

Draft laid before the House of Commons under paragraph 13(2) of Schedule 11 to the Finance Act 2004 for approval by resolution of the House of Commons

DRAFT STATUTORY INSTRUMENTS

2015 No.

INCOME TAX

CORPORATION TAX

The Income Tax (Construction Industry Scheme) (Amendment of Schedule 11 to the Finance Act 2004) Order 2015

Made - - - - *******

Coming into force - - *******

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

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with paragraph 13(2) of Schedule 11 to the Finance Act 2004.

Citation and commencement

1. This Order may be cited as the Income Tax (Construction Industry Scheme) (Amendment of Schedule 11 to the Finance Act 2004) Order 2015 and comes into force on 6th April 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)(2).”.

(2) 2010 c. 4. Although Part 10 has been amended none of the amendments are relevant to this instrument.

Date

Name
Name
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 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.

A Tax Information and Impact Note covering this instrument was published on 10th December 2014 alongside a draft of this instrument and is available at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.