

## Contractor guide on when IR35 will apply to overseas contracts

"Contractors trading via a UK-based [limited company](#) and who are UK resident will find [IR35](#) applies wherever in the world they are working," explains [Andy Vessey](#) of IR35 specialist [Qdos Consulting](#). "The locations where duties are performed have no bearing on IR35."

"If a contractor's working arrangements put them inside [IR35](#), even if they are working on an offshore platform in the Gulf of Mexico, they are required to calculate and pay their deemed payment as required by the legislation."

However, in theory contractors should be making social security contributions to the state in which they are working regardless of their IR35 status, so any deemed payment would exclude the National Insurance Contributions (NICs) element.

### 'Onshore' contracts in the European Economic Area and Reciprocal Agreements

"Contractors working for a client in a country that is a member of the European Economic Area (EEA) and in jurisdictions with a 'Reciprocal Agreement' (RA) with the UK regarding tax and social security, are still subject to IR35 legislation," continues Vessey.

"However, because they are liable to make social security contributions to the state in which they are working, the NIC element of the IR35 rules won't apply. That means any deemed payment calculation won't include NICs."

For example, a contractor working in an EEA member state such as France should pay French social security contributions regardless of their IR35 status. If the relationship with the client was one where IR35 would apply, the legislation requires the contractor to calculate a deemed payment for income tax but not for NICs.

### Contractors should, in theory, make social security contributions

"The same is true for countries with an RA, such as the United States. Contractors working in the US should make US social security contributions and IR35 will still apply," adds Vessey.

Special EEA rules apply when a contractor is working in two member states. In this case, the rules say that the contractor is subject to the legislation of the member state in which they reside, which for most contractors would be the UK. If they are working inside IR35, then the full deemed payment of income tax and NICs will apply.

If there is no social security system in the country in which the contractor is working then any deemed payment calculation for contractors inside IR35 must include UK NICs, as well as income tax.

### Contractors working 'offshore'

According to Vessey, working offshore does not provide a UK-based contractor with an IR35 get-out-of-jail-free card: "Contractors working for long periods in remote regions, on offshore platforms or on survey vessels are not exempt from IR35 if they and their company are UK residents."

"That means an oil and gas contractor working on an oil rig who satisfies the tests of employment used to [determine IR35 status](#), such as being [controlled](#) by their client or unable to [substitute](#), may be inside IR35 and therefore required to make a deemed payment."

### Tax residency rules have tightened

Following a series of high profile cases involving tax exiles, HMRC has tightened the rules regarding tax residency and expanded its guidance.

Vessey explains: "It was once sufficient to spend just enough days outside the UK for a contractor to be domiciled 'offshore'. That is no longer the case.

"HMRC will look at a contractor's ties to the UK, such as family and a UK-registered and trading company. The more ties, the more likely it is to conclude that a contractor is resident in the UK, even if they do spend most of the year out of the country."

### IR35 best practice when working overseas

Vessey warns contractors that they should take extra care over IR35 'best practice' when working overseas: "If HMRC decides to open an [IR35 review](#), it may look specifically at any overseas assignments.

"There is no reason to suppose that assignments of this nature are more likely to be inside IR35 than UK-based ones, but the evidence a contractor must assemble to demonstrate that they aren't inside IR35 may be much harder to gather."

“  
If a contractor's working arrangements put them inside IR35, even if they are working on an offshore platform in the Gulf of Mexico, they are required to calculate and pay their deemed payment as required by the legislation ”

Andy Vessey, Qdos Consulting

Vessey gives an example: "If HMRC is not satisfied with the contractor's evidence that an overseas contract is outside IR35, it may wish to contact the client, which is a common occurrence for IR35 reviews of UK-based contracts."

Vessey points out that HMRC does not have the power to compel a client based outside the UK's tax jurisdiction to answer its queries, although it does have wide ranging international arrangements to help combat tax evasion. Information is exchanged with countries where a double taxation agreement or tax information exchange agreement exists with the UK.

An unresponsive foreign client could backfire on a contractor, delaying closure of the review or even resulting in the contractor being hauled in front of a tribunal and found to be inside IR35 when they were not.



**Andy Vessey**

Client Services Manager

Qdos Consulting Limited

Andy is a Senior Tax professional at Qdos and has a wealth of experience in IR35 and status matters which he guides the firm on.

Qdos Consulting is a leading expert in status and IR35. The company also consults in taxation and employment law and provides low cost business insurance for contractors. [Read Full Profile...](#)

[View all our experts](#)

"Contractors should aim to obtain a signed [Confirmation of Arrangements](#) from their overseas clients and maintain detailed records, including correspondence, throughout their contracts," Vessey says. "Providing this evidence to HMRC at the outset of an IR35 review is likely to close the investigation before it gets off the ground."

Published: Monday, October 29, 2012

© 2016 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#).



ABCe verified website - last audit confirmed 134,482 monthly unique visitors

© Copyright 2016 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)