In its ruling, the FHC held that in the event of the National Assembly making laws for any other item of taxation outside of those for which the 1999 Constitution expressly vests the National Assembly with powers, in this case, taxation of incomes, profits, capital gains and stamp duties, such laws shall become a nullity.

Considering the VAT Act forms the basis for the imposition and collection of VAT by the Federal Government via the Federal Inland Revenue Service (FIRS), the decision of the FHC in ***Ukala's case*** is significant, as it questions the powers of the National Assembly to enact the Act in the first place. It is worth mentioning here that the FHC did not consider item 62 of the Exclusive Legislative List which gives the National Assembly the power to make laws on matters of trade and commerce particularly between Nigeria and other countries, including the import of commodities, and trade and commerce between states. A combined reading of item 62 and 68 of the exclusive legislative list surely gives the National Assembly the power to make laws on the taxation of trade and commerce between Nigeria and other countries and between states in Nigeria. Additionally, the decision of the FHC also lends credibility to the imposition of consumption/sales tax by several states in Nigeria. It is expected that in light of the constitutional nature of the issues in ***Ukala's case,*** the FIRS shall take steps to appeal the decision or seek an amendment of the relevant constitutional provisions to give the Federal Government the necessary powers to make laws concerning VAT.

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Ukraine

Taxation of digital services in Ukraine

The Ukrainian Parliament has recently adopted the law introducing a 20% VAT on digital services supplied to individuals located in Ukraine by non-resident businesses (hereinafter – the Law).

New rules on VAT taxation of non-resident suppliers of digital services shall apply to tax periods starting from 1 January 2022.

1. Affected suppliers

The Law shall apply to non-resident businesses who do not have a permanent establishment in Ukraine and supply digital services to individuals, including private entrepreneurs, in the customs territory of Ukraine by 1) providing access to digital services through an electronic data interface, 2) providing technical, organisational, informational, and other capabilities by means of information technologies for establishing contacts and concluding agreements between sellers and buyers, 3) providing digital services under intermediary agreements.

Affected non-resident businesses are required to register as VAT payers with the tax authorities 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 (approx. EUR 31,100) within the preceding calendar year.

2. Taxation procedure

Affected suppliers are obliged to submit a simplified VAT return in an electronic form on a quarterly basis and pay the respective VAT liabilities based on the sales to individuals in Ukraine.

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

Should the non-resident supplier who is registered as a VAT payer in Ukraine fail to remit the amount of tax to the budget of Ukraine, the Ukrainian tax authorities will issue a tax notice regarding its obligation to pay the tax, and may also initiate a tax collection procedure in accordance with international treaties of Ukraine.

3. Definition of digital services

Under the Law, digital services shall include 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, or other digital devices. These services include, inter alia, the following:

a) supply of electronic copies of, or provision of access to images, texts, video and audio works, games and information;
b) provision of access to databases;
c) supply of distance learning services on the Internet, the carrying out of which does not require human participation;
d) supply of cloud-based services;
e) supply of software and its updates;
f) supply of advertising services on the Internet.

The list of digital services is not exhaustive and may be supplemented by other services on a case-by-case basis.

At the same time, some services are excluded from the definition of "digital services", e.g. provision of web access, consulting via email, 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, etc.

The place of supply of digital services is determined as the location of the recipient of such services. To determine the location of the recipient, different factors may be taken into account, such as the location of the telecommunication provider, country of the SIM card of the customer, location of the device based on its IP address, billing address and bank details of the customer, etc.

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