

When it comes to Relevant Contracts Tax, the confusion is justified

Solicitor **Sally Anne Stone** untangles the confusion surrounding relevant contracts tax.

Relevant contracts tax ("RCT") is a tax deduction system under which a 'principal contractor' must deduct tax at 35% from payments made to 'sub-contractors', unless that 'sub-contractor' produces a C2 tax clearance certificate. That's the easy part, trying to understand the definitions is where the confusion starts.

The definition of a 'principal contractor' for the purposes of the RCT legislation includes a lot more than just a main contractor, it also includes:

- A local authority
- Any board established by or under statute
- A minister of state
- A public utility or any person that carries on any gas water, electricity, hydraulic, power, dock, canal or railway undertaking

Accordingly, most contracting authorities employing a main contractor would be 'principal contractors' for the purposes of the RCT legislation. In turn, the main contractor would become the 'sub-contractor'.

If the main contractor (i.e. the 'sub contractor' for the purposes of the RCT legislation) subcontracts part or whole of the works to another contractor, that contractor would also be a 'sub contractor' for the purposes of the RCT legislation. That is to say one 'sub contractor' appointing not a sub sub-contractor, but simply another 'sub contractor'.

When a 'principal contractor' pays a 'sub contractor' i.e. the main contractor or its sub-contractor, it must deduct tax at 35% from any direct payment it makes if the 'sub contractor' does not hold a valid C2 clearance certificate, failing which the Revenue Commissioners will charge interest at a rate of 1.25% per day on any amounts unpaid.

Most main contractors hold a valid C2 certificate; however the main contractor's sub-contractors are not always as likely to have the necessary tax clearance. This was the rationale for bringing in the RCT legislation.

While there is no contractual link between a contracting authority/employer and its main-contractor's sub-contractors, there is



sometimes an obligation under the main contract to pay the third party sub-contractors directly. If so, the contracting authority/employer will have to retain 35% RCT on any direct payments (no matter how small) if no C2 certificate is produced.

It should be noted that the C2 certificate itself is not enough. Once the C2 certificate is produced, the contracting authority/employer must first obtain a 'relevant payments card' from the Revenue Commissioners for that 'sub contractor' before it can make RCT free payments to it.

For the most part, payments to the main contractor's sub-contractor will be made by the main contractor who will be responsible for the RCT payments. However, it is prudent for contracting authorities employing a main contractor to impose an obligation on the main contractor, in their agreement with that main contractor, to ensure that all sub-contractors it employs (whether or not direct payments will be made to them) have valid C2 certificates.

Furthermore, contracting authorities should note that in accordance with the Department

of Finance circular 43/2006, where payments (direct or otherwise) to the main contractor's sub-contractors exceed h2,600 in any 12 month period under a public sector contract, the contracting authority is obliged to insist that it will be a condition of contract that all of the main contractor's sub-contractors have current and valid C2 certificates.

As an added bonus, insisting on such tax clearance will also benefit the project as a whole, by preventing the obvious cash flow difficulties the deduction of RCT at 35% would cause.

The RCT net can catch you in more ways than one. The best way to avoid getting caught up in the obligations is to insist on all 'sub-contractors' within the meaning of the RCT legislation having valid C2 certificates at all times. ■

Sally Anne Stone is a solicitor in the Construction & Procurement Group in Beauchamps Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2. T+353.1.418.0600 E s.stone@beauchamps.ie.