TAXATION ON THE DIGITAL ECONOMY
THE ITALIAN SOLUTION

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ABSTRACT: *There is a great challenge in the digital economy the increasing of digital companies., the digital revolution. The digitalism has a lot of good and lot of bad results, the emergence of digital companies on the market has made it clear that the international tax system is ineffective in the face of these new economic actors. In the international taxation the taxation takes place in the country where the company has an effective physical presence, but the aim is because of the cross-border digital activity, all countries in which the digital company carries out its dominant activity and generates profits should be included in the taxation. The aim to tackle against the dangerous tax avoidances, to tackle the harmful tax practices in the digital economy. The aim of this paper is to analyse the project developed by the OECD, the European Union proposal and the unilateral measures adopted by the States in order to understand how the digital economy will be implemented presently, particularly in Italy.*

KEYWORDS: *taxation of digital economy; Digital Service Tax; Italy; OECD BEPS Project; GLOBE II Pillars; fighting against the harmful tax practices.*
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1. INTRODUCTION THOUGHTS

In recent decades, we have witnessed a digital revolution that is gradually impacting all sectors of the economy and making it an increasingly digital economy. Like all revolutions, this new type of business has both positive and negative aspects. Regarding the latter in particular, the emergence of digital companies on the market has made it clear that the international tax system is ineffective in the face of these new economic actors. The various criteria on which the tax system is based are inappropriate for digital companies. "The main challenge in the area of taxation is that under the traditional rules of international taxation, taxation takes place in the country where the company has an effective physical presence." (Varga, 2020)

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In international taxation and in European policy, the aim should be to tax in line with the principle of transparent, proportionate public taxation, where taxation is at the place where the real value is created, in the country where the digital company is operating, where the profits are generated. This can only be the one country that determines the tax status based on the company's registration, but because of the cross-border digital activity, all countries in which the dot.com company carries out its dominant activity and generates profits should be included in the taxation. (Erdős, 2019) Taxing this new way of doing business is problematic and complicated. In addition to the questions of where, how and what kind of activity is taxed, the principles of fair taxation and the avoidance of double or multiple taxation also need to be clarified. The main challenge is therefore to find an appropriate plan to tax digital subjects. Over the last decades, various institutions, such as the OECD (Organization for Economic Cooperation and Development) in cooperation with the G20, have tried to find a global solution to taxing digital subjects. The response of companies to this challenge lies in changing their business models. In fact, they are currently characterized by an increasing presence of intangible elements. In addition, these phenomena allow companies to operate in markets without needing a physical presence on the ground. In this context, it should be noted that the basic principles of corporate income taxation need to be updated to keep pace with the changes mentioned above. The aim of this work is to analyse the project developed by the OECD, the European Union proposal and the unilateral measures adopted by some States in order to understand how the digital economy will be implemented presently, particularly in Italy. Although none of the countries can be considered unique in the light of the subject, since we are talking about a global matrix of cross-border services. The analysis was conducted in relation to the OECD, government agencies and research on practice and theory. The analysis shows that there is an urgent need to change tax laws in relation to the digital economy and multinational corporations, which can achieve negligible tax rates or outright legal tax avoidance through aggressive tax policies. The OECD/G20's proposal, based on two pillars, has reached consensus in several jurisdictions.[1] It should therefore be noted that the long process of defining the taxation of the digital economy could lead to a global solution based on a common consensus.

2. DEFINITION AND CHALLENGES IN THE DIGITAL TAXATION

2.1 Definition of digital businesses

Digital technology and the development of information and communication technologies are having an impact on all sectors of society, speeding up the passage of time considerably. In all production processes, the development of modern communication has shortened the distance between people or even reduced it to zero. The acceleration of scientific and technological progress in recent years has brought about qualitative changes in the elements of the third industrial revolution, leading to the fourth industrial revolution. This revolution is characterized by the integration of physical objects into computer networks, via Web connections, with minimal human involvement. The undisputed protagonist of the digital revolution is the Internet. The emergence of the fourth industrial

[1] see in the EU the first part: the Council Directive about on ensuring a global minimum level of taxation for multinational groups in the Union adopted in 2022.

revolution has led to significant economic changes, including digital businesses, which encompass a variety of phenomena. The digital economy and the traditional economy are increasingly intertwined, making it difficult to define precisely. Neither the OECD nor the existing economic sector categories can provide a clear and precise answer to the central question: how is the economy practised in a way that can be considered digital? The digital economy is the result of a process that is the result of the spread of information and communication technology (ICT), a process that cannot be contained. No sector has not expanded and, consequently, the economy itself is becoming a digital economy. All sectors of the economy are using information technology to increase productivity, expand target markets and reduce operating costs.

2.2. Issues for digital businesses

The emergence of digital technologies, in particular the internet, has enabled companies to offer their products and services in locations other than their physical premises. Whereas in the past, a multinational company that provided its business in another country had to set up an operational centre there, allowing that state to tax the income it generated. Nowadays, companies can easily place their goods or services anywhere in the world via the internet without having to be physically established in the countries with which they are dealing. Current technological advances, the removal of barriers to the free movement of capital and the shift to a mainly service-based economy have enabled multinational companies to operate as global businesses, reducing their presence in individual countries by adopting a purely digital presence. The digital economy has brought about a huge shift, with 9 out of the top 20 companies with the largest capitalisation now being digital companies, compared to 1 out of 20 ten years ago. A feature of the digital economy is that it crosses regulatory boundaries, so it is now normal for the places where businesses produce goods or provide services to be different from the places where they are used. This high degree of dematerialisation of the digital industry allows for a taxable presence in areas where they are already active in the market, and also for the transfer of all profits to companies belonging to a group of companies based in countries with a more favourable tax regime. Furthermore, "from a tax perspective, it is important to note that companies operating in the digital economy usually do not establish a taxable permanent establishment in the 'market state', as they do not have a permanent physical presence or have a minimal presence that is considered to be only ancillary or preparatory under traditional rules of international tax law. They may install servers or use software to facilitate the activity in the 'market state', but under traditional rules of international taxation, automated equipment, in particular servers, is only narrowly located and software and data do not normally give rise to a PE." (Varga, 2020) "According to the OECD Model Tax Convention and its Commentary, the operation of a website or similar virtual presence does not constitute a permanent establishment."[2] To this must be added the inadequate regulatory framework that allows operators, i.e. businesses in the sector, to engage in tax avoidance and evasion practices in order to reduce their contribution to the tax payment.

[2] OECD Modellegyezmény Kommentárja, 5. cikk 42.2 pont. The software and data cannot be assigned to a geographical location, that's why there is no permanent place of business that creates a nexus principle, or nexus, that gives right to the taxation. In Varga E (2020). pp.268.

2.3 The main challenges of the digital economy: Tax optimisation, tax avoidance: harmful tax practices

Following the OECD and EU action against money laundering and tax evasion, some clarification is needed on some of the degrees of tax optimisation. In the case of tax optimisation, we are talking about tax planning activities that help us to find a legal way to pay less tax or to schedule our compulsory tax payments in a way that is more favourable to us.

To achieve more favourable tax conditions, some people also use international company formation, but you don't have to go far, as you can also use this process for a company formed in your home country.

When setting up a company in another country, you have the option of paying the mandatory taxes to the tax authorities in that country, according to the laws of that country. Not only can this reduce the amount of tax due, but it can also open up possibilities for tax reclaims. "The economic impact of tax policy and its practical applicability can be seen in the behaviour of different groups of taxpayers and tax subjects." (Földes, 2007) "Taxpayer behaviour can range from conscious tax planning and tax optimisation to tax avoidance, tax evasion and tax fraud sanctioned by criminal law. The legality of various tax avoidance techniques may at some point be transferred to the category of offences and then to the sanctioned offences of tax evasion and avoidance." (Erdős, 2012) The general perception is that tax evasion, tax fraud and money laundering are mostly treated as one concept. However, there are huge differences in substance between these concepts. There is a very simple reason for reducing the tax payable. Companies want to make more profit. What can complicate the plan is the way in which they want to achieve it, because it makes a difference whether they achieve it legally or by breaking the law, and here there is a crucial difference between the concepts.

We see tax planning as a legitimate tax reduction method of tax optimisation. According to Gábor Földes, "tax planning means tax optimisation based on economic, economic calculations, i.e. the combination of different tax liabilities and profitability that yields the most favourable outcome for the enterprise under the given conditions." (Földes, 2007)

Every country can give businesses built-in tax breaks to help them achieve their goals. When a company, with the help of a tax adviser, identifies the benefits it can benefit from and applies them systematically, this is called tax planning. Such benefits include the offshore rule and the rules on affiliated companies in the corporate tax system.

In summary, tax optimisation is based on identifying all the tax relief opportunities provided by the state, with the aim of legitimately reducing the proportion of taxes payable to the state. It is a legal practice based on an analysis of the company's assets, economic and financial situation and the characteristics that constitute the requirements for access to tax credits and deductions. An important aspect of tax optimisation is often the choice of the most appropriate legal form.

When we read about harmful tax practices in the literature, it is inevitable that we do not come across the "Double Irish and Dutch Sandwich" (Google), the "advance tax ruling" of Apple (Apple Operations Europe, Apple Sales International), the practice of Airbnb, or the issue of transfer pricing (Amazon). In the case of a "Double Irish and Dutch Sandwich", the proceeds are transferred to a country with a very low tax rate or no tax liability.

Specifically, Google did not pay the 20% tax on its UK income because it has no permanent establishment there, but instead transferred it to its offshore company in Bermuda, where profits are taxed at a very low or no tax rate, through its subsidiaries in Ireland and the Netherlands. In this single example we find profit shifting, aggressive tax planning, double or multiple non-taxation. (Erdős, 2019)

"Airbnb's practices also fall into the category of harmful tax practices. Airbnb is a short stay booking system that is tax resident in the US but has subsidiaries and branches in the UK and France, collecting a 3% commission on bookings from property owners, but also charging a fee to travellers. Of the £657 million of fee income collected in the UK, only £200,000 was taxed in the UK as the commission was booked by Airbnb's Irish subsidiary." (Erdős, 2020)

3. SOLUTION IN THE INTERNATIONAL AND EUROPEAN TAX LAW

3.1. Towards an international solution

In view of the issues outlined above, which have arisen with the expansion of the digital economy, the OECD has issued policy recommendations with the aim of finding a global solution, inviting countries to wait for global implementation standards to ensure global harmonisation, rather than implementing individual proposals within their own jurisdictions and legislation.

The problem of inadequate tax systems in relation to the digital economy is not just a problem for a few countries but affects tax systems around the world. The OECD has tried to address the problem in recent years, with the aim of finding a single solution that all countries can clearly follow.

3.2 The first attempts at a solution in an international context

The most important work on this issue is the OECD BEPS project. However, other attempts have been made in the past to tackle the problem. However, these were not effective because they did not address the problem from a global perspective, which is essential in this case.

The first attempt to tackle this problem was made in 1997, when a conference was held in Finland, where the topics discussed included the relationship between e-commerce, digital economies and tax systems.

The following year, another conference was held in Ottawa, where the topics discussed at the previous meeting were discussed further. An important outcome of this conference was the identification of five tax principles that form the basis for regulating digital commerce. These were identified in a study prepared by the Committee on Fiscal Affairs (CFA). Its overall aim is to contribute to shaping globalisation for the benefit of all by promoting and developing effective and sound tax policies, international tax standards and guidelines that enable governments to provide better services to their citizens while maximising economic growth and achieving environmental and social objectives.

Their work aims to enable the OECD and partner (i.e. non-member) governments to improve the design and operation of their national tax systems, to promote cooperation and coordination between them in the field of taxation, and to reduce tax obstacles.

1. to support the development of efficient and equitable tax systems, consistent with maximising the growth potential of OECD members and partners and the achievement of

governments' environmental and social objectives, by analysing tax policy issues, providing comparative statistics, comparing countries' experiences in designing tax systems, and sponsoring or conducting research on tax planning and related issues;

2. facilitates the negotiation of bilateral tax treaties and the drafting and administration of related domestic legislation;

3. promote communication between countries and the adoption of appropriate policies to prevent international double taxation and to combat tax avoidance and evasion;

4. encourage the elimination of tax measures that distort international trade and investment flows;

5. promote an atmosphere conducive to mutual assistance between countries and establish procedures through which potentially conflicting ta policies and administrative practices can be discussed and resolved ;

6. seek to improve the efficiency and effectiveness of tax administration, both in terms of taxpayer services and enforcement, including by analysing the compliance costs borne by businesses in implementing complex legislation and regulations, and by simplification where possible to promote voluntary compliance;

7. support the integration of partners into the international economy by strengthening the policy dialogue with them in order to improve their understanding of and contribution to the standards, guidelines and best practices of the Commission.[3]

It addresses issues of debt neutrality, efficiency, certainty - simplicity, clarity and flexibility.

" - tax neutrality: the decisions of economic operators must be based on economic criteria and not on tax considerations

- efficiency: the modernisation and computerisation of tax services are tools which make it possible to minimise administrative costs and the costs borne by taxpayers in meeting their tax obligations and tax liabilities;

- certainty and simplicity: taxpayers should be able to understand the rules more easily by

make them clear and simple;

- clarity: taxation should be able to generate the right amount of revenue at the right time, minimising the risk of tax evasion and avoidance;;

- flexibility: tax legislation must be able to adapt quickly and flexibly to new commercial and economic circumstances and to commercial and technological realities." (DELLA VALLE & FRANSONI, G. , 2022)

It was at this conference that the framework crystallised in the document "Taxation and e-commerce" was developed. The Ottawa Framework for Taxation was implemented in 2001. Some changes have been made to the OECD Commentary in order to address the doubts that have arisen about the application of the concept of permanent establishment in the context of new technologies related to the digital economy.

3.3 BEPS Action Plan project

All the solutions developed in the last decade of the 1990s and early 2000s proved ineffective, leading members to seek new solutions. In 2013, the OECD published a paper

[3] https://oecdgroups.oecd.org/Bodies/ShowBodyView.aspx?BodyID=963&Lang=en, letöltés ideje: 2024.08.20 14:14

entitled "Addressing Base Erosion and Profit Shifting", in which it outlined "an action plan to provide states with appropriate tools, both national and international, to adapt tax laws to underlying economic realities." (Della Valle & Fransoni, 2022) Through international instruments, it seeks to prevent multinational companies from using various tax avoidance techniques to shift profits from the place where value is created to where they can pay more favorable taxes.[4]

The package proposes that digital companies pay part of their tax where the consumer has used the service. Later, in July of the same year, it published another document, entitled "An Action Plan on Tax Base Erosion and Profit Shifting", based on a 15-part plan and a three-element system. Its aim was to:

1. "To introduce consistency in national rules on cross-border activities;
2. to restore the full impact and benefits of international standards;
3. to ensure transparency while promoting greater certainty and predictability."[5]

Since then, all G20 and OECD countries have been working on an equality plan, on which the European Commission, among others, has expressed its views. Developing countries have also been involved in the project through various mechanisms, such as direct participation in the Tax Committee. All the key features of the digital economy have been considered in the development of the project. Firstly, the definition of permanent establishment is modified in the document. It also organises guidelines on transfer pricing and the CFC (Controlled Foreign Company - CFC) rules. CFC can be a foreign person who is not a resident taxpayer under the Corporate Tax Act. The document then focuses on indirect taxes, developing and identifying enforcement mechanisms to facilitate the collection of VAT (value added tax).

Directive 2006/112/EC recasts and repeals the Sixth Directive on value added tax (VAT) with a view to clarifying the current European Union (EU) VAT rules. Under this Directive, taxable transactions include intra-EU supplies of goods and services, intra-EU acquisitions of goods between EU Member States and imports of goods into the EU from non-EU countries.

The place of taxation depends on the nature of the transaction, the type of product supplied and whether or not the product involves transport. In the case of supply of goods, the place of taxation is the place where the goods are supplied. In the case of supplies of goods between Member States, the place of taxation is the place where the goods are supplied, i.e. the Member State to which the goods arrive after being supplied from another Member State. In the case of imports of goods, the place of taxation is the Member State where the goods arrive. For the supply of services, the place of taxation is the place where the service is supplied. This depends not only on the type of service, but also on the type of customer using the service. As a general rule, a service should be taxed at the place of the customer if it is a business, or at the place of the supplier if the customer is an individual. In order to ensure that the service is taxed at the place where it is actually used, there are certain exceptions to these general rules, including

- services relating to immovable property;

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4 A digitális szektor adóztatása. Infojegyzet, Országgyűlés Hivatala Közgyűjtemény és Közművelődési Igazgatóság Képviselői Információs Szolgálat, 2021/53. 2021. június 11

5 OCSE/G20, Base Erosion and Profit Shifting Project, Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report, 2015.

- passenger transport;
- activities connected with culture, sport, education and entertainment;
- restaurant services.[6]

The ultimate goal is to create a single set of tax rules for all states, designed to protect tax bases while providing greater certainty and predictability for taxpayers.

The work needed to complete the 15 measures was completed after two years and to date more than 135 countries are implementing these measures, which are designed to combat tax avoidance, improve the consistency of international tax rules and ensure a more transparent tax environment.

The various results have been brought together in a comprehensive package, the first major overhaul of international tax rules in nearly a century. In applying the new measures, profits are expected to be reported where the economic activities that generate them take place and where the value creation takes place. The data from the implementation of the BEPS project is continuously recorded, monitored and analysed over time. The data and analysis help to evaluate the impact of the countermeasures developed under the BEPS project.

The final report published by the OECD in 2015 concluded that no single tax rule alone has made BEPS possible, but that it is the interaction between different issues that makes it possible.

By adopting the BEPS package, the OECD and G20 countries, as well as all developing countries that can be considered developing countries, will lay the foundations for a modern international tax framework. This means that profits should be taxed where economic activity takes place and where value creation takes place.

3.3.1 GLOBE II. – The two pillars

"Addressing the tax challenges arising from the digitalisation of the economy was a key objective of the BEPS project"[7]

Following the 2015 report, an interim report was prepared in March 2018 at the request of the G20. Next year, 2019, will be the turning point. For the first time, the documents published in this period will present the idea of carrying out work with a two-pillar approach, which could form the basis for a consensus solution to the tax challenges arising from the digitalisation of the economy.

The first pillar focuses on the distribution of profits, i.e. the development of a system that would allow a fair distribution of profits between companies operating in the European Union. To make this possible, a new nexus has been introduced, which defines "significant digital presence" as a new criterion and links it to jurisdictions where companies have significant links with consumers, regardless of whether they have a physical presence in the country.

"The first pillar proposes a review of the rules giving states the right to tax the cross-border income of multinational companies in the light of the innovations in the economy related to digitalisation." (DELLA VALLE & FRANSONI, G. , 2022)

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6 https://eur-lex.europa.eu/HU/legal-content/summary/the-european-union-s-common-system-of-value-added-tax-vat.html, (download:2024.08.20 18:24)

7 OECD/G20, Base Erosion and Profit Shifting Project Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint, 2020

By declaring the territorial presence of companies alone ineffective, the first pillar document proposes a nexus that considers a significant digital presence and not only the existing economic presence. The second pillar of GLOBE II will be introduced from 2024, the global minimum tax will be 15% applicable to multinational enterprises with annual revenue of Eur 750 million.[8]

In this context, the proposal proposes to extend the taxing rights of market jurisdictions to the following areas where "an enterprise has an active and lasting involvement in the economy of that jurisdiction through remotely controlled activities."[9]

It also aims to significantly improve tax certainty by introducing innovative mechanisms. The key elements of the first pillar can be summarised in a profit-sharing mechanism. To ensure that the proposals within this framework work properly, the simplest solution is to consider a revenue threshold, the amount of which could depend on the size of the market, as the main indicator of significant participation in each territory. This threshold would also take into account certain activities, such as online advertising to users who are located elsewhere than where the revenues are generated. In each State, a business may carry out activities without a physical presence in that State.

The division into two areas of intervention, corresponding to the first and second pillars, will determine the scope for future action on the international scene. As set out below, the public consultation has been informed by the following:

- the profit-sharing criteria and their necessary revision (the first pillar) and;
- the intention to follow up the original objective of combating the phenomenon of "profit shifting", based on which the inclusive framework will develop a "global anti-tax base erosion proposal" (hereinafter GloBE) as a means to ensure a "minimum tax level" for multinational companies, without however limiting its scope to operators in the digital sector (the second pillar)." (DELLA VALLE & FRANSONI, G. , 2022)

Building on these two new pillars, the new tax system for multinational groups should contribute to the security and stability of the global economy.

4.TAX ON A DIGITAL SERVICES

4.1 Italian response to the digital economy

Italy is one of the Member States which, following the European Council Directive, has moved to find an internal solution to the tax problem caused by the digital economy. The work done by the Italian legislator is precisely based on a draft proposal put forward by the European Union in 2018, which was later rejected by the EU.

Italy's proposed tax on digital services (ISD) is a tax that differs from the others because it is not a tax on income, let alone turnover, but "a genuine indirect tax on the use of users' personal data, perfectly in line with the purpose for which it was created. In fact, it fills a glaring gap: the absence of a tax link between the transnational income and the tax relationship between the state of residence (source of wealth) of the users; and it has a clear advantage: users cannot be controlled by multinationals, so such a tax is an effective tool to solve the problems of aggressive tax planning by multinationals" (SARTORI, 2021)

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[8]Council Directive 2022

9 OECD/G20, Base Erosion and Profit Shifting Project Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint, 2020

However, the solution presented by the Italian legislator is not definitive, as it is subject to the following conditions and is subject to deferred repeal, which means that its repeal is pending and will become definitive when an international solution is reached at some point. It therefore serves as a temporary instrument to address increasingly urgent and complex tax issues. This is confirmed by the agreements recently concluded by Italy at global level, which have shown that all taxes on digital services will be repealed and then abolished as soon as measures are adopted at international level to tax the digital economy. Therefore, the ISD, as well as similar measures adopted by any other state, will only be temporary solutions.

4.2 Taxpayers of the digital service tax

The digital services tax applies to all entrepreneurs, regardless of the type of organisation, regardless of its nature, whether they are resident in the territory of the Italian State, or who exceed the two thresholds during the tax period (calendar year preceding the calendar year of application of the tax).

Digital taxation is defined for the following two thresholds:

- EUR 750 million or more in total global revenue;
- digital service revenues of at least EUR 5.5 million, of course for revenues generated in Italy.

In choosing the two thresholds, the legislator has taken as a starting point the thresholds provided for in the Council of Europe Directive:

As regards the first threshold, the legislator has chosen to set it at an amount equal to that of the following Directive, while as regards the second threshold, the legislator has chosen to change it and has chosen a lower value corresponding to a fraction of the rate set by the Directive, namely 11%, thus reducing it from EUR 50 million to EUR 5.5 million. The two thresholds are designed to ensure that the ISD (digital services tax) applies only to companies that can create real value by using users' personal data, so that it only applies to companies already active in the digital market. Only established companies that dominate the digital market should be subject to the tax, while allowing other small and large companies to enter the market by not hindering free competition. The tax is levied for the year preceding the year of application, which means that if a person does not exceed the pre-defined thresholds in the year of application of the tax, but exceeds them in the year before, they will still have to pay it.

4.3 Introducing a tax on digital services

“Defining the precondition for a digital services tax is a straightforward task; in fact, it is difficult to outline the scheme for this tax. In truth, it seems to be a tax of several kinds, because in some respects it resembles an excise tax, in others an advertising tax, and in others a sales tax (since the tax base is the gross receipts from domestic digital services). “ (SARTORI, 2021)

To begin with, this tax applies to different types of digital services used by users who are resident in the Italian State.

To start with, this tax applies to different types of digital services used by users who are on Italian territory.

These services are:

1. the distribution of targeted advertising to users of digital platforms through digital platforms;

2. the creation of digital platforms that allow the establishment of links between users of the platforms, also with a view to facilitating the exchange of goods and services (digital multilateral interface; interaction between users of digital platforms digital multilateral interfaces);

3. the transmission of users' data.

"To frame the nature of the new tax, it must be taken into account that users are not final consumers (or buyers) but are themselves factors of production and therefore contribute to the creation of value for the company." (SARTORI, 2021)

4.3.1 Scope and taxable amount of targeted advertising services

One of the three types of digital services relevant for the purposes of the digital services tax is the scope of advertising services and the measure applicable to this service describes it as an activity characterised by two modes

- the placing of the service on a digital platform;
- the display of the service also on a digital platform.

"Such activities, in the relationship between the outsourcer and the exhibitor on the one hand, and between the outsourcer and his principal on the other, generate income that is considered "relevant" for tax purposes, subject to the distinction made in point 3.3 of the Regulation.

In fact, point 3.5 of the Regulation classifies as relevant the consideration generated in connection with the activity of placement on the digital interfaces and that which arises in connection with the presentation on the interfaces " (DELLA VALLE & FRANSONI,, 2022)

Revenues from intra-group transactions are not included in taxable income, i.e. activity arising from the broadcasting of advertisements for the products or services of other companies belonging to the same group does not give rise to an ISD taxable event. This is intended to ensure that only those who supply targeted advertising services to third parties who are not part of the same group are taxed.

From the identification of revenues, we now move on to the determination of the tax base, which

a rate of 3% will be applied hereafter

- Counter: the number of targeted advertising messages displayed on a digital platform to the following individuals to users in the state;
- denominator: total targeted advertising messages displayed on the digital platform (both to users and to users) for both in-state and out-of-state users).

The percentage resulting from this ratio is multiplied by the relevant revenues, the result being the tax base to which the rate is applied.

But what is the characteristic element that makes a person subject to the tax, and which, in its absence does not render the person liable to tax? "The determining element for the purposes of the tax is for the purposes of tax liability is not the advertising activity, but that which implies (or depends on) the 'profiling' referred to above. Indeed, in general, a useful criterion for identifying the precondition for a tax is to consider what objectively distinguishes a person who, all other things being equal, acts in accordance with all other conditions, is exempt from the tax. Considering the ISD from this perspective, it is quite clear that the distinguishing element is precisely the fact that the advertising message, the data concerning the recipient, is transmitted based on a prior data collection activity for subsequent processing (i.e. for the purpose of advertising)." (Della Valle & Fransoni, G., 2022)

4.3.2 Scope and tax base of multilateral interface services

When we talk about multilateral interface, it is difficult to understand what is meant by it, given the different definitions. The tax under discussion considers those interfaces that are open spaces for both supply and demand within the network... The value of these interfaces lies in the connections and interactions between the different users of these platforms. The more users you have, the higher the value generated by the interfaces.

The ISD thinks first of all of two different types of interfaces:

- digital platforms, designed to facilitate the exchange of goods and services between different actors;

- digital platforms whose sole purpose is to connect users to each other, but which provide an opportunity to exchange goods and services.

According to this distinction, digital platforms are therefore to be considered differently whether they generate revenue through exchange or through access charges when accessing a digital platform service.

The receipts so defined are the receipts relevant for the purposes of the digital services tax, always excluding the following amounts together with those realised within the group and only in respect of the part that does not relate to the amount paid for the exchange.

"The relevant income realised worldwide shall be taxable only in respect of that part which is

State and determined based on a percentage consisting of:

(a) in the case of revenues derived from the provision of trade facilitating interfaces, the proportion of the number of sales of goods and services of which at least one

the contracting party is in the territory of the State, based on the IP address of the device from which access is made

(as currently drafted in point 4.4 of the Regulation, it is doubtful whether the "location"

should be identified for each delivery, or whether an individual order located in the territory of a State should include the territory of the State in the counter for each subsequent delivery to the territory of the same State.

(b) in the case of income derived from the provision of digital interfaces solely for the purpose of facilitating the following (not directly trading), the rate of tax liability shall be calculated as the ratio (or Anglo-Saxon term: account) between the total number of users with an account (or Anglo-Saxon term: account) open (even for only part of the year) through a device located in the territory of the State and the total number of users. State and total number of users " (DELLA VALLE & FRANSONI, 2022)

The percentage thus calculated multiplied by the total relevant income gives the tax base to which the 3% tax rate is then applied.

It is useful to note that, even if not directly, user data is absolutely central; in fact, these interfaces provide the interaction and the link between users subscribed to digital platforms based on the transfer and exchange of user data.

4.3.3 Scope and taxable amount of user data transmission services

The last type of service to be examined relates to data exchange and transfer services in connection with the transfer of user data generated and collected during the use of digital platforms. This activity is characterised by two elements:

- legal: the possibility for third parties to use the data for a fee;
- material: the type of data used; in fact, the tax only considers the use of data resulting from the use of digital platforms by users.

The relevant revenues for the purposes of the tax are therefore all those derived from these activities, also excluding transfers, in order to avoid double taxation, intra-group transfers.

The taxable part is again calculated on the basis of the following ratio:

- numerator: the total number of users in the state who created the transmitted data;
- denominator: the total number of users in the state of the state in which the data were transmitted.

As in the previous two cases, the ratio calculated above must be multiplied by the relevant revenue to obtain the tax base to which the tax rate is applied, i.e. 3%.

4.4 Exceptional cases

Once the preconditions and the nature of the tax on digital services have been defined, it is easier to

to delimit the situations in which an exception to the application of the tax is made.

The national legislator has listed the services to which the tax does not apply, on the basis of Article 1(37) of the 2019 Finance Act. these services are:

1. "direct sales of goods and services, as part of a digital intermediary service;
2. the supply of goods or services ordered through the website of a supplier of goods or services, where the supplier is not acting as an intermediary;
3. the provision of a digital interface the sole or main purpose of which is the provision of digital content, communication services or payment services by the entity operating the interface to the users of the interface;
4. the provision of a digital interface for the management of financial services;
5. the transmission of data by entities providing the services referred to in point (d);
6. carrying out activities related to the organisation and management of telematic platforms in the

the exchange of electricity, gas, environmental certificates and fuels, and

transmission of related data collected on these and all other related activities "[10]

5. CONCLUSIONS

For almost two decades, a globally accepted solution to the problem caused by the emergence of digital technologies and the digital economy has been sought. This new sector, whose expansion has been rapid and has gradually spread to almost all sectors of the economy, has shown with its specific characteristics that new technologies are not sufficient and that the international tax system is inadequate.

The fact that digital operators do not require a permanent establishment in other countries, such as the in which they are resident, the exploitation of user data for value creation purposes meant that there were inadequate tax rules to properly tax such entities.

10 Circ. N.3 Agenzia delle entrate, 23 marzo 2021, pp. 34 - 35. https://www.agenziaentrate.gov.it/portale/documents/20143/0/Circolare_3_23.03.2021+%282%29.pdf/d55787f9-bbed-5285-ad18-058032f6a23a download: 2024.10.01 9:33

It is clear that, first of all, the right solution to this phenomenon was found very late. As analysed in this paper, the first work on how to solve the problem was not done until 2013, when the digital economy was already present and well established. While huge progress has been made, the biggest challenge is to find a solution that brings together all the actors involved in the scenario. As we have seen over the years, at international (OECD), Community (EU) and finally national level. In this climate of uncertainty, which is the result of the fact that the problem has not yet been solved, work is continuing to find a solution at international level.

In the meantime, various countries, including Italy, must not stand idly by and must adopt temporary solutions internally to contain the problem, fill in the legal gaps and adapt to the new developments caused by unstoppable technological and economic progress, in order to avoid finding answers to the above questions.

The final solution is the global minimum tax (15%) of the multinational enterprises, which was introduced in the year of 2025 in Italy.

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