Italy’s 2019 budget law introduces a digital service tax

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In brief

The 2019 Italian budget law (‘Law’) introduces a ‘new’ digital service tax (DST), repealing the previous one which never entered into force due to the lack of implementing secondary legislation.

During the Italian government and EU Commission negotiations for defining the 2019 Italian budget, the DST was identified as a revenue raiser (estimated at 150 million EUR for 2019 and 600 million EUR for each of 2020 and 2021).

Although details about the new DST have not been released, the new DST is expected to employ a structure similar to the EU Commission 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

Entry into force

The DST will become effective 60 days after the Minister of Economy and Finance issues secondary legislation that implements the decree. We expect issuance of this secondary legislation around the end of April, therefore we expect the DST to become effective around the end of June 2019.

The Law empowers the Italian Revenue Agency (IRA) to issue further guidance in order to implement certain provisions.

Taxable digital service and taxable revenues

The DST appears to target revenues arising from digital services that underpin ’user participation,’ which consists of one of the following activities (exhaustive list):

i. placing on a digital interface of advertising targeted at users of that interface (‘*service a*’)

ii. making available to users of multi-sided digital interfaces:

- which allows users to find other users and interact with them (‘*service ba*’)
- and which may also facilitate the provision of underlying supplies of goods or services directly between users (‘*service bb*’)

iii. transmission of data collected about users and generated from users' activities on digital interfaces (‘*service c*’).

When calculating DST:

- Revenues include total gross revenues.
- The calculation is net of value added tax and other similar taxes.
- Intercompany transactions are not relevant.

Taxable person

Taxable entities are business undertakings that satisfy both of the following conditions during a taxable year (defined as a solar year), at either the individual or group level:

i. total worldwide revenues reported for the relevant taxable year exceed EUR 750,000,000 and

ii. total taxable revenues within the Italian territory during the relevant financial year exceed EUR 5,500,000.

Tax rate

The DST owed is calculated by applying a 3% rate to the amount of the relevant taxable revenues.

Territoriality of relevant revenues

Taxable revenues derived by a taxable person are deemed Italian-source taxable revenues from digital services if the user of that service is located in the Italian territory.

A user is deemed to be located in the Italian territory on an independent basis for each category of digital services (see types of service listed above):

i. For *service a*, a user is located in Italy if the advertising in question appears on the user's device when the device is being used in Italy in that tax period to access a digital interface.

ii. For *service ba*, a user is located in Italy if it has an account for all or part of that tax period allowing the user to access the digital interface and that account was opened using a device in Italy.

iii. For *service bb*, a user is located in Italy if it uses a device in Italy in that tax period to access the digital interface and concludes an underlying transaction on that interface in that tax period.

iv. For *service c*, a user is located in Italy if the data generated from the user having used a device in Italy to access a digital interface, whether during that tax period or any previous one, is transmitted in that tax period.

DST collection

Self-declaration by the taxable person (no withholding tax applies) is required to be filed four months after the end of each taxable year. The quarterly DST owed must be paid to the tax authority one month from the end of each quarter.

A group regime can be established.

Foreign taxpayers that perform business activities in Italy and that do not have a permanent establishment or VAT identification number and that are subject to the DST must request a DST identification number from the IRA, pursuant to guidelines that the IRA will issue in the coming months.

Obligations and penalties

The same provisions provided by the Italian VAT legislation in terms of tax assessment, penalties, tax collection and dispute apply to the DST (such as, in general, 90% penalties applicable on the under declared tax, which can be increased on a case-by-case basis, and the lack of criminal liabilities).

Note: The preliminary considerations on the application of penalties require further analysis, and as such, the above should not be relied on as a legal advice.

The DST owed by a taxpayer that is neither resident nor established in the Italian territory can be collected by Italian Tax Authorities from other group entities resident or established in the Italian territory.

The takeaway

The recently introduced DST features:

- a definition of services falling within the category of digital taxable service
- an identification of taxable revenues obtained from the taxable digital services
- a definition of taxable person (at the individual or group level)
- specific sourcing rules for each taxable digital service/taxable revenue
- the DST collection process
- obligations and penalties.

Considering that the DST is likely to enter into force around the end of June, multinational entities that derive a significant portion of their revenues from providing digital services should begin assessing the extent to which the Italian DST could potentially affect their operations. Such assessment includes determining whether the digital services they provide fall within the definition of taxable digital services, as well as determining which obligations should be fulfilled and which procedures should be implemented.

Let's talk

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

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