

City of Buenos Aires, May 6th, 2018

Ref.: VAT COLLECTION MECHANISM ON DIGITAL SERVICES

On April 24th, 2018, Decree 354 came into force regulating the payment mechanism of VAT arising from the so called “*digital services*” provided by nonresidents and that are economically used or exploited in Argentina.

In the upcoming section, we briefly refer to the VAT taxable event on digital services created by Law 27,430, to then describe the new regulations contemplated under Decree 354/2018.

1. DIGITAL SERVICES UNDER LAW 27,430

Effective as from February 1st 2018, digital services were incorporated as a new VAT taxable event with the following scope:

- a) Taxable digital services refer to those provided by a nonresident and are economically used in Argentina¹.
- b) Digital services are deemed to be economically used in Argentina when: (i) SIM card of the cell-phones receiving the service is located in Argentina; (ii) those services are received by any other device whose IP is located in Argentina; (iii) invoicing address of the beneficiary of the client is in Argentina; and (iv) the bank account used for payment or the invoicing address for the credit bank statement is located in Argentina.²
- c) Taxable digital services are those provided by Internet or any other adaptation or use of automatic protocols, platforms or technologies with minimum human intervention disregarding the type of device in which the service is received. The list of taxable services includes but not limits to websites hosting, software programs as services, database use, download of images, texts, videos, music, movies, help-desk services, update of content, etc.³.
- d) Download or Access to digital books are exempt from VAT⁴.
- e) Digital-service taxable event applies provided that the Argentine beneficiary is a non-registered VAT taxpayer. VAT registered taxpayers were already subject to VAT for digital services under the figure of “import of services” – services provided abroad though economically used in Argentina-. Thus, this new taxable event impacts on nonregistered VAT taxpayers, which are generally the final consumers.

¹ Section 1.3 to VAT Law.

² Section 1 in fine to VAT Law.

³ Section 3.e.21.m) to VAT Law.

⁴ Section 7.h.29) to VAT Law.

- f) Taxable event is deemed to occur when the services was fully provided or when paid, whichever the earliest⁵.
- g) Tax liability is assessed by applying the 21% rate on the price invoiced by the non-resident supplier net of commercial discounts⁶.
- h) VAT must be paid by the beneficiary of the services, except if a payment intermediary exists. In that case, the intermediary must act as collection agent and remit the tax to the Argentine tax authorities⁷. Non-resident suppliers must not pay any taxes in Argentina.

2. REGULATIONS UNDER DECREE 354

- a) Intermediary in the payment between non-resident service provider and local beneficiary of the service: Intermediary must act as collection agent. If there is more than one, the liable collection agent is the one closest to the non-resident service suppliers. In all cases, the non-resident supplier is not liable for the payment of the tax.

Intermediaries acting as collection agents must proceed so upon list of digital service providers which will be published and updated by the Argentine Tax Authorities from time to time. This collection mechanism will be come enforceable once the tax authorities publish such list.

In the event that a listed service provider also provides other non-taxable services, the Argentine Tax Authorities must set the conditions (frequency, amounts, and other aspects) to determine when a given digital service amounts to taxable. The beneficiary of the services can prove that the service does not have a digital nature, or that the service is not economically used in Argentina.

- b) No intervention of intermediaries in the payment of digital services In these cases, VAT must be paid by the local beneficiary of the service (e.g. final consumer). The tax authorities will soon determine how to remit and pay the tax.
- c) When VAT becomes due: To determine when VAT is triggered, it is considered that the rendering of the services is terminated when the due date for payment expires or when paid, whichever the earliest. There is no hesitation as to how to apply this rule when VAT must be paid by the local recipient, but it is not clear if a payment intermediary exists and the tax is not paid by the beneficiary. This would be the case in which the intermediary claims the payment to reach due dates set by tax authorities and the final consumer does not pay to the intermediary.
- d) Exchange rate to assess VAT on digital services: If the tax is paid by the local consumer, service consideration must be converted into AR\$ by using the selling Exchange rate

⁵ Section 5.i to VAT Law.

⁶ Section 26.1 to VAT Law.

⁷ Section 27.1 to VAT Law.

published by Banco Nación Argentina during the day before due date for payment or payment, whichever the earliest. If payment must be made by an intermediary, the selling exchange rate of the day before to the issuance of the statement or liquidation by the intermediary to the final consumer.

3. LEGAL ASPECTS ASSOCIATED TO PAYMENT INTERMEDIARIES

In our opinion, the position of the payment intermediaries is complex; not to mention that VAT Law and Decree 354 require additional clarifications on this matter. Based on this, we found that:

- a) Current rules do not provide a clear definition of the entities that could qualify as payment intermediary. Decree 354 only mentions those entities that engage in collecting fees arising from digital services. This should be a matter to be included in the upcoming resolution to be issued by the Argentine Tax Authorities.
- b) Argentine tax authorities must be specific as to the list of taxable service providers and/or the conditions in which VAT must be assessed. Decree 354 clearly mention that a listed service provider may render non-taxable services, and for those reasons, intermediaries will be obliged to make a “*due diligence*” of the service to be paid and whether it amounts to taxable digital service. Intermediaries will also be obliged to review any evidence filed by the local consumer as to the nature of the service paid or as to if it is economically used in Argentina.
- c) Intermediaries acting as collection agents may be subject to claims from its own clients when collecting VAT from non-taxable services or from the tax authorities when they fail to apply VAT on taxable services. In the case of the latter, the claim will include compensatory interest and penalties since collection agents can be held jointly and severally liable for the payment of the tax with the local consumer. This means that intermediary may be liable even with its own net-worth⁸.

There are no doubts that intermediaries must act as collection agents once the provider list is published. In any case, the complexity of the situation will require months for an effective implementation of this collection mechanism of VAT on digital services.

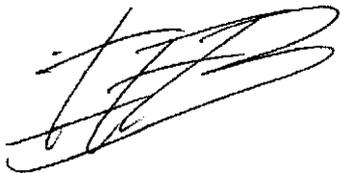
4. PENDING ASPECTS TO REGULATE

- a) Due dates and mechanism to pay VAT arising from taxable services occurred as from Decree 354;
- b) Due dates and mechanism to pay VAT arising from taxable services from 01/02/2018 (when the taxable event was created by law 27,430) and 23/04/2018 (day before the issuance of Decree 354);

⁸ Section 8.d) to Law 11,683.

- c) List of digital services providers;
- d) Conditions and parameters under which intermediaries must act as collection agent when a listed service provider engages in rendering other non-taxable services;
- e) Conditions or parameters for intermediaries to evaluate the evidence provided by consumers on the nature of the service or the location where those services are economically used.

We hope you find this report useful. Please do not hesitate to contact us if you any further doubts or queries.



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