The Construction Industry
Joint Taxation Committee

JTC

JTC NEWSLINE

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VAT Reverse Charge

From 1 October 2019 the way VAT is paid between businesses in the construction sector will change.

Companies who are VAT registered and CIS registered will no longer pay VAT to the majority of their subcontractors. VAT will only be paid to firms who supply only labour (employment businesses) and to the merchants and businesses that sell building materials only without any fix.

The purpose of the change is to collect VAT from the few contractors at the top of the construction tree who interface with the customers rather than numerous smaller subcontractors whom HMRC think are less reliable!

From 1 October 2019 you will **need** to have two types of invoice, a reverse charge invoice and a VAT charging invoice, and you will have to decide which to issue to be paid. ■

What does a reverse charge invoice look like?

Invoices sent after 1 October 2019 will need to contain wording explaining that they are reverse charge invoices and will look something like the example invoice on the right. The important thing is that they will not show VAT in the columns which calculate the payment to be made!

This is not prescriptive – you do not legally have to show the VAT number of the customer.

Your software system may not let you calculate the VAT that is being reverse charged and print it outside the accounting column. If you can't show it don't worry. **however,** you must not show any VAT in the right hand column because it might mislead anyone into paying you VAT.

What is important is that your invoice does not charge VAT and clearly shows that it is a reverse charge invoice and S55A applies. ■

INVOICE

To: Main Contractor
Address:

Customer VAT Reg. No:

Invoice No:
Invoice Date:

From:Sub-contractor
Address:

Supplier VAT Reg. No:

Description	Net £	VAT Rate	VAT £	Gross £
Construction of new housing	200,000	0%	0	200,000
Supply of ovens/ hobs in new housing	20,000	20%	Domestic Reverse Charge applies	20,000
Construction of retail premises	100,000	20%	Domestic Reverse Charge applies	100,000
Non-residential to residential conversion	150,000	5%	Domestic Reverse Charge applies	150,000
TOTAL	**470,000**		**0**	**470,000**

Customer to account to HMRC for the reverse charge output tax on the VAT exclusive price of items marked 'reverse charge' at the relevant rate as shown above. **S55A VATA 1994 applies.**

Standard Rate Output VAT subject to Reverse Charge: £24.000
Reduced Rate Output VAT subject to Reverse Charge: £7,500

Court of appeal confirms definition of Managed Service Company Provider

Sometimes it takes a long time for tax law to crystallise but everything comes to he who waits!! The following case also shows how an appeal against a decision of HMRC goes up through the court system getting more and more force behind it.

This case is unlikely to go further. The taxpayer challenged the decision of HMRC and lost at First Tier Tribunal (FTT), then he challenged the decision of the FTT and lost, then he challenged the decision of the Upper Tribunal (UT) and lost and now the Court of Appeal has upheld the decisions of HMRC, the FTT and the UT. Only the Supreme Court lies ahead and the taxpayer would be unwise to pour money there!

In ***Christianuyi Limited & Others v HMRC*** the Court of Appeal confirmed that the UT and FTT were correct in finding that a business - Costello Building Services Limited - which was set up to facilitate workers to provide their services via managed personal service companies was a Managed Service Company (MSC) provider.

This upheld the 2018 decision of Upper Tribunal (UT) which had concluded:
The law sets out a perfectly straightforward two stage test for determining whether a company is or is not an MSC provider:

☐ (a) First, does the putative MSC provider promote or facilitate the use of a company?
☐ (b) Secondly, if so, does that company provide the services of individuals?

Applying that test, the UT held that it was plain that Costello fell within the statutory definition. It was common ground that Costello did not promote or facilitate the services that each of the individual owners provided to the appellants' end clients.

Each appellant arranged and negotiated its own contracts, including payment rates and terms, with the end clients, sometimes through a recruitment agency but without any control or supervision by Costello.

The Court of Appeal considered the earlier appeals, the legislation, guidance and consultation documents and outcomes and concluded that the business that the Government was trying to catch in the legislation is precisely the business that Costello runs; its business is in promoting a situation in which the workers provide their services through a company instead of directly to the end client and it thereby promotes the use of companies to provide those services. Costello then provides the Gold Business Service to the MSC, thereby facilitating the use of the MSC by that individual in order for him or her to provide services to the end client.

Background, FTT and UT findings:
☐ In 2007 the i4 group, including Costello Building Services Limited developed a new product for use by personal service companies.

☐ Costello assisted in setting up the PSCs; each was solely owned by an individual client who also acted as director with most PSCs using the address of Costello as their registered office and a group company as company secretary.

☐ Amounts received from third parties for clients' work were paid into special bank accounts which Costello set up and Costello made deductions from these accounts for their fees and taxes.

☐ The vast majority of clients opted to be paid a minimum wage by their company. The balance of funds in the PSC account was then transferred to their private bank accounts as dividends.

Continued overleaf

Court of appeal confirms definition of Managed Service Company Provider - continued

The Courts held that Costello:

☐ Benefitted financially on an ongoing basis from the provision of services by their clients.

☐ Controlled or influenced the way in which payments were made to each individual taxpayer.

☐ Influenced the PSCs' finances and activities in respect of bank accounts, tax payments, and access to their funds without having a direct debit in place.

☐ As a result CBS was 'involved' with the PSCs and the Managed Service Company rules applied.

Comment: This is the first case that shows HMRC fighting their corner to defeat the Managed Service Company sector and they have won a decisive battle. The Court of Appeal was quite clear that the MSC regime is an anti-avoidance regime and it was designed to catch the arrangements made by Costello. ■

If you have a query on any item in newsline contact

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How to prepare for changes to the off-payroll working rules from 6 April 2020 (IR35)

From April 2020 the rules for engaging individuals through Personal Service Companies (PSCs) are changing. The responsibility for determining whether the off-payroll working rules apply will move to the organisation receiving an individual's services.

The changes will apply to businesses that employ more than 50 people or which have a balance sheet showing assets of more than £5.1 million or which have a turnover of £10.2 million.

HMRC have issued the following guidance to help firms prepare before the changes come in.

☐ 1. Look at your current workforce (including those engaged through agencies and other intermediaries) to identify those individuals who are supplying their services through Personal Service Companies.

☐ 2. Determine if the off-payroll rules apply for any contracts that will extend beyond April 2020. You can use HMRC's 'Check Employment Status for Tax service' to do this.

☐ 3. Start talking to your contractors about whether the off-payroll rules apply to their role.

☐ 4. Put processes in place to determine if the off-payroll rules apply to future engagements. You will need someone in your organisation who will decide whether the new rules apply to each engagement and they may need training in advance of the change. You also need to decide how payments will be made to contractors within the off-payroll rules. (In the public sector where these rules are already in place the response has been to put the worker into PAYE.)

More information on the eligibility and details of the reform is in the consultation 'Off-payroll working rules from April 2020' on GOV.UK. ■

Does your business sell recycled materials as part of its income stream?

Do you ever adjust (reduce) a contract price because of the scrap value of plant or materials that will be recovered in that contract?

Many big projects involve demolition or stripping out copper pipes or removal of slate tiles or reusable items like lead or copper and on occasion the contract price to do work may be reduced to take into account money that can be made by the resale of such items.

An EC court has just held that there are two transactions for VAT purposes and both should be recognised in full for VAT, whether or not the client was aware of the potential resale when the contract was agreed.

It is no use blaming the EC Court; VAT law is clear on this issue although it has never been to court in the UK. The problem with the EC decision, which is about a Hungarian demolition contractor, is that it draws attention to an area that has previously slipped under the radar in the UK.

So if, when you price for work you undertake two calculations, (1) the cost of doing the work and (2) any income that can be made from selling items recovered in the course of doing the work, and you net off the two in making a contract price, you have a new VAT problem. The problem exists even if the client doesn't know that there is a two part calculation happening in your business.

The judgement says that the correct interpretation of the law is that there are two VAT legs – the demolition contractor must charge full VAT on the full price of the demolition and the building owner must 'sell' the goods to the demolition contractor charging full VAT if he is VAT registered.

The important things to remember are that HMRC may be aware of the case and may now enquire about the sale of recovered goods. If it is obvious from the negotiations, and the paperwork up to contract, that there were going to be recovered resalable items there will be adjustments to make.

If no account is taken of potential recoveries in the setting of a contract price, but later it is found that items recovered can be sold on, possibly because as a contractor you have acquired a bulk lot from several clients, there is no adjustment to be made.

Where your firm regularly sells recovered materials, or makes a substantial sum selling a recovered item(s) on a particular project **you** will need some careful specialist VAT advice. ■