

APPENDIX 4

CIRCULAR 43/2006:

TAX CLEARANCE PROCEDURES PUBLIC SECTOR CONTRACTS

Notice to Government Departments and other public sector bodies concerned with awarding public sector contracts.

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1. Introduction

1.1 The Minister for Finance has directed that the following revised procedures are to be followed in the operation of the tax clearance scheme with respect to the award of public sector contracts **with effect from 1 January 2007**. Department of Finance Circular 22/95 of July 1995 is accordingly rescinded.

1.2 Copies of this Circular are available on the Department of Finance website (www.finance.gov.ie).

1.3 A separate Circular **44/2006** sets out the tax clearance procedures in relation to the payment of grants, subsidies and similar type payments by Government Departments and other public sector bodies.

2. Tax Clearance Procedures

2.1 In the case of all public sector contracts of a value of €10,000 (inclusive of VAT) or more within any 12-month period, the contractor (and agent as appropriate) will be required to produce either a valid tax clearance certificate or a C2 certificate¹.

2.2 As an alternative to producing a valid tax clearance certificate a contractor may authorise the contracting authority to confirm electronically that he/she holds a valid tax

clearance certificate using the on-line verification facility on the Revenue Commissioners' website www.revenue.ie . (See paragraph 8 for further details.)

2.3 It will not be necessary for a contractor to obtain a tax clearance certificate if he/she holds a current C2 certificate. Sub-contractors who do not already hold a C2 certificate should apply for a tax clearance certificate even where they are not legally required to produce a C2 for the purpose of the contract.

2.4 The Revenue Commissioners will, on application, issue a tax clearance certificate if satisfied that the conditions set out in section 1095 of the Taxes Consolidated Act, 1997 as amended (copy at Appendix 2) are being met by the applicant.

3. Scope of Tax Clearance Procedures

3.1 The public sector includes all Government Departments and Offices, Local Authorities, the Health Service Executive and other Health Agencies, Educational Bodies and all State Bodies whether commercial or non-commercial (statutory or otherwise) and in general all authorities (agencies/entities/bodies) who finance contracts out of public funds.

3.2 For convenience, the word contract is used in this circular but this should be interpreted to cover situations where public sector bodies are buying, hiring or leasing goods,

1 A 'C2 certificate' is a certificate of authorisation issued by the Revenue Commissioners, in accordance with the terms of section 531(11) of the Taxes Consolidation Act 1997, to qualifying subcontractors carrying out construction, forestry or meat processing operations as specified in that section. The certificate authorises a principal contractor to make arrangements to make payments to such sub-contractors without deduction of tax. In the absence of a C2 certificate, the principal contractor must deduct tax at the rate of 35% from payments to sub-contractors. Tenderers requiring further information on C2 certificates should contact their Local Revenue District services or property or generally expending public monies including, for example, contracts for cleaning or security, consultancies for management, legal or design services, purchases of materials or commodities, leases of property, plant hire etc. It is not necessary that a contract be the subject of formal documentation or a tendering process for the tax clearance procedures to apply.

3.3 A contractor for the purposes of this circular includes any individual, partnership or company, whether resident in Ireland or not, in receipt of payments of €10,000 (inclusive of VAT) or more from a public sector body. (A tax clearance certificate is now issued to non residents in situations where "statements of suitability" previously applied.)

3.4 Where a public sector body is making a payment to a third party, other than the contractor, as a result of 'invoice selling', 'factoring', 'discounting',² or for any other reason, the contractor must first produce a valid tax clearance certificate to the public body.

3.5 Subject to the exclusion set out at paragraph 4, the procedures set out in paragraph 2 should be applied to all public sector contracts of a value of €10,000 (inclusive of VAT) or more. It should be noted that individual contracts with any person or firm with a cumulative value of €10,000 or more during any 12-month period are subject to the tax clearance procedures. A standing arrangement with a supplier as a result of which purchases of a value of €10,000 or more are made during any 12-month period is also within the scope of the scheme. If any public sector body is in doubt as to whether the procedures should apply the Department of Finance should be consulted as appropriate (see contact details in Appendix 1).

3.6 Tenders should be invited for public sector contracts in the normal way, but advertisements and tender documentation should state that it will be a condition for the award of a contract that a firm or individual must comply with the terms of this circular. Where an agent is acting on behalf of a potential contractor both the agent and the contractor will be required to comply with the terms of this circular.

3.7 Tenders or prices should be sought and assessed in the normal way. The tax clearance requirements under this circular should be applied by the contracting authority only to the person or firm submitting the successful tender. The requirements should not accordingly be applied in the case of all tenderers for contracts.

4. Exclusion

4.1 Contracts awarded and payments made by public sector bodies to other public sector bodies are excluded from the scope of these procedures.

5.1 In the case of sub-contractors on any public sector contract of a value of €10,000 (inclusive of VAT) or more, the contracting authority should, when advertising the main 2 The original contractor cannot remove the requirement to produce a valid tax clearance certificate by agreeing, in whatever manner, that any payment(s) be made to a third party. No payment should be made by the Public Sector body if the contractor does not produce a valid tax clearance certificate contract, state that it will be a condition for the award of the contract that all sub-contractors employed on the project must produce a tax reference number where payments exceed €650.

Records of tax reference numbers must be kept by the contractor and be available for inspection where requested by the Revenue Commissioners. Where payments exceed €2,600 in any 12 month period the sub-contractor will be required to produce either a current tax clearance certificate or a current C2 certificate. It should be made clear to sub-contractors that payments under a contract are at all times conditional on compliance with these requirements.

5.2 It will be the responsibility of the relevant contractor to ensure that any sub-contractor employed by him complies with these requirements. In all cases contracting authorities must ensure that contractors have complied with these requirements. Any failure to comply with this requirement will affect a contractor's prospects of obtaining future public contracts.

5.3 It should be emphasised in the case of sub-contractors in the construction, forestry and meat processing industries that, in the absence of a C2 certificate, tax must continue to be deducted at source at the rate of 35 per cent in accordance with Section 531 of the Taxes Consolidation Act, 1997 as amended, notwithstanding the fact that a tax clearance certificate has been furnished under these arrangements.

5. Duration of Certificates

6.1 Successful applicants will be issued with a single tax clearance certificate valid for contracts awarded by any public sector body. Normally, the tax clearance certificate will be valid for 12 months.

6.2 Contracting authorities should take the necessary steps to ensure that contractors are in possession of a valid appropriate certificate at all times. Accordingly renewed certificates should be verified on-line in accordance with paragraph 8 or production of the new original certificate should be sought when an existing certificate expires and the contractor or subcontractor is still engaged on the contract. It should be made clear to contractors and to subcontractors that payments under a contract are at all times conditional on the contractors being in possession of a valid appropriate certificate.

6. Application for Certificates

7.1 Contractors, except for PAYE and Non-residents, should be advised that the application form (TC1) for a tax clearance certificate should be completed on-line on the Revenue Commissioner's website – www.revenue.ie. To facilitate all concerned, contractors should be encouraged to agree, on the on-line application form, to the on-line verification of any certificate issued to them (see paragraph 8). Contractors who do not have access to the internet may request an application form from their Local Revenue District.

7.2 Non-resident contractors cannot apply on-line for a tax clearance certificate but the following procedures apply:

7.2.1 Non-resident contractors who are registered for Irish tax and who do not have a permanent established place of business in the State should be advised to apply for tax clearance to Dublin City Centre Revenue District, 9/15 Upper O'Connell Street, Dublin 1.

7.2.2 Non-resident contractors who are registered for Irish tax and also have a permanent established place of business in the State should be advised to apply for tax clearance to the Revenue District in which the place of business is located.

7.2.3 Non-resident contractors who have neither an Irish tax registration nor a permanent established place of business in the State [i.e. foreign traders] should be advised to apply for tax clearance to Non-Residents Unit, Collector-General's Office, Sarsfield House, Francis Street, Limerick, fax 00353-61-401012 or e-mail nonrestaxclearance@revenue.ie

7. On-line verification facility

8.1 The Revenue Commissioners provide an on-line verification facility to confirm a contractor's tax cleared status. This allows contracting authorities to confirm electronically

that a person holds a tax clearance certificate. It also eliminates the need for a taxpayer to produce the original tax clearance certificate.

8.2 The on-line verification facility can be found on Revenue's website at www.revenue.ie. The facility is secure and can only be accessed with the permission of the contractor who holds the tax clearance certificate. The contractor gives permission to confirm his/her tax cleared status by quoting the customer number and tax clearance certificate number which appear on the certificate. This allows contracting authorities to access the secure facility to confirm the position. The contracting authority can accept on-line confirmation that a contractor is in possession of a tax clearance certificate and there is no need for the contractor to produce the original certificate.

8. The Issue of Certificates

9.1 The issuing of tax clearance certificates is the responsibility of the Revenue Commissioners. Successful applicants will be issued with a tax clearance certificate, valid for contracts with any public sector body, if Revenue is satisfied that the applicant has met the conditions set out in Section 1095 Taxes Consolidation Act, 1997 as amended (copy at Appendix 2).

9.2 The contractor will retain his/her tax clearance certificate but, before awarding a contract, each authority must either confirm the contractor's tax clearance status through the Revenue Commissioner's website or see the original tax clearance certificate or an authorised duplicate. A print-out of the website screen or a copy of the original certificate, as appropriate, must be kept by the contracting authority for its own record. The Revenue Commissioners will issue duplicate certificates to a contractor where this is considered necessary and appropriate. On expiry, tax clearance certificates can be renewed on-line on the Revenue Commissioners' website at www.revenue.ie or by post.

9.3 In normal circumstances, the Revenue Commissioners will issue a tax clearance certificate to applicants whose affairs are in order within six working days from the receipt of the application for a certificate. In exceptional cases, e.g. where the taxpayer has not quoted proper references or their tax affairs are not up to date, the process will take longer.

9.4 A successful tenderer should be given ten working days to produce the tax clearance or C2 certificate. If they have not done so within that period, enquiries may be made in respect of tax clearance certificates by the contracting authority concerned from the relevant Local Revenue District as to the position. If there are bona fide reasons for giving the tenderer an extension of the ten-day period, this extension may be allowed at the contracting authority's discretion in the light of information received from the Revenue Commissioners.

If not, a certificate should be sought from the person or firm that submitted the second most suitable tender and the process repeated. The contract should be awarded to the most suitable tenderer who can produce the appropriate certificate.

9. Other Issues

10.1 Should cases arise where only one tender is received and the firm involved cannot produce the appropriate certificate, it may be necessary for the contracting authority

(i) to hold a new competition;

(ii) if (i) is not possible, to exert pressure on the firm involved to make arrangements with the Revenue Commissioners to clear tax arrears before the contract is awarded: or

(iii) to postpone the awarding of the contract.

10.2 A contract should not be awarded to any firm which cannot produce a tax clearance certificate except as a last resort. In such a case, the advance approval of the Department of Finance must be obtained.

10.3 A valid tax clearance or C2 certificate is not required to be produced where, under a Notice of Attachment issued under section 1002 Taxes Consolidation Act, 1997, payment is due to the Revenue Commissioners instead of to the contractor.

10. General Government Contracts Procedures

11.1 In addition to the tax clearance procedures set out in this circular, the procedures set down in 'Public Procurement Guidelines - Competitive Process' by the National Public Procurement Policy Unit of the Department of Finance (see www.etenders.gov.ie) should be followed by the bodies which it covers.

D. McNally

Second Secretary

21 December 2006

Appendix 1 – Contact Information

Contact Information

(i) Tax clearance application forms are available on Revenue’s website www.revenue.ie. Further information in relation to C2 certificates can also be found on that site. Tax clearance certificates are issued by the relevant local Revenue District. The contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory Section of the Eircom phonebook. Forms and certificates for use by non-resident applicants are issued in accordance with paragraph 7.2 of this circular which also contains the contact details for non-resident contractors.

(ii) Implementation and operational queries in relation to tax clearance governed by this circular should be directed to the local Revenue District or in the case of non residents, the procedures set out in paragraph 7.2 of this circular should be followed.

As above at (i), the contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory section of the Eircom phonebook.

(iii) Tenderers requiring further information on C2 certificates should contact their local Revenue District. As above at (i) the contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory section of the Eircom phonebook.

(iv) Policy queries in relation to the tax clearance procedures covered by this circular should be directed to Tax Clearance Section, Department of Finance, Merrion Street, Dublin 2, Tel: (01) 6767571 Ext: 5597.

Appendix 2 – Section 1095 Taxes Consolidation Act

Taxes Consolidation Act, 1997. [No. 39.]

1095. Tax clearance certificates: general scheme.

(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;

‘licence’ has the same meaning as in section 1094;

‘tax clearance certificate’ shall be construed in accordance with subsection (3).

(2) The provisions of this section shall apply in relation to every application by a person to the Collector-General for a tax clearance certificate other than an application for such a certificate made—

- (a) in relation to a licence, or
- (b) pursuant to the requirements of —
 - (i) the Standards in Public Office Act 2001, or
 - (ii) Regulation (6) of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S.I. No. 135 of 1999).

(3) 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, and
- (b) the delivery of any returns to be made under the Acts, applies to the Collector-General in that behalf 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.

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

- (a) that person and, in respect of the period of that person's membership, any partnership of which that person is or was a partner,
- (b) in a case where that person is a partnership, each partner, and
- (c) in a case where that 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 paragraph (a) and (b) of subsection (3).

(5) Where a person who applies for a tax clearance certificate in accordance with subsection (3) (in this section referred to as 'the first-mentioned person') carries on a business activity which was previously carried on by, or was previously carried on as part of a business activity by, another person (in this section referred to as 'the second-mentioned person') and—

(a) the second-mentioned person is a company connected (within the meaning of section 10 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 in which—

- (i) a partner is or was able, or
- (ii) where more than one partner is a shareholder, those partners together are or were able, directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 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 in which—

- (i) a partner is or was able, or
- (ii) where more than one partner is a shareholder, those partners together are or were able, directly or indirectly, whether with or without a connected

person or connected persons (within the meaning of section 10 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 by the Collector-General under subsection (3) to the first-mentioned person unless, in relation to that business activity, 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 (3).

(6) Subsections (5) to (9) of section 1094 shall 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.