

# Construction Industry Scheme

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The logo for the Accounting Association of Teachers (AAT) is displayed in a green, lowercase, sans-serif font. The letters 'a', 'a', and 't' are connected, with the second 'a' being slightly larger than the first. The 't' has a horizontal bar that extends to the right.

# Construction Industry Scheme Agenda

- The basics
  - Who is affected, what is construction?
- Status
- Registration
- Verification
- Payments
- Returns
- Payment of deductions
- Recovery of deductions suffered
- Offences and penalties
- Systems
- Miscellaneous issues

# Construction Industry Scheme

## The Basics

- Set out rules on how payments to subcontractors must be processed
- All payments must take account of subcontractors tax
- May require contractor to make a deduction
- Tax is calculated after the reduction of the cost of materials and other items.

# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Requirement to be registered with HMRC
- Both contractors and sub-contractors must be registered
- All types and forms of business are affected
  - Sole traders
  - Partnerships
  - Companies
  - LLP's
  - Agencies and bureaux
  - Developers
  - “Deemed” contractors
  - Overseas businesses



# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- “Deemed” contractors
  - The £1m a year average rule
- Overseas businesses
  - Construction in the UK or UK territorial waters



# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Verification
  - Contractor duty
  - HMRC's decision
  - Determines rate of deduction, if any
- Existing sub contractors
  - Won't need verification
  - Depends on timescales



# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Payments
  - Contractor pays in accordance with HMRC determination
  - Pay heed to sub contractors tax deduction rate
  - Tax deducted must be paid across to HMRC
  - Returns required and statements to sub contractor
  - Payment records
  - Monthly returns irrespective of payment schedule
  - Monthly returns even if no payments made!



# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Returns
  - Monthly returns
  - No mandation on electronic filing
  - Includes;
    - Sub contractors details
    - Payments made
    - Deductions made
    - Declaration that verification has taken place
    - Declaration on the status of the sub contractor!





# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Penalties
  - Failure to submit returns
  - Late returns
  - Incorrect returns
    - Genuine error and deliberate falsehood treated the same
  - Failure to keep records



# Construction Industry Scheme

## The Basics

### **Rules on how payments to subcontractors must be processed**

- Compliance
  - Routine reviews
  - Business records checks
  - Sub contractor complaints
  - Contractor complaints
  - Access to records
  - Keep three closed years plus existing



# Construction Industry Scheme Construction

## **What is construction?**

- Obvious construction work
- Demolition and site preparation
- Repairs and refurbishment
- Decoration
- Landscaping
- Mixed work

# Construction Industry Scheme

## The Basics

### **What isn't construction?**

- Own property
- Work within a group
- Low value work
- Charities and schools
  - But be careful over definition
  - Maintained and voluntary aided schools only
- Services for workers
- Professional and miscellaneous work



# Construction Industry Scheme Status

## Status?

- Definition
  - Employed or self employed?
- Rules and tests
  - Control test
  - Economic reality
  - Mutual obligation
  - Equipment and materials

# Construction Industry Scheme Status

## Status?

- Return includes declaration that the sub contractors status has been checked
- Requirement to know what this means
  - If sub contractor, they are CIS
    - Make the normal enquiries
    - Carry out verification
    - Make payments
    - Make deductions in accordance with HMRC requirements
    - Issue statements
    - Complete the return
  - If employee –
    - Employment contract
    - Payroll
    - PAYE requirements
    - No CIS

# Construction Industry Scheme Status

## Status?

- Access to expertise on status
  - Will the contractor know the difference?
  - Do you know the difference?
  - Access to contracts which meet requirements
- Checklist perhaps
  - No checklist is fool proof
  - Itemise the key indicators
  - Brief summary of arrangements which comply

# Construction Industry Scheme Status

## Status?

- Rules and tests
  - Hall v Lorimer 1974
  - Control tests
    - Who draws up contract?
    - Who decides start and finish, and why?
    - Who decides working times?
    - Hourly, daily, weekly, monthly pay rates?
    - Invoicing and payment



# Construction Industry Scheme Status

## Status?

- Rules and tests
  - Economic reality
    - Is it a real business?
    - If limited, is there an entry on companies house?
    - If sole trader what evidence that business exists?
    - Any alternative clients?
    - Who puts right unsatisfactory work?

# Construction Industry Scheme Status

## Status?

- Rules and tests
  - Mutuality of obligation
    - What are the expectations of both parties?
    - Is the requirement for the work, or for the person?
    - Are there substitution clauses?



# Construction Industry Scheme Status

## Status?

- Rules and tests
  - Equipment and materials
    - Who supplies the equipment needed?
    - If contractor, what are the reasons for this?
    - Can the sub contractor supplied materials?
    - If not, why not?

# Construction Industry Scheme Status

## Status?

- Rules and tests
  - HMRC Employment status indicator (ESI) tool
    - Optional test for contractor to use
    - Often used as a general guide only
    - Save each page of questions, plus decision, all with same reference number for it to be binding
    - Otherwise, or if answers are not accurate, decision is not binding
    - <https://esi2calculator.hmrc.gov.uk/esi/app/index.html>
    - Alternative is to call the CIS Helpline, 0845 366 7899

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Contractor:
  - HMRC may treat them as a contractor even if they disagree
  - Use new employer process
  - Go to [www.hmrc.gov.uk/online/new.htm](http://www.hmrc.gov.uk/online/new.htm)
  - Non UK based businesses call +44 151 210 2222
  - Make sure the PAYE scheme is not set up unless it is needed
  - Indicate if sub contractors are going to be engaged

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor:
  - May be treated as a sub-contractor even if they disagree
  - No online process
  - Call CIS Helpline on 0845 366 7899
  - May need to be a contractor as well, if additional sub-contracting goes on
  - Indicate if sub contractors are going to be engaged
  - Registration is critical to being “verified” by the contractor
  - No registration, no payments!

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor:
  - HMRC will classify the sub-contractor
  - Three options:
    - Gross payment
    - Payment under standard deduction – 20%
    - Payment under higher deduction – 30%
  - Classification depends on sub-contractors relationship with HMRC

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor:
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    - Gross payment
    - Payment under standard deduction – 20%
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  - Classification depends on sub-contractors relationship with HMRC



# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor: Test (1)
  - Gross payment tests
  - If business does construction work in the UK
    - Or provides labour for construction work
  - Is run largely through a bank account
    - No definition of “largely”
    - No requirement for it to be a UK bank account!

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor: Test (2)
  - Turnover tests
    - £30,000 of construction work in the previous 12 months for a sole trader
    - £30,000 of construction work for each partner in a partnership, subject to at least £200,000 for the partnership as a whole
    - £30,000 for each director of a company, subject to £200,000 for the company as a whole
    - If a closed company £30,000 for each director

# Construction Industry Scheme Registration

## Registration

- Contractors and sub-contractors need to be registered
- Sub - Contractor: Test (3)
  - Compliance tests
    - Tax affairs up to date
    - Includes self assessment and corporation tax returns
    - Includes all payments due
    - Covers sole trader, all partners and directors
    - Subject to scheduled review, Tax Treatment Qualification Test
    - Subject to some easements in respect of returns and payments
    - Doesn't have to be perfect!

# Construction Industry Scheme Verification

## Verification

- Contractors need to verify the sub contractor
- Preferably before payment
- Not always necessary:
  - New sub contractors verified always
  - After considering the status rules
  - Ignore sub-contractor paid in last tax year, or
  - In one of the two tax years prior

# Construction Industry Scheme Verification

## Verification

- No mandation on electronic verification
- May be system generated
- Use:
  - HMRC's on-line service
  - HMRC's CIS helpline on 0845 366 7899
  - Use EDI if the company is big enough and has the right software
  - Other third party software



# Construction Industry Scheme Verification

## Verification

- Contractor needs own details
- Full details of sub-contractor:
  - Name, partnership name or company name
  - UTR
  - Partners name/s
  - National insurance numbers of all parties in the business
  - Company registration numbers
  - Confirmation of contractual relationship

# Construction Industry Scheme Verification

## Verification

- HMRC will check:
  - Sub –contractor exists on the tax record
  - Information matches with their own
  - Check compliance rating of sub-contractor
- Issues verification reference number
- Different format if HMRC has difficulty verifying them
- Confirms payment rules:
  - Gross payment
  - Standard deduction, or
  - Higher rate deduction

# Construction Industry Scheme Verification

## Verification

- Sub-contractor changes name or deduction status
  - Verify the sub-contractor again
  - Use new name, if that has changed
  - If HMRC agrees with name change it will confirm verification
  - If deduction rate has changed, HMRC will verify at the new rate
  - It is sub-contractors responsibility to inform the contractor
  - When it does so, contractor is obliged to check



# Construction Industry Scheme Payment

## Payment

- Sub-contractor submits invoices in the normal manner
- Invoices need to be itemised:
  - Labour charge
  - Materials brought in
  - Consumables
  - Fuel or travelling charges
  - Plant hire
  - VAT
- Contractor cannot make assumptions about these

# Construction Industry Scheme Payment

## Payment

- Deduction, if any, applied as instructed by HMRC
- After allowing for the non labour charges
  - Materials brought in
  - Consumables
  - Fuel or travelling charges
  - Plant hire
  - VAT
- Not itemised – it doesn't exist!
- Deduction, if any, then applies to total invoice

# Construction Industry Scheme Payment

## Payment

- Pay in the manner agreed
- Payment terms ought to be in the contract
- Late payment of commercial debt regulations may apply
- Payment may be made to a third party
- Not contractors problem, payment is made to whoever it is agreed
- Written statement must be given whenever a payment, from which a deduction is taken, is made by the contractor

# Construction Industry Scheme Returns

## Returns

- Returns are submitted monthly
- Nil returns are required
- Make the return:
  - HMRC online service
  - Electronically using EDI/software
  - By post!
- Nil returns can be notified to the CIS helpline

# Construction Industry Scheme Returns

## Returns

- Set up a period of inactivity if no payments will be made for up to six months
- Inactivity can only be set up if all returns are up to date
- Inform the CIS helpline immediately a payment is needed within the period of inactivity
- Period of inactivity ends as soon as this return is received



# Construction Industry Scheme Returns

## Returns

- No mandation on electronic returns
- It is recommended
- Must have access to CIS online services, either as contractor or agent
- Large contractors may be using EDI
- Availability of paper returns ends upon signing up for online

# Construction Industry Scheme Returns

## Returns

- Check any pre-populated fields
- Business details are correct
- Sub-contractor business details are correct
- Add new sub-contractors details, including verification reference number
- Enter gross amount demanded
- Enter the amount of the deduction withheld
- Complete employment status question, question 6
- Complete verification statement
- Complete “wet” or electronic signature requirements

# Construction Industry Scheme Returns

## Returns

- Submit or send the form to HMRC
- Must arrive no later than 19<sup>th</sup> of month following month of activity
- Automatic penalties apply to late returns
- Submit return even if there issues you are discussing with HMRC
- Make sure it is signed (paper) if not it comes back
  - Original submission date is not recorded
  - If signed copy arrives after deadline it is late
- Contractor or agent is responsible for postal delays, not HMRC



# Construction Industry Scheme Returns

## Returns

- Mistakes happen!
- Mistakes on all returns are best sorted before submission
- Paper returns, put a line through it and enter the correct data
- Electronic returns are more difficult, but
- May be able to sort it with the sub-contractor
- Otherwise call the CIS helpline
  - Essential if wrong sub-contractor entered
  - Incorrect business name
  - Incorrect month or year
  - Transposed figures

# Construction Industry Scheme Returns

## Returns

- Mistakes happen!
- Underpayments sorted with sub-contractor directly
- Overpayments are more difficult but return must reflect what happened
- Subsequent returns will show the correction
- If sub-contractor fails to repay the overpayment then no correction to return is made
- HMRC has full list of errors and correction guidance on the website
- Go to <http://www.hmrc.gov.uk/cis/returns/correct-return.htm>



# Construction Industry Scheme Returns

## Returns

- Mistakes happen!
- Errors of significance or frequent errors may result in compliance review
- If HMRC suspects deliberate error –
- Could threaten contractors status!

# Construction Industry Scheme Payment

## Payment of deductions

- Payments are due on same schedule as PAYE
- Even if scheme is CIS only
- Electronic payment due 22<sup>nd</sup> of month following month of deduction
- All other payment methods due 19<sup>th</sup>
- Few employers permitted to pay 19<sup>th</sup>
- Cheques must clear by 19<sup>th</sup> to be accepted
- Faster payment service can be used
- CHAPS is also accepted

# Construction Industry Scheme Payment

## Payment of deductions

- If contractor already has a PAYE scheme:
  - CIS deductions are added to the other PAYE payments due
  - If this is still less than £6,000 a year then payment is quarterly
  - Anything more and it is monthly PAYE/CIS payments

# Construction Industry Scheme Payment

## Payment of deductions

- If contractor does not have and doesn't need a PAYE scheme:
  - Make sure HMRC knows the scheme is for CIS only
  - HMRC will start a dedicated scheme
  - If they are not told:
    - Contractor will end up with a PAYE scheme they don't need
    - HMRC will expect PAYE returns under RTI
    - It will take considerable time to sort it out

# Construction Industry Scheme Payment

## Payment of deductions

- If contractor does not have and doesn't need a PAYE scheme:
  - Make sure HMRC knows the scheme is for CIS only
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    - It will take considerable time to sort it out

# Construction Industry Scheme Recovery

## Recovery of deductions suffered

- Sole trader
  - More likely to be suffering deductions
  - All taxation is via the self assessment system
  - All income recorded as gross
  - All tax and Class 4 NIC worked out on profit calculation
  - Aggregate value of statements on file = CIS suffered
  - Not the total of deductions
  - Sub-contractors job to obtain and secure the statements
  - HMRC will not issue confirmation – well not any more!
  - CIS suffered is deducted from the tax and C4 figure
  - Balance is paid by due date or due for repayment



# Construction Industry Scheme Recovery

## Recovery of deductions suffered

- Sole trader
  - If business runs a PAYE scheme
  - CIS suffered may be recoverable earlier
  - Any CIS suffered, and for which there is a statement, may be recovered from the PAYE payment due
  - Can be either monthly or quarterly
  - All aspects of PAYE, tax, NIC and CIS payments due, available for recovery
  - Generally only allowed down to nil
  - Any further CIS suffered due must be carried forward
  - Where CIS is less than PAYE balance of PAYE must be paid
  - Not permitted to hold back PAYE lieu of future CIS to be suffered

# Construction Industry Scheme Recovery

## Recovery of deductions suffered

- Limited liability company
  - Most likely to be receiving gross payment
  - Your experience may be different, but
  - Easier to satisfy the business tests as a company
  - Again, recovery allowed against PAYE payments due
  - CIS suffered entered against the tax, NIC and CIS due
  - Only allowed down to nil PAYE due
  - Remaining CIS must be carried forward
  - Any PAYE balance due must be paid over in time
  - Any CIS outstanding at end of the tax year must be reclaimed in writing
  - Can wait until CT600 is submitted

# Construction Industry Scheme Recovery

## **Recovery of deductions suffered**

- Limited liability company
  - Written claim to Benton Park View
  - Must be done after final FPS and EPS returns
  - Must include a request for payment, even if it is obvious
  - Alternative is to fast track the CT600 and account for it then
  - Comments on repayments later



# Construction Industry Scheme Compliance

## Offences and penalties

- Failing to assess status
  - Could find payments assessed for PAYE instead
  - HMRC not obliged to take account of self employed tax paid
  - Penalties and interest can double the assessment
  - Getting this wrong is not an option
  - Information on tax status is often shared with employment bodies

# Construction Industry Scheme Compliance

## Offences and penalties

- Failing to submit returns
  - £100 for late return
  - £200 after two months
  - After 6 months it is greater of 5% of CIS due and £300
  - After 12 months a further greater of 5% of CIS due and £300
  - Continue to accrue
  - Very negotiable, surprisingly
  - HMRC very lenient with sole traders and single director companies
  - Often remit all but the initial penalty
  - At least that's my experience!

# Construction Industry Scheme Compliance

## Offences and penalties

- Incorrect returns
  - Information withheld deliberately, but not concealed;
    - greater of 70% of CIS due and £1,500
  - Deliberate and concealed;
    - Greater of 100% of CIS due and £3,000
  - Gross payment CIS
    - £1,500 or £3,000 depending on the level of concealment
    - Usually after 12 months late returns



# Construction Industry Scheme Systems

## **Systems**

- Most have CIS functionality
- Different degrees of performance
- Some will carry out on line verification
- Others merely record the deduction suffered for recovery
- Decision must be based on needs and budget



# Construction Industry Scheme

## Miscellaneous matters

- Contractor and sub-contractor together
  - Principle is straightforward:
    - Business operates both sets of rules
    - Maintains position as a sub-contractor in their own right
    - Also verifies, pays and makes deductions from other sub-contractors
    - Pays HMRC, but uses this to recover CIS suffered
  - In practice though, not so straightforward
    - They just need to keep the two sides separate
    - And understand both sets of rules



# Construction Industry Scheme

## Miscellaneous matters

- Recovery of CIS suffered
  - Principle is straightforward:
    - Once again, but not so in practice
    - Main issue is where CIS suffered is recovered at year end
    - If there is little income tax and Class 4, or Corporation Tax to pay
    - Can be large sums of CIS suffered to recover
    - HMRC not quick at refunding large sums
    - AAT members often more successful because of HMRC recognition
    - Still problems to face



# Construction Industry Scheme

## Miscellaneous matters

- Recovery of CIS suffered
  - Principle is straightforward:
    - Large refunds go through “security checks”!
    - Some of these seem legitimate
      - Any irregularity in accounts submitted?
      - Any other taxes owed?
      - Any previous irregularities investigated?
      - Any enquiries opened in the past?
    - Some seem to be simply delaying tactics!

# Construction Industry Scheme

## Miscellaneous matters

- Recovery of CIS suffered
  - Agents need to step in if the “security checks” are protracted
  - Allow one round of checks
  - Obtain explanation for a second round, but may have to accept
  - At the third set of checks- it’s time to question the delay
  - Ask for matter to be reviewed by Officer in charge
  - Ask for detailed explanation for continued delay
  - No choice but to keep pressing for repayment of reasons.



# Construction Industry Scheme

**Thank you for listening  
and taking part**

**Questions and debate**