

SHIPPING

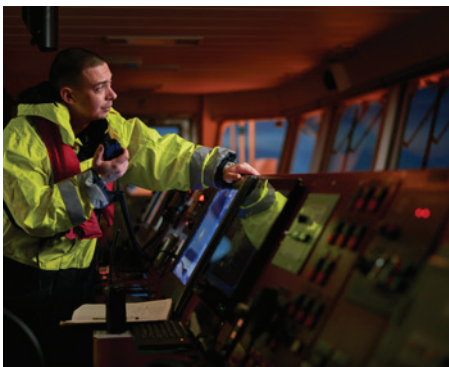
CREWING: TAX & SOCIAL SECURITY ISSUES



The UK tax and social security legislation for crews, and other specialist workers (e.g. divers) that operate offshore, is complex and it is not uncommon for it to be misunderstood. Withdrawal from the EU may add to this, and as the economy emerges from lockdown, HM Revenue & Customs ("HMRC"), will be focusing on the shipping sector, amongst others, to ensure it is being compliant and the correct liabilities have been met. This factsheet sets out the key points that the sector needs to consider.

Independent research* suggests that at present global crewing costs exceed \$500bn per annum. If any of those costs are connected to the UK, this can give rise to a potential exposure to employment related liabilities (PAYE/NIC). Following lockdown we are aware that HMRC will be working hard to ensure compliance requirements are being met to help replenish the Exchequer. Currently 51% of Government tax income is employment related. As compliance failure in this area can generate recoveries of up to 61% (before adding interest and potential penalties) we can be sure this will be an area of HMRC focus.

The shipping sector is likely to receive particular attention as there are a range of sector specific regulations that can be very difficult to interpret. Also it's often our experience that perception within the sector can differ from the HMRC view. In addition, practices can develop that invalidate the very specific tax/NIC exemptions that can potentially apply.



We have set out below the top issues to be aware of:

1. Connection

Any operator may consider that the UK PAYE/ NIC rules can be ignored if their vessels are not UK flagged, or if the vessel never enters UK territorial waters. This is not necessarily the case however.

If crew members are UK tax residents then depending when they join a vessel, and for how long they are on board, it can have a bearing on any tax liability, and in turn the requirement to operate PAYE. The residency rules for UK NIC also look at residency in a different way to tax so can require a separate analysis.

The vessel itself may also be owned and operated offshore, but if there is a UK entity that is involved in the funding of the crew, a UK connection for tax purposes can also exist.

2. Crewing arrangements

It is quite common to find crew being engaged via an offshore crewing arrangement which is based outside of the EU. As such it is possible payments to crew in this scenario can fall outside the scope of UK NIC.

HMRC will scrutinise such arrangements very carefully and where it can find evidence of a connection to a UK entity then it will pursue UK NIC. This can relate to where the crew member signs their contract and whether the owner or ship manager has a place of business in the UK. In our experience the fact pattern behind such arrangements is often complex, and the "audit trail" of documentation often falls short of what is required.

FOR MORE INFORMATION:

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* Clarksons Research Services and Stifel, Nicolaus & Company, Inc estimates June 2020

3. Withdrawal from the EU

If you engage European crew members then the UK withdrawal from the EU could complicate matters from 1 January 2021. At present, in simple terms, a worker who is an EU resident is liable to social security in only one EU member state. However once the UK has left the EU these provisions will fall away. As yet there is no formal indication of how the social security will apply post Brexit.

Many EU countries apply punitive rates of social security and we may find that crews on vessels sailing between the UK and EU countries are subject to new liabilities.

4. Coronavirus Job Retention Scheme (CJRS) and Furlough errors

The furlough scheme was implemented in a very short timeframe, and the mechanism for claiming a CJRS grant was very complex. Understandably many organisations focused on cash flow and securing a grant rather than the detail of their claim.

As the furlough scheme ends in October 2020, HMRC is starting to focus on the detail and review claims to ensure they were accurate. It has also introduced a penalty regime that will apply where corrections to a claim have not been made in the allowable time frame (the later of 90 days from the claim or 20 October 2020).

If this may impact your crews, or workforce in general, taking a proactive stance in reviewing your claim is perhaps a prudent course to take.

5. Worker status

There are many specialist occupations in the shipping sector which traditionally have been treated as self-employment by the business engaging the individual and the individual themselves.

Defining the status of "worker" is a complex process. Many engagers have sought to mitigate the potential PAYE/NIC risk by engaging workers via a personal service company (PSC). From 6 April 2021 legislative changes will mean that engagers will face the same potential risks engaging a PSC as they would a self-employed worker. Offshore PSCs can already present this risk.

Understanding who you engage with (either directly or through an intermediary) is key. HMRC will be focusing on this area across the sector.

6. The wider picture

All UK organisations have been subject to the Corporate Criminal Offence (CCO) regime since 2017. In summary, the legislation means that if an associated person of a business does criminally facilitate tax evasion, and the business is unable to demonstrate that it had reasonable procedures in place to prevent such facilitation, the business is guilty of a criminal offence.

There are also more stringent tests where an international aspect exists from a CCO perspective. So if organisations are using offshore crewing arrangements for example, ensuring CCO compliance is essential.



HOW CAN WE HELP?

Our Global Employer Services team is focused on the issues confronting employers today and delivers fast, accurate and practical advice. Maritime navigation is a complex mix of science, experience and understanding. The same can be said of the tax and social security issues arising when you engage a crew. We have the right people to help you do that.

For more information about our Shipping services, please visit our website: <https://www.bdo.co.uk/en-gb/industries/shipping-and-transport>