

Italian Tax Authorities issue final guidelines on Digital Services Tax

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On 15 January 2021, the Italian Tax Authorities released the final guidelines on the Digital Services Tax (DST) on their official website, taking into account the comments received during the public consultation.

The DST is effective from 1 January 2020, however, the deadlines for 2020 have been postponed to 16 March 2021 for the tax payment and 30 April 2021 for the annual return for 2020.

First, the guidelines clarify that the tax is applied to businesses who, individually or as a group, in the previous calendar year (i.e., 2019 for 2020 tax) have:

- ▶ Accrued a total amount of global revenues of at least €750 million, and
- ▶ Cash¹ revenues from digital services in Italy, as defined for the purpose of the DST, of at least €5.5 million.

The guidelines also provide a clearer definition of the items quoted in the DST Law, including the following:

- a) **Digital content:** software, apps, games, audio, video, text via download or streaming
- b) **Group:** resident and nonresident companies included in the consolidated statutory financial statements drafted according to international accounting principles or to a national system for financial information purposes (relevant for the application of the thresholds or for the appointment of the common representative)

- c) **Non-collaborative country:** a country other than European Union (EU) Member States or out of the European Economic Area who has not signed with Italy any cooperation agreement for the fight against tax evasion and fraud and a reciprocal assistance agreement for the recovery of tax credits (taxable persons here established and without a permanent establishment in Italy are requested to appoint a fiscal representative)
- d) **Digital interface:** any software, including websites or parts of them and applications, also mobile, made available to users and by which digital services are rendered by taxable persons; a digital interface is "multilateral," when it allows the users to interact among them also with the aim to facilitate direct supplies of goods/services
- e) **User:** any person who connects, via a device, to the digital interface
- f) **Targeted advertising:** ad messages via a digital interface based on the data related to the user who access and consult such interface
- g) **Vehiculation:** the specific service of digital interfaces who re-address to third party websites or host targeted advertising

The taxable revenues are equal to:

- (a) Total digital services revenues wherever located cashed by each single taxable person
- x
- (b) The percentage which represents the quota of the services connected to the Italian territory

The digital services revenues (a) relevant for the DST are respectively:

- 1) For advertising, the consideration collected by operators who deploy the targeted ad content on third-party websites and the consideration collected by operators who host on the digital interface such ad content.
- 2) For provision of digital multilateral interface aimed at allowing users to interact, the consideration paid by the multilateral digital interface users, except for that paid as consideration for supply of goods/services which represent a separate and independent transaction from the access and use of the digital service.
- 3) For provision of data collected from users, the consideration coming from the transmission of the data obtained from the activities of the digital interface users.

The percentage (b) for DST is respectively:

- 1) For **advertising**, the ratio between **(a)** the ads posted, in the calendar year, on the digital interface taking into account the data related to the user who consults the interface while located in Italy and **(b)** the total of targeted ads posted on the digital interface during the same period.
- 2) For provision of **digital multilateral interface aimed at allowing users to interact to facilitate direct supplies of goods/services among them**, the ratio between **(a)** supplies of goods/services performed during the calendar year for which one of the users is located in Italy and **(b)** the total of supplies of goods/services concluded in the same period.
- 3) For provision of **digital multilateral interface aimed at allowing users to interact other than the ones at point 2)** above, the ratio between **(a)** the number of users who have an open account in Italy which allows the access to all or part of the services available on the multilateral digital interface and which have used the interface during the calendar years and **(b)** the total number of users who have used the interface in the same period.
- 4) For **provision of data collected from users**, the ratio is between **(a)** number of users whose data, totally or partially supplied and transmitted during the calendar year, have been generated or collected during the consultation of the digital interface while they were located in Italy and **(b)** number of all the users whom such data refer to.

The taxable revenue is subject to the DST when the service is enjoyed by the user which is located in Italy. The user is located in Italy respectively:

- 1) For **advertising**, when the ad appears on the user device at the time the device is used in Italy in the calendar year to access the digital interface.
- 2) For **provision of digital multilateral interface aimed at allowing users to interact to facilitate supplies of goods/services**, when the user uses in the calendar year the device to access the digital interface and concludes the transaction in the same period.
- 3) For **provision of digital multilateral interface aimed at allowing users to interact other than the ones at point 2)**, when the user owns an account for the full

calendar year or part of the calendar year allowing him to access the digital interface and the account has been opened using a device located in Italy.

- 4) For **provision of data collected from users**, when the transmission of the data generated from the user using the device located in Italy to access the digital interface in the same calendar year or previous ones is made.

The device is located in Italy on the basis of the IP address of the device, or in the lack of, based on other information available to taxable persons allowing them to geolocate the device.

DST is paid by **16 February** of the calendar year following the one in which the taxable revenues are cashed (16 March 2021 for 2020). Payment is made via the F24 form; tax codes will be identified separately by the tax authorities; for nonresident companies without an Italian bank account, a bank transfer to the Italian Treasury is required.

The annual DST return is due by **31 March** of the calendar year following the one in which the taxable revenues are cashed (30 April 2021 for 2020); the form and instructions will be defined separately.

DST compliance, payments and refunds require an Italian fiscal code (ID tax number). The Pescara Office is in charge of overseeing the applications of nonresident taxable persons.

Taxable persons established in a non-collaborative country must appoint an Italian fiscal representative.

Group entities may appoint (on a yearly basis) a member of the group as representative. The representative shall be chosen among the entities established in Italy or, in the absence thereof, among the non-established taxable persons, with the exception of taxable persons established in non-collaborative countries without a permanent establishment

in Italy. The appointment of the representative may be made by all of the group entities or by some of them. The representative entity may apply for the fiscal code for the other entities. Each group member provides the representative entity with its own data to be included in the DST return. The Group representative is jointly liable with the represented companies.

There is also a joint-liability between group entities established in Italy (even though not subject to DST) and non-established group entities (other than the ones in non-collaborative countries).

Taxable persons have to record all data used for the determination of the DST on a monthly basis and shall be able to issue a monthly Report according to the guidelines of the Revenue Agency. They also have to draft an annual Explanatory Note (with qualitative information) by annual return deadline, for which specific templates have been provided by the Italian tax authorities.

Where figures are recorded in a foreign currency, the bookkeeping must be kept using the Euro and such foreign currency; conversion into the Euro is made using the last exchange rate published in the EU *Official Gazette*, available the first day of the month during which the amounts are received.

Tax authorities during inspections may request the taxable person for such bookkeeping and for any other relevant information for the DST determination.

DST refund applications are filed via the annual return; if the annual return is not due, the refund claim is separately submitted to the Pescara tax authorities. For non-collaborative countries, the refund is requested by the Italian fiscal representative; for groups, the refund is requested by the representative entity.

Endnote

1. Cashed: Payment has been received.

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