CIOT responses to recent VAT consultations

Indirect Tax

01 June 2019

The CIOT has submitted responses to two recent VAT consultations.

Amendment to VAT Regulation 38: Statutory Instrument technical consultation

At Budget 2018, the government announced that there would be new, stricter rules for how and when adjustments to VAT should be made following a reduction in price, and that secondary legislation would amend Regulation 38 of the VAT Regulations 1995 (SI 1995/2518). This has arisen due to attempted abuse of Regulation 38 in circumstances that should be dealt with under the error correction rules, resulting in some businesses adjusting their output VAT but not paying the corresponding refund to the customer. At the time of writing, the date for the changes to the rules has yet to be announced. The CIOT supports actions taken by HMRC to tackle non-compliance, although it has raised following points in its submission to HMRC:

- Although a 14 day time limit has been set for the issue of credit notes or debit notes, s.6(6) to the VAT Act 1994 allows HMRC to permit the variation of the time limit to issue invoices and we would anticipate that such permission should also extend to draft regulation 15C documents, so this should be made clearer for affected taxpayers; and,
- We would like the term ‘the recipient of the supply’ used in draft regulation 15C and the draft amendments to paragraph 4 and the draft paragraph 4A of regulation 38, to be clearly defined. In draft regulation 24A, the scope includes the recipient and a third party liable or entitled to the adjustment, but this wording is not used in draft regulation 15C or the draft amendments to regulation 38, which may cause confusion.

Draft legislation: VAT (Reduced Rate) (Energy-Saving Materials) Order 2019

The CIOT submitted its response to HMRC for its technical consultation on the draft legislation: VAT (Reduced Rate) (Energy-Saving Materials) Order 2019, published on 8 April 2019. The draft legislation will amend the scope of Group 2 (installation of energy saving materials), Schedule 7A to the VAT Act 1994.

The amendments are required as a result of infraction proceedings by the European Commission, who considered that the UK's legislation went beyond the scope of the reduced rate supplies set out in Category 10 and 10(a) of Annex III to the Council Directive 2006/112/EC (as amended by Council Directive 2009/47/EC). The Court of Justice of the European Union (CJEU) in case C-161 /14 found that the UK had applied the reduced rate too widely, as the reduced rate must be applied for a social policy purpose (a social policy cannot apply equally to everyone), or where the energy-saving materials (ESMs) are installed in private dwellings, the cost of materials may not be a significant part of the value of the supply. The proposed changes in the draft legislation are due to come into effect from 1 October 2019.

Although the CIOT broadly expects that the draft legislation will deliver its aims, we would like to see improvements in the draft legislation and supporting guidance so that businesses are clear on what rate of VAT should be charged. This includes:

- Understanding what HMRC will accept as evidence that a contract was entered into before 1 October 2019. This will give businesses certainty when charging the reduced rate after 1 October 2019 under the special provisions in s88 and 89 to the VAT Act 1994 (VATA94) and Regulation 95 of the VAT Regulations 1995 that allows the VAT rate to be set at the time of entering into the contract, even where the rate changes after the contract commences;
- The impact of single and multiple supply rules where additional building works are supplied at the same time, for example, can any apportionment of the reduced rate be made in a single contract of building works that are otherwise standard-rated?
- We would like a meaning provided for the term 'in residential accommodation' used in the draft legislation, or see the word 'in' amended, otherwise it may cause confusion for ESMs that are affixed 'on' or 'outside' the dwelling (for example, roof or ground mounted solar panels); and,

- We would like to see standard terminology used in the legislation and supporting guidance when describing the changes to the reduced rate, as they are described slightly differently in the draft legislation and the supporting documents. We also want the term ‘relevant housing association’ used consistently in the documents, as the phrase ‘housing association’ has been used, but as they may not be required to be regulated they would not qualify for the reduced rate rules and this may cause confusion for taxpayers.

Please send any further feedback to technical@ciot.org.uk.