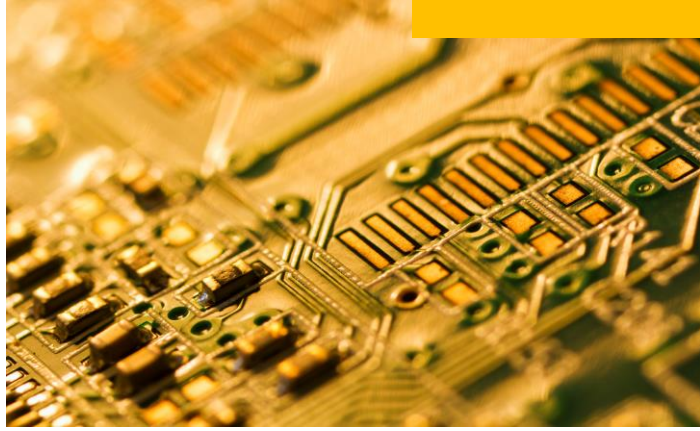


FOCUS ON ...

EXPERTISE



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Subcontracting: financial solidarity of the principal

In the context of the fight against undeclared work, the principal may be held liable if he has not ensured that his subcontractor complies with the rules of labour law. Thus, any person who concludes a contract for an amount of at least € 5000 excluding VAT must check, at the time of the conclusion of the contract and every 6 months until the end of the performance of the contract, that his subcontractor has carried out all the legal formalities and steps. Failing this, the principal will be held jointly and severally liable for payment of the various sums claimed from his subcontractor for undeclared work.

The people involved

Individuals and professionals, natural or legal persons, under private or public law, are subject to this obligation of vigilance as long as they are in a position to give orders.

A company is a principal when it entrusts another company, the subcontractor, with the task of carrying out production or service activities for it, according to pre-established specifications, for which it retains responsibility.

The subcontractor remains responsible for the human and material resources used to carry out the work entrusted to it. In return, the subcontractor receives a fixed remuneration for the work performed.

The operations concerned

This includes contracts for the performance of work, the supply of services or the performance of a commercial act: contracts for production, manufacture processing, repair, construction, supply, sale, agricultural work, services, material, intellectual or artistic services, transport, industrial subcontracting or works.

The obligation to exercise due diligence concerns contracts worth at least € 5000 excluding tax. The total amount of the transaction should be taken into consideration, even if it is the subject of several payments or invoices.

The duty of care of the principal

The client must ensure that his subcontractor provides him with a certain number of documents when the contract is concluded and every six months until the end of its performance. He must check the consistency of the information at his disposal in the light of the documents submitted.

The certificate of vigilance

The principal must obtain from his subcontractor a "vigilance certificate": a certificate of provision of social declarations and payment of social security contributions. This certificate is issued to the subcontractor by the URSSAF (or the MSA).

This certificate also mentions the number of employees and the total remuneration that the subcontractor declared at its last deadline. This information should enable the principal to assess whether the number of employees declared matches the scope of the work entrusted.

The principal must ensure that the certificate of vigilance provided by the subcontractor is genuine. This check is carried out with the competent collection agency, by electronic means, on the agency's website (URSSAF, MSA or Social Security for the self-employed), the security number mentioned on the certificate.

Other documents

The principal must ensure that the subcontractor provides him with the following documents:

- An extract of the registration in the Trade and Companies Register.
- An identification card proving registration in the Répertoire des métiers.

- A quotation, an advertising document or professional correspondence, provided that the name or corporate name, the full address and the registration number in the Trade and Companies Register or in the Trade Register or in a list or roll of a professional body, or the reference of the approval issued by the competent authority, are mentioned.

- A receipt of the deposit of a declaration with a centre for business formalities for those in the process of registration.

In case of employment of foreign workers

If the subcontractor employs foreign workers, he must provide the principal with a list of the names of the foreign workers employed, specifying for each one: the date of recruitment, his nationality, the type and number of the work permit.

Subcontractor established abroad

Where the subcontractor is established abroad, he must provide the principal with:

- If the co-contractor is not required to have such a number, a document mentioning its identity and address or, where applicable, the contact details of its fiscal representative in France.

- A document certifying that the person's situation is in conformity with the European regulation on the coordination of social security systems or with an international social security convention (form "A1").

- A document from the body responsible for the compulsory social security scheme stating that the subcontractor is up to date with his social security declarations and the payment of the relevant contributions, or an equivalent document.

- Where registration of the subcontractor in a professional register is mandatory in the country of establishment, a document proving such registration.

The duty of injunction

A principal who is informed in writing by a control officer, a trade union, a professional association or an institution representing the personnel, of the intervention of a subcontractor who does not respect the obligations of prohibition of concealed work, must enjoin him immediately, by registered letter with acknowledgement of receipt, to put an end to this situation without delay. The same applies to the employment of a foreign worker without a work permit. Failing this, the principal is held jointly and severally liable

Financial solidarity

Cases of implementation

The mechanism of financial solidarity with a subcontractor who has been fined for undeclared work can be applied in several ways:

- As a principal who has failed to fulfil his obligations of vigilance,
- As a principal convicted of knowingly using the services of the perpetrator of the offence of concealed work,
- As a principal who has been warned and has not stopped the infringement (duty of injunction),*
- As a parent or holding company

The extent of financial solidarity

In such cases, the principal shall be held jointly and severally liable with the subcontractor:

- Payment of taxes and compulsory contributions due to the Treasury and social security bodies, including penalties and increases,
- Payment of remuneration and charges due in respect of the employment of undeclared workers,

- The reimbursement, where applicable, of sums corresponding to the amount of public aid from which the subcontractor has benefited.

In addition, when a principal has failed to comply with his duties of vigilance or injunction with regard to a subcontractor who has engaged in undeclared work, the collection agency cancels the reductions or exemptions from contributions from which the principal may have benefited in respect of remuneration paid to his employees. The cancellation applies for each of the months during which the principal did not comply with his obligations, up to a limit of €15,000 for a natural person and €75,000 for a legal person.

In case of employment of foreign workers

If the principal has not verified that his subcontractor fulfils his obligations relating to the employment of foreign workers, he will be jointly and severally liable for payment :

- Wages and accessories due to the foreign employee not authorised to work,
- Compensation for the termination of the employment relationship,
- The special contribution to be paid to the OFII and the flat-rate contribution representing the costs of returning the person concerned to their country of origin.

The joint and several liability of the principal in the event of irregular employment of foreign workers may be added, where appropriate, to the financial solidarity provided for in the case of concealed work.

Our firm is at your disposal to advise and assist you.

Please do not hesitate to contact us.



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