

**Further written evidence submitted by the Chartered Institute of Taxation Clause
38 (FB16)**

Clause 38 – VAT: Online Marketplaces

Executive summary

We are supportive of measures to tackle VAT evasion / non-compliance by overseas businesses, but have concerns over how this particular measure will work in practice. It may prove a difficult measure for the marketplaces to implement and for HMRC to police.

1. Overview

- 1.1. Clause 38 is an anti-fraud / non-compliance measure with several distinct elements:
 - 1) It extends the scope of existing joint and several liability rules for online marketplace operators to include sales of goods of both UK and non-UK sellers to UK consumers (previously just non-UK sellers).
 - 2) It introduces a new test for online marketplace operators in relation to non-UK sellers; where the online marketplace “knows, or should know” that the seller is in breach of its VAT registration requirements.
 - 3) It requires online marketplace operators to (a) display VAT numbers of all sellers and (b) take reasonable steps to verify the VAT number is valid.
- 1.2. This is part of a package of measures designed to clamp down on businesses who sell through online marketplaces but fail to pay VAT. Such activity reportedly costs the UK an estimated £1.2 billion per annum in lost revenues.
- 1.3. The CIOT welcomes this legislation, which builds on the good progress already made by HMRC to tackle the issue of online VAT non-compliance. Since 2016, the Government has taken a number of steps to increase VAT compliance, including making online marketplaces potentially liable for VAT due by their non-UK sellers. Additionally, HMRC will start to accept registrations for the Fulfilment House Due Diligence Scheme from April 2018, which will oblige fulfilment businesses in the UK to register with HMRC, keep certain records and carry out robust due diligence checks on their overseas customers.
- 1.4. These measures will help to level the playing field between sellers who comply with their UK VAT obligations and those who do not. The measures will be welcomed by compliant retailers who for years have paid the appropriate amount of VAT due, but who have had to compete against those who have not.
- 1.5. However, whilst we are supportive of measures to tackle VAT evasion / non-compliance by overseas businesses, we do have some concerns over how this particular measure will work in practice. It may prove a difficult measure for the marketplaces to implement and for HMRC to police.

2. The ‘knew or should have known’ test

- 2.1. The measure enables HMRC to hold online marketplaces jointly and severally liable for any unpaid VAT of a non-UK business arising from sales of goods in the UK via that online marketplace, where that marketplace ‘knew or should have known’ that the non-UK business should be registered for VAT in the UK. The ‘knew or should have known’ test is more

commonly referred to as the Kittel principle (*Axel Kittel v Belgium, Belgium v Recolta Recycling (C-439/04, C-440/04)*) and has been subject to significant litigation through the UK Courts and the European Court of Justice. The principle continues to evolve, intertwined with principles of abuse (*Halifax*). How these principles will evolve and how they might influence the UK's interpretation post-Brexit is a matter of continued debate.

- 2.2. We are concerned that it will not always be obvious whether a seller should be registered for VAT. Marketplaces will need to satisfy themselves and HMRC that they have taken sufficient reasonable steps to protect themselves against challenges that they 'knew or should have known' that a seller should be VAT registered in the UK. Effective and clear guidance will be crucial.

3. Displaying and verifying VAT numbers

- 3.1. Online Marketplace operators will be required to display the VAT number of their third- party sellers (generally within 10 days of being provided with it) and take reasonable steps to check that the VAT number provided is valid. Where the online marketplace becomes aware that the VAT number is not valid, it is required to remove it from display within 10 days.
- 3.2. The most common way of checking whether a VAT number is valid is to use the online VAT number validation service provided by the VAT Information Exchange System (VIES); operated by the European Commission. The system uses real-time data feeds from individual member states' VAT systems so the information should be up to date at all times.
- 3.3. What provision will be made for UK taxpayers to validate VAT numbers after Brexit? It is not clear whether the VIES online validation check (or similar) will remain available.

4. The Chartered Institute of Taxation

- 4.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 4.2. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
- 4.3. The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

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