



TO: All Private Practice Members of Irish Dental Association

FROM: Fintan Hourihan, Chief Executive

RE: Guidance on contracts and administrative arrangements – Associates and Hygienists

DATE: 20th July 2012

Dear Doctor

As you will be aware, the Revenue Commissioners have indicated that they are reviewing the tax status of dental associates and hygienists and they have signalled that they believe some may now be regarded as employees for tax purposes. The Union has stated its disagreement with this analysis but has also suggested a January 2013 commencement date for any new policy on this matter.

While we await a final decision from the Revenue Commissioners on our proposal for a deferral of such a new policy being effected, we have commissioned tax experts and legal advisers, including Senior Counsel Mr. Mark Connaughton, to advise us on preparing a new suite of pro-forma agreements / contracts for members to use in their practices.

New pro-forma Agreements

We are pleased to advise you that we have now placed in the members section of our website (www.dentist.ie) copies of a revised Agreement for Associates engaged as self-employed contractors and a new pro-forma Contract to be used where dentists are to be engaged as employees. A new employee Contract for hygienists is also available to members.

In addition, we have prepared detailed guidance in an Advice Sheet for Practice Owners and Associates on the practical and administrative issues to be addressed where both parties wish to proceed on the basis of a self-employed contractor model. Anyone experiencing difficulty in downloading these documents should contact us in IDA House.

It is critically important that members read all these documents carefully and proceed with the utmost caution and with appropriate professional assistance.

We are mindful that members wish to obtain certainty and to resolve issues with reasonable comfort for the future but equally it remains better to ‘get things done right rather than to get things done quickly and repenting at leisure thereafter’.

Specialist Professional Advice Essential

It is vitally important that members proceed carefully before considering any changes in their working or contractual arrangements and we caution that **members should not proceed without appropriate legal advice provided by a legal advisor with specialist employment / contract law expertise and other specialist tax and financial professional advice to support them in effecting changes within their practice.**

Changes in the day to day running of some practices may be required to clearly demonstrate more clearly the independence of each contractor.

It will not be sufficient to download the relevant agreements / contracts we have prepared and to proceed without also carefully considering the important administrative changes which we are recommending for your consideration in the special Advice Sheet we have prepared for members.

The adoption of a new Associate Agreement cannot guarantee self-employed status and that is why individual professional advice is recommended for each practice.

Changes and Notice Periods

All members, whether practicing as Associates, Practice Owners or in any other capacity are entitled to insist on all parties to a contract honouring existing agreements / contracts and to have full regard to the notice provisions contained within existing agreements / contracts before seeking to effect any material change in the terms of the relationship, contractual and otherwise, existing between the parties.

Where no notice period is specified, a third party asked to decide upon the issue may take the view that a three month notice period exists in the Practice Owner / Associate relationship given the prevalence of such notice requirements within agreements commonly pertaining across the profession. A thirty day notice requirement would be more common for agreements between Practice Owners and Hygienists.

Incorporation

We are aware that some members are being asked to consider incorporation as a response to the intervention of the Revenue Commissioners. The IDA continues to warn members not to consider incorporation. In addition to concerns we have about incorporation exposing dentists to a possible breach of the Dentists Act, 1985 we also believe that it may expose members to significant VAT liabilities and may have implications for the rights of individuals as employees.

In assessing any changes within your practice, we strongly recommend that members sit down to discuss the implications of the shift in policy signaled by the Revenue Commissioners and to read carefully the advices and contracts we have made available to members.

Ultimately, members should decide in the first instance on the business model they wish to operate and where the preference is for Practice Owners and Associates to continue on a self-employed basis particular attention should be paid to the Advice Sheet we have prepared and also to ensure that the reality of the contractual arrangements conforms to the terms of the contracts we have commissioned and made available to members through our website sample agreements and contracts.

It would also be important to caution members that it is not advised to adopt an *a la carte* approach to the terms of the revised pro-forma agreements / contracts we have had prepared and also to ensure that professional legal advice is obtained to guide parties in agreeing contractual terms.

Associate Agreement – Significant Changes

The revised Associate Agreement differs from the previous template for Associates in a number of significant ways to take account of the recent views expressed to us by the Revenue Commissioners and also the professional legal and tax advice we have commissioned on behalf of members.

The changes in the contract are also consistent with the administrative changes we are recommending for consideration in the Advice Sheet and therefore it is important that both the Associate Agreement and the Advice Sheet are considered carefully by members.

Employee Contracts

For practice owners we have also commissioned **employee** Contracts for **both** Dentists and Hygienists. As discussions are still continuing on the implications for the tax status of Hygienists we have decided for now to simply circulate a pro-forma contract for Hygienists employed on a PAYE basis. Other Hygienist contract templates may be circulated in due course. Again we would emphasise the importance of commissioning expert legal advice in finalising arrangements within your practice.

For staff who are now to be engaged as employees, there are significant changes as regards employers PRSI contributions and other administrative changes required which are explained in the Advice Sheet.

Annual Leave Entitlements

Among the changes will be calculating the annual leave entitlement of employees and we would reiterate that for any staff member whose status may be revised to that of an employee the method of calculating leave entitlements is identical to that for all other employees currently engaged in your practice.

The annual leave entitlement for staff is calculated on the hours actually worked. Generally, full-time employees (work at least 1,365 hours in the year) are entitled to four working weeks and part-time employees (work less than 117 hours per month) are entitled to 8% of the hours worked.

Here are three methods for calculating annual leave entitlement and the employee is entitled to whichever method gives them the greatest entitlement:

1. Where employee works at least 1,365 hours in the leave year – entitled to 4 working weeks.
2. Where employee works at least 117 hours per calendar month – entitled to 1/3 of a working week per calendar month.
3. Where employee works less hours than the above, he/she is entitled to 8% of the hours actually worked during the year (but subject to a max of 4 working weeks per annum)

Periods that shall be included are as follows: health and safety leave, parental leave, maternity leave, additional maternity leave, adoptive leave, additional adoptive leave and care leave (first thirteen weeks) together with time spent on annual leave itself.

The employer determines the timing of the annual leave, taking into consideration work and personal requirements and should consult with employees in advance. Following 8 months work, the employee is entitled to an unbroken period of 2 weeks which may include one or more public holidays.

It is illegal to pay an allowance in lieu of the minimum statutory holiday entitlement of an employee unless the employment relationship has been terminated.

Public Holiday Entitlements

Equally, newly classified employees will also be entitled to paid public holiday benefits. There are nine public holidays (1) New Years Day, (2) St Patrick's Day, (3) Easter Monday, (4) First Monday in May, (5) First Monday in June, (6) First Monday in August, (7) Last Monday in October, (8) Christmas Day and (9) St Stephen's Day.

Full-time employees have an immediate entitlement to public holiday benefits. Part-time employees must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for public holiday benefit. Where the public holiday falls on a day on which the employee normally works, the employee is entitled to a day's pay for the public holiday. Where the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage.

Conducting Negotiations in the Practice

Again, it is also important to advise members that discussions within the practice are best arranged in a spirit of openness and transparency, respecting the wishes of all parties but also cognisant of the additional risk and financial burden assumed by the Practice Owner.

The success of negotiations will be reflected by the extent to which the parties conclude arrangements which secure the immediate viability of the practice while also positioning the practice and its staff members to work together and to develop the practice over the long term.

Remuneration

For legal and other reasons, the Association cannot advise or intervene in discussing remuneration levels in the practice, fee setting or apportionment.

It is important to remember that employees can be remunerated in many different ways and it is not necessarily the case that salary alone should be the sole basis of remuneration or that salary must be stated on the basis of a traditional working week (sessional payments are possible also). **It is also possible to continue to remunerate salaried associates and hygienists on the basis of a net percentage of fee income received as has traditionally prevailed.**

In the case of employees, performance-related payments or incentive / bonus payments can also be considered to supplement a basic salary where this is deemed appropriate.

Ultimately practice owners ought to seek to agree remuneration levels which are sufficient to cover costs and generate sufficient surpluses to reward practice staff for their efforts. Again, your financial adviser can assist you in exploring all the possible options available.

Clinical Independence

Where practices wish to continue with a traditional self-employed contractor model as would apply for Practice Owners and Associates, it is important to recognise that dentists may have different preferences in terms of the equipment / laboratories they use and / or the clinical practices they prefer.

This is entirely normal and consistent with an independent clinically-autonomous professional relationship and the differences and preferences of both parties should be respected where any such differences exist.

Bank Accounts

It is recommended that where a self-employed relationship is in existence and an appropriate fee sharing arrangement has been put in place between the practice owner and the associate, any income that is paid into the bank account of the practice owner is clearly identified as income of both the associate and the practice owner.

It would be important to open a joint account (between the practice owner and the associate) or where this is not practically possible the practice owner should become a signatory of the associate's bank account. This will allow the income to be split between the associate and the practice owner in an efficient manner.

Credit Card / Laser Machines

With respect to credit card or laser card machines, we would recommend that separate machines are used for each associate in the practice. The cost of purchasing and operating the separate machines should be borne by the practice owner and the associate separately.

Revenue Appeal Process

Where Revenue issue a notice of assessment to a Practice Owner (i.e. following a Revenue audit or otherwise), an individual can appeal such an assessment if they do not agree with it.

Irish Dental Union

5

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When making an appeal, an individual must identify the specific matter that they do not agree with. They must also pay any tax which is not being disputed by the individual within one month of the notice of assessment. It is important to note that an individual can only appeal against a decision made by Revenue when a notice of assessment has been raised by Revenue.

Appeals to such notices of assessment must be made in writing to the Inspector within 30 days of the issuance of the notice of assessment. The Revenue Inspector will then review the appeal claim. If the individual and the Inspector fail to reach agreement on the matter, the matter can be brought to the Appeals Commissioner. Decisions made by the Appeals Commissioner can be further appealed by the tax payer to the Circuit Court.

Further Advices

Before pursuing an appeal to the Appeal Commissioners, careful consideration should be given to the grounds for appeal along with the financial and time constraints of the appeals process. We recognise that members may have many questions arising from consideration of the new guidance we have made available and we will endeavor to assist promptly with any queries or comments so please do not hesitate to contact us at IDA House or by emailing your response to this message.

We anticipate we will continue to issue further advices to members as queries arise and with any further developments where they arise in the coming months.

We would also draw your attention to the wealth of HR and best practice advice in the Members Section of our website.

Finally, we would welcome notification from members where they receive differing advices to those we are providing and to learn of the outcome of any engagement your practice may have with the Revenue Commissioners on the categorisation of practice members for tax purposes.

Yours sincerely



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Chief Executive