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 H.M. Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends certain paragraphs in Schedule 11 to the Finance Act 2004 (c. 12) which identifies the conditions which have to be satisfied by sub-contractors during the qualifying period (the 12 month period ending with the date of application) in order to be registered to receive payments gross (i.e. payments from which no deductions are made under the Construction Industry Scheme on account of tax). The instrument simplifies the compliance test (which is one of the conditions that a sub-contractor must satisfy). As a consequence of this Order rather than having to have complied with all the obligations imposed on it by the Tax Acts and the Taxes Management Act 1970 (c. 9) during the qualifying period, a sub-contractor will have to have complied with the "compliance obligations" which are i) the obligation to file monthly returns in respect of the Construction Industry Scheme, ii) the obligation to file an income tax self-assessment return or a corporation tax return and iii) to have paid to HMRC any amounts which the applicant was liable to have deducted under Section 61 of the Finance Act 2004 and under the Income Tax (Pay As You Earn) Regulations 2003 ("the PAYE Regulations") (S.I. 2003/2682).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 This instrument amends paragraphs 4(1), 8(1) and 12(1) of Schedule 11 to the Finance Act 2004 which paragraphs contain the compliance test.

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. Article 2(a) substitutes a new paragraph 4(1)(a) to provide that a sub-contractor only has to have satisfied the compliance obligations during the qualifying period.

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. Article 2(b) substitutes a

new paragraph 8(1)(a) to provide that a sub-contractor only has to have satisfied the compliance obligations during the qualifying period..

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. Article 2(c) substitutes a new paragraph 12(1)(a) to provide that a sub-contractor only has to have satisfied the compliance obligations during the qualifying period.

5. Extent and Territorial Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

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, i.e. contractors for whom the sub-contractors work are not required to make any deductions from the payments to such sub-contractors on account of tax. To qualify sub-contractors must pass three tests (a business, a turnover and a compliance test).

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 To help small business' cash flow HMRC has simplified the compliance test which sub-contractors need to pass to achieve gross payment status thereby reducing the administrative burden for small businesses and HMRC

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.

8.3 HMRC carried out a technical consultation on this instrument in December 2015 and January 2016.

9. Information

9.1 Information on these changes will be available from April 2016 on Gov.uk.

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 minimal impact on the public sector. The instrument will benefit any business wishing to apply for gross payment as it will simplify the application process.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and is available on 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.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. The instrument will benefit any business wishing to apply for gross payment as it will simplify the application process.

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.