

## New Zealand Government to “seriously consider” a Digital Services Tax

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### Executive summary

The New Zealand Government has released [Options for taxing the digital economy](#): a discussion document on the design of a possible Digital Services Tax (DST). While the Government would prefer an internationally agreed multilateral approach through the work currently underway at the Organisation for Economic Co-operation and Development (OECD), it will “seriously consider” a unilateral DST at a flat rate of 2% to 3% if insufficient progress is made at the OECD during the remainder of 2019.

### Detailed discussion

#### Background

In February 2019, the Government announced its intention to seek public consultation on the design of a DST.<sup>1</sup> Shortly after that announcement, the Tax Working Group (an independent panel set up to review New Zealand’s tax system) recommended that New Zealand continue to participate in multilateral discussions in the OECD. The Group further recommended that New Zealand be prepared to implement a DST if a critical mass of other countries (particularly Australia) do so. The Government acknowledged this approach in their response to the Group’s final report in April 2019.<sup>2</sup>

On 4 June 2019, the Government set out its revised thinking on the taxation of the digital economy in its Discussion Document. It emphasized a commitment to ensuring everyone pays their fair share of tax, including multinationals in digital businesses. It states achieving this will require changes to the current tax rules in one of two ways:

- ▶ The first option would be to apply a separate DST to certain digital transactions. A DST would tax 2% to 3% of the gross turnover of certain highly digitalized businesses that are attributable to the country.
- ▶ The other option would be to change the current international tax framework. Countries have been discussing different ways of achieving this at the OECD.

The Government supports an internationally agreed solution at the OECD, but it will “seriously consider” a DST if the OECD cannot make sufficient progress during the remainder of 2019.

The Discussion Document notes that the value of cross-border digital services in New Zealand is estimated to be around NZ\$2.7 billion. It also notes that the estimated revenue of from any DST would be between NZ\$30 million and NZ\$80 million, depending on the final design adopted.

### Design of the potential DST

The potential DST would be a flat tax charged at 2% to 3% on gross turnover from certain digital platforms to the extent they are attributable to users in New Zealand.

The DST would apply to groups with activities that derive value from active user participation (in-scope services).

These include:

- ▶ Intermediation platforms that facilitate buying and selling of goods or services
- ▶ Social media platforms
- ▶ Content sharing platforms
- ▶ Search engines and the sale of user data

The DST would not apply to the online sale of goods and services, or the provision of online content or subscriptions (though the platforms themselves may be captured). The DST would also not apply where a business did not exceed both:

- ▶ €750 million of consolidated annual turnover
- ▶ NZ\$3.5 million New Zealand specific annual turnover

If the DST applies to a group, it would calculate its DST liability by:

- ▶ Determining annual gross revenue attributable to in-scope services; then
- ▶ Determining the proportion of those revenues attributable to New Zealand; then
- ▶ Applying DST at a rate of 2% to 3% on those revenues.

The DST would likely be applied to some domestic companies to comply with New Zealand’s international obligations. In practice, the number of domestic companies impacted would be small.

In the Discussion Document, the Government concludes that the DST would not be an income tax, and would not be creditable against income tax obligations, however, this conclusion has not yet been tested by any court. The DST would be considered a business expense and would be deductible in accordance with the income tax deduction rules.

Groups required to pay DST would be required to register with Inland Revenue (New Zealand’s tax administration). Registered groups would be able to furnish returns on a quarterly basis, in line with New Zealand’s Goods and Services Tax reporting obligations.

### New Zealand decision depends on progress at the OECD

On 31 May 2019, the OECD released *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy* (the Workplan).

The Workplan describes the plans for developing new international tax rules that address the tax challenges of the digitalization of the economy, which have been agreed upon by the 129 jurisdictions participating in the Inclusive Framework on Base Erosion and Profit Shifting. The Workplan reflects an ambitious timeline, calling for agreement on an outline of the architecture for the new rules in January 2020 and full consensus on specific rules by the end of 2020.

EY’s Global Tax Alert on the release of the Workplan can be found [here](#).

In the Discussion Document, the Government outlines concerns that a multilateral solution through the OECD's work may not be reached until 2020 and that implementation may take as long as 2025. If sufficient progress is not made during 2019, the Government intends to follow other countries (such as the United Kingdom) in implementing an independent DST. The Government expects to re-evaluate progress in the second half of 2019. The Discussion Document also indicates that the Government would look to repeal any DST if and when the OECD's international solution is implemented.

### Next steps

The Government will accept public submissions on the discussion document until 18 July 2019. Many design questions remain open.

If the Government does decide to adopt a DST, then the public would have a further opportunity to submit comments on the design of the DST. The legislation for any DST likely would be introduced in Parliament during 2020, with no start date yet proposed.

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### Endnotes

1. See EY Global Tax Alert, [New Zealand announces proposal to implement Digital Services Tax](#), dated 26 February 2019.
2. See EY Global Tax Alert, [New Zealand rejects Tax Working Group recommendation to implement a capital gains tax](#), dated 19 April 2019.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young Limited (New Zealand), Auckland**

- ▶ Matthew Hanley, *New Zealand Tax Leader* [matthew.hanley@nz.ey.com](mailto:matthew.hanley@nz.ey.com)
- ▶ Paul Smith, *New Zealand Indirect Tax Leader* [paul.smith@nz.ey.com](mailto:paul.smith@nz.ey.com)
- ▶ Dean Madsen, *New Zealand International Tax Services Leader* [dean.madsen@nz.ey.com](mailto:dean.madsen@nz.ey.com)

**Ernst & Young Limited (New Zealand), Wellington**

- ▶ David Snell, *New Zealand Tax Policy Leader* [david.snell@nz.ey.com](mailto:david.snell@nz.ey.com)

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