



## IMPROVING THE OPERATION OF THE CONSTRUCTION INDUSTRY SCHEME COMMENTS ON DRAFT REGULATIONS ARISING FROM THE CONSULTATION

ICAEW welcomes the opportunity to comment on the draft secondary legislation [\*The Income Tax \(Construction Industry Scheme\) \(Amendment\) Order 2015\*](#) published by HMRC on 10 December 2014.

This response of 7 January 2015 has been prepared on behalf of ICAEW by the Tax Faculty.

Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## INTRODUCTION

1. We welcome the opportunity to comment on the draft statutory instrument, explanatory memorandum and explanatory note published on 10 December 2014 although are disappointed that only 4 weeks were allowed, which included the Christmas period. We are a professional body with many thousands of members representing hundreds of thousands of businesses and collating views from even a small number of those affected takes time. This was an opportunity to make real improvements to part of the tax system affecting many UK construction businesses and it is unfortunate that it has not achieved more.
2. We took part in the earlier consultation, Improving the operation of the Construction Industry Scheme (CIS) earlier in 2014, see [TAXREP 49/14](#), and subsequent meetings and have noted the Government's response document published on 10 December 2014.
3. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

## MAJOR POINTS

4. In accordance with the Government's commitment to making the tax system quicker, simpler and easier for business by reducing the administrative burden, the policy objective of the CIS consultation in 2014 was to reduce costs for business and for HMRC by simplifying the scheme. These regulations, arising from that 2014 consultation, do not fulfil this main purpose.
5. In our response to the original consultation document, we stated that the scope of the consultation was too limited. Regrettably, the outcomes concerning the few areas which have been considered, appear to have favoured HMRC ahead of the tangible improvements for businesses in the construction industry.
6. It is difficult to see how the idea that "these proposals could substantially reduce CIS businesses' administrative costs" will become reality.
7. It is disappointing to note that while a consultation on CIS is now on record, the opportunity for a more thorough review has been missed.

## Digital account

8. The measure that would have been of greatest benefit to businesses, including the least active subcontractor, is the digital account (see paras 3.24 and 3.29 of the consultation response document). This would assist every subcontractor who would be able to check deductions made in their name, cross-referenced to net sums received, and to query problems straight away rather than waiting until after 5 April.
9. Regrettably, this is described as a "vision" with no impact assessment or timetable. This proposal was included in the original consultation document in June 2014. The Minister's foreword stated that HMRC is "investing extensively in digital services to save businesses time and money".
10. We would like to have seen a timetable for this alongside the more onerous changes being imposed on businesses in 2015. We note that HMRC will be taking this forward and look forward to participating in discussions on this as soon as possible.

## COMMENTS ON THE REGULATIONS

11. The following measures within the draft regulations appear to be of more benefit to HMRC;
  - Mandating online submission for monthly CIS returns, abolishing paper returns
  - Downgrading the telephone subcontractor verification service

- Mandating online penalty appeals

### **Mandating online submission for monthly CIS returns, abolishing paper returns**

12. Undoubtedly there is a trend towards contractors making monthly online submissions, but presently about 20% of contractors, or 30,000 businesses, prefer the paper alternative. It is difficult to understand how removing an option is a benefit to business. Our position on mandation remains as it has always been: the business case will lead businesses to file online when it is more efficient and reliable for them to use this route rather than file using paper.

### **Downgrading the telephone subcontractor verification service**

13. Contractors have often found that online verification of subcontractors provides an unexpected and disputed answer. Usually this leads to making that verification by telephone, which takes further time to do so, and which often produces a different and more accurate result.

14. It is useful that the shortcomings of the current online system have been recognised, and that any withdrawal of the telephone service is to be delayed until 2017. We hope to receive notice from HMRC that the online service has been improved, such that we may verify this by reference to the experience of our members. Until then, there should be no downgrading of the telephone system, nor should the date of withdrawal of some time in 2017 be regarded as a definite. We would emphasise that the telephone service is indeed a valuable “service” and hope that HMRC reconsiders the intention to completely withdraw the telephone option.

### **Online penalty appeals**

15. The Government presumes that the move to online appeals is an improvement. However, we disagree with making online the only option. Businesses being faced with penalties often prefer some personal contact to explain how the penalty has arisen, particularly those who do not have a professional adviser. We cannot agree that removal of this option is a reduction of an administrative burden to business.

### **Benefits to business**

16. The measures that will benefit businesses are:

- Disregarding directors’ tax compliance failures in assessing gross payment status (GPS) application
- Removing penalties for nil monthly return
- Reduction in the GPS threshold
- Relaxation of GPS regulations for joint ventures

### **Eligibility for gross payment status (GPS)**

17. The step regarding directors will be useful in that a disincentive to apply for GPS is removed. It should be noted, however, that a considerable amount of work has been undertaken by the Collector of Taxes to identify persistent tax evaders and their associates operating in construction and that granting GPS to businesses controlled by such individuals may be counter-productive.

18. It is mentioned that the revised GPS compliance test will include “substantially fewer obligations”, but will retain the need for timely submissions of returns and payments. It would have been helpful for HMRC to list out the other obligations that will be removed. These only appear to be the removal of timely submissions of P11Ds (if applicable) and timely payments of self assessment or corporation tax (if due), so the overall effect can scarcely be described as substantial.

19. HMRC has declined to write to those contractors eligible for GPS, inviting their application. As they have the data available, it is disappointing to note the lack of willingness.

## **20. Removing penalties for nil monthly returns**

21. Many small businesses consider even a penalty of £100 to be disproportionate for a late nil return. This move is welcomed, though HMRC should consider the automatic withdrawal of the penalty once the return is submitted, rather than the contractor needing to spend time working through an appeal process.

22. While the proposed change to the regulations (in Regulation 2(2)) to remove the obligation to file a nil return is welcome, the fact that HMRC will continue to issue automatic penalties for not filing a nil return is perverse. Any such penalty would need to be appealed on the grounds that no payments were made to sub-contractors during the month (Explanatory Note 7.1) creating extra work for HMRC and contractor alike.

23. With this amendment in the regulations, HMRC will have no statutory basis to issue such penalties for non-filing of a nil return in future. HMRC therefore needs to alter its systems and processes so that erroneous penalties for non-filing of a nil return are not issued.

24. These changes will otherwise mean that it will be less effort for taxpayers to file a nil return as they do currently than to appeal an erroneous penalty issued by HMRC. This is nonsense.

## **GPS threshold**

25. The reduction in the GPS threshold to £100,000 should enable between 400 and 1,000 businesses to apply for GPS. The reduced regulation is welcomed, but tempered by the recognition that more than 50,000 businesses act as contractors without having GPS status.

## **Insolvent businesses**

26. The allowance for earlier repayment of CIS tax to insolvent businesses is a small alleviation in bureaucracy, but no help to those still in business.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )