

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME)
(AMENDMENT) REGULATIONS 2015

2015 No. 429

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Regulations which provide the operational detail of the Construction Industry Scheme (CIS) (the Income Tax (Construction Industry Scheme) Regulations 2005 (S. I. 2005/2045)) (“the principal Regulations”).

2.2 This instrument removes the obligation to file a return in cases where the contractor has not paid any subcontractors in a tax month and also amends the rule that any repayment can only be made to a subcontractor after the end of the tax year in which the deductions were made where the sub-contractor is insolvent.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no matters of special interest.

4. Legislative context

4.1 This instrument removes the obligation on a contractor which has not made any payments under a construction contract in a tax month to make a return to HMRC notifying that no payments have been made by repealing regulation 4(10) of the principal Regulations.

4.2 This instrument also amends regulation 56(5) of the principal Regulations to permit repayments of sums deducted under section 61 of the Finance Act 2004 (c. 12) to be repaid during the tax year in which the deductions were made where the subcontractor is a company which is subject to a winding up under Part 4 of the Insolvency Act 1986 (c. 45) and which has ceased trading, or, in

cases where the company is also a contractor, it has permanently ceased to make payments to sub-contractors.

5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

7.1 At present contractors get a financial penalty if they miss the filing deadline of the 19th of the month for their CIS returns. They must still file a return if they have not made any payments to subcontractors in a tax month (a nil return) unless they ask for the scheme to be inactive. Contractors and their agents have expressed views that penalties for nil returns are seen as disproportionate to the offence. HMRC no longer intends to charge penalties in these circumstances and has therefore decided to remove the legal obligation to file the nil return.

7.2 HMRC is therefore removing the statutory obligation on contractors to file a nil return where a contractor has not paid any subcontractors in a tax month. Although contractors will no longer be required to make a nil return, HMRC will encourage contractors to file a nil return on a voluntary basis. In cases where contractors do not make any payments to subcontractors if they notify HMRC of that fact they will not receive a late filing penalty or a late payment penalty and specified charge notices will not be issued.

7.3 When a company is subject to a winding up proceeding under the Insolvency Act 1986, the present rules prevent it from claiming any repayment from HMRC until after the end of the tax year. Depending upon the timing of the insolvency, this may severely delay the winding-up proceedings. The principal Regulations are being amended to facilitate an early payment to creditors and reduce the time taken to deal with insolvency cases.

- **Consolidation**

7.4 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 HMRC carried out a formal consultation between June and September 2014 on improving the Construction Industry Scheme: *Improving the Construction Industry Scheme (CIS)*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325772/Improving_the_operation_of_CIS.pdf

8.2 About 40 responses were received. The nil return proposal in the consultation document was well received.

8.3 A response document was published on 10 December 2014. A copy is available at
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384729/1049 - Improving CIS - responses summary final version v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384729/1049_-_Improving_CIS_-_responses_summary_final_version_v2.pdf)

9. Guidance

9.1 Guidance on these changes will be available from March 2015.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside a draft of this instrument and is available at
<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. This remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This statutory instrument will impact across all construction business including small businesses.

12. Monitoring and review

- 12.1 The purpose of this instrument is to ensure that where a contractor has not paid any subcontractors in a month that the contractor is not liable to a penalty in the event that it fails to notify HMRC of that fact. Additionally it will allow an earlier repayment to a company subcontractor who is subject to a winding up proceeding under the insolvency provisions in the Insolvency Act.
- 12.2 HMRC will monitor the effectiveness of this instrument to ensure the Government objectives are met.

13. Contact

- 13.1 Adrian Dixon at HMRC (Tel: 03000 586934 or email: review.cis@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.