Individuals described as ‘locums’ engaged in the fields of medicine, health care, pharmacy and ‘dental associates’ engaged in the field of dentistry

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Cáin agus Custaim na hÉireann
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1 Background

Revenue continues to focus on the issue of employed v self-employed across a multiplicity of sectors. This work is carried out in conjunction with the Department of Social Protection and the Workplace Relations Commission (as appropriate).

The purpose of this Manual is to set out Revenue's position as regards:

- the status (employed or self-employed) for taxation purposes of individuals described, correctly or otherwise, as 'locums' in the fields of medicine, health care, pharmacy and 'dental associates' engaged in the field of dentistry; and
- the incorporation of Medical Locum practices.

2 Locums

The term 'locum' (in particular, as regards engagements in the fields of medicine, health care and pharmacy) now appears to be a colloquial term. It is used to cover a wide and disparate range of engagements and, perhaps, to describe non-permanent appointments or engagements.

Notwithstanding that an individual, in relation to an engagement, may be described, correctly or otherwise, as a 'locum', in determining the employment status of such an individual for taxation purposes each case must be examined having regard to the five step decision making framework as set out in the Supreme Court judgement in Karshan (Midlands) Ltd t/a Domino's Pizza case [2023] IESC 24.

Further guidance on this is included in Tax and Duty Manual Part 05-01-30 – Revenue Guidance for Determining Employment Status for Taxation Purposes.

3 Dental associates and dental hygienists

Dental associate is a term widely used in dentistry to describe a dentist who works within the dental practice but does not own it. Dental associates primarily focus on delivering dental services and care to patients within the established dental infrastructure (location, brand, reception infrastructure, nursing staff, equipment and dental expertise) provided by the principal dentist and where a second, third, or more associate dentist(s) has the clinical skill(s) to provide dental treatments.

Dental hygienists can be described as dental professionals who provide dental related services within dental practices under the care and supervision of registered dentists.

Notwithstanding that an individual, in relation to an engagement, may be described, correctly or otherwise, as a "dental associate" or "dental hygienist", each case must be examined having regard to five step decision making framework as set out in the Supreme Court judgement in Karshan (Midlands) Ltd t/a Domino's Pizza case [2023] IESC 24.

Further guidance on this determination is provided in Tax and Duty Manual Part 05-01-30 – Revenue Guidance for Determining Employment Status for Taxation Purposes.

4 Incorporation of Locum Practices

Some locums now operate through a limited company. Typically, in these cases, the intermediary (locum company) enters into a contract to supply the services of the individual locum. This contract can be either directly with the end-user of the individual locum's services or via an agency. Revenue has carried out reviews on a number of these companies and has identified issues in the following areas:

4.1 Travel and Subsistence Claims

Travel expenses must be **necessarily** incurred **in the performance** of the duties of the employment to be reimbursed tax free. Expenses incurred which merely put an employee in a position to exercise his or her employment are not incurred **in the performance** of the duties of the employment. For example, expenses incurred on travel between an employee's home and normal place of work are not allowable.

In most cases, the normal place of work of an employee/director of an intermediary (locum company) will be the premises of the intermediary's client. Travel expenses incurred by a director/employee on the journey from home to the normal place of work (and vice versa) do not qualify for a statutory deduction under Schedule E. These expenses may not be reimbursed free of tax. The fact that an intermediary may undertake a series of short-term contracts does not alter this position. The normal place of work for each new contract will most likely be the premises of the intermediary's client.

Tax and Duty Manual Part 05-01-06 (paragraphs 4.2 and 4.9) provides more detailed information (including examples) on the tax treatment of reimbursement of expenses of travel and subsistence.

4.2 Other Expenses

Section 81 of the TCA 1997 provides that no sum will be deducted in respect of "**any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade**". Section 886 of the TCA 1997 obliges a taxpayer to maintain certain records in relation to a business, including records of "**all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity**".

Expenses which are not vouched and are not expended wholly and exclusively for the purposes of the trade will be treated as emoluments of the locum and taxed accordingly.

4.3 Family Wages

Wages paid to family members are an expense of the business. Like all other business expenses, a deduction will only be allowable where the expense is incurred "**wholly and exclusively**" for the purposes of the trade. The amount to be deducted as an expense must actually be paid and must be commensurate with the duties undertaken.

Tax and Duty Manual Part 04-06-23 provides further guidance and examples in relation to the payment of wages to family members.

4.4 VAT

The provision of staff by an intermediary is an activity liable to VAT. VAT should be charged at 23% on turnover once the turnover exceeds or is expected to exceed the relevant annual threshold.

5 Further Guidance

- Code of Practice on Determining Employment Status

  Following the Supreme Court judgement in Karshan (Midlands) Ltd t/a Domino's Pizza case [2023] IESC 24, the Department of Social Protection (DSP), Revenue and the Workplace Relations Commission (WRC) have jointly reviewed and updated the Code of Practice on Determining Employment Status (the Code). The Code is designed to serve as an evolving guide incorporating future developments in the labour market, changes in relevant legislation and case law. A copy of the revised Code can be accessed here.

- The Scope Section of the Department of Social Protection makes decisions or 'determinations' in respect of PRSI-related matters;
- The Workplace Relations Commission provides guidance on compliance with employment rights and industrial relations legislation.
- VAT treatment of dental services

6 Frequently Asked Questions

Q.1. What is the tax treatment of payments to a 'locum'?

A.1. Whether or not an individual is described, correctly or otherwise, as a locum is not the deciding factor. The deciding factor is whether, in relation to an engagement, the individual is engaged under either -

a) a contract of service [i.e., an employee]; or

b) a contract for service [i.e., self-employed]

To determine the proper tax treatment, i.e., whether a person is an employee or self-employed, the five step decision making framework as set out in the Supreme Court judgement in Karshan should be applied. Tax and Duty Manual 05-01-30 'Revenue Guidelines for Determining employment status for Taxation purposes' sets out the process and steps to be followed.

If an Employee: -

If, having examined the facts, circumstances and evidence relating to an engagement, an individual is, having applied the five step framework in relation to that engagement, an employee, then his or her remuneration from that engagement is subject to deductions at source under the PAYE system.

If Self-employed: -

If, having examined the facts, circumstances and evidence of an engagement, an individual is, having applied the five step framework in relation to that engagement, self-employed, then -

a) the individual pays his/her tax under the self-assessment Pay & File system; and

b) depending on the nature of the service being provided -

(i) the individual may be obliged to charge VAT on the provision of the service, opinion, etc; and

(ii) the payer (if a public body) may be obliged to deduct Professional Services Withholding Tax at source from payments made to the individual.

Q.2. I am a GP and I am about to engage a doctor and a nurse to work in my practice. I have put into the contract of engagement a specific clause that states - "Dr./Mr./Ms. XX is a self-employed doctor/nurse and is not an employee of this practice". Does the insertion of such a clause mean that these individuals are self-employed for taxation purposes?

A.2. The content of written contracts between parties is, of course, a matter for those parties and/or their legal advisors. However, statements in contracts such as -

- "You are deemed to be an independent contractor",
- "It shall be your duty to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise",
- "It is agreed that the provisions of the Unfair Dismissals Act 1977 shall not apply, etc,",
- "You will not be an employee of …….",

carry little weight and are not definitive of the employment status of an individual for taxation purposes. While they may express an opinion of the contracting parties, they are of minimal value in coming to a conclusion as to the work status of the person engaged.

Therefore, regardless of how the parties to an engagement may describe themselves in contracts, all the relevant factors (including written, oral and implied) that bear on the relationship between the parties are to be examined, specifically as part of step four of the five step decision making framework detailed in Tax and Duty Manual Part 05-01-30, given their proper weight, and a decision made on their overall effect. In other words, the written contact may not be the sole determining factor as the facts and circumstances of that relationship may also have to be considered in the application of the framework.

Q.3. I run a GP practice and the doctors and/or nurses that I wish to engage to work in my practice have informed me that they do not wish to pay tax via the PAYE system and that they will only work for me if they are engaged as a "self-employed contractor". Can I agree with these individuals that they are engaged as "self-employed contractors"?

A.3 In some instances, individuals or practices may be of the erroneous opinion that they can simply elect or decide that such individuals can be engaged either under a contract of service (i.e., an employee) or under a contract for service (i.e., self-employed). The question of whether an individual is an employee or self-employed for tax purposes depends on the facts and circumstances of their engagement and is not a matter of choice.

If, on examination of the facts, circumstances and evidence of an engagement, i.e., the application of the five step decision making framework as set out in Tax and Duty Part 05-01-30 , the individuals are employees, then they cannot simply 'opt out' of paying tax/USC/PRSI under the PAYE system on the remuneration from that engagement. Equally, the payer of the remuneration cannot opt out of their PAYE/USC/PRSI obligations.

Q.4. What is the position as regards an individual who works only a few hours per week?

A.4. Depending on the facts, circumstances and evidence of an engagement, i.e., the application of the five step decision making framework as set out in Tax and Duty Manual Part 05-01-30, an individual may be a full-time employee, a temporary employee, a part-time employee or a casual employee or, indeed, may be self-employed. The fact that an individual may not have continual work under an engagement does not, of itself, make such an individual a self-employed contractor in relation to that engagement.

Q.5. What is the tax treatment of 'agency workers'?

A.5. Revenue does not regard the taxation of workers engaged through agencies any differently to the taxation of workers engaged by any other means - see Tax and Duty Manual Part 05-01-15.

Q.6. We are a group of GPs which operates the doctor element of our local "Doctors Out of Hours Service". We engage other doctors to do the work. What is the status (employed or self-employed) of these 'other doctors'?

A.6. Based on Revenue's experience to date in such cases, subject to the application of the five step framework detailed and Tax and Duty Manual Part 05-01-30, generally, such 'other doctors' are engaged under a contract of service (i.e., they are employees) and the remuneration from such an engagement is subject to deductions at source under the PAYE system. Each employer must still satisfy themselves that this is the case based on the facts and circumstances of the case in question, and applying the five step decision making framework as set out in Tax and Duty Manual Part 05-01-30.

Q.7. I own a pharmacy and have engaged a 'locum' pharmacist to work for me. What is the correct tax treatment of the payments I make to the locum?

A.7. Once again, whether or not an individual is described, correctly or otherwise, as a locum is not the deciding factor. Based on Revenue's experience to date in such cases, , subject to the application of the five step framework detailed and Tax and Duty Manual Part 05-01-30, generally, such ''locum" pharmacists are engaged under a contract of service (i.e., they are employees) and the remuneration from such an engagement is subject to deductions at source under the PAYE system. Each employer must still satisfy themselves that this is the case based on the facts and circumstances of the case in question, and applying the five step decision making framework as set out in Tax and Duty Manual Part 05-01-30.

Q.8. I am a principal dentist who owns a dental practice. I've recently engaged a dental associate to provide dental services to the patients in my practice. How can I determine the correct tax treatment of the payments I make to this associate?

A.8. Dental associates are the individuals who are working within established dental practice infrastructure. Tax and Duty Manual Part 05-01-30 sets out the process and steps to be followed to determine employment status of an individual and includes illustrative examples to assist businesses. Example 8 in the manual considers the status of a dental associate by reference to a particular set of circumstances and in applying the five step framework, the dental associate is considered an employee. If following the application of five step decision making framework, the business determines the associate to be engaged under a contract of service (i.e., as an employee), his/her remuneration from such engagement will be subject to deductions at source under the PAYE system.