



HM Treasury



HM Revenue  
& Customs

# Digital Services Tax: Consultation

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November 2018



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# Contents

|            |  |    |
|------------|--|----|
| Foreword   |  | 2  |
| Chapter 1  | Introduction                               | 3  |
| Chapter 2  | User participation                         | 6  |
| Chapter 3  | Business activities in scope               | 9  |
| Chapter 4  | Revenues in scope                          | 16 |
| Chapter 5  | UK revenues                                | 18 |
| Chapter 6  | Rate and de minimis thresholds             | 22 |
| Chapter 7  | Safe harbour                               | 24 |
| Chapter 8  | Deductibility and crediting                | 27 |
| Chapter 9  | Review clause and global reform            | 30 |
| Chapter 10 | Interaction with international obligations | 31 |
| Chapter 11 | Reporting                                  | 34 |
| Chapter 12 | Payment and compliance                     | 37 |
| Chapter 13 | Assessment of impacts                      | 41 |
| Chapter 14 | Next steps                                 | 42 |
| Annex A    | Examples of business activities in scope   | 46 |
| Annex B    | List of consultation questions             | 49 |

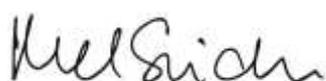
# Foreword

The digital revolution has unlocked huge opportunities for people and businesses, increasing consumer choice and boosting prosperity. That's why the government is committed to making the UK the best place to start and grow a digital business. The government took this commitment further at Budget, announcing significant investment in cutting edge technologies, including £235 million for the National Quantum Technologies Programme, and up to £50 million for new Turing Artificial Intelligence Fellowships.

But embracing digitalisation also means updating existing policy, or the principles that guide policy, to reflect how our economy is changing. That's particularly true of tax, and specifically corporate taxation. While businesses have responded to the realities of digitalisation, the international corporate tax system has not kept pace. That is why last year the government set out the need for ambitious international reforms so the corporate tax framework reflected the way digital businesses create value. Only by making fundamental changes can we ensure that the tax system is sustainable in the digital age, and that all types of businesses make a fair contribution to support our vital public services.

The government continues to believe that the most sustainable long-term solution is reform of the international tax framework, and is continuing to lead work to deliver an international tax system fit for the digital age. But in the interim, there is a need to act, to address outcomes under the existing system that are increasingly hard to defend.

Therefore, the government is introducing the Digital Services Tax (DST) from April 2020, to ensure certain digital businesses pay tax reflecting the value they derive from UK users. The DST is proportionate, narrowly-targeted, and is intended to ultimately be a temporary tax, to be replaced by a comprehensive global solution. The government recognises this is an issue of significant interest to businesses. It is therefore consulting on the design and administration of the tax, and looks forward to working with stakeholders to ensure the DST operates as intended.



The Rt Hon Mel Stride MP

Financial Secretary to the Treasury and Paymaster General

# Chapter 1

## Introduction

### Nature of the challenge

- 1.1 The international corporate tax framework is underpinned by the principle that the profit of a multinational group should be taxed in the countries in which it creates value.
- 1.2 That is, countries should have the right to tax a multinational group on the profits it derives from activities undertaken and value generated in their jurisdictions.
- 1.3 The government continues to support that overarching principle.
- 1.4 However, as set out in its previous position papers, the government believes the international tax framework is failing to achieve this principle in relation to certain highly-digitalised business models that derive value from the participation of their users.<sup>1</sup>
- 1.5 The government believes that the failure of the international tax framework to take account of this new and important source of value creation is leading to a mismatch between where business profits are taxed and where value is created.
- 1.6 And it considers that this mismatch represents a fundamental challenge to the fairness, sustainability and public acceptability of the corporate tax system.

### Solving the challenge

- 1.7 The government's ultimate objective is to address the challenges outlined above through reform of the international corporate tax framework.
- 1.8 It is for that reason the government has been leading multilateral discussions at the level of the OECD/G20, with the aim of reaching consensus on the principle for reform and a detailed approach that delivers on that principle.
- 1.9 That includes consideration of the approach set out in the government's March position paper, which set out a model for how the international tax framework could be updated to allow jurisdictions to tax profits that businesses derive from the activities of local users.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/689240/corporate\\_tax\\_and\\_the\\_digital\\_economy\\_update\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689240/corporate_tax_and_the_digital_economy_update_web.pdf)

- 1.10 The government is optimistic that progress can be made on multilateral reform, and acknowledges the clear and important commitment made by the participating countries in the OECD's March 2018 interim report, to undertake a fundamental review of the concepts of nexus and profit attribution.<sup>2</sup>
- 1.11 However, that review will be a challenging process given the fundamental nature of the issues being addressed, and the different country perspectives on those issues, as identified in the OECD's interim report. Furthermore, it will take significant time before agreement on a principle for reform is translated into a detailed model and then reflected in countries' international tax treaties.

## Interim action

- 1.12 It is against this background that the government has decided to take interim action, and introduce a tax on the revenues of certain digital business activities to ensure tax is paid that reflects the value derived from UK users.
- 1.13 The government acknowledges the limitations and challenges of revenue-based taxes, and recognises the concerns expressed that such taxes do not represent a sustainable long-term solution to this issue.
- 1.14 However, it has also been clear that revenue-based taxation has a purpose, in demonstrating the importance that the government attaches to this issue, and in helping to address the unfair and distortive market outcomes that will persist until a multilateral solution is agreed and implemented.
- 1.15 The government will continue to engage constructively in discussions on a pan-European solution, given the clear benefits of consistency between countries in setting the scope and administration of a revenue-based tax on digital businesses. However, it has decided that now is the time to act, and has set out in this document what it believes to be targeted and proportionate approach for achieving the policy aim in this area.

## What that solution looks like

- 1.16 The Digital Services Tax (DST) is not a tax on online sales. Nor is the DST intended to be a generalised tax on businesses that provide digital services, collect data or generate revenue from online advertising.
- 1.17 Instead the DST will be a narrowly-targeted 2% tax on the UK revenues of digital businesses that are considered to derive significant value from the participation of their users. The tax will apply from April 2020, and be legislated in Finance Bill 2019-20.
- 1.18 In more detail:
- the tax will be applied by reference to specific digital business activities, which the government considers derive significant value from users

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<sup>2</sup> <http://www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm>

- the business activities within scope will be the provision of a social media platform, search engine or online marketplace
  - the tax will apply to the revenues generated by these taxable business activities, where those revenues are linked to the participation of a UK user base
  - a business will only become taxable if it:
    - generates more than £500 million in global annual revenues from in-scope business activities
    - generates more than £25 million in annual revenues from in-scope business activities linked to the participation of UK users
  - businesses will not have to pay tax on their first £25 million of UK taxable revenues
  - the tax will include a 'safe harbour' which will allow businesses to elect to make an alternative calculation of their DST liability, and will be of value to those with very low profit margins
  - the tax will be deductible against UK Corporation Tax under existing principles, but it will not be creditable
- 1.19 The government will continue to monitor progress in international discussions and will dis-apply the DST if an appropriate global solution is successfully agreed and implemented.
- 1.20 In addition to that, the legislation enabling the DST will include a clause that requires the tax, and the progress in international discussions, to be reviewed in 2025. The outcome of that review will then be reported to Parliament.

## The purpose of the consultation

- 1.21 The consultation seeks views on the detailed design, implementation and administration of the DST.
- 1.22 This includes:
- the proposed approach to defining the business activities in scope of the tax
  - the proposed approach for determining the instances when revenues become taxable
  - the detailed design of the safe harbour
  - the effect of the DST being a deductible expense for corporate tax purposes
  - the review mechanism and the link to the international process
  - reporting and payment
- 1.23 The government welcomes comments on this consultation by 28 February 2019.

# Chapter 2

## User participation

### Overview

- 2.1 The Digital Services Tax (DST) is designed to ensure digital businesses pay tax reflecting the value they derive from the participation of UK users.
- 2.2 It responds to the international tax framework's failure to recognise this important source of value creation in how the profits of a multinational group are allocated between countries for tax purposes.
- 2.3 The government believes that this creates a mismatch between the location in which multinational groups generate value and the location in which their profits are taxed, something which goes against the principles on which the corporate tax system is based.
- 2.4 Given that this policy concern will shape the detailed design of the DST, this chapter sets out what is meant by the term user participation and the business activities it is considered most relevant for.

### Meaning of user participation

- 2.5 As set out in its position papers, the government considers user participation to be the process by which users create value for certain types of digital businesses through their engagement and participation.
- 2.6 Based on an examination of different digital business models, the government considers that there are four main channels which best illustrate how this value is created:
  - **Generation of content** - some digital businesses operate platforms that are substantially made up of user-generated content e.g. a social network. As a result, while the technology and branding of the platform will be an important driver of value, a core part of the business offering remains the content generated by users. These businesses invest heavily in engaging users and encouraging them to supply content as part of the platform's offering.
  - **Depth of engagement** - users form strong relationships with certain types of online platforms, including spending significant amounts of time on a platform, contributing content and interacting with other users. These interactions allow certain business models to tailor their platform to each individual user and gain valuable insights about user behaviour through the collection of data.

- **Network effects and externalities** - for some digital businesses, the value that a user derives from a platform is strongly correlated with the number of other active users on that platform. Building a large user network is therefore central to the success of the business. Users themselves play - and are encouraged to play - an important role in building these networks, through their engagement and through actions which foster connections e.g. sharing content, rating products, creating internal networks.
  - **Contribution to brand** - some digital businesses are reliant on their users for platform content, or for the provision of goods and services that are exchanged on the platform. Users will be encouraged to review and rate content or services provided by third parties, which is crucial in regulating what appears on the platform and establishing an important trust mechanism for other users.
- 2.7 The government has previously set out why it believes these characteristics mean that the nature of the relationship between certain businesses and their users is different to the more traditional relationship between a business and its customers.
- 2.8 Users play a role beyond creating demand for a product. Instead they co-contribute to a business offering, and help to develop and improve that offering on an unprecedented scale in a way that is vital to the performance of the business.

## Relevance of user participation for different businesses

- 2.9 While user participation is of relevance to a range of businesses, its materiality as a value driver (both on an absolute basis and relative to other drivers of value) will vary by business model.
- 2.10 The DST is focused on those business models for which the participation of a user base can reasonably be considered a central value driver, critical to the success or failure of the business.
- 2.11 Based on its position papers, and through reflecting on the business model analysis included within the OECD's Interim Report, the government considers that this is applicable to the following business models:
- **The provision of a social media platform:** a social media platform derives value from user participation in a number of ways. The platform itself is largely populated by user-generated content. As a result, the volume and quality of that content will be a key factor in generating revenues - usually from online advertising displayed alongside user content. But a social media platform also benefits from the role users play in building a wider network of platform users, through their role in fostering connections and encouraging others to use the platform. A core business strategy will be to cultivate an active user base and encourage them to proactively contribute content and spend time on the platform, indicating the centrality of user participation to the business model.
  - **The provision of a search engine:** in a similar way to a social media platform, much of the content of a search engine is delivered, directly or

indirectly, by users of that platform. The intensive monitoring of user data also allows the platform to tailor experiences to individual users, and also to indirectly improve platform performance for other users. A key driver of revenue will often be advertising based on data provided by the user.

- **The provision of an online marketplace:** this model relies on the development of a large user network on either side of the platform, and the choice of goods and services those users are offering. Businesses will often encourage users to play a role in regulating the quality of goods and services provided on the platform, such as by offering public reviews or providing feedback directly to the platform. This way user participation is important in establishing the platform as a trusted mechanism to exchange goods and services, which ultimately drives higher numbers of transactions and increases platform revenue.

- 2.12 By contrast, user participation may be less central, intrinsic or material for other types of business models, which are nonetheless digital.
- 2.13 Such other models include the direct sale of goods online and the provision of hardware and software.
- 2.14 In these cases, value is principally generated by business decisions over the development, production and marketing of a product.
- 2.15 Users do not co-contribute to the business offering, nor is the network created by users vital to the success or failure of these business models.
- 2.16 Equally the business places less focus on cultivating an active and participatory user base as a core part of business strategy.

# Chapter 3

## Business activities in scope

### Scope of the Digital Services Tax (DST)

- 3.1 The government set out in its position papers that there are three main approaches that could be taken to set the scope of a tax based on the concept of user participation.
- 3.2 The first approach would be to define the channels through which users create value for a business through their participation, and then impose a tax on the revenue streams of businesses for whom those channels are most relevant, based on a case by case assessment of those businesses' specific characteristics and value drivers.
- 3.3 The second approach would be to objectively define the business activities that derive most value from user participation and then impose the tax on the revenues generated from those activities. So this would involve defining the provision of a social media platform, search engine and online marketplace as a taxable business activity.
- 3.4 The third approach would be to define the revenue streams that are commonly generated from those categories of business activity and then charge the tax on any business in relation to such revenues. This could, for example, mean taxing generalised services such as all online advertising.

### Proposed approach

- 3.5 The government intends to legislate the scope of the DST using the second method. That is, the government intends to draw the scope of the DST by defining specific in-scope business activities in legislation.
- 3.6 Businesses which undertake these activities, most likely across multiple legal entities, will be within the charge to DST and will pay tax on revenues that are generated from those activities, whatever the character of those revenues.
- 3.7 While there is a balance of arguments for different approaches, the government thinks this approach will best ensure the DST is appropriately targeted at business models deriving value from user participation.
- 3.8 It will also ensure that the DST's impact on in-scope business activities is not conditional on how that activity is monetised. For example, a social media platform that is considered to derive material value from user participation would be within scope of the tax, irrespective of whether that platform generates revenue through online advertising or through subscription fees.

3.9 Under this method:

- the legislation will define the business activities in scope of the DST
- businesses will then assess which functions they currently perform meet the definitions of these activities, and identify revenues generated from those activities
- the revenues generated from in-scope business activities will then be taxable when they are linked to the participation of a UK user

3.10 This chapter focuses on the first step i.e. defining business activities in scope of the DST. The second and third steps will then be covered in Chapters 4 and 5.

## Defining in-scope activities

3.11 As above, the government intends to draw the scope of the DST by defining specific in-scope business activities in legislation.

3.12 The government believes that those activities should be the provision of a social media platform, the provision of a search engine and the provision of an online marketplace.

3.13 This section sets out the approach the government thinks could be taken to defining those activities in each case.

## Provision of a social media platform

3.14 The government considers that the key elements in defining the provision of a social media platform would be:

- it is delivered through a website or an alternative internet-based application (e.g. a mobile application)
- the following functions are a central part of the business offering:
  - allows users to interact with other users
  - allows users to publish or share personal details, media content or other information
  - allows users to join and create communities based on shared interests or objectives
- it generates revenue by monetising users' engagement with the platform and with other closely integrated functions.

3.15 This government intends that this definition would be intended to cover platforms that perform the following types of activities:

- social/online networks: those that focus on building social or professional communities based on shared interests, objectives or existing personal relationships
- blogging/discussion platforms: those which focus on allowing users to publish information which is shared publicly with other users of the platform

- content sharing platforms: Those which focus on allowing users to share media content such as photos or videos
- review platforms: Those which focus on aggregating information provided by users (e.g. reviews), which is displayed publicly across the platform and forms the basis of the platform service of rating/assessing a given good or service
- dating platforms: which are intended to help develop personal relationships between users, through sharing information and content about different users

## Provision of a search engine

3.16 The government considers that the key elements in defining the provision of a search engine would be:

- it is delivered through website or alternative internet-based application (e.g. a mobile application)
- the following functions are a central part of the business offering:
  - to view webpages beyond those provided by the platform itself
  - to search for and obtain information, services and other matters of interest on the internet which result from, or correspond to, keywords, web addresses or other information specified by the user
- it generates revenue by monetising users' engagement with the platform and with other closely integrated functions e.g. websites accessed through a web browser

3.17 The government believes this definition applies to quite a narrow range of business activities. For instance, it would not cover the function a website might offer to allow users to search for products being sold on the site or for content made available on the site.

3.18 The government intends for this definition to cover cases where a search engine monetises user engagement by advertising directly against search results. It also intends for this definition to cover cases where a business generates revenue from advertising on websites that the search engine has facilitated access to, or have been accessed through an integrated web browser.

## Provision of an online marketplace

3.19 The government considers that the key elements in defining the provision of an online marketplace would be:

- it is delivered through a website or an alternative internet-based application (e.g. a mobile application)
- it allows users of the platform to advertise, list or sell goods and services to other users with the purpose of seeking to facilitate the exchange of goods or services

- it generates revenue through the performance of this activity and the direct or indirect monetisation of users' engagement with the platform

3.20 This definition would cover businesses that facilitate the formal exchange of goods, services or digital content between third-parties on a platform. For example, a business that takes a commission from matching third-party buyers and sellers of physical goods.

3.21 It would also cover businesses that provide a platform for third-parties to list products and services, and communicate with prospective buyers, even if subsequent transactions are concluded away from the marketplace.

3.22 This definition will not cover the sale of own goods online.

**Question: Do you agree the proposed approach of defining scope by reference to business activities is preferable to alternative approaches?**

**Question: Do you have any observations on the proposed features used to describe the business activities in scope of the DST?**

### Isolating in-scope business activities

3.23 Groups will be required to isolate business activities that fall in scope of the above definitions.

3.24 That should be straightforward for groups that perform substantially one major revenue-generating activity in line with the definitions above.

3.25 It is acknowledged that it will be more difficult however where groups undertake multiple business activities.

3.26 In some situations, in-scope activities may be clearly identified as separate product or service lines in the business's accounts. They may also be distinguished from out-of-scope activities for internal management and reporting processes.

3.27 In other situations, in-scope business activities may be more closely integrated with other activities undertaken by the group.

3.28 In such cases, the expectation is that businesses will isolate the in-scope business activities and pay the DST on revenues that those activities generate for the group. The proposed approach for attributing revenues between integrated in and out-of-scope business activities is covered in Chapter 4.

### Business activities not in scope of the DST

3.29 The DST is only intended to apply to specific business activities which derive significant value from user participation.

3.30 The government considers that the following business activities do not derive significant benefits from user participation, and therefore revenue derived from these activities should not be in scope of the measure:

- **The provision of financial or payment services** - these activities are not considered to derive significant value from user participation and are

often subject to unique tax and regulatory regimes already. Financial and payment services will not therefore be in-scope of the DST.

- **The sale of own goods online** - the tax is not intended to capture revenues derived from the sale of own goods online, either through a seller's own website or through a marketplace. It will only apply to the revenues generated by the marketplace from facilitating such sales. While businesses selling own goods online use the internet to facilitate revenue generation, users are not considered a central value driver. Instead those businesses create value through product development, selection and anticipating consumer demand. The government thinks this category would also include the provision of hardware, software and cloud computing.
- **The provision of online content** – the government does not intend to apply the DST to revenues generated from the direct sale of online content (e.g. TV or music subscription services, online newspapers etc) where the business either owns the content or has acquired the right to distribute content. The government believes that this is similar in principle to the online sale of goods. The government believes that, in general, this principle should extend to online games, and console games that allow users to play with/against other users on an online network. However, there are online games that share similar features to social media and online marketplace business models e.g. those that benefit from the sustained engagement of a large user base that is encouraged to build networks, communicate and enter into exchanges. The government believes that there is a need to reflect further on how such online games should be characterised against the definitions above.
- The provision of radio and television broadcasting services are also not intended to be in scope of the DST.

3.31 The DST is also not intended to be a generalised tax on the collection of data or online advertising. These services are only relevant in so far as they are the way a business generates revenue from an in-scope activity.

3.32 So for example, revenues that a supermarket generates from collecting information on customers via a loyalty card scheme, or revenues an industrial goods manufacturer generates from collecting data from sensors, will not be in scope of the DST.

3.33 The government believes that its approach to defining business activities in scope means that there is unlikely to be a need for an exhaustive list of exemptions. However, it would like to test this point during the consultation.

**Question: Do you think the approach to scope negates the need for a list of exemptions from the DST?**

## Boundary issues

3.34 The government anticipates that there will be circumstances where stakeholders are uncertain about whether certain business activities meet the definition of an in-scope business activity or not.

- 3.35 The government foresees that the following examples may get raised and has set out an indication of the approach that could be reasonably be taken in each case.
- 3.36 These are not exhaustive and the consultation is intended to help explore these and other examples, before considering the most appropriate legislative approach.

### **Boundary between a marketplace and the selling of own goods**

- 3.37 In most cases the government anticipates that it will be clear whether a business activity is providing a marketplace or is making direct sales of goods.
- 3.38 A marketplace will not have legal ownership of the goods being sold. The seller will be the person who owns the goods available for purchase
- 3.39 As a result, legal ownership of the goods being exchanged should be the key determining factor of whether a business activity meets the definition of being a marketplace as opposed to being a seller of own goods in this example (the example is not relevant for marketplaces that simply list goods).
- 3.40 The government acknowledges concerns that businesses could opt to take flash title, or theoretically be the contractual party to a transaction when in reality they are acting in substance as a marketplace.
- 3.41 For instance, their contractual ownership of a good may be fleeting; they may not be responsible for any liability if the goods prove to be faulty; and they may only generate revenue on a per sale basis.
- 3.42 The government is considering whether specific rules are needed to deal with these circumstances, such as allowing HMRC to look through legal ownership to the substance of the arrangement.

### **Boundary between a search engine and a website**

- 3.43 The provision of a website sometimes includes functionality allowing a user to search for other material within that website. If the scope of the search is limited to material that is produced by the business running the website, for example an online newspaper allowing a user to search for old articles, it is still a single site search function and will not meet the proposed definition of a search engine.

### **Boundary between a social media platform and a website with comment functionality**

- 3.44 Providers of websites may be concerned that allowing users to upload content in any form, such as through commenting on an article on the website, might lead them to meet the definition of a social media platform.
- 3.45 The government does not anticipate this to be the case where such a function is only an ancillary or incidental part of the platform's offering.
- 3.46 This difference would be reinforced if, on the facts, the website does not meet the other relevant definitions such as allowing users to build communities with other users based on shared interests.

## Boundary between online content and a social media platform

- 3.47 If a platform is principally designed to allow users to interact with each other, share content (their own or others'), and build networks, it is likely that the business would meet the definition of a social media platform, even if it displays some professional content as an auxiliary or incidental feature to this overall business activity.
- 3.48 If the platform is principally designed to distribute professionally made content, with the owner of the platform making decisions on acquiring, producing and marketing such content, then it is less likely to fall in scope of the DST as a social media platform.
- 3.49 It is possible that a platform may be highly integrated and have features matching both business activities e.g. the provision of a social media platform and online content.
- 3.50 In this case the business will need to assess whether the distribution of online content is of an auxiliary or incidental nature, or if on the facts it is clearly separable. If it is clearly separable, then the business will need to identify the revenues for each part on a just and reasonable basis (see Chapter 4).

**Question: Do you have any observations on the boundary issues the government has identified or others it has not identified?**

# Chapter 4

## Revenues in scope

### Taxable revenues

- 4.1 The DST will apply to third-party revenues that are generated from in-scope business activities. That could include revenues from different channels.
- 4.2 For example, a social media platform could generate revenues through online advertising, subscription fees or sales of data, all which would be in scope of the DST.
- 4.3 Equally an online marketplace could generate revenue through commission, subscription fees, delivery fees or online advertising revenues, all of which would be in scope of the DST.
- 4.4 It does not matter whether these third-party revenues are realised in a UK or non-UK entity, or in single versus multiple entities.

### Attributing revenues to in-scope business lines

- 4.5 In many cases, the government believes that it will be clear what revenues are generated from an in-scope business activity. That will likely be the case, for example, where a business only undertakes one activity which falls within scope of the above definitions.
- 4.6 It will also likely be the case where a business undertakes multiple activities, but identifies in-scope activities as a separate product or service line, and attributes revenues to those business lines for reporting or internal management purposes.
- 4.7 However, the government recognises that there will be examples of businesses in scope of the DST which have more than one major business activity and don't separate those activities into separate product lines for reporting purposes, or at least not according to the definitions that are set out in Chapter 3.
- 4.8 In these cases, where in-scope activities are integrated with out-of-scope activities, it is proposed that businesses be required to apportion revenues generated from their integrated activities between in and out-of-scope business activities.
- 4.9 The appropriate approach for that apportionment will depend on the specific facts and circumstances of each case, but the general principle should be that any apportionment is just and reasonable. That is, the apportionment should fairly reflect the contribution of in-scope activities to

the generation of overall revenues from the activities with which it is integrated.

- 4.10 For example, consider a business that provides an online marketplace that is highly integrated with an online sales platform.
- 4.11 It might be that some revenues are clearly attributable to the online marketplace activity rather than the online sales platform, for example the commission that the business generates from matching third-party buyers and sellers.
- 4.12 However, it might be that other revenues are more difficult to attribute to the online marketplace versus the sales platform. That might include revenues from advertising across a common platform, or subscription fees that allow users to access both a marketplace and online sales function of the business.
- 4.13 In this case the advertising and subscription revenues relate to both business activities and would need to be apportioned between the two on a reasonable basis.
- 4.14 Linked to these issues, the government would also like to explore the extent to which mechanical rules would help with apportioning revenues between in and out-of-scope business lines. The benefit of mechanical rules is that they can increase certainty, and may be simpler for business to apply.
- 4.15 But the government also acknowledges that mechanical rules may apply less well to certain types of business models, or may give rise to distortive behavioural responses. It therefore intends to continue considering this as part of the consultation.
- 4.16 In all cases HMRC would need to have the ability to test any apportionment against the requirement that it has been calculated on a just and reasonable basis.

**Question: Do you have any observations on the proposed approach for attributing revenues to business activities?**

**Question: Do you think there is a need for mechanical rules to guide apportionment in certain circumstances?**

## **Costs**

- 4.17 The rules for DST will make no provision for the deduction of costs incurred in generating revenues in calculating DST.
- 4.18 The government did consider the case in its position papers for allowing businesses to deduct certain costs incurred in the generation of in-scope revenues, such as traffic acquisition costs. However, the DST is a tax on gross revenues rather than on income or profits, and the government does not consider it possible or justifiable to distinguish certain costs based on how closely they are tied to revenue generation.
- 4.19 The expectation is that revenues chargeable to the DST will be declared net of VAT.

# Chapter 5

## UK revenues

### Overview

- 5.1 Business revenues only become taxable under the Digital Services Tax (DST) where they meet the following two conditions:
- they are revenues that are attributable to an in-scope business activity (see Chapters 3 and 4)
  - the revenues are linked to the participation of UK users
- 5.2 This section covers the meaning of revenues linked to the participation of UK users.

### Meaning of a user

- 5.3 The government intends to define a user broadly, so the meaning of user will include an individual, a company or any other legal person that participates with an in-scope business activity.
- 5.4 In most cases the government anticipates that the DST rules will not need to make specific reference to the nature of a user, or the capacity in which a user is operating.
- 5.5 For instance, consider an online marketplace which matches a company selling a good in the course of its business with an individual purchasing a good. Both parties are considered users for the purposes of the DST.
- 5.6 Alternatively, consider an individual who views an advert on a search engine while at work, performing a search as part of a business function.
- 5.7 The revenues generated by that advertising are still in scope of the DST.

**Question: Do you have any observations on the proposed approach to defining a user?**

### Meaning of revenue linked to the participation of a user (UK revenues)

- 5.8 The overall objective is to focus on revenues, from in-scope business activities, that have been facilitated by the engagement and participation of a UK user base rather than a non-UK user base.
- 5.9 The government believes that this objective can be realised through the following approach:

- Social media platform: a social media platform may generate revenue from online advertising displayed at users. In this case UK revenue will be considered revenue from advertising that is targeted at UK users or has involved a UK user action e.g. a click. Equally it could be that the platform charges a subscription fee for monthly/annual access. In this case UK revenue will be considered revenue from UK user subscription payments.
- Search engine: normally a search engine will monetise user engagement through online advertising. Much like a social media platform, UK revenue will be considered revenue from advertising that is targeted at UK users or has involved a UK user action e.g. a click.
- Online marketplace: a marketplace may generate revenues by charging commission, taking a share of any payment for a certain good or service, or charging a delivery fee. In these cases UK revenue will be considered to be revenue (whether that be a commission fee, consideration share or delivery fee) that results from a transaction involving a UK user. It may also be that a marketplace generates revenue through advertising, potentially alongside taking commission. In this case UK revenues will be revenues from advertising that is targeted at UK users or situations where a UK user has performed an action that gave rise to advertising revenue.

5.10 In summary, where revenue is derived from online advertising, UK revenue will be defined as revenue from adverts displayed at UK users. Where revenue is derived from other forms (e.g. subscription, commission etc.) the question will be whether the payment comes from a UK user, or relates to a transaction that involves a UK user

## Meaning of a UK user

### Basic approach

- 5.11 The approach outlined above relies on the concept of a UK user.
- 5.12 As an overarching principle, a user will be considered a UK user if they are normally resident in the UK and thus primarily located in the UK when participating with the relevant business activity.
- 5.13 The government will however allow businesses to take different approaches to identifying user location, based on their activities and the way in which they generate revenue.
- 5.14 For example, if a search engine generates revenues from displaying online advertising, it may be able to determine user location based on the country to which it is intending to deliver that advertising or the IP address of the user.
- 5.15 Alternatively, a marketplace taking commission on an exchange of goods will generally be able to identify user location by reference to the payment details, delivery address, or other customer information that has been provided.
- 5.16 In each case the requirement will be that the assessment is undertaken on a just and reasonable basis, having regard to the facts.

- 5.17 As with other areas of detailed design, the government will explore the role for more mechanical rules to define user location. This could include defining certain information required to evidence user location.
- 5.18 But it is conscious the appropriateness of such rules would vary by business and that the impact of new information requirements needs to be balanced against the need for rules that are as simple and certain as possible.

### More challenging cases

- 5.19 Generally, the government expects that businesses will have a good understanding of the location in which a service is performed given that analysing where users are participating with their platform is essential to these business models.
- 5.20 However, it recognises that there could be difficult cases that need further consideration. Those include:
- cases where the intended destination of advertising is unclear e.g. where user location is not actively tracked
  - cases where there is contradictory evidence of user location e.g. a difference between intended destination of advertising and the IP address of the user viewing the advertising
  - cases involving users who are mobile across borders e.g. a user who travels for work while participating with a social media platform
  - cases where the initial payment or registration of a user occurs while they are travelling e.g. if a user normally located in the UK signs up for a service while on holiday
  - cases where participation is unclear in the case of a legal person e.g. if a company located abroad purchases access to a social media platform on behalf of UK employees
- 5.21 In each case the expectation will be that businesses make a just and reasonable apportionment, having regard to the facts.
- 5.22 Nonetheless, the government welcomes businesses' views on these issues and wants to ensure the final legislative approaches taken for dealing with them are proportionate and reasonable.
- 5.23 It is also interested in hearing further suggestions about how to provide businesses with sufficient certainty that their approach to identifying user location, and their approach to other areas of the tax computation e.g. revenue apportionment, are acceptable.

**Question: Do you think the proposed approach for determining user location for the purpose of the DST is reasonable?**

**Question: Do you think there is a need for mechanical rules to determine what is considered a UK user in certain circumstances?**

### Cross-border transactions

- 5.24 There will be cases where a transaction involves a UK and a non-UK user.

- 5.25 This can be most easily demonstrated in an online marketplace, whereby a business located in Country X sells a widget to an individual located in the UK.
- 5.26 This could also be the case in the opposite direction i.e. a business in the UK selling a widget via a marketplace to an individual located in Country X.
- 5.27 The revenues generated by the marketplace from these transactions are taxable under the DST. This reflects that a UK user is still contributing value to the marketplace, regardless of whether the UK user is just one side or both sides of the transaction. In the absence of a DST, the value contributed by that user would not be recognised in determining UK taxable profits of the marketplace platform.
- 5.28 The government recognises however, that other countries may introduce a similar tax and as a result it would lead to these revenues being either fully or partially taxed twice.
- 5.29 In those circumstances, the government would intend to negotiate an appropriate division of taxing rights with the other countries which are also implementing a DST.

**Question: Are there any other circumstances where the treatment of cross-border transactions needs to be clarified?**

# Chapter 6

## Rate and de minimis thresholds

### Rate

- 6.1 The Digital Services Tax (DST) will have a rate of 2%.
- 6.2 This rate will apply to all revenues attributable to in-scope business activities where those revenues are linked to the participation of UK users.
- 6.3 The level of the rate is designed to ensure digital businesses pay tax reflecting the value they derive from UK users, but also to acknowledge the need to be proportionate given the DST is a tax on revenues not profits.

### Threshold and allowance

- 6.4 To become taxable under the DST a business would need to meet the following conditions on an annual basis:
  - generate more than £500 million in global revenues from in-scope business activities
  - generate more than £25 million in revenues from in-scope business activities linked to the participation of UK users (i.e. UK revenues)
- 6.5 Businesses that meet these thresholds will not have to pay tax on the first £25 million of their UK revenues.
- 6.6 These thresholds will ensure that the DST, reflecting its interim nature, only applies in cases where the value derived from users is material to a business.
- 6.7 The thresholds are also based on an expectation that the value derived from users will be more material for large digital businesses, which have established a large UK user-base, and generate substantial revenues from that user base. Consistent with the OECD's interim report, the thresholds also ensure that the DST does not place unreasonable burdens on small businesses and scale-ups.
- 6.8 The thresholds and allowance will apply on a group-wide basis, not on a per business activity or per company basis. The government will be considering rules to deal with businesses that cross the threshold from one year to the next.

### Application to legal entities

- 6.9 The expectation is that in-scope business activities, generating revenues that exceed de-minimis thresholds, will be undertaken by corporate groups, or incorporated businesses.

- 6.10 However, to ensure fairness and avoid distorting operating structures, the government does not intend for the DST to be limited to activities undertaken by corporates.
- 6.11 Instead the DST will be applied to taxable revenues from in-scope business activities that are undertaken within either an incorporated or unincorporated business.
- 6.12 The government welcomes views on this during the consultation.

**Question: Do you have any comments on this chapter, and are there any other issues the government needs to consider in relation to the rate, thresholds or allowance?**

# Chapter 7

## Safe harbour

### Overview

- 7.1 The Digital Services Tax (DST) is a tax on gross revenues.
- 7.2 However, as set out in its position papers, the government acknowledges that revenue-based taxation can pose challenges under certain circumstances.
- 7.3 This includes when businesses are either loss-making or have very low profit margins.
- 7.4 In these circumstances, there is a risk that a DST becomes disproportionate relative to a business's ability to pay, or has other disproportionate impacts on business sustainability.
- 7.5 To ensure the DST is levied in such a way that it will remain proportionate for businesses with very low profit margins, the government intends to include a safe harbour within its design.
- 7.6 The safe harbour will allow businesses to elect to make an alternative calculation of their tax liability under the DST. This is intended to only be of value to those with very low profit margins or those making losses.
- 7.7 The DST has the primary character of a tax on gross revenues. This means the safe harbour cannot become the default way for most taxpayers to meet their DST liability, but rather should be a limited feature of the tax to ensure it does not place disproportionate burdens on those with low margins.
- 7.8 The government intends to consult carefully to ensure it has the intended effect.

### Calculation of the safe harbour

- 7.9 Businesses will be able to calculate their DST liability according to the following formula:

$$\text{Profit margin} * \text{in scope revenues (less allowance)} * X$$

- 7.10 The government intends to set X at a level where the safe harbour is only of benefit to businesses with very low profit margins, for whom the full rate of DST would be disproportionate.
- 7.11 It believes that X should be set at a minimum level of 0.8, and will consult on the appropriate level for X subject to that parameter. The profit margin will have a floor of 0%.

- 7.12 To illustrate how the safe harbour will work in practice, consider a social media platform that has global revenues of £600 million and £100 million of those revenues are linked to the participation of UK users.
- 7.13 Under the normal rules the social media platform would pay, after deduction of the £25 million allowance, £1.5 million in DST (£75 million \* 2%)
- 7.14 However, now consider the social media platform has a profit margin of 1% as calculated under the appropriate safe harbour legislative provisions.
- 7.15 It could then elect to pay DST of £0.6 million ( $1\% * £75 \text{ million} * 0.8$ ) instead under the safe harbour provision.

## Profit margin

- 7.16 The government believes the key consideration in designing the safe harbour is the profit margin which forms the basis of the safe harbour calculation.
- 7.17 It thinks the most coherent and proportionate option would be to base the safe harbour on a UK and business activity-specific profit margin.
- 7.18 This would help ensure that the profit margin reflects the performance of the business within the UK, and hence more accurately reflects the value created by UK users.
- 7.19 It will also ensure that the profit margin is not distorted by decisions made in relation to other markets or business activities unrelated to the DST.
- 7.20 In setting a UK and business activity-specific profit margin for the purposes of the safe harbour calculation, the government believes there are a number of issues that need to be considered:
- Costs: the profit margin would be based on the profit made on revenues derived from UK users, irrespective of where that profit is realised in the global group. As a result, there would need to be an agreed approach on which costs were allowable for the purposes of calculating the profit margin, and how to allocate global or regional overheads to UK specific revenues.
  - Timing: if a profit margin was UK and business activity-specific there would need to be agreement as to what period the profit margin related to, including whether it was anticipated profit for an accounting period, or a margin relating to a previous accounting period.
  - Multiple business activities: for businesses which provide more than one in-scope business activity to UK users (e.g. a social media platform and online marketplace) there would be a need to decide on what basis the profit margin would be calculated and presented.
  - Other effects: to ensure the profit margin is a consistent measure of performance the government believes it should likely exclude exceptional items. To avoid circularity, the profit margin will also need to exclude the tax cost of the DST.

- 7.21 The main alternative to a UK and business activity-specific profit margin would be to use some measure of a group's global consolidated profit margin.
- 7.22 While this would be a simple approach that has the benefit of relying on public accounts information, it would be a less accurate measure of in-scope business activity performance and the value created by UK users.
- 7.23 The government would like to explore the practical questions relating to the profit margin further during the consultation.

## Election and timing

- 7.24 The government intends to make use of the safe harbour subject to an election.
- 7.25 The duration of the election, and its revocability will be considered as part of the consultation process.
- 7.26 In electing to use the safe harbour, it is proposed that businesses will need to provide information to HMRC to evidence their stated profit margin, including the supporting calculations.

**Question: Do you agree that the safe harbour should be based on a UK and business activity-specific profit margin?**

**Question: What approach do you think the government should take in relation to the issues identified in determining a UK and business activity-specific profit margin?**

**Question: Are there other elements of how the safe harbour would operate that need to be clarified?**

# Chapter 8

## Deductibility and crediting

### Deductibility

- 8.1 It is not proposed to introduce new rules enabling or denying businesses a deduction for Digital Services Tax (DST) liabilities against their profits for Corporation Tax (CT) purposes.
- 8.2 That means that a business would normally have an allowable expense for DST where:
- it is a business subject to CT that recognises revenues that are subject to DST
  - the DST is shown in its accounts as an expense
  - the expense is incurred wholly and exclusively for the purposes of its trade
- 8.3 So whether an allowable expense is achieved will depend on the facts and circumstances of each taxpayer, in particular the nature of the activities carried on in the UK.
- 8.4 The examples below show the key considerations will be the division of functions and activities across the group, and the closeness of the relationship between the revenues received and DST.

### Example 1 – Revenue realised by a UK principal company

- The DST is likely to be an allowable expense where the revenues subject to the DST are realised in a UK-resident principal company whose trade is that of the in-scope business activity.
- Consider Company A and Company B. They are part of a group that operates a search engine and are UK resident. Company A earns revenue from selling advertising that it targets at users of the search engine. Company B provides routine services to Company A in return for a small fee over and above its costs.
- Company A will be liable to DST on its advertising revenues linked to the participation of UK users (assuming it exceeds the relevant thresholds). The DST liability will then likely be recognised as an expense in its accounts.
- In this scenario, the government anticipates that Company A will be able to deduct the cost of that DST expense against its trading profits as it is wholly and exclusively incurred for the purpose of its trade, which is the

provision of a search engine. Company B will not be liable to DST, so has no DST expense.

### **Example 2 – A UK service provider to a foreign principal company**

- Consider a case with the same facts as Example 1, except that Company A is not resident in the UK and is not chargeable to UK Corporation Tax. It consequently cannot get a UK tax deduction for the DST expense recognised in its accounts.
- As Company B earns its revenues from providing services to another group company, it does not receive revenues attributable to the business activity of operating a search engine and will not be liable to DST. It would not therefore be expected to have a DST expense.
- Even if Company B paid DST on behalf of the group, and this was included as an expense in its accounts, it would be unlikely to qualify as an allowable expense for CT. This is because DST would have been incurred for the purposes of another group member's trade rather than its own trade of providing intra-group services.

### **Example 3 – Revenue realised by a UK distributor for a foreign principal company**

- Some UK companies receive revenue attributable to the business activity, but carry out limited activities themselves.
- Consider Company C and Company D which are part of a group that operates a social network. Company C takes the strategic decisions, and manages the important risks, relating to the operation of the social network in the EU. It is not UK resident.
- Company D is a UK resident company that generates revenue as an advertising reseller on behalf of the group but bears limited risk. It receives a small margin and passes most of the advertising revenue back to Company C.
- Company C's profits are not chargeable to UK CT and consequently there can be no allowable expenditure against UK CT for this company. However, in this example, Company D's advertising revenues are attributable to an in-scope business activity and subject to DST.
- On the assumption that DST is included as an expense in the Company D's accounts, it is likely to qualify as an allowable expense for the same reasons as given in the first example.
- Company C and Company D will need to review their arrangements to ensure they still reflect what would happen at arm's length. Having considered the full facts, it may be that an adjustment to the pricing of the services provided by Company D is required to reflect the additional cost of the DST expense. That might mean that, despite the deduction for the costs of the DST, the taxable profit of Company D in the UK remains unchanged.

- 8.5 Collection of the tax from a UK company on behalf of the group will not of itself affect the amount of allowable expense for Corporate Tax purposes.

**Question: Do you agree with the government's characterisation on the circumstances of when the DST will be a deductible expense for UK corporate tax purposes? Are there other issues that require further clarification?**

## Crediting

- 8.6 The government does not intend to make DST creditable against UK CT.
- 8.7 The government considers that a credit would not assist in delivering the policy aims for DST.
- 8.8 The rate of the tax has already been set at a level which the government believes, alongside the safe harbour, will achieve a proportionate and fair outcome.
- 8.9 Additionally, DST is not a tax within the scope of the UK's double tax agreements, and so is not subject to the credit or exemptions provided for by those agreements.

# Chapter 9

## Review clause and global reform

### Link to the international process

- 9.1 The government has set out that the long-term solution to this challenge is global reform. It therefore intends for the Digital Services Tax (DST) to be a temporary tax, to be replaced by a global solution.
- 9.2 As set out in its March 2018 position paper update, the government thinks the international tax system needs to be reformed to reflect the value created by users for digital businesses.
- 9.3 The government has set out a detailed framework for how such reform could be achieved, focusing on the need to change Articles 5, 7 and 9 of the OECD Model Tax Convention, and the associated guidance on transfer pricing and profit attribution.
- 9.4 The government will continue to work at the OECD and G20 to reach agreement. It acknowledges that this will inevitably involve an element of compromise, but it is clear that the challenges posed by digital businesses for the corporate tax system must be addressed.
- 9.5 Reflecting that commitment, the government will, in the event an appropriate international agreement is in place, assess whether the DST is still needed as a response to this policy challenge, with the presumption that it would be dis-applied.

### Review clause

- 9.6 Given the timing of any international agreement is uncertain, the government thinks there is a case to include a review clause in legislation.
- 9.7 This would underline the commitment to reassess the DST in light of any international agreement, and oblige the government to analyse the effect of the DST once it has been in operation a number of years.
- 9.8 A review clause would therefore state that the application of the DST would be reviewed by the government in 2025. The government would then report to Parliament on whether the DST still represented a fair and effective response to this policy challenge, taking into account the progress in international discussions.
- 9.9 Parliament would then need to take separate action, through a Finance Bill, to give effect to any decisions on the DST arising from the review.

**Question: Do you have any observations on the proposed review clause?**

# Chapter 10

## Interaction with international obligations

### Overview

- 10.1 The government was clear in its position papers that it would only implement an interim Digital Services Tax (DST) in a way that was consistent with its international obligations.
- 10.2 The government is confident that the proposal set out in this document is consistent with those obligations, and will ensure any changes made to the design or administration of the DST in response to the consultation do not change that.

### Tax treaties

- 10.3 Some countries have questioned the compatibility of digital services taxes with double tax treaties.
- 10.4 There are two relevant considerations for the UK DST.
- 10.5 The first is whether the DST is discriminatory and thus inconsistent with the non-discrimination provisions that are included in most double tax agreements.
- 10.6 The second is whether the DST is an income tax and thus subject to the constraints that treaties impose on how income taxes can be applied to non-resident companies.

### Non-discrimination

- 10.7 Article 24 of the OECD Model Tax Convention (MTC) sets out a model approach for drafting a non-discrimination provision in double tax agreements.
- 10.8 That article prevents a country from imposing taxes “of every kind and description” that discriminate against nationals of the country with whom they are entering into an agreement i.e. the other Contracting State.
- 10.9 That includes taxes that discriminate against companies parented in the other Contracting State or taxes that discriminate against local permanent establishments of companies that are resident in the other Contracting State.
- 10.10 The DST does not discriminate against non-resident businesses.
- 10.11 The DST will be imposed on revenues from certain digital business activities, irrespective of where the company recognising those revenues is resident,

where the company's group parent is located and where the activities of the group leading to the generation of revenue are undertaken.

## Income tax

- 10.12 Double tax treaties set out the circumstances in which a country is entitled to tax the income of businesses that are resident in the other Contracting State.
- 10.13 They also impose limitations on the amount of income that can be taxed in these circumstances.
- 10.14 The model approach to defining a covered tax, to which these provisions apply, is set out in Article 2 of the MTC.
- 10.15 The definition within that article covers income taxes listed by the Contracting States (e.g. Corporation Tax), taxes that are identical and substantially similar to those listed taxes, and more generally taxes on income or capital.
- 10.16 Given that the DST is not a listed tax, and not identical or substantially similar to any listed taxes, the question is whether the DST meets the general definition of a tax on income.
- 10.17 The MTC commentary does not include a definition of an income tax, or a definition of the term income.
- 10.18 However, income is commonly understood to be a measure of the net accretion to a taxpayer's economic wealth between two points in time, which is generally calculated by taking a measure of the taxpayer's gross receipts and then deducting relevant costs and expenses incurred in generating those receipts.
- 10.19 The DST will not meet such a definition.
- 10.20 It will be a tax on the gross receipts from certain digital business activities, that only takes account of the costs incurred in generating those revenues in the application of the safe-harbour provision, which will only apply in exceptional cases where the tax could otherwise have a disproportionate effect.
- 10.21 It has been noted that there are examples of taxes applied to gross receipts that are nonetheless determined to meet the definition of an income tax.
- 10.22 However, the government believes that this is only the case where the taxation of gross receipts is designed to approximate and substitute for the taxation of income i.e. the tax on gross receipts is a tax in lieu of income.
- 10.23 That might for example be the case where a country, perhaps for administrative reasons, allows certain taxpayers to pay a lower rate of tax on a simplified measure of income under which only limited costs are deductible.
- 10.24 It is also the case for withholding taxes on royalties and fees for technical services, which clearly form part of countries' approach to taxing income, as evidenced by the fact that: (a) they are not applied to payments to local residents that are taxed directly on income from such sources; and (b) they

are typically creditable against a tax liability of the recipient that has been calculated on the basis of net income.

10.25 Despite the DST being justified on concerns regarding the corporation tax system, the government does not believe that the DST can be classified as a tax in lieu of corporate tax given that it will apply separately to, and not in place of, corporate tax.

## OECD principles

10.26 More broadly, the government has also sought to design the DST by reference to the principles set out in the OECD's interim report to the G20 on tax and digitalisation, including that it be:

- compliant with international obligations: this includes ensuring that the DST does not conflict with tax treaties and does not discriminate between resident and non-resident businesses
- temporary: this includes the commitment that the government will reassess the DST in light of international agreement; and also the inclusion of a review clause to take effect in 2025
- targeted: the tax will apply to a narrow range of business models which derive significant value from user participation, and often monetise user participation through the services discussed in the OECD report: advertising and intermediation
- minimises over taxation: the DST will be a deductible expense and the government has included a safe harbour to acknowledge the potential effects of revenue-based taxation
- minimises impact on small businesses: the DST includes material thresholds, which means small businesses will not need to pay the tax
- minimises cost and complexity: the government is committed to ensuring that the application of the DST is predictable and administrative costs are minimised. This consultation forms part of meeting that commitment.

10.27 This reflects the government's commitment to ensuring that the DST is a proportionate interim solution. The government will continue seeking a global solution as a long-term replacement.

# Chapter 11

## Reporting

### Overview

- 11.1 To minimise additional compliance burdens on affected businesses, the administrative, reporting and compliance framework for the Digital Services Tax (DST) will be aligned with the existing Corporation Tax framework.
- 11.2 This is because the businesses affected by the DST should be familiar with Corporation Tax rules and processes.
- 11.3 This section sets out the main administrative rules and how the government intends to operate the new tax. It focuses on these rules as they apply to corporates, and welcomes businesses' views on whether other arrangements are likely to be needed to deal with non-corporate entities.

### Chargeable entity and liability

- 11.4 All businesses that receive relevant revenues will be chargeable to the DST where the business performs activities which satisfy at least one of the defined in-scope business activities and the business's revenues exceed the relevant thresholds.
- 11.5 There will consequently be two discrete steps in determining whether a business is chargeable to the DST.
- 11.6 The first will be to consider the worldwide business as a whole. For a corporate business, this will mean determining:
  - whether the activities of a corporate group, or entities included within the group, match the activities defined as in scope of the DST
  - whether the group's global revenues from in-scope business activities exceed £500 million per annum
  - whether the group's UK revenues from in-scope business activities exceed £25 million per annum
- 11.7 If these conditions are satisfied, the second step is that each company in the group will then need to determine the amount of taxable revenues it receives.
- 11.8 This will involve identifying whether the company has revenues from an in-scope business activity which are linked to the participation of UK users.
- 11.9 Each company that has such revenues will be chargeable to the DST and will need to notify HMRC that it is liable to DST.

- 11.10 This will be the case irrespective of whether a company is resident in the UK or has a UK permanent establishment.
- 11.11 The government is considering requiring the business to jointly nominate a single company to act on behalf of the chargeable companies in the worldwide group in respect of their DST liabilities and obligations. This is discussed in more detail in Chapter 12.
- 11.12 All companies in the group will be jointly and severally liable for the DST liabilities of members of that group.

**Question: Do you foresee any difficulties for individual entities to calculate whether the worldwide group is in scope, and if so, how could they be overcome?**

## Reporting Periods

- 11.13 The government's preferred approach is that the DST will be reported annually using Corporation Tax rules as a framework for determining the period covered by the return.
- 11.14 The government believes annual reporting will reduce the reporting requirements of each company as global consolidated figures will only need to be collated annually. It will also ensure that the revenues reported will be based on information contained in annual financial statements.
- 11.15 An alternative approach could be to use quarterly reporting periods.
- 11.16 However, the government believes this would introduce greater volatility due to seasonal fluctuations in revenue.
- 11.17 Quarterly filing will also require more returns to be made to HMRC, with potentially further intra-period adjustments required.
- 11.18 On balance therefore, the government favours annual reporting periods following the rules that already exist for Corporation Tax.
- 11.19 This means the Accounting Period (AP) for the DST cannot be longer than 12 months and will normally be the same as the period covered by the company's annual accounts.
- 11.20 Similar rules to those used in Corporation Tax will ensure that accounting periods continue to align with company financial accounts when there are changes to the company's accounting periods.
- 11.21 It is possible that there will be companies chargeable to the DST in a worldwide group with different accounting periods. The interaction with the nominated company regime is discussed in Chapter 12.

**Question: Do you agree that the DST should be reported annually?**

**Question: Do you see any difficulties applying the CT rules for accounting periods for DST, and if so how could they be overcome?**

## Reporting requirements

11.22 A company liable to DST will be required to self-assess its liability and provide HMRC with its DST return by the end of the calendar year following the end of the Accounting Period.

11.23 This return will include:

- revenue from the in-scope business activities which are linked to the participation of UK users i.e. UK revenues
- UK revenues less allowance
- whether making safe harbour election and a stated profit margin
- the DST liability

11.24 Consideration is also being given to the case for requiring the provision of:

- aggregate global revenue from the in-scope business activities
- global revenue from the in-scope business activities broken down as necessary if a company operates more than one in-scope business activity

11.25 Figures reported to HMRC should be in Pounds Sterling.

11.26 If revenue is received in another currency the figure should be converted at an exchange rate which is in accordance with generally accepted accounting practice.

## Registration requirements

11.27 All companies liable to DST will be required to notify HMRC of the start of their first DST Accounting Period within 3 months of that date.

**Question: Are there any other issues relating to reporting the government should consider?**

# Chapter 12

## Payment and compliance

### Payment deadlines

- 12.1 Businesses will make DST payments quarterly according to the same payment schedule as Very Large Corporate Quarterly Instalment Payments.
- 12.2 The government believes it is appropriate for groups to make regular payments because the DST is a tax on revenues and the groups in scope are likely to have significant cash flows.
- 12.3 Typically, where the Accounting Period is 12 months the instalment payment dates will be as follows:
- the first payment will be due 2 months and 13 days after the beginning of the AP
  - the second payment will be due 3 months after the first
  - the third payment will be due 3 months after the second
  - the final payment will be due 3 months after the third
- 12.4 The instalment payments will therefore be due on the 14th day of months 3, 6, 9 and 12 of the AP.
- 12.5 The payment dates will be adjusted accordingly when the accounting period is less than 12 months. These rules will follow the arrangements for Corporate Tax.
- 12.6 Credit and debit interest will operate in the same as the Corporate Tax framework for over and underpayments of instalments, and late and repayment interest may also be due.

**Question:** Do you agree that mirroring the CT framework is the correct approach to minimise the compliance burden? If not do you have a preference for an alternative framework and can you give details of why this is preferred.

### Nominated entity

- 12.7 The government can see benefits in allowing the business to jointly nominate a single company to act on their behalf in respect of their DST liabilities and obligations.
- 12.8 The government believes this will reduce the compliance burden for groups by reducing the number of returns groups need to submit.

- 12.9 If the government did pursue this option, the Nominated Company would report the group's DST liability and assume primary responsibility for all correspondence with HMRC.
- 12.10 It would be entitled to make payment on behalf of the companies covered by the nomination, but this would not be a legal requirement.
- 12.11 The companies covered by the nomination would continue to be chargeable to DST. However, their obligations to notify and submit returns would be discharged when the Nominated Company fulfils these requirements on their behalf.
- 12.12 All entities would also continue to be jointly and severally liable for the payment of that liability, as well as any penalties or interest charges from late or inaccurate reporting or payment.
- 12.13 As part of its assessment of this option, the government is also considering mandating that the ultimate parent company of the worldwide group must nominate a Nominated Company. It would therefore be a mandatory requirement.
- 12.14 This is because the government recognises there could be difficulties for companies (and nominated companies) accessing sufficient information to determine whether the worldwide group is in scope (Step 1 of the calculation referred to in Chapter 11).
- 12.15 Recognising this challenge, and to encourage nomination, the government is considering the option of making the allowance contingent on the making of a valid nomination.
- 12.16 By placing an obligation on the parent company to nominate, the government believes that this will encourage the parent company to make available the information necessary for chargeable companies to comply with their DST obligations.
- 12.17 There would also be certain requirements for a nomination to be valid, which are intended to provide adequate assurance that the nominated entity will be able to comply with its obligations.
- 12.18 The nomination statement would need to be signed by a representative of each entity covered by the nomination. These entities and the details of their registered office would also be included.
- 12.19 Nominating companies would need to agree to provide the Nominated Company sufficient information to allow it to respond to reasonable requests from HMRC about the group's DST liability.
- 12.20 The government does not propose to restrict the availability of the nomination to companies with the same AP as the Nominated Company. However, it recognises this could introduce complexity so would like to hear views on whether this could cause problems and how these might be resolved.

**Question: Do you agree that allowing a Nominated Company to act on behalf of the group will reduce the compliance burden?**

Question: Do you foresee any difficulties with the Nominated Company calculating DST liability on behalf of the whole group?

Question: Are there any practical issues around the Nominated Company accessing information from the rest of the group?

Question: Would specific rules be needed for companies whose AP does not coincide with the Nominated Company's AP?

## Commencement

- 12.21 DST will apply to relevant revenues received in accounting periods ending on or after 1 April 2020.
- 12.22 Where a company's accounting period straddles this date the company will be required to create two deemed accounting periods covering the periods before and after 1 April.
- 12.23 Revenue will be apportioned between the two deemed accounting periods in accordance with GAAP, unless such a result would produce an unjust or unreasonable outcome.
- 12.24 In this instance, the company would need to apportion the revenues between the two periods on a just and reasonable basis.

## Anti-Avoidance

- 12.25 The government is considering introducing two targeted anti-avoidance rules.
- 12.26 The first would be an anti-forestalling rule designed to address the risk that taxpayers accelerate the recognition of revenue before the 1 April 2020 so it is outside the scope of the DST.
- 12.27 The second would prevent taxpayers artificially re-characterising revenue streams so they fall outside the relevant business activity.
- 12.28 The rule would only apply when in substance the revenue remains attributable to the business activities within the scope of the tax, and a main purpose of the re-characterisation is to avoid the DST.
- 12.29 The government welcomes views on avoidance risks generally, and how these should be minimised.

Question: Do you have any observations on either of the proposed anti-avoidance provisions, or other avoidance risks?

## Compliance

- 12.30 The government anticipates that some non-resident businesses, including those with non-resident companies without a UK permanent establishment could be liable to DST.
- 12.31 All entities in the business will be jointly and severally liable for the DST liability of the business's members.

- 12.32 The government therefore expects businesses to comply voluntarily with the DST as they would for any other UK tax obligation.
- 12.33 Nonetheless, the government is considering introducing new penalties for the DST as a preventative measure.
- 12.34 The government therefore welcomes observations on whether additional compliance obligations are needed or if the steps set out earlier in this chapter will be sufficient.

**Question: Do you think it will be necessary to introduce additional rules to ensure compliance with the tax?**

# Chapter 13

## Assessment of impacts

### Summary of impacts

| Exchequer impacts (£mn)   | 2019-20  | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|--|---------|---------|---------|---------|
|   | +5   | +275    | +370    | +400    | +440    |
| <b>Economic impact</b>  | This measure is not expected to have significant macroeconomic impacts.  |         |         |         |         |
| <b>Impact on individuals, households and families</b>               | This measure is not expected to directly impact on individuals, households and families. The measure is not expected to impact on family formation, stability or breakdown.  |         |         |         |         |
| <b>Equalities impacts</b>   | This measure is not expected to impact on any of the groups with protected characteristics   |         |         |         |         |
| <b>Impact on businesses and Civil Society Organisations</b>         | <p>The measure is expected to mainly affect large multinational businesses which operate search engines, social media platforms and online marketplaces. The thresholds mean that small businesses are not in scope of the tax.</p> <p>There is likely to be an initial burden in training and familiarisation with the rules. We hope to gather more information on the administrative impact through the consultation process.</p> |         |         |         |         |
| <b>Impact on HMRC or other public sector delivery organisations</b> | We anticipate there will be one-off and ongoing costs related to the administration of the tax for HMRC.   |         |         |         |         |
| <b>Other impacts</b>  | Other impacts have been considered and none have been identified at this stage. We would welcome views on this initial assessment of impacts.  |         |         |         |         |

Question: Do you have any comments on the summary of impacts?

# Chapter 14

## Next steps

### Responding to the consultation

- 14.1 The government recognises that the digital services tax is novel, both in approach and motivation, and is therefore committed to working with stakeholders to ensure it operates as intended.
- 14.2 The government would welcome comments on this consultation by 28 February 2019.
- 14.3 Responses can be sent by:
- Email: [dstconsultation@hmtreasury.gov.uk](mailto:dstconsultation@hmtreasury.gov.uk)
- Post: Corporate Tax Team, 1 Yellow, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

### Data protection notice

#### HMT consultations – processing of personal data

This notice sets out how we will use your personal data, and your rights under the Data Protection Act 2018 (DPA).

#### Your data (Data Subject Categories)

The personal information relates to members of the public, parliamentarians, and representatives of organisations or companies.

#### The data we collect (Data Categories)

Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions.

It is possible that respondents will volunteer additional identifying information about themselves or third parties.

#### Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

## Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the HM Treasury. The task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

## Who we share your responses with (Recipients)

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

## How long we will hold your data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

## Special data categories

Any of the categories of special category data may be processed if such data is volunteered by the respondent.

## Basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

## Your rights

- you have the right to request information about how your personal data are processed, and to request a copy of that personal data
- you have the right to request that any inaccuracies in your personal data are rectified without delay
- you have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- you have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted
- you have the right to object to the processing of your personal data where it is processed for direct marketing purposes

## Complaints

If you have any concerns about the use of your personal data, please contact us via this mailbox: [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

[casework@ico.org.uk](mailto:casework@ico.org.uk)

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

## Contact details

The data controller for your personal data is HM Treasury. The contact details for the data controller are:

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

020 7270 5000

[public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

The contact details for the data controller's Data Protection Officer (DPO) are:

DPO

1 Horse Guards Road

London

SW1A 2HQ

London

[privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

## **Consultation principles**

This consultation is being run in accordance with the government's consultation principles. The government will be consulting for approximately 16 weeks.

# Annex A

## Examples of business activities in scope

### Examples of business activities in and out-of-scope

A.1 Using the definitions of in scope business activities set out in Chapter 3 the government believes the following types of businesses are likely to fall in and out-of-scope of the DST.

#### Example 1 – social media platform

- Consider Company X which provides an internet based platform which allows users to upload personal content, communicate with other users via messages and to add/invite people to join the platform.
- Company X generates revenues from displaying advertising on the platform and typically earns revenue on a per click or per impression basis.
- Given the nature of its activities Company X would be in scope of the DST as it provides a social media platform, to the extent it generates revenues linked to the participation of UK users

#### Example 2 – online marketplace

- Company Y operates a platform that allows businesses to list widgets for sale.
- It then allows individuals or businesses to browse the site and purchase items from these third parties.
- Company Y generates revenue by taking commission from any payment between third parties, as well as advertising against the website.
- Based on these activities company Y would meet the definition of an online marketplace and fall within scope of the tax.

#### Example 3 – online marketplace

- Company Z operates a platform which allows businesses to list widgets for sale, and individuals or other business to browse the site and contact businesses to enquire about a purchase.
- All purchases take place away from the site itself and Company Z generates revenue by charging listing fees for businesses advertising their widgets on the site.
- Company Z would meet the definition of an online marketplace and would therefore fall within scope of the tax.

#### Example 4 – search engine

- Company F operates an internet-based platform which allows individuals to search the world wide web for specific interests or objects of interest by entering specific key words.
- The platform then displays results to users or allows users to access a website.
- Company F generates revenues by advertising against the result of user searches, be that a list of objects of interest; a specific website or some other form of content.
- Company F would meet the definition of a search engine and therefore be in scope of the tax.

#### Example 5 – online content

- Company G provides an internet based platform which allows users to watch popular television programmes.
- This includes programmes commissioned by the platform itself and those commissioned by third parties. The platform has long term contracts to buy content from third parties.
- The platform does not contain content generated by users of the platform.
- This would not meet the definition of an in-scope business activity so would not be taxable.

#### Example 6 – online sales of goods

- Company L makes white goods. It then sells these goods exclusively via its website to users located in the UK.
- Company L is the owner of the goods.
- It therefore does not meet the definition of an in-scope business activity and is not in scope of the tax.

#### Example 7 – social media platform

- Company G runs an internet-based platform that allows users to create profiles and seek to match with other users for the purpose of meeting other users in person to date and form relationships.
- Company G charges an annual subscription to users to access the platform. It would meet the definition of a social media platform and be in-scope.

#### Example 8 – data collection

- Company H manufacturers airplanes.
- To help support operational performance it places sensors on plane engines and uses the information collected from those sensors to inform engineering decisions.

- This indirectly leads to better engines and hence more revenues for the business.
- Company H is not undertaking one of the in-scope business activities, so is not taxable.

### Example 9 – data collection

- Company M produces clothing and footwear for the mass-market. It mainly sells these via physical stores but also via its website.
- Company M operates a loyalty card scheme. It collects data on user purchases via the loyalty card which is used to inform investment decisions and to advertise products at users.
- Company M does not undertake an in-scope business activity, so is not taxable.

# Annex B

## List of consultation questions

- 1 Question: Do you agree the proposed approach of defining scope by reference to business activities is preferable to alternative approaches?
- 2 Question: Do you have any observations on the proposed features used to describe the business activities in scope of the DST?
- 3 Question: Do you think the approach to scope negates the need for a list of exemptions from the DST?
- 4 Question: Do you have any observations on the boundary issues the government has identified or others it has not identified?
- 5 Question: Do you have any observations on the proposed approach for attributing revenues to business activities?
- 6 Question: Do you think there is a need for mechanical rules to guide apportionment in certain circumstances?
- 7 Question: Do you have any observations on the proposed approach to defining a user?
- 8 Question: Do you think the proposed approach for determining user location for the purpose of the DST is reasonable?
- 9 Question: Do you think there is a need for mechanical rules to determine what is considered a UK user in certain circumstances?
- 10 Question: Are there any other circumstances where the treatment of cross-border transactions needs to be clarified?
- 11 Question: Do you have any comments on this chapter, and are there any other issues the government needs to consider in relation to the rate, thresholds or allowance?
- 12 Question: Do you agree that the safe harbour should be based on a UK and business activity-specific profit margin?
- 13 Question: What approach do you think the government should take in relation to the issues identified in determining a UK and business activity-specific profit margin?
- 14 Question: Are there other elements of how the safe harbour would operate that need to be clarified?
- 15 Question: Do you agree with the government's characterisation on the circumstances of when the DST will be a deductible expense for UK

corporate tax purposes? Are there other issues that require further clarification?

- 16 Question: Do you have any observations on the proposed review clause?
- 17 Question: Do you foresee any difficulties for individual entities to calculate whether the worldwide group is in scope, and if so, how could they be overcome?
- 18 Question: Do you agree that the DST should be reported annually?
- 19 Question: Do you see any difficulties applying the CT rules for accounting periods for DST, and if so how could they be overcome?
- 20 Question: Are there any other issues relating to reporting the government should consider?
- 21 Question: Do you agree that mirroring the CT framework is the correct approach to minimise the compliance burden? If not do you have a preference for an alternative framework and can you give details of why this is preferred.
- 22 Question: Do you agree that allowing a Nominated Company to act on behalf of the group will reduce the compliance burden?
- 23 Question: Do you foresee any difficulties with the Nominated Company calculating DST liability on behalf of the whole group?
- 24 Question: Are there any practical issues around the Nominated Company accessing information from the rest of the group?
- 25 Question: Would specific rules be needed for companies whose AP does not coincide with the Nominated Company's AP?
- 26 Question: Do you have any observations on either of the proposed anti-avoidance provisions, or other avoidance risks?
- 27 Question: Do you think it will be necessary to introduce additional rules to ensure compliance with the tax?
- 28 Question: Do you have any comments on the summary of impacts?





