

Global Tax Alert

News from EY Americas Tax

Peru issues regulations on indirect foreign tax credit

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EY Americas Tax

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On 10 December 2019, Peru's Minister of Economics issued Supreme Decree 369-2019-EF, which includes regulations on the indirect foreign tax credit. The Supreme Decree is effective 1 January 2020.

Background

On 1 January 2019, Peru amended its Income Tax Law to include an indirect foreign tax credit. Therefore, a Peruvian entity receiving foreign income as dividends or profits from nonresident entities may deduct:

- ▶ The income tax withheld from the dividends or profits distributed (direct credit)
- ▶ The income tax paid by the first-tier nonresident entity (i.e., the entity in which the Peruvian entity is a direct shareholder) and the second-tier nonresident entity (i.e., the entity directly owned by the first-tier entity) (indirect credit), provided certain conditions are met

To qualify for the indirect foreign tax credit, the Peruvian entity must directly or indirectly own 10% of the shares of the first-tier nonresident entity or second-tier nonresident entity for 12 months before the date in which the dividends are paid. The second-tier nonresident entity must be a resident of a country that has an exchange of information agreement with Peru or is a resident of the same country as the first-tier nonresident entity.

Supreme Decree 369-2019-EF

Dividends paid abroad

Supreme Decree 369-2019-EF establishes that dividends distributed by the first-tier nonresident entity may be in cash or in kind, including the distribution of reserves and advance dividend payments. Dividends are considered distributed when they have been paid or when they have been made available to the Peruvian entity.

How to determine ownership percentage

To determine the direct or indirect 10% ownership of the first-tier nonresident entity or the second-tier nonresident entity, the Peruvian entity must include the underlying shares of American Depositary Receipts and Global Depositary Receipts in its calculation.

To establish the Peruvian entity's indirect ownership percentage in the second-tier nonresident entity, the Peruvian entity's ownership percentage in the first-tier nonresident entity must be multiplied by the Peruvian entity's ownership percentage in the second-tier nonresident entity.

Available information

The Peruvian entity must keep the following information in case it is requested by the Peruvian Tax Authority:

- ▶ Evidence of its ownership in the first-tier nonresident entity and the second-tier nonresident entity and the percentage of ownership (documents issued in a foreign language must be translated into Spanish)
- ▶ Evidence of the dividends or profits distribution made by the first-tier and second-tier nonresident entities, including the dividend distribution agreement and the payment either to the first-tier nonresident entity and/or the Peruvian entity through a bank, or other documents that show the distribution when the dividends are in kind

The Peruvian entity must report this information through a registry established by the Peruvian Tax Authority. The Peruvian entity should only include dividends or profits that it obtains from 1 January 2019 and thereafter.

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