



Response from ICAS

Extension of security deposit legislation to include CT and CIS deductions

12 June 2018

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK.

General comments

2. ICAS welcomes the opportunity to respond to the HMRC consultation 'Extension of security deposit legislation to include CT and CIS deductions' published on 13 March 2018.
3. We believe that the extension of the existing security deposit legislation to include corporation tax and CIS deductions should be considered in conjunction with the measures proposed in a separate consultation to tackle tax abuse and insolvency. We are also submitting a response to that consultation.
4. In general, we believe that the security requirements should be aimed at taxes where businesses are effectively acting as collectors, i.e. PAYE, NIC, VAT, and CIS. However, we accept that in the case of abusive phoenixism it would be appropriate to extend the security requirements to corporation tax, provided that the legislation is applied in a targeted way.
5. Phoenixism is difficult to define - there is no legal definition and what is sometimes described as phoenixism could also, in certain circumstances, encompass serial entrepreneurship. Often what is referred to as a phoenix operation will have resulted from a business or asset sale which maximises the return to creditors out of an insolvent situation – the primary responsibility of an insolvency practitioner. It may also maximise the preservation of employment. In applying the requirement for a security to CT cases we therefore believe that HMRC should seek to distinguish between abusive phoenixism and other forms of phoenixism.

Specific questions

Question 1 – do you think that there are any further forms of security that could be provided?

6. We have no comments on this question.

Question 2 – do you agree that any company within scope of the charge to CT should fall within the scope of the CT securities provision?

7. As noted in our general comments we believe that the CT securities provision should primarily be used against abusive phoenixism. CT is a tax on company profits, due by reference to accounting periods – and rather different to PAYE, CIS, NIC and VAT, where there should not generally be any excuse for non-payment (other than cash flow problems, particularly for VAT).
8. The UK promotes entrepreneurialism and a rescue culture for financially distressed businesses. If HMRC used the provision more widely we are concerned that it might have a detrimental impact by placing limitations on a rescue environment.

Question 3 – do you agree that it is reasonable to estimate the amount of CT revenue at risk by reference to taxpayer provided information and wider sources of relevant information, including HMRC data, or are there other ways in which the amount of security could be calculated?

9. As noted in our response to Question 2, CT is a tax on company profits, due by reference to accounting periods; the quantification of the corporation tax liability may be time consuming and open to dispute – and is unlikely to be finalised until after the end of the accounting period. Quantifying the liability for the purposes of the security requirement will therefore be more challenging than for VAT and PAYE. In cases of abusive phoenixism we believe that it would be reasonable for HMRC to adopt the approach outlined in paragraphs 3.11 and 3.12.
10. The difficulty of quantifying the liability early in the accounting period (as outlined in paragraph 3.10 of the consultation) is one of a number of factors which we believe makes it inappropriate to use the security provision against companies in general.

Question 4 – do you agree that allowing payment in instalments or using a series of securities staged over a longer period could offer a way of balancing the protection of the revenue at risk with reducing the financial impact on the company? Are there any other approaches that you consider would be helpful in establishing an appropriate balance?

11. If the proposed CT security legislation is used in the targeted way we suggest above, we believe it would be inappropriate to consider payment of the security in instalments because this would undermine the effectiveness of requiring a security in the first place.

Question 5 – do you think that there should be a simple offence of failing to provide a security when required, or is there an alternative approach that would be suitable for CT?

12. If the proposed CT security legislation is used in the targeted way we suggest above, we agree that there should be a simple offence of failing to provide security when required. If the legislation is used more widely, we think that this approach – or the alternative of linking it to continuing a potentially taxable activity – could present problems because of the nature of CT as a profits based tax due by reference to accounting periods.

Question 6 – do the proposed safeguards strike the right balance between protecting taxpayers and tackling the behaviour of deliberate non-compliance?

13. If the proposed CT security legislation is used in a targeted way against abusive phoenixism the proposed safeguards should strike the right balance. However, as paragraph 3.17 notes, the profits based nature of CT and its structure raise some new issues. This could require additional safeguards, if HMRC chose to use the new legislation more widely.

Question 7 – do you think that the proposed scope of CIS securities targets the measure appropriately?

14. Yes.

Question 8 – do you agree that it should be an offence for a payment to be made to a subcontractor when a requirement for a security has not been met or is there an alternative approach that would be more suitable?

15. Yes, we agree with the proposed approach.