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| Review of the International Telecommunication Regulations: APPLICATION OF ARTICLE 8.3 of itrs 2012 and ARTICLE 6.13 of ITRs 1988 | |

1. **Introduction**

VEON Ltd., an ITU-T and ITU-D Sector Member, is pleased to present its contribution to the Expert Group on the International Telecommunication Regulations (EG-ITRs).

VEON Ltd is an international communications and technology company with headquarters in Amsterdam. It serves over 200 million users across 13, mainly emerging, markets (Algeria, Armenia, Bangladesh, Georgia, Italy, Kazakhstan, Kyrgyzstan, Laos, Pakistan, Russia, Tajikistan, Ukraine and Uzbekistan).

We believe that certainty, predictability and uniform application of international rules governing commercial activities are crucial in creating a favourable investment environment necessary to expand connectivity to everyone. Framework for taxation of international telecommunication services set out in Article 8.3 of the International Telecommunication Regulations of 2012 (ITRs 2012) identically to Article 6.13 of the International Telecommunication Regulations of 1988 (ITRs 1988) constitutes part of such rules and states that:

*Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special- circumstances.*

These provisions remain applicable and relevant in the rapidly evolving international telecommunication environment. Regretfully, due to misunderstandings in legal interpretation at the national level, an inconsistent application of these provisions by a number of ITU Member States significantly and unpredictably increases costs to operating agencies leading to operational difficulties and constrained investment.

1. **Application of Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988**

A number of countries, in which we operate, do not apply Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988 despite their international commitments to do so. For example:

1. The Kyrgyz Republic is a signatory of ITRs 2012. As per Article 14 of ITRs 2012 together with Article 54 of the ITU Constitution, ITRs 2012 are provisionally applicable to the Kyrgyz Republic as from 1 January 2015. Furthermore, the Kyrgyz Republic *ipso facto* committed to ITRs 1988 as from 5th September 1994 when it acceded to the Constitution and Convention of the ITU (Article 54 (2) of the ITU Constitution). Despite this commitment as well as despite the lack of any special provisions in the national tax laws, the Kyrgyz Republic tax authorities has decided to interpret national tax laws in a manner that makes the value added tax (VAT) applicable to international telecommunications services that are not billed to customers in the Kyrgyz Republic. This led to tax claims for VAT on non-resident services to VEON Ltd. group companies in the Kyrgyz Republic amounting to 5.9 million USD for 2014 and 6.6 million USD for 2015.
2. The Republic of Tajikistan *ipso facto* committed to ITRs 1988 as from 19th July 1994, when it acceded to the Constitution and Convention of the ITU (Article 54 (2) of the ITU Constitution). Despite this commitment as well as despite the lack of any special provisions in the national tax laws, the Republic of Tajikistan tax authorities has decided to interpret national tax laws in a manner that makes VAT applicable to international telecommunications services that are not billed to customers in the Republic of Tajikistan. This led to application of VAT on non-resident services to VEON Ltd. companies in the Republic of Tajikistan amounting to 2.6 million USD for 2014 and 1.44 million USD for 2015.

As can be seen from the above, inconsistent application of ITRs results in specific and tangible detrimental effects to operating agencies.

1. **Legal analysis of Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988**

In demonstrating reluctance to apply provisions of ITRs certain ITU Member States use a number of legal arguments, including the following:

1. That a specific ITU Member State has not signed ITRs 1988, despite the fact that ITRs 1988 were in force at the time when such ITU Member State acceded to ITU Constitution. In our opinion, such ITU Member State is *ipso facto* obliged to apply provisions of ITRs 1988 as per Article 54 (2) of the ITU Constitution;
2. That a specific ITU Member State has not ratified ITRs 2012, despite the fact that it signed ITRs 2012 and that as per Article 14 of ITRs 2012 together with Article 54 of the ITU Constitution provisions of ITRs 2012 apply to such ITU Member States as from 1 January 2015;
3. That word “normally” included in the said provisions enables ITU Member States to decide at their discretion whether to apply these rules. In our opinion, however, such position is not grounded in the text of ITRs. We consider that the word “normally” should be applied together with the wording “unless other arrangements are made to meet special- circumstances”. Therefore it should mean simply a right for ITU Member States to make (i.e., transparently legislate) special arrangements to meet special (justified) circumstances, but not to a catch-all ability to decide not to apply the rule as such. The interpretation to the contrary would render the rule meaningless.
4. That ITRs do not directly apply to the relationship between ITU Member States and private sector entities. In our opinion, such argument should not enable an ITU Member State to defy its international obligations.

In the absence of a clear dispute resolution mechanism, inconsistent application and legal analysis of ITRs by certain ITU Member States risk rendering provisions of ITRs void and meaningless, undermine legal expectations of operating agencies and result in direct losses to such entities.

1. **Suggestions to EG-ITRs**

We believe that EG-ITRs is an ideal forum to reinforce certainty of application of provisions of ITRs and thereby contribute to the improvement of the investment environment in the sector. With this aim and having regard to the above, we suggest that EG-ITRs:

1. In its work take into account inconsistencies of application of ITRs outlined above;
2. Request ITU Secretary General to provide legal analysis of:
   1. Applicability of ITRs 1988 to ITU Member States that have not separately signed ITRs 1988, but acceded to the ITU Constitution after ITRs 1988 coming into force;
   2. Applicability of ITRs 2012 to ITU Member States that have signed but not ratified ITRs 2012;
   3. Ability of ITU Member States, which signed ITRs and/or to which ITRs apply *ipso facto,* to decline application of ITRs 2012 and/or ITRs 1988 due to them missing to take measures foreseen in the national legislation for adopting international treaties;
   4. Applicability of Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988, in particular with the view to clarify in which specific circumstances ITU Member States can legitimately levy fiscal tax on collection charges in respect of international services that are not billed to customers in that country;
   5. Any potential conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs with respect to the implementation of Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988;
   6. Forms of redress available to operating agencies and/or ITU Member States in cases when certain ITU Member States do not apply or incorrectly apply Article 8.3 of ITRs 2012 and/or Article 6.12 of ITRs 1988;
3. Having reviewed Article 8.3 of ITRs 2012 and/or Article 6.12 of ITRs 1988, on the basis of the legal analysis provided as per above include in its report a suggestion to the Council to:
   1. Invite ITU Member States to apply Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988 in an accurate, consistent, predictable and certain manner;
   2. Consider a need to develop and adopt binding (such as amendments to ITRs) and/or non-binding (such as ITU-T Recommendations) instruments to reinforce certainty and predictability of application of Article 8.3 of ITRs 2012 and Article 6.12 of ITRs 1988.