



## VAT and Construction Contracts

## BRIEFING

HM Revenue & Customs (HMRC) have released some draft revised guidance giving advance warning of some policy changes. In particular, these will affect 'design and build' contracts and authenticated receipts.

### Design and build

HMRC have historically accepted that professional services supplied by a building contractor, along with building work, followed the same VAT liability as the work itself. This allowed a VAT saving on, for example, surveyors' and architects' services in connection with the construction of housing. Many organisations have established a 'design and build' subsidiary in order to take advantage of this.

HMRC have concluded that this arrangement is ineffective and that professional services remain standard-rated in these cases. Where relevant, this might be expected to increase construction costs by something like 2%.

This is unlikely to be a major concern for house builders who will be selling the completed units or granting long leases. However, it will be an issue for those granting short leases, notably housing associations. It is also a concern for sectors such as student accommodation and nursing homes as well as for some charities. In these cases however, it may be possible to deal with the matter by restructuring transactions.

This change will not be formally announced for some months and HMRC have indicated that it will

only apply from a forward date. Several bodies are currently co-operating on lobbying over the proposals and their implementation.

### Authenticated receipts

Authenticated receipts, rather than VAT invoices, are often used in construction contracts. HMRC currently accept that the employer can recover the VAT as soon as it has paid the contractor, without waiting for the authenticated receipt.

The draft guidance indicates a change of policy, saying that the employer can only recover the VAT once it actually has the authenticated receipt. Any delay on the contractor's part will therefore create a cashflow cost for the employer. Again, this will not be formally announced until later in the year and it seems unlikely that HMRC will seek to apply it retrospectively.

This is an issue for anyone engaging a contractor for works that are subject to VAT and using authenticated receipts. In negotiating contracts, you may wish either to consider the use of VAT invoices, where this problem does not arise, or to put a heavier onus on the contractor to issue authenticated receipts promptly.

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Following discussions over the last couple of days:

- HMRC have confirmed that they are not proceeding with the change of policy on authenticated receipts.
- HMRC are reconsidering the position on 'design and build'.