



Chartered
Institute of
Taxation

Excellence in Taxation

**Extension of the existing security deposit legislation to include CT and CIS deductions
Response by the Chartered Institute of Taxation**

1 Introduction and summary

- 1.1 The Chartered Institute of Taxation (CIOT) sets out below its brief comments on extending the scope of the existing security deposit regime to include corporation tax (CT) and construction industry scheme (CIS) deductions.
- 1.2 The response below concerns the proposal to extend the security deposit regime to CIS deductions. We would also refer you to the comments made in our meeting of 7 June 2018 regarding the current use of the security deposit regime and the extension to both CT and CIS deductions.
- 1.3 In principle, we support steps to protect the revenue where tax is at risk because businesses default on their CIS obligations. This already applies for PAYE.
- 1.4 This said, we recommend that prior to extending the security deposit regime, and to ensure that any new powers are adequately safeguarded, HMRC commissions independent research into its current approach to imposing security deposits and the effect demands for a deposit have on struggling businesses. Particularly, the use of the regime with smaller businesses which get into difficulties where HMRC, rather than working with the business to allow them to trade out of their problems, may demand a security deposit the business cannot pay. This often leads to otherwise viable businesses ceasing to trade.
- 1.5 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT 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.
- 1.6 Our stated objectives for the tax system include:

- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented); and
- Responsive and competent tax administration, with a minimum of bureaucracy.

2 Extending Securities to Corporation Tax and CIS deductions

2.1 *Questions 1 – do you think that there are any further forms of security that could be provided?*

2.2 HMRC currently accepts security deposits in the form of cash, or a guarantee in the form of a performance bond issued by a financial institution. It seems sensible that the same options will apply to CIS securities.

3 Securities in CIS deductions

3.1 *Question 7 – do you think the proposed scope of CIS securities targets the measure appropriately?*

3.2 We agree, in principle and subject to safeguards, that it is right that HMRC can require a security from any person that is required to register as a contractor under the CIS where HMRC reasonably believes there is a risk of non-payment of CIS deductions.

3.3 A key aspect to the extended regime must be to continue distinguishing those who cannot pay from those who will not pay (paragraph 1.9 of the consultation document refers).

3.4 There are businesses/directors that are living on the edge and are trying to duck and dive around their tax/VAT obligations and knowingly use the tax/VAT monies to run the business. Protection of the current and future revenue in those cases is a real concern and HMRC should legitimately take a tough approach.

3.5 There are, however, also cases where viable businesses get into difficulties and where HMRC should help them trade out of their difficulties rather than require a security deposit. In these cases, HMRC must not take a blinkered approach to protecting the revenue as this will simply result in the loss of future tax revenue by killing the business. We suggest that to safeguard businesses that need help rather than applying 'the stick' then the legislation should clearly state that use of the security deposit regime must only be deployed where it is 'appropriate and proportionate' to do so.

3.6 We therefore recommend HMRC review the operation of the security deposit regime to PAYE (and VAT) over the last few years and take on board lessons to be learned from that experience and modify their approach accordingly.

3.7 As regards fraud in the construction sector and noting Example 3 in the consultation document in this respect: While we agree that the use of security deposits would be an appropriate response where a shell company is set up with the sole intention of not paying over to HMRC CIS deductions made from subcontractor payments, we are unclear how HMRC is going to know who these people are. It seems unlikely that such fraudsters would register for CIS in the first place. Surely, in such a scenario, the appropriate action would be a prosecution for fraud?

- 3.8 ***Question 8 – do you agree that it should be an offence for a payment to be made to a subcontractor when a requirement for a security has not been met or is there an alternative approach that would be more suitable?***
- 3.9 We agree that an offence should arise where a requirement for a security deposit has not been met.
- 3.10 We understand that under the existing security deposit regime for VAT and environmental taxes a criminal offence arises where a business continues to make taxable supplies without having complied with a notice to provide a security. Whereas, for PAYE and NICs, there is a simple offence of failing to provide a security when required.
- 3.11 Given the similarities between CIS and PAYE, we think that the offence for not complying with a security deposit for CIS should mirror that for PAYE and NICs. It seems to us that this approach keeps the legislation simple. We do not see what advantage there is to have to refer also to when payments have been made – for the potential fraudster this is another excuse to use to delay, gather the funds and disappear.

4 Acknowledgement of submission

- 4.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

5 The Chartered Institute of Taxation

- 5.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with 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. 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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