

# Income Tax

## Statement of Practice SP - IT/1/04

### Tax Treatment of Remuneration of Members of State and State Sponsored Committees, Boards, Commissions and other Bodies

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## Executive Summary

Members of State and State Sponsored Committees, Boards, Commissions and other Bodies (hereinafter referred to as members of State Bodies) fall into two general categories in that they are either –

- (a) members of State Bodies created by statute [i.e. statutory office holders]; or
- (b) members of non-statutory State Bodies [i.e. members of what are known as ‘ad-hoc’ State Bodies].

Notwithstanding that members of State Bodies may, in addition to membership of such Bodies, also hold other occupations [either in an employed or a self-employed capacity] and/or have other income [e.g. a pension], the tax treatment of payments to such members is as follows –

### ***Members of State Bodies created by statute [i.e. statutory office holders]***

As such members are clearly office holders, payments to them in their capacity as office holders are chargeable to tax under what is known as Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.

### ***Members of non-statutory State Bodies [e.g. members of what are known as ‘ad-hoc’ State Bodies]***

While each case must be examined on its merits, Revenue’s view, based on experience to date, is that members of non-statutory State Bodies are either office holders and/or employees. Payments to such members in their capacity as office holders or employees are chargeable to tax under what is known as Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.

## **Further Information**

Government Departments and State Bodies seeking information or clarification on matters relating to payments to members of State Bodies should contact their local Revenue office.

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## 1. Introduction

The purpose of this Statement of Practice is to set out the tax treatment of payments made to individuals in their capacity as members of State and State Sponsored Committees, Boards, Commissions and other Bodies (hereinafter referred to as members of State Bodies).

Payments made out of public funds to individuals will generally fall to be one of the following -

- (a) payments made to an office holder in his/her capacity as an office holder;
- (b) payments made to an employee in his/her capacity as an employee;
- (c) stipends payable out of the public revenues of the State; or
- (d) payments made to a self-employed individual in the capacity of his/her self-employment.

***The tax implications for payments falling into categories (a), (b) and (c) are the same – they are chargeable to tax under Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.***

A key factor, therefore, in determining the tax treatment of payments made to individuals in their capacity as members of State Bodies is the status of such individuals in that capacity [i.e. are the members of State Bodies office holders and/or employees?].

## 2. Office Holders

### 2.1 Meaning of 'office'

An office holder is a person who 'holds office'. Once it is established that an individual holds an 'office', it is not necessary to show that he/she is also an employee [i.e. an individual can be an office holder without also being an employee].

While there is no statutory definition of 'office', guidance on the meaning of 'office' is found in case law. For example, the case of *Great Western Railway Company v Bater* [8 TC 231] has held that the word 'office' means a "*substantive position which has its existence independent of the person who fills it*". Later case law (*Edwards v Clinch* [56 TC 367]) states that the term 'office' "*must involve a degree of continuance (not necessarily continuity) and of independence; it must connote a post to which a person can be appointed, which he can vacate and to which a successor can be appointed*".

### 2.2 Creation of an 'office'

The position of 'office' can be created by statute, statutory regulation, charter, deed of trust or other such means. While this gives rise to statutory office holders and non-statutory office holders, the tax treatment of payments to all office holders is the same.

### 2.3 Tax treatment of payments to office holders

Payments to officer holders in their capacity as office holders are chargeable to tax under what is known as Schedule E and subject to deductions (i.e. tax,

PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.

### 3. Employed or Self-employed

#### 3.1 Meaning of Employed or Self-employed

There is no statutory definition of employment or self-employment and the question of whether an individual is engaged under either -

- (a) a contract of service [i.e. an employee]; or
- (b) a contract for service [i.e. self-employed]

is a question of fact and of general law.

Case law shows that there is no one formula under which a contract of service or a contract for services between parties can be identified. Regardless of how the parties may describe themselves, all the possible factors (including written, oral and implied details) that bear on the relationship between the parties must be examined, given their proper weight and a judgement made on their overall effect. To try to provide some clarity as to whether an individual is employed or self-employed, the Employment Status Group (set up under the Programme for Prosperity and Fairness) has published a **Code of Practice for determining Employment or Self-employment status of Individuals**.

#### 3.2 Categories of employee

Depending on the facts and circumstances of a case, an employee may be a full time employee, a part-time employee, a temporary employee or a casual employee.

#### 3.3 Tax treatment of payments to employees

Payments to employees in their capacity as employees are chargeable to tax under what is known as Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.

#### 3.4 Self-employed

If having applied the tests in the **Code of Practice for determining Employment or Self-employment status of Individuals**, an individual is regarded as self-employed as regards his/her relationship with a State Body, then, depending on the nature of the service being provided –

- the individual may be obliged to charge VAT on the provision of the service, opinion, etc; and/or
- the State Body may be obliged to deduct Professional Services Withholding Tax at source from payments made to the individual.

Details of Professional Services Withholding Tax [PSWT] are contained in Revenue's Information Leaflet IT 61.

#### **4. Status of experts or specialists engaged by the State or nominated to State Bodies**

Notwithstanding that members of State Bodies may be appointed because of their qualifications, expertise and/or experience, a distinction can be made between -

- (a) an individual [including an expert or specialist] carrying out duties and functions in his/her capacity as a member of a State Body; and
- (b) a Government Department or a State Body engaging an individual [e.g. an expert or specialist] who is not a member of the Body to provide an independent service or opinion to it.

As regards (a), such individual is treated in like manner to other State Body members (see Paragraph 6 below).

As regards (b), one has to have regard for the **Code of Practice for determining Employment or Self-employment status of Individuals** to determine whether the individual is either -

- an employee of the Department / State Body who engaged him/her; or
- self-employed.

#### **5. Contract of engagement that stipulates that the person providing the duties/service is self-employed**

It is Revenue's view, supported by case law (e.g. Denny & Son (Tralee) Ltd v The Minister for Social Welfare [5 ITR 238]), that a contract of engagement between two parties that states that the individual providing the duties/service is self-employed is NOT prima facie evidence that that individual is self-employed.

As stated in Paragraph 3.1 above, regardless of how the parties may describe themselves, all the possible factors (including written, oral and implied details) that bear on the relationship between the parties must be examined, given their proper weight and a judgement made on their overall effect to determine whether an individual is either an employee or self-employed.

On a similar note, a contract of engagement which stipulates that an individual has no rights to statutory employee entitlements is not prima facie evidence that the said individual is self-employed as an individual's right to statutory employee entitlements such as holidays, holiday pay, etc. is not a test of whether he/she is an employee but rather is a consequence of being an employee.

#### **6. Status of Members of State Bodies**

##### **6.1 Overview**

Members of State Bodies -

- (a) fall into two general categories in that they are either –
  - members of State Bodies created by statute [i.e. statutory office holders]; or
  - members of non-statutory State Bodies; and

- (b) may, in addition to membership of such State Body, also hold other occupations [either in an employed or a self-employed capacity] and/or have other income [e.g. a pension].

While Revenue accepts that each case must be examined on its merits, the Revenue view is that, in general -

- (i) notwithstanding that an individual may be nominated to be a member of a State Body by virtue of his/her expertise, the duties relating to such membership and the remuneration therefrom can usually be distinguished as being separate and distinct from the duties of, and the income from, such members' other occupation(s); and
- (ii) because of such distinction, the status of an individual in his or her other occupation or employment (e.g. as a farmer, teacher, doctor, solicitor, barrister or publican) is not a factor as regards determining his/her status as a member of a State Body.

### **6.2 Members of State Bodies created by statute [i.e. Statutory Office Holders]**

Some individuals are appointed under statute, usually by the relevant Government Minister, to hold office. Wording in the relevant statute will generally be sufficient to indicate the existence of an 'office'. For example, wording such as –

- “The member shall be appointed by the Minister to the office ....”; or
- “The member shall hold office upon such terms as the Minister may determine”

indicates clearly the existence of an 'office' and that the member holds such 'office'.

### **6.3 Members of non-statutory State Bodies**

While each case must be examined on its merits, Revenue's view, based on experience to date, is that members of non-statutory State Bodies are either office holders and/or employees. Factors that influence Revenue's view include -

- the content of the documents relating to the appointment of the members to the State Body indicating the existence of an office or employment;
- many State Bodies and members of such Bodies have the use of Departmental or State Body facilities including support staff;
- members are generally appointed as individuals and cannot sub-contract the work assigned to them;
- the mode of remuneration;
- members are not generally exposed to personal financial risk in carrying out their work and many are reimbursed for expenses on the same basis as for Civil Servants.

### **6.4 Members of Commissions of Investigation**

An individual appointed as a member of a Commission of Investigation created under the Commission of Investigation Act 2004 holds a public office



or an employment notwithstanding that the individual may be appointed because of his/her qualifications, expertise and/or experience.

#### **6.5 Members of more than one State Body**

While an individual may be a member of more than one State Body, his/her status in respect of each State Body is determined separately.

#### **6.6 Tax treatment of payments made to office holders and employees**

Payments to office holders and employees in their capacity as office holders or employees are chargeable to tax under Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.

### **7. Tax treatment of payments mandated by a Member of a State Body to a business/ company owned by him/her**

Where a member of a State Body mandates his/her remuneration arising from such a Body to a business or company owned, in whole or in part, by him/her, the Revenue view is that the payment belongs to the member in his/her capacity as a member of such State Body and, as such, must be taxed as if the payment is made directly to him or her.

### **8. The tax treatment of the reimbursement of expenses of travel and subsistence for Members of State Boards**

The Revenue Commissioners have published a Statement of Practice SP IT/2/07 entitled "The Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees", which makes specific reference (at Paragraph 4.9) to the tax treatment of expenses of travel and subsistence for members of State Boards.

### **9. PRSI**

PRSI at Class M (Nil Liability) should be applied to the income of Members of State and State Sponsored Committees and Boards. Queries on PRSI matters should be addressed to the Information Section, Department of Social Protection, Aras Mhic Dhiarmada, Store Street, Dublin 1 (Telephone 01 7043000)."

### **10. Summary**

Payments to officer holders and employees in their capacity as office holders or employees are chargeable to tax under Schedule E and subject to deductions (i.e. tax, PRSI and the Universal Social Charge as appropriate) at source under the PAYE system.