

Construction Industry Scheme

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The logo for AAT (Association of Accounting Technicians) is displayed in a green, lowercase, sans-serif font. The letters 'a', 'a', and 't' are connected, and the 't' has a horizontal bar that extends to the right.

Construction Industry Scheme Agenda

- The basics
 - Who is affected, what is construction, who is who?
- 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

- Who is who?
 - Contractor
 - Primary contract

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
 - 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

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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 19th 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 22nd of month following month of deduction
- All other payment methods due 19th
- Few employers permitted to pay 19th
- Cheques must clear by 19th 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
 - 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 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