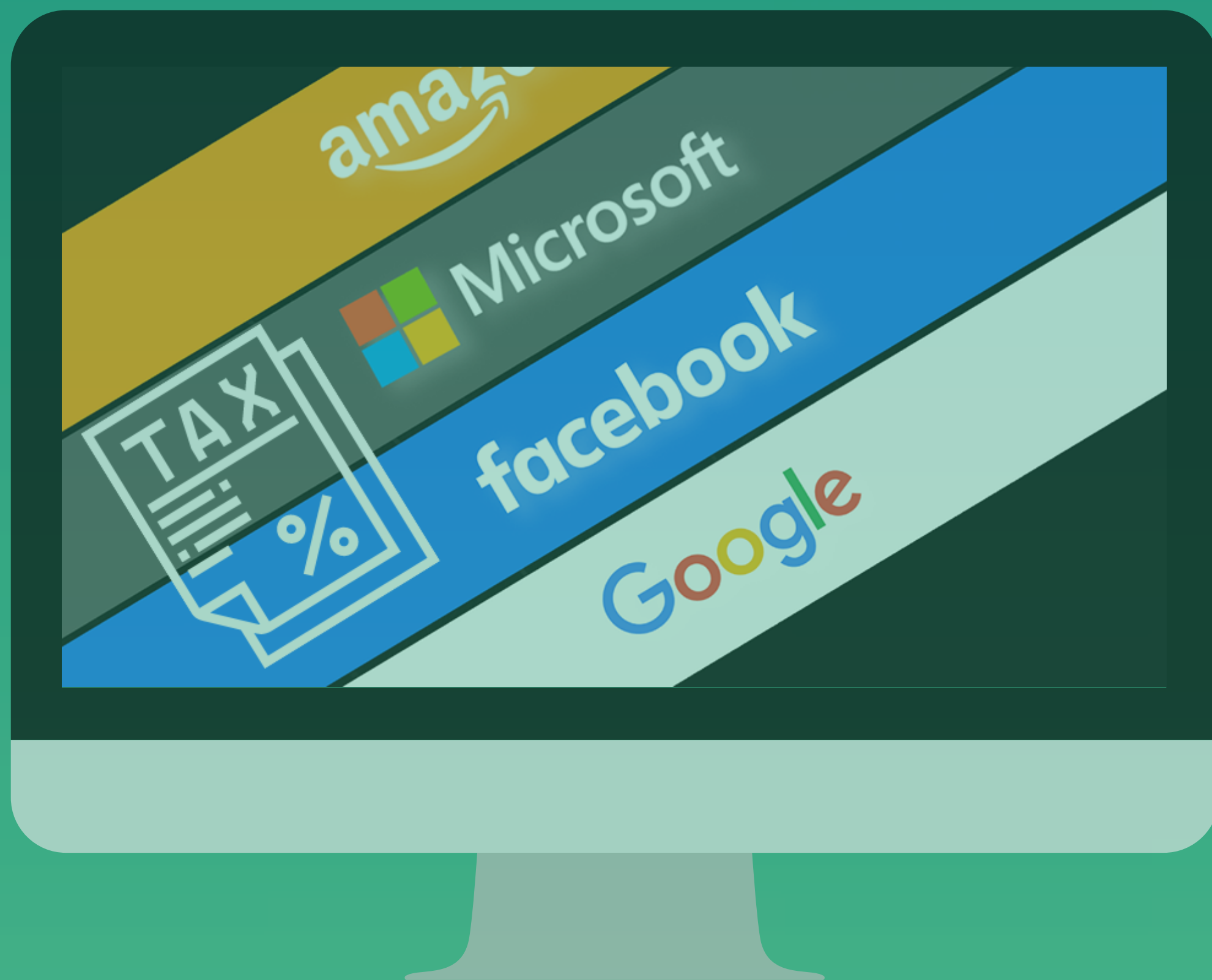


INFORMATION LETTER

№ 27



Registration peculiarities of non-residents as the VAT payers involved in provision of electronic services to individuals and submission of tax declarations

General provisions of the Law of Ukraine as of 03.06.2021 № 1525-IX “On amendments to the Tax Code of Ukraine on abolition of income taxation received by non-residents in the form of payment for production and / or distribution of advertising and improvement of value added taxation on the provision of electronic services to individuals by non-residents” (hereinafter - Law № 1525) and requirements for registration of non-residents as the VAT payers were considered in the Information letter № 26.

This Information letter contains answers to some practical questions regarding application of provisions of the Law № 1525 regarding procedures for registration of non-residents as the VAT payers, rules for determining reporting period and tax payment deadlines.

This Information 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 Tax Code of Ukraine.

1

IN WHAT TERM NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, GIVEN THAT THE PROVISION PLACE IS LOCATED IN THE CUSTOMS TERRITORY OF UKRAINE, MAY APPLY FOR MANDATORY REGISTRATION AS THE VAT PAYER IF PROVISION VOLUME OF ELECTRONIC SERVICES IN THE CUSTOMS TERRITORY UKRAINE EXCEEDED 1 MILLION UAH IN 2021?

Paragraph 2 of the Final and Transitional Provisions of the Law № 1525 stipulates that amendments it made to 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 in the customs territory of Ukraine, is applicable to tax periods starting from January 1, 2022.

Obligation to register as the VAT payer arises for non-resident if, according to results of previous calendar year, the total amount from provision of electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, exceeds equivalent of 1 million UAH (hereinafter - the maximum volume of operations) (Note A).

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 corresponding year.

Application **for mandatory** non-resident's registration as the VAT payer, who in 2021 reached the specified maximum volume of operations, is submitted by such non-resident by **March 31, 2022** inclusively (by March 31 inclusively of the corresponding calendar year following year when such non-resident reached the limit).

This Application is submitted through a **special portal solution for non-resident users** who provide electronic services. Law № 1525 does not provide for the possibility to apply in any other way than through a special portal decision and to do so before January 1, 2022.

2

IN WHAT TERM NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, GIVEN THAT THE PROVISION PLACE IS LOCATED IN THE CUSTOMS TERRITORY OF UKRAINE, MAY APPLY FOR VOLUNTARY REGISTRATION AS THE VAT PAYER, IF PROVISION VOLUME OF ELECTRONIC SERVICES IN THE CUSTOMS TERRITORY OF UKRAINE DID NOT EXCEED 1 MILLION UAH IN 2021?

If non-resident who did not reach amount equivalent to 1 million UAH (amount of operations for provision of electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, is less than the specified amount) considers it appropriate to voluntarily register as the VAT payer, such person may apply for registration as the VAT payer. This can be done **not later** than 10 calendar days before the beginning of reporting (tax) period (quarter) from which such non-resident will be considered the VAT payer (Note B).

As follows, from the date of entry into force of the Law № 1525 (January 1, 2022), the non-resident may submit Application for voluntary registration by March 21, 2022 inclusively, if he / she considers it appropriate to be the VAT payer from the first day of the second quarter of 2022.

[A]. Second clause of Paragraph 208 Note. 1.2 Article 208 Note. 1 Section V of the Code. Norms of Article 208 Note. 1 Section V of the Code enter into force on January 1, 2022.

[B]. Third clause of Paragraph 208 Note. 1.2 Article 208 Note. 1 Section V of the Code.

3 FROM WHAT DATE NON-RESIDENT IS CONSIDERED TO BE REGISTERED AS THE VAT PAYER IN CASE OF MANDATORY REGISTRATION AS THE VAT PAYER?

In case of non-resident's mandatory registration as the VAT payer who provides electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, such non-resident is considered registered as the VAT payer from the date of entry in Register of the VAT payers. Entry in Register of taxpayers is carried out within three working days after the receipt of Application for taxpayer's registration by tax authority (Note. C).

Example. Non-resident submits Application for mandatory registration as the VAT payer through a special portal solution for non-resident users who provide electronic services. Tax authorities received application, for example, on February 28, 2022. Entry in Register of taxpayers was made on March 2, 2022. In this case, non-resident is considered to be registered as the VAT payer from **March 2, 2022**.

4 FROM WHAT DATE IS NON-RESIDENT REGISTERED AS THE VAT PAYER IN CASE OF VOLUNTARY REGISTRATION AS THE VAT PAYER?

In case of non-resident's voluntary registration as the VAT payer who provides electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, such non-resident is considered registered as the VAT payer from the first day of reporting (tax) period (quarter) following the expiration day of 10 calendar days after submission of Application for the taxpayer's registration to tax authority (Note D).

Example 1. Non-resident submitted application for voluntary registration as the VAT payer on February 28, 2022. Entry in Register of taxpayers was made, for example, on March 2, 2022. Non-resident is considered to be registered as taxpayer from April 1, 2022 (from the first day of reporting (tax) period (quarter) following the expiration of 10 calendar days after submitting Application for taxpayer's registration to tax authority).

Example 2. Non-resident submitted application for voluntary registration as the VAT payer on March 28, 2022. Entry in Register of taxpayers was made, for example, on March 30, 2022. Non-resident is considered to be registered as taxpayer from July 1, 2022 (from the first day of reporting (tax) period (quarter) following the expiration of 10 calendar days after submitting application for taxpayer's registration to tax authority).

[C]. Seventh and eleventh clauses of Paragraph 208 Note. 1 .2 Article 208 Note. 1 Section V of the Code.
[D]. Third and eleventh clauses of Paragraph 208 Note. 1 .2 Article 208 Note. 1 Section V of the Code.

5

WHAT PROCEDURES ARE ENVISAGED BY THE CODE IN CASE OF ANY CHANGES IN THE CREDENTIALS OF NON-RESIDENT THAT OCCUR AFTER REGISTRATION AS THE VAT PAYER?

If non-resident registered as taxpayer undergoes any changes in the credentials, such non-resident shall notify about changes in electronic form through a special portal solution for non-resident users of electronic services by submitting Application for re-registration within 10 working days following the day when the taxpayer's data changed (Note. E).

6

WHERE CAN REFERENCE APPLICATION FORM FOR REGISTRATION OF NON-RESIDENT AS THE VAT PAYER BE FOUND IN A PERIOD BEFORE JANUARY 1, 2022?

Application form (№ 1-POH) is in Ukrainian and English languages and is an annex to Order of the Ministry of Finance of Ukraine "On Amendments to Order of the Ministry of Finance of Ukraine as of 14.11.2014 № 1130", which is currently undergoing state registration.

Draft of this Order is 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.

Application form will be the same for all cases of its submission (for mandatory and voluntary registration and changes to the credentials) and will provide for selection of appropriate registration action in Section 2.

Application is submitted with copies of an extract from the relevant business register (trade, banking or other register, which records state registration of company, organization) issued in the country of registration of such non-resident (hereinafter - business register), document confirming assignment of identification (registration, accounting) number (code) of non-resident in the country of registration, if extract from the relevant business register does not contain information about such number (code) (hereinafter - document on assignment of number (code)) and document that confirms authority of the non-resident's representative who will be subject to electronic remote identification. Application is also accompanied by information regarding confirmation of the fact and period of achievement of amount of operations for provision of electronic services to individuals, determined for mandatory registration. Information in Application must correspond to documents attached to it.

To ensure quality communication, it is also recommended to submit translation of these documents in English and / or Ukrainian.

The following is an explanation of how to fill in the specific columns of Application:

Information in Section 2 of the Application form:

1) Individual tax number of non-resident registered as taxpayer on the territory of Ukraine (in case of re-registration) - individual tax number of the value added taxpayer assigned on the territory of Ukraine (VAT payer's individual tax number), in case of submission of Application for making changes to the non-resident's credentials.

Information in Section 3 of the Application form:

- 2) Full non-resident's name - information about the full legal name of member of the international group of companies, including internal designation of the legal form, according to an extract from the business register, which records state registration of the company, organization or document (code);
- 3) Non-resident's trademark title (trademark, brand) - information about the title of all trademarks (brands) of non-resident under which electronic services are provided to consumers in the customs territory of Ukraine and well-known reduction of such title if available (including abbreviations);
- 4) Identification (registration, accounting) number (code) of non-resident in the country of registration - information about the identification number (ID) confirming state registration of the company, organization such as company's registration number (BRN), company's registration number or global legal entity's identification code (Global Entity Identification Number - EIN), according to an extract from the relevant business register or a document on the assignment of number (code), if an extract from the relevant business register does not contain information about such number (code). Name of the country where this identification (registration, accounting) number (code) was issued is also indicated. Country is selected by searching by code, name or two-digit alpha-2 code according to the List of country codes for statistical purposes, approved by Order of the State Statistics Service of Ukraine as of January 8, 2020 № 32 (hereinafter - List of country codes) available at the link: <https://zakon.rada.gov.ua/rada/show/v0032832-20#Text>;
- 5) Title of the state registration body - indicate the state registration body that issued relevant identification (registration, accounting) number (code) of non-resident in the country of registration, according to an extract from the business register or document (code).
- 6) Registration date - indicate non-resident's registration date according to an extract from the business register or document on the assignment of a number (code);
- 7) Number of decision on registration - indicate number of decision on the non-resident's registration according to an extract from the business register or document on the assignment of a number (code);
- 8) Address of the web portal of the relevant business register (trade, banking or other register, which records state registration of the company, organization) - information about the web portal of the business register or relevant body, where data confirming non-resident's individual number (according to an extract from the business register or document on the assignment of a number (code)). If data from such register is not available for public access, the phrase "information not available" is indicated.
- 9) Non-resident's identification number of taxpayer in the country of registration or its analogue - indicate the Tax Identification Number (TIN) used by tax authorities of the country (territory) of tax residence of non-resident - applicant. If non-resident does not have TIN, the phrase "NOTIN" is indicated. Name of the country that issued TIN is also indicated. Country is selected by code searching, name or two-digit alpha-2 code, according to the List of country codes for statistical purposes.

- 10) Address data / country - information about the country where non-resident's address is located. Country is selected by code searching, name or two-digit alpha-2 code, according to the List of country codes for statistical purposes.
- 11) Address data / full address - information about the following components of non-resident's full address is indicated: postal code, subscriber box, country region, city, district, street, house number, floor number, office (apartment) number.
- 12) Contact phone numbers - information about contact phone numbers of non-resident's responsible person who is authorized to communicate with tax authorities of Ukraine regarding any issues related to performance of non-resident's duties as the VAT payer in Ukraine is indicated. These data may coincide with the representative's data (applicant) indicated in Column 5 of Application.
- 13) Non-resident's domain name - is a domain name of at least the second tier of DNS-servers administered by non-resident. Data in this column are extremely important, as electronic identification will use information about non-resident's registration in the country of non-resident, identification of non-resident subject to electronic identification, information about representative, e-mail address, website and non-resident's domain name.
- 14) E-mail address - information about the e-mail address of non-resident's representative who is authorized to communicate with tax authorities of Ukraine regarding any issues related to performance of non-resident's duties as the VAT payer in Ukraine. These data may coincide with the representative's data (applicant) indicated in Column 5 of Application. Official notification from tax authorities of Ukraine regarding registration as the VAT payer will be sent to this non-resident's address.
- 15) Website address - information about address of the website where public information about non-resident as an electronic service provider is posted.

Information in Section 4 of the Application form:

- 16) Electronic services provided by non-resident via the Internet - appropriate types of services are selected (for each type of service there is a separate line) according to Annex 2 to the Application form ("Directory of electronic services").

Explanation to Application can be found in Annex 1 to the Application form.

To confirm data provided during registration as the VAT payer, within 180 calendar days from registration date, non-resident sends to the tax authority's postal address official letter confirming data provided during registration as the VAT payer, including identification (registration, accounting) number (code) and about the non-resident's representative person, who was electronically remotely identified.





7 HOW NON-RESIDENT FINDS OUT ABOUT REGISTRATION DATE AS THE VAT PAYER?

Information about registration date of non-resident as the VAT payer is sent by tax authority to such person through a special portal solution for non-resident users who provide electronic services.

At the same time, the relevant notification is sent to the e-mail address specified in Application for non-resident's registration as the VAT payer (Note. F).

8 WHAT INFORMATION WILL NON-RESIDENT RECEIVE WITH INFORMATION ABOUT REGISTRATION DATE AS THE VAT PAYER?

Non-resident with information about registration date as the VAT payer will receive information about:

-  individual tax number of non-resident registered as the VAT payer;
-  reporting (tax) period;
-  deadlines for submitting the VAT tax declarations;
-  deadlines and procedure for payment of tax liabilities (Note. G).

9 HOW TO DETERMINE THE FIRST REPORTING PERIOD FOR SUBMISSION OF SIMPLIFIED TAX DECLARATION BY NON-RESIDENT REGISTERED AS THE VAT PAYER?

Article 208 Note 1 Section V of the Code does not establish special rule for determining the first reporting period for non-residents registered as the VAT payers.

In this regard, to determine the first reporting period should be used a general rule established by Sub-paragraph "a" of Paragraph 202.1 Article 202 Section V of the Code, according to which if person registers as a taxpayer from another day than the first day of calendar period, the first reporting (tax) period is a period starting from the date of such registration and ending on the last day of the first full reporting period.

Example. Non-resident submits Application for **mandatory** registration as the VAT payer. Tax authorities received Application, for example, on February 28, 2022. Entry in the register of taxpayers was made on March 2, 2022. Non-resident is considered registered as taxpayer from March 2, 2022. In this case, the first reporting (tax) period is a period starting from the date of such registration (March 2, 2022) and ending on the last day of the first full reporting period (June 30, 2022).

[F]. Seventh clause of Paragraph 208 Note 1. 2 Article 208 Note. 1 Section V of the Code.

[G]. Eighth - Tenth clauses of Paragraph 208 Note1. 2 Article 208 Note. 1 Section V of the Code.

Deadline for submitting tax declaration is within 40 calendar days following the last calendar day of reporting (tax) period, ie, in the example below not later than August 9, 2022.

Deadline for payment of tax liabilities accrued on such declaration is within 30 calendar days following the last day of deadline for submitting such tax declaration, ie, in the example below not later than September 8, 2022.

10

HOW TO DETERMINE THE FIRST REPORTING PERIOD FOR SUBMISSION OF SIMPLIFIED TAX DECLARATION BY NON-RESIDENT WHO VOLUNTARILY REGISTERED AS THE VAT PAYER?

Article 208 Note. 1 Section V of the Code does not establish special rule for determining the first reporting period for non-residents registered as the VAT payers.

In this regard, to determine the first reporting period should be used the general rule established by Sub-paragraph "a" of Paragraph 202.1 Article 202 Section V of the Code, according to which if a person registers as a taxpayer from another day than the first day of calendar period; the first reporting (tax) period is a period starting from the date of such registration and ending on the last day of the first full reporting period.

Example. Non-resident submitted Application for voluntary registration as the VAT payer on February 28, 2022. Entry in the register of taxpayers was made, for example, on March 2, 2022. Non-resident is considered to be registered as a taxpayer from April 1, 2022 (from the first day of reporting (tax) period (quarter) following the expiration of 10 calendar days after submitting Application for registration as a taxpayer to the tax authority).

In this example, the first reporting (tax) period will be the second quarter of 2022 (period from April 1, 2022 to June 30, 2022).

Deadline for submitting tax declaration is within 40 calendar days following the last calendar day of reporting (tax) period, ie, in the example below not later than August 9, 2022.

Deadline for payment of tax liabilities accrued on such declaration is within 30 calendar days following the last day of deadline for submitting such tax declaration, ie, in the example below not later than September 8, 2022.

11

FROM WHAT PERIOD DOES NON-RESIDENT ACCRUE THE VAT LIABILITIES FOR ELECTRONIC SERVICES, IF NON-RESIDENT SUBMITTED APPLICATION FOR MANDATORY REGISTRATION AS THE VAT PAYER AFTER JANUARY 1, 2022?

Tax liabilities can be charged only by a person registered as the VAT payer. Therefore, non-resident - VAT payer who provides electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, determines the VAT liabilities for provision of electronic services, which are carried out from the **taxpayer's registration date of such non-resident**.

Example. Non-resident submits Application for mandatory registration as the VAT payer. Tax authorities received Application, for example, on February 28, 2022. Entry in the register of taxpayers was made on March 2, 2022. Non-resident is considered registered as a taxpayer from March 2, 2022. In this case, the VAT liabilities must be accrued by non-resident for provision of electronic services that have been carried out **since March 2, 2022 inclusively**.

12

FROM WHAT PERIOD DOES NON-RESIDENT DETERMINE THE VAT LIABILITIES FOR PROVISION OF ELECTRONIC SERVICES, IF NON-RESIDENT SUBMITS APPLICATION FOR VOLUNTARY REGISTRATION AS THE VAT PAYER AFTER JANUARY 1, 2022?

Tax liabilities can be charged only by a person registered as the VAT payer.

Therefore, non-resident - VAT payer who provides electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, determines the VAT liability for provision of electronic services, which are carried out from such non-resident's registration date as taxpayer.

Example. Non-resident submits Application for **mandatory** registration as the VAT payer. Tax authorities received Application, for example, on February 28, 2022. Entry in the register of taxpayers was made on March 2, 2022. In case of voluntary registration, non-resident is considered registered as taxpayer from April 1, 2022 (from the first day of reporting (tax) period (quarter) following the expiration of 10 calendar days after submitting Application for taxpayer's registration to tax authority).

In this case, the VAT liabilities must be accrued by non-resident for provision of electronic services **starting from 1 April 2022 inclusively**.

13

WHAT OPERATIONS MUST BE REFLECTED BY NON-RESIDENT IN TAX DECLARATION IF NON-RESIDENT SUBMITTED APPLICATION FOR MANDATORY REGISTRATION AS THE VAT PAYER AFTER JANUARY 1, 2022?

Operations that have been carried out since the registration date of such non-resident as the VAT payer are subject to payment to the budget as they're reflected reflected in tax declaration.

Date of occurrence of tax liabilities for provision operations by non-resident registered as the VAT payer is the last day of reporting (tax) period when payment for provision of electronic services was made. (Note. H).

In turn, subject to provisions of Sub-paragraph "a" of Paragraph 187.1 Article 187 Section V of the Code for purposes of determining the occurrence date of tax liability, it is considered that payment for goods / services occurred in the case of crediting funds from buyer to the taxpayer's bank account.

As follows, based on the example given in answer to question 11, if the registration date of non-resident is March 2, 2022, the declaration should reflect provision of electronic services, provision of which has been made since March 2, 2022 and which are paid with accrual of the VAT in a period from March 2, 2022 to June 30, 2022. In this case, the VAT amount payable to the budget and reflected in tax declaration is determined by non-resident on the date of crediting funds to his / her account. That is, if funds, in specified example, were transferred to the non-resident's account in March 2022, such operations must be reflected in tax declaration for the first quarter of 2022. If such funds will be received in April (particularly, in the case of their transfer to non-resident's intermediary who provides payment acceptance), such operations must be indicated by non-resident in declaration for the second quarter of 2022.

[H]. Seventh clause of Paragraph 208 Note 1. 2 Article 208 Note. 1 Section V of the Code.

Operations for provision of electronic services to individuals, given that the provision place is in the customs territory of Ukraine, that were carried out before registration date of non-resident as the VAT payer (in this example - until March 2, 2022) but payment for which (upon receipt of funds on account) occurred after such registration, are not subject to the VAT and are not reflected in tax declaration.

14

UNDER WHAT CONDITIONS WILL IT BE CONSIDERED THAT NON-RESIDENT WHO PROVIDES ELECTRONIC SERVICES TO INDIVIDUALS, GIVEN THAT THE PROVISION PLACE IS LOCATED IN THE CUSTOMS TERRITORY OF UKRAINE, VIOLATED THE DEADLINES FOR SUBMITTING APPLICATION FOR MANDATORY REGISTRATION AS THE VAT PAYER?

Carrying out operations by non-resident on the provision of electronic services to individuals in the customs territory of Ukraine without registration of such non-resident as the VAT payer entails imposition of a fine (Note. I).

Amount of a fine is 30 times the minimum wage established by law on January 1 of the reporting (tax) year. As stated in the answer to question 1, the Application for **mandatory** registration of non-resident as the VAT payer who in 2021 reached the specified volume of operations is submitted by such non-resident by March 31, 2022 inclusively.

As follows, if non-resident who provides electronic services to individuals, given that the provision place is located in the customs territory of Ukraine, and who reached the maximum volume of operations in 2021, submits Application **after March 31, 2022 (or not at all)**, it will be considered that such person violated the deadlines for submitting Application for mandatory registration as the VAT payer, which is the basis for application of the specified fine.

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