

Taxation of non-resident electronic service providers in Ukraine

- 1. The new Law and related regulations**
- 2. Non-residents as VAT payers**
- 3. Definition and list of electronic services**
- 4. Exemption from VAT**
- 5. Registration of non-residents as taxpayers**
- 6. VAT base and rate**
- 7. Penalties**

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1. The new Law and related regulations

On 02 July 2021, the Law of Ukraine on Amendments to the Tax Code of Ukraine (the so-called "Google Tax Law") came into force, under which the value added tax (VAT) on transactions that provide electronic services to individuals in Ukraine will be taxable in Ukraine (certain provisions of the Law will come into force on 01 January 2022).

The Law was adopted to ensure fair tax conditions for national and international non-resident companies rendering electronic services. Similar legal provisions are in force in the European Union, Australia, Belarus, Kazakhstan, Russia, etc.

In order to ensure practical implementation of the above-mentioned changes, on 01 January 2022, an Order of the Ministry of Finance of Ukraine of 21 October 2021 will come into force which approves the Form of simplified tax declaration for VAT, the form of clarifying calculation of deductible VAT liabilities in relation to the simplified tax declaration due to correction of self-identified errors, and the procedure for filling in and submission of the simplified tax declaration for VAT.

2. Non-resident VAT payers

The list of VAT payers includes non-resident persons who:

- do not have a permanent representative office in Ukraine and
- provide electronic services in the customs territory of Ukraine to individuals (including private entrepreneurs who are not registered as VAT payers).

3. Definition and list of electronic services

E-services are services that are delivered via the Internet in an automated way, using information technologies and predominantly without human intervention, including through the installation of special software or applications on smartphones, tablets, television receivers or other digital devices.

This includes providing access to electronic services through an electronic interface, offering technical, organisational, informational, and other capabilities through the use of information technologies and systems for contacting and transactions between sellers and buyers and/or supplying such electronic services under intermediary contracts in the vendor's own name, but on behalf of the electronic service provider.

Electronic services include, but are not limited to:

a) supply of electronic copies, provision of access to images, texts and information, including

- subscription to electronic newspapers, magazines, books;
- provision of access to and/or download of photos, graphics, videos;

b) provision of access to databases, including the use of Internet search engines and catalogue services;

c) provision of electronic copies (electronic digital information) and/or on-request access to audio-visual works, video and audio recordings, games, incl.:

- provision of services for participation in such games;
- provision of access to television programs (channels) or their packages (except for access to television programs simultaneously with their

broadcasting on the television network);

d) provision of access to information, commercial and entertainment electronic resources and other similar resources, including those hosted on public information or video platforms;

e) provision of online learning services, the conduct and delivery of which does not require human participation, including by providing access to virtual classes, educational resources, in which students perform tasks online and grades are assigned automatically, without human involvement (or with minimal human involvement);

f) provision of cloud technology services by way of making computing resources, storage resources or electronic communication systems available through cloud computing technologies;

g) provision of software and software updates, including:

- electronic copies, provision of access thereto;
- remote maintenance of software and electronic equipment;

h) provision of advertising services on the Internet, mobile applications and other electronic resources, provision of advertising space, incl. by placing banner advertisements on websites, web pages or web portals.

Electronic services do not include the following activities:

- provision of goods/services that are ordered (booked) via the Internet, mobile applications and other electronic resources, but actually delivered without using the Internet. In particular, these include accommodation services, car rental services, catering services for food delivery, passenger transport services, etc.;
- supply of goods and/or other services other than electronic services which include electronic services, where the cost of electronic services is included in the total cost of such goods/services;
- provision of remote education services via the Internet, if the Internet is used exclusively as a means of communication between an instructor and a student;
- provision of copies of works of science, literature and art on tangible media;
- provision of consulting services by e-mail;
- provision of Internet access services.

4. Exemption from VAT

Non-residents exempt from VAT include the following:

- those rendering electronic services under intermediary contracts, if invoices (receipts) issued to customers of electronic services define the list of such electronic services and indicate their actual supplier;
- those who solely process payments for e-services and are not involved in the provision of such services;
- those providing electronic services directly through their permanent representative office in Ukraine.

5. Registration of non-residents as taxpayer

Non-residents are registered in Ukraine as a VAT payer on the basis of their applications. The application contains, inter alia:

- information on the registration of a non-resident in the non-resident's country;
- identification data of the non-resident;
- information on confirmation of the fact and period of reaching the value of transactions for the supply of electronic services to natural persons, determined for obligatory registration as VAT payer.

The application shall be accompanied by copies of:

- an extract from the relevant business register (commercial, banking or other register in which the fact of state registration of a company, organisation is recorded) issued in the non-resident's country of registration;
- document confirming the assignment of identification (registration, accounting) number (code) of a non-resident in the country of its registration, if the extract from the relevant business register does not contain information on such number (code).

Obligatory registration

A non-resident is obliged to submit an application for the registration as a VAT payer, if according to the results of the previous calendar year, the total value of transactions for the supply of electronic services to individuals whose place of supply is located in the customs territory of Ukraine, exceeds the equivalent of UAH 1 million (USD 36,900). Such application shall be submitted until 31 March, inclusive, of the calendar year following the year in which such non-resident reached the said amount.

Voluntary registration

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A non-resident who has not reached the prescribed amount but considers it expedient to voluntarily register as a taxpayer may apply for the registration as a taxpayer not later than 10 calendar days before the beginning of the reporting (tax) period from which such non-resident will be regarded as a taxpayer.

6. VAT base and rate

The tax base for the provision of electronic services by a non-resident person registered as a VAT payer is determined by the value of such services.

The tax rate is 20% of the taxable base and is added to the value of electronic services, except for operations exempt from VAT.

The tax base and the amount of tax are determined in a foreign currency (EUR or USD).

7. Penalties

A non-resident supplying electronic services in the customs territory of Ukraine to individuals, including private entrepreneurs, who are not registered as VAT payers, without being registered as a VAT payer, shall be liable to a fine in the amount of 30 minimal wages, established by law as of 1st January of the reporting (fiscal) year (from 1st December 2021, the amount is UAH 195 000, approx. USD 7,195).