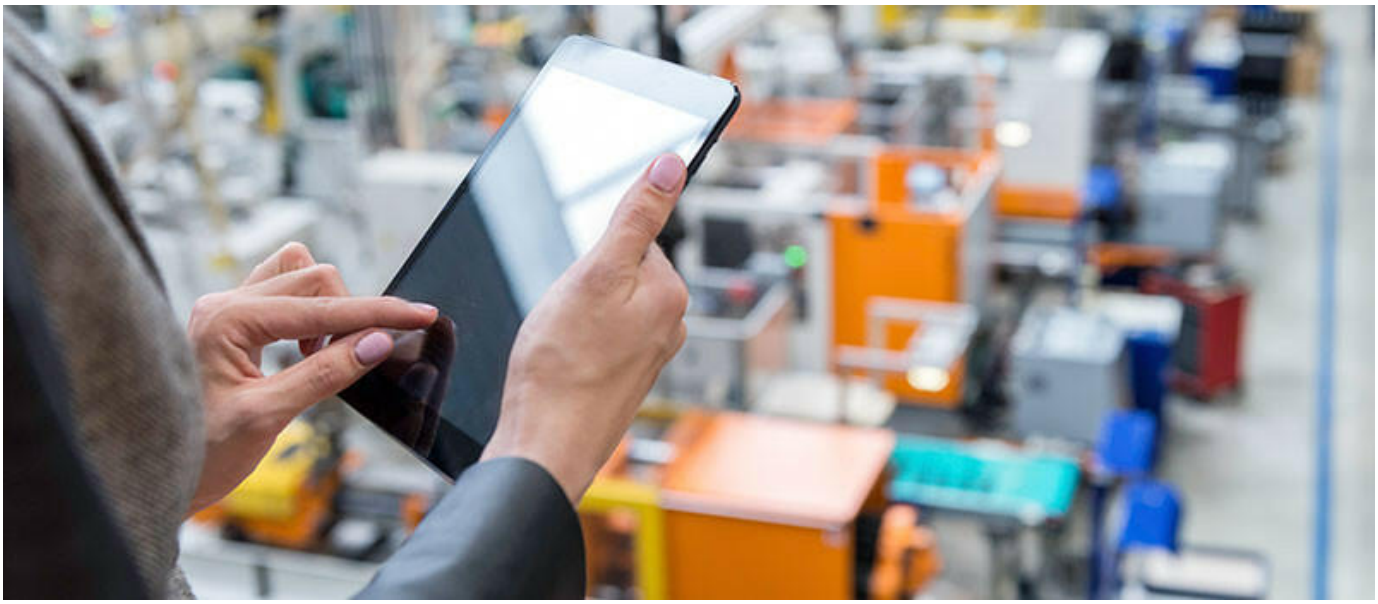
Finance Bill 2023-24: Interpretation of VAT and excise law

Indirect Tax



19 January 2024

CIOT provided representations to parliamentarians ahead of the Committee of Whole House debate on provisions in the Finance Bill that aim to provide clarity on interpretation for VAT and excise duty in the UK, following the end of the supremacy of EU law.

Clause 27: Interpretation of VAT and excise law

The proposed legislation in the Finance Bill seeks to clarify how VAT and excise legislation should be interpreted in the light of changes made by the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act). The REUL Act ends the supremacy and special status afforded to retained EU law in the UK and came into effect on 1 January 2024.

While we support the legislation’s aims, we are concerned that significant complexity and uncertainty will remain, so that the legislation’s objectives will not

be fully met.

Our briefing noted that feedback from CIOT members has highlighted thecomplexity of interpreting this legislation, and potential gaps in its application, undermining the certainty which it is intended to bring. This includes:

- Recognising the distinction between disapplication and quashing of an enactment because of EU law on the one hand, and its interpretation on the other. In this regard, we consider that sub-section 4 should continue to apply more generally (that is, without this distinction).
- The extent to which a 'conforming interpretation' is relevant or preserved.
- Legislative gaps, which will occur where previous UK law did not fully or accurately reflect the EU law that itimplemented, and removal of the reliance on the EU provision will leave the UK law incomplete.
- Uncertainty as to the extent to which UK higher courts are intended to be bound by prior CJEU case law.

Our full briefing can be read here: tax.org.uk/ref1277

Previous consultation

The government had published the draft legislation for technical consultation in October 2023 ahead of its inclusion in the Finance Bill. This followed an informal consultation through the Joint VAT Consultative Committee (tinyurl.com/4vfkj26b), giving stakeholders including the CIOT an opportunity to comment on the draft legislation before its more general publication.

In our response (tax.org.uk/ref1237), we raised questions and concerns about the interaction with case law and the principle of direct effect, as well as the key points noted above. We also included several commercial examples where uncertainty arose.

Disappointingly, the only addition to the draft legislation in the Finance Bill, published 10 days after the close of the consultation period on 27 November, wasthe inclusion of a new sub-section 8, stating that the section is treated as coming into force from 1 January 2024. No other amendments were made to the draft legislation,

notwithstanding the consultation feedback.

Committee of the Whole House

The Committee of the Whole House considered clause 27 on 10 January 2024. Labour signalled its support for Clause 27 but, citing concerns from CIOT, questioned its effectiveness in reducing complexity for businesses interpreting the VAT regime. Shadow Economic Secretary Tulip Siddiq also expressed concern that the REUL Act had created 'significant gaps in UK legislation where our domestic rule book did not fully transpose EU directives' and called for detailed guidance to help address these concerns.

CIOT's blog on the Committee of Whole House debate can be found here: www.tax.org.uk/fbdebate

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