

REPORT No. 094-2015-SUNAT/5D0000

SUBJECT:

The following inquiries are made:

1. Regarding taxpayers referred to in the second paragraph of Article 76 of the Income Tax Law, is it necessary for the non-residents mentioned in the same article to present their Certificates of Residence to enable those taxpayers to apply the benefits provided in the Double Taxation Avoidance and Prevention of Tax Evasion Agreements (DTAs) that are applicable to such non-residents for determining the amount of the tax retention that must be paid?
2. In the case of countries that issue Certificates of Residence with an annual validity, which makes it impossible to present certificates with a validity of 4 months for such countries, do these certificates fulfill the purpose of proving the residency status within their validity period?

LEGAL BASIS:

- Single Consolidated Text of the Income Tax Law, approved by Supreme Decree No. 179-2004-EF (1) (hereinafter, the Income Tax Law).
- Supreme Decree No. 090-2008-EF⁽²⁾, which establishes the obligation to request the presentation of the Certificate of Residence for the application of Double Taxation Avoidance Agreements and regulates the issuance of Certificates of Residence in Peru.

ANALYSIS:

1. Regarding the first inquiry, it should be noted that in accordance with Article 2 of Supreme Decree No. 090-2008-EF, the Certificate of Residence issued by the competent entity of a state with which Peru has entered into a DTA aims to prove the taxpayer's residency status in that state, in order to allow them to benefit from the provisions of the DTA.

Add the rule stating that if the resident subject of the other state does not present the Certificate of Residence at the time of withholding, the

¹ Published on December 8, 2004, and its amendments.

² Published on July 4, 2008.

withholding agent must carry it out without considering the benefits provided in the DTA⁽³⁾.

As can be seen, the Certificate of Residence under analysis is intended to certify the status of a resident in a state that has signed a DTA with Peru, in order to make use of the benefits provided therein.

Now, even though, according to the cited regulations, non-domiciled subjects must present this Certificate at the time the Income Tax withholding is to be carried out, nothing prevents such presentation from being made in advance.

Considering the above, and also that the taxpayers referred to in the second paragraph of Article 76 of the Income Tax Law, in order to comply with its provisions, must determine the equivalent amount of the withholding of said tax as indicated in that regulation, and given that this withholding must consider the benefits provided in the DTA applicable to the non-domiciled subjects mentioned in said article, it is necessary that they present their Certificates of Residence to those taxpayers so that, in complying with the provisions of that regulation, the mentioned benefits are taken into account.

2. Regarding the second inquiry, it should be noted that, in accordance with the criteria set forth in Report No. 012-2014-SUNAT/4B0000⁽⁴⁾, which is applicable to the present query, *"In the case of residents in Chile, in order for the withholding of Income Tax in Peru to be carried out 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 elapsed from the date of issuance of the Certificate of Residence⁽⁵⁾, and that the period for which this certification was granted includes the date on which the withholding is to be carried out."*

Thus, the aforementioned Certificate of Residence: i) must be presented by the resident of a state that has signed a DTA with Peru at the time of the Income Tax withholding and must be within the 4-month period counted from the date of issuance of said Certificate; and, moreover, ii) the validity period

³ According to the same regulation, in this case, the resident of the other state may request a refund from SUNAT for taxes unduly or excessively withheld, taking into account the provisions contained therein.

⁴ Available on the SUNAT Portal.

⁵ Unless the issuing state grants a shorter validity period.

for which it has been issued must include the date on which the withholding is carried out.

In this regard, even though Certificates of Residence are issued for a period of one year, their effectiveness depends on their presentation within the 4-month validity period counted from the date of issuance.

Consequently, Certificates of Residence issued for a one-year term certify the resident status, provided they are presented for the purpose of Income Tax withholding within the four-month period counted from their date of issuance.

CONCLUSIONS:

1. In the case of the taxpayers referred to in the second paragraph of Article 76 of the Income Tax Law, it is necessary that the non-domiciled individuals mentioned in the same article present their Certificates of Residence to them so that, in complying with the provisions of that regulation, the benefits provided in the applicable DTAs for those non-domiciled individuals are considered.
2. Certificates of Residence referred to in Supreme Decree No. 090-2008-EF, issued for a one-year term, certify the resident status, provided they are presented for the purpose of Income Tax withholding within the 4-month period counted from the date of issuance.

Lima, July 3, 2015

ORIGINAL DOCUMENT SIGNED BY
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