TAXATION OF DIGITAL ECONOMY
EU and Italian Perspectives

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INTRODUCTION

- The main issue of the international taxation is still the one of 1923: the amount of taxes due on cross-border income and the identification of the countries that have a better right to tax this income;

- The difference is now the source of wealth (from land to digital data), but the solution is still the same:

  "The ideal solution, is that the individual's whole faculty should be taxed, but that it should be taxed only once, and that the liability should be divided among the tax districts according to his relative interests in each".

THE MAIN ISSUE

- The international tax regime was designed for a physical world and it is not fit for the new digital world;
- Based on current rules, corporations end up paying income taxes where production occurs (where there is a permanent establishment) and not where consumers/users are;
- Because of the absence of a physical presence, based on traditional international tax rules, corporations are generally not subject to income tax in the country where consumers/users are.
- The country where most of the value is created is the country where users are located.

COMMON SOLUTION

Addressing tax challenges raised by the digitalization of the economy is a priority

common solution

"the question of tax evasion can only be solved in a satisfactory manner if the international agreements on this matter are adhered to by most of the States and if they are concluded simultaneously"

(League of Nations, 1925)

THE PROPOSALS

PILLAR 1	PILLAR 2
Taxing rights over 25% of the residual profit of the largest and most profitable MNEs would be **re-allocated to the jurisdictions where the customers and users** of those MNEs are located; a lower threshold is set for re-allocating profit to smaller, developing economies	GloBE rules provide a global minimum tax of 15% on all MNEs with annual revenue over 750 million euros
Tax certainty through mandatory and binding dispute resolution, with an elective regime to accommodate certain low capacity Countries.	Requirement for all jurisdictions that apply a nominal corporate income tax rate below 9% to interest, royalties and a defined set of other payments to implement the "Subject to Tax Rule" into their bilateral treaties with developing Inclusive Framework members when requested to, so that their tax treaties cannot be abused.
Provision for a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low capacity countries (Amount B).	Carve-out to accommodate tax incentives for substantial business activities
Removal and standstill of Digital Services Taxes and other relevant similar measures	

Note: EU is willing to implement both Pillars

INDIVIDUAL MEASURES

In the meanwhile, some countries have adopted **individual measures**

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Austria, France, Hungary, Italy, Poland, Turkey, and the United Kingdom

ITALIAN INDIVIDUAL MEASURES

- Change in the definition of PE;

- Enactment of a digital service tax (DST) at the end of 2018 (in force since the beginning of 2020).

Note: No unilateral tax treaty override!

TAXPAYERS

- Anyone with a business activity;

- Thresholds (in the previous calendar year):
  - total amount of revenue ≥ 750 million Euros;
  - Italian revenue from qualified digital services ≥ 5,5 million Euros.

FACTS THAT TRIGGER THE TAX

- Revenue deriving from qualified digital services:
  - advertising on a digital interface targeted to users of the same interface;
  - provision of a digital multilateral interface aimed at allowing users to interact (also in order to facilitate the direct exchange of good and services);
  - transmission of data collected from users and generated by the use of a digital interface;
- Exclusions:
  - direct supply of goods and services, as part of a digital intermediation service;
  - supply of goods or services ordered through the website of the supplier, if the supplier does not perform intermediary functions;
  - communication or payment services;
  - trading and banking platforms;
  - organization and management of platforms for the exchange of electricity, gas, environment certificates, ...;

QUANTIFICATION OF THE TAX

- Tax rate: 3%

- Taxable base: turnover related to the qualified digital services rendered in Italy:
  - fees related to the provision of a digital multilateral interface that facilitates the sale of specific products subject to excise duties are not taxable;
  - intercompany revenue is not taxable;
  - no deductions of costs;
  - deduction of indirect taxes;
  - no cash method.

TERRITORIALITY

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users located in Italy

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internet protocol or other geolocation tools

NATURE OF THE DST

- It is not an income tax;

- Based on the ability to pay principle, the DST is an indirect tax on the use of personal data of the users

DST AND THE INTERNATIONAL TAX REGIME

- Taxing rights in the country of the users (which is not the market jurisdiction)

- No double taxation

- DST falls outside the scope of tax treaties

- No application of FTC

EU LAW ISSUES

- Compatibility with VAT
- Compatibility with fundamental freedoms
- State aids?

OTHER ISSUES

- Enforcement;
- Discrimination?

WHAT'S NEXT

- Pillar one has also the purpose to stop the proliferation of DST and similar Unilateral Measures;

- Sunset clause of DST;

- Press release October 21, 2021: no trade actions but tax credit

TAX CREDIT - EXAMPLE

- DST in 2022-2023: 100 (avarage of 50 each year);
- Income tax related to Amount A in 2024: 20;
- Income tax related to Amount A in 2025: 25;
- Total income tax liability in 2024: 110;
- Total income tax liability in 2025: 70;
- Total tax credit: (50-20)x2=60
- Credit I year: 20-20=0 (40 credit is carried forward);
- Credit II year: 25-25=0 (15 credit is carried forward).
- Total tax 2024: 110-20=90;
- Total tax 2025: 70-25= 45.

Note: distortion given by the deduction of DST.

CONCLUSION

The Italian DST raises many political and technical issues, but it has some positive aspects

common solution!