



The Revenue Agency publishes the Draft Provision implementing the DST

The Revenue Agency just published on its website the draft provision ("**Draft Provision**") containing the implementing legislation of the Italian Digital Service Tax ("**DST**") and launched a public consultation open until 31 December 2020.

The Italian DST was introduced by the Italian Budget Law for 2019 (Law No. 145 of 30 December 2018); it was further amended by the Italian Budget Law for 2020 (Law No. 160 of 27 December 2019) and entered into force on 1 January 2020, while its first payment is due by 16 February 2021.

Similarly to the DST put forward by the European Commission in its proposal of March 2018 (COM(2018) 148 final), the Italian DST is levied on three types of services:

1. the placing on a digital interface of advertising targeted at users of that interface;
2. the 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;
3. the transmission of data collected about users and generated from users' activities on digital interfaces.

DST taxable persons are those individuals and entities that, in the calendar year preceding the relevant tax (calendar) year, meets both the following thresholds, either on a standalone or on a group basis:

- (i) the total amount of worldwide revenues is not lower than EUR 750 millions;
- (ii) the total amount of taxable revenues from digital services sourced in Italy is not lower than EUR 5.5 millions.

Clarifications on the existing legislation

The Draft Provision clarifies that the taxable revenues from the digital services are those collected during the relevant calendar year, rather than those merely accrued.

The Draft Provision further introduces a definition of "digital interface" which is similar to the one that was laid down by the European Commission's proposal and states that "*digital interface means any software, including a website or a part thereof and applications, including mobile applications, accessible by users*". Such definition seems to confirm that, for the purposes of the levy, if, for example, a website has several sub-domains, each of them should be regarded as a separate digital interface.

Similarly, the new definition of "targeted advertising" provided by the Draft Provision supports the view that the placing of advertising on a digital interface is taxable only if the advertising is targeted at the users on the basis of users' data. Therefore, static advertising should be outside the scope of the levy. However, departing from the European Commission's proposal, the scope of the first type of taxable services (placing of advertising on a digital interface) is drafted in a rather broad manner, so that it seems capable to include also the hosting of the targeted advertising on a digital interface provided by the owner of such digital interface, in addition to the placing of the targeted advertising.

One of the main exclusions from the DST is the making available of a digital interface to users, if the sole or main purpose of that interface is the supply of digital contents, communication services and payment by the same entity that operates the interface. The Draft Provision clarifies that this principal purpose test is based on the revenues realized through the interface.

Tax payments and other instrumental obligations

As provided by the existing legislation, the Draft Provision confirms taxable persons are due to make their first payment of the DST within 16 February 2021 and submit the first tax return by 31st March 2021.

The Draft Provision also provides other provisions concerning instrumental obligations relevant to the payment of the DST. Particularly, the Draft Provision:

- requires all taxable persons to obtain an Italian tax identification number in Provision to fulfil their tax obligations; in addition, taxable persons established in non-EU/EEA countries, with which no agreement on exchange of information and tax collection is in force, must appoint a tax representative in Italy;
- provides that taxable persons which are part of a group may designate a company of the group as the person responsible for fulfilling all tax obligations relevant to the DST;
- the information on revenue and the monthly quantitative elements must be formatted and stored on a digital support that guarantees the inalterability and preservation of the recorded data.
- establishes that taxable persons should keep ad-hoc accounting of the taxable services, to be prepared pursuant to two forms attached to the Draft Provision. Such documents shall be kept available by the taxable person and provided to the tax authorities upon request.

Finally, the Draft Provision confirms that, as provided by the existing legislation, persons who are resident of Italy and, at the end of the relevant calendar year, are part of a multinational group, are jointly liable for the payment of the DST with the non-resident companies of the same group.

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