

# The Construction Industry Scheme (CIS)

*for* VINCI Construction

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

### 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?**

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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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## 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'?*

- Contracts can be written or implied
  - Formal contracts
  - Emails
  - Purchase orders
  - Verbal arrangements

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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 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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## ***Contractors and subcontractors***

A **contractor** is:

- **Any** person or body 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 construction operations, and/or
- **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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## 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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## Terminology

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

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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, for example:

- 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
  - Tunnelling 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
  - Installation 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

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>	



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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 (April 2021)
- 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 treated as 'materials' where 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

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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) is for its operation

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- Continued rental of plant and machinery (eg scaffolding):
    - CIS must still be operated
    - Can only treat as 'materials' if hired by provider
  - Plant and machinery include 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: The mechanics

### Verification

- There are three types of subcontractors:
  - Registered for gross payment
  - Registered for payment under deduction (20%)
  - Not registered (30%)
- Verification can **only** be undertaken **after** a contract is in place (or a formal tender has been accepted) and **must** be undertaken before first payment

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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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## 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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## 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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## 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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## Session 5: Key actions

- Ensure all relevant staff are trained on
  - The requirements and obligations under the CIS
  - The scope of the CIS
  - Procedures manual
- 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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## **Looking ahead...**

### **Supply chain measures**

- Government remains 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 is 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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### **Strengthening the Gross Payment Status tests**

- Currently only direct taxes (PAYE/NIC, CIS and corporation tax) compliance is considered
- Proposed introduction of VAT compliance to also be considered
- Bringing forward the first annual review of compliance history
- Enabling HMRC to mandate the application method

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## **Administrative easements**

- Payments by landlords to tenants for Category A works
- Group arrangements for CIS reporting
- Suggestions for other simplification measures

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