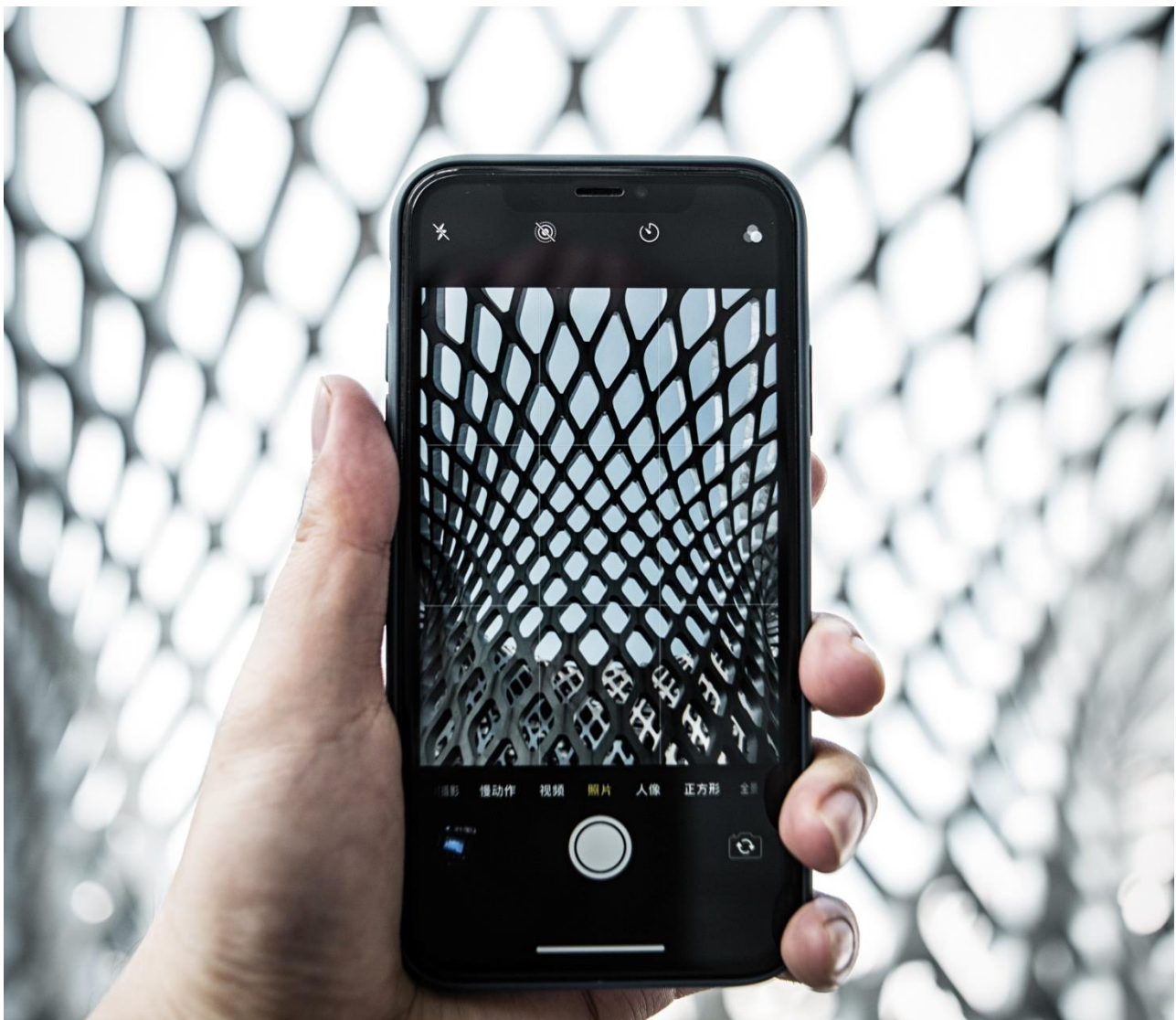


WTS VAT Update for the Digital Economy

Italian Digital Service Tax



February 2020

1. 3% Italian Digital Service Tax 2020

The 2020 Italian Budget Law introduced a new tax on revenues from qualified "digital services" (Digital Service Tax, "DST"), reshaping the prior version of DST as introduced by 2019 Budget Law, never entered into force in lack of the implementing decree.

The amended DST entered into force starting from 1st January 2020, without the need for further implementing rules.

2. Taxable Persons

The Italian DST will apply to taxpayers (Italian resident or not) satisfying - standalone or at a group level - both of the following requirements for the calendar year prior to the one in which the DST comes due:

- » The amount of worldwide revenues reported by the entity at least equal to Euro 750 million;
- » The amount of revenues, generated in Italy, from qualified digital services at least equal to Euro 5.5 million.

Please note that this threshold is substantially lower than the threshold of EUR 25 million revenue on local supplies of digital services that applies for the French DST which has recently been enacted.

Then, in order to verify if the DST will be due on revenues realized in FY 2020, companies should have exceeded the above-listed revenues thresholds in FY 2019.

3. Scope of Italian DST

The DST is due at the rate of 3% on gross revenues (net of VAT and other indirect taxes) generated from B2B and B2C "qualified" digital services when tax relevant in Italy, i.e., when the user is located in Italy. Intragroup transactions are excluded.

Such "qualified" digital services are represented by the following three categories:

- a) the placing on a digital interface of advertising targeted at users of such interface;
- b) the provision of a digital multilateral interface connecting users and letting them interact, even in order to facilitate the direct - among the same - supply of goods or services;

- c) the transmission of data collected about users and generated from user's activities on digital interfaces.

However, an exclusion list has been provided (e.g., direct sale of goods or provision of services performed in the context of an intermediation service; or the supply of goods or services ordered through the website of the same supplier when the latter does not act as an intermediate; or making available of a digital interface where the sole or main purpose is to supply digital contents, communication services or payment services to users).

4. How to determine the DST

For each tax period, companies shall determine the amount to be subject to Italian DST, as follows:

- » computing the overall worldwide taxable revenues from the provision of digital services (to any users, wherever located); and
- » determining the portion of qualified revenues to be allocated to Italy.

Complex rules are established in order to determine the relevant portion of qualified revenues, mainly focusing on where the user is located and varying depending on the (3) different categories of relevant digital services.

In general, a user's device should be considered as used in Italy by reference to the Internet Protocol (IP) address of the device or any other method of **geolocation**, in respect of protection and treatment of personal data rules.

Depending on the no. 3 categories of services, the relevant portion of qualified services is:

Category a):

the proportion of advertising that appears on user's device when accessing the digital interface while located in Italy;

Category b):

- i. if the service implies a multilateral digital interface that facilitates the supply of goods or services directly between users, the proportion of deliveries of goods or services when one of such users is located in Italy;

- ii. if the service implies a multilateral digital interface of a type other than those listed at point i. above, the proportion of users who have an account in Italy that enables them to access all or some of the services available through the interface and who have used the interface during the calendar year in question;

Category c):

the proportion of users whose transmitted data has been generated or collected during the user's consultation of a digital interface while located in Italy.

5. Penalties for non-compliance

Italian VAT penalties are applicable, in principle, to the Italian DST (the reference is explicitly made by the Law). As a consequence, a penalty from 90% to 180% of the DST due is applicable in case of unfaithful tax Return, and a 30% penalty is applicable for omitted or late payment of the DST due.

6. WTS Global: Next Steps

After the implementation of the French DST, which has proven to be a challenge for the companies that it concerned, companies operating in the digital economy now face the implementation of the Italian DST.

However, due to the fact that the Italian DST applies a significant lower threshold, more companies will be liable for the Italian DST.

Given that the thresholds are considered at a group level, Italian and foreign companies should verify if they belong to a Group that could fall into the scope of the DST. Furthermore a retrospective analysis of 2019 will be needed to verify whether the revenues thresholds are exceeded, in which case each of the companies belonging to the group could qualify as a DST taxable person from 1 January 2020.

Once the group has exceeded the thresholds, any company belonging to the group is subject to the Italian DST on all the digital services it provides to Italian users.

In the event companies are in scope of the Italian DST, it is highly recommended to review and verify their customer onboarding procedures to determine whether the required information in order to comply with the Italian DST liabilities and to calculate the Italian DST due.

Furthermore, we recommend to review and analyze the impact of the Italian DST on the margins of the company (i.e. the group).

In addition we also recommend to review the underlying contracts and Terms & Conditions in order to ensure that these are aligned with these new Italian DST liabilities.

Companies subject to DST are required to set up a specific monthly bookkeeping in order to account qualified revenues from digital services and give evidence of the criteria through which a portion of qualified worldwide revenues is allocated in Italy. In case of revenues collected in a foreign currency (different from Euro), the official exchange rate – published on EU Official Journal – has to be applied.

An annual DST return has to be filed within 31 March of the calendar year following the one the DST refers to (first filing deadline is 31 March 2021). DST has to be paid within 16 February of that same year (first annual DST payment deadline is 16 February 2021).

For companies that are part of the same group, a single entity must be identified to comply with the above DST fulfilments.

In order to comply with the Italian DST fulfilments, non-resident taxpayers without an Italian PE or a VAT number, have to request an identification number from the Italian Revenues Agency.

Fiscal Representative

Furthermore, taxpayers established outside the EU, in a country without an exchange of information agreement with Italy, have to appoint a fiscal representative in Italy.

Editorial Team

Johan Visser

jv@atlas.tax
T +31 202 376 299
Atlas Tax Lawyers
Weteringschans 24
1017 SG Amsterdam, The Netherlands
www.atlas.tax

Ivo Kuipers

ik@atlas.tax
T +31 205 354 562
Atlas Tax Lawyers
Weteringschans 24
1017 SG Amsterdam, The Netherlands
www.atlas.tax

Gert Vranckx

Gert.Vranckx@tiberghien.com
T +32 277 340 22
Tiberghien
Havenlaan – Avenue du Port 86C B.4
1000 Brussels, Belgium
www.tiberghien.com

Aldo Bisioli

aldo.bisioli@slta.it
T +39 027 636 931
SBNP Biscozzi Nobili Piazza
Corso Europa 2
20122, Milan
<https://www.sbnp.it>

Fabrizia Orsillo

fabrizia.orsillo@slta.it
T +39 027 636 931
SBNP Biscozzi Nobili Piazza
Corso Europa 2
20122, Milan
<https://www.sbnp.it>

About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced business people in a constantly changing world.

For more information please see: wts.com

Imprint

WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de

The above information is intended to provide general guidance with respect to the subject matter. This general guidance should not be relied on as a basis for undertaking any transaction or business decision, but rather the advice of a qualified tax consultant should be obtained based on a taxpayer's individual circumstances. Although our articles are carefully reviewed, we accept no responsibility in the event of any inaccuracy or omission. For further information please refer to the authors.