Construction Industry Scheme – a headache for landlords and tenants?

Christina Tennant examines its implications for landlords and tenants

What is the CIS?
The CIS was created more than 40 years ago, but was revised in 2007. It is a tax deduction scheme which sets out rules for deducting tax at source from payments relating to construction work. It was brought in to address the ‘cash in hand’ black market in the construction industry, and the resulting tax avoidance.

The CIS catches any payments that are made under a ‘construction contract’. A construction contract is an agreement which relates to construction operations taking place in the UK, where one party is a contractor and another is a sub-contractor. This can include payments made to a tenant by a landlord where the tenant has contracted with the landlord to carry out certain works.

Construction operations
Broadly, any building works will come within the definition of construction operations. That said, consultative work such as architects’ design works are excluded.

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Contractor and sub-contractor
As well as mainstream contractors, other entities are deemed to be contractors as a result of the amount that they spend on construction operations.

Therefore institutional landowners or those with a big property portfolio are likely to qualify.

The party receiving the payment qualifies as a sub-contractor if:

- it is under a duty to the contractor to carry out the construction operations (or procure that they are carried out) or to provide labour for them; or

- it is answerable to the contractor for construction operations carried out by others.

Exclusions
Certain payments are excluded from the CIS. In particular, these include:

- payments by the landlord of a reverse premium (e.g. for a tenant’s fit out costs as an inducement); and

Rate of tax payable
The rate of tax depends on the status of the sub-contractor, and whether it is registered with HM Revenue & Customs under the CIS.

If the sub-contractor is not registered, the contractor must automatically deduct tax of 30% (excluding any VAT charged by the sub-contractor and the costs of materials).

If the sub-contractor is registered, the contractor must deduct tax of 20% (with the same exclusions as above), unless the sub-contractor is registered to receive payments gross.

In effect the deducted tax is then treated as payment on account of the sub-contractor’s tax obligations.

A headache for companies?
A company that has had tax deducted under the CIS can take comfort. It can set off the CIS deductions against the following sums payable to HMRC:

(a) PAYE tax due from the company’s employees;
(b) employers’ and employees’ National Insurance contributions due; or
(c) in the event that the CIS deductions are greater than the PAYE and National Insurance contributions payable for any month or quarter, the company can set off the excess against future payments in the same tax year.