Construction Industry Scheme: current issues

Large Corporate | Employment Tax | Property Tax

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Construction Industry Scheme issues affecting commercial transactions are the subject of two recent submissions by the CIOT. These submissions outline the problems, the commercial implications and suggest solutions.

Development finance

On 5 May and 4 June 2026, HMRC made changes to the Construction Industry Scheme Reform Manual at CISR140201. The changes led to concerns that HMRC may have changed their approach and that some development financing arrangements might be regarded as falling within the Construction Industry Scheme (CIS) by virtue of standard lender protections in respect of the borrower’s development works.

In response to immediate concerns raised by the CIOT, HMRC confirmed that:

‘HMRC’s position in relation to financing arrangements has not changed. While the CISR manual does not explicitly address lending arrangements, the scheme applies only where there is a contract relating to construction operations. Accordingly, pure financing arrangements (including lending and grant funding) fall outside the scope of CIS, unless they amount in substance to the procurement of construction operations by the funder.’

Significant concerns were expressed by advisers and participants in the development sector about the potentially negative effect on the cost and availability of development finance, with consequential impacts on housing supply, if standard financing arrangements were to be treated as falling within CIS.

Given these concerns, we wrote to HMRC to request clarification on (and ideally further amendment to) the updated HMRC guidance, and their views on market standard development facility agreements, particularly those based on standard finance facilities.

We said we would welcome:

- confirmation of the principle that standard development finance facilities (including those based on standard finance facilities, with ordinary lender controls) are not regarded as construction contracts for CIS purposes;
- confirmation that lenders will not be treated as contractors or deemed contractors merely because they provide such finance; and
- amendment of CISR14020 (or a new stand-alone page) to set this out, ideally with illustrative examples distinguishing genuine development finance from more contrived arrangements that are, in substance, contracts for construction operations.

The issue was further discussed at HMRC’s Construction Forum (see tinyurl.com/53aawyea) on 18 June, the minutes for which will be published. We await HMRC’s response.

Landlord payments for tenant works: Regulation 20A

Regulation 20A of the Income Tax (Construction Industry Scheme) Regulations 2005 came into effect on 6 April 2024. The government’s policy intent was stated as being ‘to alleviate certain administrative burdens by removing most payments made by landlords to tenants from the scope of the CIS'.

Unfortunately, members' experience suggests this policy intent is not being achieved. Representative members of HMRC's Construction Forum have provided evidence and anonymised case studies demonstrating the difficulties of applying HMRC's guidance at CISR14048 and CISR14049, particularly on conditions (1)(e) and (1)(d) of Regulation 20A.

The consequence is that landlords are still making landlord contributions subject to deductions of 20% or 30%, notwithstanding the policy objective of Regulation 20A. Members have reported that many prospective and existing tenants receiving landlord contributions for fit-out works are in the hospitality and retail sectors or are start-ups. These are often cash-limited businesses that rely on the landlord's contributions to spread the cost of fitting out their premises and do not have sufficient payroll costs against which to offset the CIS deductions.

Our submission also evaluates possible solutions, including complete exemption and more limited exclusions or safe harbours. Our preference is for a full exemption, potentially subject to a targeted anti-avoidance rule, if HMRC perceive or have evidence of avoidance.

A presentation on the commercial context and background to this issue was given at the 18 June Construction Forum. We will continue to actively engage with HMRC on this issue via the Construction Forum.

The full CIOT submission on development finance is available here: www.tax.org.uk/ref1696

The full CIOT submission on Regulation 20A is available here: www.tax.org.uk/ref1644

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