

IAB UK response to Digital Services Tax draft guidance consultation

5 September 2019

Background

IAB UK is the trade association for digital advertising, representing over 1,200 of the UK's leading brands, agencies, media owners and technology providers and a [Board](#) comprised of 24 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £13.44bn in the UK in 2018.

The IAB is actively engaged in working towards the optimal policy and regulatory environment to support a sustainable future for digital advertising. We also develop and promote good practice to ensure a responsible medium.

Comments on the DST draft guidance

Impacts of the DST

1. Given the Government's stated intention that the tax should be 'narrowly-targeted', IAB UK still believes further consideration should be given to who is ultimately likely to bear the burden of the DST. There are significant risks of the DST being passed down the supply chain, and this is particularly likely in a market as interconnected as that of the online advertising industry.
2. The IAB set out its concerns in this regard in its response to the Government's initial DST consultation: namely that, given that smaller companies often buy services from or through larger companies, the additional costs arising from a tax on revenue would have a knock-on effect throughout the market. There is a risk therefore that the tax will have a negative impact on out-of-scope businesses, including small and medium sized businesses (SMEs), who – despite the revenue thresholds and safe harbour provisions – will bear the impact of the DST in a way that does not appear to be in line with the Government's stated policy intention.
3. There may be a risk that the DST produces distortive effects on economic activity, particularly against SMEs.
4. In our response to the Government's initial consultation on the DST, the IAB urged assumptions about margins and profitability to be tested in a more comprehensive impact assessment, in order to understand how the costs of the tax may be passed down to out-of-scope companies and buyers/advertisers, and what impact this might have on the industry as a whole. Such an impact assessment does not appear to have been carried out, and we are concerned therefore that the full consequences of the tax's implementation may not be fully understood. If the tax may have a wider affect on the industry than is planned then this should obviously be examined.

5. A tax that has the potential to have a wider affect on the industry than its more tightly targeted objective – whether directly or indirectly – deserves full and wide consideration.

Business activities and revenue streams

6. The IAB remains concerned that identifying which lines of revenue fall inside in-scope business activities will not be an insignificant task for businesses, requiring new reporting structures to be created for the task of identifying which of their services fall into the in-scope business models. This is particularly complex for businesses that have integrated in-scope and out-of-scope business activities, and may prove a disproportionate amount of complexity and uncertainty for both business and HMRC, for a tax which is intended to be temporary.
7. The examples given in the draft guidance of business models that are in or out of the DST's scope are helpful, but full clarity and certainty on this is difficult for businesses to glean. It would be preferable to have an explicit list of business models and revenue streams which would be excluded – or even those that would be included – in the DST's scope.

Business to business marketplaces

8. The draft guidance makes clear that the definition of an online marketplace, for the purpose of the DST's scope, can include platforms that facilitate business to business transactions.
9. However, the rationale for applying the DST so broadly to all businesses that can be considered to be a 'marketplace', with no firm criteria around whether they generate value from user participation beyond users simply creating demand for a product, remains unclear to the IAB. Many business to business marketplaces in the online advertising supply chain derive value from their users only through those users creating demand for a product; their users do not co-contribute to the business' offering. These companies are at risk of being caught by the DST, despite this not being the tax's intended focus.
10. Additionally, if the term 'marketplace' in the DST, regardless of what is being exchanged in the marketplace, is intended to mean only businesses which act as agents in a transaction and not those that act as principal, then this should be clarified in the guidance.

Exclusion

11. The IAB believes making an explicit exclusion for advertising exchanges in the online advertising supply chain, on the same grounds as the DST does for financial and payment services, would protect against the DST impacting businesses that fall outside its stated target of companies that derive value from user participation beyond users simply creating demand for a product. The IAB remains unconvinced by the Government's argument that financial services are unique in qualifying for exclusion.

Cascading taxation

12. There is a clear risk of cascading taxation for businesses which deliver a service for or on behalf of a third party where that arrangement involves a revenue share, such as referral or traffic acquisition services. In cases such as these, if an in-scope business collects and accounts for the gross revenue received, but part of that is then passed on to a third party company also in scope of the DST, there is a risk that the in-scope business will be taxed for the gross revenue at every stage, therefore creating cascading taxation. For example it would be particularly unfair for an advertising exchange to pay the tax on the total spend (revenue) it receives from its buy-side clients, when it simply passes on this spend to its sell-side clients (minus the fee charged for the service it provides, which would be a revenue share).
13. It is important that the Treasury fully understands this potential impact of the DST in the digital advertising sector where revenue share arrangements are not uncommon. We urge Treasury to work with businesses in this sector to establish how in-scope businesses currently account for revenues described above whether this is on a net or gross basis, and what factors influence this. The DST guidance should then be revised accordingly to ensure the DST's design does not result in cascading taxation. The IAB would be happy to work with the Treasury to facilitate conversations with relevant businesses to this end.

International solutions

14. Government should continue to support efforts to accelerate the OECD process to agree a comprehensive international approach. The OECD work is making progress and should be allowed the time to run its course. The OECD has noted how difficult ('if not impossible') it is to ring-fence the digital economy from the rest of the economy for tax purposes¹, but the best chance any such efforts have will be as one global solution, avoiding the costs and burdens that would result from numerous unilateral proposals in the UK and elsewhere.

¹ *Addressing the Tax Challenges of the Digital Economy, Action 1 2015, Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, p.11, <https://www.oecd-ilibrary.org/docserver/9789264241046-en.pdf?expires=1551198250&id=id&accname=guest&checksum=BBB02B83A9CE44B0EEA6FBF122B84609>