
Construction Industry Scheme (CIS)

The Revenue places great emphasis on automatic penalties for late returns, failure to provide records or payslips etc, but also a monthly emphasis on the employed/self-employed position of the subcontractors. If contractors get this wrong, once again penalties may apply.

This bulletin focuses on the main areas requiring consideration in relation to CIS.

Monthly Return

Contractors have to make a monthly return to HMRC:

- Confirming that the employment status of subcontractors has been considered.
- Confirming that the new verification process has been correctly dealt with.
- Detailing payments made to all subcontractors.
- Detailing any deductions of tax made from those payments.

The monthly return is sent electronically and will relate to each tax month (i.e running from the 6th of one month to the 5th of the next). The deadline for submission is 14 days after the end of the tax month:- 19th of the month. Even if no subcontractors have been paid during a month, contractors will still have to make a nil return to April 2015. From April 2015 this will not be necessary.

Verifying Subcontractors

Sub-contractors must give contractors their name, unique tax payer reference and national insurance number (or company registration number for the limited company) when they enter into a contract. So long as the contractor is satisfied that the subcontractor is genuinely self-employed, the 'verification' procedure must be followed.

Employed or Self-Employed?

A key part of the new regime will be that the contractor has to make a monthly declaration that they have considered the status of the subcontractors and are satisfied that none of those listed on the return are employees. HMRC has decided to back this up with a penalty of up to £3,000 if contractors negligently or deliberately provide incorrect information.

Remember that employment status is not a matter of choice. The circumstances of the engagement determine how it is treated.

The issue of the status of workers within the construction industry is not a new matter and HMRC have been making substantial efforts to re-classify as many subcontractors as possible as employees. The courts have considered many cases over the years and take into account a variety of different factors in deciding whether or not a worker is employed or self employed

There are a number of factors which must be considered and the decision as to whether somebody should be classified as employed or self-employed is not a simple one.

Clearly, HMRC would like subcontractors to be classed as employees, as this generally means that more tax and national insurance is due. However, just because the HMRC think that somebody should be re-classified does not necessarily mean that they are correct.

Verification

The contractor will have to contact HMRC to check whether to pay a subcontractor gross or net. Every subcontractor will need verifying.

The verification procedure will establish which of the following payment options apply:

- gross payment
- a standard rate deduction of 20%, which is the current rate of deduction
- a deduction made at the higher rate of 30%, if the subcontractor has not registered with HMRC or cannot provide accurate details to the contractor and HMRC cannot verify them.

HMRC will give the contractor a verification number for the subcontractors which will be matched with HMRC's own computer. The number will be the same for each subcontractor verified at any particular time. There will be special numbers for subcontractors who cannot be verified. The numbers will have to appear on contractors' monthly returns and payslips.

Clearly, these numbers are a fundamental part of the new system and contractors will have to ensure that they have a foolproof system in place for obtaining and retaining them. It will also be very important to give precise details to HMRC because, if their computer does not recognise the subcontractor, the higher rate deduction will have to be made.

A Payslip

Contractors will have to provide a monthly 'payslip' to all subcontractors paid, showing the total amount of the payments and how much tax, if any, has been deducted from those payments. The contractor will have to provide this for each tax month as a minimum. Contractors will be allowed to choose the style of the 'payslips' themselves but certain specific information will have to be provided including:

- the contractor's name
- the contractor's employer tax reference
- the tax month to which the payment relates
- the subcontractor's name, unique tax reference or specific subcontractor reference
- the gross amount of the payment
- the cost of any materials which have reduced the gross payment
- the amount of any deductions.

Penalties

The whole system is backed up by a series of penalties. These cover situations in which an incorrect monthly return is sent in negligently or fraudulently, failure to provide CIS records for HMRC to inspect and incorrect declarations about employment status. However, further penalties will be much more common on a day to day basis:

- 1 day late = £100
- 2 months late = £200
- 6 months late = £300 or 5% of the CIS deduction (whichever is higher)
- 12 months late = up to £3,000 or 100% of the CIS deduction (whichever is higher)

Clearly procedures and controls will be vital in avoiding these penalties.

Paying over the deductions

Contractors will have to pay over all deductions made from subcontractors in any given tax month by the 19th following the end of the tax month to which the deductions relate. If payment is being made electronically, the date will be the 22nd, or the next earlier banking day when the 22nd is a weekend or holiday. If the contractor is a company which itself has deductions made from its payments as a subcontractor, then the deductions made may be set against the company's liabilities for PAYE, NI and any CIS deductions it is due to pay over.

Please do not hesitate to contact us should you have any queries.

Tel: 024 7625 1333 Fax: 024 7625 1777

Email: accts@leigh-christou.co.uk



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