

Digital Services Tax Bill

Government Bill

Explanatory note

General policy statement

This Bill would allow the Government to implement, at an appropriate time, a digital services tax (**DST**) to be administered by Inland Revenue. The Bill proposes enabling a more comprehensive taxation of the digital economy.

The DST would be imposed at a rate of 3% on digital services revenues connected to New Zealand users or land that are derived by in-scope digital services groups. Taxable digital services revenues are revenues relating to intermediation platforms, social media and content sharing platforms, internet search engines, digital advertising and user-generated data. The tax would apply to large businesses with global digital services revenues of at least €750 million per revenue year and at least \$3.5 million of New Zealand digital services revenue per revenue year.

The DST would be calculated based on the digital services group's revenue year and would be paid and reported via self-assessment by the due date in the following year. Members of the digital services group would be jointly and severally liable for the DST.

The Bill would introduce consequential amendments to the Tax Administration Act 1994.

The Digital Services Tax Act would come into force on 1 January 2025. However, the Government would be able to defer this commencement date for up to five years. The Government is working with other countries at the Organisation for Economic Co-operation and Development to achieve a multilateral agreement. The Government intends to ask Parliament to repeal the DST when an acceptable multilateral solution is implemented.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=288>

Regulatory impact statement

The Inland Revenue Department produced a regulatory impact statement on 9 August 2023 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://taxpolicy.ird.govt.nz/publications/2023/2023-ris-dst-bill>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 gives the date on which the clauses of the Bill come into force.

Part 1

Preliminary provisions

Clause 3 provides the purpose of the Bill, namely to impose a digital services tax (**DST**).

Clause 4 provides the DST revenue years for which the Bill will apply.

Clause 5 provides the interpretation of terms used in the Bill.

Clause 6 provides that the currency for DST and its administration is New Zealand dollars.

Part 2

Imposition of tax

Clause 7 imposes a tax to be known as *digital services tax*.

Clause 8 provides that an entity or group of entities is liable to pay DST if their global revenue from digital services is at least €750 million per revenue year.

Clause 9 provides an exception from DST if the group's digital services revenue is less than \$3.5 million annually.

Clause 10 provides a definition of digital services revenue based on the provision of taxable digital services to New Zealand users or in connection with New Zealand land.

Clause 11 defines taxable digital services to include services such as social media and content sharing platforms, intermediation platforms and internet search engines.

Clause 12 provides that a digital service has been provided to a New Zealand user, and is therefore taxable, if it has been used or consumed by a person who is normally in New Zealand, as evidenced by numerous indicators such as the person's address.

Clause 13 sets out how DST applies to intermediation platforms.

Clause 14 provides that DST is a debt due to the Crown until paid in full to the Commissioner.

Clause 15 provides payment obligations for DST.

Clause 16 requires the Commissioner to refund overpaid DST.

Clause 17 provides that the Commissioner must refund overpaid DST that a person has paid as a result of an amendment to an assessment.

Clause 18 sets out an anti-avoidance rule for DST.

Part 3

Amendments to Tax Administration Act 1994

Clause 19 provides that *Part 3* amends the *Tax Administration Act 1994* (the **TAA**).

Clause 20 amends section 3(1). *Subclause (2)* amends the definition of *civil penalty* to incorporate penalties under *new section 139ABB*. *Subclause (3)* inserts a new definition of *digital services group*. *Subclause (4)* inserts a new definition of *digital services tax*. *Subclause (5)* inserts a new definition of *digital services tax return*. *Subclause (6)* inserts a new definition of *DST representative member*. *Subclause (7)* inserts a new definition of *DST revenue year*. *Subclause (8)* inserts a new definition of *ultimate parent entity*.

Clause 21 inserts *new section 22BB*, which sets out the records to be kept for digital services tax.

Clause 22 inserts *new section 33G*, which sets out who must provide a digital services tax return.

Clause 23 amends *section 79* consequentially.

Clause 24 amends *section 80* consequentially.

Clause 25 amends *section 89D* to require a taxpayer to file a digital services tax return before disputing an assessment made by the Commissioner.

Clause 26 amends *section 89DA* to enable a taxpayer to issue a notice of proposed adjustment in relation to an assessment of DST.

Clause 27 amends *section 91C* to enable the Commissioner to make a binding ruling on any provision of the Digital Services Tax Act **2023**.

Clause 28 inserts *new section 92C* to require a DST representative member who is required to provide a digital services tax return to make an assessment of the amount of digital services tax payable.

Clause 29 inserts *new section 94E* to allow the Commissioner to make an assessment of a penalty that, in the Commissioner's opinion, ought to be imposed on a DST representative member under *new section 139ABB*.

Clause 30 inserts *new section 108AD* to provide a time bar of 4 years for amending assessments of DST.

Clause 31 inserts *new section 139ABB*, which sets out penalties of up to \$100,000 and \$500 respectively for a DST representative member failing to register the digital services group and file a digital services tax return.

Clause 32 amends *section 141B* to ensure the penalty for taking an unacceptable tax position applies to DST.

Clause 33 inserts *new sections 226G and 226H*. *New section 226G* provides for the nomination of the DST representative member. *New section 226H* sets out the process for registering the digital services group.

Clause 34 amends *Schedule 1* to ensure that the Digital Services Tax Act **2023** will be an Inland Revenue Act.

Hon Barbara Edmonds

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Digital Services Tax Act **2023**.

2 Commencement

(1) This Act comes into force on—

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- (a) 1 January 2025 if no date is fixed in accordance with **paragraph (b)**; or
- (b) a date, fixed by the Governor-General by an Order in Council made before 1 January 2025 on the recommendation of the Minister of Revenue, if the date is between 1 January 2025 and 2 January 2030.
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5

Part 1 Preliminary provisions

- 3 Purpose** 10
The purpose of this Act is to impose a digital services tax.
- 4 Application**
This Act applies to impose digital services tax for DST revenue years starting on or after the 1st of January that follows the date that this Act comes into force.
- 5 Interpretation** 15
In this Act, unless the context otherwise requires,—
Commissioner has the same meaning as in the Tax Administration Act 1994
digital services group is a group of all persons—
(a) included in the consolidated financial statements of an ultimate parent entity, if those financial statements are prepared in accordance with generally accepted accounting practice: 20
(b) that would be included in the consolidated financial statements of an ultimate parent entity, if generally accepted accounting practice applied to the persons and their financial statements were prepared in accordance with it 25
digital services revenue is defined in **section 10**
digital services tax is defined in **section 7**
DST representative member has the same meaning as in the Tax Administration Act 1994
DST revenue year means a relevant annual accounting period under generally accepted accounting practice for a group or on an entity basis 30
generally accepted accounting practice means—
(a) International Financial Reporting Standards (IFRS); or
(b) other country-specific generally accepted accounting principles relevant for publicly traded entities outside New Zealand that require 2 or more 35

entities to prepare consolidated financial statements in a similar manner to IFRS

goods has the same meaning as in the Goods and Services Tax Act 1985

intermediation platform means an online platform that has a main purpose of facilitating the sale by users of users' goods and services to other users, including by advertising, notice, or offer 5

internet search engine means an online platform that allows users to search the internet for digital content of multiple unrelated websites

New Zealand has the same meaning as in the Income Tax Act 2007

New Zealand land includes— 10

- (a) an estate in, interest in, or agreement in relation to, land in New Zealand:
- (b) goods and services connected to an estate in, interest in, or agreement in relation to, land in New Zealand

online platform means a website, application, or any other electronic medium through which data or digital content is collected, viewed, consumed, delivered, or interacted with 15

person includes a group of persons or entities

services has the same meaning as in the Goods and Services Tax Act 1985

social media and content sharing platform means an online platform that has a main purpose of promoting interaction or facilitating the sharing of content between users 20

taxable digital services is defined in **section 11**

ultimate parent entity means a person that—

- (a) owns, directly or indirectly, a controlling interest in any other person; and 25
- (b) is not owned, directly or indirectly, by another person with a controlling interest.

6 Currency

(1) For the purposes of this Act, other than **section 8**, and the digital services tax return, assessment, information keeping, and other digital services tax-related matters in the Tax Administration Act 1994, all non-New Zealand dollar amounts must be converted to New Zealand dollars. 30

(2) An amount must be converted into New Zealand currency by applying the close of trading spot exchange rate on the date the amount is required to be measured or calculated. 35

(3) Despite **subsection (2)**, where an amount relates to a period, the amount may be converted into New Zealand currency by applying the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the relevant period.

Part 2 Imposition of tax

- 7 Digital services tax** 5
A tax, to be known as **digital services tax**, is imposed and payable at a rate of 3% of digital services revenue for a DST revenue year.
- 8 Persons liable to pay digital services tax**
A digital services group is liable to pay digital services tax if the group's global revenue from taxable digital services for the DST revenue year is €750 million or greater.
- 9 Digital services tax: exception** 10
A digital services group's digital services tax liability is zero if their digital services revenue under **section 10** totals less than \$3.5 million for the DST revenue year.
- 10 Digital services revenue** 15
A digital services group's **digital services revenue** is the gross amount obtained from taxable digital services to the extent to which the services are provided to New Zealand users under **section 12** or connected to New Zealand land.
- 11 Definition: taxable digital services**
- (1) **Taxable digital services** means services, to the extent to which the services are— 20
- (a) an intermediation platform:
 - (b) a social media and content sharing platform:
 - (c) providing an internet search engine:
 - (d) advertising on, linked to, connected with, or facilitated by, a platform, service, or engine described in **paragraphs (a) to (c)**: 25
 - (e) activities related to user-generated data gathered in connection with a platform, service, engine, or advertising described in **paragraphs (a) to (c)**:
 - (f) any activity that is incidental to a platform, service, engine, or advertising described in **paragraphs (a) to (c)**. 30
- (2) Despite **subsection (1)**, taxable digital services does not include—
- (a) services described in **subsection (1)** if the services are merely incidental to a supply of goods and services that are not a service described in **subsection (1)**: 35

- (b) online financial marketplace activities that are supervised or regulated under the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or the Banking (Prudential Supervision) Act 1989, or are supervised or regulated under corresponding legislation in another jurisdiction: 5
- (c) an online platform for a loyalty programme that is incidental to the supply of goods and services.

12 When taxable digital service has been provided to New Zealand user

A taxable digital service has been provided to a New Zealand user to the extent to which the service has been used or consumed by a person who is normally in New Zealand, as evidenced by any of the following indicators: 10

- (a) the person's billing address:
- (b) the person's delivery or shipping address:
- (c) the internet protocol address of the device used by the person: 15
- (d) the person's bank details, including the account the person uses for payment or the billing address held by the bank:
- (e) phone number area code or country calling code:
- (f) global satellite positioning data on the person or another geolocation method: 20
- (g) other information considered relevant by the Commissioner:
- (h) an indicator agreed to by the Commissioner with the DST representative member.

13 Application to intermediation platforms

Despite **section 10**, for transactions on an intermediation platform, an amount from taxable digital services provided to a New Zealand user or connected to New Zealand land is reduced by 50% if the amount is also connected to a user who may reasonably be assumed to use the platform in a foreign country or territory that has a tax that is substantially the same in nature as the digital services tax. 25
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14 Digital services tax is debt due to the Crown

Until paid in full to the Commissioner, the amount of digital services tax payable under this Act is—

- (a) a debt to the Crown owed by the digital services group; and
- (b) recoverable by the Commissioner in a court of competent jurisdiction. 35

15 Payment and other obligations

- (1) The DST representative member must pay the digital services tax for which their digital services group is liable under this Act to the Commissioner by the date that is 6 months after the end of the group's DST revenue year.
- (2) Despite **subsection (1)** and the Tax Administration Act 1994, members of the digital services group are jointly and severally liable for the amount of digital services tax and for any obligations imposed on the DST representative member by the Tax Administration Act 1994. 5

16 Refunds for overpaid DST

The Commissioner must refund an amount of digital services tax that a person has paid if— 10

- (a) the amount is more than is required to be paid by the person under this Act; and
- (b) the Commissioner is satisfied, or receives notice, that the person is entitled to the refund before the end of the 4-year period under **section 108AD(1)** of the Tax Administration Act 1994 for amendment of an assessment. 15

17 Overpayment on amended assessment

The Commissioner must refund an amount of digital services tax that a person has paid if— 20

- (a) the person paid the amount as a result of an amendment to an assessment increasing the amount of digital services tax payable by the person; and
- (b) the amount is more than the amount required to be paid by the person under this Act; and
- (c) the 4-year period under **section 108AD(1)** of the Tax Administration Act 1994 beginning from the end of the DST revenue year in which the assessment was amended has not ended. 25

18 Tax avoidance

- (1) A tax avoidance arrangement entered into by a person is void against the Commissioner for tax purposes. 30
- (2) A tax avoidance arrangement is an arrangement that has a purpose or effect, not being a merely incidental purpose or effect, of defeating the intent and application of this Act.
- (3) If a tax avoidance arrangement is void against the Commissioner, the Commissioner may adjust the amount of digital services tax payable by, or refundable to, a person affected by the arrangement, whether or not the person is a party to the arrangement, in the manner the Commissioner considers appropriate to counteract any tax advantage obtained by the person from, or under, the arrangement. 35

Part 3 Amendments to Tax Administration Act 1994

19 Amendments to Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

- 20 Section 3 amended (Interpretation)** 5
- (1) This section amends section 3(1).
- (2) In the definition of **civil penalty**, after paragraph (cb), insert:
(cbb) a penalty under **section 139ABB**; or
- (3) Insert, in appropriate alphabetical order:
digital services group has the same meaning as in the Digital Services Tax Act **2023** 10
- (4) Insert, in appropriate alphabetical order:
digital services tax means the digital services tax imposed by the Digital Services Tax Act **2023**
- (5) Insert, in appropriate alphabetical order: 15
digital services tax return means a form or document that a DST representative member is required to provide under **section 33G**
- (6) Insert, in appropriate alphabetical order:
DST representative member means, for a digital services group, the member of the group nominated under **section 226G** to perform obligations under this Act or, in the absence of a nomination, the ultimate parent entity of the group 20
- (7) Insert, in appropriate alphabetical order:
DST revenue year has the same meaning as in the Digital Services Tax Act **2023**
- (8) Insert, in appropriate alphabetical order: 25
ultimate parent entity has the same meaning as in the Digital Services Tax Act **2023**
- 21 New section 22BB inserted (Records to be kept for digital services tax)**
- After section 22B, insert:
- 22BB Records to be kept for digital services tax** 30
- (1) The DST representative member of a digital services group is required to keep sufficient records to enable the Commissioner to readily ascertain the group's liability to pay digital services tax, including a zero amount.
- (2) The records must be in English or te reo Māori and may be kept outside of New Zealand. 35

- (3) The records must be kept for a period of 7 years after the end of the DST revenue year to which they relate.

22 New section 33G inserted (Digital services tax return)

After section 33F, insert:

33G Digital services tax return

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- (1) This section applies to the DST representative member of a digital services group if the group is liable to pay an amount of digital services tax for a DST revenue year (the **current DST revenue year**).
- (2) This section also applies to the DST representative member of a digital services group if the group is liable to pay zero digital services tax for a DST revenue year, and—
- (a) the group has been liable to pay an amount of digital services tax for a DST revenue year before the current DST revenue year; and
- (b) the DST representative member has not received notification from the Commissioner to stop providing digital services tax returns.
- (3) The DST representative member of the group must provide a digital services tax return on behalf of the group for the current DST revenue year in the form, and with the particulars, prescribed by the Commissioner.
- (4) The return for the current DST revenue year must be provided to the Commissioner by the date that is 6 months after the end of the current DST revenue year.
- (5) The return must contain a notice of the assessment required to be made under **section 92C** of this Act, including a nil, or zero, assessment if **subsection (2)** of this section applies.

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23 Section 79 amended (Other annual returns)

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In section 79, after “33”, insert “, 33G,”.

24 Section 80 amended (Commissioner may require other returns to be made)

In section 80, after “33,”, insert “33G,”.

25 Section 89D amended (Taxpayers and others with standing may issue notices of proposed adjustment)

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After section 89D(2E), insert:

- (2F) A taxpayer who has not provided a digital services tax return for a DST revenue year may not dispute the assessment made by the Commissioner other than by providing a digital services tax return for the DST revenue year.
- (2G) For the purposes of **subsection (2F)**, **section 33G(5)** does not apply.

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- 26 Section 89DA amended (Taxpayer may issue notice of proposed adjustment for taxpayer assessment)**
- In section 89DA(1), in the words before the paragraphs, replace “tax year or a GST return period” with “tax year, GST return period, or a DST revenue year”.
- 27 Section 91C amended (Taxation laws in respect of which binding rulings may be made)** 5
- In section 91C, after section 91C(1)(ec), insert:
- (ed) the Digital Services Tax Act **2023**; or
- 28 New section 92C inserted (Assessment of digital services tax)** 10
- After section 92B, insert:
- 92C Assessment of digital services tax**
- (1) A DST representative member who is required to provide a digital services tax return for a DST revenue year must make an assessment of the amount of digital services tax payable by the digital services group for the DST revenue year. 15
- (2) An assessment under this section is made on the date on which the DST representative member’s digital services tax return is received at an office of the department.
- (3) This section does not apply to a DST representative member for a DST revenue year if the Commissioner has made an assessment of the digital services tax payable by the digital services group for the DST revenue year. 20
- 29 New section 94E inserted (Assessment of penalties related to requirements under digital services tax rules)**
- After section 94D, insert:
- 94E Assessment of penalties related to requirements under digital services tax rules** 25
- (1) The Commissioner may make an assessment for a DST representative member of the amount of a penalty under **section 139ABB** that, in the Commissioner’s opinion, ought to be imposed, and the members of the digital services group are jointly and severally liable to pay the penalty assessed. 30
- (2) Despite **subsection (1)**, this section does not apply in so far as the DST representative member establishes in proceedings challenging the assessment that the assessment is excessive or that the digital services group is not chargeable with the penalty.
- 30 New section 108AD inserted (Time bar for amending assessment of DST)** 35
- After section 108AC, insert:

108AD Time bar for amending assessment of DST

- (1) If a DST representative member provides a digital services tax return for a DST revenue year and an assessment has been made, the Commissioner may not amend the assessment to increase the amount assessed if 4 years have passed from the end of the DST revenue year in which the digital services tax return was provided. 5
- (2) The Commissioner may, at any time, amend an assessment to increase the amount of the assessment if the Commissioner considers that the digital services group assessed, or any of its members, have, jointly or severally, knowingly or fraudulently failed to disclose to the Commissioner all of the material facts that are necessary for determining the amount of digital services tax payable for a DST revenue year. 10
- (3) This section overrides every other provision of this Act, and any other rule or law, that limits the Commissioner’s right to amend digital services tax assessments. 15

31 New section 139ABB inserted (Penalty for DST representative member failing to provide information)

After section 139AB, insert:

139ABB Penalty for DST representative member failing to provide information

- (1) The members of a digital services group are jointly and severally liable to pay a penalty under this section if— 20
- (a) the DST representative member does not apply for registration as required under **section 226H**;
- (b) the DST representative member does not comply with the requirements of **section 33G**. 25
- (2) The penalty for failing to comply with the requirements of **section 226H** is the amount specified by the Commissioner, which must not exceed \$100,000.
- (3) The penalty for failing to comply with the requirements of **section 33G** is \$500.
- (4) The due date for payment of a penalty imposed under this section is the later of— 30
- (a) 30 days after the date on which the Commissioner issues the notice of assessment for the penalty;
- (b) the date specified by the Commissioner in the notice of assessment as being the due date for payment of the penalty. 35

32 Section 141B amended (Unacceptable tax position)

In section 141B(2), before “income tax”, insert “digital services tax or”.

33 New sections 226G and 226H inserted

After section 226F, insert:

226G Nomination of DST representative member

- (1) The ultimate parent entity of a digital services group must nominate a company that is a member of the group, the **DST representative member**, to perform the obligations under this Act on behalf of the group. 5
- (2) The company stops being the DST representative member if—
 - (a) the company leaves the group; or
 - (b) the ultimate parent entity nominates a different company to be the DST representative member. 10
- (3) If no nomination is made, the ultimate parent entity of the group is the DST representative member.

226H Registration of digital services group

- (1) This section applies if a digital services group is liable to pay digital services tax. 15
- (2) The DST representative member must register the group with the Commissioner within 90 days of the end of the first DST revenue year for which the group first becomes liable to pay digital services tax.
- (3) The registration must include—
 - (a) the name of the DST representative member; and 20
 - (b) the registered office of the DST representative member; and
 - (c) the start and end dates of the group's DST revenue year; and
 - (d) if the ultimate parent entity is not the DST representative member, the name and address of the ultimate parent entity of the group.

34 Schedule 1 amended (Inland Revenue Acts) 25

In schedule 1, insert, in appropriate alphabetical order, “Digital Services Tax Act **2023**”.