

*Ref: PT*

23 June 2026

[REDACTED]  
Construction Industry Scheme  
HMRC

Via email: [REDACTED]

Dear [REDACTED]

### **Construction Industry Scheme - Regulation 20A**

Following the presentation at the Construction Forum meeting of 18 June on the commercial and practical context for lease grants and the tax tensions that cause delays and administrative costs for businesses, we thought it would be helpful to set out further detail of the issues encountered in relation to Regulation 20A and possible solutions for discussion at the next Construction Forum meeting.

The change made by Regulation 20A that aims to exclude most landlord to tenant payments for construction works from the Construction Industry Scheme (CIS) is not achieving its policy aim in many cases. We outline the problem and evaluate solutions that we hope will assist HMRC to fulfil the policy objective and reduce the administrative burden and adverse cash flow impacts for these commercial payments. Our members' unanimous preference is for a full exemption.

#### **Introduction and commercial context**

Landlords will often offer an inducement to a tenant to enter or vary a lease. The form the inducement takes is driven by commercial negotiations and the needs of the parties. The inducement may take the form of a cash payment (without conditions of use) or a rent-free or reduced rent period or a payment as a contribution for building works and fit out. These inducements can give rise to multiple complex tax issues including VAT, SDLT, CIS as well as income or corporation tax depending on the nature of the commercial inducement. CIS is relevant (only) where the inducement takes the form of a payment for construction services for landlord building works.

## **Regulation 20A**

Regulation 20A of The Income Tax (Construction Industry Scheme) Regulations 2005 came into effect on 6 April 2024 as inserted by The Income Tax (Construction Industry Scheme) (Amendment) Regulations 2024<sup>1</sup>. The Explanatory Notes refer to the policy intent:

*'In the Summary of Responses to the consultation published at Autumn Statement 2023, the Government committed to alleviate certain administrative burdens by removing most payments made by landlords to tenants from the scope of the CIS.' (Our underlining)*

This matches what we understood from the meetings at the Construction Forum at which the need for Regulation 20A was discussed.

Unfortunately, it appears that this policy intent is not being achieved. Representative members of HMRC's Construction Forum have provided evidence and anonymised case studies demonstrating the difficulties of applying HMRC's guidance at CISR14048 - CISR14049 particularly on conditions (1)(e) and (1)(d) of Regulation 20A.

Although CISR14048 sets out a process for a guidance referral service in case of uncertainty, we understand that HMRC has received very few referrals. Feedback from our members suggests that the reason for not taking up this process is the driver of commercial timing and therefore concerns that a response may not be received in time, or in terms that provide sufficient certainty, before the transaction takes place. The process is not therefore an effective route to resolving uncertainty for business.

The consequence of these difficulties is that landlords are still making landlord contributions subject to deductions of 20% or 30%, notwithstanding the policy objective of Regulation 20A. Our members have reported that many prospective and existing tenants receiving landlord contributions for fit out works are in the hospitality and retail sectors or are start-ups. These are often cash-limited businesses that rely on the landlord's contributions to spread the cost of fitting out their premises and which do not have sufficient payroll costs against which to offset the CIS deductions.

### *Difficulties with the approach to Regulation 20A(1)(e)*

Condition (1)(e) requires that 'the payment is for construction operations relating to works intended primarily for the benefit and use of the tenant that occupies or will occupy the property under the lease'.

HMRC's guidance focuses on the physical nature of the works which requires an onerous detailed analysis of the expenditure and judgement-calls on the extent of the benefit to each party. The time and costs involved in identifying the nature of the works and the party that primarily benefits combined with uncertainty and grey areas mean that it is often commercially more efficient and cost effective to make the payment under deduction notwithstanding that the majority of works are in substance intended primarily for the benefit and use of the tenant occupier.

The focus on the physical nature of the works as a proxy for determining primary benefit and use also means that even a small element of the works that benefits the landlord as well as the tenant to some degree runs the risk that the condition is not met. For example, a tenant installs LED lights in the demised areas, would the question of primary benefit turn on whether the typical lifespan of the lights aligns to the tenant's lease term? If the life extends beyond the lease term, does the benefit to the landlord displace the primary benefit to the tenant, and for how long would the life of the lighting have to exceed the term to fail the test.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2024/308/made>

A further related example in practice is where the landlord has a requirement to reach net zero targets and a LED lights upgrade would assist with meeting this target while also being specialist lighting for the tenant's benefit.

#### *Difficulties with approach to Regulation 20A(1)(d)*

Condition (1)(d) requires that 'the tenant that occupies or will occupy the property will carry out the construction operations itself, or a third person will carry out the construction operations pursuant to a contract with the tenant'

HMRC's guidance for this condition requires the landlord to satisfy themselves that there will be a contract in place for the work with a third person either by way of copies of invoices supplied by the tenant or by warranties given by the tenant to the landlord. Such evidence is not expressly mandated by Regulation 20A and it is unclear why this evidence is required. It gives rise to problems in practice.

In practice in a typical arrangement, the tenant will enter a contract for works with the sub-contractor and commercially the landlord's contribution is usually only payable on the tenant having disbursed the funds for those works.

The practical application of the approach in the guidance has resulted in landlords seeking formal contractual protections to mitigate risk. This creates additional legal fees and administrative time as the warranties must be agreed by both parties' lawyers, regardless of the amount of contribution payment. For most small contribution payments, it is cheaper and more time efficient for both parties to apply CIS rather than incur additional legal fees and administrative time on protracted warranty discussions.

This outcome runs counter to the policy objective underpinning Regulation 20A to reduce cost and administrative burden for landlord and tenant arrangements.

#### *Possible solutions (for discussion)*

In light of the difficulties, we evaluate possible solutions. The solutions are set out in an order of preference for the solution to be adopted, based on the policy intent and our evaluation of the pros and cons. However the order of preference (except for solution 1) may depend on the profile of the parties.

#### **Solution 1: A complete CIS exemption for a landlord's payments for tenant's works**

##### Pros:

- Removes the significant administrative burden on landlords and tenants involved in analysing works on a case-by-case basis under HMRC's current approach.
- Removes the adverse cash flow impact on tenants of receiving payments under deduction that cannot be offset, of particular concern for start-ups and the hospitality sector.
- Existing measures provide safeguards against any perceived exchequer risk of evasion including the offence of failure to prevent facilitation of tax evasion under the Criminal Finances Act 2017 and the business risk review process.
- An additional safeguard of a targeted anti-avoidance rule (TAAR) could provide for the disapplication of the exemption if it were reasonable to suppose that a leasing arrangement had been entered into to circumvent the avoidance of CIS.

##### Cons:

- HMRC had concerns about artificial or contrived arrangements to avoid CIS by routing payments via a tenant. It is not clear whether these concerns remain and whether they are based on known or theoretical exchequer risk.

**Solution 2: An exclusion/safe harbour for the landlord contribution payment where the tenant provides the landlord with an invoice from the sub-contractor, the amount payable by the landlord matches that amount and the tenant's subcontractor is registered for gross payment.**

Pros:

- Removes the adverse cash flow impact on tenants of receiving payments under deduction, to the extent that payment is matched.
- This would mean that the arrangements could not be used to allow payments via the tenant to be paid without deduction to tenant's sub-contractors who are not registered for gross payment.
- HMRC has greater visibility of payments made than the current position.

Cons

- In practice the contribution may not cover all the works as generally there will be a cap. There may be difficulty matching payments to invoices in some cases.
- Deduction still required where tenant's sub-contractors are not registered for gross payment, a de minimis disregard for low value works could reduce the administrative burden with minimal risk.
- The landlord may want to allocate the contribution to the expenditure giving the highest capital allowances and that exercise may not be done until well after the contribution has been paid.
- The tenant would verify the sub-contractor status so introducing an admin burden for the tenant although the process may not be very onerous in terms of obtaining and recording a verification code.

**Solution 3: An exclusion/safe harbour for the landlord contribution payment where the tenant opts to register as deemed contractor in respect of landlord works (where the application of Regulation 20A is uncertain)**

Pros:

- Where there is uncertainty over whether Regulation 20A applies to elements of the contribution, that uncertainty is removed by providing an exclusion from CIS where the tenant is registered as a deemed contractor and Regulation 22 protection is 'switched off' (only) for matters funded by the contribution
- Registration as a deemed contractor is an established mechanism.
- HMRC has improved visibility of payments to the tenant's sub-contractors relating to the landlord works, subject to deduction as appropriate.

Cons:

- Additional administrative requirement for the tenant for whom it adds complexity however registration/deregistration as a deemed contractor is much less onerous than gross payment status.
- The safe harbour would be limited by the £3m annual expenditure threshold.

**Solution 4: An exclusion/safe harbour if less than a percentage (say 10%/20% - or the lower of 10%/20% and an absolute monetary amount) of the total contribution relates to works that primarily benefit the landlord then the contribution can still fall within Regulation 20A.**

Pros:

- This could assist for larger projects while preserving HMRC's ability to challenge abusive arrangements.
- Simple to implement and an established mechanism for removing administrative burdens in other areas.

Cons: Creates a potential cliff edge that will still require analysis at the boundary. ☒

### **Solution 5: Apply the test in condition (1)(e) on a principles-based approach using guidance**

This solution would involve moving away from the focus on the physical nature of the works in applying condition (1)(e) and therefore the requirement in guidance for a granular analysis of expenditure. Instead the focus would be on the nature of the payment and the principles to apply in accordance with both the policy intent and the need to protect against abuse. This might encompass the following:

- for works within the area leased by the tenant, it is usually the case that any works are primarily for the tenant's benefit and use, taking account of the tenant's direct use of the premises and noting the requirement under condition (d) for the tenant to occupy and therefore use the premises
- areas outside the demise may also be for the tenant's primary use and benefit (consistent with the existing guidance on this point about server rooms etc.)
- works would not be primarily for the tenant's benefit and use where it is reasonable to suppose that a main purpose of the tenant being party to the lease or the lease being granted is to obtain the application of Regulation 20A, for example if it were reasonable to suppose that a leasing arrangement had been entered into in order to circumvent the application of CIS.

Pros:

- Removes the ambiguity for (1)(e), while remaining consistent with the wording and policy intent of the legislation.
- An attempt to rely on Regulation 20A to circumvent CIS would fail the primary benefit and use test based on the existing legislation, as reinforced by the type of guidance above.

Cons: Likely concerns about reliance on guidance and therefore may not give the required certainty.

### **Solution 6: To the extent that the landlord pays the tenant's sub-contractors directly, the payments are treated as being contract payments under an implied contract directly between the landlord and subcontractor.**

Pros:

- Tenant does not suffer deductions thereby removing the adverse cash flow impact.
- A clear audit trail, with payments being clearly made under CIS deduction (and so no risk of loss to the exchequer)
- CIS is applied to payments to tenant's sub-contractors depending on the verified sub-contractors' status providing greater visibility to HMRC than the current position.

Cons:

- Often landlords have a strict onboarding policy and require detailed due diligence of the suppliers they are paying including but not limited to KYC, money laundering checks, compliance with modern slavery etc.
- From an audit and governance perspective it is normally the case that a third party would only be paid where there is a contract in place. It would therefore require a payment direction letter that is potentially difficult to draft, involves VAT issues, may not be effectively implemented in practice, would require amendments to current industry contractual templates and create contractual issues as to the party who can take legal action for non-payment.
- From an IR35 perspective, if a landlord pays a tenant's sub-contractors, the landlord will become the 'fee payer' meaning, the liability for checking status and dealing with PAYE if applicable will fall upon the landlord.

- The payments when the works are complete. The contribution towards the works and may not cover all the works as generally there will be a cap. There will be difficulty in matching payment to respective contracts if this is the case.
- Where a contribution payment does not cover all the cost of the works, the landlord often includes a waterfall provision in the agreement for lease in order to have priority claim on how the contribution payment is allocated across the works for capital allowances. Generally, the landlord would allocate the contribution to the expenditure giving the highest allowances. This exercise may not be done until well after the contribution has been paid, sometimes up to two years after the event. If payments must be made to the tenant's sub-contractors as the works commence or, on completion of the project, this may restrict how the allocation of costs in future for the purpose of capital allowances.
- Reg 22 will exempt the tenant from applying the CIS rules. If payments are made direct to the tenant's contractors, the tenant would then have to verify on behalf of the landlord so introducing a further administrative burden for the tenant.

### **Conclusion**

Our members' unanimous preference is for a full exemption, potentially subject to a TAAR, if HMRC perceive or have evidence of potential avoidance of which our members are unaware. It would be helpful to understand HMRC's concerns.

Yours sincerely

Leigh Sayliss

Chair, Property Taxes Committee

## **The Chartered Institute of Taxation**

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.