

## Keeping Compliant

*How will the new CIS affect your tax obligations? In the second article in the series, Ken Tracey warns how easily your gross payment status can be lost.*

HM Revenue and Customs' (HMRC) efforts to improve compliance with tax obligations have been apparent for some time under the current Construction Industry Scheme (CIS). It refuses to renew gross payment certificates where failure in any category of the compliance test is proved.

When the new CIS is launched on 6 April 2007, sub-contractors registered under the current scheme will be transferred to the new version and have the Turnover and Compliance Tests applied on an annual basis. In cases where they fail either, or both, of the tests they will be notified by HMRC of the withdrawal of their gross payment status.

The requirement for reinstatement will be to maintain a good compliance record over the following 12 months. Re-registration for CIS periodically, as under the current scheme, will not be required; continued compliance will result in continuing registration for gross payment.

### The Compliance Test

The Test is based on compliance with all obligations imposed by the Tax Acts during the previous 12-month period; this includes CIS, PAYE, and NIC. It will cover business and personal taxation, that is the tax compliance of an organisation's owners, partners and directors. It is important that all the principals in an organisation are aware of and comply with their tax obligations as failure to do so could lose the organisation its gross payment status.

Obligations include the completion and timely submission of tax returns and the supply of any information required by HMRC. An important aspect of compliance is payment of personal and business tax due.

A popular compliance failure among bona fide contractors is late payment. In some such cases, although regular tax payments may be made, they are not submitted by the monthly due dates – by day 19 of the month following that in which the deductions were made. Under the new CIS, if electronic payments are made, the due date is the 22<sup>nd</sup> day of the month following deduction.

There has been a tendency for contractors to pay at the month end in accordance with tradition but this has resulted in failure to comply and the refusal to renew registration for gross payment. All submissions to HMRC are subject to final dates for submission, which must be adhered to.

However, there are some tolerances known as 'prescribed circumstances', but it would be advisable not to rely on the exceptions allowed but to consider them a safety net for the occasions when unforeseen delays occur. Although a limited number of late submissions will be disregarded when judging compliance, these too are subject to specific timescales.

## **Special Circumstances**

There are some tolerances known as 'prescribed circumstances'. It is advisable, though, not to rely on these but to consider them a safety net for occasions when unforeseen delays occur. Although a limited number of late submissions will be disregarded when judging compliance, these too are subject to timescales.

In a 12-month period, three late submissions of the monthly return, one late payment of self-assessment tax and any payment of corporation tax (provided a penalty has not been incurred) will be disregarded, provided that submissions are made not later than 28 days after the due date.

Three late payments of CIS/PAYE deductions will also be disregarded, provided that payments are made no later than 14 days from the due date.

Further disregards are late submissions of employer's end of year returns, any self-assessment return and any "minor and technical" failures under the old scheme.

## **Loss of Status**

The operation of a contracting organisation can be seriously affected by payment under deduction. Cash flow is restricted and gross payment status is often regarded as a "licence to work". Some main contractors and employers will not do business with contractors who are required to be paid under deduction due to the administrative burden this imposes on them.

The first action following loss of gross payment status is to consider an appeal against the refusal of the tax inspector to grant a certificate. Appeals must be made within 30 days of the Notice of Refusal. Refusals may be as a result of failure of the Compliance Test and/or the Turnover Test. It is advisable to discuss the substance of an appeal with an accountant prior to submission and to refer to relevant cases, e.g. HMIT v. JDC Services, Shaw (HMIT) v. Vicky Construction Limited.

Late payment of tax is often due to the industry's payment culture affecting firms' cash flow. In these circumstances it is advisable to provide evidence of upstream late payment but it must be appreciated that the Commissioners will decide upon the facts and will not ignore or change the law.

The difficult options on losing an appeal are to trade under deduction for the minimum of one year or to diversify into operations excluded from CIS.