Tackling Construction Industry Scheme abuse: CIOT response

Employment Tax

01 October 2020

The CIOT is concerned that changes being made to the Construction Industry Scheme have not been thought through and are not properly being consulted on but is supportive of further consultation aimed at preventing fraud in construction supply chains.

The CIOT has responded to the consultation document on 'Tackling Construction Industry Scheme Abuse' published on 19 March 2020 and expressed its disappointment that the government has chosen not to consult on many of the proposed changes to the Construction Industry Scheme (CIS).

The consultation concerned ways that HMRC might tackle abuse of CIS. It sets out various suggestions to prevent tax loss within construction supply chains and invites feedback on the same. It is intended to build on the VAT reverse charge for the construction industry, which is due to come into effect on 1 March 2021, and off-payroll working rules for the private sector which take effect from 6 April 2021.

The document also explains a new power for HMRC to adjust the CIS deduction amounts claimed by limited company sub-contractors that are employers via their PAYE Real Time Information (RTI) Employer Payment Summary (EPS); and seeks views on the implementation of this new power but not the policy rationale for this change. In addition, the document sets out changes to existing CIS rules aimed at clarifying their meaning or expanding their scope, which are not being consulted on, and seeks views on other changes that could be made to the CIS rules to tackle abuse.

Correcting the CIS deductions claimed on an EPS

This concerns offset claims by limited company sub-contractor employers to offset CIS deductions suffered on payments from contractors against their in-year

employer liabilities. The proposed approach is for HMRC to be empowered to ‘correct the CIS deduction figure an employer has recorded on an EPS; and to prevent the employer from setting further CIS deductions against their employer liabilities for the rest of the same tax year where the correction power has been used’. This seemed to us a somewhat muted response to what appeared to be characterised as a deliberate intent to misrepresent the amount of CIS deductions that a sub-contractor has suffered. Of course, in reality, over-claims for CIS deduction offsets can arise in a range of circumstances from genuine mistakes, to careless claims, to deliberate attempts to defraud. Hence, we thought the proposed ‘one size fits all’ approach is not the right solution and, instead, that the appropriate compliance response from HMRC should be tailored according to the underlying reason for the incorrect claim.

We also thought that the proposed 14 day period for the employer to provide evidence of CIS deductions suffered or to correct their return is too short and suggested that it should be at least 21 days and, preferably, 30 days. In addition, we suggested that HMRC should tailor their responses to sub-contractor employers so that the response is calibrated and proportionate to the reason why the over-claim arises.

Deemed contractors and the trigger for CIS registration

This concerns the current rule to determine whether/when a business undertaking ‘construction operations’ is a ‘deemed contractor’. The consultation document indicates that the rule is open to abuse without explaining what precisely this abuse is and why a new definition based on rolling spend on a construction contract is to be preferred. In our view, moving away from