

# A review of the legal tax framework for digital platforms in Mexico

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**Abstract:** In recent years, Mexico has made significant advances in its legislation related to digital platforms, especially regarding their tax obligations. In this regard, this text seeks to delve into the Mexican tax system in order to understand its direct relationship with e-commerce, as it not only currently represents 5% of GDP but also experienced an almost doubling in just one year. It will explore how various laws regulate the actions of different digital platforms and how they seek to prevent international companies from making profits without paying taxes. Specifically, the 2021 tax reform and its relationship, application, and implications with digital platforms will be analyzed in detail. The analysis is based on the premise that said reform is a success of the Legislative Power. However, the need to adapt laws as Mexican society continues to adopt technology and carry out transactions in the digital market is also discussed.

**Keywords:** digital platforms, tax reform, legal framework in Mexico, Income Tax Law, electronic commerce.

**Resumen:** En los últimos años, México ha avanzado significativamente en su legislación relacionada con las plataformas digitales, especialmente en lo que se refiere a sus obligaciones fiscales. En este sentido, este texto busca adentrarse en el sistema fiscal mexicano para entender su relación directa con el comercio electrónico, ya que este no solo representa actualmente el 5% del PIB, sino que además experimentó una casi duplicación en tan solo un año. Se explorará cómo diversas leyes regulan las acciones de las diferentes plataformas digitales y cómo buscan evitar que empresas internacionales obtengan ganancias sin pagar impuestos. En concreto, se analizará en detalle la reforma fiscal de 2021 y su relación, aplicación e implicaciones con las plataformas digitales. El análisis parte de la premisa de que dicha reforma es un acierto del Poder Legislativo. Sin embargo, también se discute la necesidad de adecuar las leyes conforme la sociedad mexicana continúa adoptando la tecnología y realizando transacciones en el mercado digital.

**Palabras clave:** plataformas digitales, reforma fiscal, marco legal en México, Ley del Impuesto Sobre la Renta, comercio electrónico.

**Summary:** I. Introduction. II. Digital Platforms. III. Overview of the legal tax framework of Digital Platforms in Mexico. IV. Conclusions. V. Proposals. VI. References.

## I. Introduction

The arrival of the Internet brought about significant changes, first in the entertainment, news, advertising, and retail industries. In these industries, the initial significant digital players stemmed from traditional business models, initially adapting them to better serve end-users (both within and outside organizations) and to a broader interconnection through the Internet.<sup>1</sup> In recent years, the rise of digital platforms has revolutionized how we conduct commercial transactions, access services, and consume information. Mexico has not been immune to this transformation, and as a result, it has had to adapt its tax legal framework to address the challenges posed by the Digital Economy (DE).

As indicated in the Tax Challenges Arising from Digitalisation–Interim Report 2018, while globalization has allowed companies to locate various parts of their production process in different countries and, at the same time, access a greater number of customers worldwide, this trend has intensified with digitization. A broader commercial reach of companies as a result of digitization has occurred regardless of the location of users and/or customers of companies or the headquarters of companies, and even the distance between them.<sup>2</sup>

In this context, digital platforms play a fundamental role in the country's economic activity. They facilitate not only commercial transactions but also entertainment services, communication, and a variety of activities that have re-

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<sup>1</sup> OECD, ADDRESSING THE TAX CHALLENGES OF THE DIGITAL ECONOMY. ACTION 1: 2015 FINAL REPORT (2015).

<sup>2</sup> OECD, *Tax Challenges Arising from Digitalisation–Interim Report 2018: Inclusive Framework on BEPS* (2018).

defined our way of interacting and doing business. However, this exponential growth has also posed challenges regarding regulation and taxation. However, due to the intangible nature of the presence of these companies in many territories, this organizational model of digital companies hinders the possibilities of control by tax authorities over the activities they carry out.<sup>3</sup>

Mexican tax authorities and legislators have been attentive to the impact of these platforms on the tax system. The goal is to ensure fair and equitable participation in tax collection. The tax legal framework has become a central topic of debate, seeking to find a balance between fostering innovation and ensuring that digital platforms contribute appropriately to the country's development.<sup>4</sup>

In today's society, people seek ways to streamline daily life, optimize time, and accomplish tasks more efficiently. Therefore, the use of technology is constant in our environment, and all the innovations it brings have been driven and utilized for everyday use. Thanks to this, e-commerce has become one of the most important commercial models and has been adopted by companies.

In Mexico, there are some rules and institutions focused on the development of e-commerce and its safe implementation. For example, in Article 24 the Federal Law on the Protections of the Consumer defines the Federal Consumer Attorney's Office (PROFECO) as the institution responsible for taking the necessary measures to promote and protect consumer rights, as well as to ensure fairness and legal security between suppliers and consumers.<sup>5</sup> Since 2004, PROFECO has been running a program called "Monitoring of virtual stores." This program aims to ensure that Mexican e-commerce sites have the necessary standards and elements to protect transactions between parties.<sup>6</sup>

With change, optimization, adaptation, and inevitable globalization, digital platforms emerge to deliver goods and services internationally. These digital platforms are defined as Internet forums that serve for interaction and digital commerce. Their characteristics include diversity and dynamism, inclusion of search engines, comparison and review, portals, and commercial markets, among others.<sup>7</sup>

The use of such digital media requires the introduction of regulatory mechanisms regarding new business models. On one hand, entrepreneurs receive an alternative way to develop their business and make themselves known in a broader market segment, while on the other hand, taxation applicable to the

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<sup>3</sup> Ester Quintas Gutiérrez, *La imposición directa ante la economía digital*, 24 *Cuadernos de Formación* 122 (2019).

<sup>4</sup> J. C. Rodríguez Domínguez, *Plataformas Digitales y su Regulación Fiscal a Partir del 2020*, PÉREZ GÓNGORA Y ASOCIADOS, MAY 21, 2021.

<sup>5</sup> LEY FEDERAL DE PROTECCIÓN AL CONSUMIDOR (DOF, 1992)

<sup>6</sup> PROFECO, <https://www.profeco.gob.mx/tiendasvirtuales/index.html> (last visited Feb. 25, 2022).

<sup>7</sup> FEDERAL MINISTRY FOR ECONOMIC AFFAIRS AND ENERGY, WHITE PAPER DIGITAL PLATFORMS: DIGITAL REGULATORY POLICY FOR GROWTH, INNOVATION, COMPETITION AND PARTICIPATION 21-23 (Spree Druck Berlin GmbH, 2017).

country where income is received and the tax appreciation of the company in question are involved.

The Fiscal Reform of 2020 in Mexico introduced mechanisms to mainly tax individuals who offer products or services through Internet Digital Platforms (IDP). However, the platforms themselves are not subject to these taxes. The discussion about “digital taxes” arose due to large-scale tax evasion attributed to big digital corporations like Google, Amazon, Uber, and Mercado Libre. This regime, contained in the VAT Law, establishes tax obligations for individuals and legal entities that sell goods or provide services through digital platforms to residents in Mexico, regardless of whether the provider is located within national territory or abroad.

From a tax perspective in Mexico, a new tax regime called Digital Platforms is included in the Official Gazette of the Federation, where the Income Tax Law and the Value Added Tax Law were reformed.<sup>8</sup> Similarly, the Income Law of the Ministry of Finance and Public Credit proposes that, in the provision of services or sale of goods through the Internet via technological platforms, tax withholding be applied, which will be the responsibility of the service provider.

The intended purpose of this change is to focus on non-resident companies in Mexico operating nationwide in order to collect revenues, withhold, and pay taxes on them. However, some companies that provide services such as Netflix, Uber, Mercado Libre, and Amazon, to name a few, adhere to tax payment by residency and do not have to pay for services in other countries as they normally do in Mexico.

The physical absence of a non-resident company in Mexico is a tax collection issue because there is no permanent establishment at the business location, and taxes on agreed services can only be levied in the country of origin. Profits received from consumers are withdrawn from the country’s territory. Support measures for business growth, such as a website, a social network, a platform, or a digital application, present a challenge in applying the corresponding values to transfer prices.

Given the steps taken by tax authorities to collect taxes digitally, small businesses and state-owned enterprises bear a higher tax burden than international companies that pay taxes in their country of origin, with tax reduction and income shifting from the services they provide. All of this leads to a lack of fair competition and to unfair treatment of the parties. We hypothesize that the implementation of a specific tax legal framework for digital platforms in Mexico will contribute to increase tax collection and equity in tax burden, while fostering sustainable growth of the digital economy.

Our thesis is that the tax legal framework applicable to digital platforms in Mexico should be comprehensive, considering both individuals offering goods or services through these platforms and the platforms themselves. This will al-

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<sup>8</sup> GACETA OFICIAL DE LA FEDERACIÓN (CÁMARA DE DIPUTADOS DEL H. CONGRESO DE LA UNIÓN, 2019).

low addressing tax evasion and ensuring a fair contribution to the tax system, without hindering innovation and technological development.

The digital economy is evolving faster than countries can modify legislation to establish any particular tax; however, guidelines set for digital platforms are becoming effective in different parts of the world.<sup>9</sup> It is true that the involvement of technological platforms in business generates a wide range of legal relationships and models of economic interaction.

## II. Digital Platforms

The digital transformation of the economy and production processes necessitates rethinking and adjusting the parameters of tax justice that have shaped international tax standards during the 20th century. These standards have allowed for significant social, economic, and technological advancements worldwide.

The ease with which users of platforms can exchange goods and services on the internet, allowing individuals to enter the job market, has made these platforms a highly popular resource. Nevertheless, their emergence and development have not been without controversy, as they have faced numerous challenges and disputes affecting pre-established interests.<sup>10</sup>

According to Urquizu Cavallé, the sharing economy can be defined as “the business model that uses information technologies through digital platforms to obtain income based on the shared use of goods, services, and/or knowledge.” According to the author, the sharing economy implies a “new business modality that is constituted on the basis of an economic activity that originates, facilitates, and/or promotes the shared use of goods and/or services, obtaining income subject to taxation.”<sup>11</sup>

In this regard, the tax field is not immune to the impact of new technologies such as Big Data, Artificial Intelligence, robotics, or new business models based on online content generation. These developments present a series of challenges to tax systems while also opening up new opportunities for improving tax compliance and combating fraud and tax evasion. The primary objective should be to ensure that new technologies do not impede the comprehensive

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<sup>9</sup> EDUARDO ANTONIO PAREDES PAREDES & ARACELLY ESTHER PAGUAY LEDESMA, LA DETERMINACIÓN TRIBUTARIA A LOS SERVICIOS DIGITALES DE ENTRETENIMIENTO QUE PRESTAN LAS EMPRESAS MULTINACIONALES 22 (Ambato, 2019).

<sup>10</sup> LAURA MERCEDES VELÁZQUEZ ARROYO ET AL., CUADERNILLO DE ANÁLISIS SOBRE: MODELO DE INTERMEDIACIÓN DE SERVICIOS DE MOVILIDAD Y REPARTO POR INTERNET. NOTA DE ANÁLISIS EN MATERIA FISCAL, LABORAL Y DERECHO PRIVADO, (Instituto de Investigaciones Jurídicas, 2024).

<sup>11</sup> Ángel Urquizu Cavallé, *El modelo de negocios basado en compartir y/o servicios: marcos jurídicos y tributación (I)*, 10 *Revista quincena fiscal I* (2019).

application of the constitutional principles governing the tax system and to guarantee fair taxation that supports public expenditure.<sup>12</sup>

The agreements reached at the international level, known as Pillar I and Pillar II, promise a hopeful future thanks to the significant political consensus achieved internationally. However, they are not without problems and technical barriers in their final approval process and practical implementation.<sup>13</sup> In the context of the digital transformation of the economy, Pillars I and II represent two fundamental areas for establishing a solid framework that promotes sustainable development and resilience in the digital era. These pillars, established by the Organization for Economic Cooperation and Development (OECD), provide a comprehensive approach to addressing the challenges and opportunities presented by the digital economy.<sup>14</sup>

It is worth referring to these pillars due to their importance to the topic at hand. Pillar I focuses on creating a favorable business and innovation environment for the flourishing of the digital economy. This entails:

- Promoting competition and market openness: Removing unjustified barriers to entry and competition in the digital market, fostering the participation of various actors and encouraging innovation.
- Facilitating access to capital and financing: Providing businesses, especially small and medium-sized enterprises (SMEs), with adequate and affordable financing to drive the development of their digital businesses.
- Developing digital skills and talent: Investing in education and training in digital skills to prepare the workforce for the challenges and opportunities of the digital economy.
- Encouraging research and development: Supporting research and development in emerging digital technologies, such as artificial intelligence, blockchain, and cloud computing, to drive innovation and economic growth.

For its part, Pillar II focuses on addressing the fiscal challenges presented by the digital economy, ensuring that multinational companies pay a fair share of their taxes wherever they operate. This includes:

- Establishing a global minimum tax rate: Implementing a global minimum tax rate to prevent tax evasion and ensure that multinational companies pay taxes fairly in all countries.

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<sup>12</sup> Saturnina Moreno González, *La digitalización de la sociedad y el impacto sobre los sistemas tributarios*, in NUEVAS TECNOLOGÍAS DISRUPTIVAS Y TRIBUTACIÓN (Thomson Reuters, 2021).

<sup>13</sup> Alfredo García Prats, *Tributación internacional de la economía digital: el mundo post-BEPS*, in TRANSFORMACIÓN DIGITAL Y JUSTICIA TRIBUTARIA (Tirant lo Blanch, 2022).

<sup>14</sup> OECD, <https://www.oecd.org/tax/la-ocde-presenta-las-normas-modelo-del-segundo-pilar-para-facilitar-la-aplicacion-interna-del-impuesto-minimo-global-del-15-por-ciento.htm> (last visited Feb. 25, 2024).

- Addressing Base Erosion and Profit Shifting (BEPS): Implementing measures to prevent multinational companies from shifting their profits to countries with more lenient tax regimes, thereby reducing tax revenue in countries where they generate value.<sup>15</sup>
- Improving tax transparency: Promoting tax transparency by requiring multinational companies to disclose information about their activities and tax payments in different countries.

As observed, digital platforms not only provide a means to buy and sell goods or services but also facilitate interactions and transactions between users, encouraging the delivery of creative content through advertising, search, social networks, applications, communications, and payment methods.<sup>16</sup>

It should be noted, as Eva Escribano points out:

The concept of a permanent establishment (hereinafter PE). The PE appears, in one form or another, in double taxation treaties, and sets the threshold at which the source state can tax the business profits obtained by non-resident companies. Such taxation could occur as long as these companies have a permanent establishment in their territory to which profits can be attributed.<sup>17</sup>

The author highlights, and this is very relevant for our study, that:

A quick look at the various PE clauses in the three most influential treaty models allows us to conclude that, in essence, all of them require some degree of physical presence in the source state's territory, to a greater or lesser extent. For example, the so-called 'general clause' establishes that a company will have a PE in a territory if it maintains a fixed place of business there through which it carries out all or part of its activity (Article 5.1), unless such activity can be classified as preparatory or auxiliary (Article 5.4). This can include headquarters, branches, offices, factories, or workshops (Article 5.2). On the other hand, the so-called 'construction site PE' (Article 5.3) determines that a PE will arise for the non-resident whenever it carries out a construction or installation project in the corresponding territory, provided its duration exceeds a certain time threshold. Then there is the 'agency PE' (Article 5.5), according to which a company will have a PE in a

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<sup>15</sup> COMISIÓN EUROPEA, PROPUESTA DE DIRECTIVA DEL CONSEJO POR LA QUE SE MODIFICA LA DIRECTIVA (UE) 2016/1164 EN LO QUE RESPECTA AL PILAR I DE LAS NORMAS BEPS (Comisión Europea, 2021).

<sup>16</sup> PAULA CASTAÑOS CASTRO & JOSÉ ANTONIO CASTILLO PARRILLA, EL MERCADO DIGITAL EN LA UNIÓN EUROPEA (Reus, 2019).

<sup>17</sup> Eva Escribano, *La tributación de los beneficios de las empresas digitales: soluciones desde la (re) interpretación del concepto de establecimiento permanente y desde su enmienda. Un análisis comparado vis à vis de las propuestas de la OCDE y la comisión europea*, 170 *crónica tributaria* 7 (2019).

territory if a person acting on its behalf habitually concludes contracts on its behalf (Article 5.5). Lastly, there is the ‘service PE,’ characteristic of the United Nations model (Article 5.3.b), which will arise when the company provides services in the source state through internal or external employees, as long as the activity continues for a minimum period.<sup>18</sup>

As we can see, it is evident that all the definitions of the concept of Permanent Establishment in the three models share the characteristic of requiring some degree of physical presence in the source state’s territory. From the general clause and the construction site PE (e.g, the location of the office, branch, or site in the source state) to the agency PE or service PE (where the persons representing the PE must carry out their activity physically in that state).

Escribano puts emphasis on a concept that is pertinent to our topic: purely digital companies, also known as digital native companies or pure digital companies, are those that operate exclusively in the online environment. Unlike traditional companies that have a physical presence, these companies do not have physical stores, offices, or tangible assets.

In this context and in line with what was previously mentioned, Patricia Font points out that:

The globalization process has led companies, in their pursuit of greater fiscal optimization, to engage in abusive practices that result in the shifting of profits. This is undoubtedly facilitated by the rise of the digital economy, which promotes business models that do not require a physical presence in the territory where the income is generated, thus aiding in the relocation of profits. In this context, the concept of a permanent establishment becomes particularly relevant as a point of connection that allows for the taxation of generated income, and which has been reviewed by the OECD under the BEPS Plan.<sup>19</sup>

Their business model is based on the use of the internet and digital technologies to carry out all their activities, from the production and distribution of goods or services to customer service and marketing. Among their characteristics, we find the following:

Online sales channel: Their primary sales channel is the internet, whether through their own website, e-commerce platforms, or social networks.<sup>20</sup>

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<sup>18</sup> *Idem.*

<sup>19</sup> Patricia Font Gorgorió, *La redefinición del establecimiento permanente en el marco de la economía digital el establecimiento permanente virtua*, 182 *Revista Española de Derecho Financiero* 115 (2019).

<sup>20</sup> OECD, *EMPRESAS NATIVAS DIGITALES: UN NUEVO PARADIGMA PARA LA ECONOMÍA DEL SIGLO XXI*, (2020).



Robust digital presence: They have a strong presence on the internet, with an optimized website, active social media profiles, and effective digital marketing strategies.<sup>21</sup>

Scalable business model: “Their business model is highly scalable, allowing them to reach a global audience with relatively low investment.”<sup>22</sup> Thus, digital platforms within the scope of this tax regime have the following obligations:

- Register in the Federal Taxpayer Registry (RFC): Digital platforms must obtain an RFC and comply with general tax obligations, such as submitting informational returns and paying taxes.
- Certify their tax residency: Foreign digital platforms must certify their tax residency to the Mexican authorities.
- Appoint a legal representative in Mexico: Foreign digital platforms must appoint a legal representative in Mexico to act on their behalf before the tax authorities.
- Withhold VAT and ISR: Digital platforms must withhold VAT and ISR on payments made to suppliers residing in Mexico.
- Submit informational returns: Digital platforms must submit monthly and annual informational returns containing information on operations carried out with residents in Mexico.

However, it is important to highlight what Marcel Olbert and Christoph Spengel state:

In the rise of the digital economy, it has been asserted that data holds a value similar to that of valuable natural resources like oil. However, this analogy is flawed. Data only increases in value when it is linked to a specific problem domain and solves issues for customers and companies. In other words, data needs to be transformed by companies aiming at value creation, and this fact should be considered when thinking about corporate income tax and data. Clearly, data (in its raw form) is not comparable to oil.<sup>23</sup>

The aforementioned authors state that data mining refers to the techniques, methods, and algorithms for analyzing large amounts of data with the ultimate goal of transforming it into knowledge. In the context of business model analysis, data mining can be considered as the part of a business model that creates

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<sup>21</sup> Foro Económico Mundial, Las empresas nativas digitales están cambiando el mundo (2021). <https://www.weforum.org/agenda/2023/01/davos-emerging-technology-ai/>

<sup>22</sup> Endeavor México, ¿Qué son las empresas puramente digitales y por qué son importantes? (2022). <https://es.linkedin.com/pulse/empez%C3%B3-una-nueva-era-para-pymes-y-mipymes-bienvenidos-blaise-iknme>

<sup>23</sup> Marcel Olbert and Christoph Spengel, *Taxation in the Digital Economy—Recent Policy Developments and the Question of Value Creation*, 3 *International tax studies* 18 (2019).

value from data.<sup>24</sup> Given the above, we can argue that digital platforms and their innovations have led to the creation of different types of markets and activities through platforms, such as accommodation services, restaurants, transportation service offers, and other options that can be contracted digitally. As we will see in the following cases:

The public transportation service concessionaire, in accordance with state transportation authorities' regulations, agrees on fares and considers the number of bases assigned based on the demand of the geographical area, the number of taxis, commercial areas, etc. Under this assumption, the State is obligated to monitor and control the services provided, leaving the responsibility to the service provider to obtain the permit from the governmental authority, which subjects it to a special legal regime for operation and compliance with its obligations.

In the 2020 fiscal reform package, a rate was applied for the provision of passenger land transport services and the delivery of goods according to their monthly income. With the modifications made to the 2021 fiscal reform package, a comparative table is included to detail the changes made.

Monthly Income Amount	Year 2020 Withholding Rate	Year 2021 Retention rate
Up to \$5 500	2%	4%
Up to \$15 000	3%	
Up to \$21 000	4%	
More than \$21 000	8%	

Source: Own elaboration based on quantitative information published by the Ministry of Finance and Public Credit (SHCP).

On the other hand, it is noted that in the lodging services, it has become common for individuals or families to search through their digital media the various options offered by a company. These searches have the greatest impact on traditional hotels. Tax authorities have taken the stance of applying the treatment of business activity to lodging services through digital platforms, considering as improper tax practice cases where a different tax treatment is applied.

Similarly to transportation, accommodation also introduces changes in the package of tax reforms for 2021, a comparative table is attached to see the changes made.

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<sup>24</sup> *Idem.*

Monthly Income Amount	Year 2020 Withholding Rate	Year 2021 Retention rate
Up to \$5 000.00	2%	4%
Up to \$15 000.00	3%	
Up to \$35 000.00	5%	
More than \$35 000.00	10%	

Source: Own elaboration based on quantitative information published by the Ministry of Finance and Public Credit (SHCP)

According to the National Association of Hotel Chains, these changes foster fair and healthy competition in the tourism market, as their contribution to the gross domestic product represents 8.7% of the total.<sup>25</sup> Additionally, streaming services are available, providing access to play audio or video files from websites or mobile applications. In Mexico, the user base has grown by 66% between 2019 and 2020, from nine million to fifteen million registered users.<sup>26</sup>

Due to the ease, speed, and accessibility of content provided by streaming services, users have determined their preferences regarding the use of such platforms. Seven out of ten Mexicans use a streaming platform daily, and 65% of television consumption time is spent streaming; 84% would choose a platform if they had to select only one type of transmission.<sup>27</sup>

As Santos Flores warns, the digitization of the economy and the emergence of new business models leveraging Information and Communication Technologies (ICT) pose significant challenges for Financial and Tax Law. The use of blockchain technology by tax administrations, the tax regime for technological platforms and software applications, the application of Artificial Intelligence (AI) and Big Data in tax management, the taxation of digital services, and the tax treatment of cryptocurrencies and financial technologies such as crowdfunding, are challenges that both academic studies and authorities must consider as imperative agenda items.<sup>28</sup>

<sup>25</sup> THE COMPETITIVE INTELLIGENCE UNIT <https://www.theciu.com/publicaciones-2/2021/5/5/contribucin-fiscal-de-la-oferta-de-alojamiento-de-corto-plazo-acp-en-mxico> (last visited: March 3<sup>rd</sup>, 2022).

<sup>26</sup> Carla Martínez, *Ademas de Netflix, ¿por qué otros como Spotify subirán de precio?*, EL UNIVERSAL, May 7, 2020.

<sup>27</sup> Magnite Team, *CTV in LATAM: Widespread CTV Adoption and High Ad Receptivity Shows Opportunities for Marketer*, MAGNITE, April 21, 2021.

<sup>28</sup> ISRAEL SANTOS FLORES, *FISCALIDAD Y ECONOMÍA DIGITALIZADA* 45 (Thomson Reuters, 2023).

### III. Overview of the legal tax framework of Digital Platforms in Mexico

As Wolfgang Schön argues, tax law -like any other area of law- is intended to express long-term value judgments and political agreements, which have been transformed into legislative language. These norms exhibit a general character and can be applied to new facts regardless of changes in the real world, whether they are changes in technology or changes in the way business is conducted. Old concepts of Roman law on warranties for defective goods can be invoked, whether they are sold in a rural market or over the Internet. Legal regimes -unlike consumer software- do not inherently require periodic updates as technology and business progress. Instead, a specific political argument is needed to modify the law, including tax law.<sup>29</sup>

The digitization of the economy in Mexico has progressed by leaps and bounds in recent years, driven by the increasing penetration of the Internet, the adoption of mobile technologies, and the proliferation of digital platforms. This process has brought with it a series of benefits, such as increased productivity, the creation of new jobs, and improved access to goods and services. However, it has also presented new challenges, both for businesses and for the government, hence the need for tax reform.

Wolfgang<sup>30</sup> asserts that arguments in favor of international tax reform in light of the digitization of the economy, which can be found in the current debate, show a vast variety. But they all start from two assumptions:

- The digitization of the economy makes it easier to offer goods and services to customers worldwide without establishing a “physical” permanent establishment or a branch in the market jurisdiction.
- The business models behind the success of companies in digitized markets are based on intangible assets (patents, algorithms, among others) and economies of scale (in particular).

It is essential to understand that the digitization of the economy is an irreversible process that presents both opportunities and challenges for Mexico. Addressing legislative challenges effectively will be crucial to maximizing the benefits of the digital economy and ensuring that all Mexicans can participate in it. We will now examine the legal framework in our country.

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<sup>29</sup> Wolfgang Schön, *Ten questions about why and how to tax the digitalized economy*, BULLETIN FOR INTERNATIONAL TAXATION (2018).

<sup>30</sup> *Idem*.

## 1. Value Added Tax Law

The value added tax is a tax levied on the consumption of goods and the use of services indirectly,<sup>31</sup> aiming to tax the consumption of taxpayers based on production costs and income obtained, which are then passed on to final consumers through sales. The Value Added Tax Law includes in Chapter III Bis the foundation for the provision of digital services by non-residents without establishment in Mexico, its general provisions, and digital services of intermediation between third parties.

Value added tax for taxpayers resident in the national territory or non-residents without establishment in Mexico will be imposed on the sale of goods, provision of digital services of intermediation between third parties, temporary use or enjoyment of goods, among others.

Regarding the value added tax, digital platforms that provide services or sell goods in Mexico are required to apply and charge VAT to their end users. This includes, for example, the sale of applications, subscriptions to streaming services, online advertising, and other digital services. Additionally, foreign digital platforms that do not have an establishment in Mexico but provide services to Mexican residents are required to register with the SAT (Tax Administration Service) and comply with their tax obligations in the country.

Their withholding rate corresponds to 50% of the Value Added Tax charged. When a natural person does not provide their Federal Taxpayer Registry to the digital platform, the withholding will be 100%.

The offsetting of value added tax may be made subject to the requirements established by law, namely, the transmission and direct and separate identification of the service provider and its beneficiary. If services are provided together with other digital services not covered in Article 18B, the tax will be calculated at the 16% rate stated on the tax receipt indicating the breakdown of these services. If the previous classification is not made, the remuneration is equal to 70% of the service value. Article 18-L allows a taxpayer who has earned up to \$300 000 Mexican pesos in the immediate preceding fiscal year for intermediation activities to definitively withhold the tax,<sup>32</sup> provided they do not receive income from other sources except for those coming from salaries or interests. This option requires registration in the Federal Taxpayer Registry before the Tax Administration Service, retention document retention and payment information from those who made the retention, issuance of the Digital Tax Invoice through the Internet to the purchasers of goods or services, and submission of the notice to opt for that option before the Tax Administration Service.

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<sup>31</sup> QUICKBOOKS <https://quickbooks.intuit.com/mx/recursos/controla-tu-negocio/que-es-el-impuesto-digital-2021/> (last visited: March 8, 2022).

<sup>32</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, VALUE ADDED TAX LAW (Diario Oficial de la Federación, 1978).

One of the most contentious aspects of the Value Added Tax Law is that it temporarily blocks access to digital services from foreign providers who do not meet their financial obligations. The blockage is carried out by public network operators in Mexico, with cases where some failures to meet obligations such as registration in the Federal Taxpayer Registry, appointment of a legal representative, provision of a national address for notification purposes, as well as failure to process the Advanced Electronic Signature, among others, are presented.

## *2. Income Tax Law*

Income tax is a direct application tax that taxes the income of an individual, legal entity, or another legal entity, and the calculation is based on a variable percentage associated with these. Its object is the income received by individuals in cash, in kind, or on credit. In the case of legal entities, it concerns income derived from commercial, industrial, agricultural, or fishing activities.<sup>33</sup>

Article 31, Section IV of the Political Constitution of the United Mexican States, establishes that Mexicans are obliged by law to contribute to public expenditure in a proportional and equitable manner.<sup>34</sup> Regarding income tax, digital platforms are subject to the same tax obligations as any other company or individual earning income in Mexico. This includes the obligation to file periodic tax returns, calculate and withhold the corresponding tax on income obtained through the platform, as well as to maintain accounting records and documentation supporting their operations.

The Income Tax Law, in Section III, addresses the income base for the sale of goods or the provision of services through the Internet via technological platforms, software applications, and similar means. In accordance with Article 113-A of the Income Tax Law, taxpayers belonging to the regime of individuals conducting business activities are subject to taxation, which specifies that the economic activity included in this case is the sale of goods through the Internet or digital platforms, software applications, among others, that provide intermediary services, such as suppliers and buyers of goods.<sup>35</sup>

Their tax base corresponds to the total amount of income actually received through technological platforms, software applications, and similar means. The tax will be paid through withholding by Mexican or foreign legal entities, as well as foreign legal entities providing the digital service. The withholding varies depending on the service or activity performed, with 2.1% for transportation and delivery services, 1% for the sale of goods and provision of services, and 4% for lodging services. If a portion of the consideration is received directly from users

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<sup>33</sup> DOLORES BEATRIZ CHAPOY BONIFAZ & GERARDO VALDIVIA GIL, INTRODUCCIÓN AL DERECHO MEXICANO. DERECHO FISCAL (Instituto de Investigaciones Jurídicas, 1981).

<sup>34</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS (Gaceta Oficial de la Federación, 2024).

<sup>35</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, LEY DE IMPUESTO SOBRE LA RENTA (Gaceta Oficial de la Federación, 2013).

and the income does not exceed \$300 000 Mexican pesos annually, taxpayers may opt to make the tax payment definitively.

The penalty that a taxpayer may incur for failing to withhold and remit the tax is similar to that of VAT; specifically it will be applied within three consecutive months for foreign legal entities without a permanent establishment in the country, as well as for foreign legal entities referred to in Article 113-A of this Law. The temporary blockage of access to the digital service and its unblocking will be carried out in the same manner as explained in the Value Added Tax Law.

### **3. Federal Fiscal Code**

The Federal Fiscal Code is the regulation that defines basic tax concepts, and establishes procedures for the collection of revenue, methods for implementing tax decisions, and other aspects.<sup>36</sup> Its interests are usually concentrated in the tax field and in practice it is of subsidiary application. It is a summary of various fiscal aspects, aimed at determining contributions and obligations in relation to the payment of federal taxes.

The requirement of a fiscal voucher in Article 29 of this Law establishes that:

When issuing digital tax vouchers via the Internet, the federal taxpayer registry of both parties and the tax regime under which they pay, folio number and digital seal of the Tax Administration Service, place and date of issue, amount, unit of measure, and description of the service must be displayed. If any of the aforementioned requirements are not met, or if the information provided differs from that established by tax regulations, such information cannot be tax-deducted or credited.<sup>37</sup>

Notifications corresponding to administrative acts are made through the tax mailbox, in person, or by certified mail. In cases where the taxpayer cannot be located at the address indicated in their Federal Taxpayer Registry, ignores their address, or opposes the notification process; the notification must be made by publication. When the person has died and the representative of the estate is unknown, it will be through edicts.

The fine established in Article 18-H QUÁTER of the Value Added Tax Law corresponds to the amount of \$500 000 to \$1 000 000 Mexican pesos and its penalty will be applied to concessionaires of a public telecommunications network in Mexico who do not comply with the order to block access to the

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<sup>36</sup> SOYCONTA <https://www.soyconta.com/introduccion-al-estudio-del-codigo-fiscal-de-la-federacion/> (last visited: November 15, 2021).

<sup>37</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, CÓDIGO FISCAL FEDERAL (Gaceta Oficial de la Federación, 2013).

provider's digital service. Similarly, the fine will be incurred when the unblocking is not carried out within the established period in said Law.

#### ***4. Fiscal Miscellaneous Resolution***

The Fiscal Miscellaneous Resolution is an annual document published in the Official Gazette of the Federation. Its objective is to encompass and facilitate the understanding imparted by tax authorities through their rules regarding taxes, products, benefits, improvement contributions, and federal rights. It is considered a guide to all aspects of tax law in a single document.

The tax reform of 2020 added a chapter on income generated through digital services for both Income Tax and Value Added Tax. In doing so, they have taken the lead in regulating e-commerce and how companies provide services with more specific operational control and greater oversight over digital platforms. Title 12 covers the provision of digital services and is divided into three chapters considering foreign residents, digital intermediary services, and individuals selling goods, providing services, or offering lodging through platforms.<sup>38</sup>

#### ***5. Federal Consumer Protection Law***

On December 22, 1975, the first Federal Consumer Protection Law was published in the Federal Bulletin, from which the National Consumer Institute and the Federal Consumer Attorney's Office were born. Its creation is very important since Mexico was the first Latin American country to have this type of consumer protection agencies.<sup>39</sup> It has undergone various reforms, and the regulations have strengthened consumer protection mechanisms, one of which occurred when the Law was modified in 2000 to add Chapter VIII Bis.

Chapter VIII Bis of this Law refers to the rights of consumers in transactions carried out through the use of electronic, optical, or any other technology. Its provisions apply to the relationships between suppliers and consumers regarding their transactions.

Transactions must comply with a series of requirements such as protecting and keeping confidential the information supplied by the consumer, the provider must hand out contact information or a means for future claims or clarifications, avoiding deceptive commercial practices regarding their products, disclosing all information regarding terms and conditions, and ensuring that their published information is clear and sufficient about the services offered.<sup>40</sup>

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<sup>38</sup> SECRETARÍA DE HACIENDA Y CRÉDITO PÚBLICO, RESOLUCIÓN MISCELÁNEA FISCAL PARA 2021 (Gaceta Oficial de la Federación, 2021).

<sup>39</sup> JORGE WITKER, DERECHO DE LA COMPETENCIA ECONÓMICA EN MÉXICO (Universidad Nacional Autónoma de México, 2003).

<sup>40</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, LEY FEDERAL DE PROTECCIÓN AL CONSUMIDOR (Gaceta Oficial de la Federación, 1992).



When a violation of the Federal Consumer Protection Law is committed, the Federal Consumer Attorney's Office initiates administrative proceedings against companies that have harmed consumers. An example was the application of Airbnb, which had a service conflict. In the advertisement, the provider indicates that it offers quality accommodation and booking services but does not take responsibility for their use. The responsibility lies with the hosts, and the application disclaims any action or mishap that may occur.

## ***6. National Commission for the Protection and Defense of Financial Services Users***

It is a decentralized public institution aimed at supporting and defending the rights and interests of individuals or users associated with financial products or services offered by Mexican financial institutions. Its purpose is to increase the legal certainty of the transactions carried out and of the relationships established. Another task is to act as an intermediary to achieve consensus between users and financial institutions.

The National Commission for the Protection and Defense of Financial Services Users has taken two actions to strengthen the relationship between Financial Technology Institutions and their users. Preventive measures aim to promote transparency regarding the level of publicly available information and financial education. Corrective actions focus on resolving disputes. Likewise, this institution created the Fintech User Platform with the purpose of providing support to the user and offering them adequate attention.

Due to the peculiarities of the institutions, markets, and products related to the National Commission for the Protection and Defense of Financial Services Users, all support, advice, and complaints are made through digital means. To file a complaint, the user must complete a form, which must be signed and attached in PDF format on this institution's website. This includes, among other things, the arbitration process between the parties in dispute, issuing statements and recommendations to federal authorities and financial institutions.

In the first quarter of 2018, 1.7 million possible fraud complaints were registered, of which 59% came from e-commerce.<sup>41</sup> Regarding digital platforms, a total of 308 000 complaints were filed for streaming services, 157 000 for private transportation services, and 121 000 for entertainment companies.<sup>42</sup>

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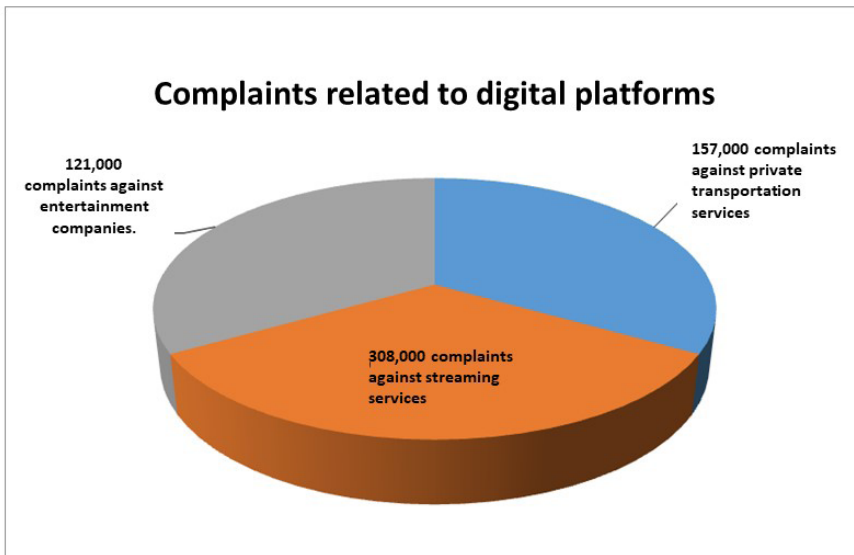
<sup>41</sup> CONDUSEF <https://www.condusef.gob.mx/?p=contenido&idc=387&idcat=1> (last visited: January 4, 2022).

<sup>42</sup> Internet Association MX, *Study on E-commerce in Mexico 2019*, DIGITAL STATISTICS, 2019.

**Graph 1. Source: Own elaboration based on the report published on the CONDUSEF platform, 2018**



**Graph 2. Source: Own elaboration based on the report published on the CONDUSEF platform, 2018**



## 7. Code of Ethics on E-commerce

The Code of Ethics on E-commerce is a set of minimum standards to improve commercial practices globally. Compliance with the code is mandatory, and its effects apply to the provider. When a consumer is affected by an activity or movement, the platform will be responsible for the services provided and will be subject to what is stipulated in its terms and conditions. To be available to consumers through a digital platform, they must have the identification and contact information of the provider, information on purchases and returns, delivery methods, among others. The terms and conditions should reference general conditions, the validity period of bargains and promotions, and payment or delivery restrictions.

Within the code of ethics, it is established that digital advertising must be truthful, clear, and related to the products or services offered on its platform, in addition to respecting the guidelines established in the Federal Consumer Protection Law. Such advertising must mention the identity of the advertiser, their contact information, and the possibility to opt out of receiving direct commercial advertising.<sup>43</sup>

Likewise, the provider must have an accessible and legible privacy statement that clearly indicates all information related to the protection of personal data. The Code will comply with the provisions of Article 16 of the Political Constitution of the United Mexican States, which recognizes the right of any person to the protection of their personal data, access, rectification, and cancellation thereof. In cases where there are conflicts with consumers, providers must have their own mechanisms to resolve disputes through alternative means and reach quick agreements through mediation, conciliation, and arbitration. Additionally, they must be guided by the Mexican Standard for E-commerce NMX-COE-001-SCFI-2018, which establishes a series of guidelines for best practices, aimed at protecting consumers and ensuring competition among companies.<sup>44</sup> Similarly, the Federal Consumer Protection Agency conducts quarterly monitoring of adhering providers, with the purpose of reviewing their compliance. The list is published in the Registry of Responsible Providers in E-commerce.

## 8. Commercial Code

The basic principles of electronic commerce were originally established in the Model Law on Electronic Commerce, which has been adopted by various countries in their legislation. The law aims to enable and facilitate electronic

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<sup>43</sup> DOF [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5612351&fecha=26/02/2021#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5612351&fecha=26/02/2021#gsc.tab=0) (last visited: January 2023).

<sup>44</sup> ECIIJA <https://ecija.com/sala-de-prensa/mexico-profeco-emite-codigo-de-etica-para-e-commerce/> (last visited: February 4, 2022).

commerce by providing lawmakers with a set of regulations focused on eliminating legal obstacles.<sup>45</sup>

In Mexico, the Commercial Code is presented in accordance with its interpretation and application related to the principles of technological neutrality, autonomy of the will, international compatibility, and functional equivalence with documented information.

In the second title of the second book of the Commercial Code, the legal provisions for electronic commerce are specified. Of the 11 chapters of the previous title, attention is focused on the first chapters that correspond to data messages and signatures.

The content of an intact data message will be considered as such when it has remained complete and unaltered, regardless of any changes the medium containing it may have undergone. Its place of dispatch shall be where the sender has its establishment and the place of receipt is where the recipient has its own.

When there exists a signature in connection with a data message, the electronic signature is deemed satisfied when the Law requires the existence of the agreement. The electronic signature shall be considered advanced when the context in which it is used corresponds to the signatory or when any alteration of the signature made after the moment of its signing can be detected. The signatory shall comply with obligations related to the use of their electronic signature, act diligently, avoid unauthorized use of the signature, and be liable for obligations arising from the unauthorized use of their signature. Likewise, they shall be responsible for the legal consequences arising from failure to fulfill their obligations.<sup>46</sup>

### ***9. Law to Regulate Financial Technology Institutions***

The Fintech Law regulates Financial Technology Institutions with the aim of increasing the legal certainty of financial services through digital platforms. The Official Gazette of the Federation promulgated the law on March 9, 2018, and the bodies responsible for approving, regulating, and supervising activities related to these platforms are the Ministry of Finance and Public Credit, the Bank of Mexico, and the National Banking and Securities Commission. Article 2 of the law establishes that its provisions focus on promoting competition, protecting consumers, safeguarding financial stability, and preventing illegal transactions.<sup>47</sup> It also describes the operations of Financial Technology Institutions and banks using virtual assets and the legal framework for exchanging infor-

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<sup>45</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, MODEL LAW ON ELECTRONIC COMMERCE (United Nations, 2021).

<sup>46</sup> CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, CÓDIGO COMERCIAL (Diario Oficial de la Federación, 1989).

<sup>47</sup> CÁMARA DE DIPUTADOS DEL HONORABLE CONGRESO DE LA UNIÓN, LEY PARA REGULAR LAS INSTITUCIONES DE TECNOLOGÍA FINANCIERA (Diario Oficial de la Federación, 2021).

mation with financial institutions and third parties.<sup>48</sup> With the information obtained, providers are given the profile of each client and the method that best suits what they are looking for in order to promote the digital economy and increase financial literacy in society.

With the aim of further improving Mexico's financial technology, authorities have proposed the implementation of this law consisting of general rules. These rules are clear and must be adjusted as this type of tool grows. Organizations need to have a broad view of regulatory, legal, and tax issues that strengthen their strategic corporate governance plans.

The regulations are based on electronic payment platforms and crowdfunding. Financial Technology Institutions that are not associated with either of the two concepts mentioned above are called novel models or Sandboxes. They aim to provide financial services using innovative technological tools or means other than those established in the market. Their approval is temporary and granted by financial authorities.

### ***10. Federal Law for the Prevention and Identification of Operations with Illicit Proceeds***

The purpose for which it was created is to monitor cash flow to maintain a healthier and more transparent economy so that illegally sourced resources are not included in the formal economy.<sup>49</sup> The law establishes that its object is to protect the financial system and the national economy by establishing measures and procedures to prevent and detect acts or operations involving illicit resources. With respect to electronic platforms, the management of virtual assets is considered one of the vulnerable activities provided for by this regulation. The reason for this is the transfer of virtual assets that are not recognized by the Bank of Mexico for operations related to the purchase or sale of products.

This measure helps identify their use on a platform that enables cryptocurrency as a payment option and prevents the origin of such assets from being illicit. It must safeguard, protect, store, and prevent the destruction or concealment of information and documentation that supports the vulnerable activity, as well as its identification to users or customers.

If the amount of the purchase or sale transaction is greater than or equal to the equivalent of 645 Units of Measure and Update, notice must be provided to the authorities. If the amount is less than the amount required by law, the platform is not obliged to provide it. All information and documents must be kept in electronic or physical form for five years from the date of dispatch or operation.<sup>50</sup>

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<sup>48</sup> OECD, DIGITAL PLATFORMS AND COMPETITION IN MEXICO OECD (2018).

<sup>49</sup> Jorge García Villalobos, *Obligaciones LFPIORPI*, DELOITTE, 2016.

<sup>50</sup> CÁMARA DE DIPUTADOS DEL HONORABLE CONGRESO DE LA UNIÓN, LEY FEDERAL PARA LA PREVENCIÓN E IDENTIFICACIÓN DE OPERACIONES CON RECURSOS DE PROCEDENCIA ILÍCITA (Diario

## 11. Financial Information Standards

Financial information standards are mandatory standards that must be followed by those responsible for financial information within the organization or independently. It is a harmonization of local standards used in various sectors of the Mexican economy and complies with the guidelines of the International Financial Reporting Standards issued by the International Accounting Standards Board.<sup>51</sup>

NIF C-22 was approved for publication by the Mexican Council of Financial Information Standards in November 2019 and came into effect on January 1, 2021. The objective of this standard is to establish valuation, presentation, and disclosure standards focused on cryptocurrencies. The standard defines it as a unique digital asset that can only be sent electronically and used as a means of payment or exchange. Its structure is based on encrypted codes for security reasons and to prevent corruption.

Cryptocurrencies are a type of digital currency that is independent of a central bank, government, or central institution for its issuance and control. They are used as electronic payment methods, among many other functions, and can only operate within a legal framework if the virtual asset is authorized by the Bank of Mexico. The currency emerged as a way to carry out operations or transactions electronically without the need for an intermediary, making the operation more efficient, fast, and anonymous. The Bank of Mexico associates them with volatility and warns that risks may arise due to the underlying complexity.

Its valuation is based on NIF B-17 where fair value is determined, as it is an asset intended for exchange or sale. In order to be reflected in a financial position statement, it must be considered as a short-term item for the purpose of being available assets to be used as a means of payment. In Mexico, digital platforms do not consider cryptocurrency as a method of payment as they are not authorized by financial institutions to handle their balances. Meanwhile, financial authorities have pointed out that financial institutions that carry out or provide transactions with virtual assets without permission violate the rules and are subject to corresponding sanctions.<sup>52</sup>

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Oficial de la Federación, 2012).

<sup>51</sup> MEXICAN COUNCIL FOR RESEARCH AND DEVELOPMENT OF FINANCIAL INFORMATION STANDARDS <https://www.consumer.ftc.gov/articles/what-know-about-cryptocurrencies> (last visited: February 25, 2022).

<sup>52</sup> GOBIERNO DE MÉXICO <https://www.gob.mx/cnbv/articulos/banco-de-mexico-shcp-y-cnbv-advierten-sobre-riesgos-de-utilizar-activos-virtuales-275831?idiom=es> (last visited: January 29, 2022).

## 12. Federal Labor Law

In recent years, the number of users and platforms offering services through digital means has increased significantly. The increase has gone from 142 platforms in 2010 to over 777 in 2020.<sup>53</sup> One of the main problems resulting from this trend is labor regulation, the lack of social security, and other benefits for workers. Moreover, workers often engage in activities on digital platforms to supplement their income from other jobs and prefer to do so from home. Thus, 32% declare that platform work is their main source of income, 36% work 7 days a week, 43% work at night, and 68% work in the afternoon.<sup>54</sup>

The main reasons people choose to work on online platforms are the opportunity to earn additional income, hobbies, or the need to work from home. Additionally, according to the International Labour Organization, digital platforms provide two types of employment relationships: those who work for the platform and those who operate through the platform or on their own account.

The operating hours of these platforms are typically long and in high demand from users. Compared to other services, transportation providers work an average of 65 hours per week compared to 59 hours for food delivery. Chapter VI of the Federal Labor Law deals with the work of self-employed transporters and emphasizes that wages are fixed per day, trip, ticket, or kilometers traveled, and include a fixed amount or bonus on earnings.<sup>55</sup> The determination for calculating rest days, vacations, and severance will be as provided in Article 89. In the case of service providers working through digital platforms, their work activities will correspond to the number of workdays, and benefits will not be granted to their employees due to the absence of an employment contract.

In the case of homeworking, Article 316 of the Federal Labor Code prohibits the use of the term intermediary, and when an employer offers to provide homework, they must register with the Homework Registry of Employers, which clearly specifies details of the employer and worker, establishment, salary, date, and place of payment. They will enjoy mandatory vacations, holidays, and other benefits granted. For employees working through the platform, the benefit of this approach is flexibility in terms of events and hiring. When it is not considered subordination to the service provided, the existence of an employment relationship is discredited. It is a provision of services and follows new technologies that create new types of work.<sup>56</sup>

To recognize the rights of all those who request and possess work, in 2020, it was proposed before the Senate to add a chapter to the Federal Labor Law regarding the issue of digital platforms. The addition intends to grant basic pro-

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<sup>53</sup> INTERNATIONAL LABOUR ORGANIZATION <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited: 4 January, 2023).

<sup>54</sup> *Idem*.

<sup>55</sup> CÁMARA DE DIPUTADOS DEL HONORABLE CONGRESO DE LA UNIÓN, LEY FEDERAL DEL TRABAJO (Diario Oficial de la Federación, 2024).

<sup>56</sup> INEGI <https://www.inegi.org.mx/> (last visited: January 9, 2024).

tections contemplated in the Law to workers who have a link or provide services within the platforms. This initiative has been referred to the Joint Committees on Labor and Social Welfare and Second Legislative Studies. In 2021, the issue was resumed with an emphasis on workers enjoying the rights mentioned in Article 123, Section A of the Political Constitution of the United Mexican States. Furthermore, tips are recognized as additional income to workers' salaries, and they will be delivered in a manner and time frame specified by the digital platform. Workers can also organize unions to better protect their labor rights and can enter into collective agreements with digital platforms.<sup>57</sup>

We believe it is necessary to reform the tax legal framework for digital platforms in Mexico with the aim of:

- Expanding the tax base: Including all digital platforms conducting economic activities in Mexico, regardless of their place of residence.
- Establishing fairer tax rates: Applying tax rates that reflect the actual value of transactions made on digital platforms.
- Strengthening tax collection: Implementing more efficient mechanisms for collecting VAT and ISR from digital platforms.
- Combating tax evasion: Implementing measures to prevent digital platforms from evading their tax obligations.

#### IV. Conclusions

The tax framework for digital platforms in Mexico has evolved significantly in recent years, aiming to adapt to changes in the digital landscape and ensure fairness and efficiency in the tax system. However, there is still work to be done to address emerging challenges and promote a fair and equitable tax environment for all businesses. Through collaboration and dialogue among different stakeholders, we can move towards a more efficient tax system suitable for the 21st-century digital economy. Current regulations aim to tackle tax evasion and ensure that digital platforms contribute appropriately to the tax system. It is important to continue monitoring developments in this area to adapt to technological changes and evolving fiscal needs.

In developing the principles of the Model Rules, the Organization for Economic Cooperation and Development (OECD) emphasized that businesses should report the income they generate through digital platforms. The digital age is constantly evolving, and every business must adapt to societal changes, so the concept of taxing digital services is an alternative to fee-based services. Therefore, it is important to raise the issue of tax withholding and who will pay the mentioned tax.

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<sup>57</sup> INTERACSO <https://interacso.com/blog/2021/07/14/la-economia-de-las-plataformas-un-nuevo-modelo-economico/> (last visited: March 1, 2024).



In Mexico, certain measures of the Organization for Economic Cooperation and Development have been adopted, and withholdings have been implemented in the Value Added Tax and Income Tax to tax the income of each operation. This business model has the potential to increase GDP and provide financial services to developing countries. In the case of Mexico, the participation of e-commerce in GDP increased from 3%<sup>58</sup> to 5%,<sup>59</sup> and its significance lies in the fact that the digital economy represents almost 20% of global GDP. As a result, digital platforms have revolutionized the economy and brought significant improvements to society.

At the national level, given that Mexico has many different laws still being developed to support a growing relationship from digital platforms, it is important to begin standardizing regulations to clarify the fiscal and legal procedures involved in having a digital platform. Therefore, when traditional and digital transactions are equitable, there will be healthy competition, and tax authorities will be able to add or establish chapters to applicable regulations clarifying and specifying how each scenario will be regulated.

On the other hand, a global, transparent, and fair tax model must be agreed upon to prevent specific laws of each country from distorting or requiring double or even triple payment of the same instrument, which can lead to certain global platforms deciding not to have a presence in some given regions. The biggest challenge is to protect users: these new taxes should not affect prices or create entry barriers that hinder the use of digital platforms. While progress has been made in Mexico with the auditing and handling of digitally conducted operations, technological platforms are a recent business model and will take time to adapt for better use with tax authorities.

Some legislative challenges of the digitalization of the Mexican economy revolve around issues such as:

- Lack of an adequate legal framework: Current legislation is not always up to date with the rapid changes in the digital economy, which can create legal uncertainty for businesses.
- Protection of personal data: The growing collection and use of personal data pose challenges in terms of privacy and security.
- Unfair competition: Digital platforms may have an unfair competitive advantage over traditional businesses, affecting market competition.
- Digital inclusion: Not all Mexicans have access to the Internet or the digital skills necessary to participate in the digital economy.

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<sup>58</sup> INEGI <https://www.inegi.org.mx/> (last visited: January 9, 2024).

<sup>59</sup> INTERACSO <https://interacso.com/blog/2021/07/14/la-economia-de-las-plataformas-un-nuevo-modelo-economico/> (last visited: March 1, 2024).

## V. Proposals

To address the challenges of digitization in Mexico's economy from a legislative perspective, the following proposals are presented:

- **Develop a comprehensive law for the digital economy:** This law should establish general principles to regulate the digital economy, including aspects such as competition, protection of personal data, cybersecurity, and the accountability of digital platforms.
- **Update existing legislation:** It is crucial to update current laws, such as the Federal Telecommunications and Broadcasting Law and the Federal Law on the Protection of Personal Data Held by Private Parties, to adapt them to the realities of the digital economy.
- **Implement mechanisms for agile regulation:** Mechanisms should be established to enable the government to regulate the digital economy quickly and efficiently, adapting to constant technological advancements.
- **Implementation of a global income tax:** This levy would target the profits of multinational companies worldwide, regardless of where they are generated. This aims to prevent companies from resorting to tax havens to evade their tax obligations.
- **Adoption of a digital services tax:** This tax would apply to sales of digital services, such as online advertising, streaming platforms, and mobile applications. Its goal is to ensure that digital companies contribute equitably to the tax system, even if they do not have a physical presence in Mexico.
- **Strengthening of tax administration:** It is essential for the Mexican government to invest in modernizing its tax administration systems to effectively identify and tax economic activities in the digital sphere. This involves improving the auditing capacity of the Tax Administration Service (SAT) and adopting technology to detect tax fraud.
- **Increase international cooperation:** Mexico should collaborate with other countries in developing international tax regulations for the digital economy. This would help prevent tax evasion and ensure that digital companies fulfill their tax obligations in all countries where they operate.
- **Exploration of taxes on digital property:** The possibility of taxing digital property, including cryptocurrencies, non-fungible tokens (NFTs), and other digital assets, could be studied. However, it is important to evaluate the challenges and opportunities this entails before implementing such a measure.

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