



STATUTORY INSTRUMENTS

S.I. No. 80 of 2008



INCOME TAX (RELEVANT CONTRACTS) (AMENDMENT)
REGULATIONS 2008

(Prn. A8/0391)

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The Revenue Commissioners, in exercise of the powers conferred on them by subsections (5) and (6) of section 531 of the Taxes Consolidation Act 1997 (No. 39 of 1997), make the following regulations:

1. (1) These Regulations may be cited as the Income Tax (Relevant Contracts) (Amendment) Regulations 2008.

(2) These Regulations come into operation on 1 April 2008.

2. The Income Tax (Relevant Contracts) Regulations 2000 (S.I. No. 71 of 2000) are amended—

(a) in Regulation 2—

(i) by inserting the following after the definition of “director”:

“ ‘employer registered number’, in relation to a person, means the identification number assigned to the person pursuant to registration as an employer under Regulation 7 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001);”

(ii) by inserting the following after the definition of “sub-contractor’s certificate”:

“ ‘tax reference number’, in relation to a person other than an individual, means the reference number stated on any return of income form or notice of assessment issued to that person by the Revenue Commissioners;”

and

(iii) by inserting the following after the definition of “uncertified sub-contractor”:

“ ‘VAT registered number’, in relation to a person, means the identification number assigned to the person pursuant to registration under section 9 of the Value-Added Tax Act 1972 (No. 22 of 1972);”

and

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 28th March, 2008.

(b) by substituting the following for Regulation 3—

“Declaration
by parties
to relevant
contract.

3. (1) Subject to paragraphs (2) to (4), prior to entering into a relevant contract, the persons who intend to enter into such a contract shall, in the form which from time to time may be specified for that purpose by the Revenue Commissioners, make a declaration to the effect that, having regard to the guidelines which from time to time may be published by the Revenue Commissioners for the information of such persons as to the distinctions between contracts of employment and relevant contracts, and without prejudice to the question of whether the contract is a contract of employment or a relevant contract, they have satisfied themselves that in their opinion the contract which they propose to enter into is not a contract of employment.

(2) Paragraph (1) shall not apply where—

(a) at the time the declaration referred to in paragraph (1) would, but for this paragraph, otherwise be required to be made, the sub-contractor has been issued with a notice (referred to in this Regulation as a ‘notice of exclusion’) in accordance with paragraph (3) and produces the notice to the principal, and

(b) the notice has not been cancelled by the Revenue Commissioners in accordance with paragraph (4).

(3) The Revenue Commissioners may, on application to them by a person in the form which from time to time may be specified by them for the purposes of this Regulation, issue to the person a notice of exclusion where the person has average annual sales, arising from relevant operations in the period of 3 years ending with the end of the last period of account ending prior to the date of application, exceeding €6,340,000 and the notice shall, unless otherwise cancelled by the Revenue Commissioners in accordance with paragraph (4), be valid for a period of 3 years from the date of issue.

(4) Where it appears to the Revenue Commissioners that—

(a) a notice of exclusion was issued to a person on the basis of false or misleading information, or

- (b) a person to whom a notice of exclusion has been issued has permitted it to be misused,

then the Revenue Commissioners may at any time cancel the notice and where a notice is cancelled they shall—

- (i) notify such person in writing to that effect, and
- (ii) require such person to return to them forthwith the notice of exclusion issued to such person.

(5) Where paragraph (3) applies to a person, that person shall be regarded as a class of person within the meaning of paragraph (b)(i) (as amended by section 35 of the Finance Act 2008 (No. 3 of 2008)) of section 531(6) of the Act.

- (6) (a) Any declaration made for the purposes of this Regulation shall be retained by the principal for the period specified in Regulation 20(4) of these Regulations.

- (b) For the purposes of this paragraph, any period for which a declaration is retained by the Revenue Commissioners following the delivery to them of that declaration in accordance with paragraph (7) or (8), as the case may be, of this Regulation, shall be taken to be a period for which that declaration was retained by the principal in determining whether the principal retained the declaration for the period referred to in subparagraph (a).

(7) Any declaration made for the purposes of this Regulation shall be delivered to the Revenue Commissioners by the principal, within a period of 7 days from the making of the declaration, if—

- (a) the relevant contract which the persons intend to enter into is the first such relevant contract to be entered into by those persons with each other,
- (b) any one, or more, of the following particulars relating to the sub-contractor are required to be entered on the form referred to in paragraph (1) and are not so entered:
 - (i) the PPS number or tax reference number;

(ii) the VAT registered number;

(iii) the employer registered number,

or

(c) at the time the declaration is made, any one or more of the following apply—

(i) the sub-contractor is not registered for income tax or corporation tax, as the case may be;

(ii) the sub-contractor is not registered for value-added tax;

(iii) the sub-contractor intends to enter into another relevant contract, or contracts, as a principal in respect of the whole, or any part, of the relevant operations to which the relevant contract, the subject of the declaration, relates and is not included in the register referred to in Regulation 7B of these Regulations.

(8) The Revenue Commissioners may, by notice in writing, require a principal to deliver to them, within a period of 21 days from the date of the notice, such declarations or categories of declarations made for the purposes of paragraph (1) as may be specified in the notice.”.

GIVEN this 26th day of March 2008

JOSEPHINE FEEHILY
Revenue Commissioner.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations amend the Income Tax (Relevant Contracts) Regulations 2000, which govern the operation of Relevant Contracts Tax in respect of payments made by principal contractors to subcontractors in the construction, meat processing and forestry industries. The Regulations substitute a new Regulation 3 for existing Regulation 3.

The Regulations require persons who are principal contractors, within the meaning of Chapter 2 of Part 18 of the Taxes Consolidation Act 1997, to deliver to the Commissioners, in certain circumstances, declarations made for the purposes of Regulation 3. Regulation 3(1) requires principals and subcontractors who intend to enter into a relevant contract to make a declaration, prior to entering into the contract, to the effect that they have satisfied themselves that, in their opinion, the contract is not a contract of employment. An exception to the requirement to make a declaration arises where the subcontractor has applied for and has been issued with a “notice of exclusion” from the Revenue Commissioners and produces the notice to the principal. Declarations are made on Form RCT1.

The circumstances requiring delivery of the RCT1 to the Commissioners are:

- where the relevant contract is the first such contract entered into by the principal and the subcontractor with each other.
- where the subcontractor’s PPS number or tax reference number, VAT registered number or employer registered number, as appropriate, are not entered on Form RCT1.
- where the subcontractor
 - is not registered for income tax or corporation tax,
 - is not registered for VAT,
 - is not included in the register of principals maintained by the Revenue Commissioners where the subcontractor intends to subcontract some or all of the work to other subcontractors.

Where any of these circumstances obtain, the principal must deliver the declaration to the Revenue Commissioners within 7 days of it being made.

The Regulations also require principals, within 21 days of a notice in writing from the Commissioners, to deliver to them the declarations or categories of declarations as may be specified in the notice.

The Regulations take effect on and from 1 April 2008.

BAILE ÁTHA CLIATH
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Le ceannach díreach ón
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