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Changes on VAT for E-services

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Introduction

The Government of the Republic of Kazakhstan (**'Kazakhstan'**) is considering the draft law on the introduction of amendments to the tax laws.

The Draft Law on amendments to the Tax Code of the Republic of Kazakhstan (**'Tax Code'**) is currently at the stage of negotiation by the Government. The Draft Law, however, is to be signed by the end of this year being effective from 1 January 2020.

Some of the key novelties would affect the value added tax (**'VAT'**). In particular, the Draft Law introduces a new Article, under which service rendering in e-form by a non-resident to Kazakhstani individuals will be subject to VAT.

Now, pursuant to the Tax Code, non-residents shall pay VAT, when the person or entity has taxable turnover in Kazakhstan and the non-resident is registered as VAT payer. Thereat, rendering e-services through the Internet is currently not considered as taxable turnover.

There are no any official explanatory notes to the Draft Law and comments on the above novelty yet. Such a reform, however, was initiated back in April, when the Majilis deputy – Mr. Amanzhan Zhamalov, “launched the initiative to collect taxes from foreign internet-companies, and sounded the amount, which he thought Kazakhstan people spent in 2015 for online shopping – about USD 3.5 bln, and only USD 60 mln were spent at domestic market.”^[1]

Below you can find our analysis of the expected amendments to the Tax Code.

Payers

Currently, the obligation to register for VAT is, inter alia, on non-residents that operate in Kazakhstan through a branch/representative office and have minimum nontaxable turnover of 30,000 MCI ^[2](75,750,000 tenge that is around USD 194,730).

The revised *Article 367 of the Tax Code ('VAT Payers')* is supplemented with the provision the VAT payers are nonresident legal

entities that render services to individuals in e-form. In other words, if a non-resident renders e-services in excess of the nontaxable turnover, it shall register as VAT payer, submit quarter VAT statements, and pay VAT at a rate of 12%.

Representatives of the State Revenue Committee clarify that the relevant sequence of actions will be as follows: "First, the tax authorities will reveal foreign companies that render e-services in Kazakhstan, then will send the relevant notices of registration, reporting, and VAT payment."^[3]

Services in E-Form (E-services)

A new Article 426-1 'The Feature of Performing VAT Obligation by a Non-Resident That Renders E-Services to Individuals' of the Tax Code also defines what services can be classified as e-services. The list consists of 15 services, including:

- ▶ providing an access to Internet search engines.
- ▶ rendering services on the search and(or) provision of information on potential buyers to the client;
- ▶ rendering advertising services on the Internet, including with the use of software and databases functioning on the Internet, as well as providing advertising platforms on the Internet;
- ▶ rendering services on the placement of purchase (sale) offers for goods (works, services), property rights on the Internet;

For your convenience, we provide the full list of the service below.

An important condition for VAT on services is the place of their sale, i.e. Kazakhstan. In this case, Article 370 of the Tax Code expressly provides that services rendered outside of Kazakhstan shall refer to the nontaxable turnover. In other words, any services or goods purchased by Kazakhstani nationals through foreign internet-companies are not considered as those purchased in Kazakhstan.

The situation, however, may change drastically. The legislator supplies the Tax Code with a new Article 426-1 'The Feature of Performing VAT Obligation by a Non-Resident That Renders E-Services to Individuals', which provides that the place of e-service rendering shall be Kazakhstan. In this case, Kazakhstan shall be considered as the place of service rendering when the individual receiving the e-service (1) resides in Kazakhstan; (2) uses the account with a Kazakhstani bank or money operator to pay for the services; (3) uses a network address registered in Kazakhstan, when purchasing the service; (4) uses the phone number, which is assigned the international code of Kazakhstan, for the purchase of or payment for the services.

Chapter 50 of the Tax Code provides that for residents of the Eurasian Union that render some e-service, the place of sale can be their state of residence. In theory, a Kazakhstani individual purchasing e-services from a Russian Internet company shall not create tax liabilities for Kazakhstani VAT for such an Internet company. However, it is difficult to predict what changes will eventually be adopted in the tax laws and how the provisions of the Tax Code will be interpreted and applied in practice.

We hope this Alert prepared by the Tax Team of GRATA Law Firm would be useful for you. If you have any questions or require further comments, please feel free to contact us. We would be pleased to assist you.

Best Regards,

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[1] https://forbes.kz/finances/finance/nalog_nagoogle/

[2] In 2019, Minimal Calculated Indicator (MCI) is 2,525 Tenge.

[3] https://forbes.kz/finances/finance/nalog_nagoogle/

The list of e-services according to the new Article 426-1 of the Tax Code:

1. granting rights to use software (including computer games), databases through the Internet, including by way of providing remote access to them, including updates and additional functionality;
2. rendering advertising services on the Internet, including with the use of software and databases functioning on the Internet, as well as providing advertising platforms on the Internet;
3. rendering services on the placement of purchase (sale) offers for goods (works, services), property rights on the Internet;
4. rendering services on the search and(or) provision of information on potential buyers to the client;
5. providing through the Internet the services on the provision of technical, organisational, information and other opportunities performed with the use of information technologies and systems to establish contacts and conclude transactions between sellers and buyers (including provision of a trading platform operating on the Internet in real time, where potential buyers offer their prices in an automated procedure and the parties are notified of the sale by an automatically created message);
6. providing and/or maintaining commercial or personal presence on the Internet, maintaining of users' web resources (websites and/or pages of websites), providing an access thereto for other network users, enabling users to modify them;
7. storing and processing information in e-form using server information and communications equipment (data centre services) provided that the person, who provided this information, has access to it through the Internet;
8. rendering services on the search and(or) provision of information on potential buyers to the client;
9. providing computing power in real time for placing information in an information system;
10. providing domain names, web hosting services;
11. rendering services for the administration of information systems, websites on the Internet;
12. providing an access to Internet search engines.
13. keeping statistics on websites on the Internet;

14. rendering services automatically through the Internet, when the buyer enters data, automated service on data retrieval, selection and sorting by requests, provision of the data to users through information and telecommunication networks (including stock exchange reports and automated translation in real time);
15. granting the right to use e-books and other electronic publications, information, educational materials, graphic images, music and audiovisual works through the Internet, including by way of listening and watching through the Internet.

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Practice areas

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