
STATUTORY INSTRUMENTS

2005 No. 2045

The Income Tax (Construction Industry Scheme) Regulations 2005

PART 6

CONDITIONS TO BE SATISFIED FOR GROSS PAYMENT

Business test

Evidence prescribed to satisfy the business test

27.—(1) The evidence required to satisfy an officer of Revenue and Customs for the purposes of section 64 of the Act (requirements for registration for gross payment) that the applicant or company is carrying on a business in the United Kingdom which satisfies the conditions mentioned in paragraph 2(a) and (b) of Schedule 11 to the Act is prescribed in paragraph (2).

(2) The evidence is—

- (a) the business address;
- (b) invoices, contracts or purchase orders for construction work carried out by the applicant;
- (c) details of payments for construction work;
- (d) the books and accounts of the business;
- (e) details of the business bank account, including bank statements.

Turnover test

Minimum turnover

28.—(1) The minimum turnover for the purposes of paragraph 3(1) of Schedule 11 to the Act is £30,000.

(2) The amount specified for the purposes of paragraph 7 of Schedule 11 to the Act is £200,000.

(3) The amount specified for the purposes of paragraph 11 of Schedule 11 to the Act is £200,000.

Evidence prescribed to satisfy the turnover test

29.—(1) The evidence prescribed for the purposes of paragraphs 3(1), 7(1) and 11(1) of Schedule 11 to the Act is—

- (a) evidence of turnover of the business mentioned in paragraph 3(1), 7(1) or 11(1) of Schedule 11 to the Act, as appropriate, during the qualifying period;
- (b) evidence of relevant payments which may include bank statements and paid cheques;
- (c) evidence that—

- (i) the aggregate amount of relevant payments received in the qualifying period equalled or exceeded the relevant turnover threshold; or
 - (ii) for the purposes of section 66 of the Act (cancellation of registration for gross payment – continuing compliance), the aggregate amount of relevant payments received in the qualifying period equalled or exceeded the relevant turnover threshold or the average amount of relevant payments received in the qualifying period and the previous two years equalled or exceeded the relevant turnover threshold;
 - (d) documentary evidence of operations carried out by the business during the qualifying period which demonstrate that the operations amounted to construction operations.
- (2) In the case of a new business carried on by a firm or company where there is no evidence as prescribed in sub-paragraphs (a), (c) or (d) of paragraph 1, the evidence prescribed for the purposes of paragraphs 7(1) and 11(1) of Schedule 11 to the Act is—
- (a) evidence of relevant payments which may include bank statements and paid cheques;
 - (b) in the case of a firm, evidence of turnover of partners during the qualifying period;
 - (c) in the case of a company, evidence of turnover of relevant persons during the qualifying period;
 - (d) evidence of construction contracts entered into by the firm or company including payment schedules where the aggregate value of these contracts exceeds £200,000 and payments of at least £30,000 have been made;
 - (e) if the business mentioned in paragraph 11(1) of Schedule 11 was acquired from another person, firm or company (“the transferor”), the evidence specified in paragraph (3).

This is subject to paragraph (4).

- (3) The evidence specified is—
- (a) evidence of turnover of the transferor in relation to carrying on the business during the qualifying period;
 - (b) evidence that—
 - (i) the aggregate amount of relevant payments received by the transferor in relation to carrying on the business in the qualifying period equalled or exceeded the relevant turnover threshold; or
 - (ii) for the purposes of section 66(1)(a) of the Act (cancellation of registration for gross payment – continuing compliance), the aggregate amount of relevant payments received by the transferor in the qualifying period in relation to carrying on the business equalled or exceeded the relevant turnover threshold or the average amount of relevant payments in relation to the business received in the qualifying period and the previous two years equalled or exceeded the relevant turnover threshold;
 - (c) invoices for operations carried out by the transferor during the qualifying period which demonstrate that the business operations amounted to construction operations;
 - (d) evidence that the transferor would have satisfied the compliance test in paragraphs 4, 8 or 12 of Schedule 11 to the Act at the date of the transfer.
- (4) The evidence prescribed in paragraph (2) may only be given in relation to one application for registration for gross payment.
- (5) For the purposes of this regulation and regulation 31—
- “relevant payment” has the meaning given in paragraph 3(2) of Schedule 11 to the Act;
 - “relevant turnover threshold” means—

- (a) for the purposes of paragraph 3(1) of Schedule 11 of the Act, in relation to individuals, the minimum turnover specified in regulation 28(1);
- (b) for the purposes of paragraph 7(1) of Schedule 11 of the Act, in relation to firms, the smaller of—
 - (i) the sum specified in paragraph 7(2) of Schedule 11 of the Act, and
 - (ii) the amount specified in regulation 28(2);
- (c) for the purposes of paragraph 11(1) of Schedule 11 of the Act, in relation to companies, the minimum turnover for the purposes of that sub-paragraph.

Number of partners or relevant persons

30. For the purposes of paragraphs 7(2)(a) and 11(2)(a) of Schedule 11 to the Act if the number of partners or relevant persons as the case may be has fluctuated over the qualifying period, the number of partners or relevant persons is the maximum number of partners or relevant persons at any one time in the qualifying period.

Turnover test treated as satisfied in prescribed circumstances

31. A person, firm or company which does not satisfy the condition in paragraphs 3(1), 7(1) or 11(1) of Schedule 11 to the Act, as appropriate, is treated as satisfying that condition if an officer of Revenue and Customs is satisfied that—

- (a) the business of the person, firm or company does not mainly consist of construction operations,
- (b) in the year prior to making the application the total turnover of the business exceeded the relevant turnover threshold, and
- (c) in the year following making the application the person, firm or company is likely to receive relevant payments in relation to construction operations which are incidental to the main business of the person, firm or company.

Compliance test

Exceptions from compliance obligations

32.—(1) The obligations and requests prescribed for the purposes of paragraphs 4(3), 8(2) and 12(2) of Schedule 11 to the Act are given in column 1 of Table 3.

(2) The circumstances prescribed in which the applicant or company is to be treated as satisfying the conditions in paragraphs 4(1), 8(1) or 12(1) of Schedule 11 to the Act as regards each of the prescribed obligations are given in column 2 of Table 3.

Table 3

<i>1. Prescribed obligations</i>	<i>2. Prescribed circumstances</i>
Obligation to submit monthly contractor return within the required period.	(1) Return is submitted not later than 28 days after the due date, and (2) the applicant or company— <ul style="list-style-type: none">(a) has not otherwise failed to comply with this obligation within the previous 12 months, or

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1. Prescribed obligations	2. Prescribed circumstances
<p>Obligation to pay—</p> <p>(a) the amount liable to be deducted under section 61 of the Act from payments made during that tax period, or</p> <p>(b) tax liable to be deducted under the PAYE Regulations.</p>	<p>(b) has failed to comply with this obligation on not more than two occasions within the previous 12 months.</p> <p>(1) Payment is made not later than 14 days after the due date, and</p> <p>(2) the applicant or company—</p> <p>(a) has not otherwise failed to comply with this obligation within the previous 12 months, or</p> <p>(b) has failed to comply with this obligation on not more than two occasions within the previous 12 months.</p>
<p>Obligation to pay income tax.</p>	<p>(1) Payment is made not later than 28 days after the due date, and</p> <p>(2) the applicant has not otherwise failed to comply with this obligation within the previous 12 months.</p>
<p>Obligation to submit a return under regulation 73, 74 and 85 of the PAYE Regulations (annual returns) within the required period.</p>	<p>Return is submitted after the due date.</p>
<p>Obligation to pay corporation tax for which the applicant or company is liable.</p>	<p>(1) Payment is made not later than 28 days after the due date, and</p> <p>(2) any shortfall in that payment has incurred an interest charge but no penalty.</p>
<p>Obligation to submit a self-assessment return within the required period.</p>	<p>Return is submitted after the due date.</p>
<p>Obligations and requests referred to in paragraphs 4(1), 8(1) and 12(1) of Schedule 11 to the Act.</p>	<p>The failure to comply occurred before the appointed day and was within section 562(10), 564(4) or 565(4) of ICTA (conditions to be satisfied: minor and technical failures).</p>

Absence abroad – evidence of living outside the United Kingdom

33.—(1) The evidence required to satisfy the Commissioners for Her Majesty’s Revenue and Customs for the purposes of paragraph 4(5)(a) of Schedule 11 to the Act that the applicant was not subject to any one or more of the obligations mentioned in paragraph 4(1) of that Schedule because he has been outside the United Kingdom for the whole or part of the qualifying period is prescribed in paragraphs (2) and (3).

(2) Subject to paragraph (3), if the applicant claims to have been employed or self-employed outside the United Kingdom during any part of the qualifying period, the evidence is any document from the Revenue Department or equivalent department of the country in which he claims to have been living which confirms his presence throughout that part of the qualifying period.

(3) If the applicant claims—

- (a) not to have been employed or self-employed while outside the United Kingdom during any part of the qualifying period, or
- (b) to have been employed or self-employed outside the United Kingdom during any part of the qualifying period but not to have been liable to tax in the country in which he claims to have been living during that part of the qualifying period,

the evidence is any document from the Social Security Department or equivalent department, or from the immigration authorities, or from any other Government department of the country in which he claims to have been living which confirms his presence throughout that part of the qualifying period.

Absence abroad – evidence of compliance with tax obligations

34.—(1) The evidence required to satisfy the Commissioners for Her Majesty’s Revenue and Customs for the purposes of paragraph 4(5)(b) of Schedule 11 to the Act that the applicant has complied with any obligations imposed under the tax laws of any country in which he was living during any part of the qualifying period which are comparable to the obligations mentioned in paragraph 4(1) of that Schedule is prescribed in paragraph (2).

(2) The evidence is such notice or documents issued by the Revenue Department or equivalent department of the country in which the applicant claims to have been living as confirms that the obligations have been complied with.

Evidence of unemployment

35.—(1) The evidence required to satisfy the Commissioners for Her Majesty’s Revenue and Customs for the purposes of paragraph 4(5)(a) of Schedule 11 to the Act that the applicant was not subject to any one or more of the obligations mentioned in paragraph 4(1) of that Schedule because he was unemployed is prescribed in paragraphs (2) and (3).

(2) If the applicant claims to have been living within the United Kingdom during any period, the evidence is—

- (a) a statement from the benefit officer certifying the period during which the applicant was registered as unemployed, or
- (b) during any period during which the applicant was not registered as unemployed, such other evidence as satisfied the Commissioners for Her Majesty’s Revenue and Customs that he was unemployed during that period.

(3) If the applicant claims to have been living outside the United Kingdom during any period, the evidence is any document from the Social Security Department or equivalent department, or from the immigration authorities, or from any other Government Department of the country in which he claims to have been living, which confirms his presence there throughout that period.

(4) In paragraph (2), “benefit officer” means appropriate officer of the Department for Work and Pensions or, in Northern Ireland, the appropriate officer of the Department of Health and Social Services for Northern Ireland.

Evidence of full-time education

36.—(1) The evidence required to satisfy the Commissioners for Her Majesty’s Revenue and Customs for the purposes of paragraph 4(5)(a) of Schedule 11 to the Act that the applicant was not subject to any one or more of the obligations mentioned in paragraph 4(1) of that Schedule because he was undergoing full-time education is prescribed in paragraphs (2) and (3).

(2) If the applicant claims to have been living within the United Kingdom, the evidence is a statement from the educational institution which the applicant attended, certifying the periods during which the applicant was undergoing full-time education at that institution.

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(3) If the applicant claims to have been living outside the United Kingdom during any period, the evidence is a statement from the educational institution which the applicant attended, in the country in which the applicant claims to have been living, certifying the periods during which the applicant was undergoing full-time education at that institution.

Interpretation

37. In this Part—

“applicant” shall be construed in accordance with section 63 of and Schedule 11 to the Act;

“qualifying period” has the meaning given in paragraph 14 of Schedule 11 to the Act.