

ORIGINAL ARTICLE

Foreign digital services consumed by individuals and the General Sales Tax

ABSTRACT

Objective: To determine whether there is a relationship between the foreign digital services consumed by individuals and the General Sales Tax (IGV), and to establish whether the Peruvian legislation related to this tax applies to these services. **Methods:** Correlational, with a quantitative-qualitative approach. The research variables are: foreign digital services consumed by individuals and IGV. The research hypothesis is: There is a significant relationship between foreign digital services consumed by individuals and IGV. **Results:** The research hypothesis is rejected. Based on the literature review on IGV legislation, it is concluded that said tax does apply to the above-mentioned services despite not explicitly including them or establishing a collection mechanism. **Conclusions:** Foreign digital services consumed by individuals and IGV are not related, and the Peruvian IGV legislation should be updated so that the companies providing such services register at the National Superintendency of Customs and Tax Administration (SUNAT) to become subject to tax and to act as withholding agents. Otherwise, the consumers will be subject to tax, while the withholding agents will be the financial entities through which payments are made for the services.

Keywords: Foreign digital services; Individuals; General Sales Tax.

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INTRODUCTION

The use of foreign digital services has become global thanks to individuals with a computer, Internet connection, and a credit or debit card. There are a wide range of digital services, such as those offering access to audio and video (streaming), passenger transportation, goods transportation (delivery), hotel accommodation, videoconferencing, data warehousing, advertising (banner ads), among others. The Inter-American Center of Tax Administrations (CIAT, 2021) shows how this phenomenon has developed in Peru. A significant increase in the consumption of these services has been noted in the last few years (see Table 1).

Table 1

Sales of digital services by the main foreign companies in Peru, 2018-2020 (millions of USD)

Company	2018	2019	2020
Apple	67.10	86.00	101.10
Netflix	92.70	120.00	141.80
Spotify	28.70	34.10	35.30
Amazon	39.30	54.50	71.10
Google	243.20	296.40	316.70
Airbnb	9.50	12.40	7.40
Uber	85.30	85.80	67.60
Totales	565.80	689.20	741.00

NotE. Adapted from CIAT, 2021.

Barrientos y Díaz (2021) argue that, while it is true that IGV will begin to exist when foreign digital services are consumed by individuals in Peru, SUNAT has not yet developed a mechanism for collecting this tax. Companies providing these services should become subject to IGV and withholding agents, and digital invoicing for these services may lead to greater tax collection and may prevent tax avoidance and evasion.

Choque (2021) states that, since foreign digital services are not subject to any tax when they are consumed by individuals in Peru, there is unequal competition against companies domiciled in Peru which do pay taxes for the transactions they enter into with individuals. The Peruvian government should use the experiences of other Latin American countries as a guide, as these updated their legislation to

levy IGV from said services. This would result in collecting a significant amount in revenue to face times of crisis.

Ponce (2021) claims that, because foreign digital services are not levied with Value Added Tax (VAT) in Chile, the companies providing them increased their prices when they discovered that their services would be subject to tax for the consumption of subscribers, who are individuals residing in Chile. The author also states that the use of mobile and domestic Internet services increased substantially during the COVID-19 pandemic, which is an indicator of an increase in tax revenue.

Carbajal and Herrera (2021) argue that, at present, foreign digital services consumed by individuals in Peru are not subject to IGV, while other South American countries such as Colombia, Chile, Argentina and Paraguay modified their legislation to tax these services. It would also be necessary for Peru to update its legislation because such an update may result in increased tax revenue which, in turn, will promote greater public expenditure to address societal needs more efficiently.

Arias and Zambrano (2021) state that digital economy causes serious socio-economic risks which are difficult for tax administrations to verify. These include: exclusion of employee salaries and their social security contributions; unequal competition against companies domiciled in the country with sales subject to IVA and income tax, involving the risk of going out of business; and company emigration, which would lead to a loss in tax revenue. They also state that, to address these risks, it is necessary to update current legislation in relation to the taxation system in the short term, which will result in a mid- and long-term increase in the public treasury.

Pintado(2020)(2020) states that foreign companies providing digital services consumed by individuals in Peru should formalize their registration before SUNAT by means of a registry to be designed by that same entity for simplicity. For IGV purposes, the consumer will be subject to tax and the withholding agent will be the financial entity through which the payment is made. For income tax purposes, the foreign company providing the above-mentioned

services will be both subject to tax and withholding agent.

Sotomayor and Valverde (2019) claim that IGV taxes the use of foreign digital services when they are consumed in Peru. The scope of application of this tax is companies and individuals domiciled in Peru. For taxation purposes, it would be ideal to demand that foreign companies register before SUNAT so that they declare and pay IGV. Consequently, the payment for this service will include this tax, and the number of taxpayers will be equal to the number of foreign companies providing the services.

Hernández and Albagli (2017) state that advances in Information and Communication Technologies (ICTs) has resulted in the virtual provision of new goods and services, an increase in their variety, a reduction in their costs, and an increase in the number of suppliers, both domestic and foreign. They also argue that, to fight informality, tax evasion and unfair competition, it is necessary to update legislation on taxation so that foreign companies are subject to tax in the country where their services are consumed. This can be achieved by improving collection mechanisms, strengthening oversight, creating new tax withholding agents --which should be the financial system companies through which payments are made.

In Peru, the Executive Branch passed Supreme Decree No. 055-99-EF, Homologized Text of the General Sales Tax and Excise Tax Act (1999), whereby the use of services within the Peruvian territory is taxed (Section 1), defines that the service is used in said territory when it is provided by an individual that is not domiciled in Peru to an individual that is domiciled in the country (Section 3), the tax originates when the compensation is paid for said service or when the invoice is recorded in the transactions book, whichever takes place first (Section 4), individuals who do not conduct commercial transactions are subject to tax when they use said service regularly (Section 9), and the individuals responsible for this tax for said services will be appointed withholding agents pursuant to the law (Section 10).

In 1994, Supreme Decree No. 122-94-EF - Regulations of the Income Tax Act (1994) was passed, which defines digital services as those

which are furnished to users so that these make use of them through the Internet or another network, by means of virtual access, and whose main characteristic is that the service is essentially automatic; this is to say, it requires minimal human intervention. It also defines that the following services are to be considered digital: technical support to network clients, accommodation apps, website hosting, advertising, data delivery, interactive training, among others (Section 4-A).

While analyzing the situation in other Latin American countries, it was found that in Uruguay in 1996, the Executive Branch passed Order No. 338/96, Homologized Text in relation to the taxes which are relevant to the General Taxation Directorate (1996). It levies VAT to the provision of services within the Uruguayan territory (Section 1). Provision of online services, when used inside Uruguay, is considered to take place within that country for IVA purposes (Section 5). In the provision of these services, IVA is generated when the service is provided (Section 3). In such case, the person receiving the service is subject to IVA (Section 6). Two years later, the Executive Branch of that country passed Decree No. 220/998, VAT Regulations (1998), which states that tax withholding agents will pay or prove compensations to entities not domiciled in Uruguay (Section 4).

In Argentina, the Executive Branch passed Decree No. 280/97, Homologized Text of the Value Added Tax Act (1997), which taxes digital services furnished by an entity that is not domiciled in that country, when these services are used within Argentina (Section 1). The tax levied from said services originates when the service has been fully provided or when payment is made, whichever takes place first (Section 5). In said services, the person who uses them as well as the tax withholding agent will be subject to tax; if there is an intermediary in the payment transaction, the latter will be subject to tax (Section 4).

In Colombia, the Executive Branch passed Decree No.624 from 1989, Tax Code for the taxes managed by the General Directorate of Domestic Taxes (1989), which applies VAT to the provision of services from overseas when the user of these services is domiciled in Colombian

territory (Article 420); VAT, in service provision, generates on the date the invoice is issued or the service was completed, or the payment date, whichever takes place first (Section 429); in foreign service provision, the entity subject to IVA is the service provider (Section 437); in foreign digital service provision, the IVA withholding agents are the companies that issue debit or credit cards, those selling pre-paid cards, or the payment collection companies (Section 437-2).

In Chile in the 1970s, the Executive Branch issued Decree No. 825, Sales and Services Tax Act (1974), which levies IVA from foreign digital services consumed within the Chilean territory (Section 5). In said services, the tax generates on the date the invoice was issued; when invoices are not applicable, on the date when the service provider received payment (Section 9); in said services, the tax withholding agent will be the issuing company of debit, credit, payment or similar cards (Section 3). Three years later, Decree No. 55, Regulations of the Sales and Services Tax Act (1977), was passed. It sets forth that, in said services, the person who uses them is subject to VAT (Section 21).

In Mexico in 1978, the Legislative Branch passed the Value Added Tax Act, unnumbered (1978), which taxes foreign digital services when their beneficiary is located within the Mexican territory (Section 16). In said services, the tax generates on the date the compensation is received (Section 17). The company providing these services is subject to tax and the withholding agent (Section 18-D).

In Costa Rica, the Legislative Branch passed Act No. 6826, Value Added Tax Act (1982), which taxes foreign digital services consumed in Costa Rica (Section 1). In said services, the tax generates at the moment of service provision, payment, or invoicing, whichever takes place first (Section 3). In said services, the consumers are subject to tax (Section 4), while the entities issuing credit or debit cards will be the withholding agents (Section 30).

In Ecuador, the Legislative Branch passed Act No. 2004-026, Internal Taxation Regimen Act (2004), which levies VAT from foreign digital services used within the Ecuadorian territory (Article 56). In said services, the tax

generates at the moment it is paid (Section 61). In said services, the entity providing the services is subject to tax (Section 63). The withholding agent in said services is the entity providing them when registered before the Internal Revenue Service; otherwise, it is the entity issuing credit or debit cards (Section 63).

In Paraguay, the Legislative Branch passed Act No. 6380, Modernization and Simplification of the National Taxation System Act (2019), which levies VAT from foreign digital services used in Paraguay (Section 81). In said services, the tax generates with its payment or the payment deadline, whichever takes place first (Section 83). In said services, the service provider is subject to tax (Section 82). The withholding agents are financial entities when the payment is made through them (Section 97).

CIAT (2021) states that the Latin American countries which did not levy VAT in 2020 from foreign digital services consumed by individuals domiciled in them, as this was not considered in their legislation, were Peru, Bolivia, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and Dominican Republic. It estimates that Peru missed the opportunity to receive USD 113 million in that year as revenue from this tax (see Table 2).

CIAT (2023) states that the Latin American countries that levy VAT from foreign digital services consumed by individuals domiciled in them are: Uruguay, with a rate of 22% since 2018; Argentina, with a rate of 21% since 2018; Colombia, with a rate of 19% since 2018; Chile, with a rate of 19% since 2020; Mexico, with a rate of 16% since 2020; Costa Rica, with a rate of 13% since 2020; Ecuador, with a rate of 12% since 2020; and Paraguay, with a rate of 10% since 2021 (see Table 3).

According to SUNAT (2023), fiscal revenue from IGV amounted to PEN 60.66609 billion in 2018, PEN 63.50426 billion in 2019, and PEN 55.37912 billion in 2020. The equivalent amounts in American dollars are: USD 17.95386 billion in 2018, USD 19.14509 billion in 2019, and USD 15.28122 billion in 2020.

The aim of this paper is to establish whether there is a relationship between foreign digital services consumed by individuals and IGV,

and to determine whether Peruvian legislation on this tax applies to these services.

METHOD

Research type and approach

This research is correlational (Hernández *et al.*, 1997) because it established whether there was a relationship between foreign digital services consumed by individuals and IGV, and has a quantitative-qualitative approach (Alan and Cortez, 2018) because it collected measurable data to verify the research hypotheses, leading to the review of various studies and legal provisions to determine whether Peruvian legislation on IGV makes these services subject to tax.

Research variables

The research variables are the following:

Variable 1. Foreign digital services consumed by individuals

Variable 2. General Sales Tax.

(See Table 5)

Research hypotheses

The following are the research hypotheses for this paper:

Alternative hypothesis (H_1). There is a significant relationship between foreign digital services consumed by individuals and the General Sales Tax.

Null hypothesis (H_0). There is not a significant relationship between foreign digital services consumed by individuals and the General Sales Tax.

Table 2

Sales of digital services by the main foreign companies and potential VAT not levied in Latin American countries, 2018-2020 (in millions of USD)

Country	2018		2019		2020	
	Sales	VAT	Sales	VAT	Sales	VAT
Peru	565.80	86.30	689.20	105.10	741.00	113.00
Bolivia	102.20	13.30	125.10	16.30	149.10	19.40
El Salvador	66.00	7.60	82.30	9.50	95.30	11.00
Guatemala	184.50	19.80	233.20	25.00	292.10	31.30
Honduras	60.00	7.80	75.70	9.90	91.90	12.00
Nicaragua	33.00	4.30	38.30	5.00	46.70	6.10
Panama	165.20	10.80	204.90	13.40	233.80	15.30
Dominican Republic	223.90	34.10	281.20	42.90	310.50	47.40
Totals	1,400.60	184.00	1,729.90	227.10	1,960.40	255.50

Note. Adapted from CIAT, 2021. The main foreign companies are Uber, Airbnb, Google, Amazon, Spotify, Netflix, and Apple.

Table 3

Latin American countries that levy VAT from foreign digital services consumed by individuals domiciled in them

Country	From	Percentage
Uruguay	2018	22%
Argentina	2018	21%
Colombia	2018	19%
Chile	2020	19%
Mexico	2020	16%
Costa Rica	2020	13%
Ecuador	2020	12%
Paraguay	2021	10%

Note. Adapted from CIAT, 2023.

The data from this research paper were statistically analyzed through SPSS Statistics version 25 to verify the research hypotheses and prepare the conclusions (see Table 6).

RESULTS

The Shapiro-Wilk normality test was applied to the research variables. The result obtained indicated that both variables show a normal distribution.

From the statistical analysis of the research variables, a $Pvalue = 0.675 > 0.05$ result is obtained. Therefore, the alternative hypothesis (H_1) is rejected: There is a significant relationship between foreign digital services consumed by individuals and the General Sales Tax, and the null hypothesis (H_0) is accepted: There is not a significant relationship between foreign digital services consumed by individuals and the General Sales Tax.

From the literature review of the Peruvian legislation on IGV, it is concluded that said tax is actually levied from foreign digital services consumed by individuals, even though it does not explicitly consider them, nor does it determine the way in which they will be collected.

DISCUSSION

There is agreement with Barrientos and Diaz (2021) in the fact that SUNAT has not yet developed a mechanism for IGV collection for foreign digital services consumed by individuals, and that the companies providing these services should become subject to tax and the withholding agents when they are registered before SUNAT.

Similarly, there is agreement with Choque (2021) in the idea that, due to the fact that the foreign companies providing digital services consumed by individuals are not tax subjects in Peru, there is unequal competition to the detriment of companies domiciled in Peru which do pay IGV and income tax for these transactions. There is also agreement on the idea that Peruvian legislation on IGV should be updated, taking the Latin American countries which have already done so as a reference point, with the aim of collecting a greater fiscal revenue.

In addition, there is agreement with Ponce (2021) in that foreign companies providing digital services consumed by individuals will increase the price of these services when they, or the financial institutions through which pay-

Table 4
Fiscal revenue from IGV, 2018-2020 (in billion USD)

Concept	2018	2019	2020
Internal IGV	10.39508	11.42349	9.02536
IGV from imports	7.55878	7.72160	6.25586
Total IGV	17.95386	19.14509	15.28122

Note. Adapted from SUNAT, 2023.

Table 5
Foreign digital services consumed by individuals (in millions USD) and General Sales Tax, 2018-2020 (in billions USD)

Year	Variable 1: Foreign digital services consumed by individuals	Variable 2: General Sales Tax
2018	86.30	17.95386
2019	105.10	19.14509
2020	113.00	15.28122
Totals	304.40	52.38017

Note. The variable 1 indicator is the annual IGV not collected from these services, and the variable 2 indicator is the annual IGV revenue.
Note. Adapted from SUNAT (2023), CIAT (2021).

Table 6

Pearson's correlation between foreign digital services consumed by individuals and the General Sales Tax.

		Foreign digital services consumed by individuals	General Sales Tax
Foreign digital services consumed by individuals	Pearson's correlation	1	-.488
	Sig. (two-tailed)		.675
	N	3	3
General Sales Tax	Pearson's correlation	-.488	1
	Sig. (two-tailed)	.675	
	N	3	3

Note. Prepared by the author, 2023.

ments for these services are made, are appointed IGV withholding agents.

There is also agreement with Carbajal and Herrera (2021) in that, because Peru has not updated its taxation legislation on IGV (as Uruguay, Argentina, Colombia and other countries have), foreign digital services consumed by individuals are not subject to this tax, and that Peru should update its relevant legislation to determine the collection mechanism for these services, therefore increasing taxation revenue.

Similarly, there is agreement with Arias and Zambrano (2021) on their assertion that the digital economy generates risks which are difficult for tax administrations to control, such as the following: job informality which leads to no contributions toward pension funds and no medical insurance; unequal competition in taxation matters to the detriment of companies domiciled in Peru, leading to the risk of closure; the emigration of domestic companies to countries where IGV is levied and collected from foreign digital services; and that the taxation legislation should be updated in the short term to increase taxation revenue in the medium and long term.

In addition, there is agreement with Pintado (2020) in that, for administrative simplicity purposes, foreign companies providing digital services consumed by individuals should formalize their registration before SUNAT through a form created by this entity. There is also agreement in that the individuals should be subject to tax, while the financial entities through which payments are made become the

withholding agents when the service providers are not registered before SUNAT.

There is also agreement with Sotomayor and Valverde (2019) in that IGV is levied from foreign digital services when these are used by companies or individuals within the Peruvian territory, and that the service providers should be required to register before SUNAT to act as IGV withholding agents, declare their transactions, and pay the above-mentioned tax.

We also agree with Hernández and Albagli (2017) in that, to fight informality, tax evasion and unequal competition, taxation legislation should be updated so that the foreign companies providing digital services pay taxes in the country where their services are consumed, and that the collection method should consist of the financial companies through which payments are made, which should act as tax withholding agents.

There is disagreement with Barrientos and Díaz (2021) in the idea that digital invoicing for the services would increase tax revenue. This is because the problem of zero revenue lies in the fact that SUNAT has not yet developed a collection mechanism, regardless of whether the foreign companies issue invoices for their services to their individual consumers.

CONCLUSIONS

The quantitative research concludes that foreign digital services consumed by individuals and the General Sales Tax do not have a significant relationship because Pearson's correlation results in $Pvalue = 0.675 > 0.05$; that is to say,

they are not related. This is because the IGV that was not collected from the above-mentioned services from 2018 to 2020, which amounts to USD 304.40 million, constitutes 0.58% of the annual IGV revenue from said period, which amounts to USD 52.38017 billion.

The qualitative research concludes that the Peruvian legislation in such matters, Supreme Decree No. 055-99, Homologized Text of the General Sales Tax and Excise Tax Act (1999) does levy tax from foreign digital services consumed by individuals, even though these are not included explicitly or through references, nor does it establish a collection mechanism. Therefore, and following the examples of Uruguay, with Decree No. 338/96, Homologized Text on taxation matters relevant to the General Taxation Directorate (1996) and Decree No. 220/998 - IVA Regulations (1998); Argentina, with Decree No. 280/97, Homologized Text of the Value Added Tax Act (1997); Colombia, with Decree No. 624 from 1989, Tax Code for the taxes managed by the General Directorate of Domestic Taxes (1989); Chile, with Decree No. 825, Sales and Services Tax Act (1974) and Decree No. 55, Regulations of the Sales and Services Tax Act (1977); Mexico, with the Added Value Tax Act (1978); Costa Rica, with Act No. 6826, Added Value Tax Act (1982); Ecuador, with Act No. 2004-026, Internal Taxation Regimen Act (2004); and Paraguay, with Act No. 6380, Modernization and Simplification of the National Taxation System Act (2019), legislation on taxation should be updated so that it includes the above-mentioned services while referencing the digital services set forth in Supreme Decree No. 122-94-EF, Regulations of the Income Tax Act (1994). In addition, the IGV collection mechanism for foreign digital services consumed by individuals should establish that the service providers are required to register before SUNAT to become subject to tax and act as withholding agents. If these companies fail to register, the service consumer will become subject to tax and the financial entities through which payments are made will become withholding agents, with a potential penalty of having to pay the IGV amounts should they fail to withhold them.

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Conflicts of interest

The author has no conflicts of interest to declare.

Author contributions

Jorge Andres Bravo Padilla (lead author): conceptualization, data curation, formal analysis, research, methodology, project management, software, validation, data visualization, writing (original draft, reviewing, and editing).