

**Formal consultation response from the Chartered Institute of Payroll Professionals in
respect of: Tackling abuse within the Construction Industry**

**Organisation response to be submitted to:
Tax Administration Policy & Strategy Team**

Date of submission: August 2020

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Dear Sirs

By Email

Introduction

The Chartered Institute of Payroll Professionals (CIPP) is grateful to have the opportunity to comment on the consultation for tackling abuse within the construction industry. We are pleased to be able to feed into the policy and operational changes that arise from this consultation, and hope that this written response will form the basis of an ongoing relationship with HMRC. The CIPP gives permission for you to include us in the list of organisations involved in the consultation exercise. Company information about the CIPP and its role in representing employers can be found at the end of this response

Purpose of response

To provide HMRC with responses and views from payroll professionals relating to the impact of the proposed changes to be implemented by HMRC to reduce the amount of abuse in respect of the Construction Industry where sub-contractors can 'offset' amounts of suffered CIS via their PAYE. The consultation also sought opinions around due diligence checks when working with a contractor and how changes implemented by the Irish Revenue would affect the UK construction industry if implemented within the UK.

In order to collate the views of the payroll profession, which include both in-house professionals, the out-sourced payroll service sector (which includes bureaux, accountants and book-keepers), and also payroll consultants, a survey ran throughout June and July 2020, and a virtual Think Tank roundtable was held, which was attended by payroll professionals representing a range of sectors and service lines, which enabled open and frank sharing of views and experiences with employees of HMRC.

The thinktank was held virtually, due to the lockdown in place at the time, and we are grateful to everyone involved for making it a successful and informative event.

Summary of key findings

- Proposed timing of corrections to be made not long enough, and 14 days was deemed to be too short to enable any amendments or to gain evidence to back up what had been submitted
- Majority in agreement with evidence requirements
- Members raised concerns over how non-compliance will be notified
- Questions around how HMRC would determine that a claim was not legitimate – i.e. what would instigate an investigation?
- Software providers should be consulted with how non-compliance is actioned and communicated
- Further guidance on compliance should be issued
- Survey results alluded that subcontractors were happy with compliance checks already carried out, and that further official testing would be detrimental

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Conclusion

It was clear from both the survey results (in-depth details of replies to the survey are contained in Appendix A) and the thinktank that members did not agree with the proposed 14-day turnaround in relation to rectifying any mis claimed CIS. Members believed that the timing should be in line with other deadlines, suggesting a deadline of 28/30 days. Communication was a big point of concern. Members were interested to know how notification would be sent to the sub-contractor in relation to HMRC's belief that the claim was incorrect. Members were concerned that, if this communication was sent via post, then the deadline would be unachievable. It was suggested that any discrepancies should not just been sent to the sub-contractor, but also to the processor of the Employer Payment Summary (EPS) (such as a bureau/accountant/agent).

During the roundtable, HMRC advised that the 14 days was not set in stone and it was a timescale for the subcontractor to get it touch with HMRC. Each case would then be looked at, confirming that communication was the key to getting the case resolved. It has not yet been decided how the communication would be sent, and investigation into this is ongoing.

Concern has been raised over how the proposed changes will interact with software providers. During the roundtable, views were expressed that HMRC should work closely with software providers to ensure that where corrections are made by HMRC, they could be easily identified, and that communication regarding subcontractor investigation could be issued via the same methods used for current notifications via Real Time Information (RTI).

67% of those that responded to the survey agreed that the evidence required to prove the CIS suffered was sufficient. Those that did not agree, believed that bank statements, remittance advices, and complete sets of invoices should be considered to prove that the CIS had been suffered. There was a strong belief that the sub-contractor should not be penalised where the contractor was not acting as they should, and that HMRC should not impose penalties unless they were 100% certain that this was a subcontractor error, and not the error of the contractor.

It is felt that CIS should be kept separate from PAYE and the EPS, as in many businesses, the management of CIS and PAYE are dealt with by different departments. There is concern with how the amendments would be shown on the employer's record and how this would interact with PAYE reconciliations. Members felt that there should a be clear description as to how this would link.

When asked if there were any other suggestions as to how abuse could be minimised, members felt that there should be more training available for compliance and that contractors should hold more weight rather than subcontractors being penalised.

Responses from the survey advised that the vast majority of subcontractors carried out diligence checks with any contractor they engaged, as by not doing so would invalidate contracts undertaken to carry out the work. All claimed that this was done prior to work being carried out. Details of checks included financial checks and UTR checking of all contractors that they engaged with. When asked if they would welcome the current process operated by the Irish Revenue, members felt that although it would be beneficial, the time it would take to action would have a detrimental effect and cause the already stretched subcontractors more work.

In conclusion, the feedback from members was that HMRC should only look to action deductions where they can demonstrate that, without a doubt, the subcontractor is non-compliant and that more weight should be on the contractors who falsify their records.

Recommendations

Communication was a key area to come from both the survey and roundtable. It would be recommended that both guidance on non-compliance was enhanced and that HMRC consults with those employers who off-set CIS to establish a more appropriate time frame in making any corrections.

Interaction with software providers would be beneficial to both HMRC and those that use the facility so that communication and clarity are heightened.

Yours faithfully

Gemma Mullis ACIPP

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Should you require clarification of any of the points that have been made in this response, please do not hesitate to contact me or another member of the Policy team.

Contact details:

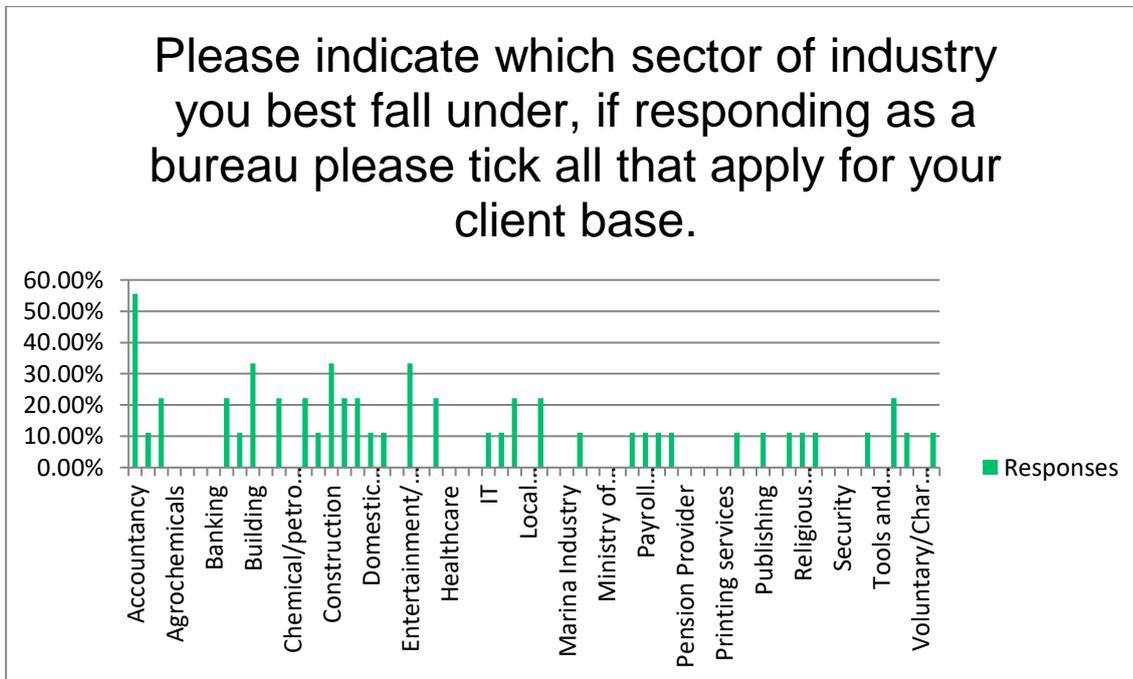
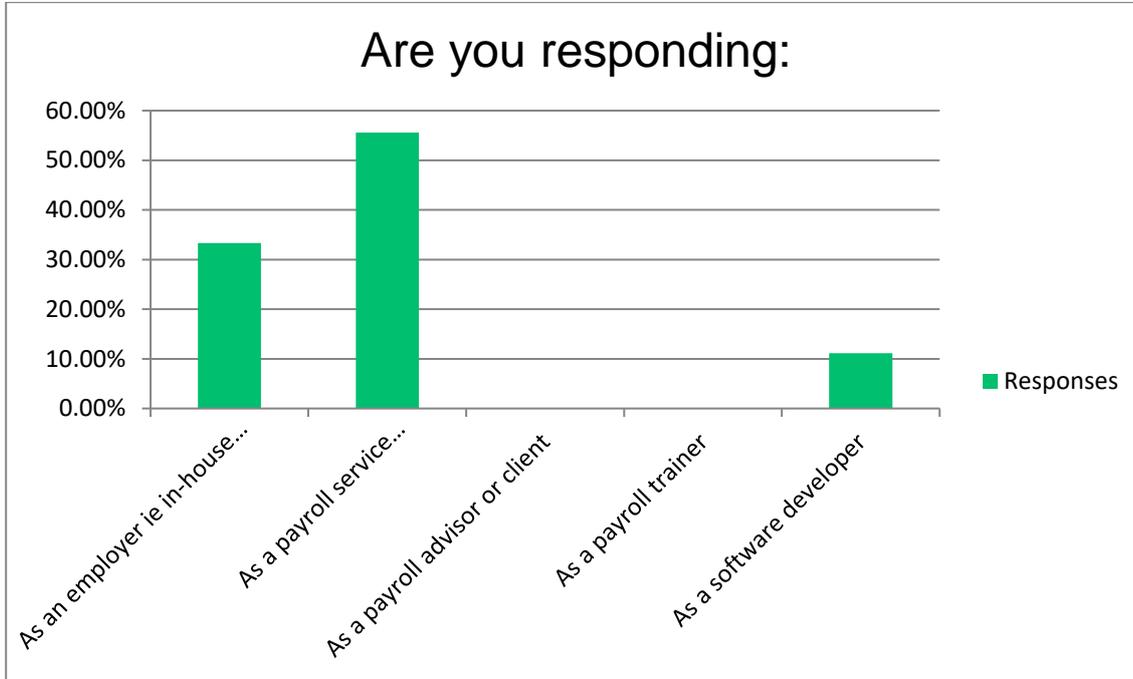
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Appendix A

Demographics

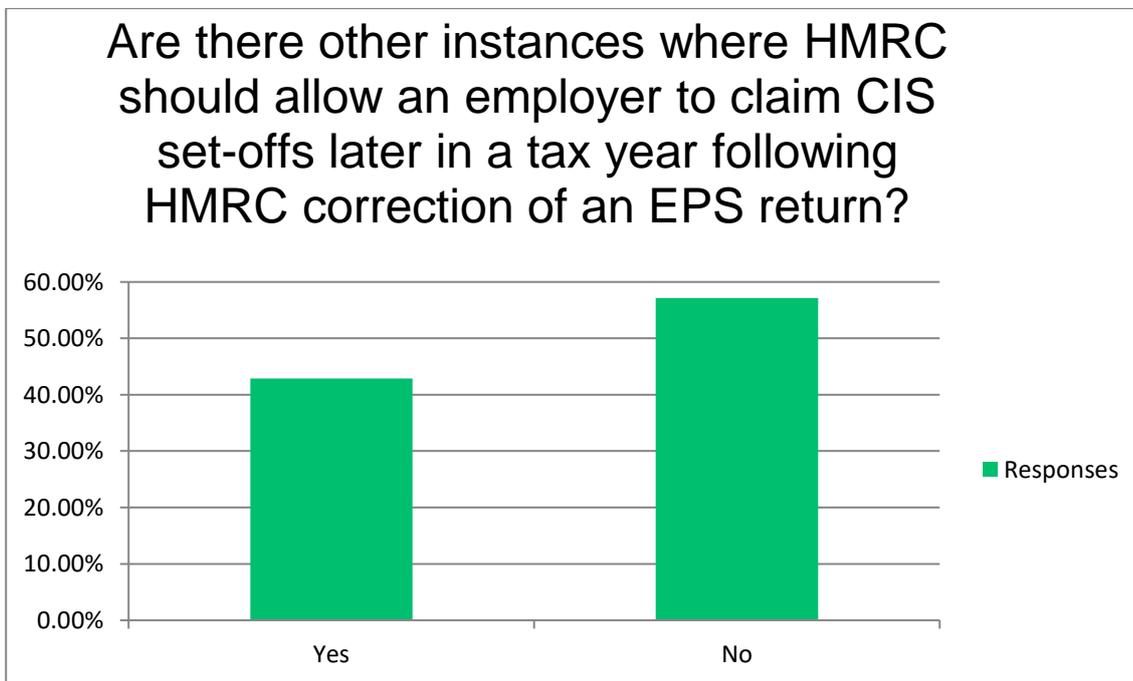
Survey respondents were represented by both in-house payroll professionals as well as external providers, responding on behalf of, or with reference to, experience with external clients.



Indication of the location of respondents:



Respondents were given details of the proposed changes and asked the following questions:



Comments

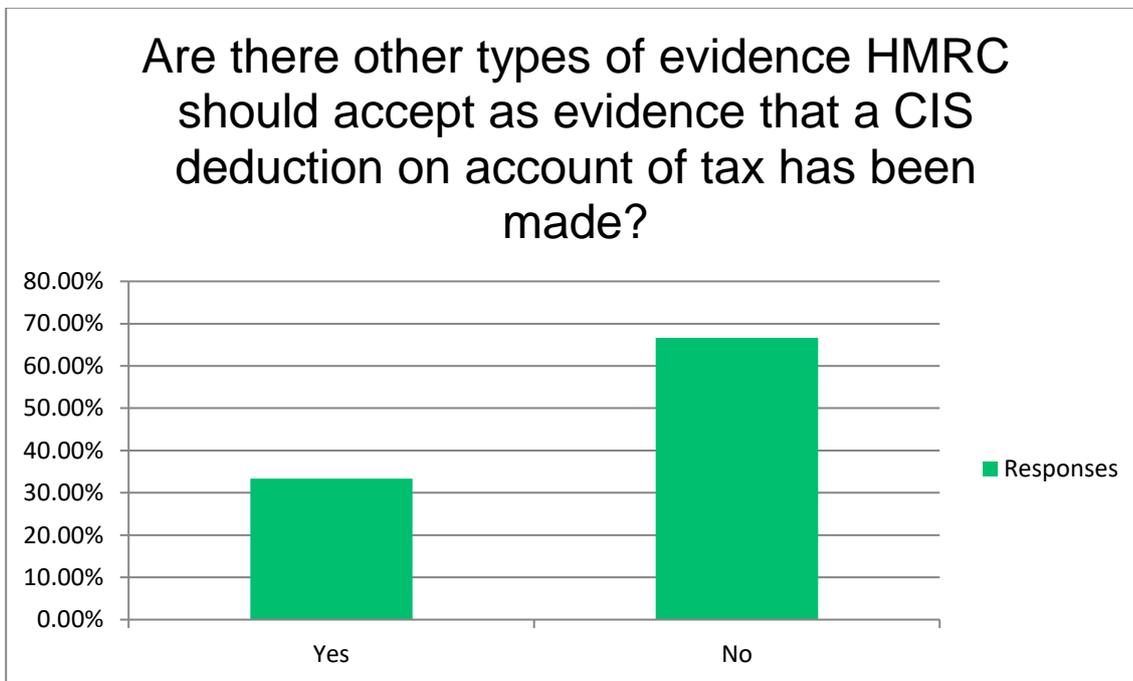
“Where the sub-contractor can prove HMRC have erroneously altered the claim and where they are refusing to engage with agent and sub-contractor over the matter. This already happens very frequently.”

“The reason for the HMRC correction should affect whether or not off-set can happen later. “

Do you have any comments on the interest and penalty consequences of HMRC making these corrections to an EPS return?

“What is the process to inform the Employer, Accountant, Bureau and Software of these changes? How will the interest & late payments be notified?”

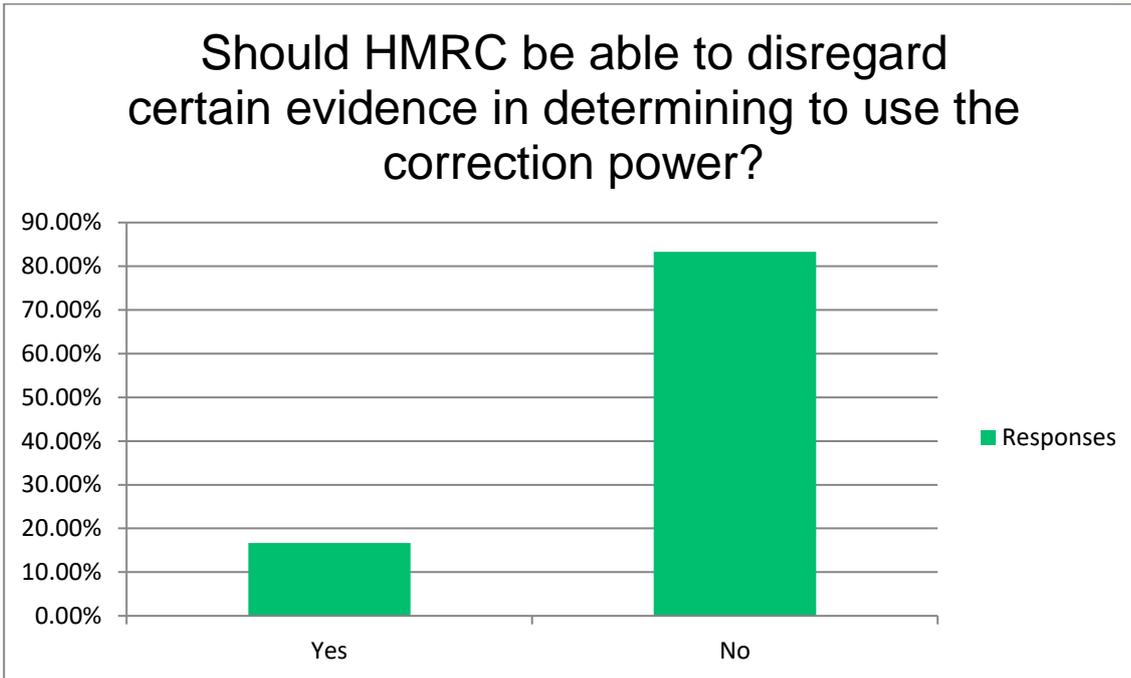
“HMRC should not be imposing penalties unless and until they can prove beyond doubt that the sub-contractor has acted unlawfully.”



Comments

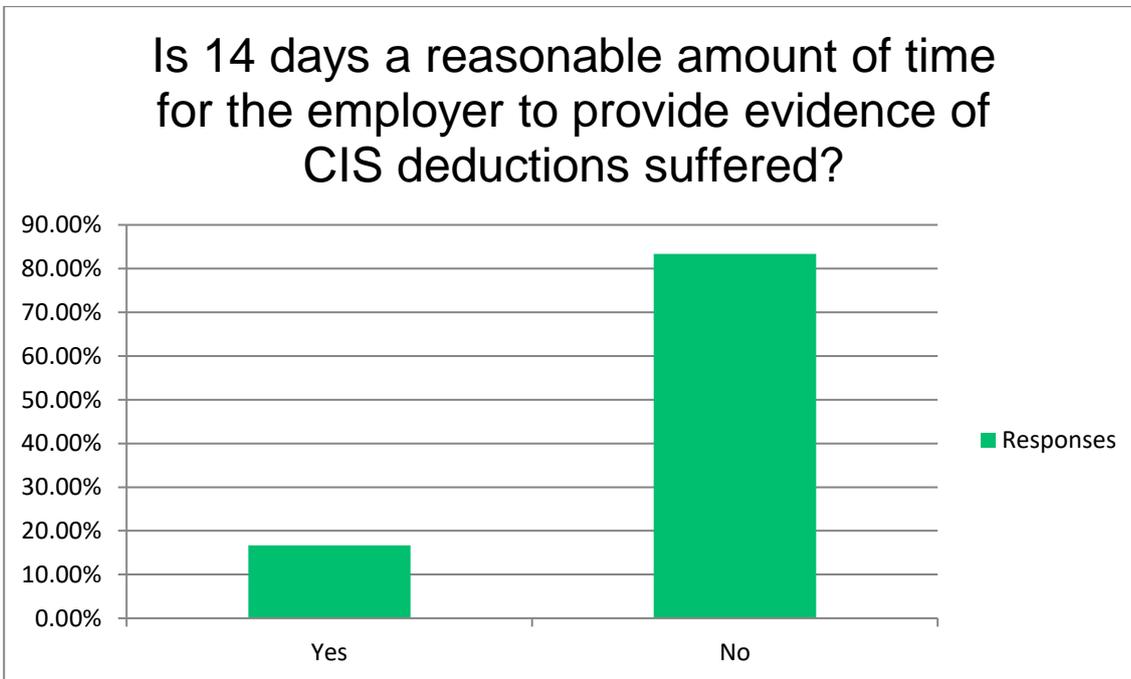
“Remittance advice - not the same as PDS”

“Statements from contractors and complete sets of invoice evidence.”



Comment:

“But only if they have done so reasonably and in a completely different fashion to their current behaviour.”



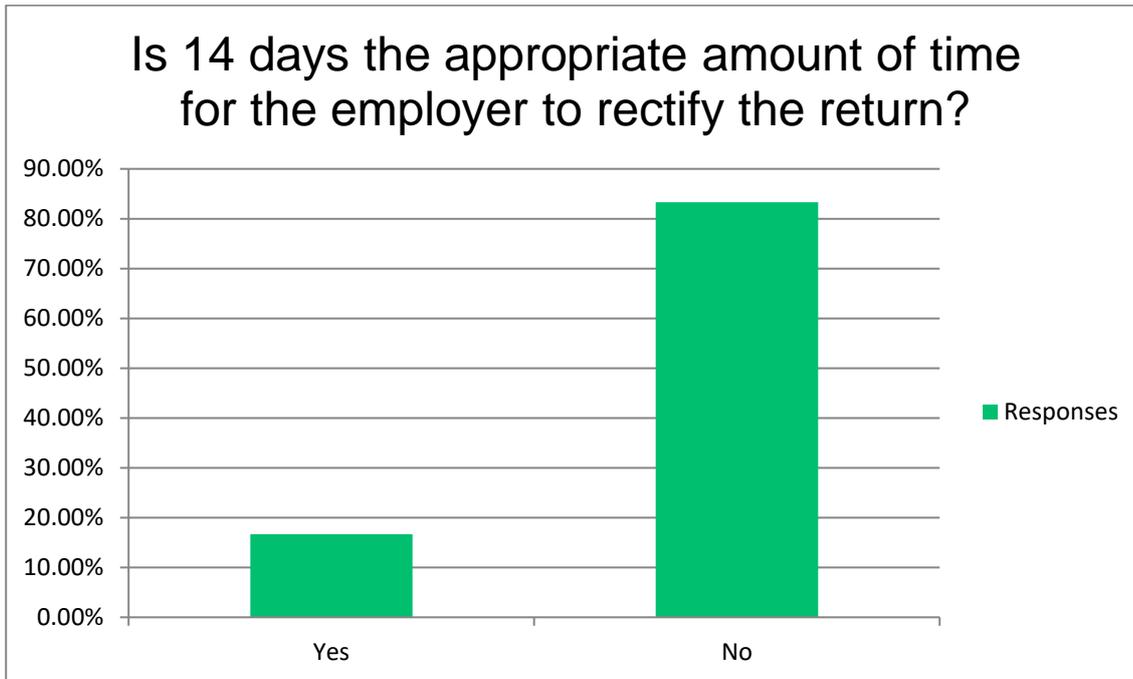
Comments:

“28 Days - depending on the set-up it may be difficult to pull together all the information”

“To end of that month. Some people are not as organised with their bookkeeping and thus making errors”

“28 days minimum. Many of my clients are small businesses undertaking projects away from home, therefore a written request might not be seen for a week if received Monday and they return Friday. Information needs locating but they are away again the following Monday - Friday so need time to obtain. Very few small businesses have full-time accounts personnel, personally I tie my work into key dates e.g. CIS month end on 5th, I may not have any contact with client for 25 days in a month.”

“30 days. HMRC tends to take months, sometimes years, to deliberate in any matter where they are considering a taxpayers liability and it is completely unreasonable to expect everyone else to be able to respond instantly.”



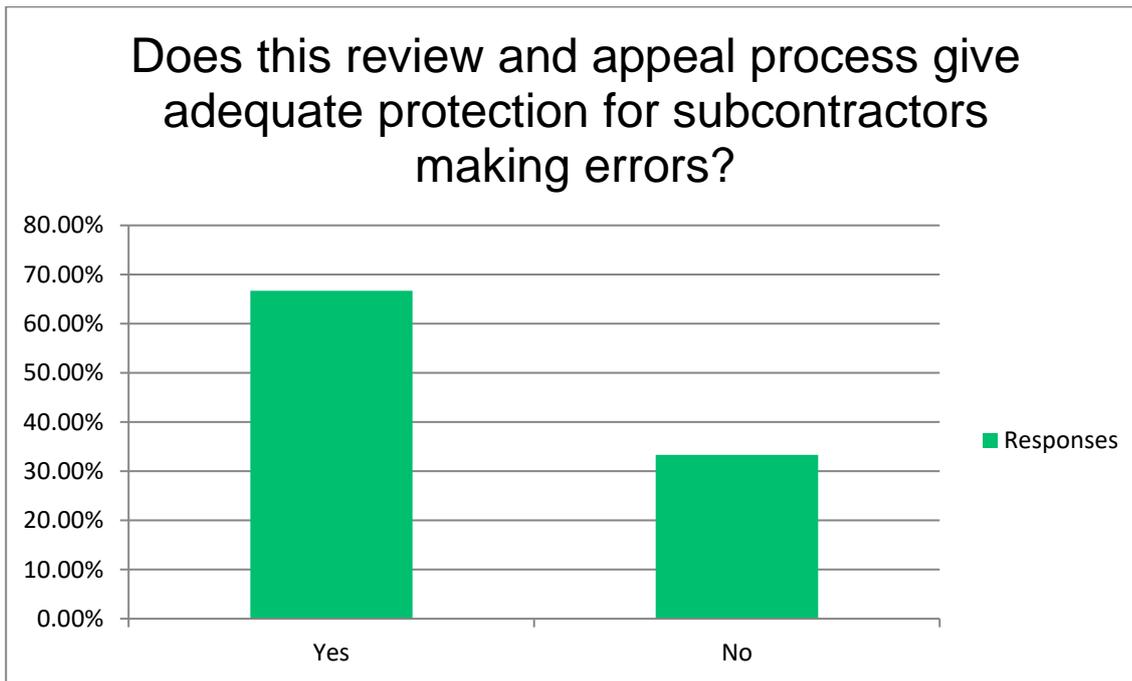
Comments

“Next monthly return - allows an accountant to review etc”

“Depends on rectification method, again I'd say a month to allow payroll who may not be familiar with the process to research and apply appropriately.”

“30 days. “

Responders were advised of the review and appeal processed that has been proposed and asked:



Comments

“HMRC need to be proactive & ensure the Employer understands”

“There is no timescale to appeal process and if found in employer's favour they may have suffered significant cashflow implications from deductions being excluded.”

Respondents were asked: Are there other alternatives to disallow CIS deductions, claimed on an EPS return, that are not supported by satisfactory evidence?

“It should be kept separate - changes should be in the CIS scheme not EPS”

Respondents were asked: Do you have other suggestions that could protect the CIS from abuse?

“Wider training/increase awareness of scheme”

“There needs to be greater onus on contractors to report correctly and provide the deduction statement; getting these from many is impossible in a timely fashion yet it is the sub-contractor who is being targeted under this scheme. Contractors are potentially able to gain cashflow advantage by deducting CIS but not declaring the CIS deduction nor paying it to HMRC this is not addressed. HMRC need to look at a 2-way portal where a subcontractor can see what a contractor has declared as deducted in lieu of the deduction certificate that way it would be clear if the EPS figures were correct. Currently I'm aware I submit EPS's based on the invoice/payment where 12 months later contractors still haven't provided deduction certificates and I'm not convinced they've declared the deduction/paid it over to HMRC. Fine that those businesses not entitled to offset on the EPS should be stopped but consideration needs to be given to why limited companies can offset on an EPS but not those legitimately trading via partnership/sole-trader routes, this is an underhand way of forcing incorporation. It is possible for a non-construction company to do one-off work falling under the construction heading and therefore suffer 30% CIS deduction and reclaim under EPS, this would be disallowed under the proposal without evidence yet could be a legitimate claim.”

“Yes, HMRC ought to be taking appropriate action against contractors who seem to be able to falsify CIS withholding data, fail to issue certificates and refuse to cooperate with sub-contractors over deductions. They appear to be able to do so with impunity leaving sub-contractors to face the consequences when they have little resource to fight HMRCs activities. “

“Disregard system. One person's tax reliant on another company correctly processing a cis return”

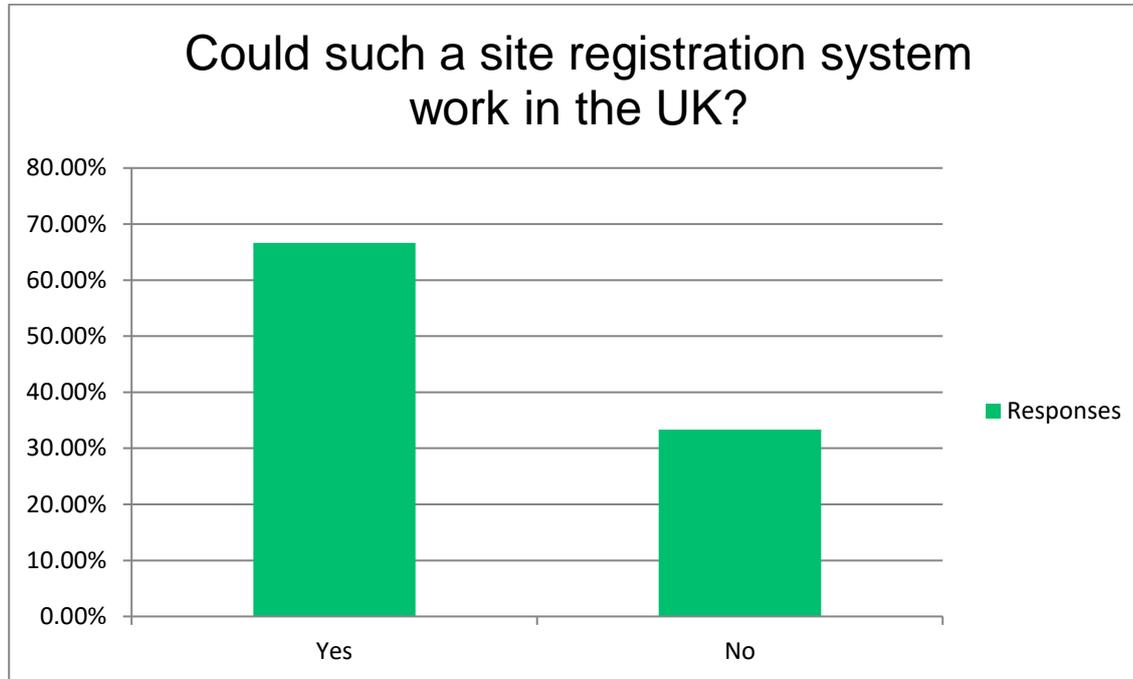
Responders were asked: What due diligence checks do you currently carry out on your subcontractors/suppliers?

“Cross casting client paperwork and bank reconciliations. Chase for missing information.”

“As a bureau and bookkeeper: AML compliant checks. On behalf of the client require subcontractor insurances, CSCS cards, qualification records and CIS verification.”

“All clients whether contractors or sub-contractors go through the usual AMLR checks upon engagement. We expect clients to engage with us on all aspects of their activity and any divergence from this places them in the risk categories for non-compliance. Where we have visibility of all aspects of their activities, business and personal we can detect any irregularities quickly.”

Responders were given details of the current contractor process used by the Irish Revenue and asked the following:



Responders were then asked: If such a system were in place, what obstacles could be faced?

*“How much detail is necessary for these reports to be effective?
a lot of detail would be needed if the main contractor was required to have a full understanding of the supply chain. I’m not sure that this would be possible or commercially viable due to time constraints in project work.”*

“Need to be fairly detailed in order for the Main Contractor to be held accountable”

“Pretty well extensive and overarching. Contractors would have to have detailed training to understand the activities throughout the chain and be able to spend the time necessary to delve into such matters carefully.”

Company Information

The Chartered Institute of Payroll Professionals (CIPP) is the Chartered association for payroll, pensions and reward professionals in the UK. With more than 9,500 individuals benefitting from the CIPP's membership benefits, support and education services, the Institute is dedicated to raising the profile of payroll in businesses across the UK and internationally.

Its education portfolio has been developed based on business and individual needs to ensure that it is providing the most relevant training in the market; while its policy and research team represent the members at government consultation forums on the 185+ pieces of legislation that affect payroll and pensions in the UK, ensuring members are up to date and their views are heard.

The CIPP also offers compliance health checks in payroll processes and procedures to ensure that organisations are complying with legislation to avoid non-compliance penalties, and CIPP members are governed by a code of conduct ensuring they remain highly professional, up to date, and compliant.

The mission statement of the CIPP is:

Leading payroll and pension professionals through education, membership and recognition

Representation

The views of the Chartered Institute are sought and valued by Government departments and other organisations, as witnessed by its representation on bodies ranging from HMRC, and other external Employer Consultation Groups. The Institute, through its Policy team headed up by Helen Hargreaves, has been responding to consultation documents and attending consultation meetings for more than 20 years.

As a result of this sustained effort, we have created sound working relationships with the DWP, HMRC, BEIS and other Government departments.

The Chartered Institute operates an Advisory Service staffed by professionals able to provide accurate and authoritative advice on a wide range of topics. It also runs national forums which allow members direct contact with representatives from HMRC and other relevant bodies and also provides a forum for members to input and feedback on the CIPP's policies.

Education

The Institute validates and controls a wide range of professional qualifications in both the payroll and pensions sectors, from Payroll Technician Certificate level to Masters level. IPP Education, a wholly owned subsidiary of the CIPP, delivers the qualifications and provides tutors at officially recognised standards. IPP Education also runs a comprehensive range of short training courses throughout the UK.

Events

The CIPP also runs a series of conferences throughout the year, culminating in the Annual Conference and Exhibition.

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