



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Mr Clive Betts MP
Chair, Housing, Communities
and Local Government Committee
House of Commons
London
SW1A 0AA

28th January 2019

Dear Clive,

Evidence session on Business Rates and the High Street

I write in reply to your letter of 17 January, regarding my evidence to your inquiry into High Streets.

In your letter you request that the government should carry out detailed legal and factual analysis to make a definitive assessment of whether an online sales tax could constitute a state aid. In my previous reply I set out the government's assessment of this risk. The government takes the rules that ensure fair competition seriously and officials, together with lawyers, assess whether measures that affect businesses are compliant with state aid rules as part of the policy development process. Should Ministers consider such a tax, this assessment would be carried out then, however I hope my following responses will be of some interest.

You ask for detail on taxes which have been judged as state aid in the past.

A measure that treats competitors equally will not create the sort of distortive advantage that is normally found to be aid. However, some tax measures that EU Member States have instituted over the last few years have been found to be aid by the European Commission.

Though not comprehensive, I have listed some of these examples below; further examples can be found via the European Commission's Competition website:

- In June 2017, the European Commission ruled that a Polish tax on the retail sector would have been in breach of state aid rules.
- In November 2016, the European Commission ruled that a Hungarian advertising tax introduced in August 2014 constituted a state aid.

While this may provide some indication of the risks around the development of new sector based taxes, it may not provide an accurate guide to how any UK tax in this area would be assessed, as state aid assessments are dependent on the tax framework in that country and the facts and impacts at play with that particular tax.

You also ask if there are examples of online sales taxes which have been judged not to be state aid. It is difficult to be certain, as in general an EU Member State would only notify a measure it believes to be aid. Likewise, the Commission generally only investigates cases where it believes there is a risk of aid. However, at this stage, we can find no evidence of online sales taxes ruled as such by the Commission.

On the government's recently announced Digital Services Tax (DST), you ask why the government believes this does not constitute state aid.

The DST is currently under public consultation and it is our intention to legislate it in Finance Bill 2019/20, and for it to apply from April 2020. As mentioned above, assessing whether measures that affect businesses are compliant with state aid rules is part of the policy development process and will remain a consideration as the government finalises design following consultation. However, the government is confident that the proposed design is consistent with the state aid rules. The DST applies to a set of business models which derive material value from user participation and does not discriminate, and therefore distort the market, based

on how these business models are monetised. It is also insensitive to business location as it applies on the basis of user location. You will be aware that both the EU has proposed a Digital Services Tax which is still under discussion, and some other Member States have indicated they intend to implement national DSTs.

You asked whether reducing the level of online sales required to be liable for an online sales tax would affect the judgement on aid issues.

Lowering the rate of online sales required to be eligible for the tax may result in fewer distortions, as it would mean more businesses making online sales are caught. However there would still be the challenge that such a tax would treat identical supplies from largely identical warehouses differently, should one be owned by a business operating only from physical stores, and the other by a business operating solely online. This would still be a risk under state aid rules, and require detailed legal scrutiny.

Finally, you query the impact that exit from the EU will have on state aid rules. As this is a matter for the Department of Business, Energy, and Industrial Strategy, I have passed your question onto that Department, and have asked they respond directly to you as soon as possible.

I hope my responses have been helpful. I look forward to reading the Committee's report.

A handwritten signature in blue ink, consisting of the letters 'JMS' on the top line and 'Mel' on the bottom line.

RT HON MEL STRIDE MP

