

# The Construction Industry Scheme (CIS)

Course book



...market leaders for business training

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## Course book

This document contains the text of the PowerPoint displays that are used during the presentation of the course

### The Construction Industry Scheme (CIS)

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## Session 1: Introduction

### What is the CIS?

- A means for HM Revenue & Customs (HMRC) to keep track of payments to subcontractors
- Why? – a quick history lesson
  - Introduced in the 70's
  - Tackle the 'cash in hand' economy
  - Workers not paying tax in the UK
- Failure to comply can lead to **substantial** liabilities

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### When does it apply?

- CIS will apply anytime you enter into an arrangement under which:
  - Development works are to be undertaken (existing property or new build)
  - Works relating to structures (permanent or **temporary**)
  - Refurbishments
  - Renovations
  - Repairs and **potentially** maintenance
- Each time payments are made in respect of **construction operations** undertaken under a **construction contract**

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## What about group companies?

- CIS applies to intercompany transactions (ie where one group company contracts with another group company or subsidiary)
- CIS operates on a legal entity by legal entity basis irrespective of ultimate ownership

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## What are 'construction operations' and 'structures'?

What comes to mind when thinking of  
**construction operations?**

What comes to mind when thinking of  
**structures?**

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## Territorial limits

- CIS only applies to works carried out **within** the UK
- This includes work carried out within its territorial waters (12 nautical miles)
- Overseas businesses carrying out works within the UK will be within the scope of CIS, eg:
  - Specialist companies
  - Property investment companies
  - Labour agencies
- It does not matter that the company is not based in the UK

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## How does it affect me?

CIS will affect those who:

- Organise work to be undertaken
- Interact with firms to carry out work
- Agree contracts for the above
- Arrange payments for the work

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## Who should take responsibility?

Everybody involved in:

- Agreeing contracts
- Approving contracts
- Approving invoices
- Making payments
- Interacting with HMRC

*Quick question: How many relate to finance?*

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## Consequences of getting it wrong

### Contractors

- Penalties for:
  - Incorrect or failure to verify subcontractor
  - Incorrect declarations
  - Incorrect or failure to submit returns
  - Incorrect or failure to provide payment statements
  - Failing to keep supporting records

### Subcontractors

- Loss of Gross Payment status

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## Session 2: The scope of the CIS

### ***Construction contracts***

#### **What is a 'construction contract'?**

- A **construction contract** is defined as any contract which **relates** to 'construction operations'

*Quick question: Can you think of examples of what can be a 'contract'?*

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#### **Contracts - when will CIS apply?**

CIS will apply...

- If under the contract **any** construction works are to be or can be undertaken
- If a person or body is:
  - Under an **obligation or duty** to carry out construction operations under that contract, or
  - **Answerable** to a contractor for the carrying out of construction operations by others

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## Mixed contracts

- Where a single contract relates to a **mixture** of construction and non-construction operations, **all** works under the contract are caught for CIS
  - This is the case even if only one of the jobs is regarded as a construction operation
  - There are no de-minimis limits
- Consider splitting the contract
- HMRC will review to see if arrangements have been artificially split
- If contracts can be split, **MUST** be done before works commence

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## Call-off contracts

- Generally, represents a firm commitment to purchase goods, services or works from a particular supplier on an 'as and when required' basis eg:
  - Maintenance providers
  - Suppliers of equipment who may be asked to install the equipment from time to time
- Where services are required, an order (or a call) is placed with the supplier
- Need to establish what type of services can be called for under the call-off contract
- If, under the call off contract, services which are **construction operations** can be called for, then contract will be a **construction contract**
- This is because the contract will be within the meaning of a **mixed contract** and as such, all services or works orders placed will be within CIS

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## Framework or enabling agreements

- Different from call-off contracts
- Usually no firm commitment to purchase goods or services
- Agreements will, generally, relate to:
  - The rates that would be charged for any services or works
  - The terms and conditions that would apply to any services provided
- The agreement may be put into place as part of a vetting process so that the supplier is able to tender for work
- There is no firm contract until an order is placed - sometimes called 'spot' contracts
- CIS will only apply if under the 'spot' contract services that are to be provided are within the scope of CIS

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## Other types of contracts

- Funding agreements
- Forward purchase agreements
- Development agreements

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## Other types of organisations

- Special purpose vehicles (SPVs)
- Joint ventures (JVs)
- Joint association no entity (JANEs)

*Quick question: Do you know what the difference is between a JV and a JANE?*

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## Points to consider

When agreeing contracts:

- Ensure CIS is considered
- It does not matter what the contract might be called
- Flag CIS to lawyers
- Ensure appropriate wording/clauses relating to CIS are included in the contract with regard to:
  - The requirement to comply with CIS
  - Indemnity
  - 'Get-out' provisions (if appropriate)

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## Contract payments

A **contract payment** is a payment made under a construction contract to a:

- Subcontractor
- Person nominated by the subcontractor
- Person nominated by the contractor

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## *Contractors and subcontractors*

### Contractors and Subcontractors

A **Contractor** is:

- **Any** body or person that **contracts** for **construction operations** to be undertaken

A person/body is a **subcontractor** if they are:

- Under an **obligation or duty** to the contractor to carry out the operations
- **Answerable** to the contractor for construction operations carried out by others

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## Professionals and consultants

- Legislation excludes the following from the CIS:  
*“the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or the laying-out of landscape.”*
- The exclusion, however, **only** applies where:
  - The work of architects or surveyors is within their normal and traditional discipline
  - The work of other professionals or consultants is limited to technical advice, assessments, plans or design
- The exclusion will **not** apply where the professional or consultant provides services which are ‘executive’ in nature as opposed to ‘consultative’
- The question that must be considered is:  
*“are the duties to be performed by the professional ‘consultative’ or ‘executive’?”*

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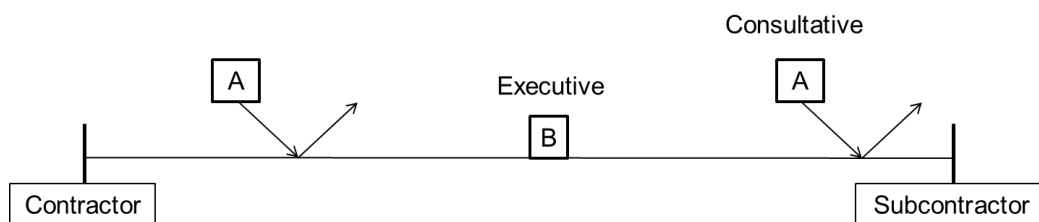
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## Consultative or executive?

- If acting in a ‘consultative’ capacity, they will be outside scope of CIS
- If acting in an ‘executive’ capacity they will be a subcontractor for the purposes of the CIS
  - This is because they are ‘**answerable**’ to the contractor for the carrying out of construction operations by others



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## Existing and former Public bodies

- Existing Public bodies are treated as registered for gross payment status, eg:
  - Government bodies
  - Local authorities
- Any subsidiaries of Public bodies which are incorporated companies must be treated as any other subcontractor
- Former Public bodies must be treated as any other subcontractor, eg:
  - Utility companies
  - Any other body which is now in private ownership

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## Subcontractor registration requirements

- Payment under deduction
  - Only requirement is to not provide false information
- Gross payment status
  - Must not provide false information
  - Business test
  - Turnover test
  - Compliance test
- If a 'close' company is registered for gross payment status, an obligation arises to notify HMRC of changes in control of that company

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## Terminology

Industry	HMRC
Employer	Contractor
Employers agent	Subcontractor
Developer	Contractor/subcontractor
Contractor	Subcontractor/contractor
Professionals/consultants	Subcontractor

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## Exceptions

### Private householders

- CIS does not apply to private householders, ie:
  - People carrying out works to their own home
- The exception **does not** apply to private landlords who undertake works to properties within its portfolio
  - However, CIS will only apply if expenditure exceeds the deemed contractor threshold
- CIS would apply if a person is acting as a developer
- Misconception that the exception applies to all works carried out on private dwellings, generally – **it does not!**

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## Small payments

CIS does not apply if the following conditions are met:

- The person making the payment is within the meaning of a **'deemed'** contractor
- Prior agreement has been obtained from HMRC
- The contract has a value not exceeding £1,000 (excluding the cost of materials)

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## Work done on own property or land

CIS does not apply if the following conditions are met:

- The person making the payment is within the meaning of a **'mainstream'** contractor
- Prior agreement has been obtained from HMRC
- The payment is made to a person or body in respect of works undertaken by that person or body in relation to:
  - Property owned by that person or body, or
  - Agricultural property/land of which that person or body is a tenant
- The contract has a value not exceeding £1,000 (excluding the cost of materials)

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## Reverse premiums

- Property investors, landlords or developers may offer an **inducement** to prospective tenants, which can be:
  - Rent free periods
  - A sum payable on occupation
  - A contribution towards fit out costs
  - Payment in full of fit out costs
- Payments of this nature, under the circumstances set out, are 'reverse premiums'

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## Schools with delegated budgets

- CIS does not apply if the payment is made by the governing body or head teacher of a:
  - Maintained school
  - Voluntary aided school
  - Free schools set up under the Academies Act 2010
- This exception **does not** apply to private schools

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## Property used for own business

CIS does not apply if the following conditions are met:

- The person making the payment is within the meaning of a **'deemed'** contractor (excluding public bodies)
- The payments relate to work undertaken on property that is:
  - Used for its own business
  - Is not for sale or let (except where the sale or letting of the property is purely incidental)
  - The property is not held as an investment
  - The use of the property by third parties is incidental

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## Private Finance Initiative (PFI)

CIS does not apply if the following conditions are met:

- The payment is made in respect of works undertaken or to be undertaken under a PFI arrangement
- The person making the payment is a public body or department of the Crown

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## Charities

- CIS does not apply if the payment is made by any person, body or trust that is established for charitable purposes only
- The exception **does not** apply to subsidiaries of charities, eg:
  - Development or trading companies etc

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## Workshop: Picture quiz 1

Which is a construction operation?

<b>Installation of solar panels on new build</b>		<b>Installation of solar panels on existing home</b>	

<b>Laying a marble floor</b>		<b>Laying a carpet floor</b>	

<b>Installation of a sculpture</b>		<b>Installation of a stained glass window</b>	



**Which is a construction operation?**

<b>Construction of a 'dry' stone wall</b>		<b>Construction of a 'wet' stone wall</b>	

<b>Installation of a sprinkler system</b>		<b>Installation of a fire alarm system</b>	

<b>Tree felling to make way for new building</b>		<b>Ecological survey before new build</b>	



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## **Construction operations**

### **What are construction operations?**

**Construction operations** include:

- Construction, alteration, **repair**, extension, demolition or dismantling of buildings or structures (whether permanent or not)
- Any works forming, or to form, part of the land
- **Installation** in any buildings or structures **of systems**, eg heating, lighting, power supply, etc.
- Installation of water-related systems, eg water meters, water softeners, water treatment systems etc.

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## But that's not all...

It also includes:

- Installation of lifts and chair lifts (not stair lifts)
- Painting and decorating the internal or external surfaces of any building or structure
- Internal cleaning of buildings or structures when carried out in the course of or on completion of construction operations
- Improvement and housing grants (council tenants)
- Maintenance (potentially)
- **Any works forming, or to form, part of the land**, including:
  - Installation of industrial plant externally
    - eg storage tanks, silos, cranes, conveyor systems etc
  - Playground surfaces and equipment
  - Drain repairs
  - Docks and/or harbours
  - Roadworks
  - Pipelines
  - Wind farms
- Works which are **integral** or **preparatory** to or for **rendering complete**, including:
  - Site clearance
  - Earth moving
  - Excavation
  - Tunneling and boring
  - Laying of foundations
  - Erection of scaffolding
  - Site restoration
  - Landscaping (in specific circumstances)
  - Provision of roadways and other access works

## THE LIST IS ENDLESS!

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## What are not construction operations?

Construction operations **do not** include:

- Painting of boats, ships or other vehicles
  - Manufacture and delivery of materials
  - Delivery, repair or maintenance of construction plant or the hire of plant and/or equipment (without an operator)
  - Hiring of scaffolding equipment (without labour)
  - Transport of materials from site to site on the public highway
  - Instillation of fire alarms and security systems
  - External cleaning of buildings/structures
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## But that's not all...

- Repair and maintenance of heating, lighting, air-conditioning, ventilation systems etc.
  - The making, installation and repairs of artistic works (e.g. sculptures, murals and other works) which are wholly artistic in nature
  - Signwriting and erecting, installation and repairing signboards and advertisements
  - Installation of seating, blinds and shutters
  - Installation of security systems (including burglar alarms), CCTV and public address systems
  - Transports of spoil from site
  - Soil testing (including digging of inspection trenches or boring for soil samples and backfilling)
  - Professional surveys
  - Professionals acting solely in a consultative capacity
  - Commissioning
  - Carpets and carpet tiles
  - Floor coverings (if done in isolation)
  - Like for like
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## Additional information/guidance

HMRC guidance:

[www.hmrc.gov.uk/manuals/cisrmanual/CISR14000.htm](http://www.hmrc.gov.uk/manuals/cisrmanual/CISR14000.htm)

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## VAT Domestic Reverse Charge (DRC)

- Since **1 March 2021**, the contractor has been required to account for any VAT to HMRC rather than paying the VAT to the subcontractor
- Applies where the services provided by the supplier falls within the meaning of '**specified construction services**'
- Specified construction services are services which fall within the meaning of '**construction operations**' as defined under CIS
- This means **anything** caught for CIS purposes will be subject to DRC (except in specific circumstances)
- DRC will not apply where the purchase relates to materials or goods **only** even where those materials and goods are used in construction

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## Workshop: Picture quiz 2

Which is a construction operation?

<b>Delivery of a portable toilet</b>		<b>Installation of portable offices/site huts</b>	

<b>Installation of security hoarding</b>		<b>Installation of security fencing</b>	

<b>General landscaping</b>		<b>Landscaping following new build</b>	



**Which is a construction operation?**

<b>Installation of CCTV security system</b>		<b>Installation of CCTV for road traffic management</b>	

<b>Installation of electrical wiring through existing ducting</b>		<b>Installation of internet/telecoms network through existing ducting</b>	

<b>Installation of new lock</b>		<b>Replacement of existing lock</b>	



## Workshop: Case study 1

- Southern Pension Funds Ltd is commissioning a new build as part of its ongoing program of investing its members funds
- Given that it does not have the relevant experience it engages a property investment manager to carry out all that is necessary (ie sourcing appropriate property developers, contractors etc, ensuring the works are carried out to specifications and undertaking all of the accounting and administration functions)
- All of the contractual arrangements will be implemented between the pension fund and the relevant service provider

### Who is the contractor?

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### Who is the subcontractor?

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## Session 3: Materials charges

### What does legislation say?

Where a deduction is required, the deduction must be applied to all of the payment that **does** not represent the **direct cost** of materials and CITB Levy

- Actual cost of materials (no mark-up)
- The cost of the materials **must have** been incurred **directly** by the subcontractor
- Need to be able to show the materials charge shown is 'reasonable'

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### What does this mean?

- Amount shown must not be inflated
- Materials charges cannot be passed up the chain
- Cannot be a percentage of the overall invoice
- Plant and/or machinery must have been physically hired in by the subcontractor
- Only those expenses that relate to directly to consumables for hired plant and machinery can be treated as a 'materials' charge
- If no materials charge is shown on the invoice, deduction applies to the full amount of the net of VAT value

*Quick question: Have you seen this?*

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## Materials charges incurred by others - example

- Main contractor engages subcontractor A to undertake works
- Subcontractor A is subject to a payment under deduction (20% or 30%)
- Subcontractor A subcontracts some of the work to subcontractor B (also subject to 20% or 30% deduction)
- Subcontractor B incurs costs relating to materials and invoices subcontractor A for these costs
- Subcontractor A allows the cost of materials when paying subcontractor B
- Subcontractor A invoices main contractor
- Main contractor cannot allow for the cost of materials

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## Plant & machinery

- Plant and/or machinery can be treated as being outside of CIS, **but only where:**
  - The plant and/or machinery is hired **without** an operator
- Where plant and/or machinery is hired with an operator, the provision can be treated as a 'materials' charge, **but only where:**
  - The subcontractor has actually hired the plant or machinery for use on the specific project
  - The cost of the operator must be treated as a labour charge
  - The cost of any consumables (ie fuel) used for its operation

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## Plant & machinery (continued)

- Plant and machinery includes anything that is used in the course of works being undertaken, e.g.
  - Boats, tugs, barges etc
- The repair of plant and machinery - whether on site or otherwise- can be treated as being outside CIS, **but only where**:
  - The plant or machinery is not industrial plant e.g. storage tanks, silos, pylons etc
- The repair of industrial plant can **only** be treated as being outside CIS where:
  - The industrial plant is located in a building and the repair work does not require any alteration to the building or remedial works

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## HMRC interest

- HMRC has written to a number of contractors regarding materials charges (November 2020)
- HMRC state it has concerns with regard to:
  - Insufficient controls
  - Overstated amounts
  - Amounts shown as a percentage
  - Plant hire - including scaffolding
  - Expenses – e.g. travel, accommodation and subsistence
- HMRC reviews submitted returns and will challenge materials charges shown

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## What should you consider?

- How would you demonstrate that the materials charges have been incurred 'directly' and are reasonably accurate?
- Review materials charges to ensure:
  - They are reasonable accurate and not overstated/inflated
  - They are not a 'standard' percentage of the invoice
  - Any plant and machinery has been hired by the subcontractor
  - Any expenses shown relate solely to consumables used in the hired plant and machinery
- Evidence is held supporting the above (eg materials charges have been considered/questioned, signed off etc)
- If in doubt, question the materials charge and seek confirmation/clarification from the subcontractor

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## Session 4: Employment status and off-payroll working

### *Employment status*

#### The first thing to consider

When engaging individuals (ie sole traders) to carry out construction operations...

#### YOU MUST CONSIDER EMPLOYMENT STATUS

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#### Why?

- HMRC scrutiny
- Being registered as a subcontractor with HMRC **does not** mean they are self-employed
- It is the terms & conditions under which they are engaged and under which they work that determines employment status
- A contractor must consider employment status in the first instance, before considering whether CIS applies
- Added importance from 6 April 2021
- Can lead to significant liabilities

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## The financial impact

	<b>Employed</b>	<b>Self-employed (sole trader)</b>	<b>Self-employed (Ltd)</b>
Salary/fees	£50,000	£50,000	£50,000
Income tax	£7,486	£7,486	£3,100
Employee's NIC	£5,316	£4,276	Nil
Employer's NIC	£6,339	Nil	Nil
<b>Total Tax/NIC</b>	<b>£19,141</b>	<b>£11,762</b>	<b>£3,100</b>
CIS deductions		£10,000	£10,000

All calculations are estimated in respect of the income tax year 2022/23 and exclude any deductible expenses, pension contributions and any optional remuneration arrangements

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## Factors to consider

- Main factors to consider:
  - Contract
  - Substitution/additional workers
  - Control
  - Financial risk
  - Mutuality of obligation
- Other factors:
  - Basis of payment
  - Integral part of organisation
  - Exclusivity

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**The question is...**

*“Is the subcontractor in business on his/her own account or working as an employee in someone else’s business?”*

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***Off-Payroll Working (OPW)***

**What is OPW?**

- Refers to the “Intermediaries Legislation” (better known as “IR35”)
- Anti-avoidance legislation
- Introduced in April 2000
- Tackles perceived tax/NIC avoidance
- Workers providing services through intermediaries
- If IR35 applies, any money drawn by the director of the PSC must be subject to PAYE/NIC in full

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## PSCs & intermediaries

- PSCs are, typically, companies where the worker has a material interest in the company
- Material interest means the worker owns 5% or more of the shares in the company
- Where there is more than one director, a company will still be a PSC if the directors are 'associated'
- Currently 'associated directors' are generally:
  - Spouses and/or partners
  - Children
  - Other family members
- The same rules apply to Partnerships or Limited Liability Partnerships (LLPs)
- Intermediaries are any person or body that sits in between the worker and the end client, eg:
  - A PSC
  - Recruitment business
  - Employment agency
  - Any other party

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## How did IR35 work prior to April 2021?

- If, ignoring the intermediary, the worker would be deemed to be an 'employee', then IR35 applies
- To determine whether IR35 applies, the **employment status tests** must be considered
- Previously it was the responsibility of the PSC to determine whether IR35 applies
- If the PSC had not considered IR35 or incorrectly determined that it does not apply, then it was the PSC that carried the risk for any loss of PAYE and NIC

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## What are the changes to the legislation?

- Since **April 2021**, it is the end client's responsibility to determine whether the OPW (IR35) rules apply
- Does **not** apply to small companies (as defined by The Companies Act)
- Where the OPW rules apply, the fee payer must deduct PAYE and account for NIC (employee and employer contributions) on the amounts paid to the PSC
- The employer's NIC cannot be transferred to the PSC
- In the first instance, the fee payer will be held liable for any loss of PAYE and NIC, but this can be transferred up the chain

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## Check employment status for tax (CEST)

*[www.tax.service.gov.uk/check-employment-status-for-tax/setup](http://www.tax.service.gov.uk/check-employment-status-for-tax/setup)*

- Anonymous basis
- Anyone can use
- Multiple choice
- HMRC will stand by decision as long as information provided was correct

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## Consequences of getting it wrong

- If HMRC recategorise a subcontractors employment status or determine that the OPW rules apply
  - HMRC will, in the first instance, seek recovery of the full amount of PAYE/NIC (less any deductions made under CIS) from the contractor
  - Where HMRC is unable to recover the liability from the fee payer, it can seek recovery from another party in the chain
  - A set-off maybe available for any tax/NIC paid via self-assessment
  - Subcontractor can refuse a set-off
  - National minimum wage
- Other factors – employment law
- Sole traders:
  - Is the subcontractor a ‘worker’ as defined under employment law?
    - Holiday pay
    - Pension rights

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## Workshop: Case study 2

- ABC Shop Fitters Ltd, based in London, engages subcontractors to carry out works for their clients
- The team of shop fitters have worked with the company for a number of years and as such are trusted subcontractors
- The company have recently won a contract in Birmingham to carry out shop fitting services for a retail chain
- Rather than source subcontractors from the Birmingham area, the company sends the trusted subcontractors to Birmingham
- Given the distance, the subcontractors will need to stay overnight - the company arranges this directly with a local hotel
- The company contracts with the hotel, books and pays for the hotel accommodation directly

### What should be considered?

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## Session 5: The mechanics

### *Payment classifications*

#### **Types of subcontractors**

Three types of subcontractors:

- Those registered for gross payment
- Those registered for payment under deduction (withholding rate currently at 20%)
- Those who have not registered (withholding rate currently at 30%)

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#### **Verification**

- A contractor **cannot** verify payment status **before** there is a contract or formally accepted tender for work
- A contractor **must** verify payment status **before** any payment is made
- Should consider re-verifying if you believe payment status may have changed
- No need to re-verify a subcontractor's payment status if the subcontractor has:
  - Appeared on a return during the current or previous two tax years, or
  - Been verified by another group company (subject to the above)

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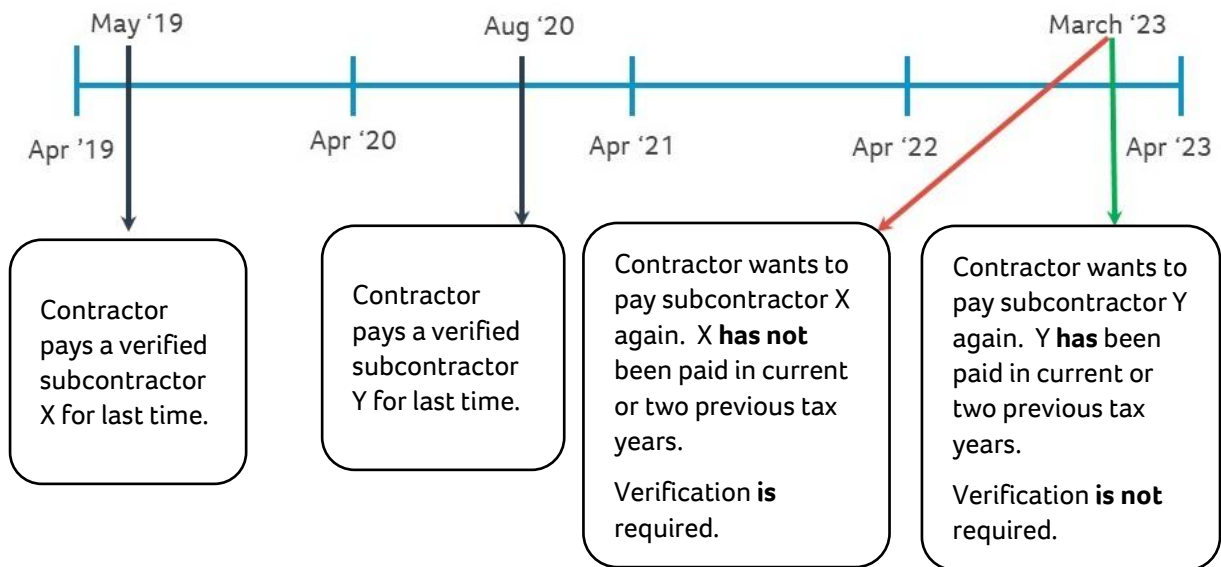
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## Verification timeline



## Unregistered subcontractors

- May want to inform subcontractors if HMRC confirms 30% deduction rate to ensure correct information provided
- If 30% deduction confirmed by HMRC, this rate **must** be applied, despite any subcontractor dispute
- It is the subcontractor's responsibility to contact HMRC to resolve the dispute



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## Group companies

- If part of a group, no need to verify the payment status of a subcontractor if:
  - The subcontractor has already been verified by another company within the group, and
  - That verification was undertaken within the current or previous two tax years

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## Public bodies

- No need to undertake verification process
- Make payments gross - ie no deductions under CIS should be applied
- Do not include payment on the monthly CIS return
- If the payment is being made to an arm of a Local Authority e.g. a Direct Labour Organisation (DLO) or Direct Service Organisation (DSO)
  - Treat as being part of the Public Body
  - If a DLO or DSO is an incorporated company, treat as any other subcontractor

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## Changes to payment status

- If subcontractor's payment status changes:
  - HMRC will inform all relevant contractors in writing
  - 30 days' notice if change is from gross to payment under deduction
  - If change is to gross, the change should be applied as soon as is practical
- HMRC state that if new payment status not applied, it would contact the contractor

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## *Payments under CIS*

### Payments from contractors

- Gross payment status
  - No issues to consider
- Payments under deduction (20% or 30%)
  - Ensure materials charge is shown on the invoice
  - Ensure payment statements are received and kept safely
  - Set-off deductions suffered against:
    - Deductions made from payments to subcontractors
    - PAYE/NIC deducted from employees
    - Carry forward any excess deductions suffered to following tax month for set-off
    - Must include Corporation Tax Unique Taxpayer Reference on Employer Payment Summary (EPS)

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## Payments from contractors (continued)

- Cannot cross tax years
- Any excess deductions suffered at the end of the tax year, which has not been recovered by set-off, must be reclaimed from HMRC
- HMRC now able to amend set-offs erroneously claimed by subcontractors
  - HMRC will ask for evidence of deductions suffered and will ask the subcontractor to correct the EPS
  - Where evidence not provided or EPS not amended, HMRC will amend the EPS

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## Payments to subcontractors

- Gross payment status
  - No receipt or similar documentation required
- Payments under deduction (20% or 30%)
  - Must provide a payment statement detailing total amount of payment (excluding VAT), materials and amount of deduction
  - Where 30% deduction applies, payment statement must include VRN
- Release of retentions
  - Must apply CIS
  - Is there a need to re-verify?

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## Payments to third parties

- Must verify **BOTH** the subcontractor and third party
- Subcontractor registered for gross payment
  - Pay gross **only if** third party registered for gross payment
- Subcontractor **not** registered for gross payment
  - The payment status of the third party is irrelevant
  - Pay under deduction at the subcontractor's rate (20% or 30%)
- Third party is a debt factor, liquidator, receiver or administrator
  - Do not need to verify the debt factor, liquidator, receiver or administrator
  - Pay in same way as if payment made to subcontractor

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## Contras and set-offs

- Contras
  - A charge applied by the contractor for goods and/or services provided to subcontractors
  - A contra does not reduce the 'payment' where a deduction is required
- Set-offs
  - A charge made by the contractor but not for goods or services
  - A set-off reduces the 'payment' where a deduction is required

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## Payment statements

- Must give a payment statement to subcontractors paid under deduction
- One per tax month or one per payment
- A statement must be given no later than 14 days after the end of the tax month (ie **by** the 19<sup>th</sup>)
- If the subcontractor is not registered include the VRN
- Format is at contractor's own choice
- Send electronically if both parties agree
- Penalties for not providing statements or wrong statements
- Payment statements must be given to the subcontractor even if payment is made to third party

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## Payment statements – HMRC example

**Contractor's Name:** ABC Construction  
**Contractor's Address:** 123 Building Avenue  
**Contractor's Employer's Reference Number:** 123/456789

### Construction Industry Scheme

**Statement of payment and deduction for month ending:** 5 April 2021  
**Subcontractor Name:** Mr A N Other  
**Unique Taxpayer Reference:** 98765 43210  
**Verification Number\***

	<b>£</b>
<b>Gross amount paid (excluding VAT)</b>	5,450.00
<b>Less cost of materials</b>	584.00
<b>Amount liable to deduction @ 20%</b>	<u>4,866.00</u>
<b>Amount deducted</b>	<u><b>973.20</b></u>

\*Verification number only to be entered where a deduction at the higher rate has been made.

[www.uktraining.com/21sol](http://www.uktraining.com/21sol)

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## Construction Industry Scheme Payment and deduction statement

Contractor details	
Contractor's name	<b>Payment and deduction made in tax month ended 05 MM YYYY</b>
<input type="text"/>	0 5 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Contractor's address	Employer's Tax Reference
<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
<input type="text"/>	
<input type="text"/>	

Subcontractor details	
Subcontractor's full name	Gross amount paid (Excl VAT) (A)
<input type="text"/>	£ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> • 0 0
Unique Taxpayer reference (UTR)	Less cost of materials
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	£ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> • 0 0
Verification Number*	Amount liable to deduction
V <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>	£ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> • 0 0
*Verification number only to be entered where a deduction at the higher rate has been made.	Amount deducted (B)
	£ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> • 0 0
	Amount payable (A-B)
	£ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> • 0 0

Subcontractors - Please keep this document safe



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## Workshop: Case study 3

- Always Construction Ltd is a well-known construction business to you as your organisation has used them frequently
- You have a project that is to commence in March 2023 and have decided to invite Always Construction to quote for part of the work
- You're not sure when it was that you had engaged Always Construction before so having looked through the purchase ledger/CIS accounts you have established that you last paid them in September 2020 and that they are registered for gross payment
- Always Construction provides a quote for the work which you are happy with and so you award the contract to them
- Work commences as scheduled but as part of the agreement payments will only be made on completion of specific stages, the first of which is signed off in May 2023

### What do they need to think about?

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## **Statutory returns**

### **Return completion**

- One return must be submitted per month
- Must arrive with HMRC **by 19<sup>th</sup>** of the month
- Include VRN if deduction was at 30%
- Nil returns are voluntary if no payments made during tax month
- Can file nil returns for up to six months at one time
- Must keep records to support the return
- Ensure all payments made to subcontractors (even those paid gross) are included on the return

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- Gross paid subcontractors
  - Include the full gross amount of the payment (excluding VAT & CITB Levy) in the 'Total payments made' section
  - No need to show any amounts in the remaining sections (ie materials and deductions)
- Payment under deduction subcontractors (20% deduction)
  - Include the full gross amount of the payment (excluding VAT & CITB Levy) in the 'Total payments made' section
  - Show any amounts relating to materials in the 'Materials paid for by the subcontractor' section
  - Show the amount deducted in the 'Total amount deducted on account of tax' section

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## Return completion (continued)

- Not registered subcontractors (30% deduction)
  - Same process as for payments to subcontractors under deduction at 20%
  - Include the verification reference number (VRN)
- HMRC CIS300 Helpsheet:  
[www.hmrc.gov.uk/gds/cisr/attachments/cis300\\_helpsheet.pdf](http://www.hmrc.gov.uk/gds/cisr/attachments/cis300_helpsheet.pdf)

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## Verification declaration

*“Every subcontractor included on this return has either been verified with HM Revenue & Customs, or has been included in previous CIS returns in this, or the previous two tax years.”*

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## Status declaration

### Legislation

*“...none of the contracts to which the return relates **is a** contract of employment;...”*

### Declaration on return

*“The employment status of each individual included on this return **has been considered** and payments have not been made under contracts of employment.”*

*Quick question:* What is the difference between the wording in legislation and declaration on the return?

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## Correcting errors

- Once return submitted you can correct error by...
  - Making a balancing entry in the following month's return
  - Filing an amended return online
- If unable to do the above...
  - Contact CIS Helpline with full details
  - Make a note of who you spoke to, the date and time of the call
  - Obtain call reference number
- Cannot contain negative figures

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## *Penalty regime*

### Admin penalties

- Incorrect or failure to verify
  - Up to £3,000
- Incorrect declaration(s)
  - Up to £3,000
- Incorrect or failure to provide payment statements
  - Up to £3,000
- Failure to maintain supporting records
  - Up to £3,000

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## Late returns

- £100 for late return
- 2 months late - £200
- 6 months late - tax geared penalty greater of:
  - 5% of deductions on outstanding return, or
  - £300
- 12 months late - 2nd tax geared penalty as above unless HMRC believe fraudulent activity, penalty then based on behaviour, greater of:
  - 70% of deductions or £1,500 - if not concealed but deliberate
  - 100% of deductions or £3,000 - if concealed & deliberate

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## Failure to register

- Where a contractor files its first return and HMRC is aware that the contractor had failed to register when it should have done
  - HMRC is able to impose late return penalties in respect of any returns that should have been filed (but have not been) if the contractor had registered at the correct time
  - The maximum penalty in respect of all of the early periods is capped at £3,000
- Tax geared penalties will still apply for the earlier periods

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## Incorrect returns

- Up to 100% of the under deducted tax
- Penalty level will, however, be determined by the nature of the error and the behaviour of the contractor:
  - Reasonable care - 0 to 30%
  - Deliberate - 20% to 70%
  - Deliberate and concealed - 30% to 100%

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## Behaviour

- Position can also be determined based on:
  - Whether the contractor has made an unprompted disclosure
  - Whether HMRC believe the business took reasonable care
  - What systems and processes the business has in place
  - Whether the subcontractor has filed their tax returns and paid any tax due
- HMRC may, at its discretion, suspend any penalty it imposes

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## Workshop: Case studies 4 to 6

### Case study 4

- Having engaged Always Construction Ltd you established that the company is no longer registered for gross payment
- The invoice received in respect of the completed 1<sup>st</sup> stage, sets out the following details:

Completion of 1 <sup>st</sup> stage	£ 55,000
Plant & equipment	£ 15,000
Materials	<u>£105,000</u>
	£175,000
VAT	<u>£ 35,000</u>
Total	<b><u>£210,000</u></b>
Amount liable to CIS	£ 55,000
CIS @ 20%	£ 11,000
Net payable within 30 days	<b>£199,000</b>

### What should be considered?

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## Case study 5

- London Investments Plc owns a number of office blocks which it leases to other businesses
- The company engages a maintenance company to maintain the various buildings
- London Investments Plc charge a service charge to all of its tenants to cover the costs associated with the maintenance of the properties
- The company then pays a monthly set fee to the maintenance company
- Where works are required, the maintenance company is not required to seek the owners' authority to carry out the work. It is responsible to maintain the property so that it is fit for occupation
- Where a tenant requires specific works/alterations to be undertaken to their area of the office, the tenant may instruct the maintenance company (if it wishes to do so) to carry out the work

**Is the service charge caught for CIS purposes?**

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**Is the service charge caught for CIS purposes?**

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**Do you think the last point is relevant?**

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## Case study 6

- You work for a company based in Jersey
- The company's main activity is to source suitable land on mainland UK with a view to building new office blocks/warehouses and from time to time shopping centres
- The company is approached by a property developer who owns land in a prime location with planning permission to build a new shopping centre but the property developer does not have sufficient funds to realise the property
- Your company decides to fund the building cost of the shopping centre (with an appropriate uplift) with the view of taking ownership of it on completion. It also undertakes to purchase the land once the build has been completed

**Does CIS apply to the payment made by the company in Jersey to the property developer?**

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**What about the purchase of land – will it be caught for CIS purposes?**

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## Session 6: Key actions

### Contractors

- Ensure all relevant staff are trained on
  - The requirements and obligations under the CIS
  - The scope of the CIS
  - Procedures manual
- Employment status of subcontractors
  - Review current arrangements
  - Labour-only subcontractors and/or labourers
  - Brief site/labour managers
  - Are the terms and conditions clear?
  - Update contracts if necessary
  - Interview a sample of subcontractors
- Off-Payroll Working
  - Review all subcontractors providing services through PSCs
  - Liaise with recruitment businesses/employment agencies who supply workers to you
  - Implement new processes to enable compliance with the change in legislation
- VAT domestic reverse charge
  - Processes not updated to account for the VAT
  - Identification of services which are at standard or reduced rate

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## **Contractors (continued)**

- Allocate responsibilities under the CIS for
  - Engaging subcontractors
  - Verification
  - Monthly returns
  - Payment statements
  - Record keeping
  - Communicating with HMRC
- Engage/communicate with staff 'on the front line' particularly with regard to
  - Identifying when CIS might in point
  - Materials charges
  - Engagement of project managers and other professionals
- Consider past compliance with CIS, if errors are identified
  - Correct the error going forward straight away
  - Quantify the potential exposure in respect of the past four years
  - Consider making a voluntary disclosure to HMRC to agree a voluntary settlement

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## **Subcontractors**

- Review compliance over the last year in respect of
  - The operation of the CIS
  - PAYE/NIC, expenses and benefits
  - Corporation tax reporting
  - Payment of PAYE/NIC and CIS deductions
- Ensure correct details are available to give to contractors for verification purposes

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## ***Looking ahead...***

### **Supply chain measures**

#### **Early consultation on supply chain proposals**

- Government remain concerned about organised fraud in labour provision within the construction sector
- The VAT Domestic Reverse Charge is one measure that has been introduced to tackle the issue
- Government are considering introducing supply chain activities, involving
  - Extensive supply chain due diligence
  - Reporting of supply chains
  - Encouraging contractors to remove fraudulent suppliers from the supply chain

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