Digital services tax: draft Finance Bill

International Tax | Large Corporate

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Draft legislation was published in July 2019, intended to be included in the next Finance Bill, to give effect to the UK's digital services tax (DST). On 11 July, the government also published draft guidance and a summary of the feedback to the consultation and the government's response (summary of responses). The CIOT has submitted comments on the proposed approach, and the draft legislation and guidance.

It was announced at Budget 2018 that the UK would implement a DST, and the government subsequently consulted on the proposed tax. We have previously commented on the proposal for the UK to introduce a DST and we reiterated our preference for a global solution to address the tax challenges arising from digitalisation. In this regard, we strongly support the government in its continued engagement with the OECD/G20 Inclusive Framework Programme of Work to Develop a Consensus Solution to these challenges. In addition, we noted that the government would be alive to the broader international reaction to the introduction of DSTs (particularly from the US) and will also be aware of fact that large tech companies may pass on the cost of the DST to small businesses they transact with and ultimately to end users. Therefore, there is a risk that the DST may not achieve its broader economic objective. However, we added that we understand the policy reasons behind the proposed introduction of the DST and broadly support the proposed design of the tax, as the most practical approach available to achieve the policy aims.

Changes have been made to the DST as a result of the consultation earlier this year and we welcomed these. However, we said that, in our view, there is further work to be done to provide sufficient clarity and certainty for businesses as to whether or not they are within the scope of the DST. We also suggested that further changes be made to the compliance aspects of the DST to ensure that businesses are better able to comply with it and can be confident that they have correctly self-assessed

the tax.

We welcomed the restatement of the government's position that the DST is intended to be an interim measure and the statement of policy intent to disapply the DST once an appropriate international solution is in place. We said that we hope that, at the appropriate time, consideration will also be given to whether other measures, such as diverted profits tax and the tax on offshore receipts in respect of intangible property, are still necessary.

In our response, we said that the key problem with the DST is that, although it is supposed to be narrowly targeted, the legislation takes a very purposive approach, meaning that the potential application of the legislation is actually very wide. Some key aspects of the new tax, such as what is in scope and the attribution of revenues to business models within the legislation, are not clearly ascertainable. This would mean that businesses which are not intended to be within the scope of the tax will be brought into charge, or at least face considerable uncertainty as to whether or not they are caught.

Our response identifies several particular areas of concern where we think as currently drafted the legislation would cause real difficulty in practice, and encourage the government to make further changes to the draft legislation to address these concerns. We said that it is not satisfactory to have fundamental questions around whether tax is payable and, if so, how much, substantively dealt with in guidance rather than in legislation. However, we also noted that in an area such as this, guidance will also be very important and encouraged greater clarity and detail in that too.

Our full response can be found on the CIOT website.