

INFORMATION LETTER

№ 26



on procedure of the value added taxation of electronic services provided to individuals by non- residents



This Letter is intended to provide information about norms of the Law of Ukraine as of 03.06.2021 № 1525-IX "On Amendments to the Tax Code of Ukraine to abolish taxation of income received by non-residents in the form of payment for production and / or distribution of advertising and improving value added taxation on the provision of electronic services to individuals by non-residents" (hereinafter - Law № 1525), which entered into force on 02.07.2021.

Law № 1525 amended the Tax Code of Ukraine (hereinafter - Code) with Article 208 note 1.

Provisions of Article 208 note 1 of the Code will enter into force on 01.01.2022.

This Letter is for informational purposes only and does not constitute individual tax consultation, as it is not based on specific circumstances of operations of a particular taxpayer.

Information Letter is based on provisions of current legislation of Ukraine and practice of its application, which may change in the future.

Each taxpayer may apply to the supervisory body with actual circumstances of operations and provide relevant materials for individual tax consultation in manner prescribed by Articles 52 and 53 of the Code.

I. GENERAL PROVISIONS

1

WHAT DOES THE TERM "ELECTRONIC SERVICES" INCLUDE?

Electronic services are services provided via the Internet automatically, using information technology and preferably without human intervention, including by installing a special application or application on smartphones, tablets, television receivers or other digital devices (note A).

Sub-paragraph 14.1.56 note 5 of Paragraph 14.1 Article 14 Section I of the Code stipulates that such services, in particular, but not exclusively, include:

- a) provision of electronic copies, access to images, texts and information, including but not limited to subscribing to electronic newspapers, magazines, books, access to and / or downloading photos, graphics, videos;
- b) provision of access to databases, including the use of search systems and service catalogue on the Internet;
- c) provision of electronic copies (electronic and digital information) and / or provision of access to audiovisual works, video and audio works to order, games, including provision of services for participation in such games, provision of services for access to television programs (channels) or their packages, except for access to television programs simultaneously with their broadcasting through the television network;
- d) provision of access to informational, commercial, entertainment electronic and other similar resources, in particular, but not limited to hosted on information-sharing or video-sharing platforms;
- e) provision of distance learning services on the Internet, provision of which does not require human participation, including provision of access to virtual classrooms, educational resources in which students complete online tasks and grades are set automatically, without human participation (or with minimal participation);
- f) provision of cloud services in terms of providing computing resources, storage resources or electronic communications systems using cloud computing technologies;
- g) provision of software and updates to it, including electronic copies, access to them, as well as remote maintenance of software and electronic equipment;
- h) provision of advertising services on the Internet, mobile applications and other electronic resources, advertising space, including through placement of banner advertising messages on websites, web pages or web portals.

The above specified list of electronic services **is not exhaustive**, it can be expanded. List of operations that do not belong to electronic services for the use of Sub-paragraph 14.1.56 note 5 of Paragraph 14.1 Article 14 of the Code includes:

[A]. Sub-paragraph 14.1.56 note 5 of Paragraph 14.1 Article 14 Section I of the Code.

- ✓ supply of goods / services ordered (booked) via the Internet, using mobile applications and other electronic resources; actual supply is made without the use of Internet (accommodation services, car rental, catering services, passenger transport services and other similar services);
- ✓ supply of goods and / or other services other than electronic services, which include electronic services, if the cost of electronic services is included in the total cost of such goods / services;
- ✓ provision of distance learning services on the Internet, if the Internet is used exclusively as a communication mean between teacher and student;
- ✓ provision of copies of scientific works, literature and art on tangible media;
- ✓ provision of consulting services by the e-mail;
- ✓ provision of the Internet access services.

2 WHAT TAX RATE IS APPLIED TO OPERATIONS FOR PROVISION OF ELECTRONIC SERVICES BY NON-RESIDENTS?

Tax rate is 20 percent of the tax base and is added to the cost of electronic services, except for operations exempted from the VAT.

3 WHO IS CONSIDERED AS A VAT PAYER FOR DELIVERY OF ELECTRONIC SERVICES?

Law № 1525 amended list of the VAT payers (note B). List of such individuals includes non-residents who do not have a permanent representative office and provide electronic services to individuals, including individuals - entrepreneurs not registered as the VAT payers, including provision of access to electronic services through electronic interface, provision of technical, organizational, informational and other capabilities that are carried out using information technology and systems to establish contacts and agreements between sellers and buyers and / or provide such electronic services under intermediary agreements on its own behalf, but upon authorization of the electronic service provider (note C).

List does not include (those who cannot be registered as the VAT payers for delivery of electronic services) non-residents who (note D):

- ✓ provide electronic services under intermediary agreements, if the invoices (receipts) provided to customers of electronic services specify the list of such electronic services and their actual provider;
- ✓ carry out exclusively processing of payments for electronic services and do not participate in provision of such electronic services;
- ✓ provide electronic services directly through their permanent representative office in Ukraine.

[B]. Sub-paragraph 9 Paragraph 180.1 Article 180 Section V of the Code.

[C]. Sub-clause «f» of Sub-paragraph 14.1.139 Paragraph 14.1 Article 14 Section I of the Code.

[D]. Sub-clause «f» of Sub-paragraph 14.1.139 Paragraph 14.1 Article 14 Section I of the Code.

By general definition, the non-residents are (note E):

- a) foreign companies, organizations established according to legislation of other states, their branches registered (accredited or legalized) under Ukrainian legislation, representative offices and other separate divisions located in Ukraine;
- b) diplomatic missions, consular offices and other official missions of other states and international organizations in Ukraine;
- c) individuals who are not residents of Ukraine.

4

HOW IS THE PROVISION PLACE OF ELECTRONIC SERVICES DEFINED?

Law № 1525 amended Article 186 Section V of the Code with Paragraph 186.3 note 1, according to which location of recipient of services is considered to be the provision place of electronic services. For the purpose of this Paragraph, the recipient's location of electronic services is determined:

- ✓ at the registration place of such recipient as a business entity for the recipient of services - individual who is registered as a business entity;
- ✓ at the actual location place of such individual - recipient of services for the recipient of services - individual who is not registered as a business entity.

In order to establish the actual location of individual - recipient of services, the following information is taken into account (hereinafter - list of information):

- a) if electronic services are provided by fixed means - the actual location of individual - recipient of services is a country of establishment of the fixed connection (location of telecommunication provider whose services were used by recipient in the process of receiving electronic services);
- b) if electronic services are provided by means of mobile communication - the actual location of individual - recipient of services is considered to be a country identified by the mobile code of the country, SIM-card used to receive such services;
- c) if electronic services are provided by means other than those specified in clauses "a" and "b", including using an access card - the actual location of individual - recipient of services is a country where such other means are located or to which access card was sent for its use (including location of device determined by its IP address used by the recipient of electronic service).

Additional evidence for determining location of individual - recipient of services, one of which is used simultaneously with one of those listed in clauses "a", "b" and "c" of list of information are:

- ✓ payment address of individual - recipient of services;

- ✓ bank requisites, particularly place of the bank account used for payment for electronic services;
- ✓ other commercially important information.

Individual - recipient of electronic services can confirm that he / she is registered as a business entity - value added tax payer by notifying a non-resident with the VAT payer's individual tax number.

If the contract, including one concluded in electronic form, does not contain information that recipient of electronic services is a business entity - value added tax payer, it is considered that such service was received by individual, including individual - entrepreneur not registered as the VAT payer.

5

IS IT NECESSARY FOR A NON-RESIDENT TO OBTAIN EVIDENCE THAT THE RECIPIENT OF ELECTRONIC SERVICES IS A BUSINESS ENTITY - VALUE ADDED TAX PAYER?

One of possible approaches to determine identity of recipient of electronic services are provisions of the public contract (offer) and / or customer's form - recipient of electronic services. In such form, the recipient must indicate his / her status: 1) legal entity, 2) individual - entrepreneur who is the VAT payer, 3) individual - entrepreneur who is not registered as the VAT payer; 4) individual - not registered as a business entity. Based on this questionnaire, the non-resident will be able to establish customer's category and determine the need for the VAT accrual.

Individual - entrepreneur registered as the VAT payer who receives services provided by non-resident may confirm the VAT payer's registration by providing information of the VAT payer's individual tax number (this condition should be provided in a public contract / offer or form). If the VAT payer's individual tax number is not specified, the non-resident will qualify the recipient of services as individual - non-VAT payer. Provision place of services will be determined as described in answer to the previous question.

6

HOW IS PROVISION OF ELECTRONIC SERVICES CONFIRMED?

Law № 1525 stipulates that document confirming provision of electronic services by a non-resident is any document confirming payment for such services, including those sent in electronic form by electronic means (note F).

II. VAT PAYER REGISTRATION

1

HOW A NON-RESIDENT WILL INTERACT WITH TAX AUTHORITIES IN UKRAINE?

Non-resident interacts with the central executive authority, which implements the state tax policy (hereinafter – tax authority). Such interaction takes place through non-resident's electronic identification using non-resident's domain name of and / or optional for a non-resident using other permitted technologies of the taxpayer's electronic identification defined for purposes of the Code (note G).

Procedure of electronic identification must be approved by the Ministry of Finance of Ukraine; official translation of this procedure in English will be placed on a special portal solution for non-resident users who provide electronic services. Currently, the draft Order of the Ministry of Finance of Ukraine "On approval of Electronic identification procedure of non-residents who provide electronic services" (<https://tax.gov.ua/diyalnist-/regulyatorna-politika-/regulyatorna-politika/2021-rik/76573.html>) is undergoing approval and state registration procedures.

Tax authority is working under development of **a special portal solution for non-residents** who provide electronic services to individuals on the customs territory of Ukraine. Operation of **a special portal solution for non-residents is expected from 01.01.2022.**

2

UNDER WHAT CIRCUMSTANCES A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS IS OBLIGED TO REGISTER AS A VAT PAYER, IF THE PROVISION PLACE IS LOCATED ON THE CUSTOMS TERRITORY OF UKRAINE?

Non-resident is obliged to register as the VAT payer if the previous year's amount of electronic services provided to individuals reached an equivalent of 1 million UAH when the provision place is located on the customs territory of Ukraine. This amount is calculated at the official exchange rate of Ukraine to foreign currency, set by the National Bank of Ukraine, effective at 12 AM on January 1 of the relevant year (note H).

Registration is carried out on the basis of non-resident's application for registration as the VAT payer. Such application is submitted on or before March 31 of the relevant calendar year following the year when such non-resident reached the indicated amount.

Provisions of the Code regarding the non-resident's registration as the VAT payer, who provides electronic services to individuals given that the provision place is located on the customs territory of Ukraine, are applied to tax periods starting from 01.01.2022.

[G]. Paragraph 208 note 1.2 Article 208 note 1 Section V of the Code.

[H]. Paragraph 208 note 1.2 Article 208 note 1 Section V of the Code. Provisions of Article 208 note 1 Section V of the Code come into force on 01.01.2022.

Consequently, a non-resident without a permanent representation in Ukraine and with amount of financial results for 2021 from provision of electronic services to individuals, including individuals – entrepreneurs not registered as the VAT payers, given that the provision place is located on the customs territory of Ukraine, reached an equivalent of 1 million UAH calculated at the official exchange rate of Ukraine to foreign currency, set by the National Bank of Ukraine, effective at 12 AM on 01.01.2022, is obliged in a period from 01.01.2022 to 31.03.2022 (inclusively) to submit application for registration of such non-resident as the VAT payer to tax authorities. Application is submitted in electronic form through **a special portal solution for non-resident** users who provide electronic services.

Code does not provide for the possibility to submit application in any other way than through a special portal solution or to submit application before 01.01.2022.

3

MAY A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS VOLUNTARILY REGISTER AS THE VAT PAYER, IF THE PROVISION PLACE IS LOCATED ON THE CUSTOMS TERRITORY OF UKRAINE?

If a non-resident has amount from provision of electronic services to individuals, including individuals – entrepreneurs not registered as the VAT payers, given that the provision place is located on the customs territory of Ukraine, **less than** 1 million UAH but considers it appropriate to register as the VAT payer, such non-resident may submit application for registration as the VAT payer.

This can be done not later than 10 calendar days before the beginning of reporting (tax) period, from which such non-resident will be considered the VAT payer (note I).

4

HOW TO SUBMIT APPLICATION ON REGISTRATION AS THE VAT PAYER BY A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, GIVEN THAT THE PROVISION PLACE IS LOCATED ON THE CUSTOMS TERRITORY OF UKRAINE?

Application for non-resident's registration as the VAT payer is submitted through **a special portal solution for non-resident** users who provide electronic services.

Application is submitted with copies of:

- ✓ excerpt from relevant business register (trade, banking or other register, which records state registration of the company, organization) issued in a country of such non-resident's registration and
- ✓ document that confirms assignment of the identification (registration, business) number (code) of non-resident in a country of registration, if the excerpt from business register does not contain information about such number (code).

Application for non-resident's registration as the VAT payer should contain information regarding the non-resident's registration in a country of jurisdiction, non-resident's identification data for electronic identification, information regarding non-resident's representative, e-mail address, reason for registration, confirmation of fact and period when operations for provision of electronic services to individuals, determined for mandatory taxpayer's registration, as well as foreign currency (euro or US dollar) where non-resident will pay the VAT.

[1]. Paragraph 208 note 1.2 Article 208 note 1 Section V of the Code.

5 HOW DOES REGISTRATION AS THE VAT PAYER OF A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, GIVEN THAT THE PROVISION PLACE IS LOCATED ON THE CUSTOMS TERRITORY OF UKRAINE, IS CONFIRMED?

If there are no reasons for refusing the non-resident's registration as the VAT payer, tax authority within three working days after receipt of application must register non-resident as the VAT payer and at the same time send to such non-resident through a special portal solution for non-resident users who provide electronic services simultaneous notification to the e-mail address indicated in application for registration as the VAT payer information regarding:

- a) VAT payer's registration;
- b) non-resident's individual tax number, assigned during taxpayer's registration;
- c) reporting (tax) period, deadlines for submission of VAT tax declarations; deadlines and procedure for payment of tax liabilities.

Non-resident is considered registered as the VAT payer from the date of inclusion in Register of taxpayers, in case of mandatory non-resident's registration as a taxpayer or from the first day of reporting (tax) period following the expiration of 10 calendar days after submission of application for registration as the VAT payer to tax authorities in case of voluntary registration.

Within 180 calendar days from the non-resident's registration date as the VAT payer, such non-resident has to send official letter confirming information provided during registration as a taxpayer to the postal address of tax authority, including non-resident's identification (registration, accounting) number (code) and representative who is remotely electronically identified.

III. REPORTING PERIOD, TAX REPORTING, TAX PAYMENT

1 WHAT IS REPORTING (TAX) PERIOD DEFINED UNDER THE CODE FOR A NON-RESIDENTS WHO PROVIDE ELECTRONIC SERVICES TO INDIVIDUALS?

Quarter is determined as a basic reporting (tax) period for a non-resident - VAT payer (note J).

2 ON WHAT DATE THE VAT LIABILITIES ARISE FOR NON-RESIDENT FROM PROVISION OF ELECTRONIC SERVICES TO INDIVIDUALS?

The last day of reporting (tax) period (quarter) when payment for electronic services were made is the date of occurrence of tax liabilities for non-resident from provision of electronic services to individuals (note K).

3 WHAT IS PROCEDURE FOR REPORTING BY NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS?

Non-resident - VAT payer who provides electronic services to individuals, given that the provision place is located on the customs territory of Ukraine, submits a simplified VAT tax declaration to tax authorities (note L).

Form of such VAT tax declaration, as well as requirements of its preparation and submission are determined by Order of the Ministry of Finance of Ukraine as of 21.10.2021 № 555 (<https://tax.gov.ua/zakonodavstvo/podatkove-zakonodavstvo/nakazi/76671.html>). This Order comes into force on 01.01.2022.

Non-resident - VAT payer who provides electronic services to individuals prepares a simplified tax declaration and submits it in electronic form through a special portal solution for non-resident users via electronic identification **within 40 calendar days** following the last calendar day of reporting (tax) period (hereinafter - deadline).

VAT tax declaration is submitted regardless of whether or not a non-resident provided electronic services to individuals, given that the provision place is located on the customs territory of Ukraine, during the reporting (tax) period (note M).

The following is indicated in a simplified tax declaration (note N):

- a) full name of non-resident - VAT payer;
- b) non-resident's individual tax number, registered as the VAT payer;
- c) reporting (tax) period for submission of simplified tax declaration;

[J]. Paragraph 208 note 1.2 Article 208 note 1 Section V of the Code.

[K]. Paragraph 208 note 1.5 Article 208 note 1 Section V of the Code.

[L]. Sub-clause 3 of Paragraph 49.2 Article 49 Section II of the Code.

[M]. Paragraph 208 note 1.8 Article 208 note 1 Section V of the Code.

[N]. Sub-paragraph 208 note 1.8.1 Paragraph 208 note 1.8 Article 208 note 1 Section V of the Code.

- d) reporting (tax) period for submission of simplified tax declaration;
- e) contract value of electronic services, excluding the VAT;
- f) amount of the VAT.

4 WHAT IS A DEADLINE TO PAY THE TAX LIABILITY FOR NON-RESIDENTS WHO PROVIDE ELECTRONIC SERVICES TO INDIVIDUALS?

Amount of tax liability from provision of electronic services, indicated by non-resident - VAT payer in a simplified tax declaration, must be paid in foreign currency (euro or US dollar) within 30 calendar days following the last day of a deadline for submission of simplified tax declaration. Payment must be made to a foreign currency account opened at the State Treasury Service of Ukraine in an authorized bank (note O).

Foreign currency account requisites will be published on a special portal solution for non-resident users who provide electronic services.

5 CAN A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS DRAW UP TAX INVOICES AND FORM THE VAT TAX CREDIT?

Non-resident - VAT payer does not form the VAT tax credit and does not draw up tax invoices for provision of electronic services, given that the provision place is located on the customs territory of Ukraine (note P).

IV. RESPONSIBILITY

1 CAN THE SUPERVISORY BODIES SEND REQUESTS FOR INFORMATION TO A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS?

Tax authority may send to a non-resident - VAT payer requests regarding generalized information in electronic form through a special portal solution for non-resident users who provide electronic services with simultaneous notification on the e-mail address indicated by non-resident during the VAT payer's registration (note Q).

The following is indicated in the electronic request:

-  list of requested information;
-  list of documents offered to provide;

[O]. Paragraph 208 note 1.9 Article 208 note 1 Section V of the Code.

[P]. Paragraph 208 note 1.7 Article 208 note 1 Section V of the Code.

[Q]. Paragraph 208 note 1.11 Article 208 note 1 Section V of the Code.

- ✓ term and method of providing such information;
- ✓ consequences for failure of submission or late submission of response on the request.

Response on the electronic request is to be provided by a non-resident within 30 calendar days from the day following the day of receipt of such request in electronic form through a special portal solution for non-resident users who provide electronic services.

2 WILL A NON-RESIDENT REGISTERED AS THE VAT PAYER BE LIABLE FOR INCORRECTLY IDENTIFIED RECIPIENT OF ELECTRONIC SERVICES (FOR EXAMPLE, IF INFORMATION PROVIDED TO A NON-RESIDENT IS INACCURATE OR NOT PROVIDED AT ALL)?

Only if the tax authority proves a non-resident's fault. Non-resident may be brought to financial liability for committing tax violation if there is a guilt in the non-resident's act (action or omission), except as provided in the Code. Non-resident will be found guilty in violation if it is proved that the non-resident was able to comply with rules and regulations for which the Code provides liability, but did not take sufficient measures to comply with them. Measures taken by the taxpayer to comply with rules and regulations of tax legislation are considered sufficient if the supervisory body does not prove that by performing certain actions or inaction for which liability is provided, the taxpayer acted unreasonably, dishonestly and without due diligence (note R).

3 IN CASE OF LATE REGISTRATION OF A NON-RESIDENT AS A VAT PAYER, WILL SUCH NON-RESIDENT BE ABLE TO PAY VAT LIABILITIES FOR THE REPORTING PERIOD IN WHICH THE NON-RESIDENT SHOULD HAVE BEEN REGISTERED AS THE VAT PAYER, BUT FOR SOME REASON DID NOT REGISTER? WHAT ARE THE POSSIBLE CONSEQUENCES OF SUCH LATE PAYMENT OF THE VAT LIABILITIES?

Code does not provide for such possibility. Provision of electronic services by a non-resident to individuals on the customs territory of Ukraine, without such non-resident's registration as the VAT payer, entails imposition of a fine to such non-resident (note S).

Amount of fine is 30 times the minimum wage established by law on January 1 of the reporting (tax) year.

This amount per month will be 6.500 UAH from 01.01.2022 (i.e. 30 times the minimum wage - 195.000 UAH) (note T).

[R]. Article 112 Section II of the Code.

[S]. Sub-paragraph 117.5 Article 117 Section II of the Code.

[T]. Law of Ukraine «On the State Budget of Ukraine for 2022».

4 WHAT SANCTIONS CAN BE APPLIED TO A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS FOR FAILURE TO SUBMIT A SIMPLIFIED TAX DECLARATION OR FAILURE TO PAY AMOUNT OF TAX WITHIN THE DEADLINES?

If a non-resident registered as the VAT payer who provide electronic services does not submit a simplified tax declaration or does not pay amount of tax within the determined period, the tax authority within 30 calendar days after the expiration of determined period sends a notification to such non-resident on the necessity to submit a simplified tax declaration and / or pay amount of tax, as well as amount of fine for such violations (note U).

Amount of sanctions

Failure to submit or late submission by the taxpayer or other persons responsible to accrue and pay taxes, levies, payments under control of supervisory bodies, tax declarations (calculations), as well as other reports, which must be submitted to supervisory bodies as provided by the Code entail imposition of a fine of 340 UAH for each such failure of submission or late submission.

Same actions, committed by the taxpayer who has been fined for such violation during the year:

- ✓ entail imposition of a fine of 1020 UAH for each such failure of submission or late submission (note V).
- ✓ If the taxpayer fails to pay agreed amount of monetary liabilities within the deadlines determined by the Code, such taxpayer will be liable to a fine in the amount of:
- ✓ 5 percent of the repaid amount of tax debt with a delay up to 30 calendar days inclusively following the last day for payment of the monetary liabilities amount;
- ✓ 10 percent of the repaid amount of tax debt with a delay more than 30 calendar days following the last day for payment of the monetary liabilities amount (note W).

5 WHAT IS PROCEDURE FOR SENDING TAX NOTIFICATION TO A NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS ABOUT THE OBLIGATION OF SUCH NON-RESIDENT TO REGISTER AS THE VAT PAYER OR PAY AMOUNT OF THE VAT LIABILITIES?

Tax notification to a non-resident not registered as the VAT payer is sent by tax authority to the competent authority of a foreign state to inform non-resident if the non-resident is not registered as the VAT payer in cases provided in Article 208 note 1 of the Code (specified details are in Section II of this Information letter) (note X).

Reference: tax notification to a non-resident registered as the VAT payer is an electronic notification sent by the tax authority about the non-resident's obligation to pay amount of the VAT liabilities determined according to the Code (note Y).

[U]. Paragraph 208 note 1.10 Article 208 note 1 Section V of the Code.

[V]. Paragraph 120.1 Article 120 Section II of the Code.

[W]. Paragraph 124.1 Article 124 Section II of the Code.

[X]. Paragraph 58 note 1.1 Article 58 note 1 Section II of the Code.

[Y]. Sub-paragraph 14.1.158 note 1 Paragraph 14.1 Article 14 Section I of the Code.

Tax notification to a non-resident not registered as the VAT payer is a written notification about the non-resident's obligation to register as the VAT payer according to Article 208 note 1 of the Code, sent by the tax authority to the competent authority of a foreign state to inform non-resident (note Z).

Relevant draft notification forms are posted on the website of the Ministry of Finance of Ukraine (<https://mof.gov.ua/uk/vat-taxation-of-supply-transactions-non-residents-of-electronic-services-to-individuals-547>).

6 WHAT IS APPEALING PROCEDURE FOR NON-RESIDENT, WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, AGAINST AN OBLIGATION OF SUCH NON-RESIDENT TO REGISTER AS THE VAT PAYER AND / OR PAY AMOUNT OF THE VAT LIABILITY?

Non-resident may submit an appeal to the tax authority within 90 calendar days following the date of receipt of tax notification drawn up according to Article 58 note 1 of the Code.

Appeal against tax notification to a non-resident registered as the VAT payer are submitted in electronic form through a special portal solution for non-resident users, who provide electronic services, by electronic identification in official national language or English language.

Appeal against tax notification to a non-resident not registered as the VAT payer is submitted according to procedure established by the international treaties of Ukraine and in case of absence of international agreement between Ukraine and a non-resident country - according to procedure established by the Cabinet of Ministers of Ukraine.

Draft Resolution of the Cabinet of Ministers of Ukraine "On approval of Procedure for submitting appeals against tax notifications to a non-resident not registered as the value added taxpayer and sending decision based on their results" is posted on the website of the Ministry of Finance of Ukraine at: <https://mof.gov.ua/uk/vat-taxation-of-supply-transactions-non-residents-of-electronic-services-to-individuals-547>.

7 WHAT ARE THE PAYMENT TERMS OF MONETARY LIABILITIES SPECIFIED IN TAX NOTIFICATION TO A NON-RESIDENT?

Amount of monetary liabilities specified in tax notification to a non-resident must be paid within 90 calendar days following the date of receipt of such tax notification or appealed according to Paragraph 56.24 Article 56 Section II of the Code (note AA).

[Z]. Sub-paragraph 14.1.158 note 2 Paragraph 14.1 Article 14 Section I of the Code

[AA]. Paragraph 58 note 1.4 Article 58 note 1. 4 Section II of the Code.

V. SPECIAL TAX CASES

1 IS THE VAT EXEMPTION REGIME ESTABLISHED IN PARAGRAPH 26 NOTE 1 OF SECTION 2 SECTION XX OF THE CODE APPLICABLE TO PROVISION OF ELECTRONIC SERVICES BY NON-RESIDENTS ON THE CUSTOMS TERRITORY OF UKRAINE, DETERMINED IN SUB-CLAUSE "E" OF SUB-PARAGRAPH 14.1.56 NOTE 5 OF PARAGRAPH 14.1 ARTICLE 14 SECTION I OF THE CODE (PROVISION OF SOFTWARE AND UPDATES TO IT, INCLUDING ELECTRONIC COPIES, PROVISION ACCESS TO THEM, AS WELL AS REMOTE SERVICING OF SOFTWARE AND ELECTRONIC EQUIPMENT)?

Non-resident - VAT payer who provides electronic services to individuals on the customs territory of Ukraine, defined in Sub-clause "E" of Sub-paragraph 14.1.56 note 5 of Paragraph 14.1 Article 14 Section I of the Code, namely software and updates to it, including electronic copies, providing access to them, starting from 01.01.2022, will be subject to the VAT exemption according to Paragraph 26 note 1 of Sub-section 2 Section XX of the Code (provided that their payment is not considered as royalty according to second and seventh clauses of Sub-paragraph 14.1.225 Paragraph 14.1 Article 14 Section I of the Code).

2 HOW DOES BUSINESS ENTITIES' OBLIGATION (LEGAL ENTITY OR INDIVIDUAL - ENTREPRENEUR) TO PAY NON-RESIDENTS' INCOME TAX UPON PAYMENTS TO NON-RESIDENTS FOR PRODUCTION AND / OR DISTRIBUTION OF ADVERTISING CHANGE?

Law № 1525 cancelled the norm of Sub-paragraph 141.4.6 Paragraph 141.4 Article 141 of Section III of the Code from 01.01.2022, which included payment of 20 percent of non-resident's income tax for production and / or distribution of advertising. Such operations from 01.01.2022 are taxed according to the general rules for income received by non-resident with source of origin from Ukraine, under requirements of Sub-paragraphs 141.4.1 and 141.4.2 Paragraph 141.4 Article 141 of Section III of the Code.

Residents who make payments to non-residents for the advertising production and / or distribution pay 20 percent tax rate of the amount of such payments at their own expense until 01.01.2022.

Residents who make in favour of non-resident or his / her authorized person payments of income for the advertising production and / or distribution with a source of origin from Ukraine are guided by requirements of Sub-paragraph 141.4.1 of Paragraph 141.4 Article 141 Section III of the Code starting from 01.01.2022. Payments to non-residents for production of advertising may fall under the definition of other income from services that are rendered, transferred, performed, provided to a resident by the non-resident according to Sub-clause "k" of Sub-paragraph 141.4.1 Paragraph 141.4 Article 141 of Section III of the Code. In this case (if payment under the contract terms does not fall under the definition of other Sub-clauses of Sub-paragraph 141.4.1 Paragraph 141.4 Article 141 of Section III of the Code) these payments are not subject to the income tax.