

# *IPCI Submission*



Department of Finance Consultation  
On  
Tax Treatment of Travel & Subsistence for Employees  
and Office Holders

[www.ipci.ie](http://www.ipci.ie)

**Independent Professional Contractors Ireland**

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## **1.0 INTRODUCTION**

The Independent Professional Contractors Ireland (IPCI) is a national organisation that was setup to represent small limited companies servicing the Pharma & ICT industries in Ireland. These small limited companies, also commonly referred to as Independent Contractors are a valuable resource and a vital cog in the wheel of the Irish economy.

## **2.0 OUR MISSION**

- Present to the public a clear and positive view of professional contractors
- Provide an ideal legal and professional framework in which professional contractors can thrive and feel legally secure
- Support members by creating an environment that allows them to grow within the economy
- Provide members with access to relevant services, including education, literature and news updates.

## **3.0 COLLABORATION**

The IPCI has collaborated with and continues to benchmark similar organisations representing contractors abroad IPSE (UK) and ICA (Australia).

In Ireland the IPCI has collaborated with Revenue on the National Contractors Project.

We currently participate in a technical forum of key industry stakeholders led by the PSCO.

## **4.0 BACKGROUND**

As you will be aware, the pharmaceutical and ICT industry is hugely significant to the Irish economy:

- Ireland is the largest net exporter of pharmaceuticals and the second largest exporter of computer and IT services in the world with combined exports valued at over €100 billion
- 9 of the top 10 Pharmaceutical and global ICT companies have significant operations in Ireland.
- The ICT sector is one of the country's most prevalent employers and at present over 75,000 people is employed by ICT companies in Ireland.

Foreign Direct Investment is attracted to Ireland by the availability of our highly skilled young flexible workforce. The main focus of IPCI is to support contractors therefore promoting this contingent workforce and the benefits of contracting for the Irish Economy

The use of independent contractors by industry is on the increase due to the nature of their ability to offer highly skilled, flexible, transient and most of all, independent services. It should also be noted that the development of the contractor sector has in this regard not been driven by contractors generally but by the requirements of the multinational sector generally to fulfil large capital projects. This point is important to note as the sector is a key contributor to the increased FDI investment in Ireland.

By their mobile nature independent contractors gather valuable experience which they can share along the way and so "cross-pollinate" indigenous companies with new ideas & technology. Independent contractors are also suitable candidates for high performance start-ups and so bring that extra dimension to Enterprise.

The IPCI have been engaging with Revenue representatives on the “Contractors Project” since September 2013 in order to seek clarification on Revenue’s interpretation of the tax treatment for contractors. The main IPCI concerns were shared with Revenue and became instrumental in the publication of a statement by the IPCI supported by Revenue in an attempt to clarify who should be inside/outside Tax Briefing 3 & 4.

## 5.0 THE CHALLENGE

The Revenue believes that both employees and contractors should be treated with tax equality when it is quite clear that the modus operandi of both differ entirely, not just in financial security and taxation but also in rights and protection of employment. The Contractors Project targeted the allowance of tax deductible expenses normally incurred by small companies as part of their everyday duties/entrepreneurial activities/servicing of contracts. The Revenue applied a blanket approach to all companies in disallowing expenses and imposing deliberate behaviour penalties.

While the IPCI welcomes regulation and the concept of tax equality in this sector we are concerned that the strategy adopted by the Revenue is not the appropriate method for achieving this and instead is having a negative impact on the sector and to Ireland’s already economic climate.

- Multinational Pharmaceutical and IT companies need independent contractors particularly in a situation where the work force needs to be scalable and flexible. Extinction of the independent contractor may damage these industries and limit future investment.
- Current Revenue practices bring about a reluctance to start new businesses in Ireland and stifle innovation.
- Vulnerable businesses have been forced to close or go bankrupt.
- The technology industry is always surviving on a delicate balance – any competitive advantage turned into a disadvantage could upset this balance and throw the industry into chaos.
- Ireland’s economy is very much dependent on the technology industry for exports & employment – Independent contractors form part of the foundation of this industry.
- FDI (Foreign Direct Investment) companies use Independent contractors for start-ups, expansions, ongoing support & all-scale projects.
- Without a stable supply of Independent contractors many FDI companies would not enjoy the success in Ireland today (and may have been dissuaded from investing in the first place).
- A NIBRT study reported 3000 open positions in the Pharma sector alone.

There is feedback from contractors and industry alike that the Revenue project has already put small companies out of business and driven contractors abroad to seek viable contracts in jurisdictions where tax guidance is less ambiguous.

The current interpretation of the tax law being adapted by the revenue is in complete contrast to the numerous initiatives announced by the government to help encourage indigenous growth and attract FDI to Ireland namely the Action Plan for Jobs and the introduction of Foreign Earnings Deduction (FED) and Special Assignee Relief Programme (SARP). These initiatives recognise the reality of the ever changing working landscape and

acknowledge that the tax code should facilitate such flexibility in a way that supports the broader policy priorities of driving economic activity and job creation.

The Taxes Consolidation Act (TCA) 1997 provides little clarity on the expense regime for office holders or employees. The deductibility of expenses for such individuals is referred to only in section 114 of the TCA. It is the revenue's interpretation and guidance of same, which appears to be based on certain UK precedent that has introduced confusion for those wanting to comply with current law. Such precedent introduced concepts such as 'normal place of work' and 'substantive' duties. Revenue has taken a very restrictive view on these terms in practice which is considered inappropriate for the modern and flexible practices of contractors operating through consultancy companies and providing services to the multinational sector. It is important to bear in mind that the terms "normal place of work" and "substantive" is not mentioned at all in statute.

In practice, Revenue has sought to apply the expenses regime differently between companies that provide services concurrently to different clients and those which provide services to one client at any one time, with no deductibility of expenses for travel to clients in the latter case. This is not supported in legislation and also ignores the specialism of the sector in practice.

As contractors operate within a limited company structure they need to be treated as such and not be considered as an employee of a client. A contractor is an office holder first and foremost and an employee second. The business premises of a client cannot be considered a normal working place for contractors as this is temporary with the registered office being the only permanent location.

The IPCI are interested in a final solution that can work with the contracting industry and provide fair treatment for all parties. The IPCI recommends that a deeper insight into how the sector works and what the main challenges are.

## **6.0 CONSISTENCY OF TREATMENT OF SOLE TRADERS AND MICRO-ENTITY COMPANIES**

It is recognised under case law that travel expenses to be claimed as a business expense for income/corporation tax purpose need to be of an actual nature.

For sole traders etc. operating under Schedule D Case I or Case II the application of case law is cumbersome and Revenue allow for a "bucket approach" to the treatment of expenses which have a dual purpose of private and business usage in that the tax payer makes a percentage adjustment or "add back" in his/her tax return. Unless the personal adjustment is of an unreasonable amount Revenue will accept the tax payer's calculation (subject to audit etc.)

In the case of Micro Entity companies where the only employees are the directors, expenses of an actual nature must be made in accordance with Revenue SP IT/2/2007 and the follow on IT51 & IT54.

However in the case of contractors who operate micro entity companies Revenue disputes that substantial business activity takes place at the business premises and argues that no Travel expenses are allowed for tax purposes when travelling to end clients. By operating through micro entity limited companies, contractors are at a tax disadvantage to those operating as sole traders. The set-up of micro entity companies is usually for legal reasons by providing limited liability protection or due to the requirements of end client.

## 7.0 UNDERSTANDING OUR MEMBERS

While the IPCI primarily represents interests of the independent professional (contractor) the organisation has a keen interest & support for entrepreneurs and entrepreneurship in Ireland. Individuals who choose to work on a contract basis are automatically risk takers and and, therefore, defacto entrepreneurs.

- An understanding of the contracting business is necessary in order to appreciate the significant contribution contractors make to the Irish economy under challenging circumstances.
- The challenges are lifestyle and family related as well as financial.
- Contracts are temporary and vary in duration from 1 month to 2 years. While projects vary in duration from 1 month up to 7 years (for major greenfield startup).
- Travel is a necessary part of this industry whether it is to a new client site, multiple sites, domestically or internationally.
- Mobility & speed of deployment of services is a key requirement for today's contracting company.

## 8.0 ASSOCIATED EXPENSES

Expenses are typically associated with servicing a contract and will change depending on the circumstance of each new contract. However, the rates for contracts are market driven and do not compensate each individual company for the expenses that they will incur. The ability to offset expenses against annual tax liability is a key enabler for the contracting sector. It removes (financial) barriers to mobility and can encourage contractors to take up otherwise unattractive contracts in remote locations. This is a lifeline to larger companies that are located away from major towns and cities.

The recent Contractors Project has introduced instability to the sector. Irish contractors are now either avoiding travel by staying close to population centres or they are travelling abroad where conditions are stable and more supportive of this transient lifestyle. The losers here are those companies expanding or trying to startup in remote locations. Contractors are travelling into Ireland from the UK and Europe to try and service those "unattractive" contracts. However, it is nowhere near the numbers needed to supply the sector. A recent NIBRT publication reported 3000 open positions in the Pharmaceutical sector alone.

The experience of the IDA recently is that they are having real difficulties in getting companies to locate outside of Dublin and Cork. The lack of access to contractors (due to unwillingness to travel) is another potential nail in that coffin.

Additionally, the reverse is true. Contractors based in remote areas are less inclined to travel to projects in other parts of the country due to the inability to obtain expenses. This can therefore result in contractors having to move to cities (with further depopulation of rural areas and loss of local expertise) to reduce costs of working. Being a contractor to the multinational sector is not a choice – it is a requirement from the multinationals.

Clearly something is off balance that needs correcting urgently...

## 9.0 WHAT IS NEEDED?

A modern tax system where these contractors are nurtured and encouraged to compete for contracts with various levels of tax supports behind them. An approach similar to that shown to entrepreneurs offering levels of flexibility and understanding of the risks and perils that goes hand in hand with success.

In order for us to translate ideas into a viable business it is first necessary to create the right business environment. In the same way that Ireland has created an environment for large scale FDI so too must we consider enablers for the "little guy".

So what are the equivalent "enablers"?

For the FDI we defined them as

[stable political climate, fair judicial system, english speaking, available educated & flexible workforce, tax incentives, readily available location, infrastructure, etc...]

Some of the key factors missing from the equation for the contractor / small business /startup entrepreneur are:

[legal status, tax status, flexible approach to work from institutions/ government/ agencies/ industry/ citizens alike, recognition of the home as a legitimate business environment, encourage business re-investment, encourage staff hires]

Without these simple structures in place it is more likely that businesses will fail/never get off the ground.

## 10.0 CONSIDERATION FACTORS

Some key topics to consider in developing a suitable tax structure may include the following:

Capital projects (support investment)	Contract Duration	Domestic vs international behaviour	Current Tax structures
Default entrepreneurs (risk takers)	Risk	Sensitive to outside influences	Interpretation of tax guidance
Mobility	Expenses (vouched & unvouched)	Capital projects of varied duration 0-7 years	Implementation practice
Mobilisation costs	Small business (family) support & remuneration	Scale up/down resources throughout the lifecycle	Impact on business
Recurring sustaining costs	Physical office, registered HQ	Barriers vs Incentives for entry to sector	Stable resource pool
Flexibility	Country money rates (site based)	Barriers vs Incentives to stay in sector	Fair tax structure
Training & Industry standards	Part site based part home based	PRSI	Steady source of income tax
Overhead	Multiple sites	Pensions	Compliance assurance



## 11.0 PROPOSAL

IPCI believe the following is needed to create the right tax environment:

- a) Formal recognition of the status of contractors in Ireland
  - b) A clear and unambiguous tax system tailored to suit contracting business
  - c) Formal recognition of the registered company office as a legitimate place of work
  - d) Acknowledgement of contractors working on capital projects
- a) Recognition that independent professionals (contractors) are a distinct work group with a unique set of skills and needs** (*instead of trying to place them in some other existing grouping that doesn't really fit*).
- b) Tax environment**
- a. Mobilisation expense (relocation allowance/deduction)
  - b. Mobility expense (travel expense incurred in servicing a client)
  - c. Loss of earnings deduction (training, business development, R&D)
  - d. New hire incentive (reduced tax/PRSI for initial period e.g. 1<sup>st</sup> year)
  - e. Unvouched expense ceiling (e.g. 10k per individual) for ease of administration
  - f. Vouched expense, receipt & use of company account
  - g. Working capital allowance (e.g. 20k identified as working capital each year not subject to corporation tax)
  - h. Contract duration of up to 2 years
  - i. Project durations of up to 7 years
  - j. Conformance to a code of practice
  - k. Demonstration of tax compliance (including self-regulation if desired)
  - l. Audited accounts
- c) Recognition that the registered company office (limited company) is where all company activity takes place with the exception of servicing clients. It is the only consistent location for a contractor. Therefore, this is the normal work base for any contractor.**
- d) Capital investment projects are unique in that they bring an expectation of high skill, high flexibility & high mobility. They are periods of intense work in a high pressure environment. It is important that the tax system recognizes this as a different work environment needing a different set of rules. It should facilitate simple and easy to use methods coupled with incentives to enter & stay working in this area.**

## **12.0 OPPORTUNITY TO INPUT**

IPCI would welcome an opportunity to meet with you and discuss any options that might be considered

Ian Guiney  
Chairman

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Independent Professional Contractors Ireland