

Finance Bill 2021-22 draft legislation - Powers to tackle electronic sales suppression¹ Response by the Chartered Institute of Taxation

1 Our comments on the draft legislation

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT strongly supports HMRC's efforts to deal with tax evasion. Electronic Sales Suppression (ESS) is fraud and needs to be tackled appropriately. However, it is not clear when HMRC will use this new power instead of existing criminal offences. We agreed with the suggestion in the Call for Evidence² which took place three years' ago that existing legislation such as the corporate criminal offence of failing to prevent the facilitation of tax evasion³ 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 fraud⁴ could be used to tackle non-compliance involving Electronic Point of Sale (EPOS) systems at the level of the software developer / designer / distributor. HMRC should explain in their guidance in what circumstances they intend using this new power instead of these other offences.
- 1.3 We are concerned that the UK's tax code is becoming overloaded with the introduction of more and more legislation, particularly where it is not altogether clear why existing provisions are inadequate to deal with the problem identified. We would therefore recommend that a formal review of this new legislation should take place in about two to three years' time in order to measure its effectiveness. We would also suggest that HMRC publish on an annual basis the number of times it has been used. This would enable the measure to be examined to ensure that it was still fit for purpose and operating effectively and as intended.
- 1.4 The original call for evidence on this measure took place in late 2018 / early 2019 at Stage 1 of the consultation process. Its purpose was to learn more about the nature and scale of the problem and to begin to explore potential options. It was therefore very general. It did not consider the proposed approach set out in the draft

¹ <https://www.gov.uk/government/publications/powers-to-tackle-electronic-sales-suppression>

² <https://www.gov.uk/government/consultations/electronic-sales-suppression-a-call-for-evidence>

³ s.45 Criminal Finances Act 2017

⁴ s.7 Fraud Act 2006

legislation including the penalties that would apply. We note that the policy paper⁵ published by HMRC on 20 July 2021 states that, ‘the government decided that there would not be merit in publishing a policy consultation document on ESS. ESS is not a controversial topic and the proposed measures are neither introducing a new tax nor increasing the level of an existing tax’. However this has meant that we have lost one step in the consultation process and there has been no formal consultation on the introduction of these new penalties. In our view all new measures would benefit from full consultation in line with the Tax Consultation Framework.

- 1.5 Para 5 - the penalty for making, supplying, or promoting an ESS tool is up to £50,000 for each supplier. Each supplier could have lots of customers whose incorrect records they facilitate. It is unclear whether the penalty is set at an appropriate level to encourage suppliers’ compliance. The amount of the penalty is to be determined by what ‘an authorised HMRC officer considers appropriate’. It is unclear what this would mean in practical terms.
- 1.6 Para 6 (1) – the penalty for possession of an ESS tool is up to £1,000. Again, it is unclear whether this is set an appropriate level to encourage compliance.
- 1.7 How is the person to satisfy HMRC that the test in para 6(2)(b) is met, in practical terms? If they have deleted the software for example, it no longer exists. We suggest this is explained in guidance.

2 About us

- 2.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
- 2.5 The CIOT’s stated objectives for the tax system, relevant to this proposal, include:
 - A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.

⁵ <https://www.gov.uk/government/publications/powers-to-tackle-electronic-sales-suppression/powers-to-tackle-electronic-sales-suppression>

- 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.

3 Acknowledgement of submission

3.1 We would be grateful if you could acknowledge safe receipt of this submission.

The Chartered Institute of Taxation

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