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VAT on Foreign E-services: New Rules in Belarus



Nikolay Artemyev
Borovtsov & Salei, Belarus

Since January 1, 2018, foreign companies rendering e-services to individuals in Belarus must calculate and pay value added tax (“VAT”). Such foreign companies now need to evaluate their business models and consider the impact of the new VAT rules.

Since January 1, 2018, foreign companies rendering e-services to individuals in Belarus must calculate and pay VAT. The relevant amendments to the Tax Code of Belarus (“Tax Code”) came into force on January 1, 2018.

VAT on e-services paid at the location of the services’ recipient is not a Belarusian innovation, as such mechanisms with certain individual characteristics have already been adopted and currently work in other countries worldwide, including European Union Member States, India, Russia and Japan. This trend has been caused by the fast moving development and widespread use of digital services, and the

corresponding desire of governments around the globe to levy tax at the location of the services’ recipient.

VAT for Supply of E-services

Before 2018, e-services rendered by a foreign company to Belarusian individuals (business-to-consumer) were not subject to VAT in Belarus.

It should be noted that, unlike business-to-consumer services, services rendered by foreign companies to local Belarusian companies and individual entrepreneurs (business-to-business) were and remain subject to VAT, with the only difference that the obligation of VAT payment is imposed on local Be-

Nikolay Artemyev,
Senior Associate,
Borovtsov & Salei,
Minsk, Belarus

Belarusian companies and individual entrepreneurs as the recipients of the services (reverse charge mechanism).

Starting from January 1, 2018 taxpayers of VAT on foreign e-services for individuals in Belarus may be either a foreign company rendering e-services or a foreign intermediary company.

A foreign company shall calculate and pay VAT in Belarus provided that *all* of the following conditions are met:

- a foreign company renders e-services;
- Belarus is recognized as a location of the supply of e-services;
- e-services are rendered to individuals.

Where certain e-services are rendered by several foreign companies (two or more), the VAT obligation is imposed on that foreign company which *directly participates in settlements with Belarusian individuals* and is considered as foreign intermediary. Accordingly, such foreign intermediary company (instead of foreign company rendering e-services) will be subject to registration with the Belarusian tax authorities for the purposes of tax payment.

If a foreign company rendering e-services does so through a Belarusian intermediary (i.e., a Belarusian company, individual entrepreneur, permanent establishment of a foreign company), which directly participates in settlements with a Belarusian individual, such Belarusian intermediary acting under commission, agency or any other similar intermediary agreement shall calculate and pay VAT. Therefore, in this situation, a foreign company is not considered as a taxpayer of VAT on e-services in Belarus.

Consequently, in case of an intermediary participating in settlements all obligations for VAT are imposed on the intermediary company, either foreign or local. In this regard, in each case it is extremely important to conduct evaluation of the scheme for the rendering of the e-services.

Scope of E-services

According to the Tax Code, “e-services” means services rendered by a foreign company through the internet in an automated manner using information technologies, including with the involvement of a foreign intermediary in settlements.

In particular, e-services include the following:

- granting rights to use software (including computer games), databases, their updates and additional functionality through the internet, as well as electronic books (publications) and other electronic publications, information, educational materials, graphic images, musical works with or without text, audiovisual works through the internet, including by providing remote access to them for watching and/or listening via the internet;
- advertising services on the internet, as well as providing space and time for advertising on the internet;

- services for placement of proposals for the acquisition (sale) of goods (works, services), property rights on the internet;
- services carried out automatically through the internet, automated data retrieval services, provision of specified data to users through information and telecommunications networks (including online stock exchange briefs, carrying out automated translation online);
- services for searching and/or providing information to the customer about potential buyers;
- services for providing through the internet technical, organizational, information and other opportunities with the use of information technologies and systems for establishing contacts and conclusion of transactions between sellers and buyers (including the provision of a trading platform);
- providing and/or maintaining presence on the internet for personal or business purposes, supporting the electronic resources of users (websites and/or pages of websites on the internet), providing access to them by other internet users, providing users with the opportunity for modification, rendering services on the administration of information systems;
- storage and processing of information provided that the person who provided this information has access to such information through the internet;
- online provision of computing capacity for placing information in the information system;
- provision of domain names, hosting services;
- provision of access to search engines on the internet;
- keeping statistics on websites on the internet.

Thus, the scope of “e-services” is quite broad and includes different services which individuals as consumers use in their daily life during work and leisure: games, social networks, mobile apps, cloud services, e-books, trade platforms, etc.

Services Which are Excluded

The Tax Code also excludes certain services from the scope of e-services:

- sale of goods (works, services), if while ordering through the internet, the delivery of goods (work, services) is carried out without using the internet;
- sale (transfer of rights to use) of computer programs (including computer games), databases on physical (material) carrier;
- advisory services by email;
- rendering of services on providing access to the internet.

In line with the above, it is important to distinguish between the two cases: (1) when an individual acquires through a foreign company a digital copy of a book by means of its downloading to his device; (2) when an individual acquires a physical copy of a book through a foreign company with receipt of its hard copy. In the first case, a foreign company is obliged to pay VAT to the state treasury of Belarus, while in the latter such obligation is absent.

Place of Supply of E-services

An individual is recognized as purchasing e-services in Belarus if at least *one* of the following conditions is met:

- the place of actual location of an individual is Belarus;
- the location of the bank in which an account used by an individual to pay for e-services or of an operator of electronic money through which an individual is paying for e-services is the territory of Belarus;
- the network (IP) address of the device used by the buyer when purchasing e-services is registered in Belarus (refers to the address space of Belarus);
- the international country code of the telephone number used to purchase or pay for e-services is assigned to Belarus.

Administration of VAT

Foreign companies (either rendering e-services *or* intermediary in settlements) are subject to registration with the tax authorities in Belarus for the purpose of VAT payment.

The unified authorized tax authority on the issue of VAT payment from e-services in Belarus is the Minsk City Inspection of the Ministry on Tax and Duties of Belarus (the “tax authority”).

Registration with the tax authority is carried out on the ground of application of a foreign company (or foreign intermediary in settlements). An application may be submitted either:

- in hard copy by the person authorized to represent the foreign company in Belarus; or
- via registered mail; or
- in electronic form signed by an authorized person by using electronic digital signature.

Interaction between a foreign company and the tax authority, including submission of an electronic tax return, payment of taxes and communication with the tax authority, is carried out via a taxpayer’s personal account opened for the foreign company.

Access to a taxpayer’s personal account is provided for a foreign company from the moment of its registration with the tax authority and carried out by means of a personal electronic digital signature key.

E-services are subject to VAT at the rate of 20 percent. The tax base is defined as the cost of e-services for the reporting period with VAT. The VAT amount payable is calculated as a multiplication of the tax base and tax rate divided by 120.

The reporting period is a calendar quarter. The tax return on VAT shall be submitted not later than the 20th day of the month following the reporting period. The deadline for payment of VAT is no later than the 22nd day of the month following the reporting quarter.

The tax return shall be submitted to the tax authority via the taxpayer’s personal account, in electronic form as prescribed.

It shall be taken into account that for non-fulfillment of tax obligations, including non-registration with the tax authority, foreign companies may be subject to an administrative liability in the form of a fine, the amount of which is up to 25 percent of the VAT obligation.

Going Forward

In light of the recent developments in the tax rules related to foreign e-services provided to individuals in Belarus, according to which foreign companies under certain conditions shall calculate and pay VAT to the state treasury of Belarus, foreign companies which are providers of e-services need to consider the impact of the new VAT rules and evaluate their business models accordingly.

Nikolay Artemyev is a Senior Associate at Borovtsov & Salei Law Firm (Belarus), and specializes in advising clients on cross-border deals and investments. His core areas of expertise are banking and finance, corporate and M&A. Before joining Borovtsov & Salei Law Firm in 2017 he worked as in-house lawyer at BelGazprombank, and as an associate and senior associate at several top-ranked international law firms. He may be contacted at: nikolay.artemyev@borovtsovsalei.com