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**PROCEDURE TO FILE AND PAY VALUE ADDED TAX (VAT) ACCORDING TO THE NEW PARAGRAPH 7° BIS OF THE SALES AND SERVICE TAX LAW FOR SERVICE PROVIDERS NEITHER DOMICILED NOR RESIDING IN CHILE.**

#### **SII DIRECTIVE N° 67/2020**

**AS ESTABLISHED IN:** the provisions of articles 1, 4 bis and 7 letter b) of the Internal Revenue Service Law, contained in the 1<sup>st</sup> article of the D.F.L. N° 7, of the Ministry of Finance, from 1980; in article 6 letter A N° 1 and article 18 N° 3 letter b) of the Tax Code, contained in the 1<sup>st</sup> article of the D.L. N° 830 of 1974; in the provisions of the new Paragraph 7° bis of the Sales and Service Tax Law contained in the 1<sup>st</sup> article of the D.L. N° 825, of 1974, incorporated by Law N° 21.210 of 2020 that modernizes tax legislation, and which establishes a simplified tax regime for taxpayers neither domiciled nor residing in Chile that render paid services levied with Value Added Tax pursuant to the new letter n) of article 8<sup>th</sup>, also introduced in the Sales and Service Tax Law by Law N° 21.210 of 2020; and in General Instructions N° 42 of June 11<sup>th</sup>, 2020 (*Circular N° 42 de 11 de junio de 2020*).

#### **WHEREAS:**

1° That, article 35 A of the new Paragraph 7° bis of the Sales and Service Tax Law (hereinafter "VAT Law") included in such law by Law N° 21.210 of 2020, indicates that taxpayers neither domiciled nor residing in Chile, that provide VAT levied services according to the new letter n) of article 8<sup>th</sup> of the VAT Law, to be used in the national territory by individuals who are not VAT taxpayers, will be subject to the simplified tax regime that the said Paragraph 7° bis regulates.

2° Likewise, taxpayers neither domiciled nor residing in Chile that provide other services levied with VAT to the individuals indicated in the previous recital, pursuant to the provisions of article 35 A of the VAT Law, may request this Internal Revenue Service (*Servicio de Impuestos Internos or SII*) to adhere to the simplified tax regime.

3° That, the General Instructions N° 42 of June 11<sup>th</sup> 2020 (*Circular N° 42 de 11 de junio de 2020*) indicates that the simplified tax regime is applicable to services rendered to individuals and to legal entities, in both cases that are not VAT taxpayers, in the same manner as indicated in the prior paragraphs.

4° That, the first paragraph of article 35 D of the new Paragraph 7° bis of the VAT Law indicates that taxpayers subject to the simplified tax regime of the said paragraph, must recharge VAT on the price of the services subject to VAT, which will be calculated applying to the aforementioned price the rate established in article 14 of the VAT Law. VAT that these taxpayers must pay is determined by adding VAT recharged in the price for services of the new letter n) of article 8<sup>th</sup> of the VAT Law, in the respective tax period. Such tax period, at the taxpayer's choice, may be one or three consecutive months.

5° That, article 35 G of the new Paragraph 7° bis of the VAT Law indicates that upon the cancellation, rescission, termination or resolution of the services, prior refund to the beneficiary of the service of the amount of VAT recharged and paid in due course, the taxpayer may deduct such VAT from the amount of VAT payable in the tax period in which VAT is refunded, or in subsequent tax periods if in the same tax period there is no VAT payable or the VAT payable is of a lesser amount.

6° That, article 35 C of the new Paragraph 7° bis of the VAT Law indicates that taxpayers subject to the simplified tax regime will not be entitled to a tax credit and will be released from the obligation to issue tax documents for their operations.

7° That, the first paragraph of article 35 F of the new Paragraph 7° bis of the VAT Law, indicates that the Commissioner of the Internal Revenue Service, through a general rule, will establish the necessary procedures to calculate and pay in foreign currency VAT levied on services of the new letter n) of article 8<sup>th</sup> of the VAT Law.

Exceptionally when the operation is carried out in foreign currency, the Commissioner of the Internal Revenue Service through a directive issued for this purpose, may authorize the calculation and payment of VAT in local currency. The exchange rate between local and foreign currency that shall be used is the one as of the date of payment of VAT according to the information published by the Central Bank of Chile in accordance with the provisions of number 6 of Chapter I of the Compendium of International Exchange Regulations. If the foreign currency in which the payment was made is not one of those reported by the Central Bank, the corresponding tax must first be calculated in its equivalent in US dollars, according to the parity between both currencies, to later convert to its equivalent in Chilean pesos in the manner previously indicated.

8° That, article 35 E of the new Paragraph 7° bis of the VAT Law indicates that taxpayers subject to the simplified tax regime must file VAT through a simplified procedure and pay VAT accrued in a tax period, until the 20<sup>th</sup> of the first following month. VAT filing and payment will be made electronically through the Portal that the Internal Revenue Service will enable for this purpose, being empowered for that purpose to display and request information in languages other than Spanish.

#### **DIRECTIVES:**

1° Service providers neither domiciled nor residing in Chile, registered in the simplified tax regime of the new Paragraph 7° bis of the VAT Law, must apply the following procedure in order to file and pay VAT recharged to individuals and legal entities who are not taxpayers of said tax, in the price, remuneration, compensation or payment of services of the new letter n) of article 8<sup>th</sup> of the VAT Law.

This procedure to file and pay VAT could also be applied by service providers neither domiciled nor residing in Chile, who have requested to adhere to the aforementioned simplified tax regime with respect to other VAT levied services not included in the new letter n) of article 8<sup>th</sup>, rendered to individuals and legal entities who are not VAT taxpayers.

### **1. VAT file and payment**

#### **1.1 Registration**

Service providers neither domiciled nor residing in Chile who receive a payment for services of the new letter n) of article 8<sup>th</sup> or for others VAT levied services, in both cases rendered to individuals and legal entities who are not VAT taxpayers, must be previously registered in the simplified tax regime in accordance with the procedure established for this purpose in the Directive N° 55 of May 20<sup>th</sup> 2020.

The foregoing will allow foreign taxpayers to authenticated access the VAT Digital Services Portal (hereinafter, the "Portal"), enabled on the website of this Service ([www.sii.cl](http://www.sii.cl)), where they can file their tax returns and make inquiries.

On the Portal, service providers neither domiciled nor residing in Chile can access the File and Payment menu, where they will find the accordant tax return named "VAT Digital Services (F129)", which must be filled out with the required information.

#### **1.2 Tax payable**

##### **1.2.1 Taxable base**

VAT's taxable base of paid services of the new article 8<sup>th</sup> letter n) or of other VAT levied services with respect to which the service provider has requested to adhered to the aforementioned simplified tax regime, is the price, remuneration, compensation or payment for the provision of the indicated services, whatever its sort or type (hereinafter "price").

VAT due will be calculated by adding up VAT recharged in the respective tax period, on the price for services indicated in the previous paragraph, paid by individuals or legal entities who are not VAT taxpayers.

### **1.2.2 Price paid by the beneficiary of the service that is a VAT taxpayer**

Price paid by the beneficiary of the service that is a VAT taxpayer, must be excluded from the tax base of the services indicated in section 1.2.1, provided that they have so informed the service providers neither domiciled nor residing in Chile. In such case, the beneficiary of the service will be the sole responsible for compliance with the tax obligation, in accordance with article 11 letter e) of the VAT Law.

The beneficiary of the service who is a VAT taxpayer, is liable for due VAT and must issue a purchase invoice (*factura de compra*), file and pay due VAT without the involvement of the service provider neither domiciled nor residing in Chile.

VAT included in the said purchase invoice could be used as tax credit, according to the general rules.

It will be the sole responsibility of the VAT taxpayer and beneficiary of the service to notify such status to the service provider neither domiciled no residing in Chile indicating his Tax ID Number (*RUT*). If the beneficiary of the service does not notify his VAT taxpayer status, the service provider neither domiciled nor residing in Chile must recharge to the beneficiary due VAT, file and pay it.

The service provider neither domiciled no residing in Chile may check the VAT status notified by the beneficiary of the service through data provided by the Internal Revenue Service. Also, the service provider neither domiciled no residing in Chile must send periodically to the Internal Revenue Service the list of VAT taxpayers who have notified their VAT taxpayer's status and thus not been recharged VAT, in the same month in which VAT is filed and paid, according to instructions that will be available on the Portal.

### **1.2.3 Services levied with Withholding Tax (*Impuesto Adicional*) of the Income Tax Law**

Services that are exempt of VAT according to the article 12, letter E, N° 7 of the VAT Law, are levied with Withholding Tax. In such case, the beneficiary of the service must notify the service provider neither domiciled nor residing in Chile that such services are subject to Withholding Tax, indicating his Tax ID Number. In such case, the service provider should not recharge VAT, being the beneficiary or payer of the service, as the withholding agent, the sole responsible for filing and paying Withholding Tax, according to the Income Tax Law rules regarding file and payment of the said tax.

In the absence of such information provided by the beneficiary of the service, the service provider neither domiciled nor residing in Chile must recharge, file and pay VAT, as instructed in section 1.2.2. of this directive. Also, the service provider neither domiciled nor residing in Chile must send periodically to this Internal Revenue Service, in the same month in which VAT should be filed and paid, a list of withholding agents who have not been recharged VAT due to their Withholding Taxpayer status priorly notified to the service provider.

### **1.2.4 Taxable base deductions**

According to article 35 G of the VAT Law, upon the cancellation, rescission, termination or resolution of the services provided, prior refund to beneficiary of the service of the amount of VAT recharged and paid in due course, the service provider may deduct such VAT from the amount of VAT payable in the tax period in which the refund has taken place.

If in such tax period there is no VAT payable or VAT payable is of a lesser amount, the difference will be deducted in subsequent tax periods.

## **1.3 VAT payment**

a) Payment in foreign currency: after completing VAT Digital Services (F129) tax return, it must be sent by pressing the enabled button on the form itself, which will refer the service provider neither domiciled nor residing in Chile to the payment page. This page contains fields of information that must be filled out to make the payment via SWIFT transfer. For these purposes, the date of the payment will be that in which the order for the transfer is given, which is registered in the SWIFT protocol with which the transfer is made.

As long as the payment is not validated by the General Treasury, it will remain in "debt" status, being the service provider neither domiciled nor residing in Chile responsible to follow the Usage Guide for an effective and correct identification of his transfer via SWIFT, that for this purpose will be displayed on the Portal.

b) Payment in national currency: it will be made following the Usage Guide displayed on the Portal.

#### **1.4 File and payment currency**

File and payment of the tax may be made, at the taxpayer's choice, in dollars of the United States of America, euros or Chilean pesos, whether the operation that is affected by VAT, by virtue of letter n) of article 8<sup>th</sup> or in the case of other services in respect of which it has been requested to enroll in the simplified tax regime, it is carried out in national currency or in foreign currency.

The currency chosen by the service provider neither domiciled nor residing in Chile can only be modified in January 1<sup>st</sup> of the business year following the one in which the currency was selected.

#### **1.5 Queries on the tax return's status**

The status of the tax return can be checked on the Portal's menu.

#### **1.6 Deadline for filing and paying VAT**

According to article 35 E of the new Paragraph 7° bis of the VAT Law, service providers neither domiciled nor residing in Chile subject to the simplified tax regime must file the tax return and pay VAT accrued in a period, until the 20<sup>th</sup> of the first month following the end of the respective period. For these purposes, "tax period" shall be understood as the period of one (monthly) or three consecutive months (quarterly), at the service provider's choice.

The tax period chosen can only be modified in January 1<sup>st</sup> of the business year following the one in which the tax period was selected.

#### **1.7 Usage Guide**

The Usage Guide for correctly filing the tax return and paying due VAT as well as making the amendments referred to in the following number 2, will be displayed on the Portal's menu.

### **2. Amendment of the tax return**

Service providers neither domiciled nor residing in Chile who, due to errors in determining the amount of VAT payable, have registered in the field "Total to Pay in Legal Term" of the VAT Digital Services (F129) tax return and paid an amount lesser than what is actually due, will be able to amend the tax return and pay any tax difference. The foregoing, in accordance with article 8<sup>th</sup> of Supreme Decree N° 910 of 1978, of the Ministry of Finance, and within the term established in article 36 bis of the Tax Code. Service providers neither domiciled nor residing in Chile that have made mistakes regarding the payable amount on the tax return filed, may file a new tax return before the Internal Revenue Service assesses any due taxes, correcting the anomalies of the original tax return and paying any difference, even when the legal term have expired, without prejudice to the application of the penalties and surcharges that correspond to the amounts not timely paid and the sanctions provided for in numbers 2, 3, 4 and / or 11 of article 97 of the Tax Code, if applicable.

If, by mistake, VAT was paid in excess, service providers neither domiciled nor residing in Chile, prior refund to the beneficiary of the service of the amount of VAT recharged and paid in due course, can deduct such VAT from the amount of VAT payable in the tax period in which VAT is refunded or in subsequent tax periods; or request its refund in accordance with the procedure of article 126 of the Tax Code.

### **3. Tax credit and issuance of tax documents**

According with the provisions of article 35 C of the new Paragraph 7° bis of the VAT Law, service providers neither domiciled nor residing in Chile subject to the simplified tax regime will not be entitled to tax credit and will be released from the obligation to issue tax documents on their operations.

### **4. Public mechanism to file complaints**

Taxpayers and citizens may file complaints regarding service providers neither domiciled nor residing in Chile who are not complying in due time and manner with their tax duties through the Evasion Complaint Form that is displayed on the website of this Service ([www.sii.cl](http://www.sii.cl)), Contact Option, Evasion Complaints.

2° Pursuant to the twenty-ninth transitory article of Law N° 21.210, the rules of the new Paragraph 7° bis of the VAT Law will come into force three months after the entry into force of said Law, that is, on June 1<sup>st</sup> of 2020.

Consequently, the said rules are applicable to services of article 8<sup>th</sup> letter n) of the VAT Law or to other services for which the service provider neither domiciled nor residing in Chile has requested to adhere to the simplified tax regime, rendered as of June 1<sup>st</sup> of 2020 and paid from the same date. VAT shall be filed and paid by the service provider until the 20<sup>th</sup> of the first month following the end of the chosen tax period.

Bearing in mind that the first period in which VAT must be filed and paid would correspond to the month of June of 2020, service providers neither domiciled nor residing in Chile that have selected a quarterly tax period when registering in the simplified tax regime in the manner provided in the SII Directive N° 55, of May 20<sup>th</sup> of 2020, exceptionally and only for this first tax period, can file and pay VAT accrued in the month of June, by adding it to VAT accrued in the third fixed quarter of the current year corresponding to the months of July, August and September, which must be filed and paid until October 20<sup>th</sup> of 2020.

Also, in case VAT is recharged on services provided to beneficiaries who are taxpayers of said tax, temporarily until September 30<sup>th</sup> of 2020, the latter may use VAT recharged as tax credit, through one of the following alternatives:

- a) Incorporating in the Purchase and Sales Register an electronic purchase invoice, if already authorized to issue this type of documents; or
- b) Recording a manual invoice in the Purchase and Sales Register, if not authorized.

In both cases, the User Number of the service provider neither domiciled nor residing in Chile, which will be available in a list published in the sii.cl website, shall be indicated as the Tax ID Number of the recipient of the invoice; and the name of the service provider as the company's name.

The procedure described is of transitory nature, so that once the indicated period of application has expired, authorization must be requested, according to the current procedures.

After the indicated period, that is, September 30<sup>th</sup> of 2020, service providers neither domiciled nor residing in Chile must have implemented the relevant mechanisms so that the beneficiaries of the service who are VAT taxpayers can notify such situation. In this case, service providers neither domiciled nor residing in Chile should not recharge VAT in the said services, being the beneficiary the sole responsible for withholding and paying VAT duly documented through a purchase invoice authorized by the Internal Revenue Service, in accordance with pertaining procedures.

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