



ICAEW REPRESENTATION 145/17

TAX REPRESENTATION

FINANCE (No.2) BILL 2017-19, CLAUSE 38

VALUE ADDED TAX: ONLINE MARKETPLACES

Text of submission by ICAEW Tax Faculty on 22 December 2017 to House of Commons Public Bill Committee in response to [invitation dated 14 December 2017 to “have your say”](#)

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Text of submission

WHO WE ARE

1. Please see Appendix 1.

SUMMARY OF THE MEASURE

2. Clause 38 deals with joint and several liability of operators of online marketplaces and the requirement for operators of online marketplaces to display valid VAT numbers.

OUR CONCERNS

3. We are concerned that the proposed UK VAT treatment of online marketplaces may not provide an adequate solution to the problem that it seeks to address and could create double taxation when combined with the latest proposals from the EU.
4. It may not work because many of the small online marketplaces are not based in the UK or EU. It is unclear how UK VAT collection could be enforced by HMRC in relation to online sales to UK customers through overseas marketplaces.
5. The proposed legislation could create double taxation if a marketplace became liable for VAT under both the proposed article 14a of the Principal VAT Directive and the proposed section 77BA of the VAT Act 1994.

RECOMMENDATIONS

6. We accept that the UK does not want to wait until the amendments to the Principal VAT Directive take effect in 2021, but recommend that there should not be two fundamental changes to the VAT treatment of sales made through online marketplaces in such a short period of time.
7. We believe that the EU approach of treating supplies being made to and by the marketplace represents a better solution in the longer term. We suggest that the UK seeks a derogation to implement these proposals from an earlier date than currently permitted under EU law. Alternatively, any changes could be implemented with effect from 1 April 2019, by which date we do not expect that a derogation will be required.

SUGGESTED AMENDMENTS TO ACHIEVE THE ABOVE

8. The proposed article 14a to the Principal VAT Directive reads as follows:

'Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, that taxable person shall be deemed to have received and supplied those goods himself.

'Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the

taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.’.

9. A similar amendment to the VAT Act 1994 could achieve a similar result and provide consistency in VAT treatment for online marketplaces before and after Brexit.

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 147,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value ICAEW is a world-leading professional accountancy body.