

Revenue Commissioners

Tax Briefing No 64

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Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

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Construction Industry

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Introduction

While Revenue has always maintained a significant amount of compliance activity in the construction sector, in November 2005 the Chairman of the Revenue Commissioners, Frank Daly, announced that Revenue were going to escalate that activity in 2006 by committing 25% of the audit and compliance resources to a national project to monitor the sector. This pull out section of Tax Briefing is dedicated to taxation issues arising in the Construction industry, gives highlights of the Revenue plans, clarifies the procedures for the correct operation of Relevant Contracts Tax (RCT), explains the new legislative changes introduced in Finance Act, 2006 and gives details of the various customer service initiatives supporting the sector.

There is no doubt about the importance of the Construction Industry in terms of the National Economy. It is very sizeable, accounting for €30bn or nearly a quarter of the Gross National Product in 2004. The net contribution to the Exchequer by way of Taxes and Levies is about €10 billion per annum.

The latest Construction industry indicators prepared for the **Department of the Environment, Heritage and Local Government** in April 2006 show:

- For the first time, employment in the Building and Construction sector exceeded 250,000 in Quarter 4 2005. The sector now accounts for almost 13% of total employment.
- Average weekly earnings grew by 8% in the sector in 2005
- Overall fixed investment in the Industry was up by 13.1% in 2005.
- While the number of dwellings granted planning permission in 2005 was down 2.3%, it predicts the level of housing output will be c. 83,000 in 2006.

- The level of housing completions in the 12 months to February 2006 represents a building rate of almost 20 dwellings for every 1,000 persons. The Western European average is 3 dwellings per 1,000.
- Housing loans paid out in Quarter 3 of 2005 reached a high of almost €5.5bn, with the number of loans issued also at a high of 27,011.
- Private housing rents increased by 3.9% in the year to February 2006.

Why has Revenue decided to launch a national project for the sector?

Revenue has always maintained a significant presence in monitoring activities in the construction sector. Dealing with the sector on a national basis and co-ordinating the reporting compliance activities will illustrate the extent of this monitoring activity and help dispel any impression that may have been formed that we were, in some way, neglecting the sector.

Many developers, contractors and operators in the sector operate on a national basis, if not on an international basis. In the past most operators in the sector were confined to an area within a radius of their home or centre of activities. This is no longer the case. The workforce is now highly mobile and this mobility has caused problems in ensuring that all of the activities of an operator in the sector are properly compliant from a Revenue perspective.

There are a significant number of non-nationals now engaged in the sector including many from the Accession States. This is a relatively new development and has raised particular customer service and compliance issues from a Revenue perspective. These issues are common to each of the Revenue geographic regions and thus a national approach appears the best approach.

All Revenue activities in the construction industry will be within the parameters set down in the Audit Code of Practice. However it is important to note that Revenue will not be issuing letters offering a period of unprompted self-review for those in the sector. In advance of a Revenue intervention, taxpayers are advised to make unprompted disclosures of under declarations to Revenue immediately to avail of significantly reduced sanctions. Alternatively, taxpayers are reminded that they may still avail of the voluntary disclosure option prior to the commencement of a Revenue audit but should be advised that the sanctions are significantly greater.

During March 2006, Revenue and the Institute of Taxation participated in Open Forums held in Cork, Kilkenny, Athlone and Dublin. The Forums offered Revenue an opportunity to clarify the scope and purpose of the Construction Industry Project and gave practitioners an opportunity to raise and clarify matters of concern/interest to them. At these Forums, senior Revenue officials from the local Revenue regions made presentations of the main features of the Construction Industry Project and its application to their region. These presentations were followed by open questions and answers sessions. Over 1,000 agents, accountants and tax advisors attended the sessions at the 4 venues, which highlighted the level of interest in the project.

What are the highlights of the national project?

In addition to the 25% resource commitment, the key points of the 2006 project, in no particular order include:

1. The establishment of a national RCT monitoring group. This is made up of staff from each of the 4 Revenue Regions who are operating on a full time basis monitoring suspect cases and sharing and disseminating intelligence.
2. Until May 2006, non-resident contractors had their tax affairs dealt with in the Revenue Districts based on where the site they are working from was located. As non-resident contractors move from site to site this led to customer service, administrative and management issues. Having the registration of non-residents managed in a central location will ease these problems. The compliance control for all non-resident contractors has been centralised in a single location. This unit is based in the Dublin City Centre District. So, no matter where the building work is located, the compliance associated with a non-resident contractor will be managed from Dublin City Centre. Dublin City Centre may of course use local staff to assist in any interventions considered necessary.
3. There is a concentration on improving returns compliance for RCT 35's (annual return) and RCT 30's (monthly return). Specific compliance campaigns are being run for these, making greater use of Revenue's enhanced IT capability to improve the effectiveness in managing non compliance for returns and payments.

4. There is a global focus on the construction industry. It is not just about RCT but also includes the ancillary activities associated with the industry. This includes construction, project management, architects, property developers, infrastructure projects, supply chain of goods and services, civil engineering etc.

5. The taxes covered are any taxes or duties associated with the sector, fiduciary taxes and direct taxes. In terms of audit activity one can expect RCT and VAT to be combined in many of the audits. All audits will take place under the terms of the Code of Practice and audit letters will be issued.

6. There are a number of changes in the Finance Act, 2006 in relation to the legislation governing the administration of Relevant Contracts Tax (RCT) aimed at tightening control and discouraging fraud. These are described [here](#).

7. More site visits are being carried out by Revenue staff and some of these are in conjunction with other State agencies or Government Departments and Regulatory bodies where it is considered appropriate. Specific attention is being placed on ensuring the correct classification of all workers on the site as either self employed subcontractors or employees (See section on [Form RCT 1](#)). Visits will include unannounced visits, visits where uniformed Revenue staff will be used in the course of the visits, simultaneous site visits on specifically selected active sites and "high visibility" visits which will include visits to large sites by cross District teams to carry out multiple enquiries - Principals, C2 holders, employees' PPSNs, fuel testing etc.

8. Revenue is monitoring all new C2 holders within 6 months of getting the C2 certificate. Initially each new case will be reviewed from the tax office records. If further action is required, a visit may be necessary which will usually take the form of a 1 to 2 hour assurance check. The books and records being kept will be looked at, to ensure that they meet Revenue requirements. The operation of RCT/VAT/PAYE will be looked at including the RCT 1 and RCTDC procedure if appropriate. The treatment of expenses and country money will also be examined. Any non-compliance issue will be followed up. The assurance check of itself is not an audit. The checks mentioned above are not exhaustive and will vary depending on the information already available to Revenue. In some cases, a visit may not be necessary.

9. Suitable cases are being identified for investigation with a view to prosecution particularly cases involving the use of false documentation.

10. From a customer service perspective, the RCT material on the Revenue website is being updated and certain items will be displayed in a number of different languages to reflect the changing composition of the workforce involved in construction e.g. Form RCT 1 and Form TR1. New folders have been placed on the website specifically for the construction project to improve access to up to date information.

11. Every effort is being made to improve the turn around time for issuing C2 certificates and Forms RCT 47 where all the relevant documentation and conditions have been complied with.

12. Technological advances continue to support all our activities, including better identification of cases posing a risk and cross checking of all data submitted to Revenue.

Site visits are usually unannounced. The Revenue team of officers will present themselves to the person in charge, produce their identification and outline the purpose of the visit. Some may be in uniform. The number of officers on site visits will vary having regard to the size of the operation, the need to keep disruption to a minimum and the number of other Government agencies involved.

What happens on a Site Visit?

All Revenue officers visiting sites will meet the Safepass requirements. Officers will carry their Revenue identification and authorisations, together with their Safepass cards.

The visit will include a check to ensure that all RCT obligations are being complied with including the correct classification of all workers on the site as either self employed subcontractors or employees. Sight of the books and records may be requested. Other tax obligations e.g. VAT registration, employers PAYE/PRSI, fuel testing etc. may also be reviewed.

*As no formal audit letter will have issued, the normal unprompted disclosure provisions in the **Audit Code of Practice** will apply.*

Need to Register for all appropriate Taxes

As part of Revenue's site visits, audits and assurance checks, officers will seek to ensure that all contractors are registered for the appropriate taxes. It is important that contractors register for the appropriate taxes in time to avoid running up arrears and possible interest and penalty charges. Enquiries have already shown that many taxpayers have not made timely registrations for VAT. Given the current growth in the construction sector, it is unlikely that any full-time contractor will have a turnover less than the VAT thresholds and checking VAT registrations will feature strongly in Revenue enquiries. Where it is found that a contractor should have been registered for VAT, the VAT registration may be backdated and interest and penalties may also be charged.

As stated above, Revenue will also be looking at the status of contractors on site visits etc. If it is found that employees are being engaged rather than self employed contractors, the Principal may be obliged to register for PAYE/PRSI and this registration may be backdated leading to the imposition of penalties and interest. Revenue will also be looking closely at Principals and Subcontractors who employ workers engaged in the hidden economy. Back dated registration, interest and penalties will be applied in such cases.

Information Technology Improvements to Identify Risk & Pursue Non Compliance

Revenue will be increasing its use of Information Technology to identify areas of risk in the construction sector and this will feed into the audit, site visit and assurance check programmes.

- Automated collection and compliance procedures, including the raising of estimates and automatic issue of demands, are already in place. RCTDC and RCT 46/46A details are entered into systems giving a good real time overview of RCT operations at Principal or Subcontractor level. RCTDCs' activities are tracked by Principal and Subcontractor.
- The listings with the RCT 35 returns for 2005 are being data captured which, when fed into the systems, will enable Revenue to match the data contained on those returns with the data already captured from Forms RCTDC and RCT 46s. This will greatly enhance the ability to identify, target and focus in on areas/cases that may pose a risk to Revenue. To ensure that we can make the best use of this data Revenue will be looking at how the RCT 35/35L is being completed and, where there are omissions or inaccuracies, will be insisting on properly completed forms showing all relevant data, in future.
- Revenue's new risk analysis tools will set the risk in the construction sector in the context of risks from all sectors of the economy, and allow Revenue, where necessary, to look at specific areas of the construction sector itself.
- Revenue commenced the RCT 35 2005 compliance campaign in early July. A copy of the text of these letters can be found on the construction project webpage on the Revenue website at www.revenue.ie. A feature of this year's program is that the initial letter will issue centrally, but local offices will have access to more up to date filing information together with compliance information on earlier years. This will lead to a more focussed approach to our RCT 35 compliance campaign. Persistent non-filers will be identified and pursued. Any outstanding RCT 35s should be filed as soon as possible.
- In the past where the amount shown as deducted on the RCT 35 did not match the amounts declared and remitted on the monthly RCT 30s for the year, Revenue only pursued cases where there was a perceived under-deduction of tax. In a development to be released in July, Principals will be contacted where there is an apparent overpayment of tax and will be asked to verify the information provided and correct any of the monthly returns (RCT 30s) if necessary.

Where to find information on Construction for Practitioner and Clients?

1. www.revenue.ie

Revenue has set up dedicated web pages relating to the Construction Industry Project in 2006. There are many articles/items already on these pages that will be of use to agents/advisors and their clients. In particular, registration and RCT forms will be posted there.

At present the following articles/information are available:

- An introduction to the Construction Industry Project
- Questions from the Open Forums with practitioners held in March 2006
- An explanation of the criteria for paying "country money" which includes the current agreed rates and the rates for earlier years
- The Code of Practice for determining Employment or Self -Employment status of individuals
- An explanation of the main forms used by Principals and Subcontractors and, where available, links to downloadable versions of these forms
- Issues for Principal Contractors
- Links to previous **Tax Briefing** articles on the Construction Industry
- Notes for non-resident contractors in the construction industry
- Leaflet on RCT 47 contract limit issued to Principals
- Text of RCT 35 non-compliance letters to agents and taxpayers

These pages will be updated regularly as the project progresses.

It is planned to put up a number of other items shortly including:

- Foreign language versions of Forms RCT 1 and TRI
- An "Issues for Subcontractors" article
- More questions from the Open Forums and
- Copy of the letter that will issue when the RCT 35 declaration is less than the amount paid on the RCT 30's

Agents and their clients are advised to access these web pages regularly to see the latest updates.

2. Construction Industry Federation

Revenue has had a number of meetings with the Construction Industry Federation to discuss their concerns/issues within the sector. Revenue is running a series of articles in their magazine "**Construction**" to highlight the key issues identified under the project.

3. Revenue On Line Service (ROS) Customer Information Service for RCT

The ROS Customer Information Service allows customers to view details of their Revenue account on line instantly. Customers can check their account for details of:

- Returns filed and outstanding
- Payments made
- Refunds and Repayments
- Details of tax outstanding
- The Event List which shows recent activity
- Registration details
- Items submitted via ROS

Customers can also order a Statement of Account for any of their tax registrations. The Statement of Account will be delivered to the customers ROS Inbox in 2-3 days.

Why spend time ringing/writing to Revenue for this information and then waiting for it to arrive in the post? View your clients' information in real time.

In 2005 there were over 4.2 million enquiries to our Customer Information Service. Have your clients registered for ROS?

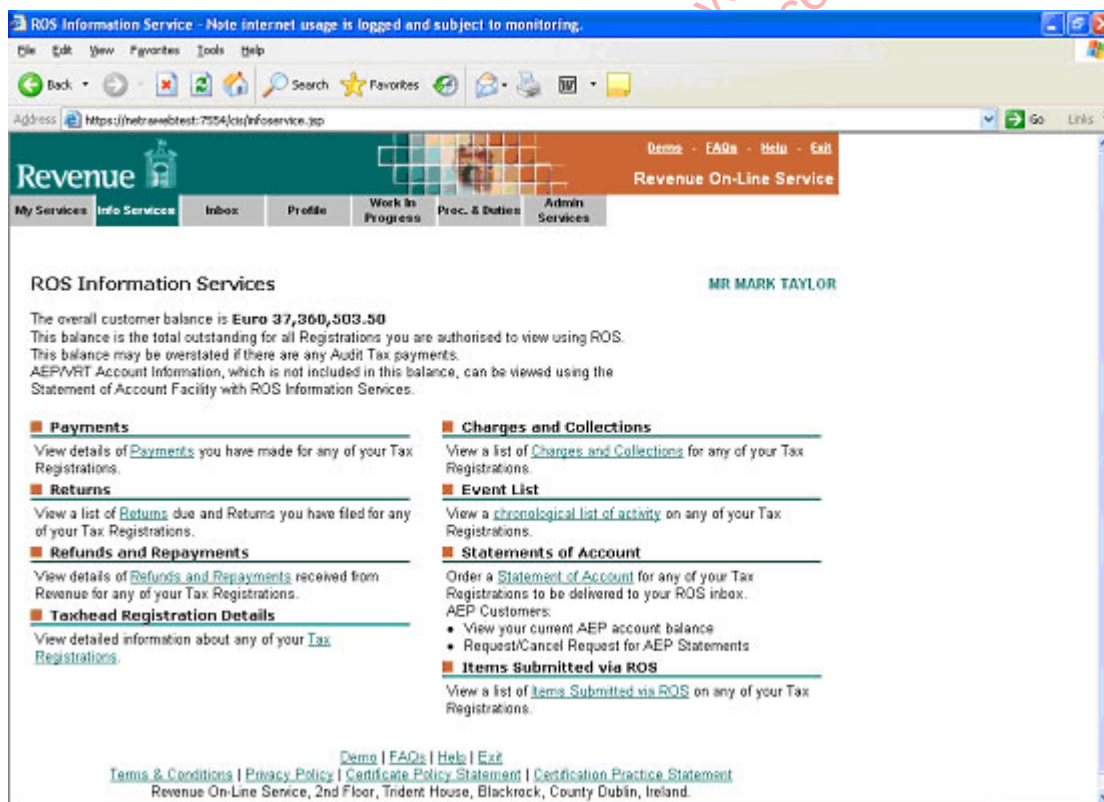
Relevant Contract Tax (RCT) on ROS

Customers can file monthly (RCT30) returns and payments on-line through the ROS service. Payments can be made by ROS Debit Instruction (RDI) or Laser Card.

The RCT 35 annual return is available in both on-line and offline versions and like all other ROS returns, it is user friendly, intuitive to complete and contains the necessary validations to assist the filer in their task. There is no payment option available with this return. However, if when completing the annual return it is discovered that a payment is due for any month, an additional payment can be made on-line by selecting the appropriate month and completing the relevant RCT 30 payment with the amount due.

When the RCT35 return is filed on ROS, customers and their agents can then view Subcontractors' details, including payments made and tax deducted. Similar details from the Form P35 are also very relevant. In view of the focus on the sector and the increased use of information technology to "number crunch" the data submitted to Revenue, electronic access to the detailed returns made by clients is recommended. If both client and tax agent are registered for the on-line service both parties are fully aware of the "real time" compliance situation should Revenue decide to pay a visit.

A sample of the ROS Information Service screens are displayed below.
Please note that the case displayed is a dummy case for illustration purposes only.



Customers can view information for the previous 7 complete years and the current tax year. Customers can search particular periods or view all available information.

Charges and Collections

Please note that the case displayed is a dummy case for illustration purposes only.

Charges & Collections Search - Note internet usage is logged and subject to monitoring.

File Edit View Favorites Tools Help

My Services Info Services Inbox Profile Work in Progress Proc. & Duties Admin Services

ROS Information Services MR MARK TAYLOR

Payments Returns Refunds & Repayments Registration Details Charges & Collections Event List Statement of Account Remo Submittal via ROS

Use this facility to access information from the previous seven complete tax years and the current tax year. To Search for details of Collections & Charges from Revenue, fill in the Search Details below and Click Go. This facility is not applicable for AEP, VRT, VTS, Vies or Jetradeit.

☒ Denotes a required field. If no dates are entered, then all available information will be returned.

Tax Type: ☒ RCT Tax Regn./Trader No.: ☒ 9110002T Period Start Date (dd/mm/yyyy): Period End Date (dd/mm/yyyy): Go

Click on the Change Currency Button to change the currency through which this information is displayed. Change Currency

Search Results:

Tax Type	RCT	Registration No.	9110002T	Information correct at	25/05/2006
Registration Currency	Euro	Search Range	21/06/1999 to 19/06/2006		
Registration Balance	-900.00	This balance covers all years for this registration, not just the period viewable through ROS. If there are any Audit Tax payments this Registration Balance may be overstated.			

Charge Type	Start Date	End Date	Liability	Collections	Balance	Payment Due Date
Informational RCT 35	01/01/2006	31/12/2006	0.00	0.00	0.00	15/02/2007
Informational RCT 35	01/01/2005	31/12/2005	0.00	0.00	0.00	15/02/2006
RCT 30 Return	01/12/2005	31/12/2005	450.00	450.00	0.00	14/01/2006
Tax Payment	01/09/2005	30/09/2005	0.00	900.00	-900.00	14/10/2005
Informational RCT 35	01/01/2004	31/12/2004	0.00	0.00	0.00	15/02/2005
Informational RCT 35	01/01/2003	31/12/2003	0.00	0.00	0.00	15/02/2004

Operation of RCT from a Construction Perspective

Legislation

Legislation governing the operation of RCT is contained in *Sections 530 and 531 TCA 1997* and *Income Tax (Relevant Contracts) Regulations 2000*. Legislation governing penalties and Revenue offences is contained in *Section 1078 TCA 1997*. *Section 531* and the regulations are listed in Columns 1 and 3 of *Schedule 29 TCA 1997*, which brings them within *Sections 1052, 1053 and 1054 TCA 1997* which also govern penalties and Revenue offences.

Registration as a Principal

Section 531(6)(ba) Regulation 7A to 7F

All principal contractors are obliged to register with Revenue. Only registered Principals will be issued with Forms RCTDC, payments cards (Forms RCT 47), monthly returns (Form RCT 30) or annual returns (Form RCT 35). This requirement was covered in **Tax Briefing 58** - December 2004.

If you are a Principal contractor and have not been receiving the standard forms you should register using Form P33 available on the Revenue website at the following link: **Form P33**

Finance Act 2006 puts beyond doubt the position of non-resident contractors where the relevant operations are carried out in the State; (see section on the 2006 changes [here](#)). Non-resident Principal contractors are also obliged to register with Revenue.

A Principal who fails to register with Revenue and makes payments without deduction of tax, may become liable for the tax that should have been deducted. Penalties may also be applied for the non-operation of RCT.

Forms RCT 30: Every Principal must complete a declaration for each month and remit any RCT deducted in that month to the Collector-General. The Form RCT 30 must be completed even if no tax was deducted in the month.

Form RCT 35: Every Principal must complete an annual declaration. The Form RCT 35 should also be used to list all details of every Subcontractor engaged during the year, whether or not tax was deducted.

Relevant Contract between Principal & Subcontractor - Form RCT 1

Section 531(6)(b) TCA 1997 and Regulations 3 and 20(4) Income Tax (Relevant Contracts) Regulations 2000.

Section 1052(1) and 1072 TCA 1997

Form RCT 1 is a declaration that is completed jointly by a Principal Contractor and a Subcontractor who are about to enter into a relevant contract even where the Subcontractor is a C2 holder. It declares that both parties to the contract have examined the criteria for determining if a contractor is self employed or an employee and that they are satisfied that the contract is **not** a contract of employment. If it is a contract of employment, PAYE/PRSI applies. If it is not a contract of employment, a declaration to that effect must be jointly signed. This declaration is the Form RCT 1. (The criteria are printed on the back of the Form RCT 1).

The Principal contractor must retain these forms for a period of 6 years after the end of the period to which they refer. In examining the Forms RCT 1 Revenue will look at the criteria in determining whether or not the contractor has been correctly classified as a self-employed contractor. For more information on determining the correct status go to the website at www.revenue.ie/leaflets/code-of-practice-on-employment-status.pdf

Form RCT 1 should be completed for every contract, even where the subcontractor holds a C2. Where the contract is with a "gang" of persons, a separate RCT 1 must be completed for each member of the gang. As a concession, where there is a continuing contractual relationship (rolling contract) a single RCT 1, completed annually will suffice. Further details on the concession are contained in **Tax Briefing 26**, April 1997. Penalties apply where the forms have not been completed, have been completed incorrectly or where they have not been retained.

Revenue staff will examine Forms RCT 1 as part of their site visits and audits to ensure that the proper procedures are being followed, in particular, that the Subcontractor is not an employee and that both Principal and Subcontractors have jointly signed the Forms. The legislation provides for penalties on the Principal and Subcontractor where the RCT 1 is not completed and on the Principal Contractor where the form is not retained.

Application by Subcontractor for a Certificate of Authorisation-C2

Section 531(6)(a), Section 531(11), Section 531 (11A), Section 531(14), Section 531(17) TCA 1997 and Regulations 8, 9 and 10 Income Tax (Relevant Contracts) Regulations 2000.

A Certificate of Authorisation, C2 is a very valuable document in that it allows the principal to apply to Revenue for a payments card for the Subcontractor entitling payments to be made to the Subcontractor gross. (It is important to note however, that the **C2 itself does not entitle the holder to be paid gross**. The principal must hold a relevant payments card (Form RCT47) issued by Revenue before payments can be made gross).

Only those Subcontractors who meet various statutory conditions are issued with a C2.

Applicants and their agents should be aware of these conditions which are set out in *Section 531(11) & (11A) TCA 1997*.

The main areas that cause difficulty in processing applications are:

(i) **Be or about to become a Subcontractor**

Where the applicant has just commenced trading, Revenue will look for a copy of the contract. The contract will be checked to ensure that the Principal contractor is a bona fide contractor. Other information in the contract will be examined to ensure that it is not a contract of employment and to determine the nature, value and duration of the contract.

Where there is no written contract, the Principal contractor should provide a letter showing the terms of the contract. Such a letter should be on headed notepaper and include the Principal's tax reference number. Where no written contract or letter can be provided, cases will be examined on their merit.

The onus is on the applicant to satisfy Revenue that they are about to become a Subcontractor under a relevant contract and the level of examination will vary from case to case.

Where a Subcontractor has been trading as an uncertified Subcontractor for some time, they are still required to submit the contract in respect of their latest contract.

Where the award of the contract is conditional on the Subcontractor having a C2, the conditional contract or letter should be submitted.

Provision of a copy of a contract will speed up the application process.

(ii) The applicant has the ability to carry out the contract

The legislation specifies that the applicant's business must be carried on from a fixed place of business in a permanent building, with such equipment stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business. Revenue will look at the detail in the contract relating to the nature, value and duration of the contract to determine what stock, equipment etc. are needed to fulfil the contract. Other factors such as the need for the Subcontractor to engage other Subcontractors or employees will be looked at. Evidence that the business is carried on from a fixed place of business, together with details of any leasing agreements, may also be required.

(iii) Tax Compliance of applicant and connected persons

The applicant and connected persons and entities as defined in the legislation must have kept their tax affairs, (specifically in relation to the payment of taxes, the delivery of returns and the provision of information) up to date **throughout** the qualifying period. The qualifying period is the 3 previous income tax years and the period in the current year from 1st January to the date of application. Note that the applicant and connected persons must have complied with all of their obligations throughout the qualifying period. It is not sufficient to be fully tax compliant at the time of application, although some discretion may be applied by Revenue.

Agents, or customers, who are registered for Revenue's On Line Service (ROS), can check their current compliance position using the Customer Information Service (see ROS Information Screen below). At a minimum, applicants should ensure that all of their current obligations are being met, and should offer an explanation where there have been instances of non-compliance during the qualifying period.

Returns Due - Overdue returns are shown in red

Please note that the case displayed is a dummy case for illustration purposes only.

Returns Search - Note internet usage is logged and subject to monitoring.

Address: https://webwebtest:7991/CIServlet

ROS Information Services

JADEERON LTD

Payments | **Returns** | Refunds & Repayments | Registration Details | Charges & Collections | Event List | Statement of Account | Items Submitted via ROS

Use this facility to access information from the previous seven complete tax years and the current tax year. To Search for details of Returns from Revenue, fill in the Search Details below and Click Go. This facility is not applicable for AEP, VRT, VTS, Vies or Jtradedat.

☒ Denotes a required field. If no dates are entered, then all available information will be returned.

Tax Type: ☒ RCT Tax Regn /Trader No: ☒ 91101401 Period Start Date (dd/mm/yyyy): Period End Date (dd/mm/yyyy):

Search Results:

Tax Type	RCT	Registration No.	91101401	Information correct at	12/12/2005
Registration Currency	Euro	Search Range	01/06/1999 to 30/05/2006		
Registration Balance	0.00	This balance covers all years for this registration, not just the period viewable through ROS.			
If there are any Audit Tax payments this Registration Balance may be overstated.					

Overdue Returns are highlighted in red

Return Type	Start Date	End Date	Date Issued	Date Due	Date Received
RCT35	01/01/2006	31/12/2006	23/11/2005	15/02/2007	
RCT30	01/02/2006	28/02/2006	23/11/2005	14/03/2006	
RCT30	01/01/2006	31/01/2006	23/11/2005	14/02/2006	
RCT35	01/01/2005	31/12/2005	23/11/2005	15/02/2006	
RCT30	01/12/2005	31/12/2005	23/11/2005	14/01/2006	
RCT30	01/09/2005	30/09/2005	27/09/2005	14/10/2005	
RCT30	01/08/2005	31/08/2005	27/09/2005	14/09/2005	
RCT30	01/07/2005	31/07/2005	27/09/2005	14/08/2005	

Where an applicant has been resident outside of the State at some time during the qualifying period, they must have complied with all of the comparable obligations imposed by the laws of the country in which they were resident.

The Finance Act 2006 imposed additional requirements for C2 applicants to satisfy (see separate section on the Finance Act 2006 changes [here](#)). The first of these extends the existing requirement that there be good reason to expect the applicant to keep proper books and records in future, to a similar expectation in relation to the future payment of taxes, delivery of returns and provision of information. The second measure makes provision for withholding the issue of a C2 where the applicant is carrying on, or is about to carry on, relevant operations which were previously carried on, or are being carried on, by a connected person (as defined) unless the connected person is compliant in relation to the keeping of business records, payment of taxes, delivery of returns and the provision of any information requested.

Given the extent of the checks that need to be carried out, applications should be submitted as early as possible. As much documentary evidence as possible in support of an application should also be submitted. The photocard (PC5) should have the photograph attached and the signature of the Subcontractor/nominated user in the correct places. Every effort is made to process applications as soon as possible, but there will be instances when further contact with the agent or taxpayer is necessary. As a security measure, the C2 contains a digitally engraved image of the photograph and signature and these take time to be produced.

Revenue will carry out checks after a C2 has been granted to ensure that the C2 holder is continuing to meet their obligations with a specific focus on new C2 holders.

Gross Payments to Subcontractors - Forms RCT 46/46A and RCT 47 (payments card) procedures

Section 531(1): obligation to deduct tax

Section 531(6)(c): obligation to record payments on payments cards

Section 531(12): application for a payments card, operation of nominated bank account, application where contract is ongoing at the end of the year.

Section 1078(2)(ii): an offence not to deduct tax required to be deducted.

Regulation 5: Principal liable where deduction that should have been made is not made.

Regulation 18: application for a payments card

Regulation 20: keeping of records and returns.

The payments card procedures are central to the correct operation of RCT for C2 holders. A C2 does not authorise the Principal to make gross payments to the Subcontractor. The Principal contractor must hold a valid payments card RCT 47 before making any gross payments. If payments are made gross before the card is received, the Principal is liable to pay to Revenue the tax that should have been deducted.

Where Revenue notify a Principal that an RCT 47 has been withdrawn, any payments made after that date must be subjected to tax and the RCT 47 returned to Revenue. Otherwise the Principal is liable to pay to Revenue the tax that should have been deducted.

The Finance Act 2006 puts on a statutory footing a previously administrative procedure, i.e., the value limit on the relevant payments cards (RCT 47). (See separate section on the 2006 changes [here](#) and also the [notice](#) that is issuing to Principals with the Form RCT 30). Where an RCT 47 contains a limit, any payments made in excess of that amount should be subjected to tax. Again, the Principal is liable to pay to Revenue any tax that should have been deducted.

A Principal who does not deduct the correct amount of tax is open to the imposition of penalties, interest and possible prosecution.

Checks before paying Gross:

A C2 should normally be presented in person to the Principal Contractor. Where a Principal engages a Subcontractor who holds a C2 card, a Form RCT 46 must be completed, signed by both and submitted to Revenue by the Principal. The following steps should be followed by the Principal before making any gross payments:

1. Examine the original C2 (certificate of authorisation), a photocopy will not suffice;
2. Check that the C2 bears the photograph of the person presenting it;
3. Check that the signature on the RCT 46 matches that on the C2;
4. Check that the Subcontractor's name on the RCT 46 is the same as that on the C2;
5. Check that the C2 is still in date;
6. If the C2 is in order, apply immediately to the local Revenue District on Form RCT 46 www.revenue.ie/forms/rct46_06.pdf for a relevant payments card for the Subcontractor. Form RCT 46 must be signed by both Principal and Subcontractor;
7. Return the C2 to the Subcontractor; and
8. Wait until the relevant payments card is issued from Revenue before making the payment. Every effort is made to issue payment cards as quickly as possible but there can be delays in issuing them as applications are subjected to Revenue's internal validation procedures. It is important, therefore, that the Form RCT 46 is completed and submitted when the contract is awarded or, well in advance of the date the first payment is due to be paid.

It should be noted that a payments card may not issue at all in non-compliant cases and tax must be deducted in these cases.

It is in the interest of the Principal contractor to ensure that the C2 details (photograph, signature etc.) are carefully checked as C2 abuse cases are liable for prosecution.

As an alternative to the above steps 1-8, a Subcontractor may nominate a bank account into which all payments made by the Principal Contractor should be lodged.

If this is the case, the Subcontractor need not present the C2 in person. Instead it will suffice to give the Principal Contractor details of the card number and the nominated bank account. (The Subcontractor should have advised Revenue of the bank account in advance.) The Principal should enter the details on the Form RCT 46 and then undertakes to make the payments due to the Subcontractor into that account only. However, the Principal still needs to have the payments card before making any gross payment.

Subcontractors should note that C2 holders are now subject to regular compliance checks and those falling into arrears run the risk of having their RCT 47 payments cards delayed, or in serious cases, having their C2 card withdrawn. It is important, then, that Subcontractors keep their tax affairs in order and up to date.

Where a contract is ongoing at the end of a year and the Principal already holds a payments card for the Subcontractor for that year, the Principal can apply to Revenue for a card for the following year by quoting the details of the Subcontractors valid C2. Form 46A is used for this purpose. Again, a Principal must deduct tax in the following year if a valid payments card has not been received for that year.

When the payment card arrives, payment can be made gross to the Subcontractor named on the card while the card is valid (usually until the end of the year or until Revenue withdraw the card if before then), or, if applicable, until the limit shown on the card is reached. Details of each payment made should be recorded on the card at the date of payment.

Bulk request for Payments Cards:

Where contracts are ongoing at the end of a year, the Principal Contractor can apply for relevant payments cards in bulk by listing the names of the Subcontractors on a Form RCT 46A, www.revenue.ie/forms/rct46a_06.pdf without seeing the actual C2 card. However, only those contractors whose contracts are ongoing at the end of the year should be listed, and, as already stated, payments should not be made gross in the new year until the card has actually been received.

Auditors will be looking at the RCT 46/RCT 47 procedure in detail.

Payments to Subcontractors under deduction of Tax - RCTDC Procedures

**Sections 531(1), (3), (3A), (4), (5), and (6) TCA 1997,
Regulations 6, 16, and 17 Income Tax (Relevant Contracts) Regulations 2000,
Section 1006A TCA 1997
Taxes (Offset of Repayments) Regulations 2001.**

Principal contractors must apply for a Form RCTDC to deduct tax from payments being made to subcontractors. They can order supplies of these forms from their local Revenue office using the Form P33 **Form P33**. These are secure certificates that contain a unique number. That number has been recorded in Revenue's systems against the Principal Contractor to whom it was issued. RCTDCs are only issued to Principals registered with Revenue. Under no circumstances should a Principal give an RCTDC to another Principal or use an RCTDC that was issued to another Principal. All RCTDCs should be retained by the Principal in a secure environment. Where an RCTDC is lost, stolen or mislaid, the details should be reported to Revenue immediately. On ceasing to be a Principal, any unused RCTDCs should be returned to Revenue.

Details of payments made under deduction of tax should be recorded on Form RCT 48. Where a Principal has deducted tax from a payment to a Subcontractor, they must give the Subcontractor a Form RCTDC with the payment. To avoid interest and penalties, tax that was deducted, or that should have been deducted, in any month must be declared on Form RCT 30 and remitted to Revenue by the 14th of the following month.

The Subcontractor may make a claim to have the tax deducted on the Forms RCTDC offset against outstanding taxes or repaid. Where an offset is required, any declaration forms (RCT 30, VAT 3, Form 11 or CT1) should be sent in the first place to the Collector-General's Division. An agent or taxpayer may request that the offset be carried out in a particular order otherwise Revenue's computer systems are developed to offset any RCT available in accordance with the legislation on offsets. Agents and taxpayers who are registered for Revenue's

On-line Service can check up on their up to date position, before submitting their claim. Any balance remaining after the offsets have been carried out is generally repaid. It should be noted that an offset can only be made where the claim is received within the four year time limit for repayments set down in *Section 865 TCA 1997*.

Refunds and Repayments

Please note that the case displayed is a dummy case for illustration purposes only.

Refunds Search - Note internet usage is logged and subject to monitoring.

Revenue On-Line Service

My Services | Info Services | Inbox | Profile | Work in Progress | Proc. & Duties | Admin Services

ROS Information Services

MR MARK TAYLOR

Payments | Returns | **Refunds & Repayments** | Registration Details | Charges & Collections | Event List | Statement of Account | Items Submitted via ROS

Use this facility to access information from the previous seven complete tax years and the current tax year. To Search for details of Refunds & Repayments received from Revenue, fill in the Search Details below and Click Go. This facility is not applicable for AEP, VRT, IT38, Vies or Interstat.

☒ Denotes a required field. If no dates are entered, then all available information will be returned.

Tax Type: ☒ RCT Tax Regn./Trader No.: ☒ 9110002T Period Start Date (dd/mm/yyyy): Period End Date (dd/mm/yyyy):

Search Results:

Tax Type	RCT	Registration No.	9110002T	Information correct at	25/05/2006
Registration Currency	Euro	Search Range	21/06/1999 to 19/06/2006		
Registration Balance	-900.00				
This balance covers all years for this registration, not just the period viewable through ROS. If there are any Audit Tax payments this Registration Balance may be overstated.					

There are no results available for the search performed.

[Demo](#) | [FAQs](#) | [Help](#) | [Exit](#)
[Terms & Conditions](#) | [Privacy Policy](#) | [Certificate Policy Statement](#) | [Certification Practice Statement](#)
 Revenue On-Line Service, 2nd Floor, Trident House, Blackrock, County Dublin, Ireland.

The Finance Act 2006 puts beyond doubt that RCT repayment claims are subject to the same time limit (4-year rule) as that provided for in Section 865 TCA 1997 for repayments generally (See separate section on the 2006 legislative changes [here](#)).

General Operation of PAYE/PRSI

Country Money

In relation to travel and subsistence payments, there are two unique agreements in place for employees in the construction sector:

- One for workers in the Construction industry, agreed between Revenue and the CIF, and
- One for the Electrical Contracting sector.

Both are commonly known as "Country Money". Details of the schemes are available on the Revenue website at www.revenue.ie/en/tax/rct/construction.html. The agreements set out expenses that can be paid tax-free once certain conditions are met.

Revenue carries out checks to ensure that all conditions relating to "country money" payments are met and that they are not being made to employees not covered by the schemes (e.g. office workers). Checks are also made to see if subsistence payments have been made to workers as payments in lieu of earnings (income replacement).

Foreign Sourced Employment Income

Employers should also note that changes in the way foreign sourced employment income is taxed came into effect on 1 January 2006. Income that is attributable to the performance of duties in the State is now chargeable to tax under PAYE. The changes deal with scenarios where employees are paid by someone other than their employer and where employees work for someone other than their employer. They also authorise the Revenue Commissioners to direct a party to a contract with an employer to make PAYE deductions. These changes apply to all sectors and are not confined to the construction industry. Further information will be given in a later article or can be viewed on Revenue's website at www.revenue.ie/en/practitioner/ebrief/archive/2007/no-9_06.htm.

Revenue recognises that the new regime in relation to the employments concerned may involve significant adjustments for the employers affected. *Revenue will not seek to penalise any employer making best efforts to implement the new regime where, despite those best endeavours, there is delay in implementing the new regime.*

Finance Act 2006 Changes - Relevant Contracts Tax

Note that these changes apply to the Construction, Forestry and Meat Processing sectors.

Section 43 - Non-Resident Contractors

This section clarifies the position of non-resident contractors by confirming that RCT applies where relevant operations under a relevant contract are carried out in the State. This is the case even where one or more of the following apply:

- Either or both parties to the relevant contract are non-resident or are not liable to tax in the State in respect of those operations
- The contract is executed outside the State, or
- The payments made under the contract are made outside the State.

Section 44 - Operation of Relevant Contracts Tax

This section introduced a number of changes affecting applicants for C2 certificates, Principal contractors making payments gross to certified Subcontractors and Subcontractors claiming repayment of RCT deducted by the Principal contractor.

1. Time Limit for Repayments of RCT

The legislation puts beyond doubt that where an uncertified Subcontractor claims a repayment of RCT the claim is subject to the 4 year time limit provided for in *Section 865 TCA 1997* for repayments generally.

It should be noted that an offset cannot be given in any case where a claim for repayment is out of time. No offsets are possible on foot of RCTDC's which are outside the four year time limit for repayment.

2. C2 Applicants - Additional requirements

Future compliance requirement for C2 applicants

Prior to the Finance Act 2006, existing requirements meant that a C2 applicant and certain connected persons had to have a history of tax compliance for a specified period, called the qualifying period. This is usually the three tax years prior to the tax year in which the C2 is applied for and the period from the commencement of that tax year to the date of application. The Finance Act 2006 provides that, as well as a good track record over the qualifying period, Revenue must now have good reason to expect that a C2 applicant will be compliant in future in relation to tax payments, delivery of returns and the provision of information requested. This new provision mirrors a requirement already in place in relation to the keeping of business records. Therefore, in respect of applications for C2s made on or after 2 February 2006 Revenue must have good reason to expect that the applicant will not only maintain proper business records in the future, but will also pay and remit tax and make returns on time.

How will this work in practice?

This new test is just one of a number of compliance tests that Revenue must have regard to in determining whether an applicant qualifies for a C2. The Principal test will, however, continue to be the requirement that the applicant and connected persons have been tax compliant in the qualifying period. In general, where this requirement is met, a C2 applicant should have no problem with the new test, as past compliance will be one of the main factors in Revenue forming a view on likely future compliance. The new test is most likely to come into play for a first time C2 applicant to ensure that the applicant has taken all the necessary measures to be tax compliant as a self employed person and as a prospective employer.

Appeals

C2 Applicants have the right of appeal to the Appeal Commissioners and the Courts as appropriate where a C2 is refused.

Extended "look through"

A further new provision provides for an extended "look through" procedure in relation to applications for C2s. In future, a C2 will not be issued to an applicant where similar relevant operations (i.e. construction operations, forestry operations or meat processing operations, as the case may be) to those being carried out, or to be carried out, by the applicant were previously, or are being carried out by another person who is connected (within the meaning of *Section 10 TCA 1997*) with the applicant in the circumstances outlined below, unless that other person is compliant with their obligations as regards maintenance of records, payment of tax and delivery of returns. The primary purpose of the measure is to help tackle "phoenix company" type situations. The persons who are to be considered as connected are:

- Any **company** connected with the applicant or which would have been so connected but for the fact that the company has been wound up or dissolved without being wound up
- Where the applicant is a partnership, **any company** in which a partner or partners of that partnership, is or was able, or are or were able, directly or indirectly, either on their own or with a connected person or persons, to control more than 15 per cent of the ordinary share capital of the company
- Where the applicant is a company, **any partner or partners** of a partnership who is or was able, or who are or were able, directly or indirectly, either on their own or with a connected person or persons to control more than 15 per cent of the ordinary share capital of the company

These new requirements apply in respect of applications for C2s made on or after **2 February 2006**.

3. Limit on Relevant Payments Cards

The practice whereby Revenue apply a value limit on Relevant Payments Cards has now been placed on a statutory basis. This change takes effect as respects applications for Relevant Payments Cards made on or after 2 February 2006.

In all cases where such a limit is applied Revenue must write to the Subcontractors concerned and inform them of the limit imposed. The payments card will also show the limit. Subcontractors affected may request Revenue to increase, reduce or remove the limit and where Revenue agree to any change they must inform the Subcontractor in writing of this change.

The Subcontractor has the right to appeal any limit imposed or amended to the Appeal Commissioners and to the Courts.

If the Principal contractor breaches the limit and makes payments gross in excess of the limit he or she will be accountable for the tax which should have been deducted and will be liable to pay any such amount to the Collector-General.

(See copy of the [notice](#) being issued by Revenue to all Principal contractors advising them of this change).

Non-Resident Contractors in the Construction Industry

The Central Non Resident Unit

As mentioned earlier, the compliance control and registration office for all non-resident contractors in the **construction** industry has been centralised in a single location. This unit is based in the Dublin City Centre District. So, no matter where the building work is located, the compliance associated with a non-resident contractor will be managed from Dublin City Centre:

*Revenue Commissioners,
RCT/VAT Section,
City Centre District,
9/10 Upper O'Connell Street,
Dublin 1.*

Telephone: 01-865 5000

This unit will

- Register all non-resident contractor/subcontractor cases for all relevant taxheads
- Process all C2 applications from these cases
- Liaise with other Revenue authorities as required

Applications for refund or offset on foot of RCTDCs will continue to be dealt with by International Claims Section (see below).

For C2 applicants, the qualifying criteria apply equally to resident and non-resident Subcontractors. In the case of an applicant who has been resident outside of the State at some time during the qualifying period, they must have complied with all of the comparable obligations imposed by the laws of the country in which they were resident. Non-resident contractors should submit their applications to the City Centre District.

Note that additional questionnaires must be completed by all non-resident applicants applying for a C2. These questionnaires are available from the above address or on the construction project webpage on the website at www.revenue.ie/en/tax/rct/non-resident-contractors.html.

International Claims Section

International Claims Section are based in Nenagh and deal with claims for Tax Repayment or Exemption from non-residents who have suffered deposit interest retention tax (DIRT), tax withheld on dividends (DWT), professional services withholding tax (PSWT) and relevant contracts tax (RCT). The claims process generally requires certification by the tax authorities in the claimant's country of residence.

Non-resident "uncertified" Subcontractors

An uncertified Subcontractor is a contractor who does not hold a C2 or if a C2 is held, the Principal contractor has not been authorised to make payments gross. RCT is deducted from payments to these contractors and the Principal contractor must give them a certificate of deduction, Form RCTDC.

Claims for repayment or offset by non-resident Subcontractors should be submitted to:

*International Claims Section,
Office of the Revenue Commissioners,
Government Buildings,
Nenagh,
Co. Tipperary.*

Telephone: (067) 33533

Fax: (067) 32916

Individual applicants must complete a claims Form IC 1 (available on the Revenue website www.revenue.ie/forms/ic1.pdf). Company applicants must complete a claims Form IC 3 (available on the Revenue website www.revenue.ie/forms/ic3.pdf). The forms are also available from International Claims Section. The completed claim form should be certified by the tax office/revenue authorities in the country in which the Subcontractor was resident for tax purposes during the tax year in which the income was earned. The claim form can include details of any number of contracts.

Note that a questionnaire must be also be completed in respect of each contract undertaken by the non-resident uncertified Subcontractor. This questionnaire is available on the Revenue website at Questionnaire - Relevant Contracts Tax.

Principal Contractor Checklist

- ✓ If you have become a Principal for the first time, have you registered as a Principal with Revenue?
- ✓ Have you registered for all appropriate taxes, such as Income Tax, Corporation Tax, Value Added Tax or Employer's PAYE/PRSI?
- ✓ Before taking on a Subcontractor, have you consulted the guidelines on the back of the RCT 1 and correctly determined the status of the contractor as an employee or self-employed contractor?
- ✓ If the contractor is not an employee, have you completed the Form RCT 1 jointly with the Subcontractor?
- ✓ If the contractor is a C2 holder, have you:
 - Checked the C2 card
 - Completed a Form RCT 46 jointly with the Subcontractor
 - Been issued with a valid payments card (RCT 47)
 - Checked the monetary limit on the Card?
- ✓ Have you got a valid payments card (RCT 47) for all Subcontractors you are making gross payments to?
- ✓ Have you issued a Form RCTDC for each Subcontractor where tax was deducted?
- ✓ Are you operating PAYE/PRSI on all payments made to your employees, excluding the approved agreements on "Country Money"?
- ✓ Are you operating the approved "Country Money" scheme correctly?
- ✓ Are you making your monthly return (RCT 30) on time and remitting any tax deducted to the Collector General?
- ✓ Have you returned your Form RCT 35 for 2005?

Subcontractor's Checklist

- ✓ Have you registered for all appropriate taxes, such as Income Tax, Corporation Tax, Value Added Tax or Employer's PAYE/PRSI?
- ✓ Before entering into a contract with a principal, have you consulted the guidelines on the back of the RCT 1 and correctly determined your status as an employee or self-employed contractor?
- ✓ If you are not an employee, have you completed the Form RCT 1 jointly with the principal contractor?
- ✓ If you are an "uncertified subcontractor" have you received a Form RCTDC for each payment received?
- ✓ If you are an "uncertified subcontractor", are you including the gross payment in your computations for Income Tax/Corporation Tax?
- ✓ If you are an "uncertified subcontractor" have you submitted your Forms RCTDC to Revenue within the time limit?

- ✓ If you are an "uncertified non-resident subcontractor" have you completed and submitted Form IC 1/IC 3 and the relevant questionnaire?
- ✓ If you are applying for a C2 have you completed Form RCT 5 and supplied all relevant documentation in good time? In particular, are your tax affairs up to date?
- ✓ If you are applying for a C2 have you provided a photograph and signature in the required format?
- ✓ If you are applying for a C2 and propose to use the nominated bank account procedure, have you provided Revenue with documentary evidence of the nominated bank account?
- ✓ As a C2 holder, have you completed the Form RCT 1 procedure before the contract commences?
- ✓ As a C2 holder who is not an employee, have you completed the Form RCT 46 in good time before the first payment is due?
- ✓ As a C2 holder, have you kept your tax affairs up to date?
- ✓ As an employer are you operating PAYE/PRSI on all payments made to your employees, excluding the approved agreements on "Country Money"?
- ✓ As an employer are you operating the approved "Country Money scheme correctly?

Notice to Principal Contractors

Section 44 of the Finance Act 2006 introduced a provision giving the Revenue Commissioners a statutory basis for imposing a limit on the amount of the payments that a Principal contractor may make, without deduction of tax, on relevant payments cards (**RCT47**) to certain subcontractors.

Where a specified limit has been applied by them for a year of assessment in relation to a relevant payments card (**RCT47**), the Revenue Commissioners, at the request of the Subcontractor named on the card, shall, as may be appropriate, amend the limit by reducing it, or if they consider it appropriate to do so in the circumstances, increasing or removing it. In such circumstances, an amended relevant payments card (**RCT47**) will be issued to the Principal contractor. Written notification of the specified limit will also be issued to the Subcontractor.

Where in the year of assessment, the total of the payments made by a Principal to a Subcontractor exceeds the specified limit, if any, imposed on the relevant payments card (**RCT47**) or the amended relevant payments card (**RCT47**), issued in respect of that subcontractor, the Principal contractor must deduct tax at 35% from such excess and pay it to the Collector-General.

Any person aggrieved by the imposition by the Revenue Commissioners, of a specified limit in relation to a relevant payments card/amended relevant payments card (**RCT47**), may appeal against the imposition of such a limit, to the Appeal Commissioners, by giving notice in writing to the Revenue Commissioners within 30 days of the issue of the relevant payments card (**RCT47**) concerned. However, the limit shall remain in place pending the decision of the Appeal Commissioners.

C2 Holding Subcontractors

Please note that you must be in possession of the appropriate Relevant Payments Card (**RCT47**), for any Subcontractor who presents a Current C2 Card, before making any payments to him without deduction of tax.

Key Dates

August 2006

14 - PAYE/PRSI

P30 monthly return and payment for July 2006

14 - DWT

Return and payment of DWT for July 2006

14 - PSWT

F30 monthly return and payment for July 2006

14 - RCT

RCT 30 monthly return and payment for July 2006

1-21 - Corporation Tax

PT for APs ending between 1-30 September 2006

Returns for APs ending between 1-30 November 2005

Pay balance due on APs ending between 1-30 November 2005

1-31 - Corporation Tax

Returns of Third Party Information for APs ending between 1-30 November 2005

September 2006

14 - PAYE/PRSI

P30 monthly return and payment for August 2006

14 - DWT

Return and payment of DWT for August 2006

14 - PSWT

F30 monthly return and payment for August 2006

14 - RCT

RCT 30 monthly return and payment for August 2006

19 - VAT

VAT 3 return and payment for period July/August 2006

1-21 - Corporation Tax

PT for APs ending between 1-31 October 2006

Returns for APs ending between 1-31 December 2005

Pay balance due on APs ending between 1-31 December 2005

1-31 - Corporation Tax

Returns of Third Party Information for APs ending between 1-31 December 2005

October 2006

14 - PAYE/PRSI

P30 monthly return and payment for September 2006

P30 quarterly return and payment for July-September 2006

14 - DWT

Return and payment of DWT for September 2006

14 - PSWT

F30 monthly return and payment for September 2006

14 - RCT

RCT 30 monthly return and payment for September 2006

1-21 - Corporation Tax

PT for APs ending between 1-30 November 2006

Returns for APs ending between 1-31 January 2006

Pay balance due on APs ending between 1-31 January 2006

1-31 - Corporation Tax

Returns of Third Party Information for APs ending between 1-31 January 2006

31 - Income Tax

Preliminary Tax 2006

Pay balance of 2005 tax liability

Return of income for 2005

31 - Capital Gains Tax

Payment due on gains arising between 1 January 2006 to 30 September 2006

Return of Capital Gains for 2005

The 10% rule - VAT

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

The 10% Rule VAT

Introduction

Where a person has developed a building, that is, constructed, reconstructed, altered, extended or demolished it, and was entitled to reclaim any VAT on the cost of such development, that person will usually have to account for VAT in respect of its disposal. This article sets out the revised 10% rule as applied to VAT on property transactions. The revised rule differs from that previously applying insofar as

- The €300,000 upper limit has been withdrawn
- The 'no essential change in the use to which the property is put' requirement has been withdrawn
- Demolitions are now included.

When does the 10% rule apply

In determining whether or not an otherwise undeveloped property is considered as developed for VAT purposes, relatively minor and routine work on extensions, alterations and demolitions carried out periodically for the purposes of the person's taxable activities may be ignored, notwithstanding that an input credit for VAT incurred may have been claimed. This is provided that the cost, excluding VAT, of such works does not exceed 10 per cent of the VAT exclusive consideration for the disposal of the interest in the building.

The extension or alteration of a building which is not of a routine nature carried out for the purposes of a person's taxable business would not benefit from the 10% rule. An example of expenditure not benefiting from the 10% rule would be the conversion of part of a shop premises to apartments.

Land ancillary to buildings

Relatively minor additions to or alterations of land ancillary or subsidiary to buildings which are used for the purposes of the person's business, can benefit from the 10% rule. An example of such expenditure would be the construction of a boiler house for the installation of a central heating boiler which, for safety reasons, must be constructed at a distance from a main building or the addition of a car park to a premises.

Construction, reconstruction

Apart from situations of a kind mentioned in the preceding paragraph, construction or reconstruction will not benefit from the 10% rule. Each case must be considered by reference to its own facts to determine whether what has taken place is extension, alteration or demolition of an existing building on the one hand or construction or reconstruction of what is, in effect, a new building on the other hand.

An example of construction not benefiting from the 10% rule would be the construction of a new building on part of the site of a factory to accommodate expansion of production or diversification into a new line of products. Reconstruction denotes a substantial rebuilding of an existing building where, for example, the existing building is either gutted or wholly or partly demolished. Because of the extent of the work on the existing building, it would not be regarded as being relatively minor or routine.

Meaning of expenditure incidental to a taxable person's current business activities

To benefit from the 10% rule, the work must be incidental to the taxable person's current business activities. The rule does not apply to expenditure incurred where the business of the person incurring the expenditure consists in the development for onward supply of the property. Nor does it apply where the expenditure is incurred in preparing the property for onward supply, since this would not be in the ordinary course of the taxable person's business.

When is the 10% rule not relevant

When a person was entitled to a VAT credit on the acquisition of an interest in a building, the 10% rule has no relevance since the sale will be taxable in any event.

Sale of land as opposed to buildings

The 10% rule applies to buildings only. The supply of land is taxable where engineering or other operation in, on, over or under the land to adapt it for materially altered use has been carried out and the vendor was entitled to a credit for VAT incurred in respect of such works.

Work by, on behalf of, or to the benefit of the landlord

The 10% rule applies in determining whether extension, alteration or demolition work carried out on a building which has passed out of the VAT net following the creation of a long lease will be treated as bringing the landlord's interest back into the VAT net.

The old 10% rule

The "non materially altered use to the building" requirement and the €300,000 limit no longer apply. Demolitions are now included.

Date of effect

This revised rule is effective from the date of publication in this issue of **Tax Briefing**.

Queries regarding this article

Any questions regarding this article can be addressed to

*Brian Shanahan,
Indirect Taxes Division*

Email: bshanaha@revenue.ie

Telephone (01) 6748233, or

Telephone (01) 7024112

Queries on specific cases should be referred to the taxpayer's Revenue Office.

VAT on Property - Registration in advance of trading

Introduction

Arising from a decision of the High Court in the case of *Brendan Crawford, Inspector of Taxes v Centime Ltd.* (2005 No. 62R) (application to register for VAT in respect of a proposed property transaction), Revenue has reviewed the criteria to be applied in deciding whether to grant an application to register for VAT in such cases.



General Statement of the Law - when is a supply of property taxable

A supply of property (other than a self-supply) **is liable to VAT** only if all the following conditions are satisfied:

(i) The property must have been actually developed or re-developed in whole or in part after 31 October, 1972;

(ii) The person making the supply must hold a taxable interest in the property. **A taxable interest is either the freehold of the property or a leasehold interest which at the time the lease was created was for at least ten years.** A lease of less than 10 years which gives the tenant the right to extend the lease for 10 years or more is regarded as a taxable interest;

(iii) The person making the supply must dispose of a taxable interest. A disposal by way of surrender or assignment of a lease is a supply of an interest;

(iv) The person making the supply must have been **entitled** to (as distinct from having received) a VAT credit, or deduction, in respect of development of the property, or, acquisition of the taxable interest and

(v) The person making the supply must dispose of a taxable interest in the course or furtherance of business.

Background

Centime Ltd, a wholly owned subsidiary of the FAI, was incorporated for the purposes of developing a football stadium and venue for other events. It proposed to enter into a taxable lease to its subsidiary Landau Ltd., which would operate the Stadium. Centime Ltd. agreed to purchase lands for this purpose and paid a deposit to a firm of solicitors as stakeholders. The agreement to purchase was conditional on planning permission being granted. The deal ultimately did not go through. Revenue refused VAT repayments sought by Centime Ltd. on the basis that the company had not yet complied with the conditions for repayment of input VAT as a taxable person.

Revenue Practice

Revenue had imposed three conditions to be met before a person who would engage in taxable property transactions could register for VAT in advance of trading, namely:

- (1) The person must have an interest in the property
- (2) Planning permission to develop the property must have been granted, and
- (3) The person must declare his intention to make a taxable disposal of an interest in the property.

Appeal Commissioner's decision

The Appeal Commissioner held that the Centime Ltd. had shown objective evidence of intention to trade and were entitled to a VAT credit without having to wait for the actual exploitation of the business to begin. He further found, again based on ECJ case law, that the entitlement to VAT credits is retained even if the project does not proceed to the operational stage.

High Court Decision

Revenue, in turn, appealed this decision to the High Court. The High Court concluded that, there was more than ample objective evidence which would have allowed the Appeal Commissioner to come to the conclusion which he did. It was of the view, inter alia, that the Revenue criteria which required a party (before such a party might qualify as a taxable person) to have actually acquired an interest in the land was unsustainable. A future

entitlement to land was, **in the circumstances, sufficient**. It was also of the view that the absence of planning permission does not demonstrate that there is not a present intention to develop. The fact that there is an apparently regular planning application in the course of being processed is objective evidence which is at least capable of supporting an intention to develop along the lines sought for planning permission.

Criteria for registration

Arising from the decision Revenue has reconsidered the criteria it sets for registration for VAT for property transactions in advance of trading. While each case must be taken on its merits, it is clear that the taxpayer need not yet have acquired a taxable interest in the property and that a contract which provides for future entitlement to the land may be taken as an indicator of intention to trade. Likewise the absence of planning permission in itself should not be considered sufficient reason to refuse registration while application by the taxpayer for planning permission can be considered an indicator of intention to trade. The third criterion listed under Revenue Practice above was not disputed.

The following minimum conditions which must be met before registration for VAT in respect of a property transaction is allowable are therefore:

- (1) The person must declare his/her intention to make a taxable disposal of an interest in the land and
- (2) That intention must be supported by objective evidence.

Objective evidence of intention to make a taxable supply of an interest could be gained *inter alia* from the following:

- Evidence of acquisition of an interest in the land or of an entitlement to develop the land
- Evidence of application for/obtaining of planning permission for development of the land
- Evidence of funding for the proposed development e.g. copies of up to date bank statements and other correspondence identifying transactions, including any deposits for the prospective purchase of the land, which support the claim that the person's intention is to make a taxable supply of the land in question.
-

Other evidence would include some or all of the following:

- Copies of certificate of incorporation, the Memorandum and Articles of Association
- List of Directors and Secretary
- List of shareholders and, if they are nominees, a note of who the beneficial owner is
- Previous experience of the beneficial owners of the company in the business of developing property in the State
- A copy of the minutes of board meetings held which confirm the company's intention to trade and any decisions made which support the contention that development of the property by it will commence
- Any other evidence such as contracts for supplies of goods or services, purchase invoices, sales invoices.
-

Refusal of registration

Note that a person has the right of appeal against the refusal to grant registration in accordance with *Section 25 (1A) VAT Act 1972* (as amended).

Queries regarding this article

Any questions regarding this article can be addressed to

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Telephone (01) 6748233, or

Telephone (01) 7024112

Queries on specific cases should be referred to the taxpayer's Revenue Office.

VAT Treatment of sales of short-let properties

Properties to which article refers

This article deals with the VAT treatment of properties where the owner has a taxable interest¹ and was entitled to deduct VAT incurred on the acquisition and/or development of the property and where the property was subject to an exempt short-term letting. The fact that the owner was entitled to deduct VAT on the acquisition and/or development of the property brings the property within the VAT net.

This article refers only to properties that are within the VAT net; it does not refer to properties in respect of which there was never an entitlement to deductibility e.g. a property which was purchased for short-term letting² where there was no waiver of exemption in place³.

Properties that were first subject to an exempt short-term letting on or after 1 May 2005

Section 4(3)(aa) VAT Act, 1972, which was introduced by Section 100 FA, 2005, applies to properties where the owner first surrendered possession of the property by way of exempt short-term letting on or after 1 May 2005.

It provides for a claw-back of part of the VAT previously claimed as deductible. This is referred to as a deductibility adjustment. The adjustment is payable on the occasion of the first exempt short-term letting of the property entered into by the landlord.

When the property is ultimately sold, the consideration will be liable to VAT and the seller will be entitled to deduct a proportion of the VAT which was clawed back when the property was first used for VAT exempt short-term letting. Details of the new provision are contained in the Notes For Guidance on Finance Act, 2005 available on the Revenue website www.revenue.ie under the heading 'Revenue Law'.

Properties that were first subject to an exempt short-term letting before 1 May 2005

The new provision (Section 4(3)(aa) VAT Act, 1972) does not apply where the property was first used for exempt short-term letting prior to 1 May 2005.

The surrender of possession of such properties by way of VAT exempt short-term letting gave rise to a charge to VAT in accordance with Section 4(3)(a) VAT Act, 1972. The charge is based on the cost, exclusive of VAT, to the person making the short-term letting, of the property (Sections 4(3)(a), 3(1)(f) and 10(4) VAT Act, 1972). In practice, Revenue deals with this by clawing back the VAT deducted by the owner on the acquisition and/or development of the property.

VAT Status of properties that were subject to an exempt short-term letting before 1 May 2005

Revenue has in the past accepted that properties in respect of which VAT had been charged in accordance with Section 4(3)(a) had passed out of the business area. This meant that tax was not charged on a subsequent disposal of the interest in the property of the person who made the short term letting, unless that person had taken a credit or deduction for any tax charged or had incurred further expenditure on development in relation to which a tax credit or deduction could be claimed.

¹ For VAT purposes, a 'taxable interest' in a property is an interest in that property of at least ten years. Examples of a taxable interest are a freehold interest and a leasehold interest of ten years.

² For VAT purposes, a short-term letting is a letting for a period of less than ten years

³ Short-term lettings are exempt from VAT. The effect of exemption is that the landlord is not liable for VAT on the rents and has no entitlement to deduct VAT incurred on the acquisition and/or development of the property being let. However, the landlord may waive his/her exemption. This means that he/she is electing to be taxable on the rents and entitled to deduct the relevant VAT incurred. The landlord may subsequently cancel the waiver of exemption but on doing so, he/she is obliged to repay a 'cancellation amount'. The cancellation amount represents any excess of VAT deducted over VAT payments made during the period of the waiver.

Example 1

A chemist decided to retire from business in 1996 and short-term let his business premises. The short-term letting gave rise to a charge to VAT as a self-supply in accordance with *Section 4(3)(a) VAT Act, 1972*. The property remained in short-term letting and was sold in 2006. No charge to VAT arises on the sale of the property.

However, cases have come to light in which properties that were claimed to have been short-term let and to have passed out of the VAT net, on the basis that tax was chargeable as a self supply in accordance with *Section 4(3)(a)*, had clearly remained as stock in trade of a fully taxable business. Revenue considers that the further supply of such properties is correctly chargeable to VAT. Examples of such cases are the short-term letting of a building site or a partly constructed building to an associated company of a developer during the construction stage or the short-term letting of fully constructed student accommodation units while the units were being sold to investors.

Revenue will continue with the existing practice of regarding properties, such as in Example 1, which had been transferred from use in a taxable activity to exempt or private use prior to 1 May 2005, as having passed out of the VAT net, except in the circumstances mentioned in the preceding paragraph.

Example 2

A property developer partially developed a site in 2004 and 'let' it to his building company, while that company was building houses on the site. He did not waive exemption on the 'rents' from the letting of the site. Once the building work was completed the building company handed him back the site and he sold the finished houses to members of the public. The sale of the finished houses is subject to VAT notwithstanding the 'letting' to the building company. (**Note:** The example is used simply to illustrate cases that can arise and is without prejudice as to the actual treatment of any such transaction for VAT purposes)

Waiver of exemption

Where a landlord who had waived exemption in respect of short-term lettings cancelled the waiver and paid the cancellation amount (see footnote ³) Revenue had in the past regarded that property as having passed out of the business area. The property was in effect treated in the same fashion as properties that had been short-term let without a waiver of exemption. The VAT status of such properties will, in future, be as outlined in the previous section, i.e., save in the exceptional circumstances outlined they will continue to be regarded as having passed out of the business area and VAT will not be charged on a subsequent disposal of the property. The date of surrender of possession, whether before or from 1 May 2006, is not relevant in these circumstances.

Example 3

The circumstances are as outlined in [Example 1](#) but in this instance the retired chemist waived exemption from VAT. Prior to sale of the premises, he cancelled the waiver of exemption and paid the adjustment amount. No VAT arises on the sale of the premises.

Example 4

The circumstances are as outlined in [Example 2](#) but in this instance the developer waived exemption on the 'rents'. Prior to sale of the houses, the developer cancelled the waiver of exemption. However, the sale of the finished houses is subject to VAT, as the houses had remained as stock in trade of a fully taxable business.

Queries regarding this article

Any questions regarding this article can be addressed to

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Queries on specific cases should be referred to the taxpayer's Revenue Office.

Non-completion of Property Based Incentive Panel Directive

Introduction

The *Details of Property Based Incentives Schemes* page was introduced into the Income Tax return for 2004 and the Corporation Tax return for 2005 - see [Tax Briefing Issue 58](#), December 2004. This page collects information on the nature of the investment claimed elsewhere in the return. There is evidence that persons claiming relief in respect of a property based incentive scheme are leaving this page blank, although there is information to be returned. In view of Revenue's commitment to provide timely and accurate statistics to the Dept. of Finance, it has been decided that a more vigorous approach to the screening of this page in the forms is required and to return to the customer/practitioner those forms where it is considered that information has been omitted from this page.

The purpose of this article is to remind practitioners that the information requested in Panel L/32 must be returned where there is a claim to any of the listed schemes and to outline the procedures that will be adopted with regard to the sending back of those returns where it is considered that required information was left out of the return. This article also identifies changes made to the Property Based Incentives Schemes page of the Form CT1 2006.

Background

The Property Based Incentives Schemes page was introduced to gather information on relief claimed in respect of a property based incentive scheme. The schemes for which information is sought are listed in Panel L of the Form 11 and Panel 32 of the Form CT1 (the references to line and panel numbers in this article refer to the Form 11 2005 and Form CT1 2005 unless otherwise stated). Whilst the information on the relief is sought in these panels, the actual relief is claimed elsewhere on the return.

In the section where the relief is claimed in the return, there is a reference to the need to complete Panel L/32 if the claim relates to a Property Based Incentives Scheme. The text of this reminder has changed from:

- a simple reminder to complete the panel in the Form 11 2004, to
- a reminder together with a tick box to indicate if the claim relates to a Property Based Incentives Scheme, for the Form 11 2005 and the CT1 2005 and 2006.

As stated in the returns, the information sought in Panel L/32 is "the 'specified details' referred to in Section 1052(i)(aa) and Section 1084(1)(b)(ib) TCA 1997 and that failure to fully complete this panel may leave your client liable to penalties under Section 1052 TCA 1997 and /or a surcharge under Section 1084 TCA 1997."

Returns that will be sent back

Where a claim is made on the return at lines 206c, 208b, or 617a in the Form 11 and Lines 2.6, 2.8, or 2.9 of the Form CT1, there should, in the vast majority of cases, be an entry in Panel L/32. Where Panel L/32 is not completed the return will be sent back to the customer/practitioner for completion in full.

Where there is an entry at Line 111 (Industrial Buildings/Farm Buildings Allowance) in the Form 11 or Lines 1.5 or 1.15 in the Form CT1, and in the opinion of the officer working the cases the panel requires completion the case will be returned. In all cases where the tick box is ticked and Panel L is not completed, the form will be returned.

Notwithstanding the above, Districts will not send back returns in such circumstances where it is clear that the relief claimed does not refer to a Property Based Incentives Scheme listed on the back of the return.

This policy will apply to all Forms 11 2005 and CT1 2005 returns received from the date of issue of this Tax Briefing.

Additional 'catch-all' Panel in the 2006 CT1

The list of reliefs in Panel L/32 is not a complete list of all Property Based Incentives Schemes; there are some terminated schemes for which relief may still be claimed, e.g., Temple Bar Area, Island relief. Instead the schemes listed are either current schemes or terminated schemes for which a considerable amount of relief is still being claimed.

A catch-all question has been added to the CT1 2006 (Lines 32.8 and 32.27). This question was introduced to ensure that where relief is claimed the scheme could be identified.

It is envisaged that this catch-all line will not be completed except in a minority of cases - the main schemes for which relief is claimed are listed on the form. This catch-all line is not to become a 'dumping ground' for all claims to relief. If there is an entry in this line it should clearly state the name of the relief; if it is unclear as to the relief claimed, or a generic phrase such as 'Section 23 relief' or indeed the actual address of the property is given, the form will be returned for completion.

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Business Tax Registration

The purpose of this article is to highlight the need for a correctly completed tax registration form when applying for Tax Registration. The article deals with registration for business taxes, that is, Income Tax (self-assessment), Corporation Tax, Relevant Contracts Tax, VAT, and PREM (employer's liability to PAYE/PRSI) registrations.

The article identifies some of the issues that cause difficulty in Revenue's Central Registration Units and offers tips that practitioners can take to avoid these problems.

Tax Registration Forms

When submitting an application for a tax registration Revenue expects a fully completed Tax Registration Form. Applications for registration in any other format, e.g., letter, fax, etc. will not be accepted. There are a number of different registration forms, each catering for a specific category of taxpayer. You should ensure that you are using the correct form for the person who is registering.

Form TR1 - is completed by the following customer types to register for Income Tax (self-assessment), PAYE/PRSI (PREM), RCT & VAT:

- An individual or unincorporated body
- A partnership, trust or foreign business (Not a limited company - see Form TR2)
- A charity or voluntary body.

Form TR2 - is completed by a Company to register for Corporation Tax (CT), PAYE/PRSI (PREM), RCT & VAT.

Form PREM Reg - Employer (PAYE/PRSI) Registration Form - is completed for a PREM only registration application, e.g., where a person (including a partnership, company, etc) who is already registered for Income/Corporation Tax becomes an employer or where a PAYE customer employs a childminder, home carer, or domestic.

Income Tax Registration Form for Collection Agents acting on behalf of non-resident landlords - This form is only to be used to register a collection agent for a non-resident landlord for income tax.

Registration Form for voluntary non-profit making organisations - This form should only be used where a voluntary, non-profit making organisation wishes to register for tax for Tax Clearance purposes.

The full and accurate completion of the registration form will ensure a speedier processing of the application for tax registration. The form acts as a checklist, ensuring that no information is omitted from the application in error. Completed registration forms should be submitted to the Customer Registration Unit in the customer's Revenue District. In the past, applications for registration by letter only have not provided all relevant information, resulting in delays in the registration process. Letters can be misdirected away from the registration unit and may not get the priority treatment afforded registration forms. As mentioned above, application for tax registration on the basis of a letter/fax only will not be accepted.

Supplies of registration forms

All registration forms are available on www.revenue.ie under Forms/Registration Forms. Supplies of forms TR1, TR2, and PREM Reg. are also available from Revenue's Forms & Leaflets Service at LoCall 1890 306 706 or from any Revenue office. Old versions of registration forms (e.g., Form STR) should not be used, as these do not provide sufficient information to process the registration in all cases.

The registration forms for Collection Agents and for Voluntary Bodies are, due to their limited customer base, only available on www.revenue.ie. If you do not have access to the internet you can request your Revenue office to download a copy for you.

Where to submit the Registration Form

The completed application form should be sent to the correct Revenue office. This is the Revenue district for the area in which the customer resides, or, in the cases of a business, where it is managed and controlled (in general this is where the main business activity is carried on). Full contact details for all Revenue offices can be found on www.revenue.ie under Contact Details.

Allocation of Registration Numbers

One of the difficulties experienced in Revenue districts is that of missing or invalid PPS or CRO numbers. The position regarding the allocation of registration numbers is as follows:

An **Individual** must have a Personal Public Service Number (PPSN) to register. The PPSN is allocated by the Department of Social & Family Affairs.

A **Company** must be incorporated in the Companies Registration Office before it can register for Tax.

A **Partnership, Trust, and Unincorporated Body** - the registration number is allocated by the Revenue District at the time the case is registered.

A **Foreign company** exercising a trade in the State is obliged to register for VAT. The Revenue District allocates the registration number at the time the case is registered.

Declaration

The declaration on page one of the application form must be completed in all cases.

- The applicant who is seeking registration should sign the form
- In the case of a partnership the precedent acting partner should sign the form
- In the case of a company the company secretary or director should sign the form

Occasionally an agent may sign the form; however the agent must provide confirmation that they have been authorised by the applicant to sign the form. Where the agent signs the form, the signature must be that of an authorised official and not the name of the firm or practice.

Difficulties encountered in the Central Processing Units

Some of the recurring problems encountered by Revenue Districts in attempting to register a case are as follows.

- Application for registration by letter or fax
- Missing or invalid PPSN or CRO number
- Registration form not signed
- No turnover figure provided; the turnover figure should be provided in all cases. The turnover figure, or an estimated figure, is required for processing the application.
- No description of trading or business activity provided
- Vague description of trading or business activity
- No dates entered for commencement of registration
- Forms sent to the wrong district
- PPSN of directors/partners, and directors' shareholding not supplied.
- The section Property details for VAT Purposes not completed where a Property Development/Property rental registration required
- Bank details not supplied in the case of a VAT registration application.

Any of the above problems will cause delays with the registration. In most instances the registration cannot be processed without further information from the customer/tax practitioner.

How to ensure a speedier registration

Practitioners are reminded that in many instances delays in registration can be avoided if full and detailed information is provided at the time of application for registration. Unnecessary delays can be avoided if practitioners:

- Use the correct registration form - see relevant section above - and ensure that the form is fully completed; incomplete forms will be sent back for completion in full.
- Ensure that the form is correctly signed; if it signed by the agent, provide confirmation that the applicant has authorised the agent to do so.
- When registering either an individual or a company make sure you quote the PPSN or CRO number as appropriate.
- If there is anything 'unusual' in the registration or the business activity further information may be provided in a covering letter with the TR1/TR2
- Do not apply for the tax registration on the basis of a letter only.

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Rental Income - Interest Deduction

Revenue wish to take this opportunity to remind landlords that, for 2006 et seq., no deduction can be claimed for interest paid on a residential property where the registration requirements of the Residential Tenancies Board are not adhered to (*Section 11 Finance Act 2006*).

Full details on the implications of this new section are contained in [Tax Briefing Issue 63](#).

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New Electronic Services for Employees - ROS

Launch of new Service for Employees

At the start of June 2006 Revenue extended the services provided by the Revenue On-Line Service to allow employees to conduct their PAYE business on-line over the internet.

The new self-service for employees, PAYE anytime, is being introduced on a phased basis and all PAYE taxpayers will receive an explanatory leaflet containing their Revenue Personal Identification Number (PIN) over the coming months; this PIN will be needed to access the service.

There are three levels to this new service.

Level One - Full Internet services:

For security reasons, to use this most comprehensive PAYE anytime option, PAYE customers will need a Reachservices user-name and password, together with their Revenue PIN. *Reachservices* is a Government agency set up to provide secure and confidential access to public services through the internet. To register with *Reachservices* go to www.reachservices.ie, select *Register with Reachservices* and follow the directions on-screen. Customers only need to do this once. It is recommended that they start the Reach registration process as early as possible, so that they will be ready to use the new service when they receive their Revenue PIN.

Once registered with Reachservices, customers can avail of the full range of PAYE anytime services by logging on to www.revenue.ie and following the instructions using their Reachservices username and password, and their Revenue PIN. PAYE anytime allows customers to do most of their PAYE business on-line.

They can for example:

- View their own tax record
- Claim a wide range of tax credits
- Request a review of their tax (balancing statement/P21) for a particular year
- Claim a refund of tax including health expenses
- Allocate tax credits between themselves and their spouse
- Change their address and update other personal information.

Existing ROS Customers

The ROS Homepage has now changed. Existing customers should now 'enter your secure services' by selecting the Login button under *Self-Employed Individuals, Business and Practitioners* on the new homepage. If they are already using ROS for other Taxes, and are also registered for PAYE, they will be able to access this new service with their current ROS digital certificate. After they login they will see a new PAYE tab at the top right hand corner of their ROS screen.

Level two - Limited Internet Service:

To use this service customers will need their Revenue PIN and their Personal Public Service Number (PPSN). With this option we offer customers a simple but limited version of the PAYE anytime Service. This option allows customers to claim the eight tax credits/reliefs listed below:

- Age Credit
- Service Charges
- Trade Union Subscriptions
- Dependant Relative Credit
- Home Carer Tax Credit
- Flat Rate Expenses
- Medical Insurance Relief
- Rent Tax Credit

Customers can also change their address and track the progress of any written contact with us using this option. Customers can access this option by going to www.revenue.ie - selecting Limited PAYE anytime, and following the instructions.

Level three - Text messaging from a mobile phone:

To use this service, customers will need their Revenue PIN and their PPSN. This service will allow customers to claim the first five tax credits listed above, change their address and order certain PAYE forms and leaflets.

Full details of how to use this service are included in the explanatory leaflet that will issue to each PAYE customer, as mentioned above.

Further Developments

The launch of the above services is the first step in providing a comprehensive electronic service to PAYE customers. Future developments are planned, including the on-line filing of the PAYE return - Form 12. Future articles in **Tax Briefing** will include details of these new developments as they arise.

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ROS Repayments - Improved Service

It has been Revenue policy since the introduction of the Revenue On-Line Service (ROS) to actively encourage practitioners to file Returns and to make payments electronically.

New computer developments now facilitate the quicker turnaround of repayment claims filed through ROS. These developments support the commitment in Revenue's Customer Service Standards to process returns and repayments for ROS customers within 5 working days, compared to up to 20 days for non-ROS customers.

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PAYE - Foreign Employments

Introduction

This article (which issued as Revenue eBrief 28/2006) addresses the application of a direction under *Section 985E TCA 1997* - PAYE: employment not wholly exercised in the State.

Section 15, Finance Act 2006 provides that so much of the income of a foreign office or employment of an individual as is attributable to the performance in the State of the duties of that office or employment is, with effect from 1 January 2006, chargeable to income tax under Schedule E (instead of Case III of Schedule D).

Previous information on the change is contained in Revenue eBrief numbers 43/2005, 9/2006, and 16/2006; these are available on the Practitioners page of the Revenue website - www.revenue.ie

Foreign Employments not Wholly Exercised in this State:

Where only some of the duties of a foreign office or employment are performed in the State, it will be necessary to distinguish: -

- (i) That part of the income attributable to the performance in the State of duties of such office or employment; and
- (ii) That part of the income attributable to the performance outside the State of duties of such office or employment.

As regards the income at (i), irrespective of the residence or domicile position of the individual, such income is now chargeable to tax under Schedule E and within the scope of PAYE. In addition, the remittance basis of taxation may no longer be claimed in respect of such income, as it is now chargeable to tax under Schedule E.

As regards the income at (ii), for Irish resident individuals, such income remains chargeable to tax under Case III of Schedule D and, where appropriate, the remittance basis of taxation continues to apply in respect of this income.

Directions Under Section 985E Taxes Consolidation Act 1997:

Where the amount of the income at (i) and (ii) above is not readily ascertainable, *Section 985E TCA 1997* (as inserted by *Section 16 Finance Act 2006*) provides that PAYE is to apply to the whole of the income unless a direction is sought from Revenue determining the proportion of income from the office or employment to which PAYE must be applied.

In applying to Revenue for a direction, the application must include such information as is available and is relevant to the giving of the direction. Any material change in the circumstances under which the direction was sought will render the direction given as void and require a further direction having regard to the altered circumstances.

A direction given by Revenue may specify more than one employee and/or any number of years.

A direction need not be sought -

(a) Where there is certainty as to the portion of the employment income assessable to income tax under Schedule E and to which PAYE may be applied (for example, where an individual works in the State under a set work pattern or is assigned into the State for a predetermined period of time); and

(b) In respect of the income of temporary assignees where the obligation to operate PAYE is relieved in accordance with the criteria described in Revenue e-Brief No. 9 of 2006.

It should be noted that *Section 985E* only has relevance to individuals who hold an office or employment where part of the income from that office or employment is chargeable to tax under Schedule E and part is not chargeable to tax under Schedule E.

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Single Payment Scheme (Farming)

Election Under Section 657A TCA 1997

Election to treat certain farm subsidy payments received in 2005 as arising in 2005, 2006, and 2007.

Section 657A(2) TCA 1997 contains a provision whereby an individual who receives a subsidy in 2005 under any of the schemes listed below, and who also receives a single payment for 2005 (thereby resulting in both amounts becoming taxable in 2005), may elect to spread the subsidy over three years, 2005, 2006, and 2007 ([Tax Briefing 61](#) refers).

Schemes covered by Section 657A:

Special Beef Premium Schemes
Suckler Cow Premium Scheme
Ewe Premium Schemes
Extensification Payments Scheme
Slaughter Premium Schemes
Arable Aid Schemes
National Envelope Top-Ups

Election

An election under this section must be made on or before the 31 October 2006. This election, which will in general be made at the time the 2005 return is submitted, should be made as follows:

Paper Filers

An election form - Election Under Section 657A TCA 1997 - available on www.revenue.ie/forms/farm_subsidy.pdf under claim forms - should be completed and submitted with the return of income.

Alternatively the election, using the wording contained in the Election Form (reproduced below), can be included in a covering letter with the return.

ROS Filers

The election, using the text from the election form (reproduced below) should be made in the *Additional Notes* section of the Accounts Menu. A paper election is not required from ROS filers.

Text for inclusion in ROS form/covering letter; this text can be suitably amended where the form or letter is not submitted by the customer.

I elect under Section 657A(2) TCA 1997 to have the aggregate of all 'relevant payments' received in 2005 treated as arising in three equal instalments in the years 2005, 2006, and 2007. I have made the appropriate adjustment to profits for 2005 and will do likewise for 2006 and 2007. I understand that this election cannot be altered and is irrevocable.

Value-Added Tax Section 4A Applications

Introduction

The purpose of this note is to signal that certain changes have been made to Form VAT 4A requesting certain additional information from both the lessor and the lessee and to re-state in general, the terms of the scheme. Additional information sought from the lessor includes:

- A description of the property
- The expected date of signing of the lease or occupancy (whichever is the earlier)
- The capitalised value of the lease
- The economic value and whether the economic value test has been passed
- The duration of the lease

Additional information sought from the lessee includes:

- The expected dates of signing of the lease or occupancy (whichever is the earlier)
- Amount of VAT due on the acquisition of the lease
- Amount of annual rent

Applications under Section 4A VAT Act 1972

Section 4A VAT Act 1972 provides that where a letting of property is considered to be a taxable supply of goods and the lessee is entitled to a full input credit in respect of the VAT chargeable on the supply, then no VAT is chargeable by the lessor and the lessee is the person responsible for accounting for the VAT due. At the same time the lessee may, of course, claim input credit of a similar amount.

The object of the legislation is to provide a cash flow benefit to both the lessor and the lessee. Application for this treatment to be applied is made on Form VAT 4A. Authorisation to supply the property without charging VAT is issued to the lessor (copied to the lessee) on Form VAT 4B.

The provisions of Section 4A do not apply to the supply of freehold interests

The relief provided for is subject to the conditions set out in that section and **both the lessor and the lessee** must agree to the operation of the provisions and sign declarations on Form VAT 4A to that effect.

Taxpayers should note the following:

- The application should be made well in advance of either (a) the signing of the lease or (b) the date of occupancy
- The form should be signed by both the lessor and the lessee
- The correct method should be used to arrive at the capitalised value of the interest
- The provisions cannot apply where the lessee is not entitled to a full input deductibility
- The economic value test must be satisfied

Lessors and lessees of taxable property and their advisers must submit **proper and timely** applications under Section 4A to ensure that all of the requirements of the legislation are met. The following should be noted in particular.

Date of application

Revenue regard the supply of the property as being made on the date the property is occupied or the date the lease is signed whichever is the earlier. The legislation requires that both the lessor and the lessee agree to the application of the provisions and that they both sign declarations to that effect. Accordingly, it is important that any application under Section 4A be made well in advance of the supply of the property. If a lessee is taking up occupation of a property with a clear intention of signing a lease for a period in excess of ten years then application should be made before the date of occupation.

Is the supply of the property subject to VAT?

There are several conditions, which must be met before a supply of property is subject to VAT. These conditions are set out in the VAT Property Transactions Booklet. Copies of this booklet are available from the Revenue website at www.revenue.ie, from the Revenue Forms & Leaflets Service at 1890 306 706, or from local Revenue offices.

How is the leasehold interest valued for VAT purposes?

There are three methods of valuing the supply of a leasehold interest and these methods are also set out in the above booklet. Taxpayers must ensure that the economic value test is satisfied.

Is full deductibility due?

For full deductibility to apply the whole property must be used for taxable activities. In cases of partial deductibility Section 4A is not applicable.

The 1997 Finance Act changes

The Section 4A mechanism has no application in the case of assignments or surrenders of leases. In such cases the tax due will normally be accounted for on a reverse charge basis and the landlord or assignee will, normally, be able to take an immediate input credit for the tax charged. However, the mechanism could have application where, following the surrender of an existing lease, the landlord grants a new taxable lease.

Important

If the Section 4A mechanism is not in place prior to the supply of a taxable property the transaction will be treated as subject to VAT in the normal way.

Date of Effect

The new forms will apply to all applications received on or after 1 September, 2006.

Queries regarding this article

Any questions regarding this article can be addressed to

*Brian Shanahan,
Indirect Taxes Division*

email: bshanaha@revenue.ie

Telephone (01) 6748233, or

Telephone (01) 7024112

Queries on specific cases should be referred to the taxpayer's Revenue Office.

Form VAT 4A - page 1



Form VAT 4A

Value Added Tax - Section 4A, VAT Act 1972

To: Inspector of Taxes,



Application by a Lessor and a Lessee to have the provisions of Section 4A VAT Act, 1972 applied to a letting of property deemed to be a supply of goods under Section 4, VAT Act 1972.

(Note 1)

[BEFORE COMPLETING THIS FORM PLEASE READ THE ATTACHED NOTES and complete the sections appropriate to you as lessor/lessee]

SECTION A - To be completed by the Lessor

1. Name	<input type="text"/>	
2. Address	<input type="text"/>	
3. Trading Name	<input type="text"/>	
4. Telephone No.	<input type="text"/>	
5. email address	<input type="text"/>	
6. VAT No.	<input type="text"/>	(Note 2)
7. Full postal Address of Property to be leased	<input type="text"/>	(Note 5)
8. Duration of Proposed Lease	<input type="text"/>	(Note 6)
9. Description of the Property	<input type="text"/>	(Note 7)
10. Expected date of signing lease or date of occupancy (whichever is earlier)	<input type="text"/>	(Note 3)
11. Is the letting of the Property by the lessor a taxable supply under Section 4, VAT Act, 1972?	Yes <input type="checkbox"/> No <input type="checkbox"/>	(Note 8)
12. (a) State Capitalised value of the lease	€ <input type="text"/>	
(b) Specify method and calculations used in arriving at this figure	<input type="text"/>	(Note 9)
13. (a) Economic Value	€ <input type="text"/>	
(b) Does this figure satisfy the economic value test as set out in Section 4(3A) VAT Act 1972	Yes <input type="checkbox"/> No <input type="checkbox"/>	(Note 10)
14. Amount of VAT due on supply of lease	€ <input type="text"/>	(Note 4)

Form VAT 4A - page 2

SECTION B - (To be completed by the Lessee)

1. Name
2. Address
3. Trading Name
4. Telephone No.
5. email address
6. VAT No. (Note 2)
7. State exact business purpose for which the premises is being leased (Note 11)
8. Expected date of signing lease or date of occupancy (whichever is earlier) / / (Note 3)
9. Amount of VAT due on acquisition of lease € (Note 4)
10. Are you entitled to full deductibility in respect of the VAT chargeable on the lease of the property? Yes ☐ No ☐ (Note 12)
11. State amount of annual rent €

DECLARATIONS

To be completed by the Lessor/Landlord

I/We declare that the information provided in this form on behalf of the lessor is correct, that the Economic Value Test as set out in Section 4(3A) VAT Act 1972 has been satisfied and I/We undertake to supply any further information which may be requested.

Signed: Status: Date / /

To be completed by the Tenant/Lessee

I/We declare that the information provided in this form on behalf of the lessee is correct and I/we undertake to supply any further information which may be requested. I/We further declare that I/we am/are entitled to full deductibility in respect of the amount of VAT shown at No. 9 above and I/we will account for that VAT on my VAT return

Signed: Status: Date / /

Form VAT 4A - page 3

NOTES ON FORM VAT 4A

(Notes 1 - 4 for both Lessor & Lessee)

Note 1

Section 4A VAT Act 1972 provides that a lessor, who is letting property which is deemed to be a supply of goods to a lessee who is entitled to take a full deduction in respect of VAT charged on the supply of the property does not have to charge VAT on the supply of the property. The lessee will be obliged to account for the VAT due on his Return but may also take a credit for the VAT on the same Return. Both the lessor and the lessee must agree to the application of the provisions before they can be applied.

Note 2

Do not leave this section blank - failure to submit VAT Nos. may necessitate the form being returned to either party for further completion causing delays (please see Tax Briefing issue 40 - see www.revenue.ie/pdf/tb40.pdf dated June 2000 that sets out Revenue's definitive views in this matter). The VAT Registration No. will verify that the lessee/lessor is registered for tax purposes.

Note 3

It is important that application under 4A be made well in advance of either (a) signing the lease or (b) date of occupancy. If the Section 4A mechanism is not in place prior to the supply of a taxable property the transaction will be treated as liable to VAT.

NB. A long lease can be signed after the Form 4A has been submitted, however the taxpayer should be aware of the possibility that the 4B transaction could be refused by the tax office, in certain cases.

Note 4

The invoice issued by the lessor should show the following endorsement in lieu of the amount of VAT chargeable "in accordance with Section 4A of the Value Added Tax Act 1972 the lessee is liable for the VAT of €XXX".

(Notes 5 - 10 for Lessor only)

Note 5

Give FULL address of premises to be leased including the Unit Nos. (if any) or building name/ outlets where appropriate.

Note 6

A lease of property must be for a period of at least ten years before it constitutes a taxable supply.

Note 7

A full description of the property should be given, for example, warehouse, factory, office, building, holiday home, site, home/apartment, industrial unit, etc.

Form VAT 4A - page 4

Note 8

A number of conditions apply before the supply of a property becomes liable to VAT. If you are in doubt as to whether VAT should be charged on the supply you should consult your local Tax office.

Note 9

There are three methods which can be used to capitalise a taxable lease of property and the chosen method used by the lessor should be shown. These are contained in Regulation 19 of the VAT Regulations 1979 and are:

- (a) a valuation by a competent valuer;
- (b) formula i.e. $\frac{1}{4}$ of annual amount of rent multiplied by number of complete years for which the lease has been created, or
- (c) annual amount of rent multiplied by the multiplier applicable at the date of the transaction.

VAT is then applied at the appropriate rate to this capitalised value. If you require further assistance in this matter you should consult your local Revenue Office.

Note 10

A person disposing of a leasehold interest in a property should value the property using one of the three methods as mentioned above and should then test this valuation using the 'economic value test' in accordance with Section 4(3A) VAT Act, 1972. Economic value is the amount on which tax was chargeable to the person disposing of an interest in respect of that person's acquisition of that interest and in respect of any development of the property by or on behalf of that person since that acquisition.

Where the consideration on disposal is less than the economic value (or less than the reduced Economic Value in certain cases), such a disposal is deemed to be an exempt letting of property. In such circumstances, the person making the disposal will not be entitled to deductibility on the acquisition or development of the property. Any deductibility previously claimed must be clawed back. In these circumstances Section 4A does not apply and this form should not be submitted to Revenue at all.

(Notes 11 and 12 for Lessee only)**Note 11**

A full description should be given as to what the premises will be used for. If it is intended to use any part of it for purposes other than in connection with taxable supplies of goods and services by the lessee e.g. short term letting of part of the premises, full details should be given on a separate sheet if necessary.

Note 12

A trader will normally be entitled to full deductibility in respect of the VAT charged as a taxable supply of property where it is exclusively used for the purposes of the trader's taxable supplies of goods or services. Section 4A does not apply to this acquisition if you are not entitled to full deductibility and this form should not be submitted to Revenue at all.

Form VAT 4B - page 1



Revenue
Office of the Revenue Commissioners

www.revenue.ie
Oifig na gCoimisinéirí Ioncaim

FORM VAT 4B

Value Added Tax - Section 4A, VAT Act 1972

Notification under Section 4A, VAT Act 1972 that the provisions of that section may be applied in relation to the letting of immovable goods detailed below

ADDRESS OF PROPERTY

Period of Lease

Capitalised Value in accordance with Regulation 19, VAT Regulations 1979

VAT Chargeable

Lessor's Name

Lessor's VAT Number

Lessee's Name

Lessee's VAT Number

To The Lessor

You are hereby notified that in accordance with Section 4A, VAT Act 1972 you are not liable to pay the VAT chargeable on the letting detailed above. Your attention is drawn to the requirement that any invoice issued in connection with the supply be clearly endorsed in accordance with the provisions of Section 4A(4), VAT Act 1972.

To the Lessee

You are hereby notified that in accordance with Section 4A, VAT Act 1972 you are liable to pay the VAT chargeable on the letting detailed above as if you yourself supplied the property. You are further notified that you must account for that VAT in the appropriate statutory VAT Return made in accordance with Section 19 VAT Act 1972. Your attention is drawn to Section 12(1)(a)(ii), VAT Act 1972 which entitles you to take a VAT input credit in respect of this VAT.

Signed on behalf of the
Revenue Commissioners:

Date:

Date Stamp

Telephone:

Fax:

VAT and the Single Farm Payment

Tax Briefing Issue 61 (November 2005) contained an article about the tax implications of the Single Farm Payment. Paragraph 6 of that Article dealt with the VAT issues concerning such payments. While the receipt of such payments is not subject to VAT in the hands of the person receiving the payment, VAT may arise where the entitlement to the payment is sold or otherwise transferred. This article further clarifies, in a question and answer format, the VAT treatment arising on the sale or transfer of the Payment Entitlement (PE).

1. When does VAT arise on the sale or transfer of PE?

VAT is due when an individual disposes of, for a consideration, his/her entitlement to receive the single farm payment. The PE is an asset of the business, and the sale of the PE is subject to VAT at the 21% rate if in any continuous period of 12 months the consideration received for the sale of PE exceeds, or is likely to exceed, €27,500. (Note, however, Questions 4, 5, 6 and 7 below.)

2. In the event of the PE being gifted to, or inherited by, a family member from another family member does VAT arise?

VAT does not arise where the PE is gifted to, or inherited by, one family member from another. There has to be a consideration involved for VAT to arise. If there is no consideration involved, there is no VAT liability.

3. If the PE is gifted to, or inherited by, a non-family member does VAT arise?

No, VAT will not arise if the PE is gifted to, or inherited by, a non-family member. For VAT to apply, the PE has to be sold for a consideration.

4. When land is sold with accompanying PE what is the VAT position?

When PE is sold with accompanying land to another farmer who is continuing on the business of farming there are no VAT implications. The transaction is considered to be the sale of a business or part of a business and is not subject to VAT.

5. What is the VAT position where the PE being sold with the land relates to a greater or lesser amount of land than is being sold?

VAT will not apply if the land and the PE are both being sold to another farmer who is continuing on the business of farming. It is immaterial whether or not the PE equates exactly to the amount of land being sold. It is also immaterial whether or not the PE is actually referable to the land being sold, that is, the PE may relate to other land entirely.

6. Is there any occasion when the sale of PE without land may not be subject to VAT?

In line with Department of Agriculture & Food policy on the transfer of PE relating to land which was sold in advance of the receipt of the PE, where a sale agreement for the land was in place by 30 April 2005 at the latest, such a sale will be considered as the sale of land with PE, if a clause is included in the sale contract, even if added retrospectively by way of an addendum, indicating that the farmer is selling the PE with the land. In order for this to apply, the PE must be disposed of by the original owner of the land, the purchaser of the land must be a farmer and still farming the land and the PE can only apply to the land sold.

7. Is VAT due on all other sales of PE without land?

A farmer who is registered for VAT must account for VAT on all sales of PE without land.

An unregistered (flat-rate) farmer need only apply VAT on the sale of PE without land where the proceeds from the sale or sales of PE exceeds, or is likely to exceed, €27,500 in any continuous period of 12 months. There is not a €27,500 limit for each sale of PE. VAT is due on all receipts from the sale of PE when it becomes apparent that the annual €27,500 VAT registration limit will be exceeded. VAT is not due on the sale of the PE where it is

clear that the amount receivable from the sale or sales of PE in the 12-month period will not exceed the €27,500 limit.

8. Does a requirement on an unregistered (flat-rate) farmer to register for VAT as a result of the sale of PE bring all the farmer's activities within the charge to VAT?

In strictness, where a farmer is required to register for VAT as a result of the sale of PE, the registration should bring all the farmer's activities within the charge to VAT. However, by way of concession, Revenue is prepared in such circumstances to treat the registration as "ring-fenced". In other words, registration will apply only in relation to the proceeds from the sale of PE and the farmer will remain an unregistered (flat-rate) farmer in respect of all other agricultural activities.

9. How is the value of PE calculated for VAT purposes?

Where VAT is due on the consideration received by the farmer from the sale of PE, Revenue is not involved in any valuation process relating to the value of the PE that is sold. The total consideration received from the sale is treated as the VAT-inclusive sales proceeds, and the VAT due and accountable by the farmer in respect of those proceeds is determined by applying the fraction 21/121 to those proceeds. For example, if the farmer receives €50,000 from the sale of PE, the VAT due is:

$$\begin{array}{rcl} \text{€50,000} \times & \frac{21}{121} & = \text{€8,678} \end{array}$$

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

Capital Allowances and Property-Based Incentive Schemes

Introduction

[Tax Briefing 63](#) contained an article on the Finance Act 2006 changes to the property-based incentive schemes. Following publication a number of issues were raised in relation to the article. This article addresses those issues. Also, in response to queries received, there is an example at the end of this article illustrating the application of the various restrictions put in place affecting hotels and certain other commercial and industrial projects etc benefiting from the extended 31 July 2008 deadline.

Hotels

Write-off over 7 years/25 years

The Finance Act 2003 extended the write-off period for capital expenditure on hotels from 7 years to 25 years. However, transitional arrangements were put in place in the Finance Acts 2003 and 2004 to retain the 7-year write-off regime to cater for certain pipeline projects. These transitional arrangements ensured that where capital expenditure was incurred on a hotel project on or before 31 July 2006 and that project was the subject of a valid application for full planning permission received by the relevant local authority on or before 31 December 2004, the expenditure could be written off at the rate of 15% per annum for the first 6 years and 10% in year 7. The new 25-year write-off regime, with expenditure being written off at the rate of 4% per annum, was to apply to all other hotel projects that did not meet the transitional arrangements.

The Finance Act 2006 extended the termination date for the 7-year write-off regime from 31 July 2006 to 31 December 2006 where the existing planning application conditions were met. New transitional arrangements in relation to expenditure incurred up to 31 July 2008 were also introduced. These provided that where there is a binding written contract for the construction or refurbishment work in place on or before 31 July 2006 and where work to the value of 15% of the actual construction or refurbishment costs (as certified by the local authority) is carried out on or before 31 December 2006, 75% of the expenditure incurred during 2007 and 50% of the expenditure incurred from 1 January 2008 to 31 July 2008 can be written off over 7 years, but subject to the ceiling of the projected expenditure as certified by the local authority (see **Tax Briefing 63** for full details of transitional arrangements and attached Example illustrating the application of the various restrictions). For such transitional hotel projects the 25-year write-off regime will apply to:

- Expenditure incurred after 31 December 2006 where a binding contract is not in place by 31 July 2006 and work to the value of at least 15% of the actual construction or refurbishment costs is not carried out by 31 December 2006
- Any expenditure incurred after 31 July 2008 where a project is not completed by that date.

It should be noted that no allowances are available in respect of the remaining expenditure incurred up to 31 July 2008 in excess of the 75% and 50% thresholds. It should also be noted that the availability of capital allowances is subject to the requirement that the hotel be registered by Fáilte Ireland and to the transitional arrangements that apply in relation to registration.

Registration with Fáilte Ireland

The Finance Act 2005 introduced a requirement for buildings or structures that are in use for the trade of hotel-keeping to be registered in the register of hotels kept by Fáilte Ireland under the Tourist Traffic Acts before they can qualify for capital allowances. This new registration requirement applies in respect of expenditure incurred on or after 3 February 2005, subject to transitional arrangements. These transitional arrangements are similar to those that were introduced by the Finance Acts 2003 and 2004 in relation to the extension of the write-off period from 7 years to 25 years (see **Tax Briefing 60** for details). A hotel project that qualified for transitional treatment in relation to registration would not be concerned with the new registration requirement and could continue to claim capital allowances over 7 years in respect of all expenditure incurred on or before 31 July 2006. As indicated above, the Finance Act 2006 extended the period within which expenditure incurred could qualify for write-off over 7 years from 31 July 2006 to 31 December 2006 and to 31 July 2008 in certain circumstances. However, it did not extend the date from which the registration requirement would come into effect. This remains at 31 July 2006. Thus, **no capital allowances will be available for expenditure incurred from 1 August 2006**

unless the building or structure involved is included in the register of hotels kept by Fáilte Ireland. This is the situation even where the Finance Act 2006 transitional arrangements in relation to the extension of the 7-year regime to 31 December 2006 or 31 July 2008 are met.

Holding period/clawback of allowances

It may happen that some of the expenditure incurred on the construction or refurbishment of a hotel will be written off over 7 years with the balance of the expenditure being written off over 25 years. This has implications for the period for which the hotel must be retained by the person claiming the capital allowances and in relation to the exposure to a balancing charge. In the case of, for example, a disposal of the hotel within 7 years of the hotel being first used (or first used after the refurbishment) all of the expenditure incurred will be taken into account in calculating any balancing charge/allowance. In the case of a disposal after 7 years but before 25 years, only the allowances in relation to that part of the expenditure that is being written off over 25 years will be subject to a balancing charge.

Binding Contracts

One of the conditions for availing of the extended termination date of 31 July 2008 for some of the property incentive schemes is that a binding contract in writing, under which expenditure on the construction or refurbishment of a building or structure is incurred, must be in place for the particular building or structure on or before 31 July 2006. Clarification has been requested about certain aspects of this condition.

The extended deadline for the following buildings or schemes is subject to such a condition:

- Hotels ('accelerated' allowances only)
- Holiday Camps ('accelerated' allowances only)
- Registered Holiday Cottages
- Urban Renewal (commercial and industrial buildings)
- Rural Renewal (commercial and industrial buildings)
- Town Renewal (commercial and industrial buildings)

'Self-Construction'

Revenue has been asked for a view about the need for a binding contract in a situation where the construction or refurbishment work on a building or structure is being carried out by the site owner, being either an individual or a company. Having regard to the fact that the projects in question all relate to commercial buildings and structures, Revenue would expect that most of these are unlikely to be undertaken by one person and that they would invariably involve the engagement of third parties to carry out some, or all, of the actual construction or refurbishment work. As there is a specific statutory requirement for a binding contract in writing to be in place by 31 July 2006, Revenue will expect that, in the absence of a global contract for the construction or refurbishment of a building, individual contracts for various elements of the construction or refurbishment work will be in place by that date.

In the exceptional situations where a site is owned by an individual or company and that individual or company will use only his/her/its own employees to carry out the development, without recourse to third parties, Revenue accepts that it would not be appropriate to insist on a binding contract between the site owner and another party. In such cases, Revenue will accept that the 'binding contract' condition is met where the site owner, whether an individual or company, swears an affidavit stating that the entire development will be carried out by the site owner's own employees. The affidavit should also contain a statement about the degree to which arrangements are in place to begin work on the particular project. It must be sworn on or before 31 July 2006. The employees must be employed directly by the site owner and not, for example, by an individual's development company where the site is owned by that individual.

Parties to contract

As already stated, the binding contract must be one under which expenditure on the construction or refurbishment of the particular building or structure is incurred. It will be a question of fact in each case whether the contract meets this requirement. It is not necessary that the contract provides for investor entitlement to the capital allowances. It is sufficient that it provides for a binding commitment to the initial construction or refurbishment expenditure. The legislation is silent about the parties to such a contract. The type of contract put in place will depend on the type of project and the various parties involved in the development. It is not, therefore, possible to be prescriptive about the type of contract that Revenue would regard as satisfying the condition. Possible examples of acceptable contracts are a development agreement between a site owner and a development company that is responsible for delivering over a completed building, a building agreement between a site owner/development company and a builder or a building agreement between an investor and a development company/builder. Where there is a single global contract for a project comprising several individual buildings, the condition will be regarded as satisfied for each individual building. Where there are separate contracts for each building, for example, building agreements with each investor, and no single global contract, each building agreement will have to be in place on or before 31 July 2006. (The above material has already been issued as e-briefs 26/2006 and 29/2006)

Documentation for investors

A copy of the binding contract or affidavit (in the case of certain 'self-construction' projects) should be given to the investor(s) along with any other documentation that may be required to support a claim for capital allowances in the event of a Revenue audit.

15% Expenditure incurred by end 2006

All of the terminating property incentive schemes, with the exception of the general countrywide refurbishment scheme, have a requirement for work to the value of at least 15% of the actual construction or refurbishment costs of the building or structure to be carried out on or before 31 December 2006 in order to avail of the extended deadline of 31 July 2008. Clarification has been requested as to whether the 15% condition applies to the overall project or to each individual building.

In the case of industrial and commercial developments under the various schemes and in the case of hotels, holiday camps and registered holiday cottages, compliance with the 15% requirement must be certified by the relevant local authority. It is expected that issues relating to satisfying local authorities in relation to 15% certificates in these cases will be addressed in guidelines to be issued by the Department of the Environment, Heritage and Local Government in the near future.

In cases not requiring local authority certification such as in the case of residential developments under the various schemes, Revenue is prepared to accept that the 15% condition can be applied to the overall development rather than to each individual building. Revenue will, therefore, accept that where the 15% condition is satisfied in relation to an overall development, it will be treated as satisfied in relation to each individual building comprised in the development.

It should be noted that applications for local authority certificates must be made by 31 January 2007. Local authorities are obliged to issue certificates by 30 March 2007. A local authority certificate must contain the following information:

- A statement indicating whether it is satisfied or not that work to the value of not less than 15% of the actual construction or refurbishment costs of the building was carried out by 31 December 2006,
- The actual amount of the capital expenditure incurred on the building by 31 December 2006, and
- The projected balance of expenditure to be incurred on the building after 31 December 2006.

Commencement orders signed

Following receipt of European Commission approval of the 31 July 2008 deadline extension from a State aid perspective, the Minister for Finance signed Commencement Orders on 26 June 2006 giving effect to the Finance Act 2006 changes. The Orders give effect to the changes introduced for the industrial and commercial aspects of the urban, rural and town schemes as well as to the changes made in relation to hotels, holiday cottages, third level educational buildings, park and ride facilities and multi-storey car parks.

Example illustrating the application of Finance Act 2006 Restrictions

A builder purchases a site in a qualifying Urban Renewal area for €100,000 and constructs an industrial building on it for a cost of €420,000. The building is completed in August 2008 and, without having been used, the builder sells it to X on 1 October 2008 for €600,000 and X immediately takes it into use for the purposes of his manufacturing trade.

Construction expenditure attributable to the various periods is as follows

Year 2006: €100,000;
 Year 2007: €220,000;
 1 Jan. 2008 to 31 July 2008: €80,000;
 August 2008: €20,000.

The projected amount of post December 2006 expenditure, as certified by the local authority, was €280,000. Therefore the combined expenditure for the period 1 January 2007 to 31 July 2008 (€300,000) must be restricted to €280,000 and the restriction (€20,000) must be made in relation to the period Jan. to July 2008 in priority to the year 2007. Accordingly, expenditure treated as incurred in the period Jan. to July 2008 (before the 50 per cent restriction is applied) is €60,000 (€80,000 less 20,000).

The amount of qualifying expenditure in each period after application of the 75 per cent and 50 per cent restrictions is as follows:

Year 2006: €100,000;
 Year 2007: €220,000 x 75% = €165,000;
 Jan. to July 2008: €60,000 x 50% = €30,000;
 August 2008: Nil (outside of the qualifying period).

Total expenditure for the purposes of the numerator "C" in the formula is therefore €295,000.

The net price paid by X for relief purposes under section 279 TCA (as amended) is -

B (purchase price) x	C (expenditure in qualifying period as reduced by restrictions)
	D (actual expenditure incurred) + E (site cost)

ie €600,000 x	€295,000	= €340,385
	€420,000 + €100,000	

X is deemed to have incurred construction expenditure on 1 October 2008 equal to the net price paid by him, that is, €340,385, and his entitlement to capital allowances will be based on that amount

NOTE: When calculating the formula for "the net price paid" in Section 279 the numerator "C" in the formula should be the amount of construction expenditure (incurred in the qualifying period for the scheme) as reduced in accordance with **subsections (5) and (7)** of section 270. The denominator "C" in the original formula - now "D" in the revised formula - should include the full amount of expenditure incurred on the construction of the building or structure i.e. before any restrictions and whether or not incurred in the qualifying period for the particular scheme.

Revenue News

ROS Payments area - Change of Address

Please note that the address to which ROS payment queries should be made is now:

*ROS Payment Support Unit,
Collector General's Division,
Sarsfield House,
Francis Street,
Limerick*

E-mail: rospayments@revenue.ie
Telephone 1890 20 30 70 ext, 55623, 56624, 56742
Direct Dial (061) 488614, (061) 488374
Fax (061) 488674

Transfer of certain Revenue functions from Dublin to Limerick

From **July 17 2006**, the following insolvency related functions are now managed from the Collector-General's Division, Sarsfield House, Limerick rather than Apollo House, Dublin 2:

- Members Voluntary Liquidations
- Creditors Voluntary Liquidations (except those outlined below)
- Receiverships
- Bankruptcies
- Formal & Informal Arrangements under Section 201 and 279 of the Companies Act, 1963
- UK Administrations

The Collector-General's staff in Apollo House, Dublin, continue to deal with:

- All Court Liquidations
- Examinerships
- Creditor Voluntary Liquidations commencing after 17/07/2006 for the Dublin and the East/ South East Regions.

The contact details for the Insolvency Unit Sarsfield House are:

E-mail: insolvency@revenue.ie
Telephone: 061- 488233
Fax: 061- 488325
061- 488236

About Tax Briefing

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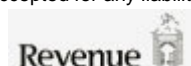
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