

Ministry of Finance Publishes Decree on Significant Economic Presence

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The Ministry of Finance has published a Decree regulating the concept of "significant economic presence" (SEP) for purposes of the taxation of digital services, which was introduced through Law 2277 of 2022 (article 20-3 of the Tax Code).

The Decree provides that non-residents with a SEP in Colombia must elect to file an income tax return and assess the corresponding tax or pay the income tax through withholding tax. In the latter case, when several withholding agents concur to the same transactions, the Decree establishes the order of priority as of which entity should withhold the tax, as follows:

- whenever there is a direct acquisition of the good or service, the withholding agents in accordance with article 368 of the TC;
- whenever the payment method is a credit/debit card, the financial entity issuer of the card will be the withholding agent provided it has the necessary information to apply the withholding tax;
- whenever payment is performed online using payment gateways, payment gateways must provide the financial entity with the transaction information so that financial entities can apply the withholding tax;
- credit or debit card franchises. If the transaction does not involve a credit or debit card payment and corresponds to another financial product or service, the withholding agent will be the entity that provides the financial product or service.
- cash collectors on behalf of third parties;
- pre-payment sellers; and
- any other withholding agents assigned by the Tax Authority.

The Decree also provides that if the non-resident elects to file an income tax return directly, it must register in the National Tax Registry (RUT) and elect to be responsible for the filing obligation. In this case, the non-resident is obliged to make bimonthly payments corresponding to January-February, March-April, May-June, July-August, September-October, and November-December. The bimonthly tax payments are determined multiplying the bimonthly gross income" times 2%. The payments made by the non-resident taxpayer are credited from the income tax due assessed in the annual income tax return.

Whenever the foreign recipient of the payment manifests under oath that it does not comply with the PES criteria, the withholding agent must refrain from applying the 10% withholding tax.

Colombian resident taxpayers buying goods or services from non-resident PES may prove their costs, deductions and creditable taxes by issuing electronic support documents. If the withholding tax is not required upon payment to the non-resident, resident taxpayers must prove that the non-resident having PES is subject to income tax at the 3% rate, information which must be included in its RUT.

Regulations were established through [Decree 2039 of 27 November 2023](#), issued by the Ministry of Finance and Public Credit.

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