

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

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Table of Contents

1	Background	3
2	Locums'	3
3	Code of Practice for Determining Employment or Self-employment Status of Individuals. .	3
4	Further Guidance	4
5	Incorporation of Locum Practices	4
5.1	Travel and Subsistence Claims.....	4
5.2	Other Expenses.....	5
5.3	Family Wages.....	5
5.4	VAT	5
6	Frequently Asked Questions	6

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 Employment Affairs and 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) of individuals described, correctly or otherwise, as 'locums' in the fields of medicine, health care and pharmacy; and
- the incorporation of Medical Locum practices.

Employment Status

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', Revenue's approach is to examine cases having regard to:

- the Code of Practice for Determining Employment or Self-employment Status of Individuals; and
- the 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). This document sought to provide clarity as to whether, in relation to an engagement, an individual is employed or self-employed. The Employment Status 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 does not espouse a “one cap fits all” approach. It stresses that it is important that the job as a whole is looked at, including working conditions and the reality of the relationship. The overriding consideration or test will always be whether the person performing the work does so ‘as a person in business on his or her 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 website.

4 Further Guidance

- Revenue’s website provides further guidance on [determining the employment status of an individual](#);
- The [Scope Section](#) of the Department of Employment Affairs and 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.

5 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:

5.1 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.

5.2 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.

5.3 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.

5.4 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.

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]

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 –

- (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". What is the Revenue view on this?

A.2. 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 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”,

have little or no contractual validity. 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, 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/USC/PRSI under the PAYE system on the remuneration from that engagement. Nor indeed, can the payer of the remuneration opt out of their PAYE/USC/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 useful 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 an 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 – 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 Revenue’s view as to the status (employed or self-employed) of these ‘other doctors’?

- A.6. Based on Revenue's experience to date in such cases, its view is that 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.
- 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, its view is that 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.