

Global Tax Alert

News from EY Americas Tax

Peru amends rules on indirect transfers of shares

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EY Americas Tax

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On 21 April 2020, Peru's Executive Power enacted Supreme Decree 085-2020-EF, amending the Peruvian Income Tax Law regulations and establishing new rules for determining the market value of shares in indirect transfers of Peruvian shares.

Background

Previously, to determine the market value of the shares of the resident entity and the nonresident entity in indirect transfers of Peruvian shares, the entities had to determine the:

- **Quotation value:** In the case of shares listed on the stock exchange, the market value was the quotation value.
- **Equity value:** In the case of non-listed shares, the market value was calculated based on the last audited annual balance sheet closed before the transfer date. The market value was calculated by dividing the value of all the entity's equity by the number of all the shares issued. If the balance sheet was not available, the market value was determined according to an appraisal dated at the close of the year preceding the year in which the transfer of shares took place.

Supreme Decree 085-2020-EF

When determining the market value of shares of the resident entity and the nonresident entity in indirect transfers of shares, either for transactions with related or unrelated parties, Supreme Decree 085-2020-EF requires the following methods to be followed:

Quotation value: For shares listed on the stock exchange, the market value will be the quotation value.

Discounted cash flow (DCF) method: For shares not listed on the stock exchange, the market value will be determined under the DCF method, provided the entity foresees that it will have future cash flows or has elements such as licenses, authorizations or intangibles that will provide cash flows in the future. If the entity has several business units, a projection must be made for each business unit.

If there is no expectation of debt linked to the economic activity or business unit of the entity, the entity will apply the DCF method; otherwise the entity's shareholder will apply the DCF method.

For the DCF method, the following rules must be considered:

- The cash flow period should be at least 10 years. If the entity has a shorter duration, the balance of the duration will be considered.
- If the entity's cash flow is applied, the discount rate is the weighted average cost of capital, which must consider the opportunity cost of capital and the cost of debt.

As supporting documentation of the DCF method, the entity must have a technical report containing at least the following information: (i) an executive summary; (ii) analysis of the sector in which the entity operates, indicating the main factors that could impact its value; (iii) analysis of the entity; (iv) valuation of the entity; and (v) annexes, including financial statements.

Equity value: If the prior methods do not apply, the market value is calculated on the basis of the issuing entity's last audited balance sheet closed within 90 days before the disposal of the shares.

Residual method: If the previous methods do not apply, the fair market value will be one of the following:

- The entity's equity value based on the last unaudited balance sheet closed within 90 days before the disposal of the shares, in accordance with the official accounting standards or
- If the prior requirement is not met, the market value will be determined by an appraisal completed within the six months before the transfer date.

Supreme Decree 085-2020-EF went into effect on 22 April 2020.

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