

Contractors Project

ITI Queries on Revenue letter of 27 November 2013

Query 1. We would like to have some sense of how Revenue will determine whether a taxpayer falls within the remit of Tax Briefing No.3 i.e. how Revenue will determine whether a taxpayer is supplying the services of an individual under the end-user's control, rather than otherwise supplying services. Is this based on a review of the contract terms, working arrangements etc?

Revenue Response: Unfortunately, as the question implies, there is no short answer that will cover every case. There are several indicators however, which enable classification of most cases.

- The first question is whether the company in question has an establishment (i.e. premises, employees, business) beyond the conclusion of contracts for an individual contractor. This would establish that the company is in the business of providing a service to the market generally.
- The next issue is how the contract was obtained – was it through a procurement process aimed at securing a defined service, or was it recruitment of an individual with specified skills/characteristics?
- The terms of the contract will show whether it is a contract defined by completion of a project or task, or defined by period, or open-ended/renewable.
- Where the position is unclear, the actual arrangements will determine our view, and working arrangements, reporting/supervision, length spent with one client, actual employment experience, and other arrangements would be considered.

Consideration of the foregoing will lead to the conclusion that a majority of professionals working in the Irish market are outside the scope of tax briefing 3 and 4 of 2013 in relation to their travel and subsistence expenses, because they are in business, offering a professional service on the open market. It is also the case that a company may have a combination of contracts, some obtained through normal service procurement, and others that constitute provision of an individual's services. In such situations, expenses arising in the business are treated as such, while travel connected with the individual's contract must be treated as set out in Tax Briefings 3 & 4.

Query 2. On a related point, in "case 2" on page 7 of your letter you note that the contractor is clearly not within the category to which the Briefing applies - is this because of the number of contracts he has, or because of other factors?

Revenue Response: The number of contracts certainly indicates that the contractor is operating as a business, seeking and accepting contracts for project management service wherever the opportunity arises. The product consultancy service he provides is a professional service, similar to the giving of legal or accountancy advice. Finally, he is working to complete delivery of a service, not under the direction of the client. Overall,

this is a business, and expenses incurred in conducting the business are allowable for tax purposes.

Query 3. There is a reference on page 5 of the letter to “...the well accepted view” that if an employee has no fixed base then he/she cannot claim a deduction for travelling expenses under Section 114. Our members are unclear as to where this view comes from.

Revenue Response: There is a slight misquotation in the query. My letter refers to the expenses of travelling to a job. If an employee has a fixed base, and is required to attend for work at some other location, then expenses may be reimbursed, calculated on distance from home or fixed base, whichever is less. If however there is no fixed base the expense of getting to work is the cost of commuting, for which no deduction is allowed.

Query 4. In relation to “country money”, the letter notes that country money applies to employees and not to contractors. Members have queried why country money is not available when Revenue are treating those who fall within the Tax Briefing as de-facto employees i.e. “working under the general direction and control of the end-user”.

Revenue Response: We have pointed out several times that we are not, in this project, addressing the issue of whether some contractors should be regarded as employees. The application of “country money” is a concession made to deal with specific features of employment in the construction and electrical industries. In practical effect, it deviates very little from the regime described in Tax Briefings 3 & 4, since tax-free expenses are not paid where travel is to or from the employer’s headquarters or the site for which the employee was recruited. Expenses are tax-free only where the employee is required to attend for work at other sites, all more than 32km from employer’s headquarters. The rate of payment of country money is then set to eliminate the need for detailed computation. In the case of a contractor required to attend temporarily at a site other than the contract site, expenses are similarly payable tax-free, and are not confined to the country money rates.

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