



Focus on

The emerging risk to gross paid subcontractors.

Under the new Construction Industry Scheme (CIS) a subcontractor who wishes to retain their gross payment status must satisfy strict new HMRC compliance criteria. Failure to do so will usually mean that gross status is withdrawn after a ninety day notice period.

- Subcontractors can expect to be reviewed for compliance at least once a year.
- The compliance criteria are well defined and strictly enforced.
- Time scale and grounds for making an appeal are minimal.
- Once gross payment status is lost, twelve months must pass before reapplication.
- The potential impact on cash flow is severe.

Under the new CIS rules HMRC are reviewing annually, on a rolling programme, the compliance performance of gross-paid subcontractors over the previous twelve months.

These are computer-generated reviews, and therefore are not limited by HMRC resources. The now infamous CIS 308 notices are issued automatically to subcontractors failing an objective computerised compliance test based upon payments and returns being made on time.





It should be noted that these obligations go far beyond making timely CIS returns and payments, and include Corporation Tax, PAYE, Directors and Partners Self Assessment.

The notice informs them that they will lose their permission to be paid gross in 90 days unless any appeal (which must be made within 30 days) is successful. This programme of reviews started in October 2007, and has already impacted seriously on the cash flow of many gross-paid subcontractors.

The Criteria

The criteria laid down by HMRC are as follows:

“To pass the compliance test, you and any business partners (or your company and each of its directors) must, during the 12 months up to the date of the application, have done all of the following:

- Completed and returned all tax returns sent to you.
- Supplied any information to do with your tax that we may have requested.

and paid by the due dates:

- All tax due from yourself or the business*.
- All your own National Insurance contributions (NICs)*.
- Any PAYE tax and NICs due from you as an employer*.
- Any deductions due from you as a contractor in the construction industry*.”

“When considering whether you have passed the compliance test, we will disregard, during the same 12 month period, any or all of the following:

- Three late submissions of the monthly return – up to 28 days late.
- Three late payments of CIS/PAYE deductions* – up to 14 days late.
- One late payment of Self Assessment tax* – up to 28 days late.
- Any employer’s end of year return made late.
- Any late payments of Corporation Tax* – up to 28 days late, including where any shortfall in the payment has incurred an interest charge but no penalty.
- Any Self Assessment return made late.

- Any failures classed as ‘minor and technical’ in relation to your obligations under the old Scheme, where these fall within the 12 month period up to your application.”

*There is a de minimus limit of £100 for (individual) late payments i.e. a monthly payment due of £99.99 CIS would be overlooked.

The new rules also mean that any payment of interest charge, penalty or surcharge of over £100 made after the due date can result in summary revocation of gross payment status.

These parameters are the same whether you are applying for gross payment status for the first time, trying to regain gross payment status after failing an earlier test, or being reviewed as an existing gross payment subcontractor. This means that any re-applications for gross status will be unsuccessful until you can demonstrate twelve months of compliance. Indeed you are not allowed to re-apply until twelve months after loss of gross status.

The above is only a summary of new CIS compliance and does not cover all of the conditions to be met to obtain gross CIS status for the first time, or the grounds under which an appeal against loss or refusal of gross payment status may be successful.

At MacIntyre Hudson we are experienced in both registering subcontractors for gross payment and making successful appeals against loss of gross status. We can assist you if you are considering applying for gross payment status. If you receive a CIS308 letter from HMRC withdrawing your gross payment status you should call your MacIntyre Hudson contact immediately to discuss whether an appeal is feasible before the thirty day time limit has passed.

Contact

If you wish to discuss anything in greater detail, please contact Andrew Snowdon on 01245 353177 or email andrew.snowdon@mhllp.co.uk

To find out more please visit www.macintyreHUDSON.co.uk

