



Italy's new Digital Services Tax is now in force

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With the 2020 Budget Law, the Italian government has reshaped Italy's digital services tax (DST), mirroring the EU Commission proposal of March 2018. The revised version of the Italian DST is now in force effective January 1, 2020.

The new Italian DST regime is an income tax regime. The new tax on the turnover from qualified "digital services" that indicate a high degree of users' involvement in the generation of value is set to apply at a rate of 3 percent on the turnover from certain digital services. The tax will be paid by service providers, both Italian and foreign, and covers both B2C and B2B transactions.

Meanwhile, the Organization for Economic Co-operation and Development ("OECD"), through its Digital Tax Initiative, is working to achieve an international consensus position on this new taxing right. Notably, Italy's DST provisions contain a sunset clause: they will be automatically repealed once an agreement on the scope of DST is reached at OECD level.

Affected taxpayers

The legal framework of the Italian DST essentially mirrors the EU Commission proposal for a directive on the

common system of a digital services tax, dated 21 March 2018 - COM(2018) 148.

The DST will apply to taxpayers carrying out business activities that, individually or at group level, jointly meet, in the previous fiscal year, the following thresholds:

- Total amount of worldwide revenues (wherever arising) equal to or exceeding €750 million *and*
- An amount of revenues from qualified digital services (as defined below) arising in Italy/ linked to Italian users equal to or exceeding €5.5 million

The tax is to be paid by Italian taxpayers as well as by non-Italian-resident companies regardless of the nature of the service recipient. That is the DST must be paid on both B2C and B2B transactions. Intragroup transactions are excluded.

Affected services - qualified digital services

The DST affects revenues derived from the provision of *qualified digital services* when tax-relevant in Italy.

Digital services subject to the DST are divided into three categories:

1. placing advertisements on a digital platform targeted at users of that interface (*i.e.*, **digital targeted advertising**)
2. making available online platforms and multi-sided digital interfaces that allow users interaction and may also facilitate the supply of goods or services (*ie*, **intermediation services**)
3. transmission of data collected about users generated from such users' activities on digital interfaces (*ie*, collecting users' data and selling the data to another – **data transmission services**)

Excluded activities

DST is not owed on the following activities:

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 (*ie*, “no intermediation”)
3. a digital platform with the sole or main objective of providing its users with digital content, communication services, or payment services
4. digital interfaces that 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
5. the management of electronic platforms for the exchange of electricity, gas, environmental certificates and fuels
6. sale of data by entities supplying services (4) and (5).

The exact perimeter of the exclusion list leaves room for uncertainty and should be assessed in light of the

taxpayer's business model.

Territorial rule

Not all digital services will be taxed – only those entailing a high degree of users' involvement in value generation. As a consequence, the territorial requirement is linked to the place where the user is located; the place where the payment is made would not be relevant *per se*.

The law establishes complex rules in order to determine where the user is located. The rules are different for each of the three categories of tax-relevant digital services.

For each tax period, entities shall (a) compute the overall worldwide taxable revenues from the provision of digital services (to any user wherever located) and (b) determine the proportion of qualified revenues to be allocated to Italy. Only the latter amount is subject to Italian DST.

The proportion should be determined according to the following rules:

Digital advertising

For those services consisted of placing of advertisements on a digital interface, the DST is due when the advertisement appears on the user's device at the time when the device is being used in Italy. Reference is made to the number of times an advertisement appeared on users' devices located in Italy in the relevant tax period.

Intermediation services

For digital intermediation services, the DST would be due:

- if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, when the users utilizes a device in Italy. Reference is made to the number of users having concluded underlying transactions on the digital interface in Italy in that tax period.
- if the service involves a multi-sided digital interface of a kind not included in the instance mentioned above, when the user has an account allowing to access the digital interface and that account was opened using a device in Italy. Reference is made to the number of users having used their account to the digital interface and in the relevant tax period.

Data transmission services

For data transmission services, the DST would be due when data are generated by the user having used a device in Italy. Reference is made to the number of users who have used a device located in Italy to access the digital interface in the relevant tax period and from whom data transmission has been generated.

A user's device should be considered as used in Italy mainly by reference to the Internet protocol (IP) address of the device or, if more accurate, any other method of geolocation, in compliance with the rules on protection and treatment of personal data.

Collection and compliance

The DST covers only revenues (gross of related expenses and net of VAT) from the provision of tax-relevant digital services linked to the Italian territory. As previously mentioned, revenues from intragroup service provisions are excluded.

The DST would apply at a 3 percent rate on the turnover. It is not clear whether the DST could be deducted from

taxable base of Italian corporate income tax, although that seems a viable option under the current tax law framework. More guidance is expected to determine whether any portion of the DST may be deductible.

Entities subject to DST should prepare monthly accounting reports of revenues from digital services and illustrate the criteria through which a portion of qualified worldwide revenues is allocated to Italy.

DST should be paid by February 16 of the fiscal year following the relevant fiscal year for DST. An annual DST return should be filed by March 31 of that same year (eg, for the year 2020, the payment is due by February 16, 2021 and the tax return should be filed by March 31, 2021).

Foreign business taxpayers resident in non-EU/EES states that have not concluded an agreement with Italy for mutual assistance in the recovery of tax claims should appoint an Italian tax representative.

As noted above, the DST provisions contain a sunset clause providing that the Italian DST will be automatically repealed *if and when* the OECD reached consensus on the taxation of digital economy at the international level and the Italian government implements the standards as law in Italy. See our alert about the OECD's work here .

Learn more about the implications of Italy's new Digital Services Tax by contacting the authors.

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