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PERÚ

Ministerio
de Economía y Finanzas

Despacho Ministerial

"DECENIO DE LA IGUALDAD DE OPORTUNIDADES PARA MUJERES Y HOMBRES"
"AÑO DEL FORTALECIMIENTO DE LA SOBERANÍA NACIONAL"

ÓSCAR GRAHAM YAMAHUCHI
MINISTER

Lima,

05 MAYO 2022

OFICIO N° 519 -2022-EF/10.01

Mr.
PASCAL DUSS
Head of Unit
Federal Department of Finance FDF
State Secretariat for International Finance SIF
Bilateral Tax Issues
Bundesgasse 3, 3003 Bern, Switzerland.



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Reference : Most Favoured Nation Clause of the Convention between The Swiss Confederation and The Republic of Peru for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital

Dear Mr. Pascal Duss,

On behalf of the Republic of Peru, I am writing to inform you that the conditions for the application of the most favoured nation clause¹ laid down in subparagraph a) of paragraph 10 of the Protocol of the Convention between The Swiss Confederation and The Republic of Peru for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital², done at Lima, on September 21st, 2012 have been met with respect to Articles 10 (dividends) and 11 (interest)³.

Following the signature of the DTA PE-SW, the Republic of Peru have concluded two new double taxation agreements with the Portuguese Republic and Japan. These are the Convention between The Republic of Peru and The Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has effect from January 1st, 2015⁴ and the Convention between the Republic of Peru and Japan for the Elimination of Double Taxation with respect to

¹ Hereinafter referred to as the "MFN clause".

² It entered into force on March 10th, 2014 and has effect from January 1st, 2015. Hereinafter referred to as the "DTA PE - SW".

³ 10. Ad Articles 10, 11 and 12

a) With reference to paragraph 2 of Article 10, to paragraphs 2 and 3 of Article 11 and to paragraphs 2 and 3 of Article 12, it is understood that, if in any agreement or convention between Peru and a third State, Peru agrees to exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Peru, or to limit the rate of tax on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than the rates provided for in paragraph 2 of Article 10, in paragraphs 2 and 3 of Article 11 or paragraphs 2 and 3 of Article 12 of this Convention, such exemption or lower rate shall automatically apply (either generally or in respect of specific categories of dividends, interest or royalties) under this Convention as if such exemption or lower rate had been specified in this Convention, with effect from the date on which those provisions of that agreement or convention become effective. The competent authority of Peru shall inform the competent authority of Switzerland without delay that the conditions for the application of this provision have been met. (...)."

⁴ It entered into force on April 12th, 2014. Hereinafter referred to as the "DTA PE-PT".



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Taxes on Income and the Prevention of Tax Evasion and Avoidance which has effect from January 1st, 2022⁵.

Both Conventions provide for exemption of certain interest from taxation in the State of source. Furthermore, the DTA PE-JP grants tax rates on dividends and interest that are lower than the ones provide for in DTA PE-SW. The corresponding provisions are cited below:

1) Paragraph 3 of Article 11 of the DTA PE-PT:

"3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if the interest is paid by the State in which the interest arises or by a political or administrative subdivision or a local authority thereof, or its Central Bank, or beneficially owned by the other Contracting State, a political or administrative subdivision or a local authority thereof, or to its Central Bank."

2) Paragraph 2 of Article 10 of the DTA PE-JP:

"2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends."

3) Paragraphs 2 and 3 of Article 11 of the DTA PE-JP:

"2. However, interest arising in a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest."

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(a) the interest is beneficially owned by that other Contracting State, a political subdivision or local authority thereof, the central bank of that other Contracting State or any institution wholly owned by that other Contracting State or a political subdivision or local authority thereof; or

(b) the interest is beneficially owned by a resident of that other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by that other Contracting State, a political subdivision or local authority thereof, the central bank of that other Contracting State or any institution wholly owned by that other Contracting State or a political subdivision or local authority thereof."



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⁵ It entered into force on January 29th, 2021. Hereinafter referred to as the "DTA PE- JP".



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Consequently, the exemption from source taxation on interest enshrined in paragraph 3 of Article 11 of the DTA PE-PT is extended to the DTA PE-SW from January 1st, 2015⁶ by virtue of MFN clause. In addition, the lower dividend and interest tax rates provided in paragraph 2 of Article 10 and paragraph 2 of Article 11 of the DTA PE-JP, respectively, as well as the exemption from source taxation on interest beneficially owned by any institution wholly owned by the other Contracting State or a political subdivision or local authority thereof enshrined in subparagraph a) of paragraph 3 of Article 11 of the DTA PE-JP and the one established in subparagraph b) of the referred paragraph are applicable to relationship between Peru and Switzerland from January 1st, 2022⁷.

Yours sincerely,



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⁶ Date from which, paragraph 3 of Article 11 of the DTA PE-PT has effect.

⁷ Date from which, paragraph 2 of Article 10 and paragraphs 2 and 3 of Article 11 of the DTA PE-JP have effect.