Electronic Sales Suppression

Management of taxes

01 May 2019

CIOT recently responded to HMRC's Call for Evidence on Electronic Sales Suppression (ESS).

In this Call for Evidence HMRC wanted to understand more about how modern technology is being exploited for ESS and the scale of this type of tax evasion. ESS is where businesses or individuals use technology to artificially reduce their reported sales and corresponding tax liabilities.

In our response, we reaffirmed the CIOT's support for HMRC's efforts to deal with tax evasion, like ESS. ESS is fraud and needs to be tackled appropriately.

One technological solution considered in the Call for Evidence was whether it would be possible to mandate 'software or hardware for businesses which conform to technical requirements that reduce the opportunity for ESS'. We said that we do not think a technological solution like this would work, and that we can envisage plenty of disadvantages, among them the following:

- Who would oversee the design of the system, and sign off the technical requirements (and updates to them)? We do not think that HMRC have the capability and resources to do this. It would also be very risky for them to take on this responsibility.
- 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.
- It is likely to place disproportionate costs on compliant businesses, whilst not necessarily changing the behaviour of the non-compliant.

In our view, ESS is primarily a compliance issue so rather than requiring businesses to take on more compliance burdens, we said that we think the solution lies in tackling the behaviour that leads to ESS, perhaps 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.

We agree that existing legislation such as the corporate criminal offence of failing to prevent the facilitation of tax evasion (Criminal Finances Act 2017 s45) 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 (Fraud Act 2006 s 7) could be used to tackle non-compliance involving Electronic Point of Sale (EPOS) systems at the level of the software developer/designer/distributor.

We ask whether the government could explore as a further solution better regulation of the EPOS software 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.

We also suggest that this initiative is looked at alongside Making Tax Digital (for VAT) and 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.