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Separate procedure for collection of VAT on digital services in the EAEU

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Kazakhstan has ratified the Protocol on amendments to the Agreement of the Eurasian Economic Union dated 29 May, 2014 in part of indirect taxes collection upon digital services rendering (hereinafter – the ‘Protocol’) [1].

The Protocol will come into effect as soon as the last EAEU state notifies the depositary on the interstate procedures compliance.



[1]The Law of the Republic of Kazakhstan dated 22 February, 2024 No. 63-VIII ‘On ratification of the Protocol on amendments to the Agreement of the Eurasian Economic Union dated 29 May, 2014 in part of indirect taxes collection upon digital services rendering’.

WHAT IS IT FOR?

The Protocol offers a separate procedure for indirect taxes collection in the EAEU. This procedure differs from the current procedure on collection of value added tax on digital services (hereinafter – ‘[VAT on digital services](#)’) in Kazakhstan.

In comparison to the current broad definition of digital services, the Protocol provides for an exhaustive list of such services approved by the EAEU Council [2].

This list excludes the following types of services:

- sale of goods, works, services through the information and telecommunication network in case these goods, works, services are supplied without the use of such network;
- sale of software/data bases on a tangible medium;
- granting of access to the information and telecommunication network.

[2]The Decision of the Council of the Eurasian Economic Union dated 27 September, 2023 No. 97 ‘On the digital services list’.



Furthermore, the Protocol provides for a solution in case of discrepancies between the conditions which trigger VAT on digital services.

For instance, a Russian company rendered digital services in address of a Kazakh citizen. This citizen lives in Kazakhstan and has a Kazakh mobile number, but the payment for the digital services was performed through its Russian bank account. In this case, the two triggers for VAT on digital services are present, i.e. the Kazakh place of residence and mobile number of the recipient of services. Hence, despite that the other condition cannot be recognised as a trigger for VAT on digital services, i.e. the Russian bank account, the Russian company will still be obliged to pay VAT on digital services in Kazakhstan as the largest number of conditions triggering VAT on digital services is satisfied.

One of the most significant differences between the current and the suggested procedures for collection of VAT on digital services is that, according to the suggested procedure, the company from the EAEU state may not pay VAT on digital services in the following cases:

Example No. 1:

A Russian company rendered digital services to a Kazakh individual entrepreneur and failed to register as VAT on digital services payer in Kazakhstan. In this case, the Kazakh individual entrepreneur is obliged to pay VAT in the general order (providing that he is registered as VAT payer);

Example No. 2:

A Russian company rendered digital services to Kazakh individuals and individual entrepreneurs. In this case, the Russian company will be obliged to pay VAT on digital services only in respect of the Kazakh individuals. The Kazakh individual entrepreneurs will be obliged to pay VAT in the general order (providing that they are registered as VAT payers);

Example No. 3:

Upon rendering of digital services to Kazakh individuals, a Russian company conducts payments through a Belarusian intermediary (company or individual entrepreneur). In this case, the Belarusian intermediary will be obliged to pay VAT on digital services.

In conclusion, it should be noted that the procedure of VAT on digital services collection suggested by the Protocol is much more detailed and convenient in comparison to the current one which is insufficiently elaborated. However, please note that the Protocol will be applied only in respect of the EAEU states, while in case with the other states the current procedure of VAT on digital services collection will be applied.



WHAT SHOULD BE DONE?

When the Protocol comes into effect, the EAEU companies should thoroughly analyse the services which they intend to render to the Kazakh citizens via information and telecommunication network as not all of the services as well as all of the cases would require tax registration and consequent payment of VAT on digital services in Kazakhstan.



HOW CAN WE HELP?

GRATA International has many years of experience in advising on tax issues, tax audits support as well as representation of the client's interests in the higher tax authorities and courts. We are happy to assist you.

OUR SERVICES



Withholding Tax Refund;



Taxation of Subsoil Users;



VAT Refund from the State Budget;



Taxation of Non-Residents;



Corporate Taxation;



Taxation of Individuals;



Tax Support and Structure in M&A Transactions;



Tax Due Diligence (Tax Audit);



Tax Investment Preferences and Tax Planning;



Representation and Protection of Interests in the Course of Tax Disputes.



Taxation of Bank and Financial Transactions;