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RSM



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Informative Newsletter Legal Regulations

RSM Peru Monthly Newsletter

Index

Articles

5 essential steps to prevent Sexual Harassment in the Workplace	3
Keys to the Proper Application of Transfer Pricing Methods	4

Legal Regulations

Tax	5
Labor	8

Case Law

9

Reports

12

Contact

13

Article

5 essential steps to prevent Sexual Harassment in the Workplace

From my experience in the Tax & Legal field, I have identified various effective strategies to prevent Sexual Harassment in the workplace. Today, I want to share with you 5 key steps to create a safe and respectful work environment.

WHAT IS SEXUAL HARASSMENT IN THE WORKPLACE?

Sexual Harassment in the Workplace refers to any unwanted sexual behavior that affects a person's dignity at work.



WHY IS IT IMPORTANT TO PREVENT IT?

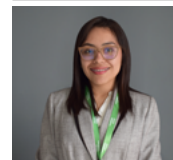
Preventing Sexual Harassment is crucial to ensuring a safe, respectful, and productive work environment. Additionally, it protects companies from potential legal sanctions and reputational damage.

LEARN THESE 5 KEY STEPS TO ACHIEVE IT

- 1 Implement clear and accessible policies:** Ensure that all employees are aware of the policies against Sexual Harassment and know how to report any incidents.
- 2 Train all staff:** Conduct regular workshops and training sessions to educate employees on what constitutes Sexual Harassment and how to prevent it.
- 3 Promote a culture of respect:** Promote values of respect and equity in the workplace and ensure that leaders set the example.

- 4 Establish confidential reporting channels:** Provide multiple avenues for employees to report Sexual Harassment safely and confidentially.
- 5 Take appropriate disciplinary actions:** Respond promptly to reports and enforce fair and proportional sanctions to deter future incidents.

"Implementing these steps not only helps prevent Sexual Harassment but also contributes to creating a healthier and more productive work environment. I encourage you to review your company's policies and ensure they align with these recommendations".



Claudia Morales

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Article

Keys to the Proper Application of Transfer Pricing Methods

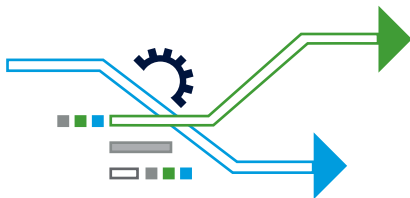
1 APPLICATION OF THE ARM'S LENGTH PRINCIPLE

- The assigned value must correspond to what independent parties would agree upon under similar conditions.
- The chosen method should reflect the economic reality of the transaction.
- It is essential to properly justify the selected method.



2 CRITERIA FOR METHOD SELECTION

- Compatibility with the business line and corporate structure.
- Quality and availability of comparable information.
- Degree of comparability between transactions and functions.
- Level of adjustments needed to eliminate differences.



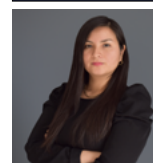
3 CRITICAL ASPECTS OF DOCUMENTATION

- Detailed functional analysis (functions, assets, and risks).
- Justification of transactions with related parties.
- Reliable financial information.
- Documentation of comparability criteria.



4 SPECIAL CONSIDERATIONS

- The Transactional Net Margin Method (TNMM) is suitable for complex transactions.
- The Resale Price Method (RPM) is ideal for distributors without added value.
- Documentation must be contemporaneous with the transactions.



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Legal Regulations

Tax

- Supreme Decree that modifies the Regulations of the Income Tax Law

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Legal basis: Supreme Decree No. 021-2025-EF

Effective date: As of February 17, 2025.

Purpose: To modify article 53-C of the Regulations of the Income Tax Law, approved by Supreme Decree No. 122-94-EF, to adapt it to the modification made by Legislative Decree No. 1624 to the Income Tax Law, whose Single Ordered Text has been approved by Supreme Decree No. 179-2004-EF.

- Extending the application of the discretionary power in the administration of sanctions for infractions related to books and records linked to tax matters kept electronically, as provided for in Res. No. 000039-2023-SUNAT/700000 and extensions

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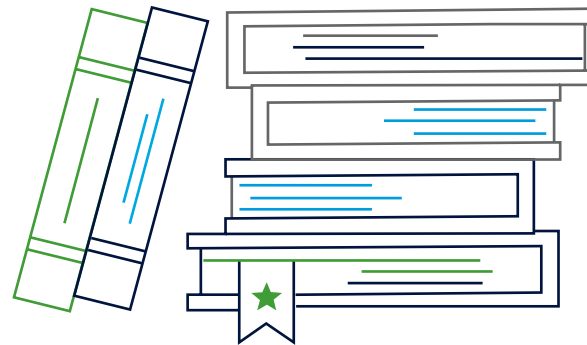


Legal basis: Resolution of the Deputy National Superintendent of Internal Taxes No. 000003-2025-SUNAT/700000

Effective date: As of February 1, 2025.

Purpose: To expand the provisions of paragraphs 2 of the column "Assumptions for the application of the discretionary power" of the Annex to the Resolution of the Deputy National Superintendent of Internal Taxes No. 000039-2023-SUNAT/700000, relating to the infractions classified in paragraphs 2 and 10 of article 175 of the Tax Code, whose last Single Ordered Text was approved by Supreme Decree No. 133-2013-EF, to:

- Include such infraction when they are configured for the periods of January, February, March, April, May and June 2025; and,
- Extend the deadline for correcting the generation of records and/or making the corresponding adjustments in the SIRE until July 31, 2025.



- Supreme Decree amending the Regulations of the Income Tax Law

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Legal basis: Supreme Decree No. 017-2025-EF

Effective date: As of February 13, 2025.

Purpose: To modify article 8-C of the Income Tax Law Regulations, approved by Supreme Decree No. 122-94-EF, which establishes the definition of Exchange Traded Fund (ETF).

“Article 8-C.- Exchange Traded Fund (ETF)

For the purposes of the non-affectation provided for in section h) of the third paragraph of article 18 of the Law, the Exchange Traded Equity Funds (ETFs) are investment vehicles whose participation units are listed on stock exchanges or organized markets, backed by a basket of assets, from which their value is derived, and which aim to replicate the performance of a certain index or basket of assets.

The creation and redemption of ETF participation units is carried out primarily through the delivery of all the securities and cash that make up the portfolio for the day.

As regards the non-affectation of the lower-case Roman numeral v. of the aforementioned section h), the ETF is only constructed on the basis of the instruments considered in the lower-case Roman numerals i. and ii. of the aforementioned section.”



- Ministerial Resolution approving the mining royalty distribution rates for the month of January 2025

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Legal basis: Ministerial Resolution No. 084-2025-EF/50

Effective date: As of February 27, 2025.

Purpose: To approve the mining royalty distribution indices corresponding to the month of January 2025 to be applied to the regional governments, local governments and national universities benefited, in accordance with the Annex "Mining Royalty Distribution Indices January 2025", which is an integral part of this Ministerial Resolution.

- Approves the Procedure for the Award, Donation and Destination of Goods - Version 2

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Legal basis: Superintendency Resolution No. 000031-2025/SUNAT

Effective date: As of February 20, 2025.

Purpose: To approve the Procedure for the Award, Donation and Destination of Goods - Version 2, which is an integral part of this resolution. Until its Supervisory Commission is formed for this procedure, its functions will be assumed by the Supervisory Commission referred to in the Procedure for the Award, Donation and Destination of Goods - Version 1, formed by National Superintendency Resolution No. 000038-2023-SUNAT/8B0000 and modified by National Superintendency Resolution No. 000247-2023-SUNAT/8B0000. In addition, it repeals Superintendency Resolution No. 000201-2020/SUNAT that approves the Procedure for the Award, Donation and Destination of Goods - Version 1.

- Resolution of the Deputy National Superintendent of Customs approving the discretionary power not to sanction violations provided for in the General Customs Law related to operations at the Chancay Multipurpose Port Terminal

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Legal basis: Resolution of the National Deputy Superintendence of Customs No. 000007-2025-SUNAT/300000

Effective date: As of February 22, 2025.

Purpose: To apply the discretionary power not to sanction the infractions classified in section c) of article 197 and section b) of article 198 of the General Customs Law, identified with codes N07, N08, N09, N10, N14, N15, N18, N19, P81 and P82, provided that the conditions established in the annex to this resolution are met jointly. In addition, there is no refund or compensation for payments made in connection with the infractions subject to the discretionary power provided for in this resolution.

- Supreme Decree amending the Regulations of Legislative Decree No. 1535 that regulates the qualification of subjects that must comply with obligations administered and/or collected by SUNAT

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Legal basis: Supreme Decree No. 018-2025-EF

Effective date: As of February 15, 2025.

Purpose: To approve the modification of article 2 and numeral 18.1 of article 18 of the Regulations of Legislative Decree No. 1535, Legislative Decree that regulates the qualification of subjects that must comply with obligations administered and/or collected by SUNAT, according to a compliance profile, as well as the effects of said qualification, applicable to subjects that generate third-category income, approved by Supreme Decree No. 320-2023-EF, in order to increase the number of test qualifications.

- Supreme Decree repealing Supreme Decree No. 189-2024-EF, Supreme Decree amending Supreme Decree No. 104-95-EF approving the Regulations for the Simplified Procedure for the Restitution of Tariff Duties, and Supreme Decree No. 197-2024-EF

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Legal basis: Supreme Decree No. 027-2025-EF

Effective date: As of March 1, 2025.

Purpose: To repeal Supreme Decree No. 189-2024-EF, Supreme Decree that modifies Supreme Decree No. 104-95-EF that approves the Regulations for the Simplified Procedure for the Restitution of Tariff Duties, and Supreme Decree No. 197-2024-EF, Supreme Decree that defers the validity of certain provisions of Supreme Decree No. 189-2024-EF that modifies Supreme Decree No. 104-95-EF that approves the Regulations for the Simplified Procedure for the Restitution of Tariff Duties.



Labor

- Article 16 of the Guidelines for Granting Recognition of Good Labor Practices and Form CBPL-1 "Application for Application" are amended

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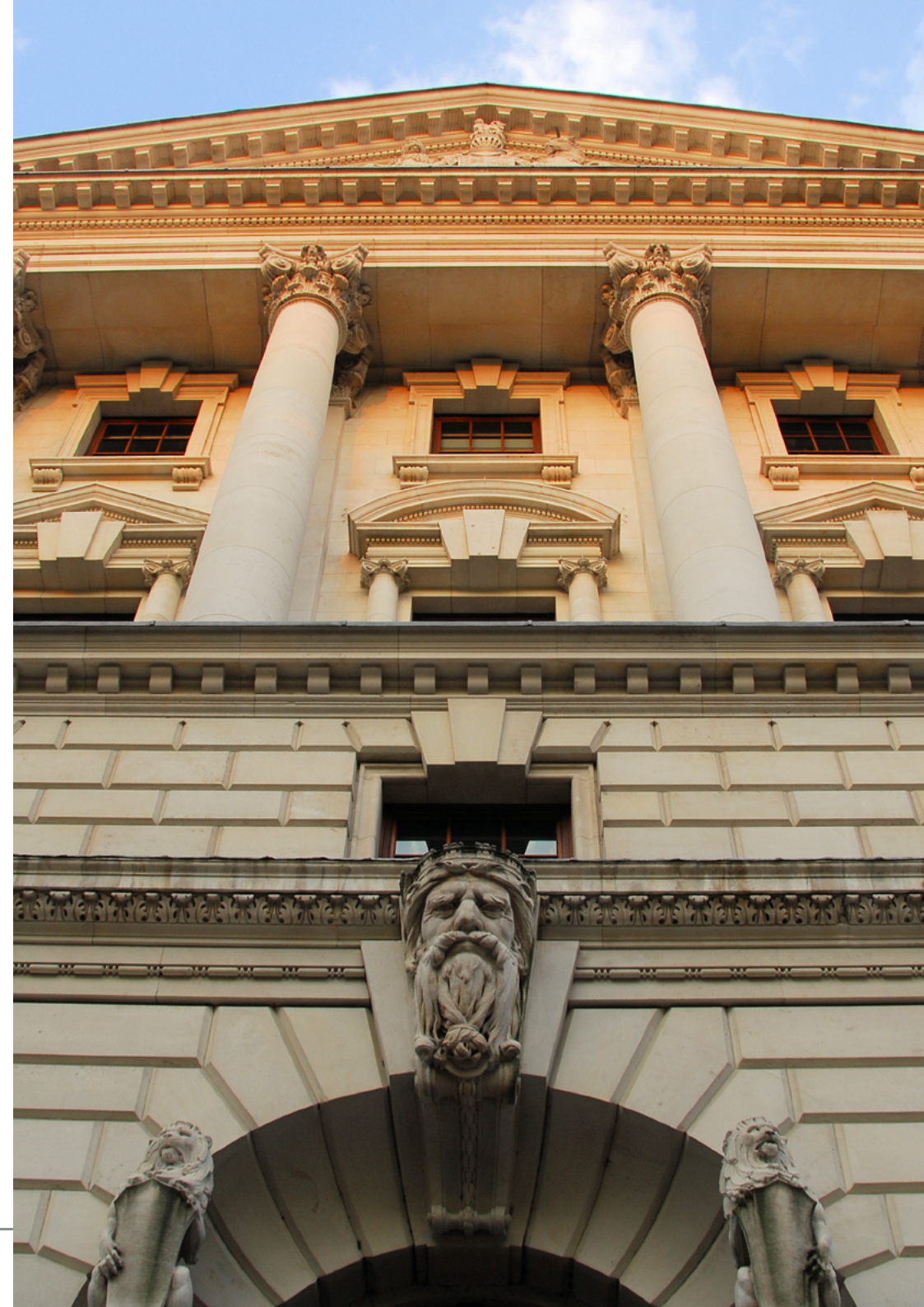


Legal basis: Vice-ministerial Resolution No. 001-2025-MTPE/2

Effective date: As of February 23, 2025.

Purpose:

- Modify article 16 of the Guidelines for Granting Recognition of Good Labor Practices, approved by Ministerial Resolution No. 074-2019-TR, modified by Ministerial Resolution No. 304-2020-TR and Vice-Ministerial Resolution No. 001-2024-MTPE/2.
- Modify Form CBPL-1 "Application for Application", of the Guidelines for Granting Recognition of Good Labor Practices, approved by Ministerial Resolution No. 074-2019-TR, modified by Ministerial Resolution No. 304-2020-TR and Vice-Ministerial Resolution No. 001-2024-MTPE/2, in accordance with the Annex that forms an integral part of this resolution.



Case Law

JUDICIARY

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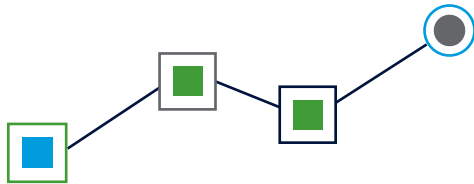


Judgment No. 13507-2024 LIMA

Subject: Prevalence of tax rules.

Summary: In our legislation, the sanctioning principles in tax matters established in articles 168 and 178 of the Tax Code prevail and not article 234 of the Single Ordered Text of the General Administrative Procedure Law. The contentious tax procedure is governed by its own rules, contained in the Single Ordered Text of the Tax Code, and, in application of the aforementioned rule IX, it is only appropriate to resort to the application of the rules of Law No. 27444 in a supplementary manner. On the other hand, in accordance with article 156 of the Single Ordered Text of the Tax Code, the claim directed against a compliance resolution must have the purpose of having the Tax Court verify whether or not the tax administration complied with the previously established mandate, and not the re-evaluation of the controversy resolved by a previous resolution by the same administrative court.

Decision: To declare unfounded the appeal for judgment filed by the defendant company Selva Industrial SA, by means of a document dated April 15, 2024.



JUDICIARY

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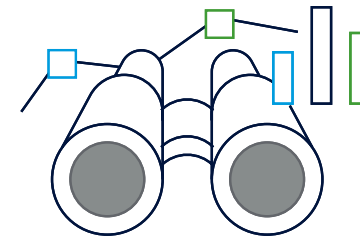


Judgment No. 17187-2024 LIMA

Subject: Determination on a presumptive basis.

Summary: The determination on a presumed basis and the presumptions that the tax administration must legally apply do not constitute procedures in the terms set forth in the aforementioned article 112 of the Tax Code or in those of article 29 of the Single Ordered Text of the General Administrative Procedure Law, but rather constitute methods with which the tax administration is empowered to determine the taxable base of the tax in certain cases, such as when the taxpayer fails to submit the information required within the audit procedure carried out.

Decision: To declare well-founded the appeal for judgment filed by the Deputy Public Prosecutor in charge of Judicial Affairs of the Ministry of Economy and Finance, representing the Tax Court, by means of a document dated April 15, 2024.



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Judgment No. 1748-2024 LIMA

Subject: Exemption from the Real Estate Property Tax.

Summary: At the time of the transfer of sale in favor of the university, on October 30, 2018, on the property located at Circunvalación Avenue No. 449, in the district of El Tambo, province of Huancayo and department of Junín, the university was already qualified to provide university education services, and at the time of requesting its institutional license from SUNEDU on October 17, 2016, the aforementioned land was affected for its use for the development of the university higher education service, therefore, on the date of transfer, it was within the scope of non-affectation from the payment of the alcabala tax provided for by article 28 of the Municipal Taxation Law.

Decision: To declare unfounded the appeal for judgment filed by the plaintiff, Public Prosecutor of the District Municipality of El Tambo, who filed an appeal for judgment on January 4, 2024.



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Judgment No. 2705-2024 LIMA

Subject: Digital services for non-residents.

Summary: Section b) of article 4-A of the Income Tax Law Regulations establishes the definition of "digital services" as income from a Peruvian source and specifies the categories of services included in this classification, such as electronic access to consulting services (section 7), without said enumeration being limiting. However, to determine whether the repaired operations qualify as digital services, it is essential to consider the definition contained in the first paragraph of section b) of the aforementioned article 4-A, which establishes that digital services are characterized by being essentially automatic and completely depend on technology for their viability, in accordance with section i) of article 9 of the Income Tax Law.

Decision: To declare unfounded the appeal for judgment filed by the plaintiff, the National Superintendence of Customs and Tax Administration, by means of a document dated January 15, 2024.

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Judgment No. 35154-2022 LIMA

Subject: Return of profits.

Summary: In the event of an overpayment made by the employer, the return of profits is not appropriate since it is the employer's responsibility to have made errors when determining the amount that should have been paid for said concept.

Decision: To declare unfounded the appeal for judgment filed by the defendant, Cesar Raúl Tengan Matsuthara and others.

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Judgment No. 941–2021 LIMA

Subject: Compensation for damages.

Summary: In the present case, the relationship of power and direction of the appellant with respect to the company where the injured party with fatal consequences worked is proven, which is why there is solidarity in the compensation determined by the instances of merit, given that the accident was not the result of a fortuitous event, but due to the omission of the duty of care of the co-defendants by not having carried out the entrusted work, indicating also that the compensation for non-contractual liability includes the consequences arising from the action generating the damage, including the reflective damages to the deceased's relatives, taking into account the particular legal relationship with him.

Decision: To declare unfounded the appeal for judgment filed by the defendant Barrick Misquichilca Mining Company, Sociedad Anónima.

JUDICIARY

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Judgment No. 16815–2024 LIMA

Subject: Nullity or revocation of the tax administrative act.

Summary: The Superior Court improperly applied Article 109 of the Tax Code, without considering that, with this provision, the issued securities have been revoked. In addition, the tax administration accepted the fact that it made an error when applying the procedure provided for in Article 61 of the Regulations of the Income Tax Law, so it is not reasonable to presume that, with the filing, it should be allowed to correct the defect in which it incurred, since, as the acts have been extinguished, there would be no defects to correct.

Decision: To declare well-founded the appeal for judgment filed by the Deputy Public Prosecutor in charge of Judicial Affairs of the Ministry of Economy and Finance, representing the Tax Court, by means of a document dated April 9, 2024.

SUNAFIL

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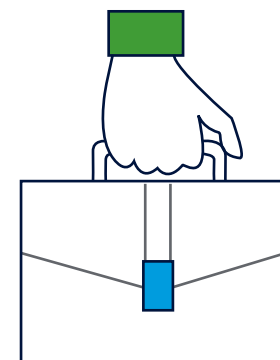
Resolution: 0008–2025–SUNAFIL/TFL–First Chamber

Subject: Labor Relations.

Summary: The appeal for review filed by Minera Bateas SAC (the company) has been declared partially founded.

Background: The company was fined for failing to refer a female worker who was a victim of sexual harassment to a health centre and for failing to inform the Ministry of Labour about the final decision on the complaint. The company appealed the fine, arguing that the worker did receive medical care at a private health centre and that the fine was unfair. The Court found that the company complied by referring the worker to a private health centre and that the care was coordinated and effective. Therefore, the profoundly serious infringement was revoked.

Decision: To declare the appeal for review partially founded, leaving without effect the sanction for the profoundly serious infraction, but maintaining the fine for the minor infraction.



Reports

SUNAT

Report No. 000022-2025-SUNAT/7T0000

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Subject: Institutional consultation on the meaning and scope of tax regulations.

Conclusion:

In relation to the acquisition of goods and services made with the money received as a non-refundable resource by the beneficiary companies of the Micro, Small and Medium Enterprises (MIPYME by its acronym in Spanish for 'Micro, Pequeñas y Medianas Empresas') Entrepreneur Fund of the Internationalization Support Program (PAI by its acronym in Spanish for 'Programa de Apoyo a la Internacionalización'):

- 1 The amount paid for such acquisitions is considered a deductible expense for the purposes of Personal Income Tax, to the extent that they are necessary for the generation and maintenance of the source of third-category income taxed with said tax, and provided that such expenses also comply with the criteria of normality and reasonableness, among others.
- 2 The VAT paid on the acquisition of goods and services can be used as a tax credit as long as the requirements established in articles 18 and 19 of the VAT Law and numeral 1 of article 6 of the Regulations of the VAT Law, among others, are met.



SUNAT

Report No. 000028-2025-SUNAT/7T0000

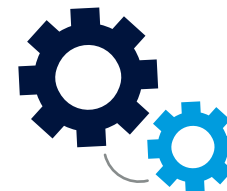
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Subject: Institutional consultation on the meaning and scope of tax regulations.

Conclusion:

- 1 If in a procedure in which several values have been challenged, the taxpayer chooses to accept only one of them under the Special Subdivision (FE by its acronym in Spanish for 'Fraccionamiento Especial') it is understood that the withdrawal is only with respect to the value for which the request for acceptance under the FE was submitted, with the other values remaining challenged.
- 2 The withdrawal of the debt disputed by tax debtors, provided for in article 10 of Legislative Decree No. 1634, with respect to the debts for which they request their acceptance by the FE, does not include the challenges of such debts made by the tax administration, so these continue with their processing.
- 3 If a taxpayer has challenged a tax debt in court and the Judiciary has issued a final judgment before the Decree comes into force, executing the surety bond granted under Article 159 of the Tax Code, the balance not covered by this may be covered by the FE.
- 4 The withdrawal generated by the approval of the request for FE only operates with respect to the contentious-administrative claims and protection actions presented by tax debtors, whose claim has an impact on the determination and/or collection of the debt for which the FE was requested, whether directly or indirectly.



If you want more information or have any questions,
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