



TAXES ON DIGITAL SERVICES IN LATAM

BRIEF INFORMATION OF THE TAX TREATMENT OF DIGITAL SERVICES IN LATIN AMERICA

In today's globalized world, economic operators have sought alternative mechanisms to sell goods, provide services or to serve as intermediaries. In order to facilitate these operations, the digital world has become especially important as a sales and services channel, especially in the current context of Covid-19.

In Latin America, the various tax legislations have committed to the task of being able to adapt to the changes generated by digital markets, and thence being capable of levying the economic activities that materialize within them.

In the case of Latin America, most digital service providers do not reside in the country of their final customers and, because these services are provided online, it has been necessary to define criteria that allow to determine the elements of the taxable event. That is to define what type of services are to be taxed, who constitutes the service provider, where is the beneficiary actually located, and who should be responsible for withholding or paying the corresponding tax.

The Latin American countries listed below have found different solutions to the issue mentioned, but it is important to note that these regulations are relatively new and being subject to constant discussions and modifications according to each country's experience with this type of taxation.

VALUE ADDED TAX

Definition of Digital Services by VAT

Law: All those services performed through the web or any sort of adaptation or application of protocols, platforms, or technology used on Internet or any other web, where equivalent services may be provided and due to their nature, such services could be automated with minimum human intervention, regardless the device for downloading, displaying or use, including: Web services, storage, software services (SaaS), remote systems, games, social media, streaming, newspaper, among others provided for a foreign entity and economically used in Argentina.

Subjects under VAT scope: Registered taxpayers and non-registered taxpayers (final consumers) are taxed at 21% VAT:

- **Registered taxpayers:** They shall pay the corresponding tax within 10 working days since the taxable event was born (the earliest between the end of service or invoice). The 21% on net invoice will be treated as a tax credit which can be offset from VAT Debts.
- **Non registered taxpayers:** By the time of paying the Credit Card Statement. Such 21% will be included into the Final amount for final users

Important: The tax burden of VAT for Digital services does not affect the foreign entity and impact on the final users or registered taxpayer.

Important: The tax burden for Digital services does not affect the foreign entity and impact on the local individuals who hired them.

Income Tax: As long as there is no advice, technical assistance or technology transfer is not subject to the withholding income tax.

Important: The tax burden for Digital Services does not affect the foreign entity and impact only on individual residentes who hired them.

Turnover Tax: This is a provincial tax, so the power of taxation is allocated to each jurisdiction.

Current Scenario for Digital Service:

Some provinces, where the service is received by the final user, tax or they are next to tax such service. Rates might vary between 2% and 5%.

SOLIDARITY TAX "PAÍS"

Digital Services: All those digital services that can be framed under the definition provided by VAT Law above, will be taxed by Solidarity Tax at 8 % rate.

In Brazil, «digital services» are subject to service taxes - ISS (2% to 5%) PIS/COFINS (3.65% or 9.25%).

The ISS aliquot will depend on the location of the establishment, while PIS/COFINS rates will depend on the income tax regime (accrued or presumed). Currently, there is a great legal discussion that, depending on the «digital service», would be subject to ICMS (status VAT) and not to the ISS.

In Chile, digital services have been recently added as a particularly taxable event in the VAT Law (19% rate), that entered into force on June 1st, 2020.

These digital services consider:

1. The intermediation of services provided in Chile, regardless of their nature, or of sales made in Chile or abroad, provided that the latter give rise to an import;
2. The provision or delivery of digital entertainment content, such as videos, music, games or other analogues, through download, streaming or other technology, including for these purposes, texts, magazines, newspapers and books;
3. Making available software, storage, platforms or IT infrastructure; and
4. Advertising, regardless of the support through which it is delivered, materialized or executed

The Internal Revenue Service issued ruling No. 55 of 2020, which established that providers not resident in Chile, must be registered in the country, collect and pay such tax on a monthly or quarterly basis as they choose.

These services shall be deemed to be provided within Chilean territory where at least two of the following conditions are met:

- i. That the IP address of the device used by the user or other geolocation mechanism establishes that it is located in Chile; or
- ii. That the credit card, bank current account or other means of payment used for payment is issued or registered in Chile;
- iii. That the address provided by the user for the billing or issuance of proof of payment is located in the national territory; or
- iv. That the subscriber identity module (SIM) card of the mobile phone through which the service is received has as a country code to Chile

Additionally, the Internal Revenue Service issued ruling No. 55 of 2020, which established that providers not resident in Chile, must be registered in the country, collect and pay such tax on a monthly or quarterly basis as they choose. Registry and filing available at Internal Revenue Services web site.

Since 2016, digital platforms in Colombia are taxed with VAT, regarding music, video, games, and education services. However, it was only until 2019 that the tax authorities adapted the tax system, allowing that the providers of these services from abroad comply with their obligations related to the new tax.

Thus, all non-residents who are providers of services through these platforms must:

1. register with the national treasury as responsible for VAT;
2. invoice the VAT and collect it, and
3. submit a periodic VAT return with which they pay the VAT collected

There is currently a collection mechanism pending regulation, consisting of the VAT paid by the client being withheld by the banks that issued the debit or credit cards with which cardholders pay for the services of the platforms. However, until the matter is regulated, all providers must act following the previous paragraph.

INCOME TAX REVENUE THROUGH THE INTERNET AND APPLICATIONS

Obligation to pay the tax "Individual with business activities".

Obligation to withhold for Foreign Residents with or without Permanent Establishment in Mexico when the individuals request this option.

Passenger transport, delivery of goods, hosting services, sell of goods and service provision.

Rate based on income and activity; over total income effectively obtained by the Individual during the month.

Passenger transport & delivery of goods	
Monthly income	Rate with-held
Up to \$5,000	2%
Up to \$15,000	3%
Up to \$21,000	4%
Over \$21,000	8%

Airbnb like services	
Monthly income	Rate with-held
Up to \$5,000	2%
Up to \$15,000	3%
Up to \$35,000	5%
Over \$35,000	10%

Sell of goods & service provision	
Monthly income	Rate with-held
Up to \$1,500	0.4%
Up to \$5,000	0.5%
Up to \$10,000	0.9%
Up to \$25,000	1.1%
Up to \$100,000	2%
Over \$100,000	5.4%

INCOME TAX REVENUE THROUGH THE INTERNET AND APPLICATIONS PAID BY INDIVIDUALS

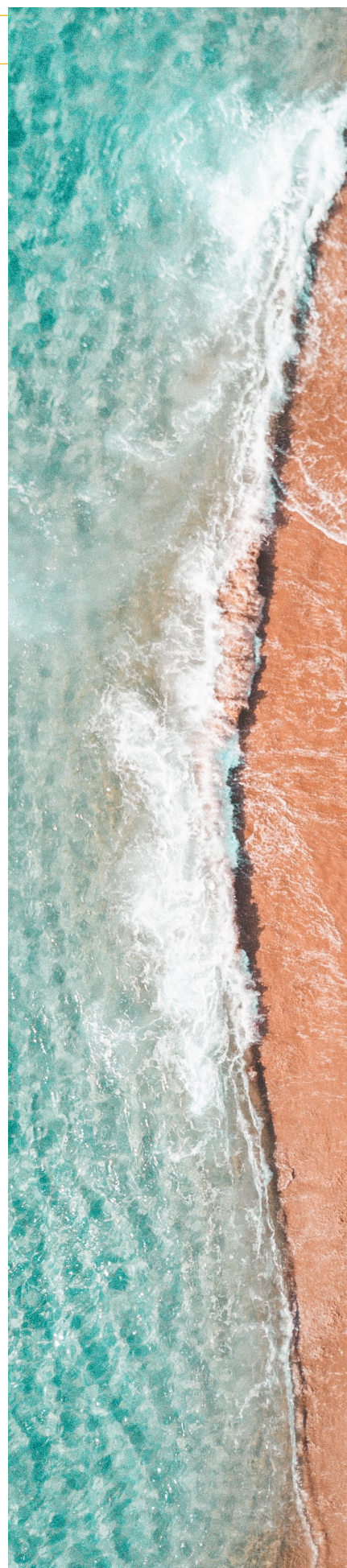
Individuals with revenue collected by final consumer, may choose to present on their own the definitive tax payment, if annual income does not exceed 300,000 pesos, also considering revenue obtained through digital platforms.

INCOME TAX REVENUE THROUGH THE INTERNET AND APPLICATIONS OBLIGATIONS

- May only consider as definitive the tax withheld or reported, if annual revenue does not exceed 300,000 pesos
- If the option of definitive taxes is elected, the corresponding deductions may not be made
- Shall keep the CFDI (Digital Tax Receipt Online) as proof of the withholding issued by technological platforms
- Submit Notice before SAT, in the event of opting to consider withholding and payment of definitive tax, starting from the 30 days following that in which the first revenue is received in the platform. (No change in 5 years), notice shall be submitted no later than June 30 of 2020

INCOME TAX REVENUE THROUGH THE INTERNET AND APPLICATIONS INDIVIDUALS WITHOUT TAX ID

If the Individual is not registered before SAT, a 20% must be withheld.



RESIDENTS ABROAD WITHOUT PE IN MEXICO OBLIGATIONS:

- Issue an electronic invoice (CFDI) for the payments and Income Tax withheld to individuals, for 2020 the invoice could be issued from abroad with some requirements, five days after the month end
- Register before Mexican tax authorities (SAT) and obtain Tax ID before June 30, 2020
- A tax legal representative and a tax address will be need in Mexico in order to obtain the Tax ID
- Obtain electronic signature (FIEL)
- Paid the withheld tax in the local currency of the PE to the account of the Mexican Treasury located abroad, Mexican tax authorities will publish the accounts in the SAT web page
- Payment shall be performed no later than the 17th day of the following month, this means withholding performed during June 2020, shall be paid on July 17th

FOREIGN RESIDENTS WITHOUT EP, WHO PROVIDE BROKERING SERVICES OF GOODS DISPOSITIONS AND SERVICES ON BEHALF OF THIRD PARTIES IN MEXICAN TERRITORY MUST COMPLY WITH THE FOLLOWING:

- Withhold 50% of the VAT (16% percentage varies due to the region) to individuals that sell goods and provide services through the foreign resident website or application
- Withhold 100% of the VAT (16% percentage varies due to the region) to individuals without Tax ID that sell goods and provide services through the foreign resident website or application

- Paid the withheld tax in the local currency of the PE to the account of the Mexican Treasury located abroad, Mexican tax authorities will publish the accounts in the SAT web page
- Payment shall be performed no later than the 17th day of the following month, this means withholding performed during June 2020, shall be paid on July 17th
- Submit a monthly report to Mexican tax authorities about the Mexican clients that used their platform and performed a transaction even if the collection was not performed by foreign resident, in 10th day of the following
- Individuals will be able to consider the VAT withholding as definitive if they do not exceed \$300,000 pesos of income on the previous year

VAT TAX SERVICES PROVIDED IN MEXICAN TERRITORY

Digital services, it is considered that the service is provided in Mexico, when recipient is in fact in Mexico.

VAT TAX DIGITAL SERVICES

Digital services consist of:

- Download or access to images, movies, texts, information, videos, audio, music games, among others (does not apply to books, newspapers and electronic magazines)
- Brokering between third parties being service providers
- On-line clubs and dating sites
- Long-distance learning or exercise test

VAT TAX FOREIGN RESIDENT, WITHOUT PE WITHHOLDING DIGITAL SERVICE OBLIGATIONS

- Offer and collect jointly with digital services VAT at 16%
- Register before Mexican tax authorities (SAT) and obtain Tax ID before June 30, 2020
- A tax legal representative and a tax address will be need in Mexico in order to obtain the Tax ID and electronic signature (FIEL)
- Delivery a Quaterly return, with "Monthly Operations with recipients information" on 17th day following the end quarter
- Calculate on each calendar month the VAT at 16% for all taxable considerations
- Deliver CFDI to recipients, during 2020 invoice could be issued from abroad with some specifications
- Paid the withheld tax in the local currency of the PE to the account of the Mexican Treasury located abroad, Mexican tax authorities will publish the accounts in the SAT web page

VALUE ADDED TAX (VAT)

The VAT system in Peru does not provide a definition of digital services subject to special provisions. As a result, they are ruled by the general provisions.

In order to be levied, digital services rendered by nonresidents for the benefit of resident parties must comply with the "services utilized in the country" characterization provided by the VAT Law. This means that the service must be rendered by a nonresident and be consumed or utilized in the Peruvian territory, regardless the place in which the consideration is paid or collected and the place where the contract is concluded.

Under the VAT scheme, the taxpayer in the context of "services utilized in the country" is the resident user, who bears the economic burden of the tax. This is what generates the tax dilemma for services rendered to final users in Peru.

Certainly, the VAT must be paid under the reverse charge method, i.e., the output VAT must be paid directly by the resident user as a taxpayer, who will be able to use it as an input VAT in the following month provided all applicable requirements are fulfilled.

For these purposes, the user must be a corporate taxpayer or an individual carrying out business activities; otherwise, the regularity of the transactions implemented by the individual must be evaluated ("regularity criterion") considering their nature and amount (they must be onerous and commercial in nature). The lack of binding precedents or interpretation guidelines from the Tax Authorities developing the "regularity criterion" in the context of digital services generates uncertainty about its application when individuals act as final users.

In practice, in a Business-to-Business (B2B) relation, the resident user must pay the VAT (18% over the gross fee agreed) using Form 1662, including the tax code number (1041) and their tax ID. This amount could be used as a credit against VAT in the following month, provided all applicable requirements are fulfilled, neutralizing the economic impact of the tax.

Business-to-Consumer (B2C) relations are currently out of the current VAT scope considering the lack of special provisions and the fact that individuals not carrying out business activities are not obliged to obtain a tax ID. However, the Peruvian Government has announced its intention to develop special regulations in order to levy services rendered by online platforms located overseas to resident individuals. In the latter scenario, the VAT would be withheld by the companies processing the associated payments. Further information on this matter is not available yet.

AUDIOVISUAL SERVICES PROVIDED DIRECTLY THROUGH THE INTERNET, TECHNOLOGY PLATFORMS, COMPUTER APPLICATIONS OR SIMILAR, SUCH AS NETFLIX, SPOTIFY, AMONG OTHERS.

Since January 2018 audiovisual services provided directly through the Internet, technological platforms, computer applications or similar, are considered 100% Uruguayan source income when the user is in Uruguay (before this date was 30%). This implies that they are taxed by Non-resident income tax (NRIT) or Corporate Income tax (CIT).

Unless evidence to the contrary, is presumed that the user is in Uruguay when the consideration is made with electronic means of payment administered from our country.

These services are taxed by VAT because they are considered consumed or used economically in Uruguay.

MEDIATION AND INTERMEDIATION ACTIVITIES IN THE SUPPLY OR DEMAND OF SERVICES PROVIDED DIRECTLY THROUGH THE INTERNET, TECHNOLOGICAL PLATFORMS, COMPUTER APPLICATIONS OR SIMILAR, SUCH AS UBER AMONG OTHERS

These are those activities that, by their nature, are basically automated (requires minimal human intervention), do not have viability outside of information technology, and participates, directly or indirectly, in the supply or demand for provision of services.

Since January 2018 these activities, are:

- 100% Uruguayan source if the offeror and service applicant are in national territory (*)
- 50% Uruguayan source when one of the parts is located abroad (*)

(*) It doesn't matter the person's residence; it matters where they are.

These mediation services are taxed by VAT where both parties (offeror and user) are in national territory.

The service applicant is in national territory when the IP address of the device used to contract it, or its billing address is in Uruguay.

The service offeror is in national territory when this service is provided in Uruguay (substantial services, not accessories, should be considered).

VENEZUELA

In Venezuela, the government has said nothing about a new tax system (direct/indirect tax) on digital services, beyond that currently existing in our domestic law.

VAT

In the field of VAT, the import of services regime is established, which taxes in Venezuela services from outside Venezuela but with destination or consumption in the country. In this case, VAT Law states as responsible for the tax to the recipient of the service, as responsible for the tax caused in the taxable transaction, being obliged to pay VAT (*condictio sine qua non*) for the importation of services, and then be able to use it as a tax credit in determining the monthly tax share of VAT.

The fee is 16%, and an additional fee is about to be issued for VAT-taxed transactions paid in foreign exchange.

VAT Law defines what should be understood as services, basically an obligation to do, and sets out a number of concrete examples to consider services (royalties, technical assistance, fees, and similar intangibles for assignment of rights, etc).

INCOME TAX

In the area of direct taxes, where income tax is understood, nothing additional has been issued, and in the same sense as explained for VAT, beyond that currently existing in the LISLR.

Income Tax Law contains a series of articles concerning the analysis of the existence or not, in Venezuela, of a permanent establishment of the entity of the foreign provider of the digital service, for which it typifies a catalogue of what is expressly considered an EP that operates in Venezuela. And also, the existence of a Treaty to Avoid International Double Taxation between Venezuela and the country of residence of the income recipient should be reviewed. In the remainder, an income received by digital services from a foreign entity would not be taxable in Venezuela with income tax.

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