

Legal 500

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Peru

Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Peru.

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Peru: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Yes, domiciled taxpayers who carry out economic activities that generate the payment of taxes, including importation or exportation, must acquire a Tax ID registration number (called "RUC" by its acronym in Spanish). This Tax ID is a single number valid for any procedure before the Peruvian Tax Authority (SUNAT), related to Corporate Income Tax (CIT), Value Added Tax (VAT) or any other taxes under SUNAT's administration.

Non-domiciled taxpayers are not obliged to acquire the abovementioned ID, unless they are deemed to act as a permanent establishment in Peru or if they qualify as:

- i. Taxpayers of the Remote Gaming and Remote Sports Betting Tax.
- ii. Withholding or collection agents of the VAT.
- iii. Collection agents of the Excise Tax.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Most taxes in Peru, including CIT and VAT are self-assessed. Self-assessment returns can then be later audited by SUNAT and thus the tax determination confirmed or modified.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Yes, in Peru taxpayers are allowed to amend tax returns after these have been filed. According to article 88.2 of the Tax Code, taxpayers can file amended tax returns until the expiry of the statute of limitations, which, according to Articles 43 and 44 of the Tax Code is four years as from January 1st of the year following to the filing of the original tax return.

However, if the period has been subject to a tax audit,

once the partial or definitive audit is concluded (or after the deadline granted by the Tax Administration under Article 75 of the Tax Code), amended tax returns will have no effect for the taxes and periods that were subject to such audit, unless the amended tax return determines a higher tax obligation.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

According to article 61 of the Tax Code, the determination of the tax obligation made by the taxpayer may be subject to audit or review by SUNAT. As a result of this tax audit procedure, SUNAT might confirm the tax determination performed by the taxpayer or perform assessments to such determination, establishing a tax omission or the reduction of the balance in favour, as may correspond.

Such article also provides that tax audits could be partial or definitive. Partial audits involve the review of one or more aspects of a tax obligation by period. Definitive tax audits, on the other hand, cover all aspects of a tax obligation and period.

Notwithstanding that SUNAT can only challenge a tax determination through a tax audit procedure, bear in mind that according to article 78 of the Tax Code, SUNAT can issue Payment Orders without previously performing a tax audit procedure, in cases where the tax debt arises from self-determined taxes, advance payments, material errors made in tax returns, among others.

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

SUNAT's timeframe to exercise its audit determination faculty and perform challenges is regulated by the statute of limitations period.

According to articles 43 and 44 of the Tax Code, SUNAT can challenge the determination of the tax obligation self-assessed during a four (4) year period, counted as from January 1st of the year following the date in which the tax

return was filed. However, if the taxpayer did not file the tax return, such period is extended to (6) six years, counted from January 1st of the year following the date on which the tax return should have been filed. In the case of withholding taxes, if the withholding agent did not make the payment of the tax withheld, the period is extended to (10) ten years, counted as from January 1st of the year following the date on which the deadline for filing the tax return.

It is important to note that the aforementioned statute of limitations may be either interrupted or suspended:

- Interruption causes the restart of the statute of limitations period. According to article 45 of the Tax Code, the new period begins on the day following the date of the interruption event. Examples of such events include the notification of an assessment resolution, payment order or fine resolution.
- Suspension pauses the statute of limitations period during specific circumstances. As an example, according to article 46 of the Tax Code, the statute of limitations is suspended during the legally established time frame for resolving tax contentious procedures, including claims and appeals.

Note that according to articles 61 and 62-A of the Tax Code, the period that SUNAT can take to perform partial audits is six (6) months, while for definitive tax audits SUNAT can take one (1) year. However, the one-year limit does not apply to definitive tax audits involving transfer pricing issues and when applying tax avoidance regulations.

6. How is tax fraud defined in your law?

Tax fraud is defined in Article 1 of the Legislative Decree No. 813 (Tax Criminal Law) as the action conducted by anyone who, for their own benefit or that of a third party, by means of any artifice, deception, cunning, trickery, or other fraudulent method, fails to pay, either wholly or partially, the taxes established by law.

Despite the abovementioned definition, it should be noted that Peruvian tax regulations foresee a broader framework for addressing tax avoidance through a general anti-avoidance rule, established in Provision XVI of the Preliminary Title of the Tax Code. This provision empowers the Tax Administration to disregard artificial or improper arrangements that aim to obtain tax advantages and instead apply the tax treatment that would have corresponded to usual or proper transactions.

Specifically, the Tax Code in Provision XVI states that a

transaction will be in tax avoidance when the occurrence of the taxable event is totally or partially avoided, or the tax base or tax debt is reduced, or balances or credits in favor, tax losses, or tax credits are obtained through acts for which the following circumstances, supported by SUNAT, are present concurrently:

- a) That they are individually or jointly artificial or improper for achieving the result obtained.
- b) That their use results in legal or economic effects, other than tax savings or advantages, that are equal to or similar to those that would have been obtained through usual or proper acts.

It should be noted that the application of the Provision XVI is not necessarily linked to a criminal action that results in judicial proceedings. For this to happen it is necessary that, while conducting a tax audit under the Provision XVI, the Tax Administration informs the Public Ministry the existence of acts that presumptively constitute tax offences. This in accordance with article 192 of the Tax Code, which establishes that criminal and administrative procedures are conducted in parallel.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

In Peru, tax fraud is a criminal offence. According to Article 7 of the Tax Criminal Law, in such cases, the Public Ministry must formally initiate the preparatory investigation with a prior report from the Tax Administration. The same article establishes that the participation of the Tax Administration in the preparatory investigation depends on the Judge and the Public Prosecutor.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

Taxpayers are audited taking into account multiple considerations but in general terms, SUNAT prioritises cases based on the likelihood of non-compliance based on historical behaviour or sector-specific risks, as well as based on the materiality or relevance of the transactions reported.

Furthermore, SUNAT has a risk assessment area that aids in this endeavour. According to its 2024 Results-Based Management Report, it uses statistical and digital

techniques, along with a Big Data platform to identify and evaluate levels of tax compliance risk.

The Tax Administration does not need any justification to initiate an audit apart from being under the statute of limitations, as it is a discretionary faculty of the Tax Administration.

However, major taxpayers are audited by the tax authority every year.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Although SUNAT does not publicly disclose a specific code of conduct for audits, all personnel from SUNAT, including tax auditors, must follow the SUNAT's Code of Ethics, approved by the Superintendence Resolution No. 245-2019/SUNAT, which sets out ethical standards and behavioural guidelines.

In addition, the tax audit procedure is regulated by the Tax Audit Regulations, approved by Supreme Decree No. 085-2007-EF, which establishes the procedural framework of tax audits, from the beginning of the audit with the introductory letter and the first requirement to its conclusion, with the issuance of the corresponding assessments or penalty resolutions.

In the context of tax audits, moreover, the Tax Administration must comply with the provisions of the Tax Code, as any breach may lead to a complaint to be filed by the taxpayer before the Tax Court. This procedure is regulated in article 155 of the Tax Code.

Furthermore, as any other entity of the Public Administration, SUNAT must comply with the principles and provisions of the General Administrative Procedure Law (Law No. 27444).

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

In general terms, according to articles 62 and 87 of the Tax Code, SUNAT is legally empowered to request diverse types of information from taxpayers, who are obliged to provide it in accordance with the way, deadlines and conditions specified by SUNAT in its requirements.

Not providing the documentation requested by SUNAT implies the commission of infractions established in the Tax Code which are sanctioned with fines. The most common ones are the following:

- Article 177.1 of the Tax Code: Infraction for not exhibit books, records and other documentation requested by the Tax Administration. The sanction is a fine that amounts the 0.6% of the net income from the Fiscal Year (FY) preceding the one under audit. The amount of the fine cannot be lower than 10% of the Peruvian Tax Units and not greater than 25 Peruvian Tax Units (The Peruvian Tax Units on FY 2025 is PEN 5,350 that equals to USD 1,532 aprox.) of the FY corresponding to that in which the infraction has been detected.
- Article 177.5 of the Tax Code: Infraction for not providing the information or documentation requested by the Tax Administration regarding the taxpayer activities or the ones of related third parties or providing it without observing the fashion, deadlines and conditions established by the Tax Administration. The sanction is a fine that amounts the 0.3% of the net income from the FY preceding the one under audit. The amount of the fine cannot be lower than 10% of the Peruvian Tax Units and not greater than 12 Peruvian Tax Units corresponding to that in which the infraction has been detected.

Now then, with regard to SUNAT's power to compulsorily request information, including emails, article 62.7 of the Tax Code provides that, in exceptional cases where SUNAT suspects tax evasion, it may proceed with the confiscation of books, documents, and electronic files (including emails), but only with prior judicial authorization.

It should be noted that even when there is not straightforward regulation, taxpayers have the right to file a complaint against the request of any documentation or information by SUNAT, when the taxpayer is not legally obliged to count with such information or if such information is not applicable considering the taxpayer activities or how they are developed or analysed; also if the information does not pertain the taxpayer but third parties (Cassation No. 4946-2019 and Tax Court Resolution No. 1607-Q-2021).

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

According to article 62.3 of the Tax Code, SUNAT might request to third parties' information and the exhibit

and/or submitting of books, records, documentation, issuance and use of credit cards and business correspondence related to events that determine a tax obligation. Such request could include information used to identify individuals who are clients or consumers of the third party.

It should be noted that third parties could stay on the same grounds that taxpayers regarding the information requested by the Tax Administration as is explained in our answer to question 10, but also if such information request infringe constitutional rights or guarantees, such as the tax reserve or bank secrecy. Then, the taxpayer may file a constitutional action before the Judiciary.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

In Peru there is no formal mechanism that allows to close the tax audit through a binding agreement. As a part of a tax audit procedure, meetings with the Tax Administration in accordance with Article 92(p) of the Tax Code which the taxpayer can expose its arguments and the Tax Administration can compromise to evaluate or even accept them, provided certain terms and conditions are met, can take place, though they are not formally regulated. Also, no compromise made by SUNAT during these meetings is binding.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

Taxpayers have two channels to file complaints against SUNAT's actions during a tax audit.

On one hand, taxpayers may file a formal complaint before the Tax Court, as regulated by article 155 of the Tax Code, when procedural infringements, such as irregular or abusive actions by SUNAT are verified. This avenue does have legal effects within the administrative procedure and may result in rulings that require correction of the challenged conduct.

According to the aforementioned Article of the Tax Code, Tax Court has a standard period of 20 business days to resolve a complaint, counted from the date it is filed. This period may be extended to 30 business days if the complaint involves issues of prescription. However, it could actually take longer than the term established in the Tax Code.

Also, taxpayers may submit a complaint to the Taxpayer

and Customs User Advocacy if they believe their rights have been violated, for example, in cases of excessive or poorly justified information requests. This complaint is non-binding, meaning it does not have direct legal effects, but it aims to promote institutional improvement and correct improper conduct through internal recommendations.

It should be noted that the Advocacy cannot interfere with the regular course of the proceedings before SUNAT or when there are pending legal remedies or procedures available for the taxpayers to defend themselves (for example, the Advocate cannot intervene when the taxpayer wants to arrange a meeting with SUNAT's officials but has not yet formally requested such meeting through a writing, or to complaint about a conduct by SUNAT that can be sorted through the complaint procedure established in the Tax Code).

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes, taxpayers have the right to disagree from a tax assessment. This right is established under article 92(d) of the Tax Code and is exercised through the initiation of a claim procedure. Claim procedures are regulated in articles 132 to 142 of the Tax Code, and they result into an Intendancy Resolution, which if results against the taxpayer's position may be contended through an appeal before the Tax Court. This last procedure is regulated in articles 143 to of the Tax Code.

According to article 142 of the Tax Code, Tax Administration have nine (9) months to solve the claim file, starting from the date of submission. Regarding transfer pricing matters, such period is extended to twelve (12) months. In the case of appeals, according to article 150 of the Tax Code, Tax Court have twelve (12) months to solve the appeal file, counted as from the date the case file is received by the Tax Court. Regarding transfer pricing matters, such period is extended to eighteen (18) months. However, the Tax Court could actually take more time than the legally established to solve the appeals.

After completing the administrative stage, a judicial stage may be initiated by either the taxpayer or the tax administration to discuss the administrative court's ruling.

15. Is the right of appeal to an administrative

body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

In Peru, the right of appeal against resolutions issued by SUNAT is part of an administrative procedure, independent from the stage before the Judiciary, being the latter however a consequence of the further.

Indeed, a proceeding before the Judiciary is normally initiated by the taxpayer or by SUNAT when the Tax Court issues a resolution confirming SUNAT's position or revoking SUNAT's assessment, respectively.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

According to the Plenary Session Agreement of the Tax Court No. 2023-14 issued on December 18th, 2023, only a maximum of two oral informants can assist to the oral hearings in the appeal stage. In addition, the taxpayer or their legal representative could participate as an observer of the oral hearing.

Note that the Tax Court besides notifying the taxpayer about the oral hearing, also publishes periodically a list of the oral hearings taking place, which can be publicly accessed.

Tax Court resolutions are then published in official website, the same that provides an important source of tax jurisprudence. However, although they are public, the names of taxpayers and other certain sensitive data that can be linked to them, are removed, erased or blurred. This is for the protection of the tax reserve. That means that third parties can access the legal content of the decision but not necessarily may be able to identify the parties involved.

In the Judiciary Power the hearing is public.

17. Is the procedure mainly written or a combination of written and oral?

With the exception of the oral hearing or report, the appeal procedure before the Tax Court is primarily written. Indeed, it starts with an appeal writing, which can be followed with additional writings if necessary. Also, according to article 150 to the Tax Code parties can present their closing arguments within (3) three business days following the oral hearing. Writings after that date can be filed by the taxpayer but will only be taken into

consideration by the Tax Court if the corresponding resolution has not been issued in (20) twenty days after the oral hearing took place. In appeal procedures where no oral hearing has taken place, only writings filed up to (5) five days before the issuance of the resolution will be considered.

In the Judiciary Power is the same.

18. Is there a document discovery process?

No, Peru does not have a formal "document discovery process".

However, according to article 62 of the Tax Code, SUNAT is enabled to perform crosschecks with third parties during tax audits.

Additionally, under Article IV of the Preliminary Title of the General Administrative Procedure Law, authorities are required to actively conduct the development of any administrative procedure, taking all the actions needed to clarify and resolve any issues in accordance with Principle of Ex-officio impulse.

19. Are witnesses called to give evidence?

In the contentious tax procedure before the Tax Court, the participation of witnesses as a means of evidence is not contemplated. The current regulation clearly establish which types of evidence are admissible.

According to article 125 of the Tax Code, the only allowed means of evidence are documents, expert reports, and inspections conducted by the decision-making body. These elements are evaluated by the Court along with the statements obtained by the Tax Administration.

This means that the procedure is based on a technical and documentary review of the case, without the involvement of witnesses or personal testimonies. The closest evidence to a personal testimony could be a signed affidavit of a third party stating a fact such as a specific business circumstance related to the taxes under review.

Thus, as can be observed, Tax Court resolutions are mostly based on written evidence submitted by the parties and the supporting documentation gathered by SUNAT.

20. Is the burden on the taxpayer to disprove the

assessment the subject of the appeal?

In general terms, the burden of proof in contentious tax procedure lies with the party asserting facts that support their allegations.

However, in transfer pricing matters, when the Tax Administration makes an adjustment to the market value, the burden of proof corresponds to the Tax Administration. This interpretation has been consistently upheld by the Tax Court, which has stated that if the Tax Administration challenges the market value of a transaction, it must provide its own value.

21. How long does an appeal usually take to conclude?

Claim procedure: As stated in article 142 of the Tax Code, SUNAT must resolve claims within 9 months. In cases involving transfer pricing adjustments, the abovementioned term is extended to a maximum of 12 months.

Appeal procedure: According to article 150 of the Tax Code, the Tax Court has a maximum period of 12 months to issue a resolution regarding appeals filed, counted as from the date the case file is received by the Tax Court. In cases involving transfer pricing adjustments, the resolution period extends to 18 months.

As mentioned, however, in practice the Tax Court might take longer than the aforementioned timeframes; this because of the amount of files. These delays are more common in the appeal stage before the Tax Court (approximately 36 -40 months).

In the judiciary power the procedures in total take 36 months approximately.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

No, while a claim or appeal is pending, the taxpayer is not required to pay the assessed amount. However, according to article 141 of the Tax Code, if taxpayer intends to submit new evidence not filed during the audit or claim procedure, despite having been asked for it (even not specifically), they must either pay the tax debt related to such new evidence or provide a guarantee from a financial institution up to such amount for the legal period SUNAT or the Tax Court have to solve the claim or appeal.

If the taxpayer does not obtain a favourable ruling from

the Tax Court, they will have to pay the debt, even though the dispute may continue in the Judiciary.

If they obtain a favourable court judgment from the Judiciary, they may request a refund of what they paid.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Yes, the appeal must be signed by the legal representative of the taxpayer as registered in the Public Registry of Legal Entities. In practice, the Tax Administration may accept the signature of the legal representative consigned in the Taxpayer's registry record. However, in certain cases, afterwards in order to admit the appeal the authority may request evidence of representation, such as a certificate issued by the Public Registry.

24. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

In Peru, there is no "loser pays" system in administrative tax procedures. Each party bears its own legal and professional costs.

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

In Peru, tax disputes with SUNAT or the Tax Court cannot be resolved through alternative dispute resolution mechanisms, such as mediation or arbitration.

However, according to Article 48 of Legislative Decree No. 757, any dispute arising within the framework of Legal Stability Agreements established by Legislative Decree No. 662 may be resolved through national or international arbitration, in accordance with internal law or international treaties to which Peru is a party, provided it involves patrimonial or legal relationships pertaining to private law or contractual nature.

Likewise, the Free Trade Agreement (FTA-TLC) include clauses to protect the investor and provide that when disputes arise between an investor and a host State due to violations of their clauses, arbitration may be resorted to in the CIADI.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Yes, once is passed the administrative stage, a proceeding before the Judiciary is normally initiated by the taxpayer or by SUNAT with the following stages:

- a. Contentious-Administrative Lawsuit Court.
- b. Appeal – Superior Chamber.
- c. Cassation – Supreme Court.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

The main penalty that can be applied when additional tax is charged is the established in article 178.1 of the Tax Code.

Such article establishes as an infraction to not include in the tax returns any income and/or compensation and/or remuneration and/or earnings and/or assets and/or taxable transactions and/or withheld or collected taxes, and/or apply rates, percentages, or coefficients different from those that correspond in the determination of advance payments or prepayments, or declare false figures or data or omit circumstances in the returns that affect the determination and payment of the tax obligation; and/or that result in undue increases of tax balances or losses or credits in favour of the taxpayer, and/or that lead to the improper obtaining of Negotiable Credit Notes or other similar instruments.

The aforementioned fine is determined by 50% of the omitted tax due, or 100% of the amount unduly obtained, in the event of having received a refund of balances or credits. The minimum amount for such fine is 5% of the Peruvian Tax Units and the maximum the 50% of the omitted tax due.

28. If penalties can be mitigated, what factors are taken into account?

In Peru, tax penalties may be mitigated through the Gradual Penalty Reduction Regime, established by Superintendency Resolution No. 063-2007/SUNAT. The percentage of reduction applicable depends on when the penalty is paid. In some cases, voluntary compliance with the omitted obligation is requested.

For example, in certain cases, such as when

documentation (i.e. accounting books) has not been submitted and SUNAT has not yet formally requested it during an audit, taxpayers may correct the omission. If they do so before any official notification or requirement is issued, they may benefit from a significant reduction in the applicable fine.

Now then, in the case of the fine determined by the omission on the tax omitted established in article 178.1 of the Tax Code, the Gradual Penalty Reduction Regime establishes the following:

- Voluntary correction: If the infraction is corrected before any notification or request related to the tax or period to be regularised, takes effect, the discount is 95%.
- Correction induced during the audit: If the infraction is corrected before the expiry of the deadline granted through the requirement issued under Article 75 of the Tax Code or before the notification of the Assessments and Fines (If such requirement is not issued/notified), the discount is 70%.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

Yes, most commonly adjustments that come from the Tax Administration are related to transfer pricing, Benefit Test (as a part of transfer pricing for services), application of the Tax Avoidance Rule, international transactions, financial expenses deductions and causality and reliability of social responsibility expenditures.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Please see answer to question 29. In addition, taxpayers today face challenges proving that expenses are legitimate due to the excessive amount of evidence required by the tax authorities.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

Please see answer to question 29.

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