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IMPLEMENTATION PROCEDURES OF NEW DIGITAL TAX



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IMPLEMENTATION PROCEDURES OF NEW DIGITAL TAX

Turkey has recently introduced a digital tax on the cross-border online advertising services by a Presidential Decree. Published in the Official Gazette dated 19 December 2018, the Presidential Decree (the New Regulation) No. 476 brings a withholding tax liability for payments made for cross-border online advertising services regardless of whether the payee is a taxpayer.

It is clear that new digital tax is a unilateral action taken by Turkish Government. Although Turkey is a G-20/OECD country and a part of OECD Inclusive Framework, it has not awaited the conclusion of ongoing work at the international level as observed in some other developing countries,

With the introduction of new digital tax, Turkey is actually trying to tax economic activities in the digital economy as it considers tax loses in that economy. This has been also observed in Turkey during the recent tax audits of large multinationals such as Google, Apple and Samsung. In that regard, new regulation brings a withholding tax only on the cross-border advertising services but does not cover other business activities in the digital economy.

In this respect, published in the Official Gazette dated 15 February 2019, the Ministry of Treasury and Finance released Communiqué No. 17 (Amending the Corporate Income Tax Communiqué No. 1) which includes further clarifications regarding the withholding tax liabilities for cross-border online advertising services.

In this international tax bulletin, we evaluate the procedures and principals of the new digital tax and provide our opinions concerning the impact of new regulation on the companies providing cross-border services to the Turkish residents.

1. Procedures and Principals of New Digital Tax

Procedures and principals regarding the implementation of aforementioned digital tax which has been provided in the Communiqué are summarized below:

- ◆ Article 94 of Individual Income Tax and Article 15 of Corporate Income Tax list those responsible for applying a withholding tax. These parties will be obliged to apply withholding tax on the

payments for cross-border advertising services.

- ◆ Those who are not responsible for applying a withholding tax are not required to apply any withholding tax for the payments made to non-resident taxpayers. In this sense, such taxpayers are not obliged to withhold tax even if they receive cross-border advertising services.
- ◆ Under the new regulation, respected parties must apply 15% withholding tax for the payments made to non-resident online advertising service providers or intermediaries. 15% withholding tax rate does not also change whether the real person is a resident or non-resident taxpayer.
- ◆ It is required to apply 15% withholding tax on the payments made to online advertising services providers and intermediaries related to aforementioned services regardless of whether the payee is a taxpayer.
- ◆ In the case that said payments are made to resident taxpayer intermediaries in Turkey, 0% withholding tax will be applied. If resident intermediaries make payments to resident taxpayer service providers in Turkey, again 0% withholding tax will be applied. However, the resident taxpayer intermediaries (e.g. a Turkish advertising agency) are required to apply 15% withholding tax to the payments made to non-resident service providers (e.g. Google) regarding the provision of related services.
- ◆ 15% withholding tax will be applied for payments made to real persons regardless of whether the real person is resident or non-resident tax payer. This means that payments to be made to the individuals who are involving advertising activities (e.g. Youtubers) will be also subject to 15% withholding tax.
- ◆ As previously mentioned, the Presidential Decree No. 476 entered into force on the date of its publication (19/12/2018) for payments made after 1/1/2019. In this sense, withholding tax must be applied to all payments



including the services provided before 19/12/2018 but paid after 1/1/2019.

- ◆ However, if cash payments and payments on account were made before 19/12/2018 to online advertising services providers and intermediaries, there will be no withholding tax even if the payments are made after 1/1/2019 related to aforementioned services.
- ◆ In this sense, an example is provided in the Communiqué as follows: A resident company, (Z) A.Ş., received online advertising services from a non-resident taxpayer, (B) Advertising Co. Ltd., in October 2018 and recorded the invoice issued by (B) Advertising Co. Ltd. in November 2018 in its legal books. Based on the agreement, (Z) A.Ş. will make the payment of the advertising service on 15 January 2019. In this case, it is not required to apply withholding tax by (Z) A.Ş. on the cash payment to be made on 15 January 2019 to (B) Advertising Co. Ltd.

2. Evaluations on the New Digital Tax

For countries that Turkey has no tax treaty, it is clear that Turkey has right to apply withholding taxes on the cross-border advertising services under the domestic legislation. Accordingly, there is no disagreement and 15% withholding tax will be applicable.

However, it is our opinion that new legislation is legally arguable for the non-resident taxpayers that do not have a fixed place of business or a permanent representative in Turkey, especially for those who reside in a country that Turkey signed a double tax treaty with.

Under the tax treaties between Turkey and other countries, non-resident taxpayers can only be taxed by Turkey if they obtained Turkey-sourced income through a fixed place of business or a permanent representative in Turkey. Also, tax treaties of Turkey do not cover a definition for a virtual permanent establishment.

In addition, the Communiqué does not address to the tax treaties and it does not mention that there will be a tax refund if unfair taxation is occurred and it is claimable by a non-resident taxpayer. On the contrary, the Communiqué gives an example of cross-border advertising service provided by a

resident of Ireland that Turkey has a tax treaty in effect.

We understand from this example in the Communiqué that it is required to apply new digital tax on the payments to be made to the residents of treaty countries of Turkey even if it is highly controversial. Based on this, it is important to note that non-resident taxpayers will be likely subject to withholding taxes in Turkey due to arguable new legislation.

On the other hand, initiated by OECD there is ongoing work on the taxation of digital economy including cross-border advertising services. As mentioned, Turkey is a G-20 and OECD country and may potentially amend its legislation if the countries reach an international consensus on the taxation of digital economy by 2020.

However, until an international consensus is reached, and Turkey adopts those rules into its domestic legislation, it seems 15% withholding tax on cross-border advertising services will unilaterally be applied by Turkey. For that reason, we advise the respected non-resident taxpayers providing advertising services to consider the new regulation and take necessary actions in that sense.

Please contact us regarding your questions on the implementation procedures of new digital tax.



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