

New digital services tax introduced

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Introduction

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Introduction

Various countries have been exploring how to tax the digital economy with digital services taxes having been adopted or under consideration by a number of European, Asian and Latin American countries. Further, the Office of the United States Trade Representative recently announced an investigation into potentially unfair or discriminatory foreign digital services taxes with regard to US technology companies. Such tax laws are often broad enough to cover all virtual services provided within a country by foreign providers.

Mexico is no exception in this regard and a new set of rules for the collection of the applicable 16% in value added tax (VAT) for digital services entered into force in June 2020. This article provides a general summary of the new tax rules.

New tax rules

Under the new tax rules, digital services performed through digital content or applications via the Internet or any other network which is fundamentally automated and are not available free of charge, are subject to specific VAT rules if the user of the service is located in Mexico.

The law covers the following digital services:

- downloading or accessing images, movies, text, information, video, audio, music, games (including games of chance) as well as other multimedia content, multiplayer environments, mobile ringtones, online news, traffic information, weather forecasts and statistics (excluding electronic books, magazines and newspapers);
- intermediary services between third-party sellers of goods or services and buyers (except second-hand goods);
- online clubs and dating pages; and
- distance learning, tests or exercises.

The law considers users of such services to be located in Mexico if:

- they have stated to the service provider that their domicile is in Mexico;
- payment for such services is made through a Mexican intermediary;
- the IP address used by the service user is located in Mexico; or
- the service user has provided a telephone number with a Mexican country code (ie, +52).

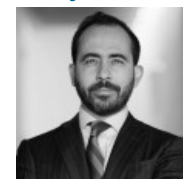
Foreign entities without a permanent establishment in Mexico for tax purposes and which provide digital services in Mexico must:

- register as withholding agents with the Mexican tax authorities;
- offer the service with the corresponding 16% VAT;
- provide information to the tax authorities on the services that users access;
- calculate and pay the applicable VAT collected to the tax authorities on a monthly basis;
- issue an invoice complying with certain requirements; and
- appoint a legal representative and domicile in Mexico.

The law provides that complying with the abovementioned rules will not trigger a taxable permanent establishment in Mexico for the foreign entity.

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In July 2020 the Tax Administration Service published in the *Federal Official Gazette* a list of non-resident entities without permanent establishment in Mexico that provide digital services to users in Mexico and which recently registered as part of the new regime. These digital companies have been implementing the above changes and have started collecting VAT from Mexican consumers.

Comment

There is no clear guidance or interpretation from the tax authorities and the courts regarding Mexico's new digital service tax rules. However, it is expected that new and additional digital economy taxes will be discussed and implemented in Mexico in the future.

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