

NEW VAT RULES FOR PRINCIPAL CONTRACTORS AND SUB-CONTRACTORS

New rules on how VAT is accounted for in the construction industry came into effect on 1 September 2008. The purpose of this note is to remind readers of these changes so as to ensure that they are properly implemented from the start.

The new rules apply to builders and certain persons who retain the services of builders i.e. all principal contractors and sub-contractors in the construction industry within the scope of relevant contracts tax (RCT). The term principal contractor is very broadly defined in the legislation and includes persons connected with a construction company. For example RCT can apply where the controlling shareholder in a construction company hires a plumber to fix the shower in his own home.

Up until now a principal contractor has had to account for RCT to Revenue on payments to sub-contractors unless certain tax clearances are in place. From 1 September the principal contractor will also have to account to Revenue for the VAT payable on the services provided to it by the sub-contractor. The imposition of this additional obligation on a principal contractor makes it even more important that if there is any doubt as to whether a person is a principal contractor they should get professional advice so to ensure they are not exposed to taxes, penalties and interest on the double.

From 1 September 2008 the new VAT rules mean the following should happen:

- The Sub-Contractor does not charge VAT to the Principal Contractor;
- The Principal Contractor instead calculates the VAT on the amount charged by the Sub-Contractor;
- The Principal Contractor must account for this VAT directly to Revenue in their VAT return;
- The Principal Contractor, if they are making taxable supplies, will be able to claim a

simultaneous deduction for this VAT in their VAT return. If the Principal Contractor is VAT exempt, however, they will have to account for the VAT to Revenue themselves. This would apply, for example, in the case of local authorities that engage sub-contractors in development projects.

The Sub-Contractor must issue an invoice to the Principal Contractor, stating their VAT number as well as the fact that the VAT on the supply is to be accounted for on a reverse charge basis i.e. by the Principal Contractor. The Sub-Contractor will continue to be able to claim a refund of deductible VAT incurred for the purposes of their business in their VAT return. The onus under the new rules shifts to the Principal to account to Revenue for the VAT on the services supplied to it by the Sub-Contractor.

After 1 September if a Principal Contractor pays VAT that a Sub-Contractor has incorrectly charged them the Principal Contractor will not be able to recover it from Revenue. In these changed economic times no Principal Contractor is going to want to find themselves in this position!

MANDATORY ELECTRONIC FILING AND PAYMENT OF TAX

Following a public consultation process new regulations have been enacted providing for mandatory electronic filing and paying of certain tax returns and tax liabilities.

To date Revenue On-Line Service (ROS) has allowed a taxpayer, on a voluntary basis, to file returns and make payments electronically. From 1 January 2009 government departments and offices, state bodies and a company or other body whose tax affairs are dealt with by large cases division will be obliged to use ROS. All other state agencies and other companies which are obliged under the Companies Acts to produce audited accounts will follow suit from 1 January 2010.

Revenue have the power to exclude a person from the obligation to pay and file electronically if they do not have access to the necessary technology. A decision by Revenue not to exclude a person from the obligation may be appealed to the Appeal Commissioners.

Anyone affected by the regulations, who is not already using ROS, should ensure that they are in a position to do so from 1 January 2009. Even if you are not affected by the new changes next year it would seem inevitable that filing returns and making payments electronically is something all taxpayers will likely face in the not too distant future.

EXTENDED DEADLINE FOR ROS CUSTOMERS IN RESPECT OF CERTAIN PENSION PAYMENTS

Up until now a taxpayer could claim relief in respect of a retirement annuity contract (RAC) a personal retirement savings account (PRSA) payment or an additional voluntary contribution (AVC) payment in a particular year provided it is made on or before the return filing date of 31 October in the following year. This gives a taxpayer further time and scope to decide what to do when it comes to their pension arrangements for a particular year.

If an individual uses ROS and qualifies for the extended pay and file deadline i.e. he or she both files and pays the taxes on line, the deadline for making RAC, PRSA and AVC payments and claiming the relief is extended from 31 October to the return filing date of 17 November in the following year.

CAPITAL GAINS TAX – DUE DATES FOR PAYMENT

A number of instances have come to the attention of Revenue in which taxpayers have sought to rely upon delays in closing contracts as a reason for not paying capital gains tax (CGT) and the ensuing statutory interest on time. Revenue has confirmed that they will not accept this as a reason for late payment of the tax. They have drawn taxpayers' attention to the due dates for payment of CGT particularly where the time of disposal, for tax purposes, may be before a due date but the contract does not close, and the monies are not received, until after the due date.

Where a disposal takes place between 1 January and 30 September, the CGT must be paid no later than 31 October.

Where a disposal takes place between 1 October and 31 December, the CGT must be paid no later than 31 January in the following year.

It is important to be aware when a disposal takes place for tax purposes. The following is a brief summary of the position;

- An Unconditional Contract - the time of disposal is the date the agreement is entered into and not the date the money is actually received.
- A Conditional Contract – the time of disposal is the date the condition is satisfied. For example, if a contract to sell a site is subject to the purchaser acquiring planning permission, the date of disposal is the date of the grant of planning permission. Again caution should be paid to the fact that in this example the time of disposal is not when the money is received but rather when planning permission is granted.
- Where land is acquired by CPO the time of disposal is the date the compensation is agreed or the date the authority enters onto the land, whichever is the earlier.
- Where farm land is acquired by CPO for road widening or road making purposes the time of disposal is when the money is actually received.

Anyone who has made a disposal during the first nine months of this year must pay the CGT by 31 October. This includes a situation where a contract has been signed during that time, and no condition precedent is outstanding, even though the money may not be received until after 31 October.

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