

e-Tax alert

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Taiwan: Draft proposal to the VAT Act to include foreign e-commerce businesses passed by the Executive Yuan

In August this year, the Taiwan Ministry of Finance (MOF) officially announced that it will amend the Taiwan VAT regulations regarding foreign e-commerce providers and bring them into the VAT net. Pursuant to the proposed changes, foreign e-commerce enterprises outside Taiwan that sells online to Taiwan individuals will be required to register and pay VAT in Taiwan.

Further to the announcement, the MOF had draft the proposed changes to the VAT Act and submitted it to the Executive Yuan. The amended draft VAT law

changes were passed by the Executive Yuan on September 22. The draft proposal of the amended VAT articles will be submitted to the Legislative Yuan for its review and approvals. Pending the outcome from the Legislative Yuan's reviews, further changes / clarifications may arise.

The main changes to the draft VAT Act to capture foreign e-commerce enterprises into the Taiwan VAT realm are summarized below:

Draft proposal of amended VAT Articles	Consequences
1. Added the definition of taxpayer and business entity selling cross-border electronic services	
Insertion of Article 2-1 A foreign enterprise, institution, group, or organization having on fixed place of business within the territory of the ROC selling electronic services to domestic individuals shall be the taxpayer of the business tax an may not apply for the provision of Subparagraph 3, the preceding Article of this Act.	Currently, under Article 2 subparagraph 3 of the VAT Act, where the foreign enterprise without a fixed place of business in Taiwan but sells services to the Taiwan purchasers (individuals or enterprises), it will be the Taiwan purchaser who will be the VAT taxpayer in Taiwan. Based on the new insertion of Article 2-1, the above will no longer apply for foreign enterprise selling electronic services to domestic individuals. The VAT taxpayer status will be shifted to the foreign enterprise itself. The definition and scope of electronic services will be set out in the enforcement rule at a later stage.
Addition of subparagraph 4 under Article 6 Any of the following is a business entity: 4. A foreign enterprise, institution, group, or organization	For the new addition to Article 6, the business entity definition is now extended to foreign enterprise without fixed place of business in Taiwan but sells electronic services to domestic individuals (i.e., B2C).

Draft proposal of amended VAT Articles	Consequences
<p>having no fixed place of business within the territory of the ROC which sells electronic services to domestic individuals.</p>	
<p>2. Added the requirement for a business entity selling cross-border electronic services to apply for VAT registration with the competent tax authority or appoint a tax-filing agent to handle it</p>	
<p>Insertion of Article 28-1</p> <p>A business entity prescribed in subparagraph 4, Article 6 of this Act with annual sales amount exceeding certain criteria, shall apply for taxation registration with the competent tax authority or appoint an individual residing within the territory of the ROC or an enterprise, institution, group, or organization with a fixed place of business as a tax-filing agent to handle the taxation registration.</p> <p>Where any foreign enterprise, institution, group, or organization appoints a tax-filing agent in accordance with the preceding paragraph, it shall apply for approval from the local competent tax authority of the tax-filing agent. In case of a change of agent, it shall also file for approval for such an event.</p> <p>The certain criteria of annual sales amount referred to in paragraph 1 above shall be prescribed by the Ministry of Finance.</p>	<p>Pursuant to the draft Article 28-1, foreign enterprises selling electronic services to Taiwan individuals will have to register for Taiwan VAT or appoint a tax filing agent in Taiwan to handle the VAT compliance requirements, if its annual sales amount exceeds certain limits. The threshold amount will be set by the MOF.</p> <p>There have been some preliminary discussions on the annual threshold and it may be set at NTD480,000.</p>
<p>3. Added the requirement for a business entity selling cross-border electronic services to file bi-monthly VAT returns or appoint a tax filing agent to handle it;</p>	
<p>Replaced paragraph 3, under Article 36</p> <ul style="list-style-type: none"> ● Previous <p>With respect to the services purchased by the purchaser of services referred to in paragraph 1 above, if the amount of each payment does not exceed the limit announced by the Ministry of Finance, it is not necessary to pay business tax according to the conditions provided under that paragraph.</p> <ul style="list-style-type: none"> ● New <p>A business entity prescribed in subparagraph 4, Article 6 of this Act applying for taxation registration in accordance with Article 28-1, shall compute the business tax based on the sales amount at the tax rate provided in Article 10, file a tax return, and pay the tax according to the preceding Article or appoint a tax-filing agent within the territory of the ROC to handle the matter.</p>	<p>Currently, the taxpayer of services sold to Taiwan purchaser by foreign enterprise without a fixed place of business in Taiwan will be the Taiwan purchaser itself. For the purpose to reduce tax collection burden, exemption threshold (currently NTD3,000) have been set. As the VAT taxpayer status will be shifted to the foreign enterprise, such exemption threshold will no longer be required.</p> <p>With the proposed replacement, foreign enterprise without fixed place of business in Taiwan but sells electronic services to domestic individuals will need to compute and pay VAT or appoint a tax-filing agent in Taiwan to handle the matter.</p>
<p>4. Added the penalty on the tax filing agent for failing to file a VAT return and pay VAT on behalf of the taxpayer</p> <p>Insertion of Article 49-1</p> <p>The tax-filing agent prescribed in paragraph 1, Article 28-1 of this Act, who fails to file a business tax return and pay the business tax on behalf of the taxpayer within the prescribed period of time, shall be fined no less than NT3,000 and no more than NT30,000.</p>	<p>Currently, for the taxpayer who fails to file or pay VAT, penalty shall be imposed under Article 49 and 50 of this Act.</p> <p>In addition to the above, pursuant to the new insertion of draft Article 49-1, penalty will now also be extended and imposed on the tax-filing agent who do not file and pay VAT on behalf of the taxpayer within the prescribed time.</p>

KPMG Observations

Pursuant to the current draft proposal of amended VAT articles, there remain still a number of areas which require further clarification, such as the minimum VAT registration threshold, clearer definitions for foreign e-commerce enterprises and electronic services, requirement to issue government uniform invoices...etc. Additionally, based on the current proposed changes, there was no mentioning of any simplified registration or VAT filing regime, hence there would be an increase on the compliance requirements for foreign e-commerce businesses selling services to Taiwan individuals. Based on our prior experiences and comments given on the proposed VAT article amendments, we expect the MOF will provide further clarity in the subsequent issuance of detailed implementation rules and rulings. For businesses which could be affected should closely monitor the progress. KPMG will continue to monitor and track the developments on the VAT law amendments. **K**

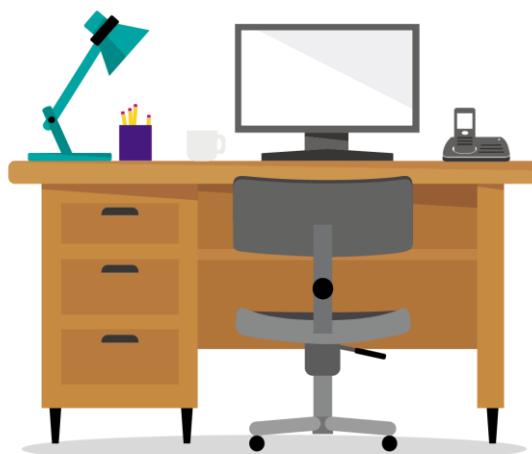
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