



Ratification of the Protocol on Amendments to the Treaty on the EAEU regarding the procedure for payment of indirect taxes upon provision of services in electronic form

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On 22 February 2024, the Parliament of the Republic of Kazakhstan adopted Law No. 63-VIII "On Ratification of the Protocol on Amendments to the Treaty on the Eurasian Economic Union (EAEU) dated 29 May 2014 on determination of the Procedure for payment of indirect taxes upon provision of services in electronic form, concluded in Bishkek on 9 December 2022" (the "Protocol").

The Protocol defines the procedure for payment of VAT upon provision of services in electronic form within the trade activities of the EAEU member states.

Protocol in detail

The key amendments made per the Protocol include the following:

1. The meaning of the "*services in electronic form*" is introduced: these are the listed services that are provided through an information and telecommunications network, including via the Internet. This list consists of 14 types of services, including, but not limited to the following:
 - provision of rights to use software and database, including provision of remote access to them;
 - provision of advertisement services and platform for advertisement;
 - provision of services for placement of offers for purchase (sale) of goods (works, services), property rights;
 - provision of technical, administrative, information and other facilities via information technologies and systems for communication and conclusion of transactions;
 - provision of rights to use electronic books (publications) and other electronic publications, information, educational materials, etc.
2. In the meantime, services in electronic form do not include the following:
 - sale of goods, if, when ordering through an information and telecommunications network, including via Internet, delivery of goods (provision of works and services) is carried out without the use of such an information and telecommunications network;
 - the sale/transfer of rights for the use of software and (or) databases in tangible storage devices;
 - provision of services for providing access to the information and telecommunication network.
3. Upon provision of services in electronic form, the place of works and services for VAT purposes should be determined based on the place of the buyer of such services. The procedure for determining the place of business of the buyer (including individuals) of the services in electronic form is provided by the Protocol.

Previously, ambiguity on the issue of VAT on services rendered in electronic form could have led to double taxation of VAT in both EAEU member states or to the circumstances, when such services were not taxed in any of the EAEU member states.

Thus, the Protocol provides unified approach in terms of determining the mechanism for taxation of services in electronic form for VAT purposes within the EAEU member states.

When does the Protocol come into force?

Currently, the Protocol is ratified by all EAEU member states. The Protocol shall come into force on the date of receipt by the depositary through diplomatic channels of the last written notification on the implementation by member states of the internal procedures necessary for its entry into force.

What steps do companies need to take?

Within the framework of organizations or individuals in EAEU member states, it is necessary to determine whether the nature of the provided or received services corresponds to the list of services in electronic form. If the nature of the services corresponds to the list, the next step would be to determine the place of such works and services in accordance with the Protocol, and, accordingly determine the VAT implication when providing / receiving such services. Special attention should be paid to the issue of VAT collection in electronic goods trading.

We would be pleased to discuss with you the implications of these changes to your business.