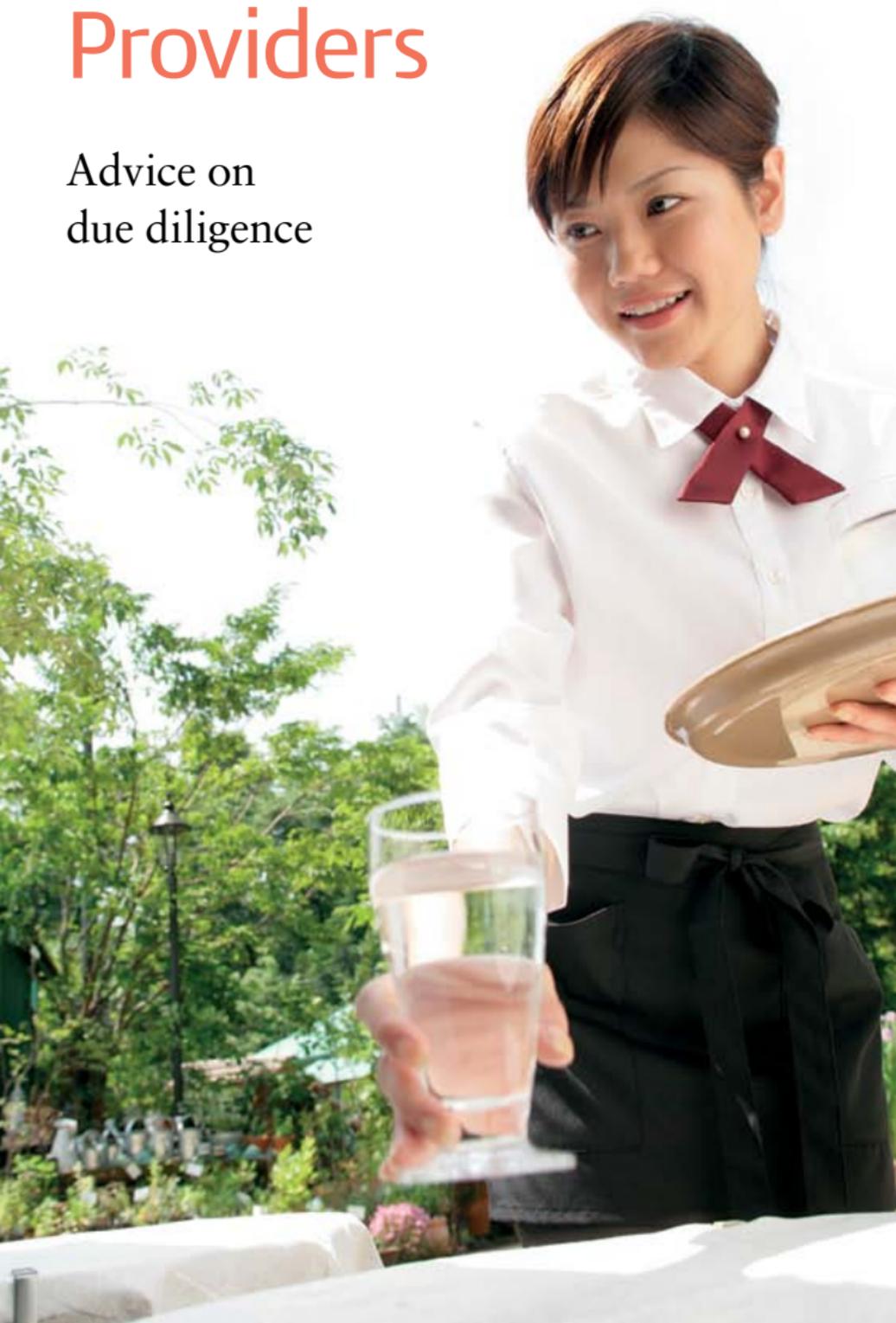




HM Revenue
& Customs

Use of Labour Providers

Advice on
due diligence



Who should read this?

This guidance applies if you use labour supplied by a third party, supply or make arrangements to supply labour.

HMRC has identified increasing problems with fraud and unpaid taxes through the use of Labour Providers – in the agricultural and food processing sectors, construction, hotels and leisure, security and other labour intensive industries.

HMRC is taking steps to combat these losses by tackling specific schemes to defraud – including the use of false invoices and hi-jacked VAT registrations.

It is good commercial practice for all businesses to carry out checks to establish the credibility and legitimacy of their supplies, customers and suppliers. However, these checks will need to be more extensive in business sectors where there are greater commercial risks or vulnerability to fraud and other criminality.

You should seek to avoid involvement in supply chains where VAT and/or other taxes will go unpaid.

Where it can be shown that you knew or should have known that transactions you entered into were connected with fraudulent evasion of VAT, you will lose your right to recover the VAT incurred on those transactions.

Failure to carry out appropriate checks may be evidence that you knew or should have known of the fraud.

HMRC is unable to tell you exactly what checks you should undertake.

The examples contained in this notice are only guidelines for the kind of checks you could make to help you avoid dealing with high-risk businesses and individuals.

The checks you will need to make, and the extent of them, will vary depending on the individual circumstances. You should ask the most appropriate questions required to protect yourself in the particular circumstances of your individual transactions.

Production of a definitive checklist would merely enable fraudsters and those willing to turn a blind eye, to ensure that they can satisfy such a list.

Types of questions you should be asking:

Does the Labour Provider need/have the appropriate Gangmaster Licensing Authority (GLA) licence?

It is illegal to use workers or services supplied by an unlicensed labour provider in the regulated sector of agriculture, forestry, horticulture, shellfish gathering and food processing & packaging. The maximum penalty is 6 months imprisonment and a fine. *(Source: GLA website)*

What is the history of the business?

Is the business registered in the UK or overseas?

Is it a live company on the Companies House register?

What do you know about the directors and their background in the industry?

Have you visited the trading premises?

Are they consistent with the business of finding and employing workers? For example, are there sufficient backroom staff, phones, desks, filing cabinets etc? Or is the business operating from an accommodation address with one desk and one phone?

How many workers for hire do they employ in total?

Do they themselves obtain workers from other Labour Providers/sub-contractors?

If so, are the fees that they are proposing to charge realistic?

ie will they meet statutory minimum wage and taxation obligations, whilst also allowing each party to achieve a profit?

How did they approach you?

eg did they just walk in off the street or were they recommended to you?

Has the business got trade references from other businesses they supply workers to?

If so, obtain copies.

Have they got Employer's Liability Insurance?

Has the Labour Provider been set up to specifically supply workers to your business alone — or do they also supply Labour to other businesses?

Is it a replacement business?

ie are they proposing to supply you with the same workers as you were using before?

If so, ask for an explanation of why this has occurred.

Why did the previous business cease trading?

Was it because of the inability to pay its creditors which may include tax debts?

What is the financial status of the business?

Have the directors got the financial resources (capital) to supply you with workers?

Are you making payments to a third party?

ie a factoring agent. If so, why?

Have normal commercial practices been adopted in negotiating prices?

Is the business VAT registered and set up for PAYE? *Obtain a copy of the VAT certificate? Does the address match the place of business you visited?*

Is the business paying its workers the National Minimum Wage? *These minimum rates can be viewed at www.hmrc.gov.uk using the search term 'Minimum Wage'.*

Are you paying the business an hourly rate for labour that allows them to meet their tax obligations and make a profit?

According to the Association of Labour Providers website a minimum hourly rate is needed to cover costs and tax obligations, on top of which the Labour Provider's profit has to be negotiated. These rates are reproduced below.

| Minimum Hourly Cost of Supply (not including Labour Provider margin) | |
|--|---------------------|
| Effective date | Minimum hourly rate |
| October 2010 | £7.69 |
| April 2011 | £7.63 |
| April 2012 | £7.85 |

Is the Labour Provider supplying transport and accommodation to its workers?

If so, you need to consider the risks associated with this, ie the possibility of foreign low paid workers being employed and exploited and breaches of National Minimum Wage and PAYE regulations.

What do you know about the workers being supplied?

Do they have the right to work in the UK?

What checks do you make to ensure this and protect your own business?

What checks are carried out by the Labour Provider on their workers?

Are they sufficient? Again, what checks do you make to ensure this?

Do the workers need a licence themselves?

ie Security Industry Authority licence. If they don't hold the required licence, you shouldn't be using them.

Should the employees be security vetted for the type of work they are doing for you? *If so, how is this done and by whom?*

Are any of them self employed? *ie registered for the Construction Industry Scheme — CIS.*

Who is responsible for matters such as Health & Safety training, general training of workers and provision of security passes?

Do the workers have written terms and conditions of employment?

Dealing with Labour Provider businesses. How to ensure the integrity of your supply chain.

The following are examples of checks you may wish to undertake to help establish the integrity of your supply chain. This list is not exhaustive and it is your responsibility to decide what commercial checks you need to carry out before dealing with a supplier.

Undertake checks on directors identities
— *obtain copies of passport etc.*

Obtain copies of Certificate of Incorporation, VAT registration certificate and GLA Licence *(if applicable)*.

Verify VAT registration details with HMRC before you use them and make regular checks of VAT registration numbers afterwards *(see below)*.

Insist on personal contact with the director of the prospective supplier, making an initial visit to their premises.

Obtain trade reference and letter of introduction on headed paper.

Obtain credit checks from an independent third party.

Obtain the prospective supplier's bank details.

Check details provided against other sources
eg website, letterheads, BT landline records.

Enter into a written contract with the Labour Provider covering matters such as a system for the issue of credit notes and arrangements for dealing with poor work etc.

Does the supplier insist on cash payments?

Consider making payments by cheque rather than cash.

Do the prices charged by the Labour Provider allow them to meet minimum wage requirements, meet their tax liabilities and to make a profit?

Undertake regular checks on workers' status to work in the UK, timesheets, payslips etc.

In order to verify the VAT status of the labour providers your business uses, we have arranged a central contact point to aid this process.

Requests for verification should be made to our Coventry Office, by calling: 024 7623 7144 (between the hours of 08.00 and 16.00 Monday to Friday).

When making requests, it would be beneficial to have the following information to hand for each Labour Provider:

- Name
- Address
- VAT registration number

You may be asked additional questions regarding these suppliers such as contact details, directors, supply dates, number of staff being supplied etc.

Again, the checks contained in this document are suggestions for the kind of checks you could make to help avoid dealing with high-risk businesses and individuals.

You should keep a full record of the checks you have made to establish the legitimacy of the supplier.

Reporting a Fraud

If you have information regarding a fraud involving Labour providers, please contact the Customs Hotline which is open 24 hours a day, 7 days a week.

Secure website: <http://www.hmrc.gov.uk/customs-hotline/>

Freepost Freepost SEA 939
 PO Box 100
 Gravesend
 Kent
 DA12 2BR

Telephone 0800 595000