

# RELEVANT CONTRACTS TAX (RCT) - CONSTRUCTION INDUSTRY

August 2008

The Revenue Commissioners have in recent times been diverting a substantial element of their resources to reviewing the tax compliance status of persons operating within the construction industry. One of the main risk areas it has identified is the non-operation or incorrect operation of Relevant Contracts Tax (RCT). While we do not propose to review the basic provisions of the legislation concerning RCT, we have set out below some recent changes/updates to the legislation and Revenue practice in this area.

## Connected Persons/Build to Let

Generally, RCT will apply to a transaction where a subcontractor is engaged by a person whose activities consist of the erection of buildings or the development of land ("principal contractor") to carry out construction operations on their behalf.

There are two exceptions to this general rule (i.e. RCT will not apply to the transaction), where the contract is in respect of the construction of a property or the development of land which when constructed/developed will:

1. Be let by the principal contractor or
2. Be used by the principal contractor for the purpose of their business

The above exceptions will not apply:

1. Where a principal contractor (excluding a company which is not itself engaged in a construction/land development business) is connected with a company carrying on a construction/land development business or
2. Where the principal contractor is carrying on a construction/land development business and the property is let for a period of in excess of 35 years.

Where either of these situations apply, RCT will continue to apply to the transaction.

A person is connected with a company where they can either solely or together with certain persons - for example relatives - control that company either directly or indirectly. For example, Mr. X owns 100% of the shares in XYZ Ltd, a construction company. Mr. X recently bought a site and is now engaging Mr. A, a builder, to construct a house on that site which when completed will be used by Mr. X as his private residence. Though Mr. X intends to use the property for his private use once completed, as he owns 100% of the shares in XYZ Ltd he will be connected with a construction company and therefore RCT will apply to any payments made by him in this regard to Mr. A.

## Limit on Relevant Payments Card

On receipt of Form RCT 47, relevant payments card, you should check immediately that a limit has not been placed on the card.

If there is no limit placed on the card, then payments can be made gross to the relevant subcontractor from the date on which the card is issued to the end of the relevant tax year.

If however, a limit has been placed on the card, then any payments (VAT inclusive) made to the relevant subcontractor in the period in excess of this limit will be subject to RCT at 35%. The subcontractor can in this case request that the Revenue Commissioners increase or remove the limit but until such time as an amended relevant payments card is received the initial limit will continue to apply.

## CONTACTS



For further information, please call your regular contact in Horwath Bastow Charleton or:

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### Revised Form RCT 1

A new version of the Form RCT 1 was introduced by the Revenue Commissioners in respect of any contracts entered into in this regard since 1 April last.

The main changes to the form are as follows:

- Before completion of the form, both the principal contractor and the subcontractor are now obliged to review the code of practice for determining employment and self employment status of individuals in order to determine if the contract is a contract of employment or a relevant contract.
- The relevant subcontractor is required to provide far greater detail with regard to his tax affairs and the contract in question.
- The form is now required to be submitted to the Revenue Commissioners within 7 days of the date on which the declaration is made in certain circumstances. The circumstances are detailed on the form and are quite extensive. These circumstances include, where this is the first time a contract for construction operation is being entered into between a principal contractor and a subcontractor or where the subcontractor is not registered for certain taxes or is registered for taxes but cannot provide a tax reference number.
- There is now a fixed penalty which the Revenue Commissioners may impose for failure to meet the obligations imposed.

A provision has also been introduced for subcontractors whose average annual sales arising from construction operations exceeds €6.34m in the last three years (ending with the end of the last period of account prior to the date of application) to apply for exclusion from the RCT 1 process. In order to apply for exclusion the relevant documentation should be completed and returned to the Revenue Commissioners. If issued with a notice of exclusion by the Revenue Commissioners a subcontractor on presentation of same to a principal contractor before entering into a relevant contract, is not required to make an RCT 1 declaration.

The Form RCT 1 once completed will suffice in respect of an ongoing contract between a principal contractor and a subcontractor regardless of whether the work to be carried out is in succession or where the work is to be carried out on multiple sites. However this does not include:

1. Where the subcontractor has to tender for new work or
2. The parties to the contract have changed or
3. The terms of the contract have changed or
4. The subcontractor was not in receipt of any payments from the principal contractor in the previous tax year.

### New Format of C2 Card

The Revenue Commissioners have introduced a new version of the C2 card. The card is similar to that which is currently in existence but has additional security features. The new features will incorporate the Revenue Logo, Castle Gates, Harp and the legend "C2" which can only be seen by moving the actual card in various directions, as would be the case with a hologram.

The new version of the card will be issued to new applicants from 1 January 2008 and to those persons who are entitled to have the cards renewed where their cards expire on or after 31 December 2008. Both cards will be in circulation until 31 December 2009.

### Conclusion

This is a brief overview of the recent main changes to the RCT legislation. The responsibility to apply RCT to a payment when necessary rests with the principal contractor. In the event that RCT is not operated or operated incorrectly the principal contractor may be liable to substantial interest and penalties together with the RCT which should have been deducted. Therefore, you must ensure that you are operating within the ambit of the legislation in order to avoid what could be both a substantial and irrecoverable cost.



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