

Relevant Contracts Tax: Who is a Principal Contractor

Part 18-02-02

This document should be read in conjunction with section 530A of the Taxes Consolidation Act 1997

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1. Introduction

This manual outlines who is a principal contractor for Relevant Contract Tax (RCT) and also outlines the position regarding the development of property for letting and the position regarding “connected” persons and RCT.

2. Principal contractors

A principal contractor is defined in the context of “relevant contract” in section 530 Taxes Consolidation Act 1997. A principal to whom RCT applies is:

- a) A person who, in respect of the whole or any part of the relevant operations to which the contract relates, is the contractor under another relevant contract. An example would be a person who contracts to carry out activities such as the plumbing or electrical work on a building but who then in turn subcontracts the work to another contractor.
- b) A person:
 - (i) Carrying on a business which includes the erection of buildings or the development of land (within the meaning of *section 639(1)*) or the manufacture, treatment or extraction of materials for use, whether used or not, in construction operations.

As well as those involved in the erection of buildings, the persons mainly affected are suppliers of concrete, concrete products, tarmacadam etc. and operators of sand-pits. Persons engaging contractors to carry out operations such as site clearance, earth moving and site restoration are also affected.

However, the scope of the provision is narrowed by virtue of section 530A(2). This provides that a builder or land developer is not to be treated as a principal **by reason only** of the fact that he or she erects a building or develops land in relation to such a building where the building is for his or her own use or occupation or the use or occupation of his or her employees. This treatment is also extended to cases where a building is erected for short term letting, i.e. 35 years or less (see section 3 below).

- (ii) Carrying on a business of meat processing operations in an establishment approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1997 (Statutory Instrument No. 434 of 1997) or, as the case may be, the European Communities (Fresh Poultry-meat) Regulations, 1996 (Statutory Instrument No. 3 of 1996).

In effect, the reference to S.I. No. 434 of 1997 limits the scope of RCT to the operators of the larger exporting meat processing plants whose activities include slaughtering, cutting, boning and cold storage of meat. It does not include food preparation.

- (iii) Carrying on a business which includes the processing (including cutting and preserving) of wood from thinned or felled trees in sawmills or other like premises or the supply of thinned or felled trees for such processing.

Here, it is important to note that a subcontractor who fells trees for a person is only subject to RCT if that person is a wood processor or sawmill operator or a person who carries on a business of supplying timber to wood processors or sawmill operators.

- c) A person connected with a company carrying on a business mentioned in *paragraph (b)*. This provides that a person connected with a company engaged in a construction, land development, meat processing or forestry processing business must operate RCT on payments made by that person to a subcontractor in the performance of a relevant contract. However, section 530A(3) modifies the position mainly in the case of companies obliged to operate RCT because they were connected with a company engaged in the business of land development or construction. Those companies do not have to operate RCT where they engage a subcontractor solely to carry out work on their own business premises provided they are not themselves engaged in the land development or construction business. The subsection also provides that a person, not engaged in the business of land development or construction, who is connected with a company in the meat or forestry processing areas, does not have to operate RCT where that person engages a subcontractor solely to carry out construction operations in relation to a private dwelling or their own business premises (see section 4 below).

A person is regarded as a principal contractor where they are connected with a company carrying on a business in the construction, forestry or meat processing industries. However, the connected person rule will not apply where the only connected parties carrying on such operations are non-resident and are not carrying on a trade or business in the State through a branch or agency. The RCT provisions will therefore not apply to a person solely on the basis that it is connected to a company outside the State which carries on these activities outside the State.

- d) A local authority, a public utility society (within the meaning of section 2 of the Housing Act, 1966) or a body referred to in subparagraph (i) or (ii) of section 12(2)(a) or section 19 or 45 of that Act.
- f) A Minister of the Government.
- g) Any board or body 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.
- h) A person who carries on any gas, water, electricity, hydraulic power, dock, canal or railway undertaking (a supplier of Liquefied Petroleum Gas is a person carrying on a gas undertaking).

- i) A person who carries out the installation, alteration or repair in or on any building or structure of systems of telecommunications.

This definition includes any telecommunication companies, including traditional telecommunication companies that install, alter or repair systems of telecommunications. However, as 'systems of telecommunications' will continue to evolve over time, this provision is designed to accommodate this evolution.

3. Developing property for letting

Revenue generally treats a developer as carrying on a business which includes the erection of buildings (and thus a principal contractor) where the developer's intention is to develop the property for either sale or letting.

Section 530A(2) states that a builder or land developer is not to be treated as a principal **by reason only** of the fact that he or she erects a building or develops land in relation to such a building, where the building is for his or her own use or occupation or the use or occupation of his or her employees. In the case of property developers who are developing property to let under very long leases, (99 and 999 year leases) such leases are regarded by Revenue as tantamount to a sale.

Accordingly, it should be noted that the provisions of section 530A(2) do not apply in the case of property developers who are developing property to let under very long leases. The provisions of section 530A(2) only applies in the case of a person who arranges to have a building erected or develops land in relation to such a building with the sole intention of letting the building under a short lease. For this purpose, a short lease will be taken to be one that does not exceed 35 years. Only in such cases will a developer or an investor be treated as not being a principal for RCT purposes.

It should be noted that the practice outlined above in relation to the short term leasing of buildings does not apply where the developer or investor would be a principal for RCT purposes for other reasons. It does not apply, therefore, where the developer or investor is also a building contractor, or develops land, or is connected with a construction company or a company engaged in land development. It only applies where the developer or investor is a principal by reason only of developing a property in the course of his or her business with the sole intention of letting that building under a short lease.

4. RCT and connected persons

Section 530A(1)(c) TCA 1997 provides that a person connected with a company involved in a construction, land development, meat processing or forestry business must operate RCT on payments made by that person to a subcontractor in the performance of a relevant contract. This connected person rule is an anti-avoidance provision to counteract the avoidance of the operation and application of RCT through corporate restructuring. A 'connected person' for this purpose covers both companies within a corporate group where one subsidiary is a principal under Section 530A(1)(b)

and directors/shareholders with a controlling interest in such companies subcontracting as individuals or as part of a partnership.

Section 530A(3) is designed to exclude some connected persons from the RCT provisions in respect of construction operations carried out on their own premises. Where the connection is with a meat processing or forestry company, the obligation to operate RCT in respect of construction work carried out on their own premises is removed from all persons connected with the company. Where the connection is with a company involved in construction or land development activities, the obligation is only removed from connected companies.

In this context, it is important to note that the obligation to operate RCT is only removed in respect of work carried out on the connected company's own premises. Where such connected companies were involved in letting out property, they were obliged to continue to operate RCT in respect of construction operations carried out on such property. As the obligation to operate RCT is only removed from companies where the connection was with a construction company, directors/shareholders with a controlling interest in construction companies were obliged to continue to operate RCT in respect of construction operations carried out in a private capacity and partnerships involving such directors/shareholders were also obliged to operate RCT in respect of all construction operations carried out on their behalf.

4.1 Companies, shareholders and directors

Revenue is prepared to regard section 530A(3) as applying in certain circumstances to construction work carried out in premises that have been let out:

- a) by persons connected with companies in the meat processing or forestry businesses, and
- b) by companies connected with companies in construction and land development businesses.

The type of work which will qualify for this treatment (i.e. the obligation to operate RCT will not apply) is minor repair or improvement work to rented property where the total value of contracts awarded per property in any tax year in respect of such repairs or improvements does not exceed €20,000 (incl. VAT). Any contracts awarded in any tax year which would bring the total value of such contracts over the €20,000 threshold (per property) will continue to be subject to the operation of RCT in the normal way.

A situation could arise where a contract is entered into during a tax year on the basis that it qualifies for this treatment i.e. the total value of the contract plus any earlier such contracts awarded does not exceed €20,000 (incl. VAT). However, if it subsequently becomes clear (at any stage after entering into the contract) that the value of the contract will/is likely to exceed the original contract price to the point that the contract will bring the total value of contracts entered into in the relevant tax year over the threshold of €20,000 per property, normal RCT requirements will apply to the contract from that point onwards. [See example in respect of Property D below.]

The approach outlined above will also apply in respect of minor repairs or improvements carried out in a private capacity on their own home (including outhouses and pleasure gardens), or private lettings, or other incidental private work (e.g. erection of a memorial monument) by a director/shareholder with a controlling interest in a construction company.

Examples

A company connected to a construction company has four rental properties. In 2016, the company engages subcontractors to carry out repairs and other minor work in each of the four properties.

Property A

The total value of contracts entered into in 2016 in respect of minor repair/improvement work is €12,000 - no RCT obligation.

Property B

The total value of contracts entered into in 2016 in respect of minor repair/improvement work is €18,000 - no RCT obligation.

Property C

The total value of contracts entered into in respect of minor repair/improvement work up to 12 September 2016 is €15,000 - no RCT obligation. A contractor is engaged on 3 October 2016 to carry out works estimated to cost €8,000. This will clearly bring the value of the contracts over the €20,000 threshold. As a consequence, the principal should operate RCT on all payments in respect of this latter contract.

Property D

The total value of contracts entered into in respect of minor repair/improvement work up to 31 July 2016 is €9,000 - no RCT obligation. A contractor is engaged on 1 September 2016 to carry out works estimated to cost €10,000 - no RCT obligation at the time of entering into the contract. During the course of work on the latter contract, it becomes clear that the overall value of the contract will exceed the original estimate of €10,000. At the point where it becomes clear that the total value of contracts entered into in 2016 will exceed the threshold of €20,000, normal RCT requirements will apply from that point onwards.

4.2 Sole traders and partnerships

A builder who is a sole trader or in partnership is a principal under section 530(A)(1)(b)(i) TCA 1997 as they are a person carrying on a business which includes the erection of buildings. They must operate RCT in respect of all payments made to subcontractors who carry out construction operations under a relevant contract, including construction operations carried out in a private capacity (i.e. non-business related construction activities). However, the approach outlined in 4.1 above (i.e. minor repairs or improvements where the total value of contracts in respect of such work does not exceed €20,000 (incl. VAT) per property in a tax year) will also apply in the case of a sole trader or partnership in respect of such work carried out in a private capacity on their own home (including outhouses and pleasure gardens) or private lettings, or in respect of other incidental private work (e.g. erection of a memorial monument).

4.3 General

Where the approach above applies (i.e. where RCT is not operated in respect of certain minor work), records relating to payments in respect of such work should be maintained by the principal and retained for inspection by Revenue. Accordingly, all relevant invoices should be retained for a period of six years and must clearly show the address of the property or properties involved, the date of the relevant contract and the dates of all payments made.

This approach outlined above represents a pragmatic approach in relation to the operation of RCT. However, Revenue reserve the right to impose the strict technical treatment set out in the legislation where, in the opinion of Revenue, there is a deliberate attempt to avoid the general operation of RCT, or there is an attempt or intention to avoid or evade tax by any of the parties to a contract.