

## Tax Alert

# Digital platform oversight program (Airbnb)

During the month of April, the Superintendency of Tax Administration -SAT- announced through a press conference and social media posts the main oversight actions it is taking with taxpayers who provide vacation rental services through Airbnb's digital platform.

The Superintendent of Tax Administration, Marco Livio Díaz, and Oscar Hernández, Intendent for Oversight, presented the verification actions carried out through the exchange of information with Ireland, headquarters of Airbnb, the largest company for vacation rentals, accommodation or lodging.

Through the evaluation of the information obtained, SAT determined that during the years 2021 and 2022 there were 2,600 taxpayers who provided occasional vacation rental services for accommodation or lodging at 7,242 properties located in Guatemala, especially in the departments of Guatemala, Sacatepéquez, Sololá, Escuintla and Santa Rosa, for which such taxpayers were not registered within a tax regime, did not issue an electronic invoice, or did not correctly file the payment of taxes.

The Superintendency of Tax Administration, together with the competent authority of the Republic of Ireland, has the necessary information (exact day of the accommodation, check-in and check-out times, amount paid through the digital platform) for notifying the taxpayers who did not pay taxes. Based on the above, SAT determined that during the years 2021 and 2022, the income received from the vacation rental operations provided by individuals and legal entities not registered within a tax regime amounts to USD 109 million dollars, that is, the equivalent of Q866 million quetzales. Therefore, Superintendent Marco Livio Díaz Reyes stated that SAT is calling for these taxpayers to regularize their situation before SAT by declaring the corresponding taxes.



The main scenarios identified by SAT are:

- 818 taxpayers not registered within a tax regime
- 1,459 taxpayers who did not issue invoices for the vacation rental service through the digital platform
- 124 small taxpayers who exceed the maximum amount of invoicing allowed in their tax regime for the providing of vacation rentals
- 50 taxpayers (companies) with inconsistencies in their invoicing
- 208 taxpayers who remain under investigation

Following are the recommendations made by the Superintendency of Tax Administration:

1. Voluntarily register in the VAT and Income Tax regimes, as applicable
2. Update your registration in the VAT and Income Tax regimes according to your income
3. Declare the corresponding taxes
4. Issue invoices for the vacation rental services
5. Respond to tax oversight requests for the payment of the appropriate taxes.



**The actions of the Superintendency of Tax Administration will be notified to taxpayers so that they can go to SAT's offices and resolve their situation as appropriate; otherwise, audit proceedings will be initiated to determine the amount payable, plus penalties and interest. In the event that the taxpayers do not accept SAT's notifications, they will be charged with "Resistance to Oversight Actions," which is a criminal offense.**

SAT indicated that it will continue strengthening the exchange of information within the framework of international cooperation agreements, to obtain information from other service platforms, such as those providing taxi services, messenger services, Facebook, and Tik Tok, among others, where income is received for services and/or goods.

## Analysis of taxes applicable in the Guatemalan territory for digital platform services:

1. How is the collection of taxes applied in Guatemala, in the event that the owner of the properties located in the country that are rented through AIRBNB (or other similar platforms) is a foreigner? What taxes should be applied?

a.1 The basis of the taxable event in Guatemala is territorial. This means that regardless of the nationality or residence of an individual or legal entity, the generation of income within the Guatemalan territory triggers the obligation to pay the taxes that apply to the activity being performed. Accordingly, the ownership of property in Guatemalan territory and the generation of income by exploiting these assets is a taxable event for this tax obligation. The taxes generated by this type of activity in Guatemalan territory are the Value Added Tax (VAT) and the Income Tax. In addition, it is necessary to consider the taxes that are applicable due to the mere ownership of the property, such as the Property Tax.

b.1 In this particular case, the foreigner must establish residency for tax purposes, obtain a tax identification number (NIT), be registered within the corresponding tax regimes, and file the corresponding monthly and annual tax returns. In this case, the foreigner must evaluate the tax regime that for the income tax best suits their line of business, i.e., 7% of gross income or 25% of the taxable income determined.

2. ¿Cómo se aplica el cobro de impuestos en Guatemala, en el caso de que el propietario de los inmuebles en el país que se da el arrendamiento por AIRBNB (u otras plataformas similares) es guatemalteco? ¿Y qué impuestos se deben aplicar?

a.2 The basis of the taxable event in Guatemala is territorial. This means that regardless of the nationality or residence of an individual or legal entity, the generation of income within the Guatemalan territory triggers the obligation to pay the taxes that apply to the activity being performed. Accordingly, the ownership of property in Guatemalan territory and the generation of income by exploiting these assets is a taxable event for this tax obligation. The taxes generated by this type of activity in Guatemalan territory are the Value Added Tax (VAT) and the Income Tax. In addition, it is necessary to consider the taxes that are applicable due to the mere ownership of the property, such as the Property Tax.



3. Can platforms, as such (Airbnb and other similar platforms), be taxed? Which taxes would apply?

a.3 There are two schools of thought with respect to this matter:

I. The first is that because these are services provided from outside the Guatemalan territory, in accordance with the territoriality principle, these types of services are not subject to tax in Guatemala, since this would imply an excessive application of the law by taxing income generated outside of the Guatemalan territory.

II. The second opinion regarding this issue is that local taxes are in fact generated, considering that the counterparty is a Guatemalan taxpayer and that the benefit of such service is generated within the national territory. In the past, this has been the criterion applied by the tax administration, but at this stage of the oversight actions and based on the international agreements signed, it is expected that SAT will ratify or clarify its position and requirements to entities such as Airbnb, and also to any e-commerce platform, including streaming providers such as Netflix and the like.

b.3 In the case of applying local taxes for commissions and other charges made by these types of platforms (foreign entities), the applicable tax would be the income tax. Since the local VAT legislation does not provide for a tax on the importation of services, we consider that this tax charge would not apply.

4. What taxes apply to the customer who rents the property, and do these differ depending on whether the customer is Guatemalan or a foreigner?


a.4 The end customer would be charged VAT because the rental is a locally provided service that is classified within the corresponding law. This tax becomes part of the cost of the rental in the case of final consumers and must be supported by an electronic invoice (FEL). If the amount of the invoice is greater than Q.2,500, the customer must be identified through their NIT, CUI or passport number if they are non-residents. This latter case has been particularly contentious in sectors such as air transportation, since there are signed international agreements that protect the identity of passengers. Therefore, it is prudent and necessary that prior to issuing regulations of this nature, the international commitments assumed must be carefully studied.



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