

WTS VAT Update for the Digital Economy

Mexican VAT on Digital Services



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1. Digital Services

Following the international trend relating to the taxation of digital services, Mexico also introduced a new tax bill with several amendments to the Mexican VAT Law (further: "VATL"), in order to tax specific online services.

A key point about these reforms is that it simplifies existing rules in Mexico. The scope of Mexico's plan includes online sales to customers based in Mexico. **Both B2C and B2B supplies** will be in scope.

As a result of this law change, non-resident businesses (foreign suppliers of digital services) would be obliged to register for VAT in Mexico and deliver the tax. Registration is with the Federal Taxpayers Registry (known as the RFC).

Additional points of attention are:

- 16% VAT to be applied to the provision of digital services
- VAT returns should be filled on a monthly basis through a local tax representative
- Simplified invoicing rules may be introduced. The current reform does not state that domestic Mexican invoices (quite complex) will be used, opening the possibility of new invoicing requirements for non-resident digital businesses
- Each month non-resident businesses will also have to provide information, on a monthly basis, on the number of services supplied and the number of transactions performed to Mexico's *Servicio de Administración Tributaria* (SAT).

2. Digital services / Tax Bill 2020 - Income Tax

For income tax purposes, the Mexican tax reform clarifies that taxpayers who obtain income from using a digital platform, software, or similar technologies must pay income tax.

As a result, digital platforms could be obliged to act as collection agents and must withhold the respective amount of income tax in accordance with withholding tax rates provided by the reform.

Under the Mexican 2020 tax reform, digital platforms must therefore register in Mexico (including nonresidents), withhold the respective amount of income tax, keep accounting records, charge VAT on users' transactions, appoint a legal representative, and establish a domicile in Mexico to receive notices.

Note that we strongly recommend to review your obligations under these new rules, as there are a number of exceptions applicable.

3. Digital services / Tax Bill 2020 - VAT

The amendment to the VATL incorporates a new section to regulate the provision of digital services, which will enter into force on June 1st, 2020.

The amendments comprise the following:

Object

Taxable digital services are those services that are provided through applications or content in digital form over the Internet or another network, primarily automated, which may or may not require minimal human intervention, and for which a fee is charged.

Specifically, the VATL taxes the following specific digital services:

- a) Downloading or accessing images, movies, text, information, video, audio, music, games, including gambling, as well as other multimedia content, multiplayer environments, obtaining mobile ringtones, viewing online news, traffic information, weather forecasts and statistics. As an exception, downloading or access to electronic books, newspapers and journals shall not be taxed.
- b) Intermediation services between third parties offering goods or services and the persons demanding such goods or services. As an exception, intermediation services for the disposal of used movable property shall not be taxed.
- c) Online club services and dating pages.
- d) Distance learning or "test", or exercises.

Subjects

The obliged subjects will be foreign residents, with no PE in Mexico, who provide digital services to recipients in Mexico.

The recipient of the services previously described is considered to be in national territory when:

- a) the recipient has indicated to the service provider an address located in national territory,
- b) the recipient makes a payment to the service provider through a financial intermediary located in national territory,
- c) the IP address of the electronic devices of the service recipient corresponds to the range of addresses assigned to Mexico, and
- d) the recipient has indicated to the service provider a telephone number with Mexico's country code.

Notwithstanding the foregoing, we point out that complying with the aforementioned shall not trigger a PE (CIT or VAT) in Mexico for the non-resident.

Obligations

Digital service providers residing abroad without a PE in Mexico must:

- a) register in the Federal Taxpayers' Registry within 30 calendar days following the date on which the services are first rendered to a recipient located in national territory,
- b) offer and charge together with the price of the services, the corresponding VAT expressly and separately,
- c) provide the SAT with quarterly information, through electronic tax return, on the number of services, operations carried out each month and the number of recipients located in national territory and maintain the base records of the information presented,
- d) calculate in each month the corresponding VAT
- e) applying the rate of 16% on the consideration actually collected in each month and make the payment by electronic tax return no later than the 17th of the following month in question,
- f) issue and send by electronic means the electronic invoices when requested by the recipient identifying the providers and recipients of services,
- g) appoint a legal representative and address in national territory, and
- h) process their advanced electronic signature.

4. Appointing Legal Representative

Under a transitory provision, non-residents without a PE who, as of June 1st, 2020, are providing digital services to Mexican recipients (B2B and B2C), must comply with the obligations of Federal Taxpayers' Registry registration, appointment of legal representative and domicile in Mexico, no later than June 30th, 2020.

5. Composite Supplies

Where digital services are offered jointly with other services that are not subject to VAT, the VAT shall be calculated by applying the 16% rate only in respect of the taxed digital services and the corresponding separation shall be made in the electronic invoice; otherwise, the consideration charged shall be deemed to correspond to 70% of the amount of the taxed digital services.

6. Penalties for non-compliance

The omission in the tax payments, withholdings payments that correspond when submitting the aforementioned tax and informative returns, will be sanctioned with the fines already established in the Federal Fiscal Code.

When digital service providers which are residents abroad, without a PE in Mexico, are not on the list of providers enrolled in the Federal Taxpayers' Registry published by the SAT, the recipients of the services will consider them as imports and will have to pay the respective tax under that scenario.

7. Specific rules for third party digital intermediation services

Non Mexican taxable person (without a Mexican establishment or a PE in Mexico) and taxable persons in Mexico who operate as intermediaries of activities performed by third parties (typically: temporary lodging services, transportation of persons, acquisition of goods), must comply with the obligations referred to in the previous sections and, additionally, with the following:

- a) publish prices with VAT expressly and separately,
- b) withhold to third parties who provide services, alienate goods or grant the temporary use or enjoyment of goods, 50% of the corresponding VAT; in the scenario that the withholding is made through its platform and when suppliers do not provide the intermediaries with the Federal Taxpayers' Registry code, the withholding must be made at 100%,
- c) pay the withholdings,
- d) issue an electronic invoice of withholdings in favor of third parties,
- e) register in the Federal Taxpayers' Registry as withholding agents and
- f) present in monthly forms information on the aforementioned third parties, information to be provided by the third parties themselves.

On the other hand, third parties that carry out activities through intermediaries must offer the price of their goods and services, stating the corresponding VAT expressly and separately.

An administrative facility is provided for third parties who have been subject to withholding in terms of the foregoing, and whose income was less than \$300,000.00

MXP in the immediately preceding fiscal year, provided that they do not receive income for other concepts, except wages and salaries.

The facility consists on individuals being able to consider the withholding made to them by intermediaries as definitive, when said withholding has been for the totality of the activities carried out with their intermediation and, in case the collection of some activities has been made directly, this benefit may be applied if the individual submits a monthly tax return for the direct collections applying a rate of 8%.

For the above, individuals must register in the Federal Taxpayers' Registry, keep the electronic invoices of withholdings and payment information they receive, issue the electronic invoices to the recipients of the services and submit a notice of the exercise of the option, without having to submit informative tax returns.

Finally, with regard to *transportation of persons* by means of an online platform, we note that it will not be considered as public transport for VAT purposes, and therefore the provision of services exempt from VAT will not be applicable if the transport is contracted by means of digital service platforms of intermediation between third parties that are transport service providers and the demanders thereof, when the vehicles with which the service is provided are for private use

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