

International Tax Bulletin

Date : 01.02.2018

Issue : 2018/2

Final Legislation on the VAT Liability of Non-Resident Electronic Service Providers



CENTRUMCONSULTING

International Consulting and Transfer Pricing Services



CentrumConsulting

www.centrumdanismanlik.com.tr

FINAL LEGISLATION ON THE VAT LIABILITY OF NON-RESIDENT ELECTRONIC SERVICE PROVIDERS

Article 9 of the Turkish Value Added Tax (VAT) Law determines the parties liable for tax and stipulates that VAT arising from services provided electronically to individuals in Turkey who are not VAT taxpayers must be declared and paid by those without a residence, workplace, headquarters, or business centre in Turkey.

In relation with this issue, a Draft Communiqué which regulates the implementation of new legislation was announced by Turkish Tax Authorities on 27 December 2017. Turkish Tax Authorities have collected public opinion on the Draft Communiqué and finalised their work.

The Final Communiqué which regulates the implementation rules of new legislation on VAT liability of non-resident electronic service providers was released in the official gazette on 31 January 2018.

In this Bulletin, we mainly compare the Final Communiqué with the draft one. Please see more details on the Draft Communiqué in our previous international tax bulletin (It is accessible at <http://www.vergiport.com/uluslararasi-vergi-bultenleri.html>).

In general, the Final Communiqué does not provide additional guidance on the implementation rules. However, as compared with the Draft Communiqué we observe four differences. Those differences are explained in the following sections of our bulletin.

1. Definition of Electronic Services

The Final Communiqué does not provide the definition of electronic services as in the Draft Communiqué. It only refers “electronic services to be provided by the non-resident tax payers”. It is our understanding that definitions in the Draft Communiqué did not cover all the electronic services; therefore, Turkish Tax Authorities did not want the restrict definitions of electronic services as considered the rapidly changing digital economy. However, this creates uncertainties at a certain level (Please see definitions in our international tax bulletin on the Draft Communiqué).

2. Intermediaries

It is stated in the Final Communiqué that intermediaries are liable for VAT declaration and payment for electronic services to be provided to individuals not VAT taxpayers in the case electronic

service provider is not openly stated and not reflected in the agreement between parties; or in case the information about the electronic service provider and electronic services are not stated in the issued invoices or similar documents. In addition, it is stated in Final Communiqué that those who have authority to demand the payment and determine general conditions in relation to electronic services or those who responsible to provide the electronic services are regarded as electronic service provider.

In the Draft Communiqué, however, it was expressed that in case of electronic services provided through a telecommunication network, interface, digital portal, when the actual electronic service provider is not shown explicitly on the invoice or relevant documents regarding the services provided, aforementioned digital platforms are obliged to declare and remit the VAT.”

We understand that new guidance explains the same issue in a broader way without providing examples. Accordingly, intermediaries like telecommunication network, interface, digital portals will be liable for VAT for the electronic services purposes.

3. Deduction of VAT

No VAT deduction was allowed for the non-resident taxpayers in the Draft Communiqué. However, we understand that Turkish Tax Authorities changed their approach and stated in the Final Communiqué that it is allowed to deduct VAT from VAT payable for non-resident taxpayer of electronic services if services and goods are obtained from those who have VAT liability in Turkey and VAT is shown on invoices and similar documents provided that VAT is related to the declared services under the special VAT liability of non-resident taxpayer of electronic services.

We understand from these explanations in the Final Communiqué that for instance a non-resident taxpayer purchased a software from a Turkish supplier, who is VAT registered in Turkey, to provide its services to its customers in Turkey, VAT shown on invoices and similar documents of the supplier can be deducted from its VAT payable due to electronic services provided to Turkish individual customers. The deduction will be applied through VAT Return



No.3 which is going to be declared by non-resident electronic service providers.

Also, the Final Communiqué indicates that non-resident taxpayer of electronic services must keep those invoices and similar documents in accordance with the provisions on the keeping and submission of legal documents of Turkish Tax Procedure Code.

4. Filing and Payment Period

The Final Communiqué does not change the VAT declaration and payment period and states that filing deadline is by the 24th day of the month following the taxation period (which is monthly according to the Final Communiqué).

However, the Final Communiqué provides a transition period and makes it possible to declare first VAT return in the April. Thus, non-resident electronic service providers will declare the transactions they have made in January, February, and March of 2018 with the VAT Return No. 3 to be filed from the beginning of April 2018 until the twenty-fourth day. There is no requirement to submit a tax return for the periods where there is no service supplied electronically.

In terms of payment no changes have been also made and the Final Communiqué repeats that VAT will be paid in Turkish Liras by the end of the 26th day of following month after the declaration period. This payment can be made by the non-resident service providers directly to tax office or banks authorized for tax collection or via the Revenue Administration's official website (www.gib.gov.tr) with debit or credit cards of banks authorized to collect taxes by Turkish Tax Authorities.

5. Take Away

Turkish Tax Authorities provided a transition period for the first VAT declaration of non-resident tax payers. Accordingly, first VAT declaration will be made for the first quarter of 2018 and it will cover 3 months transactions of non-resident electronic service providers. In line with the first implementation period, which is an exception, VAT of first quarter (January-April 2018) will be paid by the end of the 26th April. However, after exception period VAT returns will be submitted, and VAT will be payable monthly.

Based on this fact, it is highly advisable that electronic service providers must initially fill out the form available on the Revenue Administration's website, www.digitalservice.gib.gov.tr. (The link

is not working currently, but it is expected it will be activated soon.). After this form is filled out and approved, a "Special VAT Registration for Electronic Service Providers" will be made for the non-resident electronic service provider before the Large Taxpayers Tax Office in Istanbul. Upon registration, the taxpayer will be provided with a user code and password to be able to operate in the internet tax office.

It is clear from the Final Communiqué that electronic service providers must compute retrospectively VAT for their sales in January 2018 and it is highly recommended that they adjust their prices for the future sales and start to compute VAT on their electronic service sales as of 1 January 2018.

It is stated in the Final Communiqué that late filings will be subject to tax penalties regulated under the Turkish Tax Procedure Code. A tax penalty (special irregularity fine) will be charged to non-complaints. The amount of tax penalty depends on the case.

Consequently, we recommend that non-resident electronic service providers take the necessary actions to comply with the new VAT obligations in Turkey.

Please contact us for our International Tax Bulletin and further details on the implementation of new VAT liability in Turkey for non-resident electronic service providers.



Dr. Burçin GÖZLÜKLÜ

Founding Partner, Sworn-in Financial Advisor

Email: burcin.gozluklu@centrumdenetim.com

Phone: + 90 216 504 2066



Ramazan BİÇER

Partner, Consulting Services Leader

E-mail: ramazan.bicer@centrumdenetim.com

Phone: + 90 216 504 2066

