

Italy considers Web Tax and other measures for digital economy

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Executive summary

The Italian budget law for 2018 (the Draft) is currently undergoing parliamentary discussion and is expected to be adopted by 31 December 2017. According to the current version of the Draft, a new “Tax on digital transactions,” as well as other tax measures related to the digital economy, mostly affecting the concept of permanent establishment (PE), would be introduced.

Such measures mainly consist of:

- ▶ A new tax on digital transactions (Web Tax)
- ▶ A mandatory discussion with the competent tax office about the possible presence of an Italian PE for nonresidents that in a six-month period have implemented more than 1500 transactions with an overall value of €1.5m
- ▶ An amended domestic definition of PE

Detailed discussion

The Web Tax

The Draft introduces a new “tax on digital transactions related to the performance of services carried out through electronic means” rendered by both resident and nonresident enterprises to Italian businesses and other entities qualifying as withholding agents under Italian tax law, different from Italian PEs of nonresidents.

“Services carried out through electronic means” shall be those supplied through the Internet or an electronic network, the nature of which makes the performance completely automatic, with minimum human intervention and for which the information technology component is essential. The aforementioned services are to be identified by a specific Decree to be issued by the Minister of the Economy and Finance at a later stage (the Draft refers to 30 April 2018).

The Web Tax would apply at a 6% rate on the amount of the consideration paid in exchange for the performance of the above services, net of VAT, and regardless of where the transaction is concluded.

The Web Tax would be due by the enterprises rendering the above services and would be settled within the same terms and through the same modalities provided for income tax. The Web Tax should also be creditable from the Italian income tax. For nonresident persons, the Web Tax would, instead, be due by the supplier of the services through a withholding tax applied by the financial intermediaries intervening in the payment of the consideration. As to nonresidents, the Web Tax applies only to those not having a PE in Italy.

The Web Tax would be applicable starting from 1 January 2019.

PE investigation for significant nonresident digital suppliers

If nonresidents without an Italian PE implement in a six-month period more than 1500 qualifying digital transactions for a value of at least €1.5M, within the following 30 days the Italian Tax Authorities (ITA) should communicate to

the nonresident that he has exceeded the threshold and that he will be invited to discuss his position. In particular, the ITA will notify the nonresident of an invite within six months (since the threshold has been exceeded) to discuss and verify whether the activity carried out by the latter may be considered as performed through an Italian PE. If that is believed to be the case, the nonresident will be given the chance to regularize its position having access to the so-called “procedure for cooperation and enhanced collaboration,”¹ with a significant penalties discount.

The ITA should be able to monitor the exceeding of the above threshold on the basis of the disclosure of the digital transactions made by VAT persons through a specific periodical return.²

The amended domestic definition of PE

The Draft would also replace the domestic definition of PE with the one provided by BEPS Action 7 with the following exceptions:

- ▶ The exemplifying list of fixed places of business which may give rise to a PE would now be modified by replacing the *text any other place of extraction of natural resources with any other place related to the search and exploitation of resources of any kind*, and by
- ▶ Introducing the new concept of *a significant and continuous economic presence in the territory of the State set up in a way that it does not result in a substantial physical presence in the same territory*.

Endnotes

1. See EY Global Tax Alert, [Italy issues draft law to encourage foreign companies engaged in digital economy to disclose or agree to existence of a permanent establishment](#), dated 12 June 2017.
2. Italian VAT persons are already obliged to transmit electronically to the Italian Tax Authorities certain data related to invoices issued and received in the quarter (so called “spesometro”).

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EYG no. 06847-171Gbl

1508-1600216 NY
ED None

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