

Digital Taxation Alert in Turkey

Need to discuss...

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VAT for ESS

In Brief

Non-resident electronic service suppliers are liable for Turkish VAT on their supplies to consumers in Turkey.

In Detail

In accordance with the Communiqué Amending the VAT General Application Communiqué No:17, all electronically supplied services (ESS) by non-TR entities to Turkish B2C customers are subject to VAT at the rate of 18%. These non-resident entities shall register as special taxpayers in Tax Authorities' Digital Services portal and shall submit and pay monthly VAT returns (VAT return no. 3) electronically until the 26th of the following month. The obligation has entered into force as of 1st January 2018 starting from March'18 VAT-declaration. January-February and March 2018 VAT-3 Returns shall be declared in March'18 VAT-3 return in accordance with the respective Communiqué. The special taxpayers are able to deduct the VAT incurred in Turkey in relation

to these supplies of electronic services.

The VAT regulation only applies to Business to Consumer (B2C) transactions and not Business to Business (B2B). However, special taxpayers are obliged to declare their B2B electronic service sales invoices in XML lists on a monthly basis as of 1st January 2019.

Audit

When an entity registers for VAT purposes in Turkey and starts filing VAT returns, Turkish Tax Authorities have the right to make tax audits even though the entity does not have any bookkeeping or invoicing requirements.

During the audit, the Tax Authority may ask for the service details, calculation details (if there are dramatic fluctuations in between) and check the related tax declarations and their attachments if any (abovementioned B2B sales list in Turkey).

Digital Service Tax

The revenue earned from following services provided in Turkey are subject to DST at the rate of 7.5%:

- 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 auditory, visual or digital contents on digital platforms (including computer programs, applications, music, videos, games, in-game applications, etc.) and services provided on digital platforms for listening, watching, playing of these content or downloading of the content to the electronic devices or using of the content in these 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).
- d) Intermediary services of digital service providers on digital platforms subject to digital service tax, as well.

The total of B2B and B2C digital service supplies are subject to DST.

The revenue less than TRY 20 million earned in Turkey or less than EUR 750 million earned globally during the relevant accounting period are exempted from DST. Also, in case the entity is a member of a consolidated group in terms of financial accounting, aforementioned total revenues of the group regarding the services subject to tax shall be taken into consideration in the application of these terms.

Digital service providers shall register Tax Authorities' Digital Services portal and complete the DST registration form – (www.digitalservice.gib.gov.tr), and submit the monthly DST returns starting from March 2020 period by the end of following month. DST return filing must be conducted through <https://digitalservice.gib.gov.tr>, which is also currently used for submitting VAT registration form and filing Turkish VAT returns for non-TR ESS entities. Monthly DST returns shall be filed through this website and paid by the end of the month.



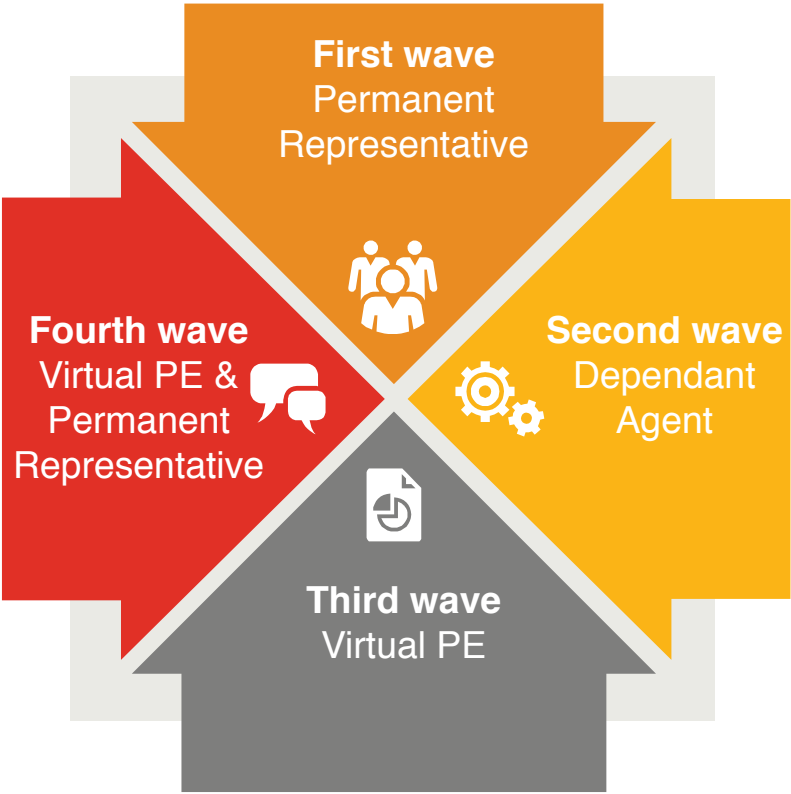


Overview on Tax Inspections

Long Story Short

“E commerce/virtual PE” concept is rather ‘new’ in Turkey and it is continuously gaining importance. A number of tax inspections relating to PE status have been conducted within companies active in different sectors in the recent years.

Tax inspections that were conducted within the course of previous years can be briefly summarized as follows.





Details on the Waves

1st Wave-Permanent Establishment

It was claimed that activities of service company in Turkey is creating a PE and all of the income of the abroad located Company (HQ) shall be taxed in Turkey.

2nd Wave-Dependant Agent

It is claimed that a 3rd party advertisement agency resident in Turkey is dependent agent of a digital advertising company located abroad. In the end it was claimed that abroad located entity has a dependent agent in Turkey and apart from the commission fee of Turkish agent, the revenue of abroad located entity should be taxed in Turkey.

3rd Wave-Virtual PE

It is claimed that entities that do not have a physical presence in Turkey but carrying out their activities through online platforms are criticized to have a workplace in Turkey. Their websites/applications are deemed to be workplaces. The revenue of abroad located entity should be taxed in Turkey.

4th Wave-Virtual PE & Permanent Establishment

The inspections realized before the companies that have service entities in Turkey ended with permanent establishment claim; whereas the inspections realized before the companies that do not have a physical presence but carry out its activities through their websites were ended up with virtual PE claim.





Frequently asked questions on Tax Audit in Turkey

Is it really possible for the inspector to audit or request foreign companies' documents?

MoF tends to make some regulations with regards to the companies and/or transactions based on online working principles. Besides, tax authorities are in a tendency to determine whether there is an amount to be taxed in Turkey or not as MoF suspects e-commerce company's deriving income from Turkey which has to be taxed in Turkey.

We would also like to note that; many of the e-commerce companies are taken under inspection. While some of them have offices, branches or service companies in Turkey, some of them have no presence at all. The inspectors do not consider this difference and start inspections even for the companies which do not have any office/presence in Turkey.

What are the related provisions on notification and inspection process?

Please note that we are of the opinion that the "Information Exchange" mechanism of relevant Double Tax Treaties needs to be complied with in cases where it is desired to inspect limited taxpayers.

Besides, under Turkish Tax Procedural Code the route to be followed for any notification (including potential inspection notices etc.) to the ones located abroad is regulated. Note that there is a draft Code amending the notification procedure, which has not been yet published.

What is the application based on our experience?

Based on our previous experiences; usually the tax authorities have a contact in Turkey that might accelerate the procedural steps, they tend to process through them. So the tax authorities usually make their own contacts with the ones like representatives, attorneys etc. they have communication with.

Besides, TTA seems to have adopted a "new" notification approach that they use to inform on tax inspections.

Contact information (like e-mail address) is provided by the taxpayers while registering to the VAT-3 and DST systems.

With the new draft Law, we are of the opinion that this process will be used more effectively.

What will happen if the entity does not respond to the request of the inspector?

There are no exact provisions in Turkish legislation about the inspection of limited tax payers (or company's deemed as having PE) in Turkey. It is beneficial to play an active role during such possible inspection in order to prevent unnecessary losses that may arise based on the lack of information on contact during the inspection process. i.e. if an assessment is made and the official minute is signed without one of the company's officials or an attorney representing the company, the conclusions in the minute will be adopted without a possibility of any intervention of the company part.