

International contracting and IR35

IR35 questions when contracting abroad:

- o Are you tax-liable in the UK?
- o When do you cease to be tax-liable in the UK?
- o Should you keep your limited company back home?
- o Does your foreign contract address the IR35 issues?
- o If you are not tax-liable in the UK, what about the laws where you work?

Yes, [IR35](#) can follow you across the border when you go [contracting overseas](#).

If you remain liable for tax in the UK, then you are liable for an IR35 re-assessment of whether you were actually an employee of a foreign company or whether you were a genuine contractor. You will only cease to be tax-liable on earned income in the UK after a full year abroad.

Where You Pay Taxes

Of course, when you cease to be liable for taxes in the UK, you can forget about IR35--but you will have to think very carefully about the rules in the country you are now working in, because these can be quite restrictive.

The same rules apply: was the contract project-based? Was there [mutuality of obligation](#) (did you have to show up and do what the end-client told you)? Did the end-client supply you with work under all circumstances? Were you running your own business?

Anywhere In The World

"An IR35 contract-assessment can be made based on contracts drawn up anywhere in the world," says [Simon Sweetman](#), a tax expert based in Felixstowe.

“ An IR35 assessment can be made based on contracts drawn up anywhere in the world ”

Simon Sweetman

Practical Problems

Of course, when you are abroad, there are some practical issues.

The Revenue will follow the same procedure that it always does if it wishes to prove that you are caught by IR35. The first step is to obtain a copy of the contract between your end-client and the agency you worked for--this is called the "upper" contract. HMRC will compare that contract with the "lower" contract--the one you have with the agency. If the upper contract sounds a lot like an employment contract, you will start seeing IR35 investigation.

In practice, HMRC may not find it easy to obtain contracts drawn up between two foreign companies, that is, the agency abroad and the end-client abroad. HMRC has no jurisdiction outside the UK, and foreign tax authorities are rarely cooperative with each other.

But don't count on avoiding the IR35 issue in this way. Should HMRC manage to obtain what it needs, you could be in trouble. "It is best to see that your contract clearly addresses the [IR35 issues](#) just as if you remained in the UK," Sweetman warns.

And When You Are Tax-Liable Abroad?

After a full year of working abroad, you cease having to pay taxes on earned income in the UK. However, you will now be subject to tax from the country you are living in.

This can be a good or a bad thing, as tax conditions in foreign countries can be extremely favourable or terribly harsh. Some countries have similar tax conditions to IR35--for example, France will not allow contractor status to a person or company that has only one client.

Get Good Local Advice

What you should do under any circumstances is to obtain very good local advice. It could be worth your while to start a company in the country you are working in. Or you may enjoy special tax exemptions--for example in the Netherlands you can obtain a 30% tax deduction if you are a skilled migrant worker. You can obtain additional tax advantages by locating your business in specific areas of a country which enjoy tax advantages. Or you may gain from locating your company abroad or offshore.

What you should not do under any circumstances is to work through a [limited company](#) based in the

UK. You will be tax-liable in any case in the country you are working in, because corporates are taxed based on the location of the people who run them. But you will still have to provide Companies House with lots of paperwork about your active company back home.

Perhaps the most important thing you can do is to have a professional carefully assess your tax liability in the UK for the first year you are abroad. A professional can make sure that you don't overpay back home, or start paying too early in the country you've just started working in.

“ If you pay taxes in the UK then it is best to address IR35 issues ”

Simon Sweetman

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