



**Tax Return 2017**  
6 April 2016 to 5 April 2017

# Employed or self-employed?

**Bob Cummings** reviews the current understanding of associate status.

From time to time discussion breaks out among dentists regarding the validity of their status as self-employed business people for tax and other purposes.

The recent Uber and Pimlico Plumbers employment tribunal cases have brought the issue of tax status to the fore again, causing alarm in some dental quarters.

In each of these cases, so called self-employed business people were

classified as 'workers' and were therefore not deemed to be self-employed. These cases were pursued by the workers, rather than by HMRC, and focused on holiday and sick pay entitlement rather than whether or not PAYE tax should have been deducted from earnings.

Despite the recent tribunal decisions, associates, and principals engaging associates, should not be too concerned about tax status and being forced to deal with associate income under PAYE. This is on the understanding that associates are engaged under standard forms of agreement and, most importantly, that both parties carry out their business under the terms of the agreement.

The tax status of associates in the eyes of HMRC was clarified shortly after the introduction of the 2006 NHS Contract. At that time, an urban myth grew up that the new GDS contract changes spelled the end of self-

employed associates. The apprehension was that associates would receive a set payment each month for NHS work. This would look like a salary payment which should be subject to employment taxes under PAYE.

Thankfully, these concerns proved to be unfounded and, following representations from NASDAL, HMRC updated its guidance manuals to recognise the new contract.

This guidance remains unchanged despite yet another scare in 2007, caused by an article published in *The Times* (online) suggesting that associate dentists were about to be targeted by HMRC. At that time, HMRC advised NASDAL, "HMRC response to the issues raised by the shadow health minister as reported in *The Times* on May 28, is that the new Standard Dental Services Contract does not lead to the conclusion that an associate dentist can no longer be regarded as self-employed. We do not know ☹"



**Bob Cummings**

is the manager of Morris & Co Specialist Dental Accountants and the national tax advisor to NASDAL.

where the alleged '£200m lost tax revenue' comes from.

"We examined the new Standard General Dental Services Contract which came into force on April 1, 2006 and were satisfied that it did not affect our existing published guidance stating that, where standard forms of agreement for associate dentists which have been approved by the BDA and GDPA are used and followed, the associate dentist is regarded as self-employed for tax and NI purposes. As always the employment status of associate dentists will depend upon the contractual terms between the principal dentist and the associate. Of course, any deviation from this agreement following the new GDS contracts may affect the employment status of

the associate and would have to be considered on a case by case basis. I hope this gives you the reassurance you were seeking."

As things currently stand, HMRC guidance contained in *Employment Status Manual ESM4030 Particular Occupations: Dentists* states, "It should be noted that there are standard forms of agreement for 'associate' dentists which have been approved by the British Dental Association (BDA) and the Dental Practitioners Association (DPA) (sic). These agreements relate to dentists practising as associates in premises run by another dentist. Where these agreements are used and the terms are followed, the income of the associate dentist is assessable under trading income rules and not

as employment income. In these circumstances the dentist is liable for class 2/4 NICs and not class 1 NICs.

"The NHS General Dental Services Contract, which came into force from April 1, 2006, provides for less fluctuation in associate dentist's income. However, providing the associate dentist continues to be responsible for paying their share of laboratory fees etc. for work relating to their patients and other terms of the standard agreement are followed, the above guidance will still apply."

Whilst the recent tribunal cases do highlight issue surrounding employment status it seems that HMRC remains content that, as long as dentists play the game properly, associates can safely be regarded as self-employed.

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