

Tax Agenda

Peru

July 2024



No.

Fact

Action

General Anti Avoidance Rule (GAAR)

Peruvian Tax Authority is entitled to disregard transactions made solely for tax reasons and has the authority to identify and qualify the real nature of the operations used by the taxpayers, based on the "substance over form" criterion. It applies to operations carried out on 19 July 2012 and onwards. It is applicable to "sham transactions" and "tax avoidance transactions" (i.e., transactions carried out without any business or economic purpose and with the only intention to avoid or reduce the payment of taxes).

To discourage the abuse of aggressive tax planning, the Peruvian Tax Authority has published a catalogue of 13 schemes that would lead to the application of the GAAR.

Taxpayers should elaborate a tax audit support file to support their operations, from a documentary point of view, in case of any eventual tax audits by the Peruvian Tax Authority.

Documentation should detail the nature of the transaction, the real need for the transaction, the margin plus costs and expenses incurred by the provider, as well as the reasonable criteria for assigning them. Review if transactions executed or to be executed are included in the catalogue.



Necessity of Tax Basis certificate on intercompany corporate reorganizations

Corporate reorganizations that imply the direct or indirect change of ownership of Peruvian shares, would be considered as taxable in Peru under the rules for direct or indirect transfer of shares. In this regard, non-resident transferors should request to the Peruvian Tax Authority the issuance of Tax Basis Certificate to pay the correspondent tax on a net basis. Failure to comply with this implies that the tax basis will be 0.

Non-resident entities should review all corporate reorganizations to be performed within the Business group and determine if the rules for direct and indirect transfer of Peruvian shares are met.

If triggered, the transferor shall initiate a Tax Basis Certification procedure before the Peruvian Tax Authority. The process takes two months on average. The certificate is valid for 45 days.

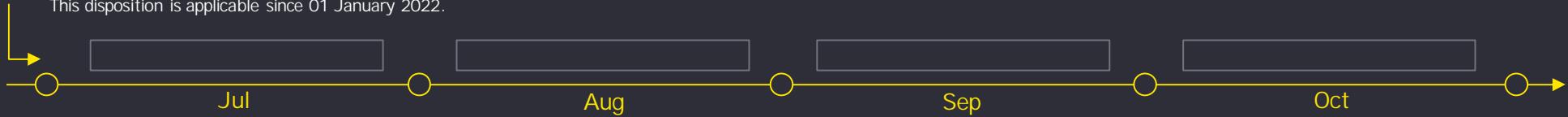


Peru-Japan Double Tax Treaty (DTT)- MFN

As the Peru-Japan DTT has established a lower interest rate (10%), the Most Favoured Nation (MFN) clause is applied for the agreements with the following countries: Canada, Korea, Mexico, Portugal and Switzerland.

This disposition is applicable since 01 January 2022.

Taxpayers applying a DTT should review if through the application of the MFN the reduced interest rate of 10% is applicable.



Use the timeline above to plan your actions for coming months

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4

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

On 03 September 2022, Peruvian Ministry of Foreign Affairs sent the documentation related to the MLI to the Peruvian Congress for its approval. Currently, the approval from the Congress is still pending.

The MLI will enter into force for Peru following the three month-period from the date Peru ratifies the MLI.



5

Transfer Pricing formalities

Taxpayers in Peru must meet certain conditions in order to deduct costs or expenses of services received from related parties. In addition to compliance with arm's length principle, Peruvian subsidiaries must comply with a two-step Benefit Test requirement:

- Demonstrate that the services received provided economic or commercial value,
- Count with supporting documentation.

Subsidiaries from multinational groups operating in Peru that are facing Benefit Test audits, are facing significant challenges in accessing information to document the cost and expense incurred by its non-Peruvian resident related party service providers, as information such as the employee payroll, contracts, accounting records among others is not difficult to obtain.

If MLI is approved by the Congress and ratified in 2024, the modification of the DTTs in Peru would come into effect in 2026. In that sense, companies should review the tax treaties that would be affected and analyze the amendments that would be introduced by the MLI, as well as determine the impact of said changes to their operations in the future.

Entities that execute operations with related parties should prepare a tax audit support files with supporting documentation to serve as evidence of compliance with said rules.



6

Peru and Switzerland begun negotiations for a new protocol on their double-tax treaty

In June 2024, Peruvian Ministry of Economy and Finance and the representatives of the Swiss government held in Bern the first round of negotiations of the new Protocol of the Peru-Switzerland DTT, to adapt it to the latest international standards.

Peruvian and Swiss entities should review the amendments made to the Protocol of the treaty to determine its impact on their operations.



7

Peru and United Kingdom conclude negotiations on double-tax treaty

On 17 May 2024, Peru and United Kingdom (UK) completed the negotiations of their DTT.

Once the DTT is signed, it will be applicable in both countries upon completion of the procedures required by their domestic legislation for its entry into force.

Peruvian and UK entities should review the dispositions of the DTT to apply them to their operations, as this treaty will play an important role in increasing cross-border trade and investments, providing certainty and long-term stability to companies in both jurisdictions and improving their bilateral relationship.



8

Tax on Online Gaming and Online Sports Betting

As from April 2024, the Online Gaming and Online Sports Betting tax is in force and applies to resident and non-resident entities engaged in the business of online gaming and sports betting conducted on digital platforms. The tax applies to the difference between the net monthly income and the digital platform's maintenance expenses at a 12% rate. Likewise, operators must comply with formal obligations to be authorized to operate in Peru.

The entities that engage in online gaming and online sports betting operations in Peru should evaluate if they are complying with these new obligations. Nonetheless, since there is no clear guidance on the process for paying the owed taxes, the mentioned entities are only required to fulfill the operational obligations in Peru.



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9

Peruvian Congress delegated legislative faculties to Peruvian government to rule on the application of VAT on digital economy operations

On 04 July 2024, the Peruvian Congress delegated legislative faculties to Peruvian government to legislate on the mechanism for the collection of VAT arising from digital economy operations (i.e., streaming services). The Peruvian government has a period of 90 days (until 03 October 2024) to legislate on the matter.

Entities that perform digital economy operations (i.e., streaming services) must adapt to the eventual application VAT on said operations.



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