



24 March 2021

Your Ref: S0259 PAC33

Our Ref: 100136-21

Ms. Éilis Fallon,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.
pac@oireachtas.ie

Dear Ms. Fallon,

I refer to your letter of 12 March 2021 requesting a response to matters raised in a submission from [REDACTED] dated 15 February 2021 in relation to 'Bogus Self-Employment' which was considered at a meeting of the Committee on 18 February 2021.

I already provided details with regard to taxation status of couriers in Appendices 2, 3 and 4 of my letter to you of 3 February 2021, copy attached. You will appreciate that I can only respond to the matters raised in [REDACTED] submission to the extent that those matters relate to Revenue. Decisions relating to the class of social insurance an individual should pay is outside Revenue's remit and is a matter for the Department of Social Protection to address, as are a number of matters raised in regard to deciding officers.

As stated in [REDACTED] letter, "employment status must always be decided on the applicable law and the individual circumstances of each case". That is the consistent and stated approach adopted by Revenue. To determine the status of a courier, it is necessary to examine each case by reference to the Code of Practice for Determining Employment or Self-Employment Status of individuals. Whilst the facts of each case will determine whether an individual is either an employee or self-employed, Revenue historically held the view that, in general, motorcycle and bicycle couriers

were engaged under a contract for service i.e. they are self-employed individuals. A similar view is taken in relation to the status of van owner-driver couriers, who are also considered self-employed. Revenue fully acknowledges the differential between rates of PRSI for the employed/self-employed, but Revenue has no input into this matter.

A voluntary PAYE system of tax deduction in respect of self-employed couriers engaged by courier firms was put in place in 1997. The voluntary system of PAYE allowed the contracting courier firm to voluntarily operate PAYE on self-employed courier income net of expenses (expenses agreed at 40% of income for motorcycle and 10% for cycle couriers). Many courier firms opted to implement that system at the time. Use of the voluntary system by the contracting courier firms was conditional on the courier being self-employed. However, in situations where a courier was employed directly by the courier firm as an employee, PAYE would have been operated as normal. It was accepted that compliance issues existed with self-employed couriers at the time and the system was to the benefit of both the couriers and Revenue by way of improved compliance and a simplified system for couriers to be tax compliant by deduction tax at source under the PAYE system. There was no question of courier companies evading statutory obligations.

It is not true to say that “this agreement treated couriers as employees”. It was necessary for the courier to be self-employed for the voluntary system to apply. It should be borne in mind that PAYE is not a tax in its own right. PAYE is a withholding mechanism. Employers are obliged to deduct income tax from emoluments they pay to employees. Employees remain liable to income tax and the Universal Social Charge (USC) on those emoluments. They are entitled to a credit for the tax deducted by the employer from the emoluments when computing their income tax and USC liabilities. However, they are only entitled to that credit where the employer has operated the PAYE system on the emoluments. In the case of the self-employed couriers, the application of PAYE was an administrative arrangement to facilitate the collection of tax and PRSI.

There was no question of a “secret agreement”. In fact, Revenue published an article in Tax Briefing issue 28 in October 1997 detailing the voluntary PAYE arrangement allowed in the taxation of self-employed couriers. This was followed by Tax and Duty manual 04-01-07 which explained the arrangement and referenced to instruction in Tax Briefing 28. Tax Briefing 28 from 1997 is available on the Revenue website¹.

¹ <https://www.revenue.ie/en/tax-professionals/historic-material/tax-briefing/1997/Tax-Briefing-Issue-28-October-1997.pdf>

In summary,

- Revenue's policy on taxation of couriers is published since 1997.
- While each case was to be decided on its own merits, couriers for the most part met the criteria, at the time, for self-employed and, as we understand it, still do. However, any individual can present their particular circumstances to Revenue and we will provide a view on whether, based on the facts, the person is employed or self-employed, taking into consideration the prevailing law contained in the Taxes Consolidation Act 1997 (as amended) and practice, as set out in the Code of Practice for Determining Employment or Self-Employment Status of individuals. This Code was agreed in 2007 between the various pillars of the then Partnership process, Unions, Management and Government. A new agreed draft of the Code is expected to be published shortly.
- The voluntary PAYE system was an administrative arrangement to assist couriers in meeting their tax and PRSI obligations as well as for Revenue.
- There was no non-compliance with statutory obligations by courier companies.

I should point out that while the voluntary PAYE deduction system is still applied by a small number of courier firms, the flat rate deduction for expenses was discontinued from 1 January 2019.

Finally, Revenue is actively monitoring the increasing prevalence of working arrangements that were not a feature of the employment landscape ten years ago. These developments contribute to a continued blurring of differences between the employed and self-employed categorisation and include the likes of zero-hour contracts, gig economy practices, and even the move to remote-working arrangements brought on by the COVID-19 pandemic. Where Revenue feels there is a need for policy change to adapt the tax system to developments in this area, it will raise the matter with the Department of Finance.

If you have any queries, please do not hesitate to contact Angela O'Gorman at (01) 8589181 or angela.ogorman@revenue.ie.

Yours sincerely,



Niall Cody,
Chairman.

Ref: S000165 PAC 33

Our Ref: 100020-21

3 February 2021

Mr. Jack Savage,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.
pac@oireachtas.ie

Public Accounts Committee meeting of 19 November 2020

Dear Mr. Savage,

I refer to your letter of 20 January 2021 seeking additional information following the Committee meeting of 19 November last.

The additional information on the issues requested is enclosed as follows:

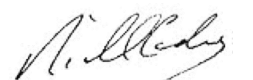
- Appendix 1: Estimate and rate of bogus self-employment in Ireland
- Appendix 2: Treatment of couriers for tax purposes
- Appendix 3: Employment status for couriers
- Appendix 4: Impact on the Exchequer of couriers paying Class S PRSI
- Appendix 5: Number of examinations of the construction sector that Revenue carried out in 2020 and inspections of workplaces carried out annually.

The Committee sought clarification on data access requests by Revenue at its meeting on Friday 29 January 2021. The information sought is enclosed at:

- Appendix 6: Information on data access requests to telecommunications companies by Revenue.

If you have any queries, please do not hesitate to contact Angela O’Gorman at (01) 8589181 or angela.ogorman@revenue.ie.

Yours sincerely,



Niall Cody,
Chairman.

Question 1: *Does Revenue have an estimate for the rate of bogus self-employment in Ireland and an estimate of the cost it imposes on the Exchequer?*

The Committee will be familiar with a Department of Finance and Department of Social Protection report titled “Report on the use of intermediary type structures and self-employment arrangements: Implications for Social Insurance and Tax Revenues” published in January 2018. That report made certain observations and recommendations relating to the differential between social insurance rates for the employed and self-employed, which is a policy matter outside of Revenue’s remit. The report also shows the possible tax loss for example cases but as the report notes these are illustrative and actual losses may differ depending on the particular circumstances of individual cases. As bogus self-employment is complex, varying case by case and not, due to its nature, reported to Revenue or any other agency, it is not possible to accurately estimate the overall scale of such activity.

A copy of this report for reference is available [here](#).

Question 2: A test-case regarding bogus self-employment amongst couriers was discussed. Please provide further details in relation to this case including detailing any associated costs.

Reference to a “test case” regarding bogus self-employment amongst couriers had been raised at the Joint Oireachtas Committee on Employment Affairs in 2019. There is no one specific “test” case. However, couriers were regarded as self-employed for PRSI purposes as a result of a Social Welfare Appeals Officer’s decision. In the interest of uniformity Revenue decided, without prejudice, to treat those couriers as self-employed for tax purposes. The matter of the taxation of couriers, and the detail of that decision, was the subject of the correspondence, referenced during the meeting on 19 November 2020, between Revenue and the Public Account Committee in August 2000.

A voluntary PAYE system of tax deduction in respect of self-employed couriers engaged by courier firms was put in place. The voluntary system of PAYE allowed the contracting courier firm to voluntarily operate PAYE¹ on self-employed courier income net of expenses (expenses agreed at 40% of income for motorcycle and 10% for cycle couriers). Many courier firms opted to implement that system at the time. Use of the voluntary system by the contracting courier firms was conditional on the courier being self-employed. However, in situations where a courier was employed directly by the courier firm as an employee, PAYE would have been operated as normal.

It was accepted that compliance issues existed with self-employed couriers at the time and the system was to the benefit of both the couriers and Revenue by way of improved compliance and a simplified system for couriers to be tax compliant. The conditions for courier companies to operate the voluntary PAYE system, and for self-employed couriers to be included in the system, were that they met all the conditions to be classified as self-employed as follows:

- that the vehicle was owned by the courier,
- that all the outgoings in relation to the vehicle were paid by the courier,
- the courier was engaged under the standard contract, and
- a basic wage was not paid in addition to a "mileage" rate.

¹ PAYE is not a tax in its own right. PAYE is a withholding mechanism. Employers are obliged to deduct it from emoluments they pay to employees. Employees remain liable to income tax and USC on those emoluments. They are entitled to a credit for the tax deducted by the employer from the emoluments when computing their income tax and USC liabilities. But they are only entitled to that credit where the employer has operated the PAYE system on the emoluments.

These requirements would indicate that the particular couriers to whom the “voluntary PAYE system” was applied were in fact self-employed individuals.

Question 3. *What is the basis, legal or otherwise, for couriers being deemed self-employed if they primarily work for one company?*

An individual's liability to Irish income tax is determined by reference to the source of his/her income. A worker's employment status is not a matter of choice, it will depend on the terms and conditions of the job. There is a legal difference between a contract of employment (known as a 'contract of service') and a contract for service.

A contract of employment applies to an employee/employer relationship while a contract for service applies in the case of an independent or self-employed contractor. While it is usually clear whether an individual is employed or self-employed, it is not always obvious. However, case law has established tests to determine whether contracts are contracts for service (i.e. self-employed contractor) or contracts of service (i.e. employee) and generally, these tests are applied to determine employment status along with a review of the evidence available regarding the nature of the relationship. Revenue's position is that each case is individual and needs to be considered on its own merits.

In order to determine the status of a courier, it is necessary to examine each case by reference to the Code of Practice for Determining Employment or Self-Employment Status of individuals. Whilst the facts of each case will determine whether an individual is either an employee or self-employed, Revenue historically held the view that, in general, motorcycle and bicycle couriers were engaged under a contract for service i.e. they are self-employed individuals. A similar view is taken in relation to the status of van owner-driver couriers, who are also considered self-employed.

As self-employed individuals, couriers are subject to self-assessment for the filing and collection of tax returns and the resulting tax. The fact that the couriers in question provided their own transport, were responsible for insurance, tax and maintenance, were free to accept or refuse work as he or she wished and were not bound by fixed hours is strongly indicative of self-employment.

Question 4: *What was the cost to the Exchequer arising from the arrangement where certain couriers were able to pay Class S PRSI while listed as employees of an organisation?*

There was no cost involved as the couriers were correctly classified as self-employed and the Department of Social Protection (DSP) had decided that class S was the appropriate rate of PRSI. DSP is responsible for determining PRSI classes.

Question 5: *How many examinations of the construction sector did Revenue carry out in 2020?*

Revenue conducted 360 construction site visits in 2020. The number of visits conducted in 2020 was lower than in previous years as a result of restricted working arrangements associated with Covid-19. Revenue conducted 1,673 construction site visits in 2019 and 1,471 in 2018.

Question 6: *How many inspections of workplaces are carried out annually, broken down by sector?*

In addition to construction site visits, in 2020 Revenue carried out a further 1,076 visits across a range of business sectors, including restaurants, public houses, takeaways, nail bars, boutiques, scrap metal dealers, architects, taxi operators and IT service operators. We do not maintain statistics relating to the number of specific visits to each of these individual sectors. Comparable figures for 2019 and 2018 were 4,091 and 2,758 respectively.

Extract from PAC meeting on 29 January 2021: On the Revenue correspondence, particularly the report on the use of data access requests to telecommunications companies, we see that in 2017 there were 40 such requests. That dropped to 26 in 2018 and according to the correspondence we received from Revenue, there have been no requests since then. Could the committee write to Revenue seeking clarification as to why that is the case? I have a suspicion it might relate to the introduction of the general data protection regulation, GDPR. Could we get clarification from Revenue on whether these types of requests simply will not be issued in the future and if that is the case, whether that points to a deficiency in the GDPR legislation and a need for it to be updated? Could we ask Revenue if there has been any engagement with the Government in this regard? As I mentioned, 66 requests have been referred. It would be useful if Revenue could inform us as to the amount recouped to date with respect to those 66 requests, if it has any data reflecting how often it would have made similar requests if this option remained open to them, and if it believes its ability to recoup tax owed to the State has been impacted by the GDPR legislation.

Revenue has not made any disclosure requests to communications service providers under the Communications (Retention of Data) Act 2011 since December 2018 based on the advice of the Attorney General's Office.

It is Revenue's understanding that the Department of Justice is advancing the Communications (Data Retention and Disclosure) Bill, which will replace the Communications (Retention of Data) Act 2011 and will take account of the recent Supreme Court referral to the CJEU and recent relevant rulings.

Revenue continues to investigate all forms of serious tax and duty offences using the range of legislative powers available to it. While the inability to use this legislation has had an impact, Revenue's investigations relating to serious tax and duty offences are multi-faceted and involve many avenues of enquiry.

Revenue does not have a record of the number of requests which would have been made under the Communications (Retention of Data) Act 2011 had it remained an option.

In respect of the 66 data access requests made in 2017 and 2018, having regard to operational and security consideration, Revenue is not in a position to provide any additional information in relation to these requests and related investigations.