

Italy's draft 2020 budget calls for unilateral digital services tax

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In brief

The 2020 Italian draft budget (Draft Budget) introduces a 3% unilateral 'Digital Services Tax' (DST). The DST will apply beginning January 1, 2020. The Italian government expects the DST to generate roughly 708 million EUR in tax revenue per year.

Although it does not contain any specific references, the Italian DST is structured similarly to the recently introduced French DST and the European Commission's proposal (2018/0073 (CNS) - Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services).

In detail

Legislative action

The Draft Budget could undergo further changes, as the Italian Parliament has until the end of 2019 to approve it. However, Parliament already appears to have reached a consensus regarding the new unilateral DST.

Services in scope

The DST appears to target revenues from digital services that underpin 'user participation,' such as the:

1. channelling of advertisements on a digital platform targeting the users of the same platform ('targeted online advertising');
2. availability of online platforms and multi-sided digital interfaces that allow user interaction and may facilitate the sale of goods and services among them; and
3. transmission of data collected about users and generated from user activities on digital interfaces.

In addition, the following digital services appear to be out of scope, per the Draft Budget:

1. online intermediation activity in the context of direct sales of goods and services from business to consumer;
2. online sales of goods and services from the web portal of the business to the consumer (i.e., 'no intermediation');
3. the availability of a digital platform with the sole or main objective to provide its users with digital content, communication services, or payment services;
4. organizing and managing digital platforms for exchanging electricity, gas, environmental certificates and fuels, as well as transmitting related data collected therefrom and any other connected activity; and
5. digital interfaces to manage Interbank or financial instruments' settlement systems, trading platforms, wholesale market of government securities, consulting activities related to equity investments, as well as other connecting systems, the activity of which is subject to authorization, and the performance of services is subject to an authority's supervision; and
6. sale of data by persons supplying services (4) and (5).

Taxable persons

The DST applies to revenues generated during the calendar year that result from providing the above-described digital services by businesses that met both of the following conditions (individually or group-wide) in the prior calendar year:

- total worldwide revenues of at least 750 million EUR, and
- revenues of at least 5.5 million EUR obtained in Italy from providing digital services (as described above).

The tax does not apply to goods and services provided between affiliated companies.

Territoriality of relevant revenues

Revenues are considered taxable in a given tax period if the taxable service's user is located in Italy during the tax period.

The user is considered to be located in Italy:

- for services described in "Services in scope," bullet 1, above, if the advertisement appears on the user's device when accessing the digital platform while the device is located in Italy during such tax period
- for services described in "Services in scope," bullet 2, if
 - (a) the service implies a multi-sided digital interface that allows user interaction and may facilitate sales of goods and services among them, the user uses the device in Italy in that tax period to access the digital interface, and the user concludes a transaction on that interface in that tax period; or
 - (b) the service implies a multi-sided digital interface that does not fall under subparagraph (a), but the user has been provided an account for the entire (or part) of that tax period that allows the user to access the digital interface and that account has been opened using the device in Italy.
- in the case of services described in Services in scope, bullet 3, if the data generated by the user in Italy to access a digital interface in that tax period, or in the previous tax period, has been transmitted in that tax period.

A device is 'used in Italy' mainly by reference to the device's internet protocol (IP) address.

Tax rate

The DST is 3% of the total gross relevant revenues, net of VAT and other indirect taxes.

Tax period

The tax period is the calendar year.

Way of collection

Taxpayers must pay the tax by February 16 of the calendar year following the year in which the taxable revenues were obtained.

Taxpayers also must submit an annual tax declaration regarding the provided taxable services by March 31 of the same year. For companies that are part of the same group, a single entity must be identified to comply with the above-described provisions.

Non-resident companies and individuals without a permanent establishment (PE) in Italy or a VAT registration number that meet the above-indicated requirements must request an identification number from the Italian Revenue Agency. The request should be submitted according to modalities established by an act that the Agency will issue.

Non-resident companies without an Italian PE that are residents of a country outside of the EU, or a country outside the European Economic Area with which Italy has not concluded any agreement on administrative cooperation to fight against tax avoidance and tax fraud, as well as any agreement for mutual assistance to recover tax credits, must nominate a fiscal representative to comply with the tax declaration and DST payment obligations.

Italian-resident companies belonging to the same group as non-resident DST taxable persons shall be jointly liable for obligations related to the DST.

Responsibilities and penalties

For purposes of tax audits, applying sanctions, and collecting the DST, as well as related litigation, VAT dispositions are applied, where compatible.

Accounting requirements

Taxpayers that fall in the DST's scope must maintain proper accounting systems that can record on a monthly basis the revenues arising from the taxable services, as well as the quantitative elements necessary to calculate the tax.

Entry into force

The DST is to enter into force on January 1, 2020. The Italian DST shall be repealed when internationally agreed-upon provisions on the digital economy's taxation become applicable.

The takeaway

The Draft Budget re-introduces and modifies the Italian unilateral DST.

Unlike the previous budget, the DST's entry into force this time is not contingent upon any further legislative intervention by the government or the Finance Minister.

Multinational enterprises that derive a significant portion of their revenues from providing digital services should begin assessing the extent to which the Italian DST could affect their operations.

Such assessment includes determining whether the digital services they provide fall within the scope of taxable digital services, as well as determining obligations that should be fulfilled and procedures that should be implemented.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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