

## **Construction Industry Scheme Operational Forum (CISOF)**

### **Minutes of Meeting**

**Wednesday 4<sup>th</sup> September 2013**

**Present (Industry):** Liz Bridge (LB), Stephen Burrell (SB), Howard Royse (HR), Paula Morgan (PM), Sue Cave (SC), Eric Rolfe (ER), Mike Sutherland (MS), Jason Piper (JP), Samantha Mann (SM)

**Present (HMRC):** Adrian Dixon (AD) – Chair, Ken Claydon (KC), Andy Thomas (AT), Ian Battour (IB) – Secretary, Julie Campbell (JC), Stephanie Allistone (SA), Anthony Browne (AB)

**Apologies:** Maurice Denyer, Jim Etherton, Mike Laughton.

#### **Introductions**

AD introduced himself and explained that he has taken over responsibility for CIS from Guy Leeser. He then welcomed all those in attendance.

#### **Action Points – Arising from 5<sup>th</sup> December 2012 CISOF minutes**

**First Action Point page 2** - KC to liaise with Compliance colleagues concerning the problem with contractors not issuing Payment and Deduction Statements (PDS) and what checks they do during a review. KC had invited along Anthony Browne from Local Compliance who would be speaking later on as part of the agenda.

**Second Action Point page 2** – SC had asked why HMRC didn't have a tick box on the CT return for companies to request any repayment of CIS to be offset against CT liabilities. KC was to take this up with Corporation Tax colleagues. KC reported the response he received was that there is a timing issue to be considered here. The CIS overpayment arises at 19 May. Either there will already be an outstanding CT charge from an earlier accounting period, in which case the return has probably already been filed, or the company wants the overpayment set against a forthcoming CT charge. As the payment date is before the filing date then, if the reallocation is prompted by the return entry, a) it would be paid later into CT than it actually should be, and b) there would have been an overpayment sat around in PAYE longer than it should have been. Overall, HMRC think the present system works better.

**Third Action Point Page 4** – ER asked if RTI guidance could be inserted into the CIS340. KC will consider this for the next update of the CIS340 which is due in January 2014.

**Fourth Action Point Page 5 under AOB** – BW asked if we were aware of problems in PAYE due to a “data cleanse”. KC confirmed that this issue was now fully resolved with almost no impact on affected contractors.

## **Main Agenda**

### **Loss of Status Letter**

LB raised concerns about Change of Deduction letters being lost by contractors causing problems when Compliance carry out a review of the contractors’ records. LB agreed that the problem was with the letters being lost after receipt and probably not a problem of them not being received in the first place. LB recalled that some assurances were given that Compliance wouldn’t take any action, but was unable to confirm when this was discussed. AT said that he was currently undertaking an exercise to see what extent of a problem this was by looking at a sample of subcontractors whose status has changed and then comparing this with contractor records to see if the change was being reflected in the deductions they were subsequently making from the subcontractor. AT would report back to the Forum by the next meeting, or before, if possible. **(AP – AT to report back to CISOF.)**

### **Definition of Materials**

LB wanted clarification of the issue of defining materials for the purposes of CIS. In particular, she quoted a case where a contractor could take on a kitchen fitter to supply and install a kitchen. The kitchen fitter could charge £5,100 where £5,000 is the retail price of the kitchen and may not be the price the fitter actually paid as, generally, subcontractors do not reveal the actual cost of materials. KC referred to the CIS guidance in the CIS340 instructing contractors to apply a fair estimate for materials. This could be based on their experience and information obtained from suppliers. HR suggested that such instances quoted should be treated on an exception basis. LB was concerned about Compliance questioning these cases, which could lead to action being taken leading on to tribunals.

### **Repayments**

Concerns were raised by a number of members of the Forum about the time it is taking for repayments of CIS deductions to be made. Prior to the meeting KC obtained a report from NIC&EO on the level of delays and problems which they are encountering. KC explained that the briefing from NIC&EO includes the following info:-

- NIC&EO are currently in the peak period for receiving repayment claims following the end of year P35 deadline.

- All repayment claims up to and including 19th July have been cleared – unless they are ones where further information is required from the subcontractor.
- NIC&EO have deployed additional resources to process CIS cases and are scheduled to bring work up to date by the end of October.
- Far fewer complaints had been received this year, compared to previous years.

HR recalled a figure of 1 in 7 repayment claims required additional information. KC confirmed that this sounded about right – it was an 85% / 15% split. HR suggested that perhaps he and KC could do another site visit to look specifically at the problems with John Clough. AT thought that the issue with 64-8 (Agent Authorisation forms) may be contributing to the problems. **(AP – KC to speak to John Clough about a further visit with HR.)**

#### **CITB Levy**

JC explained to the forum how it is a practice within the industry for some contractors to deduct their CITB levy from payments made to their subcontractors. This is contrary to CITB guidance. HMRC guidance currently supports this which they now accept is wrong. HMRC will be looking to review this guidance and make changes. LB mentioned that these deductions are built into the contract often shown as a contractor discount. ER mentioned that this deduction is built into many software packages. LB suggested that HMRC should bear in mind VAT when looking at guidance. **(AP – JC to consider VAT implication as part of review.)**

#### **Compliance**

AB talked about how cases are selected for review based on profiling and risk, looking to maximise the best possible yield. Local compliance teams have brought in around £28million yield in CIS compliance between April and July this year. HR asked if AB could explain in more detail how cases are targeted. AB explained that they look at behaviours such as late payments, late returns and intelligence held. HR asked if Gross Payment Status (GPS) could be restricted only to limited companies operating within the construction industry. KC said that the legislation doesn't allow this and that there are companies which are not strictly involved in construction but would still require GPS. Looking at future representation from Compliance, LB thought that someone who deals with smaller traders would be better placed than AB to advise the forum as AB deals with issues at a much higher level than the people they represent. **(AP – AD to enquire if HMRC are looking into the potential loss of revenue by allowing non-construction companies to have GPS.)**

## **Penalties**

SA reported back on the work that had been done looking into reducing the compliance burden of CIS penalties on small occasional contractors following representations from the Industry. This work focused on what could be done within the current legislation. HMRC has specifically looked at streamlining our processes relating to:

- Mitigation
- Extending guidance on who should/shouldn't be in the scheme
- Cessation date used. Instead of using the discovery date, HMRC are looking to use the actual last date of payment made
- Clarifying the guidance on failures to file returns and penalties for Compliance staff

SA provided the forum with a copy of the draft guidance for information purposes prior to it being formally agreed.

LB raised the point that the problem with large penalties normally involved small contractors who only occasionally subcontract work and forget to file returns. AD suggested that they should register and de-register which is easily done by calling the Helpline. HR asked if the present guidance on hardship could be polarised to help clarify when it might be appropriate for someone to make a claim for penalties to be reduced under these provisions. SA said that she would look at this but as this policy covers all taxes and regimes it may not be appropriate to make changes for CIS. SA explained that once any changes were in place to the CIS obligations further consideration could be given to the late filing penalties. SC wondered whether a proposal to suspend penalties for later good compliance could be considered and that she would be happy to be involved in any future working groups.

SB said that all of this was a major step forward and looked very encouraging.

## **Future of scheme**

AD referred to the letter he sent to Forum members detailing outline proposed changes to the system asking for comments from members. KC went through these in order:

### **1) Relaxation of the obligation for contractors to provide Nil returns or, alternatively, HMRC not to charge penalties on late submission of nil returns**

SM wondered about the timing bearing in mind the introduction of RTI. However, the group generally agreed that this would be a good idea.

### **2) Relaxation of the obligation for contractors to report all payments to subcontractors**

SB raised a concern that if a subcontractor's payment status changed from Gross to Net, the contractor may not be made aware. LB thought that this

may lead to confusion over who contractors should be putting onto returns and there could be a problem with software. KC said that this proposal could be made optional to allow for this but the Forum's views were noted.

### **3) Mandatory electronic filing**

The group all agreed that it was the time to consider this. However, there were a few concerns. SC asked how would those in broadband 'black spots' make electronic returns. SC asked what consideration was given to these people for PAYE and VAT returns. SM asked if there were any statistics available on why contractors still file by paper. If so, could these statistics go down to post code level to compare against information on black spots. HR thought that this could be because these are small traders who do not wish to pay for software. KC said that there is a free HMRC filing application available designed for use for returns of up to 50 subcontractors. **(KC – to look into statistics available on paper filers to compare against broadband black spots.)**

### **4) The three statutory tests to qualify for Gross Payment Status (GPS)**

KC went through the thinking around this proposal. One of the thoughts was around whether HMRC should still penalise someone for what could be minor compliance failures by not giving them GPS, when they are likely to have already received penalties and charges for their other non-compliant actions. KC said that HMRC are also looking at the level of turnover required as, originally, the scheme was aimed at individuals who may be paid in cash but do not declare their earnings. LB suggested that the VAT threshold could be used, although someone could voluntarily apply to be VAT registered. The group agreed that these tests needed to be reviewed.

### **5) Change to internal processes to reduce numbers of 'absent' schemes**

KC explained about the problem within HMRC with sharing data between HMRC systems and that this would be reviewed as part of this project.

### **6) Registration of large contractors**

KC explained that under the present rules of CIS, every business involved in construction work is required to register for the scheme and, where they make payments to others, register as a contractor. HMRC have become aware that some contractors only ever pay other large, non-risk, contractors and we need to reconsider whether we really need these businesses to be registered within CIS. The general view was that this would not directly affect many contractors.

HR asked the question whether CIS was still viable bearing in mind the cost to business and HMRC to administer and whether the resource could be better used somewhere else. AD answered that, yes, CIS was still required for the many reasons it was introduced in the first place. However, he proposed to look more generally into the scheme in addition to the proposals already mentioned. At the moment, the proposals will require minor amendments to legislation/regulations. AD asked the group to let him have any further thoughts on the current proposals and any other thoughts on the scheme. **(AP – Forum members to come back to AD on current proposals and other ideas.)**

**AOB**

MS asked if HMRC have recently changed guidance/policy on Deemed Status. KC answered that nothing has been changed since the update in 2011. AD agreed that nothing has been changed although there has been recent representations from the Industry in particular trades.

PM asked about a subcontractor they had mistakenly taken a Net deduction from and then paid the money over to HMRC. PM asked how this could be rectified. KC answered that if this was done in-year, PM's organisation could repay the subcontractor then make the necessary amendment on the next CIS return they submit.

**Date of next meeting**

**Provisionally: 12<sup>th</sup> or 26<sup>th</sup> February 2014**

**Ian Battour  
(CISOF Secretary)**