Association of International Certified Professional Accountants®

The Helicon, One South Place, London EC2M 2RB, United Kingdom
T: +44 (0) 20 7663 544
aicpaglobal.com | cimaglobal.com | aicpa.org | cgma.org

Rt. Hon. Mel Stride MP
Financial Secretary to the Treasury and Paymaster General
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

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Association Response: HM Treasury Digital Services Tax Consultation

Dear Financial Secretary,

Thank you for the opportunity to express our views on the new proposed Digital Services Tax (DST). As you are aware, the Association recently produced a policy paper on the taxation of the digitalized economy that we have attached to this response. This paper sets out the Association's broad thoughts on key issues around taxing the digitalized economy.

The Association of International Certified Professional Accountants (the Association) is the most influential body of professional accountants, combining the strengths of the American Institute of CPAs (AICPA) and The Chartered Institute of Management Accountants (CIMA) to power opportunity, trust and prosperity for people, businesses and economies worldwide. It represents 667,000 members and students across 184 countries and territories in public and management accounting and advocates for the public interest and business sustainability on current and emerging issues. With broad reach, rigor and resources, the Association advances the reputation, employability and quality of CPAs, CGMAs and accounting and finance professionals globally.

The AICPA regularly produces advice on global tax issues, debates and proposals. Recently the AICPA produced a framework guide on the principles of good tax policy, which can be viewed here:https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf This guide sets out and explains some of the guiding principles that make a good tax policy.

Below, we have raised some general points and concerns on the proposal as a whole. We have also answered some of the specific questions posed in the consultation paper. The Association believes that any changes to the taxation of digital services should be done so on the basis of international consensus and part of a global solution, should not be temporary in nature, and should be easy to administer.

General Comments

The Association understands the national interest in boosting tax revenue as more and more economic activity shifts to a digital platform. However, we believe the UK government should reconsider the introduction of the proposed temporary DST and should instead continue to engage through organizations such as the OECD to find an internationally acceptable way forward on the taxation of the digitalized economy. Over recent years there has been work coordinated through the OECD looking at the tax challenges posed by digital economic activity. The OECD work involves more than 110 countries and plans to report by 2020.

In February, the OECD opened a public consultation on possible solutions to the tax challenges arising from the digitalization of the economy. A public hearing is scheduled for March 13 and 14 in Paris with a stated goal of providing the G-20 nations the outline of a proposed solution at their next meeting in Japan this coming June. Their consultation demonstrates significant progress towards a global consensus on changing the international tax framework to address the issues and concerns driving the UK proposed DST. We believe the UK government should continue to work with the OECD to seek an internationally agreeable solution to the global issue of changing the tax framework and hold off introducing the proposed DST.

We are also worried about the temporary nature of the proposed DST. Temporary tax measures create concerns for taxpayers and tax administrators alike. These taxes can often give rise to transition issues when a global consensus on taxation is introduced, they can be difficult to unwind, and often introduce costly reporting regimes for both tax authorities and taxpayers. Not only can transitory taxes cause administration problems and costs, they are also difficult to remove and change as the revenues they generate start to be spent by government bodies and agencies. We believe for both the benefit of taxpayers and tax administrators it would be better if the UK government held off introducing a DST or similar regime until there is sufficient worldwide agreement on how best to address the challenges of taxing the digitalized economy.

There are also concerns about how easily administrable this tax will be. This proposed tax focuses on identifying UK users of digital services and providers. This raises issues on the identification of (1) a user of such services, and (2) what country they reside in or were in when engaged in digital transactions. If the proposed tax relies on identifying and locating IP addresses of users, this can create privacy concerns as this may go against EU privacy laws. Any tax should not be targeted at specific sectors as we believe would be the result with the DST described in the consultation. Instead DST should apply across all organisations and sectors.

<u>Specific Comments</u>

Below are our answers to some of the specific questions the consultation asks.

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

We believe that the digital economy and services cannot be ring-fenced and that any tax policy needs to approach all sectors equally. The OECD recently studied the impact of digital companies on the economy as part of its Base Erosion and Profit Shifting (BEPS) initiative and concluded that the digital economy is an integral part of, and not separate from, the general economy. This suggests that the digital economy should be treated the same as the rest of the wider economy.

We recognize that different countries have differing views on how the OECD should redefine the international tax system to keep up with the digital economy. We believe the UK government should continue to work through the OECD to seek a global solution on this issue instead of introducing the proposed temporary tax measure.

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

We have some concerns over the proposed approach to defining a user the Digital Services Tax consultation paper proposes. It is not always apparent that users create value when a user engages in an online transaction or provides personal information in exchange for content or to share on a social media platform. Value is created when the manufacturer ships their products, a service is delivered electronically, or a combination of activities is undertaken by digital services companies and their advertisers.

The proposals outlined in this paper could mean one rule for social media providers and another for retail loyalty cards, for example – both collect and store data on their users in order to advertise and try to sell them products, however, due to one being based solely online, they would be taxed under the proposed DST. This could mean one organization would be facing additional taxation while another, similar organization might not face extra taxation.

Another example is consumer purchases of travel services such as hotels, holiday packages and flights. ”Brick and mortar” travel agencies maintain details of their customer preferences which they use to focus advertisement and promotion of new deals. A tax is not currently imposed on these traditional style travel agencies internal use of customer data. However, online-based travel companies may be hit by this new tax.

In both of these examples, both the online and traditionally-based companies keep and maintain user data, but in the proposed DST, only certain business models would have to pay this new tax. We do not believe that basing this tax on a type of user creates a fair taxation system.

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

We have concerns with the proposed approach outlined in the consultation paper. If businesses rely on using IP addresses to determine a user’s location, this could potentially be illegal under EU law. Determining the IP addresses of users with enough certainty to determine their precise location would entail the voluntary elimination of privacy by the user, or a mandate by legislative authorities, which is counter to current EU privacy directives.

We also believe there are other challenges in determining user location. For example if a tourist from abroad comes to the UK and uses an app such as Uber to travel locally while in the UK, but had booked their place of stay via Airbnb while in their home country, both constitute economic activity in the UK but it is likely that only the Uber journey will be subject to DST based on the IP address location at the time of purchase.

For this reason, it would be preferable for the DST to avoid using IP addresses as a basis for determining a user's location. A potentially more administrable way to determine a user's location would be to use their home address, billing address, the address of their bank account details or credit card details.

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

Given the challenges outlined above in determining the location of a user and the privacy issues around using IP addresses, we believe it would be useful for businesses to have further clarity on how to determine a UK user.

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In conclusion, we believe that the UK government would be better to wait and seek consensus through bodies such as the OECD on the taxation of the digitalized economy, rather than introduce this proposed temporary digital services tax. We are concerned that this tax will be hard to administer for both tax authorities and taxpayers alike, some of the proposed measures may go against EU privacy laws, and that the proposed DST will ultimately be determined not to be temporary. We urge the UK government to focus on achieving global consensus and rethink introducing this proposed digital services tax.

Yours sincerely,

Andrew Harding FCMA CGMA
Chief Executive - Management Accounting