

**HMRC Technical Consultation: The Fulfilment Businesses  
(Approval Scheme) Regulations 2018  
Response by the Chartered Institute of Taxation**

## **1 Introduction**

- 1.1 The Chartered Institute of Tax (CIOT) presents its response to HMRC's technical consultation on the draft statutory instrument: The Fulfilment Businesses (Approval Scheme) Regulations 2018, published on 23 October 2017 at [www.gov.uk/government/consultations/draft-legislation-the-fulfilment-businesses-approval-scheme-regulations-2018](http://www.gov.uk/government/consultations/draft-legislation-the-fulfilment-businesses-approval-scheme-regulations-2018).
- 1.2 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the 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 We support HMRC taking action to combat abuse and non-compliance in this area and we recognise the resource constraints HMRC face in the current economic and political climate.

- 2.2 We wish to draw HMRC's attention to the CIOT's previous written submission in relation to the Fulfilment House Due Diligence Scheme 5 July 2016 [www.tax.org.uk/policy-technical/submissions/fulfilment-house-due-diligence-scheme-ciot-comments](http://www.tax.org.uk/policy-technical/submissions/fulfilment-house-due-diligence-scheme-ciot-comments)
- 2.3 Our view is that that the Regulations will, subject to our concerns below, achieve their purpose.
- 2.4 Our key concerns with the draft legislation are as follows:
- a) Where a non-EU customer is declaring UK VAT and duty correctly, the approved person could still face penalties for administrative oversights or non-approval due to compliance history, even though they may be otherwise fully compliant in paying their UK tax and VAT and have not been involved in any fraudulent supply chain to date.
  - b) The legislation does not consider any proportionality of penalties for contraventions by approved persons in compliant supply chains compared to businesses with non-compliant supply chains; it isn't clear if 'special circumstances' addresses this point.
  - c) The legislation is silent on appealable matters concerning amending or revoking the approval.
  - d) We believe that it is important that the legislation set out timescales for the Commissioners rather than stating 'as soon as reasonably practicable' as there could be detrimental impacts on businesses if there are delays with HMRC. It should also be made clear what can / should happen if the Commissioners do not respond within the necessary timeline.

### **3 Comments have been invited by HMRC on the draft statutory instrument**

- 3.1 We welcome the fact that these regulations are subject to consultation. Our comments are as follows:
- 3.2 In Part 1 Interpretation, Regulation 2(b) refers to 'a person on whose behalf those goods are stored'. It isn't clear if this means an agent or non-owner acting on behalf of a non-EU owner. There is no additional information in guidance about HMRC's interpretation of this role and this needs clarification.
- 3.3 In Part 1 Interpretation, we would like to see 'approved person' in the definitions set out in Regulation 2(b) for the avoidance of doubt.
- 3.4 In Part 2 Approval Procedure, Regulation 3 sets out the timelines for registration for the scheme. We would like to see a clearer registration timeline position for new fulfilment businesses who set up from 1 July 2018 onwards.
- 3.5 In Part 2 Approval Procedure, Regulation 4(1), and elsewhere in the Regulations, only refers to the Commissioners' timeline as being 'as soon as reasonably practicable'. There are obligations on fulfilment businesses to do things within specific timescales, and there should be also be specific timelines for the Commissioners, particularly for new businesses who will be unable to trade until the

- approval has been obtained. It should also be made clear what can / should happen if the Commissioners do not respond within the necessary timeline.
- 3.6 In Part 2 Approval Procedure, Regulation 4(1)(c) sets out further circumstances where the Commissioners may require additional steps prior to issuing the approval. We would like to see the criteria published when this may apply, so that businesses have the opportunity to submit the fullest details at the time that the application is made.
- 3.7 Where existing fulfilment businesses may have had certain historic compliance history failures, eg submitting a late return or having a tax debt in explained circumstances, this should not correlate that these businesses will automatically be more likely to deal with non-EU customers that are not registered for UK VAT, where there is no evidence a taxpayer has had business with such customers in the past.
- 3.8 In Part 3 Obligations and Restrictions, Regulation 5(3) states 'an approved person must not carry on a third country goods fulfilment business with a person named in a notice...'. We would expect this to have reference to not providing services to that person to avoid misinterpretation that an approved person cannot carry on its business with other customers that are not named in a notice.
- 3.9 In Part 3 Obligations and Restrictions, Regulation 5(4) does not indicate if there is any right of appeal.
- 3.10 In Part 3 Obligations and Restrictions, we would like to see HMRC produce a template of the notice referred to in Regulation 6, so that businesses have the choice of either sending the prescribed information to their customers using the template, or they can choose to embed the notice information into their terms and conditions (or similar).
- 3.11 In Part 3 Obligations and Restrictions, Regulation 8 requires that an approved person must verify the VAT registration number of a customer. Taxpayers are required to verify a customer's VAT number for several different types of transaction including supplying goods and services to EU customers, so this responsibility in itself is similar to other business models. We note that the current method of VAT number verification is VIES, and with the UK leaving the EU in 2019, it is not yet clear what alternative VAT number verification system will be in place.
- 3.12 In Part 3 Obligations and Restrictions, Regulation 8(3) states that the approved person must notify the Commissioners of any discrepancies in the verification process 'within any period specified'. Neither the draft legislation nor published guidance sets out what this period is. We would like to the period set out in the Statutory Instrument.
- 3.13 In Part 4 Variation and Revocation of Approval, Regulation 12 sets out further circumstances where the Commissioners may require additional steps prior to varying the approval. We would like to see the criteria published when this may apply, so that businesses have the opportunity to submit the fullest details at the time that the application to vary the approval is made.
- 3.14 In Part 4 Variation and Revocation of Approval, Regulation 13 if an approval is revoked, it isn't clear if that means that the approved person may no longer conduct business with any non-EU customers until such time that the Commissioners allow approval in the future. We assume that the business can continue to trade with UK established and EU customers if the approval status is revoked. However, as the UK

is leaving the EU, it isn't clear for how long customers from EU countries will remain as outside this scheme. We would also like to understand what notice period a taxpayer will be given between the date that the Commissioners have taken a decision and the date that the business is no longer an approved person. Can a revocation notice have immediate effect? This could cause problems for taxpayers with stock in storage as they cannot send the goods to the UK consumer and there may be a period of delay before the goods can be returned to the customer or another UK warehouse. Taxpayers will need some time to make arrangements to move stock.

- 3.15 We would like the digital submissions for this scheme to have user friendly online forms where taxpayers and / or agents are able to read through the forms in full before completing them and save partially completed forms.
- 3.16 In Part 6 Communications, Regulations 20(3) and 21 do not provide for any exclusions to digital submissions such as age, disability, location without internet access, objections to computers on religious grounds and if there is an insolvency issue that prevents the use of an online account.
- 3.17 In Part 7 Penalties, we would like the Commissioners to apply proportionality when considering whether to issue penalties, ie if a taxpayer has a 'contravention' in an otherwise fully compliant supply chain, should this be liable to the same penalty as the situation where a taxpayer has a similar 'contravention' but the supply chain has involved a non-compliant customer? We understand that there are experiences of taxpayers in the Excise Duty Alcohol Wholesale Registration Scheme that experience similar penalties where there are administrative errors to those that have had contaminated supply chains, without proportionality being considered.

The Fulfilment House Due Diligence Scheme seeks to tackle VAT loss from overseas business and if a contravention has occurred that results in no VAT loss or risk to the supply chain ie an administrative oversight within an otherwise compliant business, this must be considered. It is not clear whether this is what is envisaged in Regulation 26, 'Special Circumstances'.

- 3.18 In Part 7 Penalties, Regulation 22(6) does not make it clear how the 12 month timescale is impacted if the two or more contraventions span a period greater than 12 months.

#### **4 Question (a) – Feedback on the impact on fulfilment businesses in applying the obligations of the scheme, including record-keeping requirements**

- 4.1 We welcome consultation on the impacts of applying the obligations of the scheme.
- 4.2 For some fulfilment house businesses with sophisticated automated systems, the information required for each customer as set out in Regulation 7 (other than Regulation 7(f)) may already be being captured and the scheme may not create significantly more administration.

For businesses using simpler accounting systems, these would not normally capture data such as the invoice description and quantity in (c) and the import entry number at (d). New procedures will have to be put in place. Further, businesses may be reliant on customers and/or freight agents supplying the import entry number and any

delays could result in stock being delayed in storage, which could hinder other business due to lack of space.

- 4.3 Our point at paragraph 3.11 also applies here.
- 4.4 Implementing the scheme will come with an associated cost, both financial for professional advice / outsourcing and training internal resource. Smaller businesses with limited resource and cashflow may be affected disproportionately.
- 4.5 Businesses with supply chains where no VAT or duty loss arises from their customer base are now facing costs of the scheme implementation and penalty risks from what could be administrative contraventions. We urge HMRC to bear proportionality and the aims of the scheme in mind when issuing penalties and variations to approvals.

## **5 Question (b) - Whether the provisions for group registrations in Part 5 will be beneficial to group companies?**

- 5.1 We welcome provisions that may provide simplifications in administration of the scheme for business.
- 5.2 We have not received feedback from our members on whether the provisions will or will not be beneficial to group companies so have no further comment on this issue.

## **6 Question (c) – Feedback on the anticipated impact of the scheme on small and micro businesses**

- 6.1 We welcome consultation on the impacts for small and micro business.
- 6.2 Where a revocation of approval takes place with no or short notice, a small or micro business may be disproportionately impacted by holding stock in its warehouse that cannot be shipped to UK consumers but needs moving back to the customer or the customer's nominated warehouse. The lack of space in the storage facilities may be a barrier to its other compliant trade. It is not clear in the legislation or guidance what the notice period would be. Conversely, we appreciate that for businesses involved in fraudulent supply chains, this notice period could create opportunities for evasion.
- 6.3 Where small or micro businesses are subject to penalties, the costs can be disproportionately punitive compared to medium and large businesses. It is possible that a micro business would incur the same financial penalty as a large group registration for the same error. We would like to see the Commissioners consider proportionality for administrative contraventions and particularly where a contravention is in an otherwise compliant supply chain where there is no VAT loss created by the customers.
- 6.4 Our comments in our submission dated 16 July 2016 in respect of small businesses are still relevant for this consultation.
- 6.5 Where small and micro businesses' turnover is less than the current VAT registration threshold, they benefit from the simplification of not having to register for UK VAT. There is currently no similar threshold simplification in place for this scheme.

- 6.6 The costs of professional advice in respect of the scheme may be disproportionately expensive in financial costs and resource that for medium and large business.

## **7 Acknowledgement of submission**

- 7.1 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.

## **8 The Chartered Institute of Taxation**

- 8.1 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 18,000 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  
20 December 2017