The domestic reverse charge for construction services: an update

Indirect Tax

01 January 2019

The final version of the draft Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019, supporting information and guidance note were published on 7 November. The statutory instrument introduces the domestic VAT reverse charge ('DRC'), via VATA 1994 s 55A, to relevant supplies of construction services with effect from 1 October 2019, as an anti-fraud measure. The reverse charge applies for business to business transactions where the customer is registered for UK VAT and required to report through the Construction Industry Scheme (CIS). The rules do not apply to zero-rated supplies.

What is VATA 1994 s 55A?

VATA 1994 s 55A is anti-fraud legislation that allows a rapid response to certain VAT frauds by deeming that the business customer, rather than the supplier, is responsible for declaring the VAT on its purchase of section 55A goods or services (known as 'relevant supplies'). By having the purchaser account for the VAT, the seller does not gain the benefit of receiving the VAT charged, which in a fraud situation would be undeclared by the seller as a 'missing trader', but deducted by the purchaser in its VAT return.

What's new in the legislation and guidance?

In our last report on the DRC we set out what supplies were affected by the DRC and our comments on the draft legislation.

The main change from the original draft is the new wording in article 8 of the final draft VAT s 55A (Specified Services and Excepted Services) Order 2019 (the Order) on excepted supplies. It confirms the position that supplies are excepted (not

subject to the DRC), if:

1. they are not subject to the CIS rules,
2. you supply an ‘end user’, or
3. you supply an ‘intermediary supplier’ that has relevant connections to an end user, either via normal connected party rules or a mutual relevant interest in land.

Although the definition of ‘end user’ in article 2(1) in the draft Order is a VAT registered recipient of specified supplies who does not make onward supplies of such services, the guidance states: *If the end user does not provide its supplier with confirmation of its end user status it will still be responsible for accounting for the reverse charge*. It will be important for buyers of specified supplies to ensure that the supplier is aware of the end user status. We would have liked to have seen this confirmation of end user status clarified in the legislation rather than guidance and will raise this in ongoing consultation.

Article 8(2) also allows for contracts with both specified supplies and excepted supplies, the supplier and customer can agree that the whole supply can become subject to the reverse charge.

Finance Bill Clause 50: Amendment to VAT threshold test for small businesses

Clause 50 of the Finance Bill and the new subsection VATA 1994 s 55A(9A) it introduces, allow the modification of the rules that require the aggregation of taxable turnover and purchases of relevant supplies for the purposes of the VAT registration threshold test in subsection (3) of VATA s55A.

For the DRC on building works and construction services, Article 10 of the draft Order removes the effect of subsection (3) of s.55A, which means that small unregistered businesses in this sector will not be required to aggregate turnover and relevant supplies for the VAT registration turnover test; it will continue to be based on taxable turnover alone. This is welcomed by the CIOT; it was raised during ongoing consultation and it removes unintended consequences whilst providing certainty for small businesses trading below the VAT threshold, where the particular fraud targeted by the DRC scheme is not occurring.

If you have any feedback please contact technical@ciot.org.uk.