

Change in Revenue Treatment of a Board of Management for School Building Projects

THIS NOTE IS FOR GUIDANCE ONLY AND DOES NOT PURPORT TO BE A LEGAL INTERPRETATION. IT WILL BE UPDATED AS ISSUES ARISE AND CLARIFICATIONS ARE RECEIVED FROM THE REVENUE COMMISSIONERS

Section 20 of the Finance Act 2011 inserted new provisions into the Taxes Consolidation Act 1997 [TCA 1997], under which new regulations relating to Relevant Contracts Tax [RCT] have been issued. This legislation will affect the tax treatment of the board of management for building projects such as emergency works, extensions, additional accommodation, new buildings, repairs etc. and payments made to contractors.

There are penalties and surcharges for non-compliance so it is vital that the legislation is properly complied with.

What is Relevant Contracts Tax [RCT]?

Relevant Contracts Tax (RCT) is a tax regime applicable to construction contracts in which tax is deducted from payments for **construction operations** due to the contractor by the principal contractor. RCT usually applies to principal contractors in their dealings with sub-contractors e.g. electrical or plumbing sub-contractor. The rates of RCT are either 0%, 20% or 35%.

What is meant by 'construction operations'?

'*construction operations*' are defined in section 530(1) of Taxes Consolidation Act 1997 as operations of the following descriptions:

- (a) the construction, alteration, repair, extension, demolition or dismantling of buildings or structures,
- (b) the construction, alteration, repair, extension, demolition of any works forming, or to form, part of land, including walls, roadworks, powerlines, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purposes of land drainage,
- (c) the installation in any building or structure of systems of heating, lighting, air-conditioning, soundproofing, ventilation, power supply, drainage, sanitation, water supply, burglar or fire protection,
- (d) the external cleaning of buildings (other than cleaning of any part of a building in the **course** of normal maintenance) or the internal cleaning of buildings and structures, in so far as carried out in the course of their construction, alteration, extension, repair or restoration,
- (e) operations which form an integral part of, or are preparatory to, or are for rendering **complete** such operations as are described in *paragraphs (a) to (d)*, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other **access** works,
- (f) operations which form an integral part of, or are preparatory to, or are for rendering complete, the drilling for or extraction of minerals, oil, natural gas or the exploration for, or exploitation of, natural resources,
- (g) the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the construction operations referred to in *paragraphs (a) to (f)*;

The Finance Act 2012 Section 22 amends the definition of Construction Operations to include: -

"the installation, alteration or repair in any building or structure of systems of heating, lighting, air-conditioning, soundproofing, ventilation, power supply, drainage, sanitation, water supply, or burglar or fire protection."

The definition of '*construction operations*' also includes **"alteration, repair...of systems of communications."**

What is a 'Principal Contractor' and why does this concern the Board of Management?

A principal contractor is defined as '*any board established by or under statute [or any Board or Body established by or under royal charter and funded wholly or mainly out of moneys provided by the Oireachtas]*' [Section 531 Taxes Consolidation Act 1997].

The Revenue Commissioners [Revenue] have recently indicated that a school board of management, being a body established by statute [Education Act 1998] and funded wholly or mainly out of moneys provided by the Oireachtas, is designated a "Principal Contractor".

This means that the board of management will be responsible for complying with RCT requirements and VAT returns when making payments to sub-contractors. Any contract subject to RCT is subject to a 'reverse charge' Value Added Tax [VAT] mechanism. It is important to note that both RCT and VAT are two distinct returns, made separately using Revenue Online Service [ROS].

The Revenue Commissioners introduced a mandatory electronic RCT system on 1 January 2012 for all principal contractors in the RCT system, so all filings and notifications must be done online through the Revenue ROS system.

How does (a) RCT and (b) VAT operate?

(a) RCT

The board of management is the "Principal Contractor" for the purposes of this legislation. It will therefore be responsible for notifying the contract to Revenue prior to commencement, notifying each payment to Revenue prior to making payment to the Contractor and paying the RCT deducted (if any) to Revenue. The board must ensure that it obtains a Deduction Authorisation from Revenue before any payment is made to the contractor. This will specify the rate of tax (0%, 20% and 35%) to be deducted from the contractor.

(b) VAT

The board of management will have to register for VAT, account for VAT on all payments made to the contractor and will be required to make bi-monthly VAT returns. The contractor will invoice the board on a VAT exclusive basis. In effect the board of management which is in receipt of the service, charges itself the VAT that would otherwise be charged to the sub-contractor. The board must apply to the DES [where relevant] for funding to cover both the amount stated on the invoice and the VAT which will be paid to the Revenue Commissioners on the bi-monthly VAT return.

What does the board of management have to do?

As soon as possible in the process the board should write to its local Revenue district seeking confirmation if the board is to be treated as a “Principal Contractor” for the proposed contract. If the answer is yes then the board must:

- Register online for ROS (Revenue Online Service). – [Revenue advises that the board should fill out Form TR1 [available on www.revenue.ie] and return it to their local tax office where they will be set up for RCT and VAT].
- Register on www.ros.ie. The board will receive an access number [RAN] and a digital certificate that will enable them to manage RCT and VAT returns online.
- Obtain contractor’s tax reference number and proof of identity
- Prior to commencement of construction, notify the Revenue of the contract (**Contract Notification**)
- Prior to discharging any payment to the contractor, notify the Revenue of the payment (**Payment Notification**)
- Obtain a **Deduction Authorisation** from the Revenue specifying the tax to be deducted from the contractor
- Provide the contractor a copy of the deduction Authorisation
- Deduct the applicable amount of tax from payments due to the contractor
- File RCT returns and pay the deducted amount to the Revenue
- Apply to the DES for the ‘VAT inclusive’ amount of each payment due to the contractor notwithstanding that the invoice received will be on a VAT exclusive basis
- File bi-monthly VAT returns and pay the VAT to the Revenue
- Obtain and keep a Deduction Summary – Periodic Return at the end of each return period

Does RCT apply to supply of goods as well as supply of services from a sub-contractor?

Supplies of goods from a sub-contractor engaged in construction operations are normally subject to RCT rules e.g. installing a data projector in a classroom requires electrical works. Supply of the data projector, other materials required for installation and labour are subject to RCT rules. If a standalone data projector is supplied to the school with no installation, RCT rules would not apply. In the event that there is any doubt, the BoM should contact their local tax office for a determination.

Does the Board of Management now have to make VAT returns for all its transactions and activities?

No. These new regulations only apply to works that fall within the definition of ‘*construction operations*’ and do not apply to any other school activity.

If the school registers for VAT, can the board claim back any of the VAT payment?

No. The board registers for the purpose of ‘*construction operations*’ only and is not entitled to claim VAT back on any of the transactions.

What about projects commenced prior to January 1st 2012 and are ongoing?

The Revenue Commissioners currently advise, where school projects commenced prior to January 1st 2012, such schools are required to comply with the new regulations. Boards are advised to check with their local Revenue office if they commenced works prior to this date.

What happens if we agree additional works over and above the amount funded by the Oireachtas from the school's own resources?

Additional works are governed by these regulations if they would fall within the definition of '*construction operations*'.

Do RCT rules apply to surveys e.g. topographical survey undertaken as an integral part of or in preparation for building works?

Revenue advise that RCT rules apply to all surveys undertaken as an integral part of or in preparation for building works. In the event that there is any doubt, the BoM should contact their local tax office for a determination.

Do RCT rules apply to small undertakings such as painting, plumbing, electrical works etc.?

There are no thresholds to the value of a contract before RCT applies. RCT rules will apply where undertakings fall within the definition of '*construction operations*'. The widening of the definition of '*construction operations*' now means that RCT must be applied to all repairs/alterations including replacement of taps, sinks electric sockets, etc.

Regarding painting, if there is a general scheme of refurbishment then painting would be considered as "finishing off" and therefore subject to RCT. The same would apply if there is repair to damage and decorating is finishing off. Where a whole premises are being redecorated this would be viewed as a refurbishment and subject to RCT. If on the other hand it is just painting a room or small area it would be more likely to be considered maintenance. It is more than a simple matter of scale as Revenue would take into account repairs to fabric of building (plastering, scaffolding, etc.). In the event that there is any doubt, the BoM should contact their local tax office for a determination.

What does the board of management do if the sub-contractor refuses to comply with the request for a VAT exclusive invoice and RCT regulation?

In such circumstances the board should contact their local Revenue office for advice as to whether RCT applies. Revenue advises that it is better to have established the status of the contract prior to commencement of the works.

Does 'annual servicing' of boiler, burglar alarm etc. come under RCT rules?

The word '**servicing**' used in this context, is to carry out works/checks to ensure that the heating system, burglar alarm continues to work and would not normally be considered a transaction subject to RCT rules.

If ,however the works carried out in the service necessitated the **repair of the system of heating**, then the new provisions as outlined under section 530 (1)(c) will apply.

Further information with audio-visual demonstrations on how to use ROS are available on www.revenue.ie

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