

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (SECTION 55A) (SPECIFIED SERVICES AND**  
**EXCEPTED SUPPLIES) ORDER 2019**

**2019 No. XXXX**

**Introduction**

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Value Added Tax Act 1994 ("the Act"), as a general rule, requires the supplier of goods and services to account for VAT on those supplies. Section 55A of the Act requires VAT to be paid by the recipient of supplies ("a reverse charge") if the supplies are of a type specified for that purpose in a Treasury order. A reverse charge prevents supplies of goods and services from being exploited by those engaged in a type of VAT fraud called "missing trader fraud". This instrument imposes a reverse charge, with effect from 1<sup>st</sup> October 2019, on standard and reduced rate supplies of construction services made by construction businesses to other contractors in the construction industry.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 Section 55A of the Act (customers to account for tax on supplies of goods or services of a kind used in missing trader fraud) provides that where a taxable person makes a supply of goods or services to which that section applies, and the supply is not an excepted supply, then it is for the recipient (if they are a taxable person), on the supplier's behalf, to account for and pay the VAT on the supply.

4.2 The goods and services to which section 55A applies and the supplies which are to be excepted from its application are those which are specified by Treasury order made under powers contained in sections 55A of the Act.

4.3 This instrument makes provision for construction services to be specified under section 55A of the Act and makes exceptions to restrict the effect of the reverse charge to supplies made by construction businesses to other similar businesses.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 This instrument, with effect from the 1<sup>st</sup> October 2019, applies a reverse charge to certain supplies of construction services in order to remove the opportunity for missing trader fraud in the construction sector.
- 7.2 Missing trader fraud is an organised criminal attack on the VAT system. The fraud is perpetrated through transaction chains in certain business sectors with the loss occurring when the VAT charged by the supplier is not paid to HMRC but is retained by the recipient.
- 7.3 This type of fraud has been used by criminals to steal billions of pounds in VAT from governments throughout the European Union, both in relation to domestic supplies such as construction services, and also in connection with cross-border intra-community trading in goods such as mobile telephones, computer chips and emissions allowances. A reverse charge for mobile telephones and computer chips was introduced with effect from 1<sup>st</sup> June 2007 and one for emissions allowances was introduced with effect from 1<sup>st</sup> November 2010. Further reverse charge measures were introduced for gas and electricity with effect from 1<sup>st</sup> July 2014 and for electronic communications with effect from 1<sup>st</sup> February 2016.
- 7.4 Construction services have been targeted by criminals because labour-only suppliers in the sector do not incur any significant VAT on their costs but can charge VAT to customers and then go missing, keeping the VAT for themselves. This instrument makes the reverse charge apply to construction services which, for these purposes, have been defined consistently with the activities covered in the Construction Industry Scheme. This is a statutory scheme which is concerned with tackling the risk of direct tax fraud in the construction industry.
- 7.5 The risk of fraud in the construction industry is principally centred around the supply of construction services between construction businesses in the supply chain and this instrument, therefore, does not require other types of business to apply the reverse charge when receiving construction services and there is also no reverse charge requirement in relation to building and construction materials that are supplied separately and independently of construction services.
- 7.6 Reverse charge accounting makes it impossible for fraudsters to perpetrate missing trader fraud because the customer rather than the supplier accounts for the VAT direct to HMRC.
- 7.7 The introduction of the reverse charge in this business sector will mean that businesses will need to adapt their systems and manage their cash flow differently. Due to the large number of small businesses potentially affected by a reverse charge

for construction services the government has given a long lead-in time to help businesses adjust, having announced in Autumn 2017 the intention to introduce legislation which will come into force in Autumn 2019 .

### ***Consolidation***

- 7.8 There is no current plan to consolidate the various Treasury orders that specify the goods and services to which section 55A applies.

## **8. Consultation outcome**

- 8.1 HMRC consulted on options, including a reverse charge, to counter the fraud in 2017 and a Summary of Responses was published on 1<sup>st</sup> December 2017. Although the majority of respondents raised reservations about a reverse charge because of the size and complexity of the construction sector, it was recognised that there were few, if any, other policy options to a reverse charge that would be as effective at preventing missing trader fraud.
- 8.2 The government has acknowledged concerns of stakeholders by providing for a long lead-in time to allow businesses to make the necessary changes.

## **9. Guidance**

- 9.1 HMRC will publish guidance concerning the introduction of the construction industry reverse charge so that businesses affected have the information they need to be able to adapt their accounting systems.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is potentially significant for those supplying construction services.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument has been published and is available on the government website at:  
<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 HMRC will monitor the application of this reverse charge and will also continue to monitor whether fraud may spread to other supplies and what further measures may be appropriate.

## **13. Contact**

- 13.1 Nick Chambers at the HM Revenue & Customs, tel. 03000 585662, email: [nick.chambers@hmrc.gsi.gov.uk](mailto:nick.chambers@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.