

TAX NEWS

August 2023

Executive Summary

Norm	Content	Date
Law No. 7143	The National Directorate of Tax Revenues ("DNIT" per its Spanish acronym) is created.	August 04, 2023
Decree No. 83	The Presidency of the Republic appoints Mr. Oscar Orué, former Vice-Minister of the Undersecretariat of State for Taxation ("SET"), as National Director of DNIT.	August 18, 2023
Decree No. 82	The Presidency of the Republic establishes the validity of Law No. 7143/2023 creating the DNIT.	August 18, 2023
Resolution No. 99	The DNIT establishes administrative measures regarding the subscription of certain administrative acts issued by the DNIT, the General Management of Internal Taxes and its dependencies.	August 29, 2023
Binding Consultation	The SET issued its opinion on the inapplicability of Value Added Tax ("VAT") to the provision of call center services through the Internet for customers located abroad.	August 2023
Administrative Court Ruling N° 174/2023	The First Chamber of the Administrative Court ruled to admit a lawsuit against the Municipality of José Félix Estigarribia, which sought the taxation of the municipal patent tax for agricultural and livestock activities.	August 2023

More Information:

Law No. 7143/2023 - Though which the DNIT is created

On August 4, 2023, the Executive Branch enacted and published Law No. 7143/2023 (the "DNIT Law"). This law created the DNIT, which is a new public law entity. For that purpose, the former SET was separated from the then Ministry of Finance (now the Ministry of Economy and Finance) and merged with the National Customs Directorate ("DNA").

The purpose of the DNIT is to collect both customs and internal taxes, and it has all the functions and powers previously held by the SET and the DNA over the respective taxes corresponding to each area.

The DNIT is an autonomous public law entity communicating with the Executive Branch through the Ministry of Economy and Finance but is no longer part of the latter. You can access a more extensive analysis we prepared on the Law of the DNIT through the following [link](#).

Decree No. 83/2023 - The Presidency of the Republic appoints Mr. Oscar Orué, former Vice-Minister of SET, as National Director of DNIT.

Through Decree No. 83/2023, the Presidency of the Republic appointed Mr. Oscar Orué, who previously served as Vice Minister of SET, as National Director of DNIT.

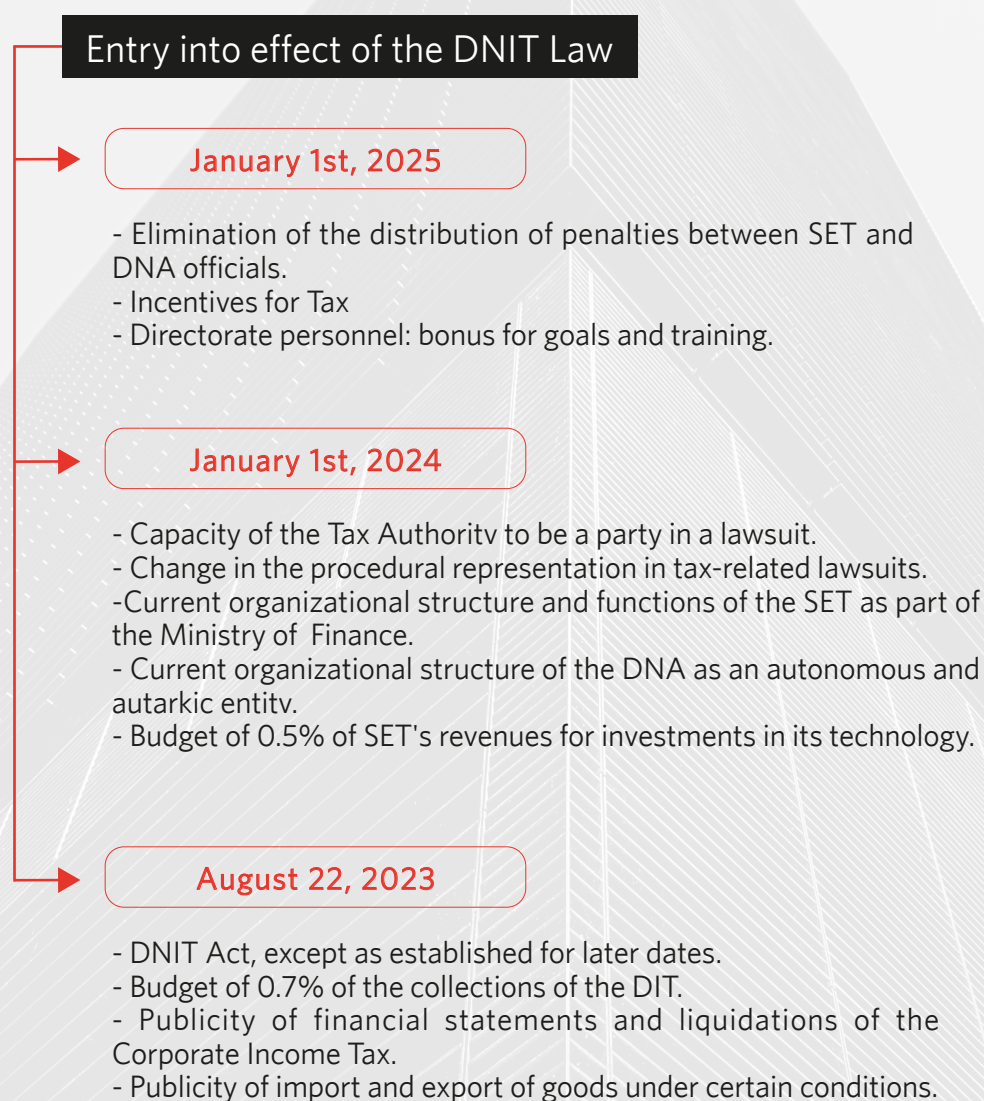
With this appointment, the National Director has continuity in the functions he previously performed as the highest authority of the SET and will be in charge of implementing the DNIT Law, by which the SET and the DNA are merged.

As the first official act after his appointment, the National Director appointed Braulio Ferreira as Executive Manager, Ever Otazú as General Manager of Internal Taxes and Juan Olmedo as Customs Manager.

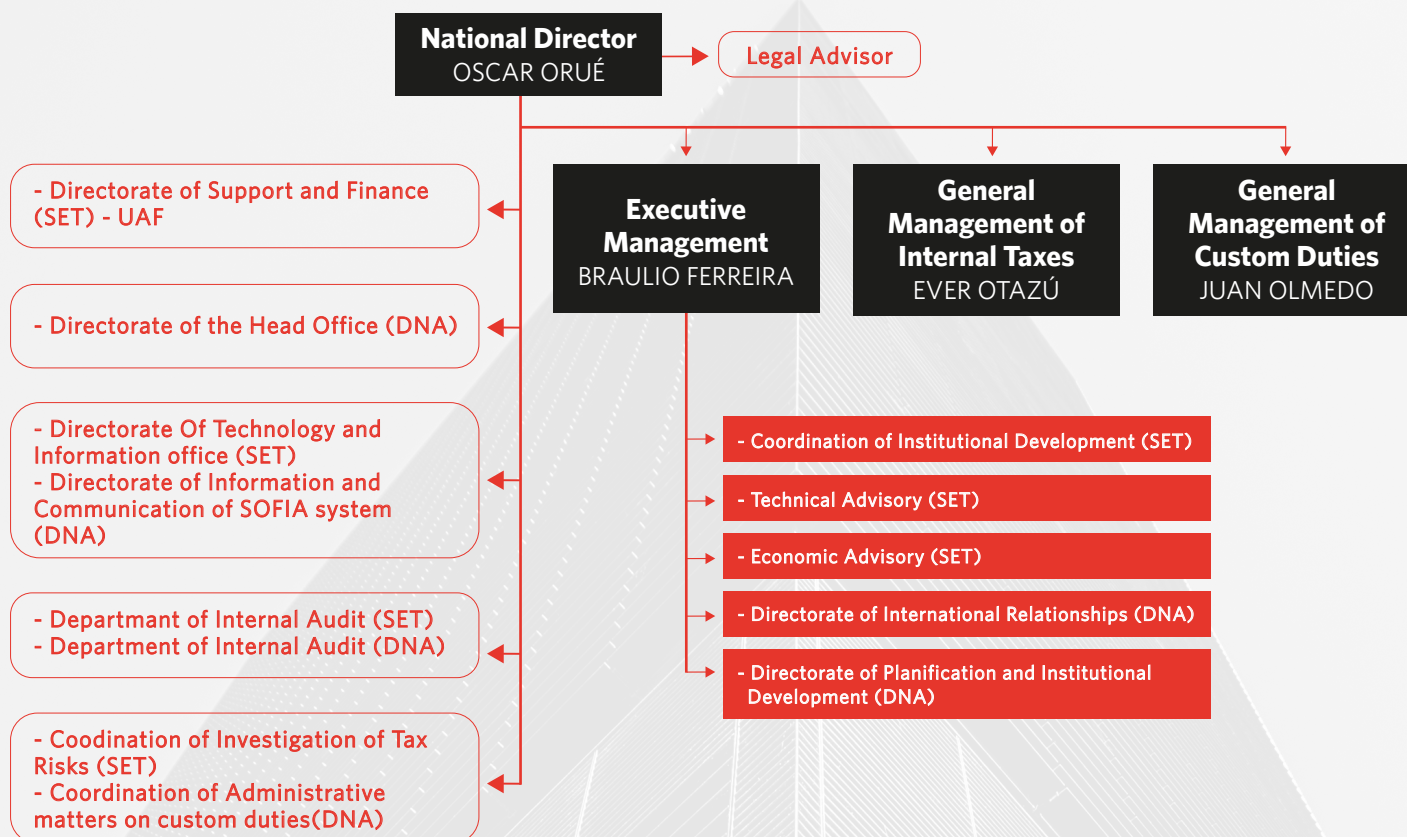
Decree N° 82/2023 - The Presidency of the Republic establishes the validity of the DNIT Law and other provisions on the functions of this entity

Through Decree No. 82/2023, the Presidency of the Republic established that the DNIT Law and the transitory rules for its effective implementation are in force. While the merger process between the former SET and the former DNA takes place, the institutional continuity of the entities that are in the process of integration is necessary, as well as legal certainty for taxpayers and users of foreign trade.

In this sense, as a reason for the decree mentioned above, the Presidency of the Republic explains in the reasons for the Decree that it is necessary to appoint a person in charge to carry out the merger process until the organizational structure and the manual of functions of the DNIT and its divisions are approved. Consequently, the DNIT Law became effective from the day following its publication in the Official Gazette on August 22, 2023. However, several provisions of the DNIT Law will enter into force at a later date, as follows:



On the other hand, until the implementation of the units and operative departments that will be established by regulation, the temporary structure of the DNIT will be as follows:



Finally, through the referred Decree No. 82/2023, the Presidency of the Republic designated the Executive Management as the unit responsible for organizational restructuring and regulation of the Law of the DNIT. The National Director must report to the Executive Branch through the Ministry of Finance on the progress made in merging or amalgamating the organizational structures of SET and DNA.

Resolution No. 99 issued by DNIT - Whereby administrative measures are established with respect to the subscription of certain administrative acts issued by the DNIT

Through Resolution No. 99 of the DNIT (the "RG 99") it was established that the highest authority of the DNIT, which is the National Directorate, will take over the competences of the General Internal Revenue Directorate with respect to certain administrative acts, among which we mention the following: (1) Resolution of requests for tax credit refund and repetition of undue or excess payment; (2) Resolution of appeals for reconsideration filed against (2.1) the particular resolutions of tax assessment and application of penalties, (2.2) the response to binding consultations and (2.3) resolutions on tax credit refund and repetition of undue or excess payment; (3) Issuance of executive title or debt certificate, among others.



Avocation is an administrative law technique used in the public administrative organization to transfer the powers to resolve a specific matter from a hierarchically inferior body to a superior one. This technique is only effective between organs of the same administration.

On the other hand, the highest authority of the DNIT delegates to the head of the General Directorate of Internal Taxes the powers to execute the following administrative acts: (a) Audit orders, together with the Intervening Director; (b) Resolution of administrative proceedings for tax assessment and application of penalties; (c) Execution of the guarantee in the accelerated tax credit refund system of the exporter; and, (d) Answers to binding and non-binding consultations, among others.

In addition, the highest authority of the DNIT establishes powers to perform certain administrative acts to the following entities: (a) Directorate of Taxpayer Assistance and Tax Credits; (b) General Directorate of Tax Auditing; (c) General Directorate of Collection and Regional Offices; (d) General Directorate of Large Taxpayers; and (e) Directorate of Tax Planning and Technique.

Response to Binding Consultation on the non-applicability of VAT to the provision of call center services via internet to foreign customers

Through a response to a binding consultation issued during August 2023, the SET established its position on the non-applicability of VAT on call centre services provided from Paraguay to customers outside the country.

For VAT not to be applied to this type of service, the operation must be within the digital services category and used outside the Paraguayan territory. According to the provisions of Law No. 6,380/2019 (the "Tax Law"), digital services are those services that are made available to the user through the internet or any adaptation of protocols and that are essentially characterized by being (a) automatic and (b) not feasible in the absence of information technology. Decree No. 3,107/2019, which regulates the VAT of the Tax Law, establishes that call centre services are digital services if they are provided through the internet or other networks.

Thus, for the service in question to be considered as provided to customers abroad and used outside the country, it is necessary that none of the following elements are located in Paraguay: (a) IP address of the device used by the customer; (b) country code of the SIM card; (c) billing address of the customer; (d) bank account used for remitting the payment; (e) billing address of the customer available to the bank; (f) financial entity issuing the SIM card; (g) bank account of the customer; (h) bank account of the customer used for remitting the payment; (i) bank account of the customer used for the payment; (j) bank account of the customer used for remitting the payment; (k) bank account of the customer used for remitting the payment; and (l) bank account of the customer used for remitting the payment.

Consequently, the SET responded by endorsing that call centre services that meet the indicated conditions may issue an invoice without generating a VAT tax debit.



Administrative Court Ruling N° 174/2023 by which the First Chamber of the Administrative Court ruled that the municipal patent tax for an agricultural company was inapplicable

The First Chamber of the Administrative Court resolved a contentious administrative action brought by a company engaged in agricultural activities against the claim of the Municipality of Mariscal Estigarribia to collect the municipal trade tax on the assets that this company has in such Municipality. As the primary basis for filing this action, the taxpayer argued that the company does not carry out industrial, commercial or professional activities and, therefore, is not obliged to pay the municipal trade tax, as provided for in Law No. 620/1976.

The representative of the defendant Municipality answered the contentious administrative lawsuit mainly arguing that the plaintiff company is constituted as a mercantile entity in the General Directorate of Public Registries and that it has a merchant's registration and, therefore it is obliged to comply with the obligations related to such condition. Consequently, such formalities are, in themselves, acts of commerce, and for this reason, all entities of a mercantile nature are obliged to pay the municipal patent tax.

The First Chamber of the Administrative Court resolved the matter in a majority (vote of two of the three members), upholding the action filed by the plaintiff company, since it understood that the agricultural production activity is not included in the factual assumption of the tax and, therefore, is not taxed by it. Consequently, it ordered the revocation of the contested administrative acts, by which the plaintiff was ordered to pay the municipal patent tax.

Although this ruling is favorable to the plaintiff company, it cannot be ignored that the Municipality may appeal this resolution and submit it to review the Penal Chamber of the Supreme Court of Justice. It is essential to note that the position of the Supreme Court of Justice on this point has varied over time, and there is case law supporting the arguments of the plaintiff company in the present case, as well as case law against such claims, the latter being the trend in recent years.

Contact:



Rodolfo G. Vouga
Partner
rgvouga@vouga.com.py
+595 21 202049



Andrés Vera
Associate
avera@vouga.com.py
+595 21 202049



Horacio Sánchez
Associate
hsanchez@vouga.com.py
+595 21 202049