



Law Society
of Scotland

Consultation Response

Construction Industry Scheme: Proposed Amendments

9 January 2024



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to the HM Revenue & Customs consultation: *Construction Industry Scheme (CIS) proposed amendments* (the “**Consultation**”).¹ The consultation seeks technical feedback to ensure that the proposed draft regulations operate as intended, and to identify areas which need further clarification in more detailed guidance. The sub-committee has the following comments to put forward for consideration.

General Remarks

We responded to the HM Revenue & Customs consultation on Construction Industry Scheme (“**CIS**”) reform in July 2023,² and welcome the publication of the draft Income Tax (Construction Industry Scheme) (Amendment) Regulations 2024 (the “**Draft Regulations**”).

We note that the Draft Regulations seek to remove from the scope of the CIS certain payments from landlords to tenants. We understand that the Government was also proposing that similar payments from tenants to landlords would also be outside the scope of the scheme. Our members note that it is not uncommon for tenants to make a payment to landlords to undertake certain works, as it makes practical sense for one party to bear responsibility for the required works. For example, if the landlord needs to carry out some landlord works prior to the commencement of the lease, it can make practical sense for the landlord to instruct contractors to carry out tenant fit out works at the same time, at the tenant's cost. The Draft Regulations do not currently deal with this point. Greater information on the policy rationale for the difference in treatment would be welcomed, and consider that there would be merit in this being revisited.

Income Tax (Construction Industry Scheme) Regulations 2005 – Amended Regulation 24ZA

Regulation 2(2) of the Draft Regulations amends the Income Tax (Construction Industry Scheme) Regulations 2005 by inserting the proposed Regulation 24ZA.

Amended Regulation 24ZA(2) sets out the prescribed conditions for the payment not to amount to a contract payment. Condition (a) is "the payment is for construction operations agreed as a consequence of a lease agreement".

¹ [Construction Industry Scheme \(CIS\) proposed amendments](#)

² Accessible [here](#).

We would welcome greater clarity on the meaning of “lease agreement” in this context. For example, whether this covers a lease, an agreement for lease, or both. We suggest that the drafting should explicitly refer to both of these, or be drafted in wider terms. In practice, members regularly see payments within the scope of the CIS made as a result of a deed of variation to an existing lease. We anticipate the policy intention is that payments made pursuant to a lease variation should similarly not be within the scope of the CIS, and would welcome amendments to make this clear.

We also note the use of the words “as a consequence of”. This may be interpreted as suggesting that there should be a causal connection between the lease and the works. Whilst in some circumstances there will be such a basis for payment, we consider that the phrase “in connection with” would be clearer. For example, in the case of a lease regear where the tenant carries out, as part and parcel of the regear, works at the expense of the landlord (which we would currently refer to as Category A works). The works are not being carried out *as a consequence of* the lease agreement, but rather as a consequence of a wholly separate agreement – which may not be expressed as a variation of the original lease agreement.

Amended Regulation 24ZA(2)(c) sets out the condition that the payment must relate exclusively to parts of the property which the tenant occupies or will occupy under the lease agreement. We would welcome clarification of how this applies to smaller areas of the demise, such as communal areas or where work is required to a small parcel of land outside the demise of the leased premises in order to carry out the required work. For example, there may be works carried out to areas which the tenant will not occupy, such as external seating areas in food and beverage outlets in shopping centres. We consider that the insertion of words to the effect of “or will have [a][the predominant] right to use” may address this point.

Income Tax (Construction Industry Scheme) Regulations 2005 – Amended Regulation 32

Regulation 2(3) of the Draft Regulations provides that Regulation 32 of the Income Tax (Construction Industry Scheme) Regulations 2005 is amended to refer to VAT payment and return obligations.

We highlight concerns that adding the words “VAT return” in row 1 does not work sufficiently in this context. The current wording of row 1 of table 3 refers to monthly (CIS) returns and does not deal with VAT returns which are submitted quarterly, or make a distinction between businesses who submit returns monthly or quarterly.

Businesses must meet both conditions of row 1, column 2 in order to satisfy the VAT compliance obligations for the purposes of obtaining and maintaining gross payment status. We do not consider this approach, particularly in its current form, meets the Government's intention that “minor VAT failures and errors would not result in GPS refusal or removal”.³ A business submitting monthly VAT returns could have three occasions where it submits a VAT return one day late, which could result in withdrawal of gross payment status, leading to a significant impact on cashflow and business. We envisage no-fault situations such as HMRC system failures where a return may be a day late, leaving businesses facing removal of gross payment status. As such, we do not consider that the current drafting includes sufficient safeguards or buffers for minor compliance failures to reflect the policy intention noted above.

³ As referred to in the Consultation.

Similarly, we consider the addition of payment of VAT to row 2 of table 3 in its current form is overly restrictive. This is inconsistent with the underlying purpose of the VAT penalty regime, which is progressive and doesn't seek to overly penalise for small or occasional errors. Further, we would highlight that the reference to an underpaid amount of £100 does not reflect commercial realities in this area.

For further information, please contact:

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