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## Turkiye's Constitutional Court annuls rule that allows blocking access to digital services upon default on Digital Services Tax liability

- *A Turkish Constitutional Court decision has annulled a provision in Digital Services Tax Law No. 7194 that allowed the government to block access to a digital service provider's services if it failed to timely report or pay certain tax obligations.*
- *The annulment decision will enter into force nine months after 12 September 2023, the date of publication in the Official Gazette.*

A Turkish Constitutional Court decision published on 12 September 2023 in the *Official Gazette* has annulled as unconstitutional a provision in Digital Services Tax Law No. 7194 (DST Law) that allowed the Ministry of Treasury and Finance to block access to digital service provider's services for failure to timely fulfill its tax filing or payment obligations.

### Background

On 7 December 2019, Law No. 7194 was published in *Official Gazette* introducing Digital Services Tax (DST) in Turkiye. Accordingly, DST liability in Turkiye began as of 1 March 2020 for digital service providers falling within the scope of the DST Law<sup>1</sup> and exceeding the revenue thresholds.<sup>2</sup>

Article 7 of the DST Law introduced measures to secure the tax.

According to paragraph 1 of Article 7 of the DST Law, digital service providers (taxpayers) or their representatives in Turkiye who have not submitted DST returns or timely made DST payments may be served a notice urging them to fulfill their tax filing and payment obligations. The tax office will issue this notice based on information obtained from digital service providers' websites, domain names, IP addresses, and information obtained from similar sources, and utilize the notification methods listed

under Law No. 213, electronic mail or any other communication methods. The notice will also be announced on the Turkish Revenue Administration's website.

Paragraph 2 of Article 7 of the DST Law further states that if the taxpayer fails to fulfill its tax filing and/or payment obligations within 30 days following the notice, the Ministry of Treasury and Finance may issue a decision to block access to the taxpayer's digital services until the obligations are fulfilled. The Ministry's decision is then sent to the Information and Communication Technologies Authority to notify the relevant internet service providers, who must execute the decision to block access within 24 hours after the notification is served to them.

Turkish Constitutional Court decision published in the Official Gazette on 12 September 2023 annuls the above-mentioned paragraph 2 of Article 7 of the DST Law on the grounds that the rule is against the Turkish Constitution.

### **Detailed discussion**

In its decision, Turkish Constitutional Court stated that the rule that permits blocking access to digital services limits the freedom of enterprise of digital service providers.

The Constitutional Court further stated that blocking access to the services offered by digital service providers that do not fulfill their tax-related obligations is a severe sanction. Lighter restrictions, such as an "advertising ban," "prohibition of contract conclusion," a "gradual narrowing of internet traffic bandwidth" for the website where service providers carry out all their activities may be considered to be implemented first, the court said. While it is possible to implement a gradual tax security measure, the reasonable balance between freedom of enterprise and public interest is disrupted by placing excessive burdens on service providers by deciding to block direct access, according to the court.

The court concluded that the limitation the rule imposed on the freedom of enterprise was disproportionate, violating the principle of proportionality.

The annulment decision will enter into force nine months after 12 September 2023, its publication date in the *Official Gazette*.

During this period, it is expected that the necessary legal changes will be made and new rules will be introduced. If no rules are introduced, administrative actions regarding blocking access to the services offered by digital service providers due to failure to fulfill their taxation obligations despite the warning given to them will be unconstitutional.

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### **ENDNOTES**

<sup>1</sup> a) All types of advertisement services provided through digital platforms (including advertisement control and performance measurement services, as well as data transmission and management services concerning users, and technical services for providing advertisements)

b) The sale of all types of audio, visual or digital content on digital platforms (including computer programs, applications, music, videos, games, in-game applications, etc.) and services provided on digital platforms for listening, watching, playing this content or downloading the content to electronic devices or using the content on electronic devices

c) Services related to the provision and operation services of digital platforms where users can interact with each other (including services relating to the sale or facilitation of the sale of goods or services among users)

Intermediary services of digital service providers on digital platforms subject to digital service tax, as well.

<sup>2</sup> €750 million in global revenues and 20 million Turkish Lira (TRY20 million) in local revenues.

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