

IPCI Submission



Department of Finance and Department of Social Protection
On
Use of Intermediary-type Structures and Self-employment
Arrangements

www.ipci.ie

Independent Professional Contractors Ireland

Protecting your Future – find out how – Contact info@ipci.ie

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Registered in Ireland No. 492539

Executive Summary

The purpose of this submission is to provide a comprehensive overview of the current status of independent professional contractors in Ireland with a view to addressing the reasons and legitimacy behind the requirement to operate as a limited company in order to provide his or her services. This submission also sets out why such arrangements, while not intended to be seen as Intermediary-type Structures that can give rise to potential losses to the Exchequer, are not an ideal basis for operations of such nature. Finally, the submission intends to provide ideas for alternative tax regimes that the IPCI believe will significantly increase overall revenue to the exchequer on an annual basis to the tune of upwards of €100M.

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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 Professionals or iPros 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 independent professional contractors (iPros)
- 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 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 iPros 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 with a flexible and skilled contractor base. This point is important to note as the sector is not only a key contributor to the increased FDI investment in Ireland and is also a consequence of the increasing value-added investment by the sector in Ireland.

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

4.0 THE CURRENT TAX REGIME

There is confusion as to the definition, role and significance of iPros within the Irish economic landscape. In the eyes of the government, there is no definition of an iPro.

Whilst iPros will generally be established as independent companies, the tax treatment of iPros fall somewhere between employees, sole traders and LLCs (both look-through and opaque entities). As such, it is impossible to receive fair tax treatment. The treatment will depend on the “opinion of the individual” dealing with the situation rather than the “merit of the situation” itself.

This ambiguity is preventing the iPro sector from growing and developing.

In order to set out a system that is fair it is necessary to understand the nature of iPros.

- Multinational Pharmaceutical and IT companies, and indeed our knowledge based economy, need iPros particularly in a situation where the work force needs to be scalable and flexible. Extinction of the independent contractor may damage these industries and the related economy and limit future investment.
- Current tax 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 – iPros form part of the foundation of this industry.
- FDI (Foreign Direct Investment) companies use iPros for start-ups, expansions, ongoing support & all-scale projects.
- Without a stable supply of iPros 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.[source? – list in footnote]

The IPCI are interested in a final solution that can work with the contracting industry and provide fair treatment for all parties whilst generating significant revenue to the exchequer.

Expenses incurred by Contractor Companies

It is matter of public record that certain expenses (particularly in the area of travel & subsistence) claimed by contractor companies have been challenged by Revenue on the basis of not being in accordance with Revenue guidance. This guidance, it is fair to say, has been reviewed in recent times and its application has not been clear prior to the recent initiatives. Over the past three to four years individual contractor companies have engaged with Revenue so as to bring their financial affairs in inline with Revenue guidance and Case law as interpreted by Revenue. The IPCI has also worked constructively with Revenue to assist with compliance in the sector, where this was not occurring. The IPCI supports a compliant sector but also a strong sector that can assist with the development of the knowledge economy in Ireland.

However, the IPCI is concerned that the guidance, as applied to iPros, is out of step for a sector that is to the forefront of our modern knowledge economy.

It is noted in the media that government agencies has made settlements with Revenue in cases regarding teachers Supervising at state exams where the travel expenses incurred were not subject to taxation as set out in case law .

The recent Finance act now includes a provision exemption teachers supervising at state exams to be exempt from taxation.

The above recent legal amendment together with other exemptions in legislation (such as the exemption of taxation of travel expenses of non-resident directors of mainly foreign banks and aircraft leasing operations in Dublin) demonstrates that changes can be made where viewed as in the interest of certain sectors. The IPCI represents a sector of vital importance to the economy and is only seek cognisance of this through a fair regime..

Our view is that current Revenue guidance and case law in the area of Travel & Subsistence expenses is not fit for purpose and needs reform such that there is one set of tax principles applied to all tax payers on a consistent basis but which can recognise particular challenges of sectors to achieve fairness. That is not the case at present.

Recent ad-hoc amendments to legislation as with the case of teachers or non-resident non-executive directors merely highlights that the current system is defective and needs reform on a holistic basis without favour to any cohort of tax payers.

Close Company Rules

During the recent financial crisis the McCarthy (Bord Snip) Review Group reported on the existing regime as regards close companies and identified that the current system needed reform.

We concur with the McCarthy report in that the existing Close Company rules need reform and are not reflective of a modern economy.

Excluding Close Companies rules there are other anti-avoidance legislation that Revenue can use as an intervention mechanism.

Irish Tax System and artificial barriers to entry to the contracting iPro market

The existing ambiguity and unfairness of both the expense regime and the Close Company rules are creating an artificial barrier to entry to the Irish contracting market with loss to the exchequer as follows:

- Potential entrants are not entering the market due the expenses and close company rules.
- Foreign registered companies are entering the market using the tax system of the country of legal registration without consideration of compliance with Irish tax legislation
- Irish iPros are exiting the Irish market and working in overseas jurisdictions and while retaining a legal registration in Ireland the tax base has effectively left the country.

Presently there are an estimated 3,000 open positions in the Pharmaceutical sector in Ireland (ref: NIBRT June 2015).

We estimate that 50% are made up of representative iPro companies with estimated annual revenue of €100,000 and a blended PAYE/PRSI/Corporation tax take of €25,000 per company.

Being conservative there maybe 500 foreign registered iPro companies working in Ireland who have not formally registered with Irish Revenue. On a like for like basis the tax yield of €25,000 is being incorrectly remitted to an overseas jurisdiction.

Being conservative there maybe 500 Irish registered iPros who have vacated the Irish economy and are operating in foreign jurisdictions. Assuming these companies have re-registered their taxes overseas there is like for like estimated loss to the exchequer of €25,000 per company.

In summary the annual tax loss to the state due to unnecessary barriers to entry could be summarised as follows:

Entity type	Estimated Nos.	Blended tax per company €	Total taxes/loss to exchequer €
ROI registered & resident company wishing to trade in ROI but not entering the market	1,500	25,000	37,500,000
ROI registered & tax jurisdiction overseas trading mainly overseas	500	25,000	12,500,000
Foreign registered & foreign tax jurisdiction	500	25,000	12,500,000
Estimated tax loss to state			62,500,000

Reform of both the existing expenses and close company rules together with intervention on non-compliant foreign participators must be implemented to ensure Ireland's competitive standing as a small open economy.

Status

As outlined above, the FDI sector requires an independent and flexible workforce to be available to it to particularly complete capital projects. The implementation of rules to determine that contractors will be employees of the multinational sector for tax purposes may undermine the sector significantly.

The IPCI, it should be noted, would welcome employment protections for iPros but the introduction of such rules would undermine the market in which they operate. This is a clear position based on the experience of our members.

5.0 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.

6.0 SOCIAL WELFARE/SOCIAL INSURANCE FUND SYSTEM

There has been comment in public sector/government circles as to the potential loss to the Exchequer arising from potential miss classification of tax payers between class A or class S (self-employed earnings). Unwarranted suspicion is that

Our opinion is that the state social insurance model should operate on a self-funded basis using formal actuarial modelling to account for age demographics and the level of participators in the employment sector.

The current social insurance fund is a mixed bag of employees and employers making contributions to the fund but where there is limited actuarial or economic co-relation to the Social Insurance fund subscriptions and the associated benefits proscribed by the Government/Executive.

If there is potential leakage in the Social Insurance fund model it can only arise where by the benefits are in excess as to what can be provided by the insurance contributions of taxpayers and their employers.

Reform is required in the area of Social Insurance such that with the exception of means tested cases, the benefits provided by the system must be matched on a formal actuarial basis to contributions paid in by those in employment and their employers (to including a levy for the uninsured).

7.0 WHAT IS NEEDED?

A modern tax system where these iPros (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.

8.0 EXAMPLES OF TAX INCENTIVES IN IRELAND AND OTHER JURISDICTIONS

Examples of non-Irish tax incentives currently available to iPros

Factor	Location	Detail	Benefit
Flat rate VAT	UK	Turnover < £150k	Simplification of tax system, less paperwork, less audits, more transparency
TFA	Netherlands	30%	Simplification of tax system, less paperwork, less audits, more transparency
T&E	UK	Unlimited for project duration maximum of 2 years	Mobility enabler

Examples of Irish tax incentives not currently available to iPros

Factor	Location	Detail	Benefit
Country Money	Ireland	Sites located >20 miles from GPO	Mobility enabler
Startup CT exemption	Ireland	First 3 years of trading	Liquidity
Sure scheme IT15	Ireland	6 years tax refund for PAYE	Startup capital
R&D allowance	Ireland	25% tax credit	Risk taking

9.0 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

10.0 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
- 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. 1st 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

11.0 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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