

## Examination of “Digital Service Tax” Suggestion in Turkey - II

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WorldWide TaxNet, January 2020

### Introduction

Since the 1990s, the growth of the Internet has expanded the elements and capabilities for the digital economy that has penetrated significantly (Nellen, 2015: 2). This economy has a very large structure in terms of its coverage and this structure still continues to expand. In this direction, the difficulties in dealing with this economy occupy the agenda of both tax administrations and tax policymakers in the world (Kofler et al., 2018: 123).

The increasingly globalized mobile and digital business models and corporate structures expand the scope of corporate tax planning activities and continue to challenge the co-existence of national tax systems without coordination (European Commission, 2015: 2). Therewithal, in particular, the rise of digital business models clearly reveals the main constraints of traditional tax systems, and therefore some of its effects on national and international tax revenues can be mentioned (Iacob and Simonelli, 2019).

As we mentioned in our previous studies, the difficulties in taxing digital companies within the scope of the digital economy are accepted as a problem faced on a global scale (Bülbül and Ülkü, 2019: 31-36; Ülkü, 2019: 2)<sup>1</sup>. Because there is no on the global scale completely consensus on this issue, it forces some countries to take unilateral measures that are not very different in order to combat the difficulties associated with the taxation of this economy (Aydemir, 2019; Kahraman, 2019). Within this framework, as well as the implementation of various countries, to tax the incomes of digital companies, of Turkey, it can be said to have appeared that arise as a country wishing to unilateral action (Ülkü, 2019: 2).

In this study, we will examine the Digital Service Tax, which was published in the Official Gazette dated 07.12.2019 and numbered 30971 and entered into force with Law No. 7194.

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<sup>1</sup> See also, Nellen (2015), Budak (2017), Kofler et al. (2018) and Orkunoğlu Şahin (2019: 110-111).

## Digital Service Tax: Practices in Turkey

In this section, we will discuss general terms such as subject, taxpayer, exemption status, exceptional services, tax base and rate, tax period, declaration, tax assessment and payment in relation to Digital Service Tax.

In the first instance, let's try to explain respectively the scope (legal provisions) of this tax, as specified in Law No. 7194:

- ✳ **Definitions (Article 2): Digital media/ environment** refers to any medium where online activities are carried out without physically confronting. **Digital service providers** refer to those who provide services specified in Article 1 of Law No. 7194. **Acquisition of the revenue/output** means that the revenue the characteristics and the amount of revenue have become finalized. **Service offered within the borders of Turkey** is composed of the following: (i) providing offered conditions of this service in Turkey, (ii) take advantage of this service in Turkey and (iii) realization or evaluation<sup>2</sup> status for persons within the borders of Turkey of this service. Finally, **the consolidated group in terms of financial accounting**, in pursuance of International Financial Reporting Standards or Turkey Financial Reporting Standards refer to the consolidated financial statements contained in all businesses.
- ✳ **Subject of the Tax (Article 1):** The subject of this tax, presented within the borders of Turkey, constitutes from revenues obtained from the following services: (i) all kinds/types of advertisement services offered in the digital media/environment (including advertising controlling, and performance measurement services; services relating to the transmission and management of user data; technical services relating to the presentation of the advertisement), (ii) the services offered in this environment for the sale of audio, visual or any digital content<sup>3</sup> (including computer programs, applications, music, video, games, in-game applications, etc.), (iii) services for providing and operating these environments where users

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<sup>2</sup> If payments made within the borders of Turkey relating to this service, or this payment have been made abroad, it can be mentioned the purpose of this assessment. According to this; these transactions involves the person paying in Turkey or account payments made on behalf of and the separation of a person's account to be transferred profit from operations. Therewithal, the digital media advertising services offered in the form of realization toward persons not in Turkey, will not be counted evaluated in Turkey (Law No. 7194, Article 2/(1)-ç).

<sup>3</sup> The scope of the content in question, services provided in this environment for listened, watched, played, or recorded or used in the electronic devices are also included.

can interact with each other (including services to facilitate the sale or sale of a good or service between users), and finally (iv) intermediary services provided by digital service providers in this environment for the services specified under this article.

- ✳ **Taxpayer and Tax Responsible (Article 3):** The payer of this tax is digital service providers. Whether these taxpayers are full taxpayers in terms of Income Tax Law and Corporate Tax Law does not affect the taxpayer of this tax. The scope of this effect, the activities in the context of the limited liability to tax are performing through a permanent establishment or permanent representatives in Turkey, the situation is also included. For some cases in this context, the Ministry of Treasury and Finance (the “Ministry”) may make arrangements to secure tax receivables.
- ✳ **The Base, Rate, and Account of Tax (Article 5):** The base of this tax consists of the revenue obtained due to the services included in this tax in the relevant taxation period. In case this revenue is calculated in foreign currency, foreign exchange, which is valid as of the date of the proceeds obtained through the buying exchange rate set by the Central Bank of the Republic of Turkey will be translated into Turkish Lira. From this tax base; there will be no discount under the name of expense, cost, and tax. This tax will not be shown separately on invoices and documents that replace invoices. The rate of this tax is determined as 7.5%. The President has the authorized to reduce this rate to 1% or to double it.
- ✳ **Exemptions and Exceptions (Article 4): Exemptions:** In the previous accounting period from the relevant accounting period, in relation to services covered by the scope to subject of this tax revenue obtained in Turkey 20 million Turkish Lira or the world obtained from the general revenues of 750 million euros, or less than those of the equivalent in foreign currency Turkish lira equivalent of this amount exempt from this tax it is maintained. If the taxpayer is a member of a consolidated group in terms of financial accounting, the total revenue that the group has obtained regarding the services subject to tax is taken into consideration in the implementation of these thresholds. In the relevant accounting period, if both thresholds in the first paragraph are exceeded, the

exemption state ends and as of the fourth taxation period following the taxation period in which the thresholds are exceeded, the obligation related to this tax begins. In determining whether these thresholds are exceeded, account as of the end of the quarterly periods of the accounting period the cumulative revenue obtained within the relevant accounting period is taken into. The tax exemption of those who fall below any of the thresholds within this scope for two consecutive accounting periods starts again from the following accounting period. The President is authorized to reduce the thresholds in this scope to zero or increase it up to three times, separately or together, depending on the types of services that are the subject of the tax. In addition, the “Ministry” is authorized to impose a notification and certification obligation for the determination and implementation of tax exemption and to determine the procedures and principles regarding the application of the article. For those who do not fulfill their notification and certification obligations accurately and on time, within this scope, an additional period of thirty days is given to fulfill these obligations. Those who fail to fulfill these obligations correctly and on time within this additional period shall not benefit from the exemption in this article context.

**Exceptions:** Revenue made in the digital environment and obtained from the following services is exception from this tax and the revenue obtained from these services will not be taken into consideration in determining the thresholds within this scope: (i) within the scope of the additional article 37 of the Telegraph and Telephone Law numbered 406, the services that the Treasury share is paid, (ii) services through which Special Communication Tax is collected under Article 39 of the Law No. 6802 on Expenditure Taxes, (iii) services within the scope of Article 4 of the Banking Law No. 5411, (iv) the sale of products created as a result of R&D activities in Research and Development (R&D) centers defined in Article 2 of the Law No. 5746 on Supporting Research, Development and Design Activities, and the services offered exclusively on these products, and finally (v) payment services in Article 12 of Law No. 493 on Payment, and Securities Settlement Systems, Payment Services, and Electronic Money Institutions. Exceptions and exemptions related to this tax are regulated only by adding

provisions to Law No. 7194 or amending this Law. The provisions regarding exceptions or exemptions in other laws are not valid in terms of this tax.

- \* **Taxation period, tax statement, assessment, and payment of tax (Article 6):** The taxation periods related to this tax consists of one-month periods throughout the calendar year. But the “Ministry” is empowered to determine a quarterly taxation period, rather than a one-month taxation period, depending on the types of services and taxpayers’ activity volumes. This tax is an assessment on the taxpayer’s declaration in this context. The taxpayers of residence within the borders of Turkey to notify this statement to the tax authority must have an establishment, the legal and business centers. If these do not exist and other circumstances are deemed necessary, this declaration will be made by those responsible for the tax cut. This tax is levied by tax offices for service providers responsible for value-added tax and by tax offices determined by the “Ministry” for service providers who do not have such value-added tax obligations. Taxpayers and those responsible for the tax cut are obliged to submit their tax returns to the relevant tax office until the end of the month following the taxation period. Taxpayers, who are obliged to submit a declaration with those responsible will pay this tax, which belongs to a taxation period, within the statement period. This tax paid by taxpayers will be deducted by these taxpayers as an expense in the determination of the net earning based on income and corporate income taxes. Finally, the “Ministry” is authorized to determine the procedures and principles within this scope.
- \* **Tax Security (Article 7):** Taxpayers or their representatives in Turkey falling within the scope of this Law who does not submit declarations or make payments in accordance with Tax Procedural Law No. 213 may be issued a notice from the tax office responsible for this tax assessment urging them to fulfill these obligations. This notice will be served based on information obtained through the communication instruments listed on their websites, domain names, Internet Protocol addresses, and information obtained from similar sources through the notification methods listed under Law No. 213, electronic mail, or any other communication instruments. This will also be announced on the Revenue Administration’s website. If the declaration and payment obligations are not

fulfilled within thirty days following the announcement, the “Ministry” may block access to the services provided by these service providers until the obligations are fulfilled. This decision will be sent to the Information and Communication Technologies Authority in order to notify the access providers. Decisions to block will be executed twentyfour hours after the notification has been given to the access providers.

### **General Evaluations Regarding Digital Service Tax**

When we examine the legal provisions of Law No. 7194 toward this tax, **generally**, we can make the following evaluations:

- ☞ At the stage of definitions, we see that the following are not explicitly and transparently stated: “digital service”, “persons”, “users”, “users to interact with each other (including provisions in parentheses)”, “ad control and performance measurement services and data transmission and management related to users, technical services related to the presentation of advertising”, “intermediary services”, “Internet Protocol address”, “etc resources”, and “tax claim/lien”.
- ☞ At the same time, we see that the subject of this tax is left uncertain, for example, using the words (prepositions) of “all kinds/types of”, “like/as” and “etc/and so on”. In this regard, we can argue that the tax administration can interpret this issue quite widely. We can also state here that there is a possibility that many situations may cover the subject of this tax (Rençber, 2020: 31).
- ☞ The use of concepts together of the accounting period and the taxation period mentioned in Articles 4 and 5 of Law No. 7194 may incur uncertainty in terms of anchoring the exemption status. For this reason, these concepts should be stated explicitly and transparently in the definitions section.
- ☞ We see that this tax is not regulated as an independent law. In other words, we see that this tax is included in the law in the form of an “omnibus bill/bag bill”. Here, we want to refer to the provision of Article 4/(7) of Law No. 7194. As we have already mentioned, exceptions and exemptions related to this tax are regulated but by adding provisions to Law No. 7194 or amending this Law. Although this provision means in a sense to accept it as a regulated law in a subject, such a situation is not in question and thus, we can argue that this provision is becoming meaningless (Şaraçoğlu and Kahraman, 2020: 14).

- ☞ The base of this tax is the revenue generated due to the services that are included in the subject of this tax during the taxation period and no discount can be made from this revenue under the name of expense, cost, and tax. In this context, it can be stated that the situations in question constitute a clear contradiction to the principle that the tax will be received according to financial power (Rençber, 2020: 32).
- ☞ In addition to this, the criteria on which these revenue thresholds are determined based on and why this tax rate is determined as 7.5 percent also indicates uncertainty. Leaving these discussions of uncertainty aside, we can argue that the relative high of this proportion may lead to a change in the level of demand, albeit temporarily, for services in this context.
- ☞ On the other hand, we need to think that this tax can be reflected directly and/or indirectly on the users who will benefit from these services, depending on the receipt of this tax on revenue/output.
- ☞ If these problems (uncertainties) are not eliminated, many economic and financial problems can arise. These can be exemplified as follows (Kahraman, 2019): (i) shaping of decisions of direct foreign investments in Turkey, (ii) shaping the decision of whether to continue the investments of investors coming to Turkey, (iii) shaping the decisions regarding the export and employment structure that these people can mediate. In summary, these three situations may be affected relatively and negatively, depending on the current situation.
- ☞ Finally, we can say that another problematic situation is related to OECD's solution proposal. If the OECD cannot reach an international agreement on the taxation of the digital economy and develop a permanent solution - we need to include other digital services taxes here - this tax application becomes debatable in terms of its scope. It is all-important to note that this discussion stems from the fact that it does not include a provision for the abolition of this tax practice, subject to this solution proposal.

## Conclusion

The digital economy that has existed as long as we have computer hardware and software have a very wide structure in terms of its scope and this structure still continues to expand. In this direction, the difficulties faced in coping with this economy occupy both the tax administrations and the agenda of tax policymakers in the world. In the meantime, increasingly globalized mobile and digital business models and corporate structures (such as the way corporations are organized, production techniques, decision-making process, and marketing strategy) have expanded the scope of corporate tax planning activities.

The challenges of taxing digital companies are recognized as a globally facing problem. Unilateral measures are taken to tax the income of these companies and it is seen that they are in search of a solution internationally (e.g. the European Commission and the OECD) related to this.

In this direction, as well as the implementation of various countries, to tax the incomes of digital companies, of Turkey, it can be said to have appeared that arise as a country wishing to unilateral action. In this context, our second study provides a general and comprehensive review of many disciplines in terms of the effects of digital service tax.

Within the scope of this study, we have concluded that this tax in force is important in terms of the area it covers and its effects, its legal provisions should be reviewed, an impact assessment should be made and a more detailed discussion is necessary. Ultimately, in our study, even if we have not mentioned this and many similar situations, these situations need to be discussed in more detail.



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