REPORT No. 000066-2024-SUNAT/7T0000

SUBJECT	**:**	Institutional inquiry regarding the interpretation and scope of tax regulations.
LOCATION	**:**	Lima, September 6, 2024

SUBJECT:

A case is presented in which pension funds, recognized as such under their domestic legislation and considered tax residents in Mexico, Chile, or Colombia, have obtained capital gains from the transfer of shares representing capital issued by societies incorporated in Peru. This transaction is carried out through a centralized local trading mechanism and is settled in cash by the Securities Clearing and Settlement Institution (ICLV) established in Peru.

In this regard, within the framework of the *Convention to standardize the tax treatment established in the Treaties to avoid double taxation signed between the state parties of the Pacific Alliance Framework Agreement*, the following questions are raised:

1. Are the capital gains obtained by these pension funds from the transfer of those shares subject to withholding tax under Peruvian income tax regulations?

2. If the answer to the previous question is negative, for the suspension of the withholding by the ICLV to proceed, would it be sufficient for the pension fund to prove to that institution that it qualifies as a "recognized pension fund" under the legislation of Mexico, Chile, or Colombia? Or would it be necessary for the fund to submit a certificate of residence issued by the tax administration of its respective jurisdiction, certifying its tax domicile, even if the pension fund proves that it is part of its home country's pension system under applicable regulatory laws?

3. Do the provisions established in Article 6 of the aforementioned Convention, as well as those provided in Article 6 of Annex I, also apply to the transfer of investment shares issued by Peruvian companies listed and traded in centralized trading mechanisms?

LEGAL BASIS

- Treaty between the Republic of Peru and the Republic of Chile to avoid double taxation and prevent tax evasion regarding income tax and wealth tax, signed on June 8, 2001, approved by Legislative Resolution No. 27905([1]), and ratified by Supreme Decree No. 005-2003-RE, including its Amending Protocol ([3]) (hereinafter, Peru-Chile DTA)

- Treaty between the Republic of Peru and the United Mexican States to avoid double taxation and prevent tax evasion regarding income taxes and its Protocol, signed on April 27, 2011, approved by Legislative Resolution No. 30144, and ratified by Supreme Decree No. 003-2014-RE (hereinafter, Peru-Mexico DTA).

- Convention to standardize the tax treatment provided in the Treaties to avoid double taxation signed between the state parties of the Pacific Alliance Framework Agreement, signed on October 14, 2017, approved by Legislative Resolution No. 31580, ratified by Supreme Decree No. 050-2022-RE, and applicable as of January 1, 2024 (hereinafter, "the Convention").

- Single Consolidated Text of the Peruvian Income Tax Law, approved by Supreme Decree No. 179-2004-EF, published on December 8, 2004, and its amendments (hereinafter, LIR).
- Regulations of the Peruvian Income Tax Law, approved by Supreme Decree No. 122-94-EF, published on September 21, 1994, and its amendments (hereinafter, Regulations of the LIR).

- Single Consolidated Text of the Securities Market Law, approved by Supreme Decree No. 020-2023-EF, published on February 10, 2023 (hereinafter, Securities Market Law).

- Law No. 27287, Peruvian Securities Law, published on June 19, 2000, and its amendments.

ANALYSIS:

1. Regarding the scope of the Convention in relation to Peru, it should be noted that under Article 1, it: i) amends the DTAs signed by Peru with Chile and Mexico, as well as their current protocols. ii) incorporates specific provisions regarding pension funds in Colombia and Peru through a Protocol in Annex I of the Convention, titled "Protocol between the Republic of Colombia and the Republic of Peru to avoid double taxation and prevent tax evasion regarding income taxes on earnings obtained by recognized pension funds" (hereinafter, Protocol with Colombia).

   Furthermore, under the aforementioned article, the DTAs signed by Peru with Chile and Mexico, as well as the Protocol with Colombia, are considered "Covered Agreements" for the purposes of the Convention.

   On the other hand, Articles 2 and 3 of the Convention establish that, for the purposes of the "Covered Agreements", the term "*person*" also comprises a recognized pension fund of a Contracting State, and the expression "resident of a Contracting State"

[1] Published on January 6, 2003.
[2] Published on January 17, 2003.
[3] Ratified by supreme decree No. 006-2003-RE, published on January 17, 2003.
[4] Published on December 28, 2013.
[5] Published on January 17, 2024.
[6] Published on October 5, 2022.
[7] Published on October 22, 2022.

also includes that state, its political subdivisions, and local authorities, as well as any recognized pension fund of that state ([8]). Similarly, Article 4 of the Protocol with Colombia establishes that the expression *"resident of a Contracting State"* refers exclusively to a recognized pension fund.

Additionally, Article 4 of the Convention defines a “recognized pension fund of a Contracting State” for Colombia, Peru, Mexico, and Chile, referring to the respective regulations governing them or specifying the characteristics they must meet to be considered as such. Likewise, Article 2 of the Protocol with Colombia defines a “recognized pension fund” of a Contracting State based on Article 4 of the Convention (subparagraphs 1. i and 1.ii, as well as subparagraphs 2, 3, and 4 of paragraph A).

On the other hand, regarding the income covered by the Convention, subparagraph d) of paragraph 2 of Article 9 states that its provisions will apply in Peru to income taxes levied on, among others, capital gains obtained, and amounts paid, credited, or recorded as expenses, starting from January 1 of the calendar year immediately following the year in which the Convention enters into force.

Furthermore, paragraph 1 of Article 6 of the Convention provides that, for the purposes of the Article regarding capital gains established in the Covered Treaties, capital gains obtained by a recognized pension fund of a Contracting State from the transfer of shares representing the capital of a company resident in a state party of the Convention, executed through a stock exchange that is part of the Latin American Integrated Market (MILA), shall be taxable only in the state of residence of the pension fund([9]).

It is important to note that similar provisions to paragraphs 1 and 2 of Article 6 of the Convention are included in paragraphs 2 and 3 of Article 6 of the Protocol with Colombia.

Based on these provisions, when recognized pension funds from Mexico, Chile, or Colombia generate capital gains from the transfer of shares representing the capital of Peruvian resident companies, executed through a stock exchange that is part of MILA, taxation will be assigned to the state of residence of such funds—that is, Mexico, Chile, or Colombia, as applicable.

2. Regarding the First Inquiry, the second paragraph of Article 6 of the LIR establishes that, in the case of non-domiciled taxpayers in Peru, including branches, agencies, or other permanent establishments of sole proprietorships, de facto business partnerships, and <u>entities of any nature constituted abroad</u> (as referred to in subparagraph e) of Article 7), the income tax is levied solely on Peruvian-source income.

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[8] It should be noted that Articles 3 and 4 of the DTA agreements that Peru has signed with Chile and Mexico, which define the terms 'person' and 'resident of a Contracting State,' respectively, did not include recognized pension funds of a Contracting State within these definitions.

[9] Paragraph 2 of the referred article adds that, for the purposes of the foregoing, a company is considered a “*resident of a state party of the Convention*” when it is regarded as a resident of that state in accordance with its legislation.

Likewise, Article 14 of the same law states that legal entities, among others, are income taxpayers; subparagraph (f) provides that, for the purposes of this law, entities of any nature incorporated abroad that derive Peruvian-source income in any form are considered legal entities, among others.

In this regard, subparagraph (h) of Article 9 of the LIR states that Peruvian-source income includes, among others, gains from the transfer of shares representing capital when the companies or societies that issued them are incorporated or established in Peru.

Furthermore, the first paragraph of Article 76 of the LIR states that individuals or entities paying or crediting Peruvian-source income of any kind to non-domiciled beneficiaries must withhold and pay the taxes referred to in Articles 54 and 56([10]) of said law, as applicable, to the tax authorities on a final basis, within the deadlines established in the Tax Code for monthly obligations.

Additionally, subparagraph (d) of Article 71 of the LIR establishes that ICLVs or similar entities incorporated in Peru are withholding agents when executing cash settlement for transactions involving financial instruments or securities.

Now then, subparagraph (b) of Article 76 stipulates that provides that if the party paying or crediting such income is a ICLV or an entity performing similar functions, incorporated in the country, in the case of second-category income arising, among others, from the transfer of the assets referred to in subparagraph (a) of Article 2 of the LIR—which include shares representing the capital of societies incorporated in Peru—the withholding must be carried out at the time of cash clearing and settlement.

Under Peruvian income tax regulations, foreign pension funds that obtain income from the transfer of shares issued by societies incorporated in Peru are considered income tax taxpayers in Peru as legal entities ([11]). Consequently, such income is subject to taxation and must be withheld by the ICLV or the entity performing similar functions at the time of cash clearing and settlement.

Without prejudice to the aforementioned, as stated in subclause 1 of this analysis, capital gains obtained by recognized pension funds from Mexico, Chile, or Colombia from the transfer of shares in Peruvian resident societies, conducted through a stock exchange that is part of MILA, are taxed in the state of residence of those funds. Therefore, these gains are not subject to Peruvian income tax and are exempt from withholding.

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[10] These establish the income tax rates applicable to individuals and undivided estates not domiciled in the country, as well as to non-domiciled legal entities, to which they are subject for their Peruvian-source income, respectively.

[11] This is because they are entities of any nature incorporated abroad (a criterion that is consistent with the opinion issued by the Ministry of Economy and Finance on pages 4 and 5 of Report No. 0019-2020-EF/61.04 dated August 20, 2020).

3. Regarding the second inquiry, as can be inferred from the statement in the previous subclause, ICLVs established in the country are required to withhold the income tax corresponding to non-resident pension funds for capital gains they receive from the sale of shares representing the capital of societies established in Peru.

   However, paragraph 3 of Article 39-A of the LIR regulations states that individuals who are not required to pay income tax in Peru, due to being domiciled in a country with which a treaty to avoid double taxation and prevent tax evasion (DTA) has been signed, must notify it to the ICLVs so that they do not withhold the tax. This notification must be made through the stockbroker firms or other participants, within the deadline established for settling the transaction, providing a copy of the corresponding certificate of residence.

   In this regard, it is important to mention that according to the first and second paragraphs of Article 2 of Supreme Decree No. 090-2008-EF ([12]), the certificate of residence issued by the competent authority of a state that has signed a DTA with Peru is intended to certify the residency status in that state in order to benefit from the provisions of the DTA. The income tax withholding agent for income paid or credited to individuals residing in a state that has signed a DTA with Peru must substantiate the granting of benefits under the DTA solely with the certificate of residence provided by the resident of that state, which must be issued by the competent authority of that state ([13]).

   In this sense, the suspension of income tax withholding applies to pension funds established abroad that derive income from the transfer of shares representing the capital of domiciled societies, provided these funds reside in a country that has signed a DTA with Peru, which must be accredited by submitting a copy of the certificate of residence issued by the competent authority of the respective country to the ICLV.

   Considering the above, it is necessary to determine the legal nature of the Convention (i.e., whether it qualifies as a DTA) in order to clarify whether pension funds, considered residents in Chile, Mexico, and Colombia under this Convention, which derive income from the transfer of shares representing capital issued by societies established in Peru, carried out through a stock exchange that is part of MILA, must submit the corresponding certificate of residence to the ICLV so that the latter suspends the income tax withholding on such funds for the receipt of the aforementioned Peruvian-source income.

   Regarding this, as stated in subclause 1 of this analysis, in relation to Peru, from the date of the Convention's entry into force:

   a) The DTAs signed by Peru with Chile and Mexico are amended, including in their scope the recognized pension funds from those countries,

[12] It establishes the obligation to require the submission of the certificate of residence in order to apply the treaties to avoid double taxation, and regulates the issuance of residence certificates in Peru, published on July 4, 2008.

[13] It adds the aforementioned article, in its sixth paragraph, stating that if the resident of the other state does not submit the certificate of residence at the time of withholding, the withholding agent must proceed with the withholding without considering the benefits outlined in the DTA. In this case, the resident of the other state may request a refund of the taxes improperly or excessively withheld from SUNAT, in accordance with the provisions set forth therein.

by expressly including them as "persons" ([14]) and "residents of a Contracting State," thereby allowing them to benefit from the provisions of such DTAs, with a recognized pension fund from a Contracting State being considered a resident of that Contracting State.

b) On the other hand, it establishes rules for the allocation of tax powers to levy, among others, capital gains obtained by recognized pension funds from Colombia and Peru.

Additionally, it should be noted that, according to the preamble of the Convention, its objective is to standardize the tax treatment of income obtained in the financial markets of the parties.

In this regard, it is worth recalling the statement by the General Directorate of Public Revenue Policy of the Ministry of Economy and Finance (MEF) in Report No. 204-2019-EF/61.01([15])([16]): *"most of the recognized pension funds of the Pacific Alliance countries do not qualify as residents for DTA purposes because they are not subect to income tax under the tax laws of the state where they were established*([17])*. This is the case for pension funds from Chile, Colombia, Mexico, and Peru (pension funds from the Private Pension Fund System). Therefore, the provisions of such agreements are not applicable to them"* (pages 4 and 5).

Now, regarding the scope of the Convention, it is appropriate to consider what is stated in the explanatory memorandum of Supreme Decree No. 050-2022-RE: *"The Convention (…) constitutes a treaty under international law. (…) Its purpose is to amend the double taxation treaties and their protocols currently in force between Chile, Colombia, Mexico, and Peru, as the states forming the Pacific Alliance, specifically regarding the recognized pension funds of those countries"* (page 1, emphasis added).

Moreover, regarding what is considered a DTA, on page 3 of the aforementioned Report No. 204-2019-EF/61.01([18]), the MEF has indicated:

> *"DTAs are international treaties that limit the tax powers of the Contracting States in order to eliminate international double taxation on income obtained from transnational operations.*
>
> *In DTAs, the CS([19]) may agree that only one or both have the power to levy certain income with income tax (…).*

[14] This is in accordance with the Ministry of Economy and Finance (MEF) as indicated in Report No. 204-2019-EF/61.01 (p. 11), to avoid any discussion regarding whether recognized pension funds qualify as a "person" for the purposes of the Covered Agreements under the Convention, as expressly stated.

[15] Through which, the aforementioned ministry provides information regarding the negotiations related to the Convention.

[16] Cited in the explanatory memorandum of Supreme Decree No. 050-2022-RE, which ratifies the Convention.

[17] Thus, for example, in the case of Peru, Article 18-C of the Law on the Private Pension Fund Administration System establishes that the funds managed by a Private Pension Fund Manager (AFP) constitute an independent and distinct asset from the AFP's assets. Furthermore, Article 76 of the aforementioned law provides that, among other things, capital gains received by pension funds are exempt from income tax.

[18] Mentioned in Report (DGT) No. 034-2019 from the General Directorate of Treaties of the Ministry of Foreign Affairs and cited in the Explanatory Memorandum of Supreme Decree No. 050-2022-RE.

[19] Contracting States.

(…) DTAs do not create taxable events. Therefore, if a state has the authority to tax a specific type of income under a DTA, it may only do so if its domestic legislation provides for it and in accordance with the rules established therein."

Likewise, on page 2 of said report, it is mentioned that the technical teams of the Pacific Alliance (PA) countries agreed on the following:

"(i) (…) the purpose of standardization is to ensure that, in the bilateral Double Taxation Agreements (DTAs) signed between the Pacific Alliance countries, the allocation of taxing rights over the income earned by residents of these countries in capital markets is similar.

(ii) To initiate the standardization process with respect to the income of pension funds of the PA countries (interest and income derived from the transfer of debt securities and shares— in the latter case, when the transfer takes place through a stock exchange that is part of the Latin American Integrated Market - MILA), as they are one of the main institutional investors.

(iii) To sign a multilateral treaty to amend the bilateral DTAs signed between the PA countries in order to implement the agreements reached regarding the allocation of taxing rights over the income earned by the pension funds of the aforementioned PA countries" (emphasis added).

As evidenced above, the Convention is an international treaty that, in the case of Peru, follows a different dynamic in its tax relations with Chile and Mexico compared to those with Colombia, as:

a) On one hand, its provisions amend the bilateral DTAs signed with Chile and Mexico, as they introduce pension funds within their scope as a "person" and a "resident of a contracting state," establishing that, among others, capital gains derived from the transfer of shares issued by societies resident in the other contracting state shall be taxed in the country of residence. Therefore, it can be stated that it constitutes an "Amending Protocol"(20) to these DTAs, meaning that it forms part of them,
b) On the other hand, it establishes rules for the allocation of taxing rights over, among others, capital gains obtained by recognized pension funds of Colombia and Peru. Consequently, it can be asserted that, in relation to Colombia, it has the nature of a DTA([21]).

Thus, given that the Convention, on one hand, forms part of the Peru-Chile and Peru-Mexico DTAs, and on the other hand, the Protocol with Colombia has the nature of a

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[20] For further clarification, paragraph 48 of the aforementioned report (DGT) No. 034-2019 specifies that "… the Convention seeks to make a transversal amendment to several treaties, specifically qualified as Covered Agreements," as stated in paragraph 47, *"the Amendment constitutes a formal alteration of the clauses of a treaty, which is made in accordance with the rules established by the treaty itself for that purpose or following the same formalities as those used for the conclusion of the instrument."*

[21] This considering that there is no DTA signed between Peru and Colombia. In this regard, it is pertinent to mention that, although Peru and Colombia are signatories of Decision 578, according to the opinion of the Ministry of Economy and Finance (MEF) in Report No. 204-2019-EF/61.01, this decision has the nature of a community norm and not a treaty (pages 3 and 4).

DTA, in order to suspend withholding tax on capital gains derived from the transfer of shares representing the capital of societies established in Peru—earned by recognized pension funds from Chile, Mexico, and Colombia through a stock exchange that is part of MILA—it will be required that said funds submit to the ICLV a certificate of residence issued by the tax authority of their respective country, certifying their tax domicile therein, even if the pension fund demonstrates that it is part of the pension system of its country under the applicable regulatory framework.

4. Regarding the third query, as indicated in section 1 of this analysis, pursuant to the provisions of Article 6 of the Convention, as well as those established in Article 6 of the Protocol with Colombia, capital gains obtained by a recognized pension fund from Mexico, Chile, or Colombia from the transfer of shares representing the capital of societies resident in Peru—conducted through a stock exchange that is part of MILA—may only be subject to taxation in the state of residence of such fund.

   It should be noted that the capital gains referred to in the provisions of the Convention and the Protocol with Colombia are those derived from the transfer of shares representing the capital of a society domiciled in Peru. Therefore, to determine whether these provisions apply to the transfer of investment shares issued by Peruvian companies listed and traded in centralized trading mechanisms, it is necessary to clarify whether these constitute shares representing the capital of Peruvian societies.

   In this regard, Article 3 of the Securities Market Law establishes that securities are those issued on a large scale and freely tradable, which confer on their holders, among other rights, participation in the issuer's capital, equity, or profits.

   Similarly, Article 255 of the Peruvian Securities Law states, among other provisions, that securities: a) Are issued on a large scale, with homogeneous or non-homogeneous characteristics regarding the rights and obligations they represent, and issuances may be grouped into classes and series; b) Are freely tradable, either privately or through public offerings via the respective centralized trading mechanisms or outside them, in compliance with the relevant law; and, c) May grant their holders, among other rights, ownership rights or participation in the issuer’s capital, equity, or profits.

   Furthermore, Article 257 of the Peruvian Securities Law—contained in Title Two of said Law, entitled "Securities Representing Participation Rights"—provides that shares may only be issued in nominative form, are indivisible, and represent a proportional part of the capital of the society authorized to issue them. It also states that they may be issued as a certificate or through book-entry registration, and their content is governed by the applicable law.

   The same article further specifies that securities may also be issued under the denomination of shares that do not represent the capital of societies but rather proportional or fractional interests in accounts or distinct equity funds, in which case they shall be governed by the special provisions applicable to them.

   As can be seen from the cited regulations, securities are issued on a large scale, are freely tradable, and may grant their holders, among other rights, the ability to participate in the issuer's capital, equity, or profits. Meanwhile, shares are a type of security that represent participation rights in:

a) A proportional share of the company's authorized capital, with its content governed by the applicable law (hereinafter, shares representing the capital of societies).

b) A proportional share of accounts or equity funds distinct from the capital of societies, in which case they shall be governed by the special provisions applicable to them.

With respect to shares representing the capital of societies, they are regulated, among others, by Articles 83 and 82 of the General Corporations Law ([22]), which establish that shares are created in the incorporation agreement or subsequently by resolution of the general meeting; they represent proportional parts of the capital ([23]), all have the same nominal value, and grant the right to one vote, except as provided in Article 164 and other provisions of this Law.

Furthermore, the Fifth Final Provision of the LGS specifies that, for the purposes of this Law, the term "shares" shall in no case include labor shares, nor shall the term "shareholders" include the holders of such shares. This means that labor shares do not fall within the scope of the GCL.

In this regard, Article 1 of Law No. 27028, which replaces labor shares with investment shares ([24]), states that "investment shares" refer to those issued by companies within the scope of Legislative Decree No. 677([25]) and that such shares constitute the "Investment Shares Account" in place of the "Work Equity Participation Account."

Additionally, Article 2 of the same law provides that investment shares grant their holders the following rights:

a) To participate in the distribution of dividends([26]);
b) To maintain their existing proportion in the Investment Shares Account in the event of an increase in share capital through new contributions;
c) To increase the Investment Shares Account through the capitalization of equity accounts;
d) To redeem their shares in any of the cases provided for in this law; and,
e) To participate in the distribution of the remaining equity in the event of the company's liquidation.

[22] Law No. 26887, published on December 9, 1997, and its amendments (hereinafter, LGS).
[23] Thus, for example, Article 51 of the LGS provides that, in a corporation, capital is represented by registered shares and is constituted by contributions from the shareholders.
[24] Published on December 30, 1998.
[25] Regulating the participation in profits, management, and ownership of employees in companies engaged in third-category income-generating activities, which are subject to the labor regime of private-sector activity, published on October 7, 1991, and its amendments.
[26] Distribution, as defined in Article 3 of Law No. 27028, is a proprietary right granted to holders of investment shares and will be made according to their nominal value. This right will be exercised until the respective companies agree on the redemption of the investment shares with their holders.

On the other hand, subparagraphs (a) and (b) of the first paragraph of Article 2 of Law No. 28739, which promotes the exchange or redemption of investment shares ([27]), define, for the purposes of this law, unless stated otherwise, the terms "shares" and "investment shares" as independent concepts.

In fact, the aforementioned subparagraph (a) **defines "shares"** as movable property intended for circulation that represents a proportional part of the capital stock of a corporation, granting the owner the status of shareholder([28]). Meanwhile, subparagraph (b) **stipulates that "investment shares"** refer to those regulated by Law No. 27028, whose predecessors were labor shares, later renamed work shares.

Regarding this last point, the Superintendency of the Securities Market (SMV, by its initials in Spanish) in Report No. 1033-2024-SMV/06(29) has stated that:

> *"(…) investment shares were originally created as **labor shares**, under the Third Transitional Provision of Decree Law No. 21789, the Private Sector Industrial Community Law, with the purpose of allowing workers who were members of the Industrial Community to participate in the company's equity. From their inception, these shares constituted an equity account of the company, called 'Labor Shares,' distinct from the capital stock.*
>
> *Later, labor shares were renamed work shares, pursuant to the Third Final and Transitional Provision of Legislative Decree No. 677.*
>
> *Subsequently, under Law No. 27028, the name of work shares was replaced with investment shares, and it was established that they would constitute the 'Investment Shares Account."*

Based on the foregoing, it can be argued that while investment shares qualify as securities([30]), they have a different legal nature from shares representing the capital of companies.

Indeed, as the SMV points out in the aforementioned report, *"investment shares do not form part of the company's capital stock, but rather belong to the company's equity—under the Investment Shares Account. Moreover, they do not grant the holder political rights in the management of the company, only economic rights," which means "it is not possible to consider investment shares as shares representing the capital of societies."*

Consequently, since the provisions of the Convention and the Protocol with Colombia refer to capital gains from the transfer of shares representing the capital of a Peruvian company, it can be concluded that these do not apply to the transfer of investment shares issued by Peruvian companies listed and traded in centralized trading mechanisms.

[27] Published on May 23, 2006.

[28] It adds that, for the purposes of this law, the term 'shares' includes the social participations representing the capital of limited liability companies that, for any reason, have issued investment shares.

[29] Submitted to this National Superintendency through Official Letter No. 3464-2024-SMV/14 of August 9, 2024.

[30] By granting its holders proprietary rights, such as participation in the company's assets and dividends. Furthermore, they were issued on a large scale, are incorporated into certificates, and are subject to a transmission regime (as stated by the SMV in Report No. 1033-2024-SMV/06).

CONCLUSIONS:

Within the framework of the Convention to standardize the tax treatment provided in the Double Taxation Treaties signed between the state parties of the Pacific Alliance Framework Agreement, in the case of pension funds recognized as such by their domestic legislation, which are considered tax residents in Mexico, Chile, or Colombia and have obtained capital gains from the sale of shares representing the capital of societies established in Peru, conducted through a local centralized trading mechanism, where the transaction is settled in cash by a Securities and Exchange Commission (ICLV) based in Peru:

1. Capital gains obtained by such funds from the sale of these shares are not subject to Peruvian income tax withholding.

2. For the purposes of suspending income tax withholding on capital gains derived from the sale of shares representing the capital of societies established in Peru, obtained by pension funds recognized from Chile, Mexico, and Colombia, conducted through a stock exchange that is part of the MILA (Latin American Integrated Market), it will be required that the said funds submit a certificate of residence issued by the tax authority of their respective country, confirming their fiscal domicile, even if the pension fund proves it is part of the pension system of its home country under the applicable regulatory framework.

3. The provisions established in Article 6 of the Convention, as well as those outlined in Article 6 of the Protocol with Colombia, do not apply to the sale of investment shares issued by Peruvian companies listed and traded in centralized trading mechanisms.

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INCOME TAX – Scope of the Convention to standardize the tax treatment established in the DTAs signed among the state parties of the Pacific Alliance Framework Agreement.