

# LATAM DIGITAL SERVICES TAXATION REGIME



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Digital taxation has become a very relevant aspect for corporate and international taxation. Globalization and digitalization of the economy have changed the way of doing business and represent the most relevant challenge of international taxation. Despite the efforts of OCDE, UE and G20 in finding a global unified answer to digital services taxation, the truth is that many countries have introduced a special digital taxes, and those unilateral answers may have an important impact on corporations. Our professionals have the experience and knowledge to analyze and determine how digital services can impact your company.

# Argentina



## Digital Services Tax

- Taxes considered: Tax on gross income (jurisdictional)
- Services considered: digital services provided by a subject from abroad whose use or effective exploitation is carried out in Argentina
- Subjects (in general): subjects from Argentina who receive the service (perception)
- In a jurisdiction: consumer (perception) + subject of the outside service provider (withholding)
- Treatment in the tax: Incidence in the final consumer (borrower) or in the subject from abroad, with the rate of 3.5% (estimated average)
- Collection: in most cases by the intermediary
- To establish when the tax corresponds: It refers to the lists of the national treasury.
- Tax base: amount of foreign currency converted to ARS (s/quote)

## Definition of Digital Services

- Services received through mobile phones: according to country phone code
- Received by other devices: in the country of the IP address
- The billing address is in the country
- The bank account/financial institution used for payment is in the country

## VAT

- Impact on the final consumer (borrower) with the rate of 21%
- Collection: in most cases by the intermediary (applies collection)
- To establish when the tax corresponds: The treasury issues updated lists with the subjects from abroad providing the service
- If the borrower is subject to the tax (R.I.): enters the tax with calculation of tax credit
- Tax base: amount of foreign currency converted to ARS(s/quote)

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# Brazil



## Digital Services Tax

There is no special tax on the digital economy, however, the Tax Authority has expressed its intention to look for ways for it to be regulated in the short term.

## Income Tax Withholding rules on Digital Services

There is no specific withholding, the general rules apply. The business intermediation rule generally applies to digital services, with taxes on services (5%), PIS (0.65% or 1.65%) and COFINS (3% or 7.6%).

## VAT

There is no VAT over any digital services.

## Definition of Digital Services

Since there is not a special digital services tax regime there is no definition of digital services under Brazilian tax regulations.

## Other Considerations

Recently the Brazilian Supreme Court has decided that software are not subject to ICMS but to ISS only (tax over services). The discussion in place was that off-the-shelf software may be considered a product or merchandize, thus, subject to ICMS (tax over goods). The Brazilian Supreme Court has decided that all software are considered a service and not a good.

# Brazil



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# Chile



## Digital Services Tax

Chilean tax regulations have incorporated VAT for digital services, for foreign suppliers who are receiving payment from natural people or companies in Chile.

## Definition of Digital Services

1. Intermediation of services rendered in Chile, whatever its nature, or of sales made in Chile or abroad provided that the latter give rise to an import.
2. Provision or delivery of digital entertainment contents such as videos, music, games or analogues, through download, streaming, or another technology, including texts.
3. The provision of software, storage, platforms or computing infrastructure.
4. Advertising, regardless of the manner through which it is delivered, materialized or executed.

## VAT

Taxpayers will be subject to a simplified tax regime.

Taxpayers subject to this regime will not be entitled to a tax credit and will be released from the obligation to issue tax documents for their operations.

Taxpayers will be subject to a tax rate of 19% over the payments received for the services provided.

Taxpayers subject to this regime must declare in a simplified form and pay the taxes accrued in a tax period, until the 20th of the month following that in which the tax is accrued.

## Income Tax Withholding Rules on Digital Services

Payment for B2C, are exempt of withholding tax. Payment for B2B, are subject to withholding tax, but do not pay VAT.



# Chile



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# Colombia



## Digital Services Tax

Colombian tax regulations have not incorporated a special digital services tax. There is not a specific tax treatment for digital services operations.

## Income Tax Withholding Rules on Digital Services

There is not a specific withholding for digital services, so the following general rules of Income Tax would apply:

1. Foreigners pay taxes only on national income (services provided in the country)
2. Withholding of 20% for payments to non-residents for technical services, technical assistance, and consulting, provided in the country or from abroad.
3. Withholding of 20% for payments to non-residents for the exploitation of software and intellectual property.

## Definition of Digital Services

Since there is not a special digital services tax regime there is no definition of digital services under Colombian tax regulations.

## VAT

In Colombia, services rendered in the country or from abroad are taxed with VAT. In the case of electronic or digital services provided from abroad, the following special rules would apply:

1. If the service is provided to a person responsible for VAT, he or she must practice withholding at the source of 100% of the tax.
2. If the service is provided to a person not responsible for VAT, the foreign provider must declare VAT in Colombia on a bimonthly basis or may choose to benefit from the alternative system of withholding at the source that will be practiced by the card-issuing entities.
3. Virtual education services for the development of digital content, provision of web pages, hosting and cloud computing are exempt from VAT.

# Colombia



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# Costa Rica



## Digital Services Tax

There is no special tax for these type of services. Some of them are known as cross border services.

## Income Tax Withholding Rules on Digital Services

When the service is used locally to generate taxable income, the Article 59 of the Law 7092 would apply; withholdings for remittances abroad with rates of 25% to 30%. The payer has to apply the withholding as a withholder agent.

## VAT

The one who receives the service has to pay 13% VAT, which will be applied on the credit card statement.

## Definition of Digital Services

Digital Services known as Cross-border digital services are those provided by a provider not domiciled in the country through the Internet or any other digital platform and that is consumed in the national territory, such as Netflix, Airbnb, and Amazon, among others.

## Other Considerations

This list of cross-border digital services is available on the page [www.hacienda.go.cr](http://www.hacienda.go.cr) and will be updated at least every six months to include new providers or exclude those who have voluntarily registered as taxpayers.



# Costa Rica



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# Dominican Rep.



## Digital Services Tax

Tax regulations in the Dominican Republic have not incorporated a digital services tax regime, tax treatment or definition.

## Income Tax Rules on Digital Services

Since digital services taxation does not exist, the following general Income Tax rules apply:

1. DR follows the territoriality principle, therefore, non resident entities and or individuals pay taxes only on DR source income (services provided in the country).
2. Withholding income tax of 27% will apply for payments made to non-residents for services provided in the country.
3. Withholding income tax of 27% will apply on payments made to non-residents as royalties for the use of and intellectual property.

## Definition of Digital Services

Under Dominican tax legislation, there is no definition of digital services.

## VAT

Services rendered in the Dominican Republic taxed with 18% VAT. If the services are rendered to non-residents and such are considered to be consumed in the DR and paid with income subject to income tax in the DR, it is considered as rendered in the DR and therefore subject to 18% VAT.

Dominican Rep.



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# Ecuador



## Digital Services Tax

Effective date of law: September 16, 2020

Taxes considered: Value Added Tax (VAT)

Rate: 12% on the value of the digital service/ or on the commission paid in the case of goods shipment services.

Chargeable event: Importation of digital services. Payment by the resident in favor of the non-resident subject providing digital services.

## Income Tax Withholding Rules on Digital Services

### Taxpayers:

- Subjects who carry out imports on their own account or on behalf of others.
- Agents of perception: Non-residents in Ecuador who provide digital services as long as they are registered in Tax Authority (SRI).
- Withholding agents: Credit card issuing companies in payments corresponding to digital services, when the service provider is not registered with the Tax Authority (SRI).

## Definition of Digital Services

Digital Services: Are those provided through the Internet or any adaptation and application of technology, regardless of the device used.

12% rate:

- Supply and Hosting of computer sites and web pages
- Supply of digitalized products and software
- Remote preventive or corrective maintenance of software and hardware
- Remote system administration and online technical support, among others

New Regulation (Nov. 2021) Transactions carried out by payment aggregators and online marketplaces for the transfer of goods or services provided by third parties do not constitute taxable events subject to VAT or IR, and therefore will not be subject to withholdings.

Payment aggregators: Companies that provide access technologies that allow their establishments to accept face-to-face or virtual payments.

Online marketplaces: Companies that, through technological platforms, enable online concurrence of supply and demand for goods and/or services from third parties.



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# El Salvador



## Digital Services Tax

Salvadoran tax regulations have not incorporated a special digital services tax. There is not a specific tax treatment for digital services operations.

## Income Tax Withholding Rules on Digital Services

There is not a specific withholding for digital services, so following general rules of Income Tax would apply:

1. Foreigners pay taxes only on national income (services provided in the country)
2. Withholding of 20% for payments to non-residents individuals for technical services, technical assistance, and consulting, provided in the country or from abroad.

## Definition of Digital Services

Since there is not a special digital services tax regime there is no definition of digital services under Salvadoran tax regulations.

## VAT

In El Salvador, services rendered in the country or to abroad are taxed with a 13% of VAT.

# El Salvador



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# Guatemala



## Digital Services Tax

In Guatemala, there are no special taxes to the digital economy, the area is not regulated in the tax legislation.

## Income Tax Withholding Rules on Digital Services

In identifiable cases, the general legislation on Income Tax withholdings applies.

## Definition of Digital Services

Although there is no legislation in Guatemala, in practice, the tax regime of companies that operate through the Internet is considered.



# Guatemala



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# Honduras



## Digital Services Tax

Currently in Honduras, there is no special tax on digital services, therefore there is no different application to any commercial transaction that is normally taxed.

## Income Tax Withholding Rules on Digital Services

There are no specific rules for withholding income tax regarding specifically to digital services.

This means that the general rules for income tax will be applied in those commercial transactions that generate this income. However, reality limits the traceability of these operations, and they are usually only applied to those transactions that can be identifiable.

## Definition of Digital Services

There is no regulated and / or unified term in relation to the concept of Digital Service. The definition of service is used analogically in a general way, when there is an applicable commercial transaction.

## VAT

As in the case of income tax, there is no specific regulation that regulates the sales tax in digital services, and its control is carried out in a similar way, in those operations that can be identifiable, or in which a commercial record remains, such as the use of credit and/or debit cards.

## Other Considerations

The taxation of digital services in Honduras currently depends on the self-taxation carried out by the taxpayers, since there are no specific provisions that achieve the supervision and identification of these transactions. However, the Tax authority has expressed interest in seeking to regulate it soon.

# Honduras



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# México



## Digital Services Tax

Although there have been some initiatives presented to Congress, Mexico has not enacted any Digital Service Tax. Instead, it has gone the VAT route and also established some withholding obligations effective June 1, 2020.

## VAT

VAT is triggered on the provision of digital services (as defined) by foreign platforms to Mexican recipients

- Obligation to register
- Trigger, transfer, collect and pay VAT
- Formal obligations (address, legal representative, filing of returns)

## Definition of Digital Services

- Streaming (download or Access to images, movies, text, information, video, audio, music, games, mobile tones, online news, traffic information, weather forecasts and statistics). Books, newspapers and magazines exempt
- Market places, peer to peer, etc. (intermediation between suppliers of goods and services and those that acquire them)
- Online clubs and dating sites
- Distance education, tests and exercises

Must be provided through applications or digital content through the internet or other network, fundamentally automated, requiring little to no human intervention and in exchange for a consideration.

Provided to Mexican recipients – domicile, telephone, credit card or IP address





## Withholding Obligation for Intermediary Platforms

Obligation to withhold VAT and IT from Mexican individuals on the sale of goods, rendering of services or granting of use or temporary enjoyment through the platforms, as well as from non-residents that provide digital services through the platforms.

Foreign and domestic platforms that provide digital services (in addition to obligation for digital services) must withhold the tax when they collect the consideration of the underlying transaction.

- ISR rate 1-4% depending on activity; 25% if no Tax ID is provided.
- VAT rate 8%; 16% if Tax ID is provided.
- Formal obligations (domicile, legal representative and filing of returns).

# México



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# Nicaragua



## Digital Services Tax

Nicaragua tax regulations have not incorporated a special digital services tax. There is not a specific tax treatment for digital services operations.

## Income Tax Withholding Rules on Digital Services

Nicaragua operates a territorial tax system under which residents and non-residents are taxed only on Nicaraguan-source income.

Technical service Fees: defined as fees payable in respect of work or other activities requiring certain expertise, paid to a non-resident are subject to a 20% withholding tax.

Capital gains: A 15% capital gains tax applies to gains derived by both residents and non-residents.

## Definition of Digital Services

Since there is not a special digital services tax regime there is no definition of digital services under Nicaragua tax regulations.

## VAT

VAT is levied on the sale of goods and the provision of services, The standard rate is 15%. Exports of goods and services are zero-rated.

# Nicaragua



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## Digital Services Tax

In Peru, there is not yet a special tax on digital services.

## Income Tax Withholding rules on digital services

Income Tax provisions state 30% withholding on digital services used in Peru.

## VAT

18% value added tax is applied on digital services under “import” scheme.

## Definition of Digital Services

Under Income Tax Regulations, are services provided through internet, automatic in essence.

## Other Considerations

Special tax on digital services is under evaluation in Peruvian Congress.



# Perú



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## Digital Services Tax

Uruguayan tax regulation has not incorporated a special tax on digital services. However, it has incorporated specific rules on IRNR (Non-Residents Income Tax), which levy:

- i) production, distribution or intermediation of audiovisual content through the Internet, technological platforms, computer applications or similar, carried out in Uruguayan territory
- ii) mediation and intermediation in supply or demand of services, provided through the Internet, technological platforms, computer applications or similar

In both cases applies a rate of 12%.

## Definition of Digital Services

**Audiovisual** (Article 3 of Law 19.307): the content produced by sounds, images or images in motion (video), separately or combined, with or without synchronism between them.

## Other Considerations

### i) Production, distribution or intermediation of audiovisual content

They are considered to be carried out entirely in Uruguayan territory when they were allocated, consumed or used economically in this country.

### ii) Mediation and intermediation in supply or demand of services, provided through the Internet, among others

In this kind of services, the taxable amount is determined as follows:

- Supplier and demander are located in Uruguay: the service is levied 100% at the rate of 12%
- Supplier or demander are located (one of them) abroad: 50% of the service is levied at the rate of 12%

The following characteristics of services are required:

- Automatic
- Minimum human intervention
- Intervention in the supply and demand



## Income Tax Withholding Rules on Digital Services

### i) Production, distribution or intermediation of audiovisual content

- Operation B2B: a non-resident provide services to an IRAE taxpayer (business income). IRAE taxpayer has to withhold IRNR and VAT
- Operation B2C: there is no tax withholding. The non-resident pays on his behalf

### ii) Mediation and intermediation in supply or demand of services, provided through the Internet, among others

- Operation B2B: tax withholding is cancelled by Decree
- Operation B2C: there is no tax withholding. The non-resident pays on his behalf

## VAT

### i) Production, distribution or intermediation of audiovisual content

Internet broadcasting of any audiovisual content provided by a non-resident is considered to be carried out entirely in Uruguayan territory, when it were allocated, consumed or used economically in this country. In this case, it is levied at the general rate of 22%.

### ii) Mediation and intermediation in supply or demand of services, provided through the Internet, among others

- Supplier and demander are located in Uruguay: the service is levied 100% at the rate of 22%
- Supplier or demander are located (one of them) abroad: 50% of the service is levied at the rate of 22%

# Uruguay



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# Venezuela



## Digital Services Tax

Venezuelan tax regulations have not incorporated a special digital services tax. There is not a specific tax treatment for digital services operations, thus regular regime applicable to services result applicable to that kind of business operations.

## Definition of Digital Services

Since there is not a special digital services tax regime there is no definition of digital services under Venezuelan tax regulations. However, general definition of services set forth in VAT Act results applicable. According to Venezuelan VAT Act Services: Any independent activity in which the main obligations to do. Contracts for movable and real estate works, even if the contractor provides the materials; water, electricity, telephone and other services supplies; the leases of movable property, leases of immovable property for purposes other than residential and any other assignments of use, by way of in the case of such property or rights, the leases or assignments of movable property intended for goodwill situated in the country, as well as such as leases or assignments for the use of such intangible property such as trademarks, patents, copyrights, artistic and intellectual works, scientific and technical projects, studies, instructions, programs of data processing and other goods covered by and regulated by law on industrial, commercial, intellectual property or transfer of Technological knowhow.

## Income Tax Withholding Rules on Digital Services

There is no specific income tax withholding, thus general income tax withholding on services result applicable. Also, general rules of residence, source and Permanent Establishment as nexus connection result applicable, therefore, it is difficult to tax services provided by digital platforms due to the localization of activities challenges.

## VAT

There is not a special regimen on VAT neither, but Article 9 of VAT Act sets forth that importer of services are responsible of filing and paying VAT. Thus, we could say that on B2B (business-to-business) operations general 16% VAT results are applicable.



# Venezuela



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