

Italian Tax Authorities issue draft guidelines on Digital Services Tax for public consultation

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On 16 December 2020, the Italian Tax Authorities posted the draft guidelines on the Digital Services Tax (DST) on their official website for public consultation. Operators are invited to provide comments by 31 December 2020.

The DST is effective as of 1 January 2020 and the first relevant deadlines will be 16 February 2021 for the tax payment and 31 March 2021 for the filing of the annual return related to fiscal year 2020.

The guidelines provide a more detailed definition of most of the items set forth in the DST legislation, including:

- a) **Digital content**, defined as software, apps, games, music, video, text via download or streaming
- b) **Group**, defined as resident and nonresident companies included in the consolidated statutory financial statements drafted according to international accounting principles or to a national system for financial information purposes (relevant for the application of the thresholds or for the appointment of a common representative)
- c) **Non-collaborative country**, defined as a country other than the European Union (EU) Member States or outside of the European Economic Area who has not signed with Italy any cooperation agreement for the fight of tax evasion and fraud or a reciprocal assistance agreement for the recovery of tax credits

- d) **Digital interface**, defined as any software, including websites or parts thereof and applications, also mobile, made available to users through which digital services are supplied. A digital interface is “multilateral,” when the users may upload and share digital content with other users, facilitating the supplies of goods/services among them
- e) **User**, defined as any person who connects, via a device, to the digital interface in order to benefit of digital services
- f) **Targeted advertising**, defined as ad messages sent via a digital interface on the basis of the data related to the user who access and consult such interface
- g) **Vehiculation**, defined as the specific service of web platforms that re-address to third party websites or host targeted advertising

The taxable revenues are equal to:

- (i) The total digital services revenues wherever accrued X (ii) the percentage which represents the quota of the services connected to the Italian territory.

The digital services revenues (i) are respectively:

- 1) For **advertising**, the consideration collected by operators who deploy the targeted ad content on third-party websites and the consideration collected by operators who host on the web site such ad content.
- 2) For provision of **digital multilateral interface aimed at allowing users to interact to facilitate supplies of goods/services** aimed at allowing users to interact, the consideration paid by the multilateral digital interface users, except for the ones paid as consideration for the supply of goods/services which represent a separate and independent transaction from the access and use of the digital service.
- 3) For **provision of data collected from users**, the consideration coming from the transmission of the data obtained from the activities of the digital interface users.

The percentage (ii) is respectively:

- 1) For **advertising**, the ratio between **(i)** the ads posted, in the calendar year, on the digital interface taking into account the data related to the user who consults the interface while is located in Italy and **(ii)** the total of targeted ads posted on the digital interface in the same period.

- 2) For provision of **digital multilateral interface aimed at allowing users to interact to facilitate supplies of goods/services**, the ratio between **(i)** goods/services performed during the calendar year for which one of the users is located in Italy and **(ii)** the total of the transactions/deliveries for supply of goods/services.
- 3) For provision of **digital multilateral interface aimed at allowing users to interact other than the ones at point 2)** above, the ratio between **(i)** the number of users who have an open account in Italy that allows access to all or part of the services available on the interface and which have used the interface during the calendar years and **(ii)** the total number of users who have used the interface in the same period.
- 4) For **provision of data collected from users**, the ratio is between **(i)** number of users whose data, totally or partially supplied and transmitted during the calendar year, have been generated or collected during the consultation of the interface while they were located in Italy and **(ii)** the number of all the users who generated such data in the same period.

The taxable revenue is taxable for DST purposes when the service is enjoyed by the user via the use of a device located in Italy. The user is located in Italy respectively:

- 1) For **advertising**, when the ad appears on the user device at the time the device is used in Italy in the calendar year to access the digital interface.
- 2) For **provision of digital multilateral interface aimed at allowing users to interact to facilitate supplies of goods/services**, when the user uses in the calendar year the device to access the digital interface and concludes the transaction in the same period.
- 3) For **provision of digital multilateral interface aimed at allowing users to interact other than the ones at point 2)**, when the user owns an account for the full calendar year or part of the calendar year allowing him to access the digital interface and the account has been opened using a device located in Italy.
- 4) For **provision of data collected from users**, when the transmission of the data generated from the user using the device located in Italy to access the digital interface in the same calendar year or previous ones is made.

The device is deemed to be located in Italy on the basis of the IP address of the device, or in the lack of this, based on other ways of geolocation.

DST is due by **16 February** of the calendar year following the one when the taxable revenues accrued. Payment will be made via F24 form; tax codes will be identified by the tax authorities; for nonresident companies without an Italian bank account, a bank transfer to the Italian Treasury is permitted.

Annual DST return is due by **31 March** of the calendar year following the one when the taxable revenues accrued; form and instructions will be issued separately.

DST compliance, payment and refund require an Italian fiscal code (ID tax number). The Centro Operativo di Pescara is in charge of addressing the applications of nonresident taxable persons.

Taxable persons established in a non-collaborative country must appoint an Italian fiscal representative.

Group entities may appoint (on an annual basis) a member of the group as representative, provided that this member is established in Italy. The appointment of the representative may be made by all the group entities or by some of them. The representative entity may apply for the fiscal code for the other entities. Each group member provides the representative entity with its own data to be included in the DST return. Each single group entity remains responsible for DST separately.

There is a joint liability between group entities established in Italy and non-established group entities (other than the ones in non-collaborative countries).

Taxable persons must maintain proper DST bookkeeping for the purposes of the DST determination. They have to also maintain a monthly Report (with indication of the data used for the determination of the DST, due by the DST payment deadline) and an annual Explanatory Note (with qualitative information, due by the annual return deadline) for which specific templates have been provided by the Italian tax authorities.

Where figures are in a foreign currency, the bookkeeping must be kept both in the Euro and in the foreign currency; conversion into the Euro is made using the last exchange rate published in the EU *Official Gazette*, available the first day of the month during which the amounts are collected.

During inspections, tax authorities may request such bookkeeping and for any other relevant information for DST determinations.

DST refund applications are filed via the annual return; if the annual return is not due, the refund claim is separately submitted to the competent Revenue office. For non-collaborative countries, the refund is requested by the Italian fiscal representative; for groups, the refund is requested by the representative entity.

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