

Further written evidence submitted by the Chartered Institute of Taxation (FB11)

Finance Bill 2017

Clauses 48-59 & Schedule 13

Fulfilment Businesses

Summary

We remain unconvinced that this measure will tackle VAT loss effectively and, instead, believe it is set to add complexity and significant administrative burden to the compliant majority of affected UK businesses. The scheme may act as a partial deterrent but we believe the measures and sanctions are disproportionate and there are more effective and fairer ways to achieve the policy aims.

1. Context

- 1.1. Third country (non-EU) businesses who sell goods to UK consumers, typically via online marketplaces, are not always paying the correct amount of VAT and duty to HMRC. This may be because of inadvertent non-compliance or evasion.
- 1.2. Clauses 48-59 introduce the framework of the Third Country Goods Fulfilment Business scheme that requires UK fulfilment businesses (dealing with imported goods offered for sale to UK customers) to gain approval from HMRC in order to trade legitimately.
- 1.3. This is the latest in a succession of measures¹ introduced by the Government attempting to tackle VAT loss through online sales and level the playing field for all businesses trading in the UK. There is also a related HMRC consultation looking at an alternative way to collect VAT in this type of supply chain using card payment technology (split payments)² to which we have responded³.
- 1.4. We have commented publicly on our concerns with HMRC's approach to this issue (CIOT [Press Release](#) and [consultation response](#)) and have fed back informally on this legislation at a stakeholder meeting with HMRC. We have publicly summarised these discussions (see Tax Adviser Magazine [article](#)).

¹ Finance Bill 2016 Clause 112 appointing VAT representatives, Clause 113 joint and several liability of operators of online marketplaces and Budget 2016 HMRC Consultation on Fulfilment House Due Diligence Scheme.

² <https://www.gov.uk/government/consultations/vat-tackling-fraud-on-goods-sold-online-update-on-split-payment>

³ <https://www.tax.org.uk/policy-technical/submissions/alternative-method-vat-collection-ciot-comments>

- 1.5. HMRC are yet to publish any detail on what fulfilment businesses will need to do in order to gain approval by 1 April 2018 – we await secondary legislation and guidance - leaving affected businesses **less than 6 months** to understand and implement these changes. This does not give businesses sufficient time to plan and make the necessary changes.

2. Clauses 48-59

- 2.1. Coming into force on 1 April 2018, the scheme will require all UK businesses that store imported goods, which are owned by or on behalf of a non-EU established business for onward sale to UK customers, to gain approval from HMRC in order to legitimately continue trading. Fulfilment businesses will also be required to carry out robust due diligence checks on their overseas customers with penalties and criminal sanctions for non-compliance.

No de-minimis limit

- 2.2. Disappointingly, the definition of a fulfilment business (Clause 48) does not contain a de-minimis limit for small business, meaning that a business storing even just one item (owned by or on behalf of a non-EU customer that is offered for UK sale) is required to get approval to trade and risks penalties, forfeiture of goods and criminal prosecution for failure to comply.

Incidental test

- 2.3. There is an 'incidental' test relating to the carriage of goods (Clause 48(3)) which remains unclear and, as a subjective test, has a well-established history in VAT law of creating disputes.

Publicly available register of approved persons

- 2.4. Clause 50 sets out the requirements for HMRC to publish a register of approved persons (approved fulfilment businesses) which we are informed will be made public and kept up to date in real-time. We have concerns about whether this register will be ready in time and will be accurate. It will be a criminal offence to knowingly continue trading as a fulfilment business dealing with non-EU businesses in this context without being approved by HMRC.

Penalties, forfeiture of goods and criminal offence

- 2.5. Clauses 53 – 55 and Schedule 13 focus on behaviour based penalties, the forfeiture of goods and criminal prosecution with up to 7 years imprisonment. These seem particularly harsh sanctions for an administrative scheme.
- 2.6. It is, in our view, disproportionate to have a criminal offence available to HMRC to use on UK businesses for an administrative scheme in a scenario without a de minimis limit, eg where a business could become a fulfilment business because it stores one parcel.
- 2.7. We understand that this legislation is based on an Excise Duty scheme known as The Alcohol Wholesaler Registration Scheme (AWRS). However, for fulfilment businesses, the goods in question are duty paid (ie in free circulation) and will have already been through the relevant customs / excise controls. HMRC informally say that the criminal powers are there to use as a last resort.
- 2.8. We are of the view that legislative powers (especially criminal sanctions) should not be given lightly and should be in proportion with the aim of the policy.

- 2.9. The introduction of new penalties should follow the Government's own penalty principles set out most recently on page 5 of 'Making Tax Digital - sanctions for late submission and late payment'⁴. We would suggest that these clauses are at odds with some of these principles.

3. General comments

Achieving the right balance

- 3.1. We fully support HMRC's will to tackle this issue; internet trading makes it easier for overseas businesses to sell into the UK but difficult for HMRC to ensure that UK VAT is being properly declared. However, our concern is that this scheme targets UK intermediaries in the supply chain and not those who are failing to comply. On the one hand, this places an extra burden on legitimate UK business, and on the other, it may unintentionally give the impression to potential tax evaders that they will not be pursued by HMRC.
- 3.2. The key question is how best to balance the fight against fraud whilst mitigating the administrative burden on legitimate business? At an HMRC consultation meeting in January 2017, some industry representatives feared the abuse would move on at a much faster pace than HMRC could keep up with, particularly with resource constraints, leaving the compliant majority undertaking a potentially disproportionate burden of administration and the underlying issue of tax loss remaining.

Effectively resourced enforcement

- 3.3. Enforcement is a fundamental issue and there is a risk of missing trader fraud and misdeclarations in any VAT system. There can be no substitute for HMRC providing effective monitoring and enforcement. In order for this package of measures to be effective, HMRC must retain the role of primary enforcer and not simply require intermediaries to take on that role on its behalf. To do that, HMRC needs to be sufficiently resourced to monitor, investigate and administer trade in this area.

The VAT gap

- 3.4. HM Treasury estimates the VAT loss attributable to sales by overseas businesses via online marketplaces to be as much as £1-1.5 billion (for 2015-16)⁵. Whether this is due to evasion or inadvertent non-compliance, it is clearly necessary to take steps to reduce that amount and we support HMRC taking action.
- 3.5. To put this sum into context, the total UK VAT gap for 2015-16 was £12.2 billion⁶ meaning that HMT believe VAT loss from this issue amounts to somewhere between 8-12% of the total VAT gap.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/601136/Making_Tax_Digital_-_sanctions_for_late_submission_and_late_payment.pdf

⁵ <https://www.gov.uk/government/publications/vat-representatives-for-overseas-businesses-and-joint-and-severalliability-for-online-marketplaces/vat-representatives-for-overseas-businesses-and-joint-and-several-liability-foronline-marketplaces>

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596498/2nd-est-vat-gap-2016.pdf

- 3.6. We have previously questioned the reliability of this estimate. If it is to drive wide-reaching tax policy resulting in significant administrative burdens on legitimate UK business it is important that a government estimate is firmly based.
- 3.7. Going forward, HMRC's new powers to deal with overseas businesses are predicted to secure future revenues of £65 million (2018/2019) rising to £365 million (2020/2021)⁷. In other words even when fully introduced the Government believes this policy will only reduce VAT loss of this kind by around 30%.
- 3.8. Given the level of perceived risk, we would expect to see HMRC committing significant resource to tackle this area rather than effectively subcontracting compliance in this area to supply chain intermediaries .

Brexit

- 3.9. When considering the impact that Brexit will have on this scheme, we assume that the EU/non-EU distinction will no longer apply; meaning that UK businesses handling goods from any other country coming into the UK for onward sale by overseas businesses will be required to be approved under this scheme. The application of the scheme is set to widen significantly post-Brexit.

16 October 2017

⁷ Page 44:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508147/PU1912_Policy_Costings_FINAL3.pdf