

Clause 1 and Schedule 1: Construction industry scheme

Summary

1. This clause and Schedule make four amendments to the Construction Industry Scheme (CIS) with effect from 6 April 2021. The CIS provisions in primary legislation are set out in Chapter 3 of Part 3 to Finance Act 2004 (FA04). The first amendment simplifies the deemed contractor rules. The second amendment clarifies the rules on deductions for materials purchased by a sub-contractor to fulfil a construction contract. The third amendment provides new powers for HM Revenue & Customs (HMRC) to restrict CIS set-off claims. The detailed rules will be in regulations. The final amendment expands the scope of current penalties for providing false information for registration to persons facilitating the application.

Details of the clause

2. Subsection 1 introduces Schedule 1. Schedule 1 contains provision amending Chapter 3 of Part 3 of FA 2004 (construction industry scheme).
3. Subsection 2 provides that the clause and Schedule have effect for the tax year 2021-22 and subsequent tax years.

Details of the Schedule

Introductory

4. Paragraph 1 provides that the Schedule amends various provisions of Chapter 3 of Part 3 of FA04 (construction industry scheme).

Contractors

5. Paragraph 2 amends the current provisions in section 59 FA04 which determine who is a deemed contractor.
6. Sub-paragraph 2(2) substitutes a new subsection 59(1)(l), which provides that a person who is carrying on a business at any time will be a deemed contractor under this provision when their expenditure on construction operations in the period of one year ending with that time exceeds £3 million.
7. Sub-paragraph 2(3)
 - substitutes a new subsection 59(2) by mirroring the above rule for certain public sector persons and bodies;
 - substitutes a new subsection 59(3) by providing that a body or person falling under subsections(1)(l) or (2) may elect for the condition in either of those

provisions to be treated as no longer being met if, at that time, they do not expect to make any further expenditure on construction operations;

- introduces a new subsection 59(3A), which provides that, where the condition in subsection 59(1)(l) or (2) ceases to be met in relation to a body or person at any time, the body or person may elect for the condition to be treated as continuing to be met until the body or person is not expected to make any further expenditure on construction operations; and
 - introduces a new subsection 59(3B), which provides that new subsections 59(3) and (3A) do not prevent the condition in subsection 59(1)(l) or (2) from being met again in relation to the body or person.
8. Paragraph 3 contains transitional provisions from the current rules to the new rules on deemed contractors.
9. Sub-paragraph 1 provides that paragraph 3 applies where the condition in existing section 59(1)(2) or 59(2) of FA04 was met in relation to a body or person immediately before the amendments made by paragraph 2 come into force, and but for the coming into force of those amendments, that condition would cease to be met in relation to the body or person.
10. Sub-paragraph 2 provides that, in such cases, the condition in section 59(1)(l) or (2) of FA04 (as the case may be) is treated as continuing to be met in relation to the body or person until they are not expected to make any further expenditure on construction operations.

Deductions for materials

11. Paragraph 4 amends section 61(1) FA04 by substituting reference to “any other person” with reference to “the sub-contractor”. This clarifies that, when a contractor is deducting the relevant percentage from a contract payment made to a sub-contractor, they should first deduct only the cost of materials purchased by the sub-contractor from the figure to which the relevant percentage deduction is applied.

Grace period

12. Paragraph 5 inserts new sub-sections after subsection 61(3) of FA04. The purpose of these new provisions is to afford a grace period to those contractors who inadvertently or unexpectedly breach the new deemed contractor threshold, so that they have time to set up the required processes to enable them to operate the CIS rules effectively. This provision covers a concession currently included in HMRC guidance.
- New subsection 61(4) provides that new subsection 61(5) applies where the contractor is a deemed contractor falling within section 59(1)(l).
 - New subsection 61(5) provides that, in such a case, an officer of Revenue and Customs may serve a notice in writing which will either exempt the contractor (prospectively) from the requirement to deduct sums from contract payments under subsection 61(1) for a specified period; or treat the contractor as if such an exemption already applied in relation to, either, specified contract payments made before the date of the notice, or contract

payments made during a specified period before the date of the notice.

- New subsection 61(6) provides that the period referred to in new subsection 61(5)(a) must not exceed 90 days, but may be extended by one or more further notices under subsection 61(5).
- New subsection 61(7) provides that, in subsection (5) “specified” (period) means specified in the notice served under subsection (5).

Restrictions on set-off

13. Paragraph 6 amends section 62 FA04. Sub-paragraph 2 inserts new subsections 62(3A), 62(3B) and 62(3C).
14. New subsection 62(3A) provides that regulations made under subsection 62(3) may include provision authorizing an officer of Revenue and Customs to correct an error or omission relating to a set-off claim; remove a set-off claim; or prohibit a person from making a further set-off claim, either for a specified period or indefinitely.
15. New subsection 62(3B) FA04 provides that regulations made under subsection (3) which include provision of the kind mentioned in new subsection 62(3A) may, for example, include provision allowing such things to be done by amending a return or otherwise, or allowing a set-off claim to be removed where the claimant is not eligible to make the claim. It also provides that such regulations may require information to be given to the Commissioners of Revenue and Customs, at such times as may be specified in the regulations.
16. New subsection 62(3C) FA04 provides that “set-off claim” means a claim for treating a sum deducted under section 61 as paid on account of any relevant liabilities.
17. Sub-paragraph 3 amends subsection 62(4) by substituting reference to “subsection (3)” for reference to “this section”.

Penalties

18. Paragraph 7 substitutes a new section 72 FA04 (penalties).
19. New subsection 72(1) provides that the section applies in a case within subsection (2), (3) or (4).
20. New subsection 72(2) replicates the current penalty that can be charged under the existing section 72 FA04, on a person (A) who knowingly or recklessly makes a false statement or furnishes a false document when applying to register for gross payment or payment under deduction under Chapter 3 of Part 3 of FA04.
21. New subsections 72(3) extends liability to a penalty under this section to a person (A) who exercises influence or control over another person (B), or who is in a position to do so, if A knowingly or recklessly makes a false statement or furnishes a false document for the purposes of enabling or facilitating B to become registered for gross payment or for payment under deduction.
22. New subsection 72(4) extends liability to a penalty under this section to a person (A) who exercises influence or control over another person (B), or who is in a position to do so, if A encourages B to make a false statement or furnish a false document, and A

either knows that the statement or document is false, or is reckless as to whether it is false.

23. New subsection 72(5) states that, in any case where the new section 72 applies, A is liable to a penalty not exceeding £3,000.
24. Paragraph 8 provides that paragraph 7 (the new sub-section 72) only applies to statements made or documents provided on or after 06 April 2021.

Background note

25. These changes are designed to tackle abuse of the CIS rules, ensuring HMRC can act quickly where the rules are being broken and that the CIS applies fairly to everyone eligible. The changes to the deemed contractor rules are designed to prevent manipulation of the current rules so that a business cannot deliberately avoid operating the CIS. The clarification to the cost of materials provision will remove scope for different interpretations of the existing rule. The new power to allow HMRC to amend certain CIS set-off claims will prevent contractors incorrectly reducing their employer liabilities. The expansion of the penalty for providing false information at registration for the CIS will allow HMRC to charge a penalty on those facilitating such applications.
26. HMRC will update the guidance to reflect these changes in due course.
27. If you have any questions about these changes, or comments on the legislation, please contact: cisconsultations@hmrc.gov.uk.