

EXPLANATORY MEMORANDUM TO

THE TAXES (INTEREST RATE) (AMENDMENT NO. 2) REGULATIONS 2020

2020 No. 995

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Part 2 of the Finance Act 2020 introduced the Digital Services Tax (DST). This legislation included provisions relating to the charging of interest on late or under payments of DST liabilities or paying interest on overpayments.
- 2.2 This instrument will amend the Taxes (Interest Rate) Regulations 1989 (SI 1989/1297) to set the interest rates for these interest provisions. It sets out what rates will apply for DST.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 DST is a new tax that was introduced in Finance Act 2020. As a new tax it required new administrative provisions. As well as setting the date for payment to be made, the legislation also made provision for interest to be charged or paid.
- 6.2 The rate of interest is set by reference to existing section 178 of the Finance Act 1989. This section requires, and provides the power for, the appropriate interest rate to be set by Regulations made by HM Treasury. The Finance Act 2020 amended this section so that it also has effect for DST.

6.3 This instrument amends the Taxes (Interest Rate) Regulations 1989 so that for the purposes of DST the correct rate applies to the various interest rate provisions.

7. Policy background

What is being done and why?

7.1 DST is a new tax on the revenues of search engines, social media services and online marketplaces which derive value from users in the United Kingdom.

7.2 DST has been introduced to address an issue with the way the current corporate tax rules apply in the digital economy. The current rules have led to a misalignment between the place where profits are taxed and the place where value is created.

7.3 Although it borrows many concepts from other taxes, DST is a standalone tax with its own new administrative framework. A consequential change from introducing this new tax is that new provisions are needed to ensure tax is paid in a timely manner.

7.4 This instrument sets interest rates on over- and under-paid DST liabilities from taxpayers. Ensuring interest is paid on these amounts at the right rate encourages compliance with making payments on time by ensuring equity exists between on time payments and early and late payments.

7.5 The interest rate applicable to the payment of a DST liability paid before its required due date will be the reference rate less 0.25%, or an interest rate of 0.5% if greater.

7.6 The interest rate applicable to the repayment of a DST liability that is overpaid on or after its required due date will be the reference rate less 1%, or an interest rate of 0.5% if greater.

7.7 The interest rate applicable when there is an underpayment of the DST liability will be the reference rate plus 2.5%.

7.8 In all cases the reference rate is the official bank rate as determined by the most recent meeting of the Monetary Policy Committee of the Bank of England.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 DST was first announced by Government in Budget 2018. This was followed by a consultation which closed in February 2019. Draft legislation was published in July 2019 followed again by consultation which closed in September 2019.

10.2 There has been no specific consultation on this instrument. The setting of the interest rates through this instrument is a consequence of the primary legislation which has already been consulted on.

11. Guidance

- 11.1 No specific guidance on this instrument is being produced. Guidance related to DST has been published on the GOV.UK website (<https://www.gov.uk/hmrc-internal-manuals/digital-services-tax>).

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A statutory review clause is included in the primary DST legislation which states that the Treasury must conduct a review of DST and prepare a report of the review before the end of 2025 which must be laid before Parliament.

15. Contact

- 15.1 Martin Wright at HMRC, email: dst.mailbox@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Lizzie Arnold, Deputy Director for Base Protection Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.