

Enforcement

Office inspections

Office
Pretoria

Enquiries
Gerna Gresse

Telephone
012-422-5024
082-465-7193

Facsimile
012-422-6843

Room
Block G
1st Floor

Reference
CON181356.

Date
15/03/2005

Mr. P Fourie
Master Builders Association
PO Box 1619
Halfway House
1685

South African Revenue Service
Pretoria Head Office
299 Bronkhorst Street,
Nieuw Muckleneuk, 0181
Private Bag X923, Pretoria, 0001
Telephone (012) 422-4000

Dear Mr Fourie

TAXATION OF LABOUR-ONLY SUB-CONTRACTORS

I refer to my earlier directive of 25 May 2004 and our discussions in this regard. In our discussions you raised some concerns in relation to the applicability of the directive of 25 May 2004 and the circumstances in which employees' tax must be deducted from payments made to Labour-Only Sub-Contractors. To address these concerns, the directive of 25 May 2004 is replaced with this directive, as follows:

Withholding rate

Employees' tax at a rate of 6% of "remuneration" as defined in the Fourth Schedule to the Income Tax Act (the Act) must be withheld in respect of payments made to Labour-Only Sub-Contractors and paid to SARS in the prescribed manner.

In addition to this, the Skills Development Levy and Unemployment Insurance contributions at the appropriate rate must be withheld and paid to SARS.

Effective date

This directive replaces the earlier one with effect from 1 March 2005.

Exceptions

This directive does not apply in the following circumstances:

- Where the Labour-Only Sub-Contractor declares in writing that it does not render or will not render services to someone else for the period concerned and the remuneration paid to the Labour-Only Sub-Contractor is less than R123 per day (or such other amount that equates to the tax threshold applicable to persons under the age of 65), no employees' tax needs to be deducted;

- The nature of the business activities of a Labour-Only Sub-Contractors is such that, as a general rule, they are not regarded as labour brokers as defined by the Fourth Schedule to the Act. Where, however, a Labour-Only Sub-Contractor is in fact a labour broker as defined and produces a valid exemption certificate (IRP30) as provided for in paragraph 2(5) of the Fourth Schedule to the Act, no employees' tax needs to be withheld;

- Labour-Only Sub-Contractors are generally subject to either supervision or control as to the manner in which their duties are performed or as to the hours of work, and generally has the right to claim remuneration (wages, and the like) at regular daily, weekly, monthly or other intervals. A Labour-Only Sub-Contractor is, therefore, generally deemed not to be an independent contractor for purposes of the Fourth Schedule to the Act. Where, however, the employer or client of a Labour-Only Sub-Contractor is satisfied that:
 - the Labour-Only Sub-Contractor is not under supervision or control as to the manner in which their duties are performed or as to the hours of work; and
 - remuneration to the Labour-Only Sub-Contractor is not payable at regular daily, weekly, monthly or other intervals; and
 - the Labour-Only Sub-Contractor is not otherwise an employee under the common law,no employees' tax needs to be withheld.

- Personal Service Companies, Personal Service Trusts and Labour Brokers without an exemption certificate are not affected by this directive. Employees' tax at a rate of 35% must be withheld in respect of these entities.

Administrative requirements

In addition to the procedures and requirements that are explained in the Guidelines of Employers (EMP10), the following administrative requirements must be met:

- Annexure A (attached) must be completed by the main contractor for all payments made to Labour-Only Sub-Contractors who are natural persons. This register should be submitted with the IRP501 reconciliations; and

- Annexure B (attached) must be completed by the main contractor for all payments made to other sub-contractors (i.e. sub-contractors other than Labour-Only Sub-Contractors) who are natural persons and should be kept for record purposes.

References

The following references are available for further clarification or research:

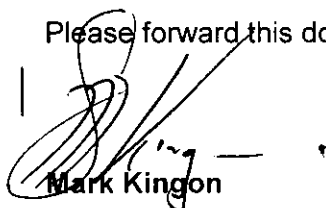
- The Guidelines for Employers (EMP10). This Guideline deals with issues like registration requirements, operational procedures and the legal framework within which it all happens. The Guideline is available at the local branch of the South African Revenue Service or at www.sars.gov.za/payee/guidelines/guidelines_main.htm
- Interpretation Note 17 on independent contractors, which is available at www.sars.gov.za/it/interpretation_notes/interpretation_notes%201.htm
- Administrative forms, which can be downloaded at www.sars.gov.za/payee/forms/forms_main.htm

Other issues

Please also draw the attention of your members to the following:

- The ruling dated 25 February 1993 that was issued to BIFSA and that dealt with Labour-Only Sub-Contractors was withdrawn with effect from 1 June 2004;
- The current rate at which employees' tax must be deducted from Labour-Only Sub-Contractors is subject to review by SARS at any time;
- Unemployment Insurance Fund (UIF) contributions as well as the Skills Development Levy (SDL) must be deducted in addition to the employees' tax. This matter has been raised with the Department of Labour who have confirmed that these amounts must be deducted. These deductions must be made regardless of whether a Labour-Only Sub-Contractor is responsible for the payment of remuneration to its own employees, and regardless of whether the remuneration paid is less than R123 per day.

Please forward this document to your members as soon as possible.



Mark Kingon

For South African Revenue Services

