

LEWIN & WILLS

ABOGADOS  
1978

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Significant  
Economic  
Presence





## 2. What is a deliberate and systematic interaction with clients and/or users located in Colombia?

Deliberate interaction is presumed if the entity engages in marketing activities or has a marketing presence with 300,000 or more clients and/or users in the country. The drafted decree did not establish a definition for marketing interaction or marketing presence.

This interaction is also presumed if the entity allows the display of prices or enables payments in Colombian pesos (COP).

## 3. Who are considered clients or users?

→ Clients: Individuals or entities located in Colombia who pay for or contract the acquisition of goods or services offered by non-resident individuals or entities not domiciled in Colombia.

← Users: Individuals or entities located in Colombia who acquire or make use of a digital interface, identifying themselves with a username and password to access that interface.

## 4. What criteria will be used to determine if an operation is covered by the SEP Regime?

- When the domicile and/or habitual residence of the client and/or user is located in Colombia.
- If payments are made through bank cards or any other payment mechanism located in Colombia.
- If the bank card used for payment was issued in Colombia.
- In the sale of goods, if the shipping address corresponds to Colombia.
- If the IP address of the client's and/or user's device at the time of the transaction corresponds to Colombia.
- If the mobile country code of the SIM card used by the client and/or user places them in Colombia.

## 5. What will be the tax obligations for entities or individuals with SEP in Colombia?

Operations falling within the scope of SEP will be subject to Income Tax in Colombia. Accordingly, the entity or individual will need to choose whether to fulfill their tax obligation by filing a tax return or by paying through tax withholdings.

- If the entity or individual opts for payment through tax returns, certain obligations must be fulfilled, including:
  - Registering in the Taxpayer Registry (RUT).
  - Seeking authorization from the DIAN.
  - Filing of tax returns following legally established deadlines.
  - Making advance payments every quarter that will correspond to 2% of the net quarterly income derived from operations falling within the scope of SEP. These advance payments will be subsequently offset against the annual tax liability of the entity or individual.

In this scenario, individuals and entities have the option to pay an Income Tax of 3% of the gross income generated from SEP activities.

- If the entity or individual elects to pay through the withholding tax mechanism, it is important to note that the applicable withholding tax rate will be 10%. The corresponding regulations for these withholdings are expected to be issued in the near future.

#### 6. Are payments made to individuals or entities with SEP in Colombia deductible for Income Tax purposes?

Yes, taxpayers who acquire products or services from individuals or entities with SEP in Colombia may support the deductibility of these expenses with the corresponding invoices or equivalent documents issued.

It will also be necessary for the acquirer to provide evidence of the withholding tax if the individual or entity with SEP did not choose to pay Income Tax through the filing of tax returns in Colombia.

#### 7. Do the Double Tax Treaties signed by Colombia prevent the application of SEP regulations?

Yes, Double Tax Treaties can impose limitations on the Income Tax which would otherwise be generated due to SEP in Colombia. However, such limitations may differ depending on the specific provisions stipulated within each Treaty.

While the official decree will be issued in the upcoming weeks, the provisions related to the Significant Economic Presence will come into effect as of January 1, 2024.

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**If you have any questions  
about this topic please contact:**

**Juan Andres Palacios** [jpalacios@lewinywills.com](mailto:jpalacios@lewinywills.com)

**Federico Lewin** [flewin@lewinywills.com](mailto:flewin@lewinywills.com)



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