

# Global Tax Alert

News from EY Americas Tax

## Peruvian Tax Court rules Peruvian payor may not consider double tax treaty benefits when determining withholding tax because the Certificate of Residency was issued retroactively

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On 28 September 2020, the Peruvian Tax Court held (Resolution 5934-5-2019) that a nonresident must provide a Peruvian payor with a Certificate of Residency when withholding is triggered for the payor to apply double tax treaty (DTT) benefits when calculating the withholding tax on the transaction.

### Background

According to Peruvian tax legislation, to invoke the benefits of a DTT, nonresidents must give the Peruvian payor a Certificate of Residency that meets the following requirements:

- ▶ Establishes that the nonresident is resident of a country having a DTT in force with Peru and, therefore, is subject to tax in that country for the period established in the Certificate of Residency
- ▶ Is valid for four months from the date of its issuance

If the nonresident does not deliver the Certificate of Residency on the date on which the withholding obligation is triggered, the Peruvian payor must make the withholding without considering the DTT benefits.

## Resolution 5934-5-2019

In the case at issue, the Peruvian Tax Court addressed whether a Certificate of Residency issued retroactively allows the Peruvian payor to consider DTT benefits when determining withholding tax. Although issued retroactively, the certificate established that the nonresident entity was a resident of the foreign country for a period before the issuance of the certificate and before the date on which the withholding obligation was triggered.

The Peruvian Tax Court stressed that the Certificate of Residency must certify the residency in the foreign country for a period including the date on which the withholding obligation is triggered. Because the Certificate of Residency was issued retroactively, the Peruvian payor must calculate the withholding without considering the benefits of the DTT. The nonresident may claim a refund directly from the Peruvian tax authorities.

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