

[18.2.4] Operation of RCT by Principal Contractor

Sections 1 – 10 of this document cover the electronic RCT system introduced from 1 January 2012.

Sections 11 – 24 cover the system in place for the years up to and including 2011

1. RCT for Principal Contractors from 1 January 2012

Section 20 Finance Act 2011 provided for the introduction of a new electronic Relevant Contracts System, which incorporates a fundamental redesign of how RCT operates both for principals and subcontractors.

The Finance Act changes were incorporated into sections 530A to 530V of the Taxes Consolidation Act. A subsequent amendment to this legislation was included in Section 22 Finance Act 2012.

The [Income Tax and Corporation Tax \(Relevant Contracts Tax\) Regulations 2011 \(S.I. No. 651 of 2011\)](#) which gave effect to certain aspects of the 2011 Finance Act changes system came into effect on 1 January 2012 and applied to all payments made under a relevant contract after that date.

These were subsequently revoked and replaced by [Income Tax and Corporation Tax \(Relevant Contracts Tax\) Regulations 2012 \(S.I. No. 576 of 2012\)](#) which gave effect to aspects of the 2012 Finance Act changes. These regulations came into effect on 24 December 2012.

Regulation 5 of the 2012 Regulations was amended by the [Income Tax and Corporation Tax \(Relevant Contracts Tax \(Amendment\) Regulations 2013 \(S.I. No. 412 of 2013\)](#) and gave effect to a change in the requirements regarding the submission of payment notifications by principals where multiple contracts are in place with a subcontractor. These regulations came into effect on 31 October 2013. E-brief 47/13, which contained these new regulations, issued to tax practitioners on 18 November 2013.

Regulation 9 of the 2012 Regulations was amended by the [Income Tax and Corporation Tax \(Relevant Contracts Tax\) \(Amendment\) Regulations 2015 \(S.I. No. 5 of 2015\)](#). These amended Regulations provide for the submission, by a principal, of an unreported payment notification where the principal has failed to operate RCT on a relevant payment to a subcontractor. The Regulations also set out the information to be included on an unreported payment notification.

It is important to note a relevant payment made before 1 January 2012 shall be dealt with under the Income Tax (Relevant Contracts Tax) Regulations (S.I. No. 71 of 2000) as if those Regulations had not been revoked under the Regulations of 2011, and a relevant payment made between 1 January 2012 and the date of the coming into operation of the 2012 Regulations shall be dealt with under the Regulations of 2011 as if those Regulations had not been revoked.

Since 1 January 2012, RCT operates as an electronic system and all interaction between the principal contractor and Revenue is through Revenue's Online Service (ROS). Subcontractors may also use the online system but it is not mandatory for them.

The key features of the new RCT system are:

- **Contract Notification:** When a principal contractor enters into a relevant contract with a subcontractor, he is obliged to provide Revenue with details of the contract. This will include details of the subcontractor who has been engaged and will also include a declaration that the contract being entered into is not a contract of employment. This process is known as "**Contract Notification**" in the new RCT system. Before notifying a contract principal contractors must satisfy themselves as to the identity of the subcontractors.
- **Payment Notification:** A principal contractor must notify Revenue of all relevant payments online immediately *before* payment is made. The gross payment (VAT exclusive amount if the VAT reverse charge applies) is advised to Revenue. Note that the contract must be notified to Revenue before any relevant payments under that contract can be notified.
- **Deduction Authorisation:** Revenue will respond to the payment notification with a deduction authorisation setting out how much tax, if any, must be withheld from the payment. The rates of tax are currently set at zero, 20% or 35%. The deduction authorisation is sent electronically to the principal contractor. The principal contractor must provide a copy, or details, of the deduction authorisation to the subcontractor if tax has been deducted. If payments are made to subcontractors, without a deduction authorisation, penalties may apply.
- **Deduction Summary/Return:** At the end of the filing period a deduction summary is made available electronically to a principal contractor detailing all the payments notified to Revenue during the filing period. The principal contractor should check the deduction summary for accuracy and amend or add to it if necessary. Otherwise the deduction summary is deemed to be the return on the return filing date.
- **Payment of RCT due:** The principal contractor must pay any RCT deducted before the due date.

Section 530A of the Taxes Consolidation Act 1997 defines who is regarded as a principal contractor for the purposes of RCT and detailed notes are available on this in Part 18-02-02 of this manual.

Section 530J of the Taxes Consolidation Act 1997 outlines the requirement to register as a principal contractor with Revenue for RCT and detailed notes are available on this in Part 18-02-02 of this manual.

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

[...]

2. Contract Notifications

Upon entering into a contract with a subcontractor, under the provisions of Section 530B, a principal contractor will be obliged to provide online via ROS the following information regarding the contract to Revenue:

1. Where the tax reference number of the subcontractor is provided the following details are required:

- Declaration check box – confirm that the contract is not a contract of employment
- Subcontractor's Tax reference number
- Subcontractor's name.
- Confirm whether the subcontractor has a fixed place of business to take orders, bookings for contracts, store materials and equipment, etc.
- Provide details of the contract:
 - Sector (construction, forestry or meat processing)
 - Nature of work
 - Location of work
 - Start date of work
 - End date of work
 - Estimated value of contract
- Answer the question: "Are you satisfied that the contract is NOT a labour only contract?"
 - If you answer, "Yes" to this question, no further information will be required.
 - If you answer "No" to this question, you will be required to answer additional questions relating to the employment status of the subcontractor (see below):

Will the subcontractor:

 - Supply materials?
 - Provide plant and machinery necessary for the job other than hand tools?
 - Engage other people to work on the contract at his/her own expense?
 - Receive an agreed contract payment(s) without entitlement to pay for overtime, holidays, country money, travel and subsistence or other expenses payment?
 - Be excluded from the industry pension and sick pay schemes, if a sole trader?

- Organise his/her own transport to and from sites?

Does the subcontractor:

- Cost and agree prices for jobs?
- Provide his/her own insurance cover as appropriate e.g. public liability, etc?

Is the subcontractor:

- Free to choose the method to be employed in carrying out the work without the direction or control of the site foreman/overseer?
(**Note:** In the construction sector, for health and safety reasons, all individuals are under the direction of the site foreman/overseer.)
- In business on his/her own account and able to provide the same services concurrently to others?
- Exposed to financial risk including bearing the cost of making good faulty/substandard work and overruns?

2. Where the tax reference for the subcontractor is unknown, the following details are required in addition to the information provided above

- The principal is required to indicate if the tax reference number is not available (checkbox) and provide the following information on the subcontractor:
 - Subcontractor's address
 - Country (Select country from a drop down box)
 - Subcontractor's phone number
 - Subcontractor's mobile number
 - Subcontractor's email address
- Subcontractor Foreign Details
 - Tax registration number in that country
 - If the subcontractor is registered for tax outside Ireland, state the country in which registered
- Type of Contractor (Radio Button)
 - Individual
 - Company
 - Partnership
- Date of birth (if individual)
- Company Registration Office number (if company)
- Precedent Partner's date of birth (if a partnership)

Where a principal contractor is unsure as to the correct employment status of a subcontractor, he or she should examine the criteria to be taken into account in the [Code of Practice for Determining Employment or Self-Employment Status of Individuals](#).

Before providing the above information to Revenue, a principal must satisfy himself or herself as to the identity of the subcontractor concerned and shall require documentary evidence to do so. The principal shall make and retain a copy of the documentary evidence provided or record and retain relevant details from the documentary evidence given.

Where the Revenue Commissioners are unable to verify the identity of a subcontractor by reference to the name and tax reference number supplied by a principal, the RCT service shall require the principal to inform the subcontractor in writing within 7 days or before making a relevant payment to the subcontractor, whichever is the earlier that-

- The Revenue Commissioners were unable to verify the identity of the subcontractor
- Tax at 35% will be deducted from payments to the subcontractor and
- The subcontractor should contact Revenue with a view to clarifying their identity.

On receipt of a contract notification from a principal the RCT service will provide an acknowledgement to the principal. The acknowledgement will include, for information purposes only, the rate of tax last notified to the subcontractor concerned under section 530I of the Act. This rate shall **not** be taken as the rate of RCT applicable to payments to be made under the contract concerned. A similar acknowledgement will issue to the subcontractor.

Up to 10 contracts can be input in one transaction by the principal. This limit applies whether the principal uses the ROS online service, the ROS offline service or ROS web based service.

An [instructional video](#) regarding the completion of contract notifications is available on the Revenue website.

Where the information referred to in a contract, which has previously been notified to Revenue changes in relation to:

- The estimated contract value,
- The contract duration, or
- The location or locations at which relevant operations under the contract are to take place,

the principal shall notify Revenue of each such change to the contract using the online service. This can be done via the RCT Homepage screen in ROS where a principal should select "Search Existing RCT Contracts". A list of all contracts for the principal is returned on the screen. To make it easier to find the contract that is being looked for, the first line of the list allows a search of contracts by:

- Contract ID Number.
- Subcontractor Rate.
- Subcontractor Tax Reference.
- Subcontractor Name.
- Contract status.

When the required contract is found, it can be selected by clicking on it and the following options are then made available at the bottom of the screen View, Cancel or Amend the contract.

Details of amendments made to contract notifications by principals shall be notified to the subcontractor by Revenue.

It is important to note that a contract cannot be cancelled where a payment notification has already been made under the contract.

Where there is an ongoing contractual relationship (also known as a rolling contract) between the parties a single contract notification will normally suffice. This includes situations where the jobs do not succeed each other immediately. An ongoing contract can also cover work to be carried out on a number of sites provided that the parties to the contract do not change. However a new contract notification must be submitted if any of the following apply:

- The subcontractor has to compete (e.g. tender) for new work.
- The contractual relationship between the parties has changed e.g. the principal sets up a new entity (e.g. a limited company) for each site.
- The contractual terms have changed significantly e.g. the payment arrangements have changed from fixed price to piece work.
- No payments were made in the preceding year to the subcontractor.

3. Payment Notifications

Section 530C TCA 1997 provides that, immediately before a principal makes a relevant payment to a subcontractor, the principal shall notify Revenue of their intention to make such a payment.

The following information is included in the payment notification:

- The identity of the subcontractor, including name and tax reference number;
- Identification of the contract to which the payment relates;
- The gross payment amount.

The 2013 Regulations provide that where a principal has entered into more than one relevant contract with a subcontractor, the Regulations state that the principal shall associate the payment notification with any current contract with the subcontractor, or the principal may —

- (a) Where the payment to be made is in respect of a single contract, in giving a payment notification, identify the contract in respect of which the payment will be made, or
- (b) Where the payment to be made is in respect of more than one contract with that subcontractor, give separate payment notifications each identifying only that part of the payment that refers to each contract.

Prior to the introduction of the 2013 Regulations, in instances where a principal contractor had multiple contracts with a subcontractor, strictly speaking the principal was obliged to associate each payment with the specific contract to which the payment related. However a transitional arrangement was in place which allowed a principal who had more than one contract with a subcontractor the option of notifying one contract to Revenue and recording all of the payments to the subcontractor under that contract.

Where a principal anticipates that a relevant payment is not going to be made before the end of the return period in which the payment notification was given, the principal shall, before the end of the return period, cancel the payment notification using the online RCT service, and the payment notification concerned shall be deemed not to have been given.

A principal cannot amend a payment notification. In instances where the details of the payment for some reason differ from the payment notification submitted, the principal should cancel the original payment notification and submit a new one with the correct details.

Where a principal cancels a payment notification the Revenue Commissioners may, by electronic or other means, notify the subcontractor of the cancellation of the payment notification by the principal.

When a principal inputs and submits a payment notification on ROS, he or she will receive a copy of the submitted payment notification detail as an inbox document in his or her ROS inbox. Where a batch of payment notifications is input by the principal, he or she should receive one inbox document which will include a copy of each submitted payment notification detail (one line item per payment notification detail).

When the inbox document is opened the principal will notice that the document is titled "Payment Notification Acknowledgement". When the principal clicks on a line item this will expand the line item, showing the details included on the deduction authorisation. The principal can print this line item to obtain a paper copy of the deduction authorisation. To print all deduction authorisations, the principal should select the "Print All" option which is located at the top left hand side of the inbox document.

The principal can also choose to view/download all line items in either CSV or XML format (this option is located at the top right hand side of the inbox document) which will allow the principal to upload the information to their in-house accounting system.

An [instructional video](#) regarding payment notifications is available on the Revenue website.

RCT applies to payments in kind in the same way as it applies to payments of money. "Payment" in section 530C TCA 1997 can include payment other than in money form. The value of the payment in kind is the market value. This can be determined at appeal, if necessary.

4. Deduction Authorisations

There are three rates of tax in the RCT system

- Zero
- 20% (standard rate)
- 35%

Sections 530E, 530G, 530H and 530I of the TCA 1997 outline the provisions in regard to the rates of RCT and how the appropriate rate is to be determined for subcontractors. Detailed information on this is included in Part 18-02-05 (RCT and subcontractors) of this manual.

On submission by a principal of a payment notification, a deduction authorisation is instantaneously issued by Revenue to the principal's ROS inbox. The deduction authorisation specifies the rate of tax (including as appropriate zero) to be deducted from the payment and authorises the principal to deduct a specified amount of tax from the relevant payment.

The deduction authorisation is valid until the earliest of:

- The making of the payment by the principal.
- The due date relating to the return period within which the deduction authorisation was issued.
- The making of the return by the principal for the return period within which the deduction authorisation was issued, or
- The cancellation of the payment notification by the principal.

The deduction authorisation is only valid for the subcontractor and the relevant payment to which it relates and there is an obligation on the part of the principal to ensure that the subcontractor named on the deduction authorisation is a party to the relevant contract to which it relates.

When a principal makes a payment to a subcontractor from which tax is deducted the principal must provide to the subcontractor a copy of the deduction authorisation. Alternatively, the principal may arrange for the following details from the deduction authorisation to be given to the subcontractor by written or electronic means:

- The name and tax reference number of the principal.

- The name and tax reference number of the subcontractor.
- The gross amount of the payment.
- The amount of tax deducted.
- The rate at which tax was deducted.
- The date of the payment.
- The unique reference number issued by Revenue on the deduction authorisation.

The details contained on a deduction authorisation may also be made available to the subcontractor by Revenue either electronically (if they are registered for ROS) or by other means.

5. Failure to Operate RCT

A principal is obliged under section 530F to deduct tax from payments to subcontractors in accordance with the deduction authorisation which has issued. Section 17 of Finance Act 2014 introduced a revised sanction where principals fail to operate Relevant Contracts Tax (RCT) on relevant payments to subcontractors. The penalty that a principal will be liable for will be proportionate to the amount of the tax that should have been deducted. The principal will be liable for a penalty for each instance of non-operation of RCT, after 1 January 2015 and this will be based on the status of the subcontractor.

- Where the subcontractor is registered with Revenue and is fully tax compliant and thus liable to a RCT deduction rate of zero, the principal will be liable to a civil penalty of 3% of the relevant payment.
- Where the subcontractor is registered with Revenue and is substantially tax compliant and thus liable to a RCT deduction rate of 20% - the principal will be liable to a civil penalty of 10% of the relevant payment.
- Where the subcontractor is registered with Revenue and is not compliant and thus liable to a RCT deduction rate of 35% - the principal will be liable to a civil penalty of 20% of the relevant payment.
- Where the subcontractor to whom the payment was made is not known to Revenue – the principal will be liable to a civil penalty of 35% of the relevant payment.

In all the above instances the principal will be required to submit an unreported payment notification to Revenue.

Prior to 2015 where a principal failed to deduct RCT in accordance with the deduction authorisation, the principal was:

- (a) Liable to pay a penalty tax at the rate of 35% on the amount of the relevant payment and
- (b) Without prejudice to any other penalty or Section 1078 be liable to a penalty of €5,000 or the amount of tax payable under (a) above, whichever is the lesser.

Where the aforementioned penalty applies and the principal submits details of the relevant payment in a return for the relevant period, and if necessary provides Revenue with details of the relevant contract, Revenue will establish the amount of tax that would have been due using the appropriate rate for the subcontractor concerned and notwithstanding (a) above, the tax due from the principal will be the amount established by Revenue. In strictness, for payments made prior to the passing of Finance (No.2) Act 2013, the position was that Revenue would only establish the appropriate rate for the subcontractor where the return for a relevant period was made by the due date, however in practice Revenue established the appropriate rate, regardless of the date of filing of the return. Revenue will notify the principal of any adjustments to his liability as a result of this process. As this is a penalty imposed on the principal, it is not available as a credit against the liability of the subcontractor.

If a principal makes a payment to a subcontractor without the principal having previously submitted a payment notification in respect of the payment then it follows that no deduction authorisation will have been issued in respect of that payment. If the principal is notifying Revenue of details of the payment **after** the return period in which the payment was made, he or she should amend the return for the period in which the payment was made to the subcontractor. The RCT service will automatically calculate the penalty and surcharge due.

6. Deduction Summary/Return

Section 530K obliges the principal to make a return to the Collector-General of all relevant payments made during the return period. To facilitate this process at the end of each return period the Revenue Commissioners issue a deduction summary to each principal for the period. The deduction summary is created by Revenue using all relevant payments for which a valid deduction authorisation issued during the return period. Depending on the principal contractor's filing frequency (monthly or quarterly) the deduction summary will cover one or three months. The details on the summary shall be deemed to be a return made by the principal for that return period and the amount of tax specified is the principal's liability in respect of that period.

The deduction summary will list all of the payments notified by the principal contractor to Revenue (one line item for each payment notified). It will also identify the total tax due for the period.

The deduction summary should be checked by the principal contractor to ensure that all payments made to subcontractors have been notified to Revenue and to ensure that the

amounts notified were correct. Where required, amendments should be made to the relevant line item(s) before the due date for the return, this can include:

- The cancelling of payments previously notified which were not made within the return period, and
- The amendment of the payment amount to a subcontractor where the payment differs from the amount specified in the payment notification due to exceptional circumstances unforeseen at the time of the notification.

Where a principal amends the deduction summary and submits the details to Revenue, the revised summary is deemed to be the return for that period and the revised total amounts are the principal's liability for that period.

Where a principal amends a line item(s) on a deduction summary, the Revenue Commissioners shall notify the relevant subcontractor of details of the amendment.

A principal contractor must make a return before the due date i.e. the 23rd day after the end of the period covered by the return.

A principal may make a late return after the due date or amend a return after the making of a return or the deemed making of a return but –

- No amendment can be made in relation to any payment for which a deduction authorisation has issued, and
- No amendment can be made to a return where an audit or other investigation has commenced in relation to the tax affairs of the principal for the chargeable period in which the return period falls.

A surcharge of €100 shall apply for late returns and this will be included in a notice together with the tax due and payable, which will be issued by Revenue for the return period or periods.

7. Payment of RCT Due

The principal contractor must pay any RCT deducted before the due date for the return (23rd day after the end of the period covered by the return). In general returns are made monthly. Businesses making total annual RCT payments of up to €28,800 may be eligible to file RCT returns and make payments on a three monthly basis.

Where tax is due for a period covering one return period (see Section 8: Assessments by Revenue Officer) the due date relating to that tax shall be the due date relating to the earliest return period covered by the relevant assessment or return.

Where payments are not made to the Collector-General by the due date, interest shall be paid at the rate of 0.0274% per day or part of day during which the amount remains unpaid.

8. Assessment by Revenue Officer

Where a Revenue officer has reason to believe that a principal who was due to make a return for a return period has not made a return or that the amount of tax due and payable by a principal for a return period was greater than the amount specified by a principal in a return, the officer may make an assessment in one sum of the total amount of tax due and payable by the principal for that return period. The amount of tax specified in the assessment shall be due and payable. A Revenue officer may if necessary amend the assessment. All assessments and amended assessments will issue electronically to principals.

An assessment may be appealed to the Appeal Commissioners in writing within 30 days from the date of the notice of assessment. An appeal cannot be made:

- In the case of a principal who has made a return or deemed return until the tax, any surcharge and/or interest due has been paid, and
- In any other case until a return for the period concerned has been made and the tax, surcharge and any interest due has been paid.

An assessment raised may be in respect of a return period or for any number of consecutive return periods and it may be issued before the end of the period to which it relates. Where the assessment is in respect of a number of consecutive return periods they cannot be appealed until such time as:

- A return is made in respect of each return period covered by the assessment, or
- An election is made to make one return covering the full period assessed and that return is made.

The provisions relating to the payment of tax, surcharge and interest also apply before a multiple period assessment can be appealed.

9. Partnerships

Where relevant operations are performed by a gang or group of persons (including partnerships) notwithstanding that any payment or part of payment is made by a principal to one or more of the gang or group or to some other person, then this payment shall be deemed to have been made to the individual members of the gang or group in the proportions in which the payment was to be divided amongst them.

Except where a separate payment to each member is made by the principal, a person authorised by the group or in the case of a partnership the precedent partner shall, in respect of the tax deducted from the payments, give to the Revenue Commissioners

- (a) The name, address and tax reference number of every person in the group and
- (b) Details of the proportion of the tax deducted to which each person is entitled.

On receipt of these details Revenue will notify in writing or by electronic means each member of the gang, group or partnership the amount of income or corporation tax treated as having been paid by them.

10. Records

A principal shall keep and maintain records in relation to

- The information and declaration on contract notifications
- Relevant payments including the tax deducted from such payments.
- Registration details required for registration with Revenue as a principal contractor.
- The details required to be included on a return for each relevant period, and
- Tax due and payable

Before submitting a payment notification, a principal shall obtain from the subcontractor a statement setting out appropriate details of the work giving rise to the payment, the cost of the work and the subcontractor's name, address and tax reference number. Where the work is being done by a gang or group of persons, (including partnerships) the statement will bear the name, business address and tax reference of the gang or group and the names of the individual members of the gang or group. The principal is obliged to retain these statements.

Each subcontractor is required to keep and maintain a record of all relevant payments received and the record shall include for each payment, the date of the payment, the amount of the payment, the amount of RCT, if any, deducted and the name of the person who made the payment. The subcontractor will also keep a record of each deduction authorisation or, alternatively, copies of the details contained on a deduction authorisation, which were supplied by a principal.

Any person who has made or received a relevant payment shall produce to a Revenue officer for inspection all documents and records relating to the relevant payment which have been requested by the Revenue officer.

Relevant Contracts Tax for Years up to and including 2011

11. Introduction

On production to a principal by a subcontractor of a C2, duly signed by the subcontractor, the principal contractor would apply to the tax office on a Form RCT46 for a relevant payments card (RCT47). The principal should have examined the C2 produced by the subcontractor or nominated user to verify that the individual who produced the C2 was the individual whose photograph appears on it.

The application form was to be signed by both the principal contractor and the subcontractor.

The Principal should have followed the steps set out below before making any gross payments:

1. Examined the original C2 - a photocopy did not suffice;
2. Checked that the C2 bore the photograph of the person presenting it;
3. Checked that the signature on the RCT 46 matched that on the C2;
4. Checked that the subcontractor's name on the RCT 46 was the same as that on the C2;

5. Checked that the C2 was still in date;
6. If the C2 was in order, have applied **immediately** to his/her local Revenue District for a RCT47.
7. Returned the C2 to the subcontractor; and
8. Waited until the Form RCT47 was issued from Revenue before making the payment. Every effort was made to issue these forms as quickly as possible but there may have been delays as they were subject to Revenue's internal validation procedures. It was important, therefore, that the Form RCT 46 was completed and submitted when the contract was awarded or, well in advance of the date the first payment was due to be paid.

Principals needed to be aware that a RCT47 may not have issued at all in non-compliant cases and tax must be deducted in these cases. Failure to deduct RCT when required to do so left the principal liable for the tax they should have deducted. Penalties may also have applied for the non-operation of RCT.

It was in the interest of the principal to ensure that the C2 details (photograph, signature, etc.) and any monetary limit on the RCT47 were carefully checked, as C2 abuse cases are liable for prosecution.

12. Nominated Bank Account Cases

As an alternative to the above steps 1-8, a subcontractor could nominate a bank account into which all payments made by the principal would be lodged. If this was the case, the subcontractor need not have presented the C2 in person. Instead, the subcontractor gave the principal details of the card number and the nominated bank account. (The subcontractor should have advised Revenue of the bank account in advance.) The principal entered the details on the Form RCT 46 and undertook to make the payments due to the subcontractor into that account only. **However, the principal still needed to have the RCT 47 before making any gross payment.**

13. Bulk request for Payments cards (RCT 47)

Where contracts were ongoing at the end of a year, the principal could apply for RCT 47 cards in bulk by listing the names of the subcontractors on a Form RCT 46A, without seeing the actual C2 card. However, only those contractors whose contracts were ongoing at the end of the year could be listed, and, once again, payments should not have been made gross in the new year until the card had actually been received.

Where a principal contractor applied for a payment card on Form 46A, the subcontractor was advised when the payments card had issued.

14. Issue of relevant payment cards (Forms RCT47)

Forms RCT 46 and 46A were processed through ITP. The district dealing with the principal should have received the RCT46.

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[...]

On receipt of a Form RCT47 the principal contractor was authorised during the year (or the unexpired portion thereof) covered by the certificate to make payments without deduction of tax to the subcontractor named therein up to the limit, if any, indicated on the card.

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

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15. Issue of relevant tax deduction cards (Forms RCT48)

Form RCT48 was used to record details of payments made and tax deducted from subcontractors where a payments card had not been received or where payments had exceeded the specified limit shown on the payments card.

These forms were issued to principal contractors prior to the commencement of each year of assessment or at any time on request. These forms contained the PPS No. and date of birth of each subcontractor.

16. Limit on RCT47

A statutory basis for the imposition of a value limit on an RCT47 was provided for as respects applications for a RCT47 made on or after 2 February 2006. The position was as follows:

- where a principal applied for a RCT47 in respect of a subcontractor, the Revenue Commissioners could, if they considered it requisite to do so to protect the revenue, impose a limit on the amount that may be paid on the card without deduction of tax,
- where a limit had been applied, the subcontractor concerned could request the Revenue Commissioners to alter it – by increasing it, reducing it or removing it,
- where the Revenue Commissioners amended a limit they were required to issue a new card to the principal concerned,
- the subcontractor was to be informed of any limit, or revised limit, imposed on the RCT47 issued in relation to him or her,
- where payments made to a subcontractor exceeded any limit imposed on the card issued in relation to the subcontractor, RCT was to be deducted from the excess.

The limit was printed on the RCT47 issued to the principal who should have deducted tax on payments in excess of the limit. If the principal breached the contract value limit and

made payments gross in excess of the limit he or she was to be accountable for the tax, which should have been deducted and liable to pay this amount to the Collector General.

Provision was made for a subcontractor to appeal against the imposition of a limit on the RCT47. However, the limit remained in place pending the outcome of the appeal.

17. Making the Payment

When the RCT47 arrived, payment was made gross to the subcontractor named on the card while the card was valid (usually until the end of the year or until Revenue withdrew the card if before then), or, if applicable, until the limit shown on the card was reached. Details of each payment made should have been recorded on the card at the date of payment.

Where a principal had not received a relevant payments card from the tax office in respect of a subcontractor, or where the principal had received a notification that a C2 in respect of a subcontractor for whom the principal had received a relevant payments card had been cancelled, he or she was required to deduct tax at 35 per cent from each payment to the subcontractor and to record the amount of the payment and the tax deducted on a Form RCT48. A relevant tax deduction certificate [RCTDC] showing the gross payment and the tax deducted was given to the subcontractor at the time of payment.

Any payments made prior to the card being received were also to be subjected to RCT at 35% and an RCTDC (tax deduction certificate) issued to the subcontractor.

Failure to do so resulted in the principal becoming liable for the tax that should have been deducted and interest and penalties.

Where a payment was made over and above the specified limit and tax was correctly deducted, the amount of the payment subjected to tax and the tax deducted was recorded on Form RCT48. A relevant tax deduction certificate [RCTDC] showing the payment and the tax deducted was given to the subcontractor at the time of payment.

Where the limit was subsequently revised, any payments made under deduction of tax as recorded on the Form RCT48 were not taken into account for the purposes of the revised limit.

RCT applies to payments in kind in the same way as it applies to payments of money. "Payment" in section 531(1) TCA 1997 can include payment other than in money form. The value of the payment in kind was the market value. This could be determined at appeal, if necessary.

18. Payments to gangs or groups of subcontractors

Gangs or groups (hereinafter referred to as gangs) are a feature of relevant operations. A gang could be described as a loose group of subcontractors, generally of the same trade, who come together to undertake a relevant contract with a principal contractor. The contract may be with one member of the gang or with the gang collectively.

Section 531(3) TCA 1997 treats payments made to a gang or group of subcontractors (including a partnership in respect of which the principal contractor had not received an RCT47) as having been made under a separate relevant contract between the principal contractor and each member of the gang or group. The payment was deemed, for RCT

purposes, to have been made to the individual gang or group members in the proportion in which the payment was to be divided amongst them.

The principal contractor remained free to make payments to a gang leader or any other person the gang or group may choose. However, the question of whether RCT would be deducted from all or part of the payment was decided by reference to the RCT status of the individual gang members.

Where the principal contractor had received a RCT47 in relation to an individual gang member, the part of the payment applicable to that gang member could be made without deduction of tax. Details of that part of the payment were entered on the card. Where the card relates to the gang leader, only the part of the payment applicable to the gang leader could be made without deduction of tax.

Where the principal contractor had not received a relevant payments card in respect of a gang member, the principal contractor deducted RCT from the part of the payment applicable to that gang member. The principal issued a RCTDC to the individual gang member in respect of the part of the payment applicable to that gang member and entered the amount of the payment on Form RCT48.

In effect, the gang leader was not recognised within the RCT system. The application of RCT to any part of a payment applicable to a gang member depended on whether the principal contractor had received an RCT47 for that gang member.

19. Cancelled C2s

On occasion, Revenue may have needed to cancel a C2. When this was necessary, Revenue notified all principals who held a RCT47 for the subcontractor and requested the return of the card. Any payments made after the date of receipt of the notice were subject to RCT at 35%.

In summary, the conditions for making a gross payment were clear: the principal must have held a valid RCT47, and the accumulated payments on the RCT47 could not exceed any limit that might have been shown on the card.

The penalty for making the payment gross without an RCT47 was also clear: the principal was liable for any tax that should have been deducted, and for any interest and penalties that may have accrued.

20. Principal Deducts Tax at 35% - Tax Deduction Forms RCTDC's

Relevant Tax Deduction Certificates- Forms RCTDC - were given by a principal to a subcontractor where RCT had been deducted. Form RCTDC should always have been given to the subcontractor at the time of payment, if not, the principal was liable to penalties. The principal recorded details of the payments on Form RCT48. The principal accounted for this tax deducted each month on Form RCT30.

Principals could order supplies of the Forms RCTDC from their local Revenue office using the Form P33. These were secure certificates that contained a unique number. That number was recorded in Revenue's systems against the principal to whom it was issued.

A principal should never have used an RCTDC that had been issued to another principal. Furthermore, access to the certificates should have been controlled. They

should have been kept in a secure place. In the event of any certificates being lost, mislaid or stolen, the facts should have been reported to the local Revenue office, which would arrange to have the certificates cancelled. Where a principal ceased to trade, any unused certificates should have been returned to Revenue. The principal should also have recorded all payments on Form RCT48.

The subcontractor could make a claim to have the tax deducted on the Forms RCTDC offset against outstanding taxes or repaid. Where an offset was required, any declaration forms (RCT30, VAT3, Form 11 or CT1) should have been sent in the first place to the Office of the Collector-General. An agent or taxpayer could request that the offset be carried out in a particular order otherwise Revenue's computer systems were 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 could check on their up to date position, before submitting their claim. Any balance remaining after the offsets have been carried out was generally repaid. It should be noted that an offset could only be made where the claim is received within the four year time limit for repayments set down in Section 865 TCA 1997. See Part 18.2.7 for further details.

21. Monthly returns and payments by principal contractor of tax deducted (Forms RCT30)

A principal contractor was obliged to complete a Form RCT30, and remit any tax deducted, by the 14th day of the month following the month in which the tax was deducted. With effect from 1 January 2009, where the RCT30 return and payment were made electronically (i.e. via ROS), the return filing and payment deadline was extended to 23rd day of the month. Form RCT30 was to be completed even if no tax was deducted in the month. The return could be filed and payment made online using the Revenue Online Service. Paper Forms RCT30 and relevant payments were sent to the Collector General's for processing. The Collector General could issue estimates of RCT to persons who failed to remit tax deducted or failed to make a monthly return. Statutory interest was charged in respect of any amounts of tax due by virtue of an estimate notice issued.

22. Returns by principal contractor of payment to subcontractors (Forms RCT35)

The totals of the payments made to certified and uncertified subcontractors were to be transferred by the principal contractor to the return Form RCT35 immediately after the end of each year from the Forms RCT47 and RCT48, respectively and a return made in respect of each year ended 31 December. The time limit for making an annual return of payments to subcontractors (RCT35) was 46 days after the end of the tax year. Return Forms RCT35 were issued immediately prior to the end of the income tax year for which the return is required.

The form was returned to:

Collector General's Office,
PO Box 354,
Limerick.

The Form RCT35 could also be filed online using Revenue's Online Service (ROS). Paper forms which were sent to the Office of the Collector General had the declaration on the front page captured in ITS. ITS performed a background check to reconcile the monthly RCT30 payments with the amount declared.

22.1 Compliance Programme

Revenue's compliance programmes (that identify and pursue non-filers) were extended in 2008 to include the Form RCT35. The RCT programme provides for the referral of RCT 5 non-filer offences for prosecution under Section 1078, Taxes Consolidation Act 1997. To avoid any risk of prosecution, the form should be completed correctly and returned on time.

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

[...]

22.2 Points to note in completing the Form RCT35

- The principal must sign the declaration.
- The declaration must include all the gross payments made and tax deducted (where applicable).
- All payments cards that were issued to principals during the year must be accounted for when completing this form.
- Where there was a declaration, there must be a listing and vice versa.
- The entries on the form must be legible.
- Full information must be completed for each subcontractor:
 - The full name and address of the subcontractor must be shown.
 - The Tax Registration Number or PPS number must be quoted where available.
 - The date of birth should be quoted in the case of individuals.
 - The RCT47 card number (payments card number) should always be quoted where one was received. (Please do not quote the number of any RCTDC issued to a subcontractor in respect of RCT deducted).

Forms that were not completed correctly should be returned for correction. Furthermore, forms that were not fully or accurately completed may have given rise to unnecessary correspondence or audit.

Where there is an apparent overpayment, a letter issued out from ITS requesting an explanation.

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[...]

22.3 RCT Payment Errors discovered while completing the Form RCT 35

In completing the return, principals or their advisors may find instances where a payment was made gross and RCT should have been deducted. This could happen where payments were made without a valid payments card (RCT47), or in excess of the specified limit on the card. Where such breaches of the regulations are discovered, the principal/advisor should regularise the position by disclosing the complete details to Revenue immediately. Subject to certain conditions, **where the failure to deduct RCT is exceptional and it is rectified within 1 month of the filing deadline**, Revenue did not seek to impose the tax, interest or tax-g geared penalties. A fixed penalty applied. The disclosure and accompanying payment of the fixed penalty should be sent to the relevant Revenue District.

Under the provisions contained in the Finance (No. 2) Act 2008, the fixed penalty of €950 that previously applied, was increased to €3,000 for offences committed on or after the passing of the Act (24 December 2008).

23. Non-operation of RCT (Code of Practice for Auditors – RCT)

In 2007, the following changes and clarifications were made in relation to RCT audits and qualifying disclosures where, in exceptional cases, payments are made gross by a principal contractor without a relevant payments card (RCT 47) as set out in Section 531 Taxes Consolidated Act and Income Tax (Relevant Contracts) Regulations, 2000 (S.I. 71 / 2000). They also apply to payments in excess of the specified limit as stated in Section 44(1)(d) Finance Act, 2006.

They apply only to cases where the subcontractor held a valid C2 at the time of the gross payment.

The payments card procedures are central to the operation of RCT for C2 holders. The existence of a valid C2 alone is not sufficient to allow the principal make gross payments to the subcontractor. **The principal will be held liable for the RCT that should have been deducted in the absence of a payments card, or on payments made in excess of the specified limit on the payments card - together with interest and applicable penalties.** However, in the exceptional circumstances set out below, and only in these circumstances, Revenue are prepared to amend the normal audit settlement regime already set out in the Code of Practice for Revenue Auditors ("the Code").

The operation of these arrangements will be monitored on an ongoing basis and will be reviewed as and when required.

23.1 Technical issue: mistaken belief that the contract is not a "relevant contract"

Where a principal contractor makes a gross payment to a subcontractor in the genuinely mistaken belief that the contract is not a "relevant contract" for RCT purposes, each case will be examined on its own merits. Tax, interest and penalties will not be imposed in bona fides cases. Factors to be taken into account will include the complexity of the technical issue and if the treatment concerned was based on an interpretation of the law that could reasonably have been considered, as likely as not, to be correct. Matters which are well established, as coming within the relevant contracts legislation should not be entertained under this concession e.g. the supply of labour, telecommunications apparatus etc.

23.2 "No loss of Revenue"

Section 2.5 of the Code provides a broad framework within which 'no loss of revenue' claims can be dealt with in relation to VAT and RCT.

23.3 Exceptional failure to deduct rectified within one month after the RCT35 filing deadline

When, prior to the RCT filing deadline any instances of payments incorrectly made gross to a valid C2 holder without an RCT47 payments card (**or in excess of the specified limit on the card**), were found or, when the RCT35 was being completed, and any instances of payments incorrectly made gross to a valid C2 holder without an RCT47 payments card (**or in excess of the specified limit on the card**) come to light, they could be regularised by the principal by disclosing the complete details to Revenue. It should be noted that Revenue's information technology systems allow officers to identify cases where the RCT35L shows gross payments to C2-holding subcontractors without payments card details.

Revenue will not seek to impose the tax, interest or tax-geared penalties where:

- a) There was an exceptional failure to deduct RCT; and
- The circumstances are such that an overall loss of revenue is improbable (i.e. Revenue should be able to collect the liability from the subcontractor); and
- There was a qualifying disclosure to Revenue of the failure to deduct RCT within one month after the RCT35 filing deadline.

To qualify as an **exceptional failure** to deduct:

- The failure must be very isolated, not involve any failure to operate RCT generally or suppressed receipts/payments and one-off;
- The principal must have taken adequate steps to prevent a recurrence; and
- The principal must be generally tax compliant.

The principal will pay a fixed penalty for each breach of the Regulations under Section 1052(1)(b) TCA, 1997 which will **not** be mitigated. In the context of this concession, a fixed penalty will apply in respect of each subcontractor to whom gross payments were made incorrectly in the year. It does not apply in respect of each individual payment incorrectly made to a subcontractor.

Under the provisions contained in the Finance (No. 2) Act 2008, the fixed penalty of €950 that previously applied, was increased to €3,000 for offences committed on or after the passing of the Act (24 December 2008).

The disclosure and accompanying payment of the relevant penalty should have been sent to the Revenue District within one month of the RCT filing deadline at the latest. The Form RCT35L should have been sent to the Office of the Collector-General by the normal filing date. All disclosures should be reviewed and assurance checks carried out where appropriate.

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[...]

Where a disclosure was not being accepted as a qualifying disclosure, the taxpayer and their agent should have been notified of this in writing and the tax, interest and penalties pursued. They should also have been advised of their entitlements to review (internal and external) and/or appeal.

Making a qualifying disclosure in these circumstances should not result in an audit. However, an audit of either the principal's or the subcontractors' returns may arise based on normal selection procedures.

23.4 Clarification of Tax Briefing 29

Tax Briefing 29 (December 1997) indicated that Revenue would not seek to collect RCT in exceptional circumstances where a payment was made gross prior to receipt of a relevant payments card, and the tax affairs of both the principal and subcontractor are fully up to date at the time payment is made.

To avoid any doubt, this treatment would only apply in future in the very narrow and exceptional circumstances where Revenue has received an application for a payments card before a payment was made and, through no fault of the principal, there was a **delay on Revenue's part** in issuing the payments card.

23.5 Certificate of deduction

In the context of an audit or qualifying disclosure involving payment to Revenue by a principal of RCT that should, in the absence of a payments card or in excess of the specified limit, have been deducted on payment to a **subcontractor with a valid C2**, the principal was permitted to issue a certificate of deduction (RCTDC) to the subcontractor. The subcontractor may only claim refund or set-off within the statutory four-year time limit.

23.6 Undertaking of future compliance

It will be a condition of any of the concessional treatments outlined in paragraphs 23.2 to 23.3 above and in paragraph 23.7 below that the principal contractor will give a **written** undertaking that the correct procedure will be fully complied with thereafter. This should be included in the audit settlement or disclosure letter.

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[...]

23.7 Operation of these revised arrangements

These arrangements came into effect on 8 February 2007 as regards audits notified on or after 8 February 2007.

As regards audits, notice of which had been given but which had not been settled before 8 February 2007, the taxpayer may choose whether the settlement is to be made under the terms of the arrangements set out in this note or previous published arrangements.

As regards qualifying disclosures or self-corrections under the Code, the arrangements outlined above came into effect on the date that eBrief No 10/2007 was published (9 February 2007).

The standard self-correction arrangements in Section 2.2 of the Code will continue to apply.

Settled cases will not be re-opened.

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[...]

24. Monthly Collection

Section 18 FA 1999 amended Sections 530 and 531 TCA 1997 and placed an obligation on a principal contractor to make a monthly RCT30 return to the Collector General and enabled Revenue to issue monthly estimates of RCT.

- RCT30 Return issued each month in advance of the due date for payment
- Customers were able to make a payment either by cheque, directly from a bank account using Single Debit Authority, or on-line through ROS.
- Revenue monitors the receipt of returns and payments on a monthly basis
- Monthly estimates, reminders or demands issued, as appropriate, where either a return or payment was not received for any month. Every principal contractor was obliged to submit an RCT 30 return, even where no tax was deducted from sub contractors during the month.
- Failure to pay a monthly tax liability, or to pay on time, could result in enforced collection.
- There was no provision, on the RCT35 annual return, for the payment of an annual tax balance – the customer was expected to pay tax due on a monthly basis.

All notifications that issued advised the customer which Revenue office to contact for assistance.