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# Digital reality and tax rules: from the bit tax to the web tax

**Abstract**
Computer science and technological developments of the last decades has impacted considerably on the forms and methods of production and circulation of wealth, encouraging the spread of new activities completely dematerialized within a social and economic context characterized by frenetic circulation of knowledge and information available than just a "click" and from a production, distribution and consumption of goods increasingly virtual and intangible. As activities that might acquire economic value, in terms of tax, we wondered if, in order to face emergencies raised by virtual economy, is sufficient to adapt existing fiscal instruments or is necessary, rather, developing new forms of levy, creating a virtual world taxation. The question arose, first, for e-commerce, both in direct as in indirect form. Not minor insights presents the theme on the taxation of the network itself, because internet is a place of social interaction and legal environment in which arise and develop new forms of wealth. Special emphasis hiring then tax profiles of the activities carried out by large multinational companies, digital society, with subsidiaries in several countries, that can produce very high incomes, hardly taxed in the source State or otherwise frequently taxed to a lesser extent than the ordinary tax regime. The Italian legal system has tried to remedy this widespread phenomenon, with timid actions which seek to establish, first, a Google tax, then a digital tax, before arriving to the web tax, recently adopted, but from an uncertain future.

**Keywords**: digital economy; tax profiles; e-commerce; bit tax; google tax; digital tax; web tax.

## 1. Tax profiles of the digital economy: origins, criticality and evolutionary perspectives

Computer science and technological developments of the last decades has impacted considerably on the forms and methods of production and circulation of

wealth (Uricchio, 2005, p. 753-754), generating that peculiar phenomenon called "globalization telematics" (Romani – Liakopoulos, 2009), whose consolidation has encouraged the spread of new activities completely dematerialized (Inzitari, 2001, p. 128 ss.) – becoming network the paradigm of loss of physicality of goods distributed in modern economies (Marello, 1999, p. 602) – within a socio-economic environment characterised by hectic circulation of knowledge and information available than just a "click" and the production, distribution and consumption increasingly of virtual and intangible assets, whose unifying is given by digital essence (Adonnino, 2002, p. 4; Molinaro, 2015; Nellen, 2015; Westberg, 2015, p. 737; Tremonti, 2016, p. 1).

These virtual entities are hardly exploitable, as well as easily transferable from one State to another, with obvious repercussions on tax matters, related to the difficulty of quantifying the taxable values, identify the country where the the same must be, in whole or in part, taxed and the fact that founding institutes the tax matters were drawn and designed to be applied to «transactions between present with objects with a well defined threshold sensory recognition» (Marello, 1999, p. 595).

In this light, the new economic forms of production of wealth, based on network utilization, «require the interpreter legal instruments to verify the adaptability of its underlying reality» (Marello, 1999, p. 595).

In other words, the development of the internet – contraction of the english phrase interconnected networks (Uricchio, 2015, p. XVII) – and the tools of information technology (IT) has encouraged the spread of economic relations intersubjective in transnational scope (Valente, 1998, p. 408), expounding a multiplicative factor in terms of development and socio-economic growth of a country (Scaglioni, 2013, p. 233): being activities that might acquire economic value, in terms of tax, we wondered if, for to emergencies raised by the digital economy (on the matter, comp. Hammond, 1996; Kamerling – Negroponte, 1996; Tapscott, 1996; Van Der Putten, 1997, p. 11 ss.; Coyle, 1998; Garrone – Mariotti, 2001; Valente, 2014; Cellini, 2015; Valente – Ianni – Roccatagliata, 2015), is sufficient to adapt the existing fiscal instruments (status quo approach) (Westberg, 2001, p. 100; Marino, 2001, p. 145) – choosing less costly, cautious, conservative and apply immediately, based on the assumption that the cyberspace is mere offshoot of the physical world (Del Federico, 2014, p. 919) – or is necessary to devise new forms of levy (revolutionary approach) (Tremonti, 1998, p. 79), creating a virtual world taxation (Uricchio, 2005, p. 754; Cipollina, 2003, p. 289 ss.; Del Federico, 2014, p. 919; Marello, 1999, 595; Corasaniti, 2003, p. 609, nt. 6. On the matter, comp. Cigler – Burrit

– Stinnet, 1996, p. 340 ss.; Aa.Vv., 1997, p. 120 ss.; Cottrell – Worsham, 1997, p. 10 ss.; Hinnekens, 1997, p. 116 ss.; Roccatagliata – Fiorelli, 1997, p. 8514 ss.; Spence, 1997, p. 143 ss.; Adonnino, 2002, p. 1 ss.; Del Federico, 2015, p. 1 ss.).

It is known that the tax law analyses the changes in the economic reality in order to locate the ability to pay to be subject to tax (Melis, 2008, p. 64). In this context, the network does not address taxation issues are completely new, but old problems – involving the allocation of tax claims between those who hold the taxing rights – in a radically revamped: the digital economy, the web and the interactions that are made (Garbarino, 2000, p. 870).

The cornerstone of the digital economy is made up of information technology; its scope, however, is not limited to the analysis of single web economy, being much larger as it also includes the economic effects arising from the use and the sale of hardware and software tools (on the matter, comp. Ravaccia, 1998, p. 623 ss.; Dan, 1999, p. 1759 ss.; Boccia – Leonardi, 2016); the digital value chain are large multinationals, namely the operators over the net (known as "Over The Top" – OTT) – that, using IP networks, operating on the digital prairies, providing services, content and applications and creating revenues, through sales to end users of such intangible entity, together with the granting of advertising space – alongside the producers of that segment of the market (Scaglioni, 2013, p. 232; Sepio – D'Orsogna, 2017).

The tributaries profiles of the network must be analyzed in three perspective (national, transnational and virtual), which reflects its scope, on account of the differences between the online transactions, a vocation tend incorporeal and intangible, and traditional activities, characterized by only two dimensions (national and transnational), by reason of the character of the same material and tangible: taxation of the internet has, therefore, for both national in scope as that transnational virtual products income (Garbarino, 2000, p. 873-877).

The question concerning the tax issues raised by network (Bernardi, 2015, p. 307 ss.), has set itself above all for e-commerce (Valente, 1998, p. 385, which means by "electronic commerce", «the multiplicity of transactions effected by electronic means concerning the supply of goods and provision of services»), both in direct form – where goods and services transaction object dissolve to be transferred or provided using the network (online delivery) – as in indirect – where, to the disposal concluded electronically, is accompanied by the physical delivery of the goods or the provision of services, subject matter of the contract, according to the traditional channels (offline delivery), as in a normal "distance selling", in which the client shall forward to alienating your order by mail or telephone

(Valente, 1998, p. 385; Garbarino, 2000, p. 867-868; Corasaniti, 2003, p. 623, nt. 58; Del Federico, 2014, p. 919; Mandelli, 1998, p. 99 ss.; Marello, 1999, p. 598, nt. 7; Melis, 2008, p. 65).

On the tax plan, direct e-commerce has particular relevance, since the transmission breaks down thing (understood as something that can be the subject of rights, ex article 810 cod. civ.) from material reality, rendering him incorporeal and, apparently, invisible to the tax authority, because of potential traceability featuring online transactions (Valente, 1998, p. 385; Peirolo, 2014; Zaccaria, 2015); by contrast, indirect e-commerce becomes a merely instrumental phenomenon, as it allows you to perform the same operations as in the traditional trade, through a dematerialised trading, ended up using electronic instruments (Adonnino, 2002, p. 2).

As a result, at least in terms of income tax, e-commerce, in theory, should be subject to the same principles that govern traditional trade, by virtue of a principle of tax neutrality; the latter, however, are not always easy application to the transaction carried out digitally, which assumes, as an alternative, the possibility of identifying a subject's personal link, owner of the income, with sorting (known as world wide principle) or a connection between the source and the income-producing territory subject to the fiscal sovereignty of the State (the source principle) (Adonnino, 2002, p. 2 e 4).

In fact, e-commerce, allowing the development of economic activity in a given State even in the absence of material resources and personnel, brings out the limits of a revenue tracking system anchored to the presence, within the national territory, of a taxpayer's business (Corasaniti, 2003, p. 609; Tesauro – Canessa, 2002), «with all that this entails in terms of territoriality of VAT, of identification of the place of establishment of the activity and, consequently, of possible tax arbitrage» ( Del Federico, 2014, p. 920); to deal with these issues, you must locate the "permanent establishment" also in the performance of tasks across the network or develop alternative income taxation and localization schemas (Melis, 2008, p. 64-65; Corasaniti, 2003, p. 615).

Also with regard to indirect taxation, trade in goods and services online involves a number of issues of no small importance: think of the value added tax, whose assumptions (subjective, objective and territorial) are questioned from e-commerce operations, resulting in the need to adapt the concept of "supply of goods" and "supply of services", taking into consideration the particularities arising from e-commerce direct, adjusting, also, subjective and territorial part of the tax to the characteristics of digital transaction (Senni, 2001; Corasaniti, 2003, p. 623).

In this context, also subject online transaction to duty on legal research (stamp duty and registration tax) is discussed, owing to existing contracts, which tends to be virtual telematic, antinomies and dematerialized, and these types of tributes, with nature tend to be "cartulary" as applied to "records, documents and registers" (Mocci, 2001, p. 155 ss.): if the digital contract is concluded for facta concludentia (for example, by downloading a software or a the video, in which the notice of credit card constitutes acceptance of the contractual conditions), stamp duty and registration will not apply, in the absence of the objective requirement of materialization paper (Corasaniti, 2003, p. 627 ss.).

## 2. Taxation instruments of the network. Fiscal reflections on the activities carried out by the giants of the web

No minor insights presents the broader theme concerning the taxation of the network itself, since the internet is a place of social interaction and legal environment in which arise and develop new forms of wealth, designed as both benefits and usefulness, which as a mere saving of expenditure (Uricchio, 2005, p. 755-756; Garbarino, 2000, p. 870; Corasaniti, 2003, p. 608, nt. 2).

Next to electronic commerce and to any network, taxation instruments within the cyberspace develop further activities, likely to gain economic benefits due to income categories (autonomous and employee), miscellaneous income and capital gains, along with forms of virtual advertising and commercial exploitation of personal data provided by users when subscribing to websites or social networks (Del Federico, 2014, p. 915).

In this context, special emphasis hiring tax profiles the activities carried out by large multinational companies (Google, E-bay, Amazon, Apple, Facebook, Twitter, Airbnb, Netflix, Spotify, Alibaba, Didi Chuxing) company, with subsidiaries in various countries, that can produce very high incomes, hardly taxed in the source State, or at least frequently taxed to a lesser extent than the ordinary tax regime.

In doing so, those who work in the digital economy can create dangerous phenomena of international tax planning (Garbarino, 2008, p. 670 ss.), resulting in a significant erosion of the tax base (Mastellone, 2017, p. 46 ss.), through the artificial transfer of profits reduced taxation or tax havens in countries (Corasaniti, 2003, p. 613, nt. 23; Uckmar, 2002, p. 17; on the preferential tax regime countries, comp. Garbarino, 2008, p. 657 ss.).

In this context, the traditional principles of international taxation soon appeared inadequate, as the term «of a distant time when the physicality of the goods appeared to ensure the preservation of tax claims» (Valente, 1998, p. 383).

The italian legal system has tried to remedy this widespread phenomenon, with timid actions which seek to establish, first, a Google tax, then a digital tax, before arriving to the recently adopted web tax, but from an uncertain future.

The operators of the "digital economy", taking advantage of regulatory deficiencies of various legal systems, not in line with the fast-paced technological development, and displacing their activities in privileged taxation states, implement a series of "steps" aimed at limit the tax burden.

These behaviors that would be difficult to implement in the old economy and that they would have resulted in tax penalties, by way of tax avoidance, in the new economy does not seem to be attributable to a net and defined framework, in given the high degree of "dematerialisation" and "relocation" which characterises the economic activity carried out.

In fact, e-commerce and the internet are sources of income that is difficult to apply the rules on territoriality, due to immateriality network boundaries and vocation transnational actions carried out basically web users. The phenomenon appears even more evident in the indirect electronic commerce, since swaps online are not related to tangible property and at a specific place, unlike what happens in traditional commerce. In this context, it appears quite difficult finding a connection with a particular legal system or with a given territory (on the matter, comp. Tarigo, 2016, p. 343 ss.). Therefore, not being territorially defined good and place of exchange, it is necessary to intervene on the tax residence of the enterprise e-commerce operator and locate the place of supply of services.

## 3. Digital transactions and online operations: from "no tax land" to the preparation of tax instruments

Indeed, in e-commerce (on e-commerce tax profiles, comp. Picardi – Colombo, 1998, p. 1373 ss.; Valente, 1998, p. 3139 ss.; Belluzzo, 1999, p. 14898 ss.; Garbarini, 1999, p. 1407 ss.; Marello, 1999, p. 595 ss.; Valente – Roccatagliata, 1999; Garbarini, 2000, p. 1205 ss.; Adonnino, 2001, p. 23 ss.; Croxatto, 2001, p. 107 ss.; Parigi, 2001, p. 103 ss.; Uricchio – Giorgi, 2001, p. 264 ss.; Pedrazzi, 2002, p. 179 ss.; Raviola, 2002, p. 5758 ss.; Westberg, 2002; Uckmar, 2002, p. 135 ss.; De Ruvo – Broggi – La Candia, 2003, p. 1816 ss.; Ficari, 2003, p. 870 ss.; Pierro, 2003, p. 286

ss.; Santacroce, 2003, p. 744 ss.; Melis, 2008, p. 63 ss.; McLure, 1999; Montalcini – Sacchetto, 2015, p. 111 ss.), term referring to transactions effected by applying computer technologies and digital infrastructure (Adonnino, 2002, p. 2; Corasaniti, 2003, p. 612, nt. 18; Garbarino, 2000, p. 866), or using one of the methods related to technical protocols of electronic filing of data (Corasaniti, 2003, p. 627), economic operators are supporting the products directly on the web, through the creation of a website that acts as a "virtual store", and can leverage an indefinite number of users located beyond national borders: e-commerce is, therefore, a market without geographical boundaries (Corasaniti, 2003, p. 608).

This configuration of the task, in a supranational dimension tend to realize benefits in terms of increased revenue, resulting from the supply of goods and services at a highly competitive price, that of lower costs, because of negligible advertising, personal and pass the need for exposure of goods in physical places and certain (Uricchio, 2005, p. 756, nt. 9).

In this light, electronic commerce has the advantage to achieve technical and organizational developments in the management of the enterprise, creating new opportunities for international trade and helping to increase competitiveness among firms for the benefit increasing the quality of consumer goods and services offered, with simultaneous reduction of the purchase price (Valente, 1998, p. 384).

Therefore, e-commerce develops new products and new markets, strengthening and simplifying transactions, by reducing distances and speeding up of time of conclusion of contracts, so as to contribute to conform, much more dynamic, relationships between businesses and final consumers (business to consumer) and between different businesses (business to business), which are found to operate in a globalised context (Adonnino, 2002, p. 2; Melis, 2008, p. 65).

However, in tax matter, the natural vocation of transnational online transactions, together with the celerity and uncertain localization of electronic transactions, often carried out in a different place than the one in which the economic operator (Adonnino, 2002, p. 2), does nothing but increase the tax competition between states (on the matter, comp. Biasco, 2015, p. 119 ss.), on account of differences inherent in the various legislations; moreover, no less irrelevant appear the difficulties to be faced in order to identify, in intermediate steps, when imposing obligations (taxation points), since often, while being easy to identify the owner of the web site's domain (Martorano, 2005, p. 1 ss.; Corasaniti, 2003, p. 613, nt. 21, who rebuilding the domain name as an «element that identifies the subject that intends to operate on the network», being «alphanumeric code consisting

of a so-called top level domain (TLD), such as "it" or "com" etc., and a second level domain (SLD), placed immediately to the left of the TLD that consists of a name or expression freely chosen by the party concerned to the allocation of a domain»), the same can be said about the not correct identification of the operator (service provider) and users (content provider) (Adonnino, 2002, p. 2). Only international cooperation, implemented with multiple instruments [information exchange (Garbarino, 2012, p. 661 ss.; Dorigo, 2015, p. 480 ss.); OECD model tax conventions (Garbarino, 2008, p. 621 ss.); international conventions against double taxation (Garbarino, 2008, p. 85 ss.)], aimed to establishing formal criteria localization and adopt measures to eliminate any tax distortions, lets tackle the risks raised by electronic commerce (Valente, 1998, p. 398-399).

In addition, the mere use of the network, through accessing, browsing, exchange of information, experience and knowledge that will improve the quality of human life, it seems, in itself, activities such as to constitute a manifestation of ability to pay, as such liable to be subject to tax, pursuant to article 53 of Constitution (Uricchio, 2005, p. 756).

Initially, in order to foster the use and spread of the internet, the legislative authorities and the scientific community (Costanzo, 1997, p. 25; Ballarino, 1998, p. 38 ss.; Costanzo, 2000, p. 347 ss.; Frosini, 2000, p. 271 ss.; Donati, 2014, p. 532 ss.; Frosini, 2014, p. 23 ss.) have made a clear choice and conscious, waiving regulations on the network through provisions imposed by other and adopting a code of conduct (netiquette) comprising customs observed by users (Uricchio, 2005, p. 756, n. 11; Draetta, 2001, p. 101; Contaldo – Dainotti, 2005, p. 303).

In this light, internet appeared a merely virtual phenomenon wholly unsuitable to be subject to its own discipline, being a tool through which multiple computers, in contact with each other, send and receive electronic pulses, without any tangible movement (Uricchio, 2005, p. 758).

In other words, originally, the cyberspace (Valente, 1998, p. 386, nt. 11, that defines cyberspace as «three-dimensional space created by a computer network in which electronic audio and video signals travel freely»), such as virtual environment developed by the interaction between the different users of the network, was intended, in legal terms, as a "non-place", an anarchy, a kind of "space without sovereignty" or, better yet, as a "telematic far west (*contra* Rossi, 2002, I, p. 751; Hinnekens, 2009, p. 9 ss., according to whom «cyberspace is not an extraterrestrial realm; is the territory of one or more States»), devoid of its own territory and characterized by the principle of material freedom (Uricchio, 2005, p. 758).

By transposing these principles to tax matters, the web appeared as a "no tax land" (Gilmore, 1999), a kind of tax haven, which not likely to be subjected to new forms of levy: the fiscal moratorium--whose legal basis is found in the "Internet Tax Freedom Act" (IFA), approved by the United States of America in 1998, which recognized the merit of their paralyzed, not only in the country of adoption, but also in Europe and in the rest of the world, every initiative to introduce new forms of taxation of network (Del Federico, 2014, p. 922; Bernardi, 2015, p. 309, nt. 3) – was justified by the international community and national authorities, for reasons of the virtuality of the phenomenon and the desirability of not discouraging the use of the web, through the provision of stringent legal restrictions, taxation fiscal and formalities, encouraging the spread of online activities, through the provision of tax legislation to favor (Uricchio, 2005, p. 758-759).

However, soon, with the expansion of the digital economy, was felt more than ever the need to draw up a precise regulation of the web, which, far from being a "non-place" without boundaries, is the environment in which legally relevant activities that require regulated (De Rosa, 2003, p. 361) and subject to tax (Uricchio, 2005, p. 760).

To this end, it cannot neglect yourself the "strategy of leapfrogging" has always adopted tax, which consists in identifying and subject to imposition of new forms of circulation of wealth (Cipollina, 2003, p. 317). In truth, however, in the case of taxation of the network, the frantic evolution, internationalisation and de-materialization of the phenomenon, carried to the extreme, can undermine even the most advanced tax systems (Cipollina, 2003, p. 318).

## 4. Electronic commerce: profiles of civil and tax law

Initially, the legislator's attention was focused exclusively on the issue of e-commerce, through the preparation of Community legislation (directive of the European Parliament and of the Council of 8 June 2000, n. 2000/31/EC), implemented in Italy with legislative decree, 9 April 2003, n. 70, statutory aspects of matter (on the matter, comp. Alpa – Zeno Zencovich, 1987; Finocchiaro, 1997; Bianca, 1998, p. 1035 ss.; Grisi, 1998, p. 875 ss.; Florindi, 1999, p. 673 ss.; Bonzanini, 2000, p. 193 ss.; Atelli, 2001; Clarizia, 2001, p. 3 ss.; Franceschelli, 2001; Nivarra – Ricciuto, 2002; Sica – Stanzione, 2002; Tosi, 2003, p. 458 ss.; Tosi, 2003, p. 101 ss.; Finocchiaro, 2014, p. 63 ss.) (consensus-building; conclusion of the contract, by means of authentication, encryption, digital signatures; payment

systems electronical; responsibility of the trader; consumer protection), in order to qualify the offence and identify the applicable law (Uricchio, 2005, p. 760; Corasaniti, 2003, p. 607 ss.; Valente, 1998, p. 387 ss.).

To profiles of civil law did soon followed the comprehensive tax legislation, community regulations [proposed amendment (COM 349/2000) of the Council directive, 17 may 1977, n. 77/388/EEC on the "value added tax arrangements applicable to certain services provided by electronic means"; Council directive, 7 May 2002, n. 2002/38/EC; regulation, 7 May 2002, n. 792/2002/EC which has made changes to the regulations, 27 January 1992, n. 1992/218/EC; directive, 12 February 2008, n. 2008/8/EC which has made changes to directive n. 2006/112/EC on the identification of the place of supply of services, with reference to the electronic services, telecommunications and tele-radio broadcasting; regulation, 15 March 2011, n. 2011/282/EU] and internal regulations (Community law, 3 February 2003, n. 14 and legislative decree, 1 August 2003, n. 273), which, on the one hand, confirmed the original decision not to subject the e-commerce taxes more and more burdensome than those applied to traditional commerce (Boutellis, 1998, p. 1048 ss.), and on the other hand, has dictated a peculiar discipline in order for VAT to be applied to transfers online (Armella, 1999, p. 838 ss.; Giorgi, 1999, p. 765 ss.; Melis, 2001, p. 713 ss.; Aujean, 2001, p. 145 ss.; Sammartino, 2001, p. 157 ss.; Peirolo – Della Carità, 2004, p. 35 ss.; Siconolfi, 2010, p. 141 ss.; Pullino, 2003, p. 16554 ss.; Cucuzza, 2005), bringing direct e-commerce activities in the list of supplies of goods and services and identifying taxation time (Miceli, 2003, p. 1143 ss.; Sirri – Zavatta, 2004, p. 3003 ss.) in the act of payment – unless the problem of establishing such time where payment is made via e-money (Melis, 2008, p. 83) – and the place of performing transactions on the basis the quality and the customer's residence, where the same is not taxable entity (Uricchio, 2005, p. 761; Adonnino, 2002, p. 8-9).

In fact, this solution, in the absence of a specific provision, it would not have been completely taken for granted owing to the dematerialization of operations carried out through the use of the network that require you to verify your eligibility as the dichotomy "supply of goods/services" to pinpoint electronic transactions – even considering the gradient and heterogeneous character of the concept of goods and services computer scientists (Del Federico, 2014, p. 920; Pierro, 2003, p. 267; Serranò, 2007, p. 606; Montanari, 2014, p. 1063) – how much of the "territoriality" (Maspes, 2000, p. 48 ss.; Miceli, 2004, p. 581 ss.) guarantee the neutrality of value added tax, so as to prevent a distortion of competition (Melis, 2008, p. 65; Mocci, 2000, p. 14361 ss.; Mocci, 2003, p. 3905 ss.).

Moreover, given the spread of electronic transactions involving digital assets, have spread guidelines (Garbarino, 2000, p. 867 ss.; Pierro, 2003, p. 222; Marello, 1999, p. 598 ss.) aimed to broaden the category of services than goods (Del Federico, 2014, p. 919).

The purpose of this discipline, having Community origin, is to avoid that taxation may lead to distortions in the context of electronic commerce and that the final price of a good or service is reconnected to exogenous factors, such as vendor's tax residence (Melis, 2008, p. 70).

With regard to taxation on income (Corasaniti, 2003, p. 611 ss.), electronic commerce had soon to face substantial problems – such as the identification of the case of taxation (goods or services), the qualification charges (income or royalties) (Corasaniti, 2003, p. 619 ss.; Galli, 2000, p. 313 ss.; Mayr, 2001, p. 1400 ss.; Melis, 2008, p. 68-69.), the identification of the place of residence and fiscal transactions of operators, the applicability of the principles of competence and inherently – and with procedural problems (on the matter, comp. De Renzis Sonnino, 2002), regarding certain tools and moments of redemption and assessment procedure (Adonnino, 2002, p. 3). In fact, in electronic transactions there are some peculiarities not found in traditional commerce: the transformation of physical goods in digital goods difficult to identify; a substantial disintermediation, for reasons of the disappearance of the subject with a key role in the implementation phase of tribute; the danger of pipelines linked to international tax avoidance and tax evasion (transfer pricing, treaty shopping, abroad dressing) (Melis, 2008, p. 65).

In the Organization for economic cooperation and development (Oecd) (Oecd, 2001) – body who first delved, in the document "Electronic commerce: the challenges to tax authorities and taxpayers", presented in Turku on 11 November, 1997, which followed by the Ottawa Conference on 8 October 1998 on the theme "A borderless world: realising the potential of electronic commerce", the issues raised, in tax matters, from e-commerce (Melis, 2008, p. 66; Corasaniti, 2003, p. 609-610; Bernardi, 2015, p. 308) – the taxation of e-commerce was informed by the following principles: fiscal neutrality, understood as equal treatment compared to traditional commerce (Costanzo, 2000, p. 362); certainty and simplicity in the application of taxes; efficiency, in terms of reducing compliance costs, to be paid by the taxpayer, and the investigation for the tax authority; effectiveness and transparency, minimizing the tendency to engage in behaviors contra legem; flexibility and dynamism in order to adapt the technological and

commercial developments levy; non-discrimination, in order to impose similar imposition templates taxpayers who perform similar operations (Uricchio, 2005, p. 762; Valente, 1998, p. 395; Adonnino, 2002, p. 2; Corasaniti, 2003, p. 609, nt. 10).

Also, in article 5 of the model convention against double taxation it is pointed out that the presence of a website on a server (Melis, 2008, p. 65, according to which the server is «in the mainframe, with its own specific software, able to store and exchange information, through the mediation of the telephone network, a modem or a suitable software allows the personal computer of the user to access information and services on the Internet»; it houses «websites through which Internet content provider makes and carries out its activities on the Internet») or the use of an internet service provider (ISP) (Melis, 2008, p. 65, which identifies the role of internet service providers in "he who manages the server, allowing access to the Internet and its services and carrying out web hosting, namely publishing web pages related to another subject (Internet content providers – ICP) through the server to it belonging») do not constitute permanent establishments of non-resident (Uricchio, 2005, p. 762-763; Corasaniti, 2003, p. 616-617; Adonnino, 1998, p. 99 ss.; Garbarino, 1999, p. 592 ss.; Garbarino, 2000, p. 882 ss.; Adonnino, 2002, p. 7; Adonnino, 2000, p. 23 ss.; Galli, 2000, p. 113 ss.; Galli, 2001, p. 79 ss.): a web site lack of materiality and is unfit to become a fixed place of business, resulting from the combination of software and electronic elements; an internet service provider has no power to conclude contracts on behalf of the non-resident entity and acts within the framework of its natural assets, consisting in offering users the network connection service and the ability to store web pages using your own server or owned by the same provider (Adonnino, 2002, p. 7; Melis, 2008, p. 67; Corasaniti, 2003, p. 618-619). On the contrary, it might become a "permanent establishment" a server if it is the full availability of the business operator, being electronic machinery fitted with the requirements to constitute a fixed place of business, through which the non-resident entity carries out all or part of its business activities (Melis, 2008, p. 67; Corasaniti, 2003, p. 617). According to the OECD, "fixity" should be understood not as an anchor to the ground, but as a economic/functional link, devoid of a temporary nature, between the place of business and the geographical area; in this context, the server is still "fixed", although it can be transferred from one place to another (Melis, 2008, p. 67).

## 5. Tax instruments that affect the different forms of wealth created by the web: the bit tax and the other tax measures of the network

In fact, focus only on e-commerce looks rather reductive, limiting the study to the topic of online transactions, seizing one aspect of the wealth produced through the network and neglecting other activities (navigation on web sites; use of social networks; gambling and betting online; advertising online) to create social and economic interaction and to transmit knowledge and experience: these activities are likely to acquire economic benefits and thus to secure tax relief (Uricchio, 2005, p. 763).

As we have seen, although initially it was felt not to impose new forms of taxation online activities, in order not to hamper the dissemination and development of the network, subsequently, also in view of the large number of users and access to the internet, it is felt, in many quarters, the need to give a new digital taxation structure, instituting new tax instruments aimed to hitting the various forms of wealth that the web can create (Uricchio, 2005, p. 763-764).

The first proposal, put forward by north american doctrine (Soete – Kamp, 1994; Soete – Kamp, 1996, p. 353 ss.; Soete – Kamp, 1996, p. 57 ss.; Soete, 1997; Goulet, 1997), consists of a new form of levy – based on the physicality of impulses transmitted by using the network, rather than on its effects and income tax valuations (Garbarino, 2000, p. 894) – called "bit tax" (Roccatagliata – Valente, 1999, p. 5514 ss.; Bernardi, 2015, p. 308; Gallo, 2017, p. 1643-1644), by reason of his assumption, consisting of the digital transmission of information. In this perspective, the information would constitute a new legal thing (Pecoraro, 2001), which may be taxed in proportion to the number of bits received or sent online, in an amount equal to 0,000001 cents for each bit, namely a cent of a dollar for every megabit (Uricchio, 2005, p. 764-765).

This tribute would be to an indirect planetary tax, commensurate with the amount of data released over the internet (Marello, 1999, p. 596, nt. 2), with any expectation of differentiated rates depending on the size or turnover of the taxpayer; the correct and uniform application of that tribute would require the agreement of all States.

In computer science, the bits that represent the smallest unit of storage and transmission of information, are also referred to by the industry "quanta" of digitized information (Uricchio, 2005, p. 765, n. 43).

The ratio of bit tax is obvious: the new wealth, ability to pay index, is to be found in the digital information transmitted over the web, expression of transactions, conversations and interactivity of the network (Cordell, 1996).

Thus, the offence is constituted by the intensity of information transmitted online, represented by the number of bits; passive subjectivity is identified with regard to the person that, holding the computer, transmits this information; localization of the case is based on the residency of the service provider; for the purposes of quantum debeatur, determination of the number of bits can be made through special gauges, similar to electric power meters, to be installed at every user on the network (Uricchio, 2005, p. 765).

The tribute has a peculiarity: the premise of taxation is quantitative and not qualitative, assuming the volume of relevant digital streams transmitted through use of the network, regardless of the value or nature, commercial or private, of the operation put in place (Uricchio, 2005, p. 766; Cipollina, 2003, p. 291).

That fact, on the empirical level, can be appreciated in that time to counteract the "computing pollution", reducing negative externalities arising from clogging the network and the information garbage on the same broadcast, in low or zero marginal cost: the bit tax rises, therefore, a tribute to environmental protection computer, as it seeks to remedy pollution particularly widespread in cyberspace, called information pollution, reducing the overcrowding of the network and selecting relevant information, with evident saving of time and energy (Uricchio, 2005, p. 766; Cipollina, 2003, p. 291).

On the strictly legal plan, however, the downside is anything but positive, because of the problems and doubts of constitutionality raised by the instrument of taxation, particularly in relation to the principle of ability to pay under article 53 of Constitution: assign relevance only to the amount of transmitted information (bits), regardless of the type and value of information, as well as the quality of the subject that the broadcasts would hit a manifestation of wealth without the character of effectiveness, there is no equal bits transmitted, for the purposes of tax treatment, no difference between a user's access to your mailbox or to a social network, aimed to reading a normal private message or chat's operations, and the conclusion of a major online financial transaction (Uricchio, 2005, p. 766).

Nor, indeed, would it be possible to return the bit tax under tax or almost commutative performance (on almost commutative performance, comp. Fedele, 1971, p. 4 ss.; d'Amati, 1991, p. 256 ss.; Del Federico, 2000), lacking

the characteristic of these types of taxes, consisting of his pay against a divisible public service, namely concerning directly the person obligated (Uricchio, 2005, p. 766-767).

In fact, despite the assimilation of the bit tax to motorway tolls, because of similarities exist between terrestrial and telematics highways, where traffic is taxed for bit transmitted, rather than in proportion to the number of mileage, you cannot qualify as a public service the online transmission of information, applying technical rules and procedures that break down communication in independent packages and recompose the receiver that connects to the network (Uricchio, 2005, p. 767).

Actually, the motorway toll, consideration which has been given the use of a service, can be assimilated, rather than a tribute, at the price paid by you to the telephone operator for the use of the service-internet connection.

Also, it doesn't even look like the bit tax can be introduced in place of the value added tax applicable to e-commerce, because of the different scope of two tributes (Uricchio, 2005, p. 767; Valente, 1998, p. 395): value added tax affects the supply of goods and the services supplied in the exercise of business or trades and professions in the territory of the State and imports by anyone; the bit tax applies, however, to the transmission of bits even if it is made in the absence of the conditions of application of VAT.

Equally to be excluded is the introduction of the bit tax in addition to the VAT payable in relation to e-commerce transactions, since, otherwise, online transactions they would discount an imposition greater than the traditional commerce (Melis, 2003, p. 71, nt. 17).

Finally, even wanting to admit the legitimacy of the tax, despite the doubts, difficulties arise in connection with the application disclosed concrete determination of quantum debeatur (Luz, 1997) and at the stage of investigation, since, in order to quantify the amount, you have to install, even if only through a mobile application (app), at any data processor, whether it be a computer, smartphone or tablet, a gauge of bits, the cost of which, in the absence of express statutory provisions, could it weigh on you.

In order to tax assessment, then, would be required controls, particularly invasive, in every place where you set a computer or each user who is using a smartphone or tablet to surf the web, in order to check the prior installation and the correct operation of the measuring equipment (Uricchio, 2005, p. 767-768). Not to mention further the difficulties concerning the identification

of the taxable person – the one who sent the bits – on grounds of character tends to be anonymous in the network and the ability to camouflage the IP (Internet Protocol) used to make the connection, so it does not uniquely identify the device connected to the computer network (Uricchio, 2005, p. 768).

Based on these premises, it is clear the inadequacy of the bit tax, feeble attempt to taxation because of network problems and contrast with different founding paradigms the tax matters, such as the principle of ability to pay and minimising compliance costs and tax assessment (Uricchio, 2005, p. 768).

Equally inadequate are the solutions adopted in some European countries, such as Hungary, France and Spain (on the spanish experience, with particular reference to Catalonia, comp. Rozas, 2015, p. 211 ss.), consisting of excise duty proportional to the number of gigabytes used, situation similar to bit tax or ad valorem taxes on the data consumed, in an amount equal to a certain percentage of the value of the uprights billed for advertising purposes, or in payment of a fee by producers.

Additional proposals for taxing the network envisaged by careful doctrine (Uricchio, 2005, p. 768 ss.), consists of the tax on registration of domains, IP addresses, license fee by the imposition on advertising online and by the imposition of access (hit tax).

Such tax instruments could help to alleviate the tax burden normally levied on productive activities (income of enterprise and work) and be designed as a substitute tax compared to ordinary taxation, that cyberspace, through the phenomenon of disappearing taxapayer (about his phenomenon, comp. Del Federico, 2014, p. 915, nt. 7; Owens, 1997, p. 16 ss.; Hinnekens, 2004, p. 798), steals corporate tax matters (Del Federico, 2014, p. 923).

## 6. Fiscal reflections of the activity carried out by multinationals of the network

No less irrelevant in this context tax profiles appear related to activities carried out by the big corporations of the digital economy (Google, E-bay, Amazon, Apple, Facebook, Twitter, Linkedin, Airbnb, Groupon, Microsoft, Tripadvisor, Netflix, Spotify, Alibaba, Didi Chuxing) company with subsidiaries in several States, which derive substantial profits, often exempt or taxed as a result of evasive maneuvers poorly designed to allocate incomes in countries with privileged taxation (on the matter, comp. Cipollina, 2015, p. 356 ss.; Fregni, 2017, p. 51 ss.).

In such cases, the Italian legislator, echoing the experiences of other European Union Member States and non-EU citizens (Bernardi, 2015, p. 311-312), has tried to remedy with the establishment of the web tax, fiscal tool who lived a regulatory procedure rather tormented and for which it has been necessary proposals, united by the same finality: to subject to tax network giants to ensure tax fairness and ensuring compliance with the competition rules.

In this light, it is clear the alternative between a dual perspective: on the one hand, the appropriateness of the rules and traditional legal categories, on the other, the need for innovative legislative measures (Del Federico, 2014, p. 917). This tax is particularly complex, due to the fiscal interest (Boria, 2002) and publishing connotations of matter, of the principle of legality in the imposition of tax competition between States, the risk of relocation of industry (Del Federico, 2014, p. 917).

In the intent of the legislator, the web tax represents the feeble attempt to refer to tax those who provide digital services, operating on the network and making profits in several States: the finality is to fight tax avoidance that you log in online transactions, beyond the tax regulations of the country where they are taken off the goods supplied and services rendered and which produces income. In other words, you want to avoid that foreign companies operating mostly in the virtual, do not comply, as they should, the tax burden, for example, by fixing the headquarters in countries with privileged taxation, while operating effectively in States characterised by a much higher taxation. The effect of such "fiscal choices", you reduce the taxable amount than that provided for by the tax system of the State in which the revenues were actually achieved, shifting part of the profits, legally, in jurisdictions in which they are taxed less (Scaglioni, 2013, p. 245; on the matter, comp. Cipollina, 2014, p. 21 ss.).

In particular, the digital giants, taking advantage of the corporate structure of the group, they do so as not to bill in the country, foreign affiliates located in countries with high taxation, advertising or sales practices, limited recording as revenue services supplied to another group company located in a country with lower rates (Scaglioni, 2013, p. 243). This result is also realized using transfer pricing practices on production costs, focusing on the sale or licensing of intellectual property rights developed in high-tax countries to a subsidiary located in a country with low taxes, which will transfer these rights to other overseas branches; thus, foreign profits, made using the parent company's technologies, are made available to regional offices based in low-tax countries, which act as the collector of the cash between related parties polling (Scaglioni, 2013, p. 244).

## 7. The foreign experience: the "Diverted Profits Tax" of the United Kingdom and the "Finanziaria Levy" of India

Actually, the most significant experiences regarding web tax, before Italian law, certainly not a forerunner in this area, have affected certain foreign legislations, both in advanced economic systems and developing development: these tax measures have been taken to ensure equal treatment between resident and non-resident taxpayers, taxpayers in the event that these subjects, in spite of the significant economic activity carried out in the territory not residence, do not have the minimum requirements for subjecting to tax income in the source State; in the absence of concrete web tools such as the web tax, it would be a risk that those economic operators, not taxed either in the market or the State of residence, will benefit from an unfair advantage, even in terms of competition, against resident taxpayers who perform the same activity (Avolio – Pezzella, 2018, p. 526-527).

Among the advanced economies, most notable is the experience of the United Kingdom, that, to meet the tax strategies used by giants of the digital economy, introduced, starting in fiscal year 2015, the "Diverted Profits Tax" (Gallo, 2015, p. 609), peculiar instrument taxation affecting, at the rate of 25%, income tax deducted in an elusive in the source State as moved by multinationals of the web in countries with low taxation; these are situations where you have reasonable reason to believe that the non-resident taxpayer carries out an economic activity in the United Kingdom, avoiding, artificially, the rise of a permanent establishment, or resident who successfully to evade taxation in the United Kingdom through the conclusion of agreements or by third parties devoid of economic substance (Avolio – Pezzella, 2018, p. 526). This measure of taxation – finding application in the presence of a significant economic activity conducted on the territory of the State, regardless of the existence of elements suitable to set up a permanent establishment, and after demonstration of behavior, held by the non-resident taxpayer, designed to circumvent the rules on permanent establishment – overcomes the ordinaries connecting factors (Avolio – Pezzella, 2018, p. 526, nt. 4). Application effects of the tax are the same as those that arise where the taxpayer has operated in the relevant territory through a permanent establishment or a subsidiary: on the hypothetical income generated by them is applying the "Diverted Profits Tax" (Avolio – Pezzella, 2018, p. 526, nt. 4).

Among emerging economies, you can cite the experience of the Indian legal system, which, with effect from fiscal year 2016, introduced the "Equalisation Levy", the main purpose of remedying the missed revenue from advertising

online, where the multinationals of the web, in the absence of a connecting factor, achieve massive profits, completely exempt (Avolio – Pezzella, 2018, p. 526). This tribute, whose nature seems more like a contribution to a tax, striking as far as 6%, revenues from digital advertising in the presence of two assumptions: lack of a permanent establishment on the Indian territory to attribute these incomes; significant economic presence, demonstrated by overcoming, in the field of online advertising, the amount of revenue required by law ($ 1,500) (Avolio – Pezzella, 2018, p. 526; Tomassini, 2018, p. 172).

In truth, the conformation of both tax measures can lift interpretive and applications issues, because, the same, being breaking free from a significant physical presence, are likely to lead to discriminatory treatments, turning into a iniquitous tool of protection of residents subjects, at the expense of those non-residents; in addition, as it emerged from Conference IFA, held in Madrid from 25 to 30 September 2016, anything but potential and hypothetically is the risk of giving rise to phenomena of double taxation in cases where the non-resident company is already subject to taxation fair and effective in the State of residence, not being at all granted the opportunity to benefit from a tax credit for the amount paid, as a web tax, in the foreign state (Avolio – Pezzella, 2018, p. 527; on the matter, comp. Malherbe, 2015, p. 23 ss.). In fact, such alternative measures, «acting only in case the taxation of income attributable to a permanent establishment (which does not exist, nor contested), imply that its tax liability cannot be regarded as a "tax on income" for the purpose of applying the conventions for the avoidance of double taxation» (Avolio – Pezzella, 2018, p. 527, nt. 5).

## 8. The troubled italian experience: the "Google tax"

Also in the Italian legal system, to deal with that, over time, has become a real emergency, arrangements were made by fiscal caution (Worstall, 2013; Iaselli – Tomassini, 2014, p. 297 ss.; Lupi, 2015; Scalera, 2015, p. 93 ss.): the first timid attempt was performed by article 1, paragraph 33, law 27 December 2013, n. 147 (Stability law 2014), embodying the primal version of the web tax, also called "Google tax" (Del Federico, 2014, p. 913 ss.; Trenta, 2014, p. 889 ss.; Quarantino, 2014, p. 211 ss.; about comparative profiles of the institute, comp. Ariatti – Garcia, 2015, p. 247 ss.). By virtue of that provision, was inserted in article 17-bis, decree of the President of the Republic, 26 October 1972, n. 633, on the VAT system which make the purchase of advertising space online

by foreign giants (such as Google) which, while maintaining stable relationships with Italian operators often do not pouring, as they should, taxes in Italy, staring at the registered office abroad – mostly in Ireland (as in the case of Apple, Google, Facebook) or Luxembourg (such as for Microsoft and Amazon), countries with the lowest tax, in terms of rates or of determination of the taxable amount, income of enterprise at Community level or in privileged fiscal jurisdictions or in tax havens such as the Cayman Islands or the British Virgin Islands – or using artificial tax maneuvers, elusive character, aimed to limiting the revenue not only for the host country but also to the country of origin (Scaglioni, 2013, p. 234).

The entry into force of the provision, originally set at 1 January 2014, was subsequently postponed until 1 July 2014; before that date, however, the rule was repealed by the article 2, paragraph 1, lett. a), decree-law, 6 March 2014, n. 16, converted with amendments by law 2 may 2014, n. 68.

Actually, the Italian "Google tax", although it never entered into force, has not been free from criticism of who (Del Federico, 2014, p. 913 ss.; Trenta, 2014, p. 889 ss.), while recognizing the shared objectives of the news statement, it stressed the inadequacy, because of existing differences compared to EU principles – founding the European single market – and the BEPS project (Base Erosion and Profits Shifting) (OECD/G20, 2014; Rizzardi, 2014; Bernardi, 2015, p. 316 ss.; Salvini, 2017, p. 768 ss.), intervention promoted by the OECD, during the G20 Summit in Moscow with the action plan of 19 July 2013, in order to combat conducted made by digital multinationals, aimed to minimizing the tax burden through tax base erosion and transfer of profits between different tax jurisdictions (the transfer of profits (profits shifting) in the jurisdiction most advantageous for tax purposes can be achieved through funding policies or by transfer pricing practice, as part companies belonging to the same group, as a result of which, the multinational enterprise sets a lower price for the goods sold subsidiaries located in countries with higher tax rates and a higher price for goods sold to affiliated companies located in countries with lower tax rates; thus, the flow of trade to (or from) companies located in countries with higher tax rates will be low (or high), compared to trade to (or from) companies located in countries with lower tax rates; on this point, comp. Scaglioni, 2013, p. 236-237 and 247; Valente, 2014).

Therefore, the idea of imposing restrictions of subjective and territorial nature in the field of VAT, to online advertising, has attracted quite a few misgivings, which helped to speed the repeal of article 17 bis of decree of the President of the Republic n. 633/1972 even before its entry into force (Del Federico, 2014, p. 916).

The reasons behind the failure of the legislative news can be summarised as follows: lack of a preliminary phase of study, being a legislative news in emergency character, contingent and improvised; lack of coordination with the OECD and addresses with similar initiatives taken by other countries; ambiguity of legislative intervention, whose drafting technique is characterized by large and innominate formulas – for example, online advertisements, sponsored links online – which does not shine with some clarity and precision; the marginal nature of the measure, in view of the limited scope of digital advertising services; poor coordination with the Community VAT discipline substrate in the field of electronic services; limitation in the purchase of online services; need for providers of online advertising arm of VAT number issued by the Italian Revenue Agency; contrary to the constitutional principles and Community competition and freedom of economic initiative and the principle of proportionality, given the tightening and excessive restrictions provided for by article 17 bis of decree of the President of the Republic n. 633/1972, even if you want to justify the rigidity of the arrangement in an anti elusive optics or tax evasion contrast (Del Federico, 2014, p. 916-917; Trenta, 2014, 892 ss.).

## 9. The proposal establishing of the "digital tax"

Subsequently, there was a bill introduced on 27 April 2015 (Atto Camera dei Deputati, n. 3076, 2015), which, resuming the studies developed by the Oecd, in order to counter tax avoidance transactions conducted electronically, amended the definition of "permanent establishment" (Garbarino, 2009, p. 663 ss.; Ricci, 2015, p. 57 ss.; on the previous concept of permanent establishment, comp. Corasaniti, 2003, p. 615; Lovisolo, 1983, p. 1128 ss.; Fantozzi, 2002, p. 9 ss.), under article 162, decree of the President of the Republic 22 December 1986, n. 917 (Tuir), and promoted the establishment of "digital tax", consisting of a withholding tax, amounting to 25%, payments made by persons resident in Italy at the time of purchase of products or services digital at a digital operator (e-commerce), residing abroad (Mobili, 2015). As you know, as part of the digital economy you can operate in a local market without having to maintain a physical presence inside, configurable as permanent establishment, resulting in liability to taxation in such State of profits of the intangible company. However, consumers cannot be qualified as a substitute for sets, the only way to apply the withholding tax is to involve the financial institutions in charge of regulating the payment of online purchases, except if the digital multinationals have not secured a permanent establishment on the

Italian territory or have concluded an agreement with the financial administration (tax rulings), in order to subject to tax the proceeds of the activity carried out in Italy. This bill, however, has remained a dead letter, having received no approval.

## 10. The transient "web tax"

A further step in this regard was made in the conversion of decree law 24 April 2017, n. 50, by the law 21 June 2017, n. 96, through the inclusion of article 1-bis, laying down the rules of procedure "enhanced cooperation and collaboration", which, on the lines of existing arrangements, such as the international ruling and cooperative compliance (Avolio – Pezzella, 2018, p. 526), allows multinationals, whose revenues are in excess of 1 billion euros annually and have carried out supplies of goods and services in the territory of the State in an amount exceeding 50 million euro, to give life to a strengthened compliance through advance arrangements with the Agency Revenue in order to verify the existence of the requisites constituting a permanent establishment and access to collaborative compliance regime, so to prevent the emergence of disputes with the Italian Revenue Agency, averting also the application of sanctions following the finding of misconduct.

In the presence of its requirements, even the giants of the web can take advantage of the compliance procedure: indeed, the norm, although applicable in theory to other economic operators, is meant primarily to facilitate the great player of network, surging to major recipients of available (Avolio – Pezzella, 2018, p. 526). In doing so, these taxpayers have the ability to regulate their relations with the tax authority, bringing out profits in the abstract subject to taxation in Italian territory, but they hardly appear to be in practice, because of the obstacles inherent in identifying a permanent establishment in Italy: the enhanced compliance procedure serves to determine in advance the amounts due in order to comply with the tax burden as a result of activity on the italian territory (Avolio – Pezzella, 2018, p. 525-526).

Therefore, the tool, commonly defined, atmospherically, "transient web tax" (on the matter, comp. Avolio – Imperato, 2017, p. 2269 ss.; Molinaro, 2017, p. 2203 ss.; Rossi – Ficai, 2017; Sepio – D'Orsogna, 2017, p. 3020 ss.), rather than build a real set, represents a form of voluntary emergence – given the optional nature – with prize effects on sanctions plan, of the permanent establishment in Italy of non-residents working in the field of digital economy and with the requirements of available (Avolio – Pezzella, 2018, p. 525).

## 11. Digital transactions tax (italian web tax)

Only with the law 27 December 2017, n. 205 (Budget Bill 2018) (paragraphs 1011-1017 in article 1), following the outcome of the informal Ecofin summit, held in Tallinn on 15 and 16 September 2017 and the communication from the Commission to the European European of 21 September 2017 [COM (2017) 547 final] on "a fair and effective tax system in the European Union for the digital single market", was established the digital transaction tax (so called web tax) (on the matter, comp. Antonini – Toschetti, 2017, p. 3177 ss.; Attardi, 2017, p. 4150 ss.; Fransoni, 2017; Della Valle, 2018, p. 1507 ss.; Avolio – Pezzella, 2018, p. 527 ss.; Bisioli – Zullo, 2018, p. 1032 ss.; Di Tanno, 2018, p. 177-178; Odetto, 2018; Telch, 2018, p. 90 ss.; Tomassini, 2018, p. 169 ss.), which applies to supplies of services made by electronic means in favour of persons residing in Italy, who have not adhered to the flat-rate scheme and to the taxation of the benefit, and for the benefit of permanent establishments of non-residents located in Italy.

This instrument of taxation, whose connotations are much closer to those of indirect taxation (Avolio – Pezzella, 2018, p. 527), represents the Italian response to the debate on procedures for taxation of the digital economy; many, though, are the profiles of critical issues raised by current legislation and in view of the differences compared to similar initiatives taken in other legal systems (Avolio – Pezzella, 2018, p. 525).

The domestic tax web appears a buffer and emergency solution, becoming almost a "turnover tax", which, it could become definitive (broadly sceptical, comp. Avolio – Pezzella, 2018, p. 529), because of the difficulty in achieving broader structural funding – international level the multilateral – susceptible to change and conventional forecasts, entrenching taxing even taking into account the location of the "significant presence", as well as identifying suitable income allocation policies in order to contest digital activities to the creation of value (Della Valle, 2018, p. 1508).

With regard to the objective scope, the budget bill 2018, resuming the definition of article 7, paragraph 1, of Council regulation EU n. 282/2011 of 15 March 2011, implementation of directive n. 2006/112/EC on the common system of value added tax (so called "recast directive") considers "supplied by electronic means" the services provided using the Internet or an electronic network, the nature of which renders the provision essentially automated, with minimum human intervention and impossible to guarantee in the absence of information technology (Della Valle, 2018, p. 1508; Odetto, 2017, p. 188; Avolio – Pezzella, 2018, p. 528).

It is a broad concept and unnamed, able to cover multiple services provided through the use of electronic networks, such as mobile networks used for telephony, and those used for financial services those that serve to transmit radio and television signals (Avolio – Pezzella, 2018, p. 528).

The domestic web tax incorporates a rate of 3% on the value of the transaction, namely the digital fee payable for these obligations, net of VAT, irrespective of the place of conclusion of the transaction (Della Valle, 2018, p. 1508; Avolio – Pezzella, 2018, p. 528). The tax is applied against the party lender, whether resident or non-resident, irrespective of the legal form, which carries out, over the course of a calendar year, a total number of transactions greater than 3,000 units (Avolio – Pezzella, 2018, p. 527; Della Valle, 2018, p. 1508, nt. 2, which stresses that it is «interesting to see if the term transaction here is equivalent or less than single service or, in other words, if the 3,000 units, which is the State for the purposes of the tax with regard to transactions made in place should be understood or not as 3,000 services»), regardless of their value; given the wide wording of the provision, the quantitative threshold is calculated taking into account only the number of potentially taxable transactions, that is made in respect of clients having the status of withholding agent (Avolio – Pezzella, 2018, p. 528).

This parameter, which, in the intention of the legislator would serve to exempt from the obligation to pay the tribute occasional providers of services, as individuals whose risk is rather limited, might, in fact, appear inefficient, since, in the absence of a parameter of economic importance, it would be paradoxical situations such as that of subjecting to tax those who implement multiple small transactions, exempting, by contrast, operators who, despite the small number of work accomplished, they perceived huge sums (Avolio – Pezzella, 2018, p. 528).

The tribute is withdrawn, upon payment of the consideration, by the purchasers of services, as a source-withholding tax, with the obligation of recourse on providers, except where registrants provide indicate in to invoice for the benefit or in any other appropriate document to be sent together with the invoice, not to exceed the above limit of transactions within a calendar year (Della Valle, 2018, p. 1508; Avolio – Pezzella, 2018, p. 529); the correct identification of concerns arise time reference (previous calendar year than in performing a benefit or, rather, the current calendar year) (Avolio – Pezzella, 2018, p. 529). The same customers are required to pay the tax within the 16 day of the month following that in which payment of the consideration (Della Valle, 2018, p. 1508; Avolio – Pezzella, 2018, p. 529).

Therefore, are taxable persons of the tax as much residents as non-residents providing services by electronic means in favour of persons residing, designated as withholding agents, ex article 23, decree of the President of the Republic n. 600/1973, and for the benefit of permanent establishments of non-residents in the territory of the State (Della Valle, 2018, p. 1508; Avolio – Pezzella, 2018, p. 527), which are also withholding agents as indicated also by the tax authority (Ministerial Circular, 23 december 1997, n. 326/E). Are excluded from the scope of the digital web tax transactions made against individuals (B2C), the latter cannot be qualified as withholding agents, the "minimum tax payers" (article 1, paragraphs 54-89, law 23 december 2014, n. 190), of those using the scheme tax advantage for "young entrepreneurs" and for workers on the move (article 27, decree law 6 july 2011, n. 98, converted to law 15 july 2011, n. 111); this exemption operates in one direction, that is only in the case of services rendered for these subjects and not the opposite (Avolio – Pezzella, 2018, p. 527; Confindustria, 2018, p. 103).

The territoriality of the tax is determined as a function of the subject customer and not of the service provider, irrespective of the place of conclusion of the transaction (Avolio – Pezzella, 2018, p. 527). This configuration, with reference to the non-resident company, raises critical issues, because such persons must comply with the web tax, «new tax, similar in some respects to VAT tribute – with all that could be achieved in terms of any community complaints, such as "duplicate" of VAT – in addition to the ordinary direct taxation, without granting any tax credit» (Avolio – Pezzella, 2018, p. 527).

The higher tax burden, digital operators residents, could result in a disadvantage, in terms of competitiveness, compared to non-residents; in fact, while revenues produced by the first would be to pay the new tribute, along with other direct taxes, with the rates in force in Italy, for non-resident corporations the web tax could allow to address, once and for all, to tax obligations in Italy, continuing to correspond, privileged taxation countries of residence, a tribute with derisory rates (Avolio – Pezzella, 2018, p. 528).

Not to mention that the network giants, being fitted with a market power greater than that of Italian firms, could translate the toll on prices of digital services, while maintaining competitiveness; in this light, even the expectation of a rate relatively low (3%) is a compromise between two opposing requirements (on the one hand, countering tax avoidance and, secondly, not penalize excessively traders residents) (Avolio – Pezzella, 2018, p. 528).

Given this configuration, the home web tax does not appear a "equalization levy", namely a compensatory levy aimed at hitting, at the place of production revenues, companies that don't discount tax loads, nor in the country of residence, nor in the source, since even non-residents with a permanent establishment in the State, including "non-physical" under article 162, letter f-bis (this is the so called "virtual" permanent establishment, identified in «ongoing and significant economic presence in the State built in such a way as not to do be a physical substance in the territory itself»; about the matter, comp. Pedaccini, 2015, p. 895 ss.; Perrone – Stevanato – Lupi, 2015, p. 121 ss.; Avolio, 2018, p. 265 ss.) of the TUIR, are affected by taxation; in addition, the tribute is not the only business to business transactions (B2B), since among the withholding agents, identified in the purchasers of digital services, there are also non-commercial bodies, even where not productive of business income, and condo buildings (Della Valle, 2018, p. 1508).

The tribute, as structured by the 2018 fiscal law, assumes the features of sectoral and discriminatory tax, even though transient, although, owing to the difficulties mentioned earlier, to elaborate a global solution is easy to predict transformation into a type of structural withdrawal (Della Valle, 2018, p. 1509): its theoretical justification (Gallo, 2015), therefore, raises many concerns, since, as confirmed by the Constitutional Court on a number of occasions (Corte Cost., 22 aprile 1997, n. 111; Corte Cost., 11 ottobre 2012, n. 223; Corte Cost., 5 giugno 2013, n. 116; Corte Cost., 16 luglio 2014, n. 201), including the previous known "Robin Hood Tax" (Corte Cost., 11 febbraio 2015, n. 10), such a form of taxation would be legitimate only if not arbitrary or unreasonable, it being necessary that «any diversification of the tax system, economic area or type of contributors», is «supported by adequate justification, without which the differentiation degenerates into arbitrary discrimination» (Della Valle, 2018, p. 1509).

No shortage more critical profiles: think of the circumstance, assumed by the legislature but unproven, greater ability to earn profits that digital would businesses than traditional ones, when, instead, the only comparison between traditional and web giants enterprises brings out differences negligible both in terms of profitability which characteristics of business (Della Valle, 2018, p. 1509); in addition, the italian web tax as structured, would hit, in the presence of its requirements, not just the giants of the network (known as "Over the top" – OTT), but also small and medium-sized enterprises operating on the web (Della Valle, 2018, p. 1509); the reference to the overcoming of 3,000 transactions for

year, regardless of the value of the transaction, does not warrant «a selection of taxable line with the intention of the legislature that is to hit headers and users of so-called Big data, so the giants of the web» (Della Valle, 2018, p. 1510) and is not fully consistent with the principle of ability to pay; for non-resident taxpayers with permanent establishment in Italy taxation revenues will add to the income levy generated in Italy and although its deductibility as production cost, would end up hitting, in a totally unreasonable, loss-making subjects (Della Valle, 2018, p. 1510); not to mention that "turnover tax", its weight will eventually weigh on consumers of digital services (Della Valle, 2018, p. 1509).

The entry into force of web tax is fixed at 1 January 2019, but, in fact, it is doubtful that actually happen, making the legislature refer to 1 January of the year following that of its publication in the official journal of the decree of Minister of economy and finance, which will have to be concretely identified the services subject to the new tribute, together with any exemptions; such modus operandi can only leave perplexed, since, refer positive assumption of taxation and any boundary exemptions to a ministerial order, in the absence of any governing policy might violate the principle of legality under article 23 of Constitution (Della Valle, 2018, p. 1510; Tomassini, 2018, p. 173); nevertheless, the adoption of the decree by the Mef, laid down by the legislature by 30 April 2018, has not occurred.

Aspects of the investigation, sanctions, the collection and litigation of domestic tax web is governed by provisions concerning the value added tax, to the extent of compatibility (Avolio – Pezzella, 2018, p. 529).

## 12. The experience of the European Union: the proposal of directive aimed to establishment the tax on digital services (european web tax)

Not hiding, however, the perplexity raised by the provision of a domestic tax web, resting their bases on national legislation, foreseen but there, however, the opportunity to a harmonised tribute, at least at Community level, if not even international, in order to prevent contradictions that may arise between internal systems and that transaction in order to impose digital supranational.

In fact, as I have already had occasion to point out (*supra* § 7), within the various legal systems, Italy included, were developed a myriad of web tax, which, in the absence of harmonisation, they hired the physiognomy of unilateral fiscal measures, different them both as regards the scope of application for the founding principles;

ensued a fragmentary regime that ended up creating more problems than they've helped solve (Avolio – Pezzella, 2018, p. 529; Della Valle, 2018, p. 1510, nt. 10).

Therefore, in the absence of a shared solution at OECD level as regards taxation mode of the digital economy (on the matter, comp. Maisto, 2017, p. 2566-2567; Padovani, 2018, p. 257 ss.) and because of unreasonable distortions of competition between States and between enterprises, depending on the degree of digitization of same, created by the current location of wealth income policy, it was necessary, at the very least, action at Community level (Rizzardi, 2014; Della Valle, 2018, p. 1510).

In this context the proposal presented by the European Commission on 21 March 2018 (comp. www.europa.eu/rapid/press-release_IP-18-2041_it.pdf) to establish a European web tax, called "digital service tax" (ISD), which initially would be equipped with temporary, to be subsequently applied to the regime, at the rate of 3%, annual gross revenues, exclusive of VAT and other similar taxes arising from some specific digital activities, where it is believed to have more meaningful user contribution to the creation of value for the digital enterprise; these are the so called "digital services" defined in article 3, paragraph 1, of the proposal for the directive (selling advertising online; transfer of data generated by information provided by users; digital brokerage operations that allow users to interact with each other through digital interfaces multilateral agreements, in order to facilitate the sale of goods and services) (Della Valle, 2018, p. 1510-1511; Di Tanno, 2018, p. 1531 ss.; Tomassini – Sandalo, 2018, p. 1395 ss.).

Thus, the new European tribute, unlike the home tax web would really hit only specific digital transactions carried out by large multinational of web (Della Valle, 2018, p. 1513).

Digital services tax is collected by the Member States in which the users reside and apply to companies (in particular, article 4 of the draft directive treats taxable entities with digital services tax revenues exceeding the thresholds mentioned and the article 2 means for entities «any legal entity or legal institution that conducts its business through a company or a transparent structure for tax purposes», excluding, therefore, from the category of taxable subject natural persons; on this point, comp. Della Valle, 2018, p. 1511) with total annual revenue, worldwide, over 750 million euros and, at European level, over 50 million euros, in order to exempt small companies from paying the tribute (small/medium businesses and startup, in relation to which the burden of the tax and compliance burdens could generate disproportionate effects) (Della Valle, 2018, p. 1511).

Therefore, the passive European toll subjectivity, detected in taxable services providers, independent digital undertaking establishment in an EU Member State, being anchored to the mere passing of two parameters related to the amount of gross revenues (community and world) achieved in the financial year, both indexes expressive of ability to pay (Della Valle, 2018, p. 1511).

The first threshold, refers to the total annual worldwide revenue, is explained as only businesses of a certain size have established market positions, enabling him to harness the power of the network, through the use of big data, and to establish their business models on the participation of users, so as to benefit economically; in particular, as a result of such models of business organization, characterized by the ability to attract a large number of users, creating a gap between the place where service is taxing and that that creates the value (Della Valle, 2018, p. 1511).

The second threshold, concerning the total annual revenues at European level, has the function to limit the scope of application of tax on digital services to offer a significant EU-wide fingerprint (Della Valle, 2018, p. 1511).

The place of taxation, identified by article 5 of the proposed directive, coincides with the territory of the Member State where service users of corporate tax are during the tax period: it is not the place in which payment of taxable services is made, but one corresponding the IP address of the device you use to connect, without prejudice to the possibility of identifying a more accurate localization method (Della Valle, 2018, p. 1512). The rationale for this choice stems from the need to introduce a tax powers with rational allocation policy: the value is taxed where it is created, or in the State where your users reside, as their participation generates value for the digital enterprise (Della Valle, 2018, p. 1512; Fransoni, 2015).

To head off any double taxation, the considering number 27 of the proposed directive, where the revenues subject to taxation on digital services are also taxed for income taxes, requires Member States to allow deductibility of the first tribute as an expense from taxable profit of the second, regardless of which the two taxes are paid in the same or different Member States (Della Valle, 2018, p. 1513).

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