

Tax treatment of capital gains in Peru



Agenda

1. Direct and indirect disposal transactions in Peru
2. The issue of capital gains derived from transactions between non-domiciled parties.
3. What is needed for the tax to function correctly?



1. Direct and indirect disposal transactions in Peru





Legal framework – disposal of shares and/or participations

Income tax is levied on capital gain. Capital gain is construed as income derived from the disposal of shares and equity participations of corporations established or domiciled in Peru (Articles 1 and 2.a of the Income Tax Law (LIR))

2
0
0
4

2
0
1
1

**Direct
disposal
Article 9.h
Income Tax**

Regardless of the nationality or domicile of the parties to the transactions and the place where contracts are concluded or fulfilled, the following shall be considered income from a Peruvian source:
h) That derived from the disposal, redemption, or retrieval of shares and equity participations.../ ...

**Indirect
disposal
Article 10.e
Income Tax**

Also regarded as income from a Peruvian source:
income derived from the indirect disposal of shares or equity participations of legal persons domiciled in the country (under certain conditions).





Types of transactions in direct and indirect disposal of enterprises

TRANSACTORS

PAYMENT OF THE TAX

Non-domiciled transferor
Non-domiciled recipient
(Direct or Indirect)



1. NON-DOMICILED TRANSFEROR.
2. ISSUING ENTERPRISE – BEARS
JOINT AND SEVERAL RESPONSIBILITY

Non-domiciled transferor
Domiciled recipient



1. Withholding agent:
DOMICILED RECIPIENT

Both transferor and recipient
domiciled



1. Transferor: Down
payment and regularizes with
annual sworn income tax return (DDJJ)



2. The issue of capital gains derived from transactions between non-domiciled parties.





DIRECT DISPOSAL

NON-COMPLIANCE WITH TAX PAYMENT

NON-DOM.
TRANSFEROR

NON-DOM.
RECIPIENT "A"

Direct payment by non-domiciled party

DOM. RECIPIENT B

Withholding agent

DOMICILED

Enterprise constituted in Peru

Bears joint and several responsibility (subject to conditions)

THE ISSUE:

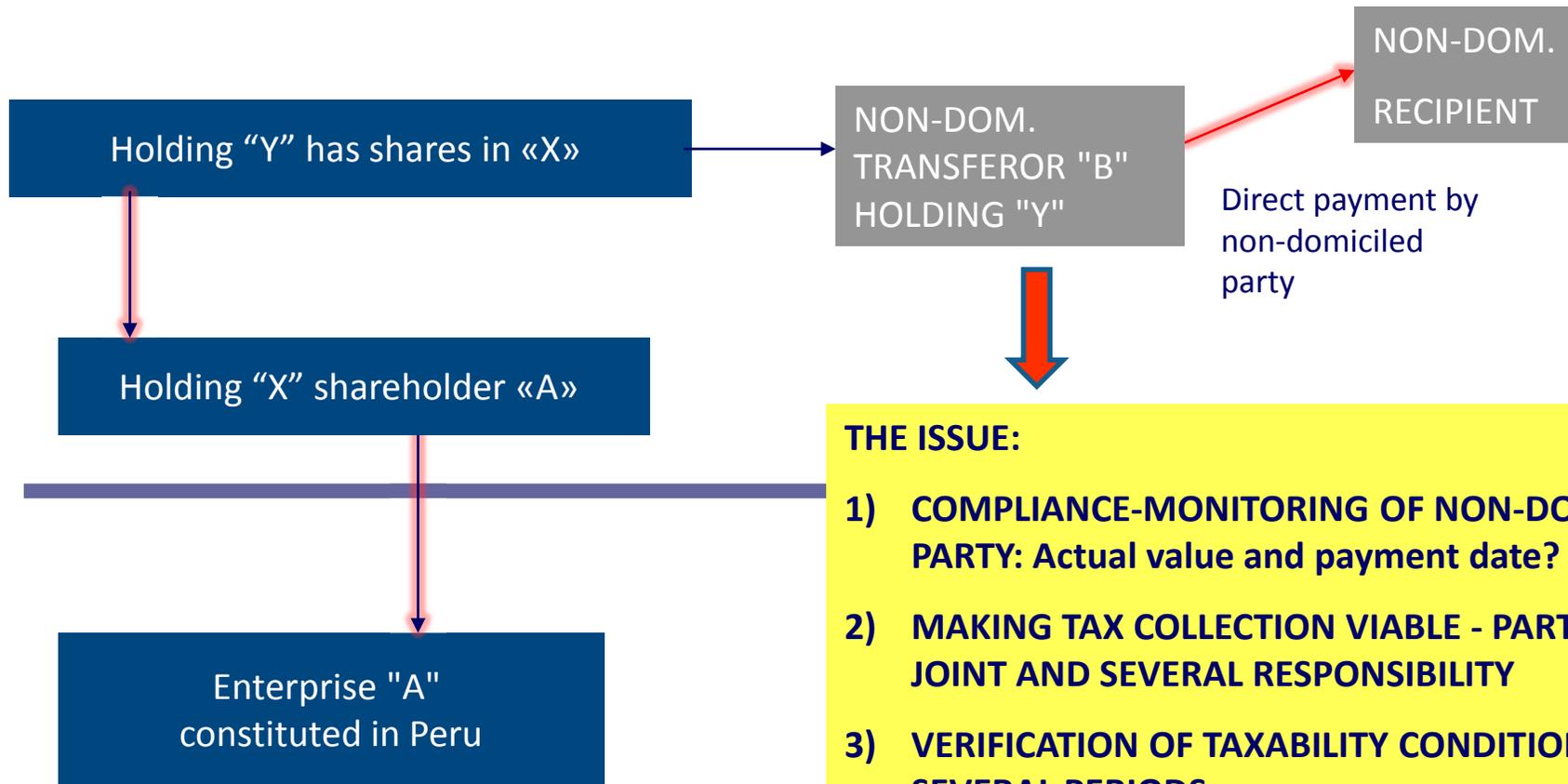
- 1) COMPLIANCE-MONITORING OF THE NON-DOMICILED PARTY – Actual value and payment date?
- 2) MAKING TAX COLLECTION VIABLE. Alternative: PARTY BEARING JOINT AND SEVERAL RESPONSIBILITY





INDIRECT DISPOSAL

HYPOTHETICAL CASE OF EVASION IN CORPORATE MERGER AND ACQUISITION TRANSACTIONS - CAPITAL GAINS 02/16/2011



- THE ISSUE:**
- 1) **COMPLIANCE-MONITORING OF NON-DOMICILED PARTY: Actual value and payment date?**
 - 2) **MAKING TAX COLLECTION VIABLE - PARTY BEARING JOINT AND SEVERAL RESPONSIBILITY**
 - 3) **VERIFICATION OF TAXABILITY CONDITIONS – SALE IN SEVERAL PERIODS.**

Bears joint and several responsibility (subject to conditions)



3. What are we doing to ensure the tax functions correctly?





What are we working on?

Identifying the investor: Obligation to register with the TA, possibility of doing Eol [survey]

Establishing or verifying the tax in a disposal transaction: Presence during Monitoring, Audit Abroad

Rules on accumulation of transactions (2 or 3 years)

Rules against Treaty Shopping

Making debt collection feasible: Rules governing joint and several responsibility and Assistance with Collection

Permanent Monitoring and Shares Reporting Rules





Monitoring of Transactions

Sources of Information:

Reporting of share transfers

SIGEF module - Requests for certification of capital invested

Bloomberg

The media, law firm, and web.

Analysis and evaluation of the transaction

- Enterprise or project disposed of
- Determine transferor and recipient
- Direct and indirect disposal (income taxed in Peru).
- Estimation of the amount of the transaction and of the tax to be paid.

Notifying the operational staff to ensure monitoring and verification of the transaction;

Concurrent action (inductive)



Subsequent action (audit or verification)



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Thank you.