Construction Industry Scheme proposed amendments

Employment Tax



19 January 2024

The CIOT has commented on draft regulations to ensure that minor VAT compliance failures will not result in gross payment status refusal or removal, and to remove most payments made by landlords to tenants from the scope of the Construction Industry Scheme.

The CIOT has responded to a consultation on draft regulations amending the Income Tax (Construction Industry Scheme (CIS)) Regulations 2005 ('the 2005 Regulations') to:

- ensure that minor VAT compliance failures will not result in gross payment status refusal or removal; and
- remove most payments made by landlords to tenants from the scope of the CIS.

Exception for minor VAT compliance failures

The regulations complete the changes being made to the rules relating to gross payment status and compliance failures that are included in the Finance Bill 2023-24.

The Finance Bill expands the grounds for immediate removal of gross payment status for cases of fraud involving VAT, corporation tax self-assessment, income tax self-assessment and PAYE. The Bill also adds compliance with VAT obligations to the gross payment status compliance test, which must be passed by subcontractors to obtain and keep gross payment status.

The 2005 regulations provide a limited exception to the gross payment status compliance test requirements and this exception will be extended to include: the submission of VAT returns; and the payment of VAT within prescribed time limits.

Exemption for landlord to tenant payments

The regulations will revoke regulation 20 (reverse premiums) of the 2005 Regulations and insert a new regulation 24ZA (payments made by landlord to tenant) to exempt certain payments made by a landlord to a tenant from the definition of a ‘contract payment’ in FA 2004 s 60.

The CIOT has for a number of years recommended removing payments from a landlord to a tenant from the scope of the CIS, where the tenant engages a subcontractor to complete construction work on the property occupied by the tenant. We therefore welcome the policy intent of these amendments. We did, however, have some concerns regarding the wording of the new regulation.

In particular, we recommended relaxing the requirement for construction obligations to relate exclusively to parts of the property that the tenant occupies or will occupy under the lease agreement, on the basis that there will be cases where the works carried out by the tenant will, for practical reasons, extend beyond the demise of the

tenant’s premises.

We also considered that the omission of a definition of a lease agreement could cause difficulties and suggested adding one to make clear that it includes the lease, an agreement for lease, a side letter, an agreement for variation or extension of a lease and a licence for alterations.

While the draft regulations do include a definition of a landlord we suggested omitting the proposed definition, as we thought it would be better if the term had its natural meaning. This said, we felt that the landlord should include a superior landlord, as well as the direct landlord. We also welcomed the confirmation that the tenant includes a sub-tenant.

Lastly, we welcomed the confirmation that the new rules on landlord/tenant payments will apply to payments falling within scope of the CIS that are made on or after the commencement date, rather than leases/agreements for lease, etc. entered into on or after that date.

The full response can be found here: www.tax.org.uk/ref1262

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