INFOCARD ELANBiz

Taxation[1]

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This infocard aims to provide an overview on some relevant aspects of taxation applicable in Peru.

An important aspect of investing or providing a service in Peru that a European company should consider, is taxation. Peru has signed only a few double taxation agreements, but is part of multilateral tax agreements promoted by the OECD. In addition, Peru's legislation provides for various levels of taxation depending on criteria such as domicile and type of activity carried out.

International Agreements and Domicile in Peru

International Agreeements

Double taxation agreements allow States to share with each other their power to levy income taxes, and to prevent the same income tax from being taxed twice in two different territories, as well as to regulate the collaboration between them. Peru has concluded only a few double taxation agreements, namely with Brazil, Canada, Chile, Korea, Mexico, Portugal (the only EU member country), Switzerland, as well as with the Andean Community (Bolivia, Colombia and Ecuador).

However, Peru is a party to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It is the main global instrument to increase transparency and combat cross-border tax evasion. The mechanism allows the implementation of the automatic exchange of information contained in country-by-country reports on the activities of multinational companies, under the OECD/G20 BEPS (Base Erosion and Profiting Profiting) Plan, as well as financial account information[2].

In addition, with the aim of acceding to the mechanisms of international tax cooperation, combating international tax avoidance, and making the mechanisms of double taxation disputes with the countries with which it has a convention more effective, Peru signed in 2018 the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting**, as a result of the

[1] *The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers as well as commercial business contacts, please contact the Commercial Offices of the Member States and the bilateral chambers of commerce in Lima.*

[2] https://busquedas.elperuano.pe/normaslegales/aprueban-reglamento-que-establece-la-informacion-financiera-decreto-supremo-n-256-2018-ef-1711155-2/

OECD/G20 BEPS Project[3].

Domicile in Peru

It is important to note that income tax varies, in particular, according to the following criteria:

- If the taxpayer is a legal person (such as a company) or a natural person.
- If the taxpayer is domiciled in Peru, or abroad (*e.g.* a cheese exporter who owns a company in France).
- If the taxpayer is an independent natural person or maintains an employment contract.

"Domiciled" and "non-domiciled" means residents and non-residents for tax purposes. Entities **incorporated in Peru** or **permanent establishments** of non-domicile entities are considered **domiciled**.

Companies **incorporated abroad** are considered **not domiciled** in Peru for tax purposes, unless they have a permanent establishment. Note that since 1 January 2019, among other situations, there is considered to be a permanent establishment in the case of services provided in Peru for more than 183 days within a 12-month period.

Finally, Peruvian law states that a foreign natural person who remains in the country for more than **183 calendar days within a period of 12 months** will be considered **domiciled in Peru** for the purposes of income tax, from **1st of January** of the **following** year.

Corporate Tax Applied to Domiciled Entities in Peru

Corporate Tax[4]

Corporate tax levies are the net income of the annual period (1 January to 31 December) with a **29.5% rate**. **Companies incorporated in Peru** are taxed not only on their **Peruvian source income**[5], but also on the income they generate in **other countries**. The income tax paid in another country may be used as **credit** against the Peruvian income tax owed for foreign source incomes, subject to certain conditions. **Branches, agencies and permanent establishments** of non-resident entities **in Peru** are only taxed on their **Peruvian source income**.

In order to establish the **taxable income** the company must deduct, from the gross revenue, the **expenses** produced as a result of the activities which either generated such income, in the first place, or helped maintain it[6]. It is important to indicate that **some expenses are capped** by law such as

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[3] The Convention shall enter into force in Peru once ratification procedures are concluded. See https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm

[4] For Peruvian tax regulation see http://www.sunat.gob.pe/legislacion/renta/index.html

[5] For the concept of Peruvian source income see http://orientacion.sunat.gob.pe/index.php/personas-menu/impuesto-a-la-renta-personas-ultimo/no-domiciliados-impuesto-a-la-renta-personas

[6] Payments as from PEN 3,500 or USD 1,000 must be performed through the Peruvian bank system, otherwise the paid amount will not be considered as a deduction and tax credit for income tax and VAT purposes.

representation expenses, personnel recreational expenses, interests[7], and payments to the board of directors. In addition, expenses resulting from transactions with **tax haven countries** are **non-deductible** except some specific expenses such as interest on loans.

In respect of net operating losses, there are two applicable modalities for offsetting them. A company may choose either "**System A**" which allows them to carry forward **100%** of tax losses but only during **4 consecutive years**, or "**System B**" by which companies are entitled to offset tax losses against **50%** of the net income obtained in each fiscal year, but **without a statute of limitations**.

Some Taxpayers Obligations

Once the company is incorporated, it must get its TIN (Tax Identification Number) called **RUC** (**Registro Unico del Contribuyente**)[8]. Taxpayers must make **monthly payments**, which constitute credit against the annual tax. These advance payments are calculated on the basis of the situation of the company in the previous annual period.

In addition to the monthly payments, taxpayers must make **the annual tax payment**. The fiscal year ends on 31 December. Taxpayers are also obligated to fulfill some obligations such as: (i) filing a monthly and an annual tax return, (ii) holding accounting books, (iii) keeping the documentation related to their activities, (iv) issuing invoices (v) informing the National Superintendence of Customs and Tax Administration (**SUNAT**) of any corporate restructuring, issuance and transfer of shares, and (vi) providing information requested by the tax authority.

Dividends

Disbursement of dividends **to non-domiciled shareholders** and to domiciled individual shareholders is levied with a tax rate of **5%**. **For companies**, this tax is triggered when the Shareholders' Meeting **decides to disburse the company's dividends or at the moment of payment, whatever occurs first**. **For branches**, this tax is automatically triggered at the moment **of filing the annual income tax return,** provided that the branch has generated **taxable profits**.

Taxation of NON-Domiciled Entities in Peru

A company or a branch of a foreign company registered in Peru that pays **Peruvian source income** to a non-domiciled person must **withhold** the corresponding tax and must pay it to the Tax Administration Office (**SUNAT**)[9]. The income tax that the Peruvian company has to withhold to the non-domiciled companies is calculated according to the following effective rates:

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[7] For thin capitalisation rules see http://orientacion.sunat.gob.pe/images/evento_reforma/9_temas_ir_subcapitalizacin_y_enaj_ind_acc.pdf

[8] For the RUC requisites see http://orientacion.sunat.gob.pe/index.php/empresas-menu/ruc-empresaas/inscripcion-al-ruc-empresas

[9] Amounts may be deducted during the fiscal year to which they correspond as long as they have been effectively paid.

• **Interest on a loan**	4.99% (under certain circumstances, otherwise 30%)
• **Interest on a loan between related parties**	30%
• **Royalties**	30%
• **Technical Assitance**[10]	15% (under certain condition, otherwise 30%)
• **Digital Assistance**	30%
• **Dividends**	5%
• **Lease of vessels and aircraft**	10%
• **Artistic shows performed by artists and non-domiciled in Peru**	15%
• **Sale of shares within Peru**[11]	5% and 0%
• **Other income**	30%

If services involve the performance of activities partly in Peru and party abroad, non-resident entities are subject to a 30% withholding tax on **deemed Peruvian source income** determined by applying the following percentages to gross income:

• **Insurance**	7%
• **Lease of vessels**	80%
• **Lease of aircraft**	60%
• **Air transport**	1%
• **Sea transport**	2%
• **Telecom services**	5%
• **International news services**	10%
• **Distribution of movies, records, and similar products**	20%
• **Supply of containers**	15%
• **Demurrage of containers**	80%
• **Rights for broadcasting**	20%

Transfer Pricing

Peruvian legislation regulates the transfer pricing of goods and/or services between **related parties**, as well as operations made from, towards or through tax havens. Regardless the application of the transfer pricing rules, a **benefice test requirement** must be performed when a company incorporated in Peru **receives a service performed by a related party**. **Low value services** must not exceed the margin of **5%**.

Corporate entities that carry out operations with related parties or with persons domiciled in tax heavens, must comply with the **arm's length principle**[12]. Related companies must have the documentation to **provide evidence** of the arm's length price, its methods, and the intra-group transactions data.

[10] If the financial consideration for technical assistane exceeds 140 UIT (Tax Units), a report issued by an auditing firm will be required. A UIT stands for *Unidad Impositiva Tributaria* which is a unit of measure to determine the tax base and fines in Peru. One UIT is the equivalent of PEN 4,300 for the year 2020 (around EUR 1,160).

[11] Some indirect sale of shares can be levied with income tax in Peru under certain conditions.

[12] The value assigned to the goods and services must be the fair market value, i.e., the value agreed between independent parties in similar transactions.

According to the Peruvian legislation, two or more persons, companies or organisations are notably considered as **related parties** provided that they meet one of the following criteria:

- A natural or legal person that directly or indirectly owns more than **30% of the share capital** of another legal person.
- More than 30% of the share capital of two or more legal persons is **directly or indirectly owned by the same physical or legal person**[13].
- The capital of two or more legal person is owned in more than the 30% by **common partners**.
- The legal persons or organisations have one or more **common directors**, managers, administrators or other personnel able to take decisions in the financial, operative and/or commercial agreements.

According to the **level of annual revenue**, companies must file the correspondent Transfer Price sworn statement among the following[14]:

- **Informative tax return - Local report**. This file must be filed by tax payers whose annual revenue for the fiscal year exceeds 2,300 Tax Units (around EUR 2.6 million) and that have entered into transactions for an amount equivalent to, or more than 100 Tax Units (around EUR 116,000) to less than 400 Tax Units (around EUR 464,00).
- **Informative tax return - Master report**. This is a compulsory file for taxpayers that are members of a group whose annual revenue for the fiscal year exceeds 20,000 Tax Units (approximatively EUR 23.2 million) and that have entered into transactions for an amount equivalent to or more than 400 Tax Units (around EUR 464,000). This report must notably include the organisation of the group, description of the business, transfer pricing policies and financing policies.
- **CbC report**. For taxpayers that are member of a multinational group whose consolidated financial statements are equal to, or more than PEN 2,700 billion.

Income Tax for Individuals

Income Tax for NON-Domiciled Self-Employed Workers

Note that non-domiciled natural persons are levied with Peruvian income tax for the income they receive, when it comes **from a Peruvian source**. The income obtained from personal services rendered in Peruvian territory is considered Peruvian income.

The Peruvian company or the branch registered in Peru that pays non-domiciled persons for services rendered in our country must act as the withholding agent, and must withhold the tax and pay it to the **SUNAT** on behalf of the non-domiciled person. The Income Tax that the non-domiciled person has to pay for the income gained for services rendered in our country is calculated applying an effective rate

[13] Peru has implemented the Final Beneficiary Regulation http://orientacion.sunat.gob.pe/index.php/empresas-menu/declaracion-y-pago-empresas/declaraciones-informativas-empresas/declaracion-informativa-del-beneficiario-final/7146-01-beneficiario-final

[14] For more detailed information see http://orientacion.sunat.gob.pe/index.php/empresas-menu/impuesto-a-la-renta-empresas/fiscalidad-internacional-empresas/precios-de-transferencia-obligaciones-formales

of **24%**.

Peruvian legislation establishes that the foreign natural person who remains in the country for more than **183 calendar days during a period of 12 months**, will be considered domiciled in Peru for income tax purposes, **from 1 January of the following year**.

Income Tax for Workers (Fifth Category Income Tax)

A natural person **non-domiciled** in Peru that renders services **as an employee** in the Peruvian territory is levied with Peruvian Income Tax with a **30% effective rate**. The employer must withhold the 30% tax. If the employer is not domiciled or does not withhold the applicable tax, the employee will have to **pay the tax directly to SUNAT**.

Once the natural person qualifies **as a tax-domiciled in Peru**, they will be able to deduct **7 Tax Units** (around EUR 8,120) to determine their net fifth category income and to apply the following rate to calculate their Income Tax[15]:

APPLICABLE INCOME TAX RATES FOR NATURAL PERSONS DOMICILED IN PERU	
Up until 7 Tax Units (≈ EUR 8,120)	0%
Greater than 7 and up to 12 Tax Units (≈ EUR 8,120 and EUR 13,920 EUR)	8%
Greater than 12 and up to 27 Tax Units (≈ EUR 13,920 and EUR 31,320)	14%
Greater than 27 and up to 42 Tax Units (≈ EUR 31,320 and EUR 48,720)	17%
Greater than 42 and up to 52 Tax Units (≈ EUR 48,720 and EUR 60,320)	20%
Greater than 52 Tax Units (≈ EUR 60,320)	30%

Said rates are also applied to self-employed natural persons, domiciled in Peru. In addition, they benefit from an allowance of 20% on their gross income.

Sales Tax or Value Added Tax (VAT)

VAT is a monthly tax whose rate (16%), added to the Municipal Promotion Tax (2%), is 18% and levies the following operations:

- Sale of goods located in Peru.
- Commercial services rendered in Peru.
- Utilisation of commercial services rendered by a non-domiciled company.
- Construction contracts.
- First sale of buildings made by their constructors.
- Import of goods.

Although export operations are not taxed with the sales tax, companies that export goods and/or

[15] Additionally, before applying the tax rate, taxpayers may deduct up to 3 Tax Units from their annual revenue, for certain expenses such as medical bills, and lease and sublease of real estate property.

services are able to recover the sales tax paid in their acquisitions through **offsetting with other tax debts and tax refund**.

As it is a value added tax, the sales tax paid in the acquisition of goods and services constitutes a **credit against the sales tax** that the company has to pay to the SUNAT for its own operations. To use the sales tax paid in the acquisitions as a fiscal credit, the transaction must comply with the following: (i) it must use the Peruvian banking system for amounts as from USD 1,000 and PEN 3,500, (ii) it must be taxed with the sales tax; and, (iii) it must be considered as a cost or expense according to the income tax legislation, and comply with formal requirements.

Net Assets Temporary Tax (ITAN)

ITAN is an annual asset tax that levies the net assets of the companies, since the following annual period that they start activities.

The tax base is the net asset value that the company had at the end of the previous year.

Rate	Net Assets
0%	Up to 1'000.000
0.4%	For the excess of PEN 1'000,000.

ITAN paid in the corresponding annual period, can be used as a fiscal credit against the Income Tax. The part of the ITAN paid that cannot be applied against the Income Tax can be paid back, after presenting/displaying the income tax annual tax return of the referred annual period.

Financial Transactions Tax (ITF)

In Peru all operations conducted through the Financial System are taxed with the ITF, a tax that has to be withheld by the financial company (banks, among others) at a rate of 0.005%.

ITF levies all credits and debits to bank accounts opened in the national Financial System. Among the amounts exempt from the ITF, we must mention wire transfers between accounts of the same person, and payment of salaries. Payments of ITF are deductible as expenses for income tax purposes.

Selective Consumption Tax - ISC (excise tax)

Excise tax levies the sale of specific goods such as soft drinks, alcoholic beverages, certain vehicles, cigarettes and others, as well as activities related to gambling. Excise tax rates and their calculations depend on the type of taxable products.

Real Estate Tax

It is an annual municipal tax levied on the real state property in each district. The determination of the tax is made on the basis of a cumulative progressive scale according to the value given to the real state property:

Up to 15 Tax Units	0.2%
More than 15 and up to 60 Tax units	0.6%
More than 60 Tax Units	1.0%

Real Estate Transfer Tax (Alcabala)

It is a municipal tax levied on the transfer of real Estate property. The purchaser of the property is the taxpayer. The tax rate is equivalent to 3% of the transfer value or 3% of the municipal appraisal of the real state, whichever one is greater. The taxable income can benefit from a deduction of 10 Tax Units.

Links of interest

National Superintedence of Customs and Tax Administration (*SUNAT*)

http://www.sunat.gob.pe/

Ministry of Economy and Finance (*MEF*)

https://www.mef.gob.pe/

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