

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (SECTION 55A) (SPECIFIED SERVICES AND
EXCEPTED SUPPLIES) (CHANGE OF COMMENCEMENT DAY AND
AMENDMENT) (CORONAVIRUS) ORDER 2020

2020 No. 578

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.

2. Purpose of the instrument

- 2.1 This Order amends the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019¹ ("the original Order"). Its main purpose is to move the commencement day of the original Order from 1 October 2020 to 1 March 2021 because of the coronavirus crisis. It also includes a technical amendment restricting the application of certain exceptions set out in the original Order.
- 2.2 As a general rule, the supplier of goods and services is required, under the Value Added Tax Act 1994 ("the Act"), to account for Value Added Tax (VAT) on those supplies but section 55A of the Act enables the Treasury to make secondary legislation for the purpose of specifying certain types of goods or services where this general rule of VAT accounting does not apply. In such cases, it is for the recipient of the supply rather than the supplier to account for VAT. This means of accounting for VAT is commonly referred to as a reverse charge. The Treasury made the original Order under this provision to apply the reverse charge to the construction industry.
- 2.3 However, as a result of additional pressures put on the construction industry by the coronavirus crisis, the government has decided to delay the implementation of the reverse charge until 1 March 2021.
- 2.4 This Order also amends the original Order by introducing a provision to restrict the application of the exceptions (set out in article 8(1)(b) of the original Order) to cases where the recipient provides a form of written confirmation to the supplier that the exceptions apply. The Treasury specified exceptions in the original Order where the reverse charge would not apply. The exceptions were designed, broadly speaking, to ensure that the reverse charge was restricted to cases where the recipient, as well the supplier, were in the business of supplying construction services. The amendment is designed to ensure that, in each case where a relevant supply is made, the supplier has the information necessary to determine whether the reverse charge applies or not.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

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

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 original Order to change its commencement date to 1 March 2021.
- 6.2 The original Order 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 but was deferred to 1 October 2020 by an amendment introduced in The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) (Change of Commencement Day) Order 2019². It makes provision for construction services to be specified under section 55A of 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 Order 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.
- 6.3 This Order also amends the original Order by introducing a new provision to restrict the application of certain exceptions to the reverse charge (as set out in article 8(1)(b) of the original Order) to cases where the recipient provides a form of written confirmation to the supplier that the exceptions apply.

7. Policy background

What is being done and why?

- 7.1 The original Order was introduced as a measure to combat VAT fraud in the construction industry by requiring supplies of construction services to be subject to the reverse charge. The commencement of the original Order is being deferred because of the potential impact on affected businesses at a time when they may still be trying to recover from the impacts of the coronavirus crisis.
- 7.2 The introduction of the reverse charge would have a direct impact on up to 150,000 businesses in this sector and the introduction of its provisions in October would have

² S.I. 2019/1240: <http://www.legislation.gov.uk/ukSI/2019/1240/made>

meant that businesses would need to adapt their systems and manage their cash flow differently whilst also dealing with the effects of the coronavirus crisis.

- 7.3 The government does not want to add additional pressure on businesses that have been affected by the coronavirus crisis and therefore has decided to delay the commencement the original Order so that the reverse charge does not come into effect until 1 March 2021
- 7.4 In addition to the deferral of the commencement of the reverse charge for the construction industry, this Order amends article 8 of the original Order. This technical amendment is being introduced as a result of industry feedback on the subject of accounting for the reverse charge which led HMRC to conclude that an amendment was needed to ensure that suppliers of construction services could be certain of applying the correct accounting treatment in relation to each supply.
- 7.5 The amendment introduces a new provision in article 8(1A) of the original Order which qualifies the effect of article 8(1)(b) of that Order. That original provision made exceptions to the reverse charge in cases where the relevant supply was made to non-construction businesses (“the end user exceptions”). So that suppliers can be sure that they are able to make informed decisions as to whether the recipient of a supply satisfies the requirements of the end user exceptions, the amendment made by this instrument restricts the application of the end user exceptions to cases where the recipient of a supply has provided written confirmation that the end user exceptions apply.
- 7.6 The amendment means that, where the recipient of supplies of specified services satisfies the requirements of the end user exceptions, written confirmation of eligibility for the exceptions will have to be provided to the supplier in order for the exception to come into effect. If no such written confirmation is given, then the supply must be treated as a reverse charge transaction for VAT purposes. This change to the original Order ensures that both the supplier and the recipient of the supply can be certain that the correct accounting treatment is applied for each supply of construction services.

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.

9. Consolidation

- 9.1 There is no intention to consolidate any legislation.

10. Consultation outcome

- 10.1 No formal public consultation has been undertaken in relation to this Order but the government is responding to concerns that have been expressed by individual businesses and trade associations particularly in relation to the timing of the introduction of the original Order because of the coronavirus crisis.

11. Guidance

- 11.1 The government is issuing a press release and is directly notifying those affected by this Order. Guidance on the government website can be found at

<https://www.gov.uk/guidance/vat-domestic-reverse-charge-for-building-and-construction-services>

12. Impact

- 12.1 The original Order's impact on business, charities or voluntary bodies 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. However, as a result of the change in commencement date of the original Order, those impacts will be deferred until 1 March 2021.
- 12.2 The amendment to the exceptions provisions in the original Order will have no, or no significant impact on business, charities or voluntary bodies as this instrument does not make any substantive changes to tax policy. Some businesses and charities will be end users and HMRC's published guidance already advises them to notify their suppliers in writing that they are end users where they meet the requirements for the end user exceptions.
- 12.3 The amendment to the exceptions provisions will have no, or no significant impact on the public sector as this instrument makes no substantive change to tax policy. Most public sector bodies which receive construction services will be end users and HMRC's published guidance already advises them to notify their suppliers in writing that they are end users where they meet the requirements for the end user exceptions.
- 12.4 A Tax Information and Impact Note has not been prepared for this instrument because other than changing the commencement date, it contains no substantive changes to tax policy. The Tax Information and Impact Note for the original Order 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. A large proportion of those potentially affected by the reverse charge comprises 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. There is no additional action being taken to minimise the regulatory burdens on small business in respect of the change to the exception provisions.
- 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 businesses are not ready for the introduction of the reverse charge as a result of the impact of the coronavirus crisis. For the change to the exception provisions, the basis for the final decision on what action to take to assist small businesses is that there is no, or no significant, impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that HMRC will monitor the impact of the changes introduced by this instrument as regards the construction industry and the effectiveness of its anti-fraud measures.

14.2 This instrument does not include a statutory review clause because it relates to tax and falls within the exception in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Nick Chambers at HMRC email: nick.chambers@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 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.