



## MONITORING LARGE CONSTRUCTION PROJECTS

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## A. INTRODUCTION

The policy plan of the Minister of Finance having identified monitoring of large structures as one of the action points, the tax administration will follow up large-scale infrastructure projects from the start.

Large construction projects can be found all over Belgium. These projects are characterised by:

- important economic interests
- different contracting parties
- recurrent involvement of foreign businesses and workers
- temporary nature of the presence of the foreign businesses
- interest of the authorities and/or the media.

Given these factors, adequate supervision by the FPS Finance is appropriate, as projects of this kind also involve fiscal and social risks.

In order to significantly intensify the fight against tax and social fraud, the tax authorities, the social inspection, the court and other public services responsible for enforcing social and tax legislation will cooperate more closely, better coordinate their actions and exchange more data. In this way, they aim at coordinated monitoring of large construction projects. In fact, the risk of social dumping and tax irregularities at construction sites with companies and employees of different nationalities is high.

Qualifying construction projects must meet a number of criteria:

1. Project sum at least €500 million (this is not a hard limit and can be deviated from, if the other criteria are met)
2. Many (foreign) contractors and subcontractors
3. High levels of temporary and redeemable (foreign) labour
4. Policy and media attention (high public interest)

The departments of the tax authorities and Social Security Intelligence and Investigation Service (SIOD) will contact the companies concerned to map out the structure of the operation, to clarify which tax and social rules general and subcontractors have to comply with and to prevent them from breaking the law - which is not always known to them.

Consequently, this monitoring requires a cultural shift from an individual approach (per individual taxable person) to an approach based on cooperation between administration and taxable persons, which on the one hand aims at legal certainty for large companies and on the other hand seeks to ensure that these companies contribute their 'fair share of taxes'.

Promoting compliance behaviour has become an important issue for the FPS Finance in recent years. Such supervision involves, among other things, working more on current issues, because of the volatility of activities, and achieving higher levels of compliance with the legislation through open and transparent cooperation between public authorities and the business community. To this end, we apply the full range of resources we have, which can go from educating and agreeing on compliance behaviour to detections and inspections.

As such, this monitoring formula has benefits for all parties. For companies, it will lead to more clarity, more legal certainty, less administrative burden, and time savings. The public authorities will receive more direct

revenue. There will be less lost to unfair competition and social dumping, and there will be less expenditure, as fewer checks will be required, resulting in fewer disputes and protracted, costly proceedings.

Currently, the tax authorities still retrospectively check for errors to recover lost revenue. However, they intend to reduce the risk of errors in compliance with the tax legislation by briefing the companies involved in the said large projects in advance. Therefore, the larger contractors involved in the project will also be asked to specify their structure of subcontractors. Ex-post controls on such projects will still be carried out anyway, but the intended new method is more efficient to avoid fraud.

## B. PURPOSE OF THE MONITORING

- Influence and promote compliance behaviour of the parties involved;
- Gain insight in the chain of subcontractors,
- Encourage (foreign) companies and employees to register for tax liability (if necessary);
- Encourage the employees and companies concerned to (timely, accurately and completely) file the return for their income from the construction project and pay any tax due (on time);
- Gather (sector) knowledge about the parties working in the execution of large construction projects;
- Achieve uniformity in tax position statement in the sector (create legal certainty).

## C. ORGANISATION, METHODOLOGY AND WORKING METHOD

- Align supervision (on compliance and collection of all taxes) to the specific situation, in cooperation with commissioning parties and general contractors.
- On the basis of mutual trust with the general contractor, achieve transparency throughout the chain of subcontractors
- Combining actual supervision and data use
- Centralised approach due to organisational and fiscal complexity and the volatility of construction site activities,
- Cooperation with other public services such as the social inspection, foreign tax administrations,...
- Keeping the list of employees and companies active on the construction site(s) up to date;
- A fiscal team can carry out regular construction site visits to get a better view of the attendance and access records applied on the construction sites. In this regard, arrangements can be made with the construction companies concerned about:
  - digital and/or paper records
  - on-site observations
  - internal and external briefings.
- In fact, the administration wants to rely as much as possible on the internal measures of the general contractor when supervising, and therefore enters into dialogue with that general contractor about:
  - Closing off construction sites by means of access gates or not
  - Is access and attendance control and recording carried out on site? If not, can this be dealt with through Check-in@work?
  - How do commissioning parties and general contractors have insight in the identity of employees and subcontractors present/active on a particular construction site at any given time?
  - Are there IT tools for this, or is it possible to quickly retrieve this information in another way?
  - Are there procedures to check the accuracy of the information provided against the actual situation on the construction sites?
  - Are the results of such 'gatekeeping' verified through random on-site checks?

- If access control systems are used, which attendance and access control data are recorded in them and which are not? A system in which the following data can be recorded (on paper or digitally):
  - the personal data (identity, nationality, wage and social security data, whether or not seconded from abroad, etc.) of the employee. - e.g. by means of the Dimona or Limosa declarations, employed by which company
  - company data (identification of the companies active on the site and the activities carried out by them,...)
  - the attendance data of a construction project (e.g. arrival and departure time per employee, as recorded on badge, time card,...)
- The fiscal project team and general contractor also agree on commitments from, for example:
  - Contracts
  - Sub(sub)contractors
  - Identification of the various sites (possibly using the relevant 'unique site reports')
  - Logs

This is with a view to obtaining a complete picture of the subcontractors active on the site and their workforce as efficiently as possible. This could also be achieved through frequent on-site observations, if possible, as this offers a good view of the workforce and subcontractors.

- Through, among other things, informing taxable persons (employees and companies) about the tax regulations that may apply to them and the various forms of supervision, the aim is to raise awareness among them about the regulations and their tax obligations. Specifically, this is done through:
  - Periodic consultations with the general contractor(s) (every 1-2 months),
  - Consultation with the commissioning party,
  - On-site visits,
  - On-site consultations without appointment, where contractors can ask questions directly.

The purpose of data collection as part of the monitoring activities is to identify and cover the risks related to the project and to find a working method to achieve a win-win situation for all parties and create legal certainty. To this end, periodic (every 2 months) consultations are held with those in charge of the construction consortium, with the aim of achieving fiscal compliance among project participants and, if agreements are not met, pointing this out and initiating any control or rectification procedures. Requesting the necessary data is done by topic and informally (not through Requests for Information). Continuous monitoring of the chain of subcontractors is also carried out.

However, the purpose of monitoring is not to carry out continuous fiscal or social controls, to unnecessarily request documents or to carry out site visits or question the fiscal advisers of the companies involved in the project. On the contrary, efforts are made to reach prior agreements if possible, for example on 'gate' or attendance registration. The idea is also to have periodic (e.g. every 6-8 weeks) consultations with contact persons within the construction companies (e.g. the project management of the contractors or, the controller, safety officer, etc.).

The competent project team of the tax department can also provide clarification (e.g. to subcontractors) and information if requested, while complying with confidentiality obligations.

The aim is also to ensure the correctness and completeness of the fiscal and social aspects related to the project. This level of trust between administration and taxable persons needs to be acquired. In order to gain insight in the reliability of accounting records etc. by the (general) contractor(s), a statistical sample method can be applied, especially in the case of voluminous data.

Initially, monitoring includes collecting information on the construction consortium in charge of the project (incl. the commissioning party, general and other contractors), such as:

- **Organisational structure of general contractors** (as they are mostly groups):
  - Which companies of the group are involved?
  - If several group companies are involved: what about deployment of employees, equipment, financing,...? And the passing on of this on what terms?
  - Temporary agency work (when, who can be appealed to, for which job)?
  - What subcontractors are there? How have they been selected? What is their job? Internal control mechanism on subcontractors?
  - Foreign employees? Is the 183-day rule complied with? What about domicile and housing? Control mechanism?
  
- **Accounting:**
  - Who is coordinator of the contracting consortium?
  - How do they include their share of the VVZRL-SASPJ (association or a company without legal personality) / partnership / joint venture in their own accounting result (proportional method,...)?
  - Result allocation and incorporation in the accounts (which method)?
  - Have rulings been requested?
  - What about unforeseen circumstances? How will this be dealt with for tax purposes?
  
- **Fiscal:**
  - Are exemptions from withholding tax on shift and night work requested?
  - Do the sites create permanent establishments of foreign contractors?
  - How is the correct allocation of labour costs to these permanent establishments ensured?
  - Transfer pricing issues for intra-group services (supply of goods, services, allocation of staff and financial resources): are market rates charged?
  - Frontier workers and 183-day rule (avoiding employees not paying tax anywhere)
  - Overnight accommodation for employees, secondment, allowances, invoicing : how are they invoiced and registered, and how are labour costs passed on?
  - How are the structures financed?
  - How is compliance with the Thin Cap tax rules ensured when interest is registered as interim interest? Is activation limited to the duration of the construction?
  - Are the relevant CBN recommendations being followed in any accounting offsetting between the headings 'Orders in progress' and 'Advance payments received'?
  - Deduction of 30 per cent for unregistered contractors, ... (New system labour-only subcontractors who pay no national insurance contributions or taxes)  
[https://www.socialsecurity.be/site\\_nl/employer/applics/30bis/index.htm](https://www.socialsecurity.be/site_nl/employer/applics/30bis/index.htm)  
[https://financien.belgium.be/nl/zelfstandigen\\_vrije\\_beroepen/inhoudingsplicht\\_fod\\_finance\\_n#q9](https://financien.belgium.be/nl/zelfstandigen_vrije_beroepen/inhoudingsplicht_fod_finance_n#q9)

In addition, a tax risk analysis is carried out on the Belgian companies participating in the project:

- Who is the company and what does it do?
- Based on past controls or information regarding that company, are there any specific concerns or risks that may be involved in a large-scale construction project?
- Questions and concerns may be addressed to the companies and persons involved in the project on the basis of the local knowledge acquired about them within the control centre responsible for them.
- Etc.

As part of a tax risk analysis, the following information is also collected for foreign companies/subcontractors and employees working on the project sites:

- copies of the contracts (including annexes) and any framework agreements;

- per contract, the effective start date of on-site activities and, if already completed, the end date;
- per contract, the amounts already invoiced (broken down by calendar year),
- identity of the foreign employees who are active on the construction sites (employed by the foreign companies or hired by Belgian companies from foreign employment agencies, to carry out work on the sites under their authority);
- etc.

When reviewing the way the various companies involved in the construction project work together, the following elements, among other things, can also be analysed:

- Distribution of tasks, functions and responsibilities,
- Prescribed/used processes;
- How is the cooperation between all (sub)contractors involved in the execution of the project organised? If this is through a joint venture, a partnership, a VVZRL-SASPJ (association or a company without legal personality) or a similar, fiscally transparent entity, an insight in the specific characteristics of this entity should be provided, by including the following clarifications:
  - Who is the coordinator?
  - Is there specific staff in charge of the accounts of the temporary association?
  - Is the validation of invoices carried out by the partners or by the coordinator?
  - Is the staff 'in the field' familiar with the rules of the coordinator?
  - Are there special rules for payments and power of attorneys on financial accounts?
  - Is there specific standardised reporting to the other partners?
  - Do the other partners carry out checks via reporting or by on-site visits?
- How does the general contractor / commissioning party / construction consortium manage the project in terms of, for instance, safety and tax compliance? A copy of the joint venture or other cooperation agreements can be requested for clarification on the following:

Project planning:

- Who is responsible for planning/coordinating the entire project?
- How are the jobs to be carried out allocated internally?
- Who decides whether (and which) subcontractors are appealed to?
- Is there a chain of hierarchy?
- Who directs whom? (tasks, assignment, responsibility,...)

Follow-up subcontractors:

- What information is provided by the general contractor / commissioning party to the subcontractors when they first start their activities on the construction site?
- Are records kept of subcontractors and employees who are active on the construction site?
- What information is requested from subcontractors? (Company number, address, contact person,...)

Follow-up safety, quality, process management:

- Who is responsible for this and how is this organised?

Risk control:

- How is any obligation to withhold determined and, in other words, is it checked whether or not there are tax and/or social security debts?
- How is correct invoicing by contractors and subcontractors monitored?

- How does the general contractor have insight in the subcontractors and workforce present on the construction site? Because of the high rotation of staff and vehicles (e.g. sand, gravel, concrete), it is often unclear which persons and companies are working or registered on the construction site.
- Does the commissioning party or general contractor have insight in the contractual relationships between companies and employees who are active on the construction sites?

In fact, these can play a significant role from a taxation point of view. Indeed, regardless of the nature of the structures, it is important - in view of implementing tax conventions - to make a distinction between contracting work on the one hand and secondment of (foreign) workforce on the other hand. In case of secondment of workforce, the (temporary) employer is authorised to manage and/or supervise the workforce. The state in which the employment is carried out, then has the power to levy tax starting from the first day worked. Opposed to this is contracting of work or assignment (a so-called risk contract), where agreements are made for the realisation of a certain work before a certain time and for a predetermined contract price. In such a case, the commissioning party cannot manage or supervise the workforce of the contractor. The State in which the employment is carried out, then only has the power to levy tax if the worker has resided in the State of employment for more than 183 days. The distinction is sometimes difficult to make because the theoretical presentation is sometimes quite different in practical terms. An attestation from the state of residence, showing that the worker remains subject to social security there, can help in this regard, although certain public entities sometimes appear to be not very strict or careful in issuing it.

For domestic situations, the distinction between secondment and subcontracting is also important, in respect of the issue regarding the obligation to withhold, and the possible joint and several liability of the commissioning party for tax and social security debts of a (sub)contractor (cf. art. 30bis-30quater NSSO Act and Art. 400-408 ITC 92).

- How was/is the selection of (sub)contractors and employment agencies going?
- What is the (tax) strategy of the general contractor when he/she suddenly needs additional staff?
- Who deals with the financial administration?
- How does the purchasing process go?
- Are invoices with man-hour statements drawn up? By whom? How are man-hours communicated?
- What is the structure of the subcontractors?
- Overview of staff, assets and other tools deployed?
- What is the process of monitoring and accounting for surplus or waste material (e.g. scrap metal) that can be exploited or reused?
- How are working hours monitored? How are working hours recorded?
- How is work safety and accident prevention organised? (RI&E = Risk Inventory & Evaluation)?
- How is the transport of staff, tools, materials, etc. monitored and organised?
- If necessary, how is the site closed off?
- Does the construction site give rise to any traffic diversions? Details?
- Overview of the various phases of the construction project and the elements involved:
  - (Land) acquisition and expropriation: consultants, brokers, land sellers, speculator / property developer, public authorities,
  - Preparing the site for construction: municipality, contractors,
  - Grants: beneficiary and providers,
  - Financing of the (sub)project: consultants / brokers, lenders (loans or equity),
  - Awarding: public authorities, private sector, entrepreneurs, property developer, consultants / brokers,
  - Construction: engineers, commissioning parties, general and subcontractors, consultants, construction consortia, suppliers, procurement agency, private builder,
  - Sales: property developer, buyer-private, buyer-company, estate agent / intermediary, buyer-investment company,
  - Operation: lessor, tenant,

- Other: DBFMO contract, companies nearby :

## Phases

As mentioned before, fiscal monitoring of large construction projects in respect of the monitoring procedure is therefore organised using risk analysis (according to the identified fiscal risks and available data).

In a second phase, more targeted follow-up and monitoring is carried out at contractor level. If it appears that further action is needed for certain taxable persons, the competent control departments are informed as soon as possible.

In a third phase, the fiscal project team, which monitors the construction project, is mainly concerned with periodically updating the list of (sub)contractors involved in the site(s) and providing feedback on this to the competent control departments for the purpose of carrying out tax risk analyses.

However, as mentioned before, it is not the intention to contact taxable persons immediately or to initiate a tax audit. However, specific questions or a tax audit may follow on the basis of monitoring findings or anomalies detected as a result.

The new working method should also not be confused with a ruling. A relationship is built between tax authorities and taxable persons, but without prejudging audits.

## D. IMPORTANT FISCAL AND SOCIAL RISKS IN LARGE CONSTRUCTION PROJECTS

### 1. JOINT AND SEVERAL LIABILITY FOR TAX AND SOCIAL SECURITY DEBTS OF SUBCONTRACTORS AND THE OBLIGATION TO WITHHOLD

First of all, it is recalled that as part of the fight against tax and social fraud in the construction sector, the legislator has created a number of mechanisms, such as joint and several liability for tax and social security debts and the compulsory electronic attendance registration on construction sites.

It refers to the use of an EARS (electronic attendance registration system), mandatory for construction sites where projects are carried out for an amount from €500,000 excluding VAT. This system is also referred to as 'Check in at work', which requires recording attendance at the construction site the day before.

Moreover, the above-mentioned joint and several liability is unrelated to the obligation of the contractor to provide information (Article 30bis, §7 NSSO Act). The mechanism of joint and several liability also applies to the social security and tax debts of the partners of a joint venture, a silent partnership or a partnership acting as a contractor or subcontractor. Such corporate structures are common in the construction sector.

Joint and several liability enters into force when the (sub)contractor has social security or tax debts at the time of entering into the (sub)contracting agreement. It is therefore very important for a commissioning party or a contractor, before contracting with a contractor or subcontractor, to verify that this (sub)contractor has no social security or tax debts. This can be done through the public databases of the relevant public services, available for consultation on [www.socialsecurity.be](http://www.socialsecurity.be) and [www.financien.belgium.be](http://www.financien.belgium.be).

If joint and several liability applies, the commissioning party or (sub)contractor becomes jointly and severally liable for the payment of the debts of the contractor or subcontractor he/she has appealed to. For social

security debts, this liability is limited to the price excluding VAT of the works assigned to the (sub)contractor. Liability for tax debts is limited to 35% of the price of the works, excluding VAT.

At the conclusion of the contract, checking whether the (sub)contractor has social security or tax debts does not suffice. This check must be made each time the commissioning party, contractor or subcontractor makes a payment to a (sub)contractor.

If this shows that the (sub)contractor has social security or tax debts, the commissioning party or contractor must withhold part of the amounts due and remit it to the NSSO or the tax authorities. This is the so-called obligation to withhold. More specifically, it involves the following withholdings:

- social security debts: withholding and remittance to the NSSO of 35 % of the invoice amount (excluding VAT);
- tax debts: withholding and remittance to the tax authorities of 15% of the invoice amount (excluding VAT).

These withholdings and remittances are always limited to the amount of the debts of the commissioning party, contractor or subcontractor at the time of payment.

If the obligation to withhold is properly carried out on every payment, joint and several liability does not apply, but if the withholding and remittance obligation is not complied with, the commissioning party/(sub)contractor, in addition to possible penalty sanctions, will owe not only the amount of the withholding, but also a surcharge equal to the same amount. Consequently, the penalty will be a doubling of the withholding amount.

The liability of the commissioning party or (sub)contractor applies not only to debts and payments owed to direct contractors, but also to subcontractors further down the chain (with whom there is no direct contractual link). A mechanism of tiered or chain liability was provided, allowing the public authorities to systematically move up the contracting chain. The *ratio legis* of this extended liability is, among other things, to avoid 'shell companies', which seek to evade social and tax contributions. After all, the regulator found that fraud was often not effectively punished, for example because (sub)contractors quickly change their names or simply disappear without trace. When chain liability is exercised, the chronological order is respected. Joint and several liability is initially applied to the contractor who directly appealed to the subcontractor with social security or tax debts. If this contractor does not proceed to the payment of the amounts due within 30 days following the sending of a registered notice of default, he/she will him/herself be identified as a debtor in the database of the public authorities. Subsequently, the NSSO and/or the tax authorities can hold a claim against the contractor who appealed to this negligent contractor and is therefore one step higher in the chain. If this contractor also fails to pay the amounts due, the NSSO and the tax authorities will be able to move up the chain 'in tiers' and collect the social security and tax contributions from the next contractor.

The system of the aforementioned subsidiary or tiered liability does not stop at the highest contractor in the chain. The NSSO and the tax authorities can further move up to the commissioning party, which can be held liable not only for the debts of his/her direct contractor, but also for those of his/her subcontractor or further subcontractors in the chain.

Commissioning parties, contractors and subcontractors can obviously make contractual arrangements regarding this joint and several liability and e.g. impose a contractual obligation on the direct contractor to strictly comply with these regulations and also impose them on any subcontractors, on pain of termination of the agreement.

## 2. UNDECLARED WORK (SOURCE: FLANDERS.BE)

Undeclared labour or work is a form of social and tax fraud. When a person engages in undeclared work, neither he/she nor his/her employer pays social security contributions and tax on the work he/she performs. Moreover, when working illegally, the employee has not been declared to social security services, which means he/she is also not covered by social insurance.

We speak of undeclared work and social fraud, for instance:

- if a person receives social benefits (sickness, disability, interruption or unemployment benefits) and at the same time works, legally or not, without declaring that work to his/her benefit payment agency
- domiciliary fraud: we speak of domiciliary fraud when false statements have been made about the place of residence or domicile of someone receiving benefits (for example, someone who does not declare that he/she is cohabiting)
- if an employer does not declare all services, such as overtime, extra hours within a part-time contract not included in the timetable ...
- if a person does small jobs on his/her own account without having the self-employed status (ancillary occupation) (work which is not declared for tax) ...
- if a person works with a false status, such as the so-called false self-employed persons, false trainees ...
- if a worker is undeclared, whether Belgian or foreigner, legally or illegally residing in the country.

### Consequences

Illegal labour has serious consequences

- for the **market**, which is distorted by unfair competition
- for the **public authorities**, who lose a lot of tax and social security revenue
- for the **employer**: those who hire undeclared workers risk heavy criminal and administrative fines, seizures and even imprisonment
- for the **employee**:
  - because he/she has no contract, there is no legal proof that he/she has worked for his/her employer. If his/her employer does not pay him/her, he/she has no defence.
  - he/she is not entitled to breaks, appropriate work clothes, meal vouchers, hospitalization insurance, end-of-year bonus, holiday pay, severance pay, accrual of pension rights ...
  - in case of illness, pregnancy, unemployment and retirement and in case of an accident, the employee suddenly finds him/herself without income. This is because social security is paid by NSSO contributions deducted from his/her gross salary and employer contributions paid by the employer.
  - if caught committing benefit fraud, he/she can also be severely punished him/herself: penalties range from repayment of social benefits received unduly to temporary suspension of unemployment benefits.

### Approach

In Belgium, the fight against illegal labour and social fraud is mainly conducted by the federal social inspection departments

- the Social Inspection of the Federal Public Service Social Security

- the Supervision of Social Acts of the FPS Employment, Labour and Social Dialogue
- the inspection of the National Social Security Office (NSSO)
- the inspection of the National Employment Office (NEO)

The inspection departments of some public bodies of social security (such as the NIHDI and the NISSE) and the regional social inspection departments (for the inspection of foreign employees) also regularly participate in actions against social fraud. Joint actions of these services are **supported and coordinated by the Social Security Intelligence and Investigation Service (SIOD)**.

### Notification

You can notify all forms of social fraud via the central [Point of contact for Fair Competition](#) of the SIOD. Because of that central point of contact, citizens and businesses do not have to look for the service qualified to deal with their notifications themselves. The targeted questioning of the on line point of contact also allows inspection departments to receive substantiated reports that provide a useful basis for their investigations.

After your notification, you will receive a confirmation message. Subsequently, no further details on the processing of your notification will be provided.

Of course, depending on the nature of the social fraud, you can always contact one of the various services. The SIOD is not competent for **tax fraud**, such as non-declaration of income or VAT. For notifications of tax fraud, contact the FPS Finance.

### Identity of notifier

Actual notifications through the Point of contact for Fair Competition cannot be made anonymously. If you notify a possible case of social fraud, you must enter your surname, first name, national register number and email address. As a company, you must provide your company number and email address. However, **the identity of the notifier is protected by law at all times**. Therefore, unless you have given your explicit consent, social inspectors may not disclose your identity to anyone.

Anyone who deliberately makes false accusations commits a criminal offence.

## 3. PERMANENT ESTABLISHMENTS

There are two main principles in international taxation:

On the one hand, there is the principle of the **state of residence**. This means that the state of which a person is a resident has the power to levy tax on all income of the resident obtained anywhere in the world.

On the other hand, there is the principle of the **source state** which means that, in certain cases, the state where income was generated by a non-resident has the power to levy tax. To avoid the risk of double taxation, double taxation conventions have been concluded by a large number of countries worldwide (including Belgium). These conventions are based on the OECD model and all have more or less the same structure. However, despite the similar structure, there are important substantive differences between the various double taxation conventions. It is therefore advisable to consult the most recent double taxation convention between your country and Belgium to check the tax rules. Essential articles relating to profit tax have been included in Articles 5 and 7 of the double taxation conventions (hereafter DTC).

## Article 5 of the DTC OECD Model Tax Convention

Article 5 of the DTC starts with the general definition of permanent establishment:

*'[...] the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.'*

In addition to the general definition, there is a separate paragraph, Article 5 §3 DTC OECD Model Tax Convention, which focuses specifically on construction sites. This is a 'lex specialis', meaning that when the case of 'existence of a temporary building, construction or installation site' (hereinafter site) arises, this paragraph applies regardless of what the general definition stipulates.

The location of the site constitutes a permanent establishment if its **duration** exceeds a certain period. This period depends on the double taxation convention. Some examples:

- Duration DTC Portugal: 12 months
- Duration DTC the Netherlands: 12 months
- Duration DTC Poland: 12 months
- Duration DTC France: 6 months

The site starts to exist from the date when the operator starts its activity including preparatory work carried out in the country where the site is located. The site will continue to exist until its activities are terminated or permanently suspended. Seasonal (and therefore regular) interruptions are included in the calculation of the period of existence of the site.

When certain projects form a whole commercially and geographically, they form a unit and their duration is added together as if they were one project or site (even if there are several contracts underlying them).

## Article 7 of the OECD Model Tax Convention

The power to tax profits is regulated by Article 7 in most double taxation conventions:

Article 7, §1:

*'The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.'*

Therefore, if the foreign company has a permanent establishment in Belgium, the profits generated by that permanent establishment are taxable in Belgium. What exactly constitutes a permanent establishment is defined in Article 5 DTC (see below).

Article 7 §2 states the basic rule to be applied to determine the profits to be attributed to a permanent establishment:

*'These profits are the profits it might be expected to make if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.'*

In other words, a fictitious hypothesis is made where the permanent establishment is a separate enterprise independent from the rest of the enterprise of which it is a part, in the same way as from any other person.

## **Useful links**

Double taxation conventions in force: [Double taxation conventions with Belgium](#)

Apply for a company number (if a permanent establishment is established): [Registration in the Crossroads Bank for Enterprises \(CBE\)](#)

## Call centre

The Cross-border Working and Entrepreneurship (**team GWO**) in Heerlen (the Netherlands) is at your service to answer your questions on the application of the double taxation conventions concluded between Belgium and the Netherlands and Germany.

Phone:

- From Belgium: [0800 / 90 220](tel:080090220) (gratis)
- From the Netherlands: [0800 / 024 12 12](tel:08000241212)
- From Germany: [0800/ 101 13 52](tel:08001011352)

The GWO can be reached on weekdays from 9.00 a.m. to 4.00 p.m..

The **general contact centre** is at your service to answer all your tax questions and all your queries on the application of all double taxation conventions concluded by Belgium.

Phone: [02 572 57 57](tel:025725757) (standard rate)

Mail: [via our contact form](#)

## 4. POWER TO TAX WAGES OF (FOREIGN) EMPLOYEES

### Article 15 of the DTC OECD Model Tax Convention

The power to levy tax on wages and salaries is usually dealt with in Article 15 of the DTC. In principle, Belgium has the power to levy tax on services performed on Belgian territory. However, there is an exception to this when the following three conditions are met simultaneously:

- The presence of the employee in Belgium does not exceed 183 days in any twelve month period commencing or ending in the fiscal year concerned.
- The wages are not paid by, or on behalf of, a Belgian employer.
- The wages are not borne by a permanent establishment which the employer has in Belgium.

When all three conditions are met simultaneously, the state of residence has the power to levy tax (and therefore not Belgium). When one of three conditions is not met, Belgium has the power to levy tax.

#### *The 183-days condition*

We elaborate on the first condition, viz. 'The presence of the employee in Belgium does not exceed 183 days'. To know whether this condition is met, it is important to consult the applicable DTC. Some conventions refer to residence, while others refer to activities. The calculation should sometimes be made over a period of 'a calendar year' and sometimes over 'any period of 12 months'.

#### *Wages not paid by, or on behalf of, a Belgian employer*

As such, the salary of an employee working for a Belgian company through a foreign temporary employment agency in Belgium (employee is therefore on a foreign pay-roll) is deemed to have been paid by, or on behalf of, a Belgian employer.

#### *Wages not borne by a permanent establishment which the employer has in Belgium*

If the employee is employed in Belgium in a permanent establishment (see above) of a foreign company, his/her salary is deemed to be borne by that permanent establishment.

### Foreign employment - implications for your employees

Sending staff abroad to develop or support a local activity may result in your employees becoming (partially) subject to tax abroad. In that case, applicable social legislation and other formalities should also be complied with. If employees are employed simultaneously in different countries, a salary split arrangement can also be worked out for them.

#### Applicability of the 'catch-all' provision:

The original intention of the legislator in introducing the so-called 'catch-all' provision (Art. 228 § 3 ITC 92) , was to ensure that Belgium could effectively tax certain categories of income, enjoyed by non-residents, in cases where a double taxation convention allocates the power to levy tax to Belgium (or - in a non-convention situation - to the extent that the taxable person cannot demonstrate that the income is actually taxed in the State of which he is a resident - see Fisc. Int. 2017, no. 398, 7).

Under this 'catch-all' provision, categories of income that are subject to personal or corporate income tax (on the part of residents) but not to the NRIT (on the part of non-residents), under certain conditions, also became subject to the latter tax. In that case, the (Belgian) debtor must withhold withholding tax from the amount paid, after deduction of a 50 per cent flat-rate cost (art. 270, 7° ITC 1992 and Art. 87, 5° RD/ITC 1992).

The income concerned are payments to foreign countries for **services provided**. In this context, it is noted that:

- according to the explanatory memorandum, 'any service' refers to 'Any action that is not a supply of goods', without any relevance to the place where the service is performed, therefore also covering services provided abroad but delivered remotely in Belgium (i.e., e.g., via email) (explanatory memorandum, no. 54-2072/001, 55 and 56).

The catch-all provision specifically introduces a legal obligation to deduct withholding tax from certain profits and proceeds. The tax is collected through a withholding tax in discharge. The beneficiary of the income then no longer needs to submit a non-resident tax return.

In concrete terms, the withholding tax is calculated on the profits and proceeds relating to certain services provided to (\*) a legal entity (company, non-profit organisation, etc.), a resident or a Belgian establishment, in the context of a professional activity generating profits or proceeds. The service provider must also have a direct or indirect link of mutual dependence with the recipient of the service. This link of mutual dependence is a question of fact. Links of mutual dependence may exist, for example, because of a participation in capital, but also in the case of a dependent position on raw materials or in the area of technical cooperation and securities. Therefore, even if neither of the two companies concerned holds a participation in the capital of the other, there may be a link of mutual dependence upon the introduction of the catch-all provision according to the Explanatory Memorandum.

(\*) It should be pointed out that the catch-all provision does not require the said income to be 'chargeable' to a resident or Belgian establishment of a foreign company. The only requirement is that the service is 'provided to' an aforementioned resident or Belgian establishment. Therefore, the debtor of the withholding tax (in application of the catch-all provision) is not necessarily the taxable person on behalf of whom the service was provided. (This situation may arise e.g. in group

situations, in which a foreign parent company procures a service from a foreign service provider 'on behalf of' its Belgian subsidiary. The fact that the foreign parent company pays the remuneration in respect of this service does not prevent the catch-all provision from being applicable if the remuneration in respect of the service provided to the Belgian subsidiary qualifies as 'profits or proceeds' on the part of the foreign beneficiary, requiring the parent company to deduct Belgian withholding tax).

In view of the foregoing, the scope of the catch-all provision is, in any case, limited to payments made to non-resident service providers with whom there is, directly or indirectly, any kind of link of mutual dependence.

A number of cases in which the provision has been applied can be found in the double taxation conventions with Romania, India, Morocco, Argentina, Brazil, Tunisia, Ghana and Rwanda. They are mainly about commissions or allowances for providing technical assistance by residents of the aforementioned countries.

The withholding tax rate on income captured by this provision is currently 29% (i.e. on income paid or allocated as from 01.05.2018). (The actual rate, after deducting flat-rate expenses of 50%, therefore amounts to 14.50%).

Moreover, the amount of withholding tax cannot exceed the maximum deduction at source provided by the applicable double taxation convention.

Income should be mentioned in form 281.30.

## 5. TRANSFER PRICING AT PERMANENT ESTABLISHMENT

Profits arising from the activities of a permanent establishment are in principle subject to tax in that country. In order for the competent tax authorities to understand the profits earned in that country, companies must, among other things, keep accounts that allow the result of the permanent establishment to be correctly determined and submit a local corporate income tax return.

The worldwide result (incl. the result of foreign permanent establishments) of the Belgian company should also be declared in Belgium. If this is a permanent establishment in a country, with which Belgium has concluded a double taxation convention, profits subject to tax in that country from a permanent establishment located there will be exempt from corporate income tax in Belgium. This is to avoid economic double taxation. However, the Belgian administration can verify the profits attributed to a foreign permanent establishment. Therefore, it is important to correctly allocate the results to Belgium or the foreign permanent establishment.

## 6. VAT

If you participate in a project in Belgium that is part of a (large) construction site, these transactions may also have implications in the area of VAT. One of the things you should always verify is the location of your transaction. If this is Belgium, Belgian VAT may be due. In addition, you should also determine who is the debtor of the Belgian VAT and who is liable for the effective remittance of the Belgian VAT due to the Belgian Treasury.

In case you are a foreign company, i.e. a company whose registered office is not in Belgium and which does not have a permanent establishment in Belgium, you may have to register in Belgium for VAT purposes.

In order to avoid breaches of tax legislation, it is important to verify before starting your transactions, whether or not you have obligations in Belgium.

A number of possible situations are briefly outlined below. Please note that not every possible situation is covered. This website only briefly describes a number of common situations to clarify the existence of a potential VAT issue.

If you would like advice on your specific transaction, please contact us at the email address [constructionsites@minfin.fed.be](mailto:constructionsites@minfin.fed.be).

In terms of VAT, you should first determine whether the transaction carried out, should be considered a supply of goods or services.

### **Classification of your transaction as a supply of goods or services**

Supply of a goods shall mean the transfer of a right to dispose of tangible property as an owner.

Supply of services shall mean any transaction which does not constitute a supply of goods.

If you carry out a transaction that classifies as construction works, this is regarded as a supply of goods.

A transaction consisting of delivering a movable asset and affixing it to an immovable property in such a way that it becomes immovable by its nature, is also a supply of services.

Note that classifying the transaction as supply of goods or services is not always straightforward. If you have any questions about the classification of your specific transaction, please contact us at the email address [constructionsites@minfin.fed.be](mailto:constructionsites@minfin.fed.be).

### **Determination of the location in case of supply of goods**

The supply of goods is subject to Belgian VAT if it takes place in Belgium.

In case the goods are not transported or dispatched: the place of supply is the place where the goods are located at the time when the supply takes place (= change of ownership).

In case the goods are transported or dispatched: the place of supply is the place where the goods are located at the time when transport or dispatch to the customer begins.

If the goods are transported or dispatched from another Member State to Belgium, the rules on intra-Community transactions may apply. If all conditions are met, it is possible that the intra-Community supply (place = place of departure = Member State other than Belgium) is exempt from VAT, while the intra-Community acquisition (place = place of arrival of transport/dispatch = Belgium) is in fact subject to tax. You should always verify whether the conditions are met on the part of both contracting parties and which party is the ultimate debtor in respect of the Belgian VAT.

Another possibility is the supply of goods with installation/assembly while the entire transaction is still considered a supply. In this case, the place of supply shall be deemed to be the place where the goods are installed.

### **Determination of the location in case of supply of services**

In this case too, it is important to determine the location of the supply of services to ascertain whether or not Belgian VAT is due.

The first step is to determine if the transaction is B2B or B2C. In the context of large construction projects, there will almost always be trading between two taxable persons acting as such and so the B2B rules will apply.

The main rule in a B2B environment stipulates that the place of supply of services is the place where the recipient of the services has established his/her business. Where the service is provided to a permanent establishment of the taxable person located in a place other than that where the customer has established his/her business, the place of supply of services shall be the place where the permanent establishment is located.

In the context of major construction projects, the supply of services will mostly be considered as 'construction work'. This includes building, refurbishing, finishing, furnishing, repairing, maintaining, cleaning and demolishing immovable property by its nature, and the transaction consisting of delivering a movable asset and affixing it to an immovable property in such a way that it becomes immovable by its nature.

In case of construction work (or equivalent) and more generally services related to an immovable property, the location of the service is determined by a different rule. Services related to an immovable property by its nature always take place where the property is located.

Therefore, this principle applies both to construction work and, for example, to services provided by experts in immovable property or services aimed at preparing, coordinating or supervising the carrying out of construction work.

If the construction work is located in Belgium, Belgian VAT is always due on services related to this construction work. Consequently, one of the contracting parties will have to pay the VAT due to the Belgian Treasury.

#### **Debtor of Belgian VAT**

In case the location of the supply or services shows that the transaction takes place in Belgium and therefore Belgian VAT is due, one of the contracting parties will have to ensure the actual payment of the tax to the Belgian Treasury.

In principle, the tax debtor is the taxable person carrying out a taxable supply, taxable intra-Community acquisition or taxable services in Belgium.

However, it is possible that, if the conditions are met, the recipient of the services will be considered the debtor of the tax.

In the context of large construction projects, the most common situation will be the one involving construction work or a transaction equivalent to it. There are then two possible different rules to determine the tax debtor:

- The service provider is a taxable person established in Belgium: The reverse-charge system should be applied making the debtor of the Belgian VAT the co-contractor if the co-contractor is a taxable person established in Belgium and obliged to file periodic VAT returns in Belgium, or is a taxable person not established in Belgium having an authorized representative in Belgium.

If the conditions are not met, the main rule applies and the service provider is still the tax debtor.

- The service provider is a taxable person not established in Belgium: In such case, the Belgian VAT due may be remitted by the recipient of the services to the Treasury of Belgium if the recipient of the services is a taxable person established in Belgium and obliged to file periodic VAT returns in Belgium or if the recipient of the services is not established in Belgium but has an authorized representative in Belgium.

If the conditions are not met, the main rule applies and the service provider is still the tax debtor.

Therefore, the above-mentioned elements show that special attention must be paid to the determination of the tax debtor, especially in the case where both contracting parties (= the service provider and the recipient) are not taxable persons identified in Belgium. In such a case, 1 of the parties will either have to

have direct identification in Belgium for VAT purposes or have an authorized representative in Belgium.

If you need a Belgian VAT number as a foreign company, you must apply for it through the department SME Centre for Specific Matters. You can reach this department:

Department SME Centre for Specific Matters  
Kruidtuinlaan 50 PO Box 3410  
1000 Brussels  
E-mail: [foreigners.team1@minfin.fed.be](mailto:foreigners.team1@minfin.fed.be)  
Phone: +32 (0)2/577.40.50

## 7. FALSE SELF-EMPLOYMENT (SOURCE: VLAANDEREN.BE)

False self-employed persons are employees who have self-employed status, although in reality they carry out a professional activity under the authority of an employer. Because of this employer-employee relationship, they should normally be in paid employment.

False self-employment is a form of **social fraud** that severely damages the solidarity on which the entire Belgian social security system is built. This form of social fraud can be severely punished.

Does the company you work for or you are applying to work for, ask you to work on a self-employed basis? Perhaps your (potential) employer does so to avoid the high charges associated with the workers' statute. In case of uncertainty, the first thing you should do is to ascertain, **based on the facts**, whether or not you are self-employed. This applies both in case you are operating under the form of a company and under the form of a sole proprietorship. The following are some of the elements that can be looked into to determine whether you are self-employed or a worker or employee with the wrong status:

- Are you able to make your own decisions about the assignment to be carried out?
- Do you control your own working hours?
- Can you employ people yourself?
- Do you have the option of working for multiple commissioning parties?
- Do you make your own investments?
- Do you have a fixed income guarantee?

If you can prove sufficiently that you are self-employed, there is no problem.

The National Social Security Office verifies whether certain self-employed people are not in fact false self-employed. If false self-employment is actually established, it can demand a review of social security contributions.

If an employment relationship is unclear, the Commission for the regulation of the employment relationship of the Federal Public Service Social Security can clarify the matter. It will decide whether a person should be considered self-employed or an employee.

**More information:**

[External directorates Social Laws Inspection](#)

## 8. SOCIAL DUMPING (SOURCE: SIOD)

An employer can send his/her employee out to another Member State to work on his/her behalf.

For example, a Hungarian roofing contractor may temporarily second his/her employees and him/herself to Belgium.

This involves two important elements:

1. Employees seconded to Belgium are entitled to the same gross salary and legal allowances payable to Belgian employees in Belgium. This is referred to as the hard core of terms and conditions of employment.
2. Social security on wages can continue to be paid in the home country (i.e. in Hungary in this example). The secondment is in principle temporary, i.e. a maximum period of 24 months. Under certain conditions, an exceptional extension is possible up to an overall maximum of 5 years. Essential in secondment is that the employee must be subject to the social security of the home country beforehand. In our example, this is social security of Hungary.

In the European Union, the principle of free movement of people, services, goods and capital applies. Free movement has undeniable advantages.

However, this principle also has a downside. This principle is also being abused, as a result of which Belgian employees, (small) self-employed persons and non-fraudulent entrepreneurs are being priced out of the market. In many cases, seconded employees are severely underpaid, have to work up to 60 hours a week and are employed in sometimes degrading working conditions.

That is why the government launched the action plan to fight social dumping on 28/11/2013. The current government wishes to continue that fight.

The main adjustments are:

Strengthening controls on cross-border employment, including by the specialised cells of the various inspection departments, known as operational cells. The operational cells carry out a number of social dumping controls every month. To enable all inspectors to efficiently anticipate situations of social dumping, the Social Security Intelligence and Investigation Service (SIOD) provided the various inspectorates with additional training and targeted questionnaires were drawn up. Thorough data mining is used to select the companies and clusters of companies with the highest risks of fraud with regard to secondment.

At the same time, a number of legislative initiatives and measures were taken:

- tightening the legislation on posting
- increasing the penalty for failure to pay wages correctly, if this is in connection with other breaches of, for example, working hours, weekly rest, public holidays and others
- tightening regulations on declaration of construction sites and deductions when working with subcontractors with social and fiscal debts
- introducing joint and several liability for wage arrears of the general contractor and commissioning party in case of serious underpayment of employees of the subcontractors
- concluding protocols with the Belgian government's building authority and regional authorities for a better exchange of information on dealing with social fraud in public construction sites

- increasing fines in the transport sector for failure to keep log books for drivers and the non-respect of weekly rest
- appointment by each judicial district of a reference magistrate in charge of social dumping and the drawing up of specific guidelines by the Board of Procurators General for the follow-up policy on social dumping
- improving cooperation with the other European inspection departments in order to optimise the exchange of information

In the meantime, last year the European enforcement directive 2014/67/EU was transposed into Belgian regulations via the law of 11 December 2016.

Through this law, a number of existing obligations such as the Limosa declaration, submission of A1 documents and declaration of works, are complemented by other measures.

For example, the foreign company that temporarily employs people here must appoint a liaison to act as a contact person for the inspection departments and present them with all the requested documents. Those documents are the employment contracts, wage payment receipts and an overview of the employees' working hours. Moreover, the documents should be presented in Dutch, French or English, either in paper or electronic form, at the request of the inspection.

**More information:**

[SIOD - Social dumping](#)

[Guidelines construction sector \(Social laws\)](#)

[Checklist construction sector \(Social laws\)](#)

## 9. SOCIAL RISKS FOR THE EMPLOYER (SOURCE: SIOD)

**The potential risks for the employer are the following:**

- A social inspector who ascertains breaches has discretion. This means that he/she can decide him/herself whether he/she will give a warning, set a deadline by which the breach must be rectified, or draw up an official report.
- The social inspector also has special considerable powers with regard to the health and safety of employees and the self-employed persons.
- In addition, he/she also has special powers with regard to the wage protection of employees.
- In exceptional cases, social inspectors can take special measures as a result of their inspection and seize or seal movable and immovable property. This can only be done if it is necessary for proving the breaches or if there is a risk that the breaches with these goods will continue or new breaches will be committed.
- If an official report is drawn up, it will be handed over to the judiciary. The public prosecutor attached to the employment courts decides whether criminal proceedings will be instituted before the Criminal court. It is ultimately the judge who will decide whether or not a criminal sanction will be imposed. This may include a fine and, in exceptional, severe cases, imprisonment.
- The public prosecutor attached to the employment courts may also decide not to institute criminal proceedings (abandonment). In that case, the official report will in many cases be eligible for an administrative fine from the 'Service administrative fines' (D.A.G.) of the Federal Public Service Employment, Labour and Social Dialogue.

- This service can in turn decide whether or not to impose an administrative fine. Minor social law violations for which an official report is drawn up go directly to the D.A.G. and not to the judiciary.
- The public prosecutor attached to the employment courts has other options for taking action. For example, he/she can also impose an amicable settlement.
- In certain cases, the commissioning party, contractor and subcontractor can be held jointly and severally liable for the correct payment of wages to employees.
- There is also joint and several liability in certain cases on the part of the commissioning party and the contractor for the payment of social security contributions and tax debts.
- As regards the declaration and payment of social security contributions (or advances) due to the NSSO, civil penalties are provided for in case of failure to make the declaration or payment (on time). These include the payment of contribution surcharges and interest on arrears to the NSSO in addition to the payment of social security contributions already due.
- If the employer employs a foreign employee illegally and the employee is repatriated, the Immigration Department will recover the costs associated with this repatriation from the employer.
- Since any wages not subject to social security that are paid out, are generally also associated to undeclared income with the employer, the employer risks a recalculation of turnover and VAT payable on it. Both breaches in direct taxes and VAT may be subject to fines and default interest added to it.

## 10. SOCIAL RISKS FOR THE EMPLOYEE (SOURCE: SIOD)

### Potential risks for the employee:

The main risk for an employee who carries out undeclared work is that as a result, he/she do not enjoy the social protection associated with employee status. This puts the employer in a weak position in relation to his/her employer in several aspects of his/her employment. Example:

- He/she is in a weak negotiating position for asking for a raise, for his/her holiday rights, the right to promotion, training and with regard to a possible dismissal. A regular employee, for example, may enjoy employment protection in certain cases.
- Much less attention will be paid to occupational safety, along with all related risks.
- In case of a work-related accident, this will not be declared, meaning that the employee cannot obtain compensation.

The undeclared worker does not accrue the same social rights as a regular employee, which means that in certain cases he/she will not be able to claim certain social security benefits, or only lower social security benefits than in the employee status. Example:

- He/she will not be able to claim unemployment benefits.
- He/she will accrue lower pension rights.

An undeclared worker, or even a declared employee or self-employed person, who *unduly* accumulates earned income with benefits (an unemployment benefit, sickness benefit, pension), risks being subject to a penalty for doing so in the form of:

- The demand for repayment of the wrongfully paid benefits.
- The suspension of payment of benefits for the future for a certain period of time.
- The loss of the right to the payment of benefits.

A sanction is possible (criminal or administrative by means of a fine) in the event that someone, by submitting false documents or incorrect or incomplete declarations, wrongly tries to obtain or maintain a social benefit or tries to pay less social contributions (or have them paid). A (criminal or administrative) penalty may even be imposed for fraud.

In addition, the court will ex officio order the repayment of social benefits wrongfully obtained, increased by default interest.

A foreign employee residing here illegally may be ordered to leave the territory. If this is not complied with, he/she may be referred to a closed institution for illegal immigrants or a residential unit (for families with minor children) with a view to being forcibly removed from the territory.

Criminal sanctions may be imposed for illegal residence in Belgium.

Finally, there may also be tax consequences associated with undeclared work. Namely, the employee risks having an additional income tax assessment made, with fines and default interest.

## 11. ILLICIT WORK (SOURCE: SIOD)

### **Potential risks related to illicit work:**

Illicit work/unreported employment can be defined as performing an independent activity without complying with the applicable legal regulations. Illicit work is first and foremost professional (not family, private...) work that is not carried out in subordination by a person who:

- either is not registered in the Crossroads Bank for Enterprises;
- or is not able to produce the necessary licences or obligations to exercise the profession.

The illicit worker and the user may be prosecuted and punished with a fine and/or imprisonment. In addition to tax officials, officials of the FPS Economy, SMEs, Self-employed and Energy are also authorised to draw up an official report for this purpose. Moreover, for the foreign illicit worker, without lawful residence in Belgium, the same applies as described above for the illegal employee.

The public prosecutor's office may also proceed to the seizure of the movable objects manufactured or repaired as well as the machines, tools, materials and vehicles that served to commit the offence or were used as a result thereof.

The self-employed person who, when starting his/her activity, has not joined a social insurance fund risks a fine imposed by the National Institute for the Social Insurance of the Self-Employed (NISSE).

If the illicit worker receives benefits at the same time, the above-mentioned fine cannot be applied, but the benefits will be recovered. Depending on how many days were accumulated and how many times it happened, the benefit may be suspended for the future for several weeks or even months. No distinction is made here between income as an employee, as a self-employed person, as an illicit worker.

With regard to direct taxes, if a person is found carrying out illicit work, this will lead to an increase in his/her personal income tax assessment, resulting in fines and default interest. If an activity was carried out on which VAT is due, fines and interest will also be due.

In addition, not having a VAT number, when required, already results in a fine, with additional fines for each periodical and other return not submitted.

As with an employee, any person carrying out illicit work also does not enjoy any social protection. To the extent that undeclared work is carried out and no social security contributions are paid, one may lose his/her rights to social insurance (sickness and disability benefits, pension, bankruptcy benefits,...).