Taxation of Digital Services in Argentina

By:

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The digital revolution is creating massive changes in society. It is influencing everything, from economy, innovation, science and education, to health, sustainability, governance, and lifestyles. This has raised questions in many legal and regulatory areas, including tax. For instance, the fact that the existing international tax system does not properly capture digital economy.

As a result, tax administrations around the world have been trying to identify ways to tax the income generated by the digitalization of the economy. The first major attempt to analyze this issue in order to find a comprehensive, consensus based solution to the challenges arising from digitalization was spearheaded by the Organization for Economic Co-operation and Development ("OECD") and the the Group of Twenty ("G20"). As a result, the OECD published a plan, called the Action Plan on Base Erosion and Profit Shifting ("BEPS").

Regarding the digital economy, in October 2015 the OECD published its report "

BEPS Action 1 - Addressing the Tax Challenges of the Digital Economy". Among other recommendations, this report set that the application of Value Added Taxes ("VAT"), or an equivalent, to business-to-consumer transactions should be based on the destination principle.

In line with the foregoing, some jurisdictions of Latin America have joined the digital tax revolution, choosing different ways to apply indirect taxes to digital services. In the case of Argentina, three taxes apply to digital services. At national level, VAT and the so-called "PAIS Tax"; and at the provincial level, Turnover Tax. There are no current mandatory registration requirements for the foreign sellers, since the Argentine payment intermediaries (e.g., credit card companies and banks) must act as withholding agents.

Regarding Value Added Tax, Law 27,430 includes as a taxable event digital services rendered by a non-resident to an Argentine resident when the effective use or exploitation of the service takes place in Argentina. The applicable tax rate is 21% of the service charge. According to the law, digital services are defined as

> "*... whatever the device used for download, viewing or use, those carried out through the Internet or any adaptation or application of protocols, platforms or technology used by the Internet or other network through which equivalent services are provided that, by their nature, are basically automated and require minimal human intervention ...".*

Among others, the law gives as examples the following services: (1) Streaming or download music, video or games, (2) Web services, (3) Online advertising, (4) Software as a Service, and (5) Data storage. With respect to the requirement of effective use or exploitation in Argentina, it is presumed - without admission of evidence in contrary - when one of the following is located in Argentina: (1) The IP address of the device used by the customer or SIM card country code; (2) the billing address of the local client; or (3) the bank account used for the payment, the billing address of the bank's customer, or the financial institution issuing the credit or debit card used for the payment.

The taxpayer is the user or consumer of the digital service. However, if an Argentine resident intermediary mediates in the payment, it must act as

withholding agent. If more than one intermediary are involved, the one with the closest business relationship with the digital service provider must act as the withholding agent. If no Argentine payment intermediary is involved, then the recipient of the services must report and pay the VAT through an electronic bank transfer to the Argentine Tax Administration.

VAT on digital services was introduced February 1, 2018. However, it was not effectively implemented until June 27, 2018, when the Argentine Tax Administration set forth the terms and conditions for VAT collection through Resolution No. 4240. According to this resolution, the different mechanism for the payment are the following:

- If the payment of the digital service is made through a credit or charge card, the withholding must be made on the date of payment or liquidation of the bank statement. If the payment is partial, the withholding must be fully made.
- If the payment of the digital service is made through a debit, prepaid or a similar card, the withholding must be made on the debit date.
- If the digital service is paid through a collecting entity, the withholding must be made when the collecting entity receives the payment.

It must be highlighted that this mechanism differs from the OECD's guidelines. These guidelines place the liability for withholding and entering the VAT on the non-resident supplier. In Argentina, the liability is on the Argentine payment intermediary. Moreover, another noteworthy element is that not all digital services are in scope. The VAT withholding is performed by the Argentine payment intermediaries based on a list of non-resident services providers established by the Argentine Tax Administration. This list is updated on monthly basis, and the Argentine payment intermediaries are required to assist in the identification of new foreign providers of digital services.

In addition , on December 23, 2019 was published in the Official Gazette Law No. 27,571, which, among other things, imposes on resident individuals and legal entities a temporary tax on the acquisition of goods and services from nonresident persons. This tax is called PAIS tax. The tax general rate is 30%. However, a reduced rate of 8% applies to digital services that also qualify for

the VAT rate of 21%. It means that, currently, all digital services paid by Argentine consumers are taxed at the rate of 30%, except if they are rendered by services providers included in the abovementioned list issued by the Argentine Tax Administration. In that case, the effectively tax rate of 29% applies.

PAIS tax is not primarily related to BEPS concerns. It is aimed at protecting Argentina's US Dollar reserves. Payments made in cash, or by means of credit card, that ultimately require access to the Argentine Foreign Exchange Market (either by the consumer or by via any payment intermediary) are taxed. On January 6, 2020, the Argentine Tax Administration issued Resolution No. 4659, by which it regulated the PAIS Tax collection regime.

According to this resolution, to assess the tax, the USD charge must be converted into Argentine Pesos applying the selling Foreign Exchange rate published by Banco de la Nación Argentina (the Argentine National Bank) in the previous working day to the issuance of the credit card or the statement issued by any Argentine payment intermediary.

Finally, at a provincial level, both the City and the Province of Buenos Aires have imposed Turnover Tax on digital services. The Turnover Tax is an indirect provincial tax levied on the sale of goods or the performance of services within the territory of a given province. Each jurisdiction provides different tax rules in relation to the taxable base (deductions, expenses, etc.), tax rates, exemptions and promotional regimes applicable to each activity. In the past, foreign entities with no permanent establishment in the country were not subject to this tax. However, recently some provinces issued new regulations in order to apply Turnover Tax withholding to non-residents.

In the case of the City of Buenos Aires, Law No. 6,279 set forth that a Turnover Tax withholding rate of 2% will apply on payments to nonresidents that provide digital services to entities or individuals domiciled in that jurisdiction. The Tax Administration of the City of Buenos Aires issued Resolution No. 312, by virtue of which regulates the procedure to pay the Turnover Tax on digital services rendered by non-resident parties to consumers domiciled in the City of Buenos Aires.

As in VAT, the taxpayer is the user or consumer of the digital services. However, the Argentine payment intermediaries must withheld the tax as substitute taxpayers. Such entities must withheld the tax when: (1) the services providers are included in the list of providers issued by the Tax Administration of the City of Buenos Aires, (2) the consumers of digital services are domiciled in the City of Buenos Aires and (3) the services providers are subject to VAT collection. The Turnover Tax on digital services is effectively in force since March 1, 2020. Through Law No. 15,079, the Province of Buenos Aires required Turnover Tax withholding on non-residents that provide digital services if the users of the services are domiciled in the Province. Under such law, residents paying for those services must withhold at the time they make the payment. The withholding tax rate is 2% of the amount paid to the non-resident.

The Tax Administration of the Province of Buenos Aires issued Resolutions No. 37, 38 and 42/2019, which contain the regulations to implement and enforce the withholding regime. According to these resolutions, if an Argentine payment intermediary is involved, it will be required to act as a withholding agent. As in the case of the City of Buenos Aires, the Tax Administration of the Province of Buenos Aires will issue a list of digital service providers, which will be updated on periodical basis. The Turnover Tax withholding began to apply to payments beginning on January 1, 2020.

It must be highlighted that this kind of unilateral moves to raise more tax revenue from the digital economy based on the location of the consumers is taking place in an increasing number of countries. Thus, as well as in the rest of the world, it is expected that the taxation environment of digital services in Argentina will continue to evolve in the next years.

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