

SCHEDULES

SCHEDULE 11

Section 64

CONDITIONS FOR REGISTRATION FOR GROSS PAYMENT

PART 1

CONDITIONS TO BE SATISFIED BY INDIVIDUALS

General

- 1 (1) In the case of an application for an individual to be registered for gross payment, the following conditions must be satisfied by the individual.
- (2) But where the application is for the registration of the individual as a partner in a firm, this Part of this Schedule has effect with the omission of paragraphs 2 and 3.

The business test

- 2 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that he is carrying on a business in the United Kingdom which—
 - (a) consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations, and
 - (b) is, to a substantial extent, carried on by means of an account with a bank.

The turnover test

- 3 (1) The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the business mentioned in paragraph 2 is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount specified in regulations made by the Board as the minimum turnover for the purposes of this sub-paragraph.
- (2) In sub-paragraph (1) “relevant payments” means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—
 - (a) are of a description specified in subsection (2) of section 74; but
 - (b) are not of a description specified in subsection (3) of that section,other than so much of the payments as represents the direct cost to the person receiving the payments of materials used or to be used in carrying out the operations in question.

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- (3) The Board may make regulations for the purpose of enabling a person who does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

The compliance test

- 4 (1) The applicant must, subject to sub-paragraphs (3) and (4), have complied with—
- (a) all obligations imposed on him in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9), and
 - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, any business of his.
- (2) An applicant who at any time in the qualifying period had control of a company is to be taken not to satisfy the condition in sub-paragraph (1) unless the company has satisfied that condition in relation to the period or periods within the qualifying period during which he had control of it; and for this purpose “control” is to be construed in accordance with section 416(2) to (6) of the Taxes Act 1988.
- (3) An applicant or company that has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
 - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue, is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (4) An applicant or company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the applicant or company had a reasonable excuse for the failure to comply, and
 - (b) if the excuse ceased, he or it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (5) Where the applicant states, for the purpose of showing that he has complied with all obligations imposed on him as mentioned in sub-paragraph (1), that he was not subject to any of one or more obligations in respect of any period within the qualifying period—
- (a) he must satisfy the Board of Inland Revenue of that fact by such evidence as may be prescribed in regulations made by the Board; and
 - (b) if for that purpose he states that he has been outside the United Kingdom for the whole or any part of the qualifying period, he must also satisfy them, by such evidence as may be so prescribed, that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in sub-paragraph (1).
- (6) The applicant must, if any contribution has at any time during the qualifying period become due from him under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
 - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

have paid the contribution when it became due.

- (7) There must be reason to expect that the applicant will, in respect of periods after the qualifying period, comply with—
- (a) such obligations as are referred to in sub-paragraphs (1) to (6), and
 - (b) such requests as are referred to in sub-paragraph (1).
- (8) Subject to sub-paragraphs (3) and (4), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (5) if there has been a contravention of a requirement as to—
- (a) the time at which, or
 - (b) the period within which,
- the obligation or request was to be complied with.

PART 2

CONDITIONS TO BE SATISFIED BY FIRMS

General

- 5 In the case of an application for an individual or a company to be registered for gross payment as a partner in a firm, the following conditions must be satisfied by the firm.

The business test

- 6 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the firm's business—
- (a) is carried on in the United Kingdom, and
 - (b) satisfies the conditions mentioned in paragraph 2(a) and (b).

The turnover test

- 7 (1) The partners must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the firm's business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than whichever is the smaller of—
- (a) the multiple turnover threshold; and
 - (b) the amount specified for the purposes of this paragraph in regulations made by the Board;
- and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).
- (2) In sub-paragraph (1) “the multiple turnover threshold” means the sum of—
- (a) the amount obtained by multiplying the number of partners in the firm who are individuals by the amount specified in regulations as the minimum turnover for the purposes of paragraph 3(1); and
 - (b) in respect of each partner in the firm which is a company (other than one to which paragraph 11(1)(b) would apply), the amount equal to what would

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have been the minimum turnover for the purposes of paragraph 11 (1) if the application had been for registration of that company for gross payment.

- (3) The Board may make regulations—
- (a) for determining the number of partners in the firm to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of partners has fluctuated over a period);
 - (b) for the purpose of enabling a firm which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

The compliance test

- 8 (1) Subject to sub-paragraphs (2) and (3), each of the persons who are partners at the time of the application must have complied, so far as any such charge to income tax or corporation tax is concerned as falls to be computed by reference to the profits or gains of the firm's business, with—
- (a) all obligations imposed on him in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9); and
 - (b) all requests made in the qualifying period to him as such a partner to supply to the Inland Revenue accounts of, or other information about, the firm's business or his share of the profits or gains of that business.
- (2) Where a person has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
 - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue, the firm is, in such circumstances as may be prescribed by the regulations, to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (3) Where a person has failed to comply with such an obligation or request as is referred to in sub-paragraph (1), the firm is to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the person had a reasonable excuse for the failure to comply, and
 - (b) if the excuse ceased, he complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) There must be reason to expect that each of the persons who are from time to time partners in the firm will, in respect of periods after the qualifying period, comply with such obligations and requests as are referred to in sub-paragraph (1).
- (5) Subject to sub-paragraphs (2) and (3), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraph (1) if there has been a contravention of a requirement as to—
- (a) the time at which, or
 - (b) the period within which,
- the obligation or request was to be complied with.

PART 3

CONDITIONS TO BE SATISFIED BY COMPANIES

General

- 9 In the case of an application for a company to be registered for gross payment (whether as a partner in a firm or otherwise), the following conditions must be satisfied by the company.

The business test

- 10 The company must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that—
- (a) it is carrying on (whether or not in partnership) a business in the United Kingdom, and
 - (b) that business satisfies the conditions mentioned in paragraph 2(a) and (b).

The turnover test

- 11 (1) The company must either—
- (a) satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of its business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount which is the minimum turnover for the purposes of this sub-paragraph; or
 - (b) satisfy the Inland Revenue that the only persons with shares in the company are companies which are limited by shares and themselves are registered for gross payment;
- and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).
- (2) The minimum turnover for the purposes of sub-paragraph (1) is whichever is the smaller of—
- (a) the amount obtained by multiplying the amount specified in regulations as the minimum turnover for the purposes of paragraph 3 (1) by the number of persons who are relevant persons in relation to the company; and
 - (b) the amount specified for the purposes of this paragraph in regulations made by the Board of Inland Revenue.
- (3) For the purposes of sub-paragraph (2) a person is a relevant person in relation to the company—
- (a) where the company is a close company, if he is a director of the company (within the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1)) or a beneficial owner of shares in the company; and
 - (b) in any other case, if he is such a director of the company.
- (4) The Board may make regulations—

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- (a) for determining the number of relevant persons to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of such persons has fluctuated over a period);
- (b) for the purpose of enabling a company which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

The compliance test

- 12 (1) The company must, subject to sub-paragraphs (2) and (3), have complied with—
- (a) all obligations imposed on it in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9); and
 - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, its business.
- (2) A company that has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
 - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue,
- is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (3) A company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the company had a reasonable excuse for the failure to comply, and
 - (b) if the excuse ceased, it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) The company must, if any contribution has at any time during the qualifying period become due from the company under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
 - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),
- have paid the contribution when it became due.
- (5) The company must have complied with any obligations imposed on it by the following provisions of the Companies Act 1985 (c. 6) in so far as those obligations fell to be complied with within the qualifying period—
- (a) sections 226, 241 and 242 (contents, laying and delivery of annual accounts);
 - (b) section 288(2) (return of directors and secretary and notification of changes therein);
 - (c) sections 363 to 365 (annual returns);
 - (d) section 691 (registration of constitutional documents and list of directors and secretary of overseas company);
 - (e) section 692 (notification of changes in constitution or directors or secretary of overseas company);
 - (f) section 693 (overseas company to state its name and country of incorporation);
 - (g) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);

- (h) Chapter 2 of Part 23 (accounts of oversea company).
- (6) The company must have complied with any obligations imposed on it by the following provisions of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) in so far as those obligations fell to be complied with within the qualifying period—
- (a) Articles 234, 249 and 250 (contents, laying and delivery of annual accounts);
 - (b) Article 296(2) (return of directors and secretary and notification of changes therein);
 - (c) Articles 371 to 373 (annual returns);
 - (d) Article 641 (registration of constitutional documents and list of directors and secretary of Part XXIII company);
 - (e) Article 642 (notification of changes in constitution or directors or secretary of Part XXIII company);
 - (f) Article 643 (Part XXIII company to state its name and country of incorporation);
 - (g) Article 649 (accounts of Part XXIII company).
- (7) There must be reason to expect that the company will, in respect of periods after the qualifying period, comply with—
- (a) all such obligations as are referred to in paragraphs 10 and 11 and sub-paragraphs (1) to (6), and
 - (b) such requests as are referred to in sub-paragraph (1).
- (8) Subject to sub-paragraphs (2) and (3), a company is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (6) if there has been a contravention of a requirement as to—
- (a) the time at which, or
 - (b) the period within which,
- the obligation or request was to be complied with.

PART 4

SUPPLEMENTARY PROVISIONS

Power to amend conditions for registration for gross payment

- 13 (1) The Treasury may by order made by statutory instrument amend this Schedule by—
- (a) adding,
 - (b) varying, or
 - (c) removing,
- a condition for registration for gross payment.
- (2) No statutory instrument containing an order under this paragraph shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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“Qualifying period”

- 14 In this Schedule “the qualifying period” means the period of 12 months ending with the date of the application in question.

Regulations under this Schedule

- 15 Any power under this Schedule to make regulations prescribing the evidence required for establishing what is likely to happen at any time includes power to provide for such matters to be presumed (whether conclusively or unless the contrary is shown in the manner provided for in the regulations) from evidence of what has previously happened.
- 16 Regulations under paragraph 3(1), 7 (1) or 11 (1) prescribing the evidence required for establishing the amount by way of relevant payments likely to be received by a person may make different provision according to whether—
- (a) the person is applying for registration for gross payment, or
 - (b) the Board of Inland Revenue are considering whether to make a determination under section 66(1)(a) cancelling the person’s registration for gross payment.