

## EXPLANATORY MEMORANDUM TO

### THE VALUE ADDED TAX (SECTION 55A) (SPECIFIED SERVICES AND EXCEPTED SUPPLIES) (CHANGE OF COMMENCEMENT DAY) ORDER 2019

2019 No. 1240

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This Order amends the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019<sup>1</sup> ("the original instrument") by changing the date on which it comes into force from 1 October 2019 to 1 October 2020.
- 2.2 The original instrument introduces a reverse charge so that the recipient of standard and reduced rate supplies of construction services accounts for the Value Added Tax (VAT) on those supplies instead of the supplier.

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

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

- 3.1 As this Order changes the date of commencement of the original instrument, it is issued free of charge to known recipients of that instrument.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 This Order amends the coming into force date of the original instrument.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2019/892/made>

6.2 The original instrument was made on 29 April 2019 and laid before the House of Commons on 30 April 2019. It was due to come into force on 1 October 2019. It makes provision for construction services to be specified under section 55A of the Value Added Tax Act 1994 (“the Act”) as services which are subject to a reverse charge for VAT purposes. This means that where a person who is registered for VAT makes a supply of specified services to which section 55A of the Act applies, then it is for the recipient (if they are also VAT registered), on the supplier’s behalf, to account for and pay the VAT on the supply. The original instrument also makes exceptions to restrict the effect of the reverse charge to supplies made by construction businesses to other similar businesses but not to non-construction businesses who act as end users of the services.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The commencement date of the original instrument is changing from 1 October 2019 to 1 October 2020.
- 7.2 The original instrument applies a reverse charge to certain supplies of construction services in order to remove the opportunity for fraud in the construction sector<sup>2</sup>. It was due to come into force on 1 October 2019.
- 7.3 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 supplier.
- 7.4 Reverse charge accounting makes it impossible for would-be criminals to perpetrate missing trader fraud because the recipient rather than the supplier accounts for the VAT direct to HMRC.
- 7.5 The introduction of the reverse charge will have a direct impact on up to 150,000 businesses in this sector. It will mean that businesses will need to adapt their systems and manage their cash flow differently. A large proportion potentially affected by the reverse charge is small businesses which is why the government gave a long lead-in time to help businesses adjust.
- 7.6 The sector has expressed concerns about the impact of these changes due to businesses being unprepared and the proximity to EU Exit and asked for a delay in their implementation. This Order responds to those concerns and the change of commencement date will give businesses more time to familiarise themselves with the new rules and adapt VAT and accounting systems and processes to enable reverse charge supplies to be calculated and reported. The change of commencement date will also avoid coinciding with EU Exit.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

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<sup>2</sup> [http://www.legislation.gov.uk/ukxi/2019/892/pdfs/ukxiem\\_20190892\\_en.pdf](http://www.legislation.gov.uk/ukxi/2019/892/pdfs/ukxiem_20190892_en.pdf)

## **9. Consolidation**

9.1 This Order does not consolidate any legislation.

## **10. Consultation outcome**

10.1 No formal public consultation has been undertaken but the Government is responding to concerns that have been expressed by individual businesses and trade associations about the timing of the introduction of the original instrument. This had been set at 1 October 2019 and six months after the United Kingdom was initially due to leave the European Union (EU). However, the commencement date is now very close to EU Exit and businesses are making preparations for that event.

## **11. Guidance**

11.1 HMRC are issuing a press release and are directly notifying those affected by the reverse charge of the change in the commencement date.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies in changing the commencement date is potentially significant for those supplying construction services because it is estimated that up to 150,000 businesses could be required to use the reverse charge. Many of these are small businesses and having more time will help them make the necessary adjustments and final preparations.

12.2 The impact on the public sector is negligible because the original instrument makes exceptions to restrict the effect of the reverse charge to supplies made by construction businesses to other similar businesses but not to non-construction businesses who are referred to as end users, for example, government departments.

12.3 During the new implementation period, HMRC will continue to carry out enhanced compliance activity to reduce VAT losses until the reverse charge comes into effect.

12.4 A Tax Information and Impact Note has not been prepared for this instrument because it only changes the commencement date of the original instrument. The Tax Information and Impact Note for the original instrument has been published and is available on the government website at <https://www.gov.uk/government/publications/vat-reverse-charge-for-building-and-construction-services/vat-reverse-charge-for-building-and-construction-services>.

## **13. Regulating small business**

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure that businesses in the construction sector are given more time to prepare for when the reverse charge does come in and avoid it coinciding with EU Exit.

13.3 The basis for the final decision on what action to take to assist small businesses was feedback from the sector about concerns that the businesses are not ready for this change and the impact the UK exiting the EU will have.

#### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that HMRC will monitor the impact and effectiveness of the communications it has with the construction industry as it continues to prepare for the commencement of the reverse charge.
- 14.2 This instrument falls with the statutory review exceptions under section 28(3)(a) Small Business, Enterprise and Employment Act 2015 as it relates to tax.

#### **15. Contact**

- 15.1 Nick Chambers at HMRC email: [indirecttax.vatsncfteam@hmrc.gov.uk](mailto:indirecttax.vatsncfteam@hmrc.gov.uk) can answer any queries regarding the instrument.
- 15.2 Alice Dowswell, Deputy Director for VAT Serious Non-Compliance & Fraud at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.