

Digital Services Tax Draft Guidance

DSTXXX: Digital Services Tax Guidance

The following draft guidance is provided to assist understanding of the application of the draft Digital Services Tax (DST) legislation. As with the draft legislation the draft guidance is subject to consultation until 5 September. It is intended to cover the substantive elements of the draft legislation published on 11 July 2019, but is not exhaustive.

HMRC will publish updated guidance later in 2019 reflecting comments received and the legislation at the time of publishing in the Finance Bill.

The DST charge will come into effect on 1 April 2020.

You should not assume that the guidance is comprehensive or that it will provide a definitive answer in every case. HMRC will use their own reasoning, based on their training and experience, when applying the guidance to the facts of particular cases.

Subject to these qualifications you can assume the guidance will normally apply, but where HMRC considers that there is, or may have been, avoidance of tax the guidance will not necessarily apply.

If you wish to submit comments on this draft guidance please contact the Digital Services Tax team by emailing them at dst.mailbox@hmrc.gov.uk.

Digital Services Tax Draft Guidance

Contents

DSTXXX: Digital Services Tax Guidance	1
DSTXXX: Digital Services Tax: Introduction	5
DSTXXX: Digital Services Tax: Overview	6
DST Activity Condition	6
DST Revenue Condition	6
Annual Thresholds	6
Rate of DST	6
Adjustments to the charge	6
DSTXXX: Definition of a Group	7
DSTXXX: Relevant Activity	8
Example A	9
Example B	9
Example C	9
DSTXXX: Definition of a Social Media Platform	10
First condition – user interaction	10
Second condition – content sharing	10
Intended scope	11
Example A	11
Example B	11
Example C	11
Associated online advertising business	12
DSTXXX: Definition of an Internet Search Engine	13
Meaning of an internet search engine	13
Internal search engines	13
Associated online advertising business	13
Example A	13
DSTXXX: Definition of an Online Marketplace	15
First condition	15
Second condition	15
Third condition	16
Associated online advertising business	17
DSTXXX: Definition of an associated online advertising business	18
Example A	18
DSTXXX: Meaning of an Online Platform	20

Digital Services Tax Draft Guidance

DSTXXXX: Revenue condition.....	21
DSTXXXX: Determining digital services revenues	21
DSTXXXX: Meaning of Revenue.....	23
DSTXXXX: Revenues from a Relevant Business Activity.....	24
Example A	24
DSTXXXX: Attribution of revenues between DST activities and other activities.....	26
DSTXXXX: UK Relevant Revenues.....	28
DSTXXXX: Meaning of a User	29
Example A	29
DSTXXXX: Meaning of a UK User	31
Examples A	31
Example B	32
DSTXXXX: Calculating UK Relevant Revenues: Revenues arising by virtue of the use of a DST activity by UK users	34
DSTXXXX: Calculating UK Relevant Revenues: Advertising Revenues	35
Example A.....	35
Example B	36
DSTXXXX: Calculating UK Relevant Revenues: Marketplace transactions	37
Example A	37
DSTXXXX: Calculating UK Relevant Revenues: Marketplace transactions involving UK land	38
Example A	38
DSTXXXX: Applying Group Thresholds	39
DSTXXXX: DST Accounting Period	40
DSTXXXX: DST Allowance	41
Example A	41
Example B	41
DSTXXXX: Calculating the DST liability	42
Example A	42
DSTXXXX: Alternative charge provision	43
DSTXXXX: Alternative basis of charge	44
Example A	45
DSTXXXX: Alternative basis of charge: Operating margin.....	47
Consolidated accounts	47
Operating costs	47
Disallowable costs.....	47

Digital Services Tax Draft Guidance

DST XXXX: Alternative basis of charge: Operating margin: Identifying the costs that are attributable to providing the relevant activity to UK users.....	49
DSTXXXX: Cross-border marketplace transactions	51
Example A	51
DSTXXXX: Responsible Member.....	52
DSTXXXX: Obligation to register.....	53
Changes to registered details.....	53
DSTXXXX: Commencement	54
DSTXXXX: Returns	55
Ending of duty to submit returns	55
DSTXXXX: Interaction with Corporation tax.....	56
Effect on transfer pricing in a group	56

DRAFT

Digital Services Tax Draft Guidance

DSTXXX: Digital Services Tax: Introduction

Digital Services Tax (DST) is a 2% tax on the revenues that a group derives from providing a social media platform, search engine or an online marketplace to UK users.

A group will be liable to DST when:

- It provides a relevant business activity
- The worldwide revenues attributable to the relevant business activity exceed £500m
- More than £25m of these revenues are attributable to UK users

The DST was announced at Autumn Budget 2018 and will apply from 1 April 2020. It was announced as an interim response to the wider challenges the digital economy poses for the international corporate tax framework.

DRAFT

Digital Services Tax Draft Guidance

DSTXXX: Digital Services Tax: Overview

The DST will apply to groups that meet the DST activity and revenue conditions.

DST Activity Condition

A group will meet the DST activity condition when it provides at least one of the following business activities:

- a social media platform;
- an internet search engine; or
- an online marketplace.

DST Revenue Condition

The revenue condition will be met when the revenues generated from the DST activities exceed the annual revenue thresholds.

Annual Thresholds

The annual revenue thresholds are:

- £500m of worldwide revenue from DST activities (digital services revenues); and
- £25m of these revenues are attributable to UK users (UK digital services revenues).

When a group meets the activity and revenue conditions, the group will be within the scope of DST.

Rate of DST

The DST will normally apply a 2% tax on UK digital services revenues.

Adjustments to the charge

There will be an annual allowance on the first £25m of UK digital services revenues.

A group can also claim to calculate the liability under the alternative charge provision, or 'safe harbour'. This election is voluntary and is applied against business activities. So for example if a business has two in-scope business activities (e.g. an internet search engine and an online marketplace) it could choose to apply the alternative basis of charge to one, both or neither of these activities.

Under the 'safe harbour' election the DST tax rate is calculated by reference to the UK operating margin of the in-scope activity. It will also ensure that where the UK activity is loss making no DST needs to be paid on revenues attributable to that activity.

Digital Services Tax Draft Guidance

DSTXXX: Definition of a Group

For the DST, a group will consist of a parent company and all its consolidated subsidiaries.

A parent company is an entity that meets one of the following conditions:

- It is a member of a GAAP group and is not a consolidated subsidiary of another entity
- Or it is not a member of a GAAP group

A GAAP group will be a group within the meaning given by International Accounting Standards (IAS), US GAAP or UK GAAP.

An entity will be a consolidated subsidiary of another entity if it is a subsidiary of that (second) entity within the meaning of IAS, UK GAAP or US GAAP.

DRAFT

Digital Services Tax Draft Guidance

DSTXXXX: Relevant Activity

In addition to identifying the members of the group (DSTXXXX) and the DST accounting period (DSTXXXX) a group will also need to identify whether it meets the DST revenue condition.

A group will only be liable to DST in any DST period in which it meets the DST revenue condition (DSTXXX). Only groups that have, or have had, relevant activities will be able to meet the DST revenue condition.

The relevant activity tests the business activities of the group to see whether these include the provision of:

- a social media platform (DSTXXXX)
- an internet search engine (DSTXXXX)
- an online marketplace (DSTXXXX)

These relevant activities include an associated online advertising business (DSTXXXX) operated by the business, where the business derives significant benefit from its connection with the relevant underlying activity (e.g. an online marketplace, internet search engine, or a social media platform)

A group may undertake more than one relevant business activity. The aggregate of all the revenue generated by all relevant business activities within the group will be relevant to the group thresholds (as well as any associated online advertising business).

The meaning of “activity” is not defined. In the majority of cases, it should be possible to determine whether a particular service is a distinct activity that should be tested against the DST activity condition or is simply a component part of a broader activity but there may be some cases where this distinction is less clear.

In HMRC’s view, an activity will generally meet two conditions.

First, it will be something that involves providing services for a commercial purpose, that is services provided to, or functions performed on behalf of, third party customers. For this reason, an activity would not cover internal functions or services. For example, that may be a social network that is only used in a single organisation to allow employees to share information or contact details with each other, and is not sold to or accessed by third parties. HMRC does not think such a service would meet the meaning of an activity.

Second, something (i.e. a service performed for commercial purpose) will only be considered to meet the DST activity condition where it is a substantive business service. This means that it should have an independent purpose and not something which is simply incidental or ancillary to a broader/function service.

In making this determination, the business should consider the facts and circumstances of its business model.

Relevant factors may include

- how users perceive the service i.e. do they view a particular service as an important part of why they engage with a given platform
- whether the service directly or indirectly generates revenue for the group
- the extent to which the service contributes to the wider revenue generation of the group
- whether the service would be viable on a freestanding basis

Digital Services Tax Draft Guidance

- whether the service is an important part of the business' development and strategy e.g. have meaningful costs be incurred on developing and supplying the service

Once the activity has been identified the group will need to determine whether that activity meets the definitions of the relevant activity.

Even if a given service or function does not satisfy the relevant activity condition itself, the revenues attributable to that service or function may still be taxable to the extent that they were generated in connection with a relevant activity (i.e. the service is ancillary or incidental to a relevant activity).

Example A

A comments section of a newspaper enables users to leave comments underneath articles. This can encourage interaction between the people leaving comments. It could be considered to have some of the features associated with a social media platform (i.e. some user generated content, user interaction). However it seems unlikely this would meet the activity condition given this service is not a substantive commercial function and would instead appear to be ancillary to the provision of digital journalistic content.

Example B

Business A provides an online retail store which sells physical goods (which Business A owns). It also operates an online forum. The forum is hosted in a separate section of the website and has a significant user base, many of whom use the forum independently of the other services provided by the business.

The forum generates revenue for Business A through advertising revenue and helps to attract traffic towards the other services provided by the group (e.g. the online retail platform). In this example, it is more likely that the forum is a distinct activity and Business A will need to determine whether the activity and threshold conditions apply.

Example C

Business B provides an online journal which allows users to comment on the articles and blogs published on the website. While the comments sections adds some limited value to the business offering, users regard the comments section as a component of the online journal and visit the website in order to access the journal. The comments section does not generate revenue and users would not visit the comments section in the absence of articles to discuss. This is not likely to be an independent activity. The business should determine whether the online journal as a whole meets the conditions.

Digital Services Tax Draft Guidance

DSTXXXX: Definition of a Social Media Platform

The activity condition will be met when the group's activities include the provision of a social media platform.

A social media platform is defined as an online platform where:

- 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)
- the platform enables content to be shared with other groups of users (or other users)
- This activity will include any associated online advertising business operated by the group, where the advertising business derives significant benefit from its connection with the underlying social media platform.

First condition – user interaction

The first condition is a test of the importance of user interactions to the business activity. Social media platforms will frequently encourage users to join and create user networks, communicate and share content with one another.

The condition will be met when the main purpose, or one of the main purposes, of the platform is to encourage users to interact with one another. It is possible that the business has more than one main purpose in providing the platform, whether a purpose is a main one will depend on the particular facts and circumstances of the business but the wording does have a connotation of importance. The following list provides some useful indicators to consider:

- Is the growth and engagement of the user base a key performance indicator and is it monitored by external investors?
- Does the platform rely significantly on user generated content rather than producing or acquiring rights to the majority of content on the platform?
- Is the ability to interact with other users an important driver in attracting new or existing users to the platform?
- Does the business expend resources understanding how users interact with the platform and how to increase engagement with the platform?
- Would users be likely to use the platform in the absence of other users?

Second condition – content sharing

The second condition tests whether the platform enables users to share content with one another. Content is not defined in the legislation but is intended to be a broad concept and would include text displayed publicly on a platform as well as media content like images, music or videos. The condition reflects the importance of user generated content to social media platforms.

The legislation refers to sharing content with other groups of users (or other users). This means the condition will only be met if the platform provides the capability to share content with multiple users. This reflects that content shared on social media platforms, in principle, can be shared openly for public display and populates the platform. This is distinguished from private messaging software such as an email provider where communication is typically private and does not help to drive network effects.

Digital Services Tax Draft Guidance

Intended scope

Together it is expected that the following types of platform will normally be covered by the definition:

- Social networking sites
- Micro-blogging platforms
- Video or image sharing platforms
- Online dating websites
- Platforms that primarily exist to share user reviews

This is a non-exhaustive list.

There are other types of platform that may be covered by the definition. This will depend on the particular facts and circumstances of the business but a key consideration should be the importance of user interactions and the user base to the business.

The definition is not intended to cover telecommunications networks or private communications platforms like email or messaging apps.

Example A

An online games publisher publishes Game A which is sold in a physical format or available for download and is typically played in single player mode. The game does have a multiplayer option but most users play against the computer and there is limited interaction between users beyond the extent they are playing the game against one another.

In this example, Game A will not meet the activity condition.

Example B

Business B provides a telecommunications network. The network facilitates the communication between individuals and provides the enabling infrastructure for the internet. The underlying technology behind these services utilises the transmission of digital information. Using the network all users are able to exchange voice and video messages with each other, sometimes on a one-to-many basis.

Business B's telecommunications network will not meet the social media definition. While the business enables the communication between individuals, it is not within any ordinary understanding of a social media platform. The business does not actively encourage users to interact with one another or seek to drive their engagement with the platform, it simply allows communication to happen. There is also some doubt whether a telecommunications network satisfies the second condition. The communication is primarily private and peer to peer.

Example C

Business C provides a social media platform and private messaging applications which allow users to contact each other privately or make voice and video calls.

Digital Services Tax Draft Guidance

The group will need to determine whether the private messaging applications are a distinct activity (DST XXXX) or part of the functionality provided by the social media platform, albeit provided by separate software.

Unconnected messaging platforms will need to be tested under the conditions. HMRC's view is that standalone messaging applications will not typically constitute a social media platform. They do not promote public user interaction in the same way.

However if the messaging platform is highly integrated, perhaps by sharing the same underlying technology as well as a highly overlapping user base with the social media platform, it is likely it will simply be part of that platform. As such it should not be tested independently to see whether it meets the definition. Although the messaging platforms may not meet the activity condition to be treated as social media platforms in their own right, Business C will also need to consider whether the revenues arising to these platforms were received in connection with the social media business (DST XXXX).

Example D

Business XY operates a social media platform which primarily displays user generated content but also displays a non-negligible amount of professional content from e.g. respected periodicals. This is integrated into the same platform and helps to encourage users to spend time on and interact with content on the platform. XY does not consider the third party professional content to be an incidental part of its offering. As a result it needs to consider whether this service is a non-incidental party of its social media offering or a separable activity in its own right. This could be determined using some of the conditions set out in DSTXXX, such as whether it would be offered for an independent purpose, or whether it exercises significant control over the curation and development of the third party professional content. But it should also consider the degree of synergy between user and third party content, and the purpose of including third party content on the platform (i.e. is it just to attract traffic to the social media platform). In this case the evidence indicates that professional content does form part of the wider social media service.

Associated online advertising business

If the group provides a social media platform, the relevant activity will consist of the social media platform and any associated online advertising business operated by the group. Further details of what is meant by an associated online advertising business is given in its own section (DSTXXXX).

DSTXXXX: Definition of an Internet Search Engine

The second business activity considered in the activity condition is the provision of an internet search engine.

The legislation seeks to identify whether the group provides an internet search engine. If the group provides an internet search engine then the relevant activity will consist of the search engine and any associated online advertising business operated by the group

Meaning of an internet search engine

An internet search engine is not defined further and is intended to reflect the normal understanding of a search engine and it should be clear in most cases when a business is providing this activity.

Internal search engines

Websites that provide a search function to allow users to navigate information solely on that website, rather than providing links to third party websites, are not included in the internet search engine definition. These search functions are not a distinct activity from the rest of the website or business but are just an ancillary activity that helps to support the main business activity. The group does not need to test such a function under the activity condition.

HMRC does not consider that an internal search function would fall within the ordinary understanding of an internet search engine business in any case. A search engine business will in principle search the whole of the internet and the algorithm will continuously collect data in order to improve the performance of the search engine. In contrast, an internal search function exists primarily to enable the user to find content on the particular website.

There may be cases where a website has a search 'box' which does display results from a large number of third party websites, but the underlying search technology is provided by a third-party other than the website owner. In these circumstances the business should consider its facts and circumstances, but HMRC expect that where the third party is the one providing the underlying search technology and concluding contracts with advertisers, it will be that third party, not the website owner, which is providing the relevant activity

Associated online advertising business

If the group provides an internet search engine, the relevant activity will consist of the internet search engine and any associated online advertising business operated by the group. Further details of what is meant by an associated online advertising business is given in its own section (DSTXXXX).

Example A

Business A originally operated a search engine. In recent years, it has shifted focus away from the search engine business and has acquired other digital services including advertising networks. However, Business A's brand is still closely associated with the search engine and it still provides a search engine portal. However, the actual search technology and search facility is contracted out to an unrelated party and the unrelated party also controls advertising contracts with advertisers.

Digital Services Tax Draft Guidance

In this example, Business A does not provide a search engine. While users may perceive that Business A is a search engine provider, it does not perform any of the actual search activities itself. It is comparable to a website that allows a search engine provider to provide an internal search function.

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Digital Services Tax Draft Guidance

DSTXXX: Definition of an Online Marketplace

The third business activity in the activity condition is the provision of an online marketplace. This is defined as an online marketplace means:

- an online platform, where;
- the main purpose, or one of the main purposes, of the platform is to facilitate the sale by users of particular things
- 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

In interpreting this definition HMRC believe businesses should consider three conditions:

- The first condition is whether the platform is an online platform (DSTXXX).
- The second condition is whether the platform allows users to list, sell or advertise services, goods, and other property to users
- Finally, the third condition is that a main purpose of the platform must be to facilitate the sale of services, goods or other property offered by third-party users via the platform

If all three tests are satisfied the activity condition will be met.

An online marketplace will include any associated online advertising business operated by the group where that the advertising business derives significant benefit its connection with the underlying online marketplace

First condition

The first condition will be satisfied when the business activity is conducted through an online platform (DSTXXX).

Second condition

The second condition is drafted broadly and will be met when the online platform allows third parties to sell or advertise services, goods or other property to users. It is not intended to cover the online sales of e-commerce retailers or online sales generally. It only captures cases where the platform's business is to act as an intermediary and match users.

Services, goods or other property is intended to include a wide range of activities and items. Most activities within the gig or sharing economy would be within the intended scope as well as physical and intellectual property.

Whether the second test is met or not will depend on the particular facts and circumstances of the commercial business model. Some key indicators are whether:

- third-party businesses offer or sell products through the platform
- the platform has legal ownership of goods sold through the platform or not
- the business accounts for revenues received as a principal or an agent (DSTXXX)

Digital Services Tax Draft Guidance

In practice, a range of different business models may satisfy the second test.

- It does not matter whether the platform facilitates business to consumer (B2C), business to business (B2B) or consumer to consumer (C2C) transactions.
- Equally, the reference to services, goods or other property means that so long as the item exchanged is a good, a service or other property, the nature of the particular transaction or good and service exchanged is unlikely to be relevant.
- It is irrelevant whether transactions are concluded on the marketplace platform itself or whether the platform simply allows users to list products and the transaction is subsequently concluded outside of the platform.
- It does not matter whether the platform is a passive intermediary, which only matches users, or whether the platform actively regulates content on the platform or carries on significant value adding services like delivery.

Example A

Business F allows users to list items for sale on the platform and charges a fixed listings fee for each item listed. Interested parties contact the seller through the contact information provided on the platform. The platform does not provide payment facilities, and users who wish to buy or sell items must make the necessary arrangements themselves. Business F's platform meets the second test as the platform enables users to list items to other users.

Third condition

The third condition considers the purpose of the platform's activities. This condition will be satisfied when a main purpose of the platform is to facilitate the sale of services, goods or other property between sets of users.

The legislation also makes it clear that hiring an item is also intended to meet this condition.

The third test is designed to filter out businesses that do not actively try to facilitate the exchange of services, goods or other property but may perhaps just display advertising as part of their normal course of business

In considering whether they meet the third test HMRC envisages that businesses may want to consider some of the following, including whether:

- Users largely visit the platform on the basis they are seeking to make a purchase or a sale
- The website has functionality which allows users to make searches for or filter results to identify specific goods/services/other property
- Facilitating sales for users is considered an important part of business strategy, either in how the business expects to grow or is monetised.

Example B

Business G provides an online magazine which is monetised by advertisements. The advertisements are typically general brand advertising rather than classified ads or product advertising. The website does not

Digital Services Tax Draft Guidance

have the functionality for users to search advertisements on the website or search for particular products based on their requirements.

In this example, the main purposes of the platform will be to provide an online magazine and to monetise this website through advertising income. The platform has no direct interest in the successful conclusion of transactions and does not promote exchange on the platform. It is therefore unlikely to meet the third condition.

Business H provides a website that is intended for users to list items of jewellery for sale on the platform. The platform charges a fee for listing each item and also receives advertising income from third parties who wish to be associated with this website. The platform allows the listed items to be searched by various criteria allowing a potential purchaser to quickly determine whether the item they want is listed. The items listed are of a high value, so typically a physical inspection takes place before the sale is concluded. The platform enables the buyers and sellers to contact each other to arrange the inspection but the platform is not involved in arranging payment or the terms of the sales between the parties.

In this example, the main purpose of the platform is to facilitate the sale of jewellery listed on its platform. It meets all of the necessary criteria to be considered an online marketplace.

Associated online advertising business

If the group provides an online marketplace, the relevant activity will consist of the online marketplace and any associated online advertising network operated by the group. Further details of what is meant by an associated online advertising business is given in its own section (DSTXXXX).

DSTXXXX: Definition of an associated online advertising business

An online advertising business is a business which uses online platforms to facilitate the display of advertising on websites and applications (beyond simply its own website). These businesses may generate revenue through auctioning advertising space on third party or related websites under their control, licensing user data, or charging fees for a third party wanting to join the advertising network.

This business is not a relevant activity of the DST in its own right, but should be considered part to the relevant activity when an online advertising business is 'associated' with a relevant activity. This reflects the fact that in some cases a relevant activity will monetise itself through the provision of wider advertising services which is either developed in conjunction, integrated with, or otherwise derives a significant benefit from the underlying relevant activity.

So if a group determines it has a relevant activity, it should also assess whether it has an associated online advertising business i.e. whether it has a business which (a) facilitates the display of online advertising (b) derives a significant benefit from its connection with the underlying activity.

It is important to note both tests. Whether the advertising business derives significant benefit from its connection the underlying activity will depend on the facts and circumstances of individual businesses but HMRC anticipates that the following factors may help guide an assessment of whether a business meets this condition:

- If the relevant activity provider shares user data with the associated online advertising network, such as in order to better understand user behaviour and deliver more relevant adverts
- If the relevant activity provider and online advertising network offer the same, integrated or similar services to third party businesses
- If the development of the online advertising network has substantially depended on its association with the relevant activity, or is integrated with that activity

Example A

Business X operates a search engine, and generates revenue by allowing businesses to pay it to display advertising against users' search results. However it also operates a service whereby it enters into agreements with third party websites to take control of their advertising space and auction this to other customers looking to display advertising across a range of websites, not just the search engine. This activity would be considered an online advertising network.

The search engine provider tracks users' behaviour across both its search website and as they browse third party websites that participate in its advertising network. It also offers businesses seeking to advertise a similar set of products to use to target adverts at users. In this case the advertising business does likely derive significant benefit from the search engine and should be considered in scope as an associated online advertising business.

Example B

Digital Services Tax Draft Guidance

LM Ltd operates a marketplace. It also helps businesses to display advertising on third party websites. It therefore needs to consider whether its advertising business derives significant benefit from the marketplace and so is an associated online advertising business. LM Ltd does not share data across the two activities and since the acquisition of the marketplace by the group the two have been operated separately, with different infrastructure and management teams. It does not have an associated online advertising network.

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Digital Services Tax Draft Guidance

DSTXXX: Meaning of an Online Platform

The relevant activity definitions include a condition that the platform is an online platform. This is not defined further in the legislation so takes its meaning from its ordinary language, the context of the provision and the objectives of the DST.

In HMRC's view, an online platform simply means a platform that is delivered online. This will include websites or internet based applications ('apps').

There may be some questions about whether this test is met when a traditional physical business also provides an online sales channel or website. The test does not impose a quantitative test of how much of a business' activity is concluded online. However, the question to be answered is whether the substance of the business is carried out online.

Example A

Business E provides a long-established auction house which specialises in selling livestock.

In recent years, the business has increasingly streamed auctions over a platform it operates which can track when remote users would like to bid. While a significant portion of bids continue to be made at the auction house, the lots also receive a limited number of bids from the online sales channels.

Business F is another well-known auction house. In recent years, almost all of its sales have been made via the online bidding platform. The platform no longer just provides a facility to make a bid but now includes detail about each lot on the listings. The livestock are no longer transported to the ring but instead the seller streams videos to the platform to assist potential bidders.

Business E and F will need to consider whether their activity amounts to an online platform. It is likely that Business E's online business should be viewed as an online channel of a traditional physical business and as such it is unlikely to satisfy the activity condition. Business F's platform on the other hand is likely to meet the online platform test. This is because the online activities go beyond just a bidding mechanism and would function as an online marketplace if the business was carried out entirely separately from the traditional auction business. The proportion of business carried out online would also suggest that the online activities are not just an ancillary component of the traditional auction business.

Digital Services Tax Draft Guidance

DSTXXX: Revenue condition

The second condition determining whether a group is within scope of DST is the revenue condition. This condition will be satisfied when the revenues attributable to the DST activity exceed the revenue thresholds.

The revenue thresholds will be met when:

- Worldwide revenues attributable to DST activities exceed £500m in the accounting period
- Revenues attributable to DST activities which are attributable UK users exceed £25m in the accounting period

The legislation refers to these revenues as digital services revenues and UK digital services revenues respectively.

The rules for determining a DST accounting period are covered in DSTXXX.

The thresholds will be reduced on a pro-rata basis where the accounting period is less than 12 months (DSTXXX).

DSTXXX: Determining digital services revenues

Groups will need to determine the worldwide revenues attributable to DST activities in order to work out whether they are chargeable to DST.

The worldwide revenues attributable to DST activities are called digital services revenues in the legislation. These are defined as revenues that arise in connection with the DST activity. Where a business has an associated online advertising business that meets the conditions, the revenues of that business should be considered connected with the underlying relevant activity.

Revenues arising means revenues, however described, recognised in the income statement (or in profit and loss) of the group consolidated accounts for that period.

The provision ensures that where there is some connection between a revenue stream and the DST activity it is relevant revenue no matter how it is described. It also ensures that revenues from activities ancillary to the DST activity are included in the relevant revenues and protects against arrangements that may attempt to split out the revenue stream from the underlying activity.

Whether a revenue stream is connected to the DST activity depends on the particular facts and circumstances of the business model. Some relevant factors to consider are whether:

- the revenues would have been earned without the performance of the DST activity
- the revenues are directly or indirectly linked to DST relevant activities provided to users

DSTXXX provides further guidance on typical revenues attributable to each of the DST activities.

Digital Services Tax Draft Guidance

Example A

ABC Group provides an online marketplace. It generates revenue by charging commission on successful transactions as well as a small delivery fee. Both sources of revenue are generated in connection with the provision of a relevant activity (the online marketplace) so are in-scope.

DRAFT

Digital Services Tax Draft Guidance

DSTXXX: Meaning of Revenue

DST is charged on the UK DST revenues arising in a DST accounting period.

There are specific rules that determine the amount of revenues which are connected to the DST activity (DSTXXX) and attributable to UK users (DSTXXX) but before this there are also rules that determine what is meant by the revenues in a DST accounting period.

The DST refers to accounting standards to determine the amount and timing of revenues. The revenues arising in an accounting period are defined as the revenues recognised in the consolidated group accounts, provided these accounts are prepared under one of the acceptable accounting frameworks, and are prepared in accordance with GAAP in relation to those standards.

The acceptable accounting frameworks are UK GAAP, IAS and US GAAP. There is also provision for HMRC to publish by way of notice any other accounting framework that it considers to be acceptable.

If a group does not prepare consolidated accounts under one of these standards the revenue for DST will need to be calculated in accordance with IAS. The relevant international standard for revenue recognition is IFRS 15.

Where the consolidated financial statements and the DST accounting period cover a different length of time the revenues of the financial statements will be time apportioned to give the revenues arising in the DST accounting period.

DSTXXXX: Revenues from a Relevant Business Activity

DSTXXXX explains that relevant revenues are revenues in connection with the DST activity. This chapter provides some examples of common sources of revenues for each of the three DST activities. This is not an exhaustive list.

Where the business carries on more than one DST activity, the revenues in connection with those activities are all relevant revenues for DST. However, the revenue should only be included once.

Example A

Business J provides a platform which could potentially meet both the search engine and online marketplace definitions. It has total revenues of £100m. While the revenues in connection with the search engine and online marketplace are both £100m, the total DST relevant revenue is £100m not £200m.

Social media platforms

The definition of a social media platform (DSTXXXX) covers a range of different types of platform whose main purpose is to promote interaction between users, and which enable users to share content.

Relevant revenues include all revenues received in connection with the social media platform. These will typically include revenues from:

- displaying advertising to users of the service
- subscription or other access fees from users of the service
- charging users to access specific content on the platform
- other direct fees from users of the service
- sale/licencing of user data

The platform may generate revenues from a combination of revenue streams. Where it has an associated online advertising platform that meets the relevant conditions for inclusion in scope (DST XXXX) all of the revenues the business earns this activity are also attributable to the social media platform.

There may be other revenue streams which are received in connection with the social media platform. This requires a close analysis of the nature of the revenue, the activity from which it is generated and the degree of relationship with the social media platform.

Revenues are likely to be relevant revenues if the revenues are connected to the user base of the platform or data the platform collects from users. Similarly, revenues from ancillary and incidental services to the social media platform are also relevant revenues.

Example B

Business F provides a social media platform. One way it generates revenue is by licencing the data it collects on users to third parties. This revenue would be considered attributable to the social media platform and therefore taxable.

Digital Services Tax Draft Guidance

Search engine

The definition of search engines is explained in DSTXXXX.

Relevant revenues for search engines include revenues from providing or facilitating:

- Search advertising on the group's search engine results
- Search advertising shown by the search engine on third-party websites
- Other search advertising revenues
- Licencing/sale of data

The platform may generate revenues from a combination of revenue streams.

Where it has an associated online advertising business that meets the relevant conditions for inclusion in scope (DST XXX) all of the revenues the business earns this activity are also attributable to the search engine.

Online Marketplaces

The definition of an online marketplace is explained at DSTXXXX.

Relevant revenues for an online marketplace will typically include:

- Commission fees received for facilitating transactions between users
- Delivery fees
- Fees to access or otherwise buy and sell products, services or other property on the platform
- Fees from advertising products to users of the marketplace, either by preferential search listings or display advertising
- General advertising on the marketplace
- Subscription fees to access marketplace services

Where it has an associated online advertising business that meets the relevant conditions for inclusion in scope (DST XXX) all of the revenues the business earns this activity are also attributable to the online marketplace.

There may be other sources of relevant revenues. This will depend whether the revenue is received in connection with the marketplace activity. This requires a close analysis of the nature of the revenue, the activity from which it is generated and the degree of relationship with the online marketplace.

Revenues are likely to be relevant revenues if the revenues are connected to the user base of the platform or data the platform collects from users. Similarly, revenues from ancillary and incidental services to the online marketplace are also relevant revenues.

HMRC expects that marketplaces will normally recognise revenue on a net basis and it is only this element of the transaction, not the total purchase price of the goods or services being exchanged by users, which is taxable.

DSTXXX: Attribution of revenues between DST activities and other activities

Some revenue streams may be received in connection with both a DST activity and another activity. For these revenues, the amount or proportion which is attributable to the DST activity should be determined on a just and reasonable basis.

Such an apportionment is only necessary when the revenues are connected to both DST and non-DST activities. If revenues are only connected to a DST activity, all of the revenues will be attributable to that DST activity.

HMRC recognise that separate business activities can sometimes complement each other. For example, an online marketplace is different business proposition than online retail store, but there is potentially some complementarity when the two are offered alongside one another, such as helping to increase product offering, or helping to increase traffic.

In cases such as these, HMRC does not generally expect indirect cross-subsidisation to be factored into the calculation of taxable revenues. However, it could be exceptions to that in circumstances where it is clear that the revenues generated by an out of scope activity would be substantially reduced were it not provided alongside an in-scope activity

Example A

A large group provides an online marketplace for third-party sellers to sell goods. The group also operates a theme park. The companies within the group operating the theme park also sell merchandise through the marketplace. These direct sales of group owned and produced products are outside the scope of DST. The platform generates revenue by displaying advertising to users of the website. Some of this advertising will be directly connected to the marketplace, for instance search advertising revenues which are received from marketplace sellers to promote their products on the platform. However, other display advertising will be viewed by both marketplace users and users making purchases of the out of scope direct sale items. Users are able to purchase annual subscriptions giving unlimited access to the theme park, preferential prices on goods sold by the platform and discounted delivery fees for all products ordered through the marketplace. Therefore part of the subscription fee and the general advertising revenue relates to the marketplace and part of it to theme park, which is not a DST activity.

In cases where revenues do relate to both in-scope and out of scope activity, the proportion which is relevant for DST should be determined on a just and reasonable basis. Whether a basis is just and reasonable will depend on the particular facts and circumstances of the business activities and the revenues concerned.

This consideration will take into account the information available to the business. The relevant test is not that the method used is the most accurate or most just and reasonable basis, it simply has to be a basis which an objective and informed person would consider just and reasonable having regard to the circumstances. The method chosen should reflect the relative contribution of the activity to the wider business.

Digital Services Tax Draft Guidance

Some methods which may be just and reasonable, depending on the circumstances, are:

- revenues split in proportion to the costs incurred for each line of business activity; or
- a split based on the total amount of revenue that can be directly attributed to each business activity.

Example B

Business G runs a social media platform and a separate online retail platform. It charges a small monthly subscription fee to access both platforms but generates the majority of its revenue from advertising against the separate websites. In total 40% of its advertising revenue comes from the social media platform and 60% from the online retail platform. In this case it may be reasonable for the business to split the subscription fee revenue on a 40/60 basis between the in and out of scope business activities.

Digital Services Tax Draft Guidance

DSTXXXX: UK Relevant Revenues

The DST is charged on UK relevant revenues.

The group will also only be chargeable to DST if its UK relevant revenues in the accounting period exceed £25m (DSTXXXX).

The legislation defines UK digital services revenues as the amount of digital services revenues which are attributable to UK users.

Revenues are attributable to UK users if they arise by virtue of the use of a DST activity by a UK user, or for revenues from online advertising if the advertising was intended to be viewed by UK users.

The meaning of a UK user is explained at DSTXXXX.

DSTXXXX provides additional guidance on the calculation of UK digital services revenues.

Digital Services Tax Draft Guidance

DSTXXX: Meaning of a User

A user is not defined in the legislation but simply means anyone using the platform or DST activity.

This is intended to include both individuals and legal persons or other arrangements.

This means that transactions between companies, companies and individuals as well as individuals to individuals are all potentially within the scope of DST.

In some cases there will be just one user in a transaction that has led to taxable revenue. This will be the case for revenues that an in-scope business derives from advertising where the user will be the person to which the advertising is targeted at or intended to be viewed by (see advertising below)

In other cases, there could be multiple users in a transaction. This will be the case for revenues attributable to specific transactions facilitated between parties on an online marketplace (e.g. commission fees, delivery fees) where the different parties to the transaction are all users (see marketplaces below)

There is no distinction between a 'buyer' or 'seller' on a marketplace, users on all sides of the marketplace are users for the purpose of DST. This is because marketplaces derive value from having high volumes of users willing to exchange. This is equally true for both buyers and sellers. It also avoids potential difficulties identifying which user is making a purchase or sale, for instance when a transaction is concluded by way of barter. Equally it makes no difference which party is formally charged something like commission as part of a transaction.

Example A

Customer A buys a toothbrush from Seller B on an online marketplace. Both customer A and seller B are users of the platform.

Example B

An online marketplace connects a UK user with an Avalonian person offering rental accommodation. The marketplace charges £25 to the UK user for facilitating the transaction. The DST group recognises this income in one of its UK subsidiaries. Separately the Avalonian is charged £30 which is recognised as revenue of an Avalonian subsidiary of the group. The UK DST Revenue in this example would be £55, comprising both £25 and £30.

Advertising

Business, including advertising agencies, placing advertising on a DST activity platform are not considered users for the purposes of DST. However, businesses that create pages or profiles on social media platforms to raise awareness of their business may be considered users for the purposes of DST; in these cases it will be the advertising shown to these users which will be relevant revenues.

Non-natural persons

A user can be a legal person such as a company. Where this is the case the user will normally be considered to be the contracting entity and there is not a requirement in the case of B2B transactions to look through the transaction chain to the location of the underlying individual consumer. HMRC may however challenge

Digital Services Tax Draft Guidance

arrangements where transactions are booked in certain group entities for the purpose of avoiding a transaction coming into scope of the DST, where in fact the benefit of those transactions primarily flows to an entity established or normally located in the UK.

DRAFT

Digital Services Tax Draft Guidance

DSTXXX: Meaning of a UK User

The legislation defines a UK user as a user who it is reasonable to assume is either an individual normally located in the UK or, for businesses, established in the UK.

Meaning of established or normally located in the UK

A user will be considered normally located in the UK if it can be reasonably assumed they are normally located or established in the UK (i.e. based on available evidence). For example, if a user using a marketplace provides a physical address in the UK, or UK payment details, it is likely to be reasonable to assume they are normally located in the UK and therefore a UK user.

The inclusion of 'established' within the legislation is intended to reflect that this term may more appropriately apply where the user is a legal or non-natural person. It should be interpreted as considering where the legal person's place of business is located, and could be evidenced by information such as address or contractual details. As noted in DSTXXX, where a legal person is considered a user it is not normally required to look through to the location of any underlying individual customer.

HMRC recognises that in some cases businesses may have limited information available to determine user location. Businesses are only expected to use the evidence available to them to determine if it is reasonable to assume a user is a UK user.

The test asks whether it is reasonable to assume something. The evidence available will determine whether that assumption is reasonable or not.

Examples A

User A lives in the UK and visits Sodor on holiday. She sees an advertisement for a dating app in Elsbridge and decides to take out a subscription. User A supplies a UK location to meet people, UK contact details and credit card details. User A is a UK user as it is reasonable to assume they are normally located in the UK. The revenues the dating app receives from the transaction will be UK relevant revenues.

User A also regularly uses a separate app to arrange local journeys, where the app introduces the user to an available transport provider. User A uses this app whilst on holiday in Sodor. The app has a history of previous journeys showing regular and frequent journeys in the UK. The app holds no further details such as payment history. As it reasonable to assume User A is normally located in the UK the revenue the platform receives from arranging the local journeys in Sodor will be UK relevant revenues.

User B lives in Sodor and visits the UK on holiday. While in Bristol he sees an advertisement for a dating app and decides to take out a subscription. The details provided by User B mean it is reasonable to assume he is a not a UK user as he is normally located in Sodor. The revenues the dating app receives from the transaction will not be UK relevant revenues.

User C is a company which operates a business in Sunderland. Employees of the company buy some fabric from an online marketplace. All the information the marketplace has about the business indicate it is normally established in the UK. The online marketplace submits its DST return and claims that the revenue from the

Digital Services Tax Draft Guidance

transaction are not UK relevant revenues because user C is based in New Zealand. User C is a UK user, notwithstanding the online marketplace's DST return. Based on the information available, the only reasonable conclusion to make is that user C is a UK user.

Evidencing whether a user is a UK user

Businesses should determine whether a user is normally located or established in the UK based on the information available to them. The information a business collects from users will vary depending on its business model. The legislation consequently does not specify acceptable sources of evidence, use presumptions or impose a prescriptive hierarchy of evidence. Instead, businesses should consider the information they hold and use the most appropriate evidence, or mix of evidence, to identify user location.

Some sources of evidence which are commonly collected by providers of DST activities include:

- Delivery address
- Payment details
- IP address
- Intended destination of advertising based on contractual evidence
- The address of property or location of goods which are rented out

Some businesses will collect more than one source of user information. There may be cases where the different data sources provide conflicting evidence regarding user location.

In these cases, the business should consider which evidence is most appropriate, remembering that the test is where the user is normally located, not where they are located at the time of the transaction. In making this determination, the business should consider whether a reasonably informed and objective observer would be likely to conclude that it is probable the user is a UK user.

Example B

Business K provides an online marketplace which allows users to order a food delivery from local delis, farm shops and urban farmers. Users choose the produce they would like to order on Business K's app and then enter their delivery address and billing information. Business K also collects the user's IP address when an order is placed. Business K can use the delivery address, billing information and IP address to determine the user location.

User B orders a bottle of wine on Business K's platform. The user's billing address and delivery address show an address in Runcorn, UK. However, the IP address is recorded in Lesotho. Business K should evaluate the evidence. In this case, the billing and delivery address is more likely to show the user's normal or permanent location than the IP address at the time of the transaction, so user B should be considered a UK user.

Business L provides an online marketplace that allows users to book a massage or spa therapies at third-party establishments. User booking details are passed directly to the spa and Business L does not retain any of the payment information. The spa pays a commission fee back to Business L when the service has been provided. Business L only collects the IP address of the user.

Digital Services Tax Draft Guidance

In this case, it would be reasonable for Business L to use IP address to identify user location. It would also be reasonable to assume that in most cases the location of the user at the time of the transaction would be the same as their normal location, in the absence of evidence to the contrary.

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DSTXXXX: Calculating UK Relevant Revenues: Revenues arising by virtue of the use of a DST activity by UK users

The general rule is UK relevant revenues are revenues that arise by virtue of the use of a DST activity by a UK user.

However, the application of this rule needs to be considered alongside the following specific provisions:

- advertising revenues (DSTXXXX)
- revenues from transactions on a marketplace (DSTXXXX)
- transactions involving UK land (DSTXXXX)
- cross-border transactions involving a user in another DST jurisdiction (DSTXXXX)

The general rule is broad to ensure that revenues arising from payments by UK users to the provider of the DST activity are taxable. Therefore subscription fees, payments to access content or a premium service will all be UK relevant revenues when the revenue is connected to the DST activity and is made by a UK user.

There may be some circumstances where the revenue arises from the use of the platform by UK users but is not received from a UK user. These are still UK relevant revenues, the business should consider whether the revenues would have been received without the interaction or involvement of UK users.

Subject to the specific provisions noted above, where revenues are attributable to UK users and non-UK users, revenues should be apportioned to UK users on a just and reasonable basis. This is most relevant to advertising revenue, which is covered in (DSTXXXX)

DSTXXXX: Calculating UK Relevant Revenues: Advertising Revenues

The revenues that a provider of a DST activity receives from facilitating or providing online advertising are UK relevant revenues when the advertising is intended to be viewed by UK users. HMRC expect that where an advert is viewed by or engaged with (e.g. clicked) by a UK user, giving rise to revenue, it would normally be reasonable to assume it was intended to be viewed by UK users. But equally where there is no direct evidence of UK user viewing or engaging with an advert (potentially because this is not tracked) the business should assess whether, for example, contractual evidence indicates that the advertising was in whole or part intended to be viewed by UK users

Where the advertising is solely intended to be viewed by UK users, all revenues from that advertising are UK relevant revenues. It does not matter whether the advertisement is general advertising like banner advertising which is displayed to large numbers of users regardless of their individual preferences or highly individualised advertising directed at users the platform believes are likely to be interested in the brand, product or service being advertised.

The test of intention is not meant to be a high bar. If an advert was displayed generally to the European market but the UK was not individually specified, it is still reasonable to assume that at least in part the advertising was intended to be viewed by UK users.

Example A

Avalonian food becomes the latest popular food trend in the UK. A large exporter of Avalonian food produce wishes to take advantage of this newfound popularity and pays Business M, which operates a large social media platform, to display advertising to UK users. This is specified in the contract between Business M and the exporter. The advertising is intended to be viewed by UK users so the revenues Business M receives are UK relevant revenues.

A popular UK clothing brand wishes to expand its sales in Sodor. It purchases advertising on a large video sharing website operated by Business N. The contract stipulates that the advertising should be displayed against certain videos watched by users with an IP address in Sodor. The advertising is not intended to be viewed by UK users so the revenues are not UK relevant revenues.

Some revenues will arise in connection with both UK users and non-UK users.

In these cases, the business must identify the UK relevant revenues by apportioning the revenue on a just and reasonable basis. The method should take into account the information about user location available to the business and any other relevant facts or circumstances.

Where businesses are able to determine the revenue directly attributable to showing advertising to UK users, they are required to do so. However, where this cannot be determined businesses should apportion advertising revenues when the advertising is intended to be viewed by both UK users and non-UK users. For instance, some businesses may launch a Europe-wide advertising campaign.

In making the apportionment, some factors which may be relevant include:

Digital Services Tax Draft Guidance

- The intended commercial outcome of the transaction
- The contractual requirements
- The relative volume of users in each jurisdiction
- The revenue per user in each jurisdiction
- The relative engagement of users in each jurisdiction
- The size and maturity of the platform in each jurisdiction
- The average profitability or revenue performance in each jurisdiction [or revenues from comparable transactions]

Sometimes factors will point in different directions. In these cases the business must use its judgement to determine which factors give a just and reasonable reflection of the revenues the business has derived from showing advertising to UK users.

Example B

A group typically charges advertisers £100 to show adverts to 1,000 UK users and £50 to show the same advert to 1,000 users outside the UK. Business X wants to launch a global campaign. The group charges Business X £90 per 1,000 views.

The campaign results in 75,000 UK views and 25,000 non-UK views. The group receives £9,000 revenue for this campaign.

As the advertising income is attributable to both UK and non-UK users, the group should determine the UK relevant revenues on a just and reasonable basis. If it is able to identify the revenues received from UK users, this amount will be the just and reasonable answer.

If it is not able to determine how much revenues were attributable to the UK users, it will need to apportion the £9,000 on a just and reasonable basis. Depending on the information available to the group this could be either:

- *£6,750 – based on 75,000 views at the contract price of £.09 each*
- *£7,500 – based on 75,000 views at the typical price of £0.10 each*
- *£8,000 – based on the typical experience that in such campaigns 80% of views are UK users and 20% non-UK users. This information is reflected in the price charged to the advertiser such that the group expected to receive £9,000 but made up of £8,000 from UK users and £1,000 from others.*

Other approaches might be acceptable based on what information is available.

DSTXXXX: Calculating UK Relevant Revenues: Marketplace transactions

This part covers the rule for determining the UK relevant revenues in respect of revenues that arise on a per transaction basis on a marketplace.

The rule is required because transactions on marketplaces will by definition involve more than one user. The question therefore arises as to how much of the revenues from a transaction are attributable to a UK user.

The legislation sets out all of the revenues that arise from a transaction on a marketplace will be UK relevant revenues if one of the parties to the transaction is a UK user. This applies equally whether the UK user is the provider or the consumer of the good or service in question. Revenues that do not arise from a specific transaction are attributable to UK users as per the general rule. This means for instance listing fees charged to non-UK users are not taxable as those fees do not arise from a specific transaction involving a UK user.

However, where one of the users is not a UK users, but instead a user of a jurisdiction which applies a tax which corresponds to the DST the revenues from the transaction will be reduced (DSTXXXX).

There are also special rules where the underlying transaction via the marketplace relates to land (DSTXXXX).

Example A

A UK user leases a table via an online marketplace from a user based in Avalon at an agreed rate of £24 per month (£288 p.a.). The UK user also pays the online marketplace provider, Business O, a £20 delivery fee and an annual £100 subscription fee. As a result of the transaction the Avalonian user pays a £30 commission in addition to the £200 annual membership fee that was already due to Business O.

The revenues from this transaction for Business O are £50, made up of the £30 commission and the £20 delivery fee. As the lessee of the table is a UK user all of these revenues will be UK relevant revenues.

The subscription fee and the membership fee will be subject to the general rule (DSTXXXX). The subscription fee arises from the use of the platform by a UK user so will be UK relevant revenues. The membership fee arises from the use of the platform by an Avalonian user so will not be taxable.

DSTXXX: Calculating UK Relevant Revenues: Marketplace transactions involving UK land

The special rule for online marketplace transactions is modified where the transaction involves UK land.

Where the transaction is related to UK land the revenues from that transaction will be UK relevant revenues even if the owner of the land is not a UK user.

Transactions that are related to land include the lease or rental of accommodation or other buildings, for any time period, as well as transactions relating to the sale of land.

This means that:

- Revenues from allowing a user to rent out a property in the UK are UK relevant revenues irrespective of where the owner of the property is located or who stays in the property.
- If a UK user stays in a property listed on the marketplace the revenues are UK relevant revenues wherever the property is situated.

The revenues from the transaction may be reduced if the other user is normally located in a country that operates a similar tax to the DST (DSTXXX).

Example A

Business A is located outside the UK but owns a property in London which it leases for short term holiday lets through an online lettings marketplace. An Avalonian visits London and rents the property. This will be considered a UK transaction and the revenues arising from the transaction are taxable under the DST (subject to any relief under part XXX)

A UK user visits Avalon and rents a flat for two weeks through a marketplace. The flat is owned by an Avalonian company. As the transaction involves a UK user the revenues are taxable under the DST (subject to any relief under part XXX)

A UK company owns a house on Sodor which it lets to an Avalonian holiday maker. This is not a UK transaction and so is not taxable.

Digital Services Tax Draft Guidance

DSTXXX: Applying Group Thresholds

The revenue condition is met when the group's revenues from the relevant activities exceed the threshold conditions. This means businesses will only be subject to DST if the worldwide revenues from the relevant activities exceed £500m and the UK relevant revenues exceed £25m in an accounting period.

The thresholds apply to the revenues of the group. Where a business carries out more than one relevant activity, the thresholds apply to the total combined revenues of those activities.

The thresholds are reduced on a pro-rata basis if the accounting period is shorter than 12 months. For example:

- A group falls within scope of the DST from 1 April 2020.
- The group produces accounts to the 31 December 2020.
- All thresholds will be apportioned by 9 months out of 12.

Digital Services Tax Draft Guidance

DSTXXX: DST Accounting Period

DST is calculated by reference to the revenues earned in an accounting period.

The rules that determine the accounting period for DST are designed to ensure the accounting period is normally aligned with the period of account covered by the consolidated financial statements of the group.

The rules restrict the maximum length of the accounting period to 12 months so there could exceptionally be a difference between the AP and the financial statements.

The first accounting period starts on 1 April 2020, which is the date from which DST becomes chargeable, and ends on the earlier of the accounting reference date of the consolidated group accounts or on 31 March 2021 if there is no accounting date in the 2020/21 financial year.

The accounting reference date is the date to which the group makes up its accounts.

The next accounting period begins immediately after the end of the first accounting period and continues until the next accounting reference date or 12 months from the start of that AP, whichever comes earlier.

If the group only comes into existence after the 1 April 2020 the first accounting period will begin on the date that the group was formed.

Digital Services Tax Draft Guidance

DSTXXXX: DST Allowance

The DST Revenues of a group will be reduced by the DST allowance in each accounting period. The DST allowance is £25m.

The allowance will be pro-rated for accounting periods less than 12 months.

Where a group has more than one type of relevant activity and elects to calculate its DST liability for one of those relevant activities under the alternative rate calculation, the DST allowance will be allocated between the relevant activities in the proportion of UK DST revenues earned by each relevant activity.

Example A

A group providing a social media platform has a worldwide revenue of £510m in the 12 months to 31 December 2022, the date it makes up its accounts. Of that £125m is attributable to the UK users. The DST Revenue is therefore £125m. The DST liability will be calculated as 2% of £100m.

Example B

*A group providing an online marketplace makes up its accounts to 31 December 2020. Its first DST accounting period runs from 1 April 2020 to 31 December 2020, its period of account running from 1 January 2020 to 31 December 2020. Its DST allowance will be calculated as $275/366 * £25m$.*

Digital Services Tax Draft Guidance

DSTXXXX: Calculating the DST liability

Once the activity and revenue conditions are met, each member of the group in that accounting period will be liable to DST.

The total liability of the group is calculated at group level and is then allocated to the individual members of the group that recognise the UK DST revenues which contribute to the group's UK DST revenues.

The steps to be followed are below:

Step 1

- Determine the group's total UK DST revenues for the accounting period.

Step 2

- Deduct £25million from the amount found under step 1.

Step 3

- Calculate 2% of the amount calculated under step 2.
- The result is "the group amount".

Step 4

- The relevant person's liability to digital services tax in respect of the accounting period is the appropriate proportion of the group amount.

As can be seen above, once the group liability has been calculated it is allocated to the individual members of the group that realise UK DST revenues (the relevant person). This allocation is by reference to the relevant revenue recognised by the member in proportion to the total UK DST revenue.

Example A

Group A consists of two companies. Company A receives all external revenue and Company B is an intragroup service provider. Both companies have near identical revenue recognised in their audited accounts. Both are a relevant person as they were members of the group in the period. The DST liability of the group however will be apportioned entirely to Company A as it is the only one which receives any relevant revenue.

If a group makes an alternate basis of charge election the above calculation is not carried out, but instead the calculation takes the form in DSTXXXX

If a group makes a claim relating to cross-border relief it should reduce the amount found in step 1 by 50% of any UK digital services revenues arising to a member of the group in the accounting period in connection with a relevant cross-border transaction.

DSTXXX: Alternative charge provision

Groups can elect to calculate their DST liability under an alternative calculation. Due to the way this is calculated it is expected only groups with low DST UK operating margins will make the election.

The election is annual so groups must make an election in each accounting period they wish to calculate their DST liability under the non-standard rate. The election is to be included in the return.

The non-standard rate will be based on the DST UK operating margin of the group's relevant business activities in the DST return period. The non-standard rate applies to the average margin of each of the DST activities, so there will be a maximum of three elections in a given accounting period.

Groups cannot carry forward losses from earlier periods in this calculation.

When the DST UK operating margin is nil or negative for a given activity the non-standard rate, and DST liability, will be nil for that activity.

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Digital Services Tax Draft Guidance

DSTXXX: Alternative basis of charge

Where the business makes a valid election, the DST liability will be calculated in the following way:

Step 1

- Find the total amount of UK digital services revenues arising to members of the group in the accounting period.

Step 2

- Apportion the total amount found under step 1 between the 3 categories of revenues (UK revenues from providing a social media platform, search engine and online marketplace respectively).

Step 3

- For each category of revenues, the “net revenues” is the amount by which the amount of revenues apportioned under step 2 exceeds the relevant proportion of £25million.

“The relevant proportion” is—

$$\frac{R}{TR}$$

Where R is the amount of revenues apportioned under step 2 to the category, and TR is the total amount found under step 1.

Step 4

- For each specified category of revenues, calculate the operating margin.

“The operating margin” is—

$$\frac{R - E}{R}$$

Where R has the same meaning as in step 3, and E is the amount of relevant operating expenses of the group that are recognised in the accounting period.

If R does not exceed E, the operating margin is nil.

Step 5

For each specified category of revenues, the taxable amount is 0.8 x the operating margin x the net revenues. For any other category of revenues, the taxable amount is 2% of the net revenues.

Step 6

Add together the taxable amounts calculated under step 5.

The result is “the group amount”.

Step 7

The relevant person’s liability to digital services tax in respect of the accounting period is the appropriate proportion of the group amount.

Digital Services Tax Draft Guidance

This formula ensures that the benefit of the non-standard rate is in proportion to the ability of the relevant activity to bear the additional cost of DST.

The alternate calculation applies to all revenue once a claim has been made. However, step 4 only needs to be carried out for the type of revenue specified in the claim. This is because step 5 applies a 2% rate to the revenue which has not been specified in a claim.

As can be seen above, once the group liability has been calculated it is allocated to the individual members of the group that realise UK DST revenues (the relevant person). This allocation is by reference to the relevant revenue recognised by the member in proportion to the total UK DST revenue.

If a group makes a claim relating to cross-border relief it should reduce the amount found in step 1 by 50% of any UK digital services revenues arising to a member of the group in the accounting period in connection with a relevant cross-border transaction. The relevant operating expense in step 4 should also be reduced by 50% of the amounts that results from a relevant cross-border transaction.

Example A

Business Z provides a social media platform which generates £125m of DST revenues. Under the standard DST calculation, after deducting the £25m allowance its DST liability would be £2m.

The social media platform's operating costs from providing the service to UK users are £123.75m meaning its operating resulting in a 1% operating margin.

If the group paid the full rate of DST, it would make a loss from providing the social media platform to UK users.

It therefore elects to calculate its DST under the non-standard rate calculation.

Its DST liability is reduced to £0.8m, which is calculated as £100m (the DST revenues less the allowance) multiplied by the 1% operating margin multiplied by 0.8.

Where a group has more than one type of relevant facility, the allowance will be apportioned to each type of relevant facility in the proportion of DST revenues attributable to each category.

Example B

Business Y has the same fact pattern as Business Z in Example A however it also has a search engine which meets the activity and revenue conditions.

The search engine generates £225m in UK digital services revenues but the group does elect to make it subject to the alternative basis of charge.

Business Y therefore has total UK digital services revenues of £350mn: £125mn (from its social media platform) added to £225mn (from its search engine).

Digital Services Tax Draft Guidance

*It first splits the allowance between the two business activities. So ~£9mn is allocated against the social media platform revenues ($\frac{£125mn}{£350mn} * £25mn$) and ~£16mn against the search engine revenues.*

The net revenues for each activity are therefore ~£116m for social media and ~£209m for search engine.

It then performs the same calculation as before to determine the operating margin of the activity in the claim. As before, this is 1%.

*It charges search engine revenues under the standard calculation of $2% * (£225 - 16m) = \sim£4.2m$*

*It charges social media revenues under the alternative basis of charge $1% * 0.8 * £116m = \sim£0.9m$.*

It has a total DST liability of ~£5.1m

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DSTXXXX: Alternative basis of charge: Operating margin

The alternative basis for calculation involves calculating the group's operating margin from providing the relevant activity to UK users. The margin is calculated for each category of relevant activity so where the group provides more than one of that type of facility it should calculate the figure including all figures for the activity. For example if a group has multiple marketplaces some of which are highly profitable and others are loss making the margin is for all marketplace activity combined. It is not possible to elect for only part of an activity to be included in the calculation. .

This section provides guidance on the costs which are deductible from the DST revenues. The DST uses a measure of the operating margin of the activity and is intended to reflect the true commercial costs of operating that activity.

This operating margin calculation is based on accounting concepts and does not replicate the adjustments, or deductions from revenue in calculating chargeable amounts for other UK taxes.

Consolidated accounts

The starting point is the consolidated income statement (or profit and loss account) of the group.

A deduction will not be allowed unless the expense has been calculated in accordance with GAAP (DSTXXXX) and included in the consolidated income statement for the DST accounting period.

Therefore intra-group charges and items which are expensed in the statement of other comprehensive income, like losses on equity instruments designated at fair value, cannot be taken into account in the operating margin calculation. Similarly, capitalised expenses in the balance sheet cannot be deducted.

Operating costs

Businesses are able to take operating expenses into account. Therefore costs that have been included in the following lines of the consolidated income statement are in principle deductible:

- Cost of sales;
- Distribution;
- Administration;
- Other operating costs;
- Amortisation and depreciation

Costs which are not part of the normal costs of running the business activity cannot be deducted.

Disallowable costs

There are some expenses in the consolidated income statement which cannot be deducted in calculating the DST profit margin.

These include costs which are not operating expenses of the DST activity and exceptional items. This is because the DST operating margin is intended to reflect the underlying operating profitability of the business

Digital Services Tax Draft Guidance

as an ongoing business and should not be distorted by one-off or non-recurring events. This means the following expenses cannot be deducted from DST revenues:

- Interest expenses
- Expenditure on acquisitions
- Changes in the valuation of tangible or intangible assets (e.g. FV movements)
- Tax costs, including the cost of the DST
- Occurring otherwise from in the normal course of business

This list is not exhaustive. Other expenses which would not be incurred on a normal basis, or which are otherwise exceptional, should be excluded.

Example A

Business X incurs a regulatory fine in relation to data protection breaches in relation to the provision of a social media platform across various EU markets, including the UK. This does not represent a normal operating expense reflecting the expenses incurring in supplying the in-scope activity to UK users and so is not allowable

Example B

Business Y has developed a new marketplace which it thinks will have a unique selling point relative to its competitors. It is continuing to incur large one-off expenses on the technology needed to run its platform. It is also running a series of promotions to break into the UK market, but expects to withdraw these once it achieves a certain level of market share. While these costs may appear to have a temporary nature, they should be considered operating costs on the basis that they represent normal expenditures which would be expected to be incurred in supplying an in-scope activity to the UK market.

DST XXXX: Alternative basis of charge: Operating margin: Identifying the costs that are attributable to providing the relevant activity to UK users

Having identified the costs in the consolidated group accounts that can in principle be considered, the next step is to identify the proportion of these costs that relate to the DST revenues. These are the costs that are attributable to earning the UK digital services revenues, including where relevant an associated online advertising business or ancillary/incidental functions, to UK users.

There will be some expenses that are directly attributable to providing the relevant facility to UK users and can be identified as such. These should be deducted from the DST revenues. These might include costs like:

- Delivery expenses in relation to fulfilling orders on an online marketplace
- Traffic acquisition costs (TAC) relating to advertising at UK users
- Marketing costs and other costs of expanding the UK user base

There are likely to be other operating expenses where it is more difficult to identify the cost that relates to providing the relevant facility to UK users. This is most likely to be the case for groups that have a closely integrated business which consists of relevant facilities or facilities that are out of scope. These businesses will often generate efficiencies and synergies through operating a shared platform. The costs relating to this platform, including expenses like platform maintenance and improvement costs, research and development expenditure and staff costs in relation to programming and regulating content on the platform may well be shared costs which relate to both activities. This is equally relevant where a group has more than one type of relevant activity.

Similarly, many businesses will operate a single platform that serves users in the UK and elsewhere. In these cases, costs are likely to be incurred centrally and relate to the global or regional user base.

Only the costs that are attributable to the earning of UK digital services revenues can be taken into account in the operating margin calculation. Businesses can deduct an appropriate proportion of central costs where the costs can reasonably be considered to have been incurred in the activities giving rise to UK relevant revenues.

This requires the business to determine the proportion of the expense that relates to the DST revenues. The legislation sets out that businesses should determine this on a just and reasonable basis.

Whether a basis is just and reasonable or not will depend on the particular facts and circumstances. The method should reflect the relative profitability of the activities and the markets to the business.

In making this determination the business should consider factors such as:

- Whether management accounts can provide a reasonable reflection of the operating margin of different activities or markets
- Whether the business already identifies the operating margin of different activities or markets, for instance through cost centres
- The relative revenues of each activity

Digital Services Tax Draft Guidance

- The relative revenues connected to UK users compared to digital revenues
- The proportion of direct and identifiable costs which relate to DST activities compared with other activities

This list is not intended to be exhaustive and factors will be more reliable in some cases than others. Businesses should consider the facts and circumstances of their business and determine what factor(s) provide a fair and reasonable reflection of the operating margin of providing the DST activity to UK users.

DRAFT

Digital Services Tax Draft Guidance

DSTXXXX: Cross-border marketplace transactions

Where one of the parties to a transaction on an online marketplace is a UK user, all the revenues the online marketplace receives from that transaction will be UK relevant revenues (DSTXXXX).

However, where a claim has been made only 50% of the revenues from qualifying cross border transactions will be UK relevant revenues. The provision is designed to reduce the tax charged where the other user in respect of a transaction is based in a country which operates a similar tax to the Digital Services Tax.

A transaction will be a qualifying cross border transaction where the other user(s) in respect of a transaction is normally located or established in a qualifying state. The test of whether the user is located or established in the qualifying state is whether it is reasonable to assume they are.

A 'qualifying state' is defined based on whether a country has a DST that is substantially comparable to the UK DST. HMRC takes this to mean one that will also apply to that same marketplace transaction.

'Identifiable transactions' means that only the revenues that arise out of this specific transaction are taxed at 50%, rather than all revenues for that particular business.

Where a claim is made for the alternative basis of charge calculation, and a claim is also made in relation to this provision, 50% of the relevant operating expense which is recognised as a result of the cross-border transaction is also disregarded for the purpose of calculating relevant operating expenses under the alternative charge provision to ensure symmetry.

Example A

A UK user leases a table via an online marketplace from a user based in Avalon at an agreed rate of £24 per month. The UK user also pays the online marketplace provider, Business O, a £20 delivery fee and an annual £100 subscription fee. As a result of the transaction the Avalonian user pays a £30 commission in addition to the £200 annual membership fee that was already due to Business O.

The revenues from this transaction for Business O are £50, made up of the £30 commission and the £20 delivery fee. As the lessee of the table is a UK user all of these revenues will be UK relevant revenues.

The subscription fee and the membership fee will be subject to the general rule (DSTXXXX). The subscription fee arises from the use of the platform by a UK user so will be UK relevant revenues. The membership fee arises from the use of the platform by an Avalonian user so will not be taxable.

In a subsequent period Avalon introduces a Digital Services Tax that is substantially similar to the UK DST. From this date onwards the platform's DST revenue from this transaction will be £25, being 50% of the £50 of the qualifying cross border transaction revenue.

DSTXXX: Responsible Member

The DST will be calculated at the group level. However, a single entity in the group will be responsible for dealing with all aspects of administration relating to the DST. This entity is referred to in the legislation as the 'responsible member'.

By default, the group's ultimate parent will be the responsible member, but it is able to nominate another company within the group to be the responsible member. An entity must meet the following conditions before it can be a responsible member. It must:

- be a company (UK or overseas)
- be a member of the group
- be able to provide the information required by HMRC

The nomination will only be valid if the ultimate parent company:

- nominates the chosen entity;
- provides the chosen entity enough resources to fulfil its obligations; and
- provides it enough information to comply with requests for information about the group

If the group does not nominate a company, or the nominated company does not fulfil the conditions, then the ultimate parent of the group will be the responsible member by default.

The responsible member will be responsible for the following DST obligations:

- Registration
- Calculating the DST liability
- Submitting returns
- Correspondence with HMRC in relation to the group's DST liability

Groups will not need to submit the nomination statement alongside their registration, but the responsible member will need to declare that the conditions have been satisfied. Groups will need to produce the statement upon request by HMRC.

The responsible member will continue to be the responsible member until:

- The ultimate parent nominates a different company (under the same process above)
- The responsible member is no longer a company or a member of the group.
- an officer of Revenue and Customs or the parent revokes the nomination.

DSTXXXX: Obligation to register

There is an obligation on the responsible member to register with HMRC once the group is liable to DST. This obligation is triggered when the group has relevant revenues from relevant activities exceeding the worldwide and UK revenue thresholds.

The responsible member will be required to register within 90 days from the end of its first DST accounting period. The registration notification will need to include:

- The name and registered number of the responsible member
- The registered office of the responsible member
- The name and address of the ultimate parent company (if different from the responsible member)
- The start and end dates of the first DST accounting period
- Confirmation that the ultimate parent has given its consent for the responsible member to act on behalf of the group and has agreed to provide the information and resources necessary for it to comply with its obligations.

Changes to registered details

The group is obliged to notify HMRC of any changes to the registered details within 90 days of the change.

Digital Services Tax Draft Guidance

DSTXXX: Commencement

The DST will apply to revenues from 1 April 2020. Although a group's period of account may begin before 1 April, the first DST accounting period will not start before 1 April 2020.

Where the DST accounting period does not fully align with the consolidated period of account the consolidated accounts figures should be time apportioned to determine the figures for the accounting period.

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Digital Services Tax Draft Guidance

DSTXXX: Returns

The DST is a self-assessment regime. The responsible member will submit the group return which will be the group's self-assessment of its total liability.

The individual companies receiving the revenues will be chargeable to DST but will not submit returns.

Groups can amend their return up to 12 months from the filing date for the return (i.e. until 2 years after the DST accounting period).

Ending of duty to submit returns

Once a group has met the revenue conditions the responsible member will have a continuing duty to submit returns to HMRC until HMRC issues a direction that responsible member no longer has a duty to submit. The responsible member is able to apply to HMRC for a direction to be issued. A direction may only be given if the officer of HMRC believes that the threshold conditions will not be met in any future period.

Therefore, although a group may have no DST liability because the revenue is too low for a period it will have to continue to submit DST returns to HMRC until directed otherwise.

If a direction has been given but the group incurs a DST liability in a later period it will have to re-register with HMRC and submit returns for the relevant period.

Groups that have no DST liability due to the alternate basis of charge applying will have to continue to submit returns.

Digital Services Tax Draft Guidance

DSTXXX: Interaction with Corporation tax

There are no specific rules concerning the interaction of DST with Corporation Tax (CT).

There is no credit relief for DST against Corporation Tax or any other taxes.

The normal rules concerning whether expenditure is an allowable deduction for CT should be considered in relation to the DST liability. In particular, it is important to determine whether the DST expense is incurred wholly and exclusively for the purposes of the company's trade. The rules apply in the same way they do to any other type of expense. Guidance on the wholly and exclusively rule is contained in the Business Income Manual in BIM37000 and BIM42100 onwards.

Although calculated at a group level, the DST arises on the individual companies in the group that recognise the UK DST revenues. It is consequently these companies which are individually liable to DST and we expect the DST expense will normally be recognised in their accounts. When determining the UK CT liability, the company will need to consider the wholly and exclusively rules for whether the DST is an allowable deduction like it would for any other expense.

The availability of any deduction will depend on the particular facts and circumstances of the business. However, it should be noted that a company's DST expense is directly related to the earning of its revenues and is a legal obligation of performing that trade. Therefore, in most cases it is likely the expense will have been incurred wholly and exclusively for the purposes of the trade.

If there are intra-group arrangements such that a single entity pays to HMRC the entire amount of the groups DST charge this would need to be considered in the same way as any other situation where a single entity incurs expenditure on behalf and for the benefit of other members of the group.

Effect on transfer pricing in a group

It is possible that the functions, assets and risks involved in providing the relevant activity are spread across more than one entity in the group. For example, one entity may own and control the platform's intellectual property and another may act as the sales and marketing entity for the group.

Where there are controlled transactions between associated enterprises in the group, the companies should consider the treatment of the DST charge in arriving at the arm's length price. In particular, they should ask whether at arm's length the company that paid and/or is liable to DST would have borne the cost of the DST expense, or whether it would have looked to recover some or all of the expense within the new the transfer price.