



ELECTRONIC SALES SUPPRESSION – CALL FOR EVIDENCE

Issued 26 March 2019

ICAEW welcomes the opportunity to respond to the **Electronic Sales Suppression – call for evidence** published by HMRC on 19 December 2018.

This response of 20 March 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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KEY POINTS

1. We have seen a **copy of a response** made by the Chartered Institute of Taxation, a body with whom we work very closely and whose membership base comprises a substantial number of chartered accountants. We support the comments that it has made in its representation and would like to add three specific comments from the Tax Faculty as set out below.
2. The scope of the call for evidence is focused on EPOS, i.e. real sales terminals in real shops. This focus is fine as far as it goes, but that is only a part of the digital future where many transactions will take place remotely. We are concerned as to the extent that ESS can occur in purely electronic transactions, for example software or media downloads, many of which could occur across international borders. HMRC will need to focus some of its resources on addressing how the threats posed by this business model can be reduced.
3. As chartered accountants, we are clearly concerned about the potential for tax evasion with electronic point of sale (EPOS) systems but were not aware of this particular problem until the mention of it in the 2018 Budget papers. Tax evasion is illegal and completely contrary to our ethical code. Any of our members engaged in activities such as those highlighted in the paper would be liable to face disciplinary action and a range of sanctions which could include expulsion from membership. If HMRC finds any of our members involved in such activity then it should report them to our regulatory team. As such, while some of our members may have a detailed knowledge of EPOS systems, as a general rule they are not something with which we are familiar let alone, for the reasons highlighted above, how they might be manipulated to facilitate tax evasion.
4. HMRC is investing heavily in its Making Tax Digital (MTD) programme and a main justification for it is that it will help reduce the tax gap through error. While we accept that HMRC has never claimed MTD could reduce fraud, the fact that these types of activities are clearly occurring highlights that moving to digital systems does not reduce the risk of fraudulent activity and may even exacerbate it. While not directly concerned with the take-up of MTD, many businesses will be dismayed to hear that such manipulation can occur within software products that are linked to the accounting and tax reporting systems which businesses are being effectively mandated to use under MTD. It will give businesses another matter to worry about. We are happy to work with HMRC to help educate users about how these threats can be reduced but it is much harder to identify the best way in which the perpetrators of such activity are held to account given that the activity appears to involve concealment. However, it is clearly essential to the integrity of the tax system and in the public interest that a way is found to tackle it.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).