

Online education and digital services tax: A Mexico case study

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As COVID-19 continues to disrupt higher education, online education is becoming the new normal, both domestically and internationally. On the international front, many schools are preparing to deliver the Fall academic term entirely online to students based abroad. Such cross-border distance education programs present an array of foreign law compliance challenges, including foreign tax considerations. The question of whether and to what extent an education provider has foreign tax obligations related to the tuition paid by a student for online programs received by the student in the foreign country merits evaluation in each jurisdiction.

Unfortunately, many countries have been looking for ways to tax the "digital economy" and university online programs increasingly are caught in the mix. Digital services taxes (DSTs) have been adopted or are under consideration by such countries as Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. Last month, the United States trade representative [announced](#) an investigation into these foreign digital services taxes as potentially unfair or discriminatory vis-à-vis U.S. technology companies. Often, these tax laws are broad enough to capture all sorts of virtual services furnished in the country by foreign providers, including online education services.

Mexico recently introduced a new set of rules for the collection of 16 percent value added tax (VAT) for digital services effective 1 June 2020. To illustrate the tax compliance challenge that institutions may encounter in providing online education into Mexico, we summarize the new Mexican tax rules below.

Under Mexico's new taxation regime, digital services – such as distance learning, among other services – that are performed through digital content or applications via internet or any other network, which are fundamentally automated, are subject to specific VAT rules whenever the receiver of the service is located in Mexico.

The law considers the receiver of the services to be located in Mexico if: (i) it has expressed to the service provider a domicile in Mexico; (ii) the payment is made through a Mexican intermediary; (iii) the IP address used by the receiver of the service is located in Mexico; or (iv) the service receiver has provided a telephone number with a Mexican country code (+52).

Foreign entities that do not have a "permanent establishment" in Mexico for tax purposes and that provide digital services into Mexico are required to: (i) register with Mexican tax authorities as withholding agents; (ii) offer the service with the corresponding VAT (16%); (iii) provide

information to the tax authorities on the services receivers; (iv) calculate and pay on a monthly basis the applicable VAT collected and pay it to the tax authorities; (v) issue an invoice complying with certain requirements; and (vi) appoint a legal representative and domicile in Mexico. The law provides that complying with the abovementioned rules will not trigger a taxable "permanent establishment" in Mexico for the foreign entity.

These rules in Mexico are very new and there is not clear guidance or interpretation from tax authorities and courts at this time. As written, the law is broad enough to collect VAT on the tuition that foreign universities receive from certain types of online programming provided into Mexico for consumption by a student located in Mexico. The ultimate tax obligations may depend on the specific characteristics of the distance learning program offered into Mexico and whether the courseware is "fundamentally automated" as contemplated in the tax law. For example, live, synchronous instruction arguably is not "automated" in the same way that fully, on-demand asynchronous programs could be automated. But distance learning programs come in several different blended formats, and applicability of a tax to any specific program's tuition revenue conjures the proverbial "devil is in the detail" analysis.

As both online education and digital services taxes proliferate around the world, cross-border education providers are taking note. Some are redesigning online programs to lawfully avoid digital taxes; others are monitoring student enrollment from certain countries, passing along costs to downstream users, or preparing to remit tax payments. Given the complexity and nuances of international tax regimes – including double taxation treaties and recent guidances from the Organisation for Economic Co-operation and Development – a "one size fits all" approach is elusive. But as virtual education becomes the new norm, a country-by-country tax strategy will be important.

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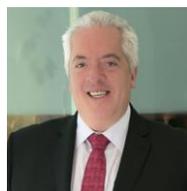
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