

Italy adopts digital services tax and reintroduces notional interest deduction

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In brief

Italy recently adopted Law n. 160 of 2019, implementing its Budget Law for 2020 ('the Law'). The adoption follows the approval of the Law on December 27, 2019, and the Law's publication in the Official Gazette on December 30, 2019. The Law contains several corporate tax provisions, including a digital services tax and reintroduction of a notional interest deduction for capital injection.

In detail

Reintroduction of the notional interest deduction (NID)

The NID benefit was reintroduced effective for fiscal year 2019, at a rate of 1.3%.

The benefit seems to have been reintroduced without any effective interruption on the deduction - the measure was repealed effective in 2019 with the 2019 Budget law and now is reinstated retroactively to 2019. Italian lawmakers clarified that this aspect of the provision was intended to avoid any 'temporal gaps' in the benefit's application.

Accordingly, all relevant capital increases and decreases (including also those deriving from the application of anti-abuse provisions) occurred since December 31, 2010, should be considered when calculating the benefit.

Digital services tax (DST)

The DST applies effective January 1, 2020. Entry into force is not dependent on any further legislation.

Scope

The DST appears to target revenues from digital services that underpin 'user participation,' such as the:

1. channelling of advertisements on a digital platform targeting the users of the same platform ('targeted online advertising'),
2. availability of online platforms and multi-sided digital interfaces that allow user interaction and may facilitate the sale of goods and services among them, and
3. transmission of data collected about users and generated from user activities on digital interfaces.

The following digital services appear to be out of scope:

1. online intermediation activity in the context of direct sales of goods and services from business to consumer,
2. online sales of goods and services from the web portal of the business to the consumer (i.e., 'no intermediation'),
3. the availability of a digital platform with the sole or main objective to provide its users with digital content, communication services, or payment services,
4. organizing and managing digital platforms for exchanging electricity, gas, environmental certificates and fuels, as well as transmitting related data collected therefrom and any other connected activity,
5. digital interfaces to manage Interbank or financial instruments' settlement systems, trading platforms, wholesale market of government securities, consulting activities related to equity investments, as well as other connecting systems, the activity of which is subject to authorization, and the performance of services is subject to an authority's supervision, and
6. sale of data by persons supplying services (4) and (5) above.

The DST applies to revenues generated during the calendar year that result from providing the above-described digital services by businesses that meet both of the following conditions (individually or group-wide) in the prior calendar year:

- total worldwide revenues of at least 750 million EUR, and
- revenues of at least 5.5 million EUR obtained in Italy from providing digital services (as described above).

The tax does not apply to goods and services provided between affiliated companies.

Tax period

Revenues are considered taxable in a given tax period if the taxable service's user is located in Italy during the tax period. Specific criteria are established for the definition of the user's location. For the location of the device, general reference is made to the device's internet protocol (IP) address.

The tax period is the calendar year. In this regard, taxpayers must pay the tax by February 16 of the calendar year following the year in which the taxable revenues were obtained. Taxpayers must also submit an annual tax declaration regarding the provided taxable services by March 31 of the same year. For companies that are part of the same group, a single entity must be identified to comply with these provisions.

Notwithstanding the entry into force on January 1, 2020, the Italian DST shall be repealed when internationally agreed-upon provisions on the digital economy's taxation become applicable.

Observation: For further details, please see PwC's Tax Insight, [Italy's draft 2020 budget calls for unilateral digital services tax](#).

Amortization benefit converted into tax credit for capital goods

The Law introduces a new tax credit for the 'Industry 4.0,' replacing the existing 'super-amortization' and 'hyper-depreciation' benefits.

Timing

Specifically, beneficiaries of the tax credit are companies that invest in new capital goods if:

- The investment is made between January 1 and December 31, 2020 (or until June 30, 2021, if the purchase/acquisition has been made and if at least 20% of the purchase price has been paid by December 31, 2020), and
- the new capital goods are intended for production structures located in Italy.

Eligible investments

Eligible 'new' investments must be functional for the business activity. The exceptions of goods established in the 'super-amortization' and 'hyper-depreciation' rules apply by analogy.

All entities residing in Italy may access the tax credit. These include permanent establishments of nonresident companies regardless of their turnover, size, economic sector, and applicable tax regime.

For investments in the goods mentioned above, the allowed tax credit will amount to 6% of its cost; the maximum limit of the admissible costs is 2 million Euro.

For investments made in capital goods functional to the digitalization and technological transformation of the companies, the tax credit is allowed for:

- 40% of the investment cost, up to 2.5 million Euro, and
- 20% of the investment cost beyond 2.5 million Euro, up to a limit of 10 million Euro of overall admissible costs.

For investments made in capital intangible goods (for example, software), the tax credit allowed is 15% of the cost, up to the maximum limit of admissible costs, equaling 700,000 Euro.

Duration of the benefit

The tax credit may be used only for compensation purposes and with the following limitations:

- The tax credit may be used in five annual quotas of the same amount; for intangible goods, the limit is reduced to three.
- The tax credit may be used beginning the year following that in which the goods enter into use.

The tax credit, e.g. the gain accounted following the credit, is not relevant for the calculation of the income or of the taxable basis for regional tax (IRAP) purposes. The tax credit may be combined with other tax benefits applicable to the same costs.

Compliance

Companies that receive the benefit must provide information to the Italian Ministry for Economic Development. The form for the communication, the relevant contents and the deadline for the filing will be provided by a Ministerial Decree.

Step-up of tangible assets and participation of unlisted companies

The Law revamps another one-off opportunity for resident individual and nonresident entities to elect a tax step-up of participations in unlisted Italian companies held as of January 1, 2020, through the payment of an 11% substitute tax (instead of ordinary taxation of 26%). The same rules apply for participations in land properties (either for building or agriculture purposes).

If a taxpayer transfers immovable property bought or built in the last five years, any capital gain is subject to a 26% substitute tax.

Observation: The provision may be of specific interest to foreign entities that could realize a capital gain subject to tax in Italy but not eligible for exemption under an applicable treaty. The basis of the substitute tax equals the value of the participation as of January 1, 2020, and needs to be certified by a sworn appraisal prepared no later than June 30, 2020.

The step-up regime also applies to goods belonging to companies that prepare financial statements according to national accounting standards; however, the regime operates differently. Specifically, it applies a 12% substitute tax for depreciable goods and 10% for non-depreciable goods.

New tax credit

The Budget Law foresees a new tax credit for investments made in (i) R&D activities in the field of ecological transition; (ii) technological 'Innovation 4.0'; and (iii) other innovation activities. However, the tax credit amount depends on the type of investment.

1. For R&D activities, the tax credit equals 12% of the calculation base, net of the other subsidies or contributions received for the expenses. The tax credit may not exceed 3 million Euro.
2. For investments in technological innovation (for example, activities finalized at the realization of new products and production processes), the tax credit amounts to 6% of the calculation base, net of the other subsidies or contributions received for the expenses. The tax credit may not exceed 1.5 million Euro.

However, if these investments pursue the objective of ecological transition or technological 'Innovation 4.0,' as specified in apposite Ministerial decree, the tax credit equals 10% of the base of calculation. The tax credit may not exceed 1.5 million Euro.

3. For investments in design, the tax credit equals 6% of the base of calculation, net of the other subsidies or contributions received for the expenses. The tax credit may not exceed 1.5 million Euro.

Plastic tax

The Law introduces a tax on the consumption of single-use plastic products for packaging use. The tax amounts to 0.45 EUR per kilogram of plastic used. The tax is not due if the amount of tax due is equal to or less than 10 Euro. Some categories of single-use plastic products are excluded (for example, if the plastic is used for packaging medical products).

The taxpayer liable for the payment of the tax is:

- the producer, if the products are manufactured in Italy
- the person who buys the products in the exercise of its economic activity (or the transferor if the products are bought directly by a private consumer), if the products are imported from other European countries
- the importer, if the products are imported from a third country (for example, a non-EU country).

These provisions will apply beginning the first day of the second month following the publication of the implementing rules by the Italian Tax Authority.

Sugar tax

The Law introduces a tax on the consumption of sweet non-alcoholic beverages. The tax amounts to 10 Euro per hectoliter on finished products and 0.25 Euro per kilogram for products to be used following a dilution process.

The tax is due when:

1. The national producer transfers the products to the consumers or to the companies selling the products in Italy. The national producer is liable for the tax.
2. The buyer receives the products when importing them from other EU countries. The buyer is liable for the tax.
3. The products are imported into Italy from non-EU countries. The importer is liable for the tax.

These provisions will apply beginning the first day of the second month following the publication of the implementing decree.

Hybrid mismatch provisions – entry in force

Hybrid mismatch provisions now apply starting from fiscal year 2020 (except for reverse hybrid mismatch provisions, which apply starting from fiscal year 2022). Italian provisions on hybrid mismatches are addressed to mismatch situations that result from double deductions, or a deduction without inclusion, from conflict in the characterization of financial instruments, payments and entities, or from the allocation of payments.

The takeaway

The Italian Budget Law includes several important measures, introducing both 'new' tax benefits (for example, the NID), credits, and also adopts new taxing measures such as the DST. These new opportunities and challenges will impact multinationals significantly.

Let's talk

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

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