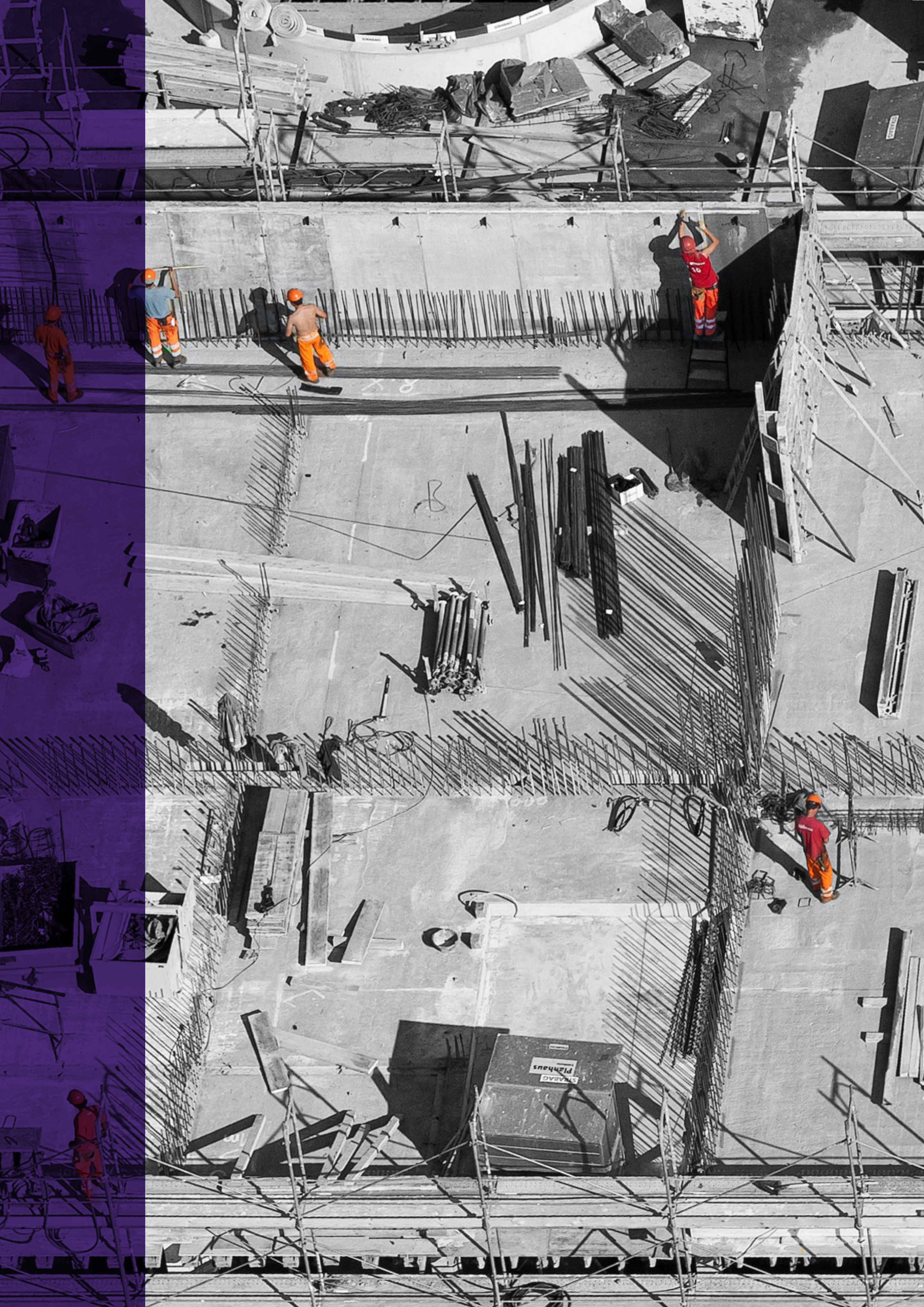
# Irish construction companies in Europe – your employment tax obligations

August 2022



# Key employment tax considerations

### Foreign countries

A foreign employment tax obligation can arise from as little as an employee spending one day working in a foreign country. Such obligations should be considered from a very early stage given the high personal tax rates that apply across Europe and associated penalties for companies who fail to register for and operate payroll withholding taxes.

Foreign employment tax obligations can arise without a construction company having a corporate tax presence in a foreign country.

Social security is also a key consideration and construction companies should consider which employees can be retained in the Irish social security system and which employees should pay foreign social security. Where foreign social security is payable, the cost of employer social security should be built into construction company budgets from the outset given the high rates that apply in some countries.

Local employment laws, for example, collective union agreements which dictate pay, holidays and working conditions, can also cause unexpected issues for employers.

Construction companies should also consider the tax impact of hiring subcontractors and ensure that they are not exposed to any payroll tax liabilities in the event that subcontractors fail to operate payroll withholding taxes to payments made to their employees.

### Ireland

It is equally important to consider the construction company's Irish employment tax obligations where the individuals are employed by an Irish company. Depending on the tax residence status of the employee and the length of time spent working abroad, a company can continue to be required to operate Irish payroll withholding taxes (known as PAYE). This is often not given full consideration by employers leading to a potential exposure to sanctions for failure to correctly operate Irish PAYE.

### Managing double taxation

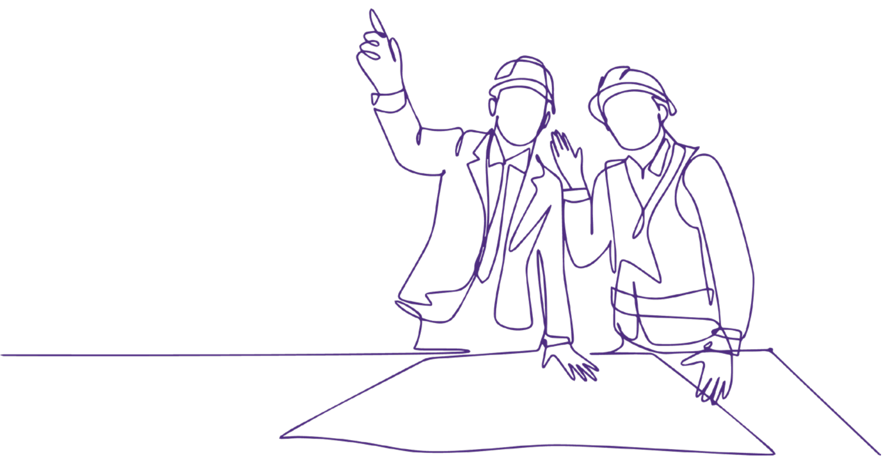
Where a payroll withholding tax obligation arises in both the foreign country and in Ireland, it is critical that a construction company puts in place policies and procedures to manage double taxation and company cashflow. This is one of the most difficult employment tax issues to manage.

Tax credits for foreign tax paid can be obtained in Ireland either real time via payroll or via end of year employee tax returns. Construction companies will need to decide who funds the foreign tax payable and build this into company budgets.

Some companies may choose to fund the foreign tax payable by employees pending the receipt of refunds in Ireland for foreign taxes paid but this needs to be carefully managed given the level of employee turnover in the construction sector; businesses need to avoid a situation where employees leave employment without having an obligation to refund the company for the foreign taxes paid on their behalf.

A robust policy should be put in place in line with business objectives to ensure that the process is efficient and cost effective, the best talent is attracted and retained by the organisation, and to underpin tax compliance.

[1] Foreign tax credit relief is available at the lower of the Irish and foreign effective tax rate.



# The key employment tax considerations from an Irish and foreign country perspective

**Employer Compliance – Irish perspective**

- Should Irish PAYE continue to operate?
- Has the company obtained PAYE Exclusion Orders where Irish PAYE is not operated?
- Where Irish PAYE continues to apply and foreign payroll withholding taxes also apply, how will double taxation be managed by the company pending receipt of foreign tax credit refunds? What is the cashflow impact of this for the company?
- Can the company apply Real Time Foreign Credit relief via the Irish payroll?
- Can the individuals be retained in the Irish social security system?
- Are travel, accommodation and subsistence expenses taxable in Ireland?
- Do employees have an Irish personal tax return filing obligation?
- Does the company have a global mobility policy in place?

**Employer Compliance – Foreign country perspective**

- How is the company tracking days spent by employees in foreign countries?
- Does the company have a foreign payroll withholding tax obligation?
- Is the company required to register for payroll taxes in the host country?
- Are travel, accommodation and subsistence expenses taxable in the foreign country?
- Has the company obtained appropriate documentation (A1 Certificates) where social security is not paid in the foreign country?
- Do employees have a foreign personal tax return filing obligation?
- Has the company complied with employment law regulations of the host country (e.g. collective labour agreements, holiday pay, minimum wage etc.).
- Are there any withholding tax obligations on payments made to subcontractors?

# Employment tax rate matrix[2]

The following table summarises the personal tax and social security rates in a number of key countries, employer pension obligations and the availability of tax efficient benefits. It is intended to act as a general guide for employers and we would recommend that specific advice is obtained on a case by case basis.

[2] Rates correct as at 30 June

| | Belgium | Denmark | Netherlands | Germany | Sweden | Finland |
|---|---|---|---|---|---|---|
| **Personal tax rates** | 25% - 50%[3] | 8% - 56% | 9.42% - 49.50%<br><br>45% (wealth tax)<br><br>5.5% solidarity surcharge[4] | 14% - 42% | 30% - 50%[5] (Tax residents)<br><br>25% (non-resident) | Progressive rates up to 50% |
| **Employee Social Security** | 13.07% | Monthly lump sum[6] | 27.65%[7] | 19.325%[8] | 7% of taxable income[9] | Employee pension of 7.15% or 8.65%<br><br>Medicare per diem approx. total of 2.0 %<br><br>Unemployment 1.50 % |
| **Employer Social Security** | 25%[10] | Monthly lump sum[11] | Varying (approx. 15.7% - 23.5%)[12] | 19.385%[13] | 31.42% (PE)<br><br>19.80 % (No PE) | ~20% |

[3] Plus municipality taxes

[4] Church tax can also apply if the employee is a member of a church that is recognised for tax purposes

[5] The first 30% in municipal tax may vary depending on the municipality the individual is living in.

[6] Danish employee social security rate is a monthly lump-sum contribution of DKK 94.65 (DKK 1,135.80 per year). It is not calculated as a percentage. Danish employer social security rate is a monthly lump-sum contribution of DKK 189.65 per employee (DKK 2,272.2 per year) and a quarterly a approx. DKK 1,800. It is not calculated as a percentage. Employer contributions include contributions to a number of funds.

[7] Maximum premium income: EUR 35,472. When the employee is subject to the Dutch social security regime, employee insurance contributions are due by the employee (to be withheld and remitted by the employer).

[8] Employee's contributions include pension insurance 9.30% (annual income threshold €82,800), unemployment insurance 1.20% (annual income threshold €84,600 for the old federal states and € 81,000 for the new federal states), health insurance 7.3%. Extra contributions might be levied and amounts for privately insured persons may change (annual income threshold €56,250), nursing insurance 1.525% except of saxony and additional surcharge 0.25% for childless individuals 23 years or older (annual income threshold €56,250).

[9] Employee social security is capped so the maximum employee pension fee for 2022 is SEK 40,100. Full tax reduction is granted so the net effect is zero (compared to an employee who is not comprised by the Swedish system and accordingly does not pay the fee).

[10] Please note a series of other obligations may exist for an employer, especially for employment law/social security purposes (declaration of works, attendance registration, affiliation with Welfare Fund, joint liability in case of infringement regarding foreign employees, etc.), which are strictly monitored in Belgium, and even more in the case of the construction sector.

[11] Danish employer social security rate is a monthly lump-sum contribution of DKK 189.65 per employee (DKK 2,272.2 per year) and a quarterly a approx. DKK 1,800. It is not calculated as a percentage. Employer contributions include contributions to a number of funds.

[12] Maximum premium income: EUR 59,706. When the employee is subject to the Dutch social security regime, employer insurance contributions are due by the employer.

[13] Employer's contributions include pension insurance 9.30% (annual income threshold €82,800), unemployment insurance 1.20% (annual income threshold €84,600 for the old federal states and € 81,000 for the new federal states), health insurance 7.3% (annual income threshold €56,250), nursing insurance 1.525% (annual income threshold €56,250), insolvency fund 0.09% (annual income threshold €84,600 for the old federal states and € 81,000 for the new federal states).

[2] Rates correct as at 30 June

| | Belgium | Denmark | Netherlands | Germany | Sweden | Finland |
|---|---|---|---|---|---|---|
| **PAYE obligation – no Permanent Establishment (PE) in country** | Possible PAYE obligation if no PE<br><br>PAYE obligation if PE exists | No PAYE obligation but possible personal tax liability for employees if no PE[14]<br><br>PAYE obligation if PE exists | Possible PAYE obligation if no PE<br><br>PAYE obligation if PE exists | Possible PAYE obligation if no PE<br><br>PAYE obligation if PE exists | No PAYE obligation but possible personal tax liability for employees if no PE[15]<br><br>Note: PAYE obligation due in Economic Employer situations<br><br>PAYE obligation if PE exists | Reporting obligation but no PAYE obligation if no PE<br><br>PAYE obligation if PE exists |
| **Tax efficient benefits** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Pension obligation** | Statutory pension contribution via PAYE (social security contributions) if subject to Belgian Social Security<br><br>Additional pension right for blue-collar workers but no additional contribution obligation for employers | Depends on collective agreement | Possible | Statutory pension via PAYE. Employers must also offer access to private pension, if certain ceiling amounts are exceeded | Depends on collective agreement | Required if no A1 Certificate in place |
| **Contractor withholding taxes** | Yes - 15% for tax debts and 35% for social security debts<br><br>To be checked through this link. | Yes if employees are regarded as "hiring out labour" | No | Yes - 15% rate where subcontractor certification not provided | Possible obligation where subcontractor cannot present documents to confirm registration for corporation tax | Possible obligation |

14 Social security withholding tax obligation arises where Danish social security is payable

15 Social security withholding tax obligation arises where Swedish social security is payable

# Other key tax considerations

- Whether the company has created a taxable presence i.e. permanent establishment ("PE") in the foreign country.
- Where a PE has been created, how to structure the operation from a foreign corporate tax perspective.
- VAT registration requirements.
- Contractor withholding taxes.

Doing business in Europe brings great opportunities to Irish construction companies but the pitfalls of failing to comply with employment tax obligations and incorrectly managing the associated budgeting and cashflow requirements can be very costly.

Early planning is critical to ensure that companies manage both their Irish and foreign employment tax obligations. HR, finance and payroll teams should all be actively involved in the process. Policies and procedures should be developed in line with business strategy to support the attraction and retention of a globally mobile workforce whilst at the same time supporting tax compliance, budgeting and cashflow management.

Should you have any queries in relation to the employment tax obligations and operations in Europe, please contact a member of our global mobility services team.

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