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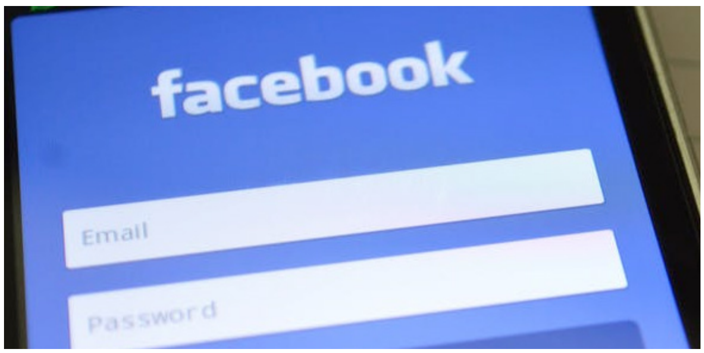
FEATURED Q&A

Will Digital Service Providers Face New Taxes in Mexico?



Digital service providers in which users generate a significant amount of the content may have to pay new taxes in locations including Mexico. // File Photo: Pixabay.com.

Q **Mexican legislators in October proposed a bill that would tax companies that provide digital services in which customers play a significant role in creating content, including platforms that use customized ads, such as Google and Facebook, and online retailers that connect users and a third party, such as Airbnb and Uber. What are the advantages and disadvantages of a tax levied on digital service providers? Will the bill be approved, and how might changes in the administration and Congress in December affect the bill's future? What have other countries in Latin America done with digital taxation, and what can Mexico and others learn from their example?**

A **Juan de la Cruz Higuera Ornelas, senior associate at JCH Abogados and professor in international tax law at Universidad Panamericana in Mexico:** "The main advantage of levying a tax like this apparently is the taxation of certain businesses that have managed to minimize or escape taxation altogether. However, the major disadvantage is the complexity of attaining an effective solution. In fact, the OECD member countries haven't even agreed on how to tax the revenues generated by these digital companies. One thing is clear: a long-term solution must be multilateral. That is the main reason why the bill proposed in Mexico is a flawed idea. Setting aside the fact that the bill is a deficient imitation of the European Commission's interim solution of a new digital services tax, the Mexican proposal is a unilateral and uncoordinated attempt to ring-fence just a segment of the digital

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TODAY'S NEWS

ECONOMIC

World Bank, IDB Approve $1.85 Bn in Argentina Loans

The lenders announced that they were providing the loans in order to aid the South American country as it deals with financial problems and also to support vulnerable citizens.

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ECONOMIC

Chile to Join China's Belt and Road Initiative

The two countries have been deepening their economic partnership. Chilean Foreign Minister Roberto Ampuero said the move will bring more Chinese investors to Chile.

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POLITICAL

Moro Accepts Position as Brazil's Justice Minister

The Brazilian judge who oversaw the massive Car Wash corruption investigation accepted President-elect Jair Bolsonaro's offer to become the country's justice minister.

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Moro // File Photo: Brazilian Government.

ECONOMIC NEWS

World Bank, IDB Approve $1.85 Billion in Loans to Argentina

The World Bank and the Inter-American Development Bank on Thursday announced they were providing Argentina with $1.85 billion in loans to help the country as it deals with financial problems and also to help at-risk citizens, Clarín reported. The World Bank said it would provide $950 million in loans, with the first $500 million installment going toward the country's budget needs and another $450 million loan to be used to protect 250,000 children by 2020. The latter loan will be for Argentina's Project to Protect Children and Youths. "Whenever there is an adjustment process, there are tensions, and that is why the World Bank is committed to supporting the most vulnerable," Jorge Familar, the World Bank's vice president for Latin America and the Caribbean, told Argentine journalists in Washington. Argentine Finance Minister Nicolás Dujovne said the loans were important for the country. "This support to Argentina, especially focused on the most vulnerable sectors, comes at a crucial moment for our country and is a clear sign of confidence," he said, the Associated Press reported. Also on Thursday, the Inter-American Development Bank said it had approved a loan of $900 million that is aimed at helping at least four million people. Two-thirds of the IDB's loan will be disbursed this year, the lender said. The announcements from the World Bank and the IDB came a week after the International Monetary Fund announced it had increased the amount of its loan to Argentina to $56.3 billion. [Editor's note: See related **Q&A** in the Oct. 15 issue of the Advisor.]

Chile to Join China's Belt and Road Initiative

Chile will join China's Belt and Road initiative, Foreign Minister Roberto Ampuero announced on Thursday, América Economía reported, as the two countries continue deepening economic and political cooperation. Ampuero said in a statement that the move will bring more Chinese investors to Chile, positioning the South American country as "the landing point for investments in Latin America," Reuters reported. The deal is set to be signed today in Beijing. As trade tensions between the United States and China increase, the Asian country has been seeking stronger ties to Latin America, a region historically close to the United States,

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economy. Besides, the bill falls short in a basic aspect: the tax will only be levied on Mexican residents and permanent establishments in Mexico (as understood in a traditional sense), disregarding non-resident companies without a permanent establishment. If approved, the bill will surely cause legal uncertainty and complex administrative burdens, in addition to negative effects on investment. Nevertheless, its endorsement by the new government is unlikely, considering that the political party proposing the bill is not the one that holds the majority in Congress. Other countries in Latin America, including Chile, Argentina, Uruguay and Colombia, have proposed and implemented reforms to tax digital services (either directly or as indirect taxes). Nonetheless, it is essential to understand that the problem can only be tackled globally or, at least, regionally."

A **Manuel Baltazar, chief executive of México Fiscal:** "The digital economy has achieved proportions we had never imagined with services in different countries, raising a key question for all governments: who is going to pay my taxes? The tax bill's advantages include the fact that the tax

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NEWS BRIEFS

Brazilian Judge Moro Accepts Post as Justice Minister

Brazilian judge Sérgio Moro on Thursday accepted President-elect Jair Bolsonaro's offer to be the country's justice ministry in the incoming government, BBC News reported. Moro headed the investigation into the massive Car Wash corruption scandal that led to the imprisonment of former President Luiz Inácio Lula da Silva, Bolsonaro's top political opponent, earlier this year, which ultimately barred him from a presidential candidacy. The new administration will take office Jan. 1.

Trump Signs Order to Crack Down on Venezuelan Gold Exports

U.S. President Donald Trump on Thursday signed an executive order barring anyone in the United States from engaging with entities and individuals with "corrupt or deceptive" gold sales from Venezuela in a fresh round of economic sanctions aimed at pressuring Venezuelan President Nicolás Maduro's government, national security advisor John Bolton said in a speech, Reuters reported. Bolton also vowed to crack down on what he called "the troika of tyranny," referring to the leftist governments of Venezuela, Cuba and Nicaragua.

Uber to Begin Accepting Cash Fares in Mexico City

Uber Technologies announced Thursday that it will begin accepting cash fares in Mexico City, Reuters reported. The announcement from the ride-sharing company followed a Supreme Court decision that sided with the company on the matter two weeks ago. The local government in the Mexican capital bans cash as a form of payment for such services, but the high court found that ban unconstitutional. Some 60 percent of Mexicans lack a bank account, the wire service reported.

including by offering some $250 billion in investment over the next decade, the wire service reported. Last week, Chile and China signed a trade deal that widens the Andean nation's access to the Chinese market and streamlines customs controls. "One of the areas in which we coincide with China is in the defense of multilateralism and free, open and transparent markets," Ampuero said, adding that joining China's global infrastructure initiative will help toward advancing this view, América Economía reported. China is Chile's top trading partner. [Editor's note: See related **Q&A** in the Oct. 2 issue of the Advisor.]

POLITICAL NEWS

Brazil's Bolsonaro to Move Brazil's Israel Embassy to Jerusalem

Brazilian President-elect Jair Bolsonaro on Thursday said he plans to move Brazil's embassy in Israel from Tel Aviv to Jerusalem, O Globo reported. "As previously stated during our campaign, we intend to transfer the Brazilian Embassy from Tel-Aviv to Jerusalem," Bolsonaro tweeted. "Israel is a sovereign state and we shall duly respect that." Israeli Prime Minister Benjamin Netanyahu quickly responded to the announcement in a statement congratulating his "friend" on "a historic, correct and exciting step," the Associated Press reported. Bolsonaro's announcement follows the steps of the United States and Guatemala, which in recent months transferred their embassies to Jerusalem. Paraguay also relocated its embassy to Jerusalem earlier this year, but the move was quickly reversed when new President Mario Abdo Benítez took office. The status of Jerusalem has long been a contentious issue in forging a peace deal between Israel and Palestinians, with both claiming sovereignty over the city, O Globo reported. Rubens Barbosa, a former Brazilian ambassador to the United States, said the decision could potentially hinder Brazilian poultry exports, which bring some $6 billion per year from sales to Arab countries, the AP reported.

LEGAL BRIEFS

Honduras Faces Suit Over Asset Expropriation

Honduras is facing a suit in the World Bank's International Center for the Settlement of Investment Disputes for allegedly expropriating the assets of a prominent local family that was accused by U.S. authorities in 2015 of laundering money derived from narcotics trafficking, Global Arbitration Review reported Wednesday. The case was filed by Marlon Duarte, an attorney for Grupo Continental, the holding company for the Rosenthal family. The plaintiffs are seeking one billion lempiras ($42 million) in damages, La Tribuna reported. Yani Rosenthal, a former Honduran legislator who twice ran for president, pleaded guilty last December to helping launder money through beef sales and was sentenced to three years in prison, Reuters reported. His cousin, Yankel Rosenthal, a former minister of investment, pleaded guilty to attempting to launder drug money through a real estate purchase in Florida and was sentenced to two years and five months in prison last January. Yani Rosenthal's father, Jaime Rosenthal, was also charged, but remains at large, according to the report.

Ex-Banker Sentenced in PDVSA Laundering Case

A former Swiss banker was sentenced to 10 years in prison Monday for his role in a plot to launder $1.2 billion stolen from Venezuelan state-owned oil company PDVSA but the judge said she may reduce his term if prosecutors are satisfied with his cooperation, Bloomberg News reported. Matthias Krull, 45, formerly of private bank Julius Baer, admitted that he joined a network of money launderers that used real estate and false-investment schemes to hide funds taken from PDVSA. Quinn Emanuel Urquhart & Sullivan is serving as outside counsel to investigate Krull's accounts and conduct. The Swiss private bank last week announced it is shutting down its Panama and Peru operations. Some of its bankers and support staff are relocating to the Bahamas, Chile or Switzerland, a bank spokeswoman said.

Pate Named to New Partner Position at White & Case

White & Case on Oct. 12 named Thomas Pate as a partner in the firm's Global Project Development and Finance Practice, the firm said in a statement. Currently based in Miami, Pate will relocate to New York where he will "continue to play an important role in the firm's Latin America Group." Pate focuses on project and bank finance matters in the power, infrastructure, renewable energy and financial services industries, according to the firm.

Paul Hastings Represents Mabe in Bond Offering

Paul Hastings last month represented Controladora Mabe, a Mexico-based manufacturer of appliances, in an international bond offering. The offering involved the issuance of $370 million of 5.6 percent senior guaranteed notes due in 2028. The firm said the offering is the first step in a liability management exercise that also involves a partial cash tender offer for up to $350 million of outstanding bonds. The underwriters were Citigroup, JP Morgan and Scotiabank. Mabe is a private company owned by a group of Mexican shareholders with 52 percent of the stake and the remaining belongs to China's Qingdao Haier.

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will be paid in the country where wealth is generated, avoiding transferring profits to countries with low or no patrimonial taxation and an improvement in wealth distribution. Among the disadvantages, the audit will be complex, it requires a lot of participation and exchange of information between countries and the fact that the tax should be managed on web payment systems. It is difficult to know whether Congress will approve the bill, since we need a Congress that learns about the issue and legislates it quickly, a complex situation given the myriad of problems the country is facing, on top of a new Congress and many limitations to the analysis. The proposed law intends to tax on the basis of permanent establishment, which would mean no one would pay. We should focus instead on taxing sources of wealth instead of the place where the goods and services are located. Lawmakers do not understand this. The first time we saw this kind of tax was in the United Kingdom, known in the international community as the 'Google tax.' Latin America and Mexico have a lot to learn, since the main premise of taxation is source of wealth and not permanent establishment as in Mexico, which would be inexistent for digital platforms. A lot of work remains to be done."

A **Eugenio Grageda, senior counsel on tax at Holland & Knight in Mexico City:** "Considering users' value creation as a tax base has certain deficiencies. Consumers' interactions with online platforms vary from a simple scrolling down to substantive purchases and contributions in the form of reviews and detailed data contributions—there will never be a straightforward relationship between the time and effort a user is spending on any given platform in terms of increasing its value. Applying the digital service tax (DST) by measuring the value of the user contribution risks defining the tax base on arbitrary criteria. Likewise, the DST applicability will depend on the IP address of the use. This does not consider the effects of virtual private networks, in which the network's IP address, located anywhere in the world, will substitute the user's. The DST also distorts competition. It will cause exporters in Mexico using an online platform to export goods and services to foreign buyers to be

> **"Considering users' value creation as a tax base has certain deficiencies."**
> **— Eugenio Grageda**

worse off than users in a foreign country with no DST selling similar services to the same foreign buyers by using the same online platform. Additionally, independent DST initiatives could create barriers to integration at a worldwide level. If the López Obrador administration were to approve the measure, it would represent a breach of its promise not to raise any new taxes for two years. Morena, with its majority in Congress, could pass the bill into law before López Obrador takes office, but it's unlikely. The DST could have low political exposure. Few voters would care about or understand it. By enacting a DST, the government's popularity would not be at risk. Compared to other Latin American countries, the Mexican DST triggers disruptive consequences on digital companies, hindering their competitiveness and increasing their compliance costs. This brings concerns about its implementation and lacks clarity on the determination of its tax base. We foresee enforcement limits and minimum results derived from the difficulty of its implementation and easy avoidance given the bill's current loopholes. Instead of looking to its European peers, Mexico should be looking at Latin America to determine the best practices to impose a levy over digital activities."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at **gkuleta@thedialogue.org**.

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