Warehousekeepers & Owners of Warehoused Goods Regulations - Update

(Holding & Movement & Modernisation Team)

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HM Revenue & Customs

Agenda

- Intro/Recap
- Feedback from internal consultation – key messages/risks
- Possible mitigations
- Current position
- Due Diligence
- Further concerns/issues – warehousekeeper
- Next steps

Informal internal consultation

Key messages:

- Revoking WOWGR would result in HMRC having no oversight or control of approvals of Owners of Duty Suspended Goods, removing compliance opportunities to tackle Organised Crime Groups (OCG's).
- However, in terms of error based non-compliance accidental breaches would decrease for Owners of Duty Suspended Goods as the requirements would no longer exist.
- There are mitigating actions that do exist and we'll be considering the potential advantages/disadvantages of these.

Key Risks:

- Removes some of the barriers OCG's face in their activity – with no opportunity for HMRC to counter this by revoking their authorisation to operate as an owner
- Opportunity for owners who were previously refused registration under WOWGR now been able to own-duty suspended alcohol. As a result potential for increase in owners who are unprepared for identifying risks of OCG activity.

Informal internal consultation

Key Mitigations:

Education and Communication

Due Diligence Education: Providing Due Diligence education to Warehousekeepers and Owners, to explain specific fraud risks, and highlight specific Due Diligence requirements

Developing Communication: Improving communications between HMRC and Warehousekeepers to share details of how to identify high-risk entities to help with their Due Diligence, and contacting new Owners as they are recorded by the Warehousekeeper to provide information about warehousing processes.

"Blacklist" Entities involved in Criminality: Potential Creating a "blacklist" of entities that cannot deposit goods due to identified criminality and share this with Warehousekeepers to make it more difficult for OCG's to open accounts at warehouses.

Informal internal consultation

Key Mitigations continued:

Monitoring

Warehousekeeper Register of Owners: Introducing specific requirements for Warehousekeepers to record details of all Owners of Duty-Suspended Goods that are stored in their warehouse, to be shared with HMRC.

Physical HMRC Presence: Increasing the physical presence of HMRC officers at warehouses and spot checks on customers and stock, to allow monitoring of goods and activity

Owner Registration: Requiring companies to register as Owners of Duty-Suspended Goods, even without the approval process or fit and proper checks, to support tracing of owners.

Simplification & Modernisation – WOWGR - Current Position

HMRC are still at the informal consultation stage with industry and no agreement/policy change has yet been confirmed.

HMRC are working to a tentative timetable and should the preferred option be pursued it's very unlikely that changes to legislation will be made until 2024/25.

The final decision on any changes to WOWGR legislation will be taken by ministers once the informal consultation has been concluded. Ministers will also be responsible for determining the level of any further consultation with industry and/or the public.

HMRC are considering the policy position regarding cases where duty points are applied from historic cases and any future cases and further information will be provided in due course.

In the meantime, and until such further notice, Warehousekeepers, Owner of Goods under duty suspension and Duty Representatives (who hold goods on behalf of owners without a UK base) must continue to:

- **apply for approval with HMRC** as set out in section 5, Registration and approval of excise goods held in duty suspension (Excise Notice 196).

- **undertake the due diligence checks** referred to within section 10, Registration and approval of excise goods held in duty suspension (Excise Notice 196).

Due Diligence

Regardless of WOWGR registration warehousekeepers are required to carry out sensible and reasonable commercial due diligence.

Not having a WOWGR approval for holding beer or spirits in warehouse does not modify/lesson the due diligence requirements.

Due diligence should be a risk-based probability process to identify the risk of alcohol fraud in the specific supply chain and mitigate any risk identified.

Why due diligence is important for business

By performing effective risk assessments and meaningful due diligence checks, businesses can reduce their exposure to the following risks:

1. Legal and financial risks
2. Operational Impact
3. Reputational Damage

Due Diligence

Undertake Due Diligence checks referred to within section 10, Registration and approval of excise goods held in duty suspension (Excise Notice 196).

Registration and approval of excise goods held in duty suspension (Excise Notice 196) - GOV.UK (www.gov.uk)

HMRC internal manual – Excise Due Diligence Condition Guidance

Excise Due Diligence Condition guidance - HMRC internal manual - GOV.UK (www.gov.uk)

Proposal

- Dedicated Due Diligence Joint Alcohol & Tobacco Consultation meeting to be arranged with representatives across HMRC and industry to establish a standard and what changes/additional guidance is required.
- Potential development of a Memorandum of Understanding (MoU) between HMRC and industry members.

Protection for warehousekeepers

HMRC would still have the ability to place conditions on the warehousekeeper where we establish a high risk business using a warehouse.

In addition, we are looking into the following matters:

- Whether warehousekeepers would have legal cover over potential criminal activity
- Possibility of including a line in secondary legislation, tertiary law or internal manual that prevents warehousekeepers being provided with penalties where they can clearly evidence that they put reasonable and proportionate checks in place to identify transactions that may have led to a fraud and have clear procedures in place to take timely and effective mitigating action when a risk of fraud is identified
- Developing a list of businesses that can't deposit goods (due to identified criminality) under duty suspension arrangements for sharing with industry

Simplification & Modernisation - WOWGR – Next Steps/Forward Look

Request for advice – ***June/July 2023***
Undertake a HMRC impact assessment on revoking parts of WOWGR and determine the deterrent effect of WOWGR – ***June/July 2023***
Submission to the minister hopefully ahead of recess (including level of consultation)

Forward Look

Informal targeted 8 week consultation with all excise stakeholders ***(September – November)*** (subject to ministerial clearance)

Draft instructions

Ongoing internal/external engagement including:

- Awareness of any legislative changes
- Awareness of any system changes
- Awareness of guidance updates
- Timelines on any changes to the policy

Issues/Questions to raise