



# Italy: amended Italian Digital Services Tax rules

## Tax Alert

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## Italian Digital Services Tax

### Update on implementation

The Italian Higher Chamber (*Senato della Repubblica*) approved the Budget Law 2020 on 16 December 2019. The Budget Law 2020 was then passed to the Lower Chamber (*Camera dei Deputati*) for its approval. Since the Budget Law 2020 needs to be finalized by 31 December 2019, it seems unlikely that the Lower Chamber will propose further amendments, as these would require further approval from the Higher Chamber.

The version of the Budget Law 2020 approved by the Higher Chamber includes an amended version of the Italian Digital Services Tax (DST).

### Actions and key points to be considered

- Preliminary analysis to check whether certain B2B and B2C services provided by Italian or foreign suppliers to customers located in Italy can be viewed as falling within the scope of the DST.
- If so, a retrospective analysis of FY2019 will be needed to verify whether certain revenue thresholds are exceeded, in which case the supplier could qualify as a DST taxable person from 1 January 2020.
- Persons qualifying as DST taxable persons must set up a special monthly ledger to record revenues falling within the scope of the DST.
- DST taxable persons not established in Italy are required to obtain a DST identification number or to appoint a tax representative in Italy to fulfil payment and reporting obligations.
- For persons qualifying as DST taxable persons for FY2020, the first payment is due on 16 February 2021 and the first DST return is due by 31 March 2021.

### Unofficial translation of the DST

Following below is our unofficial English translation of the new and likely final DST rules. We have highlighted in **bold** the changes and additions made to the previous version (see our previous [Tax Alert](#)).

## Taxable persons

The DST shall apply to revenues resulting from the provision of certain digital services, as defined below, obtained by the taxable persons indicated below, **during a calendar year**.

**Taxable persons** are businesses that, individually or group-wide, meet both of the following conditions, in **the calendar year before** the one in which the taxable revenues are obtained:

- total worldwide revenues of no less than EUR750 million;
- revenues of no less than EUR5.5 million, obtained in Italy from the digital services defined below.

## Taxable services and tax period

The DST **shall apply** to revenues resulting from the provision of the **following services**:

- a) the placing on a digital interface of advertising targeted at users of that interface;
- b) the making available to users of a multi-sided digital interface which allows them to be in contact and to interact with each other, and which may also facilitate the provision of underlying supplies of goods or services directly between users;
- c) the transmission of data collected from users and generated from the use of digital interfaces.

The DST **does not apply** to the **following services**:

- **the supply of goods or services directly between users of a multi-sided digital interface;**
- **the supply of goods or services purchased via a supplier's website;**
- the making available of a digital interface for the sole or main purpose of enabling the entity making it available to supply digital content to users or to supply communication services to users or to supply payment services to users;
- **the making available of a digital interface for the supply of regulated financial services by regulated financial entities;**
- the transmission of data by the regulated financial entities mentioned above;
- **the management of digital platforms for the exchange of electricity, gas and carbon credits and the transmission of related data;**
- **the making available of a digital interface for the supply of goods subject to excise duties.**

Revenues derived from the provision of the above services shall **not be taxable** if those services are rendered to companies that are deemed to be parent, subsidiary or sister companies as per article 2359 of the Italian Civil Code.

The taxable revenues shall include total gross revenues, net of VAT and other indirect taxes.

The **tax period** shall be the calendar year.

## Place of taxation

Revenue shall be taxable in a tax period if the user of the taxable service is located in Italy in that period.

A user shall be deemed to be **located in Italy if**:

- in the case of a service falling under **letter (a)**, the advertising in question appears on the user's device at a time when the device is being used in Italy in that tax period to access a digital interface;
- in the case of a service falling under **letter (b)**:
  - i. if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, the user employs a device in Italy in that tax period to access the digital interface and concludes an underlying transaction on that interface in that tax period;
  - ii. if the service involves a multi-sided digital interface of a kind not covered by point (i), the user has an account for all or part of that tax period that allows the user to access the digital interface and that account was opened using a device in Italy;
- in the case of a service falling under **letter (c)**, data generated from the ~~use~~ user's employment of a device in Italy to access a digital interface, during that tax period or any previous one, is transmitted in that tax period.

For the purposes of **determining the user's location**, ~~locating the user in Italy~~, the device shall be deemed to be used in Italy mainly by reference to the **Internet Protocol (IP) address** of the device itself or any other acceptable method of geolocation, **in compliance with data protection rules**.

## Digital services tax calculation and compliance

The DST shall be chargeable on the proportion of taxable revenues (realized by a taxable person in a tax period) that is obtained in Italy according to the following criteria:

- **as regards taxable revenues resulting from the provision of services falling under letter a) above, in proportion to the number of times an advertisement has appeared on users' devices in that tax period;**
- **as regards taxable revenues resulting from the provision of services falling under letter b) above:**
  - i. **if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, in proportion to the number of underlying transactions concluded on the digital interface by a user located in Italy in that tax period;**
  - ii. **if the service involves a multi-sided digital interface of a kind not covered by point (i), in proportion to the number of users who hold an account opened in Italy, allowing them to access all or part of the services available on the digital interface, and who have used that interface during the relevant tax period;**

- **as regards taxable revenues resulting from the provision of services falling within the scope of letter c) above, in proportion to the number of users from whom all or part of the data sold in that tax period have been generated or collected as a result of users having used a device to access a digital interface, whilst the users were located in Italy.**

DST shall be calculated by applying the 3% rate to the **proportion** of taxable revenues obtained by the taxable person (as explained above) during **the calendar year**.

Taxable persons shall pay the DST **by 16 February** of the calendar year following the one in which the taxable revenues are obtained. The same taxable persons shall file an annual return to declare the taxable revenues by **31 March** of the same year. **Taxable persons liable to DST shall keep a separate monthly ledger to identify revenues subject to DST; when revenues are booked in currencies other than EUR, a euro equivalent must also be recorded, using the latest exchange rate published in the Official Journal of the European Union in the month when the revenues are generated.**

For companies belonging to the same **corporate** group, a single company shall be appointed to fulfill the obligations resulting from the DST provisions.

**Non-established** persons without a permanent establishment in Italy or Italian VAT registration shall, if they qualify as DST taxable persons and meet the above conditions during a calendar year, obtain a DST identification number by submitting an application to the Italian Revenue Agency. Non-established persons without a permanent establishment in Italy and established in a jurisdiction other than an EU or EEA Member State shall, if they qualify for DST, appoint a tax representative in Italy. The application shall be made in accordance with the procedures to be laid down by the Director of the Revenue Agency.

Persons established in Italy and belonging to the same group as the non-established DST taxable persons shall be **jointly liable** with the latter for DST compliance.

For the purposes of DST assessment, penalties, collection and litigation, the **Italian VAT rules** shall apply, if compatible.

The Director of the Revenue Agency shall issue one or more decrees establishing how to apply the DST.

## Entry into force

The above provisions shall apply **from 1 January 2020**.

The Italian DST shall be repealed when the internationally agreed provisions on digital economy taxation become applicable.

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