

## Italy's unilateral Digital Services Tax advances

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### Executive summary

On 2 November 2019, the Italian Government presented the draft Finance Bill for 2020 (the Draft Finance Bill) to Parliament. The Draft Finance Bill includes some amendments to the previously proposed unilateral Digital Services Tax (DST) along with a series of other tax measures. The incorporation of the new DST in the Draft Finance Bill effectively removes the need for a special implementing decree to be utilized (as was previously the case) and also means that the DST is more likely to become effective as of 1 January 2020.

The DST, as currently proposed, closely aligns to the features of the proposed European Union (EU) DST Directive, with a 3% tax on certain services, and builds upon measures that were also proposed in Italy's Finance Bill for 2019 (Law 145/2018). That law has not yet entered into force, nor has it been withdrawn.

The Draft Finance Bill effectively amends part of the proposed 2018 law, specifically removing the need for an implementing decree (an instrument used in the Italian legislative process) and adding other clarifying rules, which will become new articles in Law 145/2018 once the Finance Bill for 2020 is enacted.

The Draft Finance Bill must be approved by both Chambers of the Italian Parliament before the end of 2019, and it is possible that the wording of the provisions will therefore change. However, it is also the case that while other measures included in the Draft Finance Bill are already causing conflicts between representatives of the various political parties, the DST seems to be attracting the broadest consensus.

## Detailed discussion

This proposed measure is not Italy's first foray into digital taxation but represents a modification of a previous digital tax law proposal. Italy launched its "Web Tax" in 2017, but the relevant provisions never became effective due to the absence of an implementing decree. Hence, at the end of 2018, the Web Tax provisions were repealed and replaced with a different set of rules in the Finance Bill for 2019. In particular, these "2018 rules" were based on the proposed EU Directive on the common system of a DST per the European Commission COM(2018) 148 final (Proposed Directive). (See EY Global Tax Alert, [European Commission issues proposals for taxation of digitalized activity](#), dated 22 March 2018, for further background information.) However, the 2018 proposal experienced the same fate as the Web Tax, and without the required implementing decree containing the related procedural guidance, it never became effective.

### Same rules, new attempt

The 2018 proposal, like the proposed EU Directive, provides for a 3% DST to be applied to the revenues resulting from the (non-intragroup) provision of the following services:

- ▶ Placement on a digital interface of advertising targeted at users of that interface
- ▶ Making available to users of a multi-sided digital interface which allows the 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
- ▶ Transmission of data collected about users and generated from users' activities on digital interfaces

Taxable persons would be entities - either Italian or foreign, and either standalone or at group level - meeting **both** of the following conditions:

- ▶ The total amount of worldwide revenues for the relevant financial year is at least €750m
- ▶ The total amount of taxable revenues (i.e., those derived from the above digital services) obtained within the Italian territory during the relevant financial year is at least €5.5m

With this relatively low local threshold, more traditional companies (such as, for example, a manufacturing group with a group subsidiary providing digital services in Italy generating revenues exceeding €5.5m) would theoretically be subject to the DST.

The Draft Finance Bill amends and integrates the previous unenacted DST legislation in the following ways:

- ▶ The provisions as stated would apply from 1 January 2020 (and no longer from the publication of the Implementing Decree)
- ▶ The DST is payable on a calendar year basis (i.e., no longer quarterly) and is due by 16 February of the following year, based on a return to be filed by 31 March
- ▶ A set of specific exclusions are set forth, in accordance with the proposed EU Directive
- ▶ Other clarifications on the taxation mechanism are provided, again in accordance with the proposed EU Directive
- ▶ A "closing" provision is inserted, whereby the entire law would be "repealed at the moment when the provisions deriving from agreements concluded at international level on the taxation of the digital economy become effective"

With respect to the specific exclusions, reference in the Draft Finance Bill is mostly made to the services connected to making a multisided digital platform available to users, but which are not deemed "intermediation services." These are defined as being other services that facilitate interaction between users but do not consist of intermediation, or those whereby the interaction remains ancillary to a supply of digital content.

The following activities are not deemed digital services that fall within the scope of the tax:

- a. The direct supply of goods and services underlying the intermediation through the digital platform
- b. The supply of goods and services ordered via the website of the supplier, when the latter does not provide intermediation services
- c. The making available to users of a digital interface whose exclusive or principal purpose is the supply of digital content, communication or payment services by the supplier that manages the interface
- d. The making available of a digital interface to manage:
  - Interbank settlement systems or financial instruments' settlement and delivery systems
  - Trading platforms or certain trading systems
  - Consulting activities related to equity investments as well as intermediation services in participative financing when facilitating the provision of loans
  - Wholesale markets of government securities or other securities
  - Central counterparties (CCP) that interpose themselves between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer
  - Central securities depositories (CSD) that operate certain securities settlement systems and provide at least certain services (art. 2.1(1) of EU Reg 909/2014)
  - Other connecting systems the activity of which is subject to authorization and the performance of services is subject to the supervision of an authority
- e. The sale of data by the persons supplying the services under d) above
- f. Carrying out the activities of organizing and managing digital platforms for exchanging electricity, gas, environmental certificates and fuels, as well as the transmission of the related data collected therefrom and any other connected activity

The Draft Finance Bill also provides guidance regarding the mechanism for taxation. It is stated that:

- ▶ Revenues subject to the DST and derived from the making available of a multisided digital platform include proceeds paid by the users, with the exception of those proceeds

paid as consideration for the supply of goods or services representing, from an economic viewpoint, a transaction independent from the access and utilization of the platform

- ▶ Revenues derived from the making available of a multisided digital platform that facilitates the supply of "excise goods" as per art. 1.1 of Directive 2008/118/EC (energy products and electricity, alcohol and alcoholic beverages, manufactured tobacco) are not subject to DST when they are directly and jointly connected to the volume or value of such supplies
- ▶ Revenues from a digital service are subject to the DST if the user is located in the Italian territory, described as:
  - For supplies of targeted advertising, if the advertising appears on the user's device when the device is being used in Italy
  - For the making available of multisided digital interface, if the user uses a device in Italy to access the interface and concludes an underlying transaction (or if the user has an account allowing him to access the interface and the account was opened using a device in Italy)
  - For the sale of data, if data is transmitted in the tax period when the data has been generated from the user by using a device in Italy
- ▶ The device is deemed as used in Italy by making reference to its Internet Protocol (IP) address or if more accurate, any other method of geolocation
- ▶ Revenues from digital services to users located in the Italian territory are taxable:
  - For supplies of targeted advertising, in the proportion of advertising placed on a digital interface as per the data related to a user accessing such interface while in Italy
  - For the making available of multisided digital interface, in the proportion of the delivery of goods or performance of services for which one of the users is located in Italy (or in the proportion of the users that have an account opened in Italy and that have used the interface during the year)
  - For the sale of data, in the proportion of the users whose sold data were generated during the period when they were located in Italy
- ▶ The persons subject to DST must have proper accounting systems to record, monthly, the information on the revenues from taxable services as well as the other informative elements necessary to calculate the proportions determining the tax

While some elements of the guidance may not be clearly specified, the Draft Finance Bill is so close to the proposed EU Directive that, while waiting for more precise and clear Italian guidance, an adequate interpretation may be drawn by making reference to the explanatory memorandum of the Proposed EU Directive.

## Implications

The relatively low local revenue threshold set out in Italy's Draft Finance Bill means that the DST may impact companies who may not have considered themselves as having significant digital business models. Companies should therefore continue to closely monitor the passage of the Draft Finance Bill, particularly where specific elements of the guidance are not yet fully clarified.

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For additional information with respect to this Alert, please contact the following:

### **Ernst & Young LLP (United Kingdom), Italian Tax Desk, London**

- ▶ Domenico Borzumato                      dborzumato@uk.ey.com

### **Studio Legale Tributario, International Tax and Transaction Services, Milan**

- ▶ Marco Magenta                              marco.magenta@it.ey.com
- ▶ Simone De Giovanni                        simone.de-giovanni@it.ey.com

### **Studio Legale Tributario, International Tax and Transaction Services, Rome**

- ▶ Daniele Ascoli                                daniele.ascoli@it.ey.com

### **Studio Legale Tributario, International Tax and Transaction Services, Bologna**

- ▶ Mario Ferrol                                  mario.ferrol@it.ey.com

### **Ernst & Young LLP (United States), Italian Tax Desk, New York**

- ▶ Emiliano Zanotti                            emiliano.zanotti2@ey.com
- ▶ Alberto Fuccio                                alberto.fuccio1@ey.com
- ▶ Michela Antonella Prencipe              michela.antonella.prencipe1@ey.com

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