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“Mixed Contracts”: VAT and RCT – Recent Developments

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Introduction

This article deals with two recent updates to Revenue’s Tax and Duty Manual (TDM) Part 18-02-01. The TDM primarily relates to relevant contracts tax (RCT). However, due to the interaction of VAT and RCT, the TDM also includes comments related to VAT.

Legislation

The parts of RCT and VAT legislation that are most relevant to the updates to the TDM are:

- Sections 530 and 530A of the Taxes Consolidation Act 1997 (TCA 1997) – these sections set out the rules for applying RCT.
- Section 16(3) of the Value-Added Tax Consolidation Act 2010 (VATCA 2010) – this section applies a VAT reverse charge to the provision of certain “construction operations” (as defined in RCT legislation) where the services are received by a “principal” (again, as defined in RCT legislation). Although not referenced in the TDM, s16(5) VATCA 2010 could also be relevant as this section applies a VAT

reverse charge to "construction work" provided by a supplier to a connected party in certain circumstances (irrespective of whether that connected party is a principal).

- Section 47 of VATCA 2010 – this section deals with the rate(s) of VAT that apply to "composite" and "multiple" supplies, which are defined in s2 VATCA 2010.
- Schedule 3, paragraphs 9, 9A, 9B, 14 and 15, of VATCA 2010 – these paragraphs apply a reduced rate of VAT (13.5% or 9% depending on the circumstances) to the sale of immovable goods, to the development of immovable goods and to work on such immovable goods, including the installation of fixtures.

Background to the TDM Updates

By way of context, in recent years there has been a significant increase in the number of residential units in Ireland being acquired by public bodies, such as local authorities. Public bodies are generally considered as a principal (for RCT purposes). The residential units (including houses and apartments) are typically acquired for social housing use and are generally purchased in one of three ways:

Scenario 1: Purchase of existing completed residential units by the public body.

Scenario 2: Purchase of land by the public body followed by construction of the residential units via a development agreement between the public body and a builder. These transactions are sometimes referred to as forward fund transactions.

Scenario 3: Agreement entered into between a vendor/developer and the public body under which the public body agrees to purchase residential units only when construction has been completed. These transactions are sometimes referred to as forward purchase transactions.

It has generally been accepted that RCT is not relevant under Scenario 1 above (i.e. a "straightforward" purchase of existing residential units). Similarly, it has usually been clear that RCT applies under Scenario 2 above (i.e. where a public body acquires land and then pays a builder/developer to construct houses or apartments on that land, RCT and VAT reverse charge apply to the payments for the construction work, which are typically identified as a separate amount in the construction services agreement).

However, the application of VAT and RCT to the purchase of residential units by public bodies under Scenario 3 is more complex and became a matter for debate. On the one hand, based on the legal agreements, this could be viewed as two separate supplies to the public body, being a supply of land and a supply of construction services. Furthermore, it was argued in some cases that RCT should apply to the full amount of the payment due under the contracts and that VAT reverse charge should apply to the full amount of the consideration payable in accordance with the RCT treatment. An alternative view was that, given that ownership of the land/units transferred only after the construction was completed, there was, in substance, a single supply for VAT purposes (being the sale of a completed property), and therefore the vendor was obliged to charge VAT on the full consideration for the sale in accordance with the rules for sales of new property. This led to challenges in completing certain property transactions as the parties (and their advisers) sought to protect their position in relation to the appropriate RCT and VAT treatment.

Interactions with Revenue

In late 2023 and early 2024 the matter was discussed at a number of Direct and Indirect Tax TALC meetings. A number of submissions were made by the Irish Tax Institute setting out the view that RCT should not be relevant where completed houses/apartments were ultimately conveyed to a public body and that the vendor is the party obliged to account for the VAT arising on such sales (as, in substance, the transactions represent the sale of completed properties). It is worth noting that in some cases the construction of the residential units is already completed when the agreement with the public body is entered into.

In late 2024 and early 2025, while acknowledging that every transaction and contract should be considered on its own merits, Revenue issued replies to the various submissions outlining its view that RCT applies in cases where a contract/agreement includes certain wording related to the provision of construction services. However, Revenue also noted that RCT should be applied only to the portion of the payment that is in respect of construction operations – i.e. RCT does not apply to the consideration attributable to the sale of land/site even if the land sale is made under the same contract under which the purported construction operations are supplied. As a result, it was indicated that the consideration should be apportioned between the amount attributable to the land (which is not subject to RCT) and the amount attributable to the construction work (which is subject to RCT).

The concept of splitting the consideration under a single contract for RCT purposes was seen by many as a departure from the generally understood position that RCT technically applied to all payments made under a relevant contract where construction operations are provided under that contract. This understanding was based on the view that RCT obligations arise from the contract itself rather than the individual components within a contract (s530 TCA 1997). This is consistent with Revenue's (now retired) Guidance Note dealing with RCT and VAT for school boards of management, which contained the following statements:

> "In considering whether a payment is subject to RCT, the contract under which the payment is being made must be examined to determine if it is a relevant contract. If it is a relevant contract, then all payments under that contract must be subject to RCT…If any part of a contract is a relevant operation then all payments under the contract are within the scope of RCT".

June 2025 Update

After a number of requests for clarification, Revenue ultimately updated the TDM referred to above in June 2025. The wording inserted in the TDM (at paragraph 3.1(a)) is as follows:

> "The question of whether a contract entered into by a principal contractor (including a Local Authority or an Approved Housing Body) for the acquisition of a property is a relevant contract will depend on the terms and wording of each individual contract. There can be multiple scenarios and multiple ways a contract(s) can be structured. The key question from an RCT viewpoint is whether the particular contract(s) comes within the definition of relevant contract in section 530(1) TCA 1997. Generally speaking, where the contract is for the acquisition of a completed property and the contract contains no provision regarding the construction of the property then there is no relevant contract between the parties and RCT does not apply. If, however, the contract does include an undertaking by a contractor to carry out construction operations, then the payments for the construction operations come within the scope of RCT. Contracts which include terms and wording along the following lines –
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> - The Employer is desirous of constructing housing units on the site in accordance with the plans (where the principal/Approved Housing Body/Local Authority is defined as the Employer in the contract).
> - The Contractor has agreed to carry out the works in accordance with the plans for the contract price (where the Contractor is defined as the construction company).
> - The Contractor will for the contract price build and completely finish in a good, substantial and workmanlike manner to the Employer the works on the site in accordance with the Plans.
> - The 'works' are defined as 'the construction of the units pursuant to the planning permission and specified in the plans together with such ancillary works and services as required for such use and/or enjoyment of the units and as may be necessary to render the units habitable when completed, including such works necessary to ensure all associated common areas, roads, footpaths, access routes, infrastructural works and services, benefitting the Site are completed to a standard acceptable for taking charge by the Local Authority'.
> - 'Contract Price' is defined as 'the sum of €xxxx being the price of the works and the assurance of the units'.

> indicate that a relevant contract for construction services exists and therefore RCT should be applied to the payments stated as the contract price. Nevertheless, every case needs to be decided on its own merits by examining the contracts and agreements that are in place between the parties.
>
> Where a contract provides for both construction services and the supply of land, only the construction services provided for in the contract are subject to RCT. Section 16(3) VATCA 2010 provides that the supply of the construction services is subject to the VAT reverse charge. Where the contract provides for a single consideration to cover both the construction services and the sale of the land, then, in order to determine the amount applicable to the construction services, the consideration needs to be apportioned by the principal. RCT and the VAT reverse charge apply to the consideration for construction services. RCT and the VAT reverse charge do not apply to the consideration for the sale of the land. In every case, it is necessary to examine the actual contract in order to determine the position."

The new wording inserted in the TDM confirmed Revenue's view that RCT applies in cases where the contract includes an undertaking by a contractor to carry out construction operations and that RCT should apply only to the portion of the payment related to the provision of the construction operations. In relation to VAT, the updated guidance also notes that where RCT applies to only a portion of the consideration, two separate VAT treatments should be applied. The guidance notes that in respect of the consideration attributable to the construction operations provided, VAT reverse charge should apply. In relation to the portion of the consideration attributable to the sale of the site/land the TDM notes that the vendor should account for VAT on the relevant consideration. Where a single price has been commercially agreed between the parties, there is then a need for that price to be split between the portion subject to RCT and the portion not subject to RCT.

Although the updated guidance provided some clarity in relation to these scenarios, certain difficulties remain in applying the guidance. For example:

- Where the two parties have agreed a single price for a supply it may be problematic to agree the split of that price to reflect two separate supplies with different RCT and VAT treatments.
- In relation to the kind of transactions envisaged by Scenario 3 above, regardless of the RCT position, it could still be argued that the economic reality is that a completed property is being supplied rather than any "construction service" (for VAT purposes) being provided to the purchaser by the seller (given that ownership of the property passes only after the construction is completed). As mentioned above, in many of the cases the relevant houses/apartments may already have been

completed when the vendor enters into the contract with the public body, making it even more likely that the supply is that of completed houses or apartments (i.e. a supply of goods) for VAT purposes.

- There are many kinds of transactions under which a seller agrees to supply goods to a customer before the goods are ready for supply. Take, for example, a person pre-ordering a new car from a motor dealer that will be manufactured, customised (e.g. specific paint colour), delivered and ultimately supplied at some point in the future. When that new car is finally supplied to the customer by the motor dealer, that supply is accepted as a single supply of goods (i.e. a car). It would not typically be suggested that the car dealer is supplying a manufacturing/assembly or painting service etc. with a separate supply of goods. Although it is appreciated that the legal contracting relating to supplies of property may be more complex (with significant focus on the construction of the residential units), it would seem that the same overall principle should apply.

- Irrespective of the RCT analysis, the VAT treatment of any transaction must take account of the general principles of EU law and the case law of the Court of Justice of the European Union. The case law on composite and multiple supplies (which is largely reflected in s47 VATCA 2010) emphasises whether the average customer considers that they are buying one composite or indivisible supply or, rather, separate supplies. It seems strongly arguable that in most cases a contract to sell completed residential units such as a block of apartments to a public body should be a composite supply for VAT purposes and should therefore follow a single VAT rate/treatment (per s47 VATCA 2010).

Notwithstanding the above, the updated TDM outlined Revenue’s position on the VAT and RCT treatment of such contracts and enabled parties to progress many transactions based on the stated position outlined. In relation to VAT, it is also helpful that the rate of VAT that applies to the sale of developed land (or the sale of newly completed houses/apartments) is generally the same (before 8 October 2025 and after 25 November 2025) as the rate of VAT that applies to the supply of construction services. As a consequence, the quantum of VAT due in respect of such transactions is generally not impacted by the split VAT treatment but merely which party is obliged to account for the VAT to Revenue.

As an aside, anyone who has paid a penalty in respect of the non-application of RCT where some of the payment related to anything other than the provision of construction operations may want to consider whether an application to have some or all of the penalty refunded is appropriate.

February 2026 Update

In February of this year the TDM was further updated with additional wording, as follows:

> “A similar position applies to other types of mixed contracts, these would include for example:
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> - a contract to supply design and build services to a principal,
> - a contract for the supply and installation of systems in a building or structure.
>
> In both of the above examples the contract contains elements which are within the scope of RCT and elements which are not. In the first example, design work is not within the definition of construction operations in section 530 (design work depending on the facts and circumstances and who the service is supplied to may come within PSWT), however the build services are within the definition in section 530. In the second example the supply of materials is not within the definition of construction operations in section 530, however the installation work is.
>
> Where the contract provides for a single consideration to cover both the RCT and non-RCT elements, the consideration needs to be apportioned by the principal with RCT applying to the part of the consideration relating to construction operations.”

The additional wording inserted in the TDM would appear to extend the requirement to split the application of VAT and RCT to a wider range of transactions. This raises a significant number of potential questions:

- It may raise questions on the VAT rate applying to such supplies. For example, it has generally been accepted that the supply and installation of a system comprising fixtures (such as a fire alarm system or security system) in a building is subject to VAT at the reduced rate (currently 13.5%), subject to the application of the “two-thirds rule”. This is on the basis that the supply and installation qualifies for the reduced VAT rate under Schedule 3 of VATCA 2010 as either work on immovable goods or the installation of a fixture, subject to the “two-thirds rule”. In cases where RCT and VAT reverse charge apply, the “two-thirds” [1] rule is generally disregarded (as the customer may not know if the “two-thirds rule” is breached or not), with the recipient self-accounting for the VAT arising on the full supply-and-install price at the reduced rate (per s41(4) VATCA 2010 and Revenue guidance [2]). However, the updated guidance, which indicates that a “contract for the supply and installation of systems” should now be split for RCT and VAT purposes, might now suggest that such transactions comprise two separate supplies for VAT purposes. If it is now the case that RCT applies to only a portion of the payment and there are two separate VAT treatments (i.e. a supply of goods and a supply of installation services), this calls into question whether the reduced rate of VAT would apply to the supply of the goods element and whether the supplier should charge and account for that VAT. This would represent a significant departure from the current treatment typically applied to many transactions.

- It is also not clear what the VAT position would be if RCT does not apply to transactions such as the ones referred to above (i.e. if the purchaser is not a principal contractor). In respect of supply-and-install contracts, is it now the case that this should still be regarded as a single supply/install with the vendor accounting for VAT at the reduced rate (subject to the "two-thirds rule") or are there also two separate supplies for VAT purposes (potentially with two separate VAT rates)?

- The use of the term "materials" in the TDM is also concerning. Many services (such as repair work) involve the provision of goods/materials. Again, typically, the VAT rate applying in such cases is based on the nature of the service as a whole rather than there being a supply of a service and a separate supply of goods.

- For existing contracts it may be difficult to amend current invoicing arrangements and RCT treatments mid-contract (some contracts, such as public–private partnership arrangements, are often for terms exceeding 25 years, and there are many such contracts in place currently).

Takeaways

- Further submissions to Revenue may be made in respect of the matters referred to above.

- Careful consideration is needed for anyone (vendors and purchasers) involved in transactions potentially impacted by the above. Purchasers may need to consider whether they should operate RCT on the full value of a contract or only a portion of that amount. In addition, purchasers may now be expected to pay VAT to sellers where previously it would have been expected that the VAT reverse charge would apply. For sellers, they need to consider if they should potentially be accounting for VAT on certain supplies where it would have been expected that the VAT reverse charge would apply. Where a split in the VAT treatment arises, sellers also need to consider the rate of VAT that they should be charging.

- Before making any changes to treatments currently adopted, it is worth bearing in mind that there has been no change to either VAT law or RCT law associated with the above updated guidance contained in the TDM.

1 Readers will likely be aware that, with some exceptions, under the “two-thirds rule” (included in s41 as well as Schedule 3 paras 9(1) and 15(2) VATCA 2010), where the value of movable goods provided under an agreement for the supply of services exceeds two-thirds of the total consideration under the agreement, the VAT rate that applies to the supply is determined by the VAT rate that applies to the goods, rather than the VAT rate applying to the services.

2 Services taxable at the rate of the goods (the two-thirds rule).