Anti-fraud measure for VAT: domestic reverse charge in the construction sector

Indirect Tax

01 March 2018

HMRC has been conducting further meetings with various stakeholders prior to finalising the draft legislation for its anti-fraud measure that seeks to tackle organised tax fraud on labour in the construction sector, where VAT and CIS losses are occurring.

CIOT representatives attended a meeting with HMRC to discuss our concerns and queries around the proposed anti-fraud measure, which comes into effect from 1 October 2019 (six months after Brexit and the launch of Making Tax Digital (MTD) for VAT). HMRC said it considers this to be a long enough lead in time to allow businesses to adjust to the MTD changes and to consider the impact to cashflow, as output VAT collected may be being used as working capital and alternative financing may be required.

Final customer

Although in earlier consultations businesses had indicated they would prefer the VAT and CIS definitions to be mirrored, the supply to the final customer by the main contractor will be removed from the VAT anti-fraud measure and VAT will be charged (as applicable) on that supply. The definition of final customer will be in the legislation. We support this position, as we consider the main contractor to be the party who should be responsible for determining the VAT liability on its building supplies, which would be particularly onerous for customers to determine where they have a mixed rate development, for example properties built for the charity and education sectors.

We discussed that where the main contractor and final customer are in a VAT group, this should not disturb the anti-fraud measure, that is the subcontractor's supply would be reverse charged by the main contractor and the onward supply to the final customer would be disregarded due to the VAT grouping.

Scope of the anti-fraud measure

The land-related services listed in VATA 1994 Sch 4A para 1(2)(e) should be within the scope of the measure, except for the supply to the final customer. We queried the position on 'repair and maintenance', which are services more usually associated with existing buildings rather than construction and this is being considered further.

We discussed the scope of the measure on supply chains involving multiple overseas contractors who are registered for UK VAT but not established in the UK, but who are supplying land related services in the UK. HMRC will consider this further.

Administration

The only reporting for VAT purposes by the customer would be Boxes 1, 4 and 7 (no Box 6), similar to the reporting requirements for purchases for other existing anti-fraud reverse charge schemes (para 8.5 of Notice 735). There are currently no plans for suppliers to complete a Reverse Charge Sales List, which are currently only applicable to mobile phones and computer chips.

HMRC do not envisage that the reverse charge should have an impact to the payments on account thresholds, although there may be cases where a business has to contact the Payments on Account team to ask for an exception.

We raised the question about some businesses becoming repayment traders due to the scheme and HMRC anticipates that an indicator will be set on these accounts so that they are not automatically receiving routine pre-credibility investigations each quarter.

The CIOT is part of the main stakeholder group which will be liaising HMRC on the legislation and guidance prior to its publication, anticipated to be in September 2018. If you have any comments in respect of the scheme please contact Jayne Simpson at jsimpson@ciot.org.uk.