

Tax and legal update

Issue 8 - April 2017

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- ensuring RCT compliance for principal contractors; and
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VAT treatment of vocational education

The text of the legislation defining VAT exempt education was amended in December 2015, to reflect judgements of the Court of Justice of the European Union (CJEU). The main change was that the provider of the education had to be a 'recognised body', e.g. a school or college as defined in the Education Act 1998. While the amendments did not impact on many education providers, such as primary schools and colleges, it created uncertainties for many commercial organisations providing vocational type education, e.g. computer training. As the provider would not be regarded as a recognised body, the training would be potentially liable at the 23% rate.

It is understood that Revenue will shortly issue guidance on their interpretation of the type of education which qualifies for the exemption and remove some of the uncertainty. It is expected that they will confirm that courses which are designed to improve an employee's ability to carry out their work, where the skills attained are transferable from one employment to another (or to self-employment) and where there is a clear student/teacher relationship in the delivery of a structured programme, will qualify as VAT exempt vocational education (without the requirement for the provider to be a recognised body).

Form S.110 application and related guidance notes

Prior to Finance Act 2016, Form S.110 was required to be filed no later than the company's first corporation tax return. With effect from 1 January 2017, a Section 110 company must notify Revenue within eight weeks of entering into its first transaction. A company that intended to be treated as a Section 110 company and entered its first transaction before 1 January 2017, but had not filed a notification by 1 January 2017, would strictly be required to file a Form S110 by 25 February 2017. However, Revenue issued guidance indicating that those taxpayers will be given until **19 April 2017**.

Companies notifying Revenue of their intention to be treated as Section 110 companies must now provide additional information to Revenue in the Form S110, including information on the type of transaction into which the company is entering, the assets acquired and details of how the company is funded.

A company that notified Revenue of its intention to be a Section 110 company on or after 1 January 2017, may have filed the old Form S110 and included the additional information required under Finance Act 2016 in a cover letter. The new guidance indicates that those companies should re-submit the information in the new Form S110 by 19 April 2017.

Change of company status description on the register of companies

With effect from 22 March 2017, the term 'receivership', in relation to a company's status with the Companies Registration Office (CRO) is no longer used.

This update from the CRO will also mean that any companies, who prior to 22 March 2017, had a status of 'receivership' will revert back to being designated as 'normal'. Similarly, any company who had a status of 'receiver/liquidator' will now be designated as 'liquidation'.

When a receiver is appointed to some or all of the property of a company, the company's status will continue to read 'normal' or 'liquidation' (where appropriate) on the register but a note will appear immediately below, alerting interested parties to the fact that a Form E8 appointment of a liquidator in accordance with S436 of the Companies Act 2014, has been filed.

This change has been made following a recent Court of Appeal judgement, in the case of *Independent Trustee Company Limited vs Registrar of Companies*, which found that the registrar is entitled to file the Form E8 but cannot change the status of the company from 'normal' to 'receivership'.

It is important to note that companies will continue not to be subjected to CRO enforcement measures whilst a receiver's appointment is current. If the receiver resigns (or the receivership otherwise ends) and no receiver is acting in relation to the property of the company, then the

company will need to file all outstanding annual returns and financial statements in order to remain on the register. If this is not done the company will be subject to enforcement measures up to and including strike off. CRO enforcement measures will continue to be blocked for the period that a receiver is acting, so as to ensure that the company remains on the register, thereby enabling the receiver to carry out their duties.

Ensuring Relevant Contracts Tax (RCT) compliance for principal contractors

There are many key administrative steps for principals to undertake to ensure they are fully compliant when operating RCT on payments to sub-contractors. The consequences of non-compliance are penal, particularly since the increase in penalties from January 2015.

The steps to be undertaken by a principal to achieve compliance in the area are as follows:

- register for RCT on Revenue's Online Service (ROS);
- notify Revenue of each contract (contract notification);
- create a Site Identifier Number (SIN);
- notify Revenue of the payment to be made to a sub-contractor (payment notification);
- await issuance of a deduction authorisation by Revenue;
- provide a copy of the payment notification acknowledgement to the sub-contractor; and
- await receipt of the deduction summary at the end of each month and carefully review this summary to ensure accuracy.

Please contact us if you require a more detailed description of each of the above steps or how to avoid falling foul of the RCT regime.

Deadline for reporting foreign income and gains 30 April 2017

New legislative provisions will result in significantly higher penalties, publication of the taxpayer's name and settlement details, and potentially criminal prosecution where a taxpayer does not report, or under reports, foreign income or gains.

The new provisions will apply from 1 May 2017 to all tax payers (individuals, trusts and companies) and you have until 30 April 2017 to make your qualifying disclosure. It is recommended that all taxpayers who have income or gains arising outside of Ireland review and ensure accurate reporting of income and gains has been made. Please contact a member of our team immediately if you require our assistance in preparing your voluntary disclosure to meet the 30 April 2017 deadline.

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