Anti-fraud measure for VAT: moving forward with the domestic reverse charge for the construction sector

Indirect Tax

01 September 2018

CIOT has continued to liaise with HMRC in relation to the draft legislation on the domestic reverse charge for the construction sector and will continue to do so in relation to the required guidance.

Since the last article on the domestic reverse charge for the construction sector was published in the March issue of *Tax Adviser*, the CIOT has continued to liaise with HMRC in regular meetings on the draft legislation and planned guidance, along with other representatives from professional bodies and the construction sector, as part of the ongoing consultation programme. This anti-fraud measure comes into effect on 1 October 2019 to tackle the estimated annual £100m subcontractor supply chain missing trader VAT fraud. In addition to the unpaid VAT, there is concurrent evasion with Construction Industry Scheme (CIS) deductions and workers' PAYE contributions.

Draft legislation: what supplies are affected?

The draft version of The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 was released in June. Services that will be subject to the domestic reverse charge (specified services) are set out in Article 5 of the Order, with excluded services in Article 6. It should be noted however that Article 6 services and goods that are used in the making of Article 5 services, can become subject to the new rules where they form part of a composite, single supply with specified services. This may bring added complexity with single and multiple supplies questions for affected businesses, and we will be supporting the position that guidance should provide sufficient examples to demonstrate the correct VAT

treatment for the majority of impacted transactions.

The scheme does not apply to zero-rated construction services nor services supplied to a customer who is not registered for VAT.

HMRC consultation and CIOT response

The CIOT has submitted its response to HMRC's consultation on the draft legislation, explanatory note and tax information and impact note. Our key concerns with the draft legislation were:

1. That confirmation is required as to whether the £1,000 'disregarded amount' rule in VATA 1994 s 55A subsection 1(d) applies.

   During the stakeholder consultation, concerns were raised that this threshold would cause complications, particularly for smaller businesses, due to stage payment timing and having supplies to a single customer that could change from standard rated to reverse charge each month. On page 3 of the 'summary of responses' published by HMRC in December 2017, it states there will be no threshold, but this position has not been confirmed in the documents under consultation.

2. We would like to see clarity on the definition of 'construction services' for services which are related to refurbishment.

   Refurbishment services do not necessarily sit within the definitions of construction, alteration or repair and the listed installation services are limited to specific goods. We will want to see examples published in guidance so that businesses are able to easily decide if their services are affected.

3. We would like clarity on the responsibility for providing any breakdown of values by VAT rate for projects with multiple VAT rates where the recipient is responsible for declaring a reverse charge.

   The current view in the stakeholder consultation is that certification should not be required, so that the scheme can remain free from the associated bureaucracy and penalty risk. The tax information and impact note states that 'the supplier will need to issue a VAT invoice that indicates the supplies are subject to the reverse charge.' Regulation 14(5) of the VAT Regulations 1995

states that a supplier must show the amount of VAT to be accounted for by means of a reverse charge, although this could mean only an aggregated value is supplied.

We anticipate that HMRC's summary of responses to the consultation will be published in autumn.

Continuing to work with HMRC

The next phase of stakeholder consultation meetings will focus on points arising from the draft legislation and shaping the guidance.

If you have any comments or questions in respect of the scheme that you would like raised during the ongoing consultation, please contact us at technical@ciot.org.uk.