

## Turkey publishes Draft General Communiqué on Digital Services Tax

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### Executive summary

On 5 December 2019, the Turkish Parliament enacted Law No. 7194 which introduces a Digital Services Tax (DST). This law was published in the *Official Gazette* on 7 December 2019. The DST is expected to enter into force on 1 March 2020.<sup>1</sup>

On 5 February 2020, the Draft General Communiqué on the Implementation of the Digital Services Tax (Draft Communiqué on DST) was published on the website of the Turkish Revenue Administration.

The Draft Communiqué on DST introduces explanations, procedures and principles regarding the implementation of the DST regulated in Articles 1 to 7 of the Law No. 7194.

### Detailed discussion

The Communiqué on DST introduces some explanations and examples on the activities that fall within the scope of the DST.

#### 1. Advertising Services Provided in Digital Environment

The following explanations are related to Article 1/1-a of the Law No. 7194.

Revenue generated from the provision of advertising services, published in the digital environment described below, is within the scope of the DST for:

- ▶ Search engine ads such as showing the ad with the search results, or showing the search result for the advertiser in priority order
- ▶ Banners
- ▶ Any audio, visual or written advertisements published in the digital environment before, during or after watching a video or a user share
- ▶ Ads automatically transmitted online via software on electronic devices
- ▶ Pop-ups, etc.

Likewise, revenue from advertisements published on the websites of newspapers or magazines or on the websites of organizations that only broadcast audio and/or visual media in the digital environment, or during their broadcasting streams, is also subject to tax.

The Communiqué on DST provides some examples for each of the advertising services within the DST scope. One of the examples provided in the Communiqué on Article 1/1-a is as follows:

Example 1: On the search engine page operated by company (A), the revenue generated by company (A) from hotel (B) is subject to DST for the hotel (B) website link to be ranked in the top ranking when users search keywords regarding hotels.

The Communiqué further states that, subject to DST, revenue generated from other services includes:

- ▶ Advertising control and performance measurement services
- ▶ Data transmission and data management related to users
- ▶ Technical services related to the presentation of the advertisement

Accordingly, in the implementation of the DST, reporting activities that analyze whether the advertisement reaches the target audience by following access to the advertisement, whether it has the desired effect or whether there is a need for a change in the advertisement or the age and gender, education status of the users that the advertisement has reached, etc., are included under advertising services in Turkey.

The Communiqué states that earning revenue from the advertiser itself, the agency of the advertiser or other third parties providing intermediary services has no effect on the taxation.

## 2. Services for Sales of Audio, Visual or Digital Content and Use of Digital Content

The following explanations are related to Article 1/1-b of Law No. 7194.

The revenue generated from the sale of the following and similar content in a digital environment is subject to DST:

- ▶ Programs, software and applications used in electronic devices such as computers, tablets, mobile phones, smart wristbands
- ▶ Image, sound and text file contents such as motion picture, series, video, picture, photo, graphic, article, magazine, newspaper
- ▶ Any digital games, game supplements or game codes, including those for playing on a game console, regardless of playing online or offline
- ▶ In online games, the player may receive applications or packages related to the game (such as an additional right to play, additional playing time, access to in-game features, materials and items, creating or developing in-game characters or in-game virtual money)

Revenue generated from the sale of said content only through electronic recording tools, such as CDs, DVDs, external memory and by physical delivery, is not considered within the scope of revenue generated by the services described in this section.

Accordingly, for example, the revenue generated from the following services is subject to DST:

- ▶ The service for listening to music or recording it on an electronic device online through a real-time data flow offered to subscribers in a virtual store by company (A)
- ▶ The service provided by company (B) to its users through a digital environment to watch online videos, movies, TV series via subscribing or charging per view
- ▶ The sale of antivirus programs in a virtual store by company (C)
- ▶ The sale of virtual money to users for the right to access additional features of a game played online in the digital environment provided by company (D)

Intermediation services for the sale of digital content in the digital environment are also within the scope of Article 1/1-b of the Law, since such content is for listening, watching, playing in the digital environment or for recording or using the content in electronic devices.

### 3. Providing and Operating Digital Environment through which Users can Interact

The following explanations are related to Article 1/1-c of Law No. 7194.

Services offered for the purpose of sale of a good or service among users and services offered for facilitating the sale are also subject to tax in accordance with the above clause. Accordingly, revenue is subject to DST if it is generated from the provision and operation of a digital environment where users can share written, visual or audio content, or comment on shared content, or interact with each other, and where digital goods can be sold or facilitated for sale.

The scope also includes revenue from services provided in the digital environment for the sale and purchase of goods and services by undertaking functions such as guaranteeing or mediating the payment, delivery or return, or only facilitating the purchase or sale of the goods or services without undertaking any function such as announcing that goods and services are subject to sale or access to the announcement.

Revenue generated by persons who sell the goods or perform the services through the sale of goods or services in the digital environment is not subject to DST. However, it is natural that the revenue generated from the digital sale of digital content included in Article 1/1-b of the Law is subject to DST, within the scope of the above clause.

For example:

- ▶ Revenue from the delivery of this service by company (A), which provides a digital environment to facilitate the sales of vehicles to third parties;
- ▶ Revenue from the delivery of this service by company (B), which mediates the sale of products of companies through its virtual store;

are within the scope of the DST.

- ▶ On the other hand, revenue generated by company (C) by selling their textile products or phone accessories purchased by company (D) through their own website is not subject to the DST.

### 4. Intermediary Services to Services Offered in Digital Environment

According to Article 1/2 of Law No. 7194, revenue generated from intermediary services provided by digital service providers in the digital environment for the services listed in the first paragraph of the same article are subject to DST.

Revenue generated from intermediary services offered in the digital environment, such as filtering the product features or comparing and sorting on the basis of in-store, or filtering products in terms of price, brand, model, etc., is also included within the tax.

For example; Company (B) mediates in its own virtual store the sales of company (A) which provides intermediary services for the sale of goods. In this case, the revenue generated by company (A) due to the intermediary service provided in the digital environment is subject to the DST within the scope of Article 1/2 of the Law. The revenue generated by company (B) is also subject to tax within the scope of Article 1/1-c of the Law.

The Communiqué also clarifies in which cases services are deemed to be benefited in Turkey. The Communiqué further states that if the intermediary services for the sale of goods or services include persons in Turkey, but the remuneration is not received from the person in Turkey but from individuals abroad or (in service purchases) the person in Turkey benefits from the services from abroad, the service will be deemed to be used and enjoyed in Turkey, for the reason that the service is delivered to individuals in Turkey.

For example:

- ▶ Intermediary services for the rental of real estate located outside of Turkey to individuals in Turkey by company (A), which is resident outside of Turkey;
- ▶ Intermediary services for trading of goods by a virtual store (B) which is resident abroad to individuals in Turkey, regardless of whether the person in Turkey received a commission fee for the service or not;

are considered as provided in Turkey.

Payments made in Turkey for the service means that the payment is made through accounts in Turkey. However, for example, if a tourist in Turkey for five days downloads an application/game to an electronic device while he/she is in Turkey, on the condition that the transaction fee is not paid via a Turkish account, the service is not considered to be benefitted in Turkey.

## Other Considerations

### 1. Exemptions

Exemptions from DST are included in paragraphs (1) to (5) of Article 4 of Law No. 7194.

One of the exemptions provides that in the accounting period before the relevant accounting period, regarding the services indicated in Article 1 of the Law, companies with revenue in Turkey of less than 20 million Turkish Lira (TL) or with worldwide digital revenue of less than 750 million Euro, or the TL equivalent in foreign currency, are exempt from DST. If the taxpayer is a member of a consolidated group for financial accounting, in regard to these thresholds, the total revenue of the group regarding the services subject to DST is taken into consideration.

The accounting period refers to the calendar year.

The taxation period for DST consists of one-month periods of the calendar year.

In the 2019 accounting period, those with more than 20 million Turkish Lira of revenue generated in Turkey and with more than 750 million Euro or its equivalent in foreign currency revenue generated worldwide from the services mentioned in Article 1 are subject to DST, as of 1 March 2020, when the law comes into force.

There are various examples provided in the Communiqué to illustrate the implementation of the thresholds. The following are some of the examples:

Example 1: Company (A), which provides and operates a digital environment through which users may interact with each other, also provides digital environment advertising services, and in terms of financial accounting is not a member of a consolidated group, has generated revenue of 28 million TL in Turkey and 740 million Euro worldwide from the provision of digital services in the 2019 accounting period. Accordingly, this company will be exempt from DST as of 1 March 2020, when the law comes into force, since its revenue in the 2019 fiscal period did not exceed 750 million Euro worldwide.

Example 3: From the sale of visual content in the digital environment and from the provision of services for monitoring this content in the digital environment, company (N), which is not a member of a consolidated group in terms of financial accounting, generates 589 million Euro in revenue worldwide and 54 million TL in Turkey. Accordingly, company (N) will be exempt from this tax as of 1 March 2020, when the Law comes into force.

The table regarding the revenue that the company generates from the same services in the 2020 accounting period is as follows:

Cumulative Revenue Periods	Amount of Revenue Generated in Turkey	Amount of Revenue Generated Worldwide
January-March	12 Million Turkish Lira	280 Million Euro
January-June	21 Million Turkish Lira	756 Million Euro
January-September	38 Million Turkish Lira	900 Million Euro
January-December	49 Million Turkish Lira	980 Million Euro

Since the amount of revenue generated by the abovementioned company in the January-June period of the 2020 fiscal period exceeds both thresholds, the exemption will end in the 2020 fiscal period, from the end of June. The DST liability of the company will start from the beginning of October 2020 for the 2020 accounting period, which is the fourth taxation period following the taxation period in which the thresholds are exceeded.

## 2. Documentation and Notification Obligation Regarding Exemption

Digital service providers that provide the services listed in Article 1 of the Law should certify that they are tax exempt in accordance with the explanations below.

Foreign tax resident digital service providers, whose Turkish revenue generated from services falling within the scope of this law exceeds the local threshold, and claiming to be exempt from the DST, shall prove this by a report to be prepared in accordance with the explanations in this Communiqué and international auditing standards by independent auditors from at least five countries, including Turkey, by 31 May following the relevant accounting period.

The above report and its Turkish translation (translated by a Turkish sworn translator operating in Turkey) should be uploaded electronically to [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr) by digital service providers by 31 May.

## 3. Taxpayers

- ▶ Before submitting a DST declaration by digital service providers for the first time, the form must be filed at the Revenue Administration [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr).
- ▶ Upon completion and approval of said form in electronic form, a DST Obligation is established on behalf of the digital service provider before the Large Tax Payers Administration.
- ▶ A user code, passcode and password are given to the taxpayer in order to be able to make transactions at the Internet Tax Office. Those that have "Special VAT Liability for Electronic Service Providers" can use their existing user codes, passcodes and passwords.

## 4. Declaration of The Tax

- ▶ DST is levied on the declaration of the taxpayer.
- ▶ The Declaration is made by those responsible for withholding the tax if the taxpayer does not have a residence, workplace or business center in Turkey.

- ▶ DST payers and those responsible for withholding the tax are obligated to submit their DST declarations until the evening of the last day of the month following the taxation period.
- ▶ Taxpayers are obligated to submit declarations regarding these periods even if they do not earn taxable revenue in a taxation period. However, tax responsible are not obligated to submit declarations regarding the taxation periods when taxable transactions have not taken place.
- ▶ All of the DST declarations must be filed electronically via [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr).
- ▶ If taxable revenue is not generated in the relevant taxation period, the declaration for the relevant period is submitted by checking the box "There is no tax base to be declared in the declaration."

## 5. Payment of the Tax

- ▶ Taxpayers that are obligated to submit tax declarations and those responsible for withholding tax must pay the DST for the taxation period within the declaration period.
- ▶ Payment can be made to the tax offices and banks authorized for collection, or by debit card or credit card of authorized banks via the internet address of the Revenue Administration ([www.gib.gov.tr](http://www.gib.gov.tr)).

With the draft Communiqué, the Revenue Administration provides multiple examples arising from actual cases involving the DST. Although some issues are clarified with the draft Communiqué, there is still some uncertainty regarding certain activities, concepts and principles surrounding the tax. Therefore, companies that are concerned about their activities being captured by the DST Law are encouraged to take action to clarify their positions before the finalization of the Communiqué. One of those actions could be to approach the Turkish Revenue Administration to clarify their position. This may enable their activities to be included in the final version of the Communiqué.

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## Endnote

1. See EY Global Tax Alert, Turkey introduces Digital Services Tax, dated 25 October 2019, [Turkey enacts law introducing new taxes and amending various tax laws](#), dated 9 December 2019 and [Turkey's 7.5% Digital Services Tax to be effective 1 March 2020](#), dated 15 January 2020.

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