

INFOCARD ELANBiz

Taxation of Technical Assistance and Digital Services in Peru¹

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The purpose of this infocard is to provide information on the essential elements related to income taxes on Technical Assistance and Digital Services in Peru.

Introduction

The import of services represents an important sector of the Peruvian economy, in particular e-commerce which accounted for 5.75% of the GDP in 2018², with a rising trend³.

In this regard, it is important to analyze how such services, carried out by non-domiciled European companies, can generate income tax in Peru. In other words, this is all about determining the **withholding tax** that these services are levied with, given that Peru has few agreements in force to avoid double taxation⁴. This is a relevant issue to consider as in practice European companies' profit margin can disappear due to the withholding tax if they miscalculate or omit said tax.

Concerning the Value Added Tax ("IGV") of 18%, subsection b) of article 1° of the VAT Law⁵, establishes that **the VAT is levied on the provision or use of services in the country, i.e. in Peru**. In this sense, numeral 1 of subsection c) of article 3° of the VAT Law establishes that services are understood to be, among others, any and all services rendered by one person to another and for which they receive a consideration or income in exchange, provided that such income is considered as a Third category income (business income) for Income Tax purposes, even when it is not levied under such category. **Services are considered to be used in Peru** when they are **provided by non-domiciled subjects and** are consumed or used in the Peruvian territory, regardless of the place where the consideration was

¹ The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers as well as commercial business contacts, please contact the Commercial Offices of the Member States and the bilateral chambers of commerce in Lima

² <https://gestion.pe/tecnologia/comercio-electronico-aporta-5-75-pbi-nacional-capece-263849-noticia/>. This trend has experienced an increase of up to 15 times the total value of imports between 2009 and 2019 (USD 276 million to USD 4 billion), which places Peru in sixth place in Latin America in the e-commerce industry. <https://www.mundoempresarial.pe/79-notas/2312-e-commerce-en-el-peru-movio-us-4-000-millones-en-el-2019.html>

³ [Trademap](#).

⁴ Current agreements include Chile, Canada, Brazil, Mexico, South Korea, the Swiss Confederation, Portugal and the Andean Community. See: https://www.mef.gob.pe/es/?option=com_content&language=es-ES&Itemid=100878&lang=es-ES&view=article&id=302. Likewise, Peru and Japan entered into a double taxation agreement on 18 November 2019, [which is set to enter into force on 29 January 2021](#). . In respect of the income tax it will enter into force on the 1st of January 2022.

⁵ See [Texto Único Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo Decreto Supremo N°055-99-EF](#)



paid or received and the place where the contract is signed. This means that the **beneficiary of technical assistance or digital services**, subject to **business income**, who uses these services in Peru will be taxed with VAT. As such, the VAT taxpayer is a person taxed with business income in Peru. Nevertheless, in recent years, lawmakers and authorities have discussed the possibility of applying VAT to any person, even natural persons without a business and not subject to business income, as beneficiaries of certain services. This would be geared toward services provided through digital platforms, such as video transmission via streaming, digital applications, and the like⁶. In September 2020, Congress submitted [Project N° 6181-2020-CR](#) in order to implement the above stated digital taxation, by modifying the VAT Law and the Tax Code.

Companies incorporated abroad are considered as **not domiciled in Peru** for tax purposes, unless they have a permanent establishment in Peru. Likewise, it is important to note that since 1 January 2019, non-domiciled companies have been considered to have a **permanent establishment**, among other things, if they render services in Peru for more than 183 days within a 12-month period.⁷

In that sense, it is important to be able to distinguish between services which qualify as “technical assistance” and those which qualify as “digital services”, since the former **enjoy a more favorable tax rate** (15%) than the latter (30%). In both cases, these services are taxed in Peru as Peruvian law considers them as generating income from Peruvian sources.⁸

Technical Assistance

Definition

First of all, NOT all services including a technical component are necessarily considered technical assistance by Peruvian legislation. Quite the contrary, the tax concept of technical assistance is specific to this area.

General concept

There are two types of definitions for technical assistance, which should be carefully examined by the non-domiciled service provider to determine if their services qualify as such.

On the one hand, the Peruvian legislation establishes a **broad definition of technical assistance, however with specific features**. Under that definition, technical assistance is understood to cover “(...) *all independent services, whether rendered from abroad or in Peru, by which the provider undertakes to use their abilities, through the application of certain procedures, art or techniques, with the purpose of providing non-patentable, specialized knowledge, necessary for the productive, commercialization and provision of services*”

⁶ See <https://www2.deloitte.com/pe/es/pages/tax/articles/IGV-a-los-servicios-prestados-via-plataformas-digitales.html>

⁷ See article 14-B of Supreme Decree N° 179-2004-EF – Single Organized Text of the Law of Income Tax (hereinafter the “**IT Law**”) <http://www.sunat.gob.pe/legislacion/renta/ley/capiii.pdf>. Indeed, if a non-domiciled company creates an establishment in Peru, said permanent establishment will be subject to taxes just as if it were a company incorporated in Peru, with certain exceptions.

⁸ See in particular 9 of the **IT Law** <http://www.sunat.gob.pe/legislacion/renta/ley/capii.pdf>

process, or any other activity carried out by the user. Technical assistance also includes the training of personnel for the application of the specialized knowledge stated above”.⁹

In this regard, technical assistance services must concurrently include the following elements:

- ❖ **Independent services**: The service must be provided by a company or legal person different from the beneficiary. It is a specific obligation to render services.
- ❖ **It is a service provided from Peru or abroad**: Even if a European company does not send any employee to Peru for the performance of a contract, as long as it qualifies as a technical assistance service, it will pay taxes in Peru. This means that non-domiciled companies that provide services which qualify as technical assistance will be taxed in Peru even if they are provided entirely from abroad, without the need for physical presence in Peru.
- ❖ **The provider must undertake to use their abilities**: Such obligation will be carried out through the application of certain procedures, arts or techniques acquired by the provider.
- ❖ **It must be considered a transfer of specialized knowledge**: This transfer of knowledge is reflected in the delivery of documentation that contains the corresponding recommendations, suggestions and/or instructions¹⁰. This will allow the beneficiary to make those services their own, and to be able to use and apply them in their activity.
- ❖ **It implies the transfer of non-patentable knowledge**: As such, the transfer is distinct from the payment of royalties for passive knowledge. The technical assistance must be necessary for the economic activity carried out by the beneficiary. Therefore, it must be part of the beneficiary's productive economic cycle¹¹.

Services not considered as technical assistance

Peruvian legislation does not consider any of the following as technical assistance¹²:

- Considerations paid to the employees of the beneficiary in exchange for the services rendered in performance of their labor contract.
- Marketing and advertising services.
- Information on improvements, and other news related to patents for inventions, patentable procedures and similar.

⁹ Article 4-A, subsection c) of the Regulations of the **IT Law** – passed by Supreme Decree N° 122-94-EF) (hereinafter the “**Regulations of the IT Law**”).

¹⁰ GÁLVEZ MÁRQUEZ, Ramón 20, “Asistencia Técnica: ¿Qué Comprende?”. Last checked 14 december 2020. http://ifa.pe/uploads/articles/272_06_ct29_rgm.pdf

¹¹ As established in [Report N° 139-2013-SUNA4B0000](#).

¹² Article 4-A, subsection c) of the **Regulations of IT Law**.

- Activities carried out in order to supply information related to industrial, commercial and scientific experience. In this case, it is a passive transfer of know-how, and the consideration is considered a royalty subject to a 30% tax.
- Oversight of imports.

Specific concepts

Peruvian legislation establishes a second definition of technical assistance which encompasses certain services, regardless of whether or not they fit under the “broad” definition of technical assistance¹³:

N°	CONSIDERED AS TECHNICAL ASSISTANCE	DESCRIPTION
01	Engineering services	The execution and supervision of the assembly, installation and start-up of production machines, equipment and plants; the calibration, inspection, repair and maintenance of machines, equipment; and conducting tests and trials, including quality control, feasibility studies and final engineering and architectural projects.
02	Project research and development	The development and execution of pilot programs, research and laboratory experiments; exploitation services and technical planning or programming of production units.
03	Financial consulting	Consultancy on the appraisal of financial and banking entities and on the preparation of plans, programs and promotion at an international level for their sale; assistance for the distribution, placement and sale of securities issued by financial entities.

Economic use in Peru

Likewise, for a service to be considered as technical assistance **it must be economically used in Peru**. The service shall be considered as economically used in any of the following cases:¹⁴

“1) It is used for the development of activities or fulfillment of their purposes, of persons domiciled in the country, regardless of whether such persons generate taxed income or not.

Taxpayers earning business income who write off the consideration paid for technical assistance as an expense

¹³ In this regard, the [Letter N° 540-2007-SUNAT/2000](#) has established that these services will be considered as technical assistance, regardless of whether or not they fulfill the requirements established in Article 4-A, subsection c) of the **IT Law**.

¹⁴ Artículo 4-A, subsection c) of the **Regulations of the IT Law**.

or cost, which complies with the principle of causality established in the third paragraph of article 37° of **the IT Law**, are considered to economically use the service in Peru.

2) It is used for the development of the functions of any entity of the National Public Sector.”

Applicable taxation

It is worth noting that, while payments for services rendered by foreign companies in favor of a Peruvian company are generally subject to a 30% income tax rate¹⁵; **technical assistance services enjoy the benefit of a 15% tax rate.**¹⁶

In addition, the tax rate is applied on the gross income paid by the Peruvian company, but it does not include air tickets or travel expenses of the Peruvian company benefitting from technical assistance services, as it happens with other services that are not considered as technical assistance.¹⁷

Technical Assistance Certification Report

Provided that technical assistance services are applied a favorable regime, the beneficiary must prove before SUNAT that the technical assistance services have been effectively provided, by means of a report issued by an auditing company¹⁸. This obligation applied when the total amount of the consideration for the technical assistance services included in a single contract, including its extensions and amendments, exceeds 140 Tax Units¹⁹ (approx.€ 143,489²⁰) at the time of its execution.

As a means to transition into the subject of “digital services”, sometimes a provider provides a series of services that include digital services and technical assistance. In this case, the rule states that “*the amounts relating to each one of them must be distinguished in order to grant each individualized operation its corresponding treatment. However, if due to the nature of the operation, this distinction cannot be made, the treatment corresponding to the essential and predominant part of the transaction will be granted*”. For this reason, it is recommended that a single contract containing services of a different nature should allow these services to be appraised and distinguished.

Digital Services

Definition

"Digital service" is understood to be any service that is made available to the user through the Internet

¹⁵ According to Article 56°, subsection j) of the **IT Law**.

¹⁶ According to Article 56°, subsection f) of the **IT Law**.

¹⁷ Articles 37°, subsection r) and 76°, subsection d) of the **IT Law**, as well as [Report N° 168-2008-SUNAT/2B0000](#).

¹⁸ According to Artículo 56°, subsection f) of the **IT Law**.

¹⁹ A Tax Unit is a measurement unit used to calculate tariffs and fines established by the Peruvian government. It is updated every year. One (01) Tax Unit in 2021 is equivalent to PEN 4,400.

²⁰ Applicable exchange rate on January 18, 2021: € 4.293 per 1 PEN.

or through any adaptation or application of the protocols, platforms or technology used by the Internet or any other network through which equivalent services are provided through online accesses and characterized by being essentially automatic and not being feasible in the absence of information technology.²¹

In this regard, SUNAT has established the following main characteristics of digital services:²²

- a) **It is a service**, meaning the performance of an obligation from one person to another.
- b) It must be **provided through the Internet or through any adaptation or application of the protocols, platforms or technology used by the Internet or any other network**.
- c) It is provided **through online accesses** (through an internet connection or another network or system), that is, the means through which the service is accessed (connection to the network) is decisive to qualify a service as digital, but not the way the information is processed, either through immediate or batch processing.
- d) It must be **essentially automatic**, that is, it must require minimal human intervention.
- e) **It relies on information technology**, which implies that it is only viable if there is basic development of computer tools.

Peruvian legislation considers the following, among others, as digital services:²³

DIGITAL SERVICES			
01	Software maintenance	08	Publicity (<i>Banner ads</i>)
02	Networked customer technical support	09	Online bidding
03	Information storage	10	Information sharing
04	Hosting applications	11	Access to interactive websites
05	Hosting services	12	Interactive training
06	Webpage hosting	13	Online portals for sales
07	Electronic access to consultancy services		

Economic Use or Consumption in Peru

For digital services to be taxed in Peru, they must be economically used or consumed in Peru, regardless of the nationality or domicile of the parties involved in the operations and the place of celebration or fulfillment of the contracts.²⁴ In that regard, the service is considered economically used

²¹ Article 4-A, subsection b) of the **Regulations of the IT Law**.

²² [Report N° 110-2019-SUNAT/7T0000](#).

²³ *Ibíd.*

²⁴ Article 9°, subsection i) of the **IT Law**.

or consumed in the country when any of the following takes place:²⁵

- ❖ It is used for the development of the economic activities of a company or for the fulfillment of the purposes referred to in subsection c) of the first paragraph of Article 18° of the Income Tax Law²⁶ of a legal person unaffected by the tax, both domiciled, with the purpose of generating income, regardless of whether it is taxed or not.²⁷
- ❖ It is used for the development of economic activities of third parties²⁸ with the purpose of generating income, regardless of whether it is taxed or not.
- ❖ It is used for the development of the functions of any entity of the National Public Sector.

Applicable Tax Rate

Digital Services are levied with a **30% Tax Rate**²⁹.

Recommendations for European companies

- ✓ Identify the type of service to be provided.
- ✓ Determine if there is an applicable [double taxation agreement](#).
- ✓ Verify if, due to its duration, the service does not involve the creation of a permanent establishment.
- ✓ Identify the parties involved in the operation and determine if there is income from Peruvian sources.
- ✓ Verify with the beneficiary of the service the applicable income tax rate that you intend to apply.

Useful links

- **National Superintendence of Customs and Tax Administration – SUNAT**
<http://www.sunat.gob.pe/>
- **Tariff Status, Trade Agreements - Statistical Allowances for Import and Export, Market Access**
<http://www.aduanet.gob.pe>

²⁵ Artículo 4-A, subsection b) of the **Regulations of the IT Law**.

²⁶ Cultural purposes, higher research, charity, social and hospital assistance, and social benefits for company employees.

²⁷ It is presumed that a company, which considers the consideration for the digital service as an expense or cost, uses the service economically in the country; in accordance with Article 37° of **IT Law**.

²⁸ In accordance with the provisions of Article 3°, subsection b), numeral 5) of the **IT Law**.

²⁹ According to Article 56°, subsection j) of the **IT Law**.

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