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## **EXECUTIVE BRANCH**

### **LEGISLATIVE DECREES**

#### **LEGISLATIVE DECREE Nº 1623**

THE PRESIDENT OF THE REPUBLIC

WHEREAS

By means of Law No. 32089, Law that empowers the Executive Branch to legislate in matters of economic revival, regulatory simplification and quality, State business activity, public safety and national defense, the Congress of the Republic has delegated to the Executive Branch the power to legislate in tax matters for a term of ninety (90) calendar days.

Paragraph a.1 of subsection a) of subclause 2.7.1 of Article 2 of Law No. 32089 establishes that the Executive Branch is empowered to regulate the taxation of business models based on the digital economy, by amending the Value Added Tax and Selective Consumption Tax Law, which Single Revised Text was approved by Supreme Decree No. 055-99-EF, in order to establish a mechanism for collecting the Value Added Tax – VAT (IGV *in Spanish*) for those transactions carried out with non-domiciled suppliers or intermediaries of goods and services within the framework of the digital economy and to adapt the regulation of the tax, as well as other tax regulations, as appropriate, which mainly includes amending the VAT liability, including the standard rules and the rules on the place of taxation in the country, in accordance with the destination principle, following, among other criteria, the recommendations established by the Organisation for Economic Co-operation and Development (OECD);

This regulatory proposal is exempted from the application of the Regulatory Impact Analysis (AIR) Ex Ante, since it is included in the assumption of subparagraph 7 of subclause 28.1 of Article 28 of the Regulation that develops the Institutional Framework that governs the Regulatory Quality Improvement Process and establishes the General Guidelines for the application of the Ex Ante Regulatory Impact Analysis, approved by Supreme Decree No. 063-2021-PCM, since it is a tax rule;

Pursuant to the provisions of Article 104 of the Political Constitution of Peru and in exercise of the powers delegated by subparagraph a.1 of subsection a) of subclause 2.7.1 of Article 2 of Law No. 32089, Law that delegates to the Executive Branch the power to legislate in matters of economic revival, regulatory simplification and quality, state business activity, public safety and national defense;

With the approving vote of the Council of Ministers;

With the obligation to give notice thereof to the Congress of the Republic;

the following Legislative Decree has been issued:

#### **LEGISLATIVE DECREE AMENDING THE VALUE ADDED TAX AND THE SELECTIVE CONSUMPTION TAX LAW WITH RESPECT TO THE USE, IN THE COUNTRY, OF DIGITAL SERVICES AND THE IMPORT OF INTANGIBLE ASSETS THROUGH INTERNET**

**Article 1.- Purpose**

The purpose of this Legislative Decree is to establish, among others:

1. That individuals who do not carry out business activities and who use digital services in the country provided by non-domiciled individuals do not require having regular transactions to be considered taxpayers of the Value Added Tax.

2. The mechanism for collecting the Value Added Tax payable by individuals who do not carry out business activities when they use digital services provided in the country by non-domiciled individuals or import intangible assets through the Internet.

3. The criteria and assumptions to determine when digital services rendered by non-domiciled individuals or intangible assets imported through the Internet are used or consumed in the country by individuals who do not carry out business activities.

## **Article 2.- Definition**

For the purposes of this regulation, the Law is understood to be the Value Added Tax and Selective Consumption Tax Law, which Single Revised Text was approved by Supreme Decree No. 055-99-EF.

## **Article 3.- Criteria for consumption or use, in the country, of digital services and intangible assets imported through Internet**

The following texts are hereby included as fourth and fifth paragraphs of subclause 1 of subparagraph c), as second, third and fourth paragraphs of subparagraph g) and as subparagraphs) and i) of article 3 of the Law:

### **"Article 3.- DEFINITIONS**

For the purposes of the application of the Tax, the following is understood as:  
(...)

#### **c) SERVICES:**

1.

(...)

In the case of the use, in the country, of digital services in favor of individuals who do not carry out business activities, it is considered that the services are consumed or used in the national territory if the user of the Service has his usual residence in the country. The usual residence of the user is understood to be located in the country when any of the following events occur:

i. The Internet Protocol (IP) address or other means of geolocation assigned to the electronic device through which digital services are provided corresponds to Peru.

ii. The country code of the subscriber identity module (SIM) card, physical or electronic, or other technology replacing it from the mobile terminal equipment through which digital services are provided corresponding to Peru.

iii. The payment of digital services is made using credit or debit cards or any support for the use of electronic money or any other product provided by entities of the Peruvian financial system.

iv. The address that the individual registers before the digital service provider, as user data or address for the issuance of payment vouchers, is located in Peru.

The Regulations may establish additional assumptions to consider that the user's usual residence is located in the country.

(...)

g) IMPORT OF INTANGIBLE ASSETS:

(...)

In the case of the import of intangible assets through the Internet in which the acquirer is a individual who does not carry out a business activity, it is considered that the assets are destined for use or consumption in the country if the acquirer has its usual residence in the country. The usual residence of the purchaser is understood to be located in the country when any of the following events occur:

i. The IP address or other means of geolocation assigned to the electronic device through which the intangible asset is downloaded corresponds to Peru.

ii. The country code of the SIM card, physical or electronic, or other technology that replaces it of the mobile terminal equipment through which the intangible asset is downloaded corresponds to Peru.

iii. Payment for the import of intangible goods is made using credit or debit cards or any support for the use of electronic money or any other product provided by entities of the Peruvian financial system.

iv. The address that the individual registers with the person from whom the intangible asset is acquired, as user data or address for the issuance of payment vouchers, is located in Peru.

The Regulations may establish additional assumptions to consider that the purchaser's usual residence is located in the country.

h) DIGITAL SERVICES:

To services made available to the user through the Internet or any adaptation or application of the protocols, platforms or technology used by the Internet or any other network through which equivalent services are provided by means of online accesses and which is characterized by being essentially automatic and not feasible in the absence of information technology.

The following, among others, are considered digital services, provided they comply with the provisions of the preceding paragraph:

1. Access and/or online transmission of images, series, movies, documentaries, short films, videos, music and any other digital content, through streaming or other technology.

2. Information storage.

3. Access to social networks and/or the provision of additional content or their functions.

4. The service provided by online magazines or newspapers.

5. Remote conferencing services.

6. Intermediation in the supply and demand of goods or services.

i) INTANGIBLE ASSETS IMPORTED THROUGH INTERNET

Acquired Intangible assets to be downloaded in a definitive manner by the purchaser through the Internet or any adaptation or application of the protocols, platforms or technology used by the Internet or any other network through which intangible assets are acquired and downloaded in a definitive manner."

#### **Article 4.- Regular use of services in the country**

Amend paragraph i. of paragraph 9.2 of article 9 of the Law, according to the following text:

##### **"Article 9.- TAXABLE INDIVIDUALS**

(...)

9.2. In the case of individuals, legal entities, public or private law entities, marital partnerships exercising the option on income allocation provided for in the rules governing income tax, undivided inheritances, which do not carry out business activities, shall be considered taxable individuals when:

i. Import goods subject to tax or, in the case of individuals who do not carry out business activities, when they use in the country digital services rendered by non-domiciled individuals.

(...)"

#### **Collection of the Value Added Tax levied on the use, in the country, of digital services and the import of intangible assets through Internet.**

The following text is hereby incorporated as Chapter XII of Title I of the Law:

##### **"CHAPTER XII**

##### **MECHANISM FOR THE COLLECTION OF THE VALUE ADDED TAX LEVIED ON THE USE IN THE COUNTRY OF DIGITAL SERVICES AND THE IMPORT OF INTANGIBLE ASSETS THROUGH THE INTERNET**

##### **Article 49-A.- WITHHOLDING AND COLLECTION OF THE TAX LEVIED ON THE USE, IN THE COUNTRY, OF DIGITAL SERVICES AND THE IMPORT OF INTANGIBLE ASSETS THROUGH THE INTERNET**

###### **1. Withholding and collection agents**

In the use in the country of digital services and in the import of intangible assets through the Internet, when the user or importer is a individual who does not perform business activities, the non-domiciled individual that provides the digital service or from whom the asset is acquired acts as a withholding or collection agent of the Tax as from the first calendar day of the month following the month in which it starts operating in the country.

The aforementioned individuals must be registered in the Single Taxpayers' Registry, in accordance with the rules regulating such registry.

###### **2. Withholding and collection of the Tax**

The withholding or collection of the Tax is made in accordance with the following:

a) In the case of the import of intangible assets through the Internet and the use of digital services that do not involve intermediation in the supply and demand of an underlying transaction, the non-domiciled individual from whom the intangible asset is acquired or who provides the digital service receives the amount resulting from applying the tax rate on the total sales value or the remuneration.

The collection is made at the time of collection.

b) In the case of the use of digital services that involve intermediation in the supply and demand of an underlying transaction, the non-domiciled individual that provides the intermediation service:

i. It acts as a collection agent of the Tax payable to the user or purchaser in the underlying transaction, for the use of the intermediation service in the country. In this case, it collects the amount resulting from applying the tax rate on the total remuneration for the intermediation service.

The collection is made at the time of collection.

ii. It acts as a withholding agent of the tax payable to the lender or seller in the underlying transaction, for the use of the intermediation service in the country. In this case, it withholds the amount resulting from applying the tax rate on the total remuneration for the intermediation service.

The withholding is made when the non-domiciled individual transfers to the current or savings account of the provider or seller of the underlying transaction, the amount paid by the user or acquirer of such transaction.

If the non-domiciled individual providing the intermediation service receives only a remuneration from the user or purchaser or from the provider or seller of the underlying transaction, the tax is collected or withheld in accordance with the provisions of this paragraph, as appropriate.

3. Verification of consumption or use in the country and of the individual using the service or importing the intangible asset.

The non-domiciled individual makes the withholding or collection referred to in this article only when:

a) The digital services or intangible assets imported through the Internet are intended for use or consumption in the country, for which purpose it verifies that any of the cases provided for in the fourth and fifth paragraphs of subclause 1 of subsection c) or in the second and third paragraphs of subparagraph g) of article 3 of this law, as applicable, occur, and

b) The individual who uses digital services or imports intangible assets through the Internet does not perform business activity, for which it verifies that it has registered on its platform:

i. Choosing the option that corresponds to individuals and using their name, surname and identity card number, among other personal information, or

ii. Using your first name, last name and ID card number, among other personal information, when the platform has a single registration option that does not distinguish between individuals and companies.

In the cases in which the registration in the platform of the non-domiciled individual does not contemplate choosing the option or entering the personal data referred to in the previous paragraph, it will be understood that the individual does not carry out business activity.

4. Declaration and payment of the tax withheld or collected

a) Non-domiciled individuals must file the tax return and pay the tax withheld or collected in each month within the first ten (10) working days of the following month, in the form and conditions established by SUNAT by superintendence resolution.

b) The declaration and payment may be made in local currency or in U.S. dollars. The option is exercised in the return corresponding to the month of January and is maintained throughout the year. If the obligation to file the return arises after January, the option is exercised in the first return filed and is maintained until December of that year.

For the declaration and payment in national currency, the conversion is carried out using the weighted average sales exchange rate, published by the Superintendence of Banking, Insurance and Private Pension Fund Administrators on its website or in the Official Gazette El Peruano, which corresponds to the date on which the return must be filed and payment made or the date on which payment is made, whichever occurs first.

The declaration and payment in U.S. dollars shall be made in accordance with the provisions of SUNAT by means of a superintendence resolution.

c) SUNAT may require the aforementioned individuals to file an annual informative return, in the form, term and conditions established by means of a superintendence resolution, including the details of the operations subject to withholding or collection.

d) The time zone considered to determine the date on which the filing of the tax return and payment is made will be the Peruvian official time, GMT-5.

#### 5. Notifications

The notification of administrative acts, communications or others to non-domiciled individuals who are withholding or collection agents is made in accordance with subsection b) of article 104 of the Tax Code, as established by SUNAT in use of the powers granted by said subsection.

#### 6. Settlement and payment by the taxpayer

In cases not included in the regulation provided for in this article, the individual using digital services in the country or importing intangible assets through the Internet directly makes the declaration and payment of the Tax, in the manner and under the conditions established by SUNAT.

#### 7. Undue payment or overpayments

In those cases in which the non-domiciled individual declares and pays withholdings or collections made to individuals who do not carry out business activities, in an undue or excessive manner, the amount corresponding to those withholdings or collections must be returned and compensated with the amount of the withholdings or collections that, for the following months, must be made by the non-domiciled individual.

In cases where the non-domiciled individual makes undue or excess payments, the individual may offset them against the payments to be made for the following months or request a refund, which is made by means of a credit to a national or international account.

In the case of international account credits, any commissions or other expenses generated as a result of the refund are borne by the non-domiciled individual.

By means of a Supreme Decree countersigned by the Minister of Economy and Finance, following the opinion of SUNAT and the Banco de la Nación, as appropriate, the necessary provisions are established for the effect of the refund by means of credit to a national or international account, as well as the cases in which, by exception, another form of refund must be used.

### **Article 49-B.- COLLECTION OF THE TAX ON THE USE OF DIGITAL SERVICES AND THE IMPORT OF INTANGIBLE ASSETS THROUGH THE INTERNET, BY PAYMENT FACILITATORS**

1. When the non-domiciled individual referred to in Article 49-A of the Law incurs in any of the following cases, the Value Added Tax levied on the use of digital services or the import of intangible assets through the Internet by individuals who do not carry out business activities, is withheld or collected by payment facilitators:

- a) Failure to register in the Single Taxpayers' Registry.
- b) Failure to file the return or make payment of the total amount of tax withheld or collected within the established deadlines, for two (2) consecutive or alternate months.
- c) Failure to file the annual informative affidavit within the deadlines indicated, if the obligation to file this affidavit is established.

The cases foreseen in paragraphs b) and c) are not applicable if the omitted tax returns are filed and payment is made, including the corresponding interest and penalties, up to the last calendar day of the month prior to that of the verification.

SUNAT verifies whether the events indicated in the preceding paragraph occurred on two (2) or more occasions during each calendar year. By means of a Superintendence Resolution, SUNAT establishes the verification schedule and other aspects necessary for its operation.

2. The list of non-domiciled individuals that incur in the assumptions described in the previous subclause is approved by supreme decree countersigned by the Ministry of Economy and Finance, with the technical opinion of the National Superintendence of Customs and Tax Administration. The Ministry of Economy and Finance publishes the list, through its digital headquarters ([www.gob.pe/mef](http://www.gob.pe/mef)), until the fifteenth day of the following month of verification.

The aforementioned supreme decree indicates the assumption incurred and the moment as from which the listed individuals cease to withhold or collect and the payment facilitators begin to withhold or collect the tax levied on the transactions mentioned in paragraph 1 of this article.

The non-domiciled individual may be excluded from the referred list in the supreme decree that approves the next list, provided that SUNAT verifies that it has complied with registering in the Single Taxpayers' Registry, if it has not done so, filing the omitted returns and making the payment of the withholdings or collections, including the applicable interest and fines, as applicable. Said supreme decree indicates the moment from which the payment facilitators cease to withhold or collect and the non-domiciled individual returns to the status of tax withholding or collection agent.

The verification referred to in the preceding paragraph is carried out at the same time as that indicated in the third paragraph of subclause 1 of this article.

3. The following are considered as payment facilitators:

a) The multiple transaction companies and the electronic money issuing companies referred to in Article 16 (A) and Article 17 (4) of the General Law of the Financial System and the Insurance System and Organic Law of the Superintendence of Banking and Insurance - Law No. 26702, as well as the Banco de la Nación, when payment is made by means of:

- i. Credit cards.
- ii. Debit cards or any support for the use of electronic money, such as prepaid electronic money cards or cell phones.
- iii. Electronic transfer of funds using digital wallets.
- iv. Any other product provided by the aforementioned entities as indicated by supreme decree.

b) Companies operating public telecommunications services that receive payment for digital services.

c) Other subjects indicated by supreme decree that receive payment for the import of intangible assets through the internet or the use of digital services.

4. The payment facilitator withholds or collects the Tax in accordance with the following:

a) In the case of the importation of intangible assets through the Internet and the use of digital services that do not involve intermediation in the supply and demand of an underlying transaction, it collects the tax payable by the importer or user, for which it must:

a.1) Charge to the credit card the amount resulting from applying the Tax rate on the amount paid by the importer or user using such card.

The collection is made at the moment the payment facilitator collects the card statement. If partial payments are made for the total amount of the billing period, the collection is made in full on the date of the first payment.

If the total amount to be collected is not reached, the balance is collected in the following payments until its cancellation.

a.2) Debit from the deposit account or electronic money account the amount resulting from applying the Tax rate on the amount paid by the importer or user using a debit card or through any support for the use of electronic money.

The collection is made on the date on which the deposit account or electronic money account is debited.

a.3) To collect the amount resulting from applying the tax rate on the amount paid by the importer or user using any other product provided by the entities indicated in subclause 1 of subparagraph c) of article 3 of the Law, as indicated by supreme decree.

The regulation establishes the form and time of collection in these cases, taking into account the characteristics of each product.

a.4) To collect the amount resulting from applying the tax rate to the amount paid by the importer or user, at the moment that receives payment for the import of intangible assets through the Internet or the use of digital services.

b) When dealing with the use of digital services that involve intermediation in the supply and demand of an underlying transaction:

b.1) Withholds the tax payable by the provider or seller of the underlying transaction for the use in the country of the intermediation service provided through the Internet.

The amount of the withholding shall be the amount resulting from applying the tax rate on the result of multiplying the amount that the non-domiciled individual providing the intermediation service transfers to the current account or savings account of the provider or seller of the underlying transaction by the percentage established in the Regulations, which may not be less than 0.5% or more than 50%.

b.2) Collects the tax payable to the user or acquirer of the underlying transaction for the use in the country of the intermediation service provided through the Internet, for which it must:

i. Charge to the credit card the amount resulting from applying the Tax rate on the result of multiplying the amount paid by the user or acquirer of the underlying transaction using such card, by the percentage established in the Regulations, which may not be less than 0.5% or more than 50%.

The collection is made at the moment the payment facilitator collects the card statement. If partial payments are made for the total amount of the billing period, the collection is made in full on the date of the first payment.

If the total amount to be collected is not reached, the balance is collected in the following payments until its cancellation.



ii. Debit from the deposit account or electronic money account the amount resulting from applying the tax rate on the result of multiplying the amount paid by the user or acquirer of the underlying transaction using a debit card or through any support for the use of electronic money, by the percentage established in the Regulations, which may not be less than 0.5% or more than 50%.

The collection is made on the date on which the deposit account or electronic money account is debited.

iii. Collect the amount resulting from the application of the tax rate on the result of multiplying the amount that the user or purchaser of the underlying transaction pays using any other product provided by entities of the financial system to be determined by supreme decree, by the percentage established in the Regulations, which may not be less than 0.5% or more than 50%.

The Regulation establishes the form and time of collection in these cases, taking into account the characteristics of each product.

5. The payment facilitator makes the withholding or collection in accordance with the provisions of this article only when:

a) Digital services used in the country and intangible assets imported through the Internet are intended for use or consumption in the national territory, for which it verifies that:

i. The address registered by the customer is located in the country; or,

ii. Payment for goods or services is made using credit or debit cards or any support for the use of electronic money, provided by entities of the Peruvian financial system.

b) The individual who uses digital services or imports intangible assets through the Internet does not perform business activity, for which it verifies that its customer has registered as a individual, using its name, surname and identity card number, among other personal information.

6. The payment facilitator must file the tax return and pay the tax withheld or collected in each month, within the deadlines established in the Tax Code for monthly tax obligations, in the manner and conditions established by SUNAT by means of a superintendence resolution.

For the conversion into local currency use the weighted average exchange rate published by the Superintendence of Banking, Insurance and Private Pension Fund Administrators on its web page or in the Official Gazette "El Peruano", corresponding to the date on which the withholding or collection is made or, in its absence, the last one published.

#### **Article 6.- Endorsement**

This Legislative Decree is countersigned by the President of the Council of Ministers and the Minister of Economy and Finance.

### **FINAL SUPPLEMENTARY PROVISIONS**

#### **FIRST - Validity**

This legislative decree becomes effective on the same date of entry into force of the regulatory rule referred to in the Fourth Final Complementary Provision; except for the provisions of Article 49-B of the Law, incorporated by this rule, which becomes effective on the same date of entry into force of the rule that regulates it.

#### **SECOND.- Withholdings or collections made to individuals carrying out business activities**

In cases where the non-domiciled individual withholds or collects the tax referred to in Article 49-A of the Law, incorporated by Article 5 of this regulation, from an individual who carries out business activities, the latter may use the tax withheld or collected as a tax credit, provided that:

1. The non-domiciled individual would have paid to the tax authorities the amount of the withholding or collection made; and,
2. Substantial and formal requirements are complied with of the tax credit provided for in the regulations on the matter.

The regulatory standards indicate the documents that must support the tax credit in these cases and that will be recorded in the Purchase Register.

### **THIRD.- Single Taxpayers' Registry**

Non-domiciled individuals referred to in Chapter XII of Title I of the Law, incorporated by Article 5 of this regulation:

1. They are not required to establish domicile in the country.
2. The representative appointed for the purpose of registration in the Single Taxpayer Registry does not need to be domiciled in the country.
3. Their registration in the Single Taxpayers Registry does not imply for them the constitution of a permanent establishment in the country.

### **FOURTH - Regulatory standards**

By means of a supreme decree countersigned by the Minister of Economy and Finance, within thirty (30) calendar days from the publication of this legislative decree, the necessary regulations for its application shall be issued.

## **TEMPORARY SUPPLEMENTARY PROVISION**

### **SINGLE - Initial term to operate as withholding or collection agents**

Non-domiciled individuals, designated as withholding or collection agents in accordance with article 49-A of the Law, incorporated by article 5 of this regulation, who are carrying out the operations referred to in said article 49-A or who start such operations up to September 30, 2024, begin to withhold or collect the Value Added Tax as from October 1, 2024.

### **THEREFORE:**

I order it to be published and complied with, reporting to the Congress of the Republic.

Given at the Government House, in Lima, on the second day of August of the year two thousand and twenty-four.

DINA ERCILIA BOLUARTE ZEGARRA  
President of the Republic

GUSTAVO LINO ADRIANZÉN OLAYA  
Chairman of the Council of Ministers

JOSÉ BERLEY ARISTA ARBILDO  
Minister of Economy and Finance

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