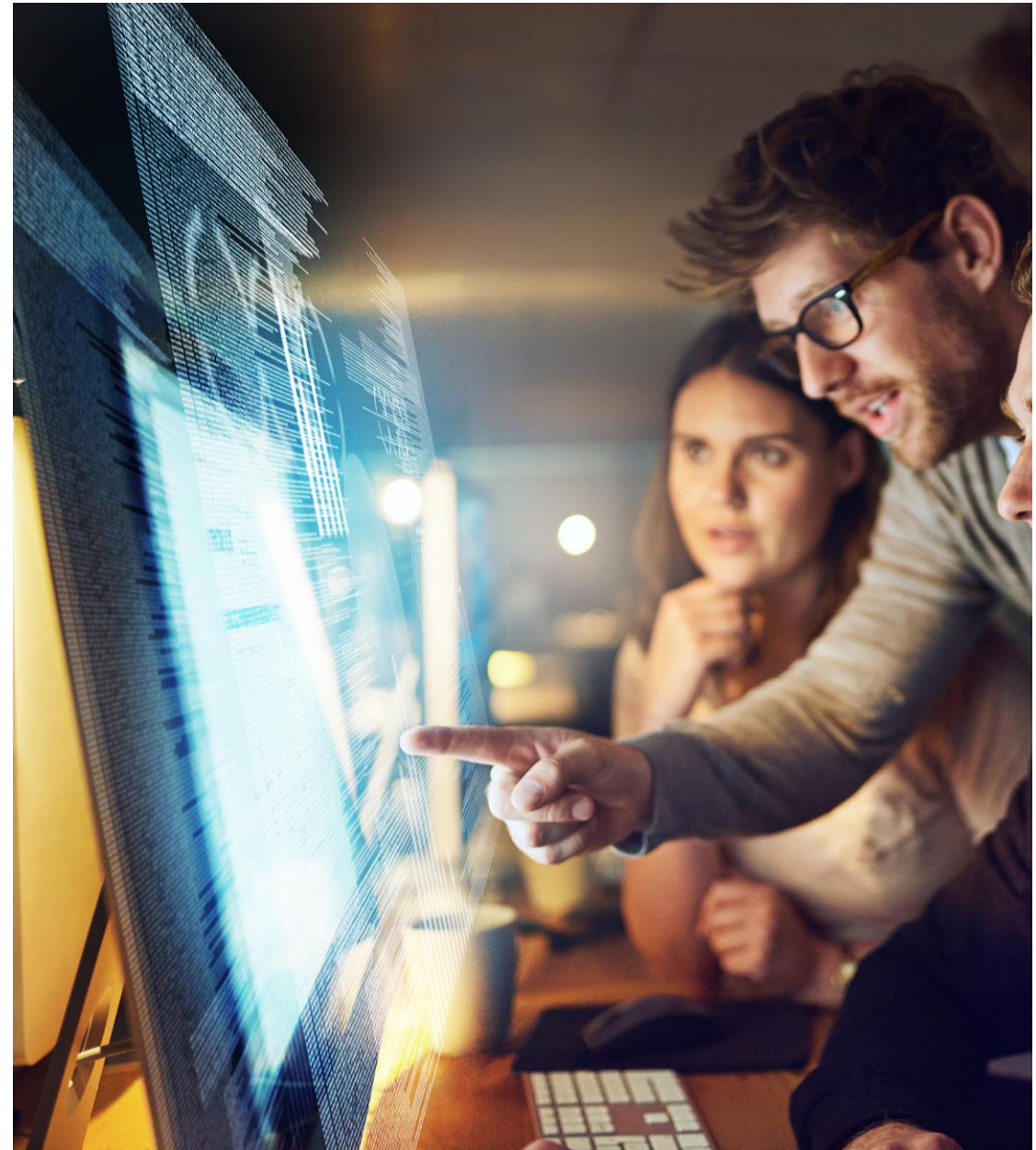
What do we mean by Benefit Test?

The “Benefit Test” is a requirement applicable to resident taxpayers who receive business income, in order for them to deduct cost or expenses related to services received from related parties, i.e., intragroup services, at the time of determining their annual Corporate Income Tax (CIT).

This requirement is regulated in subsection i) of Article 32-A of the Income Tax Law, complemented by Article 118-A of its Regulations.

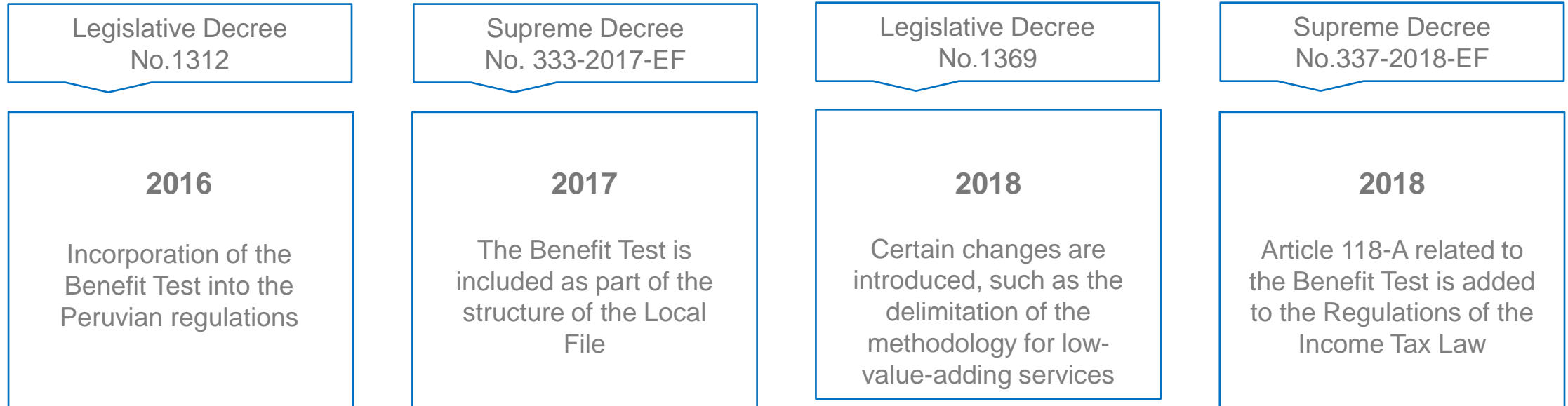
Objective

According to the proposal in Action 10 of the BEPS Plan (developed by the OECD), the objective of complying with the Benefit Test is to establish mechanisms of protection against payments for services invoiced by companies within a group that could erode the taxable base.



Evolution of Peruvian regulations in this matter:

Background



The impact on tax compliance:

To date, there is no obligation to submit an informative return regarding the Benefit Test towards SUNAT, subject to a specific deadline. In practice, some taxpayers have made various efforts to gather all the detailed documentation required by local regulations to support the deductibility of amounts agreed upon for intercompany services received. They have done this as a preventive measure in case of a potential tax inspection. Others just decided to wait for complementary regulations specifying the format or tool to use to present the information that could be requested by an inspector.

Nevertheless, since the beginning of the SARS-CoV-2 pandemic until today, there has been a substantial increase in tax inspections related to the Benefit Test by SUNAT. This has led to a series of requests for which taxpayers were not prepared to respond, primarily due to a lack of knowledge of the topic and the high degree of formalities that tax inspectors require, in addition to the short deadlines given to comply with these requests.



02

Section 02:

Scope of the Benefit Test



Scope of the Benefit Test

The benefit test must be accomplished when a resident entity receives a service rendered by any of its related parties. Such test is considered complied when the rendered service provides economic or commercial value to the recipient of the service, improving or maintaining its commercial position, which occurs if independent parties would have satisfied the need for the service, performing it themselves or through a third party.

Chapter VII of the OECD guidelines provides detailed information aimed at verifying compliance with the Benefit Test, including: i) the economic and commercial benefit received by the company, ii) the absence of service duplication, iii) services not corresponding to shareholder activities, and iv) the determination of the service price.

In addition to the general requirements, costs and expenses for services received from related parties are subject to the following specific requirements imposed by local regulations:

1

Comply with the Benefit Test based on the **parameters** specified in the regulations.

2

Appropriate documentation and information must be integrated to provide substantiated support for compliance with the Benefit Test.

3

In the case of **low-value-adding services**, the profit margin on costs and expenses should not exceed 5%

Parameters of the Benefit Test

In general, it must be substantiated that the services received:

1

Provide economic or commercial value to the recipient.

2

Improve or maintain the recipient's commercial position.

3

Are not the same as services received from third parties or activities carried out with in-house personnel.

4

Do not correspond to activities for the shareholder interest held in a company.

5

Independent parties would be willing to meet that need by either performing the service directly or paying a third party.



Documentation required by local regulations:

Local regulations requires specific supporting documentation and information. The following graphic outlines the minimum content of the required supporting documentation:

Conceptual Documentation

1

- Description of the service provided and details of the service recipients.
- The reasons that substantiate that the service provided complies with the Benefit Test.
- Justification of the need for the provision of the service in the context of the economic group's business.

2

- Describe the reasons why the service provided qualifies as high-value or low-value adding.

Numerical Documentation (Value of the Consideration)

3

- The detail of the costs and expenses incurred by the service provider.

4

- The criteria chosen for the allocation of costs and expenses to the service recipient and its justification.

5

- The profit margin applied and its justification.

6

- Any other relevant documentation or information that is useful for determining the valuation of the transactions.

Practical application of these conditions

Based on current developments in Benefit Test inspections, taxpayers should not wait for a request from SUNAT to prepare all the documentation required by regulations and the type of information typically requested by SUNAT in these processes.

Therefore, we emphasize the importance of having supporting documentation or a *defense file* that is gradually integrated as the services are provided, i.e., prior to the calculation of the annual Corporate Income Tax and the submission of the corresponding tax return. Failing to do so would entail the risk of having to address objections related to expenses or costs during a potential tax inspection, along with the imposition of applicable fines and interest charges.



Added value of the services received

Low Value - Subsection i) Article 32-A of the Income Tax Law

LOW VALUE

- Auxiliary or supportive in nature.
- They do not constitute main activities of the taxpayer or the multinational group.
- They do not require the use of unique and valuable intangibles.
- They do not entail assuming or controlling a high or significant level of risk, nor do they generate a significant level of risk for the provider.

High Value - Article 118-A of the Income Tax Law Regulations

HIGH VALUE

- Services that constitute the main activity of the taxpayer or the multinational group.
- Research and development services.
- Manufacturing and production services.
- Purchasing activities related to raw materials or other materials used in the manufacturing or production process.
- Sales, distribution, and marketing activities.
- Financial transactions.
- Extraction, exploration, or transformation of natural resources.
- Insurance and reinsurance.
- High-level management services for companies

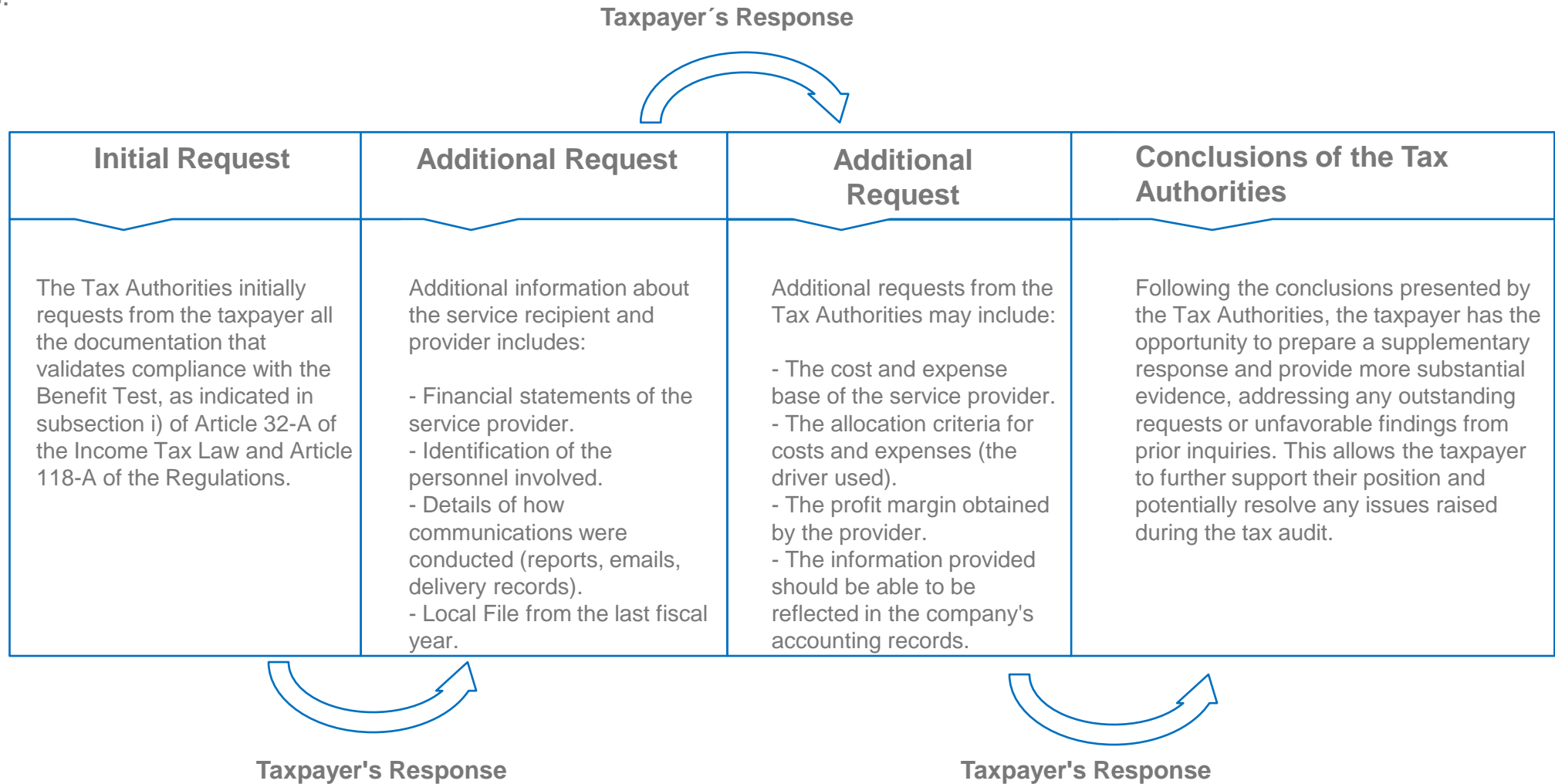
03

Section 03:

**Flow chart of tax audits in this matter and
recommendations**

Benefit Test Audits

The following graphic illustrates the flow of the audits process, along with the standard information request typically made by the Tax Authorities.



Suggested preventative measures

To face a tax audit of this type, it is necessary to have a strategic plan and, at a minimum, have the following:

1. A list of all services received from related parties, along with their respective agreements (translated into Spanish if necessary), preferably with specific dates.
2. A record of purchase orders or documents that trace the origin and progress of work, especially in the case of master agreements covering a series of services.
3. A list of individuals who participated in the execution of the services.
4. Implementation of service acceptance records with identification of responsible parties for service validation.
5. Maintenance of the cost and expense base of the service provider, including allocation keys and profit margins.
6. Preservation of evidence of communications between the parties involved.
7. Documentation of results achieved throughout the execution, including final reports if applicable.
8. Retention of residence certificates for non-domiciled providers, as well as financial statements and transfer pricing Local Files.

04

Section 04:

Offered Support

Transfer pricing services at Mazars

- ✓ Our transfer pricing services include professional support for the preparation of a Benefit Test Report that can be submitted to the tax inspector at the beginning of a potential tax audit in this matter. We also provide guidance for the integration of the *defense file*, which aims to substantiate the traceability of the operation and facilitate the compilation of all the information required by regulations. Additionally, we assist in meeting the typical requirements that SUNAT requests in its inquiries.
- ✓ It is important to note that during tax audits, tax authorities typically grant a timeframe of approximately 1 to 2 weeks (with a minimum of 3 days) to submit the requested information. Therefore, our suggested scope aims to conduct the analysis simultaneously with the determination of the Annual Income Tax for the corresponding fiscal year, which is usually due in March or April of the following year. It's worth mentioning that taxpayers obligated to submit the informative tax return - Local File in June must include the required Benefit Test section in Annex III. Hence, the analysis should be completed by that date.
- ✓ In situations where the analysis was postponed, if you receive a request from SUNAT on this matter, our support will include assisting you in designing a strategy to effectively navigate the process, taking into consideration the tight deadlines mentioned earlier.



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