

REPORT No. 131-2020-SUNAT/7T0000

SUBJECT:

The situation is presented of a taxpayer domiciled in the country who assumes the payment of Peruvian-source income tax that corresponds to their non-domiciled supplier, to whom no withholding tax was applied on the income paid. This supplier is a resident of a country with which Peru has entered into a Double Taxation Avoidance Agreement (DTA) to prevent tax evasion.

In this regard, the question is raised as to whether, for the purpose of applying the reduced income tax rates provided in this DTA, concerning the requirements that the Certificate of Residence referred to in Supreme Decree N.º 090-2008-EF must meet, related to the period for which it is issued and the period of its validity:

1. The period for which the Certificate of Residence is issued must include the date of payment to the non-domiciled supplier.
2. The validity period of the Certificate of Residence must cover the date of payment to the non-domiciled supplier or the date of payment of the tax to SUNAT.

LEGAL BASIS:

- Supreme Decree No. 090-2008-EF, which establishes the obligation to request the presentation of the Certificate of Residence to apply Double Taxation Avoidance Agreements and regulates the issuance of residence certificates in Peru, published on 4.7.2008.
- Single Consolidated Text of the Income Tax Law, approved by Supreme Decree N.º 179-2004-EF, published on 8.12.2004 and its amendments (hereinafter, "LIR").
- Regulations of the LIR, approved by Supreme Decree N.º 122-94-EF, published on 21.9.1994 and its amendments.

ANALYSIS:

1. Article 76 of the LIR establishes that individuals or entities that pay or credit Peruvian-source income to non-domiciled beneficiaries must withhold and pay the taxes to the government on a final basis, within the deadlines provided by the Tax Code for obligations with a monthly frequency, as stipulated in Articles 54 and 56 of the aforementioned Law, as applicable.

Furthermore, subparagraph e) of Article 39 of the LIR Regulations establishes that, in cases where the withholding or perception obligations exist but have not been carried out or have been partially performed, taxpayers are required to pay to the government, within the same deadlines, the amount equivalent to the withholding or perception that was not carried out.

On the other hand, there are several Double Taxation Agreements (DTAs) concluded by Peru with other states that are currently in force, which specify, with respect to certain types of income, that such income may be taxed in the source country at a maximum rate, but only for a resident of the other contracting State.

Now, in accordance with the previously mentioned Article 76 of the Income Tax Law (LIR), a non-domiciled person is subject to tax on Peruvian-source income at the moment of receipt, through the mechanism of withholding at the source, without prejudice to the fact that the taxpayer may make the direct payment if the withholding was not carried out. Therefore, for the application of the benefits provided in a DTA, it must be verified that, at the time the income is paid, the beneficiary has the status of a resident of the relevant state.

2. In accordance with 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 DTA serves the purpose of confirming the taxpayer's status as a resident of that state, allowing them to take advantage of the benefits provided in the DTA.

The second paragraph of the same article states that the withholding agent for the Income Tax on payments or credits made to taxpayers who are residents of a state with which Peru has signed a DTA, or in general for any tax covered by the DTA, must support the granting of DTA benefits solely with the Certificate of Residence provided by the taxpayer resident in that state, which must be issued by the competent authority of that state.

Additionally, the fourth paragraph of the mentioned article indicates that the Certificate of Residence must confirm that the taxpayer is a resident of a state with which Peru has signed a DTA and, as such, is subject to taxes in that state for the specified period.

Furthermore, the fifth paragraph of the article establishes that the Certificate of Residence will be valid for a period of four (4) months from the date of issuance, unless the issuing state grants a shorter validity period.

It should be noted that, regarding the Certificate of Residence, this Tax Administration⁽¹⁾ has stated the following:

- The Certificate of Residence is a document used to verify a taxpayer's resident status in a state for the period indicated therein, with which the taxpayer gains access to the treatment outlined in a DTA.

¹ In Report No. 012-2014-SUNAT/4B0000, available at:
<http://www.sunat.gob.pe/legislacion/oficios/2014/informe-oficios/i012-2014.pdf>

- The regulations distinguish between the period mentioned and the validity period of the Certificate of Residence, which constitutes a maximum period during which the document is considered valid, so that the withholding agent for the income tax in Peru can use it to justify the granting of the benefits outlined in the DTA for the period of residence indicated in the mentioned Certificate.
- Consequently, at the time of withholding, it should be ensured that the validity period of the Certificate of Residence has not elapsed, i.e., it should not be more than 4 months from the date of issuance, and that the period for which the certification has been granted covers the date when the withholding will be made.

Thus, regarding the Certificate of Residence, it must generally confirm that the taxpayer is a resident of a state with which Peru has signed a DTA and that, by virtue of this, the taxpayer is subject to taxes in that state, for the period indicated. It must also be valid, meaning that no more than 4 months have passed from the date of issuance.

3. Now, since the purpose of the Certificate of Residence is to verify the taxpayer's residency status in a state with which Peru has signed a DTA, to allow them to benefit from the provisions of the DTA, the fact that the withholding agent did not make the withholding at the time does not prevent the application of the reduced tax rates set out in the DTA if, at the time the tax is paid, the mentioned Certificate is provided, which meets the previously specified conditions.

In this regard, if a domiciled party assumes the payment of the Peruvian-source income tax owed by their non-domiciled provider, to whom the withholding was not made despite the payment of the income, for the purpose of applying the reduced tax rates outlined in the DTA, it must be verified that the period for which the certificate was granted includes the date when the payment was made to the non-domiciled provider (which is the date on which the income was generated) and that the validity period of the Certificate of Residence has not expired, i.e., no more than 4 months from the date of its issuance, which should cover the date the payment was made to the non-domiciled provider.

CONCLUSION:

In the event that a resident taxpayer assumes the payment of the Peruvian income tax corresponding to their non-resident supplier, to whom the respective tax withholding was not made on the paid income; for the purposes of applying

² Unless the issuing state grants a shorter validity period.

the reduced income tax rates provided for in a Double Taxation Agreement (DTA):

1. The period for which the Residence Certificate is granted must cover the date on which the payment was made to the non-domiciled supplier.
2. The validity period of 4 months, counted from the date of issuance of the Residence Certificate, must cover the date on which the payment was made to the non-resident supplier.

Lima, December 10, 2020.

(Seal)

NATIONAL DEPUTY SUPERINTENDENCY OF INTERNAL TAXES

National Legal and Tax Intendency