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## **ECONOMY AND FINANCE**

### **Amendments to the Regulations of the Value Added Tax and Selective Consumption Tax Law**

#### **SUPREME DECREE N° 157-2024-EF**

THE PRESIDENT OF THE REPUBLIC

WHEREAS

Legislative Decree No. 1623 amends the Value Added Tax and Selective Consumption Tax Law with respect to the use in the country of digital services and the import of intangible assets through the Internet, establishing a mechanism for collecting the Value Added Tax levied on such operations, when the user or importer is an individual who does not carry out business activities;

Second Final Supplementary Provision of the aforementioned legislative decree states that, in the cases in which the non-domiciled individual makes the withholding or collection referred to in Article 49-A of the Value Added Tax and Selective Consumption Tax Law, incorporated by said legislative decree, to an individual who carries out business activities, the latter may use the tax withheld or collected as a tax credit, provided that the non-domiciled individual has paid to the tax authorities the amount of the withholding or collection made and that the substantial and formal requirements are complied with, adding that the regulations indicate the documents that must support the tax credit in these cases and that shall be recorded in the Purchase Register;

In accordance with the Fourth Final Supplementary Provision of the aforementioned legislative decree, by means of supreme decree countersigned by the Minister of Economy and Finance, within thirty (30) calendar days from the publication of said legislative decree, the necessary regulations for its application shall be issued;

Consequently, it is necessary to approve the aforementioned regulations;

In accordance with the provisions of subclause 8 of Article 118 of the Political Constitution of Peru, the Second and Fourth Final Supplementary Provision of Legislative Decree No. 1623;

ENACTS

#### **Article 1.- Purpose**

This Supreme Decree aims at regulating certain aspects necessary for the better application of the 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 Internet, as provided for in Chapter XII of Title I of the Value Added Tax and Selective Consumption Tax Law, the Single Ordered Text of which was approved by Supreme Decree No. 055-99-EF.

#### **Article 2.- Definition**

For the purposes of this regulation, the Regulation is understood to be the Regulation of the Value Added Tax and Selective Consumption Tax Law, approved by Supreme Decree No. 29-94-EF.

#### **Article 3.- Incorporation of Chapters XII and XIII to Title I of the Regulations.**

The following is incorporated as Chapter XII and Chapter XIII of Title I of the Regulations:

## **"CHAPTER XII**

### **TAX LEVIED ON THE USE IN THE COUNTRY OF DIGITAL SERVICES AND THE IMPORT OF INTANGIBLE ASSETS THROUGH INTERNET**

#### **Article 11-L. Entities of the Peruvian financial system**

The entities of the Peruvian financial system referred to in section iii of subclause 1 of subparagraph c) and section iii of subparagraph g) of article 3 of the Decree are:

a) The multiple transaction companies and 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.

b) The Banco de la Nación.

#### **Article 11-LL. Underlying transaction**

For the purposes of the provisions of Chapter XII of Title I of the Decree, an underlying transaction is understood to be that which the seller of a good or provider of a service and the person interested in acquiring that good or service seek to enter into with each other, and whose execution is facilitated by the non-domiciled individual that provides the intermediation service in the supply and demand of goods or services.

The underlying transaction may be taxed, not taxed or exempted from the tax in accordance with the relevant regulations.

#### **Article 11-M. Document supporting the tax credit in the case of individuals who carry out business activities**

In the case referred to in the Second Final Complementary Provision of Legislative Decree No. 1623, the document that supports the use as a tax credit of the tax withheld or collected from the individual who performs business activities is the document issued by the non-domiciled individual in which the value of the transaction is recorded, without prejudice to compliance with the other aspects indicated in the aforementioned complementary provision.

## **CHAPTER XIII**

### **UNDUE OR EXCESS PAYMENTS PROVIDED FOR IN ARTICLE 49-A, SUBCLAUSE 7 OF THE DECREE**

#### **Article 11-N. Offsetting of tax collections and withholdings made unduly or in excess to individuals who do not carry out business activities declared and paid by the non-domiciled individual**

In order to apply the offsetting referred to in the first paragraph of subclause 7 of article 49-A of the Decree, the non-domiciled individual shall:

a) Previously, to have previously refunded the amount of the tax collected or withheld in excess or in an undue manner to the individual or individuals who do not carry out a business activity.

b) To include in the monthly tax return corresponding to the month in which the refund was made, the amount of the amount refunded to individuals who do not carry out business activities, in order to offset such amount against the tax collections or withholdings made, for such month or, if such amount is not used up, in the following months.

#### **Article 11-Ñ. Offsetting or refund of undue or excess payments made by the non-domiciled individual**

a) For purposes of the application of the provisions of the second paragraph of subclause 7 of article 49-A of the decree, the non-domiciled taxpayer who makes undue or excess tax payments arising from an error in the determination of the tax liability recorded in the monthly tax return must, prior to offsetting or requesting a refund, file the corresponding rectifying tax return.

The non-domiciled individual may decide for an offsetting or refund as from the month following the filing of the rectifying return.

b) If the undue or excess payment of the tax is caused by an error only in the payment, the non-domiciled individual may offset this or request a refund as from the following month in which the payment was made.

c) The offsetting referred to in this article, as well as in the preceding article, is made in the corresponding monthly tax return of the non-domiciled individual, in accordance with the form and conditions established by SUNAT by means of a superintendence resolution.

d) If the withholdings or collections of the tax to be declared and paid are less than the undue or excess payment made, the remaining amount of such payment is carried forward to the following months until it is exhausted.

In case the undue or excess payment was made in local currency and the non-domiciled individual chooses to declare and pay in U.S. dollars, the exchange rate to be applied to the effect of the amount of the undue or excess payment that is being carried forward is established in the superintendence resolution referred to in the last paragraph of subsection b) of subclause 4 of article 49-A of the Decree.

e) In case the non-domiciled individual chooses to request the refund, must submit the written request, as well as the corresponding form, to SUNAT in the form and conditions established by SUNAT through a superintendence resolution. SUNAT resolves the refund requests within forty-five (45) business days from the business day following the date of filing of the request. Upon expiration of such term, the non-domiciled individual may consider its request denied and file the appeal provided for in the second paragraph of article 163 of the Tax Code.

The refund is made in local currency or, in the event that the undue or excess payment had been made in U.S. dollars, in such currency, by crediting a national or international account, as established by supreme decree countersigned by the Minister of Economy and Finance, following the opinion of SUNAT and the Banco de la Nación, as applicable.

f) With respect to requests for refund of undue or excess tax payments, the provisions of paragraph c) of the first paragraph of Article 39 of the Tax Code are applicable. If there is a balance to be refunded, the refund is made in accordance with the provisions of the supreme decree referred to in the preceding paragraph.

In the event that the non-domiciled individual has enforceable tax debts, SUNAT may issue Negotiable Credit Notes or non-negotiable checks up to the amount of such debts, to be applied against such debts.

The non-negotiable check referred to in the preceding paragraph is made payable to the order of SUNAT.

For this purpose, the debts referred to in Article 115 of the Tax Code are understood as payable."

#### **Article 4.- Endorsement**

This Supreme Decree is countersigned by the Minister of Economy and Finance.

## **FINAL ADDITIONAL PROVISION**

### **Single – Entry into force**

This Supreme Decree becomes effective as of the day following its publication in the Official Gazette "El Peruano".

## **TEMPORARY SUPPLEMENTARY PROVISION**

### **Single. Refund of undue or excess tax payments made in local currency by the non-domiciled individual**

a) The refund of undue or excess payments referred to in the second paragraph of subclause 7 of Article 49-A of the Value Added Tax and Selective Consumption Tax Law made in local currency is made, as long as the supreme decree referred to in Article 11-Ñ incorporated to the Regulations by this provision is not approved, by crediting a current or savings account in accordance with Supreme Decree N° 155-2011-EF "Refund of undue or excess payments of tax debts whose administration is in charge of SUNAT, of the balance in favor of the benefit, of the tax refund for the Jungle Region and of the tax refund, by crediting a current or savings account".

b) With respect to the requests for refund of undue or excess payments of the Tax made in local currency referred to in this final complementary provision, the provisions of paragraph c) of the first paragraph of article 39 of the Tax Code are applicable. If there is a balance to be refunded, the refund shall be made in accordance with the provisions of the preceding paragraph.

In the event that the non-domiciled individual has enforceable tax debts, SUNAT may issue Negotiable Credit Notes or non-negotiable checks up to the amount of such debts, to be applied against such debts.

The non-negotiable check referred to in the preceding paragraph is made payable to the order of SUNAT.

For this purpose, the debts referred to in article 115 of the Tax Code are understood as payable.

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

DINA ERCILIA BOLUARTE ZEGARRA  
President of the Republic

JOSÉ BERLEY ARISTA ARBILDO  
Minister of Economy and Finance

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