

Italy introduces new digital services tax

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Executive summary

The Italian Budget Law 2019 (Law no.145/2018), published in the *Official Gazette* (G.U.) on 1 January 2019, introduces a "new" tax on digital services (Italian Digital Services Tax or the DST).

This new indirect tax replaces the previous measures provided by the Budget Law 2018 regarding the introduction of a so-called "WEB Tax," which never entered into force due to the lack of enactment of the implementing decree. The DST will apply with respect to digital transactions performed, individually or at the group level, by taxable persons either established or non-established in Italy, in the course of their business activity.

The Ministry of Finance is required to issue an implementing decree within the following four months (i.e., by 30 April 2019) and the DST will apply as from the 60th day after its publication in the *Official Gazette*.

The Italian Tax Authority is further required by the law to issue guidelines on the application of the DST.

Main features of the DST

In line with the proposed European Union (EU) DST,¹ the Italian DST is an indirect tax with the following characteristics:

- ▶ **Periodical:** it is calculated on a quarterly basis and it is paid by the end of the month following each quarter
- ▶ **Levied on turnover:** the taxable base is the amount of revenues on digital supplies (as defined below), net of Value Added Tax (VAT)
- ▶ **Tax rate:** 3% of Taxable base
- ▶ **Tax period:** the calendar year
- ▶ **An annual Return will be required:** to be filed by the end of the 4th month following each calendar year (i.e., 30 April)
- ▶ **Specific place of supply rules:** as detailed below
- ▶ **Requires VAT or a specific identification number:** only for non-established subjects which are not already registered for VAT purposes; otherwise the VAT registration number will be used
- ▶ **Assessment, Infringements and collection:** the same law provisions applicable for VAT purposes also apply to DST

Detailed discussion

Subjects liable to the DST

Any company or group of companies meeting certain quantitative requirements and supplying digital services exceeding a threshold of revenues is liable to the new tax.

Namely, the tax applies on digital services supplied by businesses (companies and groups) which, during the fiscal year, jointly realize:

- ▶ Total amount of annual revenues - wherever arising - not lower than €750 million
- ▶ Total amount of annual revenues derived from digital services supplied in the Italian territory not lower than €5.5 million

Non-established businesses

Italian established and non-established taxable persons already registered for VAT purposes do not require a specific registration number for DST purposes. Only those taxable persons not established or VAT registered in Italy will be required to apply for a DST registration number to fulfill the consequent tax obligations.

It is worth highlighting that Italian resident businesses belonging to the same group of nonresident taxable subjects are jointly responsible for the collection of DST.

Scope: taxable digital services

In line with the proposed EU DAT, the Italian DST will apply to revenues on the following digital services:

- a) Advertising routed on a digital interface to its users
- b) Providing a multilateral digital interface allowing users to get in contact and interact, even to facilitate the supply of goods or services
- c) Transmitting data collected from users and generated through the use of a digital interface

Place of supply

Services are relevant for DST purposes if they are supplied to users located in Italy.

The criteria for determining where the users should be deemed to be located differs depending on the kind of digital services provided and, namely:

- a) Advertising routed on a digital interface to its users: if the users access the advertising with a device which is located in Italy during the relevant period
- b) Providing a multilateral digital interface for contact, interact, supply: if the users use a device located in Italy to access to the platform, during the relevant period or if they use such a device for opening a digital account for their transactions, in the same period
- c) Transmission of collected data: if the data are collected from users using a device located in Italy, and transmitted during the relevant period

It is worth noting that the law does not consider the place of residence of the users for determining the place of supply, as the place where the device is located the main aspect to be considered.

Exclusion

Digital services rendered between parties belonging to the same group are not relevant for DST purposes if one party is the controller of the other or if they have the same controlling entity.

Implications

The introduction of an Italian DST represents the latest in a series of national measures in the area of Digital Services Taxes. The ECOFIN grouping of the finance ministers of the 28 EU Member States will meet on 12 February to discuss the European Commission's DST proposal. The outcome of that meeting will in turn impact and influence the tax policies of individual Member States. Taxpayers are therefore advised to closely monitor developments in this area.

Endnote

1. See Appendix for comparison of the Italian DST and the proposed EU DST.

Appendix

The table below summarizes the main features of (i) the Italian DST and (ii) the EU DST Proposal.

	Italian DST (2019)	EU DST Proposal
Taxable Persons	<p>Entity (either resident or nonresident) carrying on business activities that meet the following thresholds in the calendar year:</p> <ul style="list-style-type: none"> ▶ Total amount of revenues (wherever arose) not lower than €750,000,000 ▶ An amount of revenues derived in Italy from the carrying out of digital services not lower than €5,500,000 	<p>Entity (either resident or nonresident) carrying on business activities that meet the following thresholds in the calendar year:</p> <ul style="list-style-type: none"> ▶ Total amount of revenues globally arisen in the previous financial period exceeding €750,000,000 ▶ An amount of revenues arisen in the EU during the same financial period exceeding €50,000,000
Digital Services	<p>A) Placing on a digital interface of advertising targeted at users of that interface</p> <p>B) Making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users</p> <p>C) Transmission of data collected about users and generated from users' activities on digital interfaces</p>	<p>A) Placing on a digital interface of advertising targeted at users of that interface</p> <p>B) Making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users</p> <p>C) Transmission of data collected about users and generated from users' activities on digital interfaces</p> <p>Specific exclusions are set forth.</p>
Tax Rate	3%	3%
Taxable Revenue	<p>Gross revenues (excluded VAT and other indirect taxes) deriving from Digital Services.</p> <p>Revenues deriving from Digital Services rendered to an entity belonging to the same group shall not qualify as taxable revenues.</p>	<p>Gross revenues (excluded VAT and other similar taxes) deriving from Digital Services.</p> <p>Revenues deriving from Digital Services rendered to an entity belonging to the same group shall not qualify as taxable revenues.</p>
Person Liable for Payment	<p>DST is due by the taxable person.</p> <p>When a Taxable Person is not resident or established in Italy but it belongs to a group, the Italian DST is enforceable also toward other group enterprises which are resident in Italy.</p>	<p>DST is due by the taxable person.</p>

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