

Why CIS is not just for construction firms

David Williams-Richardson and Lee Knight explain the wider implications of the construction industry scheme

While the construction industry scheme (CIS) is generally associated with businesses whose primary trade is construction, a significant number of non-construction businesses in the UK have to be registered and operate the scheme each year by virtue of their spend on construction operations. These businesses are referred to as 'deemed contractors'.

New legislation from April 2021 has changed the criteria that determines when non-construction businesses need to register and start operating the scheme. Businesses will therefore need to be aware of the changes and introduce appropriate processes to continually monitor levels of expenditure on construction.

What are the new rules?

The new rules require a rolling assessment of expenditure on construction operations and a business needs to register and start operating the scheme as a deemed contractor if, in the period of one year ending with that time, expenditure on construction operations exceeds £3m. For these purposes it is understood that expenditure on construction operations includes the cost of building materials which form part of the contract, but VAT should be excluded.

Strictly, once a business reaches the £3m threshold it is required to start operating the CIS on its next payment to a subcontractor for construction operations. This can be challenging and requires appropriate processes and procedures to be set up to facilitate: the registration itself; communication with subcontractors; verifying the CIS payment status of subcontractors; making CIS deductions and issuing payment and deduction statements where necessary; and, preparing and submitting a monthly return to HMRC.

HMRC recognises that it may take time to put all these processes and procedures in place so can agree, at its discretion, to issue a notice in writing, granting a period of grace after the threshold is exceeded to enable the deemed contractor to get ready to operate CIS. This period of grace can generally not exceed 90 days, although the legislation does permit it to be extended by HMRC at its discretion by the issue of one or more further notices.

Deregistration

Deemed contractors are able to stop operating the CIS when their expenditure on construction operations falls below £3m within the previous 12-months. Alternatively, if a business that would otherwise be a deemed contractor does not expect to have any further expenditure on construction operations, it may elect for the requirement to register as a deemed contractor to be treated as no longer being met.

Exceptions to registration

Importantly businesses brought into the CIS because they have reached the £3m threshold on construction operations do not need to apply the scheme if their expenditure relates to property exclusively used for the purposes of the business itself or, if the business is a company, that of other companies within the same group or any company of which 50% or more of the shares are owned by the company incurring the expenditure. This exception will typically cover expenditure on property such as new offices, warehouses and retail units used by the business.

The exception does not provide a blanket exemption, but instead applies to certain payments. Importantly, for these purposes, payments are not deemed to be for expenditure on property used for the purpose of the business if the property is for sale or to let or is held as an investment property.

It is therefore recommended that if a business believes that the payments in respect of property used for the business exception applies, agreement should be sought from HMRC by setting out the relevant circumstances. Where agreement is obtained, it is the responsibility of the business to ensure that the conditions for exception continue to be met.

Summary

The new CIS rules mean that any business that incurs expenditure on construction is required to put processes in place to continually assess the level of its cumulative spend on a rolling 12-month basis.

Where the threshold is reached, the business will need to contact HMRC and either:

- arrange to register as a deemed contractor;
- seek agreement that the exception for construction expenditure on property used for the business applies; or

- elect for the requirement to register as a deemed contractor to be treated as no longer being met if no further expenditure on construction operations is expected.
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