Managing Independent Contractors Internationally: FAQs

When it comes to international contractor scenarios, we’ve just about seen it all. Today governments around the world are placing independent contractors under more scrutiny than ever.

Ensure that you aren’t one of the 60% of businesses that operate with non-compliant contractors with our in-depth answers to all your contractor questions.
CAN AN INDEPENDENT CONTRACTOR OWN EQUITY OR STOCK OPTIONS OF THE COMPANY THAT THEY ARE CONTRACTED TO?

Yes, this is generally allowable and does not necessarily interfere with the status of the person as an Independent Contractor (IC). However, as with everything around this topic, care should be taken to ensure there are no possible conflicts of interest and that are no questions about company ownership.

HOW CAN I PAY CONTRACTORS LOCATED OVERSEAS?

Most IC’s are paid through accounts payable, with the contractor sending an invoice directly to the company. One of the challenges of this approach is that they’re outside the usual HR/PR process and are oftentimes overlooked when managing headcount and total expense reporting. It also is the Contractor’s responsibility to report all income and manage their own taxes.

CAN A PAID INTERN BE HIRED AS AN INDEPENDENT CONTRACTOR?

Generally, no. An intern implies someone who is more junior in experience and thus requires supervision, guidance and training to perform his/her work. This requirement removes them from consideration as an Independent Contractor.

DO I NEED TO FILE A 1099 WHEN PAYING MY CONTRACTORS THAT ARE LOCATED OUTSIDE OF THE US?

Generally, no – there is no requirement to file 1099’s for IC’s working outside of the US. However, it is advisable for the firm to request that Contractor file IRS Form W-8BEN, certifying that foreign status.

CAN I USE A US CONTRACT WHEN ENGAGING INDEPENDENT CONTRACTORS OVERSEAS?

It is possible to use a US contract for foreign IC’s; however, you should ensure that any country-specific language and clauses are included.

CAN I PROVIDE PAID TIME OFF FOR VACATION AND SICKNESS TO CONTRACTORS?

No, providing benefits such as paid time off is considered part of the employer/employee relationship. The Contractor would likely be seen as misclassified if they were offered benefits. However, in some countries and under certain circumstances the contracting party has the obligation to provide some of those benefits. Again, consulting local experts is advised to be sure you have everything covered.

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### Percent of contractors that make up total workforce

- **2005**: 6.9%
- **2015**: 9.6%

*Source: National Bureau of Economic Research*
SHOULD I BE WITHHOLDING ANY OF THE CONTRACTOR’S INVOICE FOR TAX PURPOSES?

No, by very virtue of being an Independent Contractor the individual under contract is normally responsible for filing and paying their own taxes and obligations. Stating this requirement explicitly in the contractor agreement helps ensure these requirements are met.

HOW LONG CAN I ENGAGE A FOREIGN CONTRACTOR FOR?

While there usually is not a set limit, Independent Contractor relationships are expected to be of a relatively short-term and temporary nature. Specific rules vary by country, so be sure to obtain legal guidance.

HOW CAN I ENSURE INTELLECTUAL PROPERTY PROTECTION ON THE WORK THE CONTRACTOR COMPLETES FOR ME?

The best way to protect your IP is through a clearly worded clause in the contract that indicates any IP developed belongs to your company.

IF MY CONTRACTORS HAVE BEEN MISCLASSIFIED, HOW MANY YEARS BACK CAN THE PENALTIES BE APPLIED TO?

While this varies from country to country, it is not uncommon for several years of back payments including taxes, insurance payments, pension or retirement plan contributions to be required. This will be in addition to any penalties and, in some cases, potential jail time!

WHAT HAPPENS IF AN INDEPENDENT CONTRACTOR AND EMPLOYEE ARE WORKING ON THE SAME JOB SITE IN A SIMILAR ROLE?

When evaluating worker misclassification, one of the areas governments will be assessing against will be supervision of the employees and direction/control imposed on the employee by their superior. Ultimately, if an independent contractor is performing the same role on the same job site as a full-time employee, then this will present a red flag during any government audit and the employer likely facing severe consequences as a result.

It is recommended that if a contractor is performing in the same capacity as an employee, that they too are transferred to a traditional employee relationship.
AS A US BASED NON-GOVERNMENTAL ORGANIZATION, WE HIRE INTERNATIONAL INDEPENDENT CONTRACTORS TO WORK IN OUR PROGRAMS ON A TEMPORARY BASIS. FOR EXAMPLE, SOMEONE FROM FRANCE WORKING IN BANGLADESH. ARE WE SUBJECT TO THE EMPLOYMENT LAWS IN FRANCE?

Assuming the contractor has the correct paperwork and visa to work in Bangladesh, they would be subject to the employment and income tax laws in Bangladesh. However, it is prudent to also take into consideration the laws of the home country, in this case France, for income tax purposes. Consultation with an international tax advisor is highly recommended.

WE HAVE CERTAIN COMPLIANCE POLICIES THAT ALL REPRESENTATIVES MUST SIGN OFF ON - SUCH AS CHILD PROTECTION, CODE OF CONDUCT, PROTECTION OF SEXUAL EXPLOITATION AND ABUSE, ETC. THESE REQUIRE POLICY ACKNOWLEDGEMENT, TRAINING. CAN WE REQUIRE AN INDEPENDENT CONTRACTOR TO COMPLETE THESE?

Yes, you can incorporate language into your contractor agreement that denotes these compliance policies must signed off on prior to the contractor commencing work for your company.

WHAT TYPE OF REGULAR ASSESSMENTS WOULD YOU RECOMMEND? CAN YOU SHARE ANY RESOURCES?

Evaluating against four key components when assessing your contractors is our recommended approach – how they’re paid, who controls their day-to-day activities, whether they are provided company resources, and whether they are only providing services to your company. If you have a high concentration of contractors in one country, it would be prudent to investigate further whether the local governments assess employee misclassification against any additional criteria.

Alternatively, our independent contractor assessment tool can provide you with an indication of any potential risk.
DO YOU HAVE ANY EXAMPLES OF COMPANIES THAT HAVE BEEN FOUND GUILTY OF FOREIGN MISCLASSIFICATION AND WHAT THE OUTCOME WAS?

Contractor and employee misclassification has long been an issue, particularly in the United States. However, foreign governments are increasingly clamping down on employee misclassification too.

We have highlighted below a number of instances that show the potential repercussion for both employee and employer when found guilty of employee misclassification.

- **Egypt** – *Egyptian court convicts 43 NGO employees* (BBC)
- **Australia** - *Employee Misclassification results in record penalties* (AMMA)
- **Europe** – *European court rules misclassified self-employed contractors can claim back holiday pay to 1996* (Personnel Today)

WHAT ARE THE RISKS FOR THE INDIVIDUAL IF THEY DO NOT FILE THEIR TAXES IN THEIR COUNTRY - AND THEY SIGNED A CONTRACTOR AGREEMENT? WOULD THE RISKS BE SOLELY TO THE INDIVIDUAL OR IS THE COMPANY AT RISK FOR THOSE TAXES AS WELL?

This is largely dependent on the country, but as a generalisation there will be potential risk for the organisation if the local government concerned deems that the contractor relationship was in fact acting as employer-employee. In these instances the government will pursue the employer for the missing taxes, in addition to further fines and penalties for the initial employment misclassification.

DOES USING AN INDEPENDENT CONTRACTOR OVERSEAS PROTECT ME FROM PERMANENT ESTABLISHMENT (PE) RISK IN THAT LOCATION?

In the majority of cases, no. It is entirely possible that the activity that the contractor carries out on your behalf might create taxable revenues that you then need to account for in that country. If they are acting as a representative of your business, then you are can be perceived by the local governments as operating in that location and still be liable for any tax as a result of these operations.
WHAT IMPACT DOES GDPR HAVE ON MY RELATIONSHIP WITH CONTRACTORS IN THE EU?

Like many scenarios these days, “it depends”. If your company engages Contractors, then there are a couple of different factors to consider here – in particular, the type of work that the Contractor will be undertaking and the level of information they will have access to. The key is whether or not the Contractor, in providing services to your company, will need to access, store or otherwise process personal data on behalf of your company.

If the Contractor is an IT service provider, for example, they may need to access your company’s systems and devices to provide their services, thereby potentially gaining access to information about your employees, customers, partners, etc. (information which, if linked to identified or identifiable individuals, is considered “personal data”).

WHAT HAPPENS IF THE CONTRACTOR DOES NOT PAY THEIR INCOME TAX?

This is largely dependent on the country the contractor has been operating in. In some cases, such as Hong Kong, the contractor will become liable for the taxes.

The real risk for the employer is that once the authorities have identified the contractor, the real risk, is that once the authorities track down the contractor, the contractor may plead naivety and state that they believed the client was handling their taxes. If you are not protected against this recourse, it can create an employment association risk, which can then mean that you as the client is exposed for not operating compliantly and can be fined all employer taxes and responsibilities for the entire period that contractor was engaged for, as well as penalties.

IF I WANT MY CONTRACTOR TO TRAVEL INTO ANOTHER COUNTRY FOR WHATEVER REASON, HOW DO WE SUPPORT THE IMMIGRATION NEEDS?

Typically the contractor would need to handle the immigration component personally, otherwise it may be perceived that they are a full-time employee if company resource is being utilised to support this.

We recommend consulting with an immigration attorney for considerations regarding taxes and the length of engagement in the contractor’s home country and overseas.

Countries with most restrictive contractor regulations

- Australia
- Brazil
- Canada
- Chile
- Germany
- Israel
- France
- Japan
- Mexico
- Spain
- India
- Netherlands
- United Kingdom
- South Korea

Source: Lexicon.com, “Independent contractor or employee: how countries differ”, 2011
WHAT ASSURANCES DOES THE GEO SOLUTION PROVIDE OVER CONTINUING TO ENGAGE THE WORKER AS AN INDEPENDENT CONTRACTOR?

Typically the legality of the contractor’s status will be evaluated against four key areas:

• How they are paid – for time worked or upon completion of a project?

• Who controls their day-to-day activities

• Whether or not they use company resources to complete their tasks

• Only provides services to you and does so for prolonged periods of time

By engaging through a GEO solution, the above mentioned risks are largely mitigated through the converting the status from contractor to full-time employee.

CAN WE OFFER OUR OWN BENEFITS TO EMPLOYEES ENGAGED THROUGH GEO?

Absolutely – providing the benefits you would like to offer do not contravene any local laws, we will be happy to accommodate additional benefit provisions for your employees. For more information on offering U.S. benefits to employees located overseas, check out our blog post.

IS THERE A MAXIMUM TIME FRAME AN EMPLOYEE CAN WORK IN A GEO RELATIONSHIP?

No – we can utilise either a fixed term or indefinite length of employment for your contractors. As they will be treated as a full-time employee, the usual risks associated with engaging contractors for too long a period of time are greatly reduced.
Global Employment Outsourcing is your gateway to international expansion and contractor compliance.

Expanding into new geographic markets presents numerous workforce challenges. Dealing with them quickly is the key to success.

In just two weeks, Safeguard Global, through Global Employment Outsourcing, acts as your “employer of record” for your international employees. We navigate local tax and labor laws, regulations and benefits, so you get down to business without a moment wasted.