

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT OF SCHEDULE 11 TO THE FINANCE ACT 2004) ORDER 2016

2016 No. [XXXX]

1. Introduction

- 1.1 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 simplifies the test that a sub-contractor must satisfy to be registered to receive payments gross (i.e. payments from which there are no deductions made under the Construction Industry Scheme). A sub-contractor who is applying to be registered to receive payments gross will now only be required to have met its obligations to file monthly returns in respect of the Construction Industry Scheme, file an income tax self-assessment return or a corporation tax return and to have paid to HMRC any amounts which the applicant was liable to have deducted under Section 61 of the Finance Act 2004 (c. 12) from payments to subcontractors and under the Income Tax (Pay As You Earn) Regulations 2003 ("the PAYE Regulations") (S.I. 2003/2682).

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None

4. Legislative Context

- 4.1 This instrument amends paragraphs 4(1), 8(1), 12(1) of Schedule 11 to the Finance Act 2004 which sets out the conditions which a sub-contractor in the construction industry must satisfy in order to register to receive payments gross (i.e. without deduction of amounts on account of tax).
- 4.2 Part 1 sets out the conditions which must be satisfied by a sub-contractor who is an individual before that individual can be registered to receive payments gross. Paragraph 4 contains the compliance test. This Order reduces the obligations under the Tax Acts which the sub-contractor must have complied with in the 12 month period ending with the date of the application ("the qualifying period") to four, these are a) the obligation to file the monthly returns in respect of the Construction Industry Scheme, b) the obligation to have a self-assessment return and c) the obligation to have paid to HMRC any amounts which the sub-contractor was required to deduct under section 61 of the Finance Act 2004 and under the PAYE Regulations.
- 4.3 Part 2 sets out the conditions that must be satisfied by a sub-contractor which is a firm before that firm can be registered to receive payments gross. Paragraph 7 contains the compliance test. This Order reduces the obligations under the Tax Acts which the sub-contractor must have complied with in the qualifying period. The obligations which have to be satisfied are identical to those referred to in paragraph 4.2.

4.4 Part 3 sets out the conditions which must be satisfied by a sub-contractor which is a company before that company can be registered to receive payments gross. Paragraph 12 contains the compliance test. This Order reduces the obligations under the Tax Acts which the sub-contractor must have complied with in the qualifying period. The obligations which have to be satisfied are identical to those referred to in paragraph 4.2:

5. Extent and Territorial 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:

6.2 In my view the provisions of the Income Tax (Construction Industry Scheme) (Amendment of Schedule 11 to the Finance Act 2004) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Sub-contractors who meet certain qualifying conditions can apply to be paid gross, with no deductions from their payments. To qualify sub-contractors must pass three tests (a business, turnover and compliance test). If eligible, sub-contractors and the contractors they work for are notified so they can be paid without deduction of amounts on account of tax.

7.2 After gross payment status has been attained, sub-contractors are subject to an annual review. Gross payment status helps businesses improve their cash flow and reduces administrative burdens in reclaiming repayments from HMRC after the end of the tax year.

7.3 This measure will reduce the number of compliance tests to those which ensure the sub-contractor is properly making tax returns and where also a contractor/employer is meeting PAYE/CIS obligations.

8. Consultation outcome

8.1 HMRC carried out a consultation between June and September 2014.

8.2 A responses document was published on, 10 December 2014 A copy is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384729/1049_-_Improving_CIS_-_responses_summary_final_version_v2.pdf.

9. Guidance

9.1 Guidance on these changes will be available from March 2016

10. Impact

- 10.1 There is no impact on charities or voluntary bodies. The instrument will benefit any business wishing to apply for gross payment as it will simplify the application process.
- 10.2 There is little impact on the public sector as most of this group qualify for gross payment status.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The purpose of this instrument is to simplify the test that a sub-contractor must satisfy to be registered for gross payment.
- 12.2 HMRC will monitor the effectiveness of the amendments made by this instrument to ensure that the Government's objectives are met.

13. Contact

- 13.1 Andy Thomas at HMRC (Tel: 03000 589714 or email: andy.thomas@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.