

The VAT taxation of digital services in Ukraine

Bill No. 4184 (hereafter, "the Bill") introducing a 20% VAT on digital services supplied to individuals located in Ukraine by non-resident businesses was submitted to the Ukrainian Parliament at the end of 2020.



On 3 June 2021, the Ukrainian Parliament adopted the Law "On Amendments to the Tax Code of Ukraine regarding the abolition of the taxation of income received by non-residents in the form of payments for the production and/or distribution of advertising and improving the taxation procedure with value added tax on transactions for the supply of digital services by non-residents to individuals" (hereafter, "the Law").

After the Ukrainian Parliament's consideration of the Bill, its text was improved and so the Law differs from the first version of the Bill.

The Law came into force on July 2, 2021, except for certain provisions. In particular, VAT taxation on the supply of digital services to individuals by non-resident businesses will apply to tax periods starting from 1 January 2022.

1. Taxpayer

As was suggested in the Bill's first version, the taxpayer will be a non-resident who does not have a permanent establishment in Ukraine and supplies its own digital services to individuals,

including private entrepreneurs, in the customs territory of Ukraine by providing 1) access to digital services through an electronic data interface, 2) technical, organisational, informational, and other capabilities by means of information technologies and systems for establishing contacts and concluding agreements between sellers and buyers, and 3) digital services under intermediary agreements.

At the same time, the following adjustments were made in the Law's final version:

1. The supply of digital services must be carried out by individuals and private entrepreneurs who are not registered as a VAT payer. While private entrepreneurs who are registered as VAT payers will have to remit VAT to the public budget authorities by themselves under the 'reverse-charge' mechanism.
2. Non-resident businesses supplying digital services will not be subject to Ukrainian VAT under the following circumstances when:
 - a. non-resident businesses provide digital services under intermediary agreements, and the list of such digital services and the actual supplier of such services is defined in the invoices sent to the customer; or
 - b. non-resident businesses solely process payments for digital services and do not participate in the provision of such digital services to the customers; or

- c. non-resident businesses supply digital services through their permanent establishments located in Ukraine.
- d. Affected non-resident businesses are required to register as non-resident taxpayers who supply digital services to individuals in the customs territory of Ukraine. The obligation to register arises if the total volume of digital services supplied to Ukraine-based individuals exceeds the amount equivalent to UAH 1,000,000 (approximately USD 37,400) within the preceding calendar year.

In accordance with the Law, registration of non-resident businesses as VAT payers will be carried out online through a Ukrainian tax authority website using the electronic identification of non-resident taxpayers. The Ukrainian tax authorities have not yet developed and approved the manner of the electronic identification of non-resident taxpayers.

2. Taxation procedure

Affected non-resident businesses are obliged to fill in and submit a simplified VAT return, which will happen electronically through a special web portal that the Ukrainian tax authorities will develop. A simplified VAT return has to be submitted by every non-resident business who is duly registered as a VAT payer regardless of whether the supply of digital services was carried out during the quarterly reporting period.

Non-resident suppliers are not allowed to deduct any associated input VAT, nor are they obliged to issue and register VAT invoices.

Non-resident suppliers will pay their VAT

liabilities exclusively in foreign currency (either US dollars or Euro).

If the non-resident supplier who is registered as a VAT payer in Ukraine fails to submit a simplified VAT return or to remit the amount of tax to the Ukrainian public budget authorities, then the Ukrainian tax authorities will issue a tax notice regarding such a supplier's obligation to submit a VAT return or to pay the tax obligation amount. If the non-resident taxpayer still fails to fulfill its obligations, then the Ukrainian tax authorities may initiate a tax collection procedure in accordance with Ukraine's international treaties.

3. The definition of digital services has been clarified

In the Law's final version, the definition and list of digital services has been clarified. The Law's published text states that digital services are services delivered over the internet, in an automated manner, using information technologies, with minimal human intervention, including by installing a special application on smartphones, tablets, television or other digital devices. These services include, among others, the following:

- a) the supply of electronic copies of and provision of access to images, text, and information, including, but not limited to, the subscription to electronic newspapers, magazines, books, the provision of access to or download of photographs, graphics, video materials;
- b) the provision of access to databases, including the use of search engines and directory services on the internet;
- c) the supply of electronic copies (electronic digital information) or the provision of access to audiovisual works, video and audio works, games, including the supply of services for participation in such games, the provision of access to television programmes (channels) or

- their packages, except for access to television programmes broadcast through any television network;
- d) the provision of access to information, commercial, entertainment electronic resources and other similar resources;
 - e) the supply of distance learning services on the internet, of which carrying out the services does not require human participation, including by provision of access to virtual classes or educational resources in which students complete tasks online, and receive grades automatically without human participation (or with minimal participation);
 - f) the supply of cloud services related to the provision of computing resources, storage resources or electronic communications systems using cloud computing technologies;
 - g) the supply of software and updates, including electronic copies of software, providing related access, as well as the remote maintenance of software and electronic equipment;
 - h) the supply of advertising services on the internet, in mobile applications or through other electronic resources, the provision of advertising space, including by placing banner advertisements on websites or web portals.

At the same time, the following services are excluded from the definition of "digital services":

- the supply of goods/services ordered through the internet, mobile applications, or other electronic resources, that are supplied without the use of the internet (including: car rental, housing, transportation services, etc.);
- the supply of goods/services that generally do not fall under the definition of "digital services", but include digital services as a component (such as packages of goods/services), provided that the price of such digital services is included in the price of the package;
- the supply of distance learning services on the internet, provided that the internet is used as a means of communication between the tutor and the student;
- the supply of material copies of works in the fields of literature, art, and science;
- consulting via emails;
- the provision of web access.

4. Place of Supply

The Law's general definition of the "place of supply" of digital services has remained the same as in the Bill, i.e. the location of the recipient of such services.

The place of supply of digital services to individuals registered as private entrepreneurs is a place of such registration.

However, the Law has revised the procedure for determining the place of supply of digital services to individuals not registered as private entrepreneurs. The location of such individuals will be determined as follows:

- for the provision of digital services by means of a fixed-line network - the country where the fixed-line network is established (i.e. the location of the telecommunications provider used for the supply of the digital service);
- for the provision of digital services by means of a mobile network - the country of the SIM card used for the supply of a digital service;
- for the provision of digital services by other means of communication - the country in which such other means of communication are located, including by the location of the device that was used for the supply of a digital service.

Additional factors that may be used to prove the location of an individual are the billing address, banking details (e.g. the location of the individual's bank) and other commercial information.

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