

Italian Revenue Agency provides clarity with regard to digital services tax

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Introduction

Budget Law 2020 (amending Law 145/2018) provided for the entry into force – as of 1 January 2020 – of a digital services tax (DST).

With Circular 3/E of 23 March 2021, the Italian Revenue Agency provided clarifications regarding DST, taking into account the implementation rules as set out in the provision of 15 January 2021.

DST taxpayers

The subjective scope of DST is characterised by the joint existence of two conditions:

- the carrying out of business activities; and
- the overcoming of two dimensional thresholds.

With reference to the 'carrying out of business activities', this expression includes companies and commercial and non-commercial entities (limited to the commercial activity carried out), irrespective of their residence. In this respect, DST also applies to non-resident companies which do not have a permanent establishment in Italy.

No subjective requirements are foreseen for clients, which may take any legal form and operate either as economic entities or private users.

The second criterion for identifying DST taxpayers refers to the overcoming of dimensional thresholds, requiring entities – either individually or jointly at the group level⁽¹⁾ – to have generated:

- €750 million or more in "worldwide revenues" (first threshold);⁽²⁾ and
- €5.5 million or more in revenues "deriving from the provision of digital services" and "obtained within the territory of Italy" (second threshold).

These thresholds must be jointly exceeded in the fiscal year preceding the one in which DST becomes due.

Digital service revenues

DST is levied on revenues generated from the supply of certain digital services characterised by:

- the taxpayer's use of a digital interface; and
- the contribution to the creation of value for users.

The service supplier need not necessarily be physically established in the place where the users are and where the value is created or monetised.

Specifically, DST applies to revenues generated from the provision of the following services:

- the placing on a digital platform of advertising targeted at the users of the platform. The large number of operators involved (both national and international) can give rise to double or multiple taxation (the so-called 'cascading effect');

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- the making available to users of a multi-sided digital interface which allows them to find and interact with other users and which may also facilitate the provision of underlying supplies of goods or services directly between users. In this case, it is possible to identify two different categories of DST revenue, deriving from:
 - interaction and contact between users, which can be defined as 'social networking'; and
 - intermediation in the transfer of goods and services between users, which can be defined as 'intermediation activity between users', whereby the role of intermediary played by the digital interface in the operations of sale and/or supply of services becomes relevant for the purposes of DST from not only a formal point of view, but also a substantial one; and
- the transmission of data collected regarding users and generated from users' activities on digital interfaces. In this case, the data includes users' personal information, such as their personal and spending habits and location.

Moreover, the definition of 'digital services' in the context of DST expressly excludes certain categories of service relating to digital interfaces. For example, the following digital service revenues are considered to be outside the scope of DST:

- the direct supply of goods or services as part of a digital intermediation service;
- the supply of goods or services ordered through the website of the supplier of those goods or services, where the supplier does not act as an intermediary;⁽³⁾
- the provision of a digital interface whose exclusive or main purpose is the provision of digital content, communication services or payment services addressed to the users of the interface by the entity operating the interface;
- the provision of a digital interface used to manage financial services (ie, regulated financial activities); and
- the transfer of data by the entities providing financial services.

Territoriality

The application of DST is strictly linked to the location of the user.

The DST framework provides for different definitions, depending on whether a user is located in Italy, according to the type of digital service at issue:

- In the case of targeted advertising, the DST framework provides that a user is located in Italy when the advertising appears on the user's device when it is used in Italy to access the digital interface.
- In the case of a multi-sided digital interface, the DST provides for two circumstances:
 - If the multi-sided digital interface facilitates the supply of goods or services directly between users, the user is located in Italy when they use the device in Italy to access the digital interface in that tax period and conclude a corresponding transaction on that interface.
 - If the multi-sided digital interface is "of a type different" from the first circumstance, the user is located in Italy when they have an account for all or part of the tax period that allows them to access the digital interface and that account was opened by using a device in Italy.

A user's device should be considered to be used in Italy based on its internet protocol address or any other method of geolocation that the DST-liable entity may be able to use. The use of virtual private networks (VPNs) can affect the result.

In addition, there are other tools to establish the geolocation of a device. The use of VPNs can affect the result. Thus, other geolocalisation criterion could apply (eg, GPS and radio base stations).

Tax base

The 3% tax rate applies to taxable revenues, which include total gross revenues, net of value added tax and other indirect taxes. For the purposes of taxable base determination, revenues deriving from digital services rendered to entities, whether resident in Italy or not, which are deemed to be controlled, controlling or controlled by the same controlling entity in the same calendar year, must not be considered.

Payment

The deadlines are 16 May for the payment of DST and 30 June for the submission of the tax return.

Non-resident taxpayers may submit the return in the following ways:

- via a permanent establishment in Italy;
- directly, if in possession of a tax code issued by the Italian tax authorities; or
- through a tax representative.

In addition, the Italian Revenue Agency has highlighted the indirect nature of DST, clarifying that it does not fall within the scope of Italy's double tax conventions. Therefore, the same revenues may be subject to DST levied by both Italy and other states, by virtue of their respective domestic laws.

In this respect, taxpayers are not entitled to claim a tax credit, even where a double tax convention exists. Since DST is an indirect tax, it may be deducted from the taxpayer's total income for corporate income tax purposes in the year in which the relevant payment is made.

For the sake of completeness, it is worth noting that DST paid is also deductible from the regional business tax base if it is included in an item which contributes to the determination of the taxpayer's net production value.

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Endnotes

- (1) It follows that, in the case of a group, all revenues earned by the entities belonging thereto must be taken into consideration, regardless of the type of activity carried out.
- (2) This threshold matches the one provided for by the EU Directive on the Automatic Exchange of Information on the Country-by-Country Report (2016/881/EU).
- (3) This exclusion applies where the supplier receives revenue from the sale of goods and services ordered online on its website, but does not apply to any other supply of goods or services in respect of which the supplier acts as an intermediary.

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