



CONSTRUCTION INDUSTRY SCHEME

Materials

Under the Construction Industry Scheme (CIS) it is the responsibility of the Contractor to check the status of their subcontractors, then withhold the relevant amount of CIS tax from payments made to those subcontractors and pay this over to HMRC.

The CIS tax deduction is calculated on the non-materials element of the payments, net of materials costs incurred by the Subcontractor. If the CIS tax is calculated incorrectly, then it is the Contractor, rather than the Subcontractor, that is liable for any additional tax and penalties due. This liability can be substantial.

What to look out for

High proportion of materials

It is not sufficient to take the subcontractor's invoice at face value, you must ask for evidence showing that the subcontractor has actually paid for the materials. Any markup/profit on the materials is treated in the same way as labour, and therefore subject to CIS. If the subcontractor does not provide evidence, and the amount charged on the invoice for materials appears excessive, then you should estimate how much the subcontractor has actually paid for the materials and apply CIS to the rest of the invoice. Bear in mind that you will be providing a certificate to the subcontractor, to allow them to claim this tax back, and it will be you (the contractor) who would be liable for any underpaid tax.

Plant

When a contractor hires plant or machinery, such as a cement mixer or a crane, and it is supplied without an operator, then it will be outside CIS. However, if a subcontractor supplies the plant or machinery with an operator, for example a crane with a driver, or provides other services within scope of CIS, then the whole amount will be treated as labour, and subject to CIS deduction. The only exception to this is where the subcontractor has hired the plant, in which case, the labour cost would be subject to CIS, and the plant hire costs can be charged on to the contractor, who can treat it in the same way as materials, if the subcontractor provides evidence of the hire costs they have incurred.

Scaffolding

Scaffolding is plant and therefore the above rules apply to scaffolding in the same way. CIS will apply unless this is a supply only (without assembly) or the supplier supplies evidence of a hire charge incurred by them, in which case the hire charge will be treated as materials and only the excess charges will be subject to tax withholding.

Split invoices

Watch out for invoices that show only plant or machinery costs, as there may be another invoice which relates to the supply of the operator. A supply of materials is only outside the scope of CIS altogether if the only supply under the contract is for those materials. If contracts are split, you must consider the invoices together to determine the realistic CIS tax. Additionally, where a subcontractor is charging for materials only on some invoices, but not providing evidence, and charging for labour on others, then you should track the proportion of materials in the contract to ensure you are satisfied that you only treat the cost to the subcontractor as material costs over the combination of all invoices. It is good practice to ask for the breakdown between

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labour and materials to be shown in the contract as part of the tender process. This can also help from a commercial point of view when comparing quotes from subcontractors.

Conclusion

A contractor must be able to demonstrate that they have processes in place to check that the materials on their subcontractor's invoices are not overstated, otherwise they are leaving themselves vulnerable to enquiry, and could be liable for the tax that should have been deducted, as well as penalties based on this liability.

We recommend that contractors seek advice to establish robust internal processes around materials and maintain evidence of where subcontractors have been challenged to provide evidence of materials costs. This will minimise the risk of significant liabilities resulting from CIS enquiries by HM Revenue & Customs.

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