

Tax in the technology and telecoms industries: Q&A

by *Jo Crookshank, Tomoko Ikawa, Nick Cronkshaw and Gary Barnett at Simmons & Simmons LLP*

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A Q&A guide to tax issues in the technology and telecoms industries. A high-level overview of the taxes and reliefs of particular relevance to the industries, the sources of those tax rules, the policy context, and developments on the horizon.

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With the increasing digitalisation of the economy, drawing a line around the technology industry in the 2020s is not straightforward. For the purposes of this note, the industry can be described as that which produces goods and services primarily intended to fulfil or enable the function of information-processing and communication by electronic means, including transmission and display. Most obviously, it includes companies that design, manufacture or distribute electronic devices such as computers, computer-related equipment, computer services and software, scientific instruments, and electronic components and products. However it also encompasses services ranging from software maintenance, through cloud and data centre services, to smart devices based on the Internet of Things and social media and search engines. For more details, see *Sector note, Technology: industry overview*.

Likewise, the telecoms industry underpins much of the economic and social activity in the UK today and is part of the UK's critical national infrastructure. All sectors in the UK, including the technology industry, rely on the connectivity provided by telecoms, the services they enable and the activities they support. For an overview, see *Sector note, Telecoms: industry overview*.

A trend of convergence generally in the TMT sector also means that it is increasingly difficult to talk of technology without reference to functionality enabled by telecoms and that the laws that are encountered by participants in each industry are frequently the same, including many of those governing the UK tax regime. The commentary in this Q&A covers both industries, unless otherwise stated.

Taxes specific to, or of particular relevance to, the industries

1. Please list and briefly summarise the policy and general operation of any industry-specific taxes, duties or tax regimes

In general, businesses in the technology and telecoms industries are subject to the same UK taxes as any other businesses. However, while not exclusive to the technology and telecoms industries, the UK digital services tax introduced in 2020 and the diverted profits tax introduced in 2015 are considered to have been largely targeted at, or have significantly affected, larger international businesses operating in these industries.

UK digital services tax

UK digital services tax (DST) was introduced to enable the UK to tax certain activities that were seen to have a close connection with the UK, but where there was no traditional taxable nexus in terms of a UK *permanent establishment* (PE). The particular concern leading to its introduction was activities that were highly digitalised and which allowed businesses to operate without physical presence and therefore avoid a liability to tax.

It is intended that DST (and other similar taxes on digital services) will be repealed following the implementation of the *OECD* Pillar 1 rules. Amount A of Pillar 1 is intended to introduce new international tax rules to allocate the profits of some of the largest multinational enterprises (MNEs) globally (see *Practice note, OECD two-pillar proposal: notable steps in development* and *Legislation Tracker, BEPS tracker*).

In the meantime, DST applies. DST is a turnover tax that applies to revenues earned from 1 April 2020. The legislation is contained in Finance Act 2020 Part 2 and Schedules 8 to 10. It is levied at a rate of 2% on groups with a turnover of £500m or more from worldwide in-scope activities in an accounting period.

DST is payable on UK digital services revenues to the extent that they exceed the £25m allowance. For these purposes, UK digital services are so much of a group's digital services revenues that are attributable to UK users. DST is determined by reference to a group's UK digital services revenues and is then apportioned among members of the group.

Digital services activities are defined as covering the following (together with associated online advertising services):

- Social media services
- An internet search engine
- An online marketplace.

There is a safe-harbour alternative calculation for revenues from low-profit activities. Broadly, this replaces the 2% rate with a rate equal to 80% of the UK profit margin of the digital services activity that generated the UK digital services revenues.

For more details of UK DST, see *Practice note, Digital Services Tax*.

Diverted profits tax

Diverted profits tax (DPT) was enacted in the Finance Act 2015 Part 3 with effect from 1 April 2015. Before DPT was introduced, there were concerns that certain multinational enterprises (in particular, technology companies) were using aggressive tax planning techniques to divert their profits from the UK and reduce their UK corporation tax liability.

Its target is large MNEs (not small or medium sized enterprises, SMEs) with business activities in the UK who enter into "contrived" arrangements to "divert" profits from the UK by either:

- Contrived arrangements between connected entities.
- "Avoiding" a UK taxable presence.

The rate of DPT is 31%, higher than the main rate of corporation tax (25% since April 2023).

In practice, DPT has largely been used to enforce *transfer pricing* adjustments. Where HMRC considers that a transfer pricing adjustment may be required, it may seek to apply DPT (rather than the transfer pricing legislation). In addition to the higher rate that applies, recovery of DPT is quicker than recovery of corporation tax if a transfer pricing enquiry is opened (it must be paid within 30 days of issue of a DPT charging notice). The legislation, however, allows taxpayers a 12-month window to amend a corporation tax return to reduce the taxable diverted profits by, for example, recognising a transfer pricing adjustment.

The link between DPT and transfer pricing is evident from recent cases (such as *R (on the application of Refinitiv Ltd) v HMRC [2023] UKUT 257 (TCC)*, see *16. Are there any key tax cases of note involving businesses in the industries, or on issues or with fact patterns that commonly arise in the industries?*) as well as in the profit diversion compliance facility (PDCF) that

was launched by HMRC on 10 January 2019 (see [17. Are there any recent examples of HMRC investigations focused on organisations in the industries?](#)).

The UK government has indicated that it will merge DPT into corporation tax and make a number of changes to its scope. Most notably, the "avoided PE" limb of DPT is to be removed. For further details see [Legal updates, HMRC consults on technical changes to transfer pricing, permanent establishment and diverted profits tax](#) and [Responses to HMRC consultation on technical changes to transfer pricing, permanent establishment and diverted profits tax](#).

For more on DPT and when it applies, see [Practice note, Diverted profits tax](#).

2. Are there aspects of corporation tax or any other general taxes that are particularly relevant to those operating in the industries?

Development of both international and UK tax laws in this area reflects a tension between jurisdictions seeking to encourage large and profitable companies to set up operations there by offering a favourable tax regime, and working to close perceived loopholes that seem to allow those companies to pay less tax than is "due" or "fair", at least in the eyes of the media.

Permanent establishment issues

Many businesses within the industries have historically used cross-border structures to avoid a local PE arising in relation to their activities. These may simply involve the use of an offshore contracting company, with any local activity being limited to activities such as purchasing, marketing, warehousing or distribution.

The OECD BEPS Project action 7 had a significant impact on such arrangements (for an accessible contemporary summary of the issues focused on the technology industry, see [reuters.com, Special report: how big tech stays offline on tax \(23 July 2013\)](#)).

Internationally, changes to the OECD Model Treaty and guidance had three main effects:

- The definition of a dependent agent PE was widened to cover situations in which an agent habitually plays the principal role leading to the conclusion of contracts that are then routinely concluded without material modification.
- The exclusion from qualification as a place of business PE for certain activities only applies where those activities are preparatory or auxiliary in relation to the business as a whole.
- Anti-fragmentation rules were also introduced to prevent the break-up of activities into several smaller entities to benefit from the preparatory or auxiliary exemption. Activities performed by related parties are combined when determining whether they are of a preparatory or auxiliary nature.

These changes were adopted by way of a Multilateral Convention with jurisdictions determining which of the changes they accepted into their bilateral treaties. The UK adopted only the anti-fragmentation rules. However, the government is currently consulting on possible changes to the definition of a PE to bring it more in line with international rules. These changes potentially include adoption of the wider OECD Model Treaty definition of dependent agent PE (see [Legal updates, HMRC consults on technical changes to transfer pricing, permanent establishment and diverted profits tax](#) and [Responses to HMRC consultation on technical changes to transfer pricing, permanent establishment and diverted profits tax](#)).

Internationally, a particular issue that arises in the telecoms industry is the extent to which servers or data centres may give rise to a local PE for businesses which use those servers/data centres to provide webservices to customers. Data centres and servers play a crucial role in the digital economy by hosting and processing cloud data. They are, essentially, the physical manifestation of the internet, which is widely regarded as a purely virtual space.

The issue is addressed by OECD commentary on Article 5 of the Model Tax Convention which includes the following principle:

A computer server can constitute a PE provided that the following tests are met:

- *Test 1: a fixed place of business exists in the relevant jurisdiction which is sufficiently controlled by the company in question.*
- *Test 2: business activities are performed through that fixed place.*

As a result, many jurisdictions will consider that a data centre or even a server can constitute a PE of a non-resident company depending on the individual facts of the case.

The UK, however, takes a more restricted view which is set out in HMRC's International Manual at INTM264700. According to that guidance, a server either alone or together with web sites could not as such constitute a PE of a business that is conducting e-commerce through a web site on the server. HMRC take that view regardless of whether the server is owned, rented or otherwise at the disposal of the business.

Equally, HMRC do not consider that an internet service provider (ISP) which provides the service of hosting websites of other enterprises can constitute a dependent agent PE in this context.

The position may be contrasted with a business actually hosting and operating a data centre in the UK through its own site. In that case, it is highly likely that the physical location of the data centre would amount to a fixed place of business and a UK PE.

For more details of the UK rules on permanent establishments, see [Practice note, Companies: UK residence and permanent establishments](#).

Transfer pricing

A key feature of both the technology and telecoms industries is innovation. In this context, intellectual property (IP) is highly significant. As such, features of the UK tax system that relate to the taxation of IP are particularly relevant to these industries and there is a strong focus on understanding how IP is owned and used for transfer pricing purposes.

Traditionally, IP was often held in a separate IP holding company in a relatively low tax jurisdiction and licensed to operating companies in other jurisdictions. Intercompany transactions relating to IP are subject to arm's length transfer pricing rules, but it was often possible to agree a favourable basis for calculating that arm's length price.

However, such structures for the holding of IP within a group were significantly impacted by the 2015 BEPS reports, with much greater stress placed on where significant economic activities take place rather than simply contractual risk and legal ownership of IP. The OECD transfer pricing guidance published following BEPS requires that value be attributed to entities with value creating functions relating to the development, enhancement, maintenance, protection and exploitation of intangible assets (DEMPE functions). These updated guidelines generally recognise that legal rights and contractual arrangements form the starting point of the transfer pricing analysis, but these do not confer any right to a return from exploiting the intangible. What is important is the entities that perform the functions, use the assets and assume the risks relating to the IP. This has greatly reduced the scope for the structuring of IP ownership arrangements within large MNEs for tax purposes.

The UK transfer pricing rules are contained in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010). They apply if:

- Provision has been made or imposed between two "affected persons" by a transaction or series of transactions.

The UK rules apply even if the transactions are solely between UK parties (though the government has indicated that it will relax the obligation to apply UK:UK transfer pricing where the UK tax base is not disadvantaged).

- The participation condition is met.

Generally, the participation condition is met where one person controls the other or they are under the control of the same person. "Control" is a complex concept but includes consideration for matters such as voting control.

- The actual provision differs from what would have been the actual provision between independent enterprises dealing on arm's length terms (arm's length provision).

In practice, determining an arm's length price to the satisfaction of both HMRC and the tax authorities in the jurisdiction of the counterparty can be a difficult exercise. This can be particularly difficult in the case of unique IP rights.

For more details of the application of transfer pricing rules to IP, see *Practice notes, Tax treatment of cross-border payments for intellectual property* and *Holding and exploiting intellectual property: tax issues: Issues to consider in selecting a jurisdiction for an IP holding company*.

For tax deductions available for expenditure on intangibles and IP see *8. Are there any other reliefs or exemptions that are particularly relevant to this industry?*.

Withholding taxes

UK withholding tax at the basic rate of income tax (currently 20%) applies to royalty payments in respect of IP where the usual place of abode of the owner or assignor of the IP is outside the UK (section 906 Income Tax Act 2007 (ITA 2007)). For these purposes, IP includes copyright, patents, trademarks and any information concerning industrial, commercial or scientific experience (section 907).

It can be common in the technology industry for IP and other ownership rights (such as copyrights) to be held by an entity in one jurisdiction while a local distributor subsidiary makes arrangements for the products to be marketed and distributed within local markets. In those circumstances, it will be important to determine the true nature of the arrangements between the IP owning entity and the local distributors. The tax treatment will vary depending on whether they involve the licensing (and sub-licensing) of IP (with payments of royalties arising which could give rise to withholding tax obligations) or merely involve the sale of the product without any true royalty payments arising. The distinction is not always clear-cut, particularly as methods of software distribution evolve over time.

Where software is purchased together with a licence entitling the purchaser to use the software and with a limited right to copy it to facilitate its use, HMRC guidance indicates that they will not usually argue that any part of the payment for the software is a royalty payment subject to withholding tax. It is only where, exceptionally, the purchaser has acquired a right of reproduction in order to make several copies as a way of exploiting the software that withholding tax applies. For further details, see *Practice note, Intangible property: tax*.

There are separate (but overlapping) rules imposing withholding tax on patent royalties (section 903), which apply to domestic as well as cross border payments. In addition, where a non-UK resident sells any patent rights and is subject to UK tax on the sale, then the person by or through whom the proceeds of the sale are paid must deduct withholding tax at the basic rate of income tax (20%) (section 910).

There are a number of exemptions and exceptions from UK withholding taxes, including the following:

- Where there is an exemption or reduced rate provided for in a relevant double tax treaty (see *Practice note, Double tax treaties: an introduction*).
- Where the payment is made by a company and at the time the payment is made it reasonably believes that it is an excepted payment (ITA 2007 Part 15 Chapter 11).

A payment would be an excepted payment if the person beneficially entitled to the payment is one of a list of specified entities including UK resident companies and UK PEs of non-UK companies.

In the UK, additional rules were introduced in the Finance Act 2019 to deal with offshore receipts in respect of intangible property (ORIP) to prevent MNEs locating intangible property generating significant income through UK sales in low tax jurisdictions. These rules seek to impose UK income tax on non-UK residents in relation to income from intangible property that is referable to sales of goods or services in the UK. It is payable regardless of whether there is a UK taxable presence, or whether payment is made between related or unrelated parties, but only applies to income receivable in a low (or no) tax jurisdiction. This income tax charge is imposed on gross income, with no deductions.

In the 2023 Autumn Statement, it was announced that the government will abolish the ORIP rules in respect of income arising from 31 December 2024 on the basis that it is expected that the Pillar 2 Undertaxed Profits Rule will more comprehensively discourage the multinational tax-planning arrangements that ORIP sought to counter.

For more details see *Practice notes, Tax treatment of cross-border payments for intellectual property* and *Withholding tax*.

3. Do the taxes encountered drive any particular conventions within the industries, for example as to how people are employed or how commercial transactions are structured?

Employment

As with other modern business sectors, the technology and telecoms industries have seen increasing moves towards the use of contractors, umbrella companies and remote working.

The tax consequences of using contractors (as opposed to employees) have seen significant changes in recent years. In particular, the IR35 rules were extended with effect from April 2021, putting the burden of the operation of IR35 on the client, including requirements concerning information provisions, status disputes and the ability of HMRC to transfer liabilities up the supply chain in cases of default. This significantly reduced its attractiveness to many businesses. For more details, see *Practice note, IR35*.

The government is also looking to curtail the role of umbrella companies in the employment sector. These are seen, in some cases, as facilitating tax evasion and avoidance. In June 2023, the UK government published a consultation on measures to address non-compliance in the umbrella company market. As well as setting out options for regulating umbrella companies, the consultation also considered a number of proposals in relation to tax non-compliance, including potentially transferring any unpaid tax liabilities to other parties in the supply chain (see *Legal update, Consultation: tackling non-compliance in umbrella company market*).

Remote working can pose a number of issues from a tax perspective, especially where this involves cross-border aspects. These can include questions around:

- The existence of a permanent establishment or a fixed establishment.

- Corporate residence.
- Employment taxes and social security (National Insurance) contributions.

The (now defunct) Office of Tax Simplification issued a Call for Evidence on the tax aspects of hybrid and distance working in 2022 and HMRC issued new guidance in July 2023. The guidance gave a number of examples involving employees of overseas entities working temporarily in the UK and considering whether the permanence condition of the fixed place of business PE test might be met in those scenarios.

It is understood that both the OECD and the United Nations have the tax treatment of distance working in cross-border scenarios on their worklist for the near future.

For more details, see [Working remotely abroad checklist](#).

Transactions

A key feature of both industries is the importance of IP. Transfer pricing rules introduced since the 2015 BEPS project have had a significant impact on the holding and exploitation of IP generally. See [Transfer pricing](#). The introduction of minimum tax rules based on the OECD Pillar 2 proposals, including at a domestic level, may further erode any benefits of offshore holding structures.

4. How does VAT apply to the industries' main business activities?

Most supplies made by businesses within the industries will be subject to VAT at the standard rate. There are very few exemptions that would be relevant, although applicable exemptions might include any financing arrangements that businesses enter into as part of making available products to customers where there may be a separate supply of credit. As such, most businesses in the industries will be fully taxable and will recover the input VAT that they incur (see [Practice note, VAT: overview](#)).

Place of supply rules

One area of complexity for businesses within these industries, however, can be the place of supply rules. There are a number of special rules which may affect the normal place of supply (generally in a B2B context, the place where the customer belongs and in a B2C context the place where the supplier belongs). For example, B2C supplies of telecommunication or "electronically supplied services" (which include services such as web hosting, supplies of software and making available databases) are treated as made where the customer belongs, while other services may be subject to the "use and enjoyment" rules.

The operation of these rules may result in overseas providers of such services being required to register and account for VAT in the UK where these services are used and enjoyed by UK consumers. UK providers may also be required to register in the EU where they provide such services to EU consumers, either through the Non-Union VAT MOSS scheme or by registering for VAT in each EU member state where such supplies are made. See [Practice note, Cross-border VAT: supplies of services](#).

Where IT equipment is provided with ancillary services to enable businesses operating in the IT field to provide electronic connections to their customers (so-called "colocation centre services"), the CJEU has held that these services do not amount to an exempt supply of the leasing or letting of property and are not "connected with immovable property", even where the servers in question were bolted to the floor. As such, the place of supply of such services is not based on where the servers or data centre are located (see [Legal update, Supply of data centre services not connected to immovable property \(ECJ\)](#) and [Practice note, VAT and property: an outline of the rules](#)).

Agency

The growth of technology has led to significant changes in the operation of a number of business models, affecting the way in which businesses and consumers interact in relation to the provision of services. Most notably there has been significant growth in the use of intermediaries in various supply chains, often in the form of online platforms (generally referred to as the "sharing economy" or the "platform economy"). VAT rules are particularly affected by the operation of the platform economy where the ability of platforms to bring together many small suppliers with consumers potentially takes many supplies outside the scope of UK VAT because those small suppliers do not meet the UK's relatively high VAT registration thresholds.

While this is not a new problem for the VAT system (similar issues have faced supplies by taxi companies and hairdressers, for example, for many years), the growth of digitalisation has increased the scope and importance of the problem for tax authorities. It is not surprising, therefore, that a number of provisions have been introduced to make the platform, rather than individual suppliers, liable to account for VAT.

The Value Added Tax Act 1994 (VATA 1994) section 47 contains special rules for agency situations involving supplies of telecommunications services and electronically supplied services.

- Section 47(4) treats supplies of such services made through an agent, where the agent is acting in its own name, as supplies by and to the agent.
- In addition, section 47(3) allows HMRC, if they think fit, to treat other supplies of services which are supplied through an agent who acts in their own name both as a supply to the agent and as a supply by the agent.

Section 47(4) was supplemented by Article 9a of the Implementing Regulation 282/2011.

Article 9a seeks to clarify the operation of Article 28 of the Principal VAT Directive (which is the basis for section 47(4)) in relation to electronically provided services via platforms and networks. Article 28 provides that "Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself".

Article 9a provides, broadly, that "where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties".

Article 9a also provides that a taxable person who with regard to a supply of electronically supplied services authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services.

The legality of this provision was questioned in *Fenix International v HMRC* (Case C-695/20) where the CJEU held that the provision was not invalid. The case concerned the operation of a social media online platform called "Only Fans". It allowed users (fans) to access uploaded content by creators by making payments in respect of each creator whose content they wish to view. Fenix was responsible for collecting and distributing the payments made by fans. Fenix charged the creators a fee of 20% of the sums paid by their fans by way of a deduction. Fenix charged and accounted for VAT only in relation to the 20% fee. HMRC determined that Fenix should have accounted for VAT on the whole of the amounts that it received as Fenix had to be deemed to be acting in its own name pursuant to Article 9a of the Implementing Regulation. See [Legal update, VAT: Article 9a of Council Implementing Regulation \(EU\) 2828/2011 \(presumption that online platforms act as principals\) valid \(ECJ\)](#).

More generally, HM Treasury published a Call for Evidence in 2020 on possible changes to the way that the VAT rules operate in the sharing economy, including making platforms liable to account for VAT in a wider set of circumstances. It ultimately

decided to keep the matter under review (see *Practice note, VAT measures addressing tax challenges from digitalisation of economy: Sharing economy and digital platforms*).

In the EU, the European Commission has proposed that platforms facilitating supplies of passenger transport and short-term accommodation (such as Uber and Airbnb) should become responsible for collecting and remitting VAT to EU tax authorities when their users do not (see *20. What developments in taxation are on the horizon that will affect these industries in particular?*).

Termination payments

One area of difficulty experienced by businesses in the telecoms industry has been the treatment of "termination payments", such as fees charged to customers for early termination of minimum period contracts.

HMRC originally regarded contractual termination payments as compensation payments and therefore outside the scope of VAT. However, two CJEU cases called this treatment into question. In the MEO case (Case C-295/17), the CJEU adopted an approach based on the commercial and economic reality. It concluded that a provider receiving exactly the same payment from the customer terminating the contract as from one continuing to enjoy the services for the minimum period was receiving that payment as consideration for its supplies. See *Legal update, Contractual fixed sums payable on termination consideration for VAT supply and not compensation (ECJ)*.

The Vodafone Portugal case (Case C-43/19) took this analysis one step further, suggesting that any fixed contractual termination payment should be seen as part of the price agreed by the customer for the services it receives under that contract. See *Legal update, Contractual sums payable on termination consideration for VAT supply irrespective of amount due (ECJ)*. HMRC subsequently issued new guidance on the treatment of termination payments in Revenue & Customs Brief 2/2022 (and in VAT Manuals at VATSC05910, VATSC05920 and VATSC05930), confirming that it would in future generally treat such payments as additional consideration for the original supplies.

5. Will the OECD's Pillar 2 proposals have any particular impact on those operating in the industry?

It is not expected that the implementation of the minimum tax rate provisions contained in the OECD Pillar 2 proposals will have any particular impact on these industries. As with other sectors, the minimum tax rules may have the effect of eroding any tax benefits from structures with significant profits in low/no tax jurisdictions (see *Transactions*).

For an overview of the Pillar 2 proposals, see *Practice note, OECD Inclusive Framework proposal for global minimum corporate tax rate*.

Tax reliefs specific to, or of particular relevance to, the industry

6. Are there any tax reliefs, incentives or exemptions that apply only to these industries?

Finance Act 2000 Schedule 23 includes provisions to enable the accounting treatment of expenditure on acquiring mobile phone licences, and for any proceeds from realising the value of them, or of rights attaching to them, to be followed for tax. These provisions cover the following types of assets acquired on or after 21 March 2000:

- All wireless telegraphy licences auctioned under the Wireless Telegraphy Acts (see *Practice notes, Mobile phone services: Telecoms regulation: wireless* and *Radio spectrum regime*).

- Indefeasible rights of use (IRU). An IRU is a legal interest created by contractual agreement that confers an indefeasible and exclusive right of access to some or all of the capacity in a telecommunications cable system on another party.
- Rights that are derived from the wireless telegraphy licences and from IRUs.

These provisions have been superseded for corporation tax purposes by the corporate intangibles regime introduced in Finance Act 2002 for accounting periods ending after 31 March 2002 (see *Corporate intangibles regime*) but remain relevant for income tax purposes.

7. What is the rationale for these reliefs or exemptions?

When the UK government decided to auction the third generation (3G) mobile phone licences it responded to representations that UK bidders would be disadvantaged if they did not enjoy a comparable tax treatment to overseas competitors. Those representations highlighted a concern that they would not get any revenue deduction for tax purposes as the length of the licences (20 years) meant the one-off up-front payment would be treated as capital in character. The provisions in Finance Act 2000 Schedule 23 were designed to level the playing field between UK and overseas bidders for telecommunication licences.

8. Are there any other reliefs or exemptions that are particularly relevant to this industry?

Corporate intangibles regime

Intangible property is a key feature of both the technology and telecoms industries. Before the Finance Act 2002, the tax treatment of corporate expenditure on and receipts in relation to intangible property assets could be both complex and disadvantageous. Expenditure and receipts might be capital or revenue in nature and might benefit from income deductions, capital allowances or no relief at all. Recognising the importance of intangibles, the government decided to introduce new rules which would remove these historic distinctions and broadly harmonise the tax treatment with the accounting treatment.

The intangibles regime aims to tax and relieve profits and losses for intangibles as income in accordance with their recognition in the accounts of the relevant company. Losses and profits under the intangibles regime give rise to debits and credits respectively. The regime applies to intangible fixed assets created or acquired after 1 April 2002 and the provisions are contained in Corporation Tax Act 2009 (CTA 2009) Part 8.

"Intangible asset" (which includes internally generated intangible assets) bears the accounting meaning given by the applicable set of financial reporting and accounting standards (CTA 2009 section 712(1)). It is specifically provided that intellectual property (IP) falls within the meaning of "intangible asset" (CTA 2009 section 712(2)). The intangibles regime also applies to goodwill, as defined for accounting purposes (CTA 2009 section 715).

For more details of the corporate intangibles regime, see *Practice note, Intangible property: tax*.

R&D relief

The UK currently operates two separate R&D incentive schemes offering additional tax relief for qualifying R&D expenditure.

- The SME scheme provides an enhanced corporation tax deduction (currently 186%) with the possibility of surrendering the additional relief for a payable credit at a rate of 10%.

In addition, a higher rate of payable credit for loss-making R&D intensive SMEs was introduced with effect for expenditure incurred from 1 April 2023. Companies will be eligible for a higher payable credit rate of 14.5% if they

meet the definition for R&D intensity, instead of the 10% credit rate for non-intensive companies. A company is considered R&D intensive where its qualifying R&D expenditure is 40% or more of its total expenditure. The 2023 Autumn Statement announced that the threshold to be considered R&D intensive will be reduced from 40% to 30% for accounting periods beginning on or after 1 April 2024.

- The research and development expenditure credit (RDEC) scheme for larger companies (and others not qualifying for the SME scheme) provides a payable "above the line", taxable credit of 20% of the qualifying R&D expenditure.

The government recently consulted on merging the two separate schemes into one UK R&D scheme, largely based on the current RDEC scheme. The 2023 Autumn Statement confirmed that the government will introduce a single, merged R&D tax relief scheme with effect from accounting periods starting on or after 1 April 2024. However, the higher rate of credit for loss-making R&D intensive SMEs introduced in April 2023 will remain in place and the definition of "R&D intensive" will be widened. For more details of these schemes and the consultation, see [Practice note, R&D tax reliefs: practical aspects](#).

Patent box

The UK also has an optional "patent box" which provides a 10% corporation tax rate for companies exploiting patented inventions (or certain other innovations). It applies to patents issued by the UK Intellectual Property Office, the European Patent Office and other specified jurisdictions. The reduced rate applies to a proportion of the profits derived from:

- Licensing or selling such rights.
- Selling the patented invention or products incorporating the patented invention.
- Using the patented invention in the company's trade.
- Compensation received for infringement.

Profits attributable to routine manufacturing, development functions and exploiting marketing intangible assets (such as trademarks) are excluded from the patent box.

For more details, see [Practice note, Patent box](#).

Investment reliefs

There are a wide range of tax incentives that are available to smaller technology companies and investors in such companies. These include the following schemes:

- **Seed enterprise investment scheme (SEIS)**. This allows for 50% income tax relief and exemption from capital gains tax for investors in high-risk start-up trading companies (see [Practice note, Seed Enterprise Investment Scheme \(SEIS\)](#)).
- **Enterprise investment scheme (EIS)**. This allows for 30% income tax relief and exemption from capital gains tax for investors in small high-risk trading companies (see [Practice note, Enterprise Investment Scheme \(EIS\)](#)).
- **Venture capital trust (VCT) scheme**. This allows for 30% income tax relief and exemption from capital gains tax for investors in venture capital trusts, which subscribe for equity in, or lend money to, small unquoted companies (see [Practice note, Venture Capital Trusts](#)).
- **Business asset disposal relief (formerly entrepreneurs' relief)**. This allows for a reduced 10% capital gains tax rate for entrepreneurs selling business assets (only available to directors and employees of businesses) (see [Practice note, Business asset disposal relief](#)).

- **Investors' relief.** This is an additional reduced 10% capital gains tax rate that allows other types of shareholders to benefit from the same relief as is provided under business asset disposal relief when they sell their shares. Unlike business asset disposal relief, this reduced rate is only available to investors who have not been officers or employees in the company whose shares are being sold (see *Practice note, Investors' relief*).

Sources of tax rules in the industries

9. Which are the key pieces of UK legislation governing the tax regime in the industries?

There are numerous pieces of legislation relevant to the different taxes affecting these industries. They are mentioned where applicable in this note, but some of the key provisions are found in:

- Corporation Tax Act 2009; Finance Act 2002 (Corporation Tax).
- Finance Act 2020 Part 2 and Schedules 8 to 10 (Digital Services Tax).
- Finance Act 2015 Part 3 (Diverted Profits Tax).
- Taxation (International and Other Provisions) Act 2010 (Transfer Pricing).
- Value Added Tax Act 1994 (VAT).
- Income Tax Act 2007 and Finance Act 2019 (Withholding taxes).

10. Is governance of any aspects of the tax regime applicable to these industries devolved to the Scottish Parliament or Welsh National Assembly?

No.

11. Are there any manuals or other published HMRC materials particularly relevant to the industries?

The following HMRC manuals are particularly relevant to activities in these industries:

- Corporate Intangibles Research and Development Manual (covering R&D tax relief, patent box and telecommunications licences and rights) (*HMRC: Corporate Intangibles Research and Development Manual*).
- Digital services tax manual (*HMRC: Digital Services Tax Manual*).
- VAT place of supply of services manual (*HMRC: VAT Place of Supply of Services*).

12. Are there any industry codes of practice particularly relevant to tax in the industries?

No.

Taxes and ESG in the industries

13. Are there any tax rules designed to encourage organisations in the industries to behave in a more environmentally friendly manner?

There are no rules specifically targeted at these industries, but details of some of the tax measures designed to encourage ESG measures generally can be found in *Environmental, social and governance (ESG): tax toolkit*.

14. Are there any tax rules designed to compensate for perceived detriment to society or the environment arising from industry practices?

Not specifically targeted at these industries, however key players in these industries have sometimes served as proxies in debates around taxation (see for example *Permanent establishment issues*).

Avoidance, enforcement and penalties

15. Are there any anti-avoidance measures or rules that relate specifically to the industries, or are particularly relevant to the industries?

In order to combat missing trader fraud (MTIC) (see *Practice note, VAT fraud: Missing trader fraud (MTIC)*), the UK has introduced domestic *reverse charge* procedures for transactions between VAT registered businesses in certain goods and services pursuant to VATA 1994 section 55A. These goods and services include:

- Mobile telephones and integrated circuit devices, such as central processing units and microprocessor units where the value of the supply is £5000 or more (see *Value Added Tax (Section 55A) (Specified Goods and Services and Excepted Supplies) Order 2010 (SI 2010/2239)*).
- Wholesale transactions of telecommunications services (see *Value Added Tax (Section 55A) (Specified Goods and Services and Excepted Supplies) Order 2016 (SI 2016/12)*).

Under the reverse charge mechanism, it is the responsibility of the customer, rather than the supplier, to account to HMRC for VAT on supplies of the specified goods.

16. Are there any key tax cases of note involving businesses in the industries, or on issues or with fact patterns that commonly arise in the industries?

Case	Area	Impact
<i>Fenix International Ltd v HMRC (Case C-695/20)</i>	VAT: application of VATA 1994 section 47 (based on Article 9a) special rules for agency situations involving supplies of telecommunications services and electronically supplied services.	The CJEU held that that Article 9a of the Implementing Regulation 282/2011, which deems electronically supplied services made through online platforms to be made by the platform itself in most cases, is compliant with EU law.

<i>Vodafone Portugal — Comunicações Pessoais SA v Autoridade Tributária e Aduaneira (Case C 43/19)</i>	VAT: treatment of early termination payments.	The CJEU held that payments received by a business from a customer for early termination of a telecommunications contract with a minimum tie-in period constitute consideration for a supply of services by that business, irrespective of whether the amount paid relates to the remainder of the contractual price.
<i>R (on the application of Refinitiv Ltd) v HMRC [2023] UKUT 257 (TCC)</i>	Corporation tax: transfer pricing.	The Upper Tribunal rejected the argument that an Advance Pricing Agreement (APA) in relation to services provided in relation to IP held in an overseas group company and covering periods to 2014 prevented HMRC issuing DPT notices for the 2018 period calculated in part on services provided during the period covered by the APA and using a different basis of calculation (profit split versus cost plus). The APA only covered the taxation of profits in earlier periods and did not prevent HMRC taking a different approach to the transfer pricing of the same services for taxation in later periods.
<i>Luxembourg and Amazon v European Commission (Case T#816/17) and (Case T#318/18)</i> <i>(Judgment in English from Curia.europa.eu)</i>	State aid.	The European General Court considered that the European Commission had failed to show that a tax ruling issued by Luxembourg in respect of an Amazon IP holding structure conferred a selective advantage compared to the "normal" tax regime by overvaluing the IP licensing agreements.
<i>Commission v Ireland, Apple Sales International and Apple Operations Europe (Case C-465/20P)</i> <i>(Opinion in English from Curia.europa.eu)</i>	State aid.	Advocate General Opinion on General Court judgment annulling Commission decision regarding two advance tax decisions adopted by the Irish tax authorities in relation to the allocation of profits arising from the exploitation of Apple IP licences

17. Are there any recent examples of HMRC investigations focused on organisations in the industries?

In 2019, HMRC introduced a compliance facility (the Profit Diversion Compliance Facility or PDCF) for MNEs using arrangements which might be viewed as targeted by the Diverted Profits Tax (DPT) legislation or having transfer pricing arrangements inconsistent with the OECD Transfer Pricing Guidelines. The facility is designed to encourage MNEs to bring their tax affairs up to date without risk of investigation by HMRC if full and accurate disclosure is made.

Following the introduction of the PDCF, HMRC has embarked on a series of rounds of prompting large and medium sized businesses to register for the PCDF, focussing initially on particular sectors. These rounds of "nudge letters" were designed to encourage businesses to engage with HMRC to provide tax certainty on a range of transfer pricing and related tax issues. One of the initial sectors that HMRC focussed on was the technology industry.

For more, see [Practice note, Diverted profits tax: overview: Process for notification, charging and paying](#).

18. Are there any rules imposing obligations specifically on organisations in the industries to report to HMRC?

The [Platform Operators \(Due Diligence and Reporting Requirements\) Regulations, SI 2023/817](#), implement the OECD's Model reporting rules for digital platforms (MRDP) with effect from 1 January 2024.

Digital platforms include apps and websites which facilitate the provision of goods and services such as taxi and private hire services, food delivery services, freelance work and the letting of short-term accommodation. These rules require UK digital platform operators to report sellers' details to HMRC. They include details of the data collection, verification and reporting requirements placed on digital platform operators under these rules and will impose penalties for non-compliance.

Having collected information, the reporting platform operator must then make a report to HMRC on or before 31 January following the end of the reportable period providing the information required by the rules concerning both the reporting platform and each reportable seller. The regulations anticipate that an electronic reporting system to be specified by HMRC must be used for this purpose.

The first reports are due by 31 January 2025. HMRC will share information with other tax authorities.

Similar rules apply in the EU through the implementation of DAC7 with effect from 1 January 2023.

For more details, see [Practice note, Common reporting obligations of platform operators](#).

Policy and horizon scanning

19. What are the key priorities governing the tax regime in the industries?

Encouraging innovation and technological developments is high on the list of government priorities.

In the 2023 Autumn Statement, the Chancellor was keen to highlight the importance of the technology industry for the UK economy. The Statement recognises that "scientific breakthroughs are a crucial driver of long-run growth and play a critical role in improving lives and helping to tackle societal challenges". Accordingly, the government intends to take further steps to ensure the UK remains at the cutting edge of science, innovation and technological development.

To drive productivity growth, ultimately businesses will need to invest more in R&D. The UK's R&D tax reliefs have an important role to play in doing this in a fiscally sustainable way. The objective of the R&D reliefs is to increase the overall levels of R&D in the UK economy by reducing the cost of investing in R&D.

Recent changes to the R&D reliefs have focussed on:

- Supporting modern research methods by expanding the scope of qualifying expenditure (including to data and cloud computing costs).
- Refocusing support towards innovation in the UK.

Consideration is also being given to providing additional relief for targeted R&D. For example, it has been suggested that, in the context of the move to net zero, R&D on net zero or green tech initiatives should receive additional support through the R&D tax relief schemes.

20. What developments in taxation are on the horizon that will affect these industries in particular?

VAT

In 2020 the UK government published a Call for Evidence on VAT in the Sharing Economy. The government considered the possible introduction of new VAT rules targeted at the sharing economy, or some parts of it, to address VAT concerns.

In particular, the call for evidence highlighted the potential for the introduction of rules which would override the agent/principal relationship in the VAT context to require VAT to be accounted for where supplies are provided by businesses under the VAT threshold through an online platform. In addition, the government considered the option of requiring overseas platforms to register and account for VAT in the UK where they facilitate supplies in the UK. In its Summary of Responses published in July 2021, the government announced its intention not to proceed with these reforms in the short term but to continue to monitor developments and seek a broader understanding of the need for reform in this area.

In December 2022, as part of its "VAT in the Digital Age" proposals, the European Commission published proposals to change the EU VAT rules for platforms facilitating supplies of passenger transport and short-term accommodation (such as Uber and Airbnb). If these new rules are agreed, platform operators in those sectors will become responsible for collecting and remitting VAT to tax authorities when their users do not, for example because they are under the VAT registration threshold.

DST

When implemented, the OECD Pillar 1 proposals will require jurisdictions including the UK to remove existing digital service taxes. Amount A of the OECD Pillar 1 rules will, broadly, apply to MNEs with global turnover above €20 billion and profitability (profits before tax) above 10%.

Amount A of Pillar 1 has been developed to provide jurisdictions in which consumers and users are located (market jurisdictions) a new taxing right over a portion of the residual profits of these largest and most profitable MNEs. Very broadly, it reallocates 25% of the MNE's profits in excess of 10% of its revenues to market jurisdictions in which the MNE satisfies the quantitative nexus test. These profits will be allocated in proportion to the amount of revenue the MNE derives from those jurisdictions as determined by revenue sourcing rules. This allocation is adjusted or eliminated to the extent that the market jurisdiction already taxes the excess profit of the MNE outside the multilateral convention and comes with a corresponding obligation on a jurisdiction to grant relief for double taxation. See [Legal update, Multilateral convention to implement amount A of OECD pillar one proposal for taxing largest multinational enterprises](#).

For more details of the OECD Pillar 1 proposals, see [Practice note, OECD pillar one proposal for taxing right over largest and most profitable multinationals](#).

21. Are there any other features of the UK tax regime that are specific to these industries?

No.

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