



HM Treasury

Digital Services Tax: response to the consultation

July 2019

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Executive summary

At Budget 2018, the government announced that it would implement a Digital Services Tax (DST) from April 2020. The aim of the DST is to take interim action to acknowledge the value that certain digital business models derive from their participation and engagement with an active UK user base, pending reform of the relevant international tax rules.

The government consulted on the DST from 7 November 2018 to 28 February 2019. It received 79 responses and held a significant number of meetings with stakeholders.

This document summarises the feedback to the consultation and the government's response. Draft legislation and draft guidance are being published alongside this document and will now be subject to a technical consultation running until 5 September 2019.

Chapter 1

Introduction

Background

At Budget 2018 the government announced that it would implement a Digital Services Tax (DST) from April 2020.

The aim of the DST is to take interim action to acknowledge the value that certain digital business models derive from the participation and engagement of an active UK user base, pending reform of the relevant international tax rules.

The government set out that the DST would be a 2% tax on the revenues derived from providing a social media platform, search engine or online marketplace to UK users. It would only apply to businesses whose global revenues from these in-scope business activities are greater than £500 million and where more than £25 million of these revenues are derived from UK users.

In addition, in-scope businesses would not need to pay DST on their first £25 million of UK revenues, and would also have the option of using an elective 'safe harbour' provision.

The government published a consultation on the detailed design of the DST on 7 November 2018 which ran until 28 February 2019. A total of 79 responses were submitted to the consultation and the government also benefitted from a number of meetings with stakeholders.

This document provides a summary of the main issues raised by stakeholders in their written responses to the consultation, the government's proposed approach to legislating the DST and areas where it is still seeking input.

Consultation responses

Consultation responses covered both high-level issues such as the rationale for the DST and the relevant international context, as well as more detailed questions of tax design.

On the former, most responses acknowledged the challenges facing the international tax system, and there was broad support for the ongoing OECD process to seek a consensus-based international solution to the tax challenges arising from digitalisation by 2020.

In this context, some respondents cautioned about the risks of unilateral action and noted the challenges posed by revenue-based taxes. This led some to call for a postponement in the implementation of the DST, or to express a desire that it would only be in place for a short period of time.

On tax design, respondents raised a number of issues focusing on the approach to drawing the scope of the DST, the method of defining a UK user and the design of the safe harbour.

There was not always a clear consensus on these issues, with some respondents broadly agreeing with the government's proposed approach, but others proposing a series of alternatives.

Nonetheless, there were some common themes, particularly among business respondents. This included the benefit of setting up mechanisms to allow taxpayers to achieve greater certainty when assessing their liability, an emphasis on the importance of guidance in helping businesses understand the DST, and an acknowledgement of some of the technical challenges involved in calculating a DST liability (e.g. identifying user location).

Intended approach

The government intends to legislate for the DST to apply from April 2020 along similar lines to those set out in the consultation document. It believes this basic design will best deliver the policy intention of ensuring digital businesses pay UK tax reflecting the value they derive from user participation.

The DST will continue to be a 2% tax on the revenues businesses derive from providing a social media platform, search engine or online marketplace to UK users. These business activities will be set out in legislation, supplemented by guidance. Any revenue the group generates in connection with the provision of these activities to UK users will then be in scope of the DST.

The level of the allowance and the thresholds will remain at the same level as proposed in the consultation document. The DST will be deductible as a normal business expense but not creditable against UK Corporation Tax.

As mentioned in the consultation document, the government wishes to minimise the effects of a revenue tax on groups least able to pay it. Therefore, it will retain the safe harbour provision at the levels set out in the consultation document.

The government envisages that, based on the broad design, businesses will need to take the following steps when determining whether they have to pay the DST:

- assess whether any of the activities performed by a group are within the meaning of one or more of the in-scope activities: the provision of a search engine, social media platform or online marketplace
- determine the revenues that are generated in connection with those in-scope activities
- determine how much of that revenue is attributable UK users
- compare the revenues attributable to UK users (relevant revenues) with the revenue thresholds
- if they are above these thresholds the business will pay DST on its relevant UK revenues after the deduction of the allowance and any relevant safe harbour adjustments

These steps are set out in more detail in the rest of this document and the draft legislation.

Summary of key changes or policy decisions

The government is confirming its position on certain issues in this document, but also intends to make some changes to the proposed DST design to ensure it is proportionate and works effectively. It would highlight the following:

- Since the government announced the DST a number of other countries have signalled their intention to introduce Digital Services Taxes. This could result in marketplaces suffering double taxation on some cross-border transactions. The government intends to limit the revenue from a marketplace transaction that is charged to the UK DST where one of the users in relation to that transaction is located in a country which also has a DST that applies to marketplace transactions.
- The government acknowledges that the DST is a novel tax and businesses will require some time to familiarise themselves with the relevant legislation, and to perform the detailed calculations required by parts of the DST (e.g. the safe harbour). As a result, it intends to make the DST payable on an annual basis, rather than in quarterly instalment payments.
- The government intends to include a financial and payment services exemption in relation to providing an online marketplace in legislation, and welcomes further comments on the legislative detail of this exemption in responses to the next stage of the consultation.
- At Budget, the government stated its preference to use a UK profit margin in the safe harbour calculation but did not confirm this position. The government can confirm it intends to use a UK profit margin in the safe harbour calculation.
- The government is revising certain administrative provisions. The DST will now be calculated and reported at the group level in order to simplify administration. The group will be able to nominate a company to undertake the reporting obligations on behalf of the rest of the group. The DST liability and expense will remain with the entities that generate the underlying revenues subject to DST. This will ensure that businesses are able to apply the normal corporate tax rules to determine the DST deduction available against their UK taxable profits.

The government believes that these changes will help in supporting its overall objective for a tax that is targeted, proportionate and ultimately temporary.

Next steps

The government would like to thank respondents for their helpful and constructive engagement with the consultation.

Several of the issues raised by stakeholders related to the structure and detail of the legislation implementing the DST (or the associated HMRC guidance). The government therefore welcomes feedback on the draft legislation and guidance being published alongside this summary of responses.

There are also some remaining policy issues the government wishes to continue exploring over the next two months. These are indicated throughout this document.

The technical consultation will last until 5 September 2019 to inform final drafting and the preparation of further guidance. Details on how to respond to the consultation are in Chapter 9.

Chapter 2

Policy intent

General comments on policy motivation

- 2.1 In commenting on the detailed design of the DST, most respondents also took the opportunity to discuss broader issues such as the DST's policy aims and its link to the international G20/OECD process considering tax and digitalisation.
- 2.2 There was broad support among respondents for the OECD process and most noted recent developments, including the OECD's March 2019 public consultation on different options for global reform.
- 2.3 Many respondents suggested that this indicated the international process had renewed momentum and prefaced their comments on tax design by noting a desire that the DST either be postponed, or delayed indefinitely to allow more time for countries to reach global agreement. Others disagreed with this however, and agreed with or accepted the case for taking interim action now.
- 2.4 Respondents also discussed the policy motivation for the DST and the extent to which businesses derive value from user participation.
- 2.5 Some respondents agreed that user participation was a source of value that would ultimately need to be reflected in the international tax rules. However, other respondents questioned whether this was the case, or if it was, suggested it applied to a broader range of business models than identified in the consultation document.
- 2.6 Separately, a number of respondents raised concerns about revenue-based taxes, regardless of exact design. This included noting that revenue-based taxes can generate high effective rates of tax on profits, risked being economically distortive or could be passed on in prices to other businesses and consumers.
- 2.7 As a result, these respondents argued that the government should focus its efforts on changing the international rules governing the taxation of corporate profits.

Government response

- 2.8 The government has always maintained that the most sustainable long-term solution to the tax challenges arising from digitalisation – that avoids double taxation and supports cross-border trade – is reform of the international corporate tax rules.

- 2.9 It therefore strongly supports the OECD process and welcomes the recent steps to hold a public consultation and the agreement to a without prejudice programme of work to take forward a detailed examination of the different proposals for reform.
- 2.10 However, agreeing and implementing a detailed global solution will take time, given the need to resolve difficult technical issues and take account of different countries' concerns.
- 2.11 It's for that reason that the government took the decision to introduce an interim Digital Services Tax, acknowledging the policy challenges with revenue-based taxes, and recognising that those challenges can only be partly addressed through the tax's design.
- 2.12 The government is committed to dis-applying the DST once an appropriate international solution is in place.
- 2.13 The government is clear that such an international solution would need to address the specific policy concern that has been identified by the UK, and lead to a greater allocation of profit of highly digitalised businesses to the countries in which their users are located.
- 2.14 However, it also recognises the need to consider whether such a solution should have broader application, to ensure that it is sustainable and to address situations in which digitalisation might be allowing other businesses to participate in market countries in a way that is not recognised under the current international tax rules.

Chapter 3

Business activities in scope

Scope of the Digital Services Tax

Question 1: Do you agree the proposed approach of defining scope by reference to business activities is preferable to alternative approaches?

- 3.1 Respondents had differing views on the government's proposed approach to setting the scope of the DST.
- 3.2 A number of responses supported the indicated approach of drawing scope by reference to business activities, noting this was most consistent with the policy rationale and was better than the available alternatives which risked being poorly targeted.
- 3.3 However, some other respondents suggested the proposed approach should either be modified or changed altogether. This was motivated by various concerns including:
- that setting the scope of the DST by reference to business activities was too complex or ambiguous, and would make it difficult for businesses to know if they were in scope or not
 - that a business model approach (but also potentially other approaches) did not acknowledge the different degrees to which user participation creates value in different businesses
 - the risks that defining business activities would have broader application than intended, including to businesses which did not derive material value from user participation
 - the degree to which this would differ from DSTs being implemented in other countries, which would increase administrative burdens and the risks of double taxation
- 3.4 There was no consensus on alternative options but some examples were:
- Hybrid approaches: Combining two different approaches by only taxing certain revenue streams of certain business models. So, for example this would mean that marketplaces would be in scope but only taxed on the revenue they derived from commission fees, or a social media platform would be in scope, but only taxed on the revenue it derives from online advertising. Some respondents argued that this approach, or an approach where the way a business is monetised is taken more clearly into account, would ensure the DST was appropriately targeted but also make it easier for businesses to understand their potential liability.

- Subjective tests or revenue streams: the government identified two main alternatives in the consultation document and these both received some limited support from stakeholders. Some respondents thought a scope based on revenue streams (e.g. taxing revenue from online advertising) would be simpler and, if applied just to 'targeted' advertising, more aligned with a rationale based on user participation. By contrast, others argued the benefit of a more subjective approach was that it would give more scope to reflect the realities of individual business models and the extent to which they derived value from user participation.
- 3.5 Some respondents noted that the in-scope activities may need to be supplemented or changed over time to reflect business innovation, or that the scope of the DST should be expanded now to cover other digital business models.

Government response

- 3.6 The government still intends to draw the scope of the DST by reference to the business activities identified in the consultation document. It continues to believe this approach to drawing scope delivers outcomes that are most consistent with the underlying policy rationale.
- 3.7 While there may be a case for revenue-stream tests on the grounds of simplicity, the government notes that the in-scope business models often generate revenue in different ways, especially marketplaces (e.g. commission, listing fees, subscriptions, advertising).
- 3.8 It therefore believes isolating and taxing specific revenue streams would give rise to distortive outcomes whereby comparable businesses are treated differently and where businesses face strong incentives to change their commercial behaviour.
- 3.9 Equally, while the government understands the theoretical merit of an approach focused on examining the extent to which a business derives value from user participation, it continues to believe this approach would be too subjective and resource intensive.
- 3.10 However, the government recognises that the way a business monetises its platform, and the extent of interaction with and participation of its users, may in certain circumstances be useful indicators of whether a particular business model meets one of the definitions of an in-scope business activity. This has been reflected in draft guidance.

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

- 3.11 Stakeholders offered a number of different observations on the proposed business model features. These generally reflected the specificities of different business models and so are summarised by business activity below, but there were some general themes:
- some stakeholders thought the definitions should include a more subjective test to assess the degree to which a business derived value from user participation

- some respondents asked for more clarity on what was meant by certain terms within the definitions, for example ‘closely integrated functions’ or ‘indirect monetisation’
- many respondents suggested that the features would have wider application than intended. Others suggested that a business model approach would exclude businesses that should be in scope
- some respondents questioned whether a business would fall in scope if it undertook activities that met the characteristics of an in-scope business activity, but were ancillary to a business activity that was clearly out of scope
- some respondents questioned whether/how in-scope business activities would be isolated from other related activities e.g. a social media platform that operates an integrated messaging service

3.12 The main comments by business activity were then as follows:

Social media

3.13 Respondents raised a variety of concerns that the definition of social media could either be too broad, too narrow or have unintended consequences.

3.14 Some responses focused on noting that the definition and boundaries of a social media platform definition were uncertain and were interested in how it would apply to certain services, for example:

- The treatment of private communication services such as email, or the infrastructure that allows private communication to take place (e.g. telecommunications infrastructure). This was on the basis that these business models allow users to communicate with each other and share information and so matched some of the features set out in the consultation document.
- The treatment of cloud computing or software given these services may allow multiple users to collaborate on something like a document or a project, again involving a process of connecting users. Some had concerns this would be included, others had concern that this would not.
- There were different views on whether types of video gaming activities which largely focus on allowing users to interact with each other and encourage social interactions would fall in or out of scope, with different views on whether this was merited.
- Areas of journalism which relied on significant input from users, or allowed users to comment and share journalistic content.

3.15 Beyond these areas of uncertainty, some respondents questioned whether certain services identified as falling within the meaning of a social media platform should do so. This included dating sites on the basis that user interactions were said to be largely one-off or private, and that the platform typically monetised itself via subscriptions.

Search engines

3.16 There were some concerns about the meaning of a search engine.

- 3.17 Some respondents queried whether the term would cover search engines which are used only to search a single website e.g. a portal on an online newspaper which allows customers to search for old articles. Respondents also questioned whether it would include businesses which include some links to third party sites in search results but without that being intended as a core means of generating revenue.
- 3.18 There were also some questions about which entity would be considered to be operating a search engine in cases where a website had a search function which was powered by another third party.

Online marketplaces

- 3.19 Some stakeholders expressed caution about including marketplaces within the scope of the DST at all, or suggested that there should be an exemption for certain marketplace activities. There wasn't a consensus on what these should be but some examples are:
- that 'goods only' marketplaces should be excluded on the basis that these tend to be low margin activities and so a DST would be passed on in the prices of these goods
 - that business to business (B2B) marketplaces should be excluded on the basis that the concept of user participation applies less strongly in a B2B context where there is said to be less interaction between users or between the platform and users
 - that marketplaces which primarily monetise themselves through charging listings fees or that do not directly facilitate exchanges should be excluded
 - that marketplaces that connect purely UK or local users should be excluded on the basis that their activity was localised and so a concern about international corporate tax rules was less relevant to these business models
 - that the scope should generally make greater distinctions based on the degree to which a business derives value from user participation (by making a more subjective analysis of a business's features)
 - that some distinction should be made between marketplaces based on the level of control they exercise over marketplace participants and the risks that they assume in relation to transactions being intermediated
- 3.20 There were also some responses which sought more clarity on whether the definition of a marketplace would cover:
- platforms provided by franchisors which enable users to make online reservations/orders of certain goods/services from franchisees, on the basis this arrangement involved connecting independent third parties
 - codeshare and interline agreements between airlines, on the basis this may involve airlines selling seats on each other's flights through a digital platform
 - news aggregation platforms on the basis that these may display content from third parties

- 3.21 Respondents also expressed interest in how HMRC would assess the boundary between a marketplace and other types of activity such as the sale of own goods or services. Several noted that the focus of HMRC's approach would be on whether a business took title in a transaction, and challenged that this could be complex. A number of responses expressed concern about giving HMRC an ability to 'look through' something like flash title, as they thought this could generate significant uncertainty for businesses.

Government response

Broad approach

- 3.22 The government acknowledges that defining business activities poses challenges and businesses have raised a number of valid examples which will involve difficult judgements being made based on the facts and circumstances of a given activity. However, it thinks many of the challenges identified in responses are manageable based on the proposed legislation and a pragmatic and proportionate approach to implementation, as set out in the guidance.
- 3.23 The government has set out its proposed definitions in draft legislation, and has published draft guidance outlining how those definitions are expected to be applied in practice.
- 3.24 Broadly the approach aims to do the following:
- the legislation will objectively set out certain business activities, along broadly similar lines to the consultation document (although there are some differences in places)
 - businesses will need to assess whether they perform an activity that meets the definition of these in-scope activities
 - any activity which facilitates, or is ancillary or incidental, to an in-scope activity should also be considered in-scope, as is any associated online advertising business where relevant
- 3.25 The government does not intend to materially change the definitions to take certain business models out of scope. Regarding marketplaces specifically, while these business models vary, the essence of a marketplace is connecting sets of unrelated third parties, where the marketplace does not bear significant risk in the development and sale of the product. So the government is not convinced a sustainable boundary can be drawn between different types of marketplaces in most cases.
- 3.26 The government acknowledges that the DST has a novel tax base and accepts some businesses will have to make judgements to determine whether they are in scope. However, it would note the following points which should help to provide greater certainty:
- The DST will apply to business activities. While the government does not intend to define the term 'activity' it believes it should be interpreted as implying a substantive commercial activity, rather than something that is merely incidental to another activity. So, for example, a business may

provide a comments section or Q&A on its website, but the government does not believe this would ordinarily constitute a separate activity.

- In addition, some of the definitions note that certain features must be the main or one of the main purposes of a given activity for it to fall within scope. Again, this means that if a business undertakes some functions which may at a superficial level match the wording in the definitions, but these clearly do not form a main part of its business activity, then they would not be in scope.
- Businesses will only be subject to DST when their total revenues from the in-scope activity exceed the thresholds. Even if a business performs certain functions, such as including third party links on its site, it would need to generate in excess of £500 million globally from this and other in-scope activity to fall in scope. The government believes this should provide certainty to businesses in most cases.

3.27 The government welcomes continued business engagement on its proposed approach and will seek to use finalised guidance to provide greater certainty on some of the difficult boundary cases noted above.

3.28 Specific issues by business activity are considered in more detail below.

Specific issues

3.29 The government will set out the in-scope business activities in legislation. There are a number of different approaches that could be taken to achieve this outcome:

- not define the terms and rely on their ordinary meaning, which would be well-understood in certain contexts
- determine the features that were commonly and strongly associated with these business activities and use them to inform a definition
- list in more detail the different types of activity that fall within these broad headings. For example, 'a social media platform will include X and Y'

3.30 The government, in line with the consultation document, has largely taken the second approach, with the exception of search engines which it thinks is a better understood term.

3.31 The proposed approach for each activity is set out in more detail below but the government believes this strikes the right balance of ensuring there is some certainty in the legislation, while also ensuring that the legislation is flexible enough to be applied to the very different facts and circumstances of each case.

Social media platforms

3.32 The definition of a social media platform is an online platform that meets the following conditions: (a) the main purpose, or one of the main purposes, of the platform is to promote interaction between users (including interaction between users and content on the platform provided by other users); and (b) the platform enables content to be shared with other groups of users (or with other users).

- 3.33 This activity includes any associated online advertising business operated by the group where that advertising business derives a significant benefit from its connection with the social media platform.
- 3.34 This definition is intended to reflect the key features of a social media platform:
- that it seeks to facilitate interactions between users
 - that it is often populated by user content or forms the basis to share content between users
 - that these interactions take place among groups or communities of users
- 3.35 While it will depend on the facts and circumstances of individual businesses, as set out in the consultation document, the government believes this definition should cover a number of different activities including social networks, dating platforms and reviews sites. That is because while these platforms all have certain specificities, they do have a main purpose of facilitating interaction and the sharing of content between communities of users. If, due to business model evolution, these features become less relevant, to the point where the main purpose test is no longer satisfied, then they would naturally fall out of scope.
- 3.36 The definition includes the operation, by a social media platform provider, of an associated advertising business which facilitates the display of advertising on related and third-party websites, where the advertising business derives a significant benefit from its connection with the social media platform.
- 3.37 This activity is included in scope in recognition of its connectedness with the underlying social media platform and the value it derives from access to a large and active user base, user data, sophisticated advertising tools and relationships with advertisers. When the conditions are met, the legislation should be interpreted as bringing revenues from this activity within scope of the charge at the level of the social media platform provider.
- 3.38 The government acknowledges that stakeholders have legitimate concerns about spillovers.
- 3.39 To be in-scope the features identified in the definitions must be one of the main purposes of the platform. This would mean that simply providing something like a comments section on a website providing content would not bring a business activity into scope, whereas a platform that served solely as a discussion forum might.
- 3.40 The government equally does not think this definition includes unintegrated private communication services like email, or the provision of something like telecommunications infrastructure. These may indirectly facilitate (e.g. by enabling internet access) interactions between users, but a main purpose of the business is not to promote interaction between users. It does expect it is likely to include messaging services that are highly integrated with a wider social media platform, on the basis this simply facilitates the provision of the in-scope activity.

Search engine

- 3.41 The activity of providing an internet search engine is not defined further, given this is already understood as being a facility that allows users to search for websites/information on the internet.
- 3.42 This activity of a search engine includes the operation by the group of an associated online advertising business which facilitates the display of advertising on related and third-party websites, where that advertising business derives a significant benefit from its connection with the search engine.
- 3.43 This activity is included in scope in recognition of its connectedness with the underlying search engine platform and the value it derives from access to a large and active user base, high-volumes of user data, sophisticated advertising tools and relationships with advertisers. When the conditions are met, the legislation should be interpreted as bringing revenues from this activity within scope of the charge at the level of the search engine platform provider.
- 3.44 The government notes the concerns raised by some stakeholders that this definition could catch search functions that only facilitate the search of content on the host website. It believes that the definition should be considered to only cover activity that allows users to search the wider internet, something which is clarified in guidance.
- 3.45 The government also notes that in some cases a website may have a search 'box', but that the underlying search technology is run by a third party which also controls advertising contracts, the collection of data and provides search results. It is not the intention that both entities fall directly within scope. Instead the government expects it should normally be the entity which is providing the underlying technology and benefitting primarily from users' use of that technology. This is again covered in the draft guidance.

Online marketplace

- 3.46 The definition of an online marketplace is an online platform which meets the following conditions: (a) the main purpose, or one of the main purposes, of the platform is to facilitate the sale by users of particular things; (b) the platform enables users to sell particular things on the platform to other users, or to advertise or otherwise offer to other users particular things for sale.
- 3.47 The definition is based on the key features of an online marketplace, which is to provide a platform that seeks to facilitate exchange between users, rather than one which produces and sells its own goods and services.
- 3.48 The government notes the boundary issue between providing a listings marketplace - which while not allowing for direct exchanges on the website is set up with the primary purpose of facilitating such exchanges - and just any website that displays adverts of third party goods/services. The latter is not intended to fall in scope of the definition given its main purpose is not to facilitate the sale of goods and services by users.

- 3.49 The inclusion of an associated advertising business is based on the same conditions as for social media platforms and search engines.

Further issues

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

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

- 3.50 Respondents recognised the challenges in drafting exemptions, but there was a broad consensus that they would be needed in some cases. This was particularly the case for financial services given the risk that some of these could fall within scope of a marketplace definition.
- 3.51 Respondents set out several justifications for financial services being exempt from the DST, with most focusing on the highly regulated nature of the financial services industry.
- 3.52 For some this was evidence that financial services businesses undertook unique functions that meant they should not be considered as typical marketplaces. For instance, even if they shared some of the features of a marketplace, they would need to bear specific financial risks rather than relying on users to bear those risks as part of their functions of facilitating market liquidity and financial stability. Similarly, they often operate in 'closed' environments such that only a relatively limited number of other regulated users could access the platform, reducing the relevance of network effects. Finally, their regulated nature meant that their activity was likely to be localised meaning the underlying rationale about profit attribution was less relevant.
- 3.53 Some respondents also felt there were further justifications for a financial services exemption, including that the financial services sector was already subject to certain sector specific taxes, or unique treatment under general taxes.
- 3.54 Other respondents did question whether an exemption was warranted however, and noted financial services businesses benefit from network effects and use data.
- 3.55 Some respondents also suggested further exemptions for different types of activity.
- 3.56 This included those activities identified by the government in the consultation document as not intended to fall in scope (e.g. broadcasting, online content provision), but also some additional activities such as private communication, gambling services, video gaming and certain types of marketplace (as noted in the previous section).
- 3.57 Respondents also identified boundary issues that they did not think had been covered in the consultation document. Many of these examples concerned different forms of marketplaces, and how HMRC would determine whether a business was acting as an intermediary or selling own goods/services.

- 3.58 Some respondents highlighted the fast changing nature of these business models, and the need for regular review of both definitions and exemptions.

Government response

Broad approach

- 3.59 The government continues to think that it is best to minimise any formal exemptions from the DST.
- 3.60 While exemptions can provide certainty for some businesses, they can also reduce the coherence of a tax and create a new set of boundary issues. The government also believes that its approach to drawing scope should, alongside the revenue thresholds, make it clear in most cases whether a business is in or out of scope, negating the need for a formal exemption.

Financial services

- 3.61 The government believes most financial services activity would be outside of its proposed business activity definitions and therefore not subject to DST.
- 3.62 However, the government recognises the concern that some financial services potentially overlap with the marketplace definition. It does not believe this outcome would be consistent with the policy objective of the DST to tax unrecognised value created by the participation of users in the digital economy. It therefore intends to introduce an exemption from the marketplace definition for certain financial and payment services.
- 3.63 In making this decision, the government considered the various points raised by stakeholders.
- 3.64 It was not persuaded by arguments that some financial services businesses are already subject to sectoral taxes (e.g. the Bank Levy).
- 3.65 However, the government agrees that there are certain unique features of financial services businesses which mean the policy rationale applies less strongly in their case than it does for other marketplaces.
- 3.66 The highly regulated nature of financial services means financial services marketplaces will often be closed environments, which are only open to other highly regulated market participants. As a result, the marketplace does not generate significant value by seeking to maximise the number of other users on the platform. There are also strict rules and limitations about how financial services businesses/marketplaces interact with users, including restrictions on the products and services they are able to offer.
- 3.67 Similarly, financial services businesses often bear significant risk. This is sometimes the case even when they are not contractually a party to a transaction. The wider macroeconomic risks financial institutions inherently present to the economy mean financial services businesses are typically required to hold capital against these risks and their direct or indirect exposure to other market participants. This means there can be significant additional costs involved in increasing the number of users on the platform, which distinguishes them from other marketplaces.

- 3.68 Finally, the regulated nature of the financial services sector means that much of their activity is localised to the markets they operate, something already reflected in the unique treatment of a banking group under existing transfer pricing rules. This means a concern about unrecognised value creation due to the nature of current international tax rules applies less strongly in these cases.
- 3.69 The government has therefore proposed a financial services exemption such that a regulated activity which primarily involves facilitation of the trading or creation of financial assets will not be considered an online marketplace.
- 3.70 For those groups which operate other in-scope activities (e.g. a social media platform) and exempted financial services activities, the latter will not be in-scope of the DST but the former still will be. In these cases, businesses will need to identify the revenues that are attributable to each activity on a just and reasonable basis
- 3.71 The government welcomes comments on the effectiveness of this exemption in responses to the draft legislation.

Specific issues

- 3.72 The government takes note of the boundary cases raised by businesses in their responses.
- 3.73 On marketplaces specifically, it still believes the central issue in determining whether a business is an intermediary is whether a business takes title, or exercises significant control of a good, service or other property, and intends to apply the definition on that basis.
- 3.74 The government has decided not to include a specific exemption for businesses that stream, broadcast or publish media like film or music, as it believes businesses that primarily develop or acquire this content to display it to customers will naturally not fall in scope of the definitions. Naturally if over time that business evolved to become a marketplace matching providers and purchasers of content, without taking on risk, then it would (in part) fall in scope.
- 3.75 In the consultation document the government highlighted video games as a particularly challenging boundary case, but does not intend to include a specific video gaming exclusion. In most cases video gaming businesses are expected to be out of scope. This reflects the fact that, while these businesses often have online platforms that facilitate multiplayer functionality, the main purpose of these platforms is to maximise the utility that customers receive from a video game rather than to encourage social interaction.

Chapter 4

Taxable revenues

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

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

- 4.1 Respondents noted that attributing revenues between business lines would be challenging in certain cases. This included:
- where a business operates a number of primary activities which are substantially integrated or share common sources of revenue, meaning that only a share of that revenue should be in-scope of the DST
 - where a business operates an in-scope activity that does not directly generate revenue, but supports or is cross-subsidised by the provision of a separate out of scope activity
- 4.2 Notwithstanding these challenges, respondents generally agreed that allowing businesses to make a just and reasonable apportionment of revenues to an in-scope business activity was a sensible approach.
- 4.3 Several added that reflecting the difficulties in achieving this in some cases, there should be a high bar to an apportionment being challenged and that the requirement for a method to be just and reasonable should be reflected in legislation, not just guidance.
- 4.4 There was not a consensus on the merit of using mechanical rules to guide revenue attribution. Some respondents felt these would be helpful either to provide certainty for businesses or to minimise opportunities for tax avoidance, but others doubted they could be applied coherently across different businesses and could give rise to distortive results. Some saw benefit in specifying mechanical rules, but allowing flexibility to use just and reasonable methods when these rules did not apply.
- 4.5 A number of respondents suggested either taxing only specific defined revenue streams, or conversely that specific revenue streams should be exempted from the DST.
- 4.6 In particular several stakeholders said that delivery fees should be explicitly excluded from scope of the DST. This was based on an argument that delivery should be considered a separate function to the provision of a marketplace, and that delivery fees were largely set to cover the costs of this separate function.

- 4.7 These respondents acknowledged the government's original motivation for not making distinctions between revenue streams. However, they felt that commercial pressures meant that this would not give rise to avoidance risks (i.e. through an inflation in delivery fees relative to other sources of revenue) and would still be consistent with the policy rationale.
- 4.8 Some respondents also questioned whether revenues should be exempt if they were likely to be taxed elsewhere under the DST. For example, it may be that a marketplace displays advertising facilitated by a search engine provider, or alternatively a social media platform displays advertising which has been purchased through an advertising exchange.
- 4.9 Some respondents also argued that there should be a deduction for certain costs. This included traffic acquisition costs (TAC), on the basis that these often reflected a very large percentage of revenues derived from providing certain services. These respondents felt it would be unfair if, due to their role in a transaction, businesses faced different treatment depending on whether they recognised revenues gross with TAC reflected in cost of goods sold, or just recognised a transaction on a net basis.
- 4.10 Linked to issues around scope there was interest in HMRC producing guidance on what it would consider a just and reasonable apportionment of revenues in different circumstances.

Government response

Broad approach

- 4.11 The government intends to follow the approach set out in its consultation document.
- 4.12 As a first step, businesses will need to assess whether they perform an in-scope activity based on the definitions. Once this is established, this activity should be taken to include all functions which facilitate the in-scope activity, such as ancillary and incidental functions, as well as any associated online advertising business where relevant.
- 4.13 A business will then need to attribute revenues to its in-scope activity. This should include all sources of revenue earned in connection with that activity.
- 4.14 For some activities that is anticipated to be straightforward as revenue will clearly relate to the provision of the in-scope service/activity e.g. the commission revenue from a successful marketplace transaction.
- 4.15 In other cases, it may not be possible to attribute an entire revenue stream to either the in-scope or the out of scope business activity. This would be the case when the revenue stream is in respect of both activities. One example might be when a user pays an annual subscription fee to access a bundle of services, some in-scope and some out of scope.
- 4.16 In these instances, businesses will need to apportion these revenue streams to the in-scope activity on a just and reasonable basis.
- 4.17 The government has set out some illustrative examples in draft guidance but it anticipates that the appropriateness of the methodology chosen will depend on the particular facts of the business.

- 4.18 For instance, in some cases it may be possible to attribute a shared revenue stream between in and out of scope activities in the same proportion to the revenues that are directly attributable to those in and out of scope activities. Alternatively, in some cases it may be more coherent to use costs as a guide for the attribution of revenues.
- 4.19 Developing mechanical rules to guide apportionment across a variety of different business models would be challenging, so is not the government's default approach. But it will consider during the technical consultation whether certain presumptions could be put in place for certain types of revenue in order to make calculating a DST liability more straightforward.

Specific issues

- 4.20 The government still thinks there is a good case to not make distinctions between revenue streams. This reflects the government's view that the in-scope business models derive significant value from an active user base and this value can be monetised in different ways.
- 4.21 It acknowledges that in the case of search engines and social media platforms, this activity is typically monetised through advertising services, so that only taxing that revenue stream would deliver similar results. But this is not always the case, and marketplaces in particular will often generate revenue through a number of channels.
- 4.22 The government acknowledges the concerns raised by stakeholders on delivery fees, but is not convinced of the case for exclusion. While it has been argued that delivery is a separable function, the government sees it as being an integral part of some business's value proposition to marketplace users, whether the delivery function is carried out by employees or third-party providers. It therefore believes that delivery fees should be treated as a source of online marketplace revenue and should be treated under the DST in the same way as other sources of marketplace revenue such as commission fees, as a matter of principle and to avoid creating distortion. The government acknowledges that a share of the income generated from provision of marketplace delivery services may be realised in the UK, but this is not necessarily unique to this case. The government continues to welcome views on this issue.
- 4.23 Revenues will be defined by reference to accounting standards. In most cases a business will determine revenue according to the accounting standards used by the ultimate parent entity. This is the simplest approach and means businesses can use existing revenue recognition criteria. Regarding marketplaces, the government anticipates that the application of accounting standards should mean they normally recognise revenue from a transaction on a net basis.
- 4.24 As the DST is a tax on revenues the government does not intend to make an allowance for traffic acquisition costs.
- 4.25 Finally, the government acknowledges the point that in certain specific situations a series of linked transactions may be subject to the DST at different points in the transaction chain. For example, if a user uses a B2C travel services marketplace, which in turns uses a B2B marketplace to help

facilitate that transaction, with both marketplaces in scope of the DST. It has not proposed any changes to address this, given it believes the narrow scope of the DST should make these instances quite limited, but it is willing to consider further evidence in relation to this issue and other aspects of including B2B marketplace transactions in scope.

Chapter 5

UK revenues

UK revenues

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

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

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

- 5.1 Respondents had differing views on the approach to defining users and identifying UK users.
- 5.2 Some were content with the proposed approach, noting it was a broadly sensible way of delivering on the policy intent.
- 5.3 However, several respondents raised concerns about a number of issues:
- there was a general concern about the complexity and administrative burdens which would arise from having to identify user location, including businesses' obligation to collect and store personal data
 - most respondents queried how the approach would deal with certain technical issues which they felt may prove to be more challenging than envisaged e.g. bots, Virtual Private Networks, tie-breakers
 - some stakeholders challenged whether a UK user should be defined on the basis of normal location, which they felt was difficult to evidence in certain cases and especially for search engines
 - some sought clarity on whether businesses would be considered to be users and how HMRC would determine whether a user was considered to be a UK user in such situations
- 5.4 Responses broadly agreed that businesses would only have certain sources of information available to them and that these were sometimes only imperfect proxies of user location (e.g. an IP address). This meant there were risks of creating inconsistent results across businesses, depending on what information each had available.
- 5.5 In common with some other parts of the tax, these responses also emphasised the importance of clear guidance on what would constitute a just and reasonable approach to identifying user location.
- 5.6 Several respondents also noted the importance of HMRC taking a pragmatic approach which recognised the limits to available information, as well as

noting the value of a clearance mechanism to allow businesses to achieve greater certainty on their proposed apportionment.

- 5.7 There was not a consensus on the merit of mechanical rules. Some stakeholders felt this would be helpful, or could be combined with a just and reasonable approach, allowing a taxpayer to choose between the two. Whereas others cautioned that mechanical rules would be difficult to apply across different types of businesses

Government response

Broad approach

- 5.8 The government intends for a user to be any person who engages with a platform, including non-natural persons.
- 5.9 A UK user will be any person it is reasonable to assume is normally located or established in the UK. Businesses will only be expected to make this judgement based on the information available to them.
- 5.10 The government does not intend to set out a detailed hierarchy of sources of evidence, reflecting that businesses will have different sources of information available to them. Instead businesses should use the sources of evidence available to them to determine whether it is reasonable to assume a user is a UK user.
- 5.11 In cases where different sources of evidence offer a conflicting picture of user location, businesses should consider the balance of the evidence to determine whether it is a reasonable assumption it is a UK user.
- 5.12 Similarly, if due to certain technical issues (e.g. VPNs) a user's normal location is difficult to identify the business will have to use available information to determine whether it is a reasonable assumption it is a UK user.
- 5.13 In determining UK revenues, a business should seek to assess what revenues generated from an in-scope activity are attributable to UK users. This would include but is not limited to:
- revenue derived from adverts which are intended to be viewed by UK users
 - revenue derived from commission fees on transactions involving UK users
 - revenue derived from charging subscription fees to UK users
- 5.14 The government recognises there will be cases where the business cannot disaggregate/identify the revenues linked specifically to UK users. This might be the case where a business receives revenue for displaying advertising to both UK and non-UK users.
- 5.15 In these cases the business should perform a just and reasonable apportionment which aims to give a fair reflection of the revenues attributable to UK users. As with attributing revenues to business lines, the appropriate approach may vary by business.

- 5.16 Where a user moves across borders, revenue will still be taxable where that user is a UK user. So, for example if a UK user pays an annual subscription and spends two months of the year outside the UK, the full subscription is still taxable. Conversely, if a tourist visits the UK and views an advert on their social media account, that revenue is not taxable under the DST.

Specific issues

- 5.17 The government does not intend to include many mechanical rules, noting that businesses will have different sources of information available to them to identify revenues attributable to UK users.
- 5.18 It does however intend to impose a specific rule in the case of marketplace transactions that concern the provision of UK land, property and accommodation. In these cases, these will be considered a UK-linked transaction, even if the object of exchange is owned by a non-UK person.
- 5.19 It will continue to consider whether certain other presumptions on user location would be helpful during the technical consultation.
- 5.20 As set out in the consultation document, in the case of online advertising, the government also intends that only the location of the user viewing the advertising is relevant to the determination of user location.
- 5.21 In the case of B2B transactions businesses are not expected to 'look through' to the location of a user further down the transaction chain. Instead for that specific transaction they need to consider whether one or both of the businesses making the exchange is a UK user. This would be the case if the available evidence meant it was reasonable to assume that at least one of the businesses was established in the UK.

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

- 5.22 A majority of respondents raised concerns with the treatment of cross-border transactions. This reflected a few different considerations:
- respondents queried whether the stated approach was consistent with the policy rationale and the approach taken to attributing revenues to UK users in the rest of the tax
 - a number of other countries have announced DSTs since Budget which do not align with the UK's proposed definition of a user and there was a risk the that cross-border transactions would be subject to a degree of double taxation
 - in that context respondents questioned whether the government would be able to conclude multilateral agreements swiftly enough to ensure an appropriate division of taxing rights with those countries
- 5.23 Some respondents therefore called for clarity on how an appropriate division of taxing rights with other countries would be achieved, or called on the government to unilaterally reduce its taxing right in certain situations.
- 5.24 Beyond this, a majority of respondents also noted the risk that different countries' DSTs could be inconsistent with each other, and lead to double

taxation. Most therefore advocated that countries implementing DSTs should seek to work together to resolve difficulties and disputes arising from these technical differences.

Government response

- 5.25 The government notes that the context since its original Budget announcement has changed and that a number of other countries are in the process of implementing Digital Services Taxes.
- 5.26 It recognises there is a risk that cross-border transactions involving users in two different DST jurisdictions could give rise to double taxation for marketplaces.
- 5.27 As a result, the government will introduce a specific rule to address cross-border marketplace transactions where another user is located in a country which has implemented a Digital Services Tax.
- 5.28 For these qualifying transactions, the UK will only tax 50% of the revenues arising directly as a result of those transactions.
- 5.29 A qualifying transaction will be a marketplace transaction involving a user in another state which levies a DST on the same marketplace transactions.
- 5.30 Beyond this the government will seek to work with countries implementing DST to seek to resolve any common issues.

Chapter 6

Further design parameters

Rate and de minimis thresholds

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?

- 6.1 Respondents broadly welcomed the thresholds and thought this contributed to ensuring the DST would be proportionate.
- 6.2 Some responses did suggest that the thresholds should be higher or increased over time. This was because the digital sector was characterised by rapid growth and higher thresholds would provide more certainty to scale-up businesses. A small number of responses suggested that the thresholds should be lower.
- 6.3 Some stakeholders suggested that the approach to scope meant there would be some challenges for businesses in determining whether they were above or below the thresholds. To address this, these responses recommended that the government should introduce gateway tests based on specific revenue-streams (e.g. generating online advertising revenues in excess of a certain amount).
- 6.4 Some respondents also suggested that the thresholds should be flexible in certain circumstances. For instance, there could be a grace period when a group acquired a business that had previously been beneath the thresholds.
- 6.5 There were also requests for clarification on:
 - whether the thresholds would be based on in-scope revenues
 - whether the thresholds would apply on a group-wide basis or to individual entities
 - the definition of a group that would be used
- 6.6 There were different views on the rate of the DST. Some thought the 2% rate was proportionate, reflecting that the DST was a tax on revenues.
- 6.7 However, several responses argued that the 2% rate was too high and that when converted to a profit based calculation meant the DST was assuming an unrealistic share of corporate profit was derived from user participation.
- 6.8 By contrast, some respondents suggested that the rate should be increased to 3% in line with the proposed EU Directive.

Government response

- 6.9 The government intends to maintain the thresholds and rate at the same level as set out at Budget. It does not intend to introduce additional gateway tests.
- 6.10 The thresholds will be applied on a group-wide basis, with a group defined as the ultimate parent and any entities that it is required to be consolidated with for accounting purposes.
- 6.11 The thresholds will apply to the group's revenues from the in-scope activities in the accounting period.
- 6.12 The term 'revenue' will be defined in legislation by reference to accounting standards. For most businesses, this will mean revenue will take its meaning from IAS, GAAP or US GAAP.
- 6.13 The government will review the thresholds at the review point in 2025 to determine that they are still set at the appropriate level.

Safe harbour

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

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?

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

- 6.14 The safe harbour generated a significant amount of interest from respondents.
- 6.15 Several respondents welcomed the inclusion of the safe harbour, agreeing that it served to mitigate some of the challenges posed by revenue based taxation. However most argued that it was too limited in its current form, noting that the safe harbour formula meant that only businesses with a profit margin below 2.5% would benefit. These respondents asserted that businesses with margins above this point were still low margin businesses and should benefit from the provision. Others added that even those benefitting from the safe harbour would still face a high effective rate of taxation on their profits. On this basis, they suggested that the safe harbour should be made more generous.
- 6.16 Responses suggested various mechanisms for achieving this:
- changing the value of 'X' in the formula so the safe harbour benefitted businesses with higher margins
 - allowing businesses to use historic losses in the safe harbour calculation, or a multi-year average profit margin
 - letting businesses with margins below 2.5% pay no DST or a lower rate compared to what they would need to pay under the original proposal

- 6.17 By contrast some respondents raised concerns about whether the safe harbour would create unfair advantages for certain businesses, or pose issues for the UK's international obligations. Others, while noting its value, also questioned whether it would give rise to avoidance risks.
- 6.18 Some respondents also expressed a concern about the potential complexity of the safe harbour mechanism, especially if it used a UK margin. This was because it would require a business to determine how to allocate certain central costs against UK DST revenue, which was not straightforward. Others expressed concern that the lack of reliance on a reported profit margin could afford businesses too much flexibility to attribute costs in a way that maximises the value of the safe harbour. For this reason, these respondents felt the safe harbour should use either a global margin or another form of margin based on published accounts information.
- 6.19 Several respondents expressed a desire for a form of HMRC clearance facility to give taxpayers certainty over their proposed approach to calculating the safe harbour margin. Others also suggested the use of some gateway tests to simplify compliance.
- 6.20 Businesses also sought clarity on a number of detailed issues, including:
- whether the safe harbour would apply on a per group or a per business activity basis
 - what costs could be taken into account in calculating the safe harbour margin
 - what approach businesses could take to allocate central costs such as R&D expenses
 - whether the safe harbour margin would relate to a prior or current accounting period
 - whether businesses would be able to carry forward losses from previous periods
 - whether the safe harbour would be an annual election or not
 - the interaction of the safe harbour with quarterly instalment payments
- 6.21 Generally, respondents suggested the responses to these questions should aim to keep the safe harbour as simple as possible.

Government response

Broad approach

- 6.22 The government intends to use a UK and business activity specific operating margin in the calculation of the safe harbour. The value of X will be 0.8 and the margin will have a floor of 0%.
- 6.23 The safe harbour is intended to only be of benefit where there is a risk of the DST becoming disproportionate and the provision of a given business activity uneconomical, and so X is set at a level commensurate with that risk.

- 6.24 The government acknowledges the views of many businesses that using a global profit margin, as per audited accounts, would increase the simplicity of the calculation. However, it has decided that the safe harbour requires a UK and business activity specific operating margin.
- 6.25 This is because the safe harbour is intended to reflect the operating performance of the UK activity, and as it is a relieving provision, the government believes this margin must be as accurate a representation of this activity as possible. It does not think a global margin would achieve that outcome given that it will reflect the return on global activities, often not closely associated with providing an in-scope activity in the UK.

Specific issues

- 6.26 The safe harbour margin is intended to reflect the operating margin from providing an in-scope activity in the UK.
- 6.27 This means that in calculating the margin businesses will need to calculate DST revenues and then deduct costs directly incurred in generating those revenues, as well as a fair and reasonable share of other costs which can be said to have been incurred in connection with providing that activity (e.g. such as a share of shared central costs).
- 6.28 The government intends to allow most normal operating costs in calculating the profit margin. Interest costs will not be allowable. Similarly, given the margin is supposed to reflect the normal operating margin of a business, non-recurring exceptional items will not be allowable. Further detail is set out in the draft guidance.
- 6.29 The treatment of both revenue and certain costs will flow from their accounting treatment. The government recognises this risks creating different outcomes for businesses that report under different accounting standards, but it also acts as a simplification. It nonetheless welcomes evidence of where this may create potentially unintended outcomes.
- 6.30 The safe harbour will not take account of prior losses, prior year investment in R&D or apply on a multi-year averaged basis. This reflects that the safe harbour is intended to avoid the DST being disproportionate on a current operating basis and the DST is a tax on revenues earned in a given period.
- 6.31 The safe harbour will apply on a business activity basis. Again, this reflects that the safe harbour should only be of benefit where the DST risks being disproportionate in relation to a specific activity.
- 6.32 As the DST will be reported and paid annually the safe harbour will be an annual calculation and the margin should be based on the activity in the accounting period.

Deductibility and crediting

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?

- 6.33 Respondents generally agreed that the DST should be a deductible expense. Most also agreed with the characterisation of how a deduction would be achieved in the examples set out in the consultation document.
- 6.34 However, some did think there needed to be more clarity on how a DST expense could be distributed around group entities in different circumstances, such as if a non-UK entity recharged some of the cost of the DST to a UK entity.
- 6.35 Some others added that those without a UK taxable presence would not be able to achieve a deduction and that it was desirable that other countries did grant deductions for DSTs. Separately some respondents queried whether foreign DSTs would be allowable as a deductible expense in UK corporate tax computations.
- 6.36 Several respondents said that the DST should be creditable against either UK corporate tax, or other taxes such as irrecoverable VAT, and strongly disagreed with the government's view that this did not align with the DST's policy objectives. This reflected a concern that the DST would cause double taxation, especially for businesses which already had a UK taxable presence.
- 6.37 Others also suggested certain adjustments such that the DST would only be payable by entities which operated from low-tax jurisdictions.
- 6.38 Some respondents also queried the interaction between the DST and some other UK tax obligations. This included the Offshore Receipts in respect of Intangible Property (ORIP) measure and the Diverted Profits Tax (DPT).

Government response

- 6.39 The government has made some changes to the administrative and charging framework for the DST. Broadly, the DST will be calculated at the group level and will be reported by a single company in the group.
- 6.40 The DST will continue to arise on the individual entities in the group that receive the underlying revenues that make up the group's DST calculation. Each individual company's DST liability will be calculated in the proportion of its share of the group's DST revenues. This is intended to ensure that these individual entities will be able to achieve a deduction for the DST expense against their Corporation Tax profits to the extent the DST liability is an expense of the company and is wholly and exclusively incurred for the purposes of its trade. As set out in the consultation document, the company will need to consider whether its transfer pricing is still at arms-length if it is party to a controlled transaction with an associated enterprise.
- 6.41 Nonetheless, this represents a change from the original administrative framework set out in the consultation, so the government would welcome business comment during the technical consultation on this approach and whether it will deliver the intended results.
- 6.42 The government acknowledges that if the DST is not creditable this will have the effect of increasing some businesses' global tax burden. It also acknowledges this may create challenging outcomes for businesses which already recognise significant taxable profit in the UK. It does not however believe introducing a credit could be achieved in a way that was simple, in

line with the DST's policy objectives, and consistent with the UK's international obligations. The DST applies in a non-discriminatory way to the provision of certain digital activities – imported or domestic – and it is important the design of the tax remains consistent with this principle.

- 6.43 The government notes that this is an example of why the DST should ideally be a temporary measure and replaced by appropriate changes to international corporate tax rules.
- 6.44 The DST will not be creditable against ORIP or DPT which are taxes designed to tackle contrived avoidance arrangements.

Chapter 7

Review clause and international process

Review clause

Do you have any observations on the proposed review clause?

- 7.1 A majority of respondents supported the OECD process to find a long-term international solution. They noted it was important that the DST was genuinely a temporary tax that would be dis-applied once an appropriate international solution was in place.
- 7.2 There was wide support for the idea of a review clause given the fast-moving nature of the digital sector and the need to assess whether the DST was still meeting its policy objectives after it had been in place a number of years. Although some felt this review should take place earlier than 2025.
- 7.3 However, many stakeholders felt the commitment to the DST being a temporary measure would be better strengthened if instead of a review clause there was a sunset clause. This would mean that absent positive action by Parliament the DST would cease to apply from a certain year.
- 7.4 There were different views on when the review or sunset clause should apply from. Some respondents suggested it should be within one to two years of the DST being in effect (so in 2021 or 2022), but others agreed with the original 2025 date while noting the DST should be dis-applied if an international solution was agreed earlier.
- 7.5 Separately, some respondents expressed an interest in what the government meant by an appropriate international solution, and what conditions needed to be met before the DST was dis-applied.
- 7.6 Some respondents also commented on the chapter of the consultation which related to the interaction of the DST with the UK's international obligations. As part of this some respondents questioned whether the DST was a covered tax under the UK's double tax agreements.

Government response

- 7.7 The DST is intended to be an interim measure, pending a long-term global solution to the tax challenges arising from digitalisation.
- 7.8 The government is committed to dis-applying the DST once an appropriate international solution is in place, and believes this achieves the same objectives as a sunset clause. It will also review the DST after it has been in place for five years to assess whether it is meeting its policy objectives.

- 7.9 An international solution will inevitably require a degree of compromise, and countries will have to work constructively together to overcome their principled differences.
- 7.10 The government has publicly outlined its objectives for the international process in its position papers.
- 7.11 It will therefore be important that an international solution addresses the concerns the UK has raised about the way highly digitalised businesses create value.
- 7.12 Nonetheless, the government acknowledges that some countries view the challenges of digitalisation as being more pervasive and therefore relevant to a wider range of businesses.
- 7.13 While the government doubts that digitalisation is equally relevant to all businesses, it is open to exploring whether there is a principled framework for acknowledging the different impacts digitalisation has had on different businesses as a way of developing a global solution.
- 7.14 This work is currently underway at the OECD which has agreed a without prejudice programme of work, and the UK will continue to support that process with the aim of reaching an international solution.
- 7.15 Separately, as set out in the consultation document, the DST has been designed so that it is consistent with the UK's international obligations.

Chapter 8

Administration and other issues

Reporting and payment

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?

Do you agree that the DST should be reported annually?

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

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

- 8.1 Some respondents noted that as the DST had a novel tax base there would be challenges for businesses in determining whether they were in scope. Several suggested that businesses should be able to engage with HMRC to get certainty on whether their business models either fell in scope of the definitions, or generated revenues above the relevant thresholds.
- 8.2 Most respondents agreed that the DST should be reported on an annual basis, although several thought that the reporting deadline should be based on the time that elapses from the end of an accounting period, rather than to the end of the calendar year which would penalise those with late ending accounting periods.
- 8.3 Most respondents did not think it was proportionate to require businesses to notify their liability to the DST within 3 months of the start of an accounting period. This was because businesses would need to forecast whether their revenues would exceed the thresholds to determine whether they are liable. Businesses were concerned they could be unfairly penalised if their actual revenues exceeded these forecasts.
- 8.4 There were few comments on the proposed information in the DST return but a small number of respondents questioned why it was necessary to include information on global revenues.
- 8.5 Separately some businesses asked whether they were still required to notify if they fell below the thresholds or benefitted from an exemption.

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.

- 8.6 Most respondents agreed that the DST's administrative framework should mirror certain elements of the corporate tax reporting framework. In particular, most respondents welcomed annual reporting.

- 8.7 However, a majority expressed concern about paying the DST in quarterly instalment payments. The novelty of the tax base meant businesses were concerned they would need time to set up the appropriate processes to calculate their DST liability.
- 8.8 They were also concerned that quarterly instalment payments would require the business to forecast its liability during the accounting period. The application of the thresholds and the safe harbour meant this could create material uncertainty and result in businesses paying interest charges.
- 8.9 A number of respondents suggested that the DST should be payable annually instead, and some expressed a preference for alternative arrangements.

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

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

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

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

- 8.10 Most respondents agreed that it would be sensible to allow a nominated company to act on behalf of the group, although a number noted that they did not think this should be compulsory and/or linked to the provision of the £25 million allowance.
- 8.11 Some disagreed with this though, and thought that a nominated company may struggle to access appropriate information from other group entities. These respondents noted that often different group entities were in direct competition with each other and would not normally share the type of information necessary for a DST return. As a result, they had a preference to allow individual entities to report and pay the DST separately.
- 8.12 Some respondents noted that entities within the group would have different accounting periods and there would need to be specific rules to guide how those businesses should calculate their DST liability. Some suggested that this could be resolved by using the AP in the group's consolidated financial statements.

Government response

- 8.13 The government intends to make a number of changes to the proposed administrative framework for the DST.
- 8.14 As the DST is based on the activities and revenues of the group as a whole, the government believes it will be simpler to calculate the DST at a group level.
- 8.15 The relevant accounting period will be the period covered in the group's consolidated financial statements, subject to a maximum length of 12 months.

- 8.16 The group will determine whether it is in scope by testing whether its activities in that accounting period include the three taxable business activities and its revenues from those activities exceed the thresholds.
- 8.17 It will only be required to register for DST if both those conditions are met. Groups whose revenues are below the thresholds will consequently not be required to register.
- 8.18 One company in the group will be responsible for registering for DST and submitting the return on behalf of the group. The government intends to allow businesses flexibility to choose which company in the group is responsible for these obligations. If a group does not nominate a company, the default position is the ultimate parent company will be responsible for these obligations. This is similar to the administrative framework in the Bank Levy.
- 8.19 The individual entities in the group that receive the DST revenues will continue to be liable to DST. These entities will not be required to report to HMRC, but the intention of keeping the liability in individual companies is to ensure that normal principles about deductibility of expenses will work for DST.
- 8.20 The government acknowledges that group-wide reporting will mean some businesses may need to change their internal processes to allow different group entities to share information with each other. However, the government considers this will be necessary in any case as the DST is based on the revenues of the group as a whole.
- 8.21 The government recognises businesses concerns about early registration and paying in quarterly instalment payments. It has therefore decided that the DST should be payable annually rather than in quarterly instalments. This means the DST will be due 9 months and 1 day from the end of the relevant accounting period. This aligns with the normal due date for payments in Corporation Tax.
- 8.22 The notification deadline will be now also be 3 months from the end, rather than the start, of the first DST accounting period.
- 8.23 These changes will reduce uncertainty for businesses by allowing them to determine if they are liable based on their actual revenues in the accounting period.
- 8.24 The deadline to submit a return will also now be 12 months from the end of the accounting period rather than linked to a calendar year. This ensures that all businesses will have the same length of time to submit their return and ensures the deadlines are aligned with the Corporation Tax rules, which are well understood.
- 8.25 The government notes that this does represent a change to the original administrative framework and welcomes comments on this new approach during the technical consultation.

Anti-avoidance

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

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

- 8.26 There were mixed views on the need for additional anti-avoidance provisions.
- 8.27 Some respondents expressed a concern that this could result in disproportionate burdens on businesses or end up extending the DST beyond the original policy intent, particularly in the case of allowing HMRC to look through legal title arrangements.
- 8.28 By contrast some other respondents felt anti-avoidance rules were important to counter efforts by businesses to minimise their tax liability.
- 8.29 A number of respondents also suggested that DST should not be included in the Senior Accounting Officer (SAO) regime. This was because the DST applies to revenues across the whole group, and the SAO would be unlikely to have oversight and control of processes in all parts of the group.
- 8.30 Separately several responses questioned how HMRC would be able to enforce the DST against those businesses without a UK taxable presence.

Government response

- 8.31 The government will introduce anti-avoidance rules to protect key areas of the DST tax base from abuse. These rules will be targeted to protect:
- artificial attempts to re-characterise revenues so they are not attributable to the relevant business activity
 - artificial arrangements which are designed to ensure the activity does not satisfy the relevant business activity definition
 - counteract arrangements which are designed to route or disguise transactions through non-UK users
 - inappropriate use of the financial services exemption or the safe harbour
- 8.32 The government intends for these rules to be designed to target arrangements that have a main purpose of obtaining a DST tax advantage. It recognises the need though, to ensure that this does not affect genuine commercial changes and welcomes business comment on the proposed approach during the technical consultation.
- 8.33 The calculation of the revenues attributable to the business activity, revenues linked to UK users and the profit margin in the safe harbour will also be subject to a requirement that any apportionment will be performed on a just and reasonable basis. As well as ensuring the rules are flexible enough to respond to the different facts and circumstances of particular businesses, these rules will provide protection against unreasonable judgements.
- 8.34 Each member of the group will be jointly and severally liable for the group's DST liability. The government is therefore confident that HMRC will be able

to enforce DST debts where the liable entity does not have a UK taxable presence.

- 8.35 The government agrees that DST should not be included in the SAO regime.
- 8.36 The government accepts there is legitimate interest about how some of the DST concepts will operate in practice and how HMRC will approach these.
- 8.37 In line with HMRC's standard practice, businesses will be able to request HMRC's view where there is uncertainty on the application of the legislation. This will be via a non-statutory clearance mechanism similar to that offered for other taxes.
- 8.38 Businesses in Large Business (LB) are also encouraged to speak to their Customer Compliance Managers (CCMs) as part of their normal engagement. Open and early conversations with CCMs will allow businesses to understand HMRC's concerns and what evidence or methodologies would be likely to be regarded as unreasonable.
- 8.39 HMRC will establish a single point of contact for businesses in Wealthy and Mid-size Business Compliance (WMBC).
- 8.40 HMRC will also publish final guidance as early as possible to help businesses understand how HMRC will interpret the legislation. Draft guidance on key parts of the legislation has been published alongside this document and the government welcomes comments from interested parties.

Summary of impacts

Do you have any comments on the summary of impacts?

- 8.41 Several respondents identified potential impacts from the DST that they did not think had been identified in the consultation document, or needed to be considered more fully. These identified, among others, the following:
- the risk that the DST would be passed on to consumers or other businesses in the form of high prices, especially when the DST applied at multiple points along the supply chain
 - that the DST would reduce investment, employment and the UK's relative competitiveness, particularly in the technology sector
 - that the DST would create significant costs for business in complying with its administrative requirements
 - that it may contribute to global trade tensions and lessen the chances of successfully agreeing global reform
 - it would create distortions between like businesses affecting competitive outcomes
- 8.42 Alongside their broader concerns about unilateral measures or revenue-based taxes, some of these respondents felt there was value in either postponing the DST or ensuring it was temporary.

Government response

- 8.43 The government takes note of the concerns raised by stakeholders.

- 8.44 The decision to announce the DST reflected a concern that certain business models did not pay tax commensurate with the value they generate in the UK. An outcome of that policy is that the DST will result in an increased tax burden for in-scope businesses.
- 8.45 The DST will only apply to businesses providing specific business activities which generate revenue above the thresholds. This means it does not apply to SMEs or individuals. As with any business tax, the extent to which a business seeks to pass on the cost to their customers will be a decision for that particular business. However the DST applies to a narrow range of economic activity and is set at a low rate, which mean the number of businesses affected, and consequential impacts, should be limited.
- 8.46 The government acknowledges businesses will face some costs in seeking to comply with the administrative requirements of the DST and will seek to keep the administrative requirements of the DST proportionate, to the extent this is consistent with the policy intent. That is why for example it has sought to allow businesses to make just and reasonable adjustments to reflect their own circumstances, and sources of information. It is also why several parts of the DST will be based on existing accounting standards.
- 8.47 The government agrees with respondents that unilateral measures pose certain challenges and the most sustainable solution is global reform to replace those unilateral measures.
- 8.48 A tax information and impact note is published alongside this summary of responses.

Chapter 9

Next steps

- 9.1 The government would like to thank stakeholders for their engagement with the consultation.
- 9.2 Several issues raised by stakeholders in their responses related to the structure and detail of the legislation underpinning the Digital Services Tax.
- 9.3 The government is publishing draft legislation (and draft guidance) alongside this summary of responses and will now undertake a technical consultation on the contents of that draft legislation until 5 September 2019. The government also welcomes comments on some of the issues identified in this document.
- 9.4 The legislation implementing the DST will form part of the 2019/20 Finance Bill and is due to take effect from 1 April 2020.
- 9.5 HMRC will seek to issue further guidance at or close to Budget 2019 based on finalised legislation for further consultation.
- 9.6 Responses to the technical consultation can be submitted via the methods set out below. The government would strongly encourage early responses focused on specific technical issues where possible.

Email: dstconsultation@hmtreasury.gov.uk

Post: Corporate Tax Team,
1 Yellow, HM Treasury,
1 Horse Guards Road,
London,
SW1A 2HQ

- 9.7 Stakeholders can also submit responses to HMRC via dst.mailbox@hmrc.gov.uk

Data protection notice

Processing of personal data

This notice sets out how HM Treasury will use your personal data for the purposes of this consultation and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarian, or representatives of organisations or companies.

The data we collect (Data Categories)

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself 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 HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Who we share your responses with

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 (such as HMRC).

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 that are published is retained indefinitely as a historic record under the Public Records Act 1958.

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

Special categories data

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.

You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road

London
SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

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

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. 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

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

Contact details

The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

020 7270 5000

public.enquiries@hmtreasury.gov.uk

The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15, HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

privacy@hmtreasury.gov.uk

Annex A

List of respondents

Two individuals

100 Group

38 Degrees

Association for Financial Markets in Europe (AFME)

Association of British Insurers

Association of Chartered Certified Accountants (ACCA)

Association of International Certified Professional Accountants (AICPA)

BDO LLP

BGL Group

Booking.com

British Retail Consortium (BRC)

BT Group

Carnegie UK Trust

Charity Retail Association

Chartered Institute of Taxation (CIOT)

Cleary Gottlieb Steen & Hamilton (CGSH) LLP

Confederation of British Industry (CBI)

Cooley (UK) LLP

Deliveroo

Deloitte LLP

Digital Economy Group

DMA UK

Ernst & Young LLP (EY)

European Technology & Travel Services Association

Funding Circle

Grant Thornton UK LLP
Guardian Media Group
House of Commons All-Party Parliamentary Group (APPG) on Responsible Tax
IAB UK
Incorporated Society of Musicians
Information Technology Industry Council (ITI)
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants of Scotland (ICAS)
Intercontinental Hotels Group (IHG)
International Air Transport Association (IATA)
Internet Association
Investment Association
Just Eat
KPMG LLP
Law Society
Match Group
Mayer Brown International LLP
Mazars LLP
MoneySupermarket Group
News Corp
News Media Association (NMA)
Paddy Power Bet Fair
Pinsent Masons LLP
PricewaterhouseCoopers LLP (PWC)
Professional Publishers Association
Remote Gambling Association
Rightmove
Sabre
Secret Escapes
Silicon Valley Tax Directors Group
Tech UK
The BEPS Monitoring Group

The Booksellers Association of the UK & Ireland

Travelport

Travers Smith LLP

UK Computing Research Committee (UKCRC)

UK Finance

UK Hospitality

UK Interactive Entertainment (UKIE)

United States Council for International Business (USCIB)

US Chamber of Commerce

World of Books

Yell

HM Treasury contacts

This document can be downloaded from
www.gov.uk

If you require this information in an alternative
format or have general enquiries about
HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk