

Tax clearance certificates in relation to public sector contracts. FA95 s177(1) to (6); FA96 s132(1) and Sch5 Ptl par19 1095.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
  - (b) the Capital Gains Tax Acts, and
  - (c) the Value-Added Tax Act, 1972 , and the enactments amending or extending that Act,
- and any instruments made thereunder;

“the scheme” means a scheme of the Department of Finance for the time being in force requiring persons to show, by means of tax clearance certificates, compliance with the obligations imposed by the Acts in relation to the matters specified in subsection (2) before the award to them of contracts that are specified in a circular of the Department of Finance entitled “Tax Clearance Procedures— Public Sector Contracts”, numbered F 49/24/84 and issued on the 30th day of July, 1991, or any such circular amending or replacing that circular;

“tax clearance certificate” shall be construed in accordance with subsection (2).

(2) Subject to this section, where a person who is in compliance with the obligations imposed on the person by the Acts in relation to—

(a) the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts to the Revenue Commissioners, and

(b) the delivery of any returns required to be made under the Acts,

applies to the Collector-General in that behalf for the purposes of the scheme, the Collector-General shall issue to the person a certificate (in this section referred to as a “tax clearance certificate”) stating that the person is in compliance with those obligations.

(3) A tax clearance certificate shall not be issued to a person unless—

(a) the person and, in respect of the period of the person's membership, any partnership of which the person is or was a member,

(b) in a case where the person is a partnership, each person who is a member of the partnership, and

(c) in a case where the person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

is in compliance with the obligations imposed on the person and each other person (including any partnership) by the Acts in relation to the matters specified in paragraphs (a) and (b) of subsection (2).

(4) Where a person (in this subsection referred to as “the first-mentioned person”) applies for a tax clearance certificate in accordance with subsection (2) and the business activity to which the application relates was previously carried on by, or was previously carried on as part of a business activity carried on by, another person (in this subsection referred to as “the second-mentioned person”) and—

(a) the second-mentioned person is a company which is connected as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,

(b) the second-mentioned person is a company and the first-mentioned person is a partnership and—

(i) a member of the partnership is or was able, or

(ii) where more than one such member is a shareholder of the company, those members acting together are or were able,

directly or indirectly, whether with or without a connected person or connected persons as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

(c) the second-mentioned person is a partnership and the first-mentioned person is a company and—

(i) a member of the partnership is or was able, or

(ii) where more than one such member is a shareholder of the company, those members acting together are or were able,

directly or indirectly, whether with or without a connected person or connected persons as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued to the first-mentioned person unless, in relation to the business activity to which the application relates, the second-mentioned person is in compliance with the obligations imposed on that person by the Acts in relation to the matters specified in paragraphs (a) and (b) of subsection (2).

(5) Subsection (4) shall not apply to a business the transfer of which was effected before the 9th day of May, 1995, or a business the transfer of which is or was effected after that date if a contract for the transfer was made before that date.

(6) Subsections (5), (6) and (7) of section 1094 shall, with any necessary modifications, apply to an application for a tax clearance certificate under this section as they apply to an application for a tax

clearance certificate under that section.

(7) A tax clearance certificate shall be valid for the period specified in the certificate.