

Relevant Contracts Tax (“RCT”)

What is RCT?

RCT is a withholding tax which must be applied to payments made by a “principal” (see below) to a sub-contractor who carries out or is responsible for what is referred to as “relevant operations”.

Relevant Operations are defined by tax law to include three industry operations: construction, forestry and meat processing. The focus of this chapter is obviously on the application of RCT to construction operations.

Persons within the RCT system have to

Either (i) withhold 20% or 35%; as advised by Revenue, from payments to persons who carry out construction works for them or (ii) obtain a clearance from Revenue in relation to such persons prior to any payments being made in order to pay gross, without any RCT withheld.

If the correct amount is not withheld by the principal contractor then they can become liable for this. So if a deemed principal makes a payment of €100 to a deemed sub-contractor but should have withheld 35% Revenue can come back to the principal; looking for the grossed up amount based on the payment of €100 which would be approximately €54.

So the total cost to the Principal would be €154 before interest and penalties as outlined below.

Who is classified as a Principal?

The definition of a “principal” includes a person who engages a contractor and who;

- carries on a business which includes the erection of buildings or the manufacture, treatment or extraction of materials for use, whether used or not, in construction operations; or
- is a contractor who is responsible to another person for the performance of relevant operations or arranging for labour to be provided to perform relevant operations; or
- is a person connected with a company carrying on a business mentioned above. “Connected” in this context includes persons under common control and relatives and spouses. The term “connected” is defined in section 10 TCA 1997.

What Constitutes Relevant Construction Operations?

For the purposes of RCT, relevant construction operations have a wide meaning. In particular please note that such operations include:

- I. Construction, alteration, repair, extension or demolition of buildings, and also of walls, water mains, wells etc.;
- II. Preparatory operations to (i) immediately above e.g. site clearance, laying of foundations, putting up of scaffolds;
- III. Installation of systems such as air conditioning, lighting, heating or alarms;
- IV. External cleaning of buildings or internal cleaning of buildings during (i) or (ii) immediately above;

V. Hiring of plant and machinery for (i) – (iv) above;

It is important to note that professional fees relating to construction works (e.g. architects, quantity surveyors etc.) are not within the RCT net provided such professional services do not involve the supervision of labour or the co-ordination of such labour.

As can be seen from the above the definition of “relevant operations” is very broad and would generally include the following:

- Typical building trade services supplied with the construction sector such as electricians, plumbers, bricklayers, plasterers, carpenters, glaziers, labourers, painters, etc.
- Refurbishment or fit out projects
- Contracts providing installation services, e.g. power supply, wind farms, heat, light, air-con, telecom systems
- Repair, demolition, site preparation and clearance services (including skip hire) Haulage services in relation to construction materials
- Crane hire with operator
- Scaffolding hire with erection services
- Agency services related to the provision of labour for construction work
- Any operations preparatory, integral to, or rendering complete the development work
- Wind farm construction
- Site clearance and provision of access routes
- Operation and maintenance contracts which include repairs

Non-resident contractors

RCT is a withholding tax whereby a person known as a “principal contractor” is obliged to retain tax from amounts payable to sub-contractors engaged to carry out “relevant operations” in Ireland. If relevant operations are carried out in Ireland, RCT applies to the contract regardless of the residence of the subcontractor.

Non-resident principals who subcontract work which takes place in Ireland are obliged to operate RCT.

While a non-resident principal or subcontractor may not have an obligation to register for other taxes in Ireland, they may have to register and operate/suffer RCT.

Can a Person be both a Principal and a Sub-contractor?

Yes. Taxpayers should therefore be careful to consider if any contracts which they take on could be as a sub-contractor. If this was to happen they would have to obtain the necessary clearance etc. in order to avoid the imposition of RCT on payments made to them

Administration RCT System

A new electronic RCT system is in operation. All principals are obliged to engage electronically with Revenue and have to:

- notify Revenue of all contracts with subcontractors online, with detailed info requirements
- notify payments online-before making the payments
- receive deduction authorisation from Revenue in relation to that payment, indicating which rate (0%, 20% or 25%) of RCT to apply (which broadly will depend on the subcontractor’s tax compliance position). This is again prior to making the payment.
- provide a copy or details of the Deduction Authorisation to the Subcontractor
- submit monthly/quarterly returns online
- make payments to Revenue of RCT deducted

The old system involving the issuance of C2’s and payments cards is no longer applicable.

What happens if RCT is not applied and it should Have Been?

As mentioned earlier payments made which is not under the terms of a deduction authorisation exposes the Principal to a liability to Revenue of the amount (35%) which should have been withheld, and penalties.

Where the principal submits the details of the payment to the Revenue before the due date for that period's return, the tax payable will be limited to that which would have applied to the payment (0%, 20%, or 35% as appropriate). There is a Code of Practice for Revenue auditors which provides for a "self-correction" mechanism within 1 year where errors are discovered.

In certain cases, particularly where no loss of revenue arises to the Exchequer, or in the case of genuine mistakes, the interest and/or penalties can be eliminated or mitigated. Revenue have outlined these as

- i) Technical issue – mistaken belief that a contract is not a relevant contract
- ii) "No loss of revenue" cases
- iii) Exceptional failure to deduct RCT – rectified within one month filing deadline
- iv) Payment made by principal prior to payments card being obtained

RCT Penalties

If you do not comply with this system the following new penalties will apply:

Principal contractors who fail to operate RCT on relevant payments to subcontractors will be liable for a penalty proportionate to the amount of the tax that should have been deducted.

- Where the subcontractor is liable to the zero rate of RCT, the principal contractor will be liable to a civil penalty of 3% of the relevant payment;
- Where the 20% RCT rate applies, the principal contractor will be liable to a civil penalty of 10% of the relevant payment;
- If a RCT deduction rate of 35% applies, the principal contractor will be liable to a civil penalty of 20% of the relevant payment;
- Where the subcontractor to whom the payment was made is not known to Revenue the principal contractor will be liable to a civil penalty of 35% of the relevant payment.

The above civil penalties of 3%, 10%, 20% and 35% are penalties for not operating the e-RCT system correctly and they are in addition to the applicable RCT due (up to 35%) and the penalties are not tax deductible for corporation or income tax purposes.

Even though RCT has been in effect in the construction sector for some 46 years, it is the tax where most errors are found when a Revenue Audit is conducted on a construction sector company. Indeed, Revenue are now targeting this sector for that very reason as RCT tax errors are both easy to identify and high yielding.

Common RCT mistakes

In general all construction operations that form part of 'rendering a building complete' are subject to RCT. This is why the likes of cleaning, laying carpets etc. all fall under the RCT rules when they are form part of a contract to build or renovate a building.

The most common areas where RCT should be operated but isn't is

- The transport of plant and equipment to and from different sites. A contract for site clearance involving the removal of rubble from the site and the transportation of same to landfill is subject to reverse charge. A contract which is solely to transport the material to landfill is haulage and not subject to reverse charge, but it is still subject to RCT.
- Skip hire. If a construction company hires a skip in relation to repairs/maintenance at the company's premises then this is not subject to RCT as this has nothing to do with 'rendering a building complete'.
- Cleaners that are engaged as part of rendering a job complete.

Even if the subcontractor issues the principal with an invoice with VAT, it is still the principals' responsibility to operate the RCT reverse charge VAT system correctly and they must notify the subcontractor that they have issued the invoice incorrectly.

TRA Professional Services authorised by the Chartered Accountants Ireland to carry on investment business.

Directors: Joe Cunnane (*FAC AITI*) Chartered Accountant, Lisa Connolly
Registered No.: 523190

Services provided:

• Financial Accounting & Bookkeeping • Audit & Assurance • Tax Consultancy
• Small & Medium Business Support • Contractor Solutions • HR & Payroll • Companies Secretarial & Formation
• Strategic & Business Planning • Insolvency & Corporate Recovery • Sales & Business Development
• Software Consultancy • Wealth Management • Mediation Services • Forensic Accounting • Corporate Finance

TRA is a trading name of TRA Professional Services which is authorised by Chartered Accountants Ireland to carry on investment business

