

Relevant Contracts Tax (RCT)

Penalties for non-operation of the RCT system.

1. Introduction

The RCT system is governed by Chapter 2 of Part 18 TCA 1997 and by the Income Tax and Corporation Tax (Relevant Contracts Tax) Regulations 2012.

Penalties for contravention of RCT obligations consist of:

- (a) 'payment geared' penalties (that is, the penalty is a percentage of a relevant payment made by a principal contractor) introduced by Section 17 Finance Act 2014 and which apply in respect of the non-operation of the RCT system occurring on or after the 1st January 2015 (these penalties are now in Section 530F Taxes Consolidation Act (TCA) 1997; and
- (b) 'fixed penalties'.

2. Overview of RCT Obligations on principal contractors

Deduction Authorisation:

Section 530F (1) TCA 1997 outlines that a principal to whom an RCT deduction authorisation has issued shall deduct RCT in accordance with that authorisation.

No deduction authorisation:

Section 530F (2) outlines that where a principal makes a relevant payment in circumstances other than those referred to in 530F (1), that principal shall be liable to a penalty.

Unreported payments:

Section 530F (3) outlines that where a principal is liable to penalty under subsection (2), the principal shall submit an unreported payment notification to Revenue.

Post payment notifications:

Section 530F (7) offers relief from the penalty where the principal is unable to notify Revenue due to a persistent technology failure and certain conditions are satisfied.

3. 'Payment geared' penalties

The contravention giving rise to the penalty is the making of a relevant payment (as defined) to a subcontractor other than in accordance with a deduction authorisation (as defined). The circumstances under which a principal contractor is liable to a penalty are –

- (a) the principal is in possession of a RCT deduction authorisation and, on the making of a relevant payment, did not deduct the RCT that ought to have been deducted;

- (b) the principal is not in possession of a RCT deduction authorisation and, on the making of a relevant payment, did not deduct the RCT that ought to have been deducted;
- (c) the principal is not in possession of a RCT deduction authorisation and, on the making of a relevant payment, deducted an amount as ‘RCT’ from the payment;

The penalty in respect of which a principal contractor is liable is as follows:

	Circumstances	Amount of Penalty
1	Where either (a) to (c) above has occurred and, at the time the relevant payment was made to a subcontractor, the subcontractor is a zero rate subcontractor as set out in Section 530G.	3% of the relevant payment made
2	Where either (a) to (c) above has occurred and, at the time the relevant payment was made to a subcontractor, the subcontractor is a 20% rate subcontractor as set out in Section 530H.	10% of the relevant payment made
3	Where either (a) to (c) above has occurred and, at the time the relevant payment was made to a subcontractor, the subcontractor is a 35% rate subcontractor as set out in Section 530E (1) (c).	20% of the relevant payment made
4	Where either (a) to (c) above has occurred and, at the time the relevant payment was made to a subcontractor, Revenue had not determined a rate in accordance with Section 530I	35% of the relevant payment made

It should be noted as regards the circumstances outlined in (c) above that the subcontractor is not entitled to a credit for any deductions made from the gross payment as the payment was made outside of the RCT system. The payment giving rise to the default is what was actually paid to the subcontractor, not any regrossed amount.

4. Fixed Penalties

Section 1052(1)(b) TCA 1997 provides for a fixed penalty of €3,000 for a failure by any persons to do any act, to furnish any particular or to deliver any account in accordance with any of the provisions specified in column 3 of Schedule 29 TCA 1997. The fixed penalty of €3,000 in question applies to failures to comply with RCT obligations. However, where the person referred to above is a body of person

(for example, a company), the fixed penalty is €4,000 with the Secretary of that body of persons being liable to a separate fixed penalty of €1,000.

In particular, where a person:

- fails to comply with an obligation under Section 530F (3) (a) TCA 1997 to submit an unreported notification; or
- fails to comply with an obligation under Section 530C (1) TCA 1997 to notify Revenue in time of an intention to make a relevant payment to a subcontractor (and the amount of that payment)

that person is liable to the appropriate fixed penalty referred to in Section 1052 TCA 1997. Other failures to comply with RCT obligations that give rise to fixed penalties are set out in Part 18.2.8 of the Tax and Duty Manuals.

5. Reduction in Penalties

There are two separate and distinct legislative mechanisms through which a penalty may be reduced -

- (a) in some instances, the statutory provision imposing a penalty contains an “in built” reduction that applies where the person liable to that penalty fulfills certain conditions e.g. penalty reductions following a qualifying disclosure; and
- (b) Section 1065 Taxes Consolidation Act 1997 which affords Revenue a discretionary power to mitigate all tax and duty penalties including those at (a) above.

As both the “payment geared” penalties referred to in paragraph 3 above and the fixed penalties referred to in paragraph 4 do not contain “in built” reductions, such penalties may only be reduced under Revenue’s discretionary power of mitigation found in Section 1065 TCA 1997. The circumstances under which such penalties may be mitigated are set out in Appendix I.

6. Determination of liability to a penalty

Firstly, there is nothing in tax and duty statutes that prevents Revenue and persons (taxpayers) from agreeing outstanding tax and duty liabilities and liabilities to penalties without recourse to the courts.

Secondly, where a Revenue officer is of the *opinion* that a person (taxpayer) is liable to a penalty and that person either -

- (i) does not agree liability to that penalty; or
- (ii) agrees liability to that penalty but fails to pay it,

then it is a matter for a relevant court (District Court, Circuit Court or High Court, as appropriate) to determine whether that person is liable to penalty (in such a scenario, a Revenue officer will bring his or her *opinion* before a relevant court for that court to determine whether that person is liable to a penalty). This is governed by Section 1077B TCA 1997 and applies to RCT penalties.

It should be noted that the RCT penalty letter that issues to a principal contractor from the ITP system is not a formal penalty Notice of Opinion. The letter sets out the defaults that would give rise to the penalty, and states that failing agreement and payment of the penalty, a Revenue officer will issue a penalty Notice of Opinion.

7. Recording mitigation of penalties

If, during the course of an intervention (Aspect Query, Profile Interview or Audit), a decision is taken to mitigate a penalty, the Intervention Report should outline the reason for that mitigation.

The intervention report should be approved in the normal way.

8. Customer Service contacts

Following the issue of an automated Penalty letter, contact from principal contractors is likely be made with a District's Customer Service area. Where a decision is taken to mitigate the penalty, Customer Notes in CRS should be updated with an outline as to the reason for the mitigation.

9. Identifying likely penalty cases for follow up action

The eRCT dashboard now contains a "Penalty Report" section through which Districts can identify cases where an RCT penalty letter has issued and there has been no follow up action. Any follow up on these cases that involves contact with the taxpayer will constitute an intervention. If a decision is taken to mitigate a penalty, the Intervention Report should outline the reason for the mitigation and the guidelines should be followed. The Intervention Report should be approved in the normal way.

Circumstances under which RCT penalties may be mitigated

A. Statutory basis for mitigation

In the context of the penalties applying in respect of the non-operation, or the incorrect operation, of the RCT system, such penalties may be reduced by virtue of the discretionary power of mitigation afforded Revenue by Section 1065 Taxes Consolidation Act 1997.

Under subsection (1) of Section 1065, where **a court has not determined that a person is liability to a penalty**, Revenue may mitigate that penalty by up to 100%.

Under subsection (2) of Section 1065, where **a court has determined liability to a penalty**, Revenue may mitigate that penalty by not more than 50%.

B. General application of discretionary mitigation

There is no “one size fits all” formula to be applied in determining which level of mitigation is appropriate and each case will need to be reviewed taking all of the risks and factors into account on a case by case basis. However, in using their discretion under Section 1065, officers should take the following matters into account, bearing in mind that all factors that affect the compliance should be considered. **Where there is a complete and deliberate failure to operate RCT, mitigation would not be appropriate.**

Tax at risk

- In circumstances where the subcontractor(s) is unknown to Revenue and the penalty is at 35%, enquiries should be made as to the evidence the principal sought and any documentation they retained in satisfying themselves as to the identity of the subcontractor. Where they have not complied with these obligations (Section 530B (1A)(a) and (b)), mitigation should be the exception rather than the rule.

General Compliance of the Principal

- Is the principal generally tax compliant, not only in respect of RCT matters but also in respect of VAT, PREM and their IT/CT obligations? Have they applied due care and attention to meeting their tax obligations?
- Have they a history of making unreported payments? If so, mitigation should be an exceptional matter.

Co-operation

- If the default has come to light as the result of an intervention, did the principal co-operate fully with the intervention as regards the provision of records and any explanations required? The penalty percentage reductions set out in the Code of Practice for Revenue Audit and other Compliance Interventions (paragraph 5.6.2) should be used as a benchmark for percentage reductions.

Self Correction

- Has the principal self corrected? If so, would they have benefitted under the Code of Practice for Revenue Audit and other Compliance Interventions (paragraph 3.2) if there had been a tax default?

Innocent Error

- A tax default of a person that was not deliberate and was not attributable in any way to the failure of the taxpayer to take reasonable care to comply with his or her tax obligations shall not render that person liable to a penalty. The factors to be taken into account are set out in the Code of Practice for Revenue Audit and other Compliance Interventions in paragraph 3.3.