Non-resident landlords, independent managing agents and fixed establishments

Indirect Tax

01 January 2018

Following several member queries, a submission was made by CIOT to HMRC regarding several VAT issues faced by non-resident landlords with opted commercial properties in the UK.

What's the issue?

Paragraph 3.5 of Public Notice 741A gives examples of when a non-resident business (including landlords) has a fixed establishment in the UK. The guidance previously stated: '*if the company has UK offices and staff or appoints a UK agent or representative (such as a subsidiary company acting on their instructions) to carry on its business by managing and operating the property, this creates a fixed establishment in the UK.'*

Some suppliers and HMRC VAT staff had interpreted the words '*by managing and operating the property*' to mean that when a non-resident landlord appointed an independent UK property agent to carry out general services such as invoicing, rent collection, arranging repairs and paying contractors etc, this created a fixed establishment in the UK. Whilst there are circumstances where a fixed establishment could be created by using a UK property agent, most contracts with third party property managers should not.

VAT consequences of fixed establishment

The VAT consequences of the landlord having a fixed establishment in the UK is that the place of supply of general rule services made in respect of the property changes

from the country where the non-resident landlord has its principal establishment (therefore outside the scope of UK VAT) to the fixed establishment in the UK (subject to UK VAT at the appropriate rate).

If the VAT office reviewing the VAT return of the non-resident landlord disagreed that the non-resident landlord had a fixed establishment, HMRC would disallow the input VAT as 'incorrectly charged VAT', leaving landlords exposed to a penalty risk and also having to seek a refund from the supplier, who may then refuse to issue a VAT credit note as they believe the liability to be correct.

HMRC's update to guidance

HMRC confirmed that they have removed the words '*by managing and operating the property*' from paragraph 3.5 in the Public Notice to reduce misunderstanding. At the time of writing, HMRC have not added this change to the amendment table attached to the notice, so we will request that this is updated. The CIOT has other VAT queries in respect of non-resident landlords in progress so we will report back should any further changes be made.

If you have any feedback in respect of the above, please contact Jayne Simpson at jsimpson@ciot.org.uk.