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Indirect Tax Alert

News from EY Americas Tax

Ecuador issues regulations on VAT on digital services

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On 4 August 2020, Ecuador published Executive Decree No. 1114 with regulations on the Value Added Tax (VAT) on digital services. The regulations take effect 16 September 2020.

Digital services subject to VAT

The regulations define digital services to include services provided and/or contracted through the internet or any adaptation or application of protocols, platforms or technology used over the internet or other network through which similar services are provided. The regulations further specify that digital services, by their nature, are automated and require minimal human intervention, regardless of the device used for downloading, viewing or use.

Digital services include:

- ▶ Website supply and webhosting, as well as any other services providing or supporting a business or personal presence on an electronic network
- ▶ The supply of digitized products generally, including software and changes to or upgrades of software; access and/or download of digital books, designs, components, patterns and similar products; and access and/or download of reports, data, market or financial analysis
- ▶ Automated online distance preventive and corrective maintenance of programs and equipment

- ▶ Online technical support administration and remote systems administration
- ▶ Web services including online data warehousing where data is stored and retrieved electronically, memory services and online advertising
- ▶ Software services, including, among others, services provided on the internet (software as a service) through cloud-based downloads
- ▶ Access / download of images, text, information, video, sporting events or other types of events, music, and games (including gambling)
- ▶ Services automatically generated from a computer via the internet or an electronic network in response to specific data input by the customer
- ▶ Online club services or online dating
- ▶ Services provided by blogs, newsletters, newspapers or journals
- ▶ Internet service provision
- ▶ Distance-learning, tests or made or corrected automated tasks
- ▶ Online auction services, labor demand/supply, transport, accommodation, order and delivery of goods or other services contracted through a website working as online marketplaces
- ▶ Data handling and calculation through internet or an electronic network
- ▶ Other services that may be defined by the Tax Authority through resolution

VAT withholding and payment

Foreign suppliers not registered in Ecuador

If the foreign supplier is not registered in Ecuador, the responsibility for the withholding and payment of VAT on importation of digital services depends on whether the transaction is business-to-consumer (B2C) or business-to-business (B2B).

For B2C, the VAT will be withheld by the intermediary (the bank if the payment is made via credit or debit card) to the Ecuadorian customer. In this case, the bank statement will be considered as the withholding receipt.

For B2B, the responsibility for the VAT will be assumed by the “importer of the service” through a “self-assessment”. In this case, the Ecuadorian resident should issue a local document denominated “*liquidación de compra de bienes y servicios*” adding the VAT to the service billed by the nonresident and then issue the withholding receipt for the 100% VAT. The VAT should be paid to the Tax Authority on a monthly basis through the VAT tax return.

Foreign suppliers registered in Ecuador

If the foreign supplier is registered in Ecuador, it should act as a collector agent of the VAT and then pay the tax to the Tax Authority. The registration will not constitute a permanent establishment for the nonresident. Recently the Tax Authority published on its website the procedure and forms to complete this registration. Due to COVID-19 emergency, the request may be done by e-mail.

Digital services corresponding to delivery of goods

For digital services corresponding to the delivery of goods that include a commission and are paid via credit or debit card, the bank performing the VAT withholding should withhold 10% of the total payment when the charge does not differentiate the value of the goods/services from the commission. If it is possible to differentiate the commission, the VAT applies only to the value of the commission.

Digital services subject to 0% VAT

The regulations specify that the following services are subject to a 0% VAT:

- ▶ Websites domain supply, i.e., the provision of internet domain names (Domain Name System)
- ▶ Hosting servers, i.e., the provision of hosting of files, images or videos, or similar content accessible to the public through internet
- ▶ Cloud computing, i.e., the private warehousing of any kind of data through the internet or telematic network

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