Locums – employees or self-employed?

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. This sets 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, dentistry, health care and pharmacy.

2. 'Locums'
The term 'locum' now appears to be a colloquial term used to cover a wide and disparate range of engagements and 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.

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. 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'."

4. 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.

Employee:- If, having examined the facts, circumstances and evidence relating to an engagement, an individual is, in relation to that engagement, an employee, then their remuneration from that engagement is subject to deductions at source under the PAYE system.
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 their tax under the self-assessment Pay & File system; and
b) 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;

Q.2. I am a GP/Dentist and I am about to engage a doctor/nurse/dentist/dental hygienist to work in my practice. I have put into the contract of engagement a specific clause that states - "Ms. XX is a self-employed doctor/nurse/dentist/dental hygienist 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 (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 your own taxes to Revenue"
- "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 contracting parties, they are of minimal value in coming to a conclusion as to the work status of the person engaged.

Q.3. I run a GP/Dental Practice and the doctor/nurse/dentist/dental hygienist that I wish to engage to work in my practice has 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).

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.

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). However, MIDOC are involved in a case with Revenue at the moment and the outcome of this case could alter this view.

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.

5. Further information

If you would like more information about locums please contact me by phone or email.

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PS: Please feel free to pass this on to any other professionals you know.

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