



Improving the operation of the Construction Industry Scheme

Who is likely to be affected?

Businesses and individuals who are subcontractors or contractors participating in the scheme. Also commercial third party software developers, agents and accountants and payroll bureaux representing those operating and participating in the scheme.

General description of the measure

A series of changes will be introduced to improve the operation of the Construction Industry Scheme (CIS) making it easier for businesses to access gross payment status, reduce administration burdens and move more transactions online. These include:

- the threshold for the turnover test will be reduced to £100,000 in multiple directorships;
- the initial and annual compliance tests will focus on fewer obligations;
- the nil return obligation will be amended;
- joint ventures where there is already one member with gross status will be allowed easier access to gross payment status;
- allow an earlier repayment to liquidators in insolvency proceedings; and
- mandation of filing of CIS returns and online verification.

Policy objective

The aim of this measure is to reduce the costs on both businesses and HM Revenue & Customs (HMRC) by making the scheme simpler to administer. It will achieve this by allowing more sub-contracting businesses to achieve and maintain gross payment status so improving their cashflow. Moving more transactions online will simplify processes for businesses and agents, reducing their administrative burden through reduced contact with HMRC. By simplifying the tax system for these business, this measure will improve the competitiveness of UK tax administration in the construction sector.

Background to the measure

The Government announced at Budget 2014 consultations to review improvements to the scheme.

A consultation document entitled *Improving the operation the Construction Industry Scheme (CIS)* was published on 27 June 2014 with proposals to reduce the administrative burden of operating the scheme. A separate informal consultation was circulated to large business on 3 July 2014 with revisions to reporting obligations for large payments and improvements in registration for joint ventures. The Government's aims were supported by most respondents to the consultations. A summary of responses and a technical note is published today on GOV.uk. Guidance to reflect changes from April 2015 will be available from March 2015.

Detailed proposal

Operative date

This measure will have effect on and after 6 April 2015 for nil returns, joint ventures and repayments in cases of insolvency; 6 April 2016 for mandating online filing of CIS returns and changes to gross payment status tests and 6 April 2017 for mandating of online verification.

Current law

The current legislation setting out requirements of the compliance tests is at Schedule 11 to the Finance Act (FA) 2004.

Further provisions are covered in:

- Paragraph 7, part 2 and paragraph 11, part 3 of Schedule 11, FA 2004 for the turnover test and the prescribed amount of turnover is at Regulation 28 of (SI2005/2045).
- Regulation 4 (10) of SI2005/2045) for nil returns
- Section 70 FA 2004 for monthly return requirements
- Section 69 FA 2004 for verification
- Regulation 56 (5) of SI2005/2045.

Proposed revisions

Regulations will be introduced to take effect from 6 April 2015 to:

- amend parts 2 and 3 of Schedule 11 to FA 2004 to relax the requirements for joint ventures to gain gross payment status where one member already has it;
- amend Regulation 4 (10) of (SI2005/2045) to replace the nil return obligation with a voluntary notification; and
- amend Regulation 56 (5) of (SI2005/2045) to allow an earlier repayment to liquidators where a company is in insolvency proceedings.

Further regulations will be introduced later to:

- amend Section 135 (1) of FA 2002 to facilitate mandatory online filing of CIS returns and mandatory online verification; and
- amend Schedule 11 to FA 2004 to allow a simplified compliance test.

Summary of impacts

| Exchequer impact (£m) | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|--|--|---------|---------|---------|---------|---------|
| | - | nil | nil | nil | nil | nil |
| | This measure is not expected to have an Exchequer impact. | | | | | |
| Economic impact | The measure is not expected to have any significant economic impact. | | | | | |
| Impact on individuals, households and families | The simplification proposals for acquiring gross payment status will benefit some of the approximately 90,000 active subcontractors who currently have net payment status but meet turnover level requirements for gross status. Approximately 5 per cent of sole-trader contractors (2000) may require additional support as legislation is introduced to make verification and online filing mandatory. The measure is not expected to impact on family formation stability or breakdown. | | | | | |

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|---|--|
| Equalities impacts | The majority of those using the scheme are male. There will be some equalities impacts when online filing and online verification is mandated for contractors who are not able to access a digital channel or object to online filing and/or verification on religious grounds. In these cases where HMRC is satisfied a customer is unable to access a digital channel, provision for capture of the data in non-digital format will be made. The same criteria used for assessing customers in the Real Time Information programme will be used. The Government does not expect the number of contractors who are not able to access digital channels to be significant. |
| Impact on business including civil society organisations | <p>These proposals are expected to relieve some of the regulatory burden of the CIS scheme.</p> <p>The following measures, nil returns, joint ventures and repayments are expected to have a negligible impact on businesses. The measures simplifying the qualifying conditions for gross payment status will Benefit companies and partnerships by increasing their cash-flow.</p> <p>The main changes to the CIS will take place in 2016 and 2017 and it is anticipated that it will affect approximately 40,000 businesses. Approximately 5 per cent of sole-trader contractors (2000) may require additional support as legislation is introduced to make verification and online filing mandatory.</p> <p>Estimates of the impact on businesses will be established and published once details of the measure have been finalised.</p> |
| Operational impact (£m) (HMRC or other) | HMRC will incur costs to make changes to, or introduce new, IT systems to enable improvements to the CIS scheme. There will be annual administrative savings for HMRC once the new processes are implemented. The levels of costs and savings will depend on the final design of the changes and these will be established as the details of the new processes are developed. |
| Other impacts | <p><u>Small and micro business assessment</u>: the revised tests for gross payment status will benefit small contractors if they apply.</p> <p>Other impacts have been considered and none have been identified.</p> |

Monitoring and evaluation

The measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Julie Campbell on 03000 586670 (email: Julie.campbell1@hmrc.gsi.gov.uk).

S T A T U T O R Y I N S T R U M E N T S

2015 No. XXXX

INCOME TAX

CORPORATION TAX

**The Income Tax (Construction Industry Scheme) (Amendment)
Order 2015**

Laid before the Commons in draft

The Treasury in exercise of the powers conferred by paragraph 13(1) of Schedule 11 to the Finance Act 2004^(a) make the following Order.

Citation and commencement

1. This Order may be cited as the Income Tax (Construction Industry Scheme) (Amendment) Order 2015 and comes into force on xxxx xxxx 2015.

Amendment of Schedule 11 to the Finance Act 2004

2. Part 2 of Schedule 11 to the Finance Act 2004 (conditions to be satisfied by firms) is amended by—

- (a) inserting after paragraph 8(5) (the compliance test)—
“**(6)** This paragraph is subject to paragraph 8A (exception from compliance test: firms).”,
and
- (b) inserting after paragraph 8—

“Exception from compliance test: firms

8A.—(1) The conditions in paragraph 8 (the compliance test: firms) do not need to be satisfied by the firm if, at the time of the application—

- (a) one or more of the partners is already registered for gross payment as a partner in another firm or otherwise than as a partner in a firm, and
- (b) that partner has, or those partners together have, a right to a share of at least half the assets, or at least half the income, of the firm.

(2) In sub-paragraph (1)(a) the reference to registration for gross payment does not include registration for gross payment by virtue of this paragraph or paragraph 12A (exception from compliance test: companies).”.

3. Part 3 of Schedule 11 to the Finance Act 2004 (conditions to be satisfied by companies) is amended by—

(a) inserting after paragraph 12(8) (the compliance test)—

“(9) This paragraph is subject to paragraph 12A (exception from compliance test: companies).”, and

(b) inserting after paragraph 12—

“Exception from the compliance test: companies

12A.—(1) The conditions in paragraph 12 (compliance test: companies) do not need to be satisfied by the company if, at the time of the application—

- (a) one or more of its members is registered for gross payment (whether as a partner in a firm or otherwise), and
- (b) that member possesses or is entitled to acquire or those members together possess or are entitled to acquire—
 - (i) at least 50% of the share capital or issued share capital of the company,
 - (ii) at least 50% of the voting power in the company,
 - (iii) so much of the issued share capital of the company as would, on the assumption that the whole of the income of the company were distributed among its members, entitle the member or members mentioned in paragraph (a) to receive at least 50% of the amount so distributed, or
 - (iv) such rights as would entitle the member or members mentioned in paragraph (a), in the event of the winding up of the company or in any other circumstances, to receive at least 50% of the assets of the company which would then be available for distribution among its members.

(2) In sub-paragraph (1)(a) the reference to registration for gross payment does not include registration for gross payment by virtue of this paragraph or paragraph 8A (exception from compliance test: firms).

(3) For the purposes of this paragraph a person is treated as entitled to acquire anything which the person—

- (a) is entitled to acquire at a future date, or
- (b) will at a future date be entitled to acquire.

(4) Any rights that a member or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in sub-paragraph (1)(b)(iii); and for this purpose “loan creditor” has the same meaning as in Part 10 of the Corporation Tax Act 2010 (close companies)(a).”.

ABC
DEF

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Parts 2 and 3 of Schedule 11 to the Finance Act 2004 (c. 12) which set out the conditions which a sub-contractor in the construction industry must satisfy to be registered for

(a) 2010 c. 4. Although Part 10 has been amended none of the amendments are relevant to this instrument.

payments to be made to it gross (i.e. payments from which there are no deductions under the Construction Industry Scheme). Part 2 sets out the conditions which must be satisfied by a firm where there is an application by an individual or a company to be registered for gross payment as a partner in a firm. Part 3 sets out the conditions that must be satisfied by a company where there is an application for the company to be registered for gross payment.

Regulation 2 amends Part 2 of Schedule 11 by inserting new paragraph 8A which provides that the compliance test does not need to be met if at the time of the application for gross payment one of the members of the firm is already registered for gross payment, providing that that person has the right to a share of at least half the assets or half the income of that firm. Where two partners together have a right to share in at least half the assets or half the income of the firm then if those two partners are registered for gross payment at the time of the application by the firm, that firm will not have to satisfy the compliance test. Paragraph 8A(2) provides that the reference to registration for gross payment does not include registration by virtue of paragraph 8A or paragraph 12A.

Regulation 3 amends Part 3 of Schedule 11 by inserting new paragraph 12A which provides that the compliance test in paragraph 12 does not need to be met where two conditions are satisfied. The first is that at the time of the application one of the members is already registered for gross payment. The second condition is that the member possesses or is entitled to acquire at least 50% of the share capital or the voting rights or so much of the share capital or the rights as would on a winding up entitled the member to receive at least 50% of the assets or the amounts available for distribution. Where two members of the company are registered for gross payment and those members together have at least 50% of the share capital or 50% of the voting rights then the company does not have to satisfy the compliance test in paragraph 12. Paragraph 12A(2) provides that the reference to registration for gross payment status does not include registration by virtue of paragraph 8A or paragraph 12A.

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EXPLANATORY MEMORANDUM TO

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT No. X) ORDER 2015

[2015] No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 This instrument amends the conditions that must be satisfied by certain firms and companies which are sub-contractors in the construction industry in order to register for payments to be made to them gross (i.e. without the deduction of tax). Where the firm or the company is already registered for gross payments and that firm or company enters into a joint venture with another firm or company, the joint venture does not need to satisfy the compliance test (which is one of the conditions for registration for gross payment) if that firm or company has a right to at least a 50% share of the assets or the income of the joint venture or holds at least 50% of the shares or the voting power in the joint venture.

3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 There are no matters of special interest.

4. **Legislative context**
 - 4.1 This instrument amends Parts 2 and 3 of Schedule 11 to the Finance Act 2004 (c. 12) which sets out the conditions which sub-contractors in the construction industry must meet to register for gross payment.
 - 4.3 Part 2 of Schedule 11 of Finance Act 2004 details the conditions that need to be met by firms. New paragraph 8A provides that where a member of a firm is already registered for gross payment at the time of registration by the joint venture, providing that that member has the right to a share of at least half the assets or half the income of the joint venture, that joint venture will not have to satisfy the compliance test in paragraph 8. However the reference to already being registered does not include registration by virtue of new paragraph 8A or new paragraph 12A.
 - 4.4 Part 3 of Schedule 11 of Finance Act 2004 details the conditions that need to be met by companies. New paragraph 12A provides that where a member of a company is already registered for gross payment at the time of the application, providing that that member owns 50% of the share capital or 50% of the voting power in the joint venture company that company will not have to

satisfy the compliance test in paragraph 12. However, the reference to registration for gross payment does not include the case where the member is registered only by virtue of new paragraph 8A or paragraph 12A.

5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

In my view the provisions of the Income Tax (Construction Industry Scheme) (Amendment No. X) Order 2015 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 HMRC is relaxing the requirements for gross payment status where two firms come together to form a joint venture and one member already has gross payment status providing the member already registered with gross payment status has the right to a share of at least half the assets or income of that firm. This is expected to speed up administration for new projects and investments.

7.2 Subcontractors who meet certain qualifying conditions can apply to be paid gross, with no deductions from their payments. To qualify subcontractors must pass a business, turnover and compliance test. If eligible, subcontractors and the contractors they work for are notified so they can be paid without deduction. If paid gross, subcontractors pay their tax to HMRC after the end of the tax year.

7.3 After first registration for gross payment status, sub-contractors are subject to an annual review. Gross payment status helps businesses improve their cash flow and reduces administrative burdens in reclaiming tax refunds from HMRC after the end of the tax year.

- **Consolidation**

7.4 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 HMRC carried out an informal consultation between July and September 2014. A copy of the written discussion document can be viewed in the annexe of the summary of responses published on 10 December 2014.

8.3 A responses document was published on, 10 December 2014 [Insert link](#).

9. Guidance

9.1 Guidance on these changes will be available from March 2015.

10. Impact

10.1 There will be no impact on charities or voluntary bodies. A small number of large businesses will benefit from the measure, however it is equally available to smaller businesses.

10.2 There will be little impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside a draft of this instrument and is available on the HMRC website at [insert link](#). This remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This instrument will mostly impact larger construction businesses but is equally available to small businesses.

12. Monitoring and review

12.1 The purpose of this instrument is to speed up the administration of new projects and investments by relaxing the requirements of the compliance test where one member of a firm already has gross payment status.

12.2 HMRC will monitor the effectiveness of this instrument to ensure the Government objectives are met.

13. Contact

13.1 Adrian Dixon at HMRC (Tel: 03000 586934 or email: review.cis@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

2014 No. XXXX

INCOME TAX

CORPORATION TAX

**The Income Tax (Construction Industry Scheme) (Amendment)
Regulations 2015**

| | | |
|---|---------|-----|
| <i>Made</i> | - - - - | *** |
| <i>Laid before the House of Commons</i> | | *** |
| <i>Coming into force</i> | - - | *** |

The Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred upon them by sections 70 and 73 of the Finance Act 2004(a), make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2015 and come into force on xxxxx 2015.

Amendment of the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045)

2.—(1) The Income Tax (Construction Industry Scheme) Regulations 2005(b) are amended as follows.

(2) In regulation 4(10) (monthly return) for “must” substitute “may”.

(3) At the end of regulation 56(5) (application of sums deducted under section 61)(c)—

“but this paragraph does not apply to a qualifying sub-contractor within paragraph (5A).

(5A) A qualifying sub-contractor is within this paragraph if—

(a) that sub-contractor is subject to a winding-up under Part 4 of the Insolvency Act 1986(d); and

(b) that sub-contractor has—

(i) ceased trading,

(ii) permanently ceased making payments to which section 61 of the Act(e) applies in its capacity as a contractor, or

(a) 2004 c. 12.

(b) S.I. 2005/2045 (the principal Regulations) amended by S.I. 2013/620; there are other amending instruments but none is relevant to this instrument.

(c) Regulation 56(5) has been amended by regulation 4 of S.I. 2013/620.

(d) 1986 c. 45.

(e) “The Act” is defined in regulation 2 of the principal Regulations as meaning the Finance Act 2004.

(iii) ceased trading and permanently ceased to make any payments within sub-paragraph (b)(ii).

(5B) Where a qualifying sub-contractor is within paragraph (5A), the Commissioners for Her Majesty's Revenue and Customs may repay any sum deducted under section 61 of the Act to that sub-contractor during the tax year in which the deduction was made.”

abc
def

Date

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (“the principal Regulations”) which make provision in relation to the construction industry scheme established by Chapter 3 of the Finance Act 2004 (c. 12) (“the Act”).

Regulation 2(2) amends regulation 4(10) of the principal Regulations. This regulation requires a contractor to make a return to Her Majesty's Revenue and Customs even if the contractor had not made any payments under a construction contract in a tax month (a nil return). As a consequence of this amendment the contractor may make a nil return if no payments have been made in a tax month but is no longer obliged to do so.

Regulation 56(5) of the principal Regulations provides that where a sub-contractor is a company, no repayment of any amount deducted and paid over to Her Majesty's Revenue and Customs by a contractor under section 61 of the Act can be made to the sub-contractor until after the end of the tax year in which the deduction was made. Regulation 2(3) of these Regulations amends regulation 56(5) so that in certain cases (for instance where the sub-contractor is subject to a winding up under Part 4 of the Insolvency Act 1986 (c. 45)) where the amount deducted by the contractor under section 61 of the Act is excessive, a repayment can be made during the tax year.

A Tax Information and Impact Note covering this instrument was published on [xxxx] alongside a draft of the legislation and is available on the HMRC website at <http://www.hmrc.gov.uk/the-library/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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EXPLANATORY MEMORANDUM TO

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT No. X) REGULATIONS 2015

[2015] No. [XXXX]

- 1.** This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 2. Purpose of the instrument**
 - 2.1 This instrument amends the Regulations which provide the operational detail of the Construction Industry Scheme (CIS) (the Income Tax (Construction Industry Scheme) Regulations 2005 (S. I. 2005/2045)) (“the principal Regulations”).
 - 2.2 This instrument alters the requirement to file a return in cases where the contractor has not paid any subcontractors in a tax month and also amends the rule that any repayment can only be made to a subcontractor after the end of the tax year in which the deductions were made where the sub-contractor is insolvent.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 There are no matters of special interest.
- 4. Legislative context**
 - 4.1 This instrument amends regulations 4(10) and 56(5) of the principal Regulations.
 - 4.2 Regulation 4(10) is amended to reflect that a contractor which has not made any payments under a construction contract in a tax month is no longer obliged to make a return to HMRC notifying that no payments have been made.

- 4.3 Regulation 56(5) is amended to permit repayments of sums deducted under section 61 of the Finance Act 2004 (c. 12) to be repaid during the tax year in which the deductions were made where the subcontractor is a company which is subject to a winding up under Part 4 of the Insolvency Act 1986 (c. 45) and which has ceased trading, or, in cases where the company is also a contractor, it has permanently ceased to make payments to sub-contractors.

5. Territorial extent and application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

- 7.1 HMRC is amending the statutory obligation on contractors to file a nil return where a contractor has not paid any subcontractors in a tax month. Instead HMRC will encourage contractors to file a nil return on a voluntary basis. If contractors do not make any payments to subcontractors they will still need to notify HMRC in order to avoid penalty notices, late payment penalties and specified charge notices being issued. However customers will be able to appeal and if the reason identified is 'no payments made to subcontractors this month' the appeal will be accepted and a nil return will be filed on the system. As a consequence, HMRC will no longer pursue penalties where a contractor does not file a nil return.
- 7.2 When a company is subject to a winding up proceeding under the Insolvency Act 1986, the present rules prevent it from claiming any repayment from HMRC until after the end of the tax year. Depending upon the timing of the insolvency, this may severely delay the winding-up proceedings. This amendment will facilitate an early payment to creditors and reduce the time taken to deal with insolvency cases.

- **Consolidation**

7.5 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 HMRC carried out a formal consultation between June and September 2014 on improving the Construction Industry Scheme: *Improving the Construction Industry Scheme (CIS)*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325772/Improving_the_operation_of_CIS.pdf

8.2 About 40 responses were received. The nil return proposal proposed in the consultation document was well received.

8.3 A response document was published on 10 December 2014 **Insert link**.

9. Guidance

9.1 Guidance on these changes will be available from March 2015.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside a draft of this instrument and is available on the HMRC website at **insert link**. This remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This statutory instrument will impact across all construction business including small businesses.

12. Monitoring and review

12.1 The purpose of this instrument is to ensure that where a contractor has not paid any subcontractors in a month that the contractor is not liable to a penalty in the event that it fails to notify HMRC of that fact. Additionally it will allow

an earlier repayment to a company subcontractor who is subject to a winding up proceeding under the insolvency provisions in the Insolvency Act.

- 12.2 HMRC will monitor the effectiveness of this instrument to ensure the Government objectives are met.

13. Contact

- 13.1 Adrian Dixon at HMRC (Tel: 03000 586934 or email: review.cis@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.