Overseas businesses selling goods to UK customers: Fulfilment House Due Diligence Scheme

Indirect Tax

01 April 2017

The CIOT has reiterated its concerns to HMRC about the proposed Fulfilment House Due Diligence Scheme at a recent consultation meeting. We remain unconvinced that the scheme will tackle the VAT loss effectively and, instead, is set to add complexity and administrative burden to the compliant majority of affected UK businesses.

Coming into force on 1 April 2018, the Fulfilment House Due Diligence Scheme (FHDDS) is part of a package of measures announced at Budget 2016 / Autumn Statement 2016 to deal with non-EU traders who sell goods to UK customers via online marketplaces who are not always paying the correct amount of VAT. For further background see https://tinyurl.com/ht7syk9.
The FHDDS will require all UK businesses that handle imported goods on behalf of non-EU third parties to gain approval from HMRC in order to legitimately continue trading. They will also be required to carry out robust due diligence checks on their overseas customers, with penalties and criminal sanctions for non-compliance. Post-Brexit, this potentially means all imports of this kind.

Achieving the right balance

We fully support HMRC’s will to tackle this issue: internet trading makes it easier for overseas businesses to sell into the UK but difficult for HMRC to ensure that UK VAT is being properly declared. However, our concern is that the FHDDS targets intermediaries in the supply chain and not those who are failing to comply. On the one hand, this places extra burden on legitimate UK business and, on the other, it may unintentionally give the impression to potential tax evaders that they will not

be pursued by HMRC.

The key question is how best to balance the fight against fraud whilst mitigating the administrative burden on legitimate business? At the consultation meeting, some industry representatives feared the abuse would move on at a much faster pace than HMRC could keep up with, particularly with resource constraints. This could leave the compliant majority bearing a potentially disproportionate burden of administration and the underlying issue of tax loss remaining.

No de-minimis limit

Disappointingly, the definition of a ‘fulfilment house’ in the Finance Bill 2017 consultative clauses 79–89 (page 74) does not contain a de-minimis limit for small business, meaning that a business storing even just one item (owned by or on behalf of a non-EU customer that is offered for UK sale) is required to get approval to trade. There is an ‘incidental’ test (clause 79(3)) which remains unclear and, as a subjective test, has a history in VAT law of creating disputes. There are provisions for penalties, forfeiture of goods and criminal prosecution for non-compliance.

What next?

Much of the detail of the approval process and due diligence is yet to be published in the form of secondary legislation. We will monitor this and continue to engage with HMRC, urging them to explore a fairer and more effective approach.

We suggested an alternative way of tackling the issue in our written submission: www.tax.org.uk/ref117. A call for evidence will also have been issued (expected on 20 March 2017) by the time of reading on a ‘split payment’ model for online sales, which would harness technology to allow VAT to be extracted directly from transactions at the point of purchase.

When considering the impact that Brexit will have on the FHDDS scheme, the EU/non-EU distinction may no longer apply, meaning that UK businesses handling any imports of goods for onward sale by overseas businesses will be required to follow the FHDDS.

We believe the FHDDS, as proposed, is disproportionate and there are more effective and fairer ways to achieve the policy aims. The scheme may act as a

partial deterrent but the UK compliant majority will suffer a high compliance burden as a result.