

FOCUS ON

# Gross-paid sub contractors – the risk of loss of gross status

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 Failure to do so will usually mean that gross status is withdrawn after a ninety day notice period.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

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.

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. A loss of gross status will have a serious cash flow impact on most 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 payment not made by the due date where it is less than £100.

To the rules mean for example that any tax, interest charge, penalty or surcharge of over £100 paid 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 MHA 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 MHA MacIntyre Hudson contact immediately to discuss whether an appeal is feasible before the thirty day time limit has passed.

## Contact us

If you wish to discuss in more detail anything, about gross status or the CIS more generally, please contact:



**Chris Blundell**  
Tax Partner

**E:** [chris.blundell@mhllp.co.uk](mailto:chris.blundell@mhllp.co.uk)  
**T:** +44 (0)20 7429 4177



**Visit our website:**  
[www.macintyreHUDSON.co.uk](http://www.macintyreHUDSON.co.uk)

MHA MacIntyre Hudson is the trading name of MacIntyre Hudson LLP, a limited liability partnership, registered in England with registered number OC312313. A list of partners' names is open for inspection at its registered office, 201 Silbury Boulevard, Milton Keynes MK9 1LZ. Registered to carry on audit work in the United Kingdom and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. An independent member of MHA, a national association of UK accountancy firms. The term 'partner' or 'partners' indicates that the person (or persons) in question is (or are) a member(s) of MacIntyre Hudson LLP or an employee or consultant of its affiliated businesses with equivalent standing and qualifications. Partners and directors acting as administrators or administrative receivers contract as agents and without personal liability. Further information and links to the respective regulators and appointed individuals' qualifications can be found via our website [www.macintyreHUDSON.co.uk/information.html](http://www.macintyreHUDSON.co.uk/information.html)

MHA MacIntyre Hudson is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. MHA MacIntyre Hudson is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, MHA MacIntyre Hudson, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. Arrandco Investments Limited is the registered owner of the UK trade mark for Baker Tilly and its associated logo.