

Payments to subcontractors in certain industries. FA70 s17(2) to (12) and (14) to (17); FA76 s21; FA78 s46; FA81 s7; FA90 s131; FA92 s28(b) to (h); FA95 s18(1)(b) and (c); FA96 s41(b), (c) and (d); FA97 s13(1)(b) and (c) 531.—(1) Subject to this section, where in the performance of a relevant contract in the case of which the principal is—

(a) a person who, in respect of the whole or any part of the relevant operations to which the contract relates, is the contractor under another relevant contract,

(b) a person—

(i) carrying on a business which includes the erection of buildings or the manufacture, treatment or extraction of materials for use, whether used or not, in construction operations,

(ii) carrying on a business of meat processing operations in an establishment approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1987 ), or

(iii) carrying on a business which includes the processing (including cutting and preserving) of wood from thinned or felled trees in sawmills or other like premises or the supply of thinned or felled trees for such processing,

(c) a person connected with a company carrying on a business mentioned in paragraph (b),

(d) a local authority, a public utility society of the Housing Act, 1966 ) or a body referred to in subparagraph (i) or (ii) of section 12(2)(a) or section 19 or 45 of that Act,

(e) a Minister of the Government,

(f) any board established by or under statute, or

(g) a person who carries on any gas, water, electricity, hydraulic power, dock, canal or railway undertaking, the principal makes a payment, or as respects relevant contracts entered into on or after the 15th day of May, 1996, is deemed to make a payment pursuant to subsection (3), to another person (whether the contractor or not and in this section referred to as “the subcontractor”), the principal shall deduct from the payment and pay to the Collector-General tax at the rate of 35 per cent of the amount of such payment.

(2) A person carrying on a business shall not be deemed to be a person of a kind specified in subsection (1)(b) by reason only of the fact that in the course of that business such person erects buildings for the use or occupation of such person or employees of such person.

(3) As respects relevant contracts entered into on or after the 15th day of May, 1996, where relevant operations are performed by a gang or group of persons, including a partnership in respect of which the principal has not received a relevant payments card, and notwithstanding that any payment or part of a payment in respect of such relevant operations is made by the principal to one or more of the gang or group

or to some other person, then, for the purposes of this section and any regulations made under this section, such payment or part of a payment shall be deemed to have been made by the principal to the individual members of that gang or group in the proportions in which the payment or any amount in respect of the payment is to be divided amongst them.

(4) In computing for the purposes of Schedule D the profits or gains arising or accruing to a subcontractor who receives a payment from which tax has been deducted in accordance with subsection (1), the payment shall be treated as being of an amount equal to the aggregate of the net amount received after deduction of the tax and the amount of the tax deducted.

(5) In so far as a subcontractor is chargeable to tax in respect of any profits or gains arising or accruing to the subcontractor from a trade or vocation, the subcontractor shall be treated as having paid on account of tax so chargeable any tax which was deducted from payments taken into account in the computation of those profits or gains and which has not been repaid or for which a set-off has not been made, and the Revenue Commissioners shall make regulations for giving effect to this subsection and those regulations shall, in particular, include provision—

(a) as to the manner in which, and the periods for which, tax deducted under this section is to be taken into account as a sum paid on account of the liability to tax of a subcontractor,

(b) for repayment, on due claim made for a period (in this paragraph referred to as “the repayment period”) commencing on the 6th day of April in a year of assessment and ending on the 5th day of the month following the date of the payment or, if the payment was made on or before the 5th day of a month, ending on the 5th day of that month, of such portion of the tax deducted from payments received by a subcontractor during the repayment period (reduced by any amount of such tax repaid or set off) as appears to the Revenue Commissioners to exceed the proportionate part of the amount of tax for which the subcontractor is liable or is estimated to be liable for that year of assessment, and

(c) for repayment in cases where the total of the tax deducted from payments received by a subcontractor and not repaid to the subcontractor exceeds the aggregate of—

(i) the amount of tax for which the subcontractor is liable, and

(ii) any amount which the subcontractor is liable to remit—

(I) under the Value-Added Tax Act, 1972 ,

(II) under the Capital Gains Tax Acts,

(III) under Chapter 4 of Part 42, and

(IV) in respect of—

(A) employment contributions and self-employment contributions under the Social Welfare Acts,

(B) health contributions under the Health Contributions Act, 1979 , and

(C) Employment and Training Levy under the Youth Employment Agency Act, 1981 , as amended by the Labour Services Act, 1987 .

(6) The Revenue Commissioners shall make regulations with respect to the assessment (including estimated assessment), charge, collection and recovery of tax deductible under subsection (1) and the regulations may, in relation to such tax, include any matters which might be included in regulations under section 986 in relation to tax deductible under Chapter 4 of Part 42 and, without prejudice to the generality of the foregoing, regulations under this subsection may include provision for—

(a) (i) the issue for a year of assessment, or, in relation to such class or classes of subcontractor as may be specified in the regulations, for such longer period as may be so specified, of certificates of authorisation,

(ii) the refusal to issue, appeal against refusal to issue, recall or cancellation of certificates of authorisation and the surrender of such certificates, and

(iii) the production of documents or other material, including a photograph of the subcontractor or, in a case where the subcontractor is not an individual, a photograph of the individual by whom the certificate of authorisation will be produced in accordance with subsection (12)(a), in support of an application for a certificate of authorisation;

(b) (i) the making, before the entering into of a relevant contract, by the persons who intend to enter into such a contract of a declaration, in a specified form, to the effect that, having regard to guidelines 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 a particular 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,

(ii) the publication of guidelines by the Revenue Commissioners for the purposes of subparagraph (i), and

(iii) the keeping by principals of every such declaration and the inspection of any or all such declarations;

(c) the keeping by principals of—

(i) such records as may be specified in the regulations,

(ii) relevant payments cards and the entry on those cards of such particulars as may be specified in the regulations,

(iii) cards (in this Chapter referred to as “relevant tax deduction cards”) in such form as may be prescribed by the regulations and containing particulars of any deductions under subsection (1) and the entry

on those cards of such other particulars as may be specified in the regulations;

(d) the making to the Revenue Commissioners of such returns relating to the payments made by principals as may be specified in the regulations and the inspection of the records referred to in paragraph (c) (including the cards referred to in that paragraph);

(e) the keeping by subcontractors of such records as may be specified in the regulations containing particulars of payments received by them, and the inspection of such records;

(f) the completion by principals of certificates of tax deducted (in this Chapter referred to as "certificates of deduction") from payments made to subcontractors and, as respects relevant contracts entered into on or after the 15th day of May, 1996, the entry on certificates of deduction of such particulars as may be specified in the regulations;

(g) the furnishing by subcontractors to principals of all such information or particulars as are required by principals to enable principals to comply with any provision of regulations made under this section;

(h) the sending to subcontractors, in cases where tax was deducted under subsection (1) from payments made to them, of statements containing particulars of their liability (if any) to tax for a year of assessment.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) The provisions of every enactment and of the Income Tax (Construction Contracts) Regulations, 1971 ), which apply to the recovery of any amount of tax which a principal of the kind referred to in subsection (1) is liable under this section and those Regulations to pay to the Collector-General shall apply to the recovery of any amount of interest payable on that tax as if that amount of interest were a part of that tax.

(9) Where an amount of tax which a person who is or is deemed to be a principal of the kind referred to in subsection (1) is liable under this section and any regulations under subsection (6) to pay to the Collector-General is not so paid, simple interest on the amount shall be paid by the person to the Collector-General and shall be calculated from the date on which the amount became due for payment at a rate of 1.25 per cent for each month or part of a month during which the amount remains unpaid.

(10) Subsection (9) shall apply to tax recoverable from a person by virtue of a notice under Regulation 12(1) of the Income Tax (Construction Contracts) Regulations, 1971 ), as if the tax were tax which the person was liable under those Regulations to remit for the last income tax month (within the meaning of those Regulations) of the year, or, as appropriate, of the months ending in the accounting period, to which the notice relates.

(11) (a) The Revenue Commissioners shall, on application to them in that behalf by a person, issue to

the person a certificate (in this section referred to as a “certificate of authorisation”) if they are satisfied—

(i) that the person is or is about to become a subcontractor engaged in the business of carrying out relevant contracts,

(ii) that the business is or will be carried on from a fixed place of business established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(iii) that in connection with the business records to which section 886 (2) refers are being or will be kept, and any other records normally kept in connection with such a business are being or will be kept properly and accurately,

(iv) that—

(I) the person, any partnership in which the person is or was a partner and any company ) of which the person is or was a proprietary director or proprietary employee,

(II) in a case where the person is a partnership, each partner, and

(III) in a case where the person is a company, each director of the company and any person who is either the beneficial owner of, or able, directly or indirectly, to control, more than 15 per cent of the ordinary share capital of the company, has throughout the qualifying period complied with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts or the Value-Added Tax Act, 1972 , in relation to—

(A) the payment or remittance of the taxes required to be paid or remitted under those Acts,

(B) the delivery of returns, and

(C) requests to supply to an inspector accounts of, or other information about, any business carried on,

by that individual, partnership or company, as the case may be, and

(v) that there is good reason to expect that that person, partnership or company will comply with the obligations referred to in subparagraph (iii) in relation to periods ending after the date of termination of the qualifying period.

(b) A person in respect of whom the Revenue Commissioners are not satisfied in relation to any one or more of the matters specified in subparagraphs (i) to (iv) of paragraph (a) shall nevertheless, for the purposes of the issue of a certificate of authorisation, be treated as a person in respect of whom they are so satisfied if the Revenue Commissioners are of the opinion that in all the circumstances such person's failure to satisfy them in relation to such matter or matters ought to be disregarded for those purposes.

(c) A certificate of authorisation issued under this subsection shall be valid for such period as the

Revenue Commissioners may provide by regulations made pursuant to subsection (6).

(12) (a) Where a subcontractor to whom a certificate of authorisation has been issued produces it to a principal, the principal shall apply to the Revenue Commissioners for a card (in this Chapter referred to as a “relevant payments card”) in respect of the subcontractor.

(b) Where on such application the Revenue Commissioners are satisfied that a relevant payments card in respect of the subcontractor ought to be issued to the principal, they shall issue such a card to the principal who on receiving the card shall, subject to subsection (13), be entitled during the income tax year (or the unexpired portion of the income tax year) to which the relevant payments card relates to make payments without deduction of tax to the subcontractor named in the card.

(13) (a) Where it appears to the Revenue Commissioners that—

(i) a certificate of authorisation was issued on the basis of false or misleading information,

(ii) a certificate of authorisation would not have been issued if information obtained subsequent to its issue had been available at the date of its issue,

(iii) a person to whom a certificate of authorisation was issued has permitted it to be misused,

(iv) in the case of a certificate issued to a company, there has been a change in control ) of the company,

(v) a person to whom a certificate of authorisation was issued has failed to comply with any of the obligations imposed on such person by the Tax Acts, the Capital Gains Tax Acts, the Value-Added Tax Act, 1972 , or by any regulations made thereunder in relation to—

(I) the payment or remittance of the taxes required to be paid or remitted under any of those Acts,

(II) the delivery of returns, and

(III) requests to supply to an inspector accounts of, or other information about, any business carried on by such person,

or

(vi) the business of carrying out relevant contracts in relation to which the certificate of authorisation was issued has ceased to be carried on by the person to whom the certificate was issued,

the Revenue Commissioners may at any time cancel the certificate and give notice in writing to that effect to any principal.

(b) Where a principal receives a notice under paragraph (a), the principal shall—

(i) deduct tax in accordance with subsection (1) from any payments made to the person to whom the notice relates on or after the date of receipt of the notice, and

(ii) return to the Revenue Commissioners any relevant payments cards issued to the principal in relation to that person and any relevant tax deduction card kept by the principal in relation to that person.

(c) The Revenue Commissioners shall advise a person in relation to whom a notice under paragraph (a) was issued of the issue of such notice and shall require such person to return to them forthwith the certificate of authorisation issued to such person.

(14) (a) Where any person—

(i) for the purpose of obtaining a certificate of authorisation or a relevant payments card makes any false statement or furnishes any document which is false in a material particular,

(ii) disposes of a certificate of authorisation otherwise than by the return of the certificate to the Revenue Commissioners,

(iii) fails to return a certificate of authorisation to the Revenue Commissioners when required to do so in accordance with subsection (13)(c),

(iv) is in possession of a certificate of authorisation that was not issued to such person by the Revenue Commissioners, or

(v) produces to a principal a certificate of authorisation after such person has been advised by the Revenue Commissioners of the issue of a notice under subsection (13)(c),

such person shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.

(b) Any person who aids, abets, counsels or procures—

(i) the obtaining of a certificate of authorisation by means of a false statement,

(ii) the use by any person, other than the person to whom it was issued by the Revenue Commissioners, of a certificate of authorisation, or

(iii) the production to a principal of a document that is not a certificate of authorisation but purports to be such a certificate,

shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.

(c) Any person who—

(i) fails to enter on a relevant payments card or relevant tax deduction card such particulars as are required to be entered on that card by virtue of this section and any regulations made under this section,

(ii) fails to return to the Revenue Commissioners the relevant payments card or relevant tax deduction card in accordance with subsection (13)(b),

(iii) returns to the Revenue Commissioners any such card on which are entered particulars which are incorrect in any material particular,

(iv) fails to comply with any provision of regulations made under this section requiring such person—

(I) to make any declaration,

(II) to provide any information or particulars to principals, or

(III) to keep or produce any records, documents or declarations,

(v) fails to give a subcontractor from whom tax has been deducted under subsection (1) a certificate of deduction in the prescribed form containing such particulars as are required to be entered in that certificate by virtue of any regulations made under this section, or

(vi) being a company to which a certificate of authorisation has been issued under subsection (11), fails to notify the Revenue Commissioners of a change in control ) of the company,

shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000.

(15) Notwithstanding any other enactment, summary proceedings in respect of offences under this section may be instituted within 10 years of the commission of the offence.

(16) Section 987(4), subsection (4) of section 1052 and 880), subsections (3) and (7) of section 1053 and sections 1068 and 1069 shall, with any necessary modifications, apply for the purposes of this section and any regulations made under this section as they apply for the purposes of those provisions.

(17) Any person who is aggrieved by a refusal by the Revenue Commissioners to issue a certificate of authorisation under this section may, by notice in writing to that effect given to the Revenue Commissioners within 30 days from the date of such refusal, apply to have such person's application heard and determined by the Appeal Commissioners.

(18) The Appeal Commissioners shall hear and determine an appeal made to them under subsection (17) as if it were an appeal against an assessment to income tax and, subject to subsection (19), the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.



(19) On the hearing of an appeal made under subsection (17), the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under this section.

(20) For the purposes of the hearing or rehearing of an appeal under subsection (17), the Revenue Commissioners may nominate any of their officers to act on their behalf.