

**HMRC Technical Consultation: The Value Added Tax (Section 55A)
(Specified Services and Excepted Supplies) Order 2019
Response by the Chartered Institute of Taxation**

1 Introduction

- 1.1 The Chartered Institute of Tax (CIOT) presents its response to HMRC's technical consultation on the draft statutory instrument: The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 ('the draft Order'), published on 7 June 2018.
- 1.2 The CIOT is grateful to have formed part of the invited stakeholder implementation group, formed as a result of HM Revenue & Customs' 'Next Steps' in its published summary of responses on 1 December 2017, at <https://www.gov.uk/government/consultations/vat-fraud-in-labour-provision-in-construction-sector>. The stakeholder group has regularly met in the first half of 2018 and representatives from the CIOT have engaged with HMRC and other stakeholders in reviewing and providing feedback on the draft legislation.
- 1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.4 Our stated objectives for the tax system include:
- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Greater certainty, so businesses and individuals can plan ahead with confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).

- Responsive and competent tax administration, with a minimum of bureaucracy.

2 Executive summary

- 2.1 We support HMRC taking action to combat abuse and non-compliance in this area, which is estimated to be costing taxpayers £100m annually. We recognise the resource constraints HMRC face in the current economic and political climate.
- 2.2 We wish to draw HMRC's attention to the CIOT's previous written submission in relation to its consultation on fraud on provision of labour in construction <https://www.tax.org.uk/policy-technical/submissions/fraud-provision-labour-construction-sector-consultation-vat-and-other>. As stated in this earlier submission, we would expect there to be a light touch in relation to any penalties until the new rules are fully embedded.
- 2.3 We welcome that the final supply, ie the supply to a person who does not make any further supplies of such specified services, is excluded from the reverse charge requirements, as set out at Article 8(a) of the draft Order. This prevents customers, who may not operate in the construction sector, from bearing the responsibility for calculating what could be complex VAT liabilities on projects with multiple VAT rates. The CIOT's view has always been, as stated in our earlier submission above, that the responsibility for determining the VAT due on the supply of 'construction services', as defined in Articles 5 to 8 of the Order, must remain within the construction supply chain.
- 2.4 Our view is that that the Order will, subject to our concerns below, achieve its purpose.
- 2.5 Our key concerns with the draft legislation are as follows:
- a) We would like the draft legislation or the explanatory note to have confirmed the position on whether the threshold for excepted transactions under the relevant supply rules in subsection 1(d) of Section 55A of the VATA94 applies. Our comments in paragraph 3 refer.
 - b) We would like to see clarity on the definition of construction services for those services which are refurbishment in nature. Our comments in paragraph 5 refer.
 - c) We would like clarity on the responsibility for providing a breakdown of values by VAT rate for projects with multiple VAT rates where the recipient is responsible for declaring a reverse charge. Our comments in paragraph 6 refer.

3 Interaction with section 55A – disregarded amount

- 3.1 Subsection 1(d) of Section 55A VATA94 sets out an exception for a 'disregarded amount' if a supply is £1,000 or less. As the draft Order is silent on this, we would assume that it currently applies.
- 3.2 In our earlier submission, we raised our concerns about the complexities of an invoice or per contract-based threshold as this would create unnecessary

complication and uncertainty, whilst still leaving the sector open to the risk of fraudulent behaviour. Due to the nature of longer term projects and stage payments in the construction sector, we would welcome a clearer statement on whether this threshold is applicable at the current level, or either increased or removed.

4 Single and multiple supplies

- 4.1 Article 4 of the draft Order states that services listed in article 5, together with any goods supplied with those services, will fall to be treated as a single supply of services. Article 7 of the draft Order states that services listed in article 6 – which are services that are not ‘construction services’ for the purpose of the draft Order – will be treated as construction services to the extent they form part of a single supply that includes services described in Article 5 of the draft Order.
- 4.2 It is worth noting that there is a difference in language in that goods supplied along with the supply of construction services, which fall to be treated as part of a single supply of services, will also fall within the reverse charge. However, services described in Article 6 which are supplied alongside construction services will only be treated as a construction services, and subject to the reverse charge, to the extent they form part of a single supply of services that includes construction services. We think this wording needs tightening up. In Article 4 we believe the final words should be ‘a single supply of construction services’ [our emphasis]. Similarly, in Article 7 the words should be ‘a single supply of construction services’ [our emphasis]. The current wording in Article 7 would treat all single supplies of services as being subject to the reverse charge even if the element of construction services were an insignificant element of a single supply of non-construction services.¹

5 Definition of construction services

- 5.1 There are services that a business may ordinarily consider to be construction or building services but may not fall squarely into the definitions in Article 5, where we assume there is an intention that they will. Examples include floor laying and kitchen installation, which could be seen as refurbishment in nature when installed in existing buildings, rather than falling within the definition of repairs or alterations. From our involvement in the stakeholder meeting process, we understand that the scope of the Article 5 services will be made clear in guidance which is intended to include refurbishment services.
- 5.2 HMRC could consider adding a cross ref to the CIS legislation in the Explanatory Note.

6 VAT liability of reverse charges – recipient responsibility

- 6.1 Where the recipient of specified supplied intends to make a further supply of specified supplies and hence must apply the reverse charge, for projects subject to

¹ For example, a builder might install blinds (non-construction services), but in doing so have to make good a wall by filling / painting holes (construction services). The making good is clearly ancillary to the installation of the blinds, but the current wording of the Order would treat the entire supply as subject to the reverse charge.

multiple VAT rates, the recipient must determine whether the values of supplies at zero, 5% or 20%.

- 6.2 The draft Order should state whether there is any responsibility for the supplier to provide a VAT analysis, whether on the invoice or by separate communication.
- 6.3 For projects that are fully taxable for both the supplier and the recipient of specified services, there will be no VAT loss as the reverse charge will have a nil net value on the VAT account. However, where the recipient is not able to fully recover VAT, the responsibility to determine multiple VAT rates will have a cost and penalty risk.
- 6.4 It is not clear to what extent supplies may be apportioned where the recipient of specified services intends to both use those services partly for its own purposes (ie where it is the final consumer) and partly for making further supplies of specified services. This needs to be set out in the Order or at the very least in guidance.

7 Non-established subcontractors

- 7.1 The draft Order is currently silent on the position for non-established subcontractors that are registered for UK VAT. Where multiple non-established contractors who are registered for UK VAT are in a supply chain, it is not clear whether the reverse charge treatment set out in the draft Order applies or whether UK VAT will be due.

8 Acknowledgement of submission

- 8.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

9 The Chartered Institute of Taxation

- 9.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
24 July 2018