



## Tackling VAT evasion by overseas sellers

In the Budget a number of new measures were announced to tackle VAT evasion by overseas sellers. The evasion concerns UK warehoused goods being sold by overseas sellers to customers in the UK, via online marketplaces. Given concerns around the numbers of these sellers failing to register and account for VAT, changes have been made to demands for security, VAT representatives and the ability for HMRC to make the online marketplaces jointly and severally liable for the VAT.

### Summary of legislation

The legislation makes some relatively minor changes to VAT representatives. These include that where a person is required to appoint a VAT representative, legislation expressly states that this must be a UK established person. The changes also give HMRC greater power to refuse to register a person as a VAT representative and cancel registrations of existing representatives. The legislation has also been changed to make it easier for HMRC to demand security.

The more important legislation relates to making the online marketplaces jointly and severally liable for a seller's VAT. This legislation sets out the steps that would lead to a marketplace being held jointly and severally liable for VAT not declared by non-compliant sellers. HMRC will issue the operator of the marketplace a liability notice in respect of an overseas seller who has failed to account for VAT in the UK. Following the issue of such a notice, the marketplace can only avoid being held jointly and severally liable if that overseas seller does not offer goods through their online marketplace i.e. it will require the marketplace to block that seller from trading. The notice has almost immediate effect, beginning on the day after the notice is given. The notices continue to apply until either the operator of the marketplace ceases or changes, or HMRC issue another notice notifying that liability will end on a specified day. This presumably covers the scenario where HMRC have issued a notice in respect of a deemed non-compliant seller and the marketplace prevents the seller selling goods. If the seller is then prompted to evidence its compliance or register for VAT, the ending of the notice period will allow the marketplace to allow the seller to recommence trading.

### Timing

The legislation will come into effect from Royal Assent. Interestingly, the Exchequer Impact only estimates a revenue benefit from later in 2017.

### Our view

Whilst making some changes to VAT representatives and security, these changes are unlikely to make significant differences. Whilst HMRC are consulting on a due diligence scheme on fulfilment houses, it appears that HMRC consider the best way to combat this evasion by large numbers of small sellers is to make the few large marketplaces jointly and severally liable. While Member States



appear to have wide ranging powers to apply joint and several liability, the key is whether the measures are proportionate. The fact that a marketplace can only be held jointly and severally liable after the receipt of a notice avoids any big VAT exposures, assuming they block those sellers. This still creates the commercial issue of having to potentially reduce the value of sales. There is a very short notice period before joint and several liability applies i.e. the next day. On the one hand this leaves little time for the business to act. However, it may be supportive that joint and several liability is a last resort, at the point of issuing a notice all other avenues have been pursued and exhausted.

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