

## Digital services tax coming into force on June 1<sup>st</sup> of this year.

On December 9<sup>th</sup>, 2019, Chapter III BIS "Provision of digital services by foreign residents without establishment in Mexico" was added to the Value Added Tax Law ("VATL"), and Section III "Income from the disposal of goods or the provision of services through the Internet, by means of technological platforms, computer applications and others alike", belonging to Chapter II of the Income Tax Law ("ITL") was incorporated.

The foregoing additions shall become effective as of June 1<sup>st</sup> of this year. The Tax Administration Service ("SAT") published on December 28<sup>th</sup>, 2019, the first group of administrative rules in order for digital platforms to be registered, in an agile and simple way, as tax withholders, collaborating with the tax authority for a better tax compliance in the country.

### I. Value Added Tax Law.

#### A) Digital Services.

Digital services are those provided through applications or content in digital format, through the Internet or other network, which are fundamentally automated, that may or may not require a minimum human intervention, provided that for the aforementioned services, a payment is charged (Art. 18-B VATL).

The service will be considered as provided in national territory when the recipient of the service is in such territory (Art. 16 VATL).

For tax purposes, the recipient is considered to be in national territory when: (i) the recipient has determined a domicile located in national territory; (ii) when it has made the payment to the provider through an intermediary located in national territory; (iii) when the IP address of their devices is located in national territory; (iv) when it has given to the provider a telephone number whose "Lada" (long distance) code belongs to Mexico.

The digital services that will be considered subject to VAT are those listed below:

- i. 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 news online, traffic information, weather forecasts and statistics;
- ii. Intermediation between third parties that are offering goods or services and those requesting the same;
- iii. Online clubs and dating sites;
- iv. Data storage and,
  - i. Distance learning or tests or exercises.



## **B) Obligations of the operator.**

Foreign residents without a permanent establishment in Mexico, providing digital services to recipients in Mexico, will be subject to VAT and must comply with the following obligations: (i) Enrolling in the Federal Taxpayer Registry; (ii) offering and collecting, together with the price of their digital services, the VAT expressly and separately; (iii) providing to the SAT the information on the number of services or operations carried out in each month, as well as the recipients of their services located in national territory, such information shall be categorized according to service and price, and must be filed quarterly; (iv) calculating VAT monthly and make its payment; (v) issuing CFDIs; (vi) designating a legal representative for SAT purposes, as well as a domicile to receive notices located in the national territory; and (vii) obtaining its advanced electronic signature.

## **C) Third Party Digital Intermediation Services.**

Foreign residents without permanent establishment in Mexico, operating as intermediaries in activities conducted by a third party, will have the following obligations:

- i. Publishing in their website, application, platform or other alike, the VAT corresponding to the price at which the goods or services are offered.
- ii. At the time of charging the price and the VAT, they must:
  - a. Withhold from individuals 50% of the charged VAT, and 100% in case the RFC is not provided.
  - b. Pay the withheld amounts with an electronic tax return, no later than the 17th of the following month.
  - c. Issue the CFDI.
  - d. Register at the RFC as withholders.
- iii. Providing to the SAT the following information of its clients which are disposing of goods, services providers or grantors of the temporary use or enjoyment of goods, in operations in which they have acted as intermediaries:
  - a. Name or corporate name.
  - b. RFC code number.
  - c. CURP.
  - d. Domicile for tax purposes.
  - e. Financial institution and standardized interbank code in which the payment deposits are received.
  - f. Amount of the operations conducted with their intermediation.
  - g. In the case of lodging services, the property address.



## II. Income Tax Law.

### A) Obligated parties.

Taxpayer individuals with business activities that transfer goods or provide services through Internet, technological platforms, computer applications and others alike that provide the services mentioned in the preceding paragraphs regarding VAT.

Such tax must be paid through **withholdings** made by legal entities whether residents in Mexico or foreign residents, with or without a permanent establishment in Mexico, which provide the service of the platforms and others alike. The retention rates will be as follows:

	Amount of monthly income	Withholding rate
<b>Provision of ground transportation services for passengers and delivery of goods</b>	Up to \$5,500.00	2%
	Up to \$15,000.00	3%
	Up to \$21,000.00	4%
	Over \$21,000.00	5%
<b>Provision of lodging services</b>	Up to \$5,000.00	2%
	Up to \$15,000.00	3%
	Up to \$35,000.00	5%
	Over \$35,000.00	10%
<b>Transfer of goods and rendering of services</b>	Up to \$1,500.00	0.4%
	Up to \$5,000.00	0.5%
	Up to \$10,000.00	0.9%
	Up to \$25,000.00	1.1%
	Up to \$100,000.00	2.0%
	Over \$100,000.00	5.4%

### B) Obligations of the services provider.

Legal entities which are Mexican or foreign residents, with or without permanent establishment in Mexico, as well as entities or legal vehicles that directly or indirectly provide the service through digital platforms or applications are also required to: (i) Register in the RFC with the SAT as withholders; (ii) issue CFDIs; (iii) appoint a legal representative for SAT purposes and provide a domicile in national territory to receive notices; (iv) process its advanced electronic signature; (v) maintain the accountability records; (vi) remit the withheld taxes by filing a return; and (vii) comply with the obligations established in the general rules issued by the SAT.

We hope that the aforementioned information will prove helpful given the proximity of the entry into force of such tax regulations.

Ricardo Chacón López Velarde (rchacon@ecija.com)

**ECIJA México, S.C.**