

PROBLEMS AND FOREIGN EXPERIENCE IN SUBJECTING THE SERVICES SECTOR TO THE VALUE ADDED TAX IN UZBEKISTAN

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Abstract:

The article examines the situation of the actual application of value-added tax through the documents of the law on transactions concluded with non-residents, that is, foreign companies in the provision of services.

First of all, special attention was paid to the rules for determining the place of performance of works (services) provided by non-residents when subject to value-added tax according to current legislation.

Keywords: tax administration, VAT refund, export of services, tax agent, services in electronic form, country of destination principle, place of service provision, value added tax, indirect taxes.

Main words: tax administration, VAT reimbursement, export of services, tax agent, electronic services, principle of designated country, place of service, value added tax, indirect taxes.

Value added tax (VAT) is the main type of indirect tax in international taxation practice. We can also consider VAT as an indirect tax as a tax on turnover, only this tax constitutes a significant part of the state budget revenues as an additional markup on the sale price of goods (works, services) determined in the national tax legislation of the country that consumes goods (works, services).

The tax calculation and payment mechanism traditionally used in all countries with VAT in the tax system reduces (takes into account) the amount of VAT paid on the resources purchased for these goods (works, services), assuming that the tax is calculated on the full value of the sold goods

(works, services). In other words, in short, we understand that the VAT paid on purchased resources at the entry into the budget is paid to the budget after deducting the output VAT calculated on the realized goods (works, services).

The aforementioned VAT calculation and payment mechanism can work stably if production and sales are carried out within one country, but additional regulation is required if the country borders are crossed in this sales chain.

In international practice, the main principle of VAT calculation is carried out in the country where the consumption of goods (works, services) is intended, that is, VAT is calculated for the budget of the country of consumption.

That is, it means that the goods (works, services) produced within the country must be subject to VAT if they are consumed in this country, and if they are exported out of the country, they must be sold tax-free. But in this case, VAT is applied at a zero rate.

International researchers also confirm that this principle is used in all countries where VAT has been introduced in relation to the sale of goods. In particular, Belarusian researchers N.A. Melnikova, A.V. Grusha [1] and Russian researchers A.D. Mishchenko, I.A. This principle is explained in detail in the work of Kuzmicheva [2].

The application of the principle of the country of consumption indicates the presence of two mandatory norms in national legislation, including:

- 1) delivery of goods produced in the territory of the exporting country for export with full VAT exemption;
- 2) introduction of goods using local rates of VAT.

The above-mentioned procedure is applied to goods produced or imported in the territory of the country, but in relation to the services provided, especially in relation to the services provided by non-residents, the application of such a procedure causes a number of inconveniences due to the fact that they are intangible. This is because where the service is provided and the place of consumption is not clearly stated.

If such a procedure for goods is determined based on the physical location (movement and consumption) of goods, international practice uses five main formal rules for determining the place of their sale in relation to services and works.

This procedure is included in the legislation of all countries where VAT has been introduced, with a number of differences.

In the current Tax Code of the Republic of Uzbekistan, 6 of such formal rules are listed (with the provision of services by means of vehicles being separately distinguished).

Principle (order) number	Type of works, services	The meaning of principle (order).	Effectuated in the legislation of Uzbekistan
1.	Regarding real estate	Works and services directly related to immovable property are determined depending on the location of immovable property.	of the Tax Code Article 241 Clause 1
2.	Regarding movable property	Works and services directly related to movable property are determined depending on the location of the movable property (except for the rental of vehicles).	of the Tax Code Article 241 Clause 2

3.	Catering, entertainment, recreation and other similar services	Catering, entertainment, recreation and other similar services, tourism, hotel services and accommodation, culture, art, physical education and sports, teaching (education), including conducting qualification exams, seminars, training courses, paid exhibitions, if the services related to the organization of conferences, symposiums and other similar events are actually provided in the territory of the Republic of Uzbekistan.	of the Tax Code Article 241 Clause 3
4.	Transportation and (or) transportation services	The starting point or delivery address of the provided services is determined depending on the rental period	of the Tax Code Article 241 Clauses 4-8
5.	Professional business services	Professional services such as management, legal, consulting, information, advertising, engineering and other similar services, as well as license fees, are provided at the location of the customer (buyer) of such services.	of the Tax Code Article 241 Clauses 9-10
6.	Other services	All other works (services) not specified in paragraphs 1-6 above are considered to be sold at the location of the contractor (seller) of such works (services).	of the Tax Code Article 241 Paragraph 1

Therefore, according to the above international principles, goods (works, services) produced within the country must be charged VAT if they are consumed in that country.

Recently, there is a clear tendency to expand the place of service by determining the location of the customer (buyer) of services.

We can clearly see such a trend in the issues of taxation of electronic services. In this case, the definition of determining work (services) at the seller's place through the place of sale is completely abandoned, and the definition of the rule "according to the buyer" is used as the main decision.

Now let's consider the supply of services (Supply of Services) in the European Union.

Service is an activity aimed at meeting the needs of others. The results of such activities, as a rule, do not have material expression, and such services are consumed in the process of implementation.

The provision of services implies the existence of two parties:

1. "Service provider" - a person who provides services.
2. "Service consumer" is a person who orders a service and consumes it.

Regarding the application of VAT to services, commercial services in the European Union are divided into two types:

1. "V2V services" (Business-to-Business Services) - services provided by one VAT payer to another VAT payer (under commercial service contracts between legal entities).

2. "V2C services" (Business-to-Customer Services) - services provided by the supplier (VAT payer) to consumers who are not VAT payers (as a rule, individuals - final consumers).

Here too, the basic rule is that VAT should be charged at the place of supply. Determining the "place of provision of services" takes into account the type of service and the status of its consumer (ie, whether the consumer of the service is a VAT payer or not).

Thus, the rules for determining the location of V2C services and V2V services are significantly different.

Location of V2V services.

As a general rule, V2V services are subject to VAT at the location of the consumer (ie in the country where the consumer's business is established). If the services are provided to a permanent establishment of the consumer located outside the country of registration, the place of supply of services is the location of that permanent establishment.

When providing V2V services, VAT is not included in the price (invoices are issued without VAT). However, this is only possible if the service provided is qualified as V2V.

If both parties to the V2V service contract are EU residents, then the consumer of such services must first inform the supplier of the VAT number and the supplier must verify the validity of this number. In that case, VAT is not included in the price of services (invoices are issued without VAT). The obligation to report and pay VAT to the tax authorities on this transaction belongs to the consumer of the service.

In this case, a mechanism called "reverse taxation" (reverse payment) is often used, which is explained as follows: the consumer reports the contract (transaction) as if there were a supplier and a consumer. That is, without transferring the VAT tax to the supplier, he shows it in his declaration as a tax payable (instead of the supplier) and takes into account the same amount of VAT (as a consumer) in accordance with certain requirements of tax legislation. As a result, without the actual payment of VAT to the treasury - the amount of VAT appears only in accounting documents.

ҚҚС тўловчиси бўлган Ирландия компанияси Кипр компаниясига (ҚҚС тўловчи) В2В хизматларини тақдим этган. Бундай ҳолда, хизматлар Кипрдаги ставка бўйича ҚҚСга тортилади (хизмат истеъмолчисининг жойлашуви Кипр). Шу билан бирга хизматлар олинаётганда, ҚҚС хизматлар нархига киритилмасдан ҳисобварақ-фактуралар берилади). ҚҚС бўйича ҳисобот бериш мажбурияти хизмат истеъмолчиси - Кипр компаниясига тегишли бўлади.

If the consumer of the services (a resident of the European Union) does not have a VAT number or does not provide it, such services are classified (considered) as V2C (consumer is final). In this case, VAT is included in the cost of services (invoices are issued with VAT) and is paid by the supplier to the budget in his country, while it is paid with the possibility of accounting.

An Irish company (a VAT payer) provides services to a Cypriot company that is not a VAT payer. In this case, the invoice will be issued with VAT included in the price of the services, and the Irish company will pay it with the possibility of further accounting (deduction) at the VAT rate of its country.

If the consumer of V2V services is located outside the European Union (non-EU resident), then VAT is not included in the price of services (invoices are issued without VAT), provided that the consumer of such services is a business entity that pays VAT in its territory. To confirm this fact, the consumer must provide the relevant documentary evidence (taxpayer's certificate, etc.) to the supplier.

An Irish company (VAT payer) provides V2V services to a Ukrainian company. In this case, Ukraine (the location of the consumer of services) is recognized as the place of provision of services. Therefore, Irish VAT is not payable (invoices are issued without VAT).

If the consumer of services (non-EU resident) does not provide documentary evidence of his business status, such services are classified as V2C (consumer is considered final). In this case, VAT is included in the price of services (invoices are issued with VAT) and is paid by the supplier to the budget of his country with the possibility of further deduction:

An Irish company (VAT payer) provides services to a Ukrainian company that has not provided documentary evidence of its business status. VAT is included in the price of the service and will be paid by the Irish company at the Irish rate in their home country with the option of deducting it later.

If the business status of the consumer of the services is not clear, by default such services are classified as V2C (the consumer is the ultimate). Accordingly, VAT is included in the price of such services (invoices are issued with VAT) and is paid by the supplier with the possibility of further deduction to the budget of his country.

Exceptions for B2B services

1. VAT for services related to real estate is paid at the place of its location.
2. Passenger transportation services are subject to VAT in proportion to the distance traveled at the place where they are performed.
3. For short-term vehicle rental (rental) services, VAT is charged at the place of delivery of the vehicle to the consumer.
4. Services in the field of culture, art, sports, science, education, entertainment, etc. they are subject to VAT at the place of actual supply.
5. Restaurant services are subject to VAT at the place of actual supply.
6. Catering services on board aircraft, ships and trains are subject to VAT at the point of departure.

Place of provision of B2S services:

As a general rule, V2C services are subject to VAT at the location of the service provider (ie in the country where the provider's business is established). If the services are provided by a permanent establishment of the supplier located outside the country of its establishment, the place of supply of services is the location of this permanent establishment.

When providing V2C services, value added tax is included in the price of services (invoices are issued with VAT) and is paid by the supplier with the possibility of further deduction to the budget of his country.

B2C хизматлар учун истиснолар

The exceptions for V2C services are the same as for V2V services (listed above), with a few more additions:

1. Intermediation services are subject to VAT at the place where the main transaction is carried out.
2. Freight transportation services are subject to VAT in proportion to the distance traveled at the place of transportation. For transportation within the EU - at the place of departure.
3. Relevant transport services (loading, unloading, etc.), as well as services for valuation of movable tangible property, are subject to VAT at the place of their actual provision.

4. Long-term vehicle rental (lease) services are subject to VAT at the location of the consumer (subject to special rules for water transport).
5. Electronic services (web hosting, provision of access to databases, sale of software, music, movies and computer games, organization of gambling games, online education, etc.), telecommunication services, as well as services in the field of television and radio 2015

From January 1, VAT will be charged at the location of the consumer.

Examples:

1. The case where the service provider (supplier) is a resident of the EU, the consumer is a non-resident of the EU: If a European company provides such services to consumers outside the EU, the obligation to pay value added tax in the EU does not arise (invoices are issued without VAT).
2. The case where the service provider (supplier) is a non-EU resident and the consumer is an EU resident: a foreign company (a non-EU resident) providing such services to European consumers has tax obligations in the EU. Such a company must register with the tax authorities in the European Union and pay VAT at local rates.

To simplify these procedures, the so-called "Single Window" system works in the EU countries - the supplier can register for VAT and pay the tax independently in one of the EU countries, regardless of which country the consumers live in. can pay. The tax paid is then distributed among the EU countries according to their share.

3. The case where the service provider (supplier) is a resident of the EU, and the consumer is also a resident of the EU: when providing such services in the European Union, European companies must also pay VAT at the rates of the country where the consumers are located (in this case, it is enough to be registered for tax in their country).
6. Transfer of copyright and related rights, patents, trademarks to another person, granting licenses for their use; providing advertising, consulting, legal, accounting, engineering, financial, insurance services; staffing; and the rental of movable property (other than vehicles) is subject to VAT at the location of the consumer, if such consumer is located outside the EU.

Examples:

1. The case where the service provider (supplier) is a resident of the EU, the consumer is a non-resident of the EU: If the EU company provides such services to consumers outside the EU, the EU company does not have the obligation to pay value added tax (invoices are issued without VAT).
2. Service provider (supplier) - non-EU resident, consumer -

In the case of an EU resident: Since such services are subject to the general V2C rule (i.e. taxation at the location of the service provider), in this case also no VAT will arise in the EU.

3. Service provider (supplier) - EU resident, consumer -

EU resident: Services are subject to VAT under the general V2C rule (ie where the service provider is located). VAT is included in the price of services (invoices are issued with VAT) and is paid by the service provider with the possibility of further deduction to the budget of his country.

If we pay attention to the taxation of services in the case of Uzbekistan, the main condition for taxing goods (works, services) is the place of their realization.

This concept for goods is considered simple, and according to Article 240 of the Tax Code, if the goods are sold in the territory of Uzbekistan or are in this territory at the time of shipment or transport, this territory is recognized as the place of sale of goods and is subject to value added tax.

However, as for the provided services, the place of their realization must satisfy certain complex conditions related to the service provider and the consumer of the services in order to be recognized as the territory of Uzbekistan. For this reason, in the countries where VAT has been introduced, measures are taken to clarify the place of realization of services by including different concepts in the issue of taxation of services provided.

The legislation of the Republic of Uzbekistan is fully coordinated with the above principles regarding the import and export of goods:

- Based on the requirements of paragraph 1 of Article 260 of the Tax Code, the taxpayer has the right to apply a "0" rate of VAT to the exported goods, while the taxpayer has the opportunity to account for (reduce) the amount of VAT paid on the materials used in the development of these goods.
- Based on the requirements of Article 254, the rate of VAT on the importation of goods shall be 12 percent according to the rate specified in the Tax Code.

The following arguments can be made in support of this proposition:

- 1) compliance with the principle of the country of destination. Compliance with this rule ensures payment of taxes in accordance with internal regulations in the country where works (services) are consumed;
- 2) compliance with the nature of modern services. The provision of modern digital services is constantly becoming more complex, it is provided remotely, the involvement of specific performers based on the reality of business practice is a complex process, and the place of sale of such professional business services is difficult to classify into "customer-oriented" or other services (whether specified by the "seller");

However, in the current Tax Code, zero tax is applied even when the goods (works, services) produced on the territory of the country are sold on the territory of the country without following this principle.

In particular, Article 263 of the Tax Code stipulates the application of zero tax to aircraft services provided directly at the airports of the Republic of Uzbekistan and in the airspace of the Republic of Uzbekistan, including aeronautical services.

However, it does not distinguish whether such services are applicable to aircraft flying on domestic routes or flying on international routes. As a result, there are constant disputes with the tax authorities regarding the taxation of all services provided at airports.

In fact, the Tax Code of the neighboring Republic of Kazakhstan

As specified in Article 388, flights with take-off and landing destinations in the territory of the Republic of Kazakhstan are not included in the zero rate of taxation on the sale of fuel and lubricants carried out in international air transportation by airports, ground service providers, when refueling aircraft of foreign airlines performing international flights.

In addition, in part 2 of Article 264, by taxpayers who purchase goods (services) within the framework of a product distribution transaction, if the transaction provides for the application of a zero-level rate, the sales turnover of goods (services) shall be zero-level by way of compensation (refund) of the paid tax. rate is expected to be applied.

In the current tax code of the Republic of Uzbekistan, the services provided by a legal entity are not classified according to whether they are provided to legal entities or individuals and their final consumption.

In this case, the main classification is based on the principle of taxation based on the recognition of the place of provision of services, and in some cases, the provision of such services may not be taxed, or the export of services provided by enterprises may lead to an increase in the cost of export.

In particular, the list of electronic services provided in Article 282 of the Tax Code is closed, and when non-residents provide other services (including electronic services) to individuals, the place of service of which is recognized as the territory of the Republic of Uzbekistan, which is not provided for in this list, problems may arise in the issue of VAT.

Conclusions and suggestions. The following conclusions were reached on the topic:

1. Amendments to the Tax Code in connection with the emergence of VAT payment obligations depending on the recognition of the place of service only in cases where "V2V services" or "V2C services" are provided.
2. It is necessary to ensure that all goods (works, services) sold on the territory of the Republic are subjected to VAT at the rate of 12 percent without exceptions, in accordance with the procedure established by the Tax Code.

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