The new Italian WEB TAX:

Compatibility with the EU Treaty

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Introduction

- December 2013: Italy introduced the new «web tax» or «google tax»
- It is not a new tax properly.
- It is a measure issued for:
  - VAT purposes and
  - Income tax purposes.
- It regards the advertising activity on internet (typically, the activity of Google or Amazon)
- It aims to restore tax fairness in the e-commerce market.

THE TRICKY BIRTH OF THE WEB TAX IN ITALY (LEGAL FRAMEWORK)

- Art. 1, Law 147/2013 («*Stability Law*»)
  - entered into force **1/1/2014**:
  - par. 33 – introduced the **web tax (VAT profile)**
  - parr. 177-178 – introduced **web tax (income tax profile)**
- Art. 1(1), Law Decree 151/2013
  - has postponed the entry into force of Art. 1, Law 147/2013 to **1/7/2014**
  - however, Law Decree 151/2013 has not been converted into Law. Therefore, the entry into force of Law 147/2013 should have been **1/1/2014**
- Art 2(1)(a), Law Decree 16/2014 («*Save Rome*»)
  - has repealed art. 1(33), Law 147/2013
  - so the **web tax (VAT profile) has been cancelled**
- Art. 9(i) of Bill approved by the Chamber of Deputies on 27 February 2014
  - reintroduced the web tax (also) for **VAT** purposes
  - such measure shall be implemented by the Government within 12 months (so it is actually not in force)

…so the present legal framework is…

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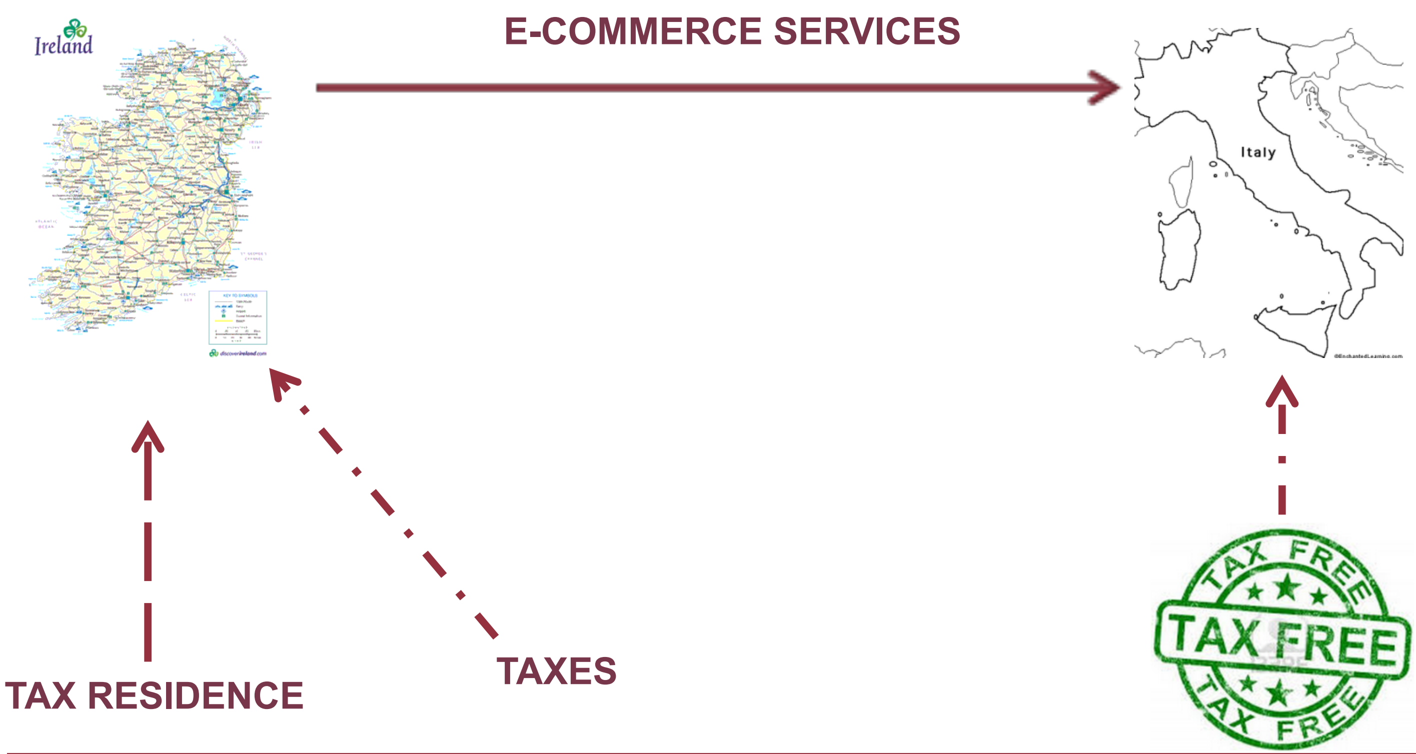
- The **web tax (direct tax profile)** is in force - Art. 1(177-178) Law 147/2013 («*Stability Law*»)

- The **web tax (VAT profile)** is not in force (it is waiting for the Legislative Decree of the Government to be issued within 12 months under art. 9(i) of the Bill approved on 27 February 2014).

PURPOSE OF THE “WEB TAX”

- The main purpose of the web tax should be to tax multinational companies operating in Italy in the field of the e-commerce (like Google or Amazon).



HOW THE WEB TAX (VAT PROFILE) WORKS…WORKED
(IN)COMPATIBILITY WITH THE EU TRATY

- The web tax (VAT profile): the Italian VAT taxpayer can purchase advertising services (on-line) from a foreign VAT taxpayer **ONLY IF** the foreign VAT taxpayer has obtained from the Italian Tax Authority a **VAT NUMBER**

- Such obligation (to obtain an Italian VAT number) seems to be incompatible with the EU Treaty:
  - freedom to provide services (Art. 56 of the Treaty of Functioning of EU)
  - Art. 224 of VAT Directive (Directive No. 2006/112/EC), which provides that «*Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number: (a) every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 197 and Article 199*».

HOW THE WEB TAX (DIRECT TAX PROFILE) WORKS

1. The web tax (direct tax profile): the Italian companies operating within a multinational group in the field of e-commerce (including the advertising services) shall not adopt the "**COST PLUS METHOD**" for **transfer pricing** purposes. **BUT**, the Italian company can start the **ruling** procedure with the Tax Authority in order to fix the correct price of its services within the group (the Italian ruling is provided by Art. 8 Law Decree 269/2003):
   - such measure seems to be based on the fact that the cost plus method should not represent the best method for on-line services (the costs for on-line activities is generally **low**)
   - such measure seems to be incompatible with the OECD Trasnfer Price Guidelines released on 2010 since it is provided that there is not a «best» method in order to establish the correct price (see Chapter II, Part I, par. 2.2.): «*The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case.* […] *No one method is suitable in every possible situation, nor is it necessary to prove that a particular method is not suitable under the circumstances*».

2. The web tax (direct tax profile) regime provides also that the on-line advertising services must be purchased through **bank transfer** to the extent that the Italian Tax Authority can control the beneficiary information:
   - the purpose seems only to generate information for the Tax Authority and to control the turnover of foreign companies acting in Italy.

THE FUTURE OF THE WEB TAX

- As aforesaid, Art. 9(i) of the Bill approved by the Chamber of Deputies on 27 February 2014 introduced (again?) a measure which could reintroduce the web tax (VAT profile) as described before.

- Art. 9(i) provides that: «*the introduction, in line with the recommendations of international organizations and with any decisions at European level,* [...], *of systems of taxation of cross-border activities, including those related to advertising in Italy*».

- Today, it is not possible to foresee how such rule will work, because we have to wait (within 12 months) the issuance of a Legislative Decree of the Government which will implement the rule.

CONCLUSIONS

Although the web is questionable from many points of view, however, we should note a positive profile: Italy is looking to react to the new-economy tax evasion/avoidance phenomena, for example, multinational companies who have been working on the Italian market.

The new Italian Prime Minister
(Mr. Matteo Renzi) said
that the discussion on the web tax (VAT profile)
must be moved within the
European Union.

We await further developments!

THANK YOU AND SEE YOU NEXT YEAR!