Turkey tax alert
Draft digital services tax bill submitted to parliament

A draft digital services tax (DST) bill was submitted to the Turkish parliament on 24 October 2019 in an attempt to grapple with the challenges faced by the country in taxing the digital economy. The provisions in the draft bill are in line with DST initiatives by other countries and generally follow the framework of the final report on action 1 of the OECD BEPS project (*"Addressing the Tax Challenges of the Digital Economy"*).

The legislation is still in draft form and may be revised during the legislative process. Since the draft bill contains other proposals (a 2% hotel accommodation tax that would affect the tourism sector, an additional property tax for high value residential houses and an increase in the individual tax rates), completion of the legislative process may take time. However, the process is expected to be finalized by the end of 2019.

The DST would apply as from the beginning of the third month following the month in which the DST law is announced in the official gazette.

Overview of proposed DST

Under the draft bill, DST would be imposed at a rate of 7.5% on revenues generated from the following "digital services" performed in Turkey:

- Online advertising services (e.g. advertising controlling and performance measurement services, services relating to the transmission and management of user data and technical services relating to the presentation of advertisements);

- Sales of audio, visual or digital content in a digital environment (computer programs, applications, music, video, games, applications within games, etc.) and any services performed in a digital environment that enable such content to be heard, viewed or played in the environment or recorded or used in electronic devices;
- Services performed relating to the provision and management of digital environments/platforms that allow users to interact with each other (including services performed to allow or facilitate sales of a product or service among the users); and
- Intermediary services performed in a digital environment with respect to the above digital services.

Digital services would be deemed to be performed in Turkey where:

- The services are carried out in Turkey;
- The benefit of the services is enjoyed in Turkey;
- The services target individuals in the Turkish market; or
- The services are accounted for in Turkey. Digital services would be deemed to be accounted for in Turkey if (i) the payments for such services are made in Turkey, or (ii) the payments are made outside Turkey but are recorded/deducted in the Turkish statutory books.

Online advertising services that target individuals located outside Turkey (i.e. outside the Turkish market) would not be considered to be digital services performed in Turkey and, therefore, would not be subject to DST.

Any entity providing digital services in Turkey would be subject to the DST, regardless of whether the provider is a resident of Turkey (for income or corporate tax purposes) or whether the services are provided through a Turkish permanent establishment or permanent representative.

Where the digital service provider is a nonresident, the Ministry of Treasury and Finance would be authorized to hold liable for the payment of DST those acting as intermediaries or the parties to the transactions.

Proposed DST exemptions

The draft bill provides an exemption from DST for digital service providers whose digital service revenues derived from Turkey are below TRY 20 million or whose global digital service revenues derived from their global market are below the TRY equivalent of EUR 750 million. For entities that belong to a consolidated group, the total revenues of the group would be taken into account in determining whether these thresholds are exceeded. Special rules would apply where both thresholds are exceeded in a particular fiscal year or where a digital service provider falls below either of the thresholds for two consecutive fiscal periods.

The president would be authorized to reduce or eliminate the exemption thresholds or increase them by up to three times, either collectively or by type of digital service.

The following types of digital services would be exempt from DST:

- Digital service revenues derived by authorized mobile electronic communication service providers (e.g. authorized mobile phone operators), on the basis of which a certain percentage is paid as a Treasury share;

- Digital services that are subject to Turkey's special communication tax;
- Digital services performed to carry out banking transactions under Turkey's banking law;
- Digital services relating to the sale of products developed in R&D centers as a result of R&D activities and services performed relating to such products; and
- Digital services relating to certain electronic payment services.

DST calculation

The 7.5% DST rate would be applied to digital service revenues to determine the DST to be declared and paid. No deductions would be allowed and taxpayers would not separately disclose DST on invoices.

The president would be authorized to reduce the DST rate to as low as 1% or to increase it to as high as 15%, either collectively or by digital service type.

Any DST paid would be deductible in determining the income and corporate tax base of the payer.

Declaration and payment of DST

Declaration and payment of the DST would be made in TRY. Where digital service revenues are denominated in a foreign currency, the amount would be converted to TRY based on the relevant currency buying rate of the Central Bank of Turkey on the date the digital revenues subject to DST were derived.

DST would be declared on a monthly basis, and DST returns and payments would have to be submitted to the same tax office as for VAT returns and payments by the end of the following month.

The Ministry of Treasury and Finance would be authorized to change the tax period from monthly to quarterly depending on the types and volume of digital services. The Ministry also would be authorized to determine the format and content of the DST return and its attachments.

Measures for securing DST collection and penalties for failure to comply

Taxpayers or their authorized representatives in Turkey that fail to declare and pay DST by the due date would be traced through their IP addresses and information available via their internet sites and issued a warning by the Ministry of Treasury and Finance, which also would be announced on the Turkish Revenue Authority's website. If the obligations are not fulfilled within 30 days from the date of the announcement, the Ministry of Treasury and Finance would be authorized to inform the Information and Communication Technologies Authority to block access to the digital services provided by the taxpayer until the obligations are satisfied.

Contacts

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