

Contractor's liability and tax number in the construction sector



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Introduction

This guide provides information on the contractor's obligation to check and the tax number used at construction sites. Construction-related amendments to the Act on the Contractor's Obligations and Liability when Work is Contracted Out¹ and regulation pertaining to tax numbers in the construction sector entered into force on 1 September 2012. These amendments are aimed at combating the "grey" or undeclared economy and ensuring healthy competition between companies.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out is used for combating the grey economy in situations involving temporary agency work and subcontracted work. According to the Act, the contractor is liable to check its contractual partner's ability to take care of its legal obligations. It is simultaneously ensured that subcontractors and employment agencies comply with the employer's obligations. The further objective of these obligations is to ensure that the minimum terms of employment of temporary agency workers and subcontractors are met.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out includes special provisions concerning construction activities, the obligation to check, and negligence fees.

A given tax number applies to the individuals working at a specific construction site.

¹ Act on the Contractor's Obligations and Liability When Work Is Contracted Out (1233/2006).

The contractor's obligation to check the operations of its contractual partner

1 What or who is a contractor?

A contractor is a trader or enterprise that uses temporary agency workers or labour based on a subcontracting agreement.

The contractor may be any trader or enterprise that is liable to submit the notification of start-up referred to in the Trade Register Act. This includes limited or general partnerships, limited companies, cooperatives, housing companies, mutual insurance companies, savings banks, state enterprises, non-profit associations and foundations, and private traders that have permanent premises for carrying out their business operations or have in their service at least one employee. The contractor may also be a foreign foundation or organisation that establishes a branch or European Company (SE) in Finland.



The state, municipalities, joint municipalities, parishes and other judicial bodies may also be contractors.

The contractor may also be an equivalent foreign enterprise when such an enterprise operates in Finland.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out does not usually apply to those engaged in agriculture and fishing as a trade, or to private households.

2 When does the Act apply to construction activities?

The Act applies to work performed in Finland.

The Act applies to a contractor *that uses temporary agency workers*. Temporary agency worker refers to an employee who has signed an employment contract with an employer that has assigned the employee with his or her consent for the use of another employer. The employer of a temporary agency worker may operate in Finland or abroad.

The Act applies to contractors in certain *employment situations based on a subcontract*, provided that:

- The contractor and the contracting party have a subcontract on agreed work against compensation.
- The work is performed at the contractor's premises or work site. The contractor's own employees also normally work at the contractor's premises. Subcontract work in which separate parts or materials or programmes are produced at the premises of the subcontractor, to be further assembled or processed at the contractor's premises, do not come under the scope of this Act. The contractor's work site may, however, be located somewhere other than at the contractor's premises. There are work sites of this kind in the construction, transport and haulage sectors and in services in which the service is provided at the premises of the service buyer or user.

The Act applies to all construction work. In addition to housing construction, construction work encompasses building maintenance and repair and civil engineering, for example. In construction, the Act applies to all contractors of work operating at a common workplace.²

Small subcontracts and contracts concerning the use of temporary agency workers are excluded from the scope of application of the Act by setting limit values.

The Act does not apply if the following limit values are met

- The total duration of the work for which a temporary agency worker or workers are hired is ten work days.
- The value of compensation in the case of a subcontract, excluding VAT, is less than EUR 7,500.

The obligation to check cannot be avoided by breaking the contract up into parts that remain below the given limit values. Work is considered to have continued without interruption if the work or work outcome performed for the contractor is made up of successive, uninterrupted fixed-term contracts or with only short breaks between the contracts.

3 What does the contractor need to check?

The provision concerning the contractor's obligation to check is one of the key provisions in the Act. The purpose of these checks is to give the contractor as accurate information as possible on whether the contracting party is reliable and whether it acts in compliance with legislation.

The contractor must acquire the information required by law prior to signing a contract. The employer of temporary agency workers and the other party to a subcontract are under an obligation to provide the contractor with this information. If the contractor only acquires this

² A common workplace is determined in section 49 of the Occupational Safety and Health Act (738/2002).

information later, it has neglected its obligation to check. An exception to the rule is contracts that include a rescinding clause to provide for the case that the contractor would not have signed the contract on the basis of the information provided. These accounts and information may also be provided as copies, or the contractor may make copies of them.

The obligation to check applies to the following:

- Information on whether the enterprise is entered in the Prepayment Register in accordance with the Act on Prepayment of Tax, in the Employment Register, and registered as VAT-liable in the Value Added Tax Register in compliance with the Act on Value Added Tax.
- An extract from the Trade Register, or information equivalent to an extract from the Trade Register, showing the date on which the company was registered, its line of business, Board of Directors, other management, persons authorised to sign the company name, auditors, personal details of responsible persons, and whether the latest final accounts documents have been submitted to the registration authority in compliance with the legislation.
- A certificate of tax paid or tax debt, or an account that a payment plan has been made for tax debt. The Finnish Tax Administration only issues this certificate to the enterprise itself and therefore it must always be requested from the other party to a subcontract or the employer or temporary agency workers. To ensure that the information on the tax debt certificate does not place a contracting party in an unfairly inferior position, the party may simply inform the contractor that an agreement on payment arrangements has been made. This would prevent the enterprise concerned from getting into further difficulty as a result of tax debt, since observance of a payment plan is evidence of the enterprise's intention to comply with the law.
- Certificates of pension insurance and payment of pension insurance premiums or an account regarding a payment agreement for overdue pension payments having been made. Pension institutions issue their customer with the certificates referred to here. From the employee's perspective, payment of pension insurance contributions



is crucial evidence that the employer is willing and able to manage its responsibilities related to work, including social security contributions. Here, too, the situation of an enterprise that has defaulted on payments is taken into consideration. If the enterprise intends to pay the arrears, it can prove its intention by arranging a payment plan and observing it.

- A certificate on taking out accident insurance. According to the Employment Accidents Act, the employer is obliged to take out accident insurance for its personnel under employment contracts. The contractor must obtain verification that the contracting party has valid accident insurance coverage for the employees. Insurance companies provide certificates on insurance policies and their content.
- An account of the applicable collective agreement or the principal terms applicable to work. The applicable collective agreement may be either one that is binding on the employer, a universally binding collective agreement, or other collective agreement that the employer applies in practice. The account of the principal terms of employment covers, among other things, the employee's main tasks and duties, the wage payment period, regular working hours, determination of annual leave, and period of notice. As regards information on wages, a description of how the wages and different components are determined is sufficient. It is not the intention to disclose personal information on wages to the contractor.

A foreign party to a contract must provide the contractor with information corresponding to the above accounts and certificates in an intelligible manner and format. Taking into account foreign legislation, the obligation to check is as extensive as in the case of enterprises operating in Finland. Information of this kind primarily means an extract from a register complying with the legislation of the country where the enterprise is domiciled or, for example, a notice or certificate subject to oath that the party is engaged in trade or business.

If no reliable information comparable to, for example, a tax debt certificate is available in the foreign enterprise's country of domicile, or if the enterprise is not obliged to take out pension insurance for its employ-

ees, the enterprise must provide the contractor with a reliable account of this. Correspondingly, information relating to social security provision by the foreign enterprise must be presented in some generally acceptable form and manner, such as an account of the insurance taken out by the enterprise.

If the aforementioned accounts cannot be submitted due to their being unavailable, the contractor has the right to accept, and the contracting party to provide, the account in some other way that can be considered generally sufficient. If the state in question is a Member State of the EU or the EEA, the employer posting foreign workers may be requested to provide an A1 or E101 certificate.

The contractor has the right to accept an account other than that given by an authority, if it has been issued by some other reliable party responsible for evaluating or registering information. In the construction sector, these companies include tilaajavastuu.fi, the ePortti online service, Suomen Asiakastieto Oy and Rakentamisen Laatu RALA ry (Construction Quality Association).

Accounts need not be requested if the contractor has justifiable reason to trust the contracting party on the following basis:

- The contracting party is the state of Finland, a municipality, a joint municipality, a parish, the Social Insurance Institution, the Bank of Finland or some other public operator referred to in the legislation.
- The contracting party is a public limited company (plc), as referred to in the Companies Act, a state enterprise, a company subject to private law wholly owned by a municipality, or an equivalent foreign organisation or enterprise.
- Other equivalent reason on the basis of which the contracting party's public reliability is comparable to the aforementioned organisations. Here, too, the general criteria for applying the law must be met and an equivalent reason must be interpreted in a narrow sense. Another equivalent reason may be, for example, the size of the enterprise.

If a contract in force for more than 12 months has been signed between the contractor and contracting parties, the contracting party must provide the contractor at 12-month intervals, also during the contractual relationship, with certificates of taxes and pension insurances. Failure does not lead to the consequences of neglecting the obligation to check. This is due to the fact that contracts do not usually include rescinding clauses for cases in which one of the contracting parties is no longer eligible for registration with an authority or that they have failed to pay employer contributions.

In order to ensure that the information describes the current state of the enterprise as accurately as possible, this information *may not date back more than three months*. The contractor must ensure that it has all the information and accounts referred to above at its disposal before signing a contract when the contract is being concluded for the first time. However, such information and accounts are not required if the contractor signs a new contract with the same contracting party during the information validity period.

New checks are not required in the event that the customer enters into a new agreement with the same contracting party before twelve months have passed since it fulfilled its obligation to check in connection with the drafting of the first agreement. A contractor committed to a contractual relationship does not always have the same opportunities to withdraw from the contract as a contractor considering entry into a new contract. As a result, the contractor's obligation to check applies if it has any reason to suspect that changes requiring a review have occurred in the contracting party's situation. Such reasons may include, for example, the fact that an owner or persons responsible for an enterprise has been barred from conducting business, a criminal investigation that has become public, or reasonable doubts presented by a personnel representative that the contracting party has violated their obligations as an employer.

The contractor must store the information for *at least two years* after the conclusion of the work to which the contract applies.



Some of the information that falls within the scope of the obligation to check is not in the public domain. From the perspective of continuing business operations, it is crucial that information concerning enterprises does not spread wider than the intent of the law. For this reason, the contractor or any person in its service may not disclose non-public information they have obtained to outside parties. Information of this type includes information on payment of taxes or tax debt, or taking out and payment of pension insurance.

The information may be disclosed if the contracting party itself or a pertinent authority has disclosed it by virtue of law, or a pension institution has notified a credit information register. The duty of non-disclosure also applies to non-public information that has been acquired from records where other information is kept. The party responsible for maintaining records of information can always disclose information to a contractor provided the contractor has received consent from the party in question.

As regards non-disclosure obligation of a civil servant or other official, the provisions of the Act on the Openness of Government Activities is applicable.

Information subject to the non-disclosure obligation may not be disclosed even after the entrepreneur or a person in their service ceases to perform the task in the course of which they have received the information. Penal provisions have been laid down for breach of the non-disclosure obligation.

4 What information do personnel representatives need?

In order to fulfil the intent of the law and promote more efficient supervision it is important that representatives of personnel also have information on the use of outside labour. For this reason the contractor is under an obligation to notify a shop steward, elected on the basis of a collective agreement, of any contract concerning temporary agency or subcontracted workers, or if no such representative has been elected, an elected representative as referred to in the Employment Contracts Act. Corresponding information must also be given to an occupational safety and health representative. Personnel representatives are to request the information from the contractor, their employer.

The contractor must clarify the number of workers to be used, the identifying details of the enterprise hiring out workers or signing a subcontract, the work site, the tasks involved, the duration of the contract

relating to the work, the collective agreement applicable to the employees working as temporary agency workers or under subcontract, or if there is no such agreement the principal terms of employment.

Said information does not have to be submitted if the Act is not applicable due to a general exemption provision pertaining to the scope of application. However, said information will be provided in situations in which work conducted by a temporary agency or subcontracted workers as such falls within the scope of the Act, but a contractor does not need to request said information, for example, in cases where the contracting party is a state or municipality.

A personnel representative in a user company must always be provided with the necessary information in cases pertaining to the resolution of any disputes concerning acts or agreements relating to the temporary agency worker's wages or employment relationship. This must be done regardless of restrictions pertaining to the application of the Act. Obtaining said information is subject to the employee's authorisation.

5 What are the consequences of a failure to discharge the obligation to check?

The consequence of failure to discharge the obligation to check is a *negligence fee*, payable by the contractor. Moreover, in certain cases a *raised negligence fee* may be imposed on the contractor. The negligence fee and raised negligence fee are payable to the state.

The negligence fee will be charged if the contractor has neglected their obligation to check.

The minimum amount of the negligence fee is EUR 1,600 while the maximum amount is EUR 16,000. In deciding the amount, the factors taken into account are the degree, type and extent of the negligence, and the value of the contract between the contractor and their contracting party. The amount of the negligence fee thus varies according to the seriousness of the negligence. The assessment is also affected by

the question of whether the contractor is a small business with only a few employees or an enterprise that has hundreds of employees. The amount of the negligence fee is also influenced by the contractor's own actions, such as the intentional nature of the negligence or the indifference of the contractor towards statutory obligations. If the negligence can be considered minor and reasonable considering the circumstances, the negligence fee may not be prescribed.

The raised negligence fee will be imposed in the following cases:

- The contractor has entered into an agreement with a business that is subject to **business prohibition** or with a company whose partner or Board member or Managing Director or a person occupying a similar position in the company is subject to business prohibition. In Finland, the Legal Register Centre maintains a register of bans on business operations. This information is also delivered to the National Board of Patents and Registration. Register information is public and can be viewed on an extract from the trade register. Provisions on business prohibitions are laid down in the Act on Business Prohibitions. A negligence fee will not be prescribed if the contractor has fulfilled its obligation to check in compliance with the law, and the presented information, certificates or accounts have not indicated that the contractor has been subject to business prohibition.
- If the contractor has entered into a contract even though it must have realised that the **other contracting party did not intend to fulfil its statutory obligations as a contracting party and employer**. This provision is primarily related to cases in which the contractor demonstrates clear indifference, observable using general life experience, to the contracting party's failure to fulfil its obligations.

The raised minimum fine is EUR 16,000 while the maximum is EUR 50,000. In deciding the amount, the factors taken into account are the achieved benefit, intentional nature, repeatability, other circumstances, and the value of the contract between the contractor and its contracting party. The determination of the fine is based on an overall

assessment of the blameworthiness and targeted benefit of the act. If application of the provision would result in an unreasonable outcome, the raised negligence fee may not be imposed or a smaller amount may be imposed.

The amount of the negligence fee is determined by the local office of the Regional State Administrative Agency, which gives an appealable decision on the matter. Before the negligence fee is imposed, the contractor must always be heard, in which case it can present the reasons that have contributed to the negligence and other factors that have influenced the matter. The Occupational Safety and Health Authority is entitled to receive the documents relating to the obligation to check from the contractor, and if necessary, a copy of these. The documents include the contract regarding subcontracting or temporary agency workers. The contractor may apply for amendment of the decision by appealing to an Administrative Court.

An office of the Regional State Administrative Agency's right to give a decision on a negligence fee expires in two years. The date of expiry is counted from the date when the work concerned in the contract referred to in the Act has been completed. If it is suspected that the obligation to check has been violated, the matter must be dealt with urgently by the local office of the Regional State Administrative Agency.

6 How is the Act supervised?

Occupational safety and health authorities supervise compliance with the Act in accordance with the Act on Occupational Safety and Health Enforcement. According to the Act on Occupational Safety and Health Enforcement, occupational safety and health authorities have the right to access workplaces and obtain the information required for supervision. According to the Act on the Contractor's Obligations and Liability When Work Is Contracted Out, this right to supervise also applies to contractors that are not employers.

Tax Numbers to be put into use on all construction sites

1 Who must have a Tax Number?

As of 1 September 2012, everyone working on a construction site must have a personal identity code displayed on a name tag, along with a Tax Number. On new work sites, the Tax Number is mandatory as of 1 September 2012. However, on existing work sites (that started operations before 1 September 2012), it will be mandatory only after a transition period which ends on 1 March 2013.

Individual Tax Numbers were distributed to Finnish construction industry workers in association with the delivery of the 2012 tax cards. Self-employed individuals find the Tax Number printed on their tax prepayment notice. Construction workers, who do not have a Tax Number or have lost it, can obtain one at any tax office.

Foreign employees can obtain a Finnish personal identity code and their Tax Number at tax offices (contact information: tax.fi/taxnumber). Employers can request their employees' Tax Numbers on a centralised basis by sending a list of their employees' personal identity codes to the Tax Administration which will then send the Tax Numbers to the employer. At the same time, the workers will be entered into the construction industry Tax Number Register.

2 How to enter an employee in the Tax Number Register

The Tax Numbers of people working on construction sites are entered into the construction industry public Tax Number Register. Employers or other identity-card issuers can use the register to verify that the Tax Number stated by the employee matches the one in the Tax Administration's register.

Employees are not entered in the Tax Number Register automatically; registration must be requested. Only when an employer sends an electronic request for the Tax Numbers of at least 20 people, these people will be entered into the register automatically. Employers can send their electronic requests to the Tax Administration via the Ilmoitin.fi service. A registration request can also be made by telephone or by visiting the tax office in person.

3 What's new?

Plans are underway to introduce a special reporting procedure on construction sites during 2013. This procedure applies to construction workers and contracts. The procedure calls for the main contractor on the construction site to report to the Tax Administration the data concerning the workers and other recipients of compensation on their site on a monthly basis. Each subcontractor must report the data concerning his or her employees to the construction site's main contractor.

The reporting procedure also applies to the buyers of construction services who report their own subcontracts to the Tax Administration on a monthly basis. In addition to new construction, this requirement also applies, for example, to significant construction and renovation work performed for housing corporations, such as refurbishment of building facades and roof and plumbing repairs.

Most likely, the reporting procedure will also apply to single-family-home construction sites. The reporting procedure does not, however, apply to housing targets which are constructed by private builders and do not require a building permit.

The Tax Administration utilises the data for real-time tax supervision. In addition, the information can be used to assess the customers' tax status and need for registration.

The Government will bring forward a legislative proposal on the matter in the autumn of 2012.

The most up-to-date information is available at tax.fi/taxnumber



Further information is available at:
www.tem.fi/en
www.tyosuojelu.fi/fi/workingfinland
www.tax.fi/taxnumber
www.finlex.fi/en/ (up-to-date legislation)

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