

Construction Industry Operational Forum (CISOF) minutes

Meeting on Wednesday 17 March 2010 – telephone conference call

Present (industry – dial-in):

Sue Cave (SC) [FSB]
Liz Bridge (LB) [JTC]
Stephen Burrell (SB) [CIOT]
Howard Royse (HR) [ICAEW]
Tim Cross (TC) [JTC]
Steve Crawte (SCe) [NSCC]
Jim Etherton (JE) [BASDA]
George Northall (GN) [CBI]
Elaine Gibson (EG) [IPPM]
Eric Rolfe (ER) [JTC]

Present (HM Revenue & Customs - dial-in):

Anthony Browne (AB) (Local Compliance, Construction Industry)

Present (HM Revenue & Customs – London):

Ken Claydon (KC) – Chair
Jeremy Croucher (JC)
David Jayes (DJ)
Helen Latham (HL)

Apologies:

Gordon Marjoram
Maurice Denyer
Sam Mitha

Introductions

KC, welcoming people to the forum, explained that this was being conducted as a dial-in telephone conference due to the low number of items for discussion on the agenda and the fact that some would have needed to travel some distance for what was likely to be a fairly short meeting.

New late payment penalties (Helen Latham)

HL gave a presentation on the new late payment penalties. She confirmed that the new late payment penalties would apply to all employers and contractors who made PAYE, NICs, CIS deductions and student loan deductions for periods starting on or after 6 April 2010.

Calculation

- penalties would be charged as a percentage of the amount paid late
- the percentage charged and how the penalties worked depended upon the type of payment

For amounts due monthly/quarterly

- no penalty charged for the first late payment in a tax year (unless it was more than six months late)
- rate of the penalties would then increase between 1 per cent – 4 per cent depending on the number of late payments in the year. HL said she would attach a table to the minutes setting out the rate of increase

- for any payment more than six months late (including the first), there was a further penalty of 5 per cent of the outstanding amount. There was also an additional penalty at 12 months

Implementation

HL explained that the penalties would not be charged automatically, but would be charged on a risk basis; and that penalties for periods starting within tax year 2010–11 would be charged from April 2011 onward.

Publicity

The group were concerned about guidance and publicity surrounding these changes. HL said that they had been publicising through all available channels including

Employer Bulletin (mailed to all employers); Employer talk; CD Rom; Agent update; press release; internet 'FAQs'; flyer with the employer 'segmentation' letter (a letter sent to all employers); Customer facing staff had been briefed to inform relevant employers/contractors.

HL confirmed that all employers had been told at least once through one of these channels. HMRC had also sent a mailing to all contractors who were not also employers.

HL said that a new web guide would be published on 6 April 2010.

Warning letters

HL said that in some cases HMRC would send warning letters the first time it appeared that an employer paid late. There was lively discussion about these letters. Some were concerned that smaller employers would not get the letters at all, others were concerned that some letters would be sent to employers in error. HL accepted these concerns. She explained that HMRC thought it important to warn as many employers as possible, and hoped that by limiting the letters to larger payers, that errors would be minimised. She asked for feedback about how this worked in practice.

She confirmed that although the letters were automated, the penalties would not be issued without manual intervention and that just because a letter was received did not mean that there would be a penalty.

New late filing penalties – CIS (David Jayes)

DJ explained the intention to begin to implement the new filing penalties for CIS returns (in Schedule 55 FA 2009) from a date in 2011.

- Late filing penalties legislation was introduced in the 2009 Finance Act
- Harmonised late payments/late filing penalties across the Department
- Fair and proportionate
- Would prevent issue of inappropriate and disproportionate penalties

Proposed changes

- To charge a fixed penalty of £100 immediately a return is late
- To change a second fixed penalty of £200 at the end of month 2 for returns still outstanding
- To charge a tax-gearred penalty for returns still outstanding after six months
- To charge a second tax-gearred penalty for returns still outstanding after twelve months
- Changes to CIS late filing penalties are still in a viability stage although high level requirements have been established. Final costing awaited. Aim is to introduce new penalties for CIS in 2011. This will ideally be in April but could be later depending on the complexity and availability of development resources.

Tax geared penalties

- Tax-gearred penalties will be a minimum of £300 and (retrospectively) 5 per cent of the deductions shown on the return in question, whichever is the greater.

- At month 12, HMRC can also issue a penalty based on deliberate and/or concealed withholding of information up to a maximum of £3,000 or 100 per cent of any liability which would have been shown on the return in question.
- A £3,000 cap will be introduced on the fixed penalties for all 'new' contractor schemes.
- Interest will be chargeable on the late payment of any penalty.

HMRC plan to publish the detail of the proposals on the HMRC website and send an information note to all contractors and agents with full details as soon as it is appropriate to do so.

A question was raised from the Industry side as to whether the new CIS filing penalties could be mitigated, particularly concerning the £3,000 capped limit for newly registered contractors that had failed to submit a series of returns. Para 16, Sch 55 allows HMRC to reduce any CIS late filing penalty charged under Sch 55 where they think it is right because of special circumstances. It is expected however that this provision will be used infrequently.

CIS statistics

KC apologised again that it had not been possible to provide the customary statistical information about the scheme either by way of an advance information pack or by handouts for today's meeting. He explained that due to financial pressures, HMRC currently had no resources available for the production of CIS statistics. KC could not, at this stage, offer any short-term resolution to the problem.

However, some statistics regarding the number of penalties issued against the number of current contractor schemes were available from Debt Management & Banking. These are as follows:

Month	Net No. of schemes	Penalties issued
Sept 09	28,751	130,052
Oct 09	35,895	127,027
Nov 09	25,487	117,573
Dec 09	No penalties issued	
Jan 10	40,590*	242,982*
Feb 10	25,300	137,624

*representative of December 2009 and January 2010

Industry issues

- SB asked about the issue of human rights with regard to penalty proportionality. KC advised that this was in relation to a particular appeal case that is still being considered by the First Tier Tribunal.
- The matter of including specific CIS information on forms 64-8 was still a live issue and is being actively considered alongside plans for the next version of the form.
- KC confirmed that the automated TTQT process does not penalise companies that pay their Corporation tax on a quarterly basis.
- It was not felt that the 'following the money' issue had been adequately addressed by HMRC. There was no knowledge on how the money collected is used to progress compliance activity with regard to the non-compliant.
AB commented that non-compliance is very far-ranging and therefore impossible to categorise. The wider context always needed to be considered. CIS is not 'siloes' to itself but has an impact on a wide range of cross-cutting taxes. The risk application is fluid and constantly under review. Data is actively used by both compliance and risk.
- There was still some concern with regard to scope. For example, with regard to retail businesses and work done on their own premises. KC stressed that the policy discussed on

this with the meeting last year between the CBI, HMRC and the Industry remained policy now. There had been no change.

- Although there is no direct CIS involvement, the consultation document on Deemed Employment has now been published.

Future CISOF meetings

The consensus of opinion was that the next scheduled meeting on 23 June 2010 should go ahead. However, a decision would be taken nearer the time as to whether to hold it as a face-to-face meeting or another dial-in telephone conference.

Jeremy J Croucher
CISOF Secretary
HMRC
March 2010