

Guidance Regarding Payments By Schools To Contractors From April 6 2007

Introduction

Following negotiations between the Construction Industry and HM Revenues and Customs a major change has been agreed for Local Authority schools with delegated budgets. This comes into effect from the 6 April 2007. **A new exemption means that where a contract is between a school head teacher or governing body and the subcontractor (i.e. not with the Local Authority) Construction Industry Scheme (CIS) reporting is not required.** This means the school can pay the subcontractor direct and do not have to forward invoices and payments to the School Finance Team at the Civic Centre.

The main guidance to the new scheme can be viewed on HM Revenues and Customs website

<http://www.hmrc.gov.uk/new-cis/index.htm>

Although the changes mean that schools can pay for construction payments made from delegated budget resources through their local accounting systems, there are certain responsibilities for schools in terms of reporting payments for services to HMRC and checking the employment status of workers.

The CIS changes are summarised below.

I have included an Appendix covering the new CIS system as well as related areas such as employment status checks and VAT on contractor payments.

Summary of Changes relating to New CIS

- Construction work paid for from delegated school budgets is outside the scope of CIS from 6 April 2007 if the contract is directly with a school
- If the contractor is self employed they can be paid by the school without a deduction of tax
- If the contractor is 'employed' they must be paid through payroll. Schools must consider this issue before engaging contractors
- If a payment is made by the school on a valuation certificate or pro forma invoice the VAT paperwork must be obtained by the school and retained for inspection
- Invoices for construction work paid for from non-delegated budgets or where the contract is with the LEA must be sent to the Council for payment as this work is still within the scope of CIS. This includes contracts entered into by the Property Design and Standards Team on behalf of schools, where the school has not acted as the agent of the LEA.
- Schools must keep records of payments for external services in the format required for a Taxes Management Act S16 return

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Section 1 Construction Industry Scheme

- From 6 April 2006 all payments made by schools to sub contractors for construction work from delegated budgets will be outside the scope of CIS.
- This means that payments to sub contractors can be made locally by schools from their delegated funds.
- The sub contractor can be paid 'gross' without a deduction of tax providing that the sub contractor is self-employed in terms of the work they have carried out.
- The Head Teacher is the agent of the Council when making these payments.

Section 2 Checking Employment Status

- Although payments made directly by schools are no longer within the scope of CIS the employment status of a worker still needs to be thought about carefully
- Even if a sub contractor is self employed in terms of running their own business they may be classified as an employee of the school in some circumstances
- The employment status should be agreed between the school and the sub contractor before any contracts are entered into as this affects the way in which the worker is paid
- It can be quite difficult to ascertain whether a worker is employed or self employed in terms of a particular task that they are engaged to carry out but there are some general points that suggest employee or employed status.
- If it doubt please consult your payroll manager for further advice or look on HMRC website where there is a tool to guide you through an assessment of a workers employment status.

Factors that suggest a worker is an employee of the school

- They have to do the work themselves - the worker has to provide the service personally without right to substitution
- The school can tell them at any time what to do, where to carry out the work or when and how to do it – there is a right of control in the way the worker is told how to perform their duties
- They have to work a set amount of hours and are paid by the hour, week, or month – there is mutual obligation in terms of a set number of hours for a set rate per hour
- The school move them from task to task – again there is a right of control
- They get overtime pay or bonus payment
- They use school equipment rather than own tools
- There is a lack of financial risk for the contractor
- The worker has entitlement to benefits such as car parking, canteen facilities

If a worker is employed in a way that reflects these factors it is possible that they are an employee of the school and should be paid through payroll rather than directly. Even if the worker is self-employed the nature of their contract of employment with the school may still indicate that they are an employee.

Factors that suggest a worker is self employed

- The worker can hire someone to do the work or engage helpers at their own expense
- They risk their own money
- They provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- They agree to do a job for a fixed price regardless of how long the job may take
- They decide what work to do, how and when to do the work and where to provide the services
- They regularly work for a number of different people
- They have to correct unsatisfactory work in their own time and at their own expense

If a worker is employed on terms that fit the above criteria they are less likely to be considered an employee of the school and will probably have self employed status in terms of the work they are carrying out

What to do if a worker is potentially an employee

- There is a tool on the HM Revenues and Customs website which will assist in coming to a decision about a workers employment status. The links take you through a step by step questionnaire that should enable a school to determine the employment status of a worker

<http://www.hmrc.gov.uk/calcs/esi.htm>

- If the worker is an employee they must be paid through the a payroll facility with deduction of tax through PAYE and not paid directly by the school
- The introduction of New CIS does not remove the obligation to consider the employment status of any worker providing services to a school.

Section 3 VAT and Payments for Construction Work

- If a contract payment is made by a school to a sub contractor based on a valuation certificate the sub contractor should send an authenticated receipt to the school within 14 days
- The authenticated receipt (AR) is required as evidence for recovery of VAT
- HM Revenues and Customs may want to see the AR if they carried out an inspection
- If the sub contractor does not provide the AR automatically the school will need to ask for it
- If a payment is from a delegated budget the Head Teacher acts as the agent of the LEA and VAT is normally recoverable under the Council's VAT registration
- All records relating to sub contractor payments must be kept by schools for 6 years
- Failure to produce tax paperwork may result in an assessment by HMRC and repayment of the VAT already claimed

Section 4 Non Delegated Budget Expenditure

- If construction expenditure is funded by the LEA outside of the delegated budget CIS will still apply and payments must be made to a sub contractor through central payments.
- If a contract for construction work at a school is placed by the LEA, the payment is within the scope of CIS and the Council must pay the sub contractor even if the spend is from a delegated budget
- Major Capital schemes are still likely to fall under the scope of CIS as these will not be funded from delegated budgets
- Schools must make sure that sub contractors are aware of the fact that major construction contract scheme payments will be made by the Council, and therefore be subject to any CIS deductions, if the contract is not with the school.

Section 5 What Is Covered By The Definition Of Construction Work

- Painting & Decorating
- Glazing (except for repair of glass in existing frame)
- Plumbing (inc. installing heating, air conditioning, ventilation, water supply etc)
- Electrical works (inc. installing computers, interactive whiteboards, power supply, lighting etc)
- Playground Re-surfacing (plus installation of Playground equipment)

- General building works (e.g. refurbishment, partitioning)
- Roofing
- Carpentry (only when involving a fixed structure – e.g. fix shelf to wall)
- Erection/ dismantling of scaffolding
- Landscaping
- Fencing
- Asbestos removal
- Damp-proofing

Note: The general rule is work **altering a fixed structure** in any way. However there are exceptions such as some security works like installation of alarm systems.

Section 6 Taxes Management Act 1970 Section 16 Return

- HMRC may require a declaration under S16 of the Taxes Management Act
- This will cover all payments that have been made to non employees for external services
- Schools should keep a record of all payments made for external services
- HMRC have a preferred format for a return under the Taxes Management Act
- There is a template for the spreadsheet on HMRC website
<http://www.hmrc.gov.uk/statutory-notice/general-template.htm>
- Schools must keep records of payments for external services in such a way that a return could be produced for HMRC on request
- Schools will be responsible for payments of any penalties from HM Revenues and Customs arising from non-compliance on reporting for tax matters, direct payments to employees that should have been made through payroll and failure to produce evidence for VAT Recovery.

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