

SKATT

Beyond tax advisory

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LOPEZ VELARDE

Venture Technology



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WEBINAR

NEW TAX REGULATION AND LEGAL CONSIDERATIONS IN MEXICO FOR LOCAL AND FOREIGN DIGITAL PLATFORMS

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AGENDA

- ❖ Background on digital economy- where we're at and what brought us here.
- ❖ Regulatory environment for digital and technological platforms
- ❖ Practical and technical issues and considerations related to the new income tax and vat obligations.



The image features a grayscale aerial photograph of a city, showing a river, roads, and buildings. A large, semi-transparent dark grey rectangle is overlaid on the right side of the image. On the left edge of this rectangle, there is a solid orange square. The word "Background" is written in white, sans-serif font in the center of the dark grey area. The word "HUAWEI" is visible on the top of a building in the background.

Background

What do digital businesses represent for Mexico?



1

In 2009 electronic commerce amounted to 24 billion pesos; in 2018 it amounted to 491 billion pesos.

2

8 out of 10 adult users have made an online purchase in the last year (2019).

3

62% of users have their personal data stored on a platform and 75% of operations are paid by credit or debit card.

Source: Asociación de internet <https://irp-cdn.multiscreensite.com/81280eda/files/uploaded/Estudio%20de%20Comercio%20Electrónico%20en%20México%202019.pdf>

What or who originated the discussion of the fiscal issue?





Coherence

Action 2: Hybrids

Action 3:
Reglas CFC

Action 4:
Interest Deductions

Action 5:
Harmful tax practices

Substance

Action 6: Treaty Abuse

Action 7: Permanent
Establishment

Action 8:
PT Intangibles

Action 9:
PT Risks & Capital

Action 10:
High-Risk Transactions

Transparency

Action 11: BEPS
Data analysis

Action 12:
Disclosure of
aggressive tax
planning

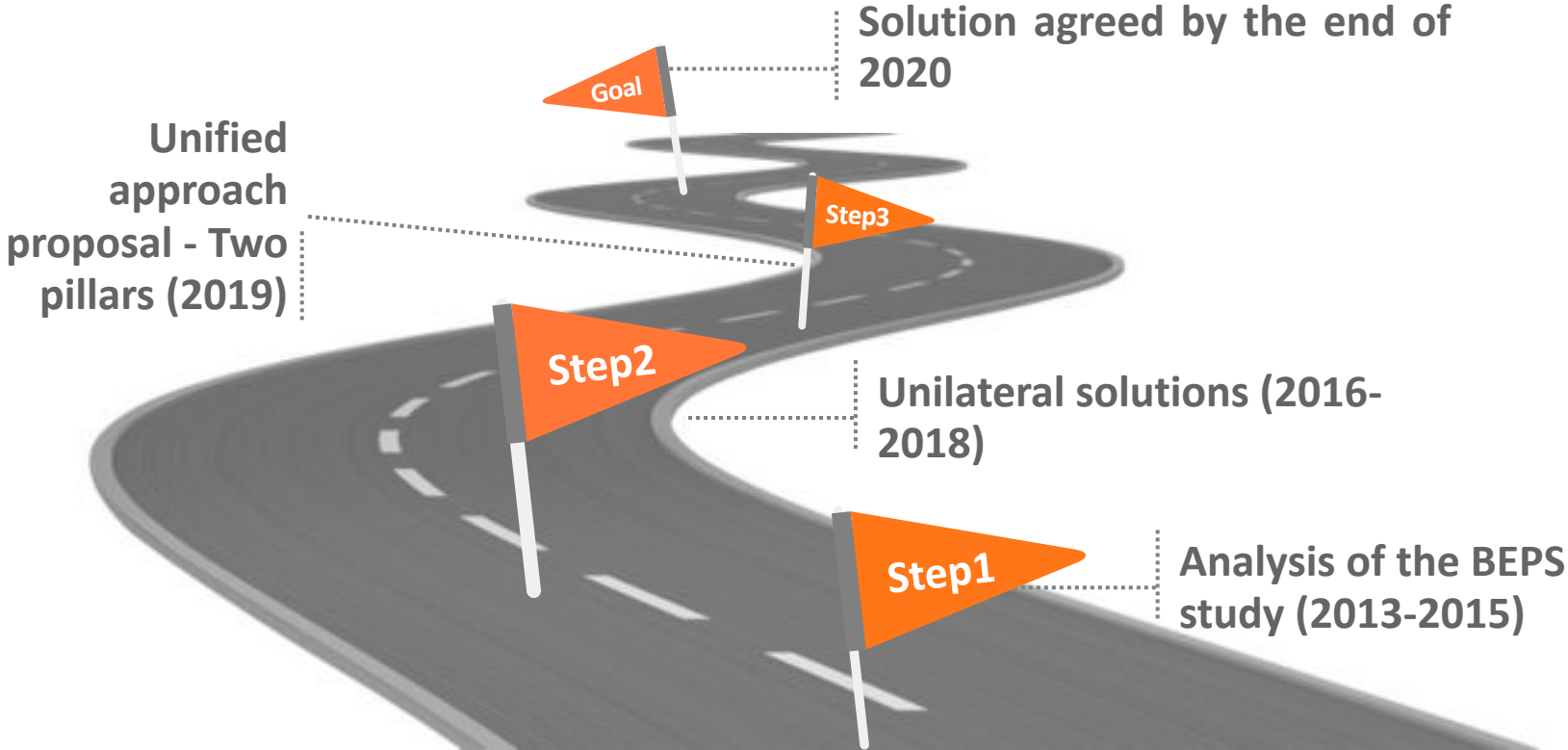
Action 13:
PT Documentation

Action 14:
Dispute resolution

Action 1: Digital Economy

Action 15: Multilateral instrument

What has been the route?



An aerial photograph of a city, featuring a prominent, modern skyscraper with the 'HUAWEI' logo on its upper facade. The building is surrounded by other high-rise structures and a network of roads. The sky is filled with scattered white clouds. A large, semi-transparent dark grey rectangle is overlaid on the image, containing the title text. To the left of this rectangle, there is a solid orange square.

Regulatory Challenges

Uber → The world's largest taxi company, owns no vehicles.

← The world's most popular media owner, creates no content. **Facebook**

Alibaba → The most valuable retailer, has no inventory.

← The world's largest accommodation provider, owns no real estate. **Airbnb**

Something interesting is happening.
TOM GOODWIN

wetp@int
creative digital solutions

📍 /WetpaintMENA

The “plataform economy”

- “on-demand economy”
- “sharing economy”
- “collaborative economy”
- “P2P economy”
- “gig economy”
- “task economy”
- “mesh economy”

The “platform economy”

- “on-demand economy”
- “sharing economy”
- “collaborative economy”
- “P2P economy”
- “gig economy”
- “task economy”
- “mesh economy”

- Financial disruption
- Functional disruption
- Higher efficiency in use of resources
- New business models (“blue ocean”)
- Decentralization
- Increased competitiveness
- Globalization and accelerated scalability

The “Platform economy”

- “on-demand economy”
- “sharing economy”
- “collaborative economy”
- “P2P economy”
- “gig economy”
- “task economy”
- “mesh economy”

- Fragmented assets
- Virtualization of operations
- Physical presence eroded
- Users empowered
- Digital middle-men
- Old rules not applicable
- Unlikely extraterritoriality

Regulation. The temptation...

- Competition and market power
- Equality in access barriers
- Functional organization
- Respect to fundamental rights
- Taxation
- Exercise of powers
- Consumer protection
- Use of infrastructure
- Etc...

Risks of over-regulation.

- Micromobility sector (Mexico City)



Risks of over-regulation.

- Subscription-based radio



SiriusXM (SIRI) Reaches More Than 30M Subscribers in 2019. SiriusXM Holdings SIRI added 1.063 million self-pay **subscribers** in **2019**, to reach a user base of more than 30 million. The company **had** anticipated adding almost 1 million self-pay net **subscribers**. 8 ene. 2020

[finance.yahoo.com › news › siriusxm-siri-reaches-more-3...](#)

[SiriusXM \(SIRI\) Reaches More Than 30M Subscribers in 2019](#)

Risks of over-regulation.

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26M Subscribers in the US

Risks of over-regulation.

- Subscription-based radio



Article 12. “Subscription-based radio cannot include advertising and may only transmit music...The reception of signals can only be done in fixed devices.”

Risks of over-regulation.

- Subscription-based television

The logo for SKY, featuring the word "SKY" in a bold, blue, sans-serif font.The logo for iZZI! telecom, featuring the word "iZZI!" in a stylized font with colored dots above the letters, and "telecom" in a smaller font below it.

MEGACABLE

The logo for Telecable, featuring a colorful circular icon with a stylized 'T' and the word "Telecable" in a blue, sans-serif font. Below it, the tagline "Televisión, Internet y Telefonía" is written in a smaller font.The logo for Dish Network, featuring the word "dish" in a stylized font with a red satellite dish icon above the letter 'i'.The logo for Totalplay, featuring a colorful triangle icon and the word "Totalplay" in a blue, sans-serif font. Below it, the tagline "VIVE EL FUTURO" is written in a smaller font.The logo for Cablemás, featuring a stylized eye icon with a green and blue outline and an orange center, and the word "Cablemás" in a blue, sans-serif font.

Risks of over-regulation.

- Subscription-based television



Risks of over-regulation.

- Subscription-based television
- On September 12, 2019, Senator Ricardo Monreal of MORENA presented a bill to amend the VAT Law and the Telecoms and Broadcasting Law.
- On March 24, 2020, the draft bill was approved in commissions at the Mexican Senate.

Risks of over-regulation.

- Subscription-based television

Article 170 requires that Internet-based streaming of television or audio require a license issued by the Mexican regulator, even if provided from abroad.

- Extraterritoriality
- Escaleability risk
- Additional regulatory burdens
- Increased liability to operators

Risks of over-regulation.


- Subscription-based television

Article 249 establishes a content quota of at least 30% of the catalog to be formed by Mexican content produced by third parties.

- Unequal obligation (discriminatory)
- Risk of total catalog reduction (limited options to consumers)
- Lack of coherent incentives to foster local production
- Risk of price increase

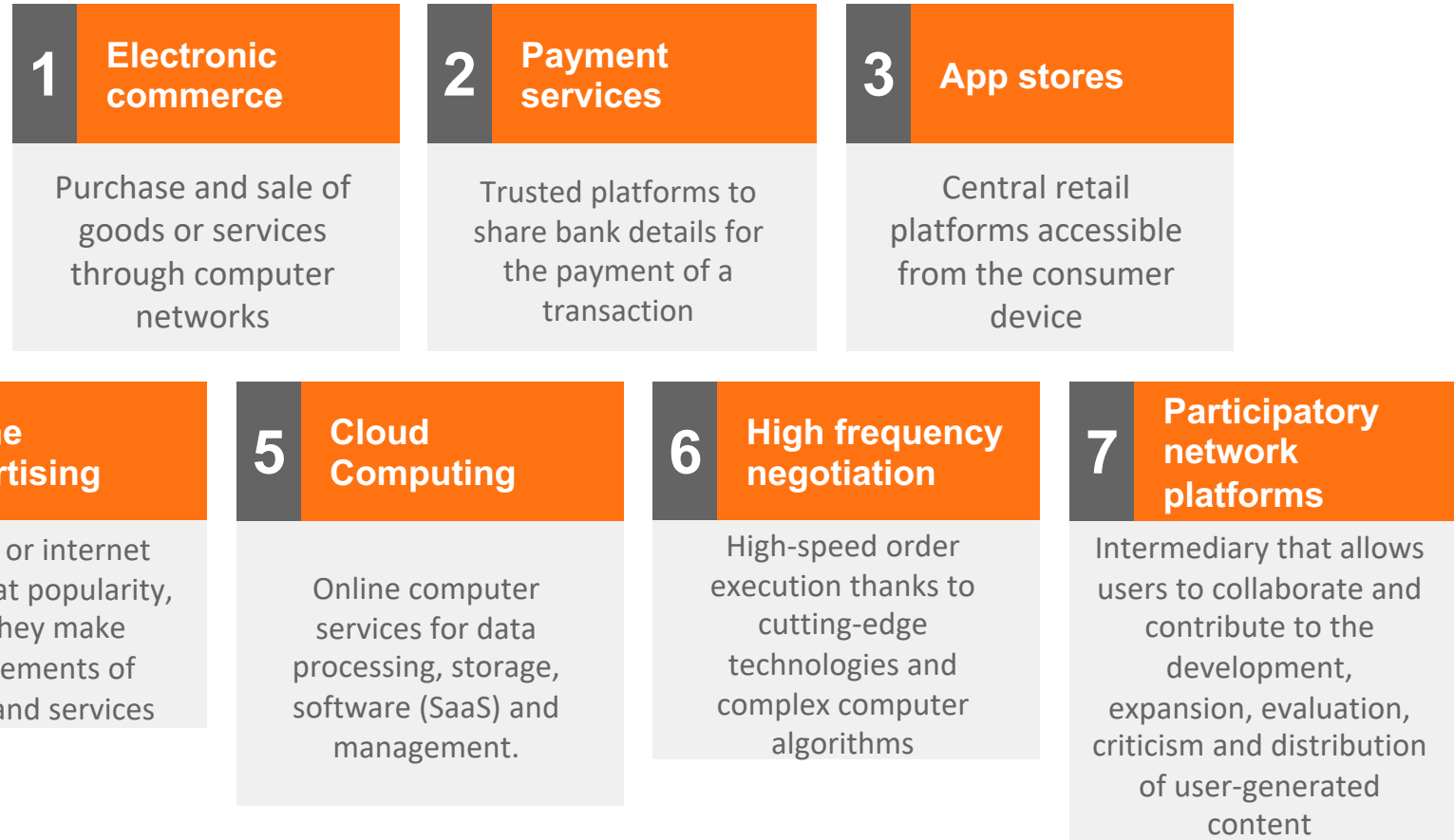
Artículo 249. ...

Los autorizados para prestar servicios de televisión y audio restringidos por Internet, deberán garantizar que al menos el treinta por ciento de su catálogo esté conformado con producción nacional que sea generada por una persona física o moral que no forme parte de dicho agente o de su grupo de interés.

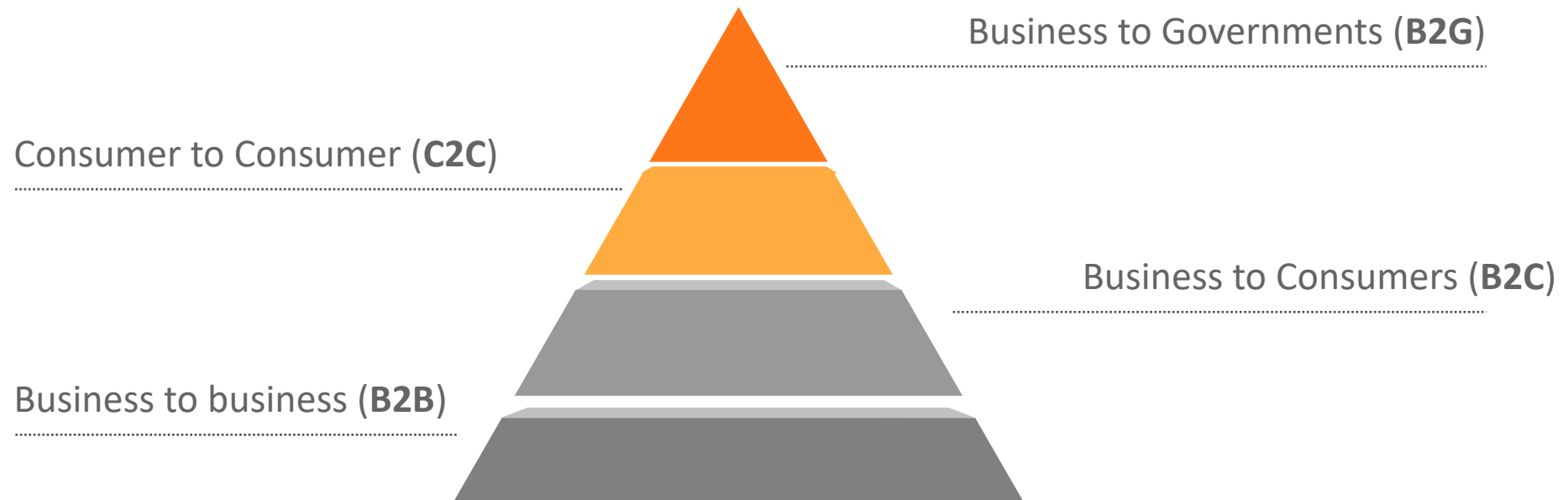
An aerial photograph of a city, featuring a prominent grey rectangular overlay in the center. On the left side of the overlay, there is a solid orange square. The text is centered within the grey area. The background shows a cityscape with roads, buildings, and a large building with 'HUAWEI' visible on its facade. The sky is filled with white clouds.

Practical and technical
issues and considerations
related to the new Income
Tax and VAT obligations.

Digital business models



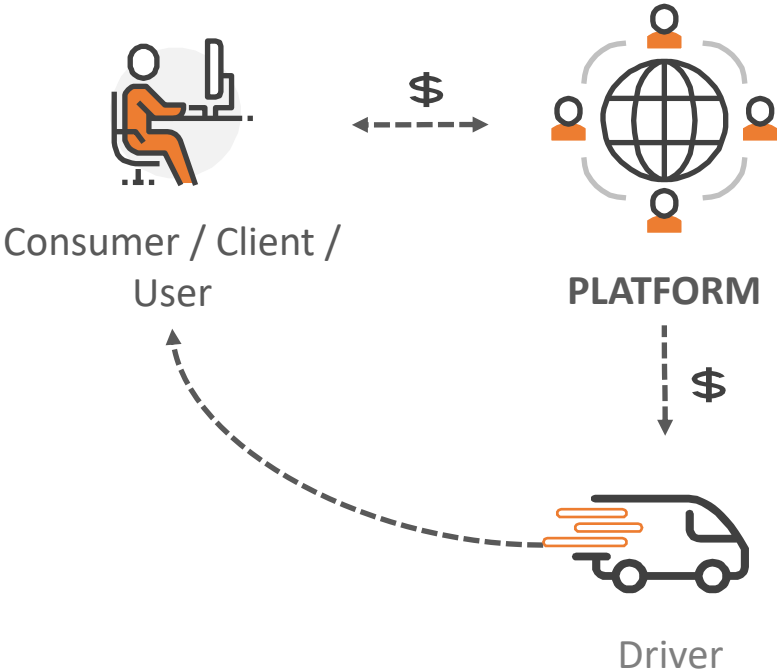
Digital business relationship categories



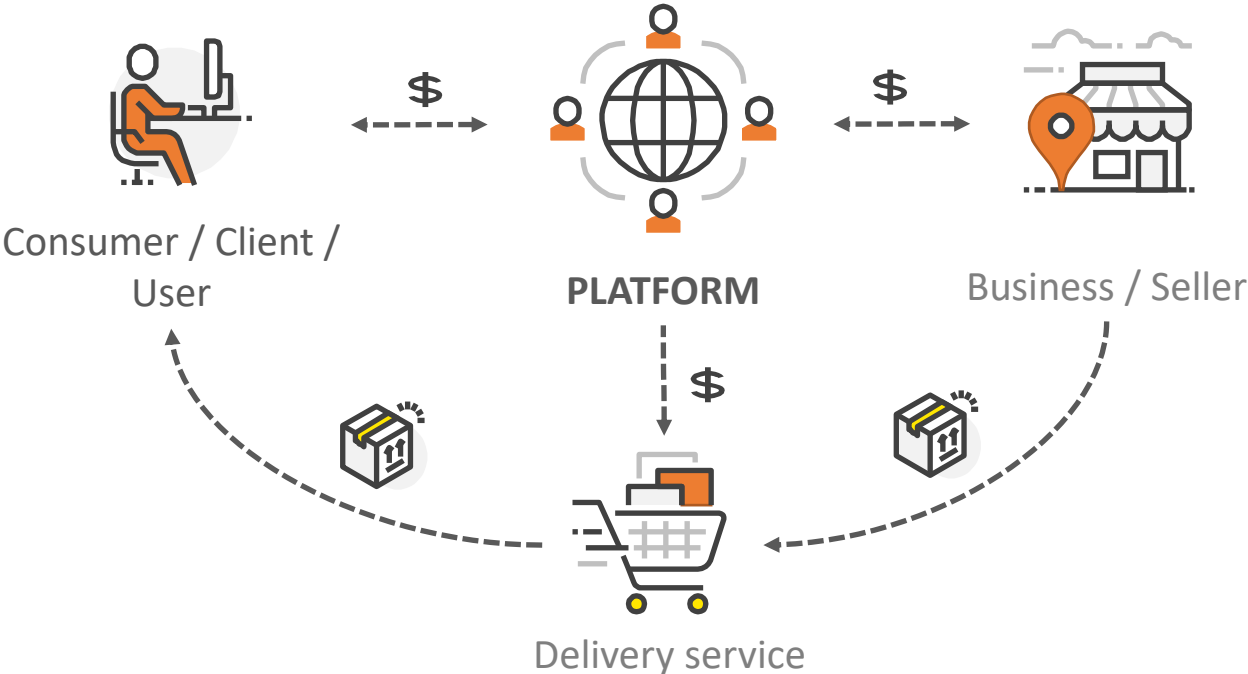
Streaming services




Platforms as a Service



Intermediation services



The background is a grayscale aerial photograph of a city, showing a river, roads, and buildings. A large, semi-transparent dark grey rectangle covers most of the image. On the left side of this rectangle, there is a solid orange square. In the center of the dark grey area, the words "Digital Services" are written in a white, sans-serif font. A thin orange border frames the central text area.

Digital Services

Digital Services – New triggering event

- Non-resident platforms shall now collect and pay VAT on digital services rendered to recipients in Mexico.
- Definition:
 - Rendered through applications or in digital format through Internet or another network.
 - Fundamentally automatized requiring minimal to no human intervention.
 - A consideration is charged
 - Download or access to images, movies, text, information, audio, video, etc. (except books and magazines); intermediation; online clubs and dating pages; remote education or tests or exercises.
 - Users in Mexico – domicile in Mexico; Mexican IP address; or telephone with Mexican country code.

Digital Services

- Streaming
- PaaS
- Others?

Foreign Platform

VAT Payment



Payment of consideration plus VAT

Digital Services / issuance of invoice and shifting VAT

User / Customer

Digital Services – Obligations

- Register and obtain Tax ID by June 30
- Shift the tax
- Provide information on monthly transactions
- Compute, collect and pay the tax – possibility to pay in functional currency
- Issue invoices – “simplified”, but with specific information
- Appoint a legal representative and a domicile for tax purposes
- Obtain electronic signatura
- Identify and detail activities that are subject to VAT vs those that are not – otherwise, 70-30% presumed.

Digital Services – Application

- Importation vs Shifting – when the platform is registered and included in the list.
- Effective as of June 1, 2020 – collection, regardless if services were rendered before that.

Digital Services Income Tax

- Foreign Digital Platforms do not pay corporate income tax in Mexico (except for Permanent Establishment)

Digital Services – Problems?

- Who can be appointed as a legal rep? Company or individual?
- When does obligation start?
- What happens if the platform does not register or is not included in the list? Or while the list is published?
- Definition of digital services
- Forex risk?
- PE?
- Can VAT on expenses be credited?
- Possible risks from registering?

The background is a grayscale aerial photograph of a city, featuring a prominent multi-lane highway and several high-rise buildings. A large, semi-transparent dark grey rectangle is superimposed over the center of the image. On the left side of this rectangle, there is a solid orange square. The text 'Intermediation services' is centered within the dark grey area in a white, sans-serif font. The word 'HUAWEI' is faintly visible on the side of one of the buildings in the background.

Intermediation services

Intermediaries – New withholding obligation

- Mexican and foreign platforms through which services are rendered or goods are sold by individuals in Mexico
- Withhold 50% of the VAT triggered, unless individual does not provide tax information (Tax ID), then 100% of VAT.

New provisions for individuals

- A new Chapter in Mexican Income Tax Law is included:

“Income from the sale of goods and rendering of services through internet using technological platforms, apps, and another similar”

- Entered into force: June 1, 2020

1. Who is obliged to pay income tax?

- Individuals that obtain income from the sale of goods or render of services through Digital Platforms that act as intermediaries.

Digital Platforms ?

- Mexican and Foreign Digital Platforms that act as *intermediaries* must withhold Income tax according to a progressive tax rate.
- Foreign Digital Platforms do not pay corporate income tax in Mexico (except for Permanent Establishment)

Platforms acting as intermediaries

- E-commerce / market places
- PaaS
- Others?

Platform

Income tax and VAT withholding payments



Intermediation service

Income tax and VAT withholdings

Option for definitive tax payments

User / Consumer

Goods / Services

Supplier

Delivery Service



Intermediaries – VAT obligations

- Same as those for digital services
- Register and obtain Tax ID by June 30 – specific section
- Deliver information
- Issue invoices detailing withholding – “simplified” during 2020
- In most cases, applies in addition to digital services

1. Who is obliged to pay income tax?

- Individuals that are foreign residents for tax purposes

Are they subject to new tax provisions?

New tax regime only applies to payments and transactions done with mexican individuals.

2. Income tax: withholding tax rates

- The withholding of the income tax must be made on the total income, not including VAT.
- If individual collects directly from consumer = no withholding tax.
- Such withholding will be considered as monthly tax pre-payment.
- Withholding tax rates:
 - ✓ From 2% to 8% for transportation services and delivery of goods;
 - ✓ From 2% to 10% for lodging services;
 - ✓ From 0.4% to 5.4% for other sales of goods and services.
 - ✓ 20% if the individual does not provide Tax ID to Digital Platform

3. Income tax obligations

A. Digital Platforms:

For Foreign Platforms without a PE in Mexico:

- Registry before tax authorities (SAT) as withholding agent.
 - ✓ Within 30 days after the services are provided for the first time in Mexico.
 - ✓ SAT will publish the list of registered platforms (resident abroad).
- Appoint a legal representative before the SAT and provide a domicile in Mexico. *Entity or individual??*
- Request an “electronic signature for tax procedures” (FIEL)

3. Income tax obligations

A. Digital Platforms:

- Withhold income tax and pay the withholdings through a tax return that should be filed no later than the 17th day of the following month.
 - ✓ In the event that the taxpayer does not provide the RFC (tax id), the income tax must be withheld applying the 20% rate.
 - ✓ Keep as part of its accounting registries the documentation that proves that the withholding and income tax return were paid and filed.
- Provide a digital tax receipt (CFDI) to individuals, indicating the amount of payment and the tax withheld, within 5 following days in which the withholding was made. ***OPTION during 2020 to issue a simplified tax receipt.***

3. Income tax obligations

A. Digital Platforms:

- Provide SAT with certain information from clients: Sellers of goods, service providers, and grantors of temporary use of real estate.
 - ✓ Name, RFC (Tax ID), CURP, domicile
 - ✓ Financial Institution and bank account where the deposits are received.
 - ✓ Amount of operation celebrated with the intermediary
- Information must be filed no later than the 10th day of the following month.
- Information that supports the income tax withholding payment must be kept as part of the accounting records.

3. Income tax obligations

A. Digital Platforms:

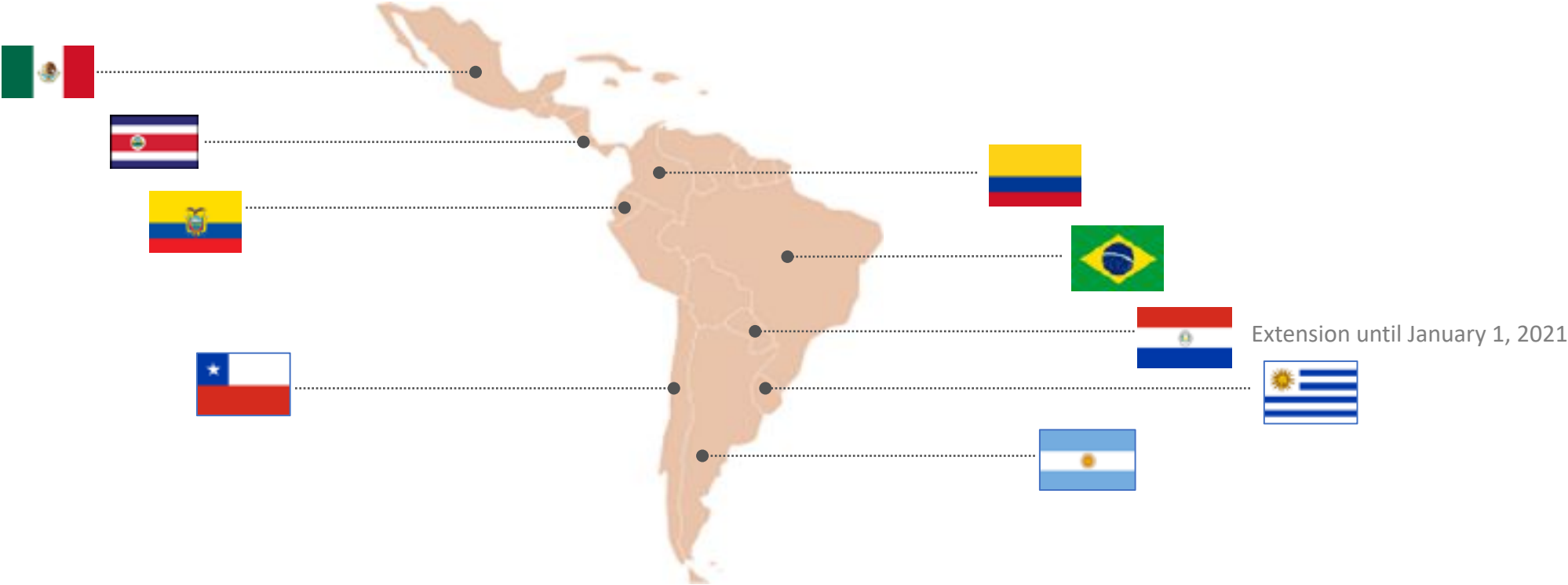
Lack of compliance ????

- Joint liability: Federal Tax Code states that withholding parties and persons who are required by law to collect contributions from taxpayers, are jointly liable with taxpayers up to the amount of said contributions.
- Penalties

Intermediaries – Problems?

- Same question on the legal representative.
- Only applies for Mexican individuals? What about non-residents?
- Can the regime be avoided if we change the type of agreement from intermediation to something else?
- Can the platform only look at if the user is an individual?
- Payment of taxes in functional currency.
- Joint Liability

What has happened in other Latin American countries?



An aerial photograph of a city, featuring a prominent, modern skyscraper with the 'HUAWEI' logo on its upper facade. The building is surrounded by other high-rise structures and a network of roads. The sky is filled with scattered white clouds. A large, semi-transparent dark grey rectangle is overlaid on the image, containing the text. To the left of this rectangle is a solid orange square.

Questions and answers

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