

REPORT No.012-2014-SUNAT/4B0000

SUBJECT:

Regarding subjects residing in Chile, the inquiry is whether, for the purpose of withholding Income Tax in Peru while considering the benefits provided in the Convention between the Republic of Peru and the Republic of Chile to avoid double taxation and prevent tax evasion concerning Income Tax and Wealth Tax, the following must be taken into account at the time of withholding:

- a) Whether those subjects are considered residents of Chile according to the period for which the residence certification has been issued by the Chilean Internal Revenue Service; or,
- b) Whether no more than 4 months have elapsed from the date of issuance of the Certificate of Residence in Chile, as referred to in Supreme Decree No. 090-2008-EF, even if the period for which this certification was issued is prior to the date on which the withholding is to be carried out; or,
- c) Whether no more than 4 months have elapsed from the date of issuance of the aforementioned Certificate of Residence, and whether the period for which this certification was issued includes the date on which the withholding is to be carried out.

LEGAL BASIS:

- Supreme Decree No. 090-2008-EF, which establishes the obligation to require the presentation of the Certificate of Residence for the application of conventions to avoid double taxation and regulates the issuance of Certificates of Residence in Peru, published on July 4, 2008.

ANALYSIS:

1. According to the first paragraph of Article 2 of Supreme Decree No. 090-2008-EF, the Certificate of Residence issued by the competent authority of a state with which Peru has signed a Convention to avoid double taxation and prevent tax evasion (DTA) is intended to certify the status of a resident in that state in order to benefit from the provisions established in the DTA.

The second paragraph of the cited article further states that the withholding agent for Income Tax on income paid or credited to subjects residing in a State with which Peru has signed a DTA—or, in general, for any tax to which the convention applies—must justify the granting of the benefits provided therein solely with the Certificate of Residence submitted by the resident subject of that State, which must be issued by the competent authority of said State.

To this effect, the fourth paragraph of the same article states that the Certificate of Residence must indicate that the taxpayer is a resident of a state that has signed a DTA with Peru and, as such, is subject to taxation in that state for the period specified therein. Additionally, the fifth paragraph of the same article specifies that this document shall have a validity period of four (4) months from its date of issuance, unless the issuing state grants a shorter validity period.

2. As can be seen from the aforementioned regulations, the Certificate of Residence issued by the competent authority of a state that has signed a DTA with Peru, such as Chile⁽¹⁾, serves as proof of a taxpayer's resident status in that state for the period specified in the certificate. This resident status enables the taxpayer to access the benefits provided in the DTA.

It is also important to note that the regulations distinguish between the period of residence specified in the certificate and the validity period of the Certificate of Residence itself. The latter constitutes the maximum period during which the document is recognized as valid for the withholding agent of Income Tax in Peru to justify the application of the benefits established in the DTA based on the residency period indicated in the certificate.

3. It is also important to note that the regulations distinguish between the period of residence specified in the certificate and the validity period of the Certificate of Residence itself. The latter constitutes the maximum period during which the document is recognized as valid for the withholding agent of Income Tax in Peru to justify the application of the benefits established in the DTA based on the residency period indicated in the certificate.

CONCLUSION:

In the case of individuals residing in Chile, in order for the withholding of Income Tax in Peru to be carried out while considering the benefits provided in the DTA signed between both countries, it must be ensured that, at the time of withholding, the validity period of the document referred to in Article 2 of Supreme Decree No. 090-2008-EF has not expired—that is, no more than 4 months have passed from the date of issuance of the Certificate of Residence⁽²⁾—and that the period for which this certification has been granted includes the date on which the withholding is to be carried out.

Lima, January 21, 2014

Original document signed by
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NATIONAL LEGAL DEPARTMENT

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INCOME TAX – Certificate of Residence

¹ Treaty signed on June 8, 2001, approved by Legislative Resolution No. 27905, and ratified by Supreme Decree No. 005-2003-RE, published on January 17, 2003.

² Unless the issuing state grants a shorter validity period.