

Peru issues guidance on reporting direct and indirect share transfers

June 5, 2014

In brief

The Peruvian government on June 4, 2014, issued long-awaited guidance (Resolution No. 169-2014) on the requirement to report the direct or indirect transfer, and issuance or cancellation of shares and participations in Peruvian entities. The Resolution takes effect June 5, 2014.

Note: The Resolution imposes a retroactive reporting requirement for transactions that took place between February 16, 2011, and May 31, 2014. The deadline for reporting these transactions is either June 30, 2014, or July 31, 2014, depending on when the transaction took place. Transactions that take place after May 31, 2014, must be reported in the month following the transaction. Failure to report a transaction could result in the imposition of penalties.

Transactions involving Peruvian American Depositary Receipts (ADRs) are not subject to the new reporting requirements.

In detail

Broadly speaking, capital gains tax is generally imposed on the direct transfer of Peruvian shares at a rate of 30% unless the transaction takes place on the Peruvian securities exchange, where a 5% rate applies. An indirect transfer of Peruvian shares may also be subject to capital gains tax –generally at a 30% rate– unless certain safe-harbors are met.

The Resolution requires a Peruvian entity whose shares are issued, transferred, or cancelled to report the transaction on Form 1605 within the first 12 business days of the month after the

transaction. Form 1605 must be submitted online to the Peruvian government; no paper forms will be allowed).

Form 1605 requires Peruvian entities to provide the following information:

- information on the transferor/transferee/acquirer,
- the number of shares or interests transferred
- whether the shares are listed, and
- the transaction date.

Retroactive reporting

The Resolution requires Peruvian entities to report

the issue, transfer, or cancellation of Peruvian shares that took place between February 16, 2011, and May 31, 2014. For these transactions, Form 1605 must be filed online before the following deadlines:

- June 30, 2014, for transactions that took place between January 1, 2013, and May 31, 2014, and
- July 31, 2014, for transactions that took place between February 16, 2011, and December 31, 2012.

Noncompliance

Failure to submit Form 1605 before the filing deadline will result in a penalty equal to 30% of a Peruvian 'UIT' (tax unit), or approximately US\$500. The UIT's value is fixed annually by the Peruvian government. The current value of a Peruvian UIT is PEN 3,800.

ADRs

Transactions involving Peruvian ADRs are not subject to the reporting requirement.

The takeaway

The Resolution provides tight deadlines for reporting transactions that took place between February 16,

2011, and May 31, 2014. US multinational entities with operations in Peru should determine whether there were any direct or indirect transfers, or issuances or cancellations of Peruvian shares during this period and work with their Peruvian subsidiaries to start gathering the information required to submit Form 1605 before the deadlines.

Let's talk

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

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