

N°44 | October 2025

Informative Newsletter Legal Regulations

RSM Peru Monthly Newsletter

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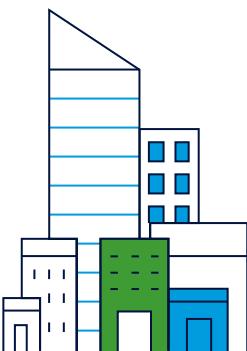
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Article

Constitutional Court Reaffirms Limits on Labor Outsourcing

The Constitutional Court (TC) has issued a ruling in Case N° 03097-2024-PA/TC (Lima Airport Partners S.R.L.), declaring unfounded the constitutional relief action that sought the non-application of Supreme Decree N° 001-2022-TR, a regulation that prohibits the outsourcing of activities that form part of the core of the business when it involves the continuous assignment of personnel to the principal company.

BACKGROUND



The plaintiff company argued that Supreme Decree N° 001-2022-TR exceeded the limits of the regulatory authority of the Executive Branch by introducing a new concept, the "core of the business," which was not expressly contemplated in the law. It alleged that the prohibition affected freedom of enterprise, freedom of contract, and the principle of normative hierarchy.

However, the TC recalled that the Outsourcing Law already provides structural limitations, such as the prohibition of simple personnel provision and the requirement of business autonomy, its own equipment, and a plurality of clients. In this sense, the challenged supreme decree does not create a new restriction, but rather clarifies the scope of the existing ones.

JURISPRUDENTIAL STANDARD

The Constitutional Court confirms the validity of Supreme Decree N° 001-2022-TR as a legitimate regulation that develops the limits already provided in the Outsourcing Law, without introducing new restrictions.

Likewise, it reaffirms that outsourcing is constitutionally valid as long as there is business autonomy on the part of the contractor and it is not used as a means of labor precarization through the permanent assignment of workers to the principal company.

The TC also highlighted its unifying role regarding constitutional criteria, in light of the contradictory decisions issued by different judicial and administrative bodies on this matter.

IMPLICATIONS IN THE PRIVATE SECTOR

- Principal companies must review their outsourcing contracts to ensure that they do not include activities that form part of the core of the business with continuous assignment of personnel.
- Sunafil may resume oversight activities in this area once the precautionary measures issued by Indecopi are lifted.
- The ruling reinforces the need to align business management with constitutional standards of labor protection, without affecting freedom of enterprise within the limits of reasonableness and proportionality.



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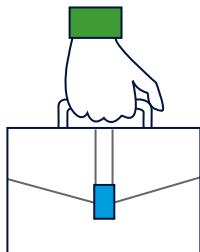
Article

In what currency should transfer pricing analyses be performed?

In a context of increased international tax scrutiny, consistency between accounting and tax rules is essential. Tax Court Resolution (RTF by its acronym in Spanish for 'Resolución del Tribunal Fiscal') N.º01428-1-2023 presents the case of a company that applied the Transactional Net Margin Method (TNMM) using its functional currency (US dollars), while its tax assessment was calculated in Peruvian soles. This raises the question: should the economic reality of the transactions (reflected in the functional currency) prevail, or should the formal obligation to keep accounting records in the national currency take priority?

CORE OF THE CONTROVERSY

The taxpayer argued that its functional currency was the **US dollar**, as this was the currency of the primary economic environment in which it operated and conducted its purchases and sales of mineral concentrates. It claimed that, under subsection (e) of Article 32-A of the Income Tax Law and its regulations, the transfer pricing analysis must reflect the economic reality of the business, which made the use of the US dollar consistent with its activities.



National Superintendence of Customs and Tax Administration (SUNAT by its acronym in Spanish for 'Superintendencia Nacional de Administración Tributaria'), however, rejected this approach, stating that the taxpayer used financial information in US dollars when it should have used Peruvian soles, in accordance with Article 87.4 of the Tax Code, which establishes that **tax obligations must be determined in the national currency**. SUNAT also noted that only companies with mining stability agreements, hydrocarbon contracts with the State, or prior authorization may use the US dollar as their functional currency, conditions the taxpayer failed to demonstrate.

CONCLUSION

Although the Tax Court adopted a position favorable to the company, the resolution does not constitute binding precedent. Nevertheless, the case highlights the importance of properly analyzing the economic nature of transactions for transfer pricing purposes, ensuring that the study accurately reflects the principle of arm's length and, therefore, the economic reality in which the transactions take place.

Companies with foreign currency operations should:

- Properly document their functional currency.
- Provide reconciled information between the functional and national currencies.
- Explicitly challenge, starting from the initial request for information, any attempt by SUNAT to require the analysis in the national currency, invoking Articles 32-A of the Income Tax Law and Articles 111 and 113 of its Regulations.



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Legal Regulations

Labor

- Supreme Decree that amends the Regulation of Law No. 31969, Law that promotes competitiveness and employment in the textile, garment, agricultural and irrigation, agro-export, and agro-industrial sectors and fosters their economic recovery, approved by Supreme Decree No. 140-2024-EF.

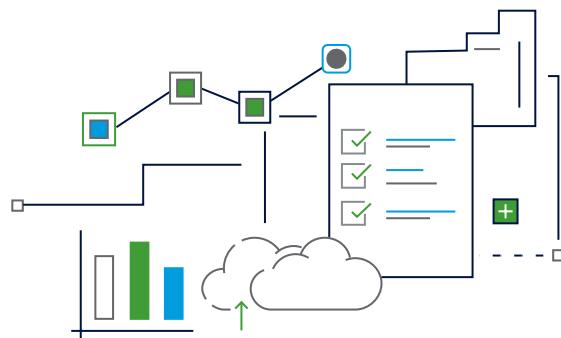
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Legal Basis: Supreme Decree No. 210-2025-EF.

Effective: January 1, 2026.

Objective: The purpose of this Supreme Decree is to amend the Regulation of Law No. 31969, which promotes competitiveness and employment in the textile, garment, agricultural and irrigation, agro-export, and agro-industrial sectors and fosters their economic recovery, approved by Supreme Decree No. 140-2024-EF, specifically regarding the determination of the annual increase in production for the application of the investment reinvestment tax credit.



Corporate

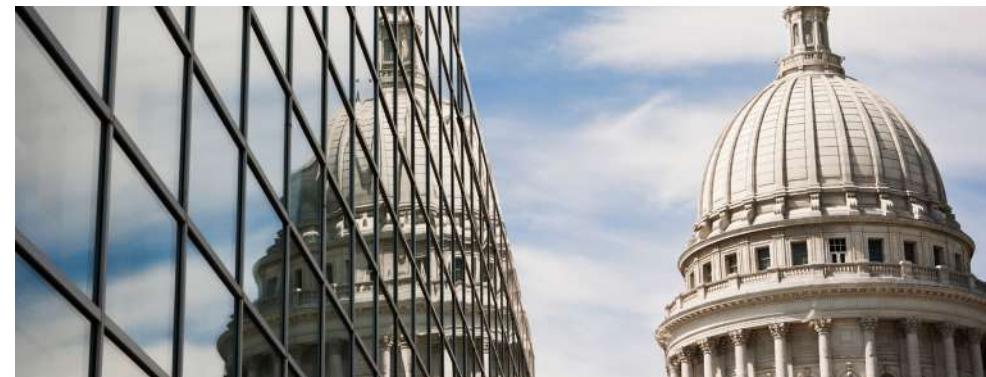
- Declaration of illegal bureaucratic barrier regarding provisions on the restrictions of attorneys-in-fact and/or legal representatives contained in the Regulation of Legislative Decree No. 1350, Migration Law, and in the TUPA of the National Superintendence of Migration.

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Legal Basis: Resolution No. 0363-2025/SEL-INDECOPI.

Objective: Resolution No. 0363-2025/SEL-INDECOPI declares illegal the restriction imposed by the National Superintendence of Migration and the Ministry of the Interior that prevented attorneys-in-fact or legal representatives from participating in procedures for the change or extension of immigration status for adults. INDECOPI determined that such limitation violates Article 118 of Law No. 27444, which recognizes the right of representation in administrative proceedings. However, it specified that Migration authorities may require personal attendance only when necessary for biometric verification or other justified acts.



Case Law

JUDICIARY

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Judgment No. 4972-2023 Lima.

Subject: Due Process and Reasoning of Judicial Decisions.

Summary: The right to obtain a duly reasoned judicial decision does not imply that the court must address every argument raised by the parties, but rather that the decision provides adequate justification for the ruling issued, according to the nature of the matter under discussion.

Decision: To declare UNFOUNDED the cassation appeal filed by Savia Perú Sociedad Anónima.

JUDICIARY

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Judgment No. 18195-2023 Lima.

Subject: Articles 36 of Law No. 27444 and 9 of Law No. 29060.

Summary: Provisions declared invalid for violating the principle of legality, as they are not included in ESSALUD's Single Text of Administrative Procedures (TUPA).

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff Tecnológica de Alimentos S.A.

JUDICIARY

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Judgment No. 3733-2023 San Martín.

Subject: Breach of Labor Regulations.

Summary: Municipal workers classified as laborers are subject to the private labor regime regulated by Legislative Decree No. 728, approved by Supreme Decree No. 003-97-TR. Therefore, they cannot be hired as service providers under any circumstance.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff José Luis Dávila Dávila.

JUDICIARY

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Judgment No. 31781-2023 Cajamarca.

Subject: Reinstatement and Others.

Summary: Municipal workers performing driver duties fall under the private labor regime in accordance with Article 37 of Law No. 27972, the Organic Law of Municipalities.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff Ricardo Cadenillas Díaz.

JUDICIARY

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Judgment No. 35599-2023 Cañete.

Subject: Nullity of Legal Act.

Summary: Restitution of property under Article 921 of the Civil Code is applicable when the nullity of the legal acts sustaining the defendants' possession has been declared (Article 219, items 3, 4, and 8), and the plaintiff's better right to possession has been recognized. An illegitimate possession based on void acts cannot be upheld.

Decision: To declare FOUNDED the cassation appeal filed by Vicente Dioscórides Saldaña Flores.

JUDICIARY

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Judgment No. 22964-2023 Lambayeque.

Subject: Reinstatement.

Summary: Pursuant to Article 77(d) of the LPCL, labor fraud occurs in temporary contracts when the objective cause for hiring is not specified, or when it is vague or imprecise. Merely indicating the position or duties is insufficient; the objective reasons must be justified according to the legal requirements of each contract type.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff María Digna Sialer Santisteban.

JUDICIARY

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Judgment No. 2152-2023 Cusco.

Subject: Compensation for Damages.

Summary: According to the Supreme Court's jurisprudential criterion, claims for damages filed by workers under the public labor regime may be processed under the procedural rules of the Labor Procedural Law (Law No. 29497).

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff Joel Malquiño Merma Meza.

JUDICIARY

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Judgment No. 15321-2023 Loreto.

Subject: Reinstatement.

Summary: An employee is one who does not directly apply physical effort to the material, machine, or tool—as a laborer does—but rather works with abstract symbols such as language, drawings, or mathematical formulas. However, intellectual work may also involve physical effort and vice versa. The distinction depends on which activity predominates: if intellectual activity prevails, the individual is an employee; if manual labor predominates, the individual is a laborer.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff Marcos Guerra Gonzales.

JUDICIARY

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Judgment No. 33554-2022 Lima.

Subject: Nullity of Administrative Resolution.

Summary: The employer is only obligated to grant union leave for mandatory attendance at union activities for up to thirty days per calendar year, in accordance with Article 32 of the Consolidated Text of the Collective Labor Relations Law, approved by Supreme Decree No. 010-2003-TR.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff Mexichem Perú Sociedad Anónima.

JUDICIARY

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Judgment No. 1688-2023 Lambayeque.

Subject: Reinstatement.

Summary: In a fixed-term employment contract due to an increase in activity, the essential elements must be expressly stated: the purpose of the contract (i.e., the objective reasons and motives) and its duration. In this case, the alleged objective cause for the increase in activity was not duly justified in the contract or its renewals.

Decision: To declare UNFOUNDED the cassation appeal filed by the plaintiff Pierre Augusto Figueroa Gonzales.

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Judgment No. 1616-2023 Lima.

Subject: Non-application of Agreement and Others.

Summary: In actions concerning rights derived from the employment relationship, the statute of limitations established by Law No. 27321 applies, rather than that of the Civil Code.

Decision: To declare UNFOUNDED the cassation appeal filed by the plaintiff Beatriz Angélica Alcedo Toro.

JUDICIARY

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Judgment: Cassation No. 27730-2022 Lima.

Subject: Compensation for Unjustified Dismissal.

Summary: A ruling is duly reasoned when judicial decisions address all disputed facts, expressing and justifying the legal position applied to the specific case.

Decision: To declare UNFOUNDED the cassation appeal filed by the plaintiff, Karla Elena Rodríguez de la Rosa.

JUDICIARY

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Judgment: Cassation No. 21522-2023 Lima.

Subject: Administrative Contentious Action.

Summary: The administrative sanctioning procedure, as an exercise of state authority, must be conducted with full respect for the principles of due process, defense, and material truth; otherwise, such action is illegal and constitutes a ground for nullity under subsection 1, Article 10 of the Consolidated Text of Law No. 27444.

Decision: To declare UNFOUNDED the cassation appeal filed by the Metropolitan Municipality of Lima.

JUDICIARY

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Judgment: Cassation No. 3177-2022 Lima Norte.

Subject: Reclamation.

Summary: Granting a ruling the status of res judicata guarantees every litigant's right, first, that the decisions ending a judicial process cannot be appealed once the means of appeal have been exhausted or the appeal period has expired; and second, that the content of such rulings cannot be annulled or modified by acts of other public authorities, third parties, or even by the same judicial bodies that issued them.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff, Zulmi Evangelista Córdova López.

JUDICIARY

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Judgment: Cassation No. 3603-2022 Moquegua.

Subject: Recognition of De Facto Union.

Summary: The Supreme Chamber finds that there is a violation of Article 197 of the Civil Procedure Code due to the lack of joint assessment of evidence. Such assessment must be conducted as provided by said article to ensure due reasoning of the appealed decision. A valid judgment must contain sufficient reasoning based on the evidence properly presented during the trial, supporting the plaintiff's claim of the existence of a de facto union with the defendant.

Decision: To declare FOUNDED the cassation appeal filed by the plaintiff, Margarita Maribel Puma Aroquipa.

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Judgment: Cassation No. 19681-2021 Junín.

Subject: Labor Reinstatement.

Summary: There is a violation of due process in its aspect of judicial reasoning when the appellate judgment lacks sufficient arguments to identify the grounds of the decision, or when the insufficiency of reasoning is evident in light of the subject matter decided, showing a manifest lack of justification.

Decision: To declare FOUNDED the cassation appeal filed by the Huancayo Charitable Society.

JUDICIARY

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Judgment: Cassation No. 3317-2023 Junín.

Subject: Nullity Ex Officio for Public Interest.

Summary: An administrative act must meet validity requirements; otherwise, it incurs in irremediable nullity, which may be declared ex officio by the administrative authority when it harms public interest or affects fundamental rights.

Decision: To declare UNFOUNDED the cassation appeal filed by the plaintiff, Inés Suárez Cárdenas.

JUDICIARY

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Judgment: Cassation No. 21257-2022 Lima.

Subject: Reasoning of Judicial Decisions.

Summary: A reasoning defect exists when the decision's grounds fail to show the reasoning that led the judge to a particular conclusion, or when the court has not specifically addressed the parties' arguments. Generic or unsupported statements without factual or legal basis constitute apparent reasoning.

Decision: To declare FOUNDED the cassation appeal filed by the defendant, the Ministry of Education.

JUDICIARY

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Judgment: Cassation No. 55507-2022 Lima.

Subject: Lack of Due Reasoning.

Summary: The Superior Court committed a reasoning defect by failing to address the grievance regarding the excessive delay in notifying the administrative sanction (more than six months after the alleged infraction) and the apparent simultaneous notification of the Sanction Resolution, Inspection Report, and Notification Record, thus infringing the right to defense and due process of the plaintiff company.

Decision: To declare FOUNDED the cassation appeal filed by J&R Ingeniería Sociedad Anónima Cerrada.

SUNARP

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Resolution of the President of the Tribunal Registral No. 252-2025-SUNARP/PT.

Subject: Powers Granted Prior to Judicial Support.

Summary: Orders the publication of the binding precedent approved in the 307th Ordinary Plenary Session of the Registry Tribunal, held virtually on September 24, 2025. "The judicially ordered appointment of a support representative for a person with a disability who cannot express their will renders null and void any powers of attorney or mandates previously granted."

Resolution No. 4187-2025-SUNARP-TR, dated September 24, 2025.

JUDICIARY

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Judgment: Cassation No. 31979-2022 Lima.

Subject: Payment of Remuneration Components.

Summary: Through this exceptional appeal, it is not possible to challenge the conviction reached by the Superior Court regarding the evidence supporting the payment of remuneration components. Nor has it been shown that the alleged violations affected the outcome of the ruling.

Decision: To declare UNFOUNDED the cassation appeal filed by the plaintiff, Gilberto Caballero Caballero.

JUDICIARY

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Judgment: Cassation No. 10625-2022 Huaura.

Subject: Reinstatement of Disability Pension.

Summary: It was proven that the defendant entity, in accordance with its authority, requested the plaintiff to undergo the required medical evaluations to verify her disability status; however, after the established period elapsed, the plaintiff failed to appear, leading the entity to suspend her disability pension in accordance with the law.

Decision: To declare UNFOUNDED the cassation appeal filed by María Conchucos Alvarado.

LABOR FISCAL COURT

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Plenary Chamber Resolution No. 010-2025-SUNAFIL/TFL.

Subject: Labor Inspection.

Summary: The appeal for review filed by AGROEXPORTADORA SOL DE OLMOS S.A.C. is declared PARTIALLY FOUNDED, and consequently, the PARTIAL NULLITY of Sub-Intendency Resolution No. 1219-2022-SUNAFIL/ILM/SISA3, dated October 13, 2022, and subsequent acts and proceedings in administrative sanctioning procedure No. 1720-2020-SUNAFIL/ILM, is declared. The criteria set forth in grounds 6.42, 6.43, 6.44, 6.45, and 6.46 of this resolution, referring to the unitary nature of the inspection requirement measure, are established as binding administrative precedents.

Decision: Declare PARTIALLY FOUNDED the appeal for review filed by AGROEXPORTADORA SOL DE OLMOS S.A.C.

SUNAFIL

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Resolution No. 1384-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by EMPRESA PRESTADORA DE SERVICIOS DE SANEAMIENTO DE AGUA POTABLE Y ALCANTARILLADO DE BARRANCA S.A. against Intendancy Resolution No. 150-2023-SUNAFIL/IRE-LIM, dated September 5, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by EMPRESA PRESTADORA DE SERVICIOS DE SANEAMIENTO DE AGUA POTABLE Y ALCANTARILLADO DE BARRANCA S.A.

SUNAFIL

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Resolution No. 1385-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by PROSEGURIDAD S.A. against Intendancy Resolution No. 210-2023-SUNAFIL/ILM, dated March 20, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by PROSEGURIDAD S.A.

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Resolution No. 1382-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Relations.

Summary: The appeal for review filed by CERÁMICOS PERUANOS S.A. against Intendancy Resolution No. 327-2023-SUNAFIL/ILM, dated April 11, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by CERÁMICOS PERUANOS S.A.

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Resolution No. 1381-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by UNIVERSIDAD CIENTÍFICA DEL SUR S.A.C. against Intendancy Resolution No. 331-2023-SUNAFIL/ILM, dated April 11, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by UNIVERSIDAD CIENTÍFICA DEL SUR S.A.C.

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Resolution No. 1365-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Relations.

Summary: The appeal for review filed by TRUPAL S.A. is declared PARTIALLY FOUNDED, and consequently, the NULLITY of Sub-Intendancy Resolution No. 788-2022-SUNAFIL/IR-LL/SISA, dated July 21, 2022, and subsequent acts and proceedings in sanctioning procedure No. 89-2020-SUNAFIL/IRE-LIB, is declared.

Decision: Declare PARTIALLY FOUNDED the appeal for review filed by TRUPAL S.A.

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Resolution No. 1362-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Relations.

Summary: The appeal for review filed by SAGA FALABELLA S.A. against Intendancy Resolution No. 1610-2022-SUNAFIL/ILM, dated October 4, 2022, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by SAGA FALABELLA S.A.

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Resolution No. 1366-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Relations.

Summary: The appeal for review filed by CORPORACIÓN PESQUERA INCA S.A.C. against Intendancy Resolution No. 281-2023-SUNAFIL/IRE-LIB is declared PARTIALLY FOUNDED, and consequently, the PARTIAL NULLITY of Sub-Intendancy Sanction Resolution No. 990-2022-SUNAFIL/IR-LL/SISA, dated September 20, 2022, and subsequent acts and proceedings in sanctioning procedure No. 141-2022-SUNAFIL/IRE-LIB, is declared.

Decision: Declare PARTIALLY FOUNDED the appeal for review filed by CORPORACIÓN PESQUERA INCA S.A.C.

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Resolution No. 1369-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by DP WORLD LOGISTICS S.R.L. against Intendancy Resolution No. 213-2023-SUNAFIL/IRE-CAL, dated August 25, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by DP WORLD LOGISTICS S.R.L.

SUNAFIL

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Resolution No. 1364-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by SOBREANDES S.A.C. against Intendancy Resolution No. 279-2023-SUNAFIL/ILM, dated April 4, 2023, is declared UNFOUNDED.

Decision: Declare UNFOUNDED the appeal for review filed by SOBREANDES S.A.C.

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Resolution No. 1361-2025-SUNAFIL/TFL-First Chamber.

Subject: Labor Inspection.

Summary: The appeal for review filed by PROMOTORA INTERAMERICANA DE SERVICIOS S.A. is declared PARTIALLY FOUNDED, and consequently, the PARTIAL NULLITY of Sub-Intendancy Resolution No. 779-2023-SUNAFIL/IRE-CAL/SISA, dated June 8, 2023, and subsequent acts and proceedings in sanctioning procedure No. 1147-2021-SUNAFIL/IRE-CAL, is declared.

Decision: Declare PARTIALLY FOUNDED the appeal for review filed by PROMOTORA INTERAMERICANA DE SERVICIOS S.A.



Reports

SUNAT

Report No. 000100-2025-SUNAT/7T0000

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Subject: Institutional inquiry on the interpretation and scope of tax regulations.

Conclusion:

- 1 The competent official authorized to impose attachment measures on funds deposited in bank accounts, other than the coercive executors designated by SUNAT, is empowered to order an attachment in the form of withholding with respect to the amounts released from the taxpayer's detraction account, as of the business day following the notification of the resolution approving the release request.
- 2 Coercive executors other than those of SUNAT, when exercising the coercive powers granted by the Consolidated Text of Law No. 26979 – Law of Coercive Enforcement Procedure – as well as by the Tax Code, are authorized to order attachments in the form of withholding on funds deposited in detraction accounts, provided that such funds have lost their non-attachable status due to the issuance and notification of a favorable resolution approving a request for release of funds.
- 3 A resolution ordering an attachment measure on funds released from the detraction account opened in Banco de la Nación must be notified to said financial institution.

SUNAT

Report No. 000107-2025-SUNAT/7T0000

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Subject: Institutional inquiry on the interpretation and scope of tax regulations.

Conclusion:

The intermediation service that connects the supply and demand of taxi services, provided by non-domiciled companies to users who are habitual residents in Peru through an application that allows duly authorized taxi service providers (by the ATU) and users to agree on the service, is not exempt from VAT.



SUNAT

Report No. 000105-2025-SUNAT/7T0000

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Subject: Institutional inquiry on the interpretation and scope of tax regulations.

Conclusion:

In the context of an income tax audit procedure, as a result of which the Tax Administration issues assessment resolutions for said tax and for the Additional 5% Rate on the amounts referred to in subsection (g) of Article 24-A of the Income Tax Law, when only the assessment resolution issued for income tax has been appealed:

The coercive collection of the tax debt contained in the assessment resolution issued for the Additional 5% Rate is applicable, even if it is related to the adjustments that support the income tax assessment resolution under appeal.

SUNAT

Report No. 000112-2025-SUNAT/7T0000

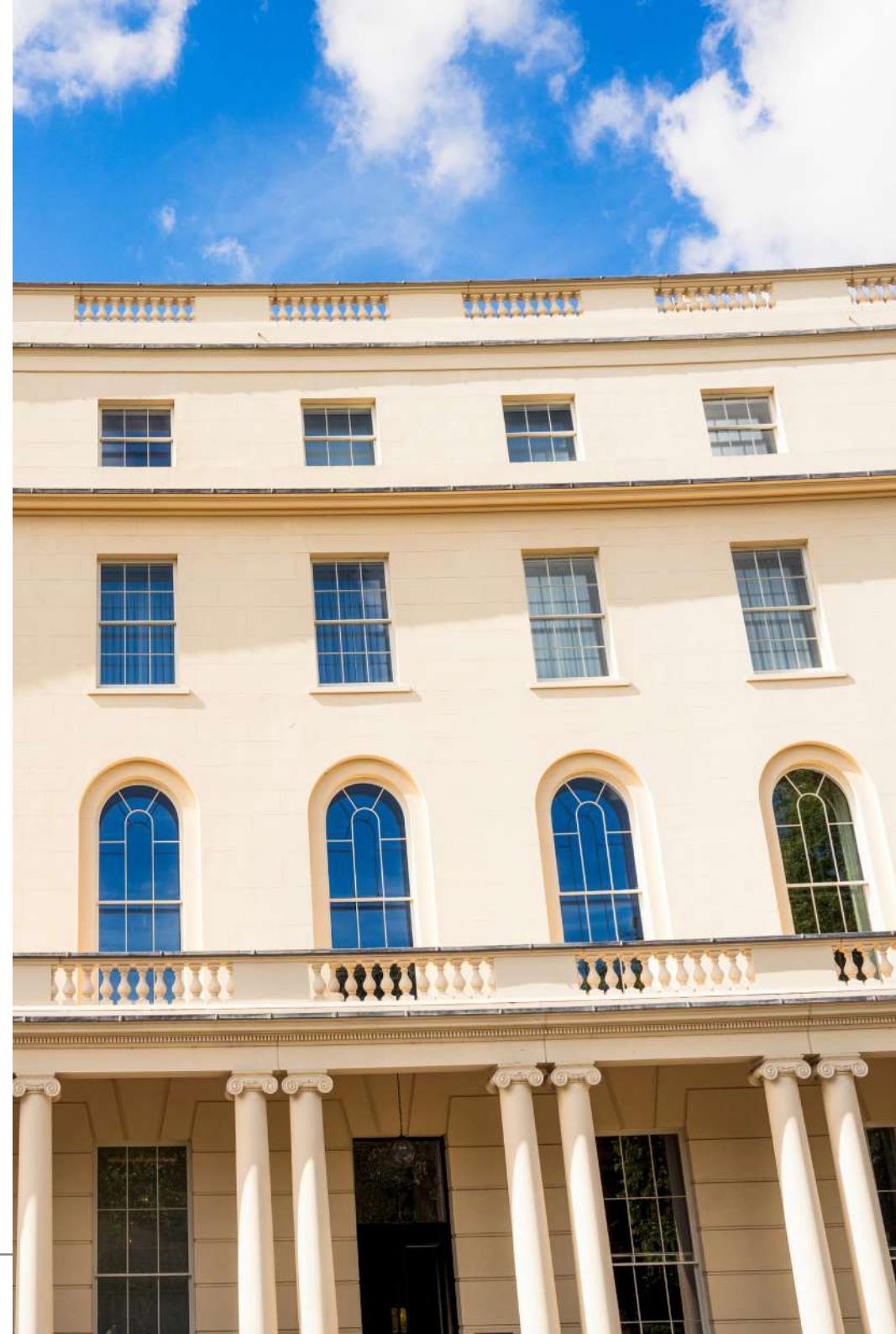
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Subject: Institutional inquiry on the interpretation and scope of tax regulations.

Conclusion:

The RERA (Early Recovery of VAT) regime applies to VAT paid on the acquisition of goods, services, and construction contracts financed by FITEL, under a non-reimbursable financing agreement, provided that such funds are used directly by the beneficiaries of the regime in the execution of the project's investment commitments and are destined for activities subject to VAT or export operations.



If you want more information or have any questions,
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