EXPLANATORY MEMORANDUM TO

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT OF SCHEDULE 11 TO THE FINANCE ACT 2004) ORDER 2015

2015 No.

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 an amount on account 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.

4.2 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 the application for 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. The reference to already being registered does not include registration by virtue of new paragraph 8A or new paragraph 12A.

4.3 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 for registration by the joint venture, 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. 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 to Schedule 11 of the Finance Act 2004) 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 that 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 three tests (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.

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.

8.2 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 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 https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. 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.