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EMERGENCY DECREE 025-2019

EMERGENCY DECREE AMENDING THE INCOME TAX ACT – LAW 30734, ACT ESTABLISHING THE INDIVIDUALS’ RIGHT TO THE AUTOMATIC REFUND OF TAXES PAID OR WITHHELD IN EXCESS AND LEGISLATIVE DECREE 1372 – LEGISLATIVE DECREE REGULATING OBLIGATION OF LEGAL PERSONS OR LEGAL ARRANGEMENTS TO PROVIDE IDENTIFYING INFORMATION OF THE BENEFICIAL OWNERS

WHEREAS

In accordance with the Peruvian Constitution, Section 135, during the parliamentary interregnum, the Executive Branch legislates through emergency decrees, which are reported to the Standing Commission for it to review them and forward them to the Congress, upon taking office;

By means of Executive Decree 165-2019-PCM, Executive Decree on the dissolution of the Peruvian Congress and call for elections for a new Congress, the parliamentary term of the congressmen was revoked, keeping the Standing Commission in office;

Pursuant to Law 30708, the Consolidated Text of the Securities Act approved by Executive Decree 093-2002-EF was amended, in order to, inter alia, strengthen the capital market infrastructure, especially that associated with the industry of mutual funds for investment in securities. Accordingly, it was established that distributors are in charge of placing the shares of mutual funds for investment in securities;

Through Law 30898, the validity of the exemptions established in Section 19, subparagraph b), of the Consolidated Text of the Income Tax Act, as approved by Executive Decree 179-2004-EF, was extended until December 31, 2019;

By means of Law 30734, the individuals’ right to the automatic refund of taxes paid or withheld in excess was established;

Legislative Decree 1372 regulates the obligation of legal persons and/or legal arrangements to provide the identifying information of beneficial owners;

In exercise of the powers conferred by the Peruvian Constitution, Section 135;

With the affirmative vote of the Cabinet; and, under the obligation to give notice hereof to the Standing Commission to review it and forward it to the Congress, upon taking office;

THE PRESIDENT OF THE REPUBLIC HEREBY DECREES AS FOLLOWS:

Section 1.- Purpose

The purpose of this Emergency Decree is to amend the Consolidated Text of the Income Tax Act, as approved by Executive Decree 179-2004-EF, in order to designate the distributors of shares -as referred to in Section 258 of the Consolidated Text of the Securities Act, approved by Executive Decree 093-2002-EF- as income tax withholding agents and extend the exemption of income from taxable foundations and non-profit corporations.

Likewise, this Emergency Decree is intended to amend Section 5, Subsections 5.5 and 5.7, and Section 6, Subsection 6.2 of Law 30734, Act establishing the individuals’ right to the automatic refund of taxes paid or withheld in excess; regarding the forms of ex officio refund of payments in excess of income tax and the date from which it is made.

Similarly, the Emergency Decree also aims to amend Legislative Decree No. 1372, which regulates the obligation of legal persons and/or legal arrangements to provide identifying information of beneficial owners; regarding the criteria to identify the beneficial owners of legal arrangements; as well as, regulate cases of exception to the filing of the beneficial ownership affidavit.

Section 2.- Amendment of the heading of Section 19, subparagraph e) of the first paragraph of Section 71 and the second paragraph of Section 72 of the Consolidated Text of the Income Tax Act.

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The heading of Section 19, subparagraph e) of the first paragraph of Section 71 and the second paragraph of Section 72 of the Consolidated Text of the Income Tax Act, as approved by Executive Decree 179-2004-EF, are hereby amended as follows:

“Section 19: The following are exempt from the tax until December 31, 2020.
(...)”.

“Section 71: The following are withholding agents:
(...)”

e) Distributors of shares of mutual funds for investment in securities, management companies of mutual funds for investment in securities and investment fund management companies, as well as securitization companies of trust assets, trustees of bank trusts and the private pension fund management companies -due to voluntary contributions without social security purposes-, regarding the profits, income or capital gains they pay or generate in favor of holders of the securities issued in the name of these funds or assets, of trustors in bank trusts, or of pension fund members.
(...)”

“Section 72:
(...)”

In the case of second-category income deriving from the sale or redemption of the aforementioned assets, the corresponding tax is only withheld when such income is allocated, paid or credited by distributors of shares of mutual funds for investment in securities, management companies of mutual funds for investment in securities and investment funds, securitization companies of trust assets, trustees of bank trusts and Private Pension Fund Management Companies -due to voluntary contributions without social security purposes-. This withholding is made as a payment on account of the Tax that is ultimately applicable for the taxable year, applying a 6.25% rate on the net income.
(...)”

Section 3.- Amendment to Section 5, Subsections 5.5 and 5.7, Section 6, Subsection 6.2 of Law 30734

Section 5, Subsections 5.5 and 5.7, and Section 6, Subsection 6.2 of Law No. 30734, Act establishing the individuals' right to the automatic refund of taxes paid or withheld in excess are hereby amended as follows:

“Section 5.- Ex officio refund for overpayments for fourth and/or fifth-category income
(...)”

5.5 The ex officio refund is paid by credit into account or any other mechanism approved by an Executive Decree endorsed by the Minister of Economy and Finance.
(...)”

5.7 The ex officio refund, in the case of individuals who receive fourth and/or fifth category income, without prejudice to the obligation to file or not the annual income tax return for the year, is made from the business day following the last day of expiration of the term established by SUNAT for the filing of the annual income tax return for the fiscal year to which the respective refund corresponds.
(...)”

“Section 6.- Refund upon request of a party of the excess payments for fourth and/or fifth category income
(...)”

6.2 SUNAT returns payments or withholdings in excess through the respective administrative act, applying the provisions of Section 5 of this Law regarding the forms of notification and refund interest, following the provisions of Subsection 5.8 of said Section. The refund is made at the option of the taxpayer through payment orders from the financial system, credit into account or any other mechanism that is approved by an Executive Decree endorsed by the Minister of Economy and Finance.

The refund is carried out without prejudice to a subsequent audit.
(...)”

Section 4.- Extension of the exemption indicated in Section 19, subparagraph b), of the Consolidated Text of the Income Tax Act

The exemption indicated in Section 19, subparagraph b), of the Consolidated Text of the Income Tax Act, as approved by Executive Decree 179-2004-EF, shall be extended until December 31, 2020.

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Section 5.- Amendment to Section 3, Subsection 3.1, subparagraph c), and Section 4, Subsection 4.2, subparagraph a) of Legislative Decree 1372

Section 3, Subsection 3.1, subparagraph c), and Section 4, Subsection 4.2, subparagraph a) of Legislative Decree 1372, Legislative Decree regulating the obligation of legal persons and/or legal arrangements to provide identifying information of the beneficial owners, are hereby amended as follows:

“Section 3. Definitions and References

(...)

3.1 Terms are defined as follows:

(...)

c) Parties required to submit the beneficial ownership affidavit:

(...)

The following legal persons and legal arrangements are exempted from the filing of the beneficial ownership affidavit:

- a) Central Reserve Bank of Peru, as well as banks and financial institutions whose capital stock is one hundred percent (100%) owned by the Peruvian State.
- b) Catholic Church. It is deemed to include the Peruvian Episcopal Conference, the Archbishops, Bishops, Prelatures, Apostolic Vicariates, Diocesan Seminaries, Parishes and their respective missions, Religious Orders and Congregations, Secular Institutes settled in the respective Dioceses, recognized as such by the competent ecclesiastical authority, that are registered in the Registry of Entities Exempted from Income Tax of the National Superintendency of Customs and Tax Administration (SUNAT).
- c) Public Administration Entities (Executive Branch, including Ministries and Decentralized Public Agencies, Legislative Branch, Judiciary, Regional Governments, Local Governments, Self-governing Bodies with powers conferred by the Peruvian Constitution and the laws, as well as other entities and bodies, State projects and programs).
- d) National Fund for the Financing of State Business Activity (FONAFE).
- e) Embassies, Diplomatic Missions, Consular Offices, International Organizations accredited to the Peruvian State.
- f) Public Universities, Public Institutes and Tertiary Education Schools, Public Educational and Cultural Centers.
- g) State-owned companies whose capital stock is one hundred percent (100%) owned by the Peruvian State.

SUNAT, by means of a Superintendence Resolution, may approve other cases of exception to the filing of the beneficial ownership affidavit.

“Section 4. Criteria for determining the beneficial owner of legal persons and legal arrangements.

(...)

4.2 The following criteria determine the condition of beneficial owner of the legal arrangements referred to in Section 3, Subsection 3.1, subparagraph a.1):

a) In the case of trusts or investment funds, individuals acting as settlor, trustees, trust beneficiaries or group of beneficiaries and any other individuals who, having the status of participant or investors, exercise ultimate effective control of the assets or are entitled to the results or profits in a trust or investment fund, as appropriate.

(...)”.

Section 6.- Countersigning

The Emergency Decree is countersigned by the Prime Minister, the Minister of Economy and Finance and the Minister of Justice and Human Rights.

FINAL SUPPLEMENTARY PROVISIONS

One. Application of the provisions of Section 3 of the Emergency Decree

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The provisions of Section 3 of the Emergency Decree are applicable with respect to excess payments of income tax corresponding to the taxable year 2019 onwards.

Two. Effectiveness

The Emergency Decree enters into force as of January 1, 2020, except for the amendment to Section 71, paragraph 1, subparagraph e), and Section 72, paragraph 2 of the Consolidated Text of the Income Tax Act, contained in Section 2 hereof; as well as the amendment to Section 3, Subsection 3.1, subparagraph c), and Section 4, Subsection 4.2, item a) of Legislative Decree No. 1372, which shall enter into force the day after its publication.

Three. Transparency

The National Superintendency of Customs and Tax Administration (SUNAT) publishes annually on its institutional portal, the list of taxable foundations and non-profit corporations exempted from the third-category income tax, in accordance with Section 19, subparagraph b) of the Consolidated Text of the Income Tax Act, as well as the amount of the exemption.

Given at the Government House, in Lima, this 11th day of December, 2019.

MARTÍN ALBERTO VIZCARRA CORNEJO
President of the Republic

VICENTE ANTONIO ZEBALLOS SALINAS
Prime Minister

MARÍA ANTONIETA ALVA LUPERDI
Minister of Economy and Finance

ANA TERESA REVILLA VERGARA
Minister of Justice and Human Rights