

5 March 2021

THE PROSPECTS FOR THE UKRAINIAN "GOOGLE TAX"

On 17 February 2021, the draft Law No. 4184 introducing Ukrainian VAT on certain services provided by non-Ukrainian companies via the internet (the so-called "Google Tax") passed the first reading in the Ukrainian Parliament (the "**Draft Law**"). The Draft Law is subject to further parliamentary consideration, and in order to become a bill, it must be adopted by Parliament in the second (and simultaneously third) reading.

The principal concept proposed by the Draft Law is that the provision of qualifying "electronic services" via the internet by a non-Ukrainian company to an individual customer located in Ukraine shall be subject to 20% Ukrainian VAT.

Considering the turnover threshold triggering the above VAT, apart from tech giants, such as Google, Apple, Facebook, Microsoft, Netflix and others, the law may impact the activities of many mid-level and even smaller companies in various industries.

The key rules proposed by the Draft Law (in its current wording), among others, include the following:

- the list of "electronic services" is not exhaustive and, among others, includes (i) supply of various content, such as images, photos, e-books, magazines, audio-visual content, on-demand video, games, (ii) provision of access to various web resources, cloud storage services, (iii) supply of software (including updates) (except for on tangible mediums), services on remote maintenance of software and electronic equipment, (iv) advertising services on the internet, mobile apps and other electronic resources;
- to qualify for the above VAT, "electronic services" must be provided (i) via the internet (services ordered via the internet but then supplied via other means should not be subject to the tax), and (ii) to an individual customer located in Ukraine. The location of the customer shall be determined based on any relevant information available to the provider, e.g. based on SIM-card country code, registered address of the internet provider, IP address of the device, registered address of the bank used for payment purposes, etc.;
- the annual turnover from the supply of "electronic services" triggering VAT obligations – UAH 1 million (approx. EUR 30,200);
- the registration of a qualifying non-resident as a VAT-payer shall be performed online. The provider shall report online on a quarterly basis by submitting the simplified VAT return;

- the tax may be paid in foreign currency from the non-resident's foreign bank account;
- failure to register as a VAT-payer in Ukraine, if required, shall be subject to a fine amounting to 100% of the value of "electronic services" provided by the non-resident in Ukraine.

Apart from the introduction of the above rules, the Draft Law also proposes to abolish the existing 20% tax payable by Ukrainian companies on top of non-resident's income from advertising services. However, in essence, for qualifying advertising services this tax would be replaced by the above 20% VAT.

While the idea behind the Draft Law is very clear and Ukraine seems to be following some other countries that have started taxing domestically multinational tech giants, the proposed rules may result in the increase of service fees for end-users. Furthermore, it is not completely clear how the proposed VAT would be administered in practice by the Ukrainian tax authorities and how compliance with the requirements among non-residents without a local presence in Ukraine would be enforced.

At this stage, it is too early to make any conclusions in respect of the Draft Law. It is not yet clear when the second reading by Parliament may take place and what changes may be introduced into the Draft Law by that time. Stakeholders should continue to closely follow and monitor the situation.

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