

Peruvian regulations address expense deduction limitations and taxation of indirect share transfers

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In brief

Supreme Decrees Nos. 337, 338, and 339, published in the Peruvian Official Gazette on December 30, 2018, contain regulations on a number of provisions that were amended in the September 2018 tax reform (for prior coverage of the tax reform, see [Insight of October 9, 2018](#)). These regulations, effective **January 1, 2019**, address limitations on the deductibility of expenses from intragroup services, taxation of capital gains from indirect transfers of shares, and the new definition of 'accrual' for business income.

In detail

Deductibility of expenses from intragroup services

Supreme Decree No. 337 sets forth the requirements for deducting fees for intragroup services for income tax purposes:

1. Under a benefit test, the service must provide the taxpayer with commercial or economic value.
2. The taxpayer must be able to justify that the fees paid are at arm's length. Accordingly, a specific formula must be applied to calculate the margin obtained by the supplier (i.e., revenues minus costs and expenses over costs and expenses multiplied by 100).

3. The taxpayer must prepare supporting documentation, which includes a description of the services, arguments that support the benefit test, information on the costs and expenses incurred by the supplier, and the calculation of the margin.

Taxation on the indirect transfer of shares

To tax capital gains from an indirect transfer of Peruvian shares, one requirement is that, during any given 12-month period, shares representing at least 10% of all the foreign entity's shares are transferred (the so-called *de minimis* rule). Supreme Decree No. 338 provides additional rules to calculate the 10% threshold. For

instance, the transfer of shares for the creation of an Exchange Traded Fund or the liquidation of derivatives must be taken into account.

Under another requirement, referred to as the 50% test, the fair market value of the Peruvian entity shares must equal at least 50% of the fair market value of the foreign entity being transferred. Supreme Decree No. 388 provides rules for calculating this percentage.

Deductibility of interest expenses

For 2019 and 2020, interest on indebtedness from related parties and from unrelated parties (from September 14, 2018) is subject to thin capitalization rules.

Supreme Decree No. 338 provides that interest expense is deductible for income tax purposes provided it does not exceed the amount obtained from the following formula:

$$\text{IDM} = (\text{MME} \times \text{MI}) / \text{MTE}$$

- IDM: maximum deductible interest
- MME: equity x 3 (to calculate the 3:1 ratio);
- MI: interest from indebtedness used to generate taxable income and subject to the deductibility limitation

- MTE: total indebtedness.

New definition of ‘accrual’ for business income

Under the September 2018 tax reform, in situations where all or a portion of the consideration is subject to a future event, the amounts must be accrued for income tax purposes when the event occurs.

Supreme Decree No. 339 clarifies that consideration is deemed to be subject to a future event if it is based on sales, production, or revenues.

The takeaway

Multinational enterprises with current or future operations in Peru should evaluate how these Supreme Decrees will impact their operations, including the potential taxation of an indirect transfer of Peruvian subsidiaries as part of global intragroup restructurings.

Multinationals also need to analyze how to meet the new rules and formulae for the deductibility of interest and for fees for intragroup services.

Let’s talk

For a deeper discussion of how this may affect your business, please contact:

Peru

Arturo Tuesta
+ 51 1 211 6500
arturo.tuesta@pe.pwc.com

Gino Menchola
+ 51 1 211 6500
gino.menchola@pe.pwc.com

United States

Jose Leiman
+1 (305) 381-7616
jose.leiman@pwc.com

Luis Vargas
+1 (646) 471-0582
maximo.l.vargas@pwc.com

Europe

Ramón Mullerat
+34 91 568-5534
ramon.mullerat@pwc.com

Isabel Asín Pérez
+34 91 568-5358
isabel.asin.p.perez@pwc.com

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