

IR35 - Key points for Medical Practices

From 6 April 2017, new tax rules will be implemented for practices engaging Locum GPs via Personal Service Companies. A personal service company is generally defined as a limited company that typically has a sole director, the contractor, or somebody who owns most or all of the shares within the company.

What action is required?

The implementation of IR35 will mean that practices need to take the intermediary company out of the equation, and focus solely on the relationship between the practice and locum doctor. It needs to be established as to whether the relationship is one of employment, rather than self-employment.

Self-employment: No problem; you just carry on as before.

Employment: The practice must operate PAYE on the payment

which includes incurring employer national insurance costs.

How do I assess whether a person is employed or self-employed?

HMRC have produced an online tool to help you decide if a person would be employed or self-employed:

www.tax.service.gov.uk/check-employment-status-for-tax/setup

The way questions are asked are dependent on contract terms, along with actual working arrangements and practices that you operate under with a locum.

How accurate is HMRC's online tool?

HMRC have confirmed that they will agree to be bound by the answer their online tool provides. The trouble with that, however, is that the only definitive answer to what a worker's status may be is only available through the courts, which of course may be different to what the tool says. There have been many court cases on the topic of status, and these have provided indicators as to what a self-employed person looks like; i.e. someone in business on their own account working under a contract (implied or actual) for services, rather than an employed person working under a contract of service.

The terms of a contract for services include the right to send another worker (substitution), no obligation to take or to be offered work (no mutuality), maintaining the supervision, direction and control of how, where and when work is done (SDC), amongst other things.

There is a long-standing concession in place that GPs are self-employed. Until recently HMRC also accepted that locum GPs were not under the SDC of a practice, and were therefore self-employed. This guidance was however withdrawn in November 2016, as they did not have entire confidence in its accuracy, which makes it essential that you complete HMRC's online tool accurately.


There are many more aspects to the argument than those highlighted above, such as workers' rights, insurance issues, payment methods etc. It is important, therefore, that the tax matters are married up with the other legal issues in an engagement agreement suitably assembled by a specialist

Continued overleaf

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healthcare lawyer that accurately reflects the working practices of the position. Although not being conclusive, such detailed planning is crucial to mitigate against HMRC attack.

Note: When you use the online checker, please ensure that you print and retain the final document as part of your business records; it would also be helpful to make a copy available to your advisor.



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