Spring Budget 2020: Tackling Construction Industry Scheme Abuse – a consultation

Employment Tax

29 April 2020

HMRC are consulting on changes to construction industry scheme deductions claimed against PAYE, deemed contractors rules, deductions for materials and expansion to the scope of the false registration penalty, as well as asking for ideas to tackle fraud in construction supply chains.

In Spring Budget 2020, the Chancellor announced that: 'The government will legislate to prevent non-compliant businesses from using the construction industry scheme to claim tax refunds to which they are not entitled. The government is also publishing a consultation which introduces options on how to promote supply chain due diligence.' A week later, on 19 March, the consultation document was published (https://tinyurl.com/vkkhg6g).

The CIOT will be responding to this consultation later this month and would welcome views from members on the proposed changes to the rules to prevent tax loss from the construction industry scheme (CIS).

CIS deductions claimed against PAYE

The consultation document notes (at para 3.2) that: 'HMRC is aware that CIS deductions suffered are being claimed:

- by employers not working in construction;
- by sub-contractor employers that are not companies; and
- that exceed the sums recorded as having been withheld for a particular sub-contractor on contractor returns.'

The government has therefore decided that a ‘new provision will be introduced from April 2021 to allow HMRC to correct the CIS deductions figure claimed on the sub-contractor employer’s EPS return where there is no satisfactory evidence to support it.’

It seems to us that these claims are potentially fraudulent, and it is unclear why existing powers are not sufficient to tackle such abuse. We are concerned that HMRC might use the new power to deny valid claims where the subcontractor has not received a CIS deduction certificate from the contractor but has other evidence of deduction. We are also concerned that HMRC will only give subcontractors 14 days to provide evidence of CIS deductions, when we would expect a minimum of 30 days to be a reasonable timescale.

Deemed contractors

The consultation document also notes (at para 4.1) that: ‘[T]he current rule to determine whether a business undertaking construction activities constitutes a “deemed contractor” is open to abuse.’ The government has therefore decided to ‘simplify the current rule to ensure businesses spending above a certain amount on construction operations have to operate the CIS when the threshold is reached.’

The proposed solution is that construction spending will be calculated on a rolling basis. When the cumulative spend on construction operations reaches the prescribed threshold (£3 million) the business has to register for CIS as a contractor (if not already registered) and begin operating CIS on their next payment made to a sub-contractor for construction operations undertaken.

Our concern with this change is that the requirement to operate CIS from the next payment made to a sub-contractor for construction operations undertaken via the relevant contract is not practical. In our view, the current rule that requires CIS to operate from the start of the next period of account provides deemed contractors with the time needed to put relevant processes in place.

Deductions for materials

The consultation document (at para 4.11) indicates that the current rule for deductions for materials is ‘open to interpretation’. The government has therefore decided that ‘a materials deduction for CIS purposes can be made only from a payment under a construction contract where a subcontractor has directly

purchased materials used or to be used in fulfilling that contract’.

This means that no deduction will be available for materials bought by a sub-contractor further down a supply chain. Our concern with this proposal is that failing to take into account all materials purchased by all sub-contractors in the supply chain may mean that a sub-contractor further up the chain suffers a CIS deduction on the full invoiced sum and will not then have sufficient funds to pay the sub-contractor with whom they contract and who is entitled to a deduction for materials they have bought.

Expanding the scope of the false registration penalty

The last of the decided changes is to the penalty for providing false information when registering for CIS where the government has decided the penalty will be applicable to a ‘relevant person’, including an agent, director, company secretary or anyone else HMRC believes is in a position to exercise control and direction over the business/person making the application.

It is intended that all of the above changes are to take effect from April 2021.

Supply chain proposals

The final chapter in the consultation document is a consultation on ‘measures designed to allow HMRC to better assure construction supply chains and to encourage supply chain due diligence will help combat this fraud’.

The consultation document discusses the following suggestions:

- Site numbers: CIS payments and deductions reported by contractors to HMRC on monthly returns would include a site number to help HMRC detect suspect entities and non-compliance in construction supply chains.
- Reporting supply chains: Main contractors would have to notify HMRC of their supply chain for a particular project or contract.
- Securing losses due to fraud in the supply chain: HMRC would tell entities in a VAT supply chain about any fraud it becomes aware of. And failure by the other parties in the chain to remove the perpetrator could leave the main contractor responsible for tax losses due to fraud lower down the supply chain!

It seems to us that these suggestions are a disproportionate response to HMRC’s concerns with fraud in construction supply chains and we would welcome other

ideas from members that could better help HMRC (and contractors) to combat fraud in construction supply chains.