

FOCUS ON

Working on construction in the UK

For companies working on construction in the UK there are many compliance beartraps to catch the unwary. Not the least of these is the UK's Construction Industry Scheme which all entities carrying out construction in the UK must be aware of whether they are UK or overseas based and whether carrying out the construction activities in the UK via a branch or a UK subsidiary.

1) Construction Industry Scheme (CIS)

a) Sub-contractor responsibility

Those who carry out 'construction operations' in the UK are required to be registered with HM Revenue & Customs (HMRC) who will determine whether payments they are due to be paid for the labour element of their contract can be paid gross or under deduction of tax and, if the latter, the level of tax to be withheld (usually 20% of sums paid but can be as high as 30%). When deciding whether tax should be withheld, HMRC will consider the past tax compliance of the contractor and its directors/shareholders.

If HMRC grants gross status to a contractor, this can be withdrawn later if there is any evidence of failure to comply with UK tax compliance requirements.

The CIS rules apply to construction operations which take place either on the UK mainland or within British territorial waters regardless of the tax residence status of the sub contractor. If HMRC decide that tax should be withheld on payments received then any tax paid will be used to set against tax or National Insurance due from the recipient. Any balance not required will be repaid. It is usually the case that repayment will not be made until after the contractors tax computations have been agreed by HMRC for the

trading period in which the tax was withheld.

b) Contractor position

If the contractor is engaging labour on a self employed basis to undertake 'construction operations' then they must register with HMRC and operate the subcontractor scheme on payments they make to subcontractors. Again this applies to any construction operation taking place in mainland UK or in British territorial waters regardless of where the contractor is based. These rules require the contractor to approach HMRC before making payment to the subcontractor for the first time. HMRC will instruct over whether the payment can be made gross or whether tax is to be deducted on the labour element of the payment. On a monthly basis, the contractor is required to make a return of payments made and to pay over to HMRC tax withheld.

The monthly return requires the contractor to certify that the workers engaged were self employed (otherwise PAYE and National Insurance should have been operated - see below).

c) Deemed contractor rules

An organisation can be caught by the CIS rules even if construction is not a core part of its business. So companies who manage their own property and premises carrying out maintenance or refurbishment are likely to be caught by the rules.

If an organisation spends on average annually in excess of £1 million on construction operations over a 3 year period they will be required to operate the CIS arrangement.

2) Bringing workers to the UK

If it is intended to either employ workers in the UK (local hires) or to bring workers to the UK then you will need to set up a UK payroll and operate PAYE and UK social security (termed National Insurance) on payments made.

It is common within the UK construction industry for contractors to comply with 'working rule agreements' in the level of payment of expenses to workers. Working rule agreements are industry wide and are agreed on a national basis between the Trades Unions and industry representatives.

HMRC will agree to expense payments, which are within the limits set out in these 'working rule' agreements, being paid free of income tax and National Insurance if the contractor confirms that all the rules of the 'working rule' agreement will be followed on site. Before payments can be made gross, however, HMRC has to give permission in the form of what is known as a PAYE dispensation.

There are special tax and National Insurance rules for workers who are seconded to work in the UK for less than 24 months and also for short term secondees working in the UK. In these circumstances the worker can be paid for their visits home and also in respect of their living expenses whilst working in the UK. However, the level of these reimbursements needs to be agreed with HMRC.

3) Tax position of company

The contractor may be caught to UK tax on their profits on projects. This will depend on whether there is a place of business here. It will also depend on what is agreed in the UK in relation to the contract. There are certain exemptions in place for contractors who come to the UK for a period of less than 12 months and their only place of business is a site office. The precise level of relief depends on the country from which the contractor came and the terms of the relief specified in the double taxation agreement which exists between the UK and the home country.

Further information on UK taxation on companies is available in our booklet "Taxation of business profits of overseas enterprises in the UK" or from your MacIntyre Hudson tax contact.

4) VAT

The VAT position in the UK can lead to a VAT registration in the UK even though there may be no formal branch or fixed establishment in the UK.

A VAT registration means that VAT will be chargeable on income due under the contract. Being VAT registered means

that UK VAT incurred on costs will be recovered on each VAT return submitted. This is usually quarterly but if the contract results in the VAT income being at a reduced VAT rate returns can be submitted monthly to help cash flow.

Contracts involving work on land require careful consideration about the VAT treatment. Where contracts involve work on goods the position is simpler and it may be possible to treat the contract as an intra-EU supply of services. This means that VAT is self-accounted for by the customer, by using the reverse charge.

Contact us

For further information, please contact a member of our tax team:

On employment taxes or CIS:

Chris Blundell
Partner

E: chirs.blundell@mhllp.co.uk
T: 020 7429 4177

On corporation tax:

Alan Craddock
Partner

E: alan.craddock@mhllp.co.uk
T: 020 7429 0531

On VAT:

Gerry Myton
Partner

E: gerry.myton@mhllp.co.uk
T: 020 7429 4191



MHA MacIntyre Hudson is the trading name of MacIntyre Hudson LLP, a limited liability partnership, registered in England with registered number OC312313. A list of partners' names is open for inspection at its registered office, 201 Silbury Boulevard, Milton Keynes MK9 1LZ. Registered to carry on audit work in the United Kingdom and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. An independent member of MHA, a national association of UK accountancy firms. The term 'partner' or 'partners' indicates that the person (or persons) in question is (or are) a member(s) of MacIntyre Hudson LLP or an employee or consultant of its affiliated businesses with equivalent standing and qualifications. Partners and directors acting as administrators or administrative receivers contract as agents and without personal liability. Further information and links to the respective regulators and appointed individuals' qualifications can be found via our website www.macintyreHUDSON.co.uk/information.html

MHA MacIntyre Hudson is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. MHA MacIntyre Hudson is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, MHA MacIntyre Hudson, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. Arrandco Investments Limited is the registered owner of the UK trade mark for Baker Tilly and its associated logo.