

## Italy – Digital Service Tax – Public consultation over the draft secondary regulation

December 18, 2020

### In brief

Starting from January 1, 2020, with a sunset clause linked to the outcomes of the OECD's Pillars, Italy unilaterally introduced, by means of Law 145/2018, as amended (**see in Annex 1 a courtesy translation of the Law**), a "digital service tax" (see our previous Tax Insight<sup>1</sup>). For FY 2020 the 3% tax must be paid on February 16, 2021 and a specific tax return is to be filed on March 31, 2021. In scope taxpayers are businesses that earn Italian digital revenues above certain thresholds. No traditional "nexus" is required.

Par. 46 of art. 1 of Law 145/2018 grants Italian Revenue Agency the power to issue secondary regulation, that is not a requirement for the entry into force (or effectiveness) of the law, to determine implementation and application details of the law.

On December 16, 2020 the Italian revenue Agency published a draft of the above cited secondary regulation (**see in Annex 2 a courtesy translation of the draft secondary regulation**) and opened a public consultation (see the link to the website of the Italian Revenue Agency<sup>2</sup>) with December 31, 2020 as a deadline to provide written comments.

PwC TLS Italy's Team will issue, in the next few days, a more in-depth analysis of the draft secondary regulation with the aim to contribute to the public consultation.

In case interested to discuss the impact of the Italian DST on your business model or the details on how to contribute to the public consultation, please contact our experts below.

**Annex 1: courtesy translation of Law 145/2018**

**Annex 2: courtesy translation of the draft secondary regulation**

### Let's talk

For a deeper discussion of how this might affect your business, please contact:

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<sup>1</sup> <https://www.pwc.com/us/en/tax-services/publications/insights/assets/pwc-italy-draft-2020-budget-calls-for-unilateral-digital-services-tax.pdf>

<sup>2</sup> <https://www.agenziaentrate.gov.it/portale/consultazione-pubblica-imposta-sui-servizi-digitali>

**Annex 1****Courtesy translation of Law 145/2018**

*Warning: this is an unofficial translation of law 145/2018 that is merely aimed at sharing contents for courtesy purposes. As such the following translation cannot be relied on for any other purpose.*

**Law No. 145 /2018****Paragraph 35**

A tax on digital services is established

**Paragraph 35-bis**

The tax is levied on revenues deriving during the calendar year from the provision of service as referred to in par. 37 rendered by parties as referred to in par.36.

**Paragraph 36**

Taxpayers subject to the digital services tax are individuals or companies carrying out business activities that, individually or at a group level, in the calendar year prior to that foreseen in par. 35-bis, generate jointly:

- a. An amount of total annual worldwide revenues equal to or greater than Euro 750,000,000;
- b. An amount of revenues deriving from the provision of digital services as indicated in paragraph 37, generated in Italy not less than e Euro 5,500,000.

**Paragraph 37**

The tax is levied on the revenue generated from the provision of the following services:

- a. Channeling of advertisement on a digital interface targeted to the users of that digital interface;
- b. offer of a multi-sided digital interface that allows users interaction, also for the purposes of facilitating the direct provision of goods and services;
- c. The transmission of data collected about users and generated from users' activities on digital interfaces

**Paragraph 37-bis**

Are not considered digital services under paragraph 37:

- a. the direct provision of goods and services in the context of an online intermediation service;
- b. the provision of goods and services ordered on the website of the supplier of that goods and services, when the supplier does not act as an intermediary;

- c. the offer of a digital interface whose sole or main scope is the provision of digital content, communication services or payment services to users of that digital interface by the entity that manage that interface;
- d. the provision of a digital interface used to manage:
  - 1. the systems of interbank settlements provided for by Legislative Decree No. 385 of 1 September 1993, or of financial instruments' settlement and delivery systems
  - 2. trading platforms or certain trading systems of systematic internalizes provided for by article 1 (5-octies) letter c) of the Legislative Decree No. 58 of 24 February 1998;
  - 3. consulting activities related to equity investments as well as intermediation services in participative financing when facilitating the provision of loans;
  - 4. wholesale markets of government securities set forth in art. 61, letter e) of the Legislative Decree No 58 of 24 February 1998;
  - 5. central counterparties governed by art. 1 (1), letter w-quinquies), of the Legislative Decree No.58 of 24 February 1998;
  - 6. central securities depositories governed by art. 1 (1), letter w-septies), of the Legislative Decree No. 58 of 24 February 1998;
  - 7. Other connecting systems whose activity is subject to authorization and the performance of services is subject to the supervision of a regulatory authority in order to ensure the security, the quality and the transparency of the transactions concerning financial instruments, savings products or other financial activities.
- e. the sales of data from the individuals or companies providing services indicated above in letter d);
- 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

### **Paragraph 38**

Revenues generated by the provision of services referred to in par. 37 are not taxable if the services are provided to companies that, according to article 2359 of the Italian civil code, are deemed controlled companies, controlling companies or companies subject to the control of the same company.

### **Paragraph 39**

Taxable revenues are considered gross of costs and net of VAT and other indirect taxes.

### **Paragraph 39-bis**

The amounts paid for the services referred to in par. 37 letter b), shall include the overall amounts paid by the users of the multisided digital interface, with the exception of the payments made from the

transfer of goods or provision of services that constitute, from an economic point of view, an independent operation from the access and the use of the taxable service.

***Paragraph 39-ter***

Shall not be considered payments that relate to the availability of a digital interface facilitating the sale of products subject to excise duties according to article 1 (1) of the Council Directive 2008/118/CE of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, when the payments are directly and inseparably linked with the volume or value of these sales.

***Paragraph 40***

The taxable period corresponds to the calendar year. Revenues are considered taxable in a given tax period if the user of the taxable service is located in Italy in that tax period.

The user is considered to be located in Italy if:

- a. in case of a service referred to in par. 37 letter a), the ad appears on the device of the user, when the device is used on the Italian territory in that tax period to access to a digital interface;
- b. in case of a service referred to in par. 37 letter b) if:
  1. the service implies a multi-sided digital interface that facilitates the corresponding sales of goods and services directly among users, the user uses the device in the Italian territory in that taxable period to access the digital interface and concludes a transaction on that interface in that taxable period;
  2. the service implies a multi-sided digital interface that does not fall within those indicated in par. 1) above, the user has been provided an account for the entire or a part of that tax period that allows him to access the digital interface and that account has been opened using the device in Italy;
- c. In case of a service as referred to in par 37 letter c), the data generated by the user, that used the device in Italy to access a digital interface in that or in the previous taxable period , have been transmitted in that tax period.

***Paragraph 40-bis***

The device is deemed to be located on the Italian territory mainly by reference to the Internet Protocol address (IP address) of the device or by other means of geo-localization, subject to the personal data protection rules.

***Paragraph 40-ter***

When the taxable service set forth in par.37, is supplied on the Italian territory during a calendar year according to par.40, the total amount of the taxable revenues corresponds to the total amount of

revenues generated from the digital services anywhere realized multiplied by the percentage representing the portion of these services linked to the Italian territory.

This percentage is equal to:

- a. for the services referred to in par. 37 letter a), the proportion of advertising messages placed on a digital interface taking into account the data related to the user that enters such interface while the user is located on the Italian territory;
- b. for the services referred to in par. 37 letter b), if:
  1. the service implies a multisided digital interface that facilitates the corresponding disposals of goods or provision of services directly among the users, to the proportion of the operations of delivery of goods or provision of services for which one of the users of the digital interface is located in the Italian territory;
  2. the service implies a multilateral digital interface of a type not falling in the ones indicated in the previous point 1), the proportion of the users that have an open account in the Italian territory that allow to access to all or part of the services available on the interface, during the calendar year in question;
- c. for the services referred to in par. 37 letter c), at the proportion of the users for whom all or part of the data sold have been generated or gathered during the access to the digital interface, when they were located on the Italian territory.

#### ***Paragraph 41***

The tax due is determined by applying a 3% tax rate to the amount of taxable revenues realized by the taxpayer during the calendar year.

#### ***Paragraph 42***

Taxpayers are obliged to pay the tax due within the 16<sup>th</sup> February of the calendar year subsequent to that indicated in paragraph 35-bis.

Taxpayers are obliged to submit an annual tax declaration regarding the amount of the taxable services provided within the 31<sup>st</sup> of March of the same year.

For companies belonging to the same group, a single entity of the group is nominated in order to comply with the obligations arising from the provisions on the digital services tax.

#### ***Paragraph 43***

The non-resident companies or individuals, without a permanent establishment in Italy and without a VAT registration number, that in a calendar year meet the requirements indicated in paragraph 36 shall request to the Italian Revenue Agency an identification number for the purpose of the digital services tax.

The request is submitted according to the modalities established by the Act of the Italian Revenue Agency indicated in paragraph 46.

If non-resident companies, with no permanent establishment in Italy, are resident in a country outside of the European Union or outside the European Economic Area, with whom Italy has not concluded any agreement on administrative cooperation to fight against tax avoidance and tax fraud as well as any agreement for mutual assistance to recover tax credits, the non-resident entity has to nominate a fiscal representative to comply with the tax declaration obligations as well as the DST payment obligations.

Italian resident companies that belong to the same group of companies mentioned above are deemed jointly liable with the latter for the obligations related to the digital services tax.

#### ***Paragraph 44***

For the purpose of tax audits, application of sanctions and collection of the digital services tax, as well as the related litigation, the dispositions on VAT are applied, where compatible.

#### ***Paragraph 44-bis***

The persons subject to tax keep, on a monthly basis, proper accounts to acquire the information on the revenues from the taxable services as well as the quantitative elements used to calculate the proportions indicated in paragraph 40-ter. The information on the amounts monthly collected specifies, where required, the amount collected in foreign currency different from euro and the amount converted in euro. The amounts collected in a currency different from the euro are converted by applying the last foreign exchange rate published in the official journal of the European union, as known on the first day of the month when the amounts are collected.

#### ***Paragraph 46***

With one or more acts, the director of the Italian Revenue Agency defines the modalities for the application of the provisions related to the digital service tax

#### ***Paragraph 47***

The provisions related to the digital service tax are applicable a from 1 January 2020

#### ***Paragraph 48***

The application of the measures included in paragraphs from 35 to 50bis must not generate any increased or new economic burden to be borne by the public expenditure. The administrations concerned guarantee the fulfilment of the obligations with the human, instrumental and financial resources available at the moment the legislation is applicable.

#### ***Paragraph 49***

The Minister of economics and finance presents to the Chambers an annual relation on the implementation status and on the economic results deriving from the measures related to the application of the digital services tax. In the Note to update the Economy and Finance Document, the Minister of economics and finance – department of finance – presents a report on the implementation

of the digital services tax regime with the objective of, amongst other, updating the financial effects arising.

***Paragraph 49 – bis***

Paragraphs from 35 to 49 of article 1 law n. 145 of 30 December 2018 are repealed at the moment of entry into force of provisions arising from agreements reached at an international level in the field of taxation of the digital economy.

***Paragraph 50***

The paragraph from 1011 to 1019 of article 1 of the law of 27 December 2017, number 2015, are repealed

## Annex 2

### Courtesy translation of the draft secondary regulation

*Warning: this is an unofficial translation of the draft regulation, as of 16/12/2020, that is merely aimed at sharing contents for courtesy purposes. As such the following translation cannot be relied on for any other purpose. Additionally, being the text subject to public consultation, further amendments cannot be excluded.*

**[Draft for public consultation] Digital service tax as provided for by par. 35 to 50 of art. 1 of Law 145/2018 as amended by art. 1 par. 678 of Law 160/2019. Implementation rules.**

#### 1. Definitions

The following definitions apply for the purposes of the Regulation

- a) **“tax”** means the digital service tax as provided for by par. 35 to 50 of art. 1 of Law 145/2018 as amended by art. 1 par. 678 of Law 160/2019;
- b) **“taxable persons”** means persons carrying out business activities that, during the calendar year prior to the one of the triggering of the taxable event, : (i) generate worldwide, individually or at the group level, a total amount of annual revenues of not less than Euro 750,000,000, (ii) generate in the same period, individually or at the group level, an amount of revenues deriving from the provision of digital services in Italy of not less than Euro 5,500,000 to be calculated based on the same criteria as provided for in point 3 below and without taking into account the revenues deriving from the services provided for by point 2.2 and 2.3 below;
- c) **“digital content”** means data supplied in digital form, such as computer programmes, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, and other than the data represented by a digital interface itself.
- d) **“group”** means all resident and nonresident entities that are included in consolidated financial statements drawn up in accordance with the International Standards for Financial Reporting or a national financial reporting system;
- e) **“foreign taxable persons obliged to register”** mean non-resident persons as provided for by lett. b) localized in States different from those provided for by lett. f) without a tax identification number issued by the Italian Tax Authority;
- f) **“taxable person established in a non-collaborative jurisdiction”** means a non-resident person as provided for by lett. b) and established in a State that neither belong to the European Union nor to the EEA with which Italy has not concluded an agreement on administrative

cooperation to fight tax evasion and tax fraud and an agreement for the mutual collection of tax credit;

- g) “**digital interface**” means any software, including a website or a part thereof and applications, including mobile applications, accessible by users to whom the taxable person provides digital services; “**multi-sided digital interface**” means any software, including a website or part thereof, including mobile application, accessible by users through which the latter can upload and share digital content with other users, facilitating the corresponding sale of goods or provision of services directly between them;
- h) “**digital services**” mean:
- i. channeling of advertisement on a digital interface targeted to the users of that digital interface;
  - ii. making available a multi-sided digital interface that allows users’ interaction also to facilitate the direct provision of goods and services;
  - iii. the transmission of data collected about users and generated from users’ activities on digital interfaces.
- i) “**taxable revenues**” means the consideration received during a calendar year by the taxable person for the provision of the digital services whenever rendered and that correspond to the percentage representing the portion of those services linked to the Italian territory.
- j) “**user**” means any person that connect to a digital interface through a device for the purposes of benefiting of the digital services;
- k) “**target advertising**” means the advertising message placed on a digital interface based on the data of the user who accesses and consults that interface;
- l) “**channeling**” means the specific service of platforms that either place on third party websites or host target advertising and receive a consideration for that intermediation or for that service;
- m) “**designated entity**” means an entity of the group appointed by other entities of the same group for the fulfilment of the duties related to the digital services tax.

## 2. Scope and exclusion

- 2.1. The tax applies to the rendering of digital services.
- 2.2. Are out of scope of the tax on digital services:
- a) the direct provision of goods and services in the context of an online intermediation service;
  - b) the provision of goods and services ordered on the website of the supplier of that goods and services, when the supplier does not act as an intermediary;

- c) the making available of a digital interface whose sole or main scope is the provision of digital content, communication services or payment services to users of that digital interface by the entity that manage that interface;
  - d) the making available of a digital interface used to manage:
    - 1. the systems of interbank settlements provided for by Legislative Decree No. 385 of 1 September 1993, or of financial instruments' settlement and delivery systems
    - 2. trading platforms or certain trading systems of systematic internalizes provided for by article 1 (5-octies) letter c) of the Legislative Decree No. 58 of 24 February 1998;
    - 3. consulting activities related to equity investments as well as intermediation services in participative financing when facilitating the provision of loans;
    - 4. wholesale markets of government securities set forth in art. 61(1) letter e) of the Legislative Decree No 58 of 24 February 1998;
    - 5. central counterparties governed by art. 1 (1), letter w-quinquies), of the Legislative Decree No.58 of 24 February 1998;
    - 6. central securities depositories governed by art. 1 (1), letter w-septies), of the Legislative Decree No. 58 of 24 February 1998;
    - 7. Other connecting systems which activity is subject to authorization and the performance of services is subject to the supervision of a regulatory authority in order to ensure the security, the quality and the transparency of the transactions concerning financial instruments, savings products or other financial activities.
  - e) the sales of data from the individuals or companies providing services indicated above in letter d);
  - 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.
- 2.3. Ancillary services to the excluded services as provided for by point.2.2 are also out of scope.

### **3. Taxable base and determination of the tax**

- 3.1. The tax is determined by applying a 3% tax rate to the taxable revenues realized during a calendar year. To this end the considerations collected in the same calendar year by each taxable person are of relevance.
- 3.2. Taxable revenues are considered gross of the costs related to the provision of the digital services and net of VAT and other indirect taxes.

- 3.3. In determining the taxable base, it is not considered revenues generated by the provision of digital service when such services are rendered to entities, resident and non-resident in the Italian territory, that according to article 2359 of the Italian civil code, are deemed controlled companies, controlling companies or companies subject to the control of the same company during the same calendar year.
- 3.4. The consideration for the provision of a digital interface facilitating the sale of products subject to excise duties according to article 1 (1) of the Council Directive 2008/118/CE of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, when the payments are directly and inseparably linked with the volume or value of these sales is out of scope.
- 3.5. For the purposes of determining the taxable revenues related to the provision of digital services as provided for by point 1, lett. h) i) it is of relevance the consideration received by the taxable persons in charge of placing the content of the targeted advertising on a third-party website and the consideration received by a taxable person hosting the advertising content on the website.
- 3.6. For the purposes of determining the taxable revenues related to the provision of digital services as provided for by point 1, lett. h) ii) it is of relevance the consideration paid by users of the multi-sided digital interface except for the consideration paid for the transfer of goods or provision of services that constitute, from an economic point of view, an independent operation from the access and the use of the taxable service.
- 3.7. For the purposes of determining the taxable revenues related to the provision of digital services as provided for by point 1, lett. h) iii) it is of relevance the consideration deriving from the transfer of the user's data collected on digital interfaces.
- 3.8. The total of taxable revenues corresponds to the total amount of revenues generated from the digital services anywhere realized multiplied by the percentage representing the portion of these services linked to the Italian territory.
- 3.9. The percentage representing the portion of digital services as provided for by point 1, lett. h) i) linked to the Italian territory is equal to the proportion of advertising messages placed on a digital interface based on the data of the user who accesses and consults that interface during a calendar year while located in Italy and the total amount of advertising messages placed on that digital interface during the same calendar year.
- 3.10. The percentage representing the portion of digital services as provided for by point 1, lett. h) ii) linked to the Italian territory involving a multi-sided digital interface that facilitates sale of goods or provision of services directly among the users is equal to the proportion of the operations of delivery of goods or provision of services occurred during a calendar year for which one of the users of the digital interface is located in the Italian territory and the total of the operations of delivery of goods or provision of services occurred during the same calendar year. Regarding the digital services as provided for by point 1, lett. h) ii) and not falling under the category described in the preceding sentence, the percentage representing the portion of digital services linked to the

Italian territory is equal to the proportion of users that have an open account in the Italian territory that allow to access to all or part of the services available on the interface and have used that interface during a calendar year and the total number of users that have used the same interface in the same calendar year.

- 3.11. The percentage representing the portion of digital services as provided for by point 1, lett. h) iii) linked to the Italian territory is equal to the proportion of the users for whom all or part of the data sold have been generated or gathered during the access to the interface, when they were located on the Italian territory and the total number of users that have generated data in the same calendar year.

#### **4. Linking rule with the Italian Territory**

- 4.1. Revenues are taxable when the user uses the device to access the digital services in the Italian Territory.
- 4.2. Regarding the digital services as provided for by point 1, lett. h) i), the user is considered to be located in Italy if the advertising appears on the device of the user, when the device is used on the Italian territory to access to a digital interface in the relevant tax period;
- 4.3. Regarding digital services as provided for by point 1, lett. h) ii), rendered through a multi-side digital interface that facilitates sale of goods or provision of services directly among the users, the user is considered to be located in Italy when the user uses the device in the Italian territory in that calendar year to access the digital interface and concludes a transaction on that interface in the same calendar year. Regarding the digital services as provided for by point 1, lett. h) ii) and not dealt with the services described in the preceding sentence, the user is considered to be located in Italy if the user has an account for the entire or a part of the relevant calendar year allowing the user to access the digital interface and that account has been opened using the device in Italy.
- 4.4. Regarding digital services as provided for by point 1, lett. h) iii), the user is considered to be located in Italy if the data generated by the user using the device in Italy to access a digital interface in that or in the previous calendar year have been transmitted in that calendar year.
- 4.5. The device is deemed to be located on the Italian territory by reference to the Internet Protocol address (IP address) of the device or in absence of IP address by other means of geo-localization.

#### **5. Payment of tax**

- 5.1. Taxable persons are obliged to pay the tax due by the 16th February of the calendar year subsequent to the one when the taxable revenues are derived.
- 5.2. The tax is paid in accordance with the provision of art.17 of Decree n. 241/1997.
- 5.3. With reference to the cases as provided for by point. 7.4 and 7.6 the fiscal representative or the designated entity fulfill the tax payment obligation for each entity by which they have been appointed.

- 5.4. The specific tax code for the payment of the tax will be provided by the Italian Tax Authority with a distinct resolution jointly with the instruction for the filling of the payment form.
- 5.5. Nonresident taxable persons without a bank account in the Italian territory and that cannot perform the payment described in point 5.2 pay the tax through a bank transfer in Euro to Bilancio dello Stato al Capo 8 -Capitolo 1006 (codice IBAN IT43W0100003245348008100600) reporting as transfer order the fiscal code, the tax code and the relevant year as indicated in the resolution under point 5.4.

## 6. Tax declaration obligations

- 6.1. Taxable persons are obliged to submit an annual tax declaration by the 31st of March of the calendar year following the one when the taxable revenues are received.
- 6.2. With a separate act the director of the Italian Revenue Agency approves the tax return form and procedures for submitting it to tax authority.
- 6.3. As far as compatible, the provisions of the Decree n.322/1998 are applicable.

## 7. Other obligations

- 7.1. To comply with the obligations under point 5 and point 6 and to request the refund as per point 10, a taxable person shall use the tax identification number attributed by Italian Tax Authority.
- 7.2. Nonresident taxable persons without an Italian identification number can request it to the Italian Tax Authority. Natural persons shall use the AA4/8 module and non natural persons the AA5/6 module. The documentation is available at [www.agenziaentrate.gov.it](http://www.agenziaentrate.gov.it).
- 7.3. The documentation under point 7.2 shall be submitted:
  - for a natural person, to the diplomatic representation - Italian consulate in the foreign country in which he resides or directly or by delegation to any other office of the Tax Revenues Agency;
  - for a person different from a natural person, exclusively to the Agenzia delle entrate - Centro operativo di Pescara - via Rio Sparto n. 21 - 65100 Pescara, directly (or through a delegate person) or through postal service. Alternatively, it is possible to send through email at [entrate.isd@agenziaentrate.it](mailto:entrate.isd@agenziaentrate.it).
- 7.4. Nonresident taxable persons without a permanent establishment in Italy and located in a non-cooperative State, shall appoint a fiscal representative in Italy as per art. 23 of Decree 600/1973 to comply with the obligation under point 5 and point 6 and to request the refund as under point 10.
- 7.5. To the extent the taxable person does not have a tax identification number (*codice fiscale*), the fiscal representatives under point 7.4 shall request the identification number on behalf of the taxable person following the procedures described under point 7.2 and 7.2 and attaching to the relevant documentation the document based on which they have been appointed. In case Module AA5/6 is used, it is necessary to provide in section C the identification number of the

representative and the Code 1. The Centro operativo of Pescara verifies the request and issues the fiscal code.

- 7.6. Taxable persons that belong to a group at the end of the calendar year in which the requirements under point 1 are met can designate another taxable person belonging to the group to comply with the obligations under point 5 and point 6 and to request the refund under point 10. The designated entity must be identified among taxable persons belonging to the group and resident or localized in Italy, if any. A taxable person located in a non-cooperative jurisdiction and without a permanent establishment in Italy cannot be designated. The designation has one-year validity with reference to the obligation to fulfil in the year that is granted.
- 7.7. Within a group only one designation for all or some of the entities of the group is allowed. Entities that choose not to designate entities fulfil the obligation under point 5 and point 6 and for requesting the refund, they fulfil the obligation under point 10 on their own.
- 7.8. The designated entity can request the identification number for the entities of the group based on point 7.2 and point 7.3
- 7.9. The designated entity must list in the declaration under point 6.1 the identification data of the entity by which has been designated.
- 7.10. To comply with the obligation under point 5 and point 6, each taxable person sends to the designated entity the data to be included in the declaration and the information to be used for determining the amount of tax due. Each designating entity is responsible for the declaration and payment of the tax.

## **8. Accounting obligation**

- 8.1. On a monthly basis, taxable persons shall keep proper accounts for the purposes of the taxable revenues as per point 3.5 to point 3.8 jointly with the quantitative elements used to calculate the proportion as per point 3.9 to point 3.11
- 8.2. The information on the monthly revenues and quantitative elements as per point 8.1 must be provided in the “*Prospetto analitico delle informazioni sui ricavi e sugli elementi quantitativi utilizzati per calcolare l'imposta*” (Annex 1). The accounting booking must be integrated with a report called “*Nota esplicativa delle informazioni sui ricavi e sugli elementi quantitativi utilizzati per calcolare l'imposta*” (Annex 2) to be prepared on a yearly basis, by the deadline for submitting the tax return.
- 8.3. The monthly information on revenues and quantitative elements as per point 8.1 must be provided and kept on a digital support that ensures the incorruptibility of those data.
- 8.4. If the information on the revenues used to determining the proportion as per point 3.5 to point 3.8 are expressed in a currency other than euros, for the purposes of the accounting as per point 8.1, the amount converted to Euros must be reported by applying the last foreign exchange rate

published in the Official Journal of the European Union, as known on the first day of the month when the amounts are collected.

- 8.5. The breakdown report containing the information on the monthly revenues and quantitative element as per point 8.1 must be drawn within the deadline for the payment of the tax.
- 8.6. The taxable person must keep all the documentation related to the tax. Such documentation must be made available to Italian Tax Authority upon request and be kept until the date as provided by art. 39 of the Decree 633/1972. In the context of an audit, the Italian Tax Authority can request partial or full extraction of the document as per point 8.3 and request any additional documentation. The taxable person must demonstrate that to have taken all the necessary measures to identify and book all the data as per point 8.1.

## **9. Responsibility of the resident taxable person belonging to a group**

- 9.1. Italian resident companies that belong to the same group of the taxable persons at the end of the calendar year during which the taxable revenues are derived are deemed jointly liable with the latter for the obligations related to the digital services tax.

## **10. Refunds**

- 10.1. The refund of the excess tax paid is requested through the declaration as under point 6.1.
- 10.2. Refunds as per point 10.1 are accorded on the basis of the provision of the Decree of the Ministry of Finance November 22, 2019
- 10.3. Unless an obligation to submit a declaration under point 6.1 exists, the refund is requested by the resident entity or the entity with a permanent establishment in Italy by submitting a request to the relevant Italian Tax Authority office identified on the basis of their fiscal domicile, and for non-resident to the email address of *Agenzia delle entrate, Centro operativo di Pescara*, entrate.isd@agenziaentrate.it, within the deadline as provided for by art. 21 of the Decree n.546/1992.
- 10.4. For non-resident taxable persons, without a permanent establishment in Italy and located in non-cooperative jurisdiction, the refund is requested by the fiscal representative as per point 7.4. For taxable persons belonging to a group, the provision under point 7.6 might be applied and the request is submitted by the designated entity. In case the taxable person no longer has a fiscal representative or a designated entity that performed the payment of the tax, the request for refund can be submitted by the same taxable person to which the excess tax paid refers to.

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## **Explanations [Extract]**

Article 1, par. 35 to 50 of the Law 145/2018 introduced a tax at the rate of 3% on revenues deriving from certain digital services rendered by persons carrying on business activities. The Law entered into

force on January 1, 2020. The Italian legislation is inspired to the EU Council Directive COM (2018) 148 final as discussed on March 21, 2018 in the context of the package on the taxation of the digital economy prepared by the EU Commission pending a final international solution (at the OECD level)”

Article 1, par. 678 of Law 160/2019 partially amended Article 1, par. 35 to 50 of the Law 145/2018 and deleted also par. 45 of art. 1 of Law 145/2018 that originally delegate to a specific Ministerial Decree the implementation rules for [the digital service tax discipline] whereas did not modify par. 46 that makes reference to one or more acts of the director of the Italian Revenue Agency which will define the modalities for the application of the provisions related to the digital service tax.

This Regulation implementing art.1 par.46 of Law 145/2018 under point 1 defines the “tax” (lett. a), “taxable person” (lett. b), “digital content” (lett. c), “group” (lett. d), “foreign taxable persons obliged to register” (lett. e), taxable persons localized in a non-collaborative jurisdiction (lett. f), “digital interface” and “multi-side digital interface” (lett. g), “digital services” (lett. h), “taxable revenues” (lett. i), “user” (lett. j), “target advertising” (lett. k), “channeling” (lett. l), “designated entity” (lett. m).

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