



Tax and legal update

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This issue:

- Companies Act 2014 – end of transition period;
- Revenue opinions and confirmations – Subject to a maximum validity period of five years;
- R&D - Revenue have confirmed they will not seek to challenge the “science test” where certain criteria are satisfied;
- minimum and maximum duration of a financial period under the Companies Act 2014; and
- Relevant Contracts Tax (RCT) – Common pitfalls to avoid.

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Companies Act 2014 – end of transition period

The 18 month transition period provided for upon the introduction of the Companies Act 2014 (the Act) has now passed. This means that any limited company that did not convert during the transition period, has been automatically converted to the new form of private limited company by the Companies Registration Office (CRO) on 1 December 2016 and will have received a new digital certificate of incorporation on conversion.

Companies that converted automatically at the end of the transition period are now operating under what is referred to as a “deemed constitution”. This is the old Memorandum and Articles of Association with the objects clause deleted.

So what does this mean?

- if the existing constitution conflicts with a mandatory provision in the Act, then the Act will overrule it;
- if the company requires the power of a new provision in the Act, it may not be in the existing deemed constitution and therefore unavailable to them;
- if the company is considering borrowing or renewing funding terms, being sold, changing its name, merging or simply entering into new contracts with another company, then shareholders may be required to bring the constitution up to date before any such action can commence;

- the existing constitution is publically available on the CRO website for any customer or potential customer to access; or
- recommended best practice is to ensure your constitution is compliant with current legislation.

Our advice is to act now and bring constitutions up to date in compliance with the Act. It is important that when a new constitution is adopted, due consideration is given to existing provisions that need to be retained. It is advisable that time be invested in the drafting of the new constitution. We can arrange for required documents to be prepared for execution by the board and shareholders and assist in the drafting of an updated constitution.

Minimum and maximum duration of a financial period under the Companies Act 2014

Section 288 of the Act clarifies and sets out the minimum and maximum duration for a financial period. It outlines that the first financial period for a company may be no longer than 18 months from the date of incorporation. Thereafter, the financial year must be for a period of 12 months plus or minus no more than seven days. A company may request to change its financial period by filing a Form B83 with the CRO, but can only do so once every five years, similar to the mechanism in which a Form B73 is used to change in an annual return date.

The Act also confirms that the financial period of a holding company must coincide with its subsidiaries unless there are substantial reasons for it not to be and any such reasons must be set out in the notes to the financial statements. Please contact us should you be considering changing your financial year end or annual return date.

Revenue opinions and confirmations – Subject to a maximum validity period of five years

On 26 January 2017, Revenue published eBrief No. 08/17, which provides details of the validity of opinions and confirmations provided by Revenue in respect of tax matters. An opinion or confirmation will only be provided by Revenue where the issues are complex, information is not readily available or there is genuine uncertainty in relation to the applicable tax rules in the legislation.

Revenue's policy is that all opinions and confirmations issued are subject to a maximum validity period of **five years**. Nonetheless a shorter period of validity may be specified by Revenue. A taxpayer or tax practitioner who wishes to continue to rely on an opinion issued before 1 January 2012 for any transaction, the whole or part of any period, after 1 January 2017, must undertake the following **by 30 June 2017**:

- supply evidence of the opinion or confirmation, being a copy of a written communication which originated from Revenue; and
- lodge a full application for the renewal or extension of the opinion or confirmation with Revenue district dealing with the taxpayer's affairs.

Research and Development (R&D) – Revenue have confirmed they will not seek to challenge the “science test” where certain criteria are satisfied

Tax relief for expenditure on R&D activities is a valuable incentive for companies to locate or undertake R&D activities in Ireland. However, many companies are discouraged from making a claim due to the considerable documentation which is required in support of a claim, particularly in relation to the “science test”. The science test examines whether the relevant activities are consistent with the statutory definition of R&D activities.

In an attempt to reduce the burden of engaging experts to verify the science test in respect of R&D tax credit claims, Revenue have issued eBrief No. 17/17 which outlines that they will not, as a rule, seek to challenge the science test in relation to a project where the following criteria are satisfied:

- an Enterprise Ireland or IDA Ireland grant has been approved in respect of the R&D project;
- the project is undertaken in a prescribed field of science or technology;
- the company is a micro or small enterprise; and
- the total R&D tax credit claimed by the company for an accounting period (of not less than 12 months) is €50,000 or less.

Relevant Contracts Tax (RCT) – Common pitfalls to avoid

It is widely known that RCT applies to payments made by principals to subcontractors operating in certain industries, i.e. construction of buildings or the development of land, meat processing operations and

forestry operations. Perhaps the most challenging issue with regard to RCT is identifying when RCT applies to a transaction. Two particular pitfalls have been recently identified in practice.

Recruitment companies

Where recruitment companies furnish the labour of others to a customer who is a principal for RCT purposes, the payments made by the recruitment company to its contractors are also within the scope of RCT. Revenue will seek to impose penalties where the RCT regime is not operated correctly by the recruitment company.

Distinction between repair and maintenance

The repair of buildings or structures is subject to RCT where a principal engages a subcontractor to carry out the work. This does not extend to routine maintenance work. Repair includes the replacement of constituent parts, e.g. the repair of a window, whereas maintenance such as the removal of graffiti or unblocking of drains is not regarded as repair for RCT purposes. The issue with payments made under contracts which cover repair and maintenance is that all such payments fall within the scope of RCT. The solution is to put in place separate repair and maintenance contracts where this is commercially feasible.

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