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Consultation: Construction Industry Scheme reform

Response by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 This consultation considers whether it is appropriate

- to add VAT to the list of taxes HMRC must consider when undertaking the statutory compliance test for the granting or retaining of Gross Payment Status (GPS) for the Construction Industry Scheme (CIS),
- to exclude payments made by landlords to prospective tenants to carry out construction works from CIS and
- to introduce a grouping arrangement for CIS.

1.3 The overarching policy aim is to ensure that the CIS continues its core revenue protection function while removing or reducing administrative burdens where there is no or minimal Exchequer risk.

1.4 The CIOT welcomes the focus on simplification of CIS in terms of its scope and administration, in particular the aim to reform and simplify the treatment of payments made by landlords to prospective tenants. The CIOT originally raised the latter issue in a proactive submission in 2017. We therefore welcome this public consultation.

1.5 We agree that the GPS test will be strengthened by including VAT. However we are very concerned to ensure that genuine and minor VAT errors or delays should not exclude an applicant from GPS or remove existing GPS status and that existing safeguards for direct taxes in the current compliance test should also apply for VAT. The loss of GPS status has significant cash flow implications for businesses particularly for smaller businesses operating on small profit margins who do not have the benefit of access to an HMRC Customer Compliance Manager or to professional advice.

1.6 There are significant administrative burdens in terms of uncertain tax and cashflow positions for tenants in respect of the current CIS treatment of landlord contributions to prospective tenants to fund works on the building. We consider that landlord to tenant payments should be outside the scope of CIS provided they properly derive from the landlord /tenant relationship and that any potential for abuse is evaluated and proportionately addressed.

1.7 We agree that a non-mandatory CIS grouping arrangement should simplify the administration of CIS for taxpayers and HMRC allowing a single nominated company within a group to be responsible for submitting CIS returns on behalf of all companies in the group.

2 About us

2.1 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.

2.2 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.

2.3 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.

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

3 Introduction

3.1 The consultation is concerned with three proposals to strengthen and simplify the Construction Industry Scheme (CIS). The main proposals are:

- To consider whether it is appropriate to add VAT to the list of taxes HMRC must consider when undertaking the statutory compliance test for the granting or retaining of Gross Payment Status (GPS), to bring forward the first annual review of compliance history to 6 months after grant of GPS and to move exclusively to a digital channel for GPS applications.

  The government is concerned that the current GPS test fails to exclude businesses that have committed VAT abuse. They point to evidence (not referenced) that suggests non-compliance with VAT obligations can indicate wider non-compliance.

- To reform and simplify the operation of CIS in relation to the treatment of payments made by landlords to prospective tenants, sometimes to encourage them to enter a lease. The CIOT originally

raised this issue in a proactive submission in 2017[1]. We therefore welcome this public consultation on the issue that has been further considered in HMRC's Construction Forum on which the CIOT is represented.

- To consider a form of CIS grouping arrangement to reduce administrative burdens.

The overarching policy aim is to ensure that the CIS continues its core revenue protection function while removing or reducing administrative burdens where there is no or minimal Exchequer risk.

3.2 CIOT representatives attended three consultation roundtables during the consultative period on 24 May, 20 June and 4 July 2023.

3.3 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.
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 Strengthening the GPS tests

4.1 **Question 1: What are the views on including VAT in the GPS compliance test?**

Question 2: Can you see any unintended consequences if VAT was added to the compliance test: are there barriers to submitting returns/payments in a timely manner, and could the proposal affect compliant or particular sized businesses?

4.2 An extension of the GPS compliance test would affect existing GPS holders and new applicants. The consultation indicates that an estimated 16% of the active GPS population would be currently non-compliant on VAT grounds if the test changed immediately, for most of these (15%) it is considered that the failure is one of non-timely compliance not abuse. It is not entirely clear from the consultation whether the target is the 16% of companies that are non-VAT compliant (or apparently so as discussed at 4.5 below) or the 1% where there is actual VAT abuse. Removal of GPS status is a significant sanction for construction businesses and the policy intent for including VAT in the compliance test needs to be clear.

4.3 Subject to the need to clarify the policy intent, we agree that the GPS test will be strengthened by including VAT. The VAT DRC charge (targeted at certain construction supplies) has highlighted the importance of VAT in the construction sector supply chain.

4.4 However we are very concerned to ensure that genuine and minor errors or delays should not exclude an applicant from GPS or remove existing GPS status and that existing safeguards for direct taxes in the current compliance test should also apply for VAT. The loss of GPS status has significant cash flow implications for

[1] https://www.tax.org.uk/ref244 . A further submission was made on 3 May 2022: https://www.tax.org.uk/ref954

businesses particularly for smaller businesses operating on small profit margins that do not have the benefit of access to a Customer Compliance Manager or to professional advice.

4.5 Currently some perceived non-compliance is due to HMRC systems or delays. Some VAT service levels fall short of HMRC's service level agreements so changes are not made quickly and may look like non-compliance when they are in fact due to a delay in processing by HMRC. This can be particularly difficult for VAT groups, businesses with error corrections or businesses with partial exemption special methods. Some businesses have had MTD for VAT system issues at HMRC's end that cause upload issues or 'missing returns'; these issues are often beyond the control of taxpayers and can take months to resolve. It is understood that the proposed CIS compliance test change would be unlikely to occur before April 2025 at the very earliest. It is to be hoped that these system issues will be resolved before any extension to the GPS test to include VAT but the potential for systemic issues causing delays in compliance needs to be factored in. HMRC staff reviewing the VAT position must also take into account specific service difficulties when reviewing cases.

4.6 We think HMRC should consider carefully what level of non-compliance and what circumstances will lead to loss of GPS status. VAT differs from direct taxes in terms of the volume of returns and the number of small transactions which need to be individually considered particularly for large businesses. In the context of VAT penalties for late payment, it is also noted that the construction sector is one of the main sectors affected by slow payments in the supply chain; whilst this should not affect traders using cash accounting, it can impact those who use invoice accounting (if the sub-contractor's clients are slow in paying), so there can be genuine reasons for late payments in the sector.

4.7 It would be an adverse consequence if businesses were concerned that correcting minor non-systemic errors through voluntary disclosure could lead to loss of GPS status. In respect of disclosure, we suggest these should be ignored if irregular, non-deliberate and potentially unprompted (possibly identified by no penalty). The Senior Accounting Officer legislation has a concept of materiality as in the extract below from SAOG14330 - Senior Accounting Officer main Duty: appropriate tax accounting arrangements: tax liabilities calculated accurately in all material aspects

'*For example, we normally regard isolated individual errors in multiple, low value transactions as immaterial in considering whether or not appropriate tax accounting arrangements were in place for a financial year. However if, in the knowledge of the weakness in the systems that have resulted in these errors, the SAO does not take steps to correct those errors then for future financial years those errors may well be regarded as material.*

Conversely though, an error in the treatment of a high value, one off transaction may well fail the provision.

We do not automatically treat amendments to returns, voluntary disclosures, and the like as indicating inappropriate tax accounting arrangements. Indeed the fact that a company identifies errors may point to the fact that good monitoring systems are in place, as part of the 'arrangements'. Customer Compliance Managers (CCMs) or Mid-sized Business Caseworkers should consider the facts behind the reporting of these scenarios in order to decide whether they arise from a main duty failure.'

Could a similar concept be used in looking at VAT failures for GPS purposes?

4.8 An alternative (and potentially simpler) solution is to use the new VAT points system for penalties (with effect from 1 January 2023) to provide a basis for assessing compliance including the application of reasonable excuse for failure. A practical point raised in the consultative workshops was the approach to GPS status while

an appeal against a VAT penalty is made, for example would GPS status be suspended pending the outcome? Suspension of GPS seems commercially unworkable.

4.9 We also suggest that if VAT compliance is to be used for GPS status it should be used not only as a reason for not granting GPS status but, on the other hand, as a reason for granting GPS status where for example a non-established taxable person (NETP) that has no direct taxes compliance record but is registered for VAT with a good compliance record. That should be sufficient to satisfy the GPS compliance test on that basis.

4.10 We understand that HMRC's internal systems for VAT and CIS are not integrated so cross checking of VAT compliance for CIS GPS is not possible other than presumably via manual checking. An IT system change will be required ideally to facilitate the process. The resources involved and/or the cost of any new IT system will need to be evaluated.

4.11 The consultation indicates that bringing forward the first automated check to 6 months (from 12 months) and annually thereafter would mean HMRC could check for compliance sooner after GPS is granted and remove GPS status if a business quickly becomes non-compliant. We can see that HMRC may have concerns that a sub-contractor relaxes their compliance after being granted GPS status and therefore wish to put in place enhanced monitoring. On the other hand a 6-month check is quite soon after the granting of GPS status following a detailed checking process on grant. For some taxes none or very few additional compliance points will have been passed after 6 months. A 6-month check may disadvantage start-ups/new to the UK entities that have teething issues in the first few months whilst getting up to speed with UK tax system requirements. It is suggested these entities should be offered help rather than penalised by loss of GPS status.

4.12 **Question 3: What channels of application are preferred, and do you envisage any challenges in shifting to digital?**

4.13 The consultation indicates that the current telephone channel does not lend itself to detailed checking. Digital application would allow applicants to submit evidence online and create a digital footprint of the applicant.

4.14 We are supportive of a digital channel provided it satisfies our minimum standards for the introduction of new HMRC digital systems and HMRC digital forms (please see Appendices 1 and 2). One of the difficulties with the current system is that some entities can only be registered for CIS by phone. It is important that any new digital channel caters for entities such as non-UK companies, partnerships and unit trusts. The ability for an authorised agent to access the digital channel on behalf of the taxpayer should be built in from the start.

4.15 We are pleased to note that if the proposal proceeds there will be further industry discussion and notice of the change. Consideration may need to be given to an alternative channel for non-UK corporates and other non-standard registrations that struggle to register online. We suggest this alternative could be a dedicated email with ideally an automated response as evidence of submission and provision of a reference, similar to the VAT registration process. The pre-implementation period should involve testing with a range of potential users. Drawing on the lessons learned from implementing the new digital VAT registration service and registration for Plastic Packaging Tax may be helpful.

4.16 In the interim it would assist businesses and agents to be able to email HMRC rather than having to deal with applications by post.

4.17 **Question 4: Are there any other changes that could be made to the scheme which would prevent abuse, while also maintaining simplicity for legitimate users?**

4.18 Noting that the digital channel will facilitate submission of supporting documentation, consideration might be given to the pros and cons of granting GPS automatically on the submission of required evidence, moving away from a HMRC 'check and grant' process to a system that is closer to a 'process now check later' as with self-assessment.

5 Simplifying the treatment of payments made by landlords to tenants

5.1 As the consultation recognises there are significant administrative burdens in terms of uncertain tax and cashflow positions for tenants in respect of the CIS treatment of landlord contributions to prospective tenants to fund works on the building. HMRC treat 'category A' (Cat A) payments by landlords to tenants as within CIS. Cat A works are the landlord's responsibility or would otherwise have been carried out by the landlord. HMRC treat 'category B' (Cat B) payments as outside CIS. Cat B works relate to expenditure funded by the landlord for the benefit of the tenant's business. Landlord contributions that are a mix of Cat A and Cat B works are increasingly common to allow tenants to model space to meet their needs providing time, cost and environmental benefits.

5.2 **Question 5: Should any landlord to tenant payment be within the scope of CIS?**

5.3 The policy aim is to ensure that the CIS continues its core revenue protection function in a sector that HMRC regard as presenting a significant risk while removing or reducing administrative burdens where there is no or minimal Exchequer risk.

We consider that landlord to tenant payments should be outside the scope of CIS provided they properly derive from the landlord /tenant relationship and therefore are outside the focus of the CIS and that any potential for abuse is evaluated and proportionately addressed.

Landlords make payments to tenants in non-construction sectors such as hospitality, retail or tech who are carrying out construction works to finish a building or to fit it out to their own specification, a practice that is increasingly common. If the works fall within CIS (and whether they do is far from clear) the tenant either has to register for the CIS as a sub-contractor or receive the payment under deduction of tax and claim it back from HMRC. We understand that tenants are rarely or never carrying out the works themselves but rather sub-contracting works to third party contractors. At that stage the CIS rules operate as intended to capture actual construction operations. It is the application of CIS between tenant and landlord for the same works that adds legal and administrative costs reducing productivity and adversely affects cash flow for start-up businesses that may not have sufficient payroll costs to offset the CIS deduction.

5.4 **Question 6: Do all landlord to tenant payments include an inducement or encouragement element?**

5.5 The structure of any incentives is dependent on the negotiations and priorities of the landlord and tenant. For example a landlord may offer a rent-free period, a cash inducement and /or payment for Cat A works, the latter are more common in relation to a new building or a refurbishment. A tenant may not have sufficient available funds in the short term to make the fit-out and needs the assistance of the landlord to fund immediate cashflow - accepting that rents will be higher in the future.

5.6 **Question 7: How do you identify whether a transaction includes an inducement or encouragement element?**

5.7 The payments or non-cash incentives will be set out in the agreement for lease or heads of terms. However it is difficult in practice to identify an inducement or encouragement element for tax purposes when commercially a contribution is viewed as a package or lump sum. The distinction for tax purposes is therefore a somewhat artificial construct and incurs substantial adviser time and fees in analysing the different parts of the package.

5.8 **Question 8: What are the drivers for delegating building fabric works to tenants rather than landlords arranging it themselves?**

A tenant of a new building especially an office will likely undertake significant fit out works to suit their own needs. If the landlord completes the building, it is likely that part of the recently completed works may need to be stripped out, and replaced, with adverse financial and environmental/sustainability consequences. Therefore, landlords complete to 'shell and core' with the tenant completing the works as part of their own fit-out funded in part by the landlord contributing to the cost.

Additional factors for smaller units, often retail, are that it is simply not practical to have two different sets of contractors working on site simultaneously and tenants often prefer to have control over some elements (using their own building contractors) that might more usually be carried out by, or on behalf of, the landlord. This may be because, for example, a large retailer has a contractor with fixed rates or because of efficiencies in carrying out the works at the same time. Having two contractors on site can lead to disputes over liability in the event of defects that are difficult to resolve. There is also the factor of timing, tenants may want to take possession before refurbishment works are completed. The tenant would therefore undertake, through its own contractor, both Cat A and Cat B works at the same time particularly where a unit has been left in disrepair by a previous tenant. These factors are commercial drivers not incentives provided by the landlord.

We think the current focus on the incentive element is too narrow and does not recognise commercial reality. In considering the best solution, it is preferable to focus on a bona fide landlord /tenant relationship.

5.9 **Question 9: Which of the solutions suggested is preferable ?Question 10: What are the advantages and disadvantages of these proposed solutions?**

Possible solutions set out in the consultation are summarised below with our evaluation of each proposal.

Solution	**Our comments**
Revisit distinction between CAT A and CAT B works – focussing on the underlying nature/intent of the payment	Much adviser time is currently spent undertaking detailed investigations to identify the nature of works. Any attempt to define the boundaries more specifically will need to be regularly maintained/updated in guidance incurring resource. Even then the distinction may still be misunderstood and ongoing grey areas are likely to arise. As an example, when the CIS guidance was updated for carpets and floor boxes, disputes between advisers remained. Moving the boundary is only likely to create new issues not solve the underlying issue. We do not think this option offers a solution.
Extend scope of Regulation 22 (The Income Tax (Construction Industry Scheme) Regulations 2005) to include CAT A work as own work for landlords	Regulation 22 provides an exemption from CIS by deemed contractors for construction work on a property that they use for their own business. We agree that extending the scope of Regulation 22 to cover landlord payments to a tenant for Cat A works by removing the

	restriction in Reg 22(2)(a) would provide a solution to this issue. However there is uncertainty over HMRC's approach to property investors in that they may be treated as contractors within FA 2004 section 59(1)(a) (instead of deemed contractors under section 59(1)(l)) to which Regulation 22 does not apply. The same exemption should apply to property investors to avoid this trap. Extending the scope of Regulation 22 will require removing the current restriction in Regulation 22(2)(a) for property that is 'let' or 'held as an investment' but also adding a further qualification that the works are carried out by the tenant. (Absent that further qualification an amended Regulation 22 would offer too wide an exemption covering a property investor that carries out own work using sub-contractors directly.) The additional requirement that the works must be carried out by the tenant should also help to counter avoidance. In the case of sub-letting by the tenant, the exemption should also apply (whether a tenant is sub-letting part or all of the premises). Amending Regulation 22 has the advantage of achieving change relatively quickly compared to change via primary legislation. It will be important to allow time for appropriate consultation on the revised draft regulation. It would be necessary to consider the risk of abuse but see further our comments at 5.10 below.
Widen scope of Regulation 20 to treat all landlord tenant contributions as reverse premiums	As with Regulation 22, widening Regulation 20 has the advantage of achieving change relatively quickly with consultation on the draft albeit without the full scrutiny of a new exemption in primary legislation. One of the current conditions is that the recipient receives the payment as an inducement in relation to a transaction entered into by them or a person connected with them. As we note above it is the inducement element that causes the difficulties in practice for CIS. Given that a change will be required to secondary (or primary legislation) it would be unfortunate if the solution adopted does not address wider situations beyond inducement payments. It will be preferable to address all the issues now. It would be necessary to consider the risk that leases are structured to take advantage of a wider reverse premium exemption for CIS purposes. See further para 5.10 below. Would it be restricted to payments in connection with the grant of a lease or include payments made on a variation of the terms of a lease or to an assignee eg if the existing tenant becomes insolvent and the assignee steps into the shoes of the tenant?

	We consider amending Regulation 20 offers only a partial solution and furthermore there are more complexities to address than is the case for amending Regulation 22. (Note Regulation 20 should be updated in any case to reflect the fact the relevant legislation is now at Corporation Tax Act 2009 section 96 not the repealed Finance Act 1999 Schedule 6)
Amend Section 61 Finance Act 2004 – Deductions on account of tax from contract payment – so as to treat landlord to tenants payments as not being 'contract payments'	It is not entirely clear what this option proposes as section 61 is an operative provision concerned with deductions on account of tax from contract payments as against section 60, which defines a contract payment. The suggestion appears to be to add wording to section 61(1) to the effect that an onward payment to a sub-contactor with GPS status would be omitted from the amount of any contract payment from which tax is deducted (in the same was as is done for the cost of materials), effectively excluding 'feed through' payments by the tenant to sub-contractors with GPS status. This option has the advantage of effecting change via primary legislation with enhanced scrutiny but also raises practical issues of timing for the change as 'space' would be required in a future Finance Bill. We suggest that this option (assuming our understanding is correct) may raise timing issues around the payment and may have wider unintended consequences beyond landlord to tenant contributions. We therefore consider a simpler option (for primary legislative change) may be to amend section 60 (contract payments) adding a separate exception for landlord to tenant contributions using the regulatory power in section 60(7). It would be necessary to consider whether there are any interactions with Regulation 20/22 that need to be addressed.
Grant automatic GPS to tenants	This option would address negative cash flow but it appears to be open to manipulation as HMRC has no means of establishing whether the tenants receive payments as tenants. It would not address the administrative burden of registration and making returns. It would also appear to require the landlord to register as a deemed contractor and deal with monthly returns, albeit that payment is made gross. Also potentially the tenant may still have to register for CIS but prove they are undertaking own works. This is not a preferred option.
Copy the VAT DRC treatment whereby all landlord to tenant payments would be excluded from CIS in the same way as they have been excluded from the VAT Domestic Reverse Charge (DRC), such as where both parties have an interest in property	Importing or mirroring the VAT DRC treatment such that the CIS would not apply to the landlord/tenant because both have a 'relevant interest' has the advantage of using existing primary legislation as a basis that has been consulted upon and recently introduced. However we note that there are issues with the drafting of article 2(2)(b) of Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892 in particular whether strictly having an agreement for lease is also a relevant

	interest in land for a prospective landlord and tenant. This is particularly important as landlord contributions can be made before formal grant of lease. This seems similar to the section 61 option effectively carving out a 'feed through' payment with the tenant as an intermediary but here the exemption depends not on the sub-contractor status (as with the section 61 option) but instead on both the landlord and tenant having a 'relevant interest'. This option could include a specific TAAR to counter any perceived risk of avoidance. As with any new exception to section 60, it would be necessary to consider whether there are any interactions with Regulations 20/22 that need to be addressed. It would require primary legislation, as with the section 61 option above, which has the advantage of enhanced scrutiny but practical issues for timing.
Better education – prospective tenants should be made aware of the CAT A issue before they enter into a lease	We do not consider this proposal offers a solution for the same reasons as above in relation to revisiting the distinction between Cat A and Cat B. It will not achieve the aim. There would be challenges in mounting an effective campaign as understandably tenants do not see themselves as part of the construction sector so any educational campaign about CIS is may not be particularly successful; for tenants leasing transactions can be irregular occurrences – commercial leases are often for terms of 10, 15 or 20 years, and therefore a tenant may only have to consider the position once. Although it could mean more tenants would be aware of the issue (currently it is often only the 'well-advised' or 'well-informed' who are aware) but the problem of cash flow and reclaim issues will remain so the fundamental issues would remain.

5.10 **Question 11: Is there a risk of creating the potential for manipulation/avoidance of the scheme by the diversion of monies via tenants?**

The perceived Exchequer risk is the potential for a landlord to re-direct payments that would be made to a net payment status sub-contractor to a tenant to allow the payments to be made gross. A landlord would not benefit financially unless there is collusion between the landlord and the net payment sub- contractor. There might be a marginal benefit to the landlord of reducing their reporting obligations but if the landlord is a contractor or deemed contractor, it will be having to report in respect of other contracts and adding reports for another net payment status sub-contractor should only be marginal.

Third party tenants are unlikely to want more of the responsibility for construction operations to be passed to them in this way. An artificial lease arrangement for CIS would also have other potential tax implications

(such as stamp duty land tax, VAT, corporation/income tax, capital gains tax, business rates) and legal implications in terms of legal liability that would outweigh any CIS advantage.

Any abuse may also be countered by existing measures such as the Corporate Criminal Offence and the GAAR or a targeted anti-avoidance rule (TAAR).

6 Reducing the administrative impact on certain groups of operating the CIS

6.1 **Question 12: Are there groups, other than property groups, that are affected by the excessive volume of returns they are submitting to HMRC?**

6.2 We understand that the problem of excessive returns may occur not only in groups in the property sector (property investment groups and large developers and housebuilders) but also for larger charities, pension funds and construction groups holding a property portfolio. The common factor is the use of Special Purpose Vehicles (SPVs) to undertake a specific development or project and the consequential potential for periods of inactivity when payments are not made to sub-contractors. Although it is possible to notify HMRC of a period of inactivity for up to 6 months, it is generally easier administratively to manage these periods of inactivity by making nil returns instead of monitoring over an arbitrary 6-month period.

We suggest that restricting a CIS grouping facility to one sector or subset of a sector would raise difficult boundary and definitional issues.

6.3 **Question 13: Is a 'grouping arrangement' the best solution to the problem outlined and are there any elements which have not been set out?**

6.4 We agree a non-mandatory grouping arrangement is the best solution to the issue of infrequent and disparate payments by multiple group companies allowing a single nominated company within a group to be responsible for submitting on monthly return on behalf of all companies in the group. It is important that using a CIS grouping arrangement is not mandatory as debt/funding arrangements may prevent certain group companies joining the group as it would breach funding covenants.

The consultation sets out one approach to grouping conditions requiring 75% ownership by a parent group company and only companies with GPS status being eligible to join the group. It is important to be clear on the underlying rational for adopting the ownership condition. In practice the requirement for joint and several liability may mean that grouping of 100% owned companies is in practice the only option as minority shareholders will not want to assume liability. In any event the consultation does not indicate why 75% ownership (as for corporation tax grouping) is adopted as the approach instead of say, of the VAT group test of control (as defined). We note in passing that VAT grouping is complex in part because as well as offering administrative simplification, it can also provide tax advantages, for example, where exempt or partially exempt group members receive taxable supplies from other group members. Therefore anti-avoidance measures are required that are of no relevance to a CIS grouping proposal that is concerned with administrative simplification only.

The requirement for all group companies to have GPS status would not achieve the grouping benefits in the case of property investment groups as most group companies will be contractors or deemed contractors, not sub-contractors with GPS status. In addition it is not clear how this requirement would operate if a group entity loses GPS status. We understand that the rationale for this condition is to provide a safeguard to ensure that all members of the grouping are CIS compliant. An alternative might be to provide HMRC the power to

remove a group member if the compliance record of that member is such that GPS status would not be granted if they were a sub-contractor. In other words using the GPS compliance tests (possibly modified) as a benchmark against which to judge members of the proposed CIS group, not for granting GPS status per se.

6.5 **Question 14: What responsibility in a 'grouping arrangement' should rest exclusively with the individual companies within the group and what responsibility with the nominated company?**

6.6 We suggest that the filing and payment obligation should rest with one representative group member. The legal obligation should remain with each group company, to ensure HMRC has access to individual company records to check compliance, together with joint and several liability for all group members**.**

6.7 **Question 15: Do you see any specific anomalies which may arise in the context of CT and VAT grouping arrangements?**

6.8 See intra group funding below at question 16.

6.9 **Question 16: Should the reporting of intra-group transactions be excluded on the CIS group return?**

6.10 For VAT groups, transactions between group members are disregarded and all supplies of goods and services made by or to group member to or by a non-member are treated as made by the representative member. Excluding intra-group transactions for CIS groups would be a significant simplification in terms of reduced reporting. We understand HMRC are concerned that an exclusion would reduce visibility in the supply chain and favour securing tax as high up the construction chain as possible in order to protect tax lower down the chain. However intragroup transactions are usually with a GPS sub-contractor at the top of the chain, that is between property owner and the internal developer. The internal developer will have the transactions with the third party sub-contractor with verification. If CIS group members are vetted/trusted HMRC will see payments from a member of the group (typically the internal developer) to a sub-contractor and the CIS would then apply as usual.

6.11 **Question 17: Will establishing a 'grouping arrangement' impact on third party software providers?**

6.12 It will affect both third party and in house software providers. Development time will be needed to allow the software to interface with in house systems. Larger groups with in-house software developers will have priorities and budgets set some time in advance so these budgets and work streams will require re-prioritisation to allow for development of a grouping package. Non-mandatory grouping will allow companies to adopt grouping within these restraints because they can opt in once available.

6.13 **Question 18: Should the process of a 'grouping arrangement' be statutorily prescribed by HMRC, and if so, to what extent?**

6.14 Conditions for grouping and notification requirements imposing obligations on taxpayer entities should be prescribed in primary legislation.

6.15 **Question 19: Are there any other issues you think will need to be considered?**

6.16 We suggest it should be easy to remove a company from the group, for example, when sold. An online notification is preferred.

7 Further simplification of the CIS

7.1 **Question 20: Are there areas of the CIS in terms of its scope and or administration where simplifications or improvements could be made?**

7.2 The process of **de-registering a company** for CIS is time-consuming. Currently a taxpayer has to phone, and it is only possible to de-register 1 or 2 companies at a time. A digital form/use of email would make the process less administratively burdensome.

7.3 The **period of inactivity relaxation** is only 6 months and administratively, particularly in large groups, is easier to file nil returns than have to extend every 6 months and deal with penalties if an extension is not processed in time. We suggest a better approach is as for corporation tax where it is possible to advise of dormancy and to notify if the company is reactivated, with HMRC having periodic checks.

7.4 Consideration might be given to removing the need for **nil returns** to be filed (as with the CT61s for example).

7.5 The **information required for the application for GPS status** causes difficulties in practice:

- It is not clear why a turnover test is required at all as the level of income does not indicate compliance per se and compliance is checked in any event. For groups it is not usually a direct parent that has GPS status but a sister company so removing the turnover requirement where any 100% group company has GPS would be a potential simplification. Currently the turnover test is not part of the test only where the direct parent has GPS status.
- Provision of directors' detailed personal information is particularly difficult in larger groups given GDPR requirements. Publicly available Companies House information should be sufficient to identify directors.
- In large groups with multiple SPVs, one company will be a group banker therefore a bank account in an associated group company name should be sufficient.

7.6 Much of the current complexity concerns **boundary issues**, that is the scope of construction operations. Current areas of uncertainty include delivery of road works including traffic management (installation and removal of barriers, white lining, installation/removal of studs and huts) electric charging points and modern methods of construction.

We suggest that once advice has been given to a taxpayer it should be added to the guidance to avoid the same questions being raised and uncertainty created between those who have received confirmation from HMRC and those who have not and to ensure consistency. We understand it is HMRC practice is to require any request to the helpline to be set out in writing so the facts are set out and that draft guidance may be shared with the forum before being published. We recognise that both processes are very helpful in producing accurate guidance.

We understand that HMRC's CIS guidance on electric charging points should be updated shortly.

7.7 It is common practice for a SPV of a housebuilder group to enter into **50:50 joint ventures** with a developer or another housebuilder. Sub-contractors on the joint venture project are engaged by the main housebuilder and the costs re-charged to the joint venture. There is uncertainty whether the recharge is a construction service within CIS. Clear guidance on this point would be helpful.

7.8 Consideration should be given to **more timely notification of change in payment status** by email to contractors. Currently contractors are not made aware by HMRC of a change in status of sub-contractors for

some time after it has happened particularly where the status change is from GPS to net payment as there is no incentive for the sub-contractor to inform the contractor quickly.

8 Acknowledgement of submission

8.1 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.

The Chartered Institute of Taxation

19 July 2023

Appendix 1

Minimum requirements for HMRC digital forms

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital forms to be used by taxpayers and agents. In this regard we mean forms that have to be completed and submitted online, rather than forms which are available online, but are printed off and submitted by post.

Development of the form

1. Consultation and testing with a range of potential users of the form.

   New digital forms, and changes to existing ones, should be the subject of consultation and testing prior to their launch, to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective. This should be carried out with represented and unrepresented taxpayers, and agents of different sizes. A *post-implementation review should be undertaken to assess whether it has met its policy objectives and identify any deficiencies or improvements that can be made.*

2. Government Gateway status

   There should be a clear policy, based on sensible rationale, as to whether a form is in front of or behind the Government Gateway. That policy should be applied consistently.

3. Allow time for familiarisation.

   Sufficient time should be given to allow taxpayers and their agents to adapt to any new processes, particularly for forms which require regular completion, or for users who complete similar forms regularly.

Completion of the form

4. A list of information required to complete the form.

   This will enable the user to easily identify all the information needed to complete the form, assemble it in advance, and prepare to complete it themselves or take advice. This is particularly important if it's not possible to progress through the form without fully completing the previous page. This will ensure that the form can be completed in an efficient manner, in one go.

5. Clear instructions for completing the form.

   There should be clear instructions on how to complete all the boxes on the form, particularly if it is necessary to complete fields with special characters, or enter 'nil' or '0' rather than leave blank, and how to digitally 'sign' the form. Links to relevant guidance should be provided throughout the form.

6. The ability to save and return to a part-completed form.

   This is necessary in case information requirements or other work prevents completion of the form in one go, or the form 'times out' after a period of inactivity, or the form needs to be checked by another party during the process of completion.

7. The ability to amend an entry.

An easy process for amending an entry that is, prior to submitting, found to be inaccurate, will reduce the scope for error and improve the taxpayer experience.

8. The ability to upload attachments or provide additional explanations.

   Some processes require the provision of supporting documentation or explanations. It should be possible to do this as part of the process of completing the digital form, through the inclusion of attachments or 'white space' explanations. This will enable the complete package to be submitted to HMRC in one go, speeding up the process and reducing the risk of documentation going astray.

9. Sufficient character spaces to meet the requirements of the form.

   The form should provide sufficient space to provide all necessary information and explanations. Fields which require explanations – eg of behaviours or the interpretation of technical points – should be large enough to accommodate them in full.

10. The ability for an authorised agent to complete the form on behalf of the taxpayer.

    Not only is this a requirement of the HMRC Charter ('Recognising that someone can represent you'), but it will also facilitate more accurate and timely completion of forms for represented taxpayers. This should include the ability for the form to be accessed by more than one individual within a business or an agent's firm, to allow for access to be delegated. HMRC's systems should be able to efficiently and securely identify agent-taxpayer relationships, without them having to be resubmitted.

11. The ability to save a completed form.

    This will enable the form to be reviewed, to ensure it is correct and complete, prior to its submission, such as a client reviewing and authorising what their agent has input, or to allow for a manager etc to review the work of a more junior member of staff.

12. The ability to print a completed form.

    If it is not possible for a represented taxpayer to view the completed form online prior to submission, the ability to print it in full will ensure that the agent can obtain approval for its submission from the client. This is necessary because agents cannot normally submit information to HMRC without the client's prior approval. For unrepresented taxpayers, being able to print a form means the taxpayer can check the form off-screen, which is often easier and can help spot mistakes.

13. The ability for the digital form to correctly compute the tax due.

    Tax Returns and other forms which lead to a tax calculation must be able to cope with all tax computations. It should not be the 'norm' for there to be a list of exceptions where computers cannot do the calculations accurately, causing taxpayers/agents to have to print and post the form to HMRC.

<u>Submission of the form</u>

14. Clear messaging to explain what submission of the form means.

Therefore, the person submitting the form is aware of the consequences of what they are certifying, what the next steps will be, and the consequences of incorrect / false declarations.

15. The ability to capture a copy of the submitted form.

    This ensures that the taxpayer (and, where appropriate, their agent) has a record of what was finally submitted – either by printing it or downloading and saving it. This might be important, for example, if the client requests a copy of the submitted form for their records, or in case of a subsequent dispute with HMRC.

16. A digital receipt or equivalent proof of submission.

    This evidences that the form has been submitted to, and received by, HMRC, and should record the date and time of submission, along with a submission reference number.

Necessary alternatives

17. Non-digital versions of forms for those who cannot interact digitally or find it difficult to do so.

    All digital forms should have a non-digital equivalent, to ensure those who cannot go online, or have difficulty doing so, are not disadvantaged when interacting with HMRC. These should be easy to obtain and include appropriate guidance to aid their completion. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly'.

18. Accessible versions of digital forms for those with particular needs.

    Digital forms should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.

Appendix 2

Minimum standards for the introduction of new HMRC digital systems

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital systems to be used by taxpayers and agents. In this regard we mean digital systems and processes by which taxpayers and agents interact with HMRC to fulfil their tax obligations (examples include the VAT registration service, the Trust Registration Service, RTI reporting, the property reporting service, Making Tax Digital etc).

1. Policy development should consider the extent of digitalisation required to deliver it.

   Changes to the tax system invariably require the introduction of new, or changes to existing, digital systems. When developing tax policy, the consultation process should include consideration of how the policy will be delivered, a realistic evaluation of how long new systems will take to put in place, and the costs of development and ongoing compliance.

2. Consultation and testing of the digital system before its use becomes mandatory.

   New digital systems should be the subject of consultation and full end-to-end pilot testing process prior to their use becoming mandatory. Participation in testing should be voluntary, and encompass a variety of circumstances, including represented and unrepresented taxpayers, and both large and smaller agents. Systems should only become mandatory once this has taken place and any glitches rectified, so as to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective.

3. The new digital system has at least the same level of functionality as the system it replaces.

   HMRC's ambition is to be 'the most digitally advanced tax authority in the world'. New systems should deliver against that ambition and introduce additional, improved functionality without removing that which exists already. Where the new system requires the completion of digital forms, we have separately set out the minimum requirements for such forms.

4. Interaction with existing HMRC systems is maximised.

   New digital systems should complement HMRC's existing IT infrastructure, pulling through information from existing systems, and seamlessly interacting with those systems. This will improve the overall 'customer experience', as well as improving accuracy and reducing costs all round.

5. Guidance is available on how to use the new digital system before it goes live.

   This will enable its users to make the necessary preparatory steps to their procedures and in-house IT capabilities so they can use the new system effectively and it can deliver the intended benefits and functionality. This should include step-by-step guidance and up-to-date screenshots or YouTube videos to aid understanding. Those testing the system should be able to access the draft guidance to ensure it supports them through the process.

6. The digital system should keep pace with legislative and policy changes.

   The digital system should be regularly reviewed and updated so that it reflects changes to legislative and policy requirements, so that its users remain compliant.

7. The new digital system should respect existing agent authorisations, and that a taxpayer may use different agents for different taxes / obligations.

   HMRC's Charter promises to 'respect your wish to have someone else deal with us on your behalf', which might include multiple agents for various taxes / obligations. Where that wish has already been granted for a particular area of tax, it should not be necessary to repeat that authorisation as a result of the introduction of a new digital system.

8. Agent access should keep pace with that for taxpayers themselves.

   One of the HMRC Charter promises is: 'Recognising that someone can represent you', and HMRC's vision is that agents should have access from the outset of new systems. This will ensure that taxpayers who have instructed an agent to deal with their affairs (a significant majority in some areas) do not miss out on the benefits of digitalisation, or are prevented from complying with their obligations.

9. Agent functionality to mirror that for taxpayers themselves.

   In addition to the Charter promise of 'Recognising that someone can represent you', HMRC's vision is for agents to be able to see and do what their clients can. Adherence to these undertakings will ensure that taxpayers who have instructed an agent to deal with their affairs (again, a significant majority in some areas) can do so effectively, thus promoting compliance and reducing costs.

10. HMRC staff are adequately trained and available to provide on-the-spot assistance.

    Even if all the above criteria are met, taxpayers and agents will need support from HMRC, whether to use the particular service (in which case a dedicated helpline should be considered), resolve glitches in the system, or those who simply need help to 'go digital'. HMRC must provide easily accessible and prompt support and recognise that non-digital channels (such as telephone helplines through to real, knowledgeable staff) will still have a role to play even as more and more services are moved onto digital channels, thus enabling compliance and reducing costs.

11. HMRC, taxpayers and agents should see the same information.

    While in some circumstances third party software will present information differently, where HMRC's systems are being used it should be possible for HMRC to see the same information in the same format as that seen by the taxpayer or their agent. This will enable HMRC to better support its customers and minimise the confusion which currently exists in many areas.

12. New digital systems should work for all affected taxpayers.

    All taxpayers faced with a particular obligation should be able to use the new digital system to comply. Groups of taxpayers (eg such as those based overseas, or without a National Insurance number etc) should not be left behind, or prejudiced, because HMRC's systems cannot accommodate their characteristics. Where there is a staged roll-out of obligations, the timescales and who is in / out of scope should be clear.

13. Non-digital processes for those who cannot interact digitally or find it difficult to do so.

    All digital processes should have a credible, non-digital equivalent, to ensure those who cannot go online (because of their inability to do so, or because HMRC's systems do not accommodate them), or have difficulty doing so, are

not disadvantaged when interacting with HMRC. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', so those users do not receive a 'second class' service.

14. Accessible versions or characteristics of digital systems for those with particular needs.

Digital systems should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.