

News Brief

December 2009

Revenue e-Brief: Individuals described as 'locums' engaged in the fields of medicine, health care and pharmacy

The Revenue Commissioners recently issued the abovementioned e-brief. The e-brief sets out the criteria that Revenue will apply in reviewing whether a person is a self-employed locum or an employee. The tax treatment of both is different for the employer/contractor and the employee/locum. The following outlines details of the e-brief.

1. Background

Revenue, in conjunction with the Department of Social and Family Affairs and the National Employment Rights Authority (as appropriate), will continue to focus on the issue of employed v self-employed across a multiplicity of sectors for the foreseeable future.

The purpose of this article is to set out Revenue's position as regards the status (employed or self-employed) of individuals described, correctly or otherwise, as 'locums' in the fields of medicine, health care and pharmacy.

2. 'Locums'

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

Notwithstanding that an individual may, in relation to an engagement, be described, correctly or otherwise, as a 'locum', Revenue's approach is to examine cases having regard to the Code of Practice for Determining Employment or Self-employment Status of Individuals and having regard to relevant case law on the subject of contract of service (employed) and contract for service (self-employed).

3. Code of Practice for Determining Employment or Self-employment Status of Individuals

This is not a Revenue Code of Practice. It has its origins in the Employment Status Group (set up under the Programme for Prosperity and Fairness) which sought to provide clarity as to whether, in relation to an engagement, an individual is employed or self-employed. As outlined in the Code, "that group was set up because of a growing concern that there may be increasing numbers of individuals categorised as 'self employed' when the 'indicators' may be that 'employee' status is more appropriate".

The Code of Practice was updated in 2007 with the assistance of:

- Irish Business and Employers Confederation
- Construction Industry Federation
- Small Firms Association
- Irish Congress of Trade Unions
- Department of Social and Family Affairs
- National Employment Rights Authority
- Department of Enterprise, Trade and Employment

□ Revenue Commissioners

The Code does not espouse a "one cap fits all" approach but rather stresses that "it is important that the job as a whole is looked at, including working conditions and the reality of the relationship, when considering the guidelines. The overriding consideration or test will always be whether the person performing the work does so 'as a person in business on their own account'. As stated in the Code of Practice:

- "Its purpose is to eliminate misconceptions and to provide clarity"; and
- "It is not meant to bring individuals who are genuinely self-employed into employment status".

The Code of Practice is available on a number of websites including Revenue's (www.revenue.ie).

4. Assistance

Local Revenue Offices or Scope Section in the Department of Social and Family Affairs may be contacted for assistance in deciding the appropriate status of an individual or groups of individuals. The relevant contact details are in the Code of Practice.

5. Questions & Answers

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

If an Employee:-

If, having examined the facts, circumstances and evidence relating to an engagement, an individual is, 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, in relation to that engagement, self-employed, then:

- the individual pays his/her tax under the self-assessment Pay & File system; and
- 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
- 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". What is the Revenue view on this?

The content of written contracts between parties is, of course, a matter for those parties and/or their legal advisors. However, as outlined in the Code of Practice – "statements in contracts (considered by the Supreme Court in the case of 'Denny') 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".

are not contractual terms and have little or no contractual validity. While they may express an opinion of the contacting 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 details) that bear on the relationship between the parties are to be examined, given their proper weight and a decision made on their overall effect. In other words, Revenue may examine matters other than those contained in written contracts.

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". What is the Revenue view on this?

A.3 If, on examination of the facts, circumstances and evidence of an engagement, the individuals are employees, then they cannot simply 'opt out' of paying tax under the PAYE system (and paying PRSI) on the remuneration from that engagement (nor, indeed, can the payer of the remuneration opt out of PAYE / PRSI obligations).

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). In such cases, it may be beneficial for both parties to examine the Code of Practice referred to above.

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, 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 individual a self-employed contractor in relation to that engagement.

Q.5. What is Revenue's view as to 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. The article "Taxation of individuals engaged through agencies" published in Tax Briefing (Issue 31) in April 1998 refers. This may be accessed on the Revenue website (www.revenue.ie).

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 Revenue's view as to the status (employed or self-employed) of these 'other doctors'?

A.6. From Revenue's experience to date in such cases, the Revenue view is that such 'other doctors' are engaged under a contract of service (i.e. they are employees).

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. From Revenue's experience to date in such cases, the Revenue view is that such "locum" pharmacists are engaged under a contract of service (i.e. they are employees) and the remuneration from that engagement is subject to deductions at source under the PAYE system.

If you require further information or advice on this issue please contact a member of our tax department:

For more information, please contact us at: marketing@crowleysdfk.ie

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