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DIGITAL SERVICE TAX RELATED PROCEDURES, 2079 (2022)

AN OVERVIEW OF THE TAX PROCEDURES IN RELATION WITH DIGITAL
SERVICES IN NEPAL



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DIGITAL SERVICE TAX RELATED PROCEDURES, 2079 (2022)

A. DIRECT TAX ON DIGITAL SERVICE

1. Introduction of Direct Tax on Digital Service

- 1.1. In a rapidly evolving digital landscape, governments around the world are adapting their tax policies to capture revenue from the booming digital economy. In 2079 (2022), Nepal introduced the Digital Service Tax ("DST") under **Section 20** of the **Finance Act, 2079 (2022 AD)** (the "Act").
- 1.2. This tax was designed to ensure that non-resident entities providing digital services to consumers in Nepal contribute to the country's revenue.
- 1.3. It lays out the framework for imposing a direct tax on the transaction value of digital services provided by non-resident persons to consumers in Nepal.

2. Definition of Major Terms

- 2.1. **"Digital Service provided to consumers of Nepal"** means digital service provided by a non-resident person to a consumer if any one of the following conditions is satisfied:
 - 2.1.1. Service is received within Nepal,

- 2.1.2. Billing address of services is in Nepal
 - 2.1.3. Payment is made through accounts maintained in banks or payment instruments operated by licenced institutions or entities of Nepal,
 - 2.1.4. Payment is made through a debit card, credit card or similar type of payment instrument issued by banks or licenced payment provider institutions or entities of Nepal,
 - 2.1.5. Service is received by using an internet protocol address in Nepal,
 - 2.1.6. Service is received by using a SIM card having the country code of Nepal or the land line of Nepal.
- 2.2. **“Digital service”** includes the following services whose delivery essentially requires information technology and is provided automatically through the internet with minimal human intervention:
- 2.2.1. Advertisement,
 - 2.2.2. Movies, television, music, over-the-top (O.T.T) and other similar subscription-based services,

- 2.2.3. Data storage service
 - 2.2.4. Cloud service,
 - 2.2.5. Gaming,
 - 2.2.6. Service related to mobile application
 - 2.2.7. Online marketplace service and goods and services to be provided through it,
 - 2.2.8. Supply and update of software,
 - 2.2.9. Sales of data collected from resident person of Nepal,
 - 2.2.10. Download of data, images and similar services,
 - 2.2.11. Education, consultancy, skill development and training service,
 - 2.2.12. E-book, e-library, e-newspaper,
 - 2.2.13. Similar Services other than serial numbers 1 to 12
- 2.3. **"Consumer"** means a person who consumes goods and services having a normal place of abode in Nepal. Provided, a person who purchases goods and services by separate arrangement for business purposes or to use in business shall not be considered a consumer.

- 2.4. **“Non-resident person”** means any person except a resident person.
- 2.5. **“Resident person”** means resident persons pursuant to the **Income Tax Act, 2058 (2002)** (the **"Income Tax Act"**).
- 2.6. **“Transaction Value”** means value of goods and services provided in any income year as per para 2.5 above excluding any indirect taxes applicable on it in Nepal.
- 2.7. **“Income Year”** means a period from the first day of Shrawan of any Nepali year to the last day of Ashad of the next year.
- 2.8. **“Act”** means **Finance Act, 2079 (2022)**
- 2.9. **“Tax”** means the Digital Service Tax to be deposited pursuant to **Section 20** of the Act.

3. Basis of Taxation and Rate

- 3.1. The tax rate for digital services provided by non-resident persons to consumers in Nepal is set at two percent of the transaction value, excluding indirect taxes levied in Nepal.

- 3.2. Non-resident persons operating online marketplaces must disclose transaction value by including both the value of goods and services provided through it. However, they should not include amounts related to goods and services supplied by resident persons through their marketplace.
- 3.3. Consumers bear responsibility for wrongly declaring themselves as consumers when utilizing digital services.
- 3.4. It's essential to note that the tax is considered a direct tax, and it should not be added to the value of the service.

4. Limitations and Exemptions

- 4.1. Digital services provided to consumers in Nepal are exempt from taxation for transaction values of up to two million rupees per income year. However, if the transaction surpasses the two million rupees threshold, taxes will be levied on the entire transaction amount.
- 4.2. Income taxed under this procedure is not subject to taxation under the Income Tax Act.

5. Tax Administration and Registration

- 5.1. The administration of the Digital Service Tax is carried out by the Large Taxpayer Office ("**LTO**" or the "**Office**").
- 5.2. Taxable persons must register in Nepal and obtain a Permanent Account Number (**PAN**) before engaging in transactions, as per the Act. However, non-registration does not exempt anyone from tax obligations.
- 5.3. Taxable persons must apply for a PAN within 30 days of exceeding the transaction threshold. Voluntary registration can be done at any time.
- 5.4. Non-resident persons who are already registered for Value Added Tax (**VAT**) do not need a separate PAN.
- 5.5. Non-resident persons should apply for a PAN online in the standard format as per Annexure 1 of **DST Related Procedures, 2079 (2022)**.
- 5.6. Non-resident persons must provide several documents when applying for registration which includes
 - 5.6.1. Notarized copies in English of their company registration certificate from their country of residence,

- 5.6.2. Tax registration identification number from their country of residence,
 - 5.6.3. Letter relating to the authorized person designated for tax purposes and a notarized copy of the person's passport in English.
 - 5.6.4. They also need to provide a photo and specimen of the authorized person designated on behalf of the non-resident person.
 - 5.6.5. If a citizen of Nepal is designated for tax purposes, an authorized letter and notarized copies of their citizenship or passport are required.
- 5.7. The Office should issue a registration certificate within seven days of receiving the application or inform the applicant within 15 days, along with reasons, if registration is not possible.

6. Accounting of Transaction and Submission of Returns:

- 6.1. Non-resident persons must disclose transaction values in Nepali currency.
- 6.2. Accounting should be done on an accrual basis for tax purposes.
- 6.3. Tax returns must be filed annually within three months of the completion of the income year.

6.4. Failure to file returns within the designated time frame incurs a fee of 0.1 percent per year.

7. Payment of Tax:

7.1. Tax payments must be made online at the designated revenue heading.

7.2. Tax must be paid within three months after the completion of the income year.

7.3. Failure to pay tax within the stipulated time results in an annual interest charge of fifteen percent pursuant to **Section 20(3)** of the Act.

8. Audit and Tax Assessment of Transaction:

8.1. The LTO has the authority to conduct audits of transactions of non-resident persons.

8.2. If a non-resident person is found to have understated their tax liability, a tax penalty of 50 percent of the concealed amount shall be imposed pursuant to **Section 20(3)** of the Act.

8.3. The tax assessment process includes

8.3.1. Issuing an initial tax assessment order based on evidence collected by the tax officer.

8.3.2. Providing a period of 15 days for submission of proof and evidence for defence on such assessment of tax.

- 8.3.3. Issuing a final tax assessment order after consideration of proof and evidence.
- 8.4. The tax assessment order sent to the email address given during registration or provided to the non-resident person's appointed representative, shall be deemed to have properly delivered the information of the order.

9. Cancellation of Registration:

- 9.1. Non-resident persons wishing to cancel their registration must submit an application to the Tax Officer.
- 9.2. The Office should notify the cancellation or provide reasons for not deregistering within three months of receiving the application.

B. INDIRECT TAX ON DIGITAL SERVICE

10. Introduction of Indirect Tax on Digital Service

- 10.1. Following the amendment to the **Value Added Tax Act 2052 (1996)** by the Finance Act of 2079 (2022), a provision has been made requiring non-resident individuals providing digital services to consumers to register for Value Added Tax (VAT) and deposit the applicable tax (VAT).
- 10.2. By imposing VAT on these services, Nepal aims to ensure that the digital economy contributes its fair share to government revenue.

11. Definitions of Digital Service Under VAT Act and Rules

- 11.1. The term "**Digital Service**" refers to the goods and services, as defined under Para 2.2 above, except to the following goods and services mentioned in the list.
 - 11.1.1. The sale of data collected from residents of Nepal
 - 11.1.2. Educational Services
 - 11.1.3. Services related to E-books, E-libraries, and E-newspapers.
- 11.2. "**Non-Resident Person**" means a person from outside Nepal who does not have a permanent business address, business representative or legal representative in Nepal.
- 11.3. "**Consideration**" means anything to be received as value for the supply of services.

- 11.4. The term "**Consumer**" refers to the same person as defined under Para 2.3 above.
- 11.5. "**Act**" means **Value Added Tax Act, 2052 (1996)**.
- 11.6. "**Rules**" means **Value Added Tax Rules, 2053 (1997)**.
- 11.7. "**Tax**" means the Value Added Tax to be levied as per the Act.
- 11.8. "**Transactions**" means digital service provided by a non-resident person to a consumer if any one of the following conditions is satisfied:
 - 11.8.1. Service is received within Nepal,
 - 11.8.2. Billing address of services is in Nepal
 - 11.8.3. Payment is made through accounts maintained in banks or payment instruments operated by licenced institutions or entities of Nepal,
 - 11.8.4. Payment is made through a debit card, credit card or similar type of payment instruments issued by banks or licenced payment provider institutions or entities of Nepal,
 - 11.8.5. Service is received by using an internet protocol address in Nepal,

11.8.6. Service is received by using a SIM card having a country code of Nepal or landline of Nepal.

12. Basis of Taxation and Rate

- 12.1. Non-resident persons conducting taxable digital service transactions exceeding two million Nepali Rupees within the last twelve months are required to register for VAT. Once registered, they must collect tax regardless of the transaction amount.
- 12.2. VAT for digital services is collected based on the transaction value of the service. The applicable tax rate is 13 percent.
- 12.3. Services provided to entities in Nepal, other than consumers, are not considered digital services for taxation purposes. In such cases, non-resident persons are not obligated to collect VAT. However, if a person other than the consumer purchases services from outside Nepal, they must deposit tax as per **Section 8(2)** of the Act under the reverse charging system.
- 12.4. Consumers shall be responsible for incorrectly declaring themselves as consumers when consuming these digital services.

13. Tax Administration and Registration

- 13.1. The administration of the tax is carried out by the Large Taxpayer Office ("**LTO**" or the "**Office**").
- 13.2. Non-resident individuals or entities conducting taxable digital service transactions exceeding two million Nepali Rupees within the last twelve months must register for VAT. They are obligated to collect VAT from the date of registration.
- 13.3. Non-resident persons meeting the criteria in para 13.2 must apply for registration to the Office within 30 days from the date when their transactions surpass two million rupees.
- 13.4. Even if the estimated annual turnover is expected to exceed two million rupees, non-resident persons can voluntarily choose to register for VAT. In such cases, they are required to collect VAT from the date of registration.
- 13.5. Non-resident persons must provide several documents when applying for registration which includes
 - 13.5.1. Notarized copies in English of their company registration certificate from their country of residence,

- 13.5.2. Tax registration identification number from their country of residence,
 - 13.5.3. Letter relating to the authorized person designated for tax purposes and a notarized copy of the person's passport in English.
 - 13.5.4. They also need to provide a photo and specimen of the authorized person designated on behalf of the non-resident person.
 - 13.5.5. If a citizen of Nepal is designated for tax purposes, an authorized letter and notarized copies of their citizenship or passport are required.
- 13.6. The Office should issue a registration certificate within seven days of receiving the application or inform the applicant, along with reasons, if registration is not possible.
- 13.7. In cases of failure to register as per the outlined procedure, the Tax Officer may impose a fine of twenty thousand rupees on the non-resident person for each instance of non-compliance.

14. Accounting of Transaction and Submission of Returns

- 14.1. Non-resident persons who are registered under this procedure have the flexibility to issue tax invoices. Electronical approval from the Inland Revenue Department (**IRD**) is not required for this purpose.
- 14.2. These invoices can be designed as per the seller's preference but must include certain key details such as:
 - 14.2.1. The seller's name and Permanent Account Number
 - 14.2.2. The buyer's name and Permanent Account Number (if available)
 - 14.2.3. The date of the transaction
 - 14.2.4. Description of the service provided, and the price.
- 14.3. It is mandatory for non-resident persons to issue invoices for the supply of services at the time when the service is provided or when the consideration for the service is received, whichever occurs earlier.

- 14.4. In cases where a non-resident person receives consideration for the supply of services in a convertible foreign currency from the consumer, the transaction should be accounted for in both the foreign currency and equivalent Nepali Rupees. This conversion should be done using the exchange rate published by Nepal Rastra Bank on the day of return submission. Accurate records must be maintained for this period in foreign currency.
- 14.5. Non-resident persons are required to file returns as per **Section 18** of the Act within twenty-five days of the expiry of the tax period online in the prescribed format as provided in the procedures.
- 14.6. Failure to file returns within the specified time frame may result in fines. The fine imposed is either 0.05 percent of the tax payable per day or one thousand rupees per tax period, whichever is higher pursuant to **Section 29** of the Act.

15. Payment of Tax

- 15.1. Non-resident individuals or entities must pay the tax, in line with the submitted tax return, through online means, specifically at revenue heading 33316.
- 15.2. Failure to pay tax within the prescribed time limit results in an interest charge of fifteen percent pursuant to **Section 26** of the Act.

- 15.3. Additionally, if tax payment is not made within the specified time frame, an additional fee of ten percent is imposed pursuant to **Section 19** of the Act.

16. Audit and Tax Assessment of Transaction:

- 16.1. Tax officers have the authority to assess tax if they have reasonable grounds to believe that the amount of tax has been understated by the non-resident person.
- 16.2. If it is determined that tax liability has been concealed or reduced through fraudulent means, fines and penalties shall be enforced pursuant to **Section 29** of the Act.
- 16.3. The tax assessment process shall be as provided in the Act.

17. Appeal Procedures

- 17.1. Non-resident individuals or entities dissatisfied with a tax assessment under Para 16 made by the tax officer may submit an application for administrative review to the Director General of IRD.
- 17.2. If the decision of the Director General remains unsatisfactory, non-resident persons have the option to appeal to the revenue tribunal.

18. Cancellation of Registration

- 18.1. Non-resident individuals or entities wishing to close their transactions or deregister for any reason must follow the cancellation process outlined in **Section 11** of the Act.
- 18.2. Deregistration requests should be filed online with the Tax Officer, using the format as prescribed.
- 18.3. Registration cannot be cancelled until any outstanding tax liability has been settled by the non-resident person.
- 18.4. The Office shall cancel the registration within three months of receiving the application and shall inform the decision to the non-resident person.

19. Payment Information of Value Added Tax (VAT) And Digital Service Tax (DST)

- 19.1. The following account details is provided by IRD to pay the Digital Service Tax and Value Added Tax by the non-resident persons from abroad.

Bank Name	NEPAL RASTRA BANK
Client Name	NON OPERATIVE REV. ACCOUNT-FCGO
Account Number	1200203/002.001.840
Swift Code	KA 1.1 REVENUE ACCOUNT-USD
Currency	USD

- 19.2. The fee to send the amount to the account mentioned above will have to be borne by the taxpayer. For the purpose of depositing revenue from the said account, the following information should also be sent along with the amount.

Office Name	Large Taxpayer Office
Office Code	305043401
Taxpayers Pan Number
Revenue Head (VAT)	33316
Revenue Head (DST)	11445

KEY CONTACTS

If you have any questions or would like to know how this might affect your business, get in touch with these key contacts



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