

Peruvian Tax Authority incorporates new scenarios as high-risk schemes under GAAR

- *The Peruvian Tax Authority has published an updated version of the list of high-risk schemes for tax planning that could be challenged under the Peruvian General Anti-Avoidance Rule (GAAR).*
- *The updated list contains the 13 situations from the second version of the list and 11 new situations that are considered high-risk.*
- *Taxpayers engaging in the respective transactions could be subject to challenge under Peru's GAAR.*

On 9 July 2024, the Peruvian Tax Authority published on its official website an updated version (third version) of the list of high-risk schemes for tax planning that could be challenged under the Peruvian GAAR.

Background

In February 2020, the Peruvian Tax Authority published the initial version of the list with five initial tax planning situations (high-risk schemes) that would generate the application of the GAAR.

In October 2022, the Peruvian Tax Authority updated the mentioned list (second version) by incorporating 13 new scenarios that are considered as high-risk.

Updated list

The Peruvian Tax Authority has now updated the second version of the list with the publication of a third edition, which includes the 13 schemes of the previous versions and incorporates 11 new situations.

Specifically, the updated list includes the following 24 high-risk schemes that could be challenged under the Peruvian GAAR:

1. Deduction of payment of royalties in a brand/trademark use assignment scenario
2. Transfer of a Peruvian company using a trust or similar entity
3. Re-domiciliation of a company and use of Double Tax Treaties
4. Assignment of trademarks and capitalization of credits
5. Management contracts and management fees
6. Assignment of a concession of an extractive industry (mining) with hidden payments for transfer of shares
7. Sale and further repurchase of an automobile under a cancellation of contract scenario
8. Direct transfer of Peruvian shares via capital contribution and subsequent capital reduction structure

9. Artificial use of preferential tax regimes
10. Loan via financial leasing structure
11. Intermediation in the sale of minerals through an entity without economic substance
12. Nonprofit entity making payments to an overseas supplier
13. Transfer of real estate to the shareholder and further lease of said real state by the shareholder to the company
14. Transfer of real estate under a demerger scheme
15. Hidden loan and accrual of interest at fair market value
16. International lease through a conduit company with no economic substance
17. Disposal of shares with the appearance of being carried out by means of a stock exchange
18. Value-added tax (VAT) exemption on sale of books
19. Transfer of dividends through an entity resident in a jurisdiction of the European Union
20. Indirect transfer of intangible assets
21. Back-to-back credit between related parties using a foreign bank
22. Transfer of research and development (R&D) functions to foreign subsidiary for exploitation of intangible
23. Commission agent versus distributor
24. Import and distribution of goods considered as services

Taxpayers engaging in the respective transactions could be subject to challenge under Peru's GAAR.

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