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FREE LIVE WEBINAR

Global Tax Aspects for Contractors

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About the webinar

This webinar aims to inform recruitment companies, their clients, and international contractors about the tax matters that may affect their business when working cross-border.

Why might this be of interest?

There are several reasons, and they revolve mainly about mitigating risk to protect you and your relationships with the others involved in the contract chain. As the term implies, contracts are exchanged several times in the chain to set out obligations and pass risk down so that the final holder of the parcel when the music stops is someone else.

There are two things to think about here. You may well be able to pass financial liabilities to a contracting partner who has a decent covenant. On the other hand, reputational damage does not work like this and tends to stick.

We hope this webinar highlights some of these risk areas with theoretical and real-life examples and shines a light on how you can best reduce potential damage to you and your business.

Tax Harmonisation & Cooperation (1/2)

Tax harmonisation is the process of making taxes identical or at least similar in a region. In practice, it usually means increasing tax in low-tax jurisdictions rather than reducing tax in high-tax jurisdictions or a combination of both. The best example of this is in the European Union, where all countries must have a standard VAT rate of at least 15% and a restricted list of reduced rates.

Another case of tax harmonisation occurred in 2013 at the time of the Cyprus financial crisis when the Troika bailed out its banks and forced a haircut on depositors. The Troika insisted as part of the bailout that Cyprus raised its corporation tax rate from 10% (the lowest full rate in the E.U. at the time) to the next lowest rate of 12.5% as existed in Ireland.

Ireland has been forced to impose a 25% rate of corporation tax on businesses trading outside Ireland and have little Irish substance: another example of enforced tax harmonisation.

Tax harmonisation and double tax treaties (to which we will come soon), won't work unless the tax authorities have the data and sharing or extraction of tax information is becoming the norm. Gone are the days when you could salt away money in a Swiss bank account or even a Liechtenstein Anstalt and not have to worry about the detection.

When clients ask us about the risk of income suppression coming to light, we have to tell them that its likelihood increases every day. Not that the detection rates should govern the decision to break the law as I don't break one law rather than another based on their relative detection rates.

The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on July 15th 2014, **calls on jurisdictions to obtain information from their financial institutions and automatically exchange it with other jurisdictions on an annual basis.** It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, and standard due diligence procedures to be followed by financial institutions.

Tax Harmonisation & Cooperation (2/2)

Over 100 countries have signed up to the Common Reporting Standard, which aims at financial and tax transparency. The notable exception is the U.S. with its FATCA. **The Foreign Account Tax Compliance Act (FATCA)** was passed as part of the HIRE Act in 2010. It generally requires that foreign financial Institutions and certain other non-financial foreign entities report on the foreign assets held by their U.S. account holders or be subject to withholding on relevant payments.

Escaping the detection of international transactions is a reducing probability. Our advice is always arranging your affairs in the most tax-efficient way possible, but please don't rely on deception and suppression, as this tends to end up badly.

The other side to tax harmonisation, which focuses on states being able to maximise tax take, is **tax competition**. Two cases where this has led to increased prosperity as states use tax incentives to boost their economy are the U.S., where the individual states are free to set their state taxes and in Switzerland, where the cantons have tax freedom. In both countries, only federal taxes apply throughout their territories. The freedom has lead to localities vying to attract business and has proven its worth.

Another interesting case where tax harmonisation has boosted the economy is India. In 2017 India replaced its motley internal duties and service taxes with a nationwide General Sales Tax (GST) that has ended levying duties on transported goods across different Indian states.

In the past weeks there have been announcements from Janet Yellen, United States secretary of the treasury and President Joe Biden calling for a global minimum rate of corporation tax. There may well be an appetite for this. If not, we can foresee the IRS imposing local corporation tax charges on US companies whose profits abroad were taxed at what the US considers distortingly low tax rates.

Double Tax Treaties
(1/2)

Double tax treaties are agreements between two states on the matters of taxation. A Double Tax Treaty or DTA's primary aim is to ensure that tax does not escape in cross-border transactions. The second role is to determine where taxes are due in cross-border situations, and the third is to avoid taxpayer unfairness by avoiding paying tax on the same income twice (in both states).

Many countries have entered into tax treaties with other countries to avoid or mitigate double taxation, and **most current tax treaties follow the OECD model**. Such treaties may cover a range of taxes, including income tax, inheritance tax, value-added tax and other relevant taxes. Treaties do not necessarily cover all aspects of taxation. Besides bilateral treaties, multilateral treaties may also be in place.

While many countries have numerous tax treaties in place, some have very few or even none. By way of example:

- **The United Kingdom** has the broadest network of tax treaties in Europe (131 countries), reflecting its long economic and political history of global trade and investment. **France** follows the UK (107 countries) and **Italy** (102 countries).

- **Jersey** has only 15 full tax treaties. **Gibraltar** has tax treaties with the UK and Spain.

Most tax treaties begin with a preamble on the parties. Then follows the taxes that the treaty covers which, as stated before, may not be comprehensive. Most OECD treaties cover:

- Income tax

- Corporation Tax

Double Tax Treaties
(2/2)

The treaty usually sets treaty rates for withholding taxes on interest, royalties and dividends paid from one member state to another.

There are usually tie-breaker clauses that set out what happens in cases of dispute.

Some treaties may give unilateral relief for taxes suffered in the other state.

Case Study 1

Mr **A** was unsure where he would have to pay taxes on the dividends he had received from his UK limited company while working in Denmark.

He read the Double Tax Treaty between the UK and Denmark, and he concluded that you should pay dividend tax in the state where the company is incorporated, namely, the UK

When we re-read the Double Tax Treaty, we concluded that the dividend tax was due in the state the beneficial owner was tax resident, which was, in this case, Denmark.

If there had been no Double Tax Treaty in place, then both the UK and Denmark would claim dividend tax on the same income source: thus, the Double Tax Treaty avoids penal double taxation.

Case Study 2

A German tax resident wanted to incorporate a Cypriot company.

Under the Double Tax Treaty between Cyprus and Germany, Cyprus should deduct dividend tax at source, and Germany could impose an extra dividend tax upon shareholder's receipt of dividends in Germany. However, despite the Double Tax Treaty in place, Cyprus has a common practice: when the Cyprus company's ultimate beneficial owner is not a Cyprus tax resident, no WHT is applied to the dividends.

In this specific case, the German individual did not have to pay any dividend tax in Cyprus.

IR35 and the UK Off-Payroll Rules – international aspects (1/3)

The Off-Payroll Rules in the UK have applied in the public sector since 2017. The rules shift the decision as to whether or not a contractor with a limited company is effectively employed or self-employed from the contractor to the end client that uses the contractor's services.

April 6th, 2021 has now passed and ushered in the era of new off-payroll rules in the private sector, together with, as reported by several press outlets, a widespread lack of preparedness by some agencies and clients. Unpreparedness should come as little surprise as there was little Brexit preparation. However, there was a stay of execution from April 6th, 2020 (the initially planned date to implement the new rules) due to COVID-19. COVID, I should mention, is still with us!

The IR35 rules require that PAYE and NIC be paid by those who provide services to a client through an intermediary, if that person would otherwise be an employee of the client.

This scenario usually occurs through the use of a personal service company (PSC). Previously, where a private sector business engaged a contractor through a PSC, it was the contractor's responsibility to decide whether IR35 applied and pay any employment taxes.

From April 6th, 2021, the burden now falls on the engaging businesses that will be made liable for determining whether the IR35 rules apply. They will also be required to operate PAYE and pay employers' National Insurance contributions where applicable.

The changes do not apply to small businesses which engage contractors through PSCs. Small businesses are those who meet two or more of the following criteria:

1. fewer than 50 employees,
2. less than £10.2m annual turnover
3. a balance sheet totalling less than £5.1 million.

IR35 and the UK Off-Payroll Rules – international aspects (2/3)

Many contractors, recruitment businesses and clients are especially unaware of how the new Off-Payroll Rules in the private sector work when there is a foreign element in the contract chain. **HMRC has no jurisdiction over companies not based in the UK, but they do have sway over any subsidiaries or branches they may have there.**

HMRC has no interest in these Rules where the worker is not a UK taxpayer. Please note that a **UK taxpayer is not the same thing as a UK tax resident**. A UK taxpayer may be subject to U.K. tax on account of income that has arisen in the UK Such a person may not have spent more than 183 days in the tax year (April 6th to the next April 5th) in the UK.

A UK-tax resident has spent more than 183 days in the tax year in the UK and has not left the U.K. to lose UK-tax residence. Such a person is subject to UK taxation on their worldwide income.

HMRC has cleverly defined that a “fee-payer” is the last entity in the UK, making payment to an intermediary, i.e. a limited company. Self-employed and employed are not affected by the Off-Payroll Rules. Other rules apply to them.

The result of these considerations is that:

1. HMRC cannot demand or enforce foreign clients to carry out a Status Determination.
2. The status determination then falls to the fee-payer, which is usually a UK recruitment business.
3. The Off-Payroll Rules do not apply if the recipient is not a UK taxpayer. In other words, if the recipient is either not present and working in the UK or not a UK tax resident.
4. Suppose your client is outside the UK and your recruitment business is also entirely outside the UK, or your paying agent is not in the UK, and you receive only a margin payment. In that case, you cannot be liable under the Off-Payroll Rules.

IR35 and the UK Off-Payroll Rules – international aspects (3/3)

Case Studies

Since the UK's public sector is entirely in the UK, there is no case law since 2017 covering international or cross-border cases. We have had several recruiters coming to us asking what do we do with our contractors? The first question we ask is whether or not the contractor is using his limited company? If he is not, carry on as before as the Off-Payroll Rules apply only to an intermediary.

If the contractor uses his company and the client is not a small company as we defined earlier, you need to decide if he is a UK taxpayer. If he is not, carry on as before.

If he is a UK taxpayer then you must carry out a Status Determination to decide if the contract is inside or outside IR35 and follow the result. If outside, pay his company gross. If not, then you must apply PAYE and NICs. If you are wrong and you don't you can be liable for the entire liability, and it is no longer the contractor's liability!

Not just one but two 183-day rules and a bit about P.E. (1/3)

Many contractors labour under the impression that a tax treaty grants them a tax-free holiday if their stay in-country is less than 183 days. Unfortunately for them, but not the tax authorities, this is not the case.

Income that arises in a country of work is taxable there unless the tax treaty states otherwise.

In the case of dependent workers (who are employed under secondment) they can continue to pay their income tax back home under most tax treaties. After 183 days, the tax becomes due in the country of work back-dated to the work stay start, which applies if the payer does not have a permanent establishment in the work country.

Thus, it is the 183-day rule that appears in tax treaties.

There is another flavour of the 183-day rule, and this has nothing to do with the tax treaty but domestic tax law. In many states, after spending 183 days in a tax year in the state, the individual becomes liable to taxation on their worldwide income.

It is not always so clear cut and assuming anything can lead to errors. For example, in Belgium and Finland, if you are registered self-employed in your home country and your work in either country for less than 183 days, without creating a Permanent Establishment, you do not have to pay taxes in the work country. In some cases, a person can stay for more than 183 days in the work country and pay taxes back home.

So what is a Permanent Establishment?

A Permanent Establishment, affectionately called a P.E., is a fixed place of business. What constitutes a fixed place of business is described in the double tax treaty. Coming to work cross-border to work at the same desk can be a fixed place of business, create a P.E., and give rise to immediate tax liability. We will come back to this.

Not just one but two 183-day rules and a bit about P.E. (2/3)

By way of example, it can be very apposite for a contractor working in Germany from May 1st until December 31st. Having exceeded the 183 days in the country, they must declare the income that arose in Germany and any income from outside Germany for the contract's duration but from the beginning of the tax (calendar) year. An assessment can be both surprising and shocking, not to mention unwelcome!

Case study 1

Mr **B.**, a Belgian national, started working in Germany as a self-employed person in September 2020.

He believed that, as his total stay in Germany for 2020 was only for four months, he would not become a German tax resident for 2020.
As he was planning to leave Germany in March 2021, staying in Germany only for three months during 2021, he believed he would not again become a German tax resident.

However, the German Authorities used the aggregate stay in Germany, which was seven months (four months in 2020 and three months in 2021). Therefore, Mr **B**. just one month before leaving Germany, became a German tax resident.

Therefore, the "183 days" rule is not absolute, nor does it always and everywhere relate to a sole calendar year.

What also makes Mr **B.**'s case doubly interesting was that he was living near the Belgian-German border. Therefore, he was travelling to and from Germany daily, as his house in Belgium was only a 1-hour trip.

However, the risk would have been that as Mr B. was using the same desk in his workplace in Germany, that desk would become a fixed place of business, thus a permanent establishment.

Not just one but two 183-day rules and a bit about P.E. (3/3)

Case Study 2

In a similar case but Denmark, the contractor straddled three calendar years, but the Skatt repaid taxes in the first year as the stay was less than 183 days and also in the third year for the same reason and taxed him only in the second year where he spent the entire year in Denmark.

Tax Residency
(1/3)

What is tax residency?

The best way to understand this is to know the distinction between a resident and a non-resident.

A Resident is a person who is taxed on their worldwide income where worldwide taxing rules apply.

Non-resident is taxed on income earned in the work country and obtains the credit of taxes paid in the work country when he files his income tax return in the country where he is resident.

How does someone become a tax resident?

The rules differ from country to country, but the general concept is that an individual is treated as a resident if he has his principal home in a country or is present there for at least six consecutive months, even if he intends to stay there permanently.

Tax residency rules differ across the globe, and generalising can be dangerous, so it is best to assume nothing.

The UK's rules are complex. Becoming a UK tax resident is easy. Just spend 183 days in a tax year in the UK, and you will become subject to UK taxation on your worldwide income. Losing UK tax residence is not so straightforward. Essentially, you must leave the UK for a full-tax year to work. Having lost UK tax residence, you must follow the complex Statutory Residence Test to discover if you have retained or lost non-UK tax residence. Due to the breadth of the test's content, I won't go into detail here, but more information is available at:

https://www.gov.uk/government/publications/rdr3-statutory-residence-test-srt/guidance-note-for-statutory-residence-test-srt-rdr3

Tax Residency
(2/3)

In Switzerland, the time taken to become a tax resident is shorter. An individual establishes a tax residence, if:

1. a stay of a minimum of 30 days is combined with a gainful activity, or
2. without such activity if the stay lasts a minimum of 90 days.

A US citizen remains subject to U.S. taxation no matter where they live as long as they retain citizenship. There are various exemptions for foreign earnings, but the principle remains.

In other countries such as Germany and France, **tax residence is determined less by time and more by where the centre of one's economic interests lie**, which often surprises contractors in Germany. The Finanzamt can view a single man renting his sole home in Germany as a tax resident and subject to Germany's worldwide taxing rules from Day 1. By contrast, a married man who leaves his family behind in the U.K. where their children are at school and where he has other income may not. As they say, it all depends on the facts of the individual case.

Case Study: Tax resident in more than one country.

Mrs **Z.** arrived in Cyprus and began work in November 2020. Before that, Mrs **Z.** lived in Greece.

Mrs **Z.**'s concern was whether she was obliged to prepare and submit a personal income tax in Cyprus for only two months.
The Cypriot Tax Department confirmed that since Mrs **Z.** intended to stay in Cyprus for several years, she became a Cyprus tax resident from her arrival date.

The issue here was that two states during 2020 could claim Mrs **Z.**'s tax residency. Greece, as Mrs Z. was living in Greece for 28 years, and Cyprus, as Mrs **Z**. was going to stay for the following years.

Both countries tax their tax residents on their worldwide income; however, the double tax treaty between Cyprus and Greece states that an individual shall pay taxes only in the country of work irrespective of the tax residence status.

Tax Residency
(3/3)

For Mrs **Z.**, we prepared and submitted a personal income tax return for 2020 for Greece and Cyprus.

For Greece, we included the income generated in Greece and employment income from Cyprus and all the Cyprus taxes. Similarly, for Cyprus, we had the Cyprus income and its taxes and the Greek one with all Greece's taxes paid.

The problem of Deemed Employment (1/2)

“Deemed Employee” is defined as “a person who is contracted wholly or principally for the supply of their labour and who is unable to delegate responsibility to another person for the completion of the contract”. Labour includes intellectual and artistic effort as well as physical effort.

The authorities worldwide are scrutinising independent persons, and the onus is increasingly on the individual to prove they are not a deemed employee. To counter this, the independent person needs to rely on more than just a contract to wave. He or she should:

- Not be under the control of the person using their services
- They should be able to substitute themselves
- Should show the traditional badges of trade
- Should hold insurance cover
- Should not be integrated into the client’s business
- Have or intend to have multiple clients
- Not have been employed formerly by the client
- Etc

At a conference, one questioner informed me that under his recruitment company’s business model, all contractors that he places in Germany are self-employed. I tried to tell him that this was an expression of desire rather than fact. The Finanzamt; the Sozialvesicherungs and the Agentur fur Arbeit may well not agree.

The recent case with Uber at the UK’s Supreme Court ruled that Uber’s drivers in the UK were not self-employed, nor were they employees. Still, they were “workers” and, as a result, were entitled to the national minimum wage and statutory holidays.

The gig economy is under constant threat from:

1. Workers seeking employment rights but the flexibility of gig working
2. Tax authorities looking to accelerate the tax take as employees have PAYE withheld by the employer
3. Unions insisting that self-employed distort the labour-market and undercut their members

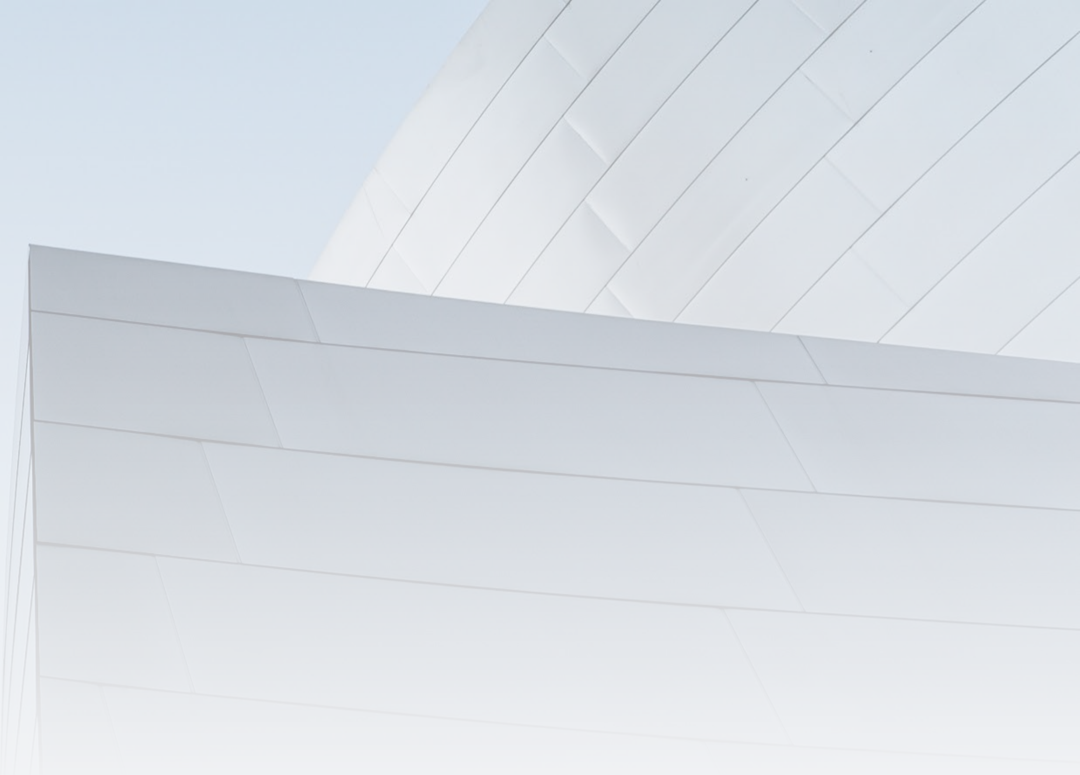
The problem of Deemed Employment (2/2)

4. The social security authorities resent that self-employed people pay less social security all-around than do employed people and their employers. (In the UK, employer's N.I. is usually 13.8%, even on those beyond retirement age.)

It is not enough just wanting to be self-employed and for a recipient of services not wishing to employ someone. In the Netherlands, this simple philosophy is embodied in Model Agreements, the nub of which neither party, not being under duress, intends there to be an employed master/servant relationship to exist between them.

No one denies that abusers are rife, and many people have little choice, but in a vibrant modern economy, being agile and free to contract as you desire should be permitted, if not encouraged. Unions and authorities everywhere question those who purport to be independent and argue that the relationship is a sham and is disguised employment.

The scandals at the BBC where even the erstwhile D.G. worked through a personal service company gave rise to IR35 and tax and NIC saving abuse. But legions of people who want to work independently or forming small business to offer their services are not necessarily participating in this abuse, and tax is not the main driver.



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