

# **WTS** VAT Update for the Digital Economy

Chilean VAT on Digital Services



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## 1. Introduction

As many countries have taken unilateral measures to confront the challenges of the digitalization of the economy, the Chilean government has also done so with Law No. 21.210 2020 (hereafter the "Law") on the modernization of tax legislation, which was published in the Official Gazette on 24 February 2020. The Law has established several amendments to Chilean, tax legislation. In particular, a new special taxable event relating to digital services was announced.

In this sense, since 1 June 2020, foreign companies providing digital services are subject to 19% Value Added Tax (VAT) in Chile. The measure mainly affects foreign digital platforms that provide digital services located in Chile.

According to government projections, the tax reform will generate an additional collection of 2,200 million dollars, which is the equivalent of 0.6% of GDP.

## 2. Tax Rate

A 19% tax rate will apply to certain digital services – discussed in detail further on – provided by foreign companies in Chile.

## 3. Taxable persons and tax collection mechanisms

The Law has established three collection mechanisms aimed at ensuring the application of VAT to digital services and goods provided by suppliers who are neither established nor domiciled in Chile:

- » If the beneficiary of the service is a VAT payer (B2B): a reverse charge mechanism applies and therefore the local taxpayer will be liable to pay the "SII" ("Servicio de Impuestos Internos" – the Chilean Internal Revenue Service).
- » If the beneficiary of the service is not a VAT payer (B2C): in such cases the foreign service provider has the obligation to register with the SII and

charge VAT for the services or goods supplied to its final consumers who are located in Chile.

For these purposes, the SII has set up some registration facilities for such entities under the Simplified Regime for non-domiciled taxpayers and non-residents in Chile, which entitles those entities to not have to issue tax documents for their operations or to be obliged to keep an accounting system.

- » VAT payment through the payment card company: If foreign companies are non-compliant with their tax obligations in Chile, then the SII may enable the payment intermediaries, by means of a well-founded resolution, to retain all or part of the VAT and report it directly to the tax administration.

## 4. Scope

According to the new regulations, the following services provided by non-residents and non-domiciled companies in Chile will be subject to VAT:

- » The intermediation of services supplied in Chile, or sales made in Chile or abroad, provided that the latter gives rise to an importation (of goods);

The operations subject to taxable intermediation may correspond to: Intermediary services regard-less of the underlying service;

- » Sales intermediation, whether this is made in Chile or abroad, provided that the latter gives rise to an importation (of goods).
- » The supply of digital entertainment content, such as videos, music, games or other analogous content, by means of downloading, streaming or other technology, including texts, magazines, newspapers, and books.

For these purposes, the Law provides a

non-exhaustive list, which includes videos, music, games or other equivalents.

In general terms, digital content corresponds to digitized information, stored in an electronic format, which can be copied, transmitted and used.

- » The supply of software, storage, computing platforms or infrastructure.

This taxable object mainly includes different operating models of so-called "cloud computing", such as "software as a service" - SaaS, "platform as a service" - PaaS, and "infrastructure as a service" - IaaS, which in general terms implies the provision of such computer resources through the Internet.

- » Those who carry out advertising, regardless of the medium or the medium through which it is delivered, materialized or executed.

Certain digital services, such as B2B transactions subject to withholding tax or commissions charged by a non-Chilean resident platform to foreign service or sales providers, are beyond the scope of the VAT.

## 5. Nexus rule

The relevant element in applying VAT to a digital service is the service's territoriality. The digital service is considered to be used in the Chilean territory if, at the time of contracting or when making the payment, at least two of the following situations occur: i) the IP address of the device used or other geolocation mechanism indicates that the user is in Chile; ii) the payment method used is issued or registered in Chile; (iii) the address indicated for billing or issuing the payment receipt is in Chile; (iv) the SIM card of the mobile phone through which the service is received has Chile as its country code.

As a legal presumption, it is possible for a Chilean taxpayer or user to prove that the presumption is not fulfilled or that the service was not actually

used in Chile.

## 6. Reporting and registration

To comply with their tax obligations in Chile, a special platform ([www.sii.cl/vat/index.html](http://www.sii.cl/vat/index.html)) is available for foreign service providers that allows them to register for the simplified VAT regime and obtain a "Tax ID Number". In this portal, taxpayers can choose if they will report VAT on a monthly or a quarterly basis, as well as the currency (euro, dollar or pesos) in which the tax will be paid. If VAT is reported and paid quarterly, then the period of June 2020 may be added to Q3 2020

## 7. Specific control rules

The new legislation also includes the following alternative control mechanisms to ensure foreign entities' VAT collection:

- » Inspection of taxpayers subject to the simplified regime: the SII will regulate a public mechanism for receiving complaints regarding foreign providers that are not compliant with their tax obligations in Chile. Furthermore, the Chilean tax authorities may use all technological control mechanisms to verify the fulfilment of such obligations.

- » Request for information regarding the underlying transactions for intermediation services carried out by providers domiciled or residing abroad: the SII is empowered to request the following information from taxpayers subject to the simplified regime:

- » Identification of the sellers or service providers;
- » The amounts paid to such vendors or providers.

- » VAT payment through the payment card company: this mechanism permits payment card issuers to retain the VAT of all or part of the operations carried out by providers domiciled abroad who have not been subject to the simplified tax regime.

## 8. Penalties

The non-payment or late payment of the VAT can trigger interest of 1.5% for each month that the VAT is not reported and paid and also a fine of between 10% and 60%.

## 9. WTS Global: Next Steps

Given these new digital services VAT provisions in Chile, affected foreign digital service companies now have VAT registration and collection obligations for their sales to Chile-based customers and so we highly recommend that foreign service providers review their service contracts and determine the effects that the new rules will have on their tax situation in Chile.

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