

October 22, 2013
2013-142

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

United Kingdom – Update on Use of Offshore Intermediaries for Employment Purposes

by Punam Birly, Steve Wade, and John Weir, KPMG LLP, London (KPMG LLP in the United Kingdom is a KPMG International member firm)

The U.K. tax authority, Her Majesty's Revenue & Customs (HMRC), has published a response to the consultation on the original proposals concerning the use of offshore intermediaries and responsibilities with respect to the payment of employers' U.K. social security and withholding of both income tax and employees' social security.

Background

The U.K. government is trying to clamp down on what it perceives as tax avoidance involving the use of offshore employment intermediaries. The government believes the current use of offshore intermediaries – for example, a situation where a Guernsey-based company supplies workers to the U.K. for services to another intermediary or end user of the labor – is being used to remove an employer's obligation to pay employer's U.K. social security and avoid withholding both income tax and employee's social security.

The government wants to “ensure that UK businesses that are complying with the rules are not undercut by those who are involved in avoidance arrangements”.¹

In its original proposal, HMRC had stated that in the case of a failure to withhold tax and social security from earnings by the offshore employer, the obligation to withhold will move to intermediary 1 (typically a U.K. agency or employment business) and if it also failed to withhold, the obligation would move to the end user².

HMRC has now published a response to the consultation on the original proposals.³ This response includes the new proposals discussed below.

New Proposal for Non-Oil & Gas Industries

If the offshore employer fails in its withholding obligation, then that obligation will be transferred to intermediary 1 and will **not** be transferred to the end user. This is the case even if intermediary 1 was to go into liquidation.

Where there is no U.K. intermediary, the withholding obligation will fall on the end user.

The original proposals would have placed an extra administrative burden on businesses within the supply chain. Under these revised proposals many businesses are removed from the administrative requirements. Some information, however, will still be required by HMRC to aid it with compliance investigations. This will involve submitting electronically through Real Time Information (RTI) details of any payments made to, and tax and U.K. social security withheld from, employees.

Additionally a quarterly return to be submitted through RTI will be required in respect of all workers not already accounted for under RTI. Penalties will apply if the return is not filed on time or an incorrect return is filed with the first quarterly return being due in October 2014. These quarterly returns will not apply to the oil and gas industry.

KPMG LLP (U.K.) Note

The original proposals would have also amended the current legislation that imposes a withholding operation on international assignees. The proposed changes would have caused more administration and greater uncertainty regarding when U.K. withholding should be operated with regard to assignees. It appears HMRC has listened to representations⁴ made by interested parties and these proposals will not now go ahead. Where the current rules require the operation of U.K. withholding with regard to international assignees, that withholding obligation will continue under the new proposals.

New Proposals for Oil & Gas Industry

There are different proposals in respect of the oil and gas industry. HMRC's revised proposal for the oil and gas industry is that if the offshore employer defaults, the withholding obligation will move to any associated company, body, or agency that the offshore employer has in the United Kingdom. The associated company, etc., will then be regarded as the secondary contributor for social security purposes. If there is no associated company, body, or agency in the U.K. then the oil field licensee will be the secondary contributor for social security and responsible for operating U.K. withholding.

The government has also decided to set up a certification scheme. Under this scheme, an offshore employer that is already fulfilling U.K. withholding obligations will be able to apply for a certificate from HMRC. The certificate will ensure that the licensee will not be the secondary social security contributor and cannot be pursued for any under-payments, even where there is not an associated company, body, or agency in the United Kingdom.

HMRC has not yet finalized its considerations on mariners operating on the U.K. Continental Shelf. Draft legislation is expected in November as well as guidance on anti-avoidance and penalties. These new proposals are to come into force on 6 April 2014, but HMRC will delay penalty provisions until April 2015.

KPMG LLP (U.K.) Note

The formal consultation phase is now complete and HMRC will issue draft legislation. Employers should review their current arrangements and identify who is in their supply chain to ascertain where an obligation as secondary social security contributor may occur.

Employers should determine if that employer is either a responsible end user, responsible intermediary, or an associated company of the offshore employer and that it is registered from 6 April 2014 to make RTI monthly returns to HMRC for tax and social security. As explained above, quarterly returns may also have to be submitted in respect of workers employed outside the U.K. who have not been included in the monthly submissions. It is not currently clear what information will be included in these quarterly returns.

HMRC is still holding round-table events in respect of the proposed changes and KPMG LLP (U.K.) continues to discuss these proposals with HMRC. A further update will be provided when the draft legislation is published.

Footnotes:

1 HMRC Response

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249786/Summary_of_R
esponses_Offshore_Employment_Intermediaries.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249786/Summary_of_Responses_Offshore_Employment_Intermediaries.pdf)

2 HMRC Consultation

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203981/130530_Offshor
e_consultation_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203981/130530_Offshore_consultation_FINAL.pdf)

3 HMRC Response

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249786/Summary_of_R
esponses_Offshore_Employment_Intermediaries.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249786/Summary_of_Responses_Offshore_Employment_Intermediaries.pdf)

4 For prior coverage, see [Flash International Executive Alert 2013-086](#), 4 June 2013.

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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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