

Split EPC contracts to reduce tax in GCC

Briefing note

Why Split an EPC Contract?

- Splitting out the offshore payments can mitigate corporate tax liability (and therefore reduce prices).

Where will this be relevant?

- Kingdom of Saudi Arabia where foreigners pay 20% corporate tax on profit
- Sultanate of Oman where all companies pay 15% corporate tax on profit
- Qatar where companies (not wholly owned by Qatari or GCC nationals) pay 10% corporate tax on net income
- Kuwait where companies with a foreign ownership pay 15% corporate tax on profit to the extent of their foreign ownership
- From mid-2023 the United Arab Emirates when 9% to 15% corporate tax on profit will come into effect

Note that these are not the applicable rates for hydrocarbons extraction which are subject to special rates. Foreign banks are also often treated differently.

Risks to cover off

Splitting an EPC contract into offshore and onshore works is problematic. The owner will face additional risks v a single LSTK approach which will need to be covered off through a wrapping (sometimes called umbrella) agreement. Risks include:

- One contractor's default may delay or disrupt the other resulting in the second claiming from the owner
- One contractor's default may lead to additional work by the second and a claim for a variation from the owner
- Incomplete split of the works leaving items outside the responsibility of either
- Warranties may be prejudiced
- Where rates and caps on liquidated damages are a percentage of contract price the coverage will be inadequate
- Defects liability period obligations should run from the construction practical completion date
- Contractor claims can be duplicated
- Termination provisions will operate independently

Action points

Consider whether a single contractor is going to deliver works with a substantial overseas element.

Consider the potential to save tax by splitting onshore/offshore contracts (with a wrapping umbrella agreement to safeguard the owner's rights).

Seek advice on the most appropriate method of splitting the contracts and developing the wrapping agreement.

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