

Associate Contracts and their Employment v Self Employment Status

Background

Historically, HMRC have accepted that associate dentists are self-employed and their Employment Status Manual currently states that agreements which have been approved by The British Dental Association (BDA) would support the self-employed status of associate dentists.

In March 2018 HMRC launched a review on the employment status of associates which has involved interviewing associates across the country to gain an understanding of the current working patterns of associate dentists in practice. The BDA and Morris & Co have been negotiating with HMRC on this.

Although the review hasn't yet been formally finalised, we understand that Practices will have to consider the status of all associates using the HMRC CEST (Check Employment Status for Tax) test using the tool supplied on line by HMRC.

You may ask why this is of such importance to the dental profession. If associates were to be treated as employees, the tax costs to both the practice and the associate would increase significantly. The practice would have to pay employers NIC on the gross income before deduction of NHS pension contributions paid to them. For associates, the rate of NIC payable would increase from 9% to 12% and the range of expenses on which associates can receive tax relief would decrease quite significantly.

Take for example an associate with an average receipt from the practice net of NHS pension of around £60,000, the tax, NIC, student loan repayments would be:

	Employment		Self-employment
	Employer - practice	Associate as employee	Associate
Employers NIC after owners tax relief	4,667		
Income tax		9,900	8,650
NIC		5,265	4,400
Student loan repayment (Plan 1)		4,130	3,040
Total tax, NIC, student loan payments	4,667	19,295	16,090

In summary, the practice owner after tax will be £4,667 worse off, and the associate would be £3,205 worse off.

Check Employment Status for Tax (CEST) test

CEST is HMRC's tool for businesses when they are engaging an individual work. There are a number of questions asked by the test relating to the engagement, such as the use of a locum, responsibilities of the worker and what the worker provides for the engagement. Answering the questions will result in the tool giving an answer of "self-employment", "employment" or even "not sure".

Associate Contracts

Our experience is that many practices don't offer a written contract and we doubt whether any practices are currently doing the CEST test.

Our understanding of the conversations between HMRC and the BDA is that the standard BDA contract, if followed, would secure self-employed status. If HMRC were to investigate, having a signed BDA contract wouldn't be sufficient, they would seek to see if the terms were being followed.

Once HMRC have pronounced on this and we know the exact terms of the new regulations, we will be writing to all our dental clients to advise them of what they need to do to secure the self-employed status of associates

Key Points of an Associate Contract

We have highlighted in bold the key points as regards self-employed status

NHS Work

- The amount you will receive?
 - Fixed monthly contract amount
 - Fixed amount per UDA with no deductions at all
 - **Net per UDA performed**
 - **Per UDA performed, less a percentage**
 - Sessional fees (unusual and not advised because of CEST)
 - Calculated in his own way by the principal! (perhaps a deduction for ROI [Return on Investment] as well)
- If your principal is paying you a percentage of the UDA price, is this the full UDA price or just the price he is declaring to you?
- Is your principal prepared to tell you the full UDA price/provide a copy of the NHS contract (as recommended in the BDA Practice Owner/Associate Code of Conduct)?
- Is this before or after deductions for lab fees?
- What are the arrangements for lab costs – paid by the practice or by the associate?
- What percentage deduction will there be?
- What targets will you be expected to meet?
- **Will there be a deduction if you fail to meet set targets? (Clawback)?**
- If you exceed set targets, will you be paid extra (Sliding scale)?
- What are the arrangements re NHS pension contributions?
- How are referrals to hygienists/therapists dealt with?
- How many days holiday will you get?
- How many days will you be given for courses/CPD?
- How many sessions are you expected to work doing NHS work?
- What are the arrangements for maternity/paternity leave and payments (if necessary)?
- If you are moving to a new practice and perhaps taking on new patients that are not dentally fit, will it be much more difficult for you to score UDAs?
- **Watch out for clauses about the associate compensating practice owners for losses due to the failure by the associate to meet UDA targets (this is different to clawback)**

Private Patients

- Will you also be allowed or encouraged to do private work?
- If so, when?
- Is there actually any scope for private work?
- The percentage that you will receive
- Think about asking for a higher percentage for private work

Other Matters

- Will the practice owner subscribe to the BDA Practice Owner/Associate Code of Conduct?
- Is this a BDA template contract
- **Who pays credit card charges?**
- **How are hygienist fees dealt with?**

- **Are you liable for bad debts and at what percentage?**
- **Will you recover bad debts subsequently settled?**
- Will there be a full list/book immediately?
- If not, will you be guaranteed all new patients coming into the practice?
- **What are the arrangements for absences – will you be required to find a locum and who pays for the locum?**
- **Are you able to use your own equipment e.g. loupes, saddle seats etc**
- Might you be able to arrange payments on account in the first few lean months of September, October and November, to be deducted from future earnings, of say £1,800 per month?

Finally!

- Don't let the Principal think that you are too keen on a particular practice or that you are definitely going to stay on in the practice where you are a FD.
- **Make sure it's a happy practice!**