REPUBLIC OF SENEGAL
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Ministry of Finance and Budget

N°_____ MFB/DGID

Dakar,

# Order implementing the provisions of article 355 bis of the General Tax Code relating to VAT on digital services provided by foreign taxable persons

## The Ministry of Finance and Budget

**CONSIDERING** the Constitution ;

**CONSIDERING** Act no. 2012-31 of December 31, 2012 on the General Tax Code, as amended;

**CONSIDERING** decree no. 2022-1774 of September 17, 2022 appointing the Prime Minister;

**CONSIDERING** decree no. 2022-1788 of September 26, 2022 on the responsibilities of the Minister of Finance and Budget;

**CONSIDERING** decree no. 2023-2104 of October 11, 2023 appointing ministers and determining the composition of the Government;

**CONSIDERING** decree no. 2023-2105 of October 11, 2023 on the allocation of State services and control of public establishments, national companies and publicly-owned companies between the Presidency of the Republic, the Prime Minister's Office and the ministries;

**ON** the note from the Director General of Taxes and Domains,

**Order**

**Article 1 -.** In accordance with the provisions of article 355 bis of the General Tax Code (CGI), the purpose of this order is to define the terms and conditions for the application of the value-added tax (VAT) regime applicable to sales of online services and commissions received by direct suppliers and digital platform operators who do not have business facilities in Senegal.

**Article 2-. Scope**

**a. Taxable Operations**

Digital services are subject to VAT.

Digital services are defined as supplies of goods and/or intangible services of any kind, carried out automatically via a computer and/or electronic network.

Suppliers established abroad who use their own technology and provide digital services are required to collect and remit VAT on their online sales operations.

Commissions received by foreign intermediaries for the sale of services on Senegalese territory are also subject to VAT. These are sums paid by the seller and/or buyer as remuneration for using the platform.

The term "intermediary" refers to those involved in online sales, in particular digital platforms, online marketplaces or marketplaces that put suppliers and their customers in touch with each other to enable them to conclude transactions through the use of information technology.

For the purposes of this Order, a digital platform is defined as a digital tool that electronically connects people at a distance, in order to sell a good or provide a service online. The e-commerce platform may be operated as follows:

- by a supplier for the distribution of its own products ;
- by an operator who connects suppliers and customers.

E-commerce platforms are considered as foreign platforms when they are operated by non-residents.

By way of illustration, VAT applies to the following digital services:

- advertising services ;
- digital intermediation services;
- downloading/broadcasting of music, films and online games;
- SaaS ["Software as a Service" or cloud software] solutions;
- data storage and processing;
- database provision;
- electronic data management;
- provision of online articles, journals and information;
- e-learning, distance learning ;
- web, image and text hosting;
- provision of travel, accommodation and transport information;
- broadcasting or provision of websites;
- data software hosting;
- sale of software and software updates;
- remote software maintenance services;
- distribution of images, text and information;
- organization of political, cultural, artistic, sports, scientific and other programs and events;
- provision of advertising platforms;
- provision of streaming platforms and subscription services;
- booth paging service;
- cloud storage service;
- provision of downloadable content (applications, books, films);
- media subscription services, streaming, software programs,
- audiovisual content;
- supplier-recipient liaison services;
- performance of any other electronic service.

**b. <u>Territoriality of digital platforms</u>**

The place of taxation for digital services is Senegal when the service is used there, or when the natural or legal person on whose behalf the service is rendered is established there, irrespective of the place of establishment of the supplier.

Operators of foreign digital platforms, liable for VAT on digital services, must consider that their customer, the natural or legal person benefiting from said services, is established in Senegal when :

- the customer's billing address is located there;
- the bank account details used by the customer to pay for digital services, or the customer's credit card details, including the credit card's bank identification number (BIN), are located there;
- the code of the customer's telephone number corresponds to that of Senegal, or the location of the customer's fixed telephone line through which a service is provided is that of Senegal, or the mobile country code (MCC) of the international mobile subscriber identity (IMSI) stored on the Subscriber Identity Module (SIM) card used when a customer places an order by cell phone is that of Senegal;

- the Internet Protocol (IP) address of the device used by the customer to make the online purchase or download the digital content is located there.

**Article 3-. Tax base**

The tax base is determined on the basis of actual sales. It is constituted by the compensation received or to be received by the supplier or provider of digital services. Where all or part of the compensation is received in kind, its value is determined on the basis of the normal selling price of a similar delivery or service.

**Article 4-. VAT calculation, collection and repayment procedures**

When the direct supplier or platform operator is not established in Senegal, he or she is required to settle, collect and remit VAT on the digital transaction and the related commission to the tax department responsible for large companies.

However, for local VAT taxpayers, in the absence of proof of regular registration of the operator of the foreign platform, the company receiving or benefiting from the taxable transaction must liquidate, collect and remit the tax in accordance with the provisions of point 3 of article 355 of the CGI.

In the case of imported goods, VAT is not collected by the platform operator, but rather by the customs authorities when the goods cross the customs cordon, in accordance with the provisions of the Customs Code.

The applicable rate is 18%.

**Article 5-. Simplified tax registration procedure**

Foreign direct suppliers and digital platform operators benefit from a simplified remote electronic registration procedure.

To this end, these companies must complete the online registration form provided by the tax authorities at the following link (https:/eservices.dgid.sn/fimfipnet). They are required to produce, as attachments :

- a copy of the Trade and Personal Property Credit Register (RCCM) or any equivalent document for legal entities;
- a copy of the identification card or passport, in addition to the RCCM, for individuals.

Once the form has been filled in correctly and the documents have been submitted to the dedicated platform, the foreign taxpayer receives confirmation of receipt of the application for registration.

The information provided on the registration form is also used to assign the foreign company a login and password needed to access Etax, the remote declaration platform.

Once the application has been processed, the managing tax department notifies the focal point designated by the foreign company by e-mail:

- the national identification number for companies and associations (NINEA), which constitutes the tax identification number;
- the user name for the remote declaration platform (ETAX), the password and the link to personalize the password.

Lastly, the tax registration of foreign suppliers and platform operators is not likely to constitute a permanent establishment for the purposes of subjecting the aforementioned digital service providers to the payment of other types of tax in Senegal. It is subscribed for the sole purpose of declaring and paying collected VAT, and does not make the platform provider or operator a tax resident.

The tax department responsible for managing the tax files of direct suppliers and digital platform operators who sell online is the department in charge of large companies.

**Article 6-. VAT tax return**

La déclaration de la TVA est faite par les fournisseurs directs et les opérateurs de plateformes électroniques à travers l'interface de télé déclaration plus tard dans les quinze premiers jours de chaque mois.

Cette déclaration doit renseigner, pour les fournisseurs directs et les gérants de plateformes numériques étrangers :

- le montant total hors taxes des opérations conclues avec des clients établis au Sénégal au cours du mois ;
- le montant de la TVA facturée et collectée sur les clients établis au Sénégal.

**Article 7-. VAT declaration and payment procedures**

VAT on online transactions carried out abroad is paid by direct suppliers and managers of digital platforms into the account opened in the name of the Treasurer General in the books of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) on behalf of the Treasury of Senegal.

The relevant collection department and the department in charge of international tax relations may, if necessary, provide administrative assistance in collection matters, as provided for in international tax agreements.

The practical arrangements for declaring and paying VAT are set out below:

- access to the Etax remote declaration platform at the following address: https://csfe4.dgid.sn/
- log in with your "login" and password;
- fill in the declaration online from the "Declarations" module in the toolbar, indicating sales for the period and the VAT due;
- printout of the declaration from the "My contributions" menu, if required by the foreign company;
- payment by bank transfer to the order of the "Trésorier général du Sénégal", to the following account:
    - Bank : Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO)
    - SWIFT Code : BCAOSNDA
    - IBAN : SN000 01001 000000050001 19
    - Bank account : SN000 01001 000000050001 19

**Article 8-. Applicable sanctions**

Without prejudice to the tax penalties provided for in the General Tax Code, failure to comply with reporting and payment obligations will result in the suspension of access to their digital platforms, markets or online marketplaces used to carry out transactions on Senegalese territory.

In this context, the relevant department of the tax authorities, on the basis of the information at its disposal, initiates the necessary diligence for the effective implementation of this sanction by the services of the Ministry in charge of telecommunications and by all other competent bodies.

**Article 9-. Miscellaneous and transitional provisions**

The tax authorities may publish a list of direct suppliers and foreign platform operators operating in Senegal or provide information about them, specifying those who are up to date with their declaration and payment obligations.

The application of this order does not require direct suppliers and foreign platform operators to maintain and produce commercial and accounting books and registers in French, in accordance with the standards in force in Senegal.

Similarly, notwithstanding existing reporting obligations, direct suppliers and operators of foreign platforms are exempted from systematically producing a list of their customers located in Senegal, unless specifically requested to do so by the tax authorities, notably in the context of audit operations, or for any other customer-related information deemed necessary.

Furthermore, non-resident digital platforms are not required to engage the services of a tax representative in Senegal for the declaration and payment of online sales subject to VAT.

Further details concerning VAT taxation of online commerce will, where necessary, be set out in specific regulations issued by the Director General of Impôts et Domaines.

The provisions of this decree take effect from April 1st , 2024, for VAT-taxable transactions carried out by non-resident digital platform operators.

**Article 10-.** The Director General of Taxes and Domains, the Director General of Public Accounting and Treasury and the Director General of Customs are each responsible for the execution of this order, which will be published in the “Journal officiel de la République du Sénégal” (JORS).

Amendement :

- DGID
- DGCPT
- DGB
- DGD
- JORS