

CIS deductions not made – what happens now?

If a contractor has not made the appropriate CIS (Construction Industry Scheme) deductions from the payments made to subcontractors, HMRC can issue a 'determination assessment' in order to collect the CIS deductions due.

How far back can HMRC go?

Where any loss of tax is not due to careless or deliberate behaviour, HMRC can raise an assessment in the four-year period from the end of the tax year to which the assessment relates.

This period increases to six years if the loss of tax is due to the careless behaviour of the taxpayer or their agent. If the loss of tax is due to 'deliberate' behaviour, HMRC have 20 years to raise the assessment. Historically, it has been very difficult for taxpayers to prove that errors arose in spite of them taking reasonable care.

What can HMRC assess for?

For CIS deductions, HMRC will assess for the 'excess', which is the difference between the CIS deductions that were due and those that were actually paid to HMRC.

Do any easements apply?

Yes. An easement exists in The Income Tax (CIS) Regulations 2005 (SI 2005 / 2045). Regulation 9 allows an HMRC Officer to direct that the contractor is not liable to pay the excess to HMRC if either Condition A or B is met.

Conditions in regulation 9

Condition A is met if the HMRC Officer is satisfied that the contractor had taken reasonable care and either:

- ❑ Failed to make the CIS deductions due to an error made in good faith; or
- ❑ Held a genuine belief that CIS deductions were not due on the payment.

Condition B is met if the HMRC officer is satisfied that the subcontractor (the person who received the payments) either:

- ❑ Was not subject to income tax or corporation tax on the payments; or
- ❑ Had filed a tax return in which the payments were accounted for and has paid the tax due.

If Condition B applies, the contractor must request that HMRC 'make a direction under paragraph 5', which means that HMRC direct that the contractor is not liable to pay the excess.

Whilst it is possible for the contractor to appeal against an HMRC officer's decision regarding Condition A, it is very difficult to prove that a taxpayer took reasonable care.

Condition B, offers a more viable method of ensuring that the contractor does not have to suffer the cashflow implications of paying several years' worth of CIS deductions to HMRC and then trying to get it back. If you are concerned that you haven't made the appropriate CIS deductions and you want to rectify your CIS affairs, please speak to us and we can consider your options.

Further information

You can read HMRC's guidance to its officers on issuing Regulation 9 directions here:

<https://www.gov.uk/hmrc-internal-manuals/construction-industry-scheme-reform/cisr83010>

This document has been prepared for information purposes and does not constitute advice. All information deemed correct as at 20 October 2025