Other Important Issues

DST payments can be considered as tax deductible from the taxpayer's taxable income regarding the personal income and corporate income taxes.

The tax office in charge for levying DST may issue a notice to the digital service providers or to their legal representatives who did not fulfill their obligations to submit a declaration and pay the respective taxes in due time. This will also be announced on the website of the Revenue Administration.

In the case of not fulfilling these declaration and payment obligations within 30 days after the notice, the Ministry of Treasury and Finance will notify the Information and Communication Technologies Authority to take necessary actions to block access to the services provided by these service providers until these obligations are fulfilled.

Interpretation of the DST Legislation

A 15% withholding tax was also introduced on cross-border online advertising services in accordance with the Presidential Decree No. 476, which became effective as of 1 January 2019, and the new DST will be applied to the online advertising services too.

The withholding tax on cross-border online advertising services can be considered within the scope of double tax treaties and can benefit from double tax treaty provisions in this respect. On the other hand, DST is an expenditure tax and, unlike cross-border online advertising services, it cannot be considered within the scope of double tax treaties and cannot benefit from double tax treaty provisions.

This situation creates a considerable tax burden for the companies which do provide cross-border online advertising services.

Furthermore, on 5 February 2020, the Ministry of Treasury and Finance announced a draft communique regarding Digital Services Tax which shall provide detailed explanations regarding the implementation of DST legislation and is envisaged to come into force simultaneously with Digital Services Tax as of 1 March 2020.

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Ukraine

Plans to tax supplies of digital services from non-residents

Ukraine follows the global trend of taxing the cross-border sales of digital services from foreign suppliers.

Recently a draft law no. 2634 amending the tax code of Ukraine has been introduced by the Head of Finance, Tax and Customs Committee of the Ukrainian parliament, proposing to extend Ukrainian VAT rules to B2C cross-border sales of digital services.

The explanatory note to the draft law says that the draft law is aimed at (1) increasing revenues of the state budget, and (2) establishing equal competitive environment for foreign and domestic suppliers of digital services.

The draft law introduces a 20% VAT on digital services supplied to individuals located in Ukraine by non-resident suppliers. Proposed amendments do not affect the B2B sales for which VAT is remitted by Ukraine-based businesses under the reverse-charge mechanism.

Digital services are defined as services delivered over the Internet, in an automated manner, using information technology, with minimal human intervention. Such services shall include, inter alia, the supply of images, photos, texts, including electronic books and magazines, audio-visual works, games, gambling, providing access to information, commercial, educational and entertainment electronic resources, storage of data using cloud-based technologies, supply of software and updates to it, as well as provision of remote software maintenance services, provision of advertising space on websites, mobile applications, and other electronic resources, etc. The list of digital services is not exhaustive and may be supplemented by other services depending on their nature.

The affected suppliers will have to register with the Ukrainian tax authorities. The registration is obligatory for suppliers who reached the total volume of digital services supplied to Ukraine-based individuals of UAH 1,000,000 (~ EUR 37,000) within the preceding calendar year. After registration, non-resident digital services suppliers will have to submit a simplified VAT return to Ukrainian tax authorities on a quarterly basis, as well as collect and remit VAT on sales made to Ukraine-based individuals.

If the draft law is adopted by the Ukrainian parliament, its provisions will be applicable to the tax periods starting from 1 January 2021.

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