

THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING

LAW 32089

LAW THAT DELEGATES TO THE EXECUTIVE BRANCH THE POWER TO LEGISLATE ON MATTERS OF ECONOMIC REACTIVATION, SIMPLIFICATION AND REGULATORY QUALITY, STATE BUSINESS ACTIVITY, CITIZEN SECURITY, AND NATIONAL DEFENSE

Objective

To delegate to the Executive Branch the power to legislate on matters of economic reactivation, simplification and regulatory quality, state business activity, citizen security, and national defense, for a period of ninety calendar days from the entry into force of the law.

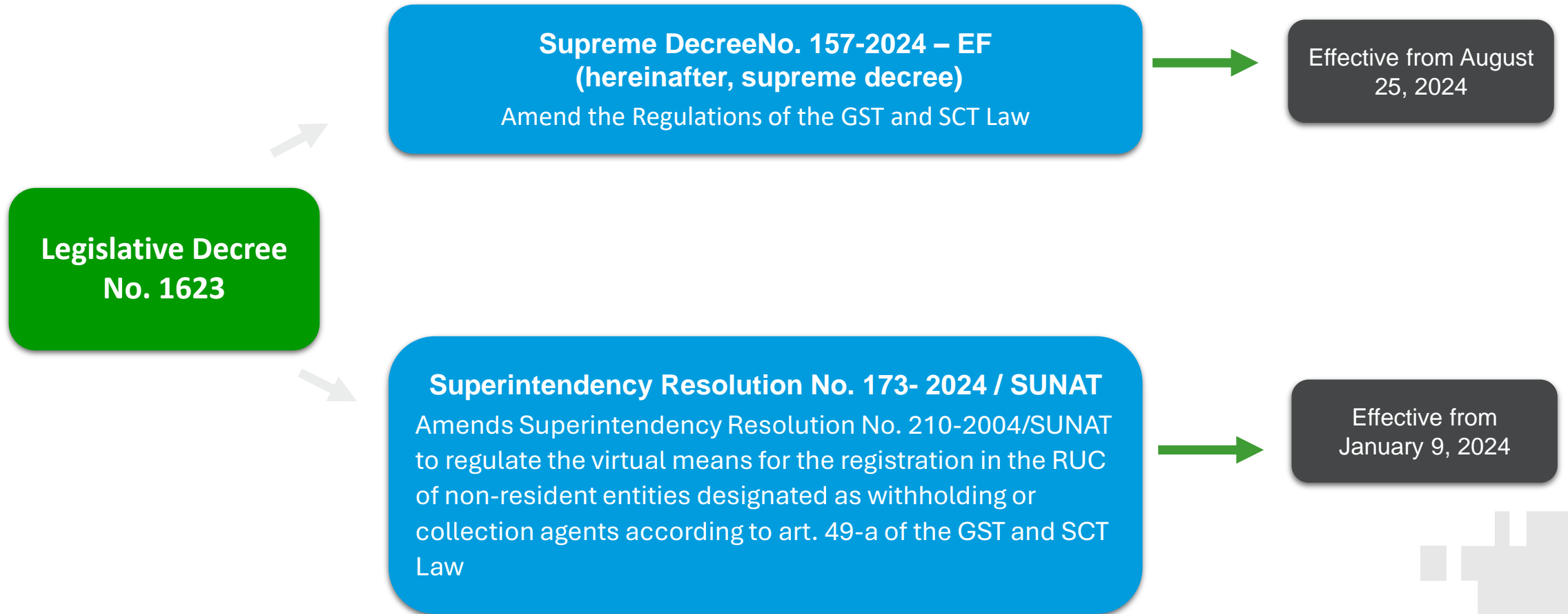
Validity

From July 5, 2024, to October 3, 2024 = 90 days

Tax Matters of the Delegation of Legislative Powers

- ✓ Regulate the taxation of business models based on the digital economy.
- ✓ Improvement of the tax system.

Regulatory Framework





Legislative Decree No. 1623

Law on the General Sales Tax (GST) and Selective Consumption Tax (SCT) regarding the use of digital services in the country and the importation of intangible goods through the internet

LD 1623 - Law on the General Sales Tax (GST) and Selective Consumption Tax (SCT) regarding the use of digital services in the country and the importation of intangible goods through the internet

1. Objective (art.1 del DL)

This Decree aims to establish, among other things:

- That individuals who do not engage in business activities and use digital services provided by non-resident entities in the country do not need to be habitual in performing such operations to be considered GST taxpayers.
- The mechanism for GST collection.
- The criteria and assumptions to determine when digital services provided by non-resident entities or intangible goods imported through the internet are used or consumed in the country by individuals who do not engage in business activities.

2. Operations subject to GST

Digital services



Example: Netflix, Disney, Amazon, Spotify, among others

1. Access and/or online transmission of images, series, movies, documentaries, short films, videos, music, and any other digital content through streaming technology or other technology.
2. Information storage.
3. Access to social networks and/or the provision of additional content or functions on these.
4. Services provided by online magazines or newspapers.
5. Remote conferencing services.
6. Intermediation in the supply and demand of goods or services.

Intangible goods imported through the internet

Intangible goods acquired to be permanently downloaded by the purchaser through the internet or any adaptation or application of the protocols, platforms, or technology used by the internet or any other network through which intangible goods are acquired and permanently downloaded.

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3. Criteria for consumption or use in the country of digital services and intangible goods imported through the internet

Digital services

Digital services are considered to be consumed or used in the national territory if the user of the service has their habitual residence in the country. Habitual residence is understood to occur when any of the following conditions are met:

- ✓ The internet protocol (IP) address or other geolocation means assigned to the electronic device through which the digital services are provided corresponds to Peru.
- ✓ The country code of the subscriber identity module (SIM) card, whether physical or electronic, or other technology that replaces it in the mobile terminal device through which the digital services are provided corresponds to Peru.
- ✓ The payment for digital services is made using credit or debit cards or any support for the use of electronic money or any other product provided by entities of the Peruvian financial system.
- ✓ The address that the individual registers with the digital service provider, as user data or address for the issuance of payment receipts, is located in Peru.

Importation of intangible goods

Intangible goods are considered to be intended for use or consumption in the country if the purchaser has their habitual residence in the country. The habitual residence of the purchaser is understood to be located in the country when any of the following conditions are met:

- ✓ The IP address or other geolocation means assigned to the electronic device through which the intangible good is downloaded corresponds to Peru.
- ✓ The country code of the SIM card, whether physical or electronic, or other technology that replaces it in the mobile terminal device through which the intangible good is downloaded corresponds to Peru.
- ✓ The payment for the importation of intangible goods is made using credit or debit cards or any support for the use of electronic money or any other product provided by entities of the Peruvian financial system.
- ✓ The address that the individual registers with the entity from whom the intangible good is acquired, as user data or address for the issuance of payment receipts, is located in Peru.

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4. Mechanism for GST Collection

Withholding or Collection Agent

The non-resident

Must register in the RUC through the National Superintendence of Customs and Tax Administration (hereinafter, SUNAT) website (www.sunat.gob.pe).

They are not required to:

- Establish a domicile in the country.
- The representative designated for the purpose of their registration in the Single Taxpayer Registry does not need to have a domicile in the country.
- Their registration in the Single Taxpayer Registry does not imply the establishment of a permanent establishment in the country.

However, they are required to provide the following information in the registry:

1. Data related to the name or corporate name.
2. Country of residence.
3. Address in the country of residence.
4. Tax identification number of the country of residence.
5. Trade name, if any.
6. Economic activity(ies).
7. Date from which the non-resident acquires the status of withholding or collection agent for GST.
8. Website or URL.
9. Data of the legal representative or attorney.
10. Contact person: Name(s) and surname(s), type and number of identity document, position in the company, email, mobile phone, whether or not they are the holder of the telephone service.

Payment Facilitator (Peruvian Entities)

1. Multiple Operations Companies and Electronic Money Issuer

Multiple Operations Companies

- Banking Company
- Financial Company
- Municipal Savings and Credit Bank
- Municipal Popular Credit Bank
- Credit Company
- Savings and Credit Cooperatives authorized to collect public resources
- Rural Savings and Credit Bank

Electronic Money Issuer Companies

- i. Credit cards.
- ii. Debit cards or any support for the use of electronic money, such as prepaid electronic money cards or mobile phones.
- iii. Electronic funds transfer using digital wallets.
- iv. Any other product provided by the aforementioned entities as indicated by supreme decree.

2. Telecommunications public service operators that receive payment for digital services

3. Other entities specified in the supreme decree

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5. Withholding or Collection Agent for the Tax – Non-Resident

1. What is the initial period to operate as a withholding or collection agent?

Non-resident entities that are currently conducting operations or that begin such operations by November 30, 2024, will start withholding or collecting GST from December 1, 2024. (Legislative Decree 1644)

2. When does the non-resident act as a withholding and collection agent?

The non-resident entity that provides the digital service or from whom the good is acquired acts as a withholding or collection agent for the tax from the first calendar day of the month following the month in which they begin operations in the country.

3. Regarding the withholding and collection of the tax:

a) In the case of the importation of intangible goods through the internet and the use of digital services that do **NOT involve intermediation** in the supply and demand of an underlying operation.

b) In the case of the use of digital services that **involve intermediation** in the supply and demand of an underlying operation, the non-resident entity providing the intermediation service:

The non-resident entity acts only as a collector:
In this case, they collect the amount resulting from applying the tax rate on the total sale value or remuneration.

The non-resident entity acts as a collector:

- ✓ They collect the amount resulting from applying the tax rate on the total remuneration for the intermediation service.
- ✓ The collection is made at the time of payment.

The non-resident entity acts as a withholding agent:

- ✓ They withhold the amount resulting from applying the tax rate on the total remuneration for the intermediation service.
- ✓ The withholding is made at the time the non-resident entity transfers to the current account or savings account of the provider or seller of the underlying operation, the amount paid by the user or purchaser of said operation.

4. Regarding keeping accounting books and issuing payment receipts

They are not required to keep accounting books or issue payment receipts.

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5. Withholding or Collection Agent for the Tax – Non-Resident

5. Regarding the declaration and payment of the withheld or collected tax:



- a) Submit the declaration and payment each month within the first ten (10) business days of the following month, in the manner and conditions established by SUNAT through a superintendency resolution.
- b) The declaration and payment can be made in national currency or in dollars. The option is exercised in the declaration corresponding to January and remains throughout the year. If the obligation to file arises after January, the option is exercised in the first declaration submitted and remains until December of that year. For the declaration and payment in national currency, the conversion is made using the weighted average sale exchange rate published by the SBS on its website or in the Official Gazette El Peruano, corresponding to the date the declaration and payment must be submitted or the date the payment is made, whichever occurs first. The declaration and payment in dollars will be made according to what SUNAT establishes through RS.
- c) SUNAT may require the aforementioned entities to submit an annual informative declaration, in the manner, time, and conditions established through a superintendency resolution, detailing the operations subject to withholding or collection.
- d) The time considered to determine the date on which the declaration and payment are made will be the official Peruvian time, GMT-5.

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6. Payment Facilitator – Peruvian Companies

1. The payment facilitator acts as a tax collector when the non-resident entity incurs any of the following situations:

- a) Failing to register in the Single Taxpayer Registry.
 - b) Failing to submit the declaration or make the payment of the total withheld or collected tax within the established deadlines, for two (2) consecutive or alternate months.
 - c) Failing to submit the annual informative declaration within the established deadlines, if the obligation to submit this declaration is established.
- ✓ The situations provided in subsections b) and c) do not apply if the omitted declarations are submitted and the payment is made, including the applicable interest and fines, by the last calendar day of the month prior to the verification.
 - ✓ SUNAT verifies if the situations mentioned in the previous paragraph occurred two (2) or more times during each calendar year. Through a superintendency resolution, SUNAT verification schedule and other necessary aspects for its operation.

2. The following is the list of non-resident entities that do not comply with the described conditions

- Approved by supreme decree endorsed by the Minister of Economy and Finance, with the technical opinion of SUNAT.
- The Ministry of Economy and Finance publishes the list through its digital headquarters (www.gob.pe/mef) by the fifteenth day of the month following verification.
- The mentioned supreme decree indicates the incurred condition and the moment from which the non-resident entities listed stop withholding or collecting, and the payment facilitators start withholding or collecting the tax that levies the operations mentioned in numeral 1 of this article.
- The non-resident entity may be excluded from the mentioned list in the supreme decree that approves the next list, provided that SUNAT verifies that it has complied with registering in the Single Taxpayer Registry, if not done, submitting the omitted declarations, and making the payment of withholdings or collections, including applicable interest and fines, as appropriate.

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6. Payment Facilitator – Peruvian Companies

3. The payment facilitator makes the withholding or collection only when:

a) The digital services used in the country and the intangible goods imported through the internet are intended for use or consumption in the national territory, for which it verifies that:

- i. The address registered by its client is located in the country; or,
- ii. The payment for the goods or services is made using credit or debit cards or any support for the use of electronic money, provided by entities of the Peruvian financial system.

b) The individual using the digital services or importing intangible goods through the internet does not engage in business activities, for which it verifies that its client has registered as an individual, using their name, surname, and ID number, among other personal information.

4. How should the declaration and payment of the withheld or collected tax be made?

The payment facilitator must submit the declaration and make the payment of the withheld or collected tax each month, within the deadlines established in the Tax Code for monthly tax obligations, in the manner and conditions established by SUNAT through a superintendency resolution.

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Anna

One of the
RSM team



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