



## Guidance issued on private binding ruling regime in Peru

Peru's executive branch published a decree on 12 September 2015 that sets out the conditions for taxpayers to request a private binding ruling under the new regime introduced by a 2014 law (Law 30296). On 27 September 2015, the Peruvian tax authorities (SUNAT) published a resolution appointing a specific division within the agency to handle private binding ruling requests and the SUNAT also posted some guidelines on its website, including a sample ruling request application letter.

### Background

Law 30296, enacted on 31 December 2014, introduced a provision in the Peruvian tax code allowing a taxpayer with a direct and legitimate interest in a tax issue to request a private binding ruling from the SUNAT on the tax treatment applicable to specific facts and circumstances, as long as a related tax obligation has not yet arisen or, in the case of customs procedures, the cargo manifest or the numbering of the goods declaration has not been initiated.

The executive branch of the government was required to issue a decree to give effect to the amendment, with regulations setting forth the procedure for applying for a ruling and how SUNAT would implement the regime.

### Effect of the decree

The decree sets out the process for obtaining a private binding ruling from the SUNAT, including the formalities that must be met and the terms and conditions for submitting a request. In addition, the decree clarifies certain other matters, including the following:

- The SUNAT is authorized to decline to issue a ruling, provided it does so within 30 business days from the day following the day on which the ruling request was submitted;
- A ruling must be issued within four months of the day following the day on which a request was submitted;
- The taxpayer may not challenge and/or appeal a ruling;
- The SUNAT will publish on its website a summary of the rulings issued, without identifying the taxpayer or disclosing confidential information; and
- The SUNAT is entitled to regulate the use of information systems for submitting ruling requests electronically, accompanied by the necessary supporting documentation, and it may exempt a taxpayer from submitting certain documents that already are on file.

Since the private binding ruling regime is intended to be implemented gradually (at the discretion of the tax authorities), the decree sets out the criteria to comply with this process, which are based on the size and scale of the taxpayer, the type of tax involved in the request and the tax background of the taxpayer.

Initially, private binding rulings may be requested only on matters involving the application of the corporate income tax and/or value added tax and that affect certain taxpayers, including the following:

- An entity with an investment agreement or a stability agreement approved by PROINVERSION (the agency that promotes private investment in Peru), or participating in a public-private association approved by PROINVERSION;
- A taxpayer with an investment project in Peru exceeding USD 10 million, based on a pre-feasibility study submitted to the SUNAT, if:
  - In the annual corporate income tax return for the year prior to the year in which the ruling request is submitted (or the year two years prior to submission, if the tax return for the

- first prior year is not yet due), the net sales or income from services reported exceeds 15,000 UIT (1 UIT in 2015 equals approximately USD 1,200); or
- For a taxpayer commencing operations in the same year that it submits the ruling request, the cumulative value of the monthly net income reported to the SUNAT exceeds 15,000 UIT at the time the request is filed;
  - A taxpayer that reported a value of financial investments higher than 3,000 UIT in its annual corporate income tax return for the year prior to the year in which the ruling request is submitted (or the year two years prior to submission, if the tax return for the first prior year is not yet due);
  - A taxpayer commencing operations in the same year that the ruling request is submitted and that has financial investments exceeding 3,000 UIT at the time of filing the request (supporting documentation on the amount of investments must be supplied to the SUNAT); and
  - A nonresident with financial investments exceeding 3,000 UIT at the time of filing the ruling request (supporting documentation on the amount of investments must be supplied to the SUNAT).

## Comments

The issuance of the decree on the private binding ruling regime is an important development for the Peruvian tax system. The new possibility of carrying out a direct consultation process with the SUNAT should provide more certainty for taxpayers regarding the tax consequences of specific transactions and tax planning structures.

The private ruling regime provides a new tool, in addition to the advance pricing agreements that already may be requested from the SUNAT, to help taxpayers manage the risk of tax exposures. The regime also should complement the efforts of the government to provide more clarity when measuring the tax costs associated with transactions, in line with the latest global trends.

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