

# AMENDMENT TO ARTICLE 113 BIS OF THE FEDERAL TAX CODE: CRIMINAL LIABILITY OF DIGITAL PLATFORMS AND CONSTITUTIONAL AND CONVENTIONAL TENSIONS

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## Executive Summary:

- As part of the tax package for fiscal year 2026, the federal legislature introduced an amendment to Article 113 Bis of the Federal Tax Code (“FTC”) which, although formally aimed at combating simulated invoicing schemes, significantly redefines the criminal liability regime applicable to digital platforms.
- The amendment expands the scope of the criminal offense by expressly providing for the potential liability of digital service platforms that allow the publication of advertisements related to the acquisition or sale of tax receipts covering non-existent, false, or simulated transactions.
- This amendment raises relevant questions from a threefold perspective: (i) tax-criminal, regarding the standard of attribution and duties of control; (ii) constitutional, in relation to the principles of criminal legality, presumption of innocence, and legal certainty; and (iii) conventional, concerning Mexico’s commitments under international treaties, particularly those related to digital trade.
- Beyond its immediate impact on the tax sphere, the amendment introduces a structural shift in the way the Mexican legal system conceives the liability of digital intermediaries, with significant practical implications for platforms, economic operators, and corporate legal departments.

The published amendment removes, for certain subjects, this subjective element and expressly includes digital service platforms as potential addressees of the criminal provision, introducing a standard focused on the act of “allowing the publication” of the referenced advertisements. As a result, the focus of criminal reproach shifts from knowledge or direct participation to the mere existence of such content within a digital environment managed by the platform.

This seemingly technical adjustment substantively transforms the design of the criminal offense and significantly expands the universe of potentially liable subjects.

From a tax perspective, the amendment strengthens the State’s strategy to combat simulated invoicing networks by extending the scope of liability beyond the direct issuers and acquirers of false tax receipts. However, this strengthening is based on a model of attribution that may generate friction with basic principles of administrative and criminal sanctioning law.

In particular, the notion of “allowing the publication” raises questions regarding the existence—or absence—of a general duty of prior monitoring by platforms, as well as the reasonable limits of diligence that may be required in environments characterized by a high volume of third-party-generated content.

Likewise, the amendment may affect the manner in which tax and administrative authorities design their investigative strategies and inter-institutional coordination, by incorporating digital intermediaries as relevant actors within the tax compliance ecosystem.

From a constitutional standpoint, the amendment to Article 113 Bis of the FTC requires careful analysis in light of the principles of criminal legality, specificity, and culpability. The expansion of the criminal offense through open or indeterminate concepts may give rise to scenarios of legal uncertainty, particularly where the subjects involved do not primarily engage in generating the sanctioned content.

Additionally, the absence of a clear subjective element for certain liability scenarios could strain the principle of presumption of innocence and the requirement that any criminal sanction be based on personally reproachable conduct, rather than solely on the position occupied within an economic or technological chain.

These issues are likely to give rise to significant constitutional debates before the courts, both in the context of diffuse constitutional review and amparo proceedings.

The amendment must also be analyzed in light of Mexico's international commitments, particularly those related to digital trade and intermediary liability. The introduction of criminal liability schemes based on third-party-generated content may be subject to scrutiny under trade agreements that seek to limit general monitoring obligations and protect digital intermediation.

In this context, it cannot be ruled out that the application of the new Article 113 Bis may lead to challenges before international fora or to disputes related to the interpretation and compliance with conventional obligations.

The amendment requires digital platforms, companies operating in digital environments, and corporate legal departments to review their internal policies on control, moderation, and response to potentially unlawful content, as well as their mechanisms for cooperation with tax authorities.

From the perspective of tax, administrative, and constitutional defense, it will be essential to assess, on a case-by-case basis, the actual scope of the new provisions and the available avenues to challenge enforcement actions that may infringe fundamental rights or exceed the limits of the principle of criminal legality.

The amendment to Article 113 Bis of the FTC transcends the strictly tax-related sphere and quietly yet significantly redefines the liability regime applicable to digital intermediaries in Mexico. Its proper implementation will require a careful balance between the legitimate objectives of combating illicit tax practices and the preservation of constitutional and conventional principles that underpin legal certainty and due process.

Monitoring its practical application and the judicial criteria that emerge in this regard will be decisive in assessing its real impact on the tax system and the digital ecosystem.

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