

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2023 edition

PART 18

Payments in Respect of Professional Services by Certain Persons and Payments to Subcontractors in Certain Industries

December 2023



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PART 18
PAYMENTS IN RESPECT OF PROFESSIONAL SERVICES BY CERTAIN
PERSONS AND PAYMENTS TO SUBCONTRACTORS IN CERTAIN
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CHAPTER 1

Payments in respect of professional services by certain persons

Overview

Chapter 1 of *Part 18* provides for the deduction at source of tax at the standard rate of income tax from payments for “professional services” made to individuals and companies by Government Departments, local authorities, the Health Service Executive, commercial and non-commercial State bodies, etc. The withholding tax applies generally to fees and similar payments made by accountable persons but not to payments already covered by PAYE (*Chapter 4* of *Part 42*), the subcontractors tax deduction scheme (*Chapter 2* of this Part) or to payments by one accountable person to another accountable person in reimbursement of relevant payments. Payments to certain exempt accountable persons and charities are also included.

“professional services” covers a wide range of services including medical services, architectural and engineering services, financial services, legal services and geological services.

Non-residents come within the ambit of the scheme, but they are entitled to receive a full refund if the income, which has suffered the tax, is **not** chargeable to Irish tax.

Although tax has been withheld at source from professional fees, any fees represented by the payments must be taken into account in calculating the profits or gains of the recipient for tax purposes. The tax deducted, however, is available for set-off against the tax chargeable on those profits or gains and any excess of amounts deducted over the determined tax liability may be refunded to the taxpayer.

Provision is also included for interim refunds in certain cases (including cases of particular hardship).

520 Interpretation (*Chapter 1*)

Summary

This section is concerned with the definitions and construction of certain terms for the purposes of the Chapter.

Details

Some of the key definitions contained in this section are:

(1)

“appropriate tax” is the amount of tax which must be deducted by an accountable person from a relevant payment. The amount deducted is an amount represented by applying the standard rate of income tax in force at the date of payment to the VAT exclusive amount of the payment.

“basis period of assessment” in relation to a specified person (that is, a person in receipt of a payment to which this Chapter applies) means —

- where that person carries on a trade or profession, the period on the profit or gains of which income tax for that year is finally computed (this will normally be a 12 month period of account ending in the tax year),
- in any other case, the year of assessment.

Where 2 basis periods overlap, then subject to *subsection (3)* the period common to both is treated as falling into the second basis period. Where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, the interval is deemed to be part of the second basis period.

The reference to the overlapping of 2 basis periods covers the situation where 2 periods coincide or where one period is included in another. The reference to the period common to both is to be construed on this basis.

“electronic means” has the same meaning as in *section 917EA(1)* which includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic means of transmission of data and other forms of related technology by means of which data is transmitted.

“partnership trade or profession” is defined as a trade or profession carried on by two or more persons in partnership.

“payment notification” has the meaning assigned to it by *section 524(4)*.

“payment notification reference” has the meaning assigned to it by *section 524(6)*.

‘PSWT service’ means such electronic system as is made available by the Revenue Commissioners to enable accountable persons to fulfil their obligations under *section 524(4)* and to facilitate electronic communication between the Revenue Commissioners, accountable persons, specified persons and others for the purpose of fulfilling those obligations and includes any enhancements or other change made to that system and any replacement system.

“partnership trade or profession” is defined as a trade or profession carried on by two or more persons in partnership

The term “professional services” includes —

- services of a medical, dental, pharmaceutical, optical, aural or veterinary nature,
- services of an architectural, engineering, quantity surveying or surveying nature, and related services,
- services of accountancy, auditing or finance and services of financial, economic, marketing, advertising or other consultancies,
- services of a solicitor or barrister and other legal services,
- geological services, and

“relevant medical expenses” are expenses incurred in respect of services provided by a practitioner which are, or may be, the subject of a claim under a contract of insurance other than expenses —

- which can normally only qualify for benefit under the contract on submission of a claim after the end of the subscription year and when the amounts involved in the claim exceed certain thresholds, or
- which are incurred in respect of professional services provided by a practitioner outside the State.

“relevant payment” is —

- a payment by an accountable person in respect of professional services whether or not such services are provided to the accountable person making the payment, or
- payments by a health insurer to a medical practitioner to discharge claims under contracts of insurance for relevant medical expenses.

Excluded are —

- payments within the PAYE system (*Chapter 4 of Part 42*),
- payments by principal contractors to subcontractors under the payments to subcontractors tax deduction scheme (*Chapter 2 of this Part*),
- a payment which is made by one accountable person to another accountable person in reimbursement of a relevant payment, and
- a payment by one accountable person to —
 - another accountable person whose income is exempt from corporation tax or is disregarded for the purposes of the Tax Acts, or
 - a (charitable) body which has been granted an exemption from tax for the purposes of *section 207*.

“specified person” is the recipient of the relevant payment. In the case of a partnership which is in receipt of a relevant payment, each individual partner is a specified person.

Amount of a relevant payment

The amount of a relevant payment, which is subject to a deduction of tax, is the amount of the payment before the tax is deducted. (2)(a)

The appropriate tax referable to an accounting period or a basis period for a year of assessment is the appropriate tax deducted from all relevant payments which are taken into account in computing the specified individual’s profits or gains for that period. (2)(b)

As a transitional arrangement to deal with the change to the calendar year basis of assessment from 2002, where a 12 month period ending between 1 January 2002 and 5 April 2002 is the basis period for both the short tax “year” 2001 and the tax year 2002, the period in question will be treated for Professional Services Withholding Tax (PSWT) purposes, as the basis period for the short tax “year” 2001 only. This ensures that the taxpayer will get credit for PSWT deducted in that 12 month period against income tax payable for the short tax “year” 2001. The credit is not deferred to the tax year 2002. (3)

521 Accountable persons

Summary

This section sets out the persons who, or bodies which, are accountable persons and who, or which, deduct tax from payments made by them in respect of professional services. Included are Government Departments, local authorities, the Health Service Executive, etc. The list of accountable persons may be added to or restricted, as necessary, by way of Regulations. Such Regulations have to be approved, in advance, by the Dáil.

Details

Accountable person

“accountable person” is a person or body listed in *Schedule 13*. (1)

Subsidiaries and Joint Ventures

Where any of the accountable persons listed in *Schedule 13* is a body corporate, any subsidiary of that body corporate which is resident in the State is also an accountable person and is, therefore, obliged to operate the scheme of withholding tax when making payments for professional services rendered to it. (2)

Where one or more accountable persons control the composition of the board, hold more than half of the nominal value of the share capital or hold more than half the voting rights, then that body will also be an accountable person. The principal type of structure which this is intended to encompass is 50/50 joint ventures between two accountable persons.

Regulations

The Minister for Finance may extend or restrict the meaning of “accountable person” by Regulation by adding further persons to the list or deleting persons from it. (3)

A draft of such a Regulation must be laid before Dáil Éireann and the actual Regulation cannot be made until a resolution to approve the draft has been passed by the Dáil. (4)

522 Obligation on authorised insurers

An authorised health insurer is obliged, where a claim under a contract of insurance has been submitted and accepted, to discharge that claim, in so far as it relates to a practitioner’s fees from professional services in respect of relevant medical expenses by paying the practitioner directly, unless *section 529A* applies on a payment to a partnership.

Where the medical practitioner was providing the services as an employee, rather than on his or her own account, then the authorised health insurer should discharge the claim directly to the employer.

This obligation facilitates a health insurer in deducting the withholding tax from such payments.

The subscriber or member is indemnified against any breach of contract by a practitioner where the health insurer pays that practitioner directly.

523 Deduction of tax from relevant payments

Summary

This section is the basic charging provision in the scheme of withholding tax from payments for professional services. It obliges an accountable person to deduct appropriate tax when making relevant payments. It also ensures that there can be no question of breach of contract on account of such deduction.

Details

Deduction of tax

An accountable person is obliged to deduct appropriate tax from relevant payments. No question of a breach of contract can arise on account of such deduction. This is achieved by providing that the specified person, or the partnership where *section 529A* applies, is to accept such deduction and the accountable person, or a member or subscriber on whose behalf a health insurer makes a payment in respect of practitioners' "fees" for professional services which give rise to relevant medical expenses, is discharged of so much money as it represented by the deduction as if that sum had actually been paid. (1)

Refund of excess fees paid

If a subscriber or member has paid any amount to a practitioner or a partnership, or a person acting on the practitioner's behalf or on the partnership's behalf, the practitioner / partnership must make a refund to the subscriber or member if the aggregate of the amount paid by the subscriber or member and the amount of benefit paid by the health insurer exceeds the amount of the practitioner's fee. (2)

Regulations

The Minister for Finance may make any regulation he/she considers necessary to secure the smooth operation of the withholding tax scheme in relation to payments made by health insurers. (3)(a)

Such regulations may set out the circumstances and manner in which a practitioner may demand or a subscriber or member may make, a payment (other than a relevant payment) of any amount for professional services which gives rise to relevant medical expenses and which are provided to the subscriber or member by a practitioner.

The regulations may provide for the indemnification of the subscriber or member against any charge of breach of contract being laid by a practitioner in respect of relevant medical expenses or as a result of any actions carried out or not carried out by the subscriber or member under this Chapter or the regulations made under this subsection.

Every regulation made under this subsection must be laid before the Dáil as soon as possible and are to be lawful unless a resolution annulling the regulation is passed by the Dáil within 21 sitting days of the Regulation being laid. If such a resolution is passed it will not affect the validity of any action carried out or not carried out by reference to the regulation in the intervening period. (3)(b)

No such regulations have been made to date.

Computation of profits or gains

The provisions of the Tax Acts relating to the computation of profits or gains are not affected by the deduction of appropriate tax from relevant payments. The gross amount of such payments is, therefore, included in computing a specified person's profits or gains for tax purposes. However, the amount of appropriate tax is available for set-off against the ultimate tax liability on such profits or gains (under *section 526*). (4)

524 Identification of specified persons and submission of payment notifications

Summary

This section is an administration measure for the deduction scheme. It provides a process for the identification of specified persons and for the submission of payment notifications.

Details

A specified person, other than in the case of a partnership where the payment is made in accordance with *section 529A*, is obliged to supply the following information to an accountable person — (1)

- if he/she is an Irish resident or if he/she has a permanent establishment or fixed base in the State —
 - his/her income tax or corporation tax number, and
 - his/her value-added tax registration number if the relevant payment includes an amount in respect of value-added tax,
- if the specified person is non-resident or does not have a permanent establishment or fixed base in the State,
 - his/her country of residence
 - his/her tax reference in that country, and
 - his/her address and contact details

Where a relevant payment is made to a partnership, under *section 529A*, the precedent partner must give the partnership's tax number to the accountable person. Tax number in relation to a partnership is defined as— (2)

- (i) the registration number allocated by the Revenue Commissioners in relation to value-added tax, or any other tax, or the reference number stated on any return, form or notice issued by the Revenue Commissioners in relation to the partnership, or
- (ii) where appropriate, the tax reference of the partnership in another country.

An accountable person can ask the specified person / precedent partner to provide evidence from the Revenue Commissioners to support the veracity of the tax number supplied. (3)

An accountable person to whom a specified person or precedent partner has supplied a tax number, must, on making a relevant payment, submit to the Revenue Commissioners, a 'payment notification' using the PSWT service, specifying— (4)

- the name and address of the person / partnership to whom the payment was made,
- the person's / partnership's tax reference,
- the amount of the relevant payment,
- the amount of the appropriate tax deducted from that payment, and
- the date on which the payment was made, and,
- such other information as may be required by the Revenue Commissioners.

Where an accountable person is aware or becomes aware that a payment notification submitted in respect of a relevant payment contains an error or omission or was not (5)

required, and the accountable person discovers that error or omission before the date on which their annual return is required to be made, they are obliged:

- (a) to cancel the payment notification and, where required, submit a further payment notification, or,
- (b) amend the payment notification.

When an accountable person submits a payment notification, the PSWT service will provide the accountable person with a reference number referred to as a ‘payment notification reference number’. This number is deemed to be an acknowledgement issued by the Revenue Commissioners. (6)

Where an accountable person has submitted a payment notification and, if necessary, made any amendments in accordance with **subsection (5)**, the accountable person shall provide the specified person, or the precedent partner as the case may be, with the following details by electronic or other means: (7)

- (i) the name and tax reference number of the accountable person, (7)(a)
- (ii) the gross amount of the relevant payment,
- (iii) the amount of tax deducted from the payment,
- (iv) the date of the payment.

If requested by the specified person or precedent partner, the accountable person must provide them with the payment notification reference number issued by the Revenue Commissioners in respect of that payment. (7)(b)

The Revenue Commissioners may make details of the information contained in a payment notification available to a specified person or the precedent partner in that partnership, as the case may be, by electronic or other means. (8)

525 Returns and collection of appropriate tax

Summary

This section outlines the processes for the filing of returns and the paying over by accountable persons to the Collector-General of all amounts of appropriate tax deducted by them from relevant payments.

Details

An accountable person is obliged to remit to the Collector-General all amounts of appropriate tax deducted from relevant payments during an income tax month. This must be done within 23 days from the end of every income tax month. (1)

Each such remittance must be accompanied by a return giving the particulars required by the return. (2)

An accountable person is obliged to submit a return even in respect of an income tax month in which no relevant payments were made. (3)

Every return must be made on a form prescribed by the Revenue Commissioners and must contain a declaration that the return is correct and complete. (4)

A return must be made by electronic means and the relevant provisions of **Chapter 6 of Part 38** apply. (4A)

The Collector-General issues a receipt to an accountable person in respect of the total appropriate tax remitted for an income tax month. (5)

The assessment, collection and recovery provisions that relate to the subcontractors tax under *Chapter 2* of *Part 18* apply to the assessment, collection and recovery of appropriate tax. (6)

An accountable person is required to submit an annual return to the Collector-General by the 23 February following each tax year containing the following details: (7)

- (a) the total amount of appropriate tax that the accountable person was liable to deduct from relevant payments during that year,
- (b) the total amount of appropriate tax remitted to the Collector-General during that year,
- (c) any amounts of appropriate tax owed to the Collector-General in respect of relevant payments made during that year.

Accountable persons are required to submit a one-off return to the Collector-General on the 23rd day of the month following the commencement of *section 13* of the *Finance Act 2020*, by the Minister. The return covers the period 1 January 2021 to the date of commencement and should include details of: (8)

- (a) the amount of relevant payments made to each specified person or partnership,
- (b) the amount of appropriate tax which the accountable person was liable to deduct from the relevant payments made to each specified person or partnership,
- (c) the amount of appropriate tax remitted by the accountable person during the period,
- (d) any other particulars that may be required by the return.

526 Credit for appropriate tax borne

Summary

This section enables a specified person (individual or company) to have appropriate tax set off against that person's tax liability.

A specified person who is within the charge to income tax may set-off the tax deducted during a year of assessment against his/her income tax liability for that year. In the case of a specified person who is liable to corporation tax, the set-off is made against the corporation tax liability of the accounting period in which the relevant payment is made.

In either case, where the appropriate tax for the period exceeds the liability the excess may be refunded.

Details

A specified person, who is chargeable to corporation tax, and who has suffered appropriate tax on relevant payments taken into account in computing profits or gains of an accounting period, may (subject to the limitation that appropriate tax may only be refunded once) claim to have the appropriate tax (as arrived at in accordance with *subsection (4)*) set off against the corporation tax chargeable for that accounting period. (1)

Where the appropriate tax is greater than the corporation tax liability, the excess is to be refunded.

A specified person, who is within the charge to income tax, and who has suffered appropriate tax in a basis period for a year of assessment, may (subject to the limitation that an amount of appropriate tax may only be refunded once) claim to have the appropriate tax, set off against his/her income tax chargeable for that year of assessment. (2)

A specified person must provide the following information to the Revenue Commissioners when making a claim for set off or a refund of appropriate tax in respect of each amount of appropriate tax included in the claim where requested to do so by the Revenue Commissioners; (3)

- (a) the relevant payment notification reference number, and,
- (b) where the claim is made by a partner in a partnership, a statement showing the apportionment that applies to the relevant payment and appropriate tax in respect of that partner.

The amount, which may be set off or repaid under this section, is limited to the amount included in the appropriate payment notifications and not already repaid under any of the provisions of this Chapter. (4)

References to income tax chargeable and to corporation tax chargeable should be interpreted in accordance with *section 959A*. (5)

527 Interim refunds of appropriate tax

Summary

This section makes provision for interim refunds of appropriate tax in certain cases. A claim for an interim refund or offset (under *section 960H*) may be made in the cases of —

- an ongoing business,
- a start up business, and
- cases of particular hardship.

Details

Ongoing businesses

A specified person may make a claim for an interim refund or offset on account of appropriate tax referable to an accounting period or to a basis period for a year of assessment, if the person satisfies the following conditions — (1) & (2)

- the profits of the accounting period or basis period immediately before that which is the subject of the claim, must have been finalised and the tax on such profits paid, and
- the claim must be supported by the appropriate payment notification reference number in respect of the payment notification made in accordance with section 524(4) or in the case of a partner, the documents referred to in *section 529A(3)*.

Any amount of PSWT in excess of the tax liability for the prior year and not refunded under this chapter is available for offset against other tax liabilities under *section 960H*. Any amount left after the offset against other taxes under *section 960H* is then available for a refund under this section. (3)

Start-up businesses

The conditions for ongoing businesses would not permit any interim refund or offset in the case of a specified person who had only started business, as such a person would not have any profits or tax payable for a preceding accounting period or basis period. (4)

However, where appropriate tax is deducted in a period in which a trade or profession is set up and commenced, the inspector is authorised to make an interim refund or offset equal to the lesser of two amounts.

The first amount is an amount determined by applying tax at the standard rate of income tax to a sum derived by the formula “E x A/B x C/P”.

The formula seeks to identify an amount of business expenditure, which may be regarded as having been laid out to earn the income represented by the relevant payments. This is achieved firstly by applying to the estimated total expenditure of the accounting period or the basis period (“E” in the formula) the proportion that the income derived from relevant payments (“A” in the formula) bears to the total of the income derived from all receipts (“B” in the formula) and then by applying a time apportionment formula given by dividing the number of months in the claim (“C” in the formula) by the number of months or fractions of months (“P” in the formula) in the accounting period or basis period.

An inspector is to make such estimates, as are required by the formula to the best of his/her knowledge and belief and in accordance with the information available to him/her.

The second amount is the amount of the actual appropriate tax included in the vouched claim.

Hardship

Where a person claims and proves hardship, the Revenue Commissioners may waive (5) any one or more of the conditions for offsets or interim refunds laid down in the section and may authorise the inspector to make an offset or interim refund or a further offset or further interim refund. The Commissioners are required to determine an amount of an offset or interim refund or further offset or further interim refund which they consider to be just and reasonable having regard to all the circumstances of the case and taking account of the objects and intentions of the earlier provisions of this section.

Income of a specified person

“the income of a specified person” for an accounting period or a basis period for a year (6) of assessment, is the total of all amounts received or receivable by the person which are taken into account in computing the profits or gains of the person’s trade or profession for that period. In this regard, the term “which are taken into account” covers the case of sums included a debtors or other on an accruals basis in the accounts of that person.

528 Apportionment of credits or interim refunds of appropriate tax

This section provides that where a claim to set-off (*section 526*) or offset or interim refund (*section 527*) relates to more than one specified person (for example, a partnership or a joint venture) there is to be an appropriate apportionment of the set-off or interim refund between those persons.

Normally the apportionment is to be made in the same proportion as a like amount of profits would be apportioned between the persons concerned.

529 Limitation on credits or interim refunds of appropriate tax

This section prohibits the refunding of appropriate tax more than once in respect of the same amount and secures that where an interim refund is made, the amount of tax refunded is not available as a credit against income tax or corporation tax.

529A Partnerships

Summary

This section provides an administrative framework for relevant payments to be made for professional services provided by partnerships.

Detail

Where a professional service is provided by a partnership, then the accountable person (1) may make that payment (including payments for medical services under *section 522*) to the partnership.

Where a relevant payment is made to a partnership, then for the purposes of *section 520(2), 526 and 527*: (2)

- The relevant payment is deemed to have been made to each partner and
- The tax deducted is apportioned between the partners in the same ratio.

Where a payment has been made to a partnership and the payment and the tax has been (3) apportioned between the partners, the precedent partner shall give each partner a statement giving details of the payment, the tax, the apportionment etc. as well as the details provided to the precedent partner by the accountable person in accordance with *section 524(7)*.

The statement from the precedent partner to the partners can be in writing or by (4) electronic means.

CHAPTER 1A

Payments in respect of non-resident artistes by companies qualifying for relief for investment in films

Overview

Chapter 1A of Part 18 provides for a scheme of tax deduction (known as film withholding tax) from payments, to non-residents artistes from outside the EU/EEA, made by companies who qualify for film tax credit under *section 481*. *Sections 529B to 529M* provide for the new withholding tax, which is subject to a commencement order by the Minister for Finance.

529B Interpretation (Chapter 1A)

Summary

This section is concerned with the definitions and construction of certain terms for the purposes of the Chapter.

Details

In this Chapter-

(1)

“artiste” means an individual who provides artistic services.

“artistic services” means services provided by an artiste in giving a performance in a film, television recording or other audio visual work, which at some stage is made available to the public. This will primarily refer to actors and voice over artists in animated work. Artistic services does not extend to administrative or support staff such as cameramen for a film, producers, film directors, choreographers, technical staff etc. Where there is doubt as to whether an individual is providing artistic services it is necessary to review the overall balance of the activities of the person concerned.

“appropriate tax” in relation to a relevant payment is tax at the standard rate.

“certificate of deduction” is a certificate issued in accordance with *section 529D(2)* by the qualifying company to a specified person of foot of a relevant payment. This certificate will show relevant details regarding the specified person, details of the payment made and tax deducted.

“chargeable period” is a period of one or more months in respect of which the qualifying company is required to make a return to the Collector-General.

“due date” is the day that is 23 days after the end of a chargeable period.

“EEA Agreement” is the agreement on the European Economic Area.

“EEA state” is a state which is a contracting party to the EEA agreement.

“electronic means” has the same meaning as in *section 917EA(1)*.

“income tax month” means a calendar month.

“non-resident” means an individual who is neither resident nor ordinarily resident in the State, in another Member State or in another EEA state.

“qualifying company” has the same meaning as in *section 481*.

“relevant payment” means any payment made by or on behalf of a qualifying company in respect of artistic services provided by a non-resident artiste. It includes payments which are made to third parties such as an agent or a company, it also includes payments for any rights (such as image rights) held by or on behalf of or in respect of the non-resident artiste. However it excludes emoluments to which *Chapter 4 of part 42* applies (payments within the PAYE system).

Article 17 of Double Taxation Treaty between Ireland and USA (1997) provides that income derived by a resident of a Contracting State as an entertainer, such as motion picture or television artiste from his personal activities as such exercised in the other

Contracting State, which income would be exempt from tax in that other Contracting State under the provisions of **Articles 14** (Independent Personal Services) **and 15** (Dependent Personal Services), may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty thousand United States dollars (\$20,000) or its equivalent for the taxable year concerned. There are no equivalent provisions in any other Double Taxation Agreements to which the State is a party to.

“Revenue officer” means an officer of the Revenue Commissioners.

“specified person” is a person to whom a relevant payment is due.

For the purposes of this Chapter any reference to the amount of the relevant payment means the amount of that payment as if no appropriate tax were required to be deducted from that payment. (2)

529C Deduction of tax from relevant payments

Summary

A qualifying company making a relevant payment is obliged to deduct tax at the standard rate. However a specified person shall have the amount of relevant payment, which is to be subject to the withholding tax, reduced by expenditure incurred in the provision of artistic services if that expenditure would not have been disallowed by **section 81**. Penalties will apply where the qualifying company fails to deduct the withholding tax.

Details

A qualifying company making a relevant payment shall deduct tax at the standard rate. The specified person will allow such a deduction. (1)

However where the specified person has incurred expenditure, which was not reimbursed or is not reimbursable, the specified person may make a claim to the Revenue Commissioners. Where a Revenue officer is satisfied that the amount of expenditure claimed would not have been disallowed under **section 81**, then a Revenue officer shall issue a notification to the qualifying company specifying the deduction to be made from the relevant payment. The qualifying company shall deduct the appropriate tax from the relevant payment having allowed the deduction on the notification issued by Revenue. (2)

Where a qualifying company fails to operate the withholding tax the qualifying company shall be liable for the tax which should have been deducted and a maximum penalty of €5,000. (3)

529D Identification of, and issue of documents to, specified persons

Summary

Qualifying companies will issue a certificate of deduction to specified person upon making a relevant payment from which tax has been withheld.

Detail

This section sets out that a specified person shall furnish to a qualifying company certain particulars regarding their residence, address and tax reference. (1)

The qualifying company on making a relevant payment shall give a certificate of deduction to the specified person, which will show: (2)

- The name, address and tax reference of the specified person.
- The amount and date of the payment and the tax deducted from the payment.

529E Returns by qualifying company

Summary

Qualifying companies are obliged to make a return to Revenue giving details of relevant payments made.

Detail

This section provides that on or before the due date, a qualifying company shall make a return to the Collector-General of all relevant payments made during a return period. (1)

The return shall be made by electronic means. (2)

Where a qualifying company fails to submit a return, the qualifying company shall be liable for a maximum penalty of €5,000. (3)

The section also includes provision for the making of regulations governing the making of a return by a qualifying company. (4)

529F Payment of tax by qualifying company

This section provides that tax due for a return period shall be remitted by the qualifying company on or before the due date relating to that period.

529G Assessment by Revenue officer

Summary

A Revenue officer may raise an assessment or amended assessment on a qualifying company. An assessment or amended assessment may be appealed by the qualifying company.

Detail

This section provides that where a Revenue officer has reason to believe that a qualifying company has not declared the correct liability for a period, the officer may make an assessment on the qualifying company covering one return period or a number of consecutive periods. (1)

The tax specified on the assessment shall be due and payable by the qualifying company. (2)

The Revenue officer may amend an assessment and may issue a notice or amended notice by electronic means. The provisions of *Chapter 5 of Part 41A* apply to assessments made under this section. (3)

A qualifying company aggrieved by an assessment has a right of appeal subject to making a return or returns for the period assessed and paying the tax declared and interest due. (4)

529H Interest on late payment of appropriate tax

Summary

This section provides that interest shall be payable to the Collector-General on overdue tax.

Detail

Section 529H specifies that interest is payable by the qualifying company to the Collector-General on overdue payments. This section sets out that the interest due will be calculated on a daily basis at the rate set out in *section 1080*. (1)

It also provides that *subsections 3 to 5 of section 1080* shall apply to the interest payable under this subsection. (2)

529I Repayment of appropriate tax

Summary

No repayment of appropriate tax withheld may be made to a specified person except where a determination is made by Revenue in respect of allowable expenditure, which was not reimbursed or is not reimbursable, which was incurred in the provision of artistic services. An appeal against a Revenue determination may be made to the Appeal Commissioners.

Detail

Subject to paragraph (d) of this section, no repayment of appropriate tax withheld may be made to a specified person. (1a)

The amount of a relevant payment shall be deemed to be income of the specified person and chargeable to income tax under Case IV of Schedule D. (1b)

Section 59 shall apply as if a reference to appropriate tax deductible under this Chapter were contained in paragraph (a) of that section. (1c)

A specified person shall be entitled in computing chargeable income to a deduction in respect of expenditure incurred in the provision of artistic services where the expenditure is not reimbursed or is not reimbursable. Where expenditure is incurred a claim may be made to the Revenue Commissioners. On receipt of a claim a determination will be made on an amount that would not have been disallowed under **section 81**. A repayment of the amount of appropriate tax charged on the amount determined shall be made to the specified person and a notification shall issue to the specified person stating the amount of the repayment. A claim may not be made under this section in respect of expenditure incurred and already allowed under **section 529C(2)**. (1d)

On receipt of a notice of determination a specified person who is aggrieved by the determination may appeal the determination to the Appeal Commissioners. (2)

The Appeal Commissioners shall hear an appeal as if it were an appeal against an assessment to tax and the provisions relating to such appeals and to the statement of a case for the opinion of the High Court shall apply. (3)

The Revenue Commissioners shall make regulations for the purposes of this section and these regulations may include provisions for the submissions of claims and appeals under this section. (4)

529J Obligation on specified person

A specified person shall furnish to a qualifying company all information and particulars required by the qualifying company to enable the qualifying company to comply with this Chapter.

529K Record keeping and inspection of records

Summary

A qualifying company is obliged to keep full records relating to relevant payments made and to make these available for inspection, on request to an authorised Revenue officer.

Detail

A qualifying company is obliged to keep and maintain a record of all relevant payments made and this includes the name address and tax reference of the specified person or artiste in receipt of the payment, the amount of the payment, the date of the payment and the amount of tax deducted from the payment. (1)

The obligations contained in **subsections (3) and (4) of section 886** apply to records created or maintained for the purposes of this Chapter. (2)

Any person, or employee of a person, who has made or received a relevant payment shall produce, on request, to a Revenue officer for inspection all documents and records relating to relevant payments. A revenue officer, who exercises powers or performs duties under this section, shall be authorised in writing by the Revenue Commissioners to do so and the officer shall on request produce evidence of the officer's authorisation. (3)

529L Civil penalties

Chapter 3A of Part 47 applies to a penalty arising under *section 529C(3) or 529E(3)*.

529M Miscellaneous

Summary

This section contains miscellaneous provision in relation to the making of Regulations, the authority of another person to act on behalf of a qualifying company and the authority of Revenue officers to carry out functions under this Chapter.

Detail

Regulations made under this Chapter are required to be laid before Dáil Éireann as soon as may be after they are made. A resolution to annul the Regulations may be passed by Dáil Éireann within the next 21 sitting days for Dáil Éireann, but without prejudice to the validity of anything done previously under the Regulations. (1)

Anything to be done under this Chapter by a qualifying company may be done by another person acting under the authority of the qualifying company and this Chapter will apply as if it had been done by the qualifying company. Unless it is proven otherwise anything purporting to be done by or on behalf of a qualifying company shall be deemed to have been done by the qualifying company. (2)

Other than the making of Regulations anything to be done by or under this Chapter by the Revenue Commissioners may be done by any Revenue officer or through electronic systems put in place by the Revenue Commissioners. (3)

CHAPTER 2

Payments to subcontractors in certain industries

Overview

Chapter 2 of Part 18 provides for a scheme of tax deduction (known as relevant contract tax (RCT)) from payments to subcontractors in the construction, forestry and meat processing industries. Tax is deducted from payments made to subcontractors at a rate which reflects their tax compliance status. ***Section 531 sets out the statutory provisions governing payments to subcontractors prior to 1 January 2012. Sections***

530A to 530V provide for a new e-based scheme of relevant contracts tax (RCT) which was introduced by order of the Minister for Finance with effect from 1 January 2012.

Reference should also be made to the provisions of **section 904** which provides authorised Revenue officers with powers of inspection (including the right of entry onto, and search of, premises) in connection with the scheme of payments to subcontractors in certain industries.

530 Interpretation (Chapter 2)

Definitions

Some of the definitions in **section 530** apply solely to the scheme of RCT which operated in respect of payments made to subcontractors prior to 1 January 2012, some other definitions apply solely to the new scheme of RCT which was introduced with effect from 1 January 2012 while others have common application to both schemes of RCT.

“certificate of authorisation” is the certificate issued by the Revenue Commissioners to a subcontractor and which allows a principal contractor to apply for a relevant payments card from Revenue, on receipt of which the principal contractor can make payments to the subcontractor in respect of construction, forestry or meat processing contracts without deduction of tax. Such a certificate is valid for such period as the Revenue Commissioners may, by regulations, provide. (1)

“certificates of deduction” means a certificate issued under **section 531(11)**.

“certified subcontractor” is a subcontractor for whom the principal holds, at the time of making a payment under a relevant contract to the subcontractor, a relevant payments card for the year in which the payment is made and for whom the principal has not received a notice from Revenue cancelling the subcontractor’s certificate of authorisation issued under **subsection (11) of section 531**.

“chargeable period” has the same meaning as in **section 321(2)**.

“construction operations” are —

- the construction, alteration, repair, extension, demolition or dismantling of buildings or structures;
- the construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including walls, roadworks, power lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage;
- 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, burglar or fire protection;
- the installation, alteration or repair in or on any building or structure of systems of telecommunications;
- 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;
- operations which form an integral part of, or are preparatory to, or are for rendering complete such operations as are described above, 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;

- 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 or exploitation of natural resources;
- the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the preceding operations.

“the contractor” has the meaning assigned to it by the definition of “relevant contract”.

“deducted tax” has the meaning given to it in *section 530P*

“deduction summary” in relation to a return period, means a statement (adjusted as appropriate in accordance with regulations made under this Chapter) which is issued to a registered principal setting out, in summary form, details in respect of each relevant payment notified by that principal and the aggregate amount of tax payable by a principal in respect of those payments.

“designated area” has the meaning assigned to it by section 13(1), which is an area designated by order under section 2 of the Continental Shelf Act 1968.

“director” means, in relation to a body corporate, where the affairs are managed by a board of directors or similar body, a member of that board or body; where the affairs are managed by a single director or similar person, that director or person and; where the affairs are managed by the members themselves, a member of the body corporate. It also includes any person who is or has been a director.

“due date”, in relation to a return period, means 14 days after the end of that return period, or 23 days after the end of that return period where the return for that period is made by electronic means and the amount of tax that the person was liable to remit to the Collector-General is made by such electronic means as are required.

“electronic means” has the same meaning as in *section 917EA(1)*.

“forestry operations” are —

- the planting, thinning, lopping or felling of trees in woods, forests or other plantations;
- the maintenance of woods, forests and plantations and the preparation of land, including woods or forests which have been harvested, for planting;
- the haulage or removal of thinned, lopped or felled trees;
- the processing (including cutting or preserving) of wood from thinned, lopped or felled trees in sawmills or other premises;
- the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the preceding operations.

“income tax month” means a calendar month.

“meat processing operations” are —

- the slaughter of cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese;
- the catching of domestic fowl, turkeys, guinea-fowl, ducks or geese;
- the division (including cutting or boning), sorting, packaging (including vacuum packaging), rewrapping or branding of, or the application of any other similar process to, the carcasses or any part of the carcasses (including meat) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese;

- the application of methods of preservation (including cold storage) to the carcasses or any part of the carcasses (including meat) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese;
- the loading or unloading of the carcasses or part of the carcasses (including meat) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese at any establishment where the preceding operations are carried on;
- the haulage of the carcasses or any part of the carcasses (including meat) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese from any establishment where the preceding operations are carried on;
- the rendering of the carcasses or any part of the carcasses of slaughtered cattle, sheep, pigs, domestic fowl, turkey, guinea fowl, ducks or geese;
- the cleaning down of any establishment where any of the preceding operations are carried on;
- the grading, sexing and transport of day-old chick of domestic fowl, turkeys, guinea-fowl, ducks or geese;
- the haulage for hire of cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese or of any of the materials, machinery or plant for use, whether used or not, in any of the preceding operations.

“NAMA” and “NAMA group entity” have the same meanings, respectively, as they have in the National Asset Management Agency Act 2009.

“principal” is the person to whom a subcontractor is liable to for —

- carrying out relevant operations (that is, construction, forestry or meat processing operations);
- answering any questions in relations to the carrying out of such operations by others, whether by contract or other arrangements made with, or to be made with, the contractor;
- furnishing his/her own labour or the labour of others in carrying out such operations.

“proprietary director” is a director of a company who is either the beneficial owner of, or is able directly or indirectly to control, more than 15 per cent of the ordinary share capital of the company.

“proprietary employee” is an employee of a company who is either the beneficial owner of, or is able directly or indirectly to control, more than 15 per cent of the ordinary share capital of the company.

“qualifying period” is the 3 year period, or such shorter period as the inspector may allow, ending on 31 December in the year preceding the year of assessment which is the first year of assessment of the period, in respect of which a certificate of authorisation is sought together with the period, if any, from the 1 January in the first year of assessment to the date on which the application for the certificate is received by the Revenue Commissioners.

“registered principal” means a principal included in a register of principals kept and maintained by the Revenue Commissioners for the purposes of this Chapter.

“relevant contract” is a contract, other than a contract of employment, or a contract between NAMA and a NAMA group entity or a contract between a NAMA group entity and another NAMA group entity, under which a person (“the contractor”) is liable to another person (“the principal”) to —

- carry out relevant operations (that is, construction, forestry or meat processing operations),

- be answerable for the carrying out of such operations by others, or
- furnish his/her own labour or the labour of others in carrying out such operations or to arrange for the labour of others to be furnished for the carrying out of such operations.

Where on or after 15 May, 1996, relevant operations are performed collectively by a gang or group of subcontractors, including persons in partnership, a separate relevant contract is deemed to exist between each member of the gang or group and the principal, despite the fact that any payment in respect of the work done under the contract is made to one member of the gang or group or to some other person on behalf of the gang or group.

“relevant operations” are construction operations, forestry operations or meat processing operations, as appropriate.

“relevant payment” means a payment made by a principal to whom *section 530A* applies in respect of a relevant contract.

“relevant payments card” is a card issued to a principal to enable him/her to keep a record of payments made to a subcontractor. The principal is obliged to apply to the Revenue Commissioners for a relevant payments card where the subcontractor produces a current certificate of authorisation.

“relevant tax deduction card” is a card on which a record of the tax deducted from subcontractors is kept.

“return period”, in relation to the principal concerned, means the period specified in a notice in writing given by the Revenue Commissioners to that principal, being a period of one or more income tax months, in respect of which the principal is required under *section 531(3A)* to make a return to the Collector-General.

“Revenue officer” means any officer of the Revenue Commissioners.

“subcontractor” means the contractor under a relevant contract where the principal under that contract is a person to whom *section 530A* applies.

“technology systems failure” means circumstances in which the electronic system put in place by the Revenue Commissioners for the operation of RCT is not functioning or is not functioning properly at any particular time such that a person is unable to comply with an obligation under this Chapter, or regulations made under this Chapter, or circumstances where a person is unable to use the electronic system at any particular time because of a general or partial systems failure of an internet service provider or of an electricity service provider, occurring in the general locality of the person’s place of business.

“uncertified subcontractor” is a subcontractor who is not a certified subcontractor.

“unreported payment notification” means a notification which has not been made to the Revenue Commissioners in accordance with 530C and where a deduction authorisation has not been issued in accordance with section 530D.

Corporation tax

Unless the context otherwise requires references to income tax include references to corporation tax, and references to a year of assessment include references to an accounting period. (2)

Proprietary directors and proprietary employees

For the purpose of determining whether a proprietary director or a proprietary employee (3) is the beneficial owner of, or is able to control directly or indirectly, more than 15 per cent of the ordinary share capital of the company, any shares so owned or controlled by —

- a spouse, a civil partner, a minor child or a minor child of the civil partner, of the director or employee, or
- a trustee of a trust established for the benefit of the director or employee or their spouses, civil partners, minor children or minor children of their civil partner,

are deemed to be owned or controlled by the director or employee and not by any other person.

Where relevant operations under a relevant contract are carried out in the State and with effect from 1 January 2016 designated areas of the Continental Shelf, then the relevant contracts tax (RCT) system applies regardless of whether or not (4) —

- either or both the principal and subcontractor who are party to the relevant contract are non-resident in the State,
- either or both the principal and the subcontractor are not carrying on a trade or business in the State through a branch, agency etc which would expose them to a charge to Irish tax,
- the contract is executed outside the State,
- payments under the contract are made outside the State.

530A - 530V New Scheme of Relevant Contracts Tax

Summary

The following is an overview of how the new scheme of RCT which was introduced from 1 January 2012 will work. Communications between Revenue and principals will be by electronic means.

- Upon entering into a relevant contract, the principal will advise Revenue of the subcontractor and contract details, including confirmation that the contract is a labour only contract where that is the case.
- Immediately before making a payment to the subcontractor, the principal will advise Revenue of details of the payment.
- Revenue will issue a deduction authorisation setting out the rate of tax and the amount of tax to be deducted, if any. Where tax is deducted, the principal will give a copy of that deduction authorisation, or appropriate details from that deduction authorisation, to the subcontractor with the payment.
- Credit for the tax deducted will be recorded on the subcontractor's tax record. That credit will be available for offset against other tax liabilities of the subcontractor or for repayment annually.
- On a monthly or quarterly basis, Revenue will issue to the principal, a transaction summary for the return period. If the summary correctly reflects transactions, the principal pays the tax due. In that circumstance, the return will be deemed to have been made by the principal.
- If the summary requires amendment, the principal will amend it.
- Revenue may assess the liability of a principal where returns (including deemed returns) appear not to have been correct. A notice of assessment will issue in such cases and appeal rights exist.

Details

Section 530A defines the categories of principal to whom RCT applies. This section specifies the same categories of principal as are specified in **section 531 (under the scheme of RCT which applied in respect of payments to subcontractors prior to 1 January 2012)** but includes a new definition - “a person who carries out the installation, alteration or repair in or on any building or structure of systems of telecommunications”

Section 530B sets out the obligations on a principal when notifying the Revenue Commissioners of having entered into a relevant contract. Before notifying Revenue, principals must satisfy themselves as to the identity of subcontractors and, for this purpose, principals must require production of documentary evidence and retain details of the relevant evidence. It also includes provision for the making of regulations in relation to the notification of a contract by a principal.

Section 530C sets out the obligations on a principal in terms of notifying the Revenue Commissioners of his or her intention to make a payment under a relevant contract. It also includes provision for the making of regulations in relation to the notification of a payment by a principal.

Section 530D provides for the issuing of a deduction authorisation by the Revenue Commissioners authorising a principal to deduct tax from a relevant payment. It also provides for the issue by Revenue of a deduction summary, effectively a summary of deduction authorisations issued during the return period to a named principal.

Section 530E sets out the circumstances in which the Revenue Commissioners will authorise a principal to deduct tax at the various rates- zero, the standard rate or 35%. It also provides that the rate of deduction for a partnership will be determined on the basis of the highest rate that would apply to any of the individual partners in a partnership.

Section 530F sets out the obligations on principals to deduct and to pay tax to the Revenue Commissioners. This includes, for years up to and including 2014, an obligation to pay tax at 35% of the amount of a payment where for example payment is not notified to Revenue in advance of making the payment or an appropriate deduction is not made from the payment to the subcontractor. It provides for a maximum penalty of €5,000 in the event of non-compliance for these years. It also provides for adjustment of the tax liability of principals who have not complied with their obligations under the scheme. The penalty amount will not be affected by any adjustment to the tax liability. It also allows for Revenue to require contract details to be supplied where a principal gives notification of a previously unreported payment.

For 2015 and subsequent years, a revised scheme and penalties were introduced for principals who failed to operate RCT on payments to subcontractors. Penalties are now linked to the status of the subcontractor with penalties of 35%, 20%, 10% and 3% applying to the relevant payment. Where the subcontractor is not known to Revenue a penalty of 35% applies and for other categories of sub-contractors the penalty is linked to the status of the sub-contractor. Where the sub-contractor is compliant by reference to S530G the penalty rate is 3%. Where the sub-contractor is substantially compliant by reference to S530H the penalty rate is 10% and where a determination has been made by reference to section 530I and the sub-contractor does not come within either section 530G or section 530H the penalty rate is 20%. A principal is obliged to submit an unreported payment notification.

Where a payment is made to a subcontractor, the section also requires a principal to give the subcontractor a copy of the relevant deduction authorisation or details from the

deduction authorisation. This section also allows for payment to be made to a subcontractor in advance of notifying Revenue where a principal is unable to give advance notification due to a “persistent technology systems failure” (as defined in *section 530*).

Section 530G sets out the conditions that a subcontractor must satisfy to receive a payment under a relevant contract without deduction of RCT. These are, essentially, the ‘C2’ conditions that applied under *section 531* in respect of payments prior to 1 January 2012.

Section 530H sets out the conditions that a subcontractor must satisfy to qualify for the 20% deduction rate. The subcontractor must have complied ‘substantially’ with tax obligations.

Section 530I provides for determination by the Revenue Commissioners as to whether a subcontractor satisfies the ‘zero rate’ criteria of *section 530G*, the ‘standard rate’ criteria of *section 530H* or neither. The section provides an appeal mechanism for subcontractors aggrieved by a Revenue determination. It also removes the need for Revenue to make a determination (i) until 30 days after a previous determination; (ii) while an appeal is awaiting determination; or (iii) until 30 days after an appeal determination.

Section 530J requires the Revenue Commissioners to keep and maintain a register of principals for RCT purposes and obliges principals to register. It also includes provision for the making of regulations governing the registration of principals.

Section 530K provides that a principal shall make a return by electronic means to the Collector-General of all relevant payments made during a return period. A principal to whom a deduction summary has issued for the period will be deemed to have made such a return unless he or she is required to amend the details on record to properly reflect all payments made by the principal and so submits an amended return. The section also includes provision for the making of regulations governing the making of a return by a principal.

Section 530L provides that tax for a return period shall be due on the due date relating to that period; the 14th day of the following month or the 23rd day of the following month where a principal files and pays electronically.

Section 530M provides for the making of a late monthly or quarterly return or the amending of a return and that a principal who makes or amends a return after the due date for the period concerned shall be liable to a surcharge of €100. However, no amendment is allowed after the due date to the details of any payment which was the subject of advance notice to the Revenue Commissioners (i.e. a principal may only make such amendments before the due date). The section also includes provision for the making of regulations governing the making of a late return or the amending of a return.

Section 530N provides that where a Revenue officer has reason to believe that a principal has not declared his correct liability for a period, the officer may make an assessment on the principal covering one return period or a number of consecutive periods. A principal aggrieved by an assessment has a right of appeal subject to making a return or returns for the period assessed and paying the tax, interest and any surcharge declared.

Section 530O provides that, in computing profits or gains for the purposes of Schedule D, a subcontractor who suffers deduction of RCT from a payment, shall treat the payment as the amount actually received plus the RCT deduction.

Section 530P provides that RCT deducted shall be treated as a payment on account of income tax or corporation tax; that RCT deductions will be available for offset against other tax liabilities of a subcontractor; that RCT deductions which are not required to meet the income tax or corporation tax liability of a subcontractor, or are not required to meet other tax liabilities of a subcontractor will be available for refund, subject to the provisions of **section 865** governing the repayment of tax; that no amount of RCT deductions shall be treated as a payment on account, set off or refunded more than once; and that no amount of RCT deductions set off or refunded shall be treated as a payment on account.

Section 530Q provides that interest shall be payable to the Collector-General on overdue RCT.

Section 530R introduces a mechanism to ensure that members of a gang, group or partnership are properly identified for the purpose of determining their individual entitlement to credit for RCT suffered.

Section 530S requires a principal, prior to notifying the Revenue Commissioners of a payment, to obtain from the subcontractor a statement setting out details of the work giving rise to the payment and the cost of the work. It requires a subcontractor to keep and maintain records of all relevant payments and to supply a principal with all such information and particulars as are necessary for the principal to comply with the Chapter. The section also includes provision for the making of regulations governing the creation, keeping and retention of records by principals and subcontractors.

Section 530T requires principals and subcontractors to produce RCT records for inspection to a Revenue officer on request.

Section 530U allows a Revenue officer to give certain evidence by certificate in proceedings for the recovery of a penalty in connection with RCT and extends the penalty procedures of **Part 47** to a penalty under **section 530F**.

Section 530V contains miscellaneous provisions in relation to the making of regulations, the authority of another person to act on behalf of a principal, obligations following the death of a principal, the authority of Revenue officers to carry out functions under the Chapter and the application of RCT to payments to a liquidator or and receiver.

531 Payments to subcontractors in certain industries

Summary

Section 531 sets out the statutory provisions governing payments to subcontractors prior to 1 January 2012. Sections 530A to 530V provide for a new e-based scheme of relevant contracts tax (RCT) which was introduced by order of the Minister for Finance with effect from 1 January 2012.

This section obliges a principal contractor to deduct tax at the rate of 35 per cent from payments made to subcontractors unless the subcontractor produces a certificate (known as a “certificate of authorisation”) and the principal holds, at the time of making a payment under a relevant contract to the subcontractor, a relevant payments card for the year in which the payment is made in respect of which the limit, if any, on the amount that can be paid without deduction of tax, placed on the card has not been exceeded and for whom the principal has not received a notice from Revenue cancelling the subcontractor’s certificate of authorisation issued under **subsection (11)**. The Revenue Commissioners issue a certificate of authorisation where they are satisfied certain

conditions in relation to a subcontractor are satisfied. The principal contractor must remit the tax withheld to the Collector-General. The section provides for the making of regulations by the Revenue Commissioners governing the operation of the scheme and also includes conditions for the issue and cancellation of certificates of authorisation, provision for penalties for offences and an appeal procedure.

Details

Deduction of tax

Where any principal makes a payment to a subcontractor, the principal is required to deduct tax at the rate of 35 per cent from such payments and to pay the tax over to the Collector-General. It is to be noted that the obligation to deduct tax rests only on a person who is a contractor under another relevant contract or who is in business as a builder, land developer, meat processor or wood processor in their own right. The section does not apply as between a client and a contractor and does not, therefore, affect the ordinary householder. (1)

Persons obliged to deduct tax

The principal contractors who are obliged to operate the scheme are — (1)

- a person who, in respect of the whole or part of relevant operations to which the contract relates, is himself or herself the contractor under another relevant contract,
- a person carrying on a business which includes the erection of buildings (or a person connected with a company carrying on such a business),
- a person carrying on a business which includes the development of land within the meaning of *section 639(1)* (or a person connected with a company carrying on such a business),
- a person carrying on a business which includes the manufacture, treatment or extraction of materials for use (whether used or not) in construction operations (or a person connected with a company carrying on such a business),
- a person carrying on a meat processing business in premises approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1997 (S.I. No. 434 of 1997) or, as the case may be, the European Communities (Fresh Poultrymeat) Regulations, 1996 (S.I. No. 3 of 1996), (or a person connected with a company carrying on such a business),
- a person 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, (or a person connected with a company carrying on such business),
- a local authority or public utility society (this encompasses a society whose objects include the erection of houses or a body whose objects are wholly philanthropic and includes the provision of houses),
- a Government Minister,
- any board established by (or under) statute, or any board or body established by (or under) royal charter and funded wholly or mainly by the State,
- a person who carries on any gas, water, electricity, hydraulic power, dock, canal or railway undertaking.

A person is outside the scope of the scheme where in the course of that person's business he/she erects buildings or develops land for his or her own use or occupation or for the use or occupation of that person's employees. (2)

In general, a person will not be regarded as a principal by reason of that person's connection with a company of a type specified in the foregoing and will not, therefore, be required to operate RCT, where the person makes payments to a subcontractor engaged solely to carry out construction operations on the person's own business premises or private dwelling and so long as the person is not engaged in a construction type business. Where the person is engaged in a construction type business, the connected persons rule continues to apply unless the person is a company. (2A)

Gang or group of subcontractors

Where on or after 15 May 1996, a principal contractor makes a payment in respect of a construction, forestry or meat processing operation to one or more of a gang or group of persons or to some other person on behalf of the gang or group, then the principal contractor is treated as having made a payment to each individual member of the group or gang equal to their respective share. A gang or group is formed where a number of subcontractors come together to collectively perform a relevant contract for a principal. (3)

Making of monthly/quarterly returns

Certain persons are required to make monthly/quarterly returns of deductions made, including a nil return, if applicable, not later than the 14th day of the month following the return period and to remit any tax deductible. The Collector will authorise only certain principals to make quarterly returns. The Collector-General will issue either an individual receipt for the payment or a periodic statement of payments made in a specified period. (3A)

Where the return and remittance are both made by electronic means the due date is extended from the 14th to the 23rd of the month. Where either the return or remittance is made electronically but after the 23rd of the month, the due date reverts to the 14th. (3AA)

Special Rule

For the tax year 2003 and subsequent tax years, a special rule applies where a principal contractor makes a remittance in respect of a tax year or a period within a tax year and the remittance is not included in a normal monthly/quarterly return. In these circumstances, the remittance is deemed to be in respect of the first income tax month of the tax year, i.e. it will be treated as being due on 14 February in the tax year. However, where interest (on late payment) is demanded by Revenue in accordance with this rule, then, if, within one month of the demand, the principal contractor makes returns in respect of the amounts comprised in the remittance, this rule will not apply and, instead, the remittance will be treated as a remittance or remittances for the income tax period or periods in question. This will then enable interest to be charged on late payment under **subsection (9)** in the normal way, i.e. interest will be charged on the basis that the tax due for each such period is due 14 days after the end of the month. (3B)

Computation of profits

Where for the purposes of Schedule D the profits or gains of a subcontractor are being computed, the gross amount of the payment which has suffered deduction of tax is included in his/her accounts and not the net sum which he/ she has received after deduction of tax. (4)

Credit for tax deducted

A subcontractor is given credit against his/her tax liability for the tax deducted from the payments he/she received less any tax which has been repaid. (5)

This subsection clarifies when a subcontractor gets credit for RCT deducted. (5B)

Regulations

The Revenue Commissioners are required to make regulations to regulate — (5) & (6)

- how credit is to be given for the tax suffered by deduction,
- for monthly repayments of the excess of tax deducted over the proportionate amount of the subcontractor’s liability or estimated liability for the year of assessment, and
- for repayment where the tax deducted, and not already repaid, exceeds the amount of the subcontractor’s liability not only for income tax but also for VAT, capital gains tax, PAYE tax deductible from employees and PRSI contributions (including health contributions and employment and training levies).

The Revenue Commissioners are also required to make regulations (which may include matters which could be included in Regulations made for the purposes of PAYE) with regard to the assessment (including estimated assessment), estimation, charge, collection and recovery of the tax deducted. These regulations may include provision for —

- the issue for a period not concerning more than 2 years of assessment, or, in relation to such class or classes of subcontractor as may be specified in the regulations, for such longer period as may be so specified, of certificates of authorisation;
- the refusal to issue, appeal against refusal to issue, recall or cancellation of certificates of authorisation and the surrender of such certificates;
- the production of documents or other material, including a photograph of the subcontractor or, in a case where the subcontractor is not an individual, a photograph of the individual by whom the certificate of authorisation is to be produced in accordance with **subsection (12)(a)**, in support of an application for a certificate of authorisation;
- requiring the parties to a relevant contract (unless specifically excluded by the Regulations) to make a declaration before entering into that contract to the effect that both parties are satisfied that the contract is, in their opinion, a relevant contract and is not a contract of employment (in making these declarations the persons concerned are required to have regard to guidelines published by the Revenue Commissioners as to the distinctions between a relevant contract and a contract of employment). The declaration made is without prejudice to the actual legal position in the case of any particular contract;
- providing for the publication of guidelines by the Revenue Commissioners concerning the distinction between a contract of employment and relevant contracts;
- providing for the keeping and inspection of such declarations and for their delivery by principals to Revenue ;
- the setting up and maintenance by the Revenue Commissioners of a register containing details of every person who is a principal within the meaning of **section 530(1)**;
- requiring a person to satisfy the Revenue Commissioners that the person is a principal, within the time limits and in the manner specified in the regulations;
- the keeping by principals of such records as may be specified in the regulations;
- the keeping by principals of relevant payments cards and all details of entries on such cards as may be required by the regulations;
- the keeping by subcontractors of such records, as specified in the regulations, containing details of payments received, and the inspection of such records;

- the completion by principals of certificates of tax deducted from payments made to subcontractors and the details to be included on such certificates;
- ensuring that all information required by principal contractors to comply with the regulations is furnished by subcontractors;
- the issuing to subcontractors of statements showing particulars of their tax liability (if any) for a year of assessment.

Where an uncertified subcontractor claims repayment of excess tax deducted under the section, the claim is subject to the 4 year time limit that applies under **section 865** to repayment claims in general. (5A)

Every regulation made under this section must be laid before Dáil Éireann, and every such regulation is to be valid unless, within 21 days of the regulation being laid, a resolution annulling the original resolution is passed. Anything validly done before the passing of a resolution annulling the original resolution remains valid. (7)

The Income Tax (Relevant Contracts) Regulations, 2000 (S.I. No. 71 of 2000) have been made under these provisions. (8)

Recovery of interest on tax deducted

All enactments and regulations which apply to the recovery of tax due under this section apply also to the recovery of interest charged under this section. (8)

Interest is chargeable at a simple interest rate of 0.0274 per cent for each day or part of a day during which tax deducted under this section remains unpaid. (9)

Where an inspector of taxes makes a monthly/quarterly estimate of tax due under this section, any interest due on such tax is chargeable at the rate set out in **subsection (9)** for each day or part of a day and is chargeable as if the tax remained unpaid from the period or periods for which the estimate is raised. (10)(i)

Where an inspector of taxes makes a yearly estimate of tax due under this section, any interest on such tax is also chargeable at the same simple interest rate and, in the case of the tax year 2002 and earlier years, is chargeable as if the tax remained unpaid from the last income tax month of the year to which the estimate relates. In the case of the tax year 2003 and subsequent years, for the purposes of charging interest on overdue tax, tax due on foot of a yearly estimate will be treated as being due for the first income tax month of the tax year, that is, it will be treated as being due on 14 February in the tax year. However, where the inspector or, on appeal, the Appeal Commissioners determine the periods to which the tax relates, interest will be calculated as if the amounts that relate to the respective income tax months were included in a monthly/quarterly estimate notice issued, that is, the interest will be calculated in accordance with **subsection (10)(i)**. (10)(ii)

Certificate of authorisation

The Revenue Commissioners are to issue a “certificate of authorisation”, (C2), to a person, on application by them, if they are satisfied that he/she meets with all of the following conditions — (11)(a)

- the person is or is about to become, a subcontractor engaged in the business of carrying out relevant contracts;
- the business is, or will be, carried on from a fixed place of business and has, or will have, such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business;
- proper books and records will be kept in relation to the business;

- the person has paid all his/her due taxes, interest and penalties and delivered all necessary returns, and supplied all information requested by his/her inspector of taxes;
- there is a good reason to expect that, in the future, the person will keep proper books and records and will pay all his/her due taxes, interest and penalties and deliver all necessary returns, and supply all information requested by his/her inspector of taxes.

Certificate of authorisation and non-resident subcontractors

An applicant for a certificate of authorisation (C2) who has been resident outside the State at some time during the qualifying period will have to satisfy the Revenue Commissioners that he/she has complied with his or her tax obligations in the country of residence during the qualifying period. **(11)(a)**

Despite the conditions of **subsection (11)(a)**, the Revenue Commissioners may issue a certificate of authorisation to a person who does not satisfy one or more of those conditions. The Commissioners are to issue a certificate of authorisation in such circumstances where, in their opinion, they are satisfied that the failure of the person to satisfy any one or more of those conditions ought to be disregarded. **(11)(b)**

The Revenue Commissioners may issue a certificate of authorisation without the need for the person concerned to make a further application to them in that regard provided they are satisfied in relation to the standard compliance requirements under **subsection (11)(a)** or where the provisions of **subsection (11)(b)** apply.

A certificate of authorisation is only valid for such period as the Revenue Commissioners may, by regulation, provide. **(11)(c)**

A certificate of authorisation is not to be issued to an applicant where similar relevant operations (i.e. construction operations, forestry operations or meat processing operations) to those being carried out or to be carried out by the applicant were previously, or are, carried out by another person who is connected with the applicant in certain circumstances, unless that other person is also in compliance with the obligations as regards maintenance of records, payment of tax and delivery of returns. The persons who are to be considered as connected are — **(11A)**

- any company connected with the applicant,
- where the applicant is a partnership and the same relevant operations were or are carried out by a company in which a partner or partners of that partnership are or were able, directly or indirectly, either on their own or with a connected person to control more than 15 per cent of the ordinary share capital of the company, that company, or
- where the applicant is a company and the same relevant operations were or are carried out by a partnership and a partner or partners of that partnership are or were able, directly or indirectly, either on their own or with a connected person to control more than 15 per cent of the ordinary share capital of the company, that partner or partners

Relevant payments card

Where a subcontractor to whom a certificate of authorisation (C2) has been issued wishes to receive payment from the principal contractor without deduction of tax, he or she must produce the C2 in person to the principal contractor. The principal contractor must then apply to the Revenue Commissioners for a “relevant payments card”. This card is used to record payments in respect of relevant contracts between the principal **(12)**

contractor and the subcontractor. When a principal contractor receives a relevant payments card, he/she may then, subject to any limit imposed on the card, make payments without deduction of tax. The requirement for the subcontractor to produce the C2 in person to the principal contractor is relaxed in two circumstances —

- (1) where the subcontractor has nominated a bank account to the Revenue Commissioners into which all payments are to be lodged by the principal contractor, and has provided details (i.e. the number) of his/her C2 to the principal contractor.
- (2) where the principal contractor already holds a payments card for the subcontractor and the contract for which the payments card was issued is likely to be ongoing at the end of the year of assessment, and the principal contractor has obtained details (i.e. the number) of the subcontractor's C2 for the year of assessment to which the application for the relevant payments card relates.

Limits on Relevant Payments Cards

Where the Revenue Commissioners consider it requisite to do so to protect the revenue, they may impose a limit on the amount that can be paid without deduction of tax on a Relevant Payments Card, subject to the following conditions — **(12)(e) to (i)**

- the Revenue Commissioners, either at the request of the subcontractor named on the card or otherwise, may, as they consider it appropriate, amend the limit by reducing, increasing, or removing it,
- where the Revenue Commissioners amend a limit they are to issue a new Relevant Payments Card to the principal concerned,
- the subcontractor is to be informed of any limit, or revised limit, imposed on an Relevant Payments Card issued in relation to him or her,
- where payments made to a subcontractor exceed any limit imposed on the Relevant Payments Card issued in relation to the subcontractor, tax is to be deducted under the section from the excess and accounted for by the principal in the normal way.

Cancellation of certificate

The Revenue Commissioners may, by notice in writing to a principal, cancel a subcontractor's certificate of authorisation if — **(13)(a)**

- the certificate was issued on the basis of false or misleading information;
- the certificate would not have issued if information obtained subsequent to its issue had been available at the date of issue;
- the person to whom the certificate was given has allowed it to be misused;
- where the certificate was issued to a company, there has been a change in control of the company;
- a person to whom a certificate was issued has failed to pay all his/her taxes due or failed to deliver all necessary returns or failed to supply all information requested by his/her inspector of taxes;
- the business of carrying out relevant contracts in relation to which the certificate was issued has ceased.

A principal who has been notified that a subcontractor's certificate of authorisation has been cancelled must — **(13)(b)**

- deduct, on or after the date of the notice, tax from any person to whom the notice relates;

- return to the Revenue Commissioners any relevant payments cards and any relevant tax deduction cards issued in respect of the person to whom the notice relates.

The Revenue Commissioners must notify a subcontractor of the fact that a certificate of authorisation has been withdrawn. In such circumstances the subcontractor must return the certificate of authorisation. **(13)(c)**

Penalties

A person is liable (on summary conviction) to a fine of €5,000 or, at the direction of the court, a term of imprisonment not exceeding 6 months or to both the fine and the imprisonment, where that person — **(14)(a)**

- for the purpose of obtaining a certificate of authorisation or a relevant payments card, makes a false statement or furnishes any document which is false in a material way,
- disposes of a certificate of authorisation otherwise than by way of return of the certificate to the Revenue Commissioners,
- fails to return a certificate of authorisation to the Revenue Commissioners when requested to do so,
- is in possession of a certificate of authorisation that was not issued to him or her by the Revenue Commissioners, or
- produces to a principal a certificate of authorisation after such person has been advised of the cancellation of that certificate.

A person is liable (on summary conviction) to a fine of €5,000 or, at the direction of the court, to a term of imprisonment not exceeding 6 months, or to both the fine and the imprisonment, where that person aids, abets, counsels or procures — **(14)(b)**

- the obtaining of a certificate of authorisation by means of a false statement,
- the use by any person, other than the person to whom it was issued by the Revenue Commissioners, of a certificate of authorisation, or
- the production to a principal of a document that is not a certificate of authorisation, but purports to be such a certificate.

A person is liable (on summary conviction) to a fine of €5,000 where that person — **(14)(c)**

- fails to enter the required details on a relevant payments card or relevant tax deduction card,
- fails to return to the Revenue Commissioners a relevant payments card or a relevant tax deduction card which have been cancelled,
- returns to the Revenue Commissioners a relevant payments card or a relevant tax deduction card on which entries have been incorrectly entered,
- fails to comply with any provision of regulations made under this section requiring such person —
 - to make any declaration,
 - to provide any information or particulars to principals,
 - to keep or produce any records, documents or declarations, or
 - to deliver declarations to the Revenue Commissioners,
- fails to give a subcontractor from whose payment tax has been deducted, a certificate of deduction on the prescribed form, or
- being a company to which a certificate of authorisation has been issued, fails to notify the Revenue Commissioners of a change in control of the company.

Time limit for taking summary proceedings, etc

The time limit for taking summary proceedings in respect of offences under this section (15) is 10 years.

Certain administrative provisions in relation to the evidence in proceedings for recovery of penalties applies also to the relevant contracts regime. (16)

Appeals

Any person aggrieved by a refusal of the Revenue Commissioners to issue a certificate of authorisation may, by notice in writing, within 30 days of the date of the refusal, apply to have their application for a certificate heard and determined by the Appeal Commissioners. (17)

Any subcontractor aggrieved by the cancellation by the Revenue Commissioners of a certificate of authorisation may, by notice in writing, within 30 days of the date of cancellation, appeal to the Appeal Commissioners against this cancellation. Pending a decision by the Appeal Commissioners to reinstate the certificate of authorisation, it remains withdrawn. (17A)

Any subcontractor aggrieved by the imposition by the Revenue Commissioners of a limit on a relevant payments card may, by notice in writing, within 30 days of the date of the issue of the card, appeal to the Appeal Commissioners against the imposition of the limit. Pending a decision by the Appeal Commissioners in the matter, the limit is to remain in place (17B)

The Appeal Commissioners are to hear and determine appeal under the section as if it were an appeal against an income tax assessment. All the provisions of the Income Tax Acts relating to such an appeal apply accordingly. (18)

On hearing of an appeal against a decision not to issue a certificate of authorisation or a decision to impose a cap on a relevant payments card (but not an appeal against the withdrawal of a certificate of authorisation), the Appeal Commissioners are to consider all such matters as were considered by the Revenue Commissioners in reaching their decision. (19)

The Revenue Commissioners may nominate any of their officers to act on their behalf at such an appeal or rehearing of such an appeal. (20)