

Italy enacts Web Tax and new PE definition

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Executive summary

The Italian 2018 Budget Law (the Law) has introduced a new “Tax on digital transactions” (“Web Tax” or “Tax”), with significant amendments compared to the initial draft law¹ (the Draft), and a new definition of permanent establishment (PE) partially in line with Organisation for Economic Co-operation and Development Base Erosion and Profit Shifting (BEPS) Action 7. According to the final version of the Law, the Web Tax is:

- ▶ Levied at a 3% rate on the value of each digital transaction
- ▶ Due by residents and nonresidents enterprises rendering more than 3,000 digital business to business transactions in a calendar year and will not be creditable from the Italian income tax
- ▶ Settled by the buyers of the services

The PE investigation for significant nonresident digital suppliers included in the Draft has been removed from the final version of the Law.

Detailed discussion

The Web Tax

The Law 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 to 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 date (the Law refers to 30 April 2018).

The Tax would apply at a 3% rate on the amount of the consideration paid in exchange for the performance of the above services, net of Value Added Tax, and regardless of where the transaction is concluded.

The Tax is due by the buyers of the above services unless the supplier declares in the invoice that it has not reached the threshold of 3,000 transactions in the calendar year. The Tax is settled by the buyer by the 16th day of the month following the payment of the consideration and is not creditable against Italian income tax.

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

The amended domestic definition of PE

The Law also replaces the domestic definition of PE with the one provided by BEPS Action 7 adding of a new example in the defined list of paragraph 2. Under the new provision, *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* may constitute a PE.

This implies the possibility of a PE presence even in the case where a company does not have a physical presence in the Italian territory to the extent other factors may indicate a significant presence (e.g., revenues, number of customers etc.).

Endnote

1. See EY Global Tax Alert, [Italy considers Web Tax and other measures for digital economy](#), dated 4 December 2017.

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