



HM Revenue
& Customs

Electronic sales suppression

Call for evidence

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1. Executive Summary

- 1.1 The government is committed to ensuring that everyone pays the correct amount of tax. It is important that all types of businesses make a fair contribution to support our vital public services. In support of this commitment, the government will explore options to tackle electronic sales suppression (ESS). ESS is where businesses or individuals use technology to reduce artificially their reported sales and corresponding tax liabilities. This tax evasion results in a loss of money for public services and has the potential to give non-compliant businesses an unfair market advantage over their competitors.
- 1.2 The government is therefore undertaking a call for evidence to understand more about how modern technology is being exploited for the purposes of ESS; what the potential scale of tax evasion is in this area; and how the electronic point of sale (EPOS) industry can help prevent this non-compliant activity.

2. Introduction

What is an electronic point of sale system?

- 2.1 EPOS systems include several useful functions that can support the day-to-day operations of a business. Functions include:
- sales, payment and cash recording;
 - stock control;
 - the issue of receipts; and
 - the recording of other commercial and financial data for management use.
- 2.2 The systems are designed to support businesses in keeping accurate, real-time records necessary for running a business and managing their accounts. This information can also be used by businesses to help them pay the right amount of tax, at the right time.

What is electronic sales suppression?

- 2.3 ESS is where businesses manipulate electronic records of sales data, either during or after the point of sale, in order to hide or reduce the value of individual transactions. This is done to reduce the recorded turnover of the business, and corresponding tax liabilities, whilst providing what appears to be a credible and compliant audit trail.
- 2.4 This manipulation broadly takes one of two forms:
- businesses can use illegitimate software and technology that has been created specifically for the purposes of facilitating tax evasion;
 - businesses can deliberately misuse legitimate EPOS functions to suppress their sales (for example, a business could misuse a till training mode, which automatically allows for sales to be excluded from their accounts).

ESS and tax evasion

- 2.5 In recent years, it has become apparent that some software developers are developing EPOS systems that deliberately suppress sales in order to facilitate tax evasion.
- 2.6 HMRC's operational experience suggests that ESS is a growing area of tax evasion, although precise estimates of the scale of evasion are difficult to calculate given the nature of this concealed activity. With non-compliant

businesses now using increasingly sophisticated EPOS systems, the government is keen to improve its understanding of these issues and tailor its compliance response accordingly.

2.7 Some ESS case studies are provided in Annex A.

The legislative position

2.8 There is no UK legislation that explicitly refers to ESS or the misuse of EPOS systems. Non-compliance involving EPOS systems is covered by more general tax legislation on non-compliance, some of which is outlined in Annex B.

3. The Call for Evidence

- 3.1 We are undertaking a call for evidence in order to learn more about the nature and scale of ESS, as a first step to developing new options for addressing this tax evasion.
- 3.2 The government is interested in both the supply and use of ESS software. The core objectives of the call for evidence are to explore:
- a. the attitudes towards the use and promotion of ESS by EPOS providers;
 - b. the ways non-compliant businesses use EPOS systems to suppress sales in the UK;
 - c. the motivations behind the use of ESS as a means of suppressing sales;
 - d. the availability of, and methods of access to, ESS software specifically designed for the purposes of evading tax;
 - e. the role the EPOS software industry can play in supporting HMRC to tackle this evasion.

Who should respond to this call for evidence?

- 3.3 The call for evidence invites views from as wide a group of stakeholders as possible, including individual taxpayers, businesses, retailers, tax professionals, EPOS software providers, EPOS hardware providers, representative bodies and anybody with knowledge or experience of ESS and its impact on tax compliance in the UK.
- 3.4 Importantly, EPOS industry insight, engagement and assistance will be essential in tackling ESS, given the pace of technological change and the rapidly evolving nature of evasion practices.
- 3.5 The government invites responses to the following questions.

Nature and scale of the problem

- 3.6 We are interested in improving our understanding of the prevalence of this abuse and the impact it may be having on legitimate businesses, in order to help inform the appropriate policy and operational response. We would like to know more about how this technology is sold, i.e. whether some individuals involved in the EPOS supply chain are actively marketing their products as a means to facilitate tax evasion; the numbers of businesses involved in selling

ESS products; how prevalent ESS is, and in which sectors; and the impact on compliant businesses.

Question 1: Are you aware of ESS being used to evade taxes in the UK?

Question 2: Are you able to make any estimates of the scale of ESS within your business sector or more generally? For example, are you able to estimate the proportion of businesses you believe may be participating in ESS or the value of sales not properly recorded?

Question 3: Can you suggest any specific measures the government could consider to address ESS?

Technological solutions

3.7 One potential option for tackling ESS is to explore technological measures. This could include mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS; or an encrypted, unalterable and complete transaction log containing details of every transaction and adjustment. We are interested in hearing views about the scope for such measures and how effective they could be. It is also important for us to be aware of any difficulties that could be caused by imposing technological restrictions on EPOS systems or software.

Question 4: What do you see as the advantages of mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS?

Question 5: What do you see as the disadvantages of mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS?

Question 6: What do you see as the advantages of an encrypted, unalterable and complete transaction log containing details of every transaction and adjustment?

Question 7: What do you see as the disadvantages of an encrypted, unalterable and complete transaction log containing details of every transaction and adjustment?

Question 8: Would an unalterable transaction log be useful for wider business activities?

Question 9: What other technological solutions could help tackle ESS?

Other key issues

- 3.8 We are interesting in hearing views on the type of challenges the government should take into account when considering its approach to ESS.

Question 10: What challenges should the government take into account in changing its approach to ESS?

Question 11: Is there a role for the public in tackling ESS? If so, what could this role be?

Question 12: How could HMRC and the EPOS industry work together to support businesses and reduce opportunities for tax evasion?

Question 13: Please feel free to submit, alongside your return, any additional information that you feel would be useful to HMRC.

If you are aware of tax evasion of any kind, this should be reported to the HMRC Fraud Hotline: 0800 788 887.

4. Summary of Consultation Questions

Question 1: Are you aware of ESS being used to evade taxes in the UK?

Question 2: Are you able to make any estimates of the scale of ESS within your business sector or more generally? For example, are you able to estimate the proportion of businesses you believe may be participating in ESS or the value of sales not properly recorded?

Question 3: Can you suggest any specific measures the government could consider to address ESS?

Question 4: What do you see as the advantages of mandatory software or hardware for businesses which conforms to technical requirements that reduce the opportunity for ESS?

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5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the call for evidence is to learn more about the nature and scale of the problem; and to begin to explore potential options.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 20 March 2019, by e-mail to compliance.policyandstrategy@hmrc.gsi.gov.uk or by post to: ESS call for evidence, Compliance Policy and Strategy team, HM Revenue and Customs, Room 3/39, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries: 03000 584745 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation

Your Data

The data

We will process the following personal data:

Name
Email address
Postal address
Phone number
Job title

Purpose

The purpose(s) for which we are processing your personal data is for the call of evidence on electronic sales suppression.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer

HM Revenue & Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Case studies

Example 1

HMRC staff encountered a particular EPOS software system during several different tax enquiries. These enquiries surfaced similar concerns around apparent gaps in the sequence of transactions in reports produced by the system to support tax declarations. The businesses were not able to provide suitable explanations. This led to suspicions that transactions had been automatically deleted in bulk by either hidden functionality within the software itself or by the use of remote software tools, in order to reduce the business's declared takings.

Investigators found that the software allowed for the EPOS till data to be remotely manipulated and deleted by the use of an associated mobile phone application. The mobile application deleted sales from the underlying database without leaving a trace of doing so within the database, meaning that the tax audit trail reports produced did not contain the missing transactions.

In one case, HMRC staff took a forensic image of a drive containing the software and database used by the business. This allowed HMRC to analyse the software and data in detail, which informed investigations into future cases.

Fourteen cases known to be using the software were pursued for tax on suppressed sales, with two of them being dealt with through criminal courts. A combined amount of £1.3m tax was recovered.

Example 2

There are several EPOS software systems in use across the UK that, whilst being originally developed and coded by a single provider, are distributed or resold through smaller concerns or intermediaries. Some of these resellers enhance or alter the underlying code and functions of the original package to meet potential customers' needs. The resellers then install and configure the systems.

In one such instance, HMRC investigators found the system had been set up in such a way that only very limited information could be obtained from it. The system supplier admitted that, in some cases, he would set up systems in ways that would assist his customers to evade tax on sales through the till. The supplier would then educate the customer on how the system could be used to achieve this.

Example 3

HMRC investigators found that a business had been evading tax on its retail sales but were not able to establish how the evasion was occurring. Deepening the enquiry, EPOS specialist investigators were able to establish that hidden functionality existed within certain versions of the software, which allowed the owners of the business to alter the value of items sold within the system data at a later point. The owners used these functions to replace high value items sold with lower price items, with the subsequent audit trail reports reflecting the lower amounts. The function was automated and could change the details in bulk and at speed at the press of a few buttons on the terminal, rather than having to edit each instance manually.

Annex B: Relevant (current) Government legislation

Section 114, Finance Act 2008

HMRC needs to be able to make checks in respect of the taxes, duties and other matters which it administers in order to ensure that the correct amount of tax and duty is being collected and, where appropriate, the correct amount of claims are being repaid. Section 114 of the Finance Act 2008 supports HMRC's ability to make such checks. It applies whenever other legislation requires documents to be produced to, or inspected by, HMRC. Where such documents are kept on computers or recorded electronically, section 114(3) enables HMRC to gain access to and inspect any associated computer or other equipment. It applies to all taxes, duties and other matters for which HMRC is responsible. The legislation is as follows.

Computer records etc

- (1) This section applies to any enactment that, in connection with an HMRC matter—
 - (a) requires a person to produce a document or cause a document to be produced,
 - (b) requires a person to permit the Commissioners or an officer of Revenue and Customs—
 - (i) to inspect a document, or
 - (ii) to make or take copies of or extracts from or remove a document,
 - (c) makes provision about penalties or offences in connection with the production or inspection of documents, including in connection with the falsification of or failure to produce or permit the inspection of documents, or
 - (d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).
- (2) An enactment to which this section applies has effect as if—
 - (a) any reference in the enactment to a document were a reference to anything in which information of any description is recorded, and
 - (b) any reference in the enactment to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

(3) An authorised person may, at any reasonable time, obtain access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.

(4) In subsection (3) “relevant document” means a document that a person has been, or may be, required pursuant to an enactment to which this section applies—

(a) to produce or cause to be produced, or

(b) to permit the Commissioners or an officer of Revenue and Customs to inspect, to make or take copies of or extracts from or to remove.

(5) An authorised person may require—

(a) the person by whom or on whose behalf the computer is or has been so used, or

(b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to provide the authorised person with such reasonable assistance as may be required for the purposes of subsection (3).

(6) Any person who—

(a) obstructs the exercise of a power conferred by this section, or

(b) fails to comply within a reasonable time with a requirement under subsection (5),
is liable to a penalty of £300.

(7) Paragraphs 45 to 49 and 52 of Schedule 36 (assessment of and appeals against penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under paragraph 39 of that Schedule.

(8) Omit the following—

(a) section 10 of FA 1985 (production of computer records etc in connection with assigned matters),

(b) section 127 of FA 1988 (production of computer records etc in connection with the Taxes Acts), and

(c) paragraphs 11(2) to (4) and 13(2) and (3) of Schedule 1 to the Civil Evidence Act 1995 (c. 38).

(9) In this section—

- “authorised person” means a person who is, or is a member of a class of persons who are, authorised by the Commissioners to exercise the powers under subsection (3),

- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,
- “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),
- “HMRC matter” means a matter in relation to which the Commissioners, or officers of Revenue and Customs, have a power or duty, and
- “produce”, in relation to a document, includes furnish, deliver and any other equivalent expression.

Section 45, Criminal Finances Act 2017

Section 45 of the Criminal Finances Act 2017 makes it a corporate offence to fail to prevent the facilitation of tax evasion. This means that a company or partnership is committing an offence where certain persons associated with it (such as its employees or agents) commit an offence of facilitating tax evasion. The legislation is as follows.

Failure to prevent facilitation of UK tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—

(a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing UK tax evasion facilitation offences.

(4) In this Part “UK tax evasion offence” means—

(a) an offence of cheating the public revenue, or

(b) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(5) In this Part “UK tax evasion facilitation offence” means an offence under the law of any part of the United Kingdom consisting of—

(a) being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,

(b) aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or

(c) being involved in and part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(6) Conduct carried out with a view to the fraudulent evasion of tax by another person is not to be regarded as a UK tax evasion facilitation offence by virtue of subsection (5)(a) unless the other person has committed a UK tax evasion offence facilitated by that conduct.

(7) For the purposes of this section “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—

(a) Part 1 of the Social Security Contributions and Benefits Act 1992, or

(b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(8) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Section 7, Fraud Act 2006

Section 7 of the Fraud Act 2006 makes it an offence to make, adapt or supply any article knowing that it is designed to be used in fraud, or intending it to be used in fraud. The legislation is as follows.

Making or supplying articles for use in frauds

(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—

(a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or

(b) intending it to be used to commit, or assist in the commission of, fraud.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.