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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 11. (See end of Document for details)

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—
- [^{F1}(a) any obligation imposed on him in the qualifying period (see paragraph 14)—
- (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
- (ii) to submit returns as required by regulations made under section 70 of this Act,
- (iii) to pay the tax liable to be deducted under the PAYE Regulations (S.I. 2003/2682), and
- (iv) to submit a self-assessment return, 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 [^{F2}sections 450 and 451 of the Corporation Tax Act 2010].
- (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

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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.

Textual Amendments

- F1** Sch. 11 para. 4(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(a)**
- F2** Words in Sch. 11 para. 4(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 430** (with Sch. 2)

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).

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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 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—
- [^{F3}(a) any obligation imposed on that partner in the qualifying period (see paragraph 14)—
 - (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
 - (ii) to submit returns as required by regulations made under section 70 of this Act,
 - (iii) to pay the tax liable to be deducted under the PAYE Regulations (S.I. 2003/2682), and
 - (iv) to submit a self-assessment return, 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,

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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.

[^{F4}(6) This paragraph is subject to paragraph 8A (exception from compliance test: firms).]

Textual Amendments

- F3** Sch. 11 para. 8(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(b)**
- F4** Sch. 11 para. 8(6) inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **2(a)**

[^{F5}Exception from compliance test: firms

Textual Amendments

- F5** Sch. 11 para. 8A inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **2(b)**

- 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).]

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*Changes to legislation: There are currently no known outstanding effects
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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—
- [^{F6}(a) any obligation imposed on it in the qualifying period (see paragraph 14)—
 - (i) to pay the amount liable to be deducted under section 61 of this Act from payments made during that period,
 - (ii) to submit returns as required by regulations made under section 70 of this Act,
 - (iii) to pay the tax liable to be deducted under the PAYE Regulations (S.I. 2003/2682), and
 - (iv) to submit a self-assessment return, 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 oversea company);

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- (e) section 692 (notification of changes in constitution or directors or secretary of oversea company);
 - (f) section 693 (oversea 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.
- [^{F7}(9) This paragraph is subject to paragraph 12A (exception from compliance test: companies).]

Textual Amendments

- F6** Sch. 11 para. 12(1)(a) substituted (6.4.2016) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2016 \(S.I. 2016/404\)](#), arts. 1, **2(c)**
- F7** Sch. 11 para. 12(9) inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **3(a)**

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[^{F8}Exception from the compliance test: companies

Textual Amendments

F8 Sch. 11 para. 12A inserted (6.4.2015) by [The Income Tax \(Construction Industry Scheme\) \(Amendment of Schedule 11 to the Finance Act 2004\) Order 2015 \(S.I. 2015/789\)](#), arts. 1, **3(b)**

- 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).]

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,

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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.

“Qualifying period”

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

[^{F9}14A(1) For any part of the qualifying period falling on 1 October 2009 or later, paragraph 12(5) must be understood as referring instead to—

- (a) the Companies Act 2006 (c. 46) sections 394, 395, 437 and 441 (accounts);
- (b) sections 167(1), 167(2), 276(1) and 276(2) of that Act (changes in director or secretary);
- (c) Part 24 of that Act (annual returns);
- (d) regulations under Part 34 of that Act (overseas companies) which are about—
 - (i) registration of particulars,
 - (ii) accounts, reports or returns,
 - (iii) trading disclosures.

- (2) For such part of the qualifying period, paragraph 12(6) must be disregarded and paragraphs 12(7)(a) and 12(8) understood as referring to sub-paragraphs (1) to (5) instead of (1) to (6).]

Textual Amendments

- F9** Sch. 11 para. 14A inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), 6

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.

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