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## Electronic Sales Suppression – HMRC Call for Evidence

### Response by the Chartered Institute of Taxation

#### 1 Introduction

- 1.1 We are pleased to provide our comments on the Call for Evidence ‘Electronic Sales Suppression’ (ESS) published by HMRC on 19 December 2018. We also met with HMRC in February 2019 to discuss the Call for Evidence. The comments in this written response supplement those provided at our meeting.
- 1.2 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the Chartered Institute of Taxation (CIOT) is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.3 Our stated objectives for the tax system include:
  - A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.
  - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
  - Responsive and competent tax administration, with a minimum of bureaucracy.

#### 2 Executive summary

- 2.1 The CIOT strongly supports HMRC’s efforts to deal with tax evasion. ESS is fraud and needs to be tackled appropriately.
- 2.2 The Call for Evidence considers whether a technological solution could include ‘*mandatory software or hardware for businesses which conform to technical requirements that reduce the opportunity for ESS*’ (para

3.7). This sounds to us like it would require HMRC’s ‘approval’. We do not think a technological solution like this would work, for the reasons outlined below.

- 2.3 In our view, rather than requiring businesses to take on more compliance burdens, the solution has to lie in tackling the behaviour that leads to ESS (that of the software designers, developers, distributors and end-users), and first and foremost considering whether existing legislation is adequate to deal with the non-compliance before considering introducing new legislation.
- 2.4 It feels like there should be one strategy for dealing with the suppliers / facilitators of ESS and another for dealing with the end-users of the software; the former involving use of current legislation and the full force of HMRC’s existing legal powers, and the latter involving more of an educative approach to increase awareness of the issue and highlight the consequences of non-compliance.
- 2.5 We suggest that this initiative is looked at alongside Making Tax Digital (for VAT) and in particular the level of controls within MTD compliant software. HMRC expect MTD software to reduce errors, but we are aware that even the MTD compliant packages do not necessarily have strong controls in them. The inclusion of hidden options in software is not a new phenomenon.
- 2.6 Finally, in VAT ‘ESS’ stands for Electronically Supplied Services. Having two ESSs, one of which refers to fraud and one of which is an EU wide compliance scheme determining place of supply and where tax is accounted for could end up being very confusing. May we suggest that a new name is thought up for the new ‘ESS’.
- 2.7 We have only addressed the questions on which we have the awareness, evidence and experience to offer a substantive response. We have therefore not responded to questions 8, 9 and 12.

**3 Q1: Are you aware of ESS being used to evade taxes in the UK?**

- 3.1 Yes, but only through information supplied to us by HMRC.

**4 Q2: Are you able to make any estimates of the scale of ESS within your business sector or more generally? For example, are you able to estimate the proportion of businesses you believe may be participating in ESS or the value of sales not properly recorded?**

- 4.1 The CIOT is not aware of any incidences of the use of ESS within the tax profession. ESS is fraud and hence illegal. Our members must comply with the law under our Institute’s rules. Further, if a member working in the regulated sector knows or suspects or has reasonable grounds for suspecting that there are proceeds of crime arising out of EES (or any other crime) they are obliged to report this to their firm’s Money Laundering Reporting Officer or direct to the National Crime Agency as applicable.

**5 Q3: Can you suggest any specific measures the government could consider to address ESS?**

- 5.1 It is important that the government first examine whether HMRC have sufficient legislative powers already to tackle the problem of ESS effectively before considering whether to introduce new legislation. We agree with the suggestion in the Call for Evidence that existing legislation such as the corporate criminal offence of failing to prevent the facilitation of tax evasion (s.45 Criminal Finances Act 2017) and the offence of making, adapting or supplying any article knowing it is designed to be used in fraud, or intending it to be used in fraud (s.7 Fraud

Act 2006) could be used to tackle non-compliance involving Electronic Point of Sale (EPOS) systems at the level of the software developer / designer / distributor. Schedule 24 para 1A Finance Act 2007 (error in taxpayer's document attributable to another person) may also be relevant in limited circumstances.

- 5.2 It may be more effective to target the people who facilitate ESS fraud (software developers / designers / distributors) rather than the end user.
- 5.3 In our view, ESS is primarily a compliance issue, not a problem caused or worsened by defective or ineffective legislation. As such the focus should be on making full use of HMRC's evidence gathering powers and detection techniques, such as their existing information gathering powers, and existing data analysis tools to improve the quality/accuracy of their risk assessment and as a result enabling them to target their resources as effectively as possible.
- 5.4 We understand that the EPOS software industry is currently not well regulated. We wonder if the government could explore as a solution better regulation of the EPOS industry, for example by setting 'industry standards' in software design, and then targeting investigative resources on those within the industry who fail to comply with those standards.

**6 Question 4: What do you see as the advantages of mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS?**

- 6.1 We do not think that mandatory software or hardware is either workable or desirable. We see no advantages.

**7 Question 5: What do you see as the disadvantages of mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS?**

- 7.1 We can envisage plenty of disadvantages of mandatory software or hardware, among them the following:
1. Who would oversee the design of the system, and sign off / 'kitemark' the technical requirements (and updates to them)? We do not think that HMRC have the capability and resources to do this.
  2. For HMRC to take on this role and responsibility would be resource intensive, and potentially very risky for them. What happens if HMRC has approved software that is misused? Would HMRC be held to be liable?
  3. Having a requirement to follow a suitable standard does not necessarily mean it will always be followed. There will always be people determined to circumvent or manipulate records or enable others to do it.
  4. It is likely to place further compliance costs on compliant businesses, whilst not necessarily changing the behaviour of the non-compliant.
  5. Every time a change or update is made to software it would have to go through the HMRC review process. This would cause considerable challenges for a large group with in-house software or tailored off the shelf software. It would no doubt delay improvements and even deter people from improving their software.
  6. Requiring an HMRC review for every change might also delay the installation of changes to correct bugs or improve security when viruses and other risks are detected.
  7. The barrier to business innovation and simple business efficiency would be disproportionate to the issue being addressed.

8. We also note that this suggestion conflicts with their approach to MTD software, which HMRC have specifically said that they will not approve.
9. A one-size-fits-all approach does not sound workable. Not all businesses are the same.
10. HMRC would need additional powers to enforce compliance and tackle non-compliance.

**8 Question 6: What do you see as the advantages of an encrypted, unalterable and complete transaction log containing details of every transaction and adjustment?**

- 8.1 In theory, this sounds attractive, but we are not sure that it would work for all businesses (see below).

**9 Question 7: What do you see as the disadvantages of an encrypted, unalterable and complete transaction log containing details of every transaction and adjustment?**

- 9.1 We have concerns about forcing software to be encrypted, unalterable or for there to have to be a permanent record of all amendments. We think that it could make things more difficult especially for small businesses that tend to struggle with using accounting software anyway. It is much easier for them to correct existing transactions than insert say a journal, which can make records messy and very difficult to follow, and inevitably leads to more mistakes.
- 9.2 If this is to be explored, we suggest that it should only be a requirement to retain a record of underlying changes to or deletions of transactions, while keeping the ability to show only the amended transactions as the default. This would make it easier for businesses to cope with. Such a change could, however, add significant costs to simple software, so should be fully evaluated first.

**10 Question 10: What challenges should the government take into account in changing its approach to ESS?**

- 10.1 The possibility of more costs and an increase in administrative burdens on compliant business must be taken into account.

**11 Question 11: Is there a role for the public in tackling ESS? If so, what could this role be?**

- 11.1 Yes, this could be by raising awareness of what ESS is, and how to contact HMRC to report ESS fraud or the suspicion of ESS fraud, as well as reassuring the public that all reports are treated in the strictest confidence by HMRC.

**12 Question 12: How could HMRC and the EPOS industry work together to support businesses and reduce opportunities for tax evasion?**

- 12.1 HMRC could consider publicising the sort of ESS fraud they have found and the consequences for the perpetrators, and ask the EPOS industry to communicate it to their members. This could go hand in hand with better regulation of the EPOS industry (see above).

**13 Question 13: Please feel free to submit, alongside your return, any additional information that you feel would be useful to HMRC.**

13.1 HMRC might consider working with large businesses to see how they protect their systems from being manipulated at a local level. HMRC might also consider working with businesses / audit firms carrying out tests on software to see what evidence exists of systems tampering.

**14 Acknowledgement of submission**

14.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

**15 The Chartered Institute of Taxation**

15.1 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.

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.

The CIOT's 18,500 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

19 March 2019