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EXECUTIVE OFFICE OF THE PRESIDENT



*Section 301 Investigation*  
**Report on Turkey's Digital Services Tax**

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# REPORT ON TURKEY'S DIGITAL SERVICES TAX PREPARED IN THE INVESTIGATION UNDER SECTION 301 OF THE TRADE ACT OF 1974

## I. EXECUTIVE SUMMARY

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Turkey's Law Regarding Digital Service Tax (the DST) under Section 301 of the Trade Act of 1974, as amended (the Trade Act). Turkey's DST imposes a tax on revenue generated from a broad range of digital services offered in Turkey, including digital advertising, digital content sales, and digital platform services. The current tax rate is 7.5%, but the Turkish President has the unilateral authority to increase that rate up to 15%, or to decrease it as low as 1%. The DST only applies to companies that generate revenues from covered digital services of at least: (i) TRY 20 million (about €2 million) in Turkey; and (ii) €750 million globally. The Turkish President has unilateral authority to increase or decrease these revenue thresholds.

In this report, the Office of the United States Trade Representative (USTR) presents its evidentiary findings on actionability. The applicable standard for actionability under Section 301 is whether Turkey's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce. As described in this report, our investigation suggests that the DST satisfies that standard. If the U.S. Trade Representative determines that the DST is actionable, Section 301 would authorize "all appropriate and feasible action ... to obtain the elimination of" the DST.<sup>1</sup>

USTR carried out its investigation over the course of several months. As explained in the Federal Register notice launching the investigation (the Notice of Initiation),<sup>2</sup> USTR focused on various aspects of the DST, including whether the DST discriminates against U.S. companies, if the DST is unreasonable as tax policy, and whether the DST burdens or restricts U.S. commerce. The Notice of Initiation requested public comments on these points, and 383 comments from interested persons, companies, organizations, and governments are available in the public docket. USTR also participated in direct, government-to-government consultations with Turkey regarding the DST on September 29, 2020. These investigatory steps indicated that Turkey's DST discriminates against U.S. companies, unreasonably contravenes international tax principles, and burdens or restricts U.S. commerce.

First, our investigation would support a finding that the Turkish DST discriminates against U.S. digital services companies. The mechanism of this discrimination is two-fold: (1) the DST targets only digital services (a sector in which U.S. firms are global leaders), but exempts similar services provided non-digitally; and (2) the DST's revenue thresholds shield Turkish firms from taxation, while creating tax liability for an inordinate number of U.S. companies. The numbers are unambiguous: USTR's analysis indicates that of the 61 companies likely subject to the Turkish DST, 42 (69%) are U.S. companies. None of the 61 companies is Turkish.

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<sup>1</sup> 19 U.S.C. § 2411(b).

<sup>2</sup> USTR, "Initiation of Section 301 Investigations of Digital Services Taxes" 85 FED. REG. 34709, June 5, 2020.

Statements by Turkish officials demonstrate that this result—capturing foreign companies while exempting Turkish firms—was no accident. In October 2019, Member of the Turkish Parliament Salih Cora stated that by including revenue thresholds in the DST, “it is intended that domestic companies are not exposed to such tax.”<sup>3</sup> The following month, during a meeting of the Turkish General Assembly, Member of Parliament Mustafa Kalayci noted that “it is said that approximately 20 companies which are all non-resident will fall within the scope” of the DST.<sup>4</sup>

For these and other reasons explained further in Section IV(A) below, our investigation would support a finding that Turkey’s DST discriminates against U.S. companies.

Second, our investigation would support a finding that the Turkish DST unreasonably contravenes international tax principles. At least three aspects of the DST are inconsistent with principles of international taxation:

- The DST taxes companies with no permanent establishment in Turkey, contravening the international tax principle that companies should not be subject to a country’s corporate tax regime absent a territorial connection to that country.
- The DST taxes companies’ revenue rather than their income. This is inconsistent with the international tax principle that income—not revenue—is the appropriate basis for corporate taxation.
- The adjustable nature of foundational aspects of the DST creates considerable uncertainty. Specifically, because the DST’s revenue thresholds can change, companies cannot be sure if they will be subject to the tax. And because the tax rate can change at the President’s discretion, companies cannot be certain of the amount of tax they might have to pay. This failure to provide tax certainty contravenes a core principle of international taxation.

For these and other reasons explained further in Section IV(B) below, our investigation would support a finding that Turkey’s DST unreasonably contravenes international tax principles.

Third, our investigation would support a finding that the Turkish DST burdens or restricts U.S. commerce. The DST is burdensome and restrictive in at least five ways:

- The DST creates a significant tax burden for U.S. companies. USTR estimates that the aggregate DST tax bill for U.S. companies could exceed US\$100 million per year. Several aspects of the DST exacerbate this tax burden, including the DST’s extraterritorial application and its taxation of revenue rather than income.
- Turkey’s current DST tax rate of 7.5%—which is significantly higher than any other digital services tax rate currently in-force anywhere in the world—is particularly

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<sup>3</sup> Statement by Member of Parliament Salih Cora, Plan and Budget Commission Meeting, October 31, 2019.

<sup>4</sup> Statement by Member of Parliament Mustafa Kalayci, General Assembly Meeting, November 13, 2019 (emphasis added).

burdensome for U.S. companies. The introduction of Turkey's maximum allowable DST tax rate of 15% would represent an even greater burden for U.S. companies.

- The DST forces U.S. companies to undertake costly measures to comply with the tax's new payment and reporting requirements. This includes the reengineering of existing systems to collect and organize new and different types of information. USTR's analysis indicates that compliance costs could run into the millions of dollars for each affected company.
- The DST burdens U.S. companies by subjecting them to double—and potentially triple—taxation.
- The DST provides for the imposition of a particularly burdensome penalty for non-compliance: the complete blocking of access to the Turkish market. No other country has implemented a digital services tax that includes this harsh penalty.

For these reasons, which we discuss further in Section IV(C) below, our investigation suggests that Turkey's DST burdens or restricts U.S. commerce.

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In summary, as set out in detail in this report, our investigation indicates that Turkey's DST is discriminatory, unreasonable, and burdens or restricts U.S. commerce, and thus, actionable under Section 301.

## II. RELEVANT BACKGROUND AND CONTEXT

This section provides background information regarding on investigation, including: the historical context of the DST, with a focus on the multilateral tax negotiations that were ongoing when Turkey adopted the tax (Section A); and an overview of USTR’s investigation, with a focus on the pertinent legal elements of Section 301, the issues addressed in USTR’s investigation, and the fact-gathering process that USTR followed (Section B).

### A. TURKEY’S ADOPTION OF THE DST IN THE MIDST OF ONGOING, MULTILATERAL NEGOTIATIONS REGARDING DIGITAL SERVICES TAXES

In 2013—long before Turkey began considering a digital services tax—the Secretary-General of the Organisation for Economic Co-operation and Development (OECD) released an action plan on base erosion and profit sharing (BEPS).<sup>5</sup> The BEPS action plan discussed the “spread of the digital economy” and its impact on digital taxation.<sup>6</sup> That plan led to the establishment of the OECD/G20 Inclusive Framework, a group of countries and jurisdictions working to address issues raised in the BEPS action plan. The inaugural meeting of the OECD/G20 Inclusive Framework was held in Kyoto, Japan in June, 2016.<sup>7</sup>

The work of the OECD/G20 Inclusive Framework continues today. As of July 2020, the OECD/G20 Inclusive Framework negotiations involve over 135 countries and jurisdictions—including Turkey and the United States—along with 14 observer organizations.<sup>8</sup> The United States remains actively engaged in the OECD Inclusive Framework process, and supports bringing those negotiations to a successful conclusion. As of now, the official position of the OECD is that, “[t]here is no consensus on either the merit or need for interim measures,” such as country-specific digital services taxes like Turkey’s DST.<sup>9</sup>

Nonetheless, the Turkish Government opted to move forward with its DST in late 2019, publishing the final statute on December 7, 2019. On February 5, 2020, the Turkish Revenue Administration issued a draft communique, which specified procedures and principles regarding

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<sup>5</sup> Org. for Economic Co-operation and Development, *Action Plan on Base Erosion and Profit Sharing*, at 2, 11 (OECD Publishing 2013), [https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting\\_9789264202719-en#page13](https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#page13).

<sup>6</sup> Org. for Economic Co-operation and Development, *Action Plan on Base Erosion and Profit Sharing*, at 2, 11 (OECD Publishing 2013), [https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting\\_9789264202719-en#page13](https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#page13) at page 12.

<sup>7</sup> Org. for Economic Co-operation and Development, *OECD/G20 Inclusive Framework on BEPS: Progress report July 2019 – July 2020*, at 2 (OECD 2020), <https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-july-2019-july-2020.pdf>.

<sup>8</sup> Org. for Economic Co-operation and Development, *OECD/G20 Inclusive Framework on BEPS: Progress report July 2019 – July 2020*, at 7, 35 (OECD 2020), <https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-july-2019-july-2020.pdf>.

<sup>9</sup> Org. for Economic Co-operation and Development, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS*, at 178 (OECD Publishing 2018), [https://read.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report\\_9789264293083-en#page180](https://read.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report_9789264293083-en#page180).

the DST. The Turkish Revenue Administration withdrew that draft just nine days later, and issued the final communique (the Communique) on March 20, 2020.

Unilateral laws like Turkey’s DST undermine progress in the OECD by making an agreement on a multilateral approach to digital taxation less likely. If unilateral measures proliferate while negotiations are ongoing, countries lose the incentive to engage seriously in the negotiations. For this reason, among others, the United States has discouraged governments from adopting country-specific DSTs. Nonetheless, Turkey has chosen to create and implement its own unilateral tax on digital services.

## **B. USTR’S INVESTIGATION OF TURKEY’S DST PURSUANT TO SECTION 301 OF THE TRADE ACT**

USTR initiated its investigation of the Turkish DST under Section 301 on June 2, 2020.<sup>10</sup> In this section, we describe the relevant legal provision in Section 301 (Section 1); the substantive focus of the investigation (Section 2); and the investigatory process USTR followed (Section 3).

### **1. Relevant Legal Provisions in Section 301**

Pursuant to Section 301, three types of acts, policies, or practices of a foreign country are actionable: (i) trade agreement violations; (ii) acts, policies or practices that are unjustifiable (defined as those that are inconsistent with U.S. international legal rights) and burden or restrict U.S. Commerce; and (iii) acts, policies or practices that are unreasonable or discriminatory and burden or restrict U.S. Commerce.<sup>11</sup> Section 301 defines “discriminatory” to “include . . . any act, policy, and practice which denies national or most-favored nation treatment to United States goods, service, or investment.”<sup>12</sup> “[U]nreasonable” refers to an act, policy, or practice that “while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.”<sup>13</sup> The statute further provides that, in determining if a foreign country’s practices are unreasonable, reciprocal opportunities to those denied U.S. firms “shall be taken into account, to the extent appropriate.”<sup>14</sup>

If the Trade Representative determines that the Section 301 investigation “involves a trade agreement,” and if that trade agreement includes formal dispute settlement procedures, USTR may pursue the investigation through consultations and dispute settlement under the trade agreement. Otherwise, USTR will conduct the investigation without recourse to formal dispute settlement.

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<sup>10</sup> USTR, “Initiation of Section 301 Investigations of Digital Services Taxes” 85 FED. REG. 34709, June 5, 2020.

<sup>11</sup> 19 U.S.C. § 2411(a)-(b).

<sup>12</sup> 19 U.S.C. § 2411(d)(5).

<sup>13</sup> 19 U.S.C. § 2411(d)(3)(A).

<sup>14</sup> 19 U.S.C. § 2411(d)(3)(D).

If the Trade Representative determines that the act, policy, or practice falls within any of the three categories of actionable conduct under Section 301, the USTR must also determine what action, if any, to take. If the Trade Representative determines that an act, policy or practice is unreasonable or discriminatory and that it burdens or restricts U.S. commerce:

“The Trade Representative shall take all appropriate and feasible action authorized under [section 301(c)], subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.”<sup>15</sup>

Actions authorized under Section 301(c) include: (i) suspending, withdrawing, or preventing the application of benefits of trade agreement concessions; (ii) imposing duties, fees, or other import restrictions on the goods or services of the foreign country; (iii) entering into binding agreements that commit the foreign country to eliminate or phase out the offending conduct or to provide compensatory trade benefits; or (iv) restricting or denying the issuance of service sector authorizations, which are federal permits or other authorizations needed to supply services in some sectors in the United States.<sup>16</sup>

## **2. The Focus of USTR’s Investigation**

As set out in the Notice of Initiation, the investigation involves determinations of whether the act, policy, or practice at issue—*i.e.*, Turkey’s DST—is actionable under section 301 of the Trade Act, and if so, what action, if any, to take under Section 301. With respect to actionability, this investigation focused on discrimination against U.S. companies, and divergence from reasonable tax policy. Regarding unreasonable tax policy, USTR investigated whether the DST diverges from international tax principles, such as adopting appropriate tax rates, providing tax certainty, avoiding extraterritorial taxation, and taxing income rather than revenue.<sup>17</sup> In addition, USTR analyzed whether the DST burdens or restricts U.S. commerce. USTR’s findings on these issues are set out in Section IV below.

## **3. USTR’s Investigatory Process**

Throughout the investigation, USTR followed the process provided for under Section 301. An initial step in the investigatory process was to provide the public and other interested persons an opportunity to present their views and perspectives on the Turkish DST. The Notice of Initiation invited written comments on the Turkish investigation (as well as the investigations of nine other jurisdictions’ DSTs) by July 15, 2020.<sup>18</sup> Interested persons filed 383 written

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<sup>15</sup> 19 U.S.C. § 2411(b).

<sup>16</sup> In cases in which USTR determines that import restrictions are the appropriate action, preference must be given to the imposition of duties over other forms of action. 19 U.S.C. §§ 2411(c).

<sup>17</sup> See Notice of Initiation, at 34710 (setting out a list of the types of issues that USTR might address). The Notice of Initiation also invited interested parties to submit comments on other aspects of the DST that may warrant a finding of actionability under Section 301.

<sup>18</sup> Notice of Initiation, at 34709.

submissions, the majority of which raised issues directly related to Turkey's DST.<sup>19</sup> Several of these public comments were lengthy and detailed, analyzing Turkey's DST specifically.<sup>20</sup>

Of the comments that addressed whether Turkey's DST is actionable under Section 301, a substantial majority supported a positive finding on actionability.<sup>21</sup> Commenters provided evidence and argumentation supporting actionability based on several of the areas of concern outlined in the Notice of Initiation. As explained in more detail later in this report, commenters provided argumentation and evidence that, *inter alia*, Turkey's DST discriminates against U.S. companies, that it is unreasonable as tax policy, and that it burdens or restricts U.S. commerce.

USTR's investigatory process also included confidential government-to-government consultations with the Turkish Government. USTR requested these consultations in a June 2, 2020 letter from the Trade Representative to the Government of Turkey,<sup>22</sup> and Turkey's Minister of Trade accepted the request for consultations in a letter dated July 3, 2020.<sup>23</sup> The consultations took place on September 29, 2020.

### **III. DESCRIPTION OF TURKEY'S DIGITAL SERVICES TAX**

One of the purposes of the investigation was to better understand Turkey's DST—its structure, its scope, how it functions, etc. This section, which describes the DST in detail, is based on USTR's analysis of public comments and a detailed review of the text of the DST itself. In the subsections below, we address: the tax rate of the DST (Section A); the companies subject to the DST (Section B); the scope of the taxable services under the DST (Section C); and the penalties for non-payment or late payment of the DST (Section D).

#### **A. THE DST'S TAX RATE**

The DST rate currently stands at 7.5% of revenue for covered digital services offered in Turkey.<sup>24</sup> As discussed in more detail in Section IV(B)(1) below, the rate of 7.5% far exceeds the current tax rates of all other DSTs around the world. That high tax rate is assessed on a company's revenue—the law is clear that “[n]o deductions are made from the tax base under the name of expense, cost and tax.”<sup>25</sup>

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<sup>19</sup> The submissions can be viewed on the Federal eRulemaking Portal, <https://www.regulations.gov>.

<sup>20</sup> *See, e.g.*, Public comment submitted by the Information Technology Industry Council, July 15, 2020; Public comment submitted by the Silicon Valley Tax Directors' Group, July 15, 2020; Public comment submitted by the Computer & Communications Industry Association, July 14, 2020.

<sup>21</sup> *See, e.g.*, Public comment submitted by Americans for Tax Reform, July 11, 2020; Public comment submitted by the National Retail Federation, July 15, 2020; Public comment submitted by the Information Technology Industry Council, July 15, 2020; Public comment submitted by the Silicon Valley Tax Directors' Group, July 15, 2020; Public comment submitted by the Computer & Communications Industry Association, July 14, 2020.

<sup>22</sup> *See* Letter from Ambassador Robert Lighthizer to Minister Ruhsar Pekcan, June 2, 2020 (Annex 3).

<sup>23</sup> *See* Letter from Minister Ruhsar Pekcan to Ambassador Robert Lighthizer, July 3, 2020 (on file with USTR).

<sup>24</sup> DST at Article 5(3).

<sup>25</sup> DST at Articles 5(2).

Turkey's DST rate is unique in that it is adjustable. At his discretion, the Turkish President may increase the tax rate to up to 15% or decrease the rate to as low as 1%.<sup>26</sup> Neither the text of the DST, nor the Communique, offers any guidance on how the President is to wield this authority. No regulation exists, for example, setting out the factors that the President must consider when changing the DST rate, or dictating the notice period companies will receive before tax rate changes are implemented.<sup>27</sup>

Furthermore, the DST permits the President to change the DST rate "in terms of the types of services."<sup>28</sup> This language allows the President to alter the DST rate for some services, but not others. Thus, the President could in theory choose to lower the tax rate for categories of digital services in which Turkish companies hold substantial market share, while maintaining—or even increasing—the tax rate for categories of services in which foreign companies command the majority of the market.

## **B. COMPANIES SUBJECT TO THE DST**

Turkey's DST only applies to digital services companies that meet or exceed two revenue thresholds.<sup>29</sup> If, in the previous accounting period, a company did not: (i) generate TRY 20 million (about €2 million) in revenue in Turkey for covered digital services; and (ii) generate €750 million globally for covered digital services, then the tax does not apply.<sup>30</sup> USTR's analysis indicates that 61 companies likely meet the revenue thresholds in the DST.<sup>31</sup> Of those 61 companies, 42 (69%) are U.S. companies. None of the 61 companies is Turkish. This analysis is consistent with other studies, which also indicate that no Turkish companies will be liable to pay the DST.<sup>32</sup>

The Turkish President can change the revenue thresholds at his discretion. More specifically, the DST stipulates that the President has authority "to change the [revenue thresholds] to zero or to triple, individually or together, according to the types of services subject

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<sup>26</sup> DST at Article 5(5).

<sup>27</sup> See Communique Section II(B) (stating simply that "According to the fifth paragraph of the same article, the President is authorized to reduce the digital service tax rate up to 1% separately or together, in terms of service types, to double it.").

<sup>28</sup> DST at Article 5(5).

<sup>29</sup> DST at Article 4(1).

<sup>30</sup> DST at Article 4(1).

<sup>31</sup> USTR's analysis of companies likely covered under Turkey's DST was based on a review of publicly available regulatory filings, corporate annual reports, press articles, and other sources. Using these sources, USTR identified which firms would likely meet the DST's revenue thresholds. Where possible, USTR isolated revenue attributable to covered services in Turkey, but this information was not available for many firms. Where that specific information was not accessible, USTR used the data available to assess the likely revenue derived from digital services provided in Turkey.

<sup>32</sup> See, e.g., R. Bicer, "Turkey proposes 7.5 percent digital services tax on large multinationals," *MNE TAX*, October 28, 2019, available at: <https://mnetax.com/turkey-proposes-7-5-percent-digital-services-tax-on-large-multinationals-36377> ("As far as I can determine, no company headquartered in Turkey will be within the scope of the new digital services tax. Accordingly, only large foreign multinationals providing digital services will be subject to digital services tax.").

to the tax.”<sup>33</sup> Thus, the President can elect to dramatically increase or decrease the revenue thresholds at any point, which could significantly expand or contract the universe of companies subject to the DST. Neither the DST law, nor the Communiqué, provides any guidance on the factors the President must consider when changing the revenue thresholds, or how long companies might have to comply with any such changes.

Furthermore, because the DST allows the President to change the revenue thresholds “according to the types of services subject to the tax,”<sup>34</sup> the President can alter the thresholds for some types of services, but not others. Using this authority, the President could in theory raise the revenues thresholds for certain categories of digital services to exclude specific Turkish companies, while decreasing revenue thresholds for other categories of services to capture more foreign companies.

### **C. SERVICES SUBJECT TO THE DST**

Turkey’s DST covers a broad range of digital services, including digital advertising, marketplace services, and the provision of digital content. More specifically, per the text of the DST, the tax applies to:

- “a) All kinds of advertising services offered in digital environment (including advertisement control and performance measurement services, data transmission and management related to users, and technical services related to the delivery of advertising)
- b) Audible, visual or any digital content (including computer programs, applications, music, video, games, in-game applications and the like) for sale on digital environment and services provided on digital environment for listening, watching, playing or recording of such content on electronic devices or for use on such devices
- c) Services for the provision and operation of digital environments where users can interact with each other (including services provided to sell or to facilitate the sale of a product or service between users)”<sup>35</sup>

In summary, like most other digital services taxes, Turkey’s DST applies to digital advertising and digital marketplace services. And in addition—unlike most other digital services taxes—Turkey’s DST also applies to the sale of digital content and digital content-related services.

With respect to digital advertising, the Communiqué stipulates that the following advertising-related services are subject to the tax:

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<sup>33</sup> DST at Article 4(4).

<sup>34</sup> DST at Article 4(4).

<sup>35</sup> DST at Article 1(1).

- Search engine advertisements (*i.e.*, advertisements that appear along with search results, and beneficial prioritization of the order of search results), which appear on sites like Google;
- Banner advertisements, which appear on a variety of websites;
- Audio, visual or written advertisements shown before, during, or after video or other content, which appear on sites like Youtube;
- Advertisements automatically transmitted online via software in electronic devices; and
- Pop-up advertisements.<sup>36</sup>

Regarding, digital content sales, the Communique clarifies that the DST applies to revenues from digital sales of:

- Programs, software and applications used in electronic devices such as computers, tablets, mobile phones, smart watches (*e.g.*, iPhone apps);
- Image, sound and text file contents such as motion pictures, series, videos, images, photographs, graphics, and newspaper and magazine articles (*e.g.*, digital movie sales);
- Any digital games, game add-ons or game codes, including games played on game consoles (including games played online or offline);
- Paid applications or packages sold to users in connection with online games (*e.g.*, additional rights to play, additional game time, access to in-game features, etc.).<sup>37</sup>

Sales of the types of content listed above delivered non-digitally—*e.g.*, music sold on CDs or movies sold on DVDs—are not subject to the DST.<sup>38</sup>

With respect to digital platform services, according to the Communique, revenue from the “provision or operation of digital media where users can post written, visual or audio content or comment on posted contents or interact with each other in other ways, and digital media aimed at the sale or facilitating the sale of products or services is subject to digital service tax.”<sup>39</sup> This includes revenue for digital intermediary services for selling and buying products (such as eBay or Amazon) or selling and buying services (such as Airbnb).<sup>40</sup> The revenue received by digital platform users (*e.g.*, the revenue a homeowner receives from renting her house on Airbnb) is not subject to the DST. Only the revenue that a digital platform provider receives (*e.g.*, the service fee that Airbnb collects for facilitating a home rental) is taxable.

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<sup>36</sup> Communique at I(A)(1).

<sup>37</sup> Communique at I(A)(2).

<sup>38</sup> Communique at I(A)(2).

<sup>39</sup> Communique at I(A)(3).

<sup>40</sup> See Communique at I(A)(3).

Importantly, the Communique stipulates that revenue from the following digital services is not subject to the DST:

- The storage of digital data on online platforms;
- The sale of digital tickets to the cinema, theater, concert, museum, sports competitions, bus, train, or plane; and
- The sale of digital tickets or coupons “on a joint bet with any game of chance and provide the right to draw or participate in the bet and are organized by authorized institutions and the relevant legislation in Turkey,” (*e.g.*, the lottery).<sup>41</sup>

Despite these exclusions, the scope of the services that the Turkish DST covers is broader than most other countries’ digital services tax. In particular, the DST’s applicability to digital content sales is a rare feature. Given that U.S. companies are global leaders in digital content services,<sup>42</sup> this aspect of Turkey’s DST could disproportionately impact U.S. companies. Furthermore, the DST is structured such that a single piece of digital content might be subject to multiple levels of taxation. If for instance, Amazon were to sell a piece of content to its Turkish subsidiary for sale in the Turkish market, both the parent-subsubsidiary sale and the subsidiary-consumer sale would be taxable under the DST.

As a final point, we note that Turkey’s DST only applies to digital services “offered in Turkey.”<sup>43</sup> Per the DST, this includes: (1) providing the service in Turkey; (2) making use of the service in Turkey; (3) performing the service for people in Turkey; and (4) utilization of the service in Turkey.”<sup>44</sup> With respect to platform services—which, *e.g.*, may connect buyers and sellers that reside in different countries—the Communique makes clear that the DST applies if either party is resident in Turkey. This is the case even if the non-Turkish party pays the fee for the platform service. As an illustration, if a Turkish homeowner lists a property on Airbnb that is rented by a German tourist, and that German tourist pays the Airbnb fee, the fee would be taxable under the DST.

#### **D. PENALTIES FOR NON-PAYMENT OF THE DST**

If companies subject to the DST fail to make their monthly tax payments, in whole or in part, the standard penalties and procedures applicable to truant tax payers in Turkey apply. In addition, the DST permits the Turkish government to block companies’ access to the Turkish

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<sup>41</sup> Communique at I(A)(2).

<sup>42</sup> See, *e.g.*, Forbes, *Top 100 Digital Companies*, 2019, available at: <https://www.forbes.com/top-digital-companies/list/#tab:rank> (noting that of the top 10 digital companies worldwide, nine companies provide “digital content,” and of those, eight are U.S. companies); PriceWaterhouseCoopers, *Global 100 Software Leaders by revenue*, 2016 available at: <https://www.pwc.com/gx/en/industries/technology/publications/global-100-software-leaders/explore-the-data.html> (noting that 9 of the top 10 global software companies are based in the United States, and that 73 of the top 100 software companies are based in the United States).

<sup>43</sup> DST at Article 1(1).

<sup>44</sup> DST at Article 2(1)(d).

market for failure to make “full, timely and proper” DST payments.<sup>45</sup> According to the Communique, the blocking process is as follows:

- (1) the Large Taxpayers Tax Authority issues a warning to the digital services company, and asks the company to fulfill its outstanding obligations within 30 days;
- (2) if the outstanding payments are not made, the Ministry of Treasury and Finance may decide to block access to the Turkish market until the company fulfills its obligations; and
- (3) if the decision is made to block access, the Information Technologies and Communication Authority receives notification, and carries out the blocking order within 24 hours.<sup>46</sup>

USTR’s analysis indicates that Turkey is the only country to have implemented a DST with this penalty—complete exclusion from a national market—anywhere in the world.

#### **IV. USTR’S FINDINGS REGARDING TURKEY’S DST**

This section sets out USTR’s findings on the question of actionability, *i.e.*, whether Turkey’s DST is unreasonable or discriminatory and burdens or restricts U.S. commerce. As explained below, our investigation would support a finding that: the DST discriminates against U.S. companies (Section A); the DST is inconsistent with international tax principles and therefore unreasonable (Section B); and the DST burdens and restricts U.S. commerce (Section C). It follows that our investigation would support a positive actionability finding under Section 301.

##### **A. TURKEY’S DST DISCRIMINATES AGAINST U.S. DIGITAL SERVICES COMPANIES**

Our investigation indicates that the DST is intended to, and by its structure and operation does, discriminate against U.S. digital companies. This occurs in two principal ways. First, the DST’s revenue thresholds function to target U.S. companies, while exempting all Turkish digital services companies from the tax (Section 1). Second, by targeting only digital services, but not the same or similar service provide non-digitally, the DST disproportionately impacts U.S. firms, which are market leaders in the digital services sector (Section 2).

##### **1. The DST is discriminatory because its revenue thresholds target U.S. companies while excluding Turkish companies**

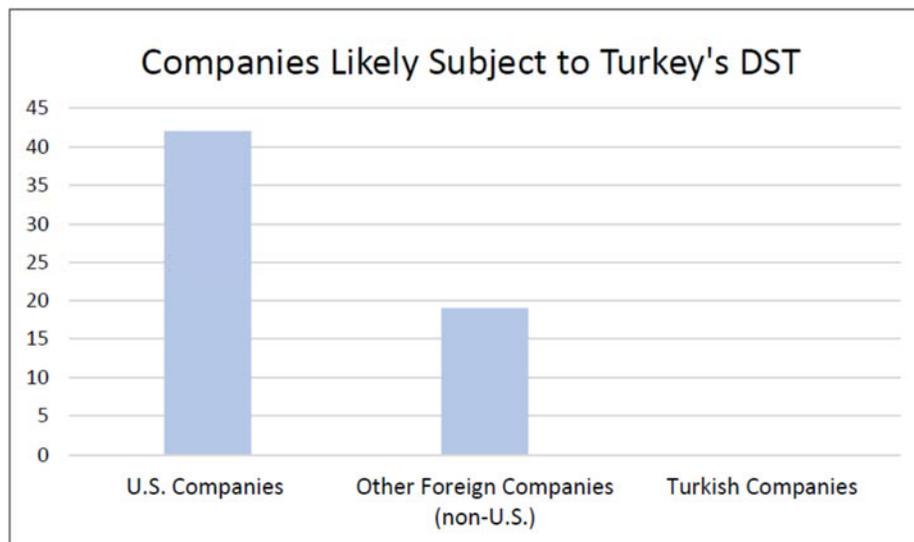
As noted above, the DST includes revenue thresholds whereby a company only pays the tax if, in the previous year, that company generated at least: (1) €750 million in global revenues from covered digital services; and (2) TRY 20 million (about €2 million) in in-country revenues

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<sup>45</sup> Communique at Section G.

<sup>46</sup> Communique at Section G.

from covered digital services.<sup>47</sup> The in-country revenue threshold of TRY 20 million is quite low, which brings more foreign companies into scope, while the high global revenue threshold of €750 million excludes Turkish companies. USTR’s analysis indicates that 61 companies likely meet the DST’s revenue thresholds. As illustrated in the graph below, 42 of those 61 firms (69%) are U.S. companies. None of the 61 companies is a Turkish firm.<sup>48</sup>



This graph highlights three critical points: (1) the revenue thresholds appear to exempt every single Turkish digital services provider from the DST; (2) the revenue thresholds force foreign companies to bear the entire tax burden under the DST; and (3) the revenue thresholds focus the DST’s tax burden on U.S. companies, which comprise 69% of the list of likely taxable service providers.

With respect to the complete exemption of Turkish companies, the legislative history of the DST indicates that this was done by design. During a Planning and Budget Commission Meeting in October 2019, Member of the Turkish Parliament Salih Cora clarified that by including the revenue thresholds, “it is intended that domestic companies are not exposed to such tax.”<sup>49</sup> The following month, during a meeting of the Turkish General Assembly, Member of Parliament Mustafa Kalayci stated that with respect to the DST, “it is said that approximately 20 companies which are all non-resident will fall within the scope.”<sup>50</sup>

<sup>47</sup> DST at Article 4(1).

<sup>48</sup> An October 2019 analysis that appeared in *MNE TAX* likewise concluded that “... no company headquartered in Turkey will be within the scope of the new digital services tax. Accordingly, only large foreign multinationals providing digital services will be subject to digital services tax.” R. Bicer, “Turkey proposes 7.5 percent digital services tax on large multinationals,” *MNE TAX*, October 28, 2019, available at: <https://mnetax.com/turkey-proposes-7-5-percent-digital-services-tax-on-large-multinationals-36377>.

<sup>49</sup> Statement by Member of Parliament Salih Cora, Plan and Budget Commission Meeting, October 31, 2019.

<sup>50</sup> Statement by Member of Parliament Mustafa Kalayci, General Assembly Meeting, November 13, 2019 (emphasis added).

The DST also allows the President to change the revenue thresholds at his or her discretion, and on a segment-by-segment basis. During USTR’s investigation, stakeholders expressed concern that the Turkish President could use this authority to shield specific Turkish companies from the DST if they grew large enough to meet the existing revenue thresholds.

Numerous stakeholders submitted public comments regarding the discriminatory nature of the revenue thresholds, noting that:

- “[T]he Turkish DST revenue thresholds are discriminatory in their intent and effect, as they are designed to capture large global digital services providers while excluding smaller local competitors, even if such competitors have a substantial local market presence.”<sup>51</sup>
- “As far as we are aware, no company headquartered in Turkey will fall within the scope of the Turkish DST.”<sup>52</sup>
- “[The DST is] designed to target a specific subset of U.S.-headquartered companies, and [is] discriminatory at [its] core”<sup>53</sup>
- “The exclusion of nearly all domestic companies appears to be the result of conscious efforts by [Turkey] to ... limit the impact of the taxes on domestic companies. ... There is no non-nationality-based explanation for this approach, as these untaxed domestic companies may be identical in nearly all respects to their taxed foreign companies in terms of their domestic footprint (*e.g.*, numbers of customers, amount of revenue).”<sup>54</sup>

In light of the above, our investigation would support a finding that the DST’s revenue thresholds discriminate against U.S. companies.

## **2. The DST is discriminatory because it targets digital services, but not similar services provided non-digitally**

The DST discriminatorily targets a select group of digital service providers (most of which are U.S. companies), but does not tax companies on revenue from the same or very similar services provided in non-digital format. For instance, the DST covers digital advertising, but not print ads, billboards, etc., even though digital advertising and more traditional forms of advertising have core features in common. Digital advertising and traditional advertising share

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<sup>51</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 67. *See also* Public Comment submitted by the Interactive Advertising Bureau, July 15, 2020, at 3 (stating that revenue thresholds: “protect[] domestic companies from application of the tax and instead targets multi-nationals and particularly U.S. multi-nationals.”) Public Comment submitted by the United States Council for International Business, July 15, 2020, at 3.

<sup>52</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 68.

<sup>53</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 9.

<sup>54</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 13.

the same purpose—to persuade consumers—and the key actors (advertiser, publisher, and advertising professionals) are the same. In addition, like digital advertisers, traditional advertisers often use data on individual consumers to place ads in specific publications or television programs,<sup>55</sup> and to monitor the effectiveness of their advertising.<sup>56</sup>

The discriminatory nature of the DST’s focus on digital services is perhaps clearest when considering companies that provide content digitally. Under the DST, if a company were to sell a movie to a Turkish consumer, and deliver that content digitally, the proceeds of that sale would be taxable. If a second company were to sell that very same movie to the same Turkish consumer, but deliver that content on a DVD, that sale would not be taxable. This differential treatment of like transactions is a textbook example of discrimination.

The OECD has several times cautioned against this discriminatory ‘ring-fencing’ approach, whereby digital companies are taxed, but non-digital companies that provide the same or similar services are excluded. For instance, in March 2019, the OECD issued a document pursuant to the Inclusive Framework on BEPS where it agreed that “it would be difficult, if not impossible, to ‘ring-fence’ the digital economy from the rest of the economy for tax purposes because of the increasingly pervasive nature of digitalization.”<sup>57</sup> Consequently, it recommended changes to international tax rules that do not distinguish between digital and non-digital activities.<sup>58</sup> A subsequent OECD document also recognized “that it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes” and therefore focused on a “systematic solution” applicable to all business models.<sup>59</sup>

Other entities have agreed that it is not possible or advisable to ‘ring-fence’ the digital economy. The International Chamber of Commerce endorsed the OECD’s statement that it would be “impossible” to “ring-fence the digital economy.”<sup>60</sup> The U.S. position—as expressed in international fora—is that any changes to the international tax system should apply across

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<sup>55</sup> See Nielsen, *Advertising & Audiences: State of the Media*, May 2014, at 11, available at: <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/advertising-and-audiences-report-may202014.pdf>.

<sup>56</sup> See Nielsen, *Maximize Your TV Advertising Effectiveness*, at 5-7, May 2016, available at: <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/tvbe-branding-best-practices-may-2016.pdf>.

<sup>57</sup> OECD, *Public Consultation Document: Addressing the Tax Challenges of the Digitalisation of the Economy*, at 5, Feb. 13, 2019, available at: <https://www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf>.

<sup>58</sup> OECD, *Public Consultation Document: Addressing the Tax Challenges of the Digitalisation of the Economy*, at 24-25, Feb. 13, 2019, available at: <https://www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf>.

<sup>59</sup> OECD, *Programme of Work to Develop and Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, at 26, May 2019, available at: <https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf>.

<sup>60</sup> International Chamber of Commerce (ICC), “Digital Tax Rules Should Be Global and Long-Term in Scope,” *iccwbo.org*, Mar. 22, 2018, available at: <https://iccwbo.org/media-wall/news-speeches/icc-digital-tax-rules-global-long-term-scope/>.

business models and not attempt to ‘ring-fence’ the digital economy.<sup>61</sup> An expert group of the European Commission agreed, acknowledging that “there should not be a special tax regime for digital companies. Rather the general rules should be applied or adapted so that ‘digital’ companies are treated the same way as others.”<sup>62</sup>

In sum, an international consensus exists that policies that target digital services, while exempting non-digital services, are not appropriate. The DST ignores this consensus by discriminatorily taxing digital services companies, but not taxing non-digital companies that provide the same or similar services. Because U.S. companies are leaders in the digital services sector—in Turkey and around the world—U.S. companies bear the brunt of this discriminatory treatment.

### **3. Conclusion**

As explained above, our investigation suggests that Turkey’s DST discriminates against U.S. companies. That discrimination takes two main forms: (1) using revenue thresholds to target only large digital services firms—the majority of which are U.S. companies—while exempting Turkish companies; and (2) taxing digital services, but not taxing the same or similar services provided non-digitally, which results in U.S. firms facing the highest tax burden.

#### **B. TURKEY’S DST IS UNREASONABLE, BECAUSE IT IS INCONSISTENT WITH INTERNATIONAL TAX PRINCIPLES**

In addition to discrimination, Section 301 also allows the USTR to act in relation to certain measures that are “unreasonable.” The statute defines an “unreasonable” measure as one that “while not necessarily in violation of, or inconsistent with, the international legal rights of the United States is otherwise unfair and inequitable.”<sup>63</sup> Tax measures that fail to comport with established principles of international taxation may be considered “unfair and inequitable,” and thus, unreasonable under Section 301. In the section below, we explain that USTR’s analysis suggests that three aspects of Turkey’s DST are inconsistent with international tax principles, and thus, unreasonable under Section 301: the DST’s extraterritorial application (Section 1); the DST’s application to revenue rather than income (Section 2); and the DST’s inherent uncertainties (Section 3).

#### **1. The DST’s extraterritorial reach contravenes international tax principles**

Our investigation indicates that the DST’s extraterritorial application—*i.e.*, its targeting of revenues unconnected to a physical presence in Turkey—contravenes prevailing international tax principles. As described in section III(C) above, the DST applies to digital services “offered in Turkey,” which the DST defines to include: (1) providing the service in Turkey; (2) making

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<sup>61</sup> See Isabel Gottlieb, “Don’t ‘Ring-Fence’ Digital Economy: Treasury Official,” *Bloomberg.Law*, Mar. 27, 2018, <https://news.bloomberglaw.com/tech-and-telecom-law/dont-ring-fence-digital-economy-treasury-official>.

<sup>62</sup> EC Expert Group on Taxation of the Digital Economy, *Report*, at 5, May 28, 2014, available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/gen\\_info/good\\_governance\\_matters/digital/report\\_digital\\_economy.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/good_governance_matters/digital/report_digital_economy.pdf).

<sup>63</sup> 19 U.S.C. § 2411(d)(3)(A).

use of the service in Turkey; (3) performing the service for people in Turkey; and (4) utilization of the service in Turkey.”<sup>64</sup> However, no physical presence in Turkey is required for the DST to apply. By defining taxable digital services in this way, the DST targets revenues of companies without a physical presence in Turkey; and for companies that do have a physical presence in Turkey, the DST targets revenues unconnected to that physical presence. Our investigation indicates that this taxation of revenues unconnected to companies’ presence in Turkey is inconsistent with principles of international tax policy.

The international tax system reflects the principle that companies are not subject to a country’s corporate tax regime in the absence of a territorial nexus to that country. This is reflected in international tax treaties, which typically establish that a company need not pay a country’s corporate income tax unless it has a “permanent establishment” in that country. For instance:

- The OECD model tax treaty provides that the profits of an enterprise “shall be taxable” only in the country of which the enterprise is a national “unless the enterprise carries on business in [another country] through a permanent establishment situated therein.”<sup>65</sup>
- The UN Model Treaty similarly provides that the profits of an enterprise are taxable in a country only if “the enterprise carries on business in [that country] through a permanent establishment situated therein.”<sup>66</sup>
- The U.S. Model Tax Treaty and the U.S.-Turkey Tax Treaty both contain similar provisions barring taxation absent a permanent establishment.<sup>67</sup>

Each of these treaties defines “permanent establishment” as “a fixed place of business through which the business of an enterprise is wholly or partly carried on.”<sup>68</sup> All also provide that the term includes a place of management, branch, office, factory, workshop, and “place of extraction of natural resources.”<sup>69</sup> A “permanent establishment” does not include, *inter alia*, the maintenance of a fixed place of business solely for the purpose of “purchasing goods or merchandise or of collecting information for the enterprise” or of “carrying on, for the enterprise, any other activity” “provided that . . . the overall activity of the fixed place of business, is of a

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<sup>64</sup> DST at Article 2(1)(d).

<sup>65</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 7(1).

<sup>66</sup> UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 7(1).

<sup>67</sup> *United States Model Income Tax Convention*, art. 7 (“Profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.”); U.S.-Turkey Tax Treaty, art. 7 (same).

<sup>68</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 5(1); UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 5(1); *United States Model Income Tax Convention*, art. 5(1); U.S.-Turkey Tax Treaty, art. 5(1).

<sup>69</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 5(2); UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 5(2); *United States Model Income Tax Convention*, art. 5(2); U.S.-Turkey Tax Treaty, art. 5(2).

preparatory or auxiliary character.”<sup>70</sup> Other sources confirm that this is the general rule in international tax policy.<sup>71</sup>

The international tax system also reflects the principle that if a foreign company has a permanent establishment in a country, it is subject to that country’s tax regime only on “the profits that are attributable to the permanent establishment” in that country.<sup>72</sup> The profits attributable to the permanent establishment “are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions.”<sup>73</sup> The U.S. Model Tax Treaty and the U.S.-Turkey Tax Treaty both contain substantially the same provisions.<sup>74</sup> The UN Model Treaty reflects the same approach, providing that a country may only tax profit attributable to the permanent establishment in that country or to other business activities (including sales of goods) carried out in the country that are of “the same or similar kind” as those carried out by the permanent establishment.<sup>75</sup>

In sum, pursuant to prevailing international tax principles: (1) a company is only subject to a country’s corporate tax if it maintains a permanent establishment in that country; and (2) if such a permanent establish exists, then a company is only subject to tax on its revenues attributable to that permanent establishment. Our investigation indicates that the DST contravenes both principles.

First, the DST’s applicability is not limited to companies with a permanent establishment in Turkey. Instead, the tax applies to revenue from digital services “offered in Turkey,” whether or not the company offering those services maintains a Turkish permanent establishment.<sup>76</sup> Thus, for example, in the case of digital advertising, the location of individuals viewing the advertisement—rather than the location of the company providing the advertising service—determines whether the DST applies. This is inconsistent with international tax principles.

Second, for companies with a physical presence in Turkey, the revenues to which the DST applies are not limited to those attributable to a permanent establishment. While a company’s Turkish office may meet the definition of permanent establishment, it may only provide a subset of the services that its parent company provides in Turkey. Under existing international tax principles, this would mean that Turkey could tax only the profit that the Turkish office might be expected to make if it were an independent company—not all of the

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<sup>70</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 5(4); UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 5(4); *United States Model Income Tax Convention*, art. 5(4); U.S.-Turkey Tax Treaty, art. 5(3).

<sup>71</sup> See, e.g., OECD, *Inclusive Framework on Base Erosion and Profit Sharing, Action 7: Permanent establishment status*, <https://www.oecd.org/tax/beps/beps-actions/action7/>.

<sup>72</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 7(1).

<sup>73</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 7(2).

<sup>74</sup> *United States Model Income Tax Convention*, art. 7(1)-(2); U.S.-Turkey Tax Treaty, art. 7(1)-(2).

<sup>75</sup> UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 7(1)-(3).

<sup>76</sup> DST at Article 1(1).

revenue that the parent company generates from providing services in Turkey.<sup>77</sup> The DST does not make this distinction. Instead, the DST applies to all revenues from all covered services provided in Turkey, regardless of whether a company’s Turkish office supplies those services. This too is inconsistent with international tax principles.

Public comments received in this investigation stated similarly. For instance, one commenter stated that the: “Turkish DST’s extraterritoriality is inconsistent with international tax principles and unusually burdensome for U.S. affected companies . . . .”<sup>78</sup>

In sum, our investigation suggests that the DST’s application to revenues not connected to a company’s physical presence in Turkey contravenes international tax principles.

## **2. The DST’s application to revenue rather than income contravenes international tax principles**

As described in section III(A), the DST applies to gross revenues generated from covered digital services.<sup>79</sup> Thus, it differs from a tax on income (also called net profit), which taxes a company’s gross revenues minus its business expenses.<sup>80</sup> Our investigation indicates that the DST’s application to revenue rather than income is inconsistent with prevailing principles of international taxation, which recognize income—not gross revenue—as an appropriate basis for taxation.

A variety of international tax treaties reflect the principle that corporate income, and not corporate gross revenue, is a proper basis for taxation. For instance, the OECD Model Treaty provides for the taxation of “business profits” and other types of income streams (dividends, interest, royalties, capital gains, et al.), but makes no provision for taxes on gross revenues.<sup>81</sup> The UN Model Treaty likewise has disciplines on taxing business profits and numerous other types of income, but has no such disciplines for taxes on gross revenues.<sup>82</sup> Moreover, the U.S. Model Tax Treaty, and scores of bilateral tax treaties—including the U.S.- Turkey Tax Treaty—make no reference to taxes on gross revenues.<sup>83</sup> Thus, the system of international tax treaties

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<sup>77</sup> See OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 7(1)-(2); *United States Model Income Tax Convention*, art. 7(1)-(2); U.S.-India Tax Treaty, art. 7(1)-(2); UN, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 7(1)-(3).

<sup>78</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 69.

<sup>79</sup> DST at Article 1(1).

<sup>80</sup> See, e.g. United Nations, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 7, 2017.

<sup>81</sup> OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, art. 7, December 18, 2017 (on business profits); see *id.* arts. 6, 8-21.

<sup>82</sup> United Nations, *Model Double Taxation Convention Between Developed and Developing Countries*, art. 7, 2017 (setting out disciplines on taxes of business profits); *id.* arts. 6, 8-21 (covering other types of income).

<sup>83</sup> See *United States Model Income Tax Convention*, art. 2, 2016 (setting out disciplines on “total income, or on elements of income”); *id.* art. 7 (establishing disciplines on taxes of “business profits”); U.S.-Turkey Tax Treaty, arts. 2, 7.

reflects the international principle that income, not revenue, is the appropriate basis for corporate taxation.

Other sources confirm that the taxation of corporate income comports with international tax principles, but that the taxation of gross revenue does not. For example, Chapter 2 of the OECD publication *Addressing the Tax Challenges of the Digital Economy*, which is entitled “Fundamental Principles of Taxation,” lists two bases for corporate taxation—income and consumption.<sup>84</sup> Taxation of gross revenue is not recognized. In practice, taxes on revenue are rare. One tax policy organization noted that “there are few recent empirical studies on gross [revenue] taxes because of their near-universal abandonment in developed countries.”<sup>85</sup>

Comments submitted during this investigation further demonstrated that the DST’s application to revenue rather than income is inconsistent with prevailing principles of international taxation. One commenter noted that: “the Turkish DST’s application to gross revenue rather than net income is inconsistent with international tax principles and unusually burdensome for U.S. affected companies.”<sup>86</sup> Another commenter observed that digital services taxes: “abandon the long-held standard of taxing profits by taxing revenues of the targeted technology companies. This contravenes the principle that companies should only be taxed on their actual gains from doing business, and leaves open the possibility to being taxed on a loss.”<sup>87</sup>

In sum, our investigation suggests that the DST’s application to revenue rather than income is inconsistent with principles of international taxation.

### **3. The DST’s inherent uncertainties contravene international tax principles**

Turkey’s DST fails to provide companies with tax certainty, and in doing so, contravenes a core principle of international taxation. As early as 2003, the OECD recognized “certainty” as a “broad taxation principle[] that should apply to e-commerce.”<sup>88</sup> As OECD members, both Turkey and United States agreed to that characterization, as well as the more recent 2014 OECD proclamation that “certainty” is one of the “fundamental principles of taxation.”<sup>89</sup> Turkey’s DST provides no such certainty. To the contrary, the DST creates uncertainty with respect to the most

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<sup>84</sup> OECD, *Addressing the Tax Challenges of the Digital Economy*, ch. 2: “Fundamental Principles of Taxation,” at 32-47 (2014). There are, of course, other appropriate bases for taxation besides income. Consumption is one generally accepted basis for taxation. Value-added taxes and sales taxes are examples of consumption taxes. However, the Indian DST is not structured as a tax on consumption.

<sup>85</sup> See Justin Roxx, “Gross Receipts Taxes: Theory and Recent Evidence,” *Tax Foundation*, available at: <https://taxfoundation.org/gross-receipts-taxes-theory-and-recent-evidence/>.

<sup>86</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 69.

<sup>87</sup> Public comment submitted by Americans for Tax Reform, July 11, 2020, at 2.

<sup>88</sup> See also OECD, *Ottawa Taxation Framework* (2003), at 11-12, available at: <https://www.oecd.org/tax/administration/20499630.pdf>.

<sup>89</sup> OECD, *Addressing the Tax Challenges of the Digital Economy* (2014), at 30, available at: <https://www.oecd-ilibrary.org/docserver/9789264218789-en.pdf?expires=1604330305&id=id&accname=guest&checksum=F2B6640E7909DBC57E97C18E168AF641>.

fundamental aspects of the tax, *i.e.*, whether companies will have to pay the tax, and how much tax those companies might have to pay.

Regarding whether companies will be subject to the DST, as explained in Section III(B) above, this turns largely on whether a company meets the DST's revenue thresholds. However, the Turkish President has the authority to change those revenue thresholds dramatically.<sup>90</sup> Any such change could alter the universe of companies subject to the tax, leaving digital services providers uncertain as to whether they will need to pay the tax in the future. The DST does not define the scope of the President's authority to change these requirements, nor does it list factors that the President must consider in making such a determination, nor does it mandate a notice period for companies to comply with such changes. The Turkish Government has issued no subsequent guidance on any of these points. That being so, companies are left to wonder when and if the President might change the revenue thresholds create tax liabilities for a new group of companies, what factors might prompt the President to make such changes, and how much time companies would have to comply.

Regarding how much tax companies might have to pay under the DST, as explained in Section III(A) above, the Turkish President can set the DST rate at anywhere between 1% and 15%.<sup>91</sup> The President's authority in this regard leaves companies uncertain of what their potential tax liability might be. Here again, the DST does not define the scope of the President's authority to change the DST rate, nor does it list factors that the President must consider in making such a change, nor does it mandate a notice period for implementing such changes. Once again, companies lack certainty regarding a foundational aspect of the DST. Indeed, one commenter noted that the President's "unilateral prerogative" to "double the already hefty 7.5% tax ... is both burdensome and highly atypical in international tax practice."<sup>92</sup>

In short, Turkey's DST leaves digital services companies uncertain with respect to the most fundamental aspects of the tax: who must pay, and how much. This uncertainty does not comport with the OECD's guidance that countries must ensure that "taxpayers know where they stand."<sup>93</sup> For these reasons, our investigation suggests that the DST contravenes the international principle of tax certainty, and is therefore unreasonable.

#### **4. Conclusion**

As explained above, our investigation indicates that the DST's extraterritorial application, application to revenue rather than income, and inherent uncertainties are all inconsistent with international tax principles. It follows that these same aspects of Turkey's DST are unreasonable under Section 301.

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<sup>90</sup> DST at Article 4(4) (stipulating that the President has authority "to change the [revenue thresholds] to zero or to triple, individually or together, according to the types of services subject to the tax.").

<sup>91</sup> DST at Article 5(5).

<sup>92</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 16.

<sup>93</sup> OECD, *Addressing the Tax Challenges of the Digital Economy*, at 30 (2014).

## **C. TURKEY’S DST BURDENS OR RESTRICTS U.S. COMMERCE**

USTR’s investigation also addressed the question of whether Turkey’s DST burdens or restricts U.S. commerce. Our investigation suggests that it does. More specifically, the DST burdens U.S. commerce by, *inter alia*: (i) obligating U.S. companies to pay hundreds of millions of dollars in new taxes; (ii) subjecting U.S. companies to an exorbitant DST tax rate; (iii) forcing U.S. companies to undertake costly compliance measures; (iv) subjecting U.S. companies to double, and potentially triple, taxation; and (v) potentially exposing U.S. companies to severe penalties for non-payment or underpayment.

### **1. U.S. companies face a large tax burden under the DST**

Our investigation indicates that the DST burdens or restricts U.S. commerce by subjecting U.S. companies to significant tax burdens. USTR’s analysis indicates that U.S. companies, in the aggregate, may face tax payments in excess of US\$100 million per year under the DST.

Several of the aspects of the DST discussed in this report exacerbate the financial burden on U.S. companies. First, at a basic level, the DST creates this tax burden by discriminatorily targeting U.S. digital services companies. Second, a key reason the tax burden is so substantial is that the DST applies to revenue that is not tied to a permanent establishment in Turkey. Had Turkey abided by the principle of extraterritoriality, and only taxed revenue tied to companies’ permanent establishments in Turkey, the burden on U.S. companies would have been far less (and in most cases non-existent).

Additionally, Turkey’s decision to disregard international tax principles by taxing revenue rather than profit exacerbates the burden on U.S. companies further still. This is most apparent in the case of low margin businesses. For example, if Company A generates US\$100 million in revenue in Turkey, it must pay US\$7.5 million under the DST—a 7.5% tax rate on Company A’s revenue. But if we assume that Company A incurred US\$90 million in costs, and thus received just US\$10 million in profit, it would still pay US\$7.5 million under the DST—a 75% tax rate on Company A’s profits. This issue is particularly salient given that many digital companies—including many U.S. companies expected to be subject to DST—are low- or zero-margin businesses.<sup>94</sup>

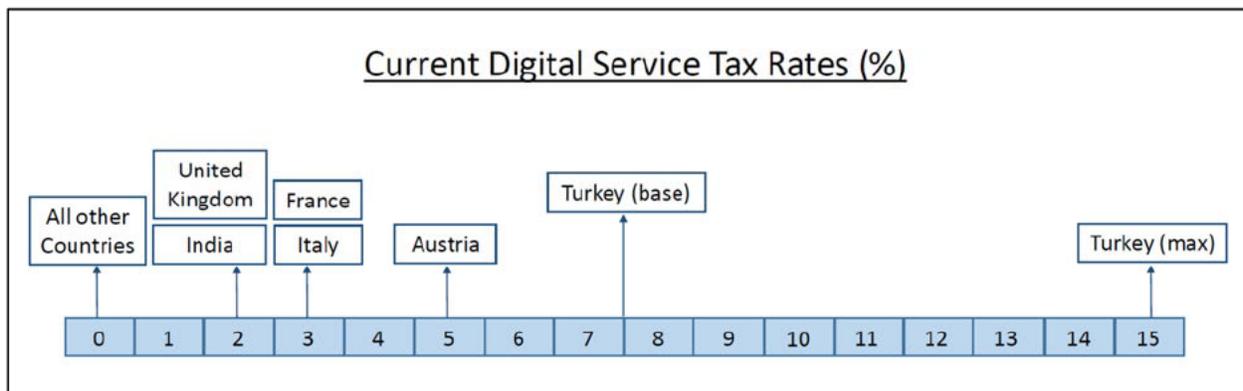
### **2. U.S. companies face an exorbitant tax rate under the DST**

As explained in section III(A) above, Turkey’s base DST rate of 7.5% currently is the highest in the world by a substantial margin. Furthermore, the maximum allowable DST rate of 15% (which the Turkish President can institute at his discretion) is even more excessive. Indeed, among the handful of countries that have adopted digital services taxes, the high rate of Turkey’s

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<sup>94</sup> See, e.g., Sara Ashley O’Brien, “Uber Says It Lost \$1.8 Billion in 2018,” *CNN*, Feb. 15, 2019, available at: <https://www.cnn.com/2019/02/15/tech/uber-2018-financial-report/index.html>; “Amazon’s Product Sales Climb Nearly 20% in 2018, but only 8% in Q4,” *Digital Commerce 360*, Jan. 31, 2019, available at: <https://www.digitalcommerce360.com/2019/01/31/amazons-q4-sales/> (showing that Amazon’s profit margin in 2018 was 5.7% and that its international operations “continue to lose money”).

DST is an outlier. For the purpose of comparison, the United Kingdom and India adopted 2% DST rates; France and Italy believed 3% was appropriate. The chart below illustrates the wide gap between Turkey’s DST rate and the rates that other countries have adopted:



As this chart demonstrates, had Turkey adopted a DST rate commensurate with other countries, the burden on U.S. companies would have been substantially less.

The public comments received in this investigation highlighted the excessive, burdensome nature of the DST’s high tax rate. For instance, the Silicon Valley Tax Directors’ Group noted that: “[t]he DST rate of 7.5% does not align with other European DSTs (e.g. UK 2%, France 3%). The DST rate of 7.5% is extremely high for a gross based tax in general and a DST in particular.”<sup>95</sup>

### 3. U.S. companies face considerable compliance costs in connection with the DST

U.S. companies also face significant costs to comply with the DST’s payment and reporting requirements. As one commenter explained, DSTs create “substantial administrative burdens in terms of compliance costs and greater uncertainty. Companies will need to engage in significant re-engineering of their internal business and financial reporting systems to ensure that they can accurately capture required information and comply with the DSTs.”<sup>96</sup> One reason this sort of “reengineering” is necessary, is because Turkey’s DST only applies to revenue from services “offered in Turkey.”<sup>97</sup> This requires companies to revamp their systems to capture and track the information needed to determine whether specific instances of service provision meet the definition of “offered in Turkey” under the DST. Companies were not previously required to categorize their work in this way. In addition to these direct “re-engineering” costs, companies also incur substantial opportunity costs whenever they divert valuable (and often scarce) engineering resources away from their core products.

<sup>95</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 67.

<sup>96</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 17.

<sup>97</sup> DST at Article 1(1).

The DST's inherent uncertainties will exacerbate U.S. companies' compliance challenges. As explained in Section IV(B)(2) above, the Turkish President has the unilateral authority to: (i) dramatically change the tax rate; and (ii) alter the universe of companies subject to the tax by changing the DST's revenue thresholds. This complicates companies' compliance challenges, because companies have no certainty regarding whether they will have to pay the DST, and if so, what their tax liability might be. To address these unknowns, companies may choose to set aside funds to cover future tax liabilities that may or may not materialize. This represents another opportunity cost imposed on U.S. digital companies. All told, commenters estimate that compliance costs for Turkey's DST will be "in the millions,"<sup>98</sup> and note that "[t]he administrative burden associated with compliance is significant, even if firms can pay the tax."<sup>99</sup>

#### **4. U.S. companies face double, and potentially triple, taxation under the DST**

The DST also burdens U.S. companies by subjecting them to double, and possibly triple, taxation. U.S. companies that pay the DST in Turkey will still be subject to U.S. corporate income tax, creating two layers of taxation. Take, for example, hypothetical Company A discussed above. To recall, Company A earned US\$100 million from services "offered in Turkey", and incurred US\$90 million in Turkey-related costs. Company A must pay US\$7.5 million (7.5% of Turkish revenue) to Turkey pursuant to the DST, leaving it with just US\$2.5 million in remaining profit. Company A must then also pay U.S. corporate income tax on its remaining US\$2.5 million. Avoiding double taxation of this sort is the focus of prominent model tax treaties as well as the U.S.-Turkey Tax Treaty.<sup>100</sup> Public comments received in the investigation highlighted the "risks of multiple taxation intrinsic to an extraterritorial tax on revenue,"<sup>101</sup> and explained that "DSTs cause companies to be taxed twice, hindering innovation and economic growth."<sup>102</sup>

Double taxation is not the end of the story, however. The DST's structure could lead to, in some circumstances, triple taxation. This is due chiefly to the DST's lack of an exemption for intragroup transactions. Under the DST, if hypothetical Company B, a U.S. digital content provider, sells its content in Turkey through its Turkish subsidiary, then the following taxes could apply: (1) Company B would pay the DST on revenues from its "sale" of its digital content to its own Turkish subsidiary; (2) Company B's Turkish subsidiary would pay the DST on the revenues from its sale of that same content to Turkish consumers; and (3) Company B would pay U.S. corporate income tax on whatever pass-through profit it receives from its Turkish subsidiary in connection with that same sale. This amounts to triple taxation. Multiple commenters highlighted this issue, noting that the DST will result "in multiple taxation at the

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<sup>98</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 17.

<sup>99</sup> Public comment submitted by the Computer & Communications Industry Association, July 14, 2020, at 14.

<sup>100</sup> See, e.g., OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, preamble, December 18, 2017; United Nations, *Model Double Taxation Convention Between Developed and Developing Countries*, preamble, 2017; *United States Model Income Tax Convention*, preamble, 2016; U.S.-Turkey Tax Treaty, preamble.

<sup>101</sup> Public comment submitted by the Information Technology Industry Council, July 15, 2020, at 17.

<sup>102</sup> Public comment submitted by CompTIA, July 15, 2020, at 2.

different levels of distribution,”<sup>103</sup> and create situations where “the same tax base will be taxed several times.”<sup>104</sup> In sum, the DST’s creation of multiple, overlapping layers of taxation further burdens U.S. digital services companies operating in Turkey.

## **5. U.S. companies may face severe penalties for non-compliance with the DST**

Like all or most tax laws, Turkey’s DST provides for penalties in cases of non-payment or underpayment. However, one penalty under Turkey’s DST is unusually burdensome: as explained in Section III(D), the DST permits the Turkish government to block digital companies’ access to the Turkish market if they fail to make “full, timely and proper” DST payments.<sup>105</sup> This harsh penalty—complete exclusion from the Turkish market—is unique among implemented DSTs,<sup>106</sup> and could prove particularly burdensome to U.S. companies. Indeed, in public comments, one trade group identified Turkey’s inclusion of this “blocking” penalty as the “most troublesome” aspect of the DST.<sup>107</sup>

## **6. Conclusion**

As explained above, our investigation would support a finding that the DST burdens or restricts U.S. commerce by negatively impacting U.S. companies’ operations in Turkey. More specifically, our investigation suggests that the DST creates a significant new tax burden for U.S. companies, subjects U.S. companies to an exorbitant DST tax rate, forces U.S. companies to undertake costly compliance measures, subjects U.S. companies to multiple layers of taxation, and potentially exposes U.S. companies to unusually harsh penalties for non-compliance.

## **V. CONCLUSIONS REGARDING USTR’S INVESTIGATION OF TURKEY’S DST**

USTR’s investigation indicates that:

1. The Turkish DST is discriminatory against U.S. companies;
2. The Turkish DST contravenes prevailing international tax principles, and is therefore unreasonable; and
3. The Turkish DST burdens or restricts U.S. commerce.

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<sup>103</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 67.

<sup>104</sup> Public comment submitted by the Computer & Communications Industry Association, July 14, 2020, at 14.

<sup>105</sup> Communique at Section G.

<sup>106</sup> We note, however, that Indonesia’s digital services tax (which is not yet in-force) includes a similar provision, as does Kenya’s proposed digital services tax regulation. *See* Government Regulation in Lieu of Law, Perppu No. 1/2020 (Indonesia) (passed into law May 16, 2020 as Law No. 2 Year 2020), Article 7 (3)-(7) (cross-referencing Article 6(10), providing for the Electronic Transaction Tax); Kenya’s Draft Income Tax (Digital Service Tax) Regulations, 2020, Section 6 (August 7, 2020 draft).

<sup>107</sup> Public comment submitted by the Silicon Valley Tax Directors’ Group, July 15, 2020, at 67, 70.

It follows that USTR's investigation would support a finding that Turkey's DST is actionable under Section 301.

**ANNEX 1: TURKEY'S LAW REGARDING DIGITAL SERVICE TAX (ENGLISH TRANSLATION)**

## LAW

**LAW REGARDING DIGITAL SERVICE TAX AND THE AMENDMENT OF VARIOUS LAWS AND STATUTORY DECREE NUMBER 375  
(Provisional Translation)**

Law No. 7194

Date of Enactment: 12/5/2019

**PART ONE****Subject of the Tax, Definitions, Taxpayer and Person with Tax Responsibility, Exemption and Exceptions****Subject of the Tax**

**ARTICLE 1** – (1) The revenue obtained from the following services offered in Turkey are subject to digital service tax:

- a) All kinds of advertising services offered in digital environment (including advertisement control and performance measurement services, data transmission and management related to users, and technical services related to the delivery of advertising)
- b) Audible, visual or any digital content (including computer programs, applications, music, video, games, in-game applications and the like) for sale on digital environment and services provided on digital environment for listening, watching, playing or recording of such content on electronic devices or for use on such devices
- c) Services for the provision and operation of digital environments where users can interact with each other (including services provided to sell or to facilitate the sale of a product or service between users)

(2) The revenue from the intermediary services provided by digital service providers in the digital environment for the services mentioned in the first paragraph are also subject to the digital service tax.

**Definitions**

**ARTICLE 2** – (1) For the implementation of this law, the following terms are defined;

- a) Digital environment: Any environment in which online activity is carried out without physical encounter,
- b) Digital service providers: The providers of services listed in Article 1,
- c) Acquisition of revenue: It is the certainty of the revenue in terms of its nature and amount,
- d) Providing the service in Turkey: Providing the service in Turkey, making use of the service in Turkey, performing the service for people in Turkey, or evaluating the service in Turkey (the purpose of the evaluation is to pay the service in Turkey or, if the payment is made abroad, to transfer the payment to the accounts of the payer or on behalf of the payer or its reservation from its profit. On the other hand, the service is not considered to be evaluated in Turkey if the advertising service offered in digital environment is performed for people who are not in Turkey.),
- e) Consolidated group in terms of financial accounting: Refers to all enterprises in the consolidated financial statements in accordance with International Financial Reporting Standards or Turkish Financial Reporting Standards.

### **Taxpayer and Person with Tax Responsibility**

**ARTICLE 3** – (1) The payer of the digital service tax is the digital service provider. If they are fully accountable pursuant to the Income Tax Law No. 193 dated 12/31/1960 and Corporate Tax Law No. 5520 dated 6/13/2006 and whether they carry out their activities through their work places or permanent representatives in Turkey in the limited liability to tax do not affect the tax liability for digital service.

(2) The Ministry of Treasury and Finance may hold those who are parties to the taxable transactions and those who mediate the processing and payment in order to secure the payable tax in case of the absence of the taxpayer's residence, work place, legal and business centers in Turkey, responsible for the payment of the tax.

### **Exemptions and exceptions**

**ARTICLE 4** – (1) In the period prior to the relevant accounting period, those whose revenues in Turkey are less than 20 million Turkish Lira or whose worldwide revenues are less than 750 million Euro or equivalent foreign currency equivalent Turkish Lira for the services to be listed in the Article 1 are exempt from the Digital Services Tax. If the taxpayer is a member of a consolidated group in terms of financial accounting, the total revenue of the group for services subject to the tax shall be taken into account in the application of these limitations.

(2) In case both of the limits mentioned in the first paragraph are exceeded within the relevant accounting period, the exemption ends, and the digital service tax liability starts from the fourth taxation period following the tax period in which the tax limit is exceeded. In determining whether these limits have been exceeded, the cumulative revenue obtained in the related accounting period as of the end of the quarterly periods of the accounting period is taken into account.

(3) Tax exemption for those who are below any of the limits in the first paragraph for two consecutive accounting periods, starts again from the following accounting period.

(4) The President shall be authorized to change the limits contained in the first paragraph to zero or to triple, individually or together, according to the types of services subject to the tax.

(5) The Ministry of Treasury and Finance is authorized to impose notification and certification obligations for the purpose of determining and implementing the exemption and to determine the procedures and principles for the implementation of this article. In this context, those who do not fulfill their notification and certification obligations in a full and timely manner shall be given an additional thirty days to fulfill their obligations. Those who do not fulfill their notification and certification obligations in a full and timely manner within the additional period given shall not benefit from the exemption contained in this article.

(6) The revenues from the following services performed in digital media are exempt from the digital services tax and the revenues from these services are not taken into account in the determination of the terms in the first paragraph:

- a) Services requiring the payment to the Treasury share according to the additional 37th article of the Law 406 on Telegraph and Telephone dated 2/4/1924
- b) Services to subject special communication tax under the 39<sup>th</sup> article of the Law No. 6802 on Expense Taxes dated 7/13/1956
- c) Services under the Article 4 of the Banking Law No. 5411 of 10/19/2005
- d) Sales of products created as a result of R&D activities in R&D centers as defined in the

- 2<sup>nd</sup> article of the Law No. 5746 dated 2/28/2008 supporting research, development and design activities and services provided exclusively through these products
- e) Payment services under the 12<sup>th</sup> article of the Law No. 6493 on Payment and Securities Reconciliation Systems, Payment Services and Electronic Money Institutions dated 6/20/2013.
- (7) The exceptions and exemptions to the digital service tax are regulated only by adding provisions to this Law or by amending this Law. The exemption or exemption provisions in other laws are invalid with respect to this tax.

## **PART TWO**

### **Tax Base, Rate and Calculation**

#### **Tax base, rate and calculation**

**ARTICLE 5** – (1) The basis of the digital services tax is the revenue generated due to services subject to the tax in the relevant taxation period. If the revenue is calculated in foreign currency, the foreign currency should be converted to Turkish currency at the exchange rate of the Central Bank of the Republic of Turkey which is valid at the date of receipt of the revenue.

- (2) No deductions are made from the tax base under the name of expense, cost and tax. The digital service tax is not indicated separately in the invoice and the documents to be issued as the invoice.
- (3) The digital service tax rate is 7.5%.
- (4) The digital service tax is calculated by applying the rate to the base. No deductions are made from the tax calculated in this way.
- (5) The President is authorized to change the rate set out in the third paragraph to 1% or double it either individually or together, in terms of the types of services.

## **PART THREE**

### **Taxation Period, Declaration, Assessment, Payment of the Tax and Tax Security**

#### **Taxation period, declaration, assessment and payment of the tax**

**ARTICLE 6** – (1) In digital service tax, the taxation period is every single month of the calendar year. However, the Ministry of Treasury and Finance is authorized to determine a three-month taxation period instead of a one-month taxation period according to the types of services and the operating volumes of taxpayers.

(2) The digital service tax is assessed upon the declaration of the taxpayer. Where the second paragraph of Article 3 applies, this declaration is made by those responsible for making tax deductions.

(3) Taxpayers and those responsible for making tax deductions are obliged to submit their digital service tax returns to the relevant tax office by the end of the month following the taxation period.

(4) Digital service tax shall be assessed by the tax office to which they are registered in respect of this tax for service providers who are liable for value added tax, and by the tax office to be determined by the Ministry of Treasury and Finance in respect of those who are not.

(5) The digital service tax shall be assessed on behalf of the taxpayer or the real or legal

person responsible for the tax. In ordinary partnerships, an assessment is made on behalf of any of the partners, which are severally responsible for the payment of the tax.

(6) Taxpayers who are obliged to submit a declaration and those who are responsible for the deduction of taxes shall pay the digital service tax for a period of taxation within the period of making the declaration.

(7) The digital service tax paid by the digital service taxpayers can be deducted by these taxpayers as an expense in the determination of the gross profit to income and corporate tax.

(8) The Ministry of Treasury and Finance is authorized to determine the form and content of the digital service tax declarations and its annexes, to determine the place of assessment upon the demand of the taxpayer or ex-officio, to make the taxpayer or the person with tax responsibility to issue a declaration for the periods in which taxable services are offered, to determine the procedures and principles for the declaration, payment term and collection of the tax, to impose the obligation of notification and certification and to determine related principles and procedures.

### **Tax security**

**ARTICLE 7** – (1) The digital service providers or their authorized representatives in Turkey who do not fulfil the obligation of submitting declaration and making payment within the period to be stipulated in the Law No. 213 on Tax Procedure dated 1/4/1961, can be notified by the tax office having the authority to assess the digital service tax for the fulfillment of the obligation by using the information to be gained from the communication tools in the website, domain name, IP address and similar resources through the notification methods in the Law No. 213, electronic mail or all other means of communications and the situation is announced at the website of the Revenue Administration.

(2) In case these obligations are not fulfilled within thirty days from the date of the announcement, the digital service provider's service that are offered access may be blocked until those obligations are met as decided by the Ministry of Finance and Treasury and this decision is sent to the Information Technology and Communication Authority for notification to access providers. The requirement for blocking decisions must be fulfilled by access providers within twenty-four hours following the notification.

(3) The procedures and principles for the enforcement of this article shall be determined by the Ministry of Treasury and Finance by having the opinion of the Ministry of Transport and Infrastructure.

## **PART FOUR**

### **Regulations on Amendments to Various Laws and the Decree Having the Force of Law Numbered 375**

**ARTICLE 8** – The phrase “one-thousandth” in the first paragraph of the Article 33 of the Law No. 6802 on Expense Taxes dated 7/13/1956 is amended to “two-thousandths” and the phrase “authorized to re-determine the above rates not to exceed” in the second paragraph is amended to “authorized to increase them up to ten times in foreign exchange transactions and to the legal level in other taxable transactions”.

**ARTICLE 9** – The abrogated title of the second section of the second part of the Law No. 6802 has been reorganized in the form of “Accommodation Tax” along with the title of Article 34 of the abrogated law as follows.

#### “Accommodation Tax

ARTICLE 34- Hotel, motel, holiday village, hostel, apart hotel, guest house, camping, chalet, highland house and all other services offered within the accommodation facility (such as eating, drinking, activities, entertainment services and use of pool, sports, thermal and similar areas) are subject to the accommodation tax. The provision of overnight services in facilities such as wellness facilities and entertainment centers does not affect taxation.

The payer of the accommodation tax is those who provide the services mentioned in the first paragraph.

The event resulting in the tax occurs with the provision of the services specified in the first paragraph.

The base of the accommodation tax is the sum of benefits, services and values, which can be represented by money, goods and other forms of money received or borrowed for such services, except for value added tax, in return for services subject to the tax.

The rate of accommodation tax is 2%. The President is empowered to increase this rate by one time, to reduce it by half, to determine different rates within these limits.

Accommodation tax is also indicated in invoices and similar documents issued by accommodation facilities. This tax cannot be deducted under any name. This tax is not included in the value added tax base.

The services below are excluded from the accommodation tax:

- a) Services provided to students in dormitories, hostels and camps.
- b) Services provided to the diplomatic representatives, consulates and members of the foreign states in Turkey and to the international organizations and their members who are granted tax exemption in accordance with international agreements.

In the accommodation tax, the taxation period is every one month of the calendar year in which it is operated. Each period of taxation for the accommodation tax, until the evening of the twenty-sixth day of the month following the taxation period is declared to the tax office that is responsible for the value added tax declaration for the same organization (if the organization is not subject to the value added tax to the tax office where the organization is located) and paid within the same period.

The Ministry of Treasury and Finance is authorized to determine the forms, contents and attachments of the accommodation tax declaration and the procedures and principles related to the application.”

**ARTICLE 10** – The following paragraph was added to Article 18 of the Income Tax Law No. 193 dated 12/31/1960.

“Those whose earnings in the scope of this article exceed the amount in the fourth income segment of the tariff set out in Article 103 shall not benefit from this exemption. Those in this situation have no obligation to withhold information under the first paragraph of Article 94.”

**ARTICLE 11** – After the “transportation expenses” phrase in the clause (10) of Article 23 of the Law No. 193, the following provisions in parentheses has been added.

“(In cases where transport service is not provided by employers, the cost of one day's transportation for working days does not exceed 10 Turkish Lira and the payment related to this must be made in the form of public transport card, ticket or the provision of payment vehicles used for this purpose. In the event that the payment exceeds this amount, payments made in cash and benefits provided for this purpose shall be taxed as fees. The Ministry of

Treasury and Finance is authorized to determine the procedures and principles for the application of this exemption.)”

**ARTICLE 12** – The clause (4) of the first paragraph of the Article 29 of the Law No. 193 has been amended as follows.

"4. Fees paid to referees governing amateur sports competitions (except those who are assigned in the top leagues of basketball and volleyball sports);”

**ARTICLE 13** – The below provisions in the parentheses are added to the clauses (1), (5) and (7) of the first paragraph of the Article 40 of the Law No. 193, respectively.

“(Except for those whose activities are partially or completely leased or operated of cars for passengers in various ways, up to 5,500 Turkish Liras of the monthly rent for each of the passenger cars acquired through leasing and up to 115,000 Turkish Lira of the total of excise tax and value added tax on the acquisition of passenger cars can be considered as expenses.)”

“(In this context, a maximum of 70% of passenger car expenses may be deducted, except for those whose activities are partially or completely leased or operated in various ways.)”

“(Except for those whose activities are partially or completely leased or operated the passenger cars in various ways for this purpose, the first acquisition cost, excluding excise tax and value added tax, is 135,000 Turkish Liras, if the said taxes are added to the cost or the passenger car is acquired as used, the portion of the depreciation allocated for each passenger car exceeding 250,000 Turkish Liras can be added for the amount as the depreciation. In the application of this provision, the amount in force at the date of acquisition of the passenger car shall be taken into account.)”

**ARTICLE 14** – The below provisions in the parentheses below are added to the clauses (4) and (5) of the first paragraph of the Article 68 of the Law No. 193, respectively.

“(In this context, in cases where the first acquisition price of 135,000 Turkish Lira excluding excise tax and value added tax is added to the cost the passenger car or it is acquired as used, the portion of the depreciation allocated for each of the passenger cars whose depreciable amount exceeds 250,000 Turkish Lira can be written off as expenses. In the application of this provision, the amount in force at the date of acquisition of the passenger car shall be taken into account.)”

“(In this context, up to 70% of the expenses related to passenger cars and up to 5,500 Turkish liras of the monthly rent for each of the passenger cars acquired through leasing, and up to 115,000 Turkish liras of the total of excise tax and value added tax paid in the acquisition of passenger cars can be considered as expenses.)”

**ARTICLE 15** – Sub-paragraph (b) of clause (1) of the first paragraph of the Article 86 of the Law No. 193 has been amended as follows.

“(b) The prices not exceeding the amount in the fourth income tranche of the tariff set out in the Article 103 to be taken from the single employer (despite the payment from more than one employer, total amount of the prices to be taken from the employers after the first one, including the amount in the second income tranche of the tariff set out in the Article 103, and the amount of price from the first employer not exceeding the amount in the fourth income tranche of the tariff in the Article 103, the taxpayers' prices to be taxed through withholding),”

**ARTICLE 16** – The following paragraph has been added to come after the second paragraph to Article 94 of the Law No. 193.

“The income tax withholding is made by those who pay the attorney fee to be charged to the other party (including those deposited in the enforcement and bankruptcy directorates)

pursuant to the Law No. 2004 on Enforcement and Bankruptcy dated 6/9/1932 and the Law No. 1136 on Legal Practitioners dated 3/19/1969.”

**ARTICLE 17** – Article 103 of the Law No. 193 has been amended as follows. "Article 103- The incomes which are subject to income tax shall be taxed at the following rates:

Up to 18,000 TL	15%
2,700 TL for 18,000 of 40,000 for the excess	20%
7,100 TL for 40,000 of 98,000 (7,100 TL for 40,000 TL of 148,000 TL in wage income) for the excess	27%
22,760 TL for 98,000 of 500,000 (36,260 TL for 148,000 TL of 500,000 TL in wage income) for the excess	35%
163,460 TL for 500,000 of the amounts over 500,000 (159,460 TL for 500,000 TL of the amount over 500,000) for the excess	40%

**ARTICLE 18** – The clauses (1) and (3) of the second paragraph and fifth paragraph in the repeated Article 121 of the Law No. 193 were amended as follows.

“1. Tax declaration for the year in which the discount will be calculated and for the last two years before this year are given within the legal period (it is not the violation of this provision if the declaration is given after the legal period for the purpose of correction or regret in relation to a declaration given in the legal period),”

“3. As of the date of the declaration in which the discount will be calculated, the taxes accrued on the tax declaration under the clause (1) have been paid (Provided that the information and documents required by the relevant legislation are presented in full and complete, the payment has been made offsetting the refund receivables arising from the tax laws and after the deduction has been taken advantage of, the amount of the refund receivables in question falls below the amount of the tax debt requested to be paid offsetting, provided that the taxes that are paid are not exceeding 10% of the amount that is intended to be paid offsetting, due to incomplete paid taxes or, if the conditions are not met, this condition is not considered to have been violated, provided that it is paid until the end of the fifteenth day following the end of the term of deferment determined in the laws), in addition, the principal tax (including tax penalties and secondary related receivables) does not have any overdue debt above 1,000 Turkish Lira,”

“In this article, the phrase tax declaration means annual income tax and corporate tax declarations, provisional tax declarations, withholding tax, withholding tax and premium declarations to the Ministry of Finance and Treasury and the tax authority to be given and the value-added tax and excise tax declarations, the tax means the statement refers to taxes accrued on the tax authority should be given to the aforementioned ministry.”

**ARTICLE 19** – To the second paragraph of the Article 123 of the Law No.193, “23/10” expression is added after “23/8” expression, “40/1, 40/7” expression is added after “31” expression and “68” expression is added after “48” expression.

**ARTICLE 20** – The phrase “up to five points” in the sixth paragraph of the provisional Article 67 of the Law No. 193 has been amended to “up to one double separately or together”.

**ARTICLE 21** – The phrase “12/31/2019” in the first paragraph of the provisional article 72 of the Law No. 193 is amended to “12/31/2023”, and the phrase “15%” in the sub-clause (1) of clause (a) is amended to “20%,” and the second paragraph has been amended as follows.

“(2) These payments shall not be withheld separately under Article 94. If the total revenues covered by this article exceed the amount included in the fourth tranche of the tariff

set out in Article 103, these revenues are declared in the annual declaration. In case of annual declaration, the income tax calculated on these declared incomes shall be deducted from the taxes deducted according to this law, provided that it is paid to the tax office by those responsible for withholding.”

**ARTICLE 22** – Below provisional article is added to the Law No. 193.

“PROVISIONAL ARTICLE 91- The tariff shall be applied to the fee revenues obtained between 1/1/2019 and 12/31/2019 before the amendment made to Article 103 by the law establishing this article.

With article 40/1 added to Article 123 by the law introducing this article, the rental amount of 5,500 Turkish lira included in Article 68 shall not be revalued as effective as of 1/1/2020 in relation to the year 2019.

Amendments made to sub-clause (1) of clause (a) of the first paragraph of the provisional Article 72 and the second paragraph of the law establishing this article shall not apply to payments made within the scope of sportsmen contracts concluded before 11/1/2019. Pre-Amendment provisions of the provisional Article 72 apply for fee payments made under previous contracts. This does not include the extension of time and changes affecting the fee for contracts prior to 11/1/2019 and after 11/1/2019.”

**ARTICLE 23** – The following paragraph was added to the third paragraph to come after paragraph (b) of Article 112 of the Tax Procedure Law No. 213 dated 1/4/1961.

“c) In the case of abandonment of the law in the scope of Article 379, taxes to be calculated according to the said article, from the normal due date of the period specified in the tax laws and where the assessment is concerned, until the date when the petition for abandonment of the law is submitted to the Tax Office;”

**ARTICLE 24** – The following article was added to the Law No. 213 to come after Article 160 "Abandonment of the tax liability record depending on the results of analysis and evaluation:

ARTICLE 160/A- The taxpayers who are determined to have a high risk of issuing forged documents are referred to the tax review and they are considered as a result of the analysis and evaluation studies conducted by the Ministry of Treasury and Finance for the tax compliance levels of the taxpayers taking into account the tax liability period, the size of assets and equity, the amount of tax paid, the number of employees.

After the consideration, according to the opinion and interest of the Tax Office regarding the high risk of issuing forged documents of the taxpayer within the framework of the principles determined by the Ministry of Treasury and Finance, the Tax Office shall leave the tax registration with the approval of the head of the tax office or the ledger and this shall be communicated to the taxpayer. The obligation shall be reinstated as of the date of abandonment, provided that no less than the minimum amount of guarantee mentioned in the first paragraph of Article 153/A is provided in the same article as 10% of the total amount included in the documents held in the periods where the risk of issuing forged documents is high, and all tax liabilities are paid. Declarations and notices not given within the range of the date of abandonment and the date of reinstatement are given within one month from the date of notification to the taxpayer of the article relating to the re-establishment and the taxes accrued are paid within the same period.

In the event that the one whose liability has been abandoned under this article and who are related to them as stated in the first and second paragraph of Article 153/A makes a notification of starting work, in order to establish a liability for these persons, all the tax

liabilities of those who have given the notification of starting work should have been paid and the assurance as it is defined in the second paragraph should have been submitted. In accordance with this article, the documents determined by the Ministry of Treasury and Finance must be arranged as electronic documents which have to be issued as invoice or for invoice for the tax obligation. In case of paper, these documents are deemed not regulated in terms of tax laws and cannot be used in the interpretation of records.

If, as a result of the review made about the taxpayer, it is determined that the taxpayer has established a liability for the purpose of issuing forged documents, even though he has no other commercial, agricultural or professional activities, the guarantee received shall be deducted from the tax liabilities, including the debts arising from the review and the increased amount shall be returned. If it is found in the review that the taxpayer has another commercial, agricultural or professional activity but has issued a forged document, the procedure shall be established on the taxpayer in accordance with the provisions of the fourth paragraph of Article 153/A. So much so that the previously received guarantee will not be returned to the taxpayer until the finalization of the review and the penalties incurred due to the fact of the fraudulent document arrangement. If, as a result of the review, it is determined that the taxpayer has not issued a forged document, the guarantee received shall be returned on the condition that there is no other tax liability.

The provisions of the ninth paragraph of the same article shall be applied for the return of the guarantees received in accordance with the first paragraph of Article 153/A and for the deduction of these guarantees for tax liabilities and the completion of the missing guarantees.

The information about the taxpayers who are obliged to issue electronic documents within the scope of this article shall be announced according to the procedures and principles to be determined by the Ministry of Treasury and Finance. Announcements made in this context are not considered a violation of tax privacy.

The Ministry of Treasury and Finance is authorized to determine the duration of transactions under the article, the date when the obligation to issue documents in electronic environment will begin, the collection and payment of taxpayers covered by this article and the other procedures and principles related to the application of this article.”

**ARTICLE 25** – The Article 370 of the Law No. 213 was amended as follows.

“ARTICLE 370- a) Taxpayers may be invited to comment on the preliminary findings made by the competent authorities that there are indications that the tax has been lost before the tax review is started or referred to the appreciation commission, provided that no notification has been made until the date of the determination. Taxpayers who are notified of the invitation letter to explain the subject of the invitation may not benefit from the provisions of regret contained in Article 371 of this law, limited to the determination of the subject of the invitation. In the event if the invitation letter is explained within a period of thirty days from the date of the notification, the letter containing the result of the evaluation shall be notified to the taxpayer by evaluating the explanation made.

1. If it is understood by the administration that no tax loss has been caused as a result of the explanation made by taxpayers, taxpayers shall not be subjected to tax review or referred to the appreciation commission in relation to the determination in question.

2. If the explanation made by taxpayers is not deemed satisfactory, within thirty days starting with the delivery of the letter notifying the conclusion of the review, submission of the tax declarations which have never been submitted, completion and correction of incomplete or misleading tax declarations and with the addition of the late payment interest

to be applied at the rate to be specified in the article 51 of the Law No. 6183 for each month and the fractions thereof the delay within the same period, to be paid, the tax loss penalty shall be applied as 20% from the tax loss incurred. This does not prevent the tax inspection and, if necessary, the levy.

b) If the preliminary determinations made in accordance with paragraph (a) relate to the fact that the tax may have been lost by the acts contained in Article 359 of this law, the taxpayers in this scope are not invited to comment. So far, the pre-determination of the use of false or misleading documents in terms of content may be processed in the preliminary determinations, the amount of false or misleading documents used in a calendar year does not exceed 100 thousand Turkish Lira, or even if this amount exceeds 5% of the total purchases of goods and services in the relevant year, taxpayers may be notified. Taxpayers, within thirty days from the date of notification of the letter regarding the determination made about them; the tax loss penalty shall be applied at a rate of 20% over the tax incurred, provided that the tax returns that have never been given, the completion or correction of the tax declaration that is incomplete or misleading and the taxes that have expired are paid within the same time as a rate increase to be applied at the rate specified in Article 51 of Law No. 6183 for each month and fractions thereof. This does not prevent the tax inspection and, if necessary, the assessment. Taxpayers who are notified of a pre-determination letter within the scope of this paragraph may not benefit from the regret provisions contained in Article 371 of this law, limited to determination. The amount contained in this paragraph shall be applied each year by increasing the revaluation rate determined in accordance with this law in relation to the previous year.

c) The Ministry of Treasury and Finance is authorized to determine the form and scope of the preliminary determination and/or the invitation to the explanation, the invitation to be made, the evaluation period of the explanation, the information and documents to be used in the explanation, and the procedures and principles related to the application in accordance with this article.”

**ARTICLE 26** – The first paragraph of Article 376 of the Law No. 213 has been amended as follows.

“Taxpayer or person with tax responsibility;

1. Notifies that the tax or tax difference to be assessed ex officio or by the administration in a complementary way and the half of the tax loss, irregularity and special irregularity penalties will be paid within thirty days to related tax office following the delivery of the notification within the term or by providing assurance to be specified in the Law No. 6183, within three months after the term, half of the penalty to be issued is deducted;

2. In case of the occurrence of reconciliation, 25% of the penalty is discounted if the 75% of agreed tax or tax differences and tax loss penalty is paid within the terms to be specified in the clause (1) of the first paragraph of the additional article 8 to this Law.”

**ARTICLE 27** – Article 379 of the Law No. 213 has been reorganized as follows.

“Waiver of legal remedies:

**ARTICLE 379-** In cases to be filed against the tax / penalty notice during the period, the decisions made by the Tax Court are open to appeal and the decisions made by the District Administrative Court are open to appeal (except the decisions made by the Council of State on the annulment decision);

1. 60% of the tax amount to be removed, 75% of the tax loss penalty for the whole of the tax amount to be certified and the tax amount to be certified,

2. 25% of the amount to be removed and 75% of the amount to be approved for tax loss penalties and special penalties for irregularities and special irregularities, which are not subject to litigation or which are incurred due to participation in the acts written in Article 359,

the application period for the legal remedy applicable to the taxpayer, provided that the petition for waiver of the legal remedies for all of the tax and/or tax penalties in question is submitted to the relevant tax office, as of the date of issuance of the petition for abandonment of the legal route will accrue without any further action.

The amounts accrued in this way are paid within one month of the date of the accrual. The tax and penalty amount will be reduced by 20%, provided that 80% of the tax and/or tax penalties accrued according to this article are paid in full during this period, together with the overdue interest to be calculated. So far, there is no rebate in the amount of tax accrued by attestation. In order to benefit from the discount provision, the tax and/or tax penalties incurred in accordance with this article and the delay interest must be paid together within the scope of this paragraph.

The petition to renounce the law is sent by the tax office to the relevant judicial authority and the date on which the petition is submitted to the tax office is considered to be the date of renunciation of the law. In case of abandoning the course of law, the administration will not continue to dispute. In case of intermediate court appeal or appeal, these applications will not be examined.

The amount paid before the accrual made in accordance with this article, including the late interest and late increase, shall be deducted from the amount to be paid in accordance with the provisions of this article for the tax and tax loss penalty that is waived by the law.

In accordance with this article, the court costs, attorney fees and their provisions as determined in the decisions related to the case which are renounced from the way of intermediate court of appeal and appeal shall not be mutually requested and execution proceedings shall not be carried out for these receivables.

The procedures and principles for the application of this article are determined by the Ministry of Treasury and Finance.”

**ARTICLE 28** – The expression inside the parentheses "except for the penalty to be issued" in the first paragraph of the Article 2 of the Law No. 213 was amended to “the penalty to be issued and the penalty to be given to the taxpayers who have already been notified the letter on the preliminary determination within the scope of the paragraph (b) of the Article 370”.

**ARTICLE 29** – The additional Article 9 to the Law No. 213 was amended as follow.

“**ADDITIONAL ARTICLE 9-** The discount shall not be applied except for the provision of paragraph (2) of the first paragraph of Article 376 on the taxes and penalties agreed upon in accordance with this section.

The provisions of paragraph (1) of the first paragraph of Article 376 shall not apply to the provisions of this section for the taxes and penalties applied. The taxpayer has the right to request the application of the provisions of clause (1) of the first paragraph of Article 376 to the event with the declaration that he has given up his request for reconciliation until he signs the reconciliation minutes.”

**ARTICLE 30** – The following article was added together with the title to the Law No. 1319 on Property Tax dated 7/29/1970 as a part to come after Article 41.

“PART FOUR

## Valuable Housing Tax

Subject:

ARTICLE 42- The buildings with tax value of the residential properties or the value determined by the General Directorate of Land Registry and Cadastre within the borders of Turkey is 5,000,000 Turkish lira and over, are subject to the valuable housing tax.”

**ARTICLE 31** – The Law No. 1319 is added below article to come after the Article 42 that is also added to the same Law with this Law.

“Determination, announcement and finalization of tax values:

ARTICLE 43- The real estate exceeding the amount to be specified in the Article 42 (including this amount) as a result of the valuation to be made or others to make within the scope of relevant legislation by the General Directorate of Land Registry and Cadastre are announced at the website of the General Directorate of Land Registry and where relevant parties may access and the relevant person is also notified separately. From the date of the notification until the end of the fifteenth day, the value of the real estate having the qualification of housing is finalized if the General Directorate of Land Registry and Cadastre does not object. The objections made during the period shall be evaluated and concluded within fifteen days and the final value shall be declared in the same procedure and communicated to the relevant person. This value considered to be the value determined by the General Directorate of Land Registry and Cadastre in the application of the valuable housing tax.

In this tax implementation, if there is no value determined by the General Directorate of Land Registry and Cadastre, taxation operations are made based on the tax value of the building.

The tax value of the building is the tax value determined in accordance with Article 29.”

**ARTICLE 32** – The following article was added to the Law No. 1319 to come after the Article 43 that is also added by this Law.

“Base and ratio:

ARTICLE 44- The tax base is higher one among the tax value of the building and the value determined by the General Directorate of Land Registry and Cadastre.

Value of residential property qualified property subject to valuable housing tax;

(3 per thousand) for the value between 5,000,000 TL and 7,500,000 TL

(6 per thousand) for the value between 7,500,001 TL and 10,000,000 TL

(10 per thousand) for the value higher than 10,000,001 TL are collected.

In shared ownership and cooperative ownership, the total value of the residential property is based on the calculation of the base.

The amount in Article 42 is increased at the revaluation rate determined by the General Directorate of Land Registry and Cadastre and in excess of the amount in Article 42 (including this amount) of the residential properties determined by the General Directorate of Land Registry and Cadastre in accordance with the provisions of the Tax Procedure Law No. 213 in relation to the previous year. Fractions of amounts calculated in this way up to 10,000 Turkish lira are not taken into account (so that; the real estate value determined by the General Directorate of Land Registry and Cadastre is not increased at the rate of revaluation in the year the value determination is made.).”

**ARTICLE 33** – The following article was added to the Law No. 1319 to come after the Article 44 that is also added by this law.

“Obligation:

ARTICLE 45- The property tax is paid by the owner of the real estate, the owner of the right to usufruct, if any, and the users of the property as if they are the owner of the real estate, if both of them do not exist.

Those who own a residential property in the form of property with shares are liable for their shares. Joint ownership owners are severally liable for tax.

Valuable housing tax obligation;

a) The date when the value of the residential property, the tax value of the building or the value determined by the General Directorate of Land Registry and Cadastre exceeds the amount specified in Article 42 (including this amount).

b) In the event of reasons amending the tax value written in paragraphs (1) to (7) of Article 33, the date on which these changes occurred,

c) The date on which the exemption lapses starts from the following year.

The obligation for residential properties which are burned, destroyed, completely unusable or which have earned exemption requirements while subject to tax shall cease as of the installment following the date these events occurred.”

**ARTICLE 34** – The following article was added to the Law No. 1319 to come after Article 45 that is also added by this Law.

“Exemptions:

ARTICLE 46- Residential properties listed below are exempt from valuable housing tax:

a) Residential properties which are owned by the administrations within the scope of general or special budgetary legislation, municipalities and universities and which is entitled to a usufruct.

b) The properties of individuals having a single real estate within the borders of Turkey who are qualified to reside; those who certify that they have no income, except those who have not reached the age of eighteen who have a taxpayer to look after them; those whose income consists exclusively of the pension they receive from the social security institutions established by law (including the right to usufruct) (this provision shall also apply to the portion of the shares of the persons mentioned in the case that they own a single residence with shares).

c) The residential property belonging to foreign states and used as embassies and consulates, and the residential property for the residence of the ambassadors and their outbuildings (provided the mutual consideration) and the residential property belonging to the international organizations headquartered in Turkey and the representative offices of international organizations in Turkey.

d) Newly built residential property which is registered to the enterprises of those whose main activity is building construction and which has not yet been put to first sale, transfer and assign (including residential property which is left to the contractor who undertakes contracting work in accordance with the contract for land construction works) (except in the case of renting or other use of these immovable properties).”

**ARTICLE 35** – The following article was added to the Law No. 1319 to come after the Article 46 that is also added by this Law.

“Declaration, payment term and payment place of the tax:

ARTICLE 47- The tax value of the building and the value determined by the General Directorate of Land Registry and Cadastre shall be declared with a declaration by the taxpayer to the competent tax office under the head of the Revenue Administration at the place where the residential property is located, until the end of the twentieth day of February of the year

following the year in which the value of the property exceeds the amount to be specified in the article 42 and the tax shall be levied and accrued by the relevant tax office. The taxpayer makes the declarations for subsequent years in the same manner annually and the tax office perform the same procedure.

In the joint ownership, the taxpayers can give joint declaration or they can give individual declaration. In the case of shared ownership, the declaration is given individually.

The tax levied and accrued by the tax office is paid in two equal installments in February and August of the relevant year.

In the event of a situation requiring the start of the tax liability within the year, the Tax Office shall be notified by the taxpayer within the period of the following year.

The provisions of the second and third paragraph of Article 37 of this law do not apply in respect of valuable housing tax.”

**ARTICLE 36** – The following article was added to the Law No. 1319 to come after the Article 47 that is also added by this Law.

“Revenue of the valuable housing tax:

ARTICLE 48- The valuable housing tax to be collected is recorded as general budget income and is not considered in the calculation of the shares to be given to local administrations according to the Law No. 5779 of 7/2/2008 on the provision of shares of General Budget tax revenues to special provincial administrations and municipalities and other laws.”

**ARTICLE 37** – The following article was added to the Law No. 1319 to come after Article 48 that is also added by this Law, and the present articles continues accordingly.

“Authority:

ARTICLE 49- The Ministry of Treasury and Finance is authorized to determine the procedures and principles for the application of this tax, to determine the documents to be sought in the application of exemptions, to extend the declaration and payment periods set out in Article 47 to three months, to determine the competent tax office to which the declaration will be issued, to determine the form, content and the assessment of the tax without any tax declaration.”

**ARTICLE 38** – The phrase “2 years” in the second paragraph of clause (A) of the first paragraph of Article 34 of the Law No. 1618 on the Association of Travel Agents and the Travel Agents dated 9/14/1972 is amended to “three years” and sub-clause (e) of the third clause of the paragraph has been amended as follows.

“e) To elect the members of the Board of Directors and Auditors and the original and substitute members of the Board of Directors of the Turkish Tourism Promotion and Development Agency established by the Law No. 7183 on 7/11/2019 on the Turkish Tourism Promotion and Development Agency,”

**ARTICLE 39** – The provisional article below is added to Law No. 1618.

“PROVISIONAL ARTICLE 5- For the elections to be made in November 2019 of the Union, the provision stating that the election is made for three years in the clause (A) of the first paragraph of Article 34 is not applied.

The term of office of the members of the Board of Directors, Audit and Discipline to be elected in the elections held in November 2019 and the principal and reserve members of the Board of Directors of the Turkish Tourism Promotion and Development Agency shall be three years.”

**ARTICLE 40** – Additional Article 12 of the Law No. 3289 on Youth and Sports Services dated 5/21/1986 has been amended as follow together with the title.

“Supporting amateur sport

**ADDITIONAL ARTICLE 12-** From the income tax to be withheld from the payments to the athletes by commercial companies operating in the field of sports and sports clubs operating in Turkey and registered by the Ministry of Youth and Sport, Turkish Football Federation and independent sports federations and to be declared and paid to related tax offices within the period to be specified by law, upon the request of the Ministry of Youth and Sport, the share to be deemed appropriate by the Ministry of Treasury and Finance is transferred to the special account of the Ministry of Youth and Sport by the Ministry of Treasury and Finance

The amounts transferred to the special account cannot be used except for the following expenses:

a) The wages and fees paid to the athletes, their coaches and other sports personnel in the amateur sports branches. (The annual payment for each athlete, trainer and other sports personnel shall not exceed three times the amount applicable to the wages in the related year, which is included in the third income segment of the tariff set out in Article 103 of the Income Tax Law No. 193 of 12/31/1960.),

b) The sporting activities, boarding, lodging, travel, health, and education expenditures for preparatory camps with amateur sport, competition, material and equipment, federation permission, license, registration, and participation expenses of the athletes, coaches, and other elements of sports under the clause (a) of this paragraph.

The amounts transferred from the special account to sports clubs and commercial companies operating in the sports field, as well as the expenditures made from these amounts, cannot be considered as income, expense, discount or cost in income and corporate tax applications.

The Ministry of Treasury and Finance and the Ministry of Youth and Sport are jointly authorized to determine the procedures and principles related to the application of the article by using and controlling the amounts transferred to the special account.”

**ARTICLE 41** – The following provisional article was added to the Law No. 3332 on the Promotion of the Capital Market, the Spread of Capital to the Base and the Measures to be taken to Regulate the Economy dated 3/25/1987, and the Law No. 5422 on Corporate Tax, the Law No. 213 on Tax Procedures and the Law No. 3182 on Changes in the Council of Ministers.

“**PROVISIONAL ARTICLE 4-** Until 12/31/2014, all kinds of utilities whose shares are deemed to have been offered to the public due to the number of shareholders and whose shares are traded on the stock exchange have been sold directly or indirectly at nominal or premium value under the name of shares or shares, without being subject to the dematerialization requirements of the Capital Market Law No. 6362 dated 12/6/2012 and, the payments made to these partnerships are considered to have been made in exchange for shares and the partnership relationship is deemed to have been established. The fact that these shares have not been dematerialized will not prejudice the rights of the partnership, nor can it be claimed that the partnership relationship has not been established.

Regarding the partnership relations established within the scope of the first paragraph; in cases where there is no valid partnership relationship or a premium share sale is made, it is decided that there is no place for the decision to be made in cases of negative determination, compensation or receivables which are opened based on reasons of unjust enrichment, tort,

contrary to pre-contract negotiations or contrary to contract, including those in the legal path review, and the judicial costs and related attorney fees are paid by the partnership”

**ARTICLE 42** – The provisional article below is added to the Law No. 6802.

“PROVISIONAL ARTICLE 3- The accommodation tax rate to be specified in the article 34 of this Law is applied as 1% until 12/31/2020.”

**ARTICLE 43** – The phrases “representative” in the fifth paragraph of Article 3 of the Law No. 7183 on Tourism Promotion and Development Agency of Turkey dated 7/11/2019 have been changed to “President” and the phrase “representatives” to “presidents”.

**ARTICLE 44** – The following clause has been added to the first paragraph of the article 3 of the Public Procurement Law No. 4734 dated 1/4/2002, to come after the (z) clause.

“aa) In order to prevent extraordinary fluctuations in product prices due to insufficient production or to ensure price stability in products, the approval of the relevant minister and the appointment of the Turkish Grain Board, the General Directorate of Turkish Grain Board to purchase agricultural products through imports and related service purchases,”

**ARTICLE 45** – The second sentence of the fifth paragraph of the provisional Article 4 of the Law No. 4734 is to come after the phrase “construction works” is added; “the General Directorate of the State Supply Office will perform on behalf of the administrations the purchase of vehicles, vehicle rental, fuel oil purchase and medicines, medical supplies and medical equipment purchases” and the following clause is added to the article.

“The procedures and principles to be applied in the purchases to be made by the General Directorate of the State Supply Office within the scope of the fifth paragraph shall be determined by the General Directorate of the State Supply Office upon the opinion of the Institution. In this context, in accordance with the basic principles set out in the first paragraph of Article 5 of the Law, tenders are carried out in such a way as to ensure the highest participation.”

**ARTICLE 46** – The definition of “Allocation of external debt” in Article 3 of the Law No. 4749 dated 3/28/2002 on the Regulation of Public Finance and Debt Management has been added the phrase “to the Presidency of Turkish Institutes of Health” to come after “the Directorate General of State Hydraulic Works”.

**ARTICLE 47** – The provisional article below is added to the Law No. 4749.

“PROVISIONAL ARTICLE 31- The amount of net debt utilization regulated in article 5 shall be applied for the year 2019 by adding seventy billion Turkish Lira to the net debt utilization amount increased by the Minister and the President, effective from 1/1/2019.”

**ARTICLE 48** – The following provisional article was added to the Law No. 5510 on Social Insurance and General Health Insurance dated 5/31/2006.

“PROVISIONAL ARTICLE 79- The owners of the right or their successors having these rights of monthly wage resulting from the abrogated Article 64 of the Law No. 5434, eighth paragraph of the Article 47 of this law, Law No. 2330 or the laws requiring the allocation of the wage with reference to the provisions of the Law No. 2330, the Law No. 1005, additional Article 3 of the Law No. 3713, the Law No. 5233 on Removal of the Losses Resulting from Terrorism and Fight against Terrorism dated 6/24/2008, the Law No. 5774 on Wages for Successful Athletes and Assignment of State Athlete Title, are not obliged to return the excessive or ungrounded payments which are defined by the Institution within the scope of the clause (b) of the first paragraph of the Article 96 of this Law and the debts to be issued for this reason are left on the date of the enforcement date of this article and the amounts to be collected before the date of enforcement of this law is not returned or set off.

The provisions in the first paragraph are also applied for the payments to made excessively or without any ground which are found within the scope of the clause (b) of the first paragraph of the Article 96 by the Institution and paid in contradiction with the third, fourth, fifth and sixth sentences of the second paragraph of the Article 4 of the Law No. 2330.”

**ARTICLE 49** – The following additional article was added to the Insurance Law No. 5684 dated 6/3/2007.

"Provisions relating to Insurance and Annuity Regulation and Supervision Agency

**ADDITIONAL ARTICLE 5** – (1) The president and the members of the Insurance and Annuity Regulation and Supervision Agency take oaths before the First Board of Presidents of the Court of Cassation to perform their assignments with complete care, honesty and impartiality during the continuation of their duties, and not to act in violation of the provisions of the relevant legislation or to let others violate. The application for the oath is considered as urgent case by the Court of Cassation. The president and the members are not deemed to start their office unless they take their oath.

(2) The following conditions are sought for those appointed to the positions of Vice President, Head of Department and Head of Group at the Insurance and Annuity Regulation and Supervision Agency:

a) Having the qualifications to be stated in the Article 48 of the Law No. 657 on State Personnel dated 7/14/1965.

b) Having at least graduation from a higher education institution for four years of education.

c) Having worked for at least five years in the private sector or freelance with international organizations subject to public and/or social security institutions.

(3) Payments made to the president and members and the personnel of the Agency within the scope of financial and social rights are paid in accordance with Article 11 of Annex 375 to the Decree Having Force of Law dated 6/27/1989. Those who are not subject to tax and other legal deductions from the payments made to the equivalent personnel shall not be subject to tax and other deductions under this law. The president and members and the personnel of the Agency are considered equal with the personnel who are also defined as the precedent in terms of pension rights.

(4) The president and the members and the personnel of the Agency shall be deemed insured under the clause (c) of the first paragraph of Article 4 of the Social Insurance and General Health Insurance Law No. 5510 dated 5/31/2006 in respect of social security. Within the scope of the clause (c) of the first paragraph of Article 4 the Law No. 5510, those who are appointed to the president and membership while insured or who wish to leave these duties, the period of service in these duties shall be taken into account in the determination of the monthly, degrees and levels of earned rights. Of these, the duration of those who fall within the scope of the provisional Article 4 of the Law No. 5510 during these duties shall be considered as the period to which the compensation of authority and the compensation of representation must be paid. The termination of the association with the previous institutions and organizations of the individuals to be assigned president or member does not require the payment of severance pay or end-of-work compensation for them while insured under the clause (a) of the first paragraph of Article 4 of the law No. 5510. In this case, the term of service for which the severance pay or end-of-work compensation must be paid is combined with the term of service for the president and the membership and the pension bonus is considered as the period to be paid.

(5) Those who are subject to other status in terms of Social Security before the appointment of the president and those appointed to the membership shall continue to be bound by these status if they wish, and the fourth paragraph provision shall not be applied to them.

(6) The Agency may employ personnel according to the provisions of Article 25 of the Annex to the Decree Having Force of Law No. 375.

(7) In the Agency, information technology personnel can be employed as contracted within the framework of the procedures and principles specified in Article 6 of the Annex to the Decree Having Force of Law No. 375. The conditions contained in clauses (a) and (b) of the third paragraph of the said article are not sought for the Agency.

(8) The authority to grant permission for investigations into crimes allegedly committed by the president and members and the personnel of the Agency in connection with their duties belongs to the related Minister for the president and the members and to the president for the personnel of the institution. The related Minister has the authority to grant permission to investigate the personnel of the Agency in the investigations related to the alleged crimes committed by the president and members and the personnel of the Agency in relation to their duties. The task of the president and the members of the Agency and the staff, even though they are separated from the office for alleged crimes committed in connection with investigations and prosecutions initiated, or staff member, upon request, will be followed by an attorney who will be appointed by the institution. The costs of litigation related to these cases and the attorney's fee determined not to exceed fifteen times the attorney's fee determined in the minimum wage tariff announced by the Bar Associations of Turkey shall be covered from the budget of the Agency. If the conviction of the president and members and the personnel of the Agency is decided upon as a result of the prosecution and this decision is finalized, the attorney fee paid from the budget of the Agency shall be collected from the president and the members and the personnel of the Agency in accordance with the general provisions.

(9) The president and members are subject to the Law No. 3628 on Declaration of Property, Anti-Bribery and Corruption dated 4/19/1990.

(10) The president and members may not be employed in private agencies in the sector and area that the Agency is authorized to supervise and regulate within two years following their leave from their posts. For those who do not comply with the provision of this paragraph, the provision of Article 4 of the Law No. 2531 on Forbidden Works for Individuals after the Public Office dated 10/2/1981 applies.

(11) The property, assets, rights and receivables of the Agency are the property of the State and cannot be confiscated or pawned.

(12) The following revenues are included among the revenues of the Agency:

a) Participation shares of insurance, reinsurance and pension companies established in Turkey and insurance, reinsurance and pension companies established abroad with organizations in Turkey and insurance and reinsurance brokers.

b) Participation shares transferred to the Agency by deducting from the amounts collected by the Union of Chambers and Commodity Exchanges of Turkey as registration fee or dues from insurance agents and insurance surveyors.

c) Registration, permit and license service fees determined by the Agency.

(13) The amounts to be collected as participation shares in accordance with the twelfth paragraph may not exceed five per ten thousand of the previous year's balance sheet totals of

the entities mentioned in paragraph (a) of the aforementioned paragraph and one fifth of the amount specified in paragraph (b).

(14) For the financial rights of those for whom the provisions in the provisional Article 12 and provisional Article 16 of the Decree Having Force of Law No. 375 and assigned to the offices in the Agency, said provisions shall continue to be applied.”

**ARTICLE 50** – The following paragraph has been added to Article 37 of the Law No. 6755 on Amending and Adopting the Decree Having Force of Law on Measures to be taken within the scope of the State of Emergency and Regulation of Certain Institutions and Organizations dated 11/8/2016.

“(3) No legal, administrative, financial or criminal responsibility shall arise due to the decisions and actions of public officials who have taken a decision, perform the decisions to be taken or proceed nothing until 10/31/2019 on the applications to Social Security rights of those who have membership, connection or link with terrorist organizations or structures, formations or groups decided by the National Security Council to act against the national security of the state.”

**ARTICLE 51** – Additional Article 32 of the Decree Having Force of Law No. 375 dated 6/27/1989 has been amended as follows.

“**ADDITIONAL ARTICLE 32-** Tax inspectors to be graduated from the faculties of law, political science, economics, business administration, economic and administrative sciences faculties that give at least four years of higher education and higher education institutions to be determined by the Board of Higher Education as equivalent and younger than thirty five years as of the date of the examination and the winner of the special competition exam are assigned as the Assistant Tax Inspector upon the approval of the Minister.

The Assistant Tax Inspector is entitled to take the proficiency exam, provided that s/he works for three years and is successful according to the performance evaluation during the period of assistance. The proficiency exam subjects, and other procedures and principles related to the exam are regulated by the directive. In order to be considered successful in the proficiency exam, the score taken in the proficiency exam must be at least sixty-five points out of one hundred points. Those who succeed in the proficiency exam are appointed as Tax Inspector. Those who fail the proficiency exam are appointed to the positions of civil servants in accordance with their degrees in the Ministry of Treasury and Finance.

Those who work for at least ten years as Tax Inspector, including the assistant tax inspector, and who succeed in performance evaluation for at least six years after the date of appointment to tax inspector are appointed to the positions of Chief Tax Inspector.

The performance evaluation system, the tax inspector and competencies, professional competency while they are recruited in a comparative manner for the evaluation of the objective and the degree of success they have achieved in exams, the task of the tax inspectors relating to the performance of the work of their chiefs' reviews, evaluations made by the evaluation commission's report on tax examination reports by the other review, research, opinion, audit investigation reports and evaluations about, it is established on the basis of graduate education levels and similar criteria. The performance assessment of the Tax Inspectors is carried out as of the calendar year.

The principles and procedures related to the creation and management of the performance evaluation system and the duties, powers and responsibilities of tax inspectors, recruitment, training, qualifications, promotion, assignment and relocation are determined by the regulation.”

### **Enforcement**

**ARTICLE 52** – (1) The articles of this law come into force as follows;

- a) Articles 1 to 7 at the beginning of the third month following the date of publication of this law,
- b) Articles 9 and 42 on 4/1/2020,
- c) Articles 10 and 15 on the date of publication to be applied to revenues acquired from 1/1/2020,
- d) Articles 11 and 12 at the beginning of the month following the date of publication of this law,
- e) Articles 13 and 14 of the date of publication to be applied to income and earnings of the taxation period starting from 1/1/2020,
- f) Article 17 on the date of publication to be applied to revenues obtained from 1/1/2019,
- g) Article 18 on the date of publication to be applied in annual income and corporate tax returns which must be issued from 1/1/2020,
- h) The provision amending the phrase “12/31/2019” in the provisional Article 72 of the Law No. 193 of Article 21 as “12/31/2023” on the date of its publication, other provisions to be applied to the revenues obtained from 1/1/2020 on the date of its publication,
- i) Articles 23, 25, 27 and 28, fourth paragraph of Article 44 added to Law No. 1319 with Article 32 and Article 40 on 1/1/2020,
- j) Other provisions are enforced on the date of publication.

### **Enforcement**

**ARTICLE 53** – (1) The provisions of this Law are enforced by the President.

12/6/2019

**ANNEX 2: GENERAL COMMUNIQUE ON DIGITAL SERVICES APPLICATION (ENGLISH  
TRANSLATION)**

From the Ministry of Treasury and Finance (Revenue Administration)

Official Gazette No: 31074

Official Gazette Date: 03/20/2020

## **GENERAL COMMUNIQUE ON DIGITAL SERVICES TAX APPLICATION**

The digital services tax regulated in Articles 1 to 7 of the Law No. 7194 dated 12/05/2019 “Digital Services Tax and Law on the Amendment of Certain Laws and Decree Law No. 375” (hereinafter referred to as Law) shall take effect on March 1, 2020 in accordance with the provisions of Article 52, paragraph (a), subparagraph (1) of the same Law.

The subject matter of this Communiqué is to specify the procedures, principles, and explanations regarding the application of the digital services tax.

### **I- SUBJECT OF THE TAX, DEFINITIONS, TAX PAYER AND TAX RESPONSIBLE, EXEMPTION AND EXCEPTIONS**

#### **A. SUBJECT OF THE TAX**

Pursuant to Article 1 of the Law, in Turkey, revenues generated from:

- All kinds of advertisement services (including ad control and performance measurement services, data transmission and management related to users and technical services related to the presentation of the advertisement),
- The sale of any audio, visual or digital content (including computer programs, applications, music, video, games, in-game applications and the like) and those provided in digital media for listening, watching, playing these contents in the digital media or recording or using them in electronic devices,
- Services for providing and operating digital media where users can interact (including services offered for selling or facilitating the sale of a product or service between users), are subject to digital service tax.

Revenues generated from intermediary services provided by digital service providers in the digital media for the above-mentioned services are also subject to the digital service tax.

If services provided by digital service providers within the scope of a different clause or clauses of the mentioned article are offered on the same digital medium, each service is taxed within the framework of its own provisions.

#### **1. ADVERTISING SERVICES PROVIDED IN DIGITAL MEDIA**

Pursuant to sub-paragraph (a), paragraph one, Article 1 of the Law, revenues generated from all kinds of advertising services provided in digital media, including advertising control and performance measurement services, data transmission and management related to users, and technical services related to the presentation of the

advertisement, are subject to digital service tax.

Generating the revenue in question from advertiser, agency of the advertising domain or other third persons offering intermediary services has no effect on taxation.

In this regard, revenues generated from advertising services published in the digital media such as:

- Search engine ads, such as showing the ad with search results, or showing search result about the advertiser in a priority order,
- Banners,
- Any audio, visual or written advertisements published in digital media before, during or after viewing the video or contents posted by a user,
- Ads automatically transmitted online via software in electronic devices,
- Pop-up adds,

are within the scope of the digital service tax.

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

In the event that broadcasts made by the broadcasting institution over terrestrial, satellite or cable environments are broadcast simultaneously in digital media, the revenue generated due to the advertising services not included in the content of the broadcast stream is also included in the tax.

**Example 1:** In the search engine page operated by (A), when users search for hotel-related keywords, the revenue of (A) from the hotel (B) is subject to the digital service tax in consideration of showing the internet site link of hotel (B) on the top of the result ranking.

**Example 2:** In the digital media operated by operator (C) where users can share videos and photographs, revenue generated against showing product advertisement video of (D) before, during and after viewing of the shared videos by other users shall be subject to digital service tax.

**Example 3:** Revenue generated per view from (F) against advertisement of products offered by (F) within the application when users play games of (E) that offers online game service in the digital media shall be subject to digital service tax.

Revenue generated from services provided in the form of retrieving data from digital media and/or measuring or processing such data and/or preparing digital advertisement content by digital service providers in connection with advertisement services offered in digital media, including:

- Advertising control and performance measurement services,
- Services such as data transmission and management related to users,
- Technical services related to the presentation of the advertisement

is also subject to digital service tax.

Accordingly, in this tax treatment, for example, determinations and reports as to

whether advertisement reached to the target group through monitoring or access, whether it created the desired effect or not or whether any modification is required in the advertisement or not, and data such as age, gender, education, etc. of the advertisement viewers are considered within the scope of definition of advertisement services provided in Turkey.

## **2. SERVICES FOR SALES OF AUDIO, VISUAL OR DIGITAL CONTENT AND USE OF DIGITAL CONTENT**

Pursuant to sub-paragraph (b), paragraph one, Article 1 of the Law, revenue generated from services provided in digital media in connection with the sale of audio, video or digital content (computer programs, applications, music, video, games, in-game applications and others) and digital services aimed at listening, viewing, playing these contents or recording them to electronic devices or using these devices is subject to digital service tax.

Accordingly, revenue generated from the sale of

- Programs, software and applications used in electronic devices such as computers, tablets, mobile phones, smart watches,
- Image, sound and text file contents such as motion picture, series, video, image, photograph, graphic, article, magazine, newspaper,
- Any digital games, game add ons or game codes, including those for playing on the game console, regardless of playing online or offline,
- Paid applications or packages sold to users in connection with online games (additional rights to play, additional game time, access to in-game features, materials and elements, creation and placement of in-game character or in-game virtual money) and sales of similar other contents are subject to tax.

Revenue generated from the sale of contents in question in the digital media through electronic recording media such as CD, DVD, flash memory and physical delivery is not considered within the scope of digital service tax.

Accordingly, for example, revenue generated from:

- (A) a service aimed at listening to music in digital media or recording in an electronic device online or through real-time data flow offered to subscribers of virtual store,
- (B) a service provided by the enterprise to watch online videos, movies, series or to save it to the electronic device by subscribing through digital media or by paying on demand,
- (C) sales of antivirus programs in a virtual store,
- (D) sale of virtual money to the users for the right to access the additional features of the game played online in the digital media,

is subject to digital service tax.

As the intermediation service for the sale of digital content in the digital environment is

for the purpose of listening, watching, playing or recording to or using electronic devices in the digital environment, it is within the scope of sub-paragraph (b), Article 1 of the Law.

The following are not considered digital content:

- Storage of digital data on online platforms,
- Tickets representing the right to benefit from a service subject to actual presentation such as cinema, theater, concert, museum, sports competitions, bus, train, or plane tickets sold in digital media,
- Tickets or coupons that are sold digitally on a joint bet with any game of chance and provide the right to draw or participate in the bet and are organized by authorized institutions and the relevant legislation in Turkey.

In addition, the activation or download of the software, which is mandatory for a sold product to work and which is included by the seller during the sale by incorporating the goods during the sale, is not considered as a sale of content made in the digital environment provided that there is no additional fee for this operation.

### **3. PROVISION OF DIGITAL MEDIA ALLOWING USERS TO INTERACT WITH EACH OTHER AND SERVICES FOR OPERATING THEM**

Pursuant to sub-paragraph (c), paragraph one, Article 1 of the Law, revenue generated from the provision of digital media allowing users to interact with each other and services for operating them is subject to digital service tax. Services offered for the purpose the sale or facilitating the sale of a product or service among users are also subject to tax in accordance with the aforementioned clause.

Accordingly:

- Revenue generated from provision or operation of digital media where users can post written, visual or audio content or comment on posted contents or interact with each other in other ways, and digital media aimed at the sale or facilitating the sale of products or services is subject to digital service tax.
- This includes revenue generated from services such as acting as intermediary for selling or buying products or services by guaranteeing the delivery or refund or assuming functions such as intermediary services, or facilitating the sale of product or service without assuming any such function or advertisement of sold products or services or access to such advertisement.

In this context, the revenue generated by those who mediate the purchase or sale of goods or services and those who facilitate the purchase and sale by differentiating the ads of those selling similar or identical products by making a listing/sorting/format change, is also subject to tax.

The revenues obtained by the person who sells the goods or performs the service due to the sales of goods or services in the digital environment are not subject to the tax. In order to consider the transaction a sale of goods or services (not an intermediary in the sale of goods or services), these individuals must have responsibilities that may arise from relevant legislation

regarding the protection of consumer rights and the performance of the actions arising from the sale of goods or services.

It follows that the revenues obtained due to the digital sale of digital content included in subparagraph (b) of Article 1 paragraph 1 of the Law are subject to tax within the scope of the aforementioned clause.

For example:

- The revenue generated from the provision of this service by (A), which provides digital media in order to facilitate the sales of vehicles to third parties,
- The revenue from the delivery of this service by enterprise (B), which mediates the sale of the products of the companies through its virtual store,
- By company (C), which mediates the sale of various cultural, artistic, sports and similar event tickets and transportation tickets through its website,
- The revenue generated by company (D), which provides a digital environment in which people can share their professional careers and professional interests,

is included in the subject of digital service tax.

On the other hand, the revenue that they earned by selling textile products manufactured by company (E) or the phone accessories purchased by company (F) through their own websites is not subject to the tax.

Depending on their authorization under the relevant legislation in Turkey and abroad, the sale of tickets or coupons that provide the right to participate in a common bet as digital dealers in the digital environment shall not be considered within the scope of subparagraph (c) of Article 1 paragraph 1 of the Law.

#### **4. INTERMEDIARY SERVICES FOR SERVICED OFFERED IN DIGITAL MEDIA**

Pursuant to paragraph two, Article 1 of the Law, revenue generated from intermediary services provided by digital service providers in the digital media in connection with services listed in paragraph one of the same article is subject to digital service tax.

Accordingly, revenue generated from intermediary services through comparison and ranking of price, make, model, etc. or filtering product specifications for the user in the digital media is subject to tax.

**Example:** (B) acts in its virtual store as intermediary for sales of (A) that provides intermediary services for the sale of product sales in its own virtual store. In this case, the revenue obtained by (A) due to intermediary service provided in the digital media is subject to digital service tax in accordance with paragraph two, Article 1 of the Law. Revenue generated by (B) is also subject to tax in accordance with sub-paragraph (c), paragraph one, Article 1 of the Law.

#### **B. DEFINITIONS**

Pursuant to paragraph one, Article 2 of the Law, for the purpose of implementing the law:

1. Digital media refers to any medium where online activity is carried out without

physical interaction.

2. Digital service providers refer to those who provide services listed in Article 1 of the Law.

3. Generation of revenue means that revenues become definite in terms of substance and amount. Accordingly, the entitlement to the price for the service provided means that the revenue has been generated, and whether a part or all of the price is collected or not does not have any effect on generation of revenue after provision of the relevant service.

4. Provision of a service in Turkey means offering the service in Turkey; using the service in Turkey; provision of service for persons resident in Turkey or utilization of the service in Turkey (utilization means making payment for consideration of the service in Turkey or if payment is made abroad, recognition of the same in the accounts or making provision from profits of the payer in Turkey or person for whom the payment is made. However, in case an advertisement service offered in digital media is aimed at persons who are not resident in Turkey, the service shall not be deemed utilized in Turkey). Accordingly, a service shall be deemed provided in Turkey in the presence of any of the foregoing.

In case of intermediary services for the trade of products or services in which one party is resident in Turkey, service shall be deemed provided in Turkey as it is aimed at persons resident in Turkey even when service price is collected from a person resident abroad instead of a person resident in Turkey or (in case of service purchase) the person in Turkey uses the service abroad.

For example:

- Intermediary services for renting real estate properties abroad to persons resident in Turkey by company (A) resident abroad,
- Regardless of whether a commission is charged from the person resident in Turkey, intermediary services provided for the trade of products to residents in Turkey by virtual store (B) resident abroad are deemed provided in Turkey.

Making payment in Turkey for the price of service means making the payment from accounts in Turkey. However, if payments made abroad, payment is deemed made in Turkey in case it is charged from the accounts of payer or those for whom the payment is made or allocated from the profits of a person in Turkey. Accordingly, in case a person downloads a game into his mobile phone upon visiting Turkey for tourism purposes for a period of five days, service is not deemed provided in Turkey provided that the price is not paid from accounts in Turkey.

5. For the purpose of financial accounting, consolidated group means all transactions specified in consolidated financial statements in accordance with the International Financial Reporting Standards and Turkish Financial Reporting Standards.

## **C. TAXPAYER AND TAX RESPONSIBLE**

### **1. Taxpayer**

Pursuant to paragraph one, Article 3 of the Law, digital service taxpayers are digital service providers.

Whether a digital service provider is a fully responsible taxpayer or not within the meaning of the Corporate Income Tax Law No. 5520 of 13/06/2006 and Income Tax law No. 193 of 31/12/1960 and whether they carry out activities via an office or permanent representative in Turkey in case they are limited taxpayer does not have an effect on liability to pay tax.

Accordingly, whether a digital service provider is a taxpayer or not in connection with income or corporate income tax in Turkey does not have an effect on tax payments for digital services.

If the digital service providers do not meet the exemption conditions described in the section (I /C-1) of this Communiqué, or if their existing exemptions expire, they are required to establish a tax payment liability within the period specified in the same article, and tax payment liability shall be created electronically before Large Taxpayers Tax Administration based on the competence specified in paragraph eight, Article 6 of the Law.

Accordingly, digital service providers should complete the form at website of Revenue Administration at [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr) before filing digital service tax return for the first time.

Upon the completion and approval of the said form in electronic form, “Digital Service Tax Liability” is established on behalf of the digital service provider before the Taxpayers' Tax Office.

In addition, taxpayers are not required to submit business licence. A user code, pin and password are given to the taxpayer for performing processes at the Internet Tax Office. Those having “VAT Liability for Electronic Service Providers” perform processes with the existing user code, pin and password.

## **2. TAX RESPONSIBLE**

Pursuant to paragraph two, Article 3 of the Law, in case domicile, business place, registered office and head office of taxpayer are not located in Turkey and in other cases deemed appropriate, the Ministry of Treasury and Finance is authorized to hold those that are party to transactions subject to tax and intermediaries of payment responsible for the purpose of securing tax receivables.

## **Ç. EXEMPTION AND EXCEPTIONS**

### **1. Exemption**

Regulations on exemption from digital service tax are stipulated in paragraph (1) to (5) in Article 4 of the Law.

In paragraph one, Article 4 of the Law, it is stipulated that in case revenue generated in Turkey in connection with services listed in Article 1 is less than 20 million Turkish Lira or revenue generated around the globe is less than 750 million Euro or its equivalent in Turkish Lira in the account period before the relevant account period shall be exempt from digital service tax.

In the event that the taxpayer is a member of a consolidated group in terms of financial accounting, the total revenue that the group receives regarding the services subject to tax is taken into consideration in the implementation of these terms.

Whether taxpayer is a member of a consolidated group within the meaning of financial accounting, and other members within the group are determined based on Turkish Financial Reporting Standards in case tax liability exists for income or corporate tax in Turkey, or International Financial Reporting Standards in the absence of tax liability in connection with these taxes.

In terms of exemption, the total revenue obtained by the digital service provider (if the group is a member of a consolidated group in terms of financial accounting) is calculated within the framework of the explanations in section (II /A) section of the Communiqué.

The proceeds obtained in Turkey and the world will of course be included in general revenue.

The accounting period refers to the calendar year.

In case revenue generated in Turkey in connection with services specified in Article 1 of the Law is more than 20 million Turkish Lira and revenue generated around the globe is more than 750 million Euro or its equivalent in Turkish Lira in 2019, digital service tax liability shall arise from 1 March 2020 after the Law takes effect.

In case revenue generated in Turkey in connection with services specified in Article 1 of the Law is less than 20 million Turkish Lira and revenue generated around the globe less than 750 million Euro or its equivalent in Turkish Lira in 2019, digital service tax liability exemption shall be provided from 1 March 2020 after the Law takes effect. Provisions of paragraph two, Article 4 of the Law shall apply to subsequent (monthly) taxation periods.

**Example 1:** (A) that provides a digital media where users can interact with each other in addition to advertisement services in the digital media is not member of a consolidated group for financial accounting purposes and generated revenue in an amount of 740 million Euro around the globe and 28 million TL in Turkey from digital services in question during accounting period 2019. Accordingly, this business will be exempt from digital service tax as of March 1, 2020, when the Law takes effect since its revenue in the 2019 accounting period did not exceed 750 million euros.

**Example 2:** (B) resident in (K) country and (C) resident in (L) country are group companies of (D) resident in (M) country in terms of financial accounting, and the group generated revenue in an amount of 900 million Euro around the globe from digital services within the scope of the Law. In 2019, (B) generated 10 million TL from digital advertisement services in Turkey, (C) generated 7 million TL from digital content sales in Turkey. Principal company (D) generated 8 million TL in Turkey by providing digital media services where users can interact with each other. Accordingly, the group generated total revenue of 25 million TL in Turkey from services subject to digital service tax. In the implementation of the limits determined for the exemption, since the total revenue they have received regarding the services subject to the tax should be taken into consideration for these enterprises, which are members of a consolidated group in terms of financial accounting, all three of the group companies shall separately become taxpayer as of 1 March 2020 when the Law takes effect.

Pursuant paragraph two, Article 4 of the Law, in case both limits specified in paragraph one of the same article are exceeded in the relevant accounting period, exemption shall end and digital tax liability shall start from the fourth taxation period following the taxation period during which the limit is exceeded. In determining whether the limits in question are exceeded or not, cumulative revenue generated in the relevant accounting period shall be taken

into consideration as of the end of each quarter in the accounting period.

**Example 3:** (N) provides services in digital media in connection with sales of visual contents in the digital media and viewing of these contents in the digital media and it is not a member of a consolidated group for financial accounting purposes; it generated 589 million Euro around the globe and 54 million TL in Turkey by reason of digital services subject to the Law, in 2019 accounting period. Accordingly, this company will be exempt from this tax as of 1 March 2020 when the law takes effect.

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

<b>Cumulative Revenue Periods</b>	<b>Revenue Generated in Turkey</b>	<b>Revenue Generated in the World</b>
January-March	TRY 12 Million	EUR 280 Million
January-June	TRY 21 Million	EUR 756 Million
January-September	TRY 38 Million	EUR 900 Million
January-December	TRY 49 Million	EUR 980 Million

Accordingly, since the amount of revenue obtained by the said enterprise in the January-June period of the 2020 fiscal period exceeds both limits included in paragraph one, Article 4 of the Law, the exemption shall end as of the end of June for 2020 accounting period. Pursuant to paragraph two of the aforementioned article, the digital service tax liability of the enterprise will start from the beginning of October in 2020 accounting period, which is the fourth taxation period following the taxation period in which the limits are exceeded.

Pursuant to paragraph three, Article 4 of the Law, the tax exemption of those who fall below any of the limits in paragraph one during the two consecutive accounting periods starts again from the following accounting period.

**Example 4:** In terms of financial accounting, the enterprise (S), which is not a member of a consolidated group, provides digital services for the sale of audio content in digital media and for listening to these content in digital media and recording them on electronic devices. Revenue generated by the enterprise from these services are as follows:

<b>Accounting Periods</b>	<b>Revenue Generated in Turkey</b>	<b>Revenue Generated in the World Amount of Revenue</b>
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2019	TRY 25 Million	EUR 800 Million
2020	TRY 39 Million	EUR 900 Million
2021	TRY 38 Million	EUR 583 Million
2022	TRY 19 Million	EUR 785 Million

Based on the revenue amounts above, since the revenue amounts generated in the 2021 and 2022 accounting periods fall below at least one of the exemption limits specified in the Law, the entity (S) will be exempt from digital service tax from the beginning of the 2023 accounting period.

Pursuant to paragraph four, Article 4 of the Law, the President is authorized to reduce or increase the terms in paragraph one of the same article up to zero, separately or together, depending on the types of services that are the subject of the tax.

## **2. DOCUMENTATION AND NOTIFICATION OBLIGATION REGARDING EXEMPTION**

Pursuant to paragraph five, Article 4 of the Law, the Ministry of Treasury and Finance is authorized to impose a notification and certification obligation for the determination and implementation of the exemption and to determine the procedures and principles regarding the implementation of the article. In this context, those who do not fulfil their notification and documentation obligations accurately and on time are given an additional period of thirty days to fulfil their obligations. Those who fail to fulfil their notification and certification obligations correctly and on time within the additional period given shall not be entitled to benefit from the exemption in this article.

Within the scope of this authorization, it has been found appropriate for the digital service providers providing the services listed in Article 1 of the Law to certify that they are tax exempt in accordance with the explanations below.

Digital service providers abroad who do not register for digital services tax although they exceed the limit specified in the first paragraph of the amount of revenue that the Law Article 4 obtained in Turkey due to services falling within the scope of the tax during an accounting period for, in so that they are exempt from taxation of digital services tax liability, it is mandatory for an independent audit report to be issued by an independent auditing firm operating in the at least five country worldwide including Turkey, in accordance with the explanations in this Communiqué and international auditing standards, until 31 May following the relevant accounting period.

As a minimum requirement, this report should contain, digital service provider's:

- Tradename, contact (address, phone, e-mail etc.) and shareholding information and information on their activities,
- If any, the information regarding the authorized representative in Turkey (tradename and contact details),
- Amount of revenue generated in Turkey by types of services subject to tax,
- Amount of revenue generated worldwide by types of services subject to tax,

- And evaluation on tax liability within the scope of the law.

In case digital service provider is a member of a consolidated group for financial accounting, the report in question should contain information on group companies (tradename and contact details, revenue generated from the relevant services both in Turkey and around the globe) and evaluation should be made accordingly in the report.

Report in question and Turkish version of the report translated by a certified translator in Turkey shall be uploaded to [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr) by digital service provider until 31st May.

For the subsequent fiscal periods that gross over the above-mentioned amount, a report is prepared in the same procedural office and uploaded at the same address.

In case the report is not uploaded electronically in accordance with required time limits and forms, digital service provider (if any, authorized representative in Turkey) is granted an additional period of 30 days through notification methods listed in the Law No. 213 of 4/1/1961 using communication tools in the internet pages, domain name, IP address and data obtained from similar sources.

In this period, exemption cannot be used if the certification obligations are not fully and timely fulfilled or it cannot be proved that they are not covered by the certification obligation regulated in this section.

Revenue Administration or Large Taxpayers Department, may request digital service providers in Turkey exceeding the specified limit in the first paragraph of Article 4 of the Law for the amount of revenue earned in Turkey for services falling within the scope of the tax from one accounting period and do not register with digital service tax, that they verify that they are exempted in writing.

In this case, the information and explanations regarding the documentation should be submitted in writing within 30 days from the date of notification of the request in question.

If the information and explanations are not sufficient, it may be requested that the documentation of the exemption of the digital service provider be made with an independent audit report within the framework described above. The independent audit report in question must be submitted within 60 days of the notification of this request to the digital service provider. If the report is not submitted within this period, an additional 30-day period is given to the digital service provider.

Exemption cannot be used if the certification obligations are not fully and timely fulfilled during this period.

### **3. EXCLUSIONS**

Pursuant to paragraph six, Article 4 of the Law, revenue generated from:

- a) services for which treasury contribution is paid in accordance with the additional Article 37 of the Telegram and Telephone Law No. 406 of 4/2/1924,
- b) services for which special communication tax is collected within the scope of Article 39 of Expense Taxes Law No. 6802 of 13/7/1956,
- c) Services within the scope of Article 4 of the Banking Law No. 5411 of

19/10/2005,

ç) the sale of products created as a result of R&D activities in R&D centers defined in Article 2 of the Law No. 5746 dated 28/2/2008 on Supporting Research, Development and Design activities and services offered exclusively on these products,

d) Payment services within the scope of Article 12 of the Law No. 6493 of 20/6/2013 on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions,

are exempt from digital service tax. The proceeds from these services are not taken into account in the determination of the terms in paragraph one of Article 4 of the Law.

As stated above, since the revenue obtained from the services covered by Article 4 of the Banking Law No. 5411 is exempt from tax, the revenue obtained due to the activities enumerated in the said article, which may be performed by the banks or other financial institutions depending on their authorization under the relevant legislation, is exempt from tax.

For example, services offered digitally by banks or other financial institutions authorized under relevant legislation, such as

- Brokerage transactions of futures contracts, option contracts, financial instruments of simple or complex structure containing more than one derivative instrument,
- Intermediary transactions in the sale of capital market instruments through export or public offering,
- Transactions for conducting the purchase and sale of the capital market instruments, which were previously issued, for intermediary purposes,
- The proceeds from insurance agency and private pension brokerage services are exempted.

Tax returns from services not covered by exemption will be taxed by those who provide services under the scope of the exemption listed in Article 4, paragraph six of the Law.

In order to apply the exemption stipulated in sub paragraph (ç) under Article 4 paragraph 6 of the Law, the digital content and digital media which are subject to tax, the sale and/or the service or delivery thereof, must be created as a result of the R&D activities defined in the subparagraph (a) and subparagraph (c) of Article 2 paragraph 1 of Law No. 5746.

In this context, it follows that there will be no exemptions for the following products:

- Products developed in R&D centers that have reached the marketable / usable stage or are currently marketed / used but not defined in Article 2 of Law No. 5746,
- Products created as a result of innovation in R&D centers defined in Article 2 of Law No. 5746,
- Products developed/improved upon/differentiated/created as a result of design activities within the scope of Law No. 5746,
- Products created as a result of activities not considered within the scope of R&D according to the relevant legislation.

In case the digital service offered through the products created as a result of the R&D activities in the R&D centers is offered by the product owner on the products that do not have this quality at the same time, the exception applies to the revenue obtained exclusively through the service provided over the products of this quality.

For example, the revenue that an enterprise receives from the sale of a computer antivirus program created as a result of R&D activities in the R&D center as mentioned above is within the scope of exemption.

It follows that tax returns from services not covered by exemption will be taxed by those who provide services under the scope of the exemptions listed in Article 4 paragraph 6 of the Law.

#### **4. LIMIT OF EXCEPTIONS AND EXEMPTIONS**

Pursuant to paragraph seven, Article 4 of the Law, exceptions or exemptions related to the digital service tax are regulated only by adding or amending this Law. The exception or exemption provisions in other laws are invalid in terms of digital service tax.

In this context, with the said regulation, the exceptions brought or to be brought by other laws, before or after the Law No. 7194 came into force, were made invalid in terms of digital service tax.

For example, the existence of a provision in the establishment law of an institution that its incomes are exempt from all kinds of taxes, duties, fees, shares and funds does not prevent the digital service tax to be applied to the revenue obtained by this institution due to the services covered by the Law.

## **II- TAX BASE, RATE AND CALCULATION**

### **A. BASE**

In accordance with paragraph one, Article 5 of the Law, the base of the digital service tax is the revenue obtained due to the services that are subject to the tax in the relevant taxation period. In case of foreign currency calculated by the Revenue, revenue obtained on the day of the Official Gazette of the Republic of Turkey Central Bank buying exchange rates translated into Turkish Lira over. The current exchange rate is taken as the basis for the conversion of foreign currency not announced in the Official Gazette by the Central Bank to Turkish currency.

Regardless of the reason, all of the revenue obtained is included in the base. In this context, all the benefits, services and values provided in sales, transaction or service fee, commission fee, subscription fee, membership fee, brokerage fee and similar names, which can be represented by money, and which are represented in money, shall be included.

Various revenues such as maturity difference, price difference, exchange rate difference, interest, premium, and all kinds of benefits, services and values provided under the service and similar names are included in the base. If such miscellaneous revenues are obtained in the taxation periods following the taxation periods during which the service is provided, they are included in the tax base of the taxation period in which they are obtained. If the exchange rate difference occurs against the taxpayer during the collection stage, the

difference can be taken into consideration in the determination of the tax base for the tax period.

It is possible to take into consideration the determination of the taxation period in which the refund is made from the amount subject to the revenue obtained through the mediation of the sale of goods or services in the digital environment, the return of the goods to the sellers due to the use of the right of withdrawal (consumers) and the goods or services due to the use of the right of withdrawal (consumers) within the scope of Article 48 of the Law on the Protection of Consumers, dated 11/07/2013.

Depending on the return of the service fee to the buyers (consumers), it is possible to consider the portion of the taxpayer returned to its addressee in the determination of the taxation period during which the refund is made.

Revenue generated by services that are part of or complement of digital services that are subject to tax is included in the maturity, even if these services are performed outside of the digital environment, or if a fee is charged for them or an invoice and similar document is issued.

However, provided that the digital services that are the subject of the tax and the services that are not part of the digital service or which are not part of the transaction, can be performed independently from the transaction, by the third parties who are not party to the transaction, the revenue obtained from the services is determined by determining the costs of the services in accordance with the precedents. It is possible to include only the revenue that hits the digital services that are the subject of tax for the services provided in these ways:

- The price of the digital services that are included in the subject of the tax is comparable to the precedents, not less than the price obtained by the digital service provider in transactions that only offer digital services (not including a service that is not subject to the tax),
- Any third party that offers the same/similar services within the same criteria by taking into consideration the price of the services that are not subject to the tax, the price of the service, the scale of the taxpayer and the service, the costs incurred, the risks undertaken, the differences in the quality of the service and the like.

In the event that the proceeds from the mentioned services cannot be separated as specified, the entire proceeds must be included in the tax base.

In this context, for example, a taxpayer who mediates the purchase and sale of goods in the digital environment and who can also provide the call center services related to the storage of the goods and the delivery of the goods sold, is part of and complementary to the intermediary service. While the revenue generated by the services is included in the matrix, the revenue obtained due to the storage services it provides to the sellers will not be included in the maturity provided it is determined in accordance with the precedents.

Value added tax paid by digital service providers is not included in revenue.

It is possible to take into consideration in determining the basis of the discounts in accordance with the commercial practices, which are also shown in the invoices and similar documents regarding the service provided. It is not possible to deduct the discounts made after the taxation period when revenue is obtained from the base.

If revenue is obtained with values other than money such as goods, interests, and

services, the base is determined in accordance with the provisions of Article 267 of the Tax Procedure Law No. 213.

Pursuant to paragraph two, Article 5 of the Law, the tax is deducted from the tax base, and there is no reduction under the name of cost and tax. Accordingly, costs or expenses incurred due to purchases made from tax payers of digital service tax or non-taxpayers for the purpose of providing services within the scope of the tax, whether they are subject to tax or not and taxes paid in connection with them, cannot be deducted from the base of digital service tax.

Digital service tax is not shown separately in invoices and documents that replace invoices.

In the sale of digital content within the scope of subparagraph (b) of the first paragraph of Article 1 of the Act through intermediary platforms, the entire revenue regarding the sale of digital content, in which the content is not clearly stated and this situation is not reflected in the contract between the parties, and the information regarding the digital content is not clearly stated in the invoices and similar documents issued. it is included in the taxpayer's base, which mediates the sale of the content in question.

**Example 1:** The taxable income that the taxpayer (A) company generated in the March 2020 taxation period due to the advertisement services it provides in the digital environment is as follows.

<b>Date of Revenue Generation</b>	<b>Amount of Revenue</b>	<b>Exchange Rate of the Central Bank of Turkey On the Date of Revenue</b>	<b>TL Equivalent of Revenue</b>
7/ 3/2020	USD 500.000	1 US dollar = 6.00 TL	TRY 3.000.000
9/ 3/2020	EUR 100.000	1 Euro= 6.60 TL	TRY 660.000
<b>Total Revenue/ Base for March Taxation Period</b>			<b>TRY 3.660.000</b>

**Example 2:** The taxpayer (B) business generated a revenue of TL 10 million from the (C) business due to its digital advertising service in the April 2020 taxation period. The taxpayer (B) company offered some of this service in the same period by publishing the advertisement in the taxpayer (D) game application and in return paid 4 million TL to the taxpayer (D) company.

Accordingly, the taxpayer's (B) tax base will be 10 million TL and the taxpayer's (D) tax base will be 4 million TL in the April 2020 taxation period.

**Example 3:** The taxpayer (E) company sold its right to access its digital game in the virtual store in the period of May 2020, to the user (K) for 10 TL. Entity (E) also sold its access to the game to the user (L) for 13 TL via the virtual store of the taxpayer (F) in the same period. (E) paid a commission of 3 TL to (F) due to the sale to (L).

Accordingly, in the taxation period of May 2020 (E), the tax base from the digital game sales of the enterprise will be (10 TL + 13 TL =) 23 TL, and the (F) tax base from the

mediation of the digital game sales of the company (F) will be 3 TL.

**Example 4:** The taxpayer (G), who operates a social media platform, has earned TL 15 million in revenue within the scope of privileged subscription service from users in the June 2020 taxation period. In the same period, it also generated TL 25 million in revenue from advertisers due to the advertising services offered through this platform.

Accordingly, the tax base (G) of the enterprise (G) will be (15 million TL+ 25 million TL= ) 40 million TL in the June 2020 taxation period.

## **B. TAX RATE AND CALCULATION**

Pursuant to paragraph three, Article 5 of the Law, digital service tax rate is 7.5%.

Digital service tax is calculated by applying the tax rate applicable to the services covered by the tax to the tax base.

If more than one service included in the subject of the tax is offered together for a single price, the tax rate to be applied to the tax base is taken into account, which is subject to the highest tax rate applicable from these services.

In accordance with the fourth paragraph of the same article, there is no reduction in the tax calculated in this way.

According to the fifth paragraph of the same article, the President is authorized to reduce the digital service tax rate up to 1% separately or together, in terms of service types, to double it.

## **III- TAXATION PERIOD, TAX RETURN, DATE AND PAYMENT OF TAX AND TAX SECURITY**

### **A. TAXATION PERIOD**

Pursuant to paragraph one, Article 6 of the Law, the taxation period in digital service tax is one-month periods of the calendar year.

The Ministry of Treasury and Finance is competent to determine a quarterly taxation period, rather than a one-month taxation period, depending on the types of services and the activity volumes of taxpayers.

### **B. TAX RETURN**

#### **1. Basis of Return and Date of Filing Return**

Pursuant to paragraph two, Article 6 of the Law, the digital service tax is levied on the return of the taxpayer.

In cases where paragraph two, Article 3 of the Law is applied, the return is filed by those responsible for tax deductions.

Digital service taxpayers and those who are held responsible for tax deductions where paragraph two, Article 3 of the Law is applied, are obliged to submit their digital service tax returns until the evening of the last day of the month following the taxation period.

Taxpayers are obliged to submit returns regarding these periods even if they do not earn taxable revenue in a taxation period.

However, those charged with tax liability pursuant to the second paragraph of Article 3 of the Law are not obliged to submit returns regarding the taxation periods when taxable transactions are not available.

## **2. FILING OF RETURNS ELECTRONICALLY**

Pursuant to paragraph eight, Article 6 of the Law and sub-paragraph (4), paragraph one, Article 257 of the Tax Procedure Law No. 213, digital service tax returns may be sent electronically at [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr) address.

Those digital services tax be liable to property income in Turkey and bodies have been found suitable to avoid any had limited with returns 213 of Law No. repeated 227 Article in accordance with the profession to have signed the necessity of not the obligation in terms of taxes.

If taxable revenue is not obtained in the relevant taxation period, the declaration for the relevant period is given by checking the box "There is no tax base to declare in the return."

Revenue obtained for each service type must be shown separately in the line regarding the relevant service type in the base section of the return.

Revenue Administration and tax office records are taken as basis for the determination and certification of the transactions made in electronic environment.

## **C. IMPOSITION PROCEDURES**

### **1. Place of Imposition**

Pursuant to paragraph four, Article 6 of the Law, the digital service tax is levied by the relevant tax office for digital service providers with tax liability on value added tax and Ministry of Treasury and Finance for those without existing tax liability.

However, within the scope of the jurisdiction included in paragraph eight the same article, it has been found appropriate that Large Tax Payers Tax Office shall be the tax office authorized to impose tax.

### **2. ADDRESSEE OF THE LEVY**

Pursuant to paragraph five, Article 6 of the Law, the digital service tax is levied on behalf of natural or legal persons who are liable for this tax or are held responsible for tax deductions.

In ordinary partnerships, a charge is made on behalf of any of the partners, being jointly responsible for the payment of the tax.

## **Ç. TAX PAYMENT**

Pursuant to paragraph six, Article 6 of the Law, taxpayers who are obliged to submit returns and those who are responsible for tax deduction pay the digital service tax for a taxation period within the return period.

Payment can be made with the credit or debit card of banks authorized to collect tax via the internet site of the Revenue Administration ([www.gib.gov.tr](http://www.gib.gov.tr)) and to the banks and tax offices.

## **D. DEDUCTION OF TAX AS EXPENSE**

Pursuant to paragraph seven, Article 6 of the Law, the digital service tax paid by the digital service taxpayers can be deducted by these taxpayers as an expense in the determination of the net income based on corporate tax.

#### **E. AUTHORITY**

Pursuant to paragraph eight, Article 6 of the Law, the Ministry of Treasury and Finance determines the form and content of the digital service tax declaration and its annexes, determining the place of the taxpayer, upon the application of the taxpayer or ex officio, only for taxpayers or taxpayers, is authorized to submit a declaration, to determine the procedures and principles regarding the return and payment time and collection of taxes, to impose a notification and certification obligation and to determine the related procedures and principles.

Within the scope of this authorization, it is deemed appropriate to establish a transaction as follows in terms of some issues.

Digital service taxpayers who are not income and corporate tax payers in Turkey are not subject to bookkeeping requirements in line with Tax Procedure Law No. 213. However, all the supporting information, documents and electronic records related to the proceeds from the provision of tax-based services are kept in accordance with the provisions of the aforementioned provisions of the aforementioned law.

Those having obligations with respect to income and corporation tax in Turkey shall act in accordance with the provisions of the Tax Procedure Law No. 213.

#### **F. CORRECTION**

As return of the digital service offered is not possible and the digital service tax is a tax on revenue, there is no correction and refund of the calculated tax for digital services.

Correction requests within the scope of erroneous tax regulated under Tax Procedure Law No. 213 are considered in accordance with the provisions of the aforementioned law.

#### **G. TAX SECURITY**

Article 7 of the Law stipulates that:

- Digital service providers or authorized representatives thereof in Turkey who are subject to this law and fail in performing their obligations to file return and make payment within the specified period of time in connection with taxes subject to Tax Procedure Law No. 213 may be issued a warning through notification methods listed in the Law No. 213, using communication tools in the internet pages, domain name, IP address and data obtained from similar sources by tax office authorized to impose digital service tax, and this imposition shall also be published on the internet site of Revenue Administration;
- In case obligations are not performed within a period of thirty days starting from the date of publishing, access to services offered by digital service providers may be blocked until performance of obligations with the decision of the Ministry of Treasury and Finance; this decision shall be sent to the Information Technologies and Communication Authority for notification to access providers and access providers shall comply with the requirements of the blocking decision within twenty-four hours upon receipt of the notification;
- Ministry of Treasury and Finance shall determine procedures and principles on tax

security in consultation with the Ministry of Transport and Infrastructure

Accordingly:

- This article is aimed at digital service providers that fail in full, timely and proper performance of obligations to file return and make payment in connection with all taxes within the scope of the Tax Procedure Law No. 213.
- Before the Ministry of Treasury and Finance makes a decision to block:
  - Large Taxpayers Tax Authority competent to impose digital service tax serves a notification about requirement to comply with liabilities to digital service provider or authorized representative thereof in Turkey through notification methods specified in the Law No. 213 and/or via electronic mail and/or other communication means, using contact details, domain name, IP address in the internet pages of digital service provider or information obtained from other sources.
  - In this warning, it is stated which obligations should be fulfilled and the digital service provider is asked to fulfil these obligations within 30 days from the date of notification,
  - In the website of the Revenue Administration, it is announced that the information regarding the digital service provider is made within the scope of Article 7 of the Law, and if the requirement is not made, all powers arising from the mentioned article will be exercised.
- If these obligations are not fulfilled within thirty days after the announcement, it is decided by the Ministry of Treasury and Finance to prevent access to the services provided by digital service providers until these obligations are fulfilled.
- This decision is sent to the Information Technologies and Communication Authority for notifying to the access providers, and the requirement of blocking decisions is fulfilled by the access providers within twenty four hours from the notification.
- In case the obligations are fulfilled;
  - If the decision to block access has not yet been made, no decision shall be made, and if a decision is made but not notified to Information Technologies and Communication Authority, the relevant procedures are terminated,
  - If the decision was sent to the Information Technologies and Communications Authority, but the decision has not yet been fulfilled by the access providers, the Ministry of Treasury and Finance should notify the Information Technologies and Communications Authority.
  - If access is blocked by the access providers, the request of unblocking by the Ministry of Treasury and Finance is forwarded to the Information Technologies and Communication Authority, and within twenty-four hours from the notification of this matter, access to services offered by digital service providers is opened by access providers.

#### **EFFECTIVE DATE**

This Communique takes effect upon promulgation starting from March 1, 2020.

It is hereby notified to the concerned parties.

**ANNEX 3: LETTER FROM AMBASSADOR ROBERT LIGHTIZER TO THE TURKISH GOVERNMENT  
DATED JUNE 2, 2020**



THE UNITED STATES TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON

June 2, 2020

H.E. Ruhsar Pekcan  
Ministry of Trade  
Ankara, Turkey

Dear Minister Pekcan:

I am writing to inform you that, in accordance with Chapter 1 of Title III of the Trade Act of 1974 (known as Section 301), I have determined to initiate a Section 301 investigation of the digital services tax (DST) adopted by Turkey. In particular, the investigation addresses a 7.5% tax on revenues from targeted advertising, social media and digital interface services.

The investigation will initially consider several problematic aspects of DSTs: (1) whether the tax amounts to *de facto* discrimination against U.S. companies; (2) whether the tax has retroactive elements; and (3) whether the tax diverges from norms reflected in the U.S. tax system and the international tax system due to, *e.g.*, possible extraterritorial application, or a purpose of penalizing certain technology companies for their commercial success. Depending on the course of the investigation, other aspects and features of the measure might also be included.

In accordance with Section 303 of the Trade Act of 1974, I hereby request consultations with the Government of Turkey regarding this matter. These issues are of great concern to the Government of the United States. I look forward to working with you or another appropriate official in a cooperative manner to resolve this matter.

Sincerely yours,

Robert E. Lighthizer

cc: H.E. Berat Albayrak, Minister of Treasury and Finance