



An Ghníomhaireacht
Tithíochta
The Housing Agency

RCT, VAT and Stamp Duty for Social and Affordable Housing

Chair:

Jim Baneham, Director of Delivery and Innovation, The Housing Agency

Speakers:

- Ray Rochford, Finance and Business Programme Manager, LGMA
- Katie O'Connor, Director of Finance, Galway County Council



LGMA

Local Government
Management Agency

Tax Challenges facing the Sector: Housing Agency Conference

10th April 2025

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Finance and Business Programme Manager
CCMA Finance Committee Business Owner
LGMA

Katie O' Connor

Director of Finance
Galway County Council



Comhairle Chontae na Gaillimhe
Galway County Council

Topics

- **What is Relevant Contract Tax (RCT)?**
- **How did we get here?**
- **Stamp Duty Memo**
- **Sectoral Approach**

Relevant Contract Tax (RCT) is a Withholding Tax System, there should no loss of earnings if Tax Compliant, but could impact on Cash Flow for developers.

Accurate application of RCT is critical.

Objective

What the sector and wider public bodies trying to achieve

- **Clarity**
- **Consistency**

What is Relevant Contract Tax (RCT)?

RCT is a withholding tax mechanism that applies where a Principal Contractor engages a 'subcontractor' under a 'Relevant Contract' to carry out 'Relevant Operations' in the state.

- All local authorities fall within the legislative definition of 'Principal Contractor'
- A 'Relevant Contract' is a contract whereby a contractor is liable to the Principal contractor to:
 - Carry out Relevant Operations
 - To be answerable for the carrying out of Relevant Operations
- A 'Relevant Contract' obligations may be contained in any form of agreement, that is, written, verbal or implied. Agreements can also evolve over time to include additional works not initially scoped.
- 'Relevant Operations' – Construction Operations including the construction, alteration, repair, extension, demolition or dismantling of buildings or structures.
- Examples of construction operations – erection of scaffolding, erection of fencing, site clearance, repair works to buildings etc

What is Relevant Contract Tax (RCT)?

- A 'Mixed Contract' is a contract where there is a mix of both relevant and non-relevant operations included within the same contract. An example would be a Repair and Maintenance contract relating to properties.
 - Maintenance services would not fall into the scope of RCT
 - Repair element would fall into the scope of RCT
 - RCT applies to all payments made under a mixed contract including the payments made in respect of non-relevant operations.
- RCT applies to 'payments in kind' even if no actual transfer of money happens including offset of liability etc
- The current rates of RCT are 0%, 20% and 35% dependent on the sub-contractors overall tax compliance status.
 - 0% - Up to date tax compliance record (3% penalty)
 - 20% - substantially up to date tax compliance record (10%)
 - 35% - poor tax compliance record or not registered (20%)
- The penalties for the Principal Contractor for not following the RCT process are 3%, 10%, 20% and 35% with 35% for an unknown subcontractor.

What is Relevant Contract Tax (RCT)?

- Where a Relevant Contract is entered into, it must be notified to Revenue and all payments need to be notified to Revenue via a Payment Notification on the eRCT portal in advance of the payments been made
 - Where RCT withholding is applied, the appropriate % is withheld based on the rate confirmed by Revenue and paid over to Revenue by the Due Date on RCT
- Revenue will generally offset this deduction against corporation/income tax liability after year end, once the sub-contractor has filed their return.
- However the subcontractor can request that it is offset against VAT/PAYE mid way through the year – Reduction in cash flow issues.
- Under RCT the Principal Contractor calculates VAT and pays directly to Revenue as VAT Reverse Charge. The invoice from the sub-contractor should contain the following statement "VAT on this supply to be accounted for by the Principal Contractor"

Context: RCT and Turnkeys...

- In October 2022 all local authorities received a Level 1 compliance intervention letter from Revenue to review property acquisitions in relation to Relevant Contract Tax (RCT)
- The review was based around the period 1st January 2020 to October 31st 2022.
- Request made to Revenue that the LGMA engage with Revenue on behalf on the entire sector rather than each LA. PwC were engaged to assist in the intervention.
- 454 contracts were within scope to the value of €1 Billion
- 13% (63 contract) of the contracts were sample making up 44% of the value of the contracts.
- It was determined that the contracts using the 'Combined Building Agreement' fall under the scope of RCT.
- 63% of the sampled contracts used the combined building agreement

Context: RCT and Turnkeys...

- Revenue requested their own samples of contracts including details on when contracts when signed, payments made and any correspondence with the developers/subcontractors on details paid on VAT on these contracts.
- CCMA Finance Committee through LGMA and PwC developed a 'technical adjustment' submission to revenue seeking full penalty mitigation.
- Following engagement, Revenue agreed to a settlement that was an 'unprecedented' level of penalty mitigation, above and beyond typical provision to other taxpayers.
 - Based on the strong arguments in the submission the unique role that local authorities play in the delivery of social housing
- There were RCT penalties, No Loss of Revenue (NLOR) VAT penalties and an assurance required that there would be a remediation of Control Deficiencies
- 98% penalty mitigation received as Revenue limited penalties to 2022 and much reduced penalties applied.

Stamp Duty Memo

- Reviewed Procurement options for the delivery of houses by local authorities under the Local Authority Affordable Purchase Scheme (LAAPS).
- To provide advice in relation to the applicable 'Stamp Duty' treatment under each option
- Document produced 31st August 2023 which is available to the sector
- This memo sets out a number of different procurement scenarios under which a local authority can source houses for delivery to eligible participants and an analysis of the charge to stamp duty on property acquisitions, the various exemptions that may be applicable.
 - With LA as Landowner
 - Traditional procurement
 - Single or Two stage. Tender notice for 'design, build, fund, sell' etc
 - Competitive Dialogue. Expressions of interest with Milestone payments – LA retains or disposes of land
 - Competitive Dialogue without milestone payments
 - Also other options with Developer as Landowner

Memo

To: Local Government Management Agency
From: PricewaterhouseCoopers
Date: 31 August 2023
Subject: Stamp Duty Implications of the Local Authority Affordable Purchase Scheme

We have been asked to review the procurement options for the delivery of houses by local authorities under the Local Authority Affordable Purchase Scheme, and to provide advice in relation to the applicable stamp duty treatment under each option.

It is intended that this stamp duty advice would then form the basis for a national stance by local authorities in relation to the stamp duty treatment under the various procurement scenarios to which it applies.

Our advice is based on Irish stamp duty law and practice as at the date of this memo. We assume no responsibility for any changes in the law or practice after the date of this memo. We will be happy to review our advice at a later date to assess its continued validity.

This advice letter is addressed to the Local Government Management Agency ("LGMA") for the sole benefit of the LGMA and the 31 local authorities to which the LGMA provides services, and it may not be relied upon by any other person, or used for any other purpose, or quoted or referred to in any public document, or filed with any other Government agency or other person, nor may its existence be disclosed to any other person without our prior consent.

We accept no liability (including for negligence) to anyone else or for any other purpose in connection with the advice contained herein.

1. Background

The Local Government Management Agency ("LGMA") is the central body for the Local Authority Affordable Purchase Scheme ("LAAPS"). LAAPS is a scheme through which local authorities make new homes available for purchase by eligible applicants at reduced prices. In return,

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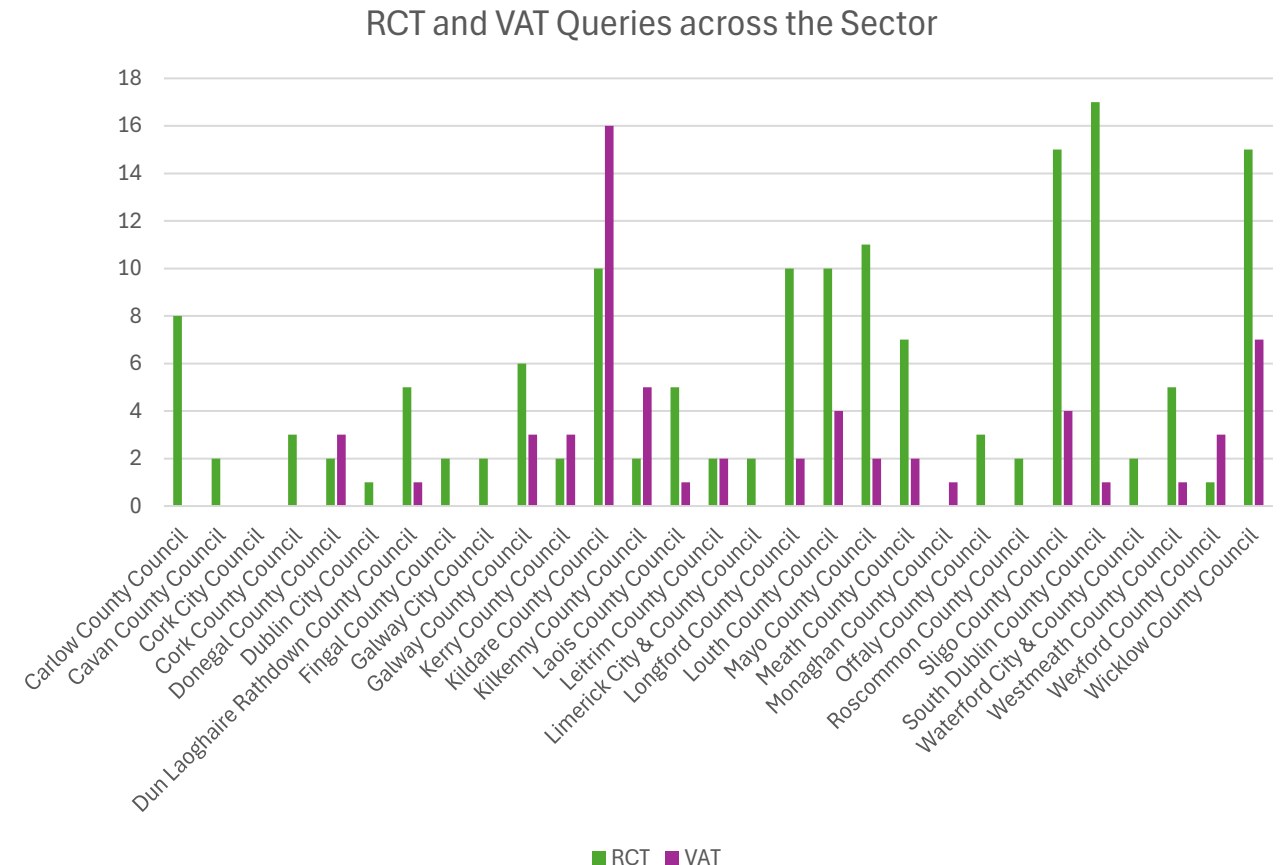
Olwyn Alexander Andy Banks Amy Ball Keiran Barbalich Paul Barrie Brian Bergin Fidelma Boyce Donal Boyle Aine Brassill Ciara Breslin Paraic Burke Damian Byrne Robert Byrne John Casey Mary Cleary Marie Coady Seánán Collier Joe Conboy Mairead Connolly Robert Costello Thérèse Cragg Moira Cronin Danielle Cunniffe Ciaran Cunningham John Daly Richard Day Elizabeth Davis Fiona de Búrca Jean Delaney Liam Diamond John Dillon Darrelle Dolan Ronan Doyle John Dunne John Dwyer Kevin Egan Colin Farrell Ronan Finn Laura Flood Ronan Furlong Marie-Louise Gallagher Fiona Gaskin Laura Gilbride Mairead Harbron Denis Harrington Aoife Harrison Harry Harrison Feilim Harvev Alisa Havden Olivia Havden Mary Honohan Gareth Hynes Patricia Johnston Paraic Jovce Andrea Kelly Ciarán Kelly

Sectoral Approach – Short Term

Tax Compliance issues are not a Finance issue but an organisation issue and possibly Sectoral

- Central processes where Sector can liaise with Tax expertise on areas, they need assistance on – Out of Scope Queries
- Frequently Asked Question (FAQ) around RCT available on LGMA Extranet
- Recorded webinar by PwC also available on LGMA Extranet

152 Queries and 61 VAT Queries– Contract reviews across 29 Local Authorities



Based on the OOS - Challenges across the sector

- Incorporation of a 'Building Agreement' or incorporation of the Construction Industry Federation (CIF) Building Agreement 2001 edition or earlier
- If a Covenant to Build Clause included as part of contract/agreement
- Inclusion of certain "Building" type wording/clauses
 - Use of Employer & contractor rather than Purchaser and Vendor
 - "Works" related definitions in the contract
 - Clauses or wording referencing development or construction works
- Clauses which render the contractor liable to the local authority in respect of any works carried out such as defects clause.
- If the contract contains any provision for specific extras or variations and whether these are 'Relevant Operations' – e.g additional works to a property to ensure it has required disability access
- If there has been any additional correspondence outside the written agreement between LA and Developer e.g changes to a building design plan or discussing specific changes savings in relation to development costs. Context is important..
- Stage of the completion of the property at the date of entering into an agreement

Based on the OOS - Challenges across the sector contd..

- These not only impact on Turnkeys but also homes sold under Part2 of the Affordable Housing Act 2021 through Affordable Subsidy Agreements (AHSA) and on homes delivered under the Capital Assistance Scheme (CAS)
- AHSA
 - Under the AHSA, the LA partners with a developer/vendor to construct housing units, which are then sold to eligible applicants nominated by the LA. The LA provides a subsidy either directly to the developer or through the Nominee/Buyers solicitor, and in return, the LA gains a percentage ownership in the property.
 - A contract between the LA and developer outlines this arrangement. However, the contract's references to building and development work have led to unintended RCT and VAT implications for the LAs. Specifically. The contract states that the vendor agrees to develop the affordable dwellings in exchange for a subsidy, which classifies the contract as a relevant contract.
 - The template also includes a contract for sale with the CIF building agreement, which is executed but undated. This ensures that the LA purchases any homes if a nominated buyer does not proceed with the purchase. The inclusion of the building agreement in the contract further brings the AHSA within the scope of RCT.
- CAS
 - The CAS is also causing unintended RCT consequences for LAs. Under CAS agreements, LAs provide funding to Approved Housing Bodies (AHBs) for developing social housing units. The AHBs then contract directly with developers for construction. The funding is provided under a Deed of Mortgage, but the LA waives repayment and interest if the AHB completes the development. This would then be considered as a payment for construction operation, making it likely to fall within the scope of RCT by Revenue
 - Other schemes such as the Capital Advance Leasing Facility (CALF) and Capital Loan Subsidy Scheme (CLSS) would also need to be checked for RCT implications

Sectoral Approach – Medium Term

Commencing in early 2023 a Due Diligence review was conducted across a number of local authorities across a number of Tax Areas including RCT , BIK, employment Taxes, PWST etc

- Tender for Tax Expertise to put in place RCT Remediation around
 - Communication and alignment – A lack of alignment among key stakeholders was revealed through the Due Diligence impacting on RCT compliance. Programme to establish an effective communication and alignment strategy is considered at each key stage in the process.
 - Standardised Procedure- A formalised procedure for RCT compliance across the sector. Outlining roles and responsibilities of all internal stakeholders, process maps and guidance documents detailing all procedure and escalation points at each stage of the process
 - Periodic RCT Testing/Self-Reviews – Introducing formalized periodic RCT testing and self-reviews. Compliance based and control based testing
- Engagement to ensure that new schemes are Tax Proofed prior to implementation

Sectoral Approach – Long Term

Acceptance that there is room for improvement in the approach to tax Control and compliance within the sector. There is a gap between what the local authority needs to be and where Revenue expects the local authority to be:

Up until the establishment of Revenue Med Section – each local authority dealing directly with their local tax office.

- Developing a sector wide Tax Control Framework (TCF) structure with RCT as one of the pillars
 - Input across all lines of management
 - Engagement with Stakeholders including DHGLH
 - Development of a sectoral Tax Strategy
 - Approach for local and regional tax expertise in the sector
 - Tax policy, rules, procedures and processes within the LA are documented for all relevant taxes
 - Role and responsibilities across the entire organisation
 - The management of risks associated with the management of Tax and compliance – Tax Risk Register
 - Assurance to Stakeholders – underpinned by maintenance and review
 - Change in Culture across the sector – importance of tax compliance, whole of organisation risk management

Sectoral Approach – Long Term

- Business case has been developed and approved through the CCMA Finance Committee Tax Working Group
- Presented to CCMA at March 2025 meeting
- Approved by CCMA to proceed with a Formal Business Case proposal based on the Recommendations presented.
 - This will include the costs to the sector, LGMA and any Tax expertise required.

Currently dealing with issues on a case-by-case basis – Based on the interpretation of the RCT Legalisation across multiple types of schemes. This is not sustainable in terms of time, resources or finances - An approach proposed is to address the Root Cause and seek Clarity.

- Affected schemes
- Impact on the sector and wider public service
- Associated risks

Impact at a Local Government level

- On the ground there are several issues impacting the delivery of housing schemes, including schemes such as:
 - Turnkeys
 - Affordable Housing Subsidy Agreements (AHSA)
 - Capital Assistance Scheme (CAS)
 - Capital Advance Leasing Facility (CALF)
 - Capital Loan Subsidy Scheme (CLSS)
 - Grant schemes
- Presently each LA is dealing with these on a case by case basis
 - Given the complexity of the RCT legislation, the LAs are seeking professional guidance
 - This is arising at the accounts payable level
 - Needs to arise at the inception of the scheme or at the latest contract
 - The LAs are committed to remaining tax compliant with all tax headings including RCT obligations
- Implement a Tax Control Framework (TCF)



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Questions?

What's Next?

1pm ➡ Return to the hotel lobby where hotel staff will direct you to lunch.

2pm ➡ The afternoon sessions resume back in the Marina Suite.

Enjoy your break!

