



## VAT & Excise

### Interpretation of VAT and excise legislation – clause 27

#### Executive Summary

The proposed legislation 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.

#### 1 Clause 27: Interpretation of VAT and excise legislation

- 1.1 The government published [draft legislation](#) on 20 October 2023, ahead of its inclusion in the Finance Bill, and announced that, *'in relation to VAT and excise law, it will no longer be possible for any part of any UK Act of Parliament or domestic subordinate legislation to be quashed or disapplied on the basis that it was incompatible with EU law following the changes made in the Retained EU Law (Revocation and Reform) Act 2023.'*

The government stated that this legislation *'ensures that UK VAT and excise legislation continues to be interpreted as Parliament intended, drawing on rights and principles that currently apply in interpreting UK law. This ensures the stability of the VAT and excise regimes and provides legal certainty.'*

- 1.2 The draft legislation was subject to technical consultation for 4 weeks from 20 October to 17 November 2023. The CIOT [responded](#) to the consultation highlighting questions and concerns including:
- The interaction with the principle of direct effect
  - The interaction with case law from 1 January 2024
- 1.3 The only addition to the draft legislation, published 10 days after the close of the consultation period on 27 November, is the inclusion of a new sub-section 8, stating that the section is treated as coming into force from 1 January 2024. No amendments were made to the draft legislation, notwithstanding any consultation feedback. Several examples highlighting uncertainty of the VAT position in commercial scenarios were provided in the CIOT submission, though these have not yet been answered.

## 2 CIOT comments

- 2.1 While supportive of what the government are trying to achieve, which is to provide stability in the VAT and excise regimes, and to provide legal certainty, we have concerns about whether the legislation, as written, fully fulfils the intended aims.
- 2.2 In the government’s policy objectives, it states that the measure ‘*provides legal certainty for business following the changes in the REUL Act taking effect*’ and that it ‘*mitigates the risk of re-litigating settled interpretation of UK law*’.
- 2.3 However, feedback received from CIOT members in both the legal and tax advisory professions has highlighted the complexity of interpreting this legislation, and potential gaps in its application, undermining the certainty which it is intended to bring. In brief, this includes:
- a) Recognising the distinction between disapplication and quashing of an enactment as a result 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 (ie without this distinction).
  - b) The extent to which a ‘conforming interpretation’ is relevant or preserved.
  - c) Legislative gaps, which will occur where previous UK law did not fully or accurately reflect the EU law which it implemented, and removal of the reliance on the EU provision will leave the UK law incomplete.
  - d) Uncertainty as to the extent to which UK higher courts are intended to be bound by prior CJEU case law.
- 2.4 Detailed guidance will be vital to ensure that these sorts of issues are comprehensively addressed and the legislation meets its aims. As the ‘effective from’ date is 1 January 2024, this should be addressed soonest.

## 3 The Chartered Institute of Taxation

- 3.1 The 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 19,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

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