



WTS VAT Update for the Digital Economy in Ukraine

Ukraine postpones the VAT taxation of foreign digital businesses until 2022

Following the global trend, the Ukrainian parliament has been considering introducing a 20% VAT tax on digital services supplied to individuals located in Ukraine by non-resident businesses. The first bill on this topic was proposed back in December 2019.

However, recently a new bill regulating the same matter has been introduced (number 4184 on 02.10.2020). Since the same group of deputies that proposed the previous bill has now submitted this new bill, the previous bill is no longer expected to be considered any further by the Ukrainian Parliament.

The new bill does not provide for significant changes in the rules for the taxation of non-resident digital businesses, but still introduces some revisions and updates.

1. AFFECTED SUPPLIERS

The new bill defines taxable business as a non-resident who does not have a Permanent Establishment (PE) in Ukraine and supplies its own digital services to individuals in the customs territory of Ukraine by:

- providing access to digital services through an electronic data interface;
- providing technical, organisational, informational, and other capabilities by means of information technologies and systems for establishing contacts and concluding agreements between sellers and buyers.

If digital services are supplied to individuals in Ukraine through an intermediary, then such an intermediary is considered as a supplier of the respective services for taxation purposes.

The new bill retains the requirement for the affected suppliers to register with the Ukrainian tax authorities. Registration will be obligatory for suppliers that have reached the total volume of digital services supplied to Ukraine-based individuals of UAH 1,000,000 (approximately EUR 29,000) within the preceding calendar year.

After registration, non-resident digital businesses will have to submit a simplified VAT return to the Ukrainian tax authorities on a quarterly basis, as well as collect and remit VAT on the sales made to Ukraine-based individuals.

Yet, non-resident suppliers will not be allowed to de-

duct any associated input VAT, nor will they be obliged to issue and register VAT invoices.

The new bill also provides for a significantly increased amount of fines for the supply of digital services without registration compared to the previous bill (from UAH 8,500 to 100% of the digital services value supplied without registration).

2. DIGITAL SERVICES

The definition of digital services in the new bill remains the same as in the previous one. Such services are defined as services delivered over the Internet, in an automated manner, using information technologies, with minimal human intervention. Digital services include the following (this list is not exhaustive and may be supplemented by other services on a case-by-case basis):

- a. the supply of images, photos, texts, including electronic books and magazines, audiovisual works, games, gambling;
- b. providing access to information, commercial, educational and entertainment electronic resources;
- c. the storage of data using cloud-based technologies;
- d. the supply of software and updates to it, as well as the provision of remote software maintenance services;
- e. the provision of advertising space on websites, mobile applications, and other electronic resources, etc.

The supply of digital services to a recipient can be proved by any document (including electronic documents) confirming the recipient's payment for such services.

3. PLACE OF SUPPLY

No considerable changes have been introduced for determining the place of supply of the digital services, which is considered to be the location of the recipient of such services. In turn, the recipient's location will be determined using the following rules:

- the location of a recipients who is registered as a private entrepreneur under Ukrainian laws will be the place of such registration,
- the location of a recipient who is not registered as a private entrepreneur will be determined based on the following factors:
 - a. the country code indicated on the SIM-card used by the recipient of digital services;
 - b. the location of the telecommunication services provider that has supplied the digital services to the recipient;
 - c. the location of the device used by the recipient of the digital services as determined by the device's IP address;
 - d. the location of the bank that opened the bank account that has been used for making the payment for the digital services;
 - e. the information about the recipient's place of living that he/she has provided to the services provider.

Yet, the new bill, in the same way as the previous one, does not specify how many factors need to match to confirm the recipient's location, or which of them will prevail in the event of any conflict.

If the new bill is adopted by the Ukrainian Parliament, then the updated rules for taxation of non-resident digital businesses will apply from the start of 2022 (with the threshold for obligatory registration to be calculated based on the sales occurring in 2021). We will of course keep you updated once the bill is adopted.

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