

Ministry of Finance Opens Public Consultation on Significant Economic Presence for Taxation of Digital Services

11 July 2023

Report from our correspondent María Alejandra Muñoz, International Tax Lawyer, Bogotá

The Ministry of Finance has published a draft decree regulating the concept of "significant economic presence" (SEP) for purposes of the taxation of digital services, which was introduced by Law 2277 of 2022 (article 20-3 of the Tax Code).

As a background, according to the newly introduced taxation of digital services rules, non-resident companies and individuals selling goods or services to customers located in Colombia are deemed to have a SEP in some cases. If the requirements for the SEP are met, the non-resident can apply for a 3% income tax rate. Otherwise, the 10% income tax withholding rate would apply (see [Tax Reform: Colombia Introduces Tax on Digital Services Rendered by Non-Residents \(15 December 2022\)](#)).

The draft decree regulates digital services taxation and the SEP concept as follows:

- it defines "digital services" as those rendered through the Internet or an electronic means in an automatized manner with minimal human intervention;
- it expressly excludes from the definition of "digital services" technical services, technical assistance, consultancy and education services even when provided through the Internet or a digital platform;
- it provides definitions of "customers" and "users". Customers are the ones paying or hiring the goods or services and users are persons using the digital interface. Both "customers" and "users" are individuals or companies located in Colombia;
- it defines "digital interface" as any type of technological program allowing users or customers to interact or communicate digitally with non-residents;
- it establishes that, for purposes of determining if a SEP exists for the commercialization of goods or services, it is deemed that a deliberate and systematic interaction with customers or users "located in Colombia" occurs when:
 - the habitual residence of the customer or user is Colombia;
 - the payment mechanism (e.g. credit, debit, gift cards) is located in Colombia;
 - the payment cards are issued in Colombia;
 - the shipment address is a Colombian address;
 - the Internet protocol (IP) address of the customer or user is a Colombia IP; and
 - the code of the mobile phone is +57 (Colombian code); and
- it establishes that the option for non-residents to be subject to a 3% income tax rate (instead of a 10% income tax withholding) must be formalized through a request submitted to the DIAN (previous registration) and an annual income tax return must be filed. Additionally, the draft decree establishes the obligation to make advance payments at a rate of 2% every 4 months.

The Ministry of Finance will receive [comments](#) to the draft decree until 15 July 2023. The draft decree can be consulted [here](#) (in Spanish only). Based on the comments and the analysis made, the government will issue the decree. Further developments will be provided in due course.