

The Construction Industry scheme

Background:

Under the Construction Industry scheme a Main Contractor is responsible for deducting tax on any payments made to Subcontractors.

However, some invoices will include the reimbursement of actual costs incurred by the Subcontractor, for example the hiring of equipment or provision of materials. Withholding tax under CIS is only required on the figure net of the costs actually incurred by the subcontractor.

The Issue

It is the Main Contractor's responsibility to satisfy themselves that any deductions applied in calculating the CIS tax payment are accurate.

We have seen HMRC taking a harder line in the review of any such deductions.

HMRC has the power to raise determinations where they are of the belief that excessive deductions have been applied in calculating the tax due. In order to displace any such determinations the Main Contractor would need to produce evidence or provide arguments to justify the deductions which have been applied.

Flat rate deductions, unless backed up by evidence, are unlikely to be acceptable.

Failing to justify any deductions will result in additional tax and potentially penalties being due from the Main Contractor and may result in the removal of any gross payment status that the Main Contractor may have.

This is a point that HMRC have successfully escalated to the tax tribunals in the past and something that they are becoming more bullish in challenging.

The Problem

The burden of proof is on the Main Contractor to satisfy HMRC that any expenses paid by the Subcontractor and claimed as a deduction in calculating the tax due under CIS are accurate.

The Main Contractor is not directly incurring those expenses so is reliant on the Subcontractor providing them with the required information.

Splits of payments included on invoices issued to the Main Contractor are not necessarily enough. The Main Contractor may be required to provide further evidence to show that any split in those invoices is reasonable.

Things to consider

- Bear the above in mind when engaging subcontractors.
- Subcontractor agreements could require the Subcontractors to provide evidence of any expenses incurred, at risk of having the entire payment made to them subject to withholding tax.
- Subcontractors with gross payment status will also remove the problem, as there is no requirement to account for any tax on any element of the payments made.
- Directly paying expenses of the Subcontractor could also help to avoid this problem.
- Keep any evidence collected in determining the amount of any deductions claimed.

For further information on any aspect of The Construction Industry scheme please contact your usual Ensors contact or Robert Leggett on 01473 220022 or email robert.leggett@ensors.co.uk