

Digital services tax

Turkish tax authority has focused on digital taxation in recent two years. Accordingly, on 5 December 2019 Law No: 7194 has been enacted by Turkish Parliament that introduce Digital Services Tax (“DST”) and the law was published in the Official Gazette on 7 December 2019. Law will be in force as of the date of 1 March 2020.

On 5 February 2020, the Draft General Communiqué on the Implementation of the Digital Services Tax (“Draft Communiqué on DST”) was published on the website of the Turkish Revenue Administration. The Draft Communiqué on DST makes some explanations and clarifications on procedures and principles to have better understanding on the implementation of the DST.

However, still there are some unclear parts which are open to question and these issues and dilemmas need to be clarified and resolved in future.

Which services have been covered in DST?

Below services “**provided in Turkey**” are defined within the scope of DST.

- *All types of digital advertising services, including services such as advertisement control and performance measurement services, services relating to data transmission and user management (i.e., the sale of user data), and technical services relating to the display of advertisements*
- *The sale of audio, visual or digital content in digital format, as well as services provided in digital format for listening, viewing, playing or recording digital content or using such content in digital format (including computer programs, applications, music, video, games and in-game applications, among others)*
- *Digital intermediary activities that allow users to interact with other users, include digital intermediary activities that can facilitate the sale of goods and services between users*
- *Intermediary services provided in a digital environment for the above categories of services*

As it is seen, scope of the DST is defined very broadly, and should we compare the DSTs applied in other countries, we can exactly say that Turkish DST has the most extensive scope.

The Draft Communiqué on DST, some of the services have been excluded from scope of DST, for example, revenue generated from the sale of services mentioned in first bullet above, only through electronic recording tools, such as CDs, DVDs, external memory and by physical delivery, is not considered within the scope of revenue generated by the services described in this section.

However, once we look at the application from a practical point of view, it is possible to say that the majority of companies producing computer programs have not been already selling in this way for many years. With the recent developments on technology, these sales can now be delivered to the users quickly via on cloud. Accordingly, in our view, companies producing own contents/programs and selling these programs on their own websites/cloud account, then these services should also be excluded from scope of DST considering law's preamble.

Meaning of “providing of services in Turkey”

The article 2 titled “Definitions” of the Law has clarified on meaning of “providing of services in Turkey” stated in the Law.

Definition of “providing services in Turkey” has been made as (i) the service should be provided in Turkey, (ii) utilizing from the services should be in Turkey, (iii) the services should be perform for people living in Turkey, or (iv) payments for the services provided should be made in Turkey or the payment is made outside of Turkey but transferred to the accounts of the payer (or the party which payment has been made on behalf of) in Turkey or is recognized as an expense in the accounts of a Turkish payer.

Tax base and rate

The base of the DST is the gross revenue generated during a taxation period. If the revenue is denominated in a foreign currency, it must be converted to Turkish lira. The DST would be applied as 7.5% over the gross revenue.

The President of Turkey may reduce the rate to 1% or increase it to 15%, either per type of digital service separately, or for all types of digital services together.

Exemptions

One of the exemptions provides that in the accounting period before the relevant accounting period, regarding the services indicated in Article 1 of the Law, companies with revenue in Turkey of less than 20 million Turkish Lira (TL) or with worldwide digital revenue of less than 750 million Euro, or the TL equivalent in foreign currency, are exempt from DST. The accounting period refers to the calendar year.

In case the thresholds mentioned above are exceeded, then in order to be exempt from DST again, taxpayer should have revenue less than thresholds for 2 accounting periods.

Below services are also exempt from DST:

- Services that are subject to Turkish Treasury Duty, paid in accordance with the Telegram and Telephone Law
- Services that are subject to the special communication tax
- Services that are in scope of Article 4 of the Banking Law No. 5411
- Payment services within the scope of Article 12 of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions
- Sales of products and services provided exclusively through products developed through research and development (R&D) activities in R&D centers in Turkey as defined under Article 2 of the Law on Supporting Research, Development and Design Activities.

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