21 November 2019

Global Tax Alert

News from Americas Tax

Peru and Japan sign Double Tax Treaty

On 18 November 2019, Peru and Japan signed the Double Tax Treaty (DTT).

Persons covered (Article 1)

The DTT applies to persons that are residents of one or both of the Contracting States.

Taxes covered (Article 2)

The DTT will apply to the following taxes:

- In Japan: the income tax; corporate income tax; special income tax for reconstruction; local corporation tax; and local inhabitant taxes
- In Peru: the income taxes imposed under the *Income Tax Act* and under the Legislative Decree that created the micro and small businesses income tax regime

Permanent establishment (PE) (Article 5)

Under the DTT, a PE is deemed to exist when a building site, installation project or supervisory activities last more than six months. A PE also is deemed to exist when the furnishing of services by an enterprise through employees continues for a period or periods aggregating more than 183 days in any 12-month period. Additionally, a PE is deemed to exist when the exploration or exploitation of natural resources lasts more than six months.

Business profits (Article 7)

Business profits are only taxable in the Contracting State in which the company is resident, unless it has a PE in the other Contracting State through which it conducts business, in which case the profits will be taxed by both Contracting States.

Dividends (Article 10)

Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

However, dividends paid by a company that is a resident of a Contracting State may also be taxed in that Contracting State according to the Contracting State's laws, but the tax cannot exceed 10% of the gross amount of the dividends if the beneficial owner of the dividends is a resident of the other Contracting State.

Interest (Article 11)

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

However, interest arising in a Contracting State may also be taxed in that Contracting State according to the Contracting State's laws, but the tax cannot exceed 10% of the gross amount of the interest if the beneficial owner of the interest is a resident of the other Contracting State.

Royalties (Article 12)

Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

However, royalties arising in a Contracting State may also be taxed in that Contracting State according to the Contracting State's laws, but the tax cannot exceed 15% of the gross amount of the royalties if the beneficial owner of the royalties is a resident of the other Contracting State.

The term "royalties" means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including films or any patent, trademark, design or model, plan, or secret formula or process. "Royalties" also includes consideration for (1) the use of, or the right to use, industrial, commercial or scientific equipment, or (2) information concerning industrial, commercial or scientific experience.

The term "royalties" does not include "technical assistance" or "digital services," as is the case in other DTTs agreed to by Peru.

Silent partnerships (Article 21)

For the first time in Peru, a DTT includes a silent partnerships provision (asociación en participación, in Spanish). According to that provision, the income derived by a silent partner is taxed at source.

Assistance in the collection of taxes (Article 27)

The Contracting States will lend assistance to each other in the collection of tax claims, provided the assistance is not restricted by Articles 1 (Persons covered) and 2 (Taxes covered).

Most-favored nation principle

The DTT's Protocol includes the most-favored nation principle, under which both states will, at Japan's request, enter into negotiations if Peru concludes an agreement with another jurisdiction that exempts dividends, interest or royalties from taxation in Peru or limits the taxation of those items in Peru to a lower tax rate than that provided in the Peru – Japan DTT.

Effective date

The DTT will enter into force on the 30th day after the date of receipt of the later notification confirming internal procedures have been completed by both governments. The DTT will be effective on or after 1 January of the calendar year following the year in which the DTT enters into force.

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