

Implementation of the obligation to require the submission of the Certificate of Residence for the application of treaties to avoid double taxation and regulation of the issuance of Certificates of Residence in Peru

SUPREME DECREE No. 090-2008-EF

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

Pursuant to Article 76 of the Income Tax Law, whose Single Consolidated Text was approved by Supreme Decree No. 179-2004-EF and its amendments, individuals or entities paying or crediting Peruvian-source income of any nature to non-domiciled beneficiaries must withhold and pay the corresponding taxes—referred to in Articles 54 and 56 of said Law, as applicable—to the tax authorities on a final basis, within the deadlines established in the Tax Code for monthly obligations.

Legislative Decree No. 25883 authorizes the Minister of Economy and Finance to negotiate and undersign bilateral treaties to avoid double taxation and prevent tax evasion;

For the effective application of the benefits provided in tax treaties to avoid double taxation and prevent tax evasion, it is necessary for non-domiciled individuals or entities to substantiate their status as residents in another contracting state, as well as to certify residence in Peru when dealing with a state with which Peru has signed the aforementioned treaty;

Pursuant to the powers conferred by subparagraph 8) of Article 118 of the Political Constitution of Peru;

HEREBY RESOLVES:

Article 1.- Definitions

For the purposes of this Supreme Decree, the following terms are defined as:

1. DTA : Agreement for the avoidance of double taxation and prevention of tax evasion.
2. SUNAT : National Superintendence of Tax Administration.

Article 2.- Certificate of Residence issued by a state that has a DTA with Peru

The Certificate of Residence issued by the competent authority of a state that has a DTA with Peru is intended to certify the taxpayer status as a resident of that state in order to access the benefits provided under the DTA.

The Income Tax withholding agent responsible for the payment or accreditation of income to individuals or entities residing in a state with which Peru has a DTA, or, in general, for any tax to which the DTA applies, must substantiate the granting of DTA benefits exclusively with the Certificate of Residence provided by the resident of that State, which must be issued by the competent authority of that state.

When the competent authority responsible for the issuance of the Certificate of Residence has an online verification system, the withholding agent must verify its authenticity. For this purpose, SUNAT shall, through a Superintendence Resolution, specify the states with which Peru has a DTA that offer online verification systems.

To substantiate the granting of benefits provided under the DTA, the Certificate of Residence must specify that the taxpayer is a resident of a state that has a DTA with Peru and, therefore, is subject to taxation in that state for the period specified therein.

The Certificate of Residence shall be valid for four (4) months from the date of issuance, unless the issuing state grants a shorter validity period.

If the resident of the other state fails to submit the Certificate of Residence at the time of withholding, the withholding agent must proceed without applying the benefits established under the DTA. In such a case, the resident of the other state may request from SUNAT a refund of undue or excess withheld taxes, subject to the following conditions:

a) The Certificate of Residence containing the information specified in the fourth paragraph of this article is the only document that will certify the taxpayer's resident status in the other state for the refund period. This document must be attached to the refund request(*) RECTIFIED IN AN ERRATUM.

b) If the state of residence does not regulate the issuance of a Certificate of Residence, any document issued by the competent authority shall be considered valid, provided it contains the information specified in the fourth paragraph of this article for the relevant refund period. This document must also be attached to the refund request(*) RECTIFIED IN AN ERRATUM.

Article 3.- Issuance of the Certificate of Residence in Peru

The Certificate of Residence issued in Peru serves to certify a taxpayer's status as a resident of the state. It shall be issued upon request by the taxpayer or their legal representative.

SUNAT shall issue the Certificate of Residence in accordance with the format, deadlines, and conditions established by the Superintendence Resolution.

Article 4.- Countersignature

This Supreme Decree shall be countersigned by the Minister of Economy and Finance.

FINAL SUPPLEMENTARY PROVISION

Only Provision.- Validity

This Supreme Decree shall enter into force on the day following its publication.

Issued at the Government Palace, in Lima, on the third day of July, two thousand and eight.

ALAN GARCÍA PÉREZ

Constitutional President of the Republic

LUIS CARRANZA UGARTE

Minister of Economy and Finance