

# CONSTRUCTION law

NEWS AND ADVICE FROM BIRKETT LONG

## Shifting the VAT

2020 sees the introduction of a new VAT charging system

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## Licensed to build

Will it improve quality and consumer confidence?

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## Holiday entitlements

Make sure you are aware of all your employee entitlements

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## Is delivering concrete a construction operation?

Find out about a recent High Court ruling

# Construction services VAT reverse charge

Many in the construction industry were unaware of the significant change, which was due to take place on 1 October 2019, relating to how VAT is charged in the construction industry. The good news for them is that the implementation of the change has been postponed until 1 October 2020. Although this is a welcome relief to many, it should not be forgotten about and businesses should be aware of the proposed change.

## **Why is the reverse charge being introduced?**

The domestic reverse charge (referred to as the reverse charge) is a substantial change in the way VAT is collected in the building and construction industries. The change is intended to prevent the perceived fraud, where it is believed that suppliers are receiving VAT from customers and then not paying their VAT bill.

## **How does the reverse charge work?**

Under the reverse charge scheme the responsibility for the reporting of a VAT transaction shifts from the seller to the buyer of goods or services. The customer receiving the goods and

services will have to pay VAT to HMRC instead of the supplier. By moving the VAT charge along the supply chain, HMRC is hoping to make this type of fraud impossible.

## **Which supplies does it affect?**

It relates to all building and construction goods and services that are supplied at the standard or reduced VAT rates and are covered by the CIS Scheme, including: -

- constructing, altering, repairing, extending, demolishing or dismantling buildings or structures
- installing heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water

- supply or fire protection systems in any building or structure
- painting or decorating the inside or the external surfaces of any building or structure, and
- services which form an integral part of, or are part of the preparation or completion of the services described above - including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works

## **What will the impact of the reverse charge be?**

The implementation of the reverse charge will, of course, have an administrative impact along with compliance and cash flow issues. Businesses need to make sure that they have accounts systems and processes to handle reverse charge invoices and that their IT and staff are up to date to cope with the changes.

# Holiday pay for permanent workers who work part of the year

**A recent Court of Appeal decision (Harpur Trust v Brazel) has shown how holiday pay must be calculated for term time, casual or seasonal workers on irregular hours, and zero hours workers. It could have implications for the construction industry where permanent staff only work part of the year.**

In this case, the employee was a music teacher employed under a permanent zero hours contract, who worked irregular hours as they were dictated by pupil demand and she only worked term

time. She was paid holiday pay based on the hours worked using a multiplier of 12.07%; the methodology suggested in ACAS Guidance where persons do not work regular patterns.

### How to get ready for the reverse charge?

- Check if the change affects your sales, purchasing or both
- Make sure your accounting systems and software are up to date and able to deal with the change

- Consider the effect of the change on your cashflow position
- Review contracts to see whether the reverse charge applies to the services you receive, if so, notify suppliers to put appropriate measures in place
- Sub-contractors should contact customers to see if the reverse charge applies and confirm whether the customer is the end user or intermediary supplier.

Businesses within the industry should make sure that they are ready for the introduction of the reverse charge on 1 October 2020. If you are unsure what is needed, then you should obtain full advice from your accountant or a VAT expert.

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## Will you need to be licensed to be a builder?

A task force has recently been set up to look at whether a form of mandatory licensing for the construction industry should be brought into effect. This followed a report in July 2018 which suggested that licensing would improve quality and increase consumer confidence. The Federation of Master Builders (FMB) stated that the licensing is needed as it is said that one third of homeowners are put off doing major home improvements where a builder is required because they fear hiring an unreputable builder. In turn the UK economy could be missing out on billions of pounds' worth of construction activity. The FMB also reported that 77% of small and medium sized (SME) construction firms support the introduction of licensing to protect consumers and hinder rogue builders. In June of this year, the task force, supported by a range of leading industry bodies and chaired by Liz Peace, former chief executive of the British Property Federation, was appointed to try to persuade the Government to introduce a new Act of Parliament to make it mandatory to have a licence to be able to trade in the construction industry. We will keep you informed of any developments and whether any Act is put forward by the Government.

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The Working Time Regulations say that all workers in the UK are entitled to 5.6 weeks' leave each year and UNISON, representing the employee, argued that the teacher was entitled to the full 5.6 weeks' holiday pay.

The Court of Appeal held that any employee who is under a permanent contract but who only works part of the year should receive the same holiday entitlement as an individual who works all year round, even though they would receive a higher rate of holiday pay.

The Court agreed that a person who works part of the week could be paid pro-rata holiday pay but said there was

no legal basis for applying a pro-rata holiday entitlement to someone who works part of the year. The Court said holiday pay should be calculated as set out in the Employment Rights Act, which has prescribed methods depending on whether someone works set hours or an irregular work pattern.

The judgement potentially affects any employee or worker who has a permanent contract and is employed throughout the year but only works part of that year, or workers who work irregular hours where holiday pay has been calculated using the 12.07% (or similar) multiplier.

This case is being appealed so it is possible the decision will be overturned. In the meantime, it would be wise to keep it in mind and consider the drawbacks.

If you require further advice or guidance on this subject, please contact me or another member of our specialist Employment Law Team.

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# Is the supply and delivery of concrete a construction operation?

In a recent High Court case, this question was asked in respect of the enforcement of an Adjudicator's decision. Only contracts that fall within the definition of "construction operations" fall within the Construction Act and therefore can rely on the Act for interim payments and adjudication.



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In this case, it had been alleged that the concrete supplied was defective. The contractor had referred the dispute to adjudication and had succeeded in its claim against the supplier and was awarded damages. It sought to enforce the adjudication award through the High Court.

The supplier had supplied the concrete and poured it in the place requested by the contractor. However, it had not carried out any other work to the concrete after the pour. Enforcement of the adjudication award was opposed on the grounds that it was simply the supply of concrete and therefore it did not fall within the definition of "construction operations". It was held in the High Court that they were right. The fact that it was poured into the

place that it was to be used did not make it more than a supply of concrete and therefore it was excluded. The adjudication award was not enforced.

This situation can therefore be added to the long list of other operations that are not included within the definition and, as a result, cannot rely upon the Construction Act.

If you require advice on construction contracts, adjudication or enforcement of an Adjudicator's award, please contact me.

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