

PCSO Submission

*Department of Finance Consultation on the Use of
Intermediary-Type Structures and Self-Employment
Arrangements*

Date: 31 March 2016

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Executive Summary

The PCSO (Professional Contractors Services Organisation) welcomes the opportunity to make a submission to the Department of Finance in relation to the “Consultation on the use of Intermediary-Type Structures and Self –Employment Arrangements.”

Common Sense Approach

Our objective has always been to arrive at a reasonable proposal to provide greater clarity in this area. The PCSO has organised several forums inviting a large number of industry stakeholders to come together with this in mind.

Support and Research

The PCSO has over two years ago, has engaged with similar organisations in the UK and endeavoured to learn from their experience.

- The FCSA (Freelancer Contractor Services Association)

- IPSE (Independent Professional and Self Employed)

Both organisations active in this sector in the UK for many years. We endeavoured to learn from their experience and research and indeed from the mistakes made in the UK in relation to this sector.

The PCSO has also interacted continuously with the IPCI (Independent Professional Contractors Ireland) for support and feedback.

Lead Researcher in this Sector based in Dublin

We have also drawn of much of the research undertaken in the UK in this sector much of this undertaken by Professor Andrew Burke, previously of Cranfield School of Management and now Dean of the Business School, Trinity College Dublin. Professor Burke is the leading researcher in this sector worldwide. We are very grateful for Professor Burke’s contribution and assistance to the PCSO over the last two years. (Reports by Prof Burke on the sector in Appendices D & E)

Submissions and Reports by the PCSO

The PCSO undertook a Special Report in this sector led by Professor Dermot Duff in May 2015. Much of this Report is incorporated into this Submission. (See Appendix A)

The PCSO also submitted a “**Submission to the Department of Finance Consultation on the Tax Treatment of Travel and Subsistence for Employees and Office Holders**” in August 2015. (See Appendix B) This submission focused on the equivalent tax treatment of these expenses in countries we directly both compete with and engage in business with i.e. the USA, Germany, UK and Canada. A very practical solution was arrived at in these countries with regard to compensating both employee and self-employed individuals when they are necessarily away from their Home Base for reasons of their work. This is also a very practical and well researched submission and we would again urge consideration and feedback on those proposals.

The Current Consultation Document issued on the 28th of January 2016

In relation to this document, “Use of Intermediary-type Structures and Self –employment Arrangements” we have set out our concerns in section 2 of this submission. We will outline that this is a complex area and any proposals for change should be well thought out, based on solid information, and with due consideration given to their consequences (both direct and indirect). In section 2 below we highlight issues on which the consultation document, in our judgement, is biased and ill-founded and ignores important aspects of the economic contribution made by this sector. In our view, a likely consequence of the approach set out set in the consultation document, together with any continuation of the current taxation approach to “Normal place of work,” would be a significant reduction in the number of capital investment projects undertaken by multinationals in this country, and the displacement of such projects to other countries which have developed more appropriate approaches in dealing the with the iPro sector. The survey referred to in section 3 below clearly bears this out.

What needs to be considered in this Consultation?

- The legitimate work needs of the iPros as skilled professionals,
- The roles they fulfil, in meeting needs of the end clients,
- The benefits of the services they supply to the businesses they work in,
- The downstream benefits they generate in getting projects completed on time and within budget,
- The iPros role in downstream job creation.
- The iPros role in attracting FDI projects.

This is all further complicated with changing work practices and the use of technology and innovation in business that moves us away from “one full time job for life” to a more flexible mobile workforce. This Flexible workforce in the modern world is the driver of innovation; creativity the hallmarks of a modern developed society.

Importance of the iPro in Ireland, The UK and European wide

Within the submission, we outline the importance of this sector to a modern developed economy and how the iPros (Independent Professionals) are playing a key role in driving innovation, creativity and job creation. Indeed we are commenting on the fact that the availability and the presence of iPros is itself a factor in where companies, MNCs and indigenous Irish companies base their operations.

We have engaged with IBEC and they have assisted us with a survey (referred to in Section 3 below)in this regard and the results from some of the biggest pharma and chemical companies based in Ireland speak for themselves. **“We see the availability of iPros as an important factor in winning international Capital Investment projects for Ireland and they are concerned at the present lack of clarity in this area”**

iPros tend to be engaged by all companies that have projects of any considerable size to implement. Nowadays there is much greater specialisation within skills categories of IT , engineering pharmacology. All companies need to minimise costs and maximise returns from capital investments. Irish based multinationals, in particular are constantly competing for projects for their

Irish operations against other locations worldwide in which the multinational has a skills base. For all those reasons, specialists are nowadays engaged for projects, as required only for very specific roles and duration. Indeed this is now the trend for all companies from start-up to mid-sized indigenous companies that want specific services for specific projects, but do not need or have the ability to engage them fulltime. The availability of this expertise on that contract for services basis is a well-documented driver of innovation and job creation.

Two Major Concerns

Within the body of this submission we identify, based on the feedback from the IBEC survey, the previous survey undertaken by Prof Dermot Duff, and also from our ongoing involvement in the sector and its stakeholders, two major concerns. In both of these areas **Clear Rules, which are easy to understand are essential.**

Firstly: The classification of the temporary engagements of professionals from both a Social Welfare and a Taxation point of view. The present lack of clarity in this area and indeed the approach in consultation document itself is a cause of concern for many of those companies that engage professionals on a short term basis.

Secondly: The issue which was the subject of the PCSO Submission to the Department of Finance in August 2015. From an iPros perspective, this was about the current interpretation of the “Normal Place of work” and in that context the allowability of expenses for necessary travel and accommodation.

Problems Arising from these Two Major Concerns

- The lack of clarity re the Social Welfare status is an impediment to taking on new projects for MNC and Indigenous companies alike and will inevitably lead to less FDI and Job Creation.
- iPros that need to undertake travel or to relocate for short term capital investment projects are increasingly reluctant to do so within Ireland and prefer to take up roles abroad, or only those close to home base.
- iPros taking up roles in Capital investment projects away from their home base, and who necessarily incurred travel and accommodation expenses away from home, are seeking compensation by way of higher rates.
- The Higher rates being sought by iPros above are increasing the costs of capital projects in professional man hours from 17% to 22% at present to 25% to 30% of the overall capital investment cost.

Our Proposal to address these Two Areas of Concern

As set out previously we feel a common sense approach to the sector is essential, and that any major changes or alternations need to be well thought out, with the associated consequences considered, both for the economy, our economic development and a much wider view of Exchequer funding on a long term basis.

FIRSTLY: “Use of Intermediary-Type Structures and Self-Employment Arrangements”

In this submission we outline the different structures which the iPros use at present and also why these structures are required.

The important point here is that under the operation of the “**Suitability Statement**” (as set out in section 5 below) applied by the PCSO members currently; all their iPro clients have taken professional advice as the most suitable structure for them and fully understand that structure.

Under this suitability process some are classified as short term iPros and hence they are taxed and pay social insurances exactly the same as any other employee i.e. Class A PRSI. This covers about 28% of all iPros.

The remaining iPros participate in structures such as managed Companies, or Personal Service Companies (PSC) which they own exclusively and this again is to suit their particular circumstances. Paying taxes as director/employees and applying Class S social insurance.

This system used by PCSO members has worked effectively for the last number of years and our proposal focuses on rolling this out to full population iPro population.

This will ensure correct classification and it will have associated benefits for all those involved. (iPros, End User, Revenue and DSP) this involves the completion of a Self-Declaration completed and signed by the iPros and counter signed by his professional adviser and submitted to Revenue.

Secondly: Travel and Subsistence Expenses incurred Wholly and Exclusively for Business Purposes by iPros.

In our proposal here we are again emphasizing and repeating our Submission to the Department of Finance in August 2015, where we set out that expenses incurred by iPros for travel and Subsistence that is incurred wholly and exclusively for business purposes should be allowed to be reimbursed tax free as is the case for all other workers.

We draw on US and German provisions and the concept of “Home Base” for tax purposes and when absent for the home base for work purposes and expenses are incurred wholly and exclusively for work purposed these should be allowed for tax purposes. We referred to the highly developed system in the US in this regard and the similar example in Germany.

Conclusion

The PCSO proposes that by undertaking the proposal below we will address the major concerns affecting the sector at present.

1. Suitability Procedures

The “Suitability Statement” and accompanying “Self- Declaration” used by the PCSO members be rolled out to cover all iPros. This will involve the iPro and their Accountant considering their specific circumstances and submitting a Self-Declaration to the Revenue Commissioners. The Revenue Commissioners will then provide an acknowledgement of this in writing. This acknowledgement being available to attest to the status of the worker as an iPro to those who seek to engage the iPro. This simple structure will have considerable benefits for all parties as outlined in section 5 below.

2. Submission in August 2015 to Department of Finance by PCSO

The Submission to the Department of Finance in August 2015 by the PCSO is acted upon and iPros are no longer discriminated against in relation to the expenses they incur “Wholly and Exclusively” for business purposes.

3. PCSO Research in this Sector

The PCSO has access to considerable research in this sector and can engage with the Department of Finance on this Submission as required.

Section 1

About the Professional Contractors Services Organisation (PCSO)

1.0 PCSO Mission

The PCSO has as its mission to help establish a clear, fair and practical, tax and legislative framework in Ireland to cover the Professional Contracting Sector. The Objective of the PCSO is to ensure the sector is Recognised, Nurtured and Supported to allow Professional Contractors to continue providing support to MNC and Indigenous Irish companies that make a significant contribution to the Irish economy.

1.1 PCSO Actions for the Sector

The PCSO has implemented a Code of Practice for all its members which is reviewed and certified bi-annually by PWC. The PCSO has created a Forum to bring all the relevant stakeholders around the table with a view to establishing best practice across the sector.

1.2 PCSO Engagement with the Revenue Commissioners

The PCSO members have been involved in servicing this sector for the last 15 years. The PCSO members have engaged with The Revenue Commissioners over the last two years and have organised that several of the stakeholders in the sector met with Revenue in order to develop the Revenue Commissioners knowledge of the operation of the sector. The purpose of this has been to provide as much information on the sector as possible, to ensure a better understanding of the sector.

The PCSO has also invited the Revenue Commissioners representative to attend each of the Forums held by the stakeholders in the sector over the last two years. Both the PCSO and the Revenue Commissioners, we understand have found this engagement very helpful.

1.3 PCSO Forum

The participants in the Forum are listed below, and mention is made (in brackets) of their specific areas of concentration.

- Enterprise Ireland (EI) (supporting Irish based Services Companies who export their services internationally. Many of these are in the Professional Services Sector)
- Industrial Development Authority (IDA) (attracting FDI into Ireland and expanding the companies already based here. The flexible workforce of professionals available in Ireland is a big factor in attracting FDI)
- IPCI (Independent Professional Contractors Ireland - national representative body for independent professional contractors in Ireland)
 - ICAI (assisting with Tax policy and to support their members)
 - ITI (assisting with Tax policy and to support members)

- Recruitment Agencies (Agencies that provide specialist skills required by companies Ireland, and who seek a compliant and efficient structure in which to operate)
- Revenue Commissioners (working to ensure a “Fair and Efficient” taxation system)
- Department of Jobs Innovation and Enterprise (Tax Policy to support Irish based Industry and Policy adjustments to ensure a competitive economy)
- Accounting & Taxation advisors to the Independent Professional Contracting Sector (seeking a compliant, equitable, efficient system in accounting taxation of the sector)
- IPSE (Independent Professionals and Self Employed) UK organisation assisting with Research and advice.
- FCSA (Freelancer Contractor Services Association) from the UK (assisted with code of Practice and with approach to setting up)

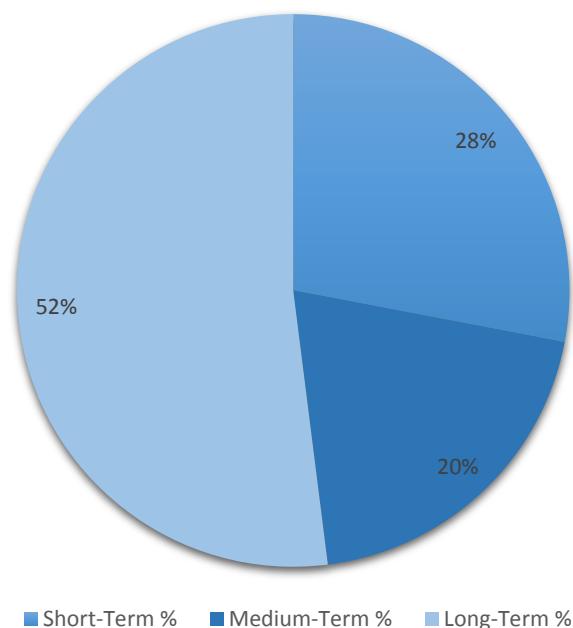
1.4 PCSO Special Report and Understanding the Sector

The Special Report on the sector was prepared by the PCSO in May 2015 is reproduced in full in the appendices. Much of this proposal is included in Section 5 of this Submission. Some of the key findings highlight exactly who iPros are:

1.5 Sole Trader Status / Ltd Company

Some of the important points to remember are that iPros are Professional individuals that chose to provide their services as independent professionals. Given the significant risks associated with engaging sole traders to undertake professional services, most end clients will insist that independent professionals must provide their services via a limited company as a measure of self-protection. Had they not have operated through limited companies but as sole traders they would be taxed as Schedule D case II (professional occupations) rather than schedule D case I (trades)

PCSO iPros Review from our Databases of the last three years, to help distinguish the different groupings.



Some of the points to note about iPros

- a) They are not a Homogeneous Group.
- b) Short term iPros provide their services for a period of up to six months. They may then move to full time roles ,in many cases using their contract experience as a "Springboard" to attain full time roles.
- c) Medium Term iPros provide their services for up to two years , then they may change to full time roles due to changes in the economy of personal circumstances or preferences
- d) Long Term iPros will provide their services on a long term basis to different companies and see this as a long term professional career.

1.6 The Structures used by iPros

Short term iPros are invariably in Umbrella company structures and taxed accordingly and paying Class A PRSI.

Medium term and Long Term iPros use the Managed Company structure or Personal Service Companies (PSC's). This has the benefit of ensuring that all VAT, PAYE/PRSI returns, CT and Income Tax returns are submitted and paid in a timely manner. It allows them to be confident that all returns are submitted and all taxes are paid on their behalf, allowing them to concentrate on providing their service. Some iPros move to their own PSC as they wish to expand, take on employees, purchase assets, and establish a separate company name.

1.7 Why iPros need a Limited Company Structure

The two alternative structures open to these long term iPros, are a managed company structure or a one man limited company structure as they require a Limited company to provide their services in this sector. This requirement has been carefully reviewed both in the UK and Ireland and in both cases it has been agreed due to international practice and customer demands a Limited company is required. (Again much consideration has been given to this and the PCSO can provide the details of the reports and findings as required)

1.8 Legal Contracts for iPros : Contracts for Service

Of the above iPros most contracts for Short Term iPros will be for six months or less and are between two limited companies. For longer and Full Time iPros will have contracts will typically have contracts for between 3 and 12 months and these may be renewed or extended if the project continues. In many occasions contracts are rolling for three month periods as this is the period of time MNC's get authorisation in their budgets. The iPros are engaged under a contract of services, and our experience in the PCSO has been and all parties to the contract are aware of their rights and obligations.

1.9 Understanding the iPro sector

It is important that the sections within the iPros sector are understood and the PCSO has accumulated a large bank of information over the last number of years. They will assist in providing this as required to get a working and workable structure for the sector.

1.10 Code of Practice developed by the PCSO for greater uniformity in the sector.

Over the last two years the PCSO has developed a Code of Practice, which it has shared with the Revenue Commissioners and requested feedback before finalising this Code of Practice. On receiving same this Code of Practice has been finalised in conjunction with PWC to establish best practice in the sector.

This Code of Practice which is similar to that operated in this sector in the UK is vetted and compliance issues reported on by PWC. This self-regulation has been very successful, together with the engagement with Revenue Commissioners in has brought a compliant framework to the sector.

1.11 PCSO Submission to the Department of Finance Consultation Process in August 2015

The PCSO submitted a comprehensive Submission to the Department of Finance in August 2015. The subject of this Submission was treatment of “Travel and Subsistence “expenses incurred by iPros in carrying out their work. This is a comprehensive submission and is supported by a wide range of organisations all calling for a review of “Normal Place of Work” as currently being interpreted by the Revenue Commissioners as applied to iPros. This Submission is reproduced in full in the appendices and supporting letters.

1.12 Clarity to this important area

The PCSO welcomes this initiative to bring clarity to this important area, but also cautions that this is a complex area. The Consultation document covers a very broad area from Zero based contracts and what are considered to be exploitative arrangements to a small but extremely valuable cohort of Independent Professionals (iPros) that provide their services on a flexible project by project basis, who offer their services throughout Ireland and indeed international, and these are by far the bulk of clients the PCSO members look after. Endeavouring to cover these all together with a broad approach without due consideration will be extremely unhelpful to Ireland Inc.

Section 2

PCSO Observations and Comments on the Consultation Document on the Use of Intermediary-Type Structures and Self-Employment

Below we highlighted some of the areas of concern with the Consultation paper published on 28/1/2016 as reviewed by the PCSO.

Document Review referenced to the actual Consultation document.

2.1 Consideration of the Broad Sector the Paper purports to cover

We in the PCSO deal with Independent Professionals Contractors (iPros) that provide their professional services under contract, undertaking to a great extent capital projects across a wide section of industries. (These should in no way be confused with “Disguised Employees”) These iPros are professionals that chose to provide their services in this manner. The iPros flexibility and availability in undertaking capital projects throughout Ireland, has been a key feature in attracting FDI, and also in supporting Indigenous Irish companies exports their professional services internationally.

2.2 Close Company Legislation Comment

Another point is mentioned in the last paragraph of page I in reference to a “Managed Service Company”

(MSC) it states that is generally structured with at least six unconnected shareholders so as to avoid close company legislation.” Please be advised that the providers of the MSC’s state quite categorically that any close company legislation has nothing whatsoever to do with why the MSC are structured in this manner.

The purpose of the MSC and the role it provides in the sector will be detailed in this submission. It is also worth noting that in almost all cases, no funds are retained within Managed Service Companies, meanings avoiding closed company legislation will give no tax advantage.

2.3 Intermediary Structure

The term “intermediary structure “needs some clarification. Are not all companies that provide services in exactly the same situation, they undertake work under a contract which is entered into by two companies for services over a period of time or a cost. It will be therefore very difficult to clearly establish when using a company will be regarding using an intermediary structure or a company to company commercial transaction without a significant amount of interpretation; this will lead to inconsistency and significant room for misunderstanding or misinterpretation.

2.4 Entrepreneurship and Risk-taking

With reference to the last paragraph under point 2 we feel it is imperative to point out in relation to the sector that there are very strong characteristics of “entrepreneurship and risk-taking” in the roles undertaken by iPros. Firstly, when they establish themselves as iPros, they cannot be sure they will win a contract and then they need themselves to undertake a negotiation to agree a rate or overall cost for their professional service, then they cannot be sure that this contract will be continued or cancelled or put on hold as quite often happens. Between contracts iPros often and necessarily engage in “Skills Update” to ensure they stay apace of the fast changing world we will live in. We see them at the forefront of risk-taking and entrepreneurship as they engage in risk in each and every project they undertake. This being exactly the same as any person running a business. As will be referred to in this Submission these professionals chose to provide their professional services in this manner for a host of reasons, a major one being the freedom to provide their professional service as they see fit and to specialise in the area they are interested in.

2.5 Provision of “Labour”

In point (3) of page 2, reference is made to arrangements to provide “Labour “. Again we need to emphasise that this must be completely differentiated from the provision of professional services under a contract for services. The Consultation Document does not make this differentiation.

2.6 Construction Industry

Also in point 3 it is imperative to distinguish between “in the construction industry indicate that self-employment arrangements of the type referred to above are a particular of the industry”

We can only assume that this in reference to the long held practice in the construction industry where, plumbers, electricians, carpenters etc., is taken on projects to complete their roles. A very interesting study was undertaken by Prof Andrew Burke in relation to this sector in the UK and the consequences of taking the above service providers on a full time basis with the construction company. In this study it was demonstrated as a key learning that was that if all these trades were to be employed on a full time basis by the main contractor, the price of a starter house (three bed semi) would increase considerably, given the additional costs incurred by the main contractor. (a full copy of this Report is in the Appendices for reference)

2.7 Forced use of PSC and MSC “come to Light”

In the last paragraph on page 2 it is said that cases have come to light where it appears that end users are insisting that if individuals wish to be engaged by the end user, the individuals must establish a PSC or be engaged via an MSC. Firstly it would be very interesting to see the extent and number of these cases referred to. Secondly it has been a long standing practice where specific expertise is required for a particular part of a project this expertise is taken on as and when required. This project may be of a short term nature or be such that specialist skills are required for a limited period of the duration of the project. These specialist skills have always been engaged on a temporary basis in these instances as they are only required for a short duration. Previously many individuals may have operated as Sole Traders however due to the standard international best practice and case law; major businesses are disinclined to engage sole traders (this is an international phenomena and consideration has been given to this in the UK recently. The PCSO can provide detail on this if required)

Over the last number of years individuals have sought to establish PSC, i.e. their own limited company or use the services of MSC to provide their Professional Services to industry. In using the MSC they have the benefit of ensuring that professionals in this area assist them under contract of managing their administrative and legislative obligations (that are quite considerable). Under the MSC structure the providers will ensure that all VAT,PAYE/PRSI Corporation Taxes, Companies Office returns, VIES, Income Tax Returns, P 30's P35's are completed and submitted in a timely manner for the directors. It in this assurance of the company being administered by professionals and all taxation, compliance issues being catered for and that all taxes and payments to the authorities is undertaken in a timely manner, that allows these professional to concentrate on what they do best, Providing their Professional Services to Industry.

Many iPros previously operating their own companies with all the associated administrative and compliance issues, payment deadlines, submission of returns deadlines late payment fines ,found all this too much, hence they have chosen a MSC to undertake this on their behalf as a low cost alternative to hiring a book keeper to deal with these issues. Many MSC are geared up for this, and realise that iPros are “time poor” and hence they ensure all their communication with them is streamlined and efficient, through phone, App and PC.

In interactions with Revenue over the last number of years this role of efficient and effective tax collection has been highlighted and the role the MSC plays in this is very much accepted.

2.8 Social Welfare Issues

In relation to Social Welfare issues we will refer to these in the proposal section of this submission. We will outline the present structures to ensure compliance operated by PCSO members to ensure that the social welfare class is appropriate for each of the iPros.

2.9 Purpose of Recent Legislation in this area

One point to note is that in the third last paragraph it is said “Class S PRSI applies to self-employed people and working directors who own more that 50% or more of the shares of the company in which they work”. This may be meant loosely but our understanding is that this was introduced to ensure those with more than 50% could not pay Class A contributions and receive the associated entitlements. The PRSI position for directors with less than a 50% shareholding is not straight forward and is dependent on establishing if such individuals have a contract of employment with the company which they are a director of.

2.10 Funding Class A and its Entitlements

In the second last paragraph it refers to PSC/MSC paying class PRSI and hence not entitled to a range of benefits available under Class A contributors. Our understanding and that generally held is the contributions under Class A do not fund the associated entitlements that it provided and each person joining Class A further contributes to the accumulated losses. Should contractors by their very nature, and the obvious need between contracts have the ability under Class A to automatically draw social welfare payments this we expect would be somewhat above the norms.

2.11 Exchequer Contributions and Support

With regard to point 5 we will be making a broad reference to variations where an individual should be considered an employee and distinguish them from iPros providing their professional services

under contract. We will in this submission outline the importance of iPros to Ireland Inc. and the role that they have played in attracting, FDI, supporting indigenous exporters of professional services and indeed in assisting and supporting start-ups all that contribute greatly to the downstream benefits to the exchequer in the form of taxes and further employment.

2.12 International Context

This outline of the International context and changing work practices is apparent in a very small section of the workforce. This is due to both changing work practices, personal choice, with increased and advanced technology in the workplace worldwide. This trend is experienced in many countries and is well documented as to the drivers of this change. In accordance with Eurostat figures it is no more prevalent in Ireland than in any other developed economy. Much of this choice is attributed to the possibility to work remotely to becoming a specialist in the service provided and hence being required for a limited but essential role in a project. The availability of these high levels of specialist skills has proven to be fundamental in attracting and retaining investment projects especially in the PharmaChem and IT sectors in Ireland and delivering investment and jobs.

Many countries are struggling with mechanisms to Recognise, Protect and Nurture this valuable talent as it is seen as a major driver of innovation and efficiency in the worldwide economy.

2.13 Options for addressing tax and PRSI issues

Several Options have been set out in the Consultation Paper as to how best approach this. We have looked at each of these options separately.

Option I. “Treat the worker as a class A contributor, with the employer contribution to be paid by the end-user. This option would not impact on workplace employment law; “

Under the provisions of the social welfare acts, Class A contributions are only payable on income arising from a contract of employment, as such, it is very difficult to see how the stated aim (applying Class A without impacting on employment law/right) could be achieved without a fundamental change in employment law.

The contractual position is that the payment for services will be between two companies, and as currently structured, the Taxes Consolidation Acts 1997 or the PAYE regulations make no provision for the application of PAYE to payments between two companies. PRSI is only payable in Reckonable emoluments. Broadly speaking, this is defined in income arising from a contact of employment, which is subject to PAYE. As such, it would appear to be very difficult to apply Class A PRSI in respect of payments between companies.

In terms of payments by a company to its directors, there have been a number of calls in the past requesting a statutory definition as to the contractual relationship between directors and their companies. This issue has also been highlighted in the past by the Social Welfare Appeals Office in their annual report.

Despite these requests, the only recent change was made in the Social Welfare Act 2013, which provided that individuals (or their spouses) whom held 50% or more of the share capital in a company are regarded as holding an excepted employment, that is, an employment which is not insurable under Class A for the purposes of the Social Welfare Acts. Should a director hold a

shareholding below 50%, it is necessary to consider all facts and circumstances in order to establish the correct PRSI class. As such, there can be inconsistencies between directors, based on minor differences in their working arrangements.

Taking the above proposal” Treat the worker as a Class A contributor, with the employer contribution to be paid by the end-user. This option would not impact on workplace employment law” as a proposal when under the current Umbrella structure and where Umbrella company pays the Class A Contribution this proposal would have merit in facilitating requirements of companies that need to engage contractors on a short term basis without impacting on workplace employment law. However we do feel this would be very difficult to implement.

Option ii. “Treat a payment made by an end-user, either to defined classes of intermediary or to defined classes of individual, to be a payment to the worker liable to tax under Schedule E. This option would not impact on workplace employment law; “

Again, this is a payment between two companies, so how would this apply. It also put a lot of risk on the end client as they are the people responsible for making the payment. They also have limited oversight as to compliance within the limited company. It would also be very difficult to set out clear rules as to when this provision would apply, for example, in a large accountancy firm please one of their employee (whom they would apply Class A PRSI to anyway) on secondment to a client for three months, would this provision apply? Would it change if the same accountancy firm was to second a partner (who would be subject to Class S)?

What happens if there are a number of companies in a chain? for example US Company is building a major manufacturing plant, and they engage a Company A to install a major IT system. Company A engage a number of individuals via limited companies to build part of the service, some of this work is done offsite and may in fact happen outside Ireland, other parts of the work require the individuals to be onsite at the US companies premises Ireland. How would this proposal work in these circumstances?

Option iii. “Where an intermediary-type structure is in place, apply a surcharge to undistributed income of the intermediary; “

In the vast majority of the cases PCSO members deal with, there is little if any undistributed income, as such, there would be little to gain from this proposal.

Option iv. “ Where an intermediary-type structure is in place, deem any undistributed income of an intermediary company to be paid to the individual who carried out the work.”

Again, given the comments above, we can foresee limited benefits from this type of structure, given that one of the most tax effective ways of extracting cash from a company is via salary and bonus, which will be subject to PAYE/USC/PRSI deduction.

Section 3

The Professional Contracting Sector in Ireland, UK and Europe

3.1 Growth in this Professional Sector

The growth in the professional contractor sector is a worldwide phenomenon and more and more professionals have chosen to provide their services as independent professionals.

3.2 This sector in the UK has been subject to many Reports

Our closest trading partner the UK has created many reports in this sector over the last number of years. It is an area of concern and these reports have stressed the importance of the sector to the UK economy.

1. The Role of the Freelancer in the 21st Century British Economy. By Professor Andrew Burke.
Key Finding *“Freelancers play a pivotal role in Britain’s 21st Century innovation-driven economy”.*
2. Report on the All Parliamentary Group “The Critical Importance of Freelancers to the UK Economy” Chairman of the Group Brian Binley Conservative.
Key Finding
“Freelancers play a vital and often understated role in the British Economy and at a time when we need to grow our economy to meet the aims of the budget strategy, they could not be more important to the wellbeing of our nation”.
3. Charter and Proposal “The Freelancer Agenda “by Phillip Ross and Andrew Burke.
Key Finding
“The importance and distinct economic role of freelancers in the modern economy needs to be: Recognised, Protected and Nurtured.”

3.3 Why More Professionals working under a Contract for Services

Professionals have chosen to take more control over their lives and careers, they wish to work as and when they decide, they wish to focus on an area of specialisation, and make their service in this area more valuable. Some will not work full time, but work intensively for a period and then take a break, ramping up on expertise and skill levels and then getting back into industry. The old “employer versus employee” paradigm in the professional sector is falling down and people are coming together in teams to create “innovation and efficiency”

Much has been written of these changes and several reports have been undertaken to attest to the importance of this sector in harnessing “Innovation and Efficiency”.

These are just a two of these Reports.

Future Working: The Role of Europe’s iPros by Patricia Leighton Professor of European Social Law at IPAG Business School France.

EFIP Manifesto European Forum of iPros 2014 “Unlocking the Potential of Europe’s iPros.

This is a sector that has attracted much attention, due to its importance in creating, attracting high technology and knowledge based companies and the associated FDI. Some EU States are starting to realise in planning a modern “Knowledge Based” economy it is essential that this sector is both understood and supported appropriately.

3.4 The Importance of the Sector in Ireland

The vast economic value iPros bring to economies has been proven through various studies and reports from leading experts around the world, some of which have been mentioned above.

3.5 FDI & Job Creation

This is particularly true for Ireland and our small open economy. We are extremely reliant on FDI and the benefits that come with it. iPros generate exceptional economic and social value by bringing their expertise to bear on substantial capital projects, new product developments and other downstream job-creating initiatives. These independent professionals provide unique cross-industry experience, entrepreneurialism and innovation that combine to make the vital difference in today’s internationally competitive marketplace.

3.6 Pharma & Chem Sector

A commonly distributed fact by the IDA is 9 out of the top 10 world’s pharma companies operate from Ireland. We rank 7th in the world for exporting medical and pharma products which exceed €39 billion each year. Pharma is only one area iPros have a direct impact on in Ireland. This phenomenon however could only happen because we had a large cadre of professionals, willing to provide their specialist services “as and when required” to critical capital projects. These ensured we had the required specialist skills to attract and manage FDI projects.

3.7 Mobile Flexible Workforce

Their availability in Ireland served Ireland well, and established an international reputation for getting projects completed on time, and within budget. We had these “*Can Do*” professionals who were willing and able to travel wherever the project was in Ireland, base themselves there for the duration, and commit to getting the project completed.

These cadres of mobile professionals and their associated expertise have made us the preferred location for many FDI projects that we would otherwise find it difficult to attract. We have been successful in this area and it is important to attribute and recognise the role played by these mobile professionals that will base themselves in Ballinasloe, Wexford, or Donegal wherever the project is for the duration of the project.

3.8 Export of Professional Services

Indigenous Irish companies have engaged iPros and a lot of our home grown companies compete very favourably on a worldwide stage especially in the engineering and IT sectors. iPros are crucial for the success of high potential start-ups as they require expertise “as and when” required as it is neither cost effective or practical to have this specialist expertise on a full time basis.

3.9 Comments PCSO Survey and Forum

Below are some comments from the PCSO Survey and Forum. There was deep consensus on the issues addresses in the Forum and the Survey undertaken of MNCs, with the following being representative comments from leading Irish and MNC firms:

Large Consulting Engineering – ***“our ISPs, Independent Service Providers, are an essential part of our business, as we operate on a project-by-project basis, and we need their expertise for the duration of the projects, as they are the drivers in successfully and efficiently completing these projects. “***

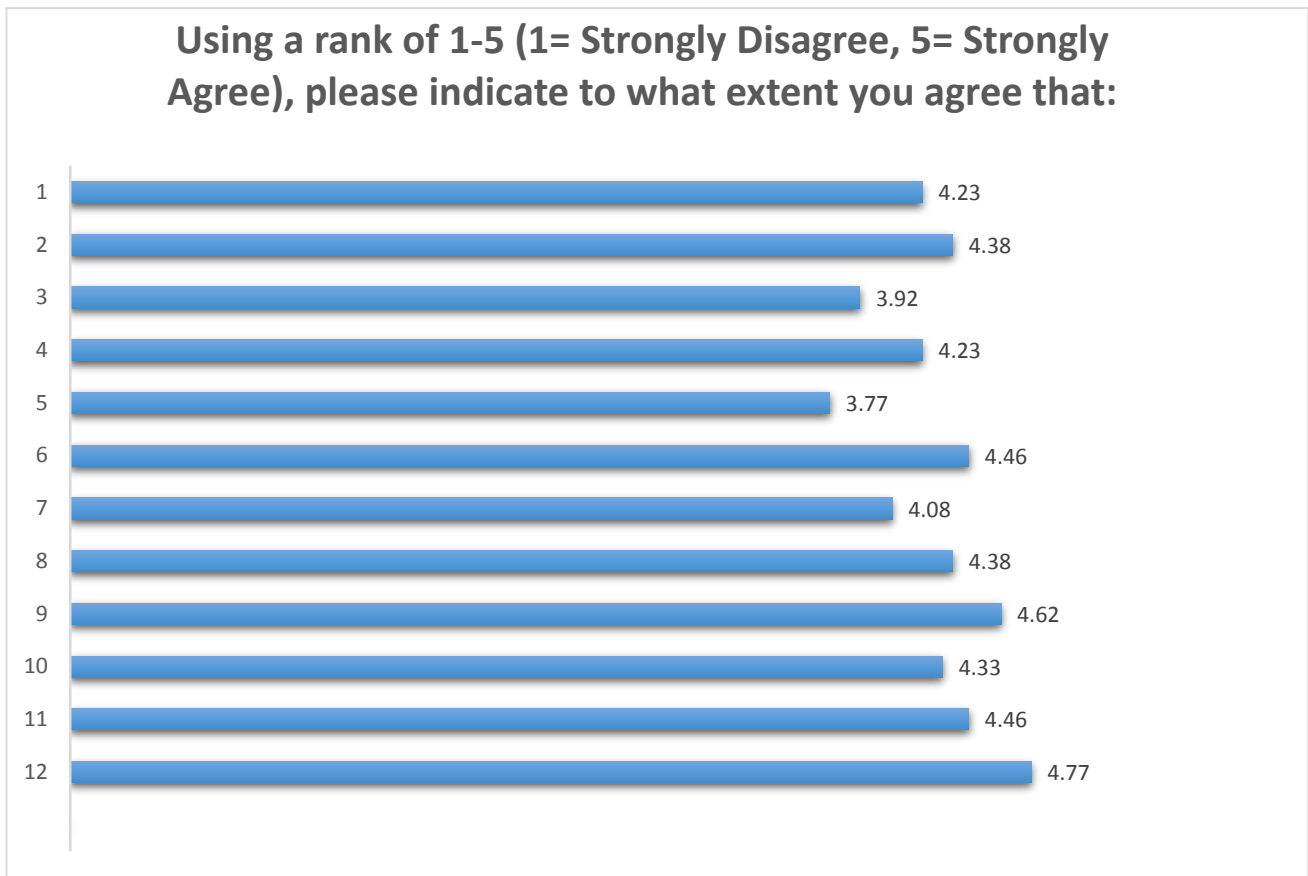
Large IT Multinational: ***Contracting as a method of working/engaging is established, recognised and embraced in most developed economies. In Ireland it seems like an inconvenience to some authorities!!!***

PharmaChem Engineering Group – ***“we operate in a very specialist area and the expertise we require needs to be available as and when we need it for a project, that is what we provide to our clients and it is a major part of our success.”***

International Engineering Group – ***“the availability of expertise as and when we need it is now a worldwide phenomenon and this is the way it is operating, it allows us to be efficient and fulfil our customers’ demands.”***

IT Multinational – ***“Contracting State and State-related parties need to truly value the expertise that exists within the consulting diaspora and accept that they need to engage using day rates which facilitate the continual upping of this expertise. Currently it can be argued that they want the value of the expertise but not to pay appropriately for it.”***

The Most recent survey undertaken with the support of IBEC to the Pharma Chemical and Engineering Sectors sets out below the importance attached by these sectors to the economy and specifically in attracting FDI and Capital Invest Projects. (Questions asked in the Survey 1- 12 Below)



Survey Results: Using a rank of 1-5 (1=Strongly Disagree, 2=Disagree, 3=Neutral, 4=Agree, 5=Strongly Agree), please indicate to what extent you agree that:

Questions Asked in Recent Survey:

1. iPros need to be treated as separate important segment of the labour force and an appropriate tax regime put in place for that which would enable to cost of delivering capital projects to be more competitive

Weighted Average Result: 4.23

2. As a valued segment of our flexible professional workforce, a tailored tax support structure is needed for iPros.

Weighted Average Result: 4.38

3. Tax compliance is central to doing business in Ireland. iPros value this more than most due to the nature of their work (heavily regulated environment where compliance is paramount)

Weighted Average Result: 3.92

4. The increasing costs of delivering capital projects are likely to cause foreign companies to review their plans to locate incremental capital investment in Ireland
Weighted Average Result: 4.23

5. Ireland's reputation as a great place to do business for MNC's is being damaged by this upward trend in the cost of iPros]
Weighted Average Result: 3.77

6. Higher rates are not the solution. Instead, what is needed is a system that will neutralise the travel and subsistence expenses involved and allow iPros to quote location independent
Weighted Average Result: 4.46

7. The fact that iPros are demanding higher rates, due to the current interpretation of the Revenue Commissioners of "Normal Place of Work" is adding substantially to the costs of delivering capital projects
Weighted Average Result: 4.08

8. Attracting iPros in Ireland and indeed Highly-skilled Non Irish nationals is now proving more difficult as they are reluctant to travel to capital projects where travel and accommodation expenses will be incurred but not allowed for tax purposes
Weighted Average Result: 4.38

9. The availability of iPros is vital to the capacity of our company to deliver Capital investment projects in a timely and efficient manner
Weighted Average Result: 4.62

10. It would not make sense for our companies to retain employees for the tasks for which we use iPros
Weighted Average Result: 4.33

11. iPros possess a range of skills and expertise that enhance the skills of our permanent staff as and when required on capital projects, and this allows us to compete for capital projects that we would find difficult otherwise
Weighted Average Result: 4.46

12. The Engineering sector regards independent professionals (iPros) as an important part of their labour force in particular in the context of capital investment projects
Weighted Average Result: 4.77

This is the Feedback from the key players in these Sectors.

3.10 Successful Knowledge Based Economy

In Ireland's drive to become a "Knowledge Based Economy" (our stated policy in this area) it is essential to have effective, efficient employment laws and taxation frameworks in which our iPros can operate. iPros support those innovative industries we are endeavouring to attract to Ireland. Our iPros support multinationals setting up in Ireland, multinationals expanding in Ireland, and also indigenous Irish companies exporting their services. Most importantly, iPros support enterprising SME's in Ireland, providing their skills as and when required.

3.11 Request for Ireland to "Recognise, Protect and Nurture" this Sector

The flight of talent, acerbated by the unfair and counter-productive treatment outlined in this submission, has reached such epidemic proportions that there is an extreme scarcity in Ireland, and many projects are in danger of being lost to Ireland, according to well-placed insiders, such as civil and project engineering firms, and recruitment agencies.

Ireland, like most countries, needs to fully appreciate the benefits a strong iPro culture has on its economy before it's too late. Our submission, to this consultation process is to highlight the importance of the sector to Ireland Inc., and to put forward a proposal to ensure we "Recognise, Protect and Nurture" this sector that is of strategic importance to the Irish economy.

3.12 Worldwide Authority in the Research in this area sitting in Dublin in Trinity.

We in the PCSO have been very fortunate in having a worldwide authority in this sector to assist us, and provide access to the research he has been involved in over the last number of years. Prof Andrew Burke, previously of Cranfield Business School has taken up the role of Dean of Business School at Trinity College Dublin. Much of the research referred to in these papers has been undertaken by Prof Burke. Prof Burke was also good enough to be the keynote speaker at the most recent Forum held by the PCSO and has been an invaluable supporter in endeavouring to achieve a workable solution for the iPro sector that will both support and simulate the Irish economy.

3.13 IPSE reports and Research from this Sector in the UK

The PCSO has also been assisted by IPSE (Independent Professionals and Self Employed) a UK based Organisation that represents the self-employed and independent professionals. They have been good enough to make their considerable research and reports available to the PCSO and have attended the most recent Forum in January of this year.

Section 4

Two Major Areas of Concern affecting the Contracting Sector in Ireland

4.1 Classification of iPros and the appropriate Social Welfare classification.

The PCSO recognises the fundamental objective of the Consultation Paper to address the loss to the Exchequer that may arise under arrangements where an individual's use intermediary – type Structures, however it is the view of the PCSO that the Consultation Paper fails to acknowledge the reason for the use of intermediary – type structures by iPros.

While the consultation paper uses the rhetoric of a changing labour market, there is little to suggest a true understanding and value of the increasing diversity in the Irish labour market. Evidently this comes in the form of the Consultation Paper alluding to the fact that such individuals under an intermediary – type Structures, would *'otherwise be an employee'* yet excludes individuals who they categorise as *'genuinely self-employed'* when operating as a Sole Trader, through a Partnership or through the incorporation of a business.

The appropriate Social Welfare classification of iPros is central, and the most important factor in reaching this and the true value and understanding of the work of an iPro is simply to undertake a fundamental analysis of each individual.

As a result, the PCSO has developed a comprehensive Suitability Questionnaire to evaluate the suitability of an iPro to operate under an intermediary Structure.

The objective of each suitability questionnaire is to analyse and recognise the self-employed characteristics displayed by an iPro. The aim of the suitability questionnaire is not limited to assessing the characteristics of self-employment, but also to examine the most appropriate intermediary type structure to operate within, taking into consideration factual conditions of a Contract for Services.

The use of an Intermediary type Structure takes the form of an Umbrella Company, a Managed Service Company or a Personal Services Company. In cases where an iPro displays the traits of risk taking, independence and exposure to financial risk, an iPro operates under the intermediary type structure of a Managed Service Company or Personal Service Companies, paying Class S PRSI.

In cases where an iPro does not portray the characteristics of self-employment with the supply of services only, the use and availability of client materials/ equipment, and a limited ability to sub contract, an iPro operates under the intermediary type structure of an Umbrella Company paying Class A PRSI.

The Suitability Questionnaire not only echoes the criteria as detailed on Code of Practise for Determining Employment or Self – Employment Status of Individuals, but applies a collective and analytic approach encompassing both guidelines from Social Welfare and Revenue to ensure the classification of individuals are correctly categorised as a self-employed or employed, eliminating the risk of incorrect payment of contributions and misuse of business expense claims to the exchequer.

The suitability questionnaire is a first step in doing so by acknowledging and adapting to changing work patterns; Not only does this Questionnaire examine the classification of iPros but collectively it builds a profile on the proposed work tasks, responsibilities, business expenses and financial risk borne by the iPro.

In the view of the PCSO, it is believed that current government guidelines and briefings are built on traditional work patterns and are simply not sufficient - **It is essential that greater understanding and recognition are required for the work of iPros operating via an Intermediary type Structure.**

4.2 Taxation Issues

The consultation Paper outlines a significant concern of potential losses to the Exchequer via the 'payment of *unwarranted tax free expenses*' through the use of intermediary – type structure, with the concluding view that different tax outcomes can arise between two individuals who perform the same services for an end user. However, again it is the view of the PCSO that the Consultation fails to examine the actual reason for the engagement of iPro; But rather alludes to the fact the functions carried out are the same as that as an employee.

It is the view of the PCSO that this is an assumption of the Consultation Paper rather than factual.

In practice, iPros, unlike employee counterparts, are more often than not restricted in their ability to claim tax relief on business expenses claims; Most evidently, this comes in the form of an employee been permitted to claim travel and subsistence while away from their normal place of work, however for an iPro there is no consensus on what is deemed as the '*normal place of work*' and as such often iPros fall victim in their inability to claim such business expenses.

Example: An employee who is resident in Dublin, working for Company A, is posted to Cork for 6 months; during this time the employee is entitled to travel, accommodation and subsistence claims devoid of any tax liability pertaining to such claims on the individual employee.

Taking the same scenario, an iPro who is resident in Dublin, undertakes a Contract for Services in Cork, yet the iPro does not receive the same entitlements in the ability to claim travel, accommodation and subsistence.

Collectively the PCSO has addressed such concerns with a detailed submission to the Department of Finance in August (Refer to Appendix B) In summary; this submission provides an in-depth evaluation into the uncertainly, unfairness and lack of clarity available for iPros for business expense claims.

The Consultation Paper, seeks to exclude individuals who they categorises 'genuinely self-employed' when operating as a Sole Trader, yet in doing so, this statement fails to recognise the reason why more and more Companies, and most significantly FDI, seek the services of the iPros via a LTD Company structure.

Section 5

The Proposal

The Proposal covers two distinct areas which are the main concerns in the sector at present.

1. The Classification of iPros for Social Insurance classification purposes.
2. The Classification of “Normal Place of Work for iPros” and the ensuing allow ability of “Travel and Subsistence Expenses” for tax purposes.

5.1 The Classification of iPros for Social Insurance Purposes

As previously outlined the PCSO has developed a comprehensive suitability questionnaire to evaluate the suitability of an iPro to operate under an Intermediary Structure to ensure no loss to the Exchequer or otherwise.

Through strict regulation and control, members of the PCSO supply the following intermediary – type structures to iPros:

Umbrella Structure

Umbrella Structure solution is suitable for iPros who undertakes short term contracts however do not display the full characteristics of a self-employed person or business.

As result, iPros under the Umbrella Company are obligated to pay Social Insurance at Class A, with expenses limited to those that an employee would claim and all responsibilities for remittance of VAT/PAYE are remitted to the Revenue by the service provider, who owns and fully manages the Company.

28% of PCSO Clients utilise this structure and remain within Class A PRSI remit.

Managed Company

The Managed Company solution is suited for iPros with a long-term contracting career perspective. iPros under the Managed Company are Shareholders and Directors of the Company, and engage in the services of a managed service provider to undertake the administration requirements and operations of the Limited Company.

The managed company is owned by the shareholders, however it is the responsibility of the Service Provider to ensure that all remittances for taxes are completed within the legislative timeframe and remitted correctly.

Personal Service Company

The Personal Limited Company is most suitable for iPros who have a long term aim in growing a business beyond Personal Services, with multiple clients. iPros have the ability to employ staff, purchase assets and are fully responsibility for the remittance of their taxes and control of the expenses they claim.

Frequently a Service Provider acts as an advisor, again ensuring remittances for taxes are completed within the legislative timeframe and remitted correctly.

To ensure ongoing compliance and regulation, each PCSO member is subject to a bi-annual, independent assessment by PWC, to ensure best practice and advice is continually adhered to and consistency remains in advising the most appropriate use of intermediary type structure and government policies.

On day to day bases, the functions of the Suitability Questionnaire will remain key in determining the classification of an iPro.

As previously highlighted, the objective of the suitability questionnaire is to analyse and establish the self-employed characteristics displayed by an iPro. In cases where an iPro displays the traits of risk taking, independence and exposure to financial risk: an iPro operates under the intermediary type structure of a Managed Service Company or Personal Service Company, paying Class S PRSI. While in cases where an iPro does not portray the characteristics of self-employment with the supply of services only, the use and availability of client materials/ equipment, and a limited ability to sub contract, an iPro operates under the intermediary type structure of an Umbrella Company paying Class A PRSI.

Collectively we believe the current suitability assessment works; in practice approximately 28% of Contractors provide their services through an Umbrella company with the deduction of PRSI at Class A.

The criteria for self-employment are clearly explained to each iPro, in tandem with a comprehensive review of the conditions designated on the Contract for Services.

Current Classification System used by PCSO members

We believe that the current suitability assessment works in practice, it means that approximately 28% of iPros will provide their services through an Umbrella company with the deduction of PRSI at Class A.

For the remaining iPros we feel that a Self-Declaration Model is the most pragmatic solution.

Umbrella Solution:

As stated above in part 1 the Umbrella company is utilised to capture the iPros who do not display the full characteristics of a self-employed person or business, the assessment of individuals will ensure that iPros who engage their services on a short term basis and who may not fit the definition of self-employed will pay PRSI at Class A.

The PCSO suitability statement will identify this class of Contractor and advise their client accordingly.

Self-Declaration Model (Example in Appendix E)

For those other iPros we are advocating the use of a self-declaration based system. In our Special report of 2015 we set this system out for use in the Contracting sector.

How it will work?

The self-declaration document will have two parts to it.

The first part will be a declaration by the individual that they understand that they are an iPro and they understand the taxation and legal obligations and they do so of their own free will.

The second part will be more detailed and will relate to Contractor's who feel they are operating as an iPro in the normal course of business and display all the characteristics of a business.

The iPro will have the intention of operating a career as an iPro in the normal course of business, and display the characteristics of a self-employed person who would normally be taxed under Schedule D, Case II.

The individual will sign the document and this will be countersigned by their Professional Advisor. On completion of the signed document this will be submitted to the Revenue Commissioners.

We propose that the Revenue issue a certificate of receipt acknowledging this self-declaration, this document will name the Individual and the Limited Company that they are operating in.

The Contractor and Limited company may then furnish this to their end-client for compliance purposes. This will give peace of mind to their client that they are registered with the Revenue Commissioners.

Once it has been assessed that the individual is a genuine iPro we feel they should be allowed to claim their expenses as per our Dept. of Finance submission on the treatment of travel & accommodation Cost

Benefits of the Proposed Solutions

The PCSO feels our solution if put into practice will be of benefit to all Stakeholders and would not require onerous legislative change. We have outlined the benefits to the stakeholders below.

Contractors (iPros)

The individuals who undertake these Contracts for Services will be satisfied that they have clarity that they are operating in a compliant manner, they will understand what expenses they can claim, and that they are paying the correct Class of Social Insurance. Those undertaking short term contracts and who don't display the characteristics of self-employment will pay their Social Insurance at Class A and will not be forced into a self-employed option whilst undertaking a contract. Other self-employed iPros will have the peace of mind that they are entitled to claim business expenses as per the Revenue guidelines and are been treated in a fair and equitable manner.

End Clients

These include MNC's, Indigenous Irish businesses and Government & Semi state bodies. The end client would have the assurance and knowledge that iPros with whom they enter into a Contract for services with and their associated Limited companies are operating in a compliant manner and that there is a clear system in place for classifying this class of worker. Moreover they will have the assurance that they will not have a future contingent liability in relation employment obligations or further financial liabilities from the state.

It would also allay concerns of an increasing cost of labour with new onerous legislation. At present in certain sectors including IT & Pharma there is a scarcity of Skilled Professionals. This has already lead to an increase in the cost base for the sector. An additional administrative and PRSI burden would have a detriment to how these companies operate in Ireland in the long term.

Revenue Commissioners

The benefit to Revenue is that they will have a database of all iPros who self-declare. They will be able to recognise them as a grouping within their systems and they can easily monitor their activity to ensure compliance. The National Contractors Project has already led to increased compliance and we feel that the introduction of self-declaration will give Revenue control over how the industry operates.

Dept. of Social Protection (DSP)

DSPt. will be able to identify the level of Social Welfare been paid to this group. They can easily analyse the level of PRSI been paid at the different classes. They can satisfy themselves that a process is in place and the correct PRSI contributions are being paid.

Other Stakeholders

The benefits to the other stakeholders including IBEC, IDA, Enterprise Ireland, Recruitment Agencies, and Accounting Advisors are tangible. It will allow them to attract more clients, more FDI and give greater confidence when advising their clients and members on the management and operation of the Professional Contractor within Ireland. The main benefit is to give greater clarity to the stakeholders and to ensure that Ireland Inc. continues to gain greater Investment from FDI due to a compliant, flexible workforce.

Conclusion

The PCSO proposes that by undertaking the proposal below we will address the major concerns affecting the sector at present.

1. Suitability Procedures

The “Suitability Statement” and accompanying “Self- Declaration” used by the PCSO members be rolled out to cover all iPros. This will involve the iPro and their Accountant considering their specific circumstances and submitting a Self-Declaration to the Revenue Commissioners. The Revenue Commissioners will then provide an acknowledgement of this in writing. This acknowledgement being available to attest to the status of the worker as an iPro to those who seek to engage the iPro. This simple structure will have considerable benefits for all parties as outlined in this proposal.

2. Submission in August 2015 to Department of Finance by PCSO

The Submission to the Department of Finance in August 2015 by the PCSO is acted upon and iPros are no longer discriminated against in relation to the expenses they incur “Wholly and Exclusively” for business purposes.

3. PCSO Research in this Sector

The PCSO has access to considerable research in this sector and can engage with the Department of Finance on this Submission as required.

5.2 The Classification of “Normal Place of Work for iPros” and the ensuing allow ability of “Travel and Subsistence Expenses” for tax purposes.

The PCSO proposal in this regard is that due consideration is given to its Submission to Department of Finance in August 2015 where it provides a comprehensive proposal for the treatment of “Travel and Subsistence” incurred by iPros when they are necessarily away from their Home Base for work purposes.

This proposal would have the benefit of ending the current discrimination against iPros in that they are unable to claim for tax purposes expenses incurred wholly and exclusively for tax purposes, unlike employees, civil servants, public servants.

Appendix A

Special Report

The Independent Professional

Knowledge-Based Economy

The PCSO and The IPCI

Author: Dermot Duff

May 2015

SPECIAL REPORT: THE INDEPENDENT PROFESSIONAL

Knowledge-Based Economy

The Professional Contractors Services Organisation

And

The IPCI

Dermot Duff

May 2015

About the Professional Contractors Service Organisation (PCSO)

The PCSO has been established to support and promote the Professional Contracting Sector.

The PCSO has as its mission to help establish a clear, fair and practical, tax and legislative framework in Ireland to cover the Professional Contracting Sector.

The PCSO has begun to implement a Code of Practice for all its members. This is reviewed and reported on by PWC bi-annually.

About the PCSO Forum

The PCSO has created a FORUM to bring all the relevant stakeholders around the table with a view to establishing best practice across the sector.

The PCSO has engaged with Government agencies in this initiative in order to have an attractive, tax-compliant environment.

In each of these endeavours the PCSO has worked hand in hand with the IPCI.

The participants in the Forum are set out below, and a mention is made (in brackets) of their specific area of concentration.

- **Enterprise Ireland (EI) (supporting Irish based Services Companies who export their services internationally. Many are in the Professional Services Sector)**
- **Industrial Development Authority (IDA) (attracting FDI into Ireland and expanding the companies already based here. The flexible workforce of professionals available in Ireland are a big factor in attracting FDI)**
- **IPCI (Independent Professional Contractors Ireland - national representative body for independent professional contractors in Ireland)**
- **ICAI (assisting with Tax policy and to support their members)**
- **ITI (assisting with Tax policy and to support members)**
- **Recruitment Agencies (Agencies that support and provide the specialist skills required by companies operating in Ireland, who seek a Compliant and Efficient structure in which to operate)**
- **Revenue Commissioners (working to ensure a “Fair and Efficient” taxation system in the sector)**
- **Department of Jobs Innovation and Enterprise (Tax Policy to support Irish based Industry and Policy adjustments to ensure a competitive economy)**
- **Accounting, Taxation advisors to the Independent Professional Contracting Sector (seeking a Compliant, Equitable, Efficient system to accounting and taxation of the Knowledge Based Flexible Workforce, KBFW)**
- **CA Interims (Chartered Accountants) tax policy and supporting members**

About the Independent Professional Contractors Ireland (IPCI)

The IPCI is the national representative body for Independent Professional contractors in Ireland and has made an invaluable contribution to this document.

The IPCI has as its mission *to support a vibrant and compliant sector supporting FDI into Ireland,*.

The IPCI has developed a code of practice for all of its members that will assist toward establishing professional standards.

About this Report

An industry wide survey has been undertaken and the findings have been presented at the most recent Forum in November 2014.

This report draws on these findings and further consultation with the sector, and international proposals in this sector.

Foreword

The growth in the professional contractor sector is a worldwide phenomenon and more and more people have chosen to provide their services as independent professionals.

The Professional Contracting Sector, and Interim Management sector as it is referred to in Ireland, the Freelancer sector as it is referred to in the UK, Independent Contractors as used in USA, Canada & Australia and iPros throughout Europe are the subject of many reports at present.

The professional contracting sector which provided an important role in supporting and attracting MNC's and Indigenous Irish companies is suffering from a lack of clarity at present.

In this report we are focusing on these contributors to the Knowledge Based Economy, the professionals, in IT, Engineering, Life Sciences, Interim Management and Professional Consultancy Services sectors whose use of professionals is often project driven, as well as Medical, Health and Aviation. For the sake of clarity we are going to draw on the European term and refer to these Independent Professionals as iPros throughout this report.

Those are the sectors where the greatest need is for knowledge based professionals to support the Knowledge Based Economy that Ireland strives for. Our taxation, "The Knowledge Box "initiative and our stated policy to develop a Knowledge Based Economy will be dependent on our ability to provide knowledge based professionals as and when required to support these industries.

For this very reason it is essential now that the lack of clarity and its consequent effect on this sector are tackled as a matter of urgency.

This report sets out proposals on how this can be undertaken.

Acknowledgements

Michael Buckley who has kindly agreed to act as Chairman of the PCSO Forum

PWC and specifically Feargal O Rourke and Ger O 'Mahoney for their support of the PCSO

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Stewart Rodgers of FCSA in the UK

CEOs of MNCs for taking part in the recent survey

Patricia Leighton for her Report on European iPros

PCG UK Lobby Group

EFIP European Forum for Independent Professionals

Phillip Ross author with Andrew Burke of LFIG Report in the UK

Duncan O Leary Author of "The rise in self-employment requires a smart response from Government" a DEMOS Report

Frank Collins of PARC for involvement in the Task Force to put this document together

Pat Byrne of CA Interims for involvement in the Task Force to put this document together

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The iPros Phenomenon

iPro numbers have been growing throughout Ireland, UK, Europe, (Europe 8.9 Million, and Ireland 60,000 are the estimated numbers of iPros) and the USA as well as many other countries over the last 20 years. More and more people chose to provide their services to industry in this manner as Independent Professionals. We will refer to reports from Eurostat and accompanying graphs in the appendices to this report to demonstrate this growth over the last ten years.

How they provide their services varies, but one factor is common, they personally control how they provide their professional services.

They may:

- a. Work for one week, one month or a year, or for one client or for many.***
- b. They may charge an hourly or daily rate, and these rates reflect the expertise they make available to their clients.***
- c. They may organise themselves to provide their services through a Limited Company, a Managed Company, or they may operate as Sole Traders.***
- d. People with permanent positions may also provide professional services in their own time to supplement their incomes.***

They engage clients by word of mouth, networking, and becoming known as subject matter experts, by advertising, or through recruitment agencies that specialise in matching required skills with industry on a contract basis.

This way of providing services suits many people, from those who want to specialise in a given area, those who want to avoid “company politics”, those who want to work when they choose to those who want to experience a sector without committing to it long term, to part time working for professionals raising a family, to those easing themselves into retirement. These are the factors attributed to the great growth in working as an iPro.

The numbers of iPros are growing year on year and it suits both parties. The iPro’s for the reasons above, are given greater freedom and the Industries that they support have the opportunity to get the expertise and assistance as and when they require it. This flexible resource, available on a “Pay as you need” basis allows SME’s expertise to grow and develop that they could not otherwise afford.

The iPros

Who are they – Our Knowledge Based Workers

The definition of iPros as used by Eurostat is quite wide, for our purposes here in Ireland we will confine it to a narrower range of professional individuals. In fact we use existing legislation to provide some clarity here. Under the current taxation regime we have what is referred to as Schedule D case II. This refers to individuals who, were they providing their services as a sole trader, would be taxed under Schedule D Case II (providing professional services), rather than Schedule D case I (providing manual or semi- skilled service)

This will provide clarity and a uniformity of approach for taxation definition purposes, and this Schedule D Case II refers to the professions such as white and blue collar workers rather than any manual labour or basic technical skills.

So to use more modern parlance we are referring to Knowledge Based Workers, those that provide their expertise and knowledge to industry. Those in these categories tend to work in the following professional areas - IT, Life Sciences, Pharmaceutical, Engineering, Educational, Medical, Accounting, Transportation, Financial. It is in these professions in Ireland that the iPros are active in, and it is these industry sectors that have the greatest need for Knowledge Based Workers.

The Definition and Extent of iPros

A report by the European Forum of Independent Professionals (EFIP) using Eurostat findings states that the number of Freelancers in the UK that work in professional occupations is said to be in the region of 576,000 and a further 352,000 work in managerial occupations.

The numbers of iPros as measured by Eurostat has seen an increase from 2004 numbers of just under 6.2 million to 8.9 million in 2013, making them the fastest growing group in the EU labour market. In Ireland it is estimated we have approximately 60,000 iPros by Eurostat.

In this report by the European Forum of Independent Professionals (EFIP) from which the above figures are taken spells out “Who are the iPros?” They are:

- ***iPros are skilled Knowledge Workers***
- ***They supply services to a range or succession of clients***
- ***iPros are neither employers nor employees***
- ***They have commercial (self-employed) relationships with their clients***
- ***iPros work for a fee, not a salary***

European wide and especially in the UK huge efforts are being made to get a clear, efficient and complaint framework to facilitate the growth of iPros. They have been the subject of several reports

that are listed in the appendices for reference and several of these have been used in presenting this report.

The Economic Benefit of iPros

Looking at the UK, our closest neighbour, and probably the economy that most closely reflects that of Ireland, and also a great competitor of ours for Foreign Direct Investment, the most recent report is:

“The Role of Freelancers in the 21st Century British Economy”. This report is authored by Professor Andrew Burke, previously Director of the Bettany Centre for Entrepreneurship at Cranfield School of Management and now of Trinity College, Dublin. Prof Burke has undertaken considerable research in this area in the UK and we are very lucky to have his assistance and participation with the PCSO Forum in Ireland.

Andrew in his report outlines the “pivotal role that Freelancers play in Britain’s 21 century innovation-driven economy.

- ***They are sources of and conduits for innovation in both corporations and SMEs***
- ***They enable businesses to manage, in fact reduce, entrepreneurial risk and so promote innovation and enterprise***
- ***They liberate businesses from limits of their internal resources and enable the use of exceptional talent that would otherwise not be economically feasible to hire on employee contracts***
- ***They enable de-risking of some of the uncertainties of the market so that firms can reduce the risk of growing***
- ***They reduce the amount of finance required for innovation and business start ups***
- ***They reduce barriers to market entry and reduce minimum efficient scale***
- ***They promote efficiency-driven economic performance***
- ***They enable businesses to maximise performance across peaks and troughs in demand***
- ***They create jobs by increasing the level of innovation and efficiency in the economy and helping projects succeed***

(The full report and the background to it can be made available if required)

The contribution in the UK of the iPros is very similar to contribution of iPros here in Ireland, and this is borne out by comments from the recent PSCO survey in which we received huge support for bringing a more compliant, transparent and equitable framework for dealing with iPros in Ireland.

iPros in Ireland support MNC’s , FDI, Large Irish Indigenous companies, and also assists greatly the SME sector, providing services and skills as and when required. The access to these skills as and when required makes Ireland an effective place to do business and create jobs

Please see the comments.

Some Comments from the Survey and Forum participation

Project Management Group – ***“our ISP, Independent Service Providers are an essential part of our business, as we operate on a project by project basis, and we need their expertise for the duration of the projects as they are the drivers in successfully and efficiently completing these projects. “***

Large IT Multinational: *Contracting as a method of working/engaging is established, recognised and embraced in most developed economies. In Ireland it seems like an inconvenience to some authorities!!!*

DPS – ***“we operate in a very specialist area and the expertise we require needs to be available as and when we need it for a project, that is what we provide to our clients and it is a major part of our success. “***

IT Multinational: *Contracting State and State-related parties need to truly value the expertise that exists within the consulting diaspora and accept that they need to engage using day rates which facilitate the continual upping of this expertise. Currently it can be argued that they want the value of the expertise but not to pay appropriately for it.*

Jacobs – ***“the availability of expertise as and when we need it is now a worldwide phenomenon and this is the way it is operating, it allows us to be efficient and fulfil our customers’ demands.”***

In our drive to become the “Knowledge Based Economy” with our stated policy in this area and also our current taxations initiatives to establish the “ Knowledge Box”, it is even more essential for us in Ireland to have an effective efficient employment laws and taxation framework in which our iPros can operate and support the Innovative Industries we are endeavouring to attract to Ireland. Our iPros support Multinationals setting up in Ireland, Multinationals expanding in Ireland, indigenous Irish companies exporting their services, and most importantly SME’s in Ireland seeking the skills set as and when required to drive their businesses forward.

Issues that Effect iPros

As Report titled “The Freelancer Agenda” prepared in the UK in September of 2014 to assist the Labour Party come up with proposals to grow and develop the Freelancer sector and to allow them to provide their supports to Industries in the UK. It states that “although Freelancers make a distinctive contribution to the economy, there is a common lack of recognition of that contribution, and a suspicion that the rise of freelancing is an undesirable development.”

A similar view is held by some in Ireland and the same would be held true for the following comment in this report. “Indeed, Freelancers are sometimes portrayed either as people who have been coerced into self-employment, or as people hiding behind a freelancer shell to avoid paying higher and additional taxes, as well as national insurance”

However iPros in Ireland generate the benefits discussed in the previous section not as replacements for existing employees, but predominantly working in partnership with those employees. iPros serve a different economic function particularly in driving innovation and helping firms overcome the challenges faced by risk and uncertainty and in so doing help create and sustain employment.

The role of the iPro has not been understood fully in the modern economy and the main reason for this being that their new pivotal role has only really come to the fore with the emergence of the innovation driven economy.

Entrepreneurship

The act of being self-employed, even if this involves employing others, of its essence requires the individual to be entrepreneurial in order to succeed. It tends to involve the professional flexible workforce supporting each stage of the business lifecycle.

We assert this on the following basis. The self-employed person is entirely a risk taker. Such people are not protected from the market (as employees are). Their income from their business is exclusively dependent on the whims and fancies of the market/s within which they operate—that is, their clients. If they don't satisfy the needs of their clients, their income will quickly diminish or stop. They will then cease to be a business because a business does not exist without income. It follows that the consequence of being self-employed demands an obsessive client focus. It demands being entrepreneurial—assuming, that is, that the individual is genuinely self-employed. We contend that the behavioural essence of entrepreneurship is this client focus.

It is this profound characteristic of self-employed people (iPros) that warrants attention and to which this report looks.

Concerns of Business

The LFIG report in the UK states that “When firms engage iPros they do not consider themselves to be taking on temporary employees, but engaging suppliers” Again the same holds true in Ireland. iPros are engaged because their required skill set is needed for the duration of a project, and for that period only. This iPros framework allows them to undertake projects that they do not have the complete skills set for in-house, they complement the in-house team with external skills and this allow them complete projects that they could not otherwise undertake.

In the world of providing services to MNC and PLC's many projects have a start stop element to them and can be subject to delays and cancellations. In this very real world project sponsors often cannot engage only full-time employees, on a full time permanent basis, to cover the full range of skills required and expect to stay competitive.

In this world where there is a continuous drive for efficiencies, companies retain a core skills set and complement this with specialist expertise as and when required.

Businesses in Ireland, if they are to stay competitive, need a clear and transparent framework through which they can engage these required skills as and when required. These businesses and their capabilities such as in delivering capital projects competitively for FDI, and for further projects for companies already based here, have been instrumental in attracting FDI and projects to Ireland.

Concerns of Revenue

The Revenue for some time interacted very little with the iPros and perhaps had not recognised nor identified them as a homogeneous group. They were taxed in the main as One Man Limited Companies and treated no differently among this group than anyone else.

Recently in the National Contractors Project (NCP) the Revenue has given the iPros a considerable amount of attention and they have been identified as an area of concern to them. They feel that the taxes collected from this grouping needs to be tackled differently. We understand that they are, during the course of the many audits undertaken, gathering information.

From the commencement of the NCP, it has been asked of Revenue not to damage this sector, and emphasis has been placed on its importance to Ireland in attracting and retaining companies that provide FDI into Ireland, and also for Irish Companies engaging in exporting professional services and consultancy services, and not forgetting the SME's that are dependent on this flexible professional resource.

This NCP is now entering its third year and it is now imperative to arrive at a transparent equitable "Fair and Efficient" method of engaging with iPros for the purposes of taxation.

We have endeavoured to take Revenue concerns, as we are aware of them, into consideration in drafting our recommendations in this report.

Clear Contribution of The iPros

Getting a clear agreement as to who is an iPro is fundamental, and then understanding that they make a valuable contribution. As outlined in several reports in the UK LFIG Report and also in Andrew Burke's Report and Patricia Leighton's Report on European iPros, this important sector needs to be:

RECOGNISED: Defined as unique economic agent providing an important and distinct economic function to employees and business owners.

PROTECTED: The unique economic value-added provided by iPros is part of the core of modern economies and hence needs to be allowed to thrive.

NURTURED: It is good policy to ensure that our MNCs, and Irish based companies always have access to a sufficient supply of high quality iPros in order to optimise the potential of these businesses.

The last point we believe is specifically important for Ireland Incorporated and for messaging by the **Industrial Development Authority (IDA)** in its efforts in attracting FDI to Ireland. It is equally important for Enterprise Ireland in manufacturing and indigenous Irish companies and helps them grow internationally. In fact we believe a transparent, compliant framework in dealing with iPros would provide Ireland with a strong competitive advantage in this area.

Having set out what needs to be undertaken it is important to set a framework as to who is an iPro and this is probably best set out by EFIP Manifesto (European Forum of Independent Professionals)

iPros are:

- **iPros are highly skilled knowledge workers**
- **They supply services to a range or succession of clients**
- **iPros are neither employers or employees**
- **They have commercial (self-employed) relationship with their clients**
- **iPros work for a fee not a salary**

Many countries throughout Europe have started to recognise and foster the iPros in order to support and attract expertise needed by Businesses to their countries. We have attached in the appendices, and outlined of what several European countries are undertaking in this area.

We believe there is an opportunity for Ireland to be to the forefront of attracting and developing a robust, compliant framework in nurturing and indeed attracting iPros to Ireland, which will give us a competitive advantage in attracting FDI and investment into Ireland.

iPros and the use of Limited Liability Companies (LLC)

As iPros are not to be confused with temporary workers it is the norm to use LLC's for iPros in the provision of their services. This is preferred by Recruitment Agencies and End Clients alike as they want to remove any ambiguity of status and insulate themselves from any tax and employment risks.

The Agencies and End Clients are engaging professionals to provide a service as and when required and then are endeavouring to ensure that there are no imputed employee or taxation exposures.

In our current structure here in Ireland, it is one of the major concerns in engaging iPros for MNC and Irish companies alike. They are concerned that Revenue Commissioners may retrospectively impute an employee relationship and claim the associated taxes and penalties thereon. This is an area that needs to be addressed as a matter of urgency and our recommendations will take this into account.

Currently, this is having a very negative effect on the sector, thereby undermining the capabilities of these agencies and end clients to engage iPros to compete for, and undertake projects both in Ireland and internationally.

Another issue that arises in the use of LLC's is that fact that the iPro is both employer and employee and is basically "*shoe horned*" in existing legislation which is not suitable for their particular circumstance. In fact from the Revenue perspective this has been voiced as one of their issues in dealing with iPros.

The proposal with regard to the use of LLC is that for iPros to engage with both agencies and corporate firms they will need to continue to use LLC's for the foreseeable future. However it would be beneficial for all, that these LLC's can be identified as iPro companies and if required treated in a manner that is consistent with their requirements and circumstances.

In the UK the recommendation of the LFIG report is that a new type of Limited Company be established a "Freelancer Limited Liability Company" (FLTD) and this type of company would be registered as an FLTD once it meets specific criteria. This has the advantage of gathering together all the Freelancers Companies in a homogeneous group and hence with their interactions with HMRC and other Government Agencies they can be treated in a similar manner.

This has great benefits and a key criterion for registration as a FLTD would be a single shareholder who is the income generator. Once registered it would be identified as an iPro. Their status as an iPro would be recognised and it would be support the charter principles, "they do not have to have concurrent clients or be able to substitute, provide their own equipment, have a distinct address, or even grow their own business, to prove their status as a freelancer".

Given this status the FLTD would also have other advantages, simplified accounting, the ability to pay expenses, including training, and carry monies forward to future years, ability to employ staff .

There are quite important advantages in this approach and we will in our recommendation incorporate some of these ideas, but we propose changes that can be undertaken quite quickly and without the need for legislative changes.

Summary of Issues to be Resolved

In summary the main issues that need to be resolved are:

- 1. No established, clear regime for dealing with iPros.**
- 2. Lack of clarity with regard the taxation position of these iPros.**
- 3. Perceived exposure with regard to the Revenue Commissioners' interpretation as to who is, and who is not, an employee and the follow on Taxation and Social Welfare implications.**
- 4. The "work" being undertaken at presents by the MNC sector and Irish based companies in order to engage expertise, as and when they require it, for projects and hence retain a level of competitiveness in the international markets, are neither efficient nor sustainable.**
- 5. The lack of clarity following the Revenue Commissioners "National Contractors Project" with regard to engaging iPros is damaging the sector considerably at present.**
- 6. IFSC and Medical companies and VAT issues that arise in iPros providing their services to these organisations.**

From this, it became obvious that many of the concerns were interlinked, and we set about putting forward a solution that encompasses the major concerns. We also got considerable feedback that, these issues are having a detrimental effect on the sector and businesses in Ireland and need to be addressed as a matter of urgency.

What we hope to achieve

Our proposal eliminates much of the barriers presently in place to iPros providing their services and also supports, and reduces the concerns of MNC' s that engage them. It provides a framework both for the Revenue Commissioners and the Department of Jobs, Enterprise and Innovation that wish to tax them in a "fair and efficient "manner.

Recommendations

In proposing a solution, each of the concerns of the major three parties (iPro, Revenue and Client) needs to be considered together with the professional accounting services provider who plays a key implementation role.



With a three way partnership as above this will endeavour to give confidence and clarity to each of the parties.

Solution

The first steps in the process are

1. **Declaration by the iPro.** The iPro having taken professional advice makes a declaration that they wish to provide their services through a Limited Company. Such declaration attests to their understanding of their role and responsibilities, their taxation situation and their commitment to remain tax compliant, and also adhere to the Code of Practice for iPros. We have drafted a provisional Declaration, but this needs to be discussed and finalised. This Declaration will be countersigned by the financial accounting professional advisor of the iPro, attesting to the fact that the information in it is correct and in accordance with the current contract/contracts in operation.
2. **Submission of Declaration to Revenue Authorities:** This Declaration is submitted to the Revenue Commissioners and the iPro receives a Certificate (similar to a Tax Clearance Certificate or C2 type Certificate) signifying that they are deemed to be iPro. This certification will mention the company which will undertake the invoicing for the services.
3. **Certificate presented to End Clients:** As the individual is a certified iPro and is responsible for their own taxation affairs as being dealt with through the invoicing entity, the End Client can be assured they will not be considered/imputed to be an employee at any time in the future. This provides clarity to the End Client and to the iPro.
4. **The Invoicing Entity:** The certified Invoicing Entity for the iPro will be either in a managed company through which they provide their services on a long term basis and wish to have a career in this sector, or a limited Company of their own which they specifically require for their own purposes. The Invoicing Entity will comply with the agreed procedures in operating an iPro company and in this it will be agreed with Revenue which expenses are appropriate in given circumstances. This will give clarity on expenses and eliminate the absence of guidance as at present (an expenses manual is being prepared to provide an outline and guidance here).
5. **Contractor Considerations:** Under this solution the iPro can claim the expenses as incurred in carrying out their services. These expenses will be similar to what the individual could claim were they taxed under Schedule D Case II, as if operating as a self-employed Sole Trader. The solution can also take into consideration, when the iPro is classified as self-employed, that an allowance and reserve can be maintained within the company to allow for payment between contracts, and to cover the costs of tendering and gaining further contracts. It is suggested that an allowance (e.g. 20k or 20% of the maximum annual turnover in past 5 years) not subject to CT could be retained in the company to be drawn down as required and at that stage taxes are applied as appropriate.

6. **Revenue Considerations:** The Revenue Commissioners have identified within this system who is an iPro and is assured that these individuals are appropriately classified as iPros within the Revenue systems and that they are treated and reviewed on a systematic basis. They have these companies identified hence they can tax these companies in a uniformed manner and in accordance with the agreed level of expenses as appropriate. This will bring a uniformity and equitable approach together with an efficient system to collect taxes in this sector in a “Fair and Efficient” manner.
7. **End Clients Considerations:** This will remove the major obstacle in engaging iPros at present for our MNC’s and Indigenous Irish companies that engage Professionals in this manner. Their biggest fear is that Revenue will at some stage in the future retrospectively deem the current Professionals engaged under contract to be Employees and hence deliver a huge Taxation bill, with accompanying Interest and Charges. Removing this and bringing a greater level of Clarity and Compliance will serve this sector.
8. **Self-Regulation:** this will be an important area and both the PCSO & IPCI have set about creating standards of best practice that we would hope will be adopted by the industry on a universal standard, and become the norm.

What this will achieve:

This registration procedure that will effectively allow for all the iPros to be identified and the companies, in which they operate, will allow for a uniform approach from Revenue. This should serve to eliminate the lack of clarity in treating iPros taxation affairs at present. This certification should take place bi-annually or with a change of Taxation Advisor or change of circumstances.

2. *Expenses Manual and Co-ordinated Approach to*

Expenses

This together with an “Agreed Expense Manual” incorporated into a Tax Briefing to deal with iPros would provide a consistency of application of the rules with regard to allowable expenses. The PCSO and IPCI will create this expense manual, and endeavour to get agreed principles established with the Revenue Commissioners, to create a unified and equitable framework. This manual would act as a framework and incorporate specific guidance under each of the major expense categories. This would also deal with the different categories of iPro and the expenses that are specific to that particular profession.

3. *Following Registration and Revenue Acceptance*

It is proposed that once iPros register and are confirmed by their taxation advisor and acknowledged by Revenue, then as proposed in the UK, the current tests will not have to be proven on a continuous basis.

- **No need to specify a substitute**
- **No need to have multiple or concurrent clients on the go**
- **The ability to apply for benefits will be dependent on the social welfare status of the iPro**
- **Ability to pay expenses, including training and also to carry a working capital allowance over to cover future expenses or wages between contracts**
- **Ability to employ other staff**
- **Simplified Accounting**

Conclusion

This will provide a stable framework for the iPro in which to operate, and significantly make Ireland an attractive environment for Independent Professionals providing their support for an Innovative, Creative, and Knowledge Based Economy.

In this we have taken the best of the proposal in this sector, which came from the UK. We have built around this achieving a similar outcome as to the proposals in the UK, but in our proposals we have eliminated the need for any legislative changes.

We have engaged with several of the stakeholders and the feedback to date has been very positive. We are now engaging in a more widespread consultation process.

Following this consultation process we would hope to set about making the required changes in an efficient manner.

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Appendix B

PCSO Submission

**Department of Finance
Consultation on the Tax
Treatment of Travel and
Subsistence for Employees
and Office Holders**

Submitted: 21st August 2015



PCSO Submission

*Department of Finance consultation on the Tax Treatment
of Travel & Subsistence for Employees and Office Holders*

Date: 21 August 2015

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Executive Summary

The PCSO (Professional Contractors Services Organisation) welcome the opportunity to make a submission to the consultation process on the tax treatment of travel and subsistence.

The PCSO have engaged with Revenue for over 2 years in relation the treatment of travel and subsistence expenses for Independent Professional contractors. Our objective has always been to arrive at a reasonable “Common Sense” proposal to provide greater clarity in this area.

The PCSO’s focus is on the independent professional contractor usually working through their own limited company. We have organised several forums inviting all the stakeholders to be involved. Our proposals have been agreed at the recent forum as being very practical and feasible and will bring a greater level of clarity to this whole issue.

Workplace Trends

On a worldwide basis more individuals choose to provide their professional services on an independent basis, usually through their own limited company. This is borne out in many reports from the USA and throughout Europe demonstrating this change. This has occurred due to advances in technology, increasing requirement for even more and more specialised skills to be provided as and when required. This has married with a desire of many professionals to exercise more control of, how, when and for what rate they provide their specialist expertise. The term iPros, Independent Professionals is the term used to describe this sector in Europe.

Irelands Position

Ireland is well placed with a large cadre of specialist professionals, willing to provide their specialist services as and when required to MNC and Indigenous Irish companies. These have ensured we have the required specialist skills to attract and manage FDI projects.

Their presence, and availability in Ireland has served us well, and established a reputation for getting projects completed on time, and within budget. We have these “Can Do” professionals that travel to where the project is in Ireland, base themselves there for the duration, and commit to getting the project completed. This is a major asset for Ireland Inc.

Lack of Clarity

With the National Contractors Project there has been a review of tax deductible travel and subsistence expenses. There is now little clarity with regard to allow ability of travel and subsistence expenses for professional contractors.

Consequences of Lack of Clarity

The consequence of this has led to situations where Professional Contractors are unwilling to undertake roles in projects that require them to incur travel and subsistence expenses, as they are concerned Revenue may (retrospectively) deem these to be disallowable for tax purposes.

The larger consequences for this, as referred to in the body of the submission, can be demonstrated by two specific examples that illustrate the longer term consequences of this for Ireland Inc.

- An increase in the overall cost of investing in Ireland
- An increase in the cost of completing capital projects in Ireland (and the associated international reputation for this)
- Ireland becoming less competitive in the ever more competitive market to attract FDI

These issues need to be resolved as soon as possible, in order to reverse these very negative consequences.

Other Developed Countries

In preparing our submission and building on the Special Report prepared recently for the stakeholders in this sector we have looked closely at how other countries have provided clarity in this area. We looked at the USA, Germany, Australia, and the UK, all trading partners of ours and with similar developed economies. Each country has addressed the issue of Temporary Workplace and the allow ability of travel and subsistence expenses to facilitate a Flexible Mobile workforce.

In this fast changing world with changing work practices and specialist skills required as and when the need arises, the flexibility and mobility of the workforce is essential. Nowhere is this more relevant than in the specialist skills provided by Professional Contractors.

Proposal

The system and concept that we believe would best suit the requirements in Ireland are those in place in the USA/Germany. In the US they have a concept of "Tax Home" (a location where you incur your normal living expenses and often where your family are located) which is well thought out and defined. Once you have a "Tax Home", and you are required to be absent from this "Tax Home" for work purposes, and then you are entitled to specific expenses (well defined) on an actual cost basis. We believe that a similar type of system should be introduced in Ireland for Professional Contractors both from a common sense and equitable point of view.

We have proposed this in the attached submission. There will require to be a requirement for some safe guards and we propose that a 24 month period be the maximum allowed for a temporary workplace. As in the USA, we envisage building in an exception to this time limit when the professional Contractor in question is engaged in a strategic capital project.

Conclusion

Benefits

We see the benefit of this in providing clarity to the sector and allowing the Professional Contractors to be reimbursed for actual “out of pocket” expenses. This will however be subject to a requirement that they are incurred wholly and exclusively to enable them to provide their Professional Services effectively throughout Ireland.

Knowledge Based Economy

In support of the “Flexible Workforce” we propose that this be introduced in the forthcoming budget as a positive pro-business initiative, and as a step toward the Knowledge Based Economy where specialist skills are available.

Exchequer

The consequences of this to the Exchequer should be minimal as the expenses claimed are to be actual “out of pocket” expenses claimed on an actual cost basis.

PCSO Special Report

We have attached to this submission the Special Report prepared by the PCSO for the recent forum where it was concluded by the stakeholders that this provided an effective “Common Sense” solution to the existing difficulties. This provided further detail as to the day to day operations as to what we are proposing.

We of course remain available to address any issues that may arise from this and provide the background and details of our proposal.

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1.0 The PCSO

1.1 Introduction

The Professional Contractors Services Organisation (PCSO) welcomes the Consultation Process on the “Tax Treatment of Expenses of Travel and Subsistence for Employees and Officeholders.

The Professional Contracting Sector and the Irish Economy

The growth in the professional contractor sector is a worldwide phenomenon and more and more people have chosen to provide their services as independent professionals.

The Professional Contracting Sector, as it is referred to in Ireland, the Freelancer sector as it is referred to in the UK, Independent Contractors as used in USA, Canada & Australia and iPros throughout Europe are the subject of many reports at present.

The professional contracting sector which provided an important role in supporting and attracting FDI projects and supporting indigenous Irish companies is suffering from a lack of clarity at present.

In this submission we are focusing on Professional Contractors who contribute to the Knowledge Based Economy. These are the professionals, in IT, Engineering, Life Sciences and the Interim Management sector, whose skills and experience have been the bedrock of many of Ireland’s successful FDI and large infrastructural projects. These individuals’ skills and experience has made them highly sought after professionals across Europe.

For the sake of clarity we are going to draw on the European term and refer to these Independent Professionals as iPros throughout this submission. Those are the sectors where the greatest need is for knowledge based professionals to support the Knowledge Based Economy that Ireland strives for. Our “Knowledge Box” initiative and our stated policy to develop a Knowledge Based Economy will be dependent on our ability to provide knowledge based professionals as and when required to support these industries.

For this very reason it is essential now that the lack of clarity and its consequent effect on this sector are tackled as a matter of urgency.

Our submission, to this consultation process is to highlight the importance of the sector to Ireland Inc, and to put forward a proposal to ensure we Recognise, Nurture and Support this sector that is of strategic importance to the Irish economy.

1.2 What is the PCSO

The PCSO has been established to support and promote the Professional Contracting Sector. It's membership consists of service providers to professional contractors.

The PCSO has as its mission to help establish a clear, fair and practical, tax and legislative framework in Ireland to cover the Professional Contracting Sector.

The Objective of the PCSO is to ensure the sector is Recognised, Nurtured and Supported to allow Professional Contractors to continue providing support to MNC and Indigenous Irish companies that make a significant contribution to the Irish economy.

The PCSO members has been involved in this sector for over 15 years and its members provide services to over 6,000 professional Contractors at present.

1.3 The PCSO Forum

The PCSO has created a forum to bring all the relevant stakeholders around the table with a view to establishing best practice across the sector.

This has been a "Round Table" initiative with an independent Chairperson attended by a wide range of stakeholders including:

- Contractors Representative Organisations
- Representatives of Large Irish and International Companies whom engage Contractors
- State and Semi-State Organisation with an interest in the Sector
- Recruitment Companies
- PCSO Member Firms

The objective is to recognise the importance of professional contractors to the Irish economy and to develop common sense solution to any issues which might arise taking into consideration the views of varied stakeholders.

Three Forums have been undertaken over the last 18 months and a survey was undertaken by Professor Dermot Duff and we will refer to these findings in this submission.

A copy of the Special Report produced by the PCSO and endorsed as a good common sense solution by the participants of the Forum.

1.4 Conclusion

We are focused on the area in which we have expertise namely, the one man professional company. These professionals are quite unique and tend to be involved in the IT, Pharma, Engineering, Bio tech, Finance sectors as well as several others. They are epitomised by the roles they take on. These are contracts of short and unknown duration, in the project driven sector and including many capital projects throughout Ireland. They provide their services on a flexible basis, invariably having no notice or a one week notice period. They enable capital projects and projects of an unknown duration to be based in Ireland by many MNC's and make

Ireland an attractive and competitive location to base these projects and investment. These individuals generally command attractive rates that compensate them for their short term nature and in many cases they are required to live away from their home.

We strongly believe that for the benefit of Ireland Inc. and our ability to compete for and win International Investment and Projects we are heavily dependent on, we need to nurture and support this sector and bring clarity to the whole area of allow ability of expenses.

We in the PCSO have been tackling this issue for over 2 years with a wide range of stakeholders and we are drawing on this experience for our submission.

2.1 *Introduction*

Section 114 of the Taxes Consolidation Act 1997 provides the legislative basis for individuals taxable under Schedule. The Section provides that where the holder of an office or employment is necessarily obliged to incur and defray expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, they may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed. Individuals can claim a tax deduction for expenses associated with costs such as travel and subsistence expenses incurred during the course of undertaking the duties of their employment or office.

There has been a significant body of case law on the interpretation of incurring a travel cost in the performance of the duties of an office or employment. Accepted practice in this area is that traveling costs associated with travelling to an employee's normal place of work is not tax deductible, however, travel to a temporary work place is tax deductible.

In a straight forward situation, these rules are easy to interpret. However, as work practices develop in the modern work environment, the line between what is a temporary work place and what is a permanent work place or the individuals "normal place of work" has become more blurred.

2.2 *Modern Work Environment*

Modern communication systems have revolutionised work patterns and the associated work environment for a significant element of the global work force. This section of the work force, are now working at multiple work locations, some of which will be located outside of Ireland. These individuals also work as part of international teams, which means that they often work outside standard Irish work hours. For both of these reasons, determining these individuals normal place of work for travel and subsistence can be complicated.

2.3 *Normal Place of Work*

Until recently, the only formal guidance on normal place of work was set out within Revenue publication IT54. This publication was first published in the mid-nineties, and the definition of normal place of work has remained largely unchanged since that point. IT54 provides that “The normal place of work is the place where an employee normally performs the duties of his/her employment”. In most cases, this should not give rise to difficulty.

IT54 provides that the employer’s business premises will be regarded as the normal place of work for an employee where:

- travel is an integral part of the job involving daily appointments with customers; or
- the duties of the employment are performed at the various premises of the employer’s customers but substantive duties are also performed at the employer’s business premises.

An employee's home would not be regarded as the normal place of work unless there is an objective requirement that the duties of the office or employment must be performed at home. It is not sufficient for an employee merely to carry out some of the duties at home.

Usually, the employer will provide the facilities necessary for the work to be performed at the business premises. Even where an employee has to do some work at home or to keep some equipment at home, the place where he/she resides is a matter of personal choice and it would not be regarded as a place of work.

With the changes in work practices the “Normal Place of Work” is becoming more difficult to establish. Several of our major trading partners have encountered similar problems, and have developed different types of guideline to deal with some of the specific issues. For example, in the USA the concept of “Tax Home” is used when a person travels to undertake work to establish when it is appropriate to allow reimbursement of related expenses to be paid without being subject to tax. This concept is to support the USA in having a flexible, mobile workforce.

2.4 *National Contractors Project*

One of the main concerns identified by Revenue within their National Contractors Project related to the incorrect payment of tax-free travel and subsistence to individuals, arising from the inconsistent interpretation of what can be regarded as a temporary workplace.

These cases largely involved individuals who provided professional services via their one man limited companies. These individuals deemed their home or the registered office of their company as their normal place of work and had claimed travel and subsistence on that basis. Revenue’s first public comment on the normal place of work for one man limited companies was set out within Tax Briefings Number 3 of 2013, titled “Reimbursement of Travel and Subsistence Expenses by Intermediaries”. Within that publication, Revenue state:

“In most cases, the normal place of work of an employee/director of an intermediary will be the premises of the intermediary’s client. In many cases, the contract may specify fixed working hours at that premises or the nature of the work requires attendance at the premises, regardless of whether this is specified in the contract. Revenue does not accept that the location at which the administration of the intermediary is carried out and its books kept (whether this is at the registered office of the intermediary or at the director’s home) constitutes a normal place of work of the director/employee.

Travel expenses incurred by a director/employee on the journey from his/her home to his/her normal place of work (and vice versa) do not qualify for a statutory deduction under Schedule E and may not be reimbursed free of tax. The rationale for this is that the necessity to incur the expense of travelling to or from home is imposed by the individual’s personal circumstances and not by the duties of the office or employment and would not be imposed on every individual holding that office or employment.”

Although the PCSO welcome publication, it does appear that there have been are unforeseen consequences for some professionals who provide their services via limited companies who now means are in effect entitled to claim even less travel expenses than employees of larger companies providing similar services.

2.5 *Anomaly within Tax Briefing 3 of 2013*

This anomaly is best explained by one of the examples set out within Tax Briefing 3 of 2013. In example 6 within that publication, deals with a situation involving a professional providing services to multiple clients. The example given is as follows:

“Kevin is a director of a company with a number of contracts to provide weekly health and safety advice to A Ltd, B Ltd and C Ltd to ensure that these companies comply with the appropriate Health and Safety legislation. Under these contracts, Kevin is required to work Mondays and Tuesdays with A Ltd, Wednesdays and Thursdays with B Ltd and Fridays with C Ltd.

The expenses of travel and subsistence incurred by Kevin on the return journey from his home to A Ltd, B Ltd and C Ltd may not be reimbursed free of tax. On each day Kevin is merely travelling from his home to his normal place of work and vice versa.”

Based on this example Kevin would have to meet the cost of travelling to the various locations where he provides services. This is despite the fact that A Ltd could be based in Dublin, B Ltd might be based in Kerry and C Ltd might be based in Galway.

By contrast, if Kevin was to close his one man company and was to go to work as an employee of a larger company (who may well also takeover the contracts to provide services to A LTD, B Ltd and C Ltd at a higher rate), he would be classed as an employee involved in travelling appointments meaning that he would have an entitlement to Travel and Subsistence payments.

In Example 7 of the same publication, Revenue accept that should Kevin change his work pattern to involve travelling to more than one client on a daily basis, that he would then be entitled to claim travel expenses between his various clients. This has led to a situation whereby individuals are seeking to make minor changes to their working arrangement in order to maximise their tax-free travel and subsistence, which would appear to make little commercial sense.

2.6 Home Workers & Short Term Contracts

There are also other circumstances in which issues arise which are not covered by the examples given. These mainly relate to individuals who undertake the majority of their services from their home, individuals who provide services on a short term basis away from their home and individuals who travel abroad to provide their services.

2.6.1 Home Workers

In terms of Home Workers, IT 69 provides that individuals who undertake activities from a mixture of their home and their employers' office are deemed to have a normal place of work at their employers' premises. This provision also applies to professional consultants who fall within the Tax Briefings 3 restrictions referred to above.

Given that there is no requirement that a substantial element of the duties be carried out at the employers premises, individuals who take a position on the basis that they will work from home and who are required to travel to their employers premises as little as five times per year are not entitled to claim a reimbursement for those travel expenses, despite the fact that they may have to undertake a substantial journey to travel to their employers premises.

By contrast, if the same employer had set up a local office with a small staff, there would be no question that the individuals would be entitled to claim tax-free expenses for travelling to the employers head office for meetings etc.

2.6.2 Individuals who provide their Services on a short term basis away from their home

There would appear to be a significant issue to be addressed here, as individuals who fall within the Tax Briefing 3 restrictions are not entitled to claim expenses for travelling to the end client's premises.

If we were to return to the Health & Safety Consultant referred to in Example 6 of that publication, and assuming he was based in Dublin, where his home and family are based. If that individual was to travel to Kerry for six weeks to undertake a specific piece of work with B Ltd, and a month later he was to travel to Galway for four weeks to undertake a project for C Ltd, under the Tax Briefing restrictions, he would have no basis for claiming any of his travel or accommodation costs. This is despite the fact that he continues to incur his normal living costs in Dublin where his family is based and that any costs incurred are above and beyond his

normal living cost which were only incurred due to the fact the he travelled to these locations for work purposes.

Again, if the same individual worked for a large company and was asked to undertake the same trips to provide services to a client of that company, there would be no question as to the availability of tax-free travel and subsistence claims.

2.6.3 Individuals Travelling to Provide their Services

Again, there would also appear to be a significant issue to be addressed here, as those professionals who provide their services via one man limited company and who fall within the Tax Briefing 3 restrictions find themselves at a disadvantage when compared to employees of large companies.

Again, if we go back to the Health & Safety Consultant referred to in Example 6 of Tax Briefing 3, should that individual take on a project to D GmbH in Germany which involves him travelling to Germany for six, two week periods, again the associated travel and accommodation costs would not be tax deductible, whereas if he was an employee of a larger company and was asked to undertake the exact same duties in Germany for a client of that company, there would be no question that these expenses would be tax deductible.

2.7 Conclusion

As you can see from the above, the current travel and subsistence rules as currently interpreted now give larger organisations a tax advantage over one man companies. The complexity as to what is and is not a person's normal place of work is leading to confusion and unforeseen tax liabilities. As such, the PCSO would suggest that legislative changes are required.

The present practices with regard to expenses and how they are being applied by Revenue are creating considerable difficulties for the sector and importantly for the end clients. There is much anecdotal evidence of professional contractors seeking positions abroad and also a considerable number leaving the sector completely.

To name two specific instances, one in the greater Dublin area, where a well-established MNC has a capital project at present. However it is unable to engage the professionals that would normally be available for these roles, and in frustration has appointed four agencies in the UK to try and attract professional contractors to these roles. They are however, we understand, having little success, as the UK contractors are also slow to enter the market due to the lack of clarity on travel expenses at present.

A similar situation exists in the South East where a large MNC active in Ireland for many years is finding it extremely difficult to get professional contractors to take on roles. They have had to increase their rates considerably and are still encountering difficulties.

All of this is coming from the unwillingness of the professional contractors to undertake roles away from their local area, where they will have to incur living and travel expenses and they do not know how Revenue are going to treat these expenses. This lack of clarity is having several outcomes:

1. Capital projects are becoming more expensive for MNC
2. Professional Contractors that undertake these projects are unwilling to travel and are leaving the sector
3. Our cost base as a location is rising and this will be reported back to HQ, hence our level of attractiveness as a location diminishes.
4. We are on the slippery slope of costs climbing again and suffering a reduction in our ability to attract FDI and further capital projects from MNC already based here.

All of these capital Projects produce Full Time Roles for employees, contribute to the economy and growth of the country and make us an attractive place to do business.

This uncertainty is effecting the sector at present and it requires immediate clarity and a more equitable approach.

4.1 *Introduction*

In this section we want to demonstrate the importance of this sector to the Irish Economy. We draw on the findings of research undertaken in the UK and presented in our Special Report on this sector. We also add our findings and comments from an extensive survey undertaken from industry stakeholders in Ireland.

This provides up to date, well researched data, on the importance of this sector to the Irish Economy.

4.2 *Worldwide Growth in the Sector*

Alongside the traditional permanent, secure, long term jobs a new world of work has emerged over the past 20 years. These are jobs that are part-time, temporary, freelance or self-employed and vary from minimum wage contracts at one end to highly skilled professional consultancy projects. For people that are highly skilled there are great opportunities for variety of work and rewards. This new world of work is growing in the developed economies and is forecast to become a larger proportion of the US and European workforces. While we may not welcome some of the effects of this changing world of work on society, we do need to accept that there is a changing workforce and it is growing worldwide. At the PCSO, we focus on the professional contractor who provides his services largely to MNCs in Ireland and abroad.

In our recent Special Report we highlighted the changes in work practices taking place worldwide and specifically in the UK, mainland Europe and Ireland. There is a growth trend worldwide in professionals providing their services independently to industry. In each country they have tended to have different labels, Freelancers or Professional Contractors. iPros is the term used throughout Europe

4.3 *Terminology used iPros*

For convenience we use the term iPros (Independent Professionals) iPro numbers have been growing throughout Ireland, UK, Europe, (Europe 8.9 Million, and Ireland 60,000 are the estimated numbers of iPros (based on Eurostat information)and the USA as well as many other countries over the last 20 years. More and more people chose to provide their services to industry in this manner as Independent Professionals.

4.4 *How iPros Work*

How they provide their services varies, but one factor is common, they personally control how they provide their professional services.

They may:

- a. *Work for one week, one month or a year, or for one client or for many.***
- b. *They may charge an hourly or daily rate, and these rates reflect the expertise they make available to their clients.***
- c. *They may organise themselves to provide their services through a Limited Company, a Managed Company, or they may operate as Sole Traders.***
- d. *People with permanent positions may also provide professional services in their own time to supplement their incomes.***

They engage clients by word of mouth, networking, becoming known as subject matter experts, by advertising, and/or through recruitment agencies that specialise in matching required skills with industry on a contract basis.

4.5 *Why Their Numbers Are Growing*

This way of providing services suits many people, from those who want to specialise in a given area, those who want to avoid “company politics”, those who want to work when they choose to those who want to experience a sector without committing to it long term, to part time working for professionals raising a family, to those easing themselves into retirement. These are the factors attributed to the great growth in working as an iPro.

The numbers of iPros are growing year on year and it suits both parties. The iPro’s for the reasons above, are given greater freedom and the Industries that they support have the opportunity to get the expertise and assistance as and when they require it. This flexible resource, available on a “pay as you need” basis allows SME’s expertise to grow and develop that they could not otherwise afford.

4.6 *The Definition of iPros*

In this report by the European Forum of Independent Professionals (EFIP) from which the above figures are taken spells out “Who are the iPros?” They are:

- ***iPros are skilled Knowledge Workers***
- ***They supply services to a range or succession of clients***
- ***iPros are neither employers nor employees***
- ***They have commercial (self-employed) relationships with their clients***
- ***iPros work for a fee, not a salary***

European wide and especially in the UK huge efforts are being made to get a clear, efficient and complaint framework to facilitate the growth of iPros. They have been the subject of several reports that are listed in the appendices of our Special Report for reference and several of these have been used in presenting this report.

4.7 *The Economic Benefit of iPros*

Looking at the UK, our closest neighbour, and probably the economy that most closely reflects that of Ireland, and also a great competitor of ours for Foreign Direct Investment, the most recent report is:

“The Role of Freelancers in the 21st Century British Economy”. This report is authored by Professor Andrew Burke, previously Director of the Bettany Centre for Entrepreneurship at Cranfield School of Management and now of Trinity College, Dublin. Prof Burke has undertaken considerable research in this area in the UK and we are very lucky to have his assistance and participation with the PCSO Forum in Ireland.

The report outlines the “pivotal role that Freelancers play in Britain’s 21 century innovation-driven economy, including:

- ***They are sources of and conduits for innovation in both corporations and SMEs***
- ***They enable businesses to manage, in fact reduce, entrepreneurial risk and so promote innovation and enterprise***
- ***They liberate businesses from limits of their internal resources and enable the use of exceptional talent that would otherwise not be economically feasible to hire on employee contracts***
- ***They enable de-risking of some of the uncertainties of the market so that firms can reduce the risk of growing***
- ***They reduce the amount of finance required for innovation and business start ups***
- ***They reduce barriers to market entry and reduce minimum efficient scale***

- ***They promote efficiency-driven economic performance***
- ***They enable businesses to maximise performance across peaks and troughs in demand***
- ***They create jobs by increasing the level of innovation and efficiency in the economy and helping projects succeed***

(The full report and the background to it can be made available if required)

The contribution in the UK of the iPros is very similar to contribution of iPros here in Ireland, and this is borne out by comments from the recent PCSO survey in which we received huge support for bringing a more compliant, transparent and equitable framework for dealing with iPros in Ireland.

4.8 *Further Impact of iPros on the Irish Economy*

iPros plays a pivotal - yet largely unheralded - role in the Irish economy, generating disproportionate economic and social value by bringing their expertise to bear on substantial capital projects, new product developments and other downstream job-creating initiatives. These independent professional knowledge workers provide unique cross-industry experience, entrepreneurialism and innovation that combine to make the vital difference in today's internationally competitive marketplace.

iPros are a key driver in the Irish Economy in the areas of IT , Engineering, Pharma, Bio Pharma, Medical sectors, that require to engage professional services on a project by project basis or for a set period of time as a requirement arises. These professionals will normally be engaged under a contract for services to be provided for the duration of the project or for a given time period. This may be 3 weeks, 6 weeks, 3 months, or 12 months or for an unknown time frame as the project progresses. All or most of these projects are for a short or unknown duration. These are the professionals that:

1. Embody our “Flexible Workforce” in making themselves available to undertake projects throughout Ireland for a short term or an unknown duration.
2. Given their track record, over the last 20+ years of FDI, provide assurances to international investors, that the expertise is available to deliver the projects on time and within budget.
3. With their considerable “Residual Expertise” of having completed projects for some of the largest MNC worldwide, make Ireland a number one location for FDI and the reputation of having the ability to complete projects on time and within budget. They give us the “Track Record” and ensure we maintain this.

A key part of the requirements (as outlined in the request for consultation) of any submissions is that it take into consideration Exchequer implications. These professionals give Ireland a major advantage in attracting FDI, creating downstream jobs and keeping Ireland as an attractive location to do business. This sector needs to be recognised for what it provides to

Ireland Inc and nurtured in a way that enhances rather than diminish this asset we have at present.

4.9 *Conclusion*

The growth of iPros and the work they perform is recognised in the UK, Mainland Europe and USA. iPros are a growing and very important sector in the Irish economy. Their role needs to be recognised and as part of this Consultation process we will put forward proposals as to how they need to be treated with regard to travel and subsistence expenses incurred in the course of carrying out their business.

5.1 Introduction

Some extracts from the Recent Survey and some comments from industry leaders gathered during that survey. This is presented to support the important role played by iPros (professional contractors) in the Irish economy.

5.2 Quotes from Industry Leaders

- 5.2.1** Large Irish Construction Consultancy Company - ***“our ISP, Independent Service Providers are an essential part of our business, as we operate on a project by project basis, and we need their expertise for the duration of the projects as they are the drivers in successfully and efficiently completing these projects. “***
- 5.2.2** Large IT Multinational - ***“Contracting as a method of working/engaging is established, recognised and embraced in most developed economies. In Ireland it seems like an inconvenience to some authorities!!!”***
- 5.2.3** Second Large Irish Construction Consultancy Company - ***“we operate in a very specialist area and the expertise we require needs to be available as and when we need it for a project, that is what we provide to our clients and it is a major part of our success.”***
- 5.2.4** IT Multinational – ***“Contracting State and State-related parties need to truly value the expertise that exists within the consulting diaspora and accept that they need to engage using day rates which facilitate the continual upping of this expertise. Currently it can be argued that they want the value of the expertise but not to pay appropriately for it.”***
- 5.2.5** International Construction Consultancy Company – ***“the availability of expertise as and when we need it is now a worldwide phenomenon and this is the way it is operating, it allows us to be efficient and fulfil our customers’ demands.”***
- 5.2.6** In our drive to become the “Knowledge Based Economy” with our stated policy in this area and also our current taxations initiatives to establish the “ Knowledge Box”, it is even more essential for us in Ireland to have an effective efficient employment law and taxation framework in which our iPros can operate and support the Innovative Industries we are endeavouring to attract to Ireland.

5.3 *Innovation and Development of Professional Contractors*

Throughout all stages of Innovation Development, Professional Contractors add value by;

- lowering the cost and risk of innovation;
- providing entrepreneurial management expertise not available in-house and without distracting executives from core business;
- enabling the use of specialised human capital not available in-house and without distracting employees from core business;
- enhancing the flexibility and agility of businesses and;
- making large organisations more capable of transformation.

5.4 *Overview/Findings in the UK*

- A new way of working
- Growth of the professional contractor sector
- Role in the innovation driven economy and efficiency in economic performance
- Creating employment through innovation and creativity
- The need to recognise, nurture and protect this sector

5.5 *Conclusion*

The iPros are a growth area in Ireland. They are recognised in both Ireland, UK and further afield to be major contributors to a vibrant economy. We have set out in our proposal how this sector should be taxed and also recommend that their status be recognised and appreciated for the contribution they make to the Irish economy.

6.1 What they do in other Countries

6.2 *Introduction*

Ireland is not the first country to consider these types of issues. A large number of countries have developed detailed tax provisions which aim to address some of the issues which arise for changing work practices. In all cases, these provisions allow for tax deductions associated with time spent away from an employee's home for work purposes. We have set out below a brief summary of these provisions. Further detail on these provisions is set out in the Appendices to this submission.

6.3 *USA*

In the USA the concept of Temporary Workplace is well understood for some time and when an individual is required for work purposes to leave their "Tax Home" a tax deduction is available for accommodation and meals costs. We have set out further detail on these provisions in Appendix I. It is however worth noting that these provisions only apply when the individual has a temporary workplace for a period of up to 12 months, however, there are a number of specific exceptions to the 12 month limitation.

There are also a number of restrictions placed on these provisions in order to ensure that the temporary workplace is genuine and that the individual is incurring additional costs over and above his normal housing costs which arise solely due to the fact that he/she is working away from their home.

We have reviewed the US provisions and their successful application within the US. Our conclusion is that these provisions have been very successful in supporting a flexible/mobile professional workforce within the US. We believe that the introduction of a similar provision in Ireland would support flexibility for the professional workforce which is fundamental to the development of the Irish economy.

6.4 *Germany*

Germany have developed the concept of a Second Home Tax Deduction, which is similar, but more generous, to the US Temporary Workplace/Tax Home concept. It allows individuals to claim a tax deduction for the extra costs associated with living away from their normal home for work purposes, together with limited travel costs for travelling between their home and work location. Further details of these provisions are set out in Appendix II.

Again, these provisions have been successful in promoting a flexible workforce within the German economy.

6.5 *Australia*

Similar to the US and Germany, Australia have specific tax exemptions for employer provided accommodation, provided to employees while they are working away from home. Further details of these provisions are set out in Appendix III, these provisions are referred to as LAFHA (Living Away From Home Allowance), which again recognises the need to provide for flexibility and mobility within the workforce.

6.6 *UK*

Finally, the UK have specific temporary workplace provisions which provide for a tax exemption for accommodation together with associated travel costs for individuals whom work at a temporary work place for a period of up to 2 years.

The UK also allow employers to reimburse an unlimited amount of home travel costs for individuals who move to the UK from abroad and whom are classed as non UK domiciled, for a period of up to 5 years.

Finally, the UK have specific rules for individuals involved in travelling appointments which allows them to claim tax-free reimbursement of travel costs irrespective of that the journey may have started from the individuals home. Further details of these provisions are set out in Appendix IV.

6.7 *Conclusion*

As you can see, each of the above countries have developed detailed provisions which clarify the tax treatment of expenses which will arise from working away from the individual's home. These provisions support the flexibility which professionals need in the modern workplace. Given the changes in modern work practices, the PCSO believe that adopting similar provisions is fundamental in attracting major capital FDI projects to Ireland, in an increasingly competitive environment.

7.1 *Introduction*

We wish to put forward proposals specifically aimed at Professional contractors who provide their services via their own limited companies. The areas which we would like to put forward proposals on are as follows:

- Temporary Workplace
- Home Workers
- Requirement to claim receipted travel and subsistence costs

Details of our proposals are set out below.

7.2 *Temporary Workplace*

In line with the position set out in Section 6 of this submission, we propose that a temporary workplace provision would be introduced as a matter of urgency. These provisions would be aimed specifically at allowing a tax deduction (on a receipted basis), to individuals for the additional out of pocket housing and living expenses associated with living away from normal home for work purposes.

We would accept that safeguards are required in order to ensure that individuals did not secure a tax deduction for their normal living costs. This may involve a process which would require the individual to continue to maintain a home away from their temporary workplace, which is available for their personal/family use. It may also involve restrictions of the type of accommodation provided at the temporary workplace in order to ensure that the costs of such accommodation are minimised as is the case with similar provisions in Germany which we have highlighted in Section 6 and Appendix II.

The PCSO propose the adoption of a mixture of the US principle of a “Tax Home” and the German Second Home Tax Deduction principle, which will allow a tax deduction for additional out of pocket expenses, arising from professional contractors working away from home. This would be an ideal way to support a flexible and mobile workforce in the Irish economy. The PCSO also propose, that similar to the US, rather than a blanket time limit on this relief, that provisions be made for exceptions for longer term projects which are deemed to have strategic value to the Irish economy.

7.3 *Home Workers*

We propose that home workers who undertake the majority of their work from home, should be entitled to claim travel and subsistence from their home, including any travel to the main client’s premises, subject to a reasonable cap (perhaps the same 60 cap which Revenue apply to employees returning to their normal place of work outside working hours for emergencies).

7.4 *Requirement to claim receipted Travel and Subsistence Expenses*

With regard to the requirement to claim travel and subsistence expenses on a receipted basis, our proposal is that once a professional contractor operating via their own limited company incurs (or would reasonably expect to incur) more than €10,000 per annum of travel and subsistence expenses, they should only be allowed claim receipted expenses. This would cover all expenses, including capital allowances on their car, incurred wholly and exclusively for the purposes of operating their business.

Where travel and subsistence is not claimed on a receipted basis, we propose that a requirement be introduced for supporting documentation (i.e. receipts) to be kept, to substantiate all claims associated with travel and subsistence.

7.5 *Conclusion*

Conclusion

Benefits

We see the benefit of this in providing clarity to the sector and allowing the Professional Contractors to be reimbursed for actual “out of pocket” expenses incurred wholly and exclusively to enable them to provide their Professional Services effectively throughout Ireland .

Knowledge Based Economy

In support of the “Flexible Workforce” we propose that this be introduced in the forthcoming budget as a positive pro-business initiative, and as a step toward the Knowledge Based Economy where specialist skills are available.

Exchequer

The consequences of this to the Exchequer should be minimal as the expenses claimed are to be actual “out of pocket” expenses claimed on an actual cost basis.

PCSO Special Report

We have attached to this Submission the Special Report prepared by the PCSO for the recent Forum where it was concluded by the Stakeholders that this provided an effective “Common Sense” solution to the existing difficulties. This provided further detail as to the day to day operations as to what we are proposing.

Further Consultation or Clarification

The PCSO remain ready to assist in any way possible with regard to solving this issue.

Appendix I - USA

Traveling away from Home (USA)

You are traveling away from home if:

- Your duties require you to be away from the general area of your [tax home](#) (defined later) substantially longer than an ordinary day's work, and
- You need to sleep or rest to meet the demands of your work while away from home.

This rest requirement is not satisfied by merely napping in your car. You do not have to be away from your tax home for a whole day or from dusk to dawn as long as your relief from duty is long enough to get necessary sleep or rest.

Example 1.

You are a railroad conductor. You leave your home terminal on a regularly scheduled round-trip run between two cities and return home 16 hours later. During the run, you have 6 hours off at your turnaround point where you eat two meals and rent a hotel room to get necessary sleep before starting the return trip. You are considered to be away from home.

Example 2.

You are a truck driver. You leave your terminal and return to it later the same day. You get an hour off at your turnaround point to eat. Because you are not off to get necessary sleep and the brief time off is not an adequate rest period, you are not traveling away from home.

Members of the Armed Forces. If you are a member of the U.S. Armed Forces on a permanent duty assignment overseas, you are not traveling away from home. You cannot deduct your expenses for meals and lodging. You cannot deduct these expenses even if you have to maintain a home in the United States for your family members who are not allowed to accompany you overseas. If you are transferred from one permanent duty station to another, you may have deductible moving expenses, which are explained in Publication 521, Moving Expenses.

A naval officer assigned to permanent duty aboard a ship that has regular eating and living facilities has a tax home aboard ship for travel expense purposes.

Tax Home

To determine whether you are traveling away from home, you must first determine the location of your taxhome.

Generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area in which your business or work is located.

If you have more than one regular place of business, your tax home is your main place of business. See [*Main place of business or work*](#), later.

If you do not have a regular or a main place of business because of the nature of your work, then your tax home may be the place where you regularly live. See [*No main place of business or work*](#), later.

If you do not have a regular or a main place of business or post of duty and there is no place where you regularly live, you are considered an itinerant (a transient) and your tax home is wherever you work. As an itinerant, you cannot claim a travel expense deduction because you are never considered to be traveling away from home.

Main place of business or work.

If you have more than one place of business or work, consider the following when determining which one is your main place of business or work.

- The total time you ordinarily spend in each place.
- The level of your business activity in each place.
- Whether your income from each place is significant or insignificant.

Example.

You live in Cincinnati where you have a seasonal job for 8 months each year and earn \$40,000. You work the other 4 months in Miami, also at a seasonal job, and earn \$15,000. Cincinnati is your main place of work because you spend most of your time there and earn most of your income there.

No main place of business or work. You may have a tax home even if you do not have a regular or main place of business or work. Your tax home may be the home where you regularly live.

Factors used to determine tax home. If you do not have a regular or main place of business or work, use the following three factors to determine where your tax home is.

1. You perform part of your business in the area of your main home and use that home for lodging while doing business in the area.
2. You have living expenses at your main home that you duplicate because your business requires you to be away from that home.
3. You have not abandoned the area in which both your historical place of lodging and your claimed main home are located; you have a member or members of your family living at your main home; or you often use that home for lodging.

If you satisfy all three factors, your tax home is the home where you regularly live. If you satisfy only two factors, you may have a tax home depending on all the facts and circumstances. If you satisfy only one factor, you are an itinerant; your tax home is wherever you work and you cannot deduct travel expenses.

Example.

You are single and live in Boston in an apartment you rent. You have worked for your employer in Boston for a number of years. Your employer enrolls you in a 12-month executive training program. You do not expect to return to work in Boston after you complete your training.

During your training, you do not do any work in Boston. Instead, you receive classroom and on-the-job training throughout the United States. You keep your apartment in Boston and return to it frequently. You use your apartment to conduct your personal business. You also keep up your community contacts in Boston. When you complete your training, you are transferred to Los Angeles.

You do not satisfy factor (1) because you did not work in Boston. You satisfy factor (2) because you had duplicate living expenses. You also satisfy factor (3) because you did not abandon your apartment in Boston as your main home, you kept your community contacts, and you frequently returned to live in your apartment. Therefore, you have a tax home in Boston.

Tax home different from family home. If you (and your family) do not live at your [tax home](#) (defined earlier), you cannot deduct the cost of traveling between your tax home and your family home. You also cannot deduct the cost of meals and lodging while at your tax home. See [Example 1](#).

If you are working temporarily in the same city where you and your family live, you may be considered as traveling away from home. See [Example 2](#).

Example 1.

You are a truck driver and you and your family live in Tucson. You are employed by a trucking firm that has its terminal in Phoenix. At the end of your long runs, you return to your home terminal in Phoenix and spend one night there before returning home. You cannot deduct any expenses you have for meals and lodging in Phoenix or the cost of traveling from Phoenix to Tucson. This is because Phoenix is your tax home.

Example 2.

Your family home is in Pittsburgh, where you work 12 weeks a year. The rest of the year you work for the same employer in Baltimore. In Baltimore, you eat in restaurants and sleep in a rooming house. Your salary is the same whether you are in Pittsburgh or Baltimore.

Because you spend most of your working time and earn most of your salary in Baltimore, that city is your tax home. You cannot deduct any expenses you have for meals and lodging there. However,

when you return to work in Pittsburgh, you are away from your tax home even though you stay at your family home. You can deduct the cost of your round trip between Baltimore and Pittsburgh. You can also deduct your part of your family's living expenses for meals and lodging while you are living and working in Pittsburgh.

You may regularly work at your tax home and also work at another location. It may not be practical to return to your tax home from this other location at the end of each work day.

Temporary assignment vs. indefinite assignment.

If your assignment or job away from your main place of work is temporary, your tax home does not change. You are considered to be away from home for the whole period you are away from your main place of work. You can deduct your travel expenses if they otherwise qualify for deduction. Generally, a temporary assignment in a single location is one that is realistically expected to last (and does in fact last) for 1 year or less.

However, if your assignment or job is indefinite, the location of the assignment or job becomes your new tax home and you cannot deduct your travel expenses while there. An assignment or job in a single location is considered indefinite if it is realistically expected to last for more than 1 year, whether or not it actually lasts for more than 1 year.

If your assignment is indefinite, you must include in your income any amounts you receive from your employer for living expenses, even if they are called travel allowances and you account to your employer for them. You may be able to deduct the cost of relocating to your new tax home as a moving expense. See Publication 521 for more information.

Exception for federal crime investigations or prosecutions.

If you are a federal employee participating in a federal crime investigation or prosecution, you are not subject to the 1-year rule. This means you may be able to deduct travel expenses even if you are away from your tax home for more than 1 year, provided you meet the other requirements for deductibility.

For you to qualify, the Attorney General (or his or her designee) must certify that you are traveling:

- For the federal government,
- In a temporary duty status, and
- To investigate or prosecute, or provide support services for the investigation or prosecution of a federal crime.

Determining temporary or indefinite.

You must determine whether your assignment is temporary or indefinite when you start work. If you expect an assignment or job to last for 1 year or less, it is temporary unless there are facts and circumstances that indicate otherwise. An assignment or job that is initially temporary may become indefinite due to changed circumstances. A series of assignments to the same location, all for short periods but that together cover a long period, may be considered an indefinite assignment.

Going home on days off.

If you go back to your tax home from a temporary assignment on your days off, you are not considered away from home while you are in your hometown. You cannot deduct the cost of your

meals and lodging there. However, you can deduct your travel expenses, including meals and

lodging, while traveling between your temporary place of work and your tax home. You can claim these expenses up to the amount it would have cost you to stay at your temporary place of work.

If you keep your hotel room during your visit home, you can deduct the cost of your hotel room. In addition, you can deduct your expenses of returning home up to the amount you would have spent for meals had you stayed at your temporary place of work.

Probationary work period.

If you take a job that requires you to move, with the understanding that you will keep the job if your work is satisfactory during a probationary period, the job is indefinite. You cannot deduct any of your expenses for meals and lodging during the probationary period.

What Travel Expenses Are Deductible

Once you have determined that you are traveling away from your tax home, you can determine what travel expenses are deductible.

You can deduct ordinary and necessary expenses you have when you travel away from home on business. The type of expense you can deduct depends on the facts and your circumstances.

[Table 26-1](#) summarizes travel expenses you may be able to deduct. You may have other deductible travel expenses that are not covered there, depending on the facts and your circumstances.

When you travel away from home on business, you should keep records of all the expenses you have and any advances you receive from your employer. You can use a log, diary, notebook, or any other written record to keep track of your expenses. The types of expenses you need to record, along with supporting documentation, are described in [Table 26-2](#), later.

Separating costs. If you have one expense that includes the costs of meals, entertainment, and other services (such as lodging or transportation), you must allocate that expense between the cost of meals and entertainment and the cost of other services. You must have a reasonable basis for making this allocation. For example, you must allocate your expenses if a hotel includes one or more meals in its room charge.

Travel expenses for another individual. If a spouse, dependent, or other individual goes with you (or your employee) on a business trip or to a business convention, you generally cannot deduct his or her travel expenses.

Employee. You can deduct the travel expenses of someone who goes with you if that person:

1. Is your employee,
2. Has a *bona fide* business purpose for the travel, and
3. Would otherwise be allowed to deduct the travel expenses.

Business associate. If a business associate travels with you and meets the conditions in (2) and (3) above, you can deduct the travel expenses you have for that person. A business associate is someone with whom you could reasonably expect to engage or deal in the active conduct of your

business. A business associate can be a current or prospective (likely to become) customer, client, supplier, employee, agent, partner, or professional advisor.

Bona fide business purpose. A *bona fide* business purpose exists if you can prove a real business purpose for the individual's presence. Incidental services, such as typing notes or assisting in entertaining customers, are not enough to make the expenses deductible.

Example.

Jerry drives to Chicago on business and takes his wife, Linda, with him. Linda is not Jerry's employee. Linda occasionally types notes, performs similar services, and accompanies Jerry to luncheons and dinners. The performance of these services does not establish that her presence on the trip is necessary to the conduct of Jerry's business. Her expenses are not deductible.

Jerry pays \$199 a day for a double room. A single room costs \$149 a day. He can deduct the total cost of driving his car to and from Chicago, but only \$149 a day for his hotel room. If he uses public transportation, he can deduct only his fare.

Table 26-1. Travel Expenses You Can Deduct *This chart summarizes expenses you can deduct when you travel away from home for business purposes.*

IF you have expenses for...	THEN you can deduct the cost of...
transportation	travel by airplane, train, bus, or car between your home and your business destination. If you were provided with a ticket or you are riding free as a result of a frequent traveler or similar program, your cost is zero. If you travel by ship, see <i>Luxury Water Travel</i> and <i>Cruise Ships</i> (under <i>Conventions</i>) in Publication 463 for additional rules and limits.
taxi, commuter bus, and airport limousine	fares for these and other types of transportation that take you between: The airport or station and your hotel, and The hotel and the work location of your customers or clients, your business meeting place, or your temporary work location.
baggage and shipping	sending baggage and sample or display material between your regular and temporary work locations.
car	operating and maintaining your car when traveling away from home on business. You can deduct actual expenses or the standard mileage rate as well as business-related tolls and parking. If you rent a car while away from home on business, you can deduct only the business-use portion of the expenses.
lodging and meals	your lodging and meals if your business trip is overnight or long enough that you need to stop for sleep or rest to properly perform your duties. Meals include amounts spent for food, beverages, taxes, and related tips. See Meals and Incidental Expenses for additional rules and limits.
cleaning	dry cleaning and laundry.
telephone	business calls while on your business trip. This includes business communication by fax machine or other communication devices.
tips	tips you pay for any expenses in this chart.
other	other similar ordinary and necessary expenses related to your business travel. These expenses might

include transportation to or from a business meal, public stenographer's fees, computer rental fees, and operating and maintaining a house trailer.

Meals and Incidental Expenses

You can deduct the cost of meals in either of the following situations.

- It is necessary for you to stop for substantial sleep or rest to properly perform your duties while traveling away from home on business.
- The meal is business-related entertainment.

Business-related entertainment is discussed under [Entertainment Expenses](#), later. The following discussion deals only with meals (and incidental expenses) that are not business-related entertainment.

Lavish or extravagant. You cannot deduct expenses for meals that are lavish or extravagant. An expense is not considered lavish or extravagant if it is reasonable based on the facts and circumstances. Expenses will not be disallowed merely because they are more than a fixed dollar amount or take place at deluxe restaurants, hotels, nightclubs, or resorts.

50% limit on meals. You can figure your meal expenses using either of the following methods.

- Actual cost.
- The standard meal allowance.

Both of these methods are explained below. But, regardless of the method you use, you generally can deduct only 50% of the unreimbursed cost of your meals.

If you are reimbursed for the cost of your meals, how you apply the 50% limit depends on whether your employer's reimbursement plan was accountable or nonaccountable. If you are not reimbursed, the 50% limit applies whether the unreimbursed meal expense is for business travel or business entertainment. The 50% limit is explained later under [Entertainment Expenses](#). Accountable and nonaccountable plans are discussed later under [Reimbursements](#).

Actual cost. You can use the actual cost of your meals to figure the amount of your expense before reimbursement and application of the 50% deduction limit. If you use this method, you must keep records of your actual cost.

Standard meal allowance. Generally, you can use the "standard meal allowance" method as an alternative to the actual cost method. It allows you to use a set amount for your daily meals and incidental expenses (M&IE), instead of keeping records of your actual costs. The set amount varies depending on where and when you travel. In this chapter, "standard meal allowance" refers to the federal rate for M&IE, discussed later under [Amount of standard meal allowance](#). If you use the standard meal allowance, you still must keep records to prove the time, place, and business purpose of your travel. See [Recordkeeping](#), later.

Incidental expenses. The term “incidental expenses” means fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Incidental expenses do not include expenses for laundry, cleaning and pressing of clothing, lodging taxes, costs of telegrams or telephone calls, transportation between places of lodging or business and places where meals are taken, or the mailing cost of filing travel vouchers and paying employer-sponsored charge card billings.

Incidental expenses only method. You can use an optional method (instead of actual cost) for deducting incidental expenses only. The amount of the deduction is \$5 a day. You can use this method only if you did not pay or incur any meal expenses. You cannot use this method on any day that you use the standard meal allowance.

Second Household Provisions (Germany)

Employees can deduct costs connected to having two households from their taxable income if these costs are work-related. Alternatively, the employer may reimburse those expenses free of tax.

A double household is work-related if an employee, if the following conditions are met:

- has his (main) household at one place,
- is working at another place and
- lives at the place of occupation.

An employee has the main household where his centre of life is. Normally, a married person has his centre of life where the spouse and the family stay. However, a single person can also have a double household if he keeps his centre of life at a location which pre-existed his employment, i.e. his home town. An employee keeps a centre of life in his home town if he stays there on a regular basis, if not working away or being on holidays.

Expenses for privately motivated double households are not tax-deductible. If an employer reimburses such expenses, the remunerations are subject to wage tax and social security contributions.

The following expenses are deductible or can be reimbursed by the employer:

Housing costs at place of occupation

The costs for a house or flat at the place of occupation or work are deductible. These are rents, associated costs, utility costs etc.

Costs can be deducted at full scale if the flat comprises of no more than 60 square meters. If the house or flat at the place of occupation/work measures more than 60 square meters, costs can only be deducted on a proportionate basis.

Travelling expenses for going home

Travelling costs for one trip home per week are deductible with € 0.30 per kilometre for the distance between household and place of occupation. This means that in reality only € 0.15 for traveling there and back can be deducted. Alternatively, real costs for flights or trains can be deducted or reimbursed.



Daily allowance for costs of meals

In the first three months of being absent from his own household, the employee can deduct the following amounts:

- absence of at least 24 hours: € 24
- absence of at least 14 hours: € 12
- absence of at least 8 hours: € 8

Relocation expenses

Relocation expenses can be deductible if certain criteria are met.

Work-related trips

If there is a work-related temporary absence from home (business trip), the following expenses are deductible or reimbursable:

- accommodation (for example hotel)
- *travelling costs with € 0.30 per travelled kilometre (for both going and returning)*
- daily allowance for costs of meals

Foreign Employees

Foreign employees can deduct costs for double household for tax purposes. However, there are certain restrictions.

- If the home abroad is kept and the family remains abroad, the employee has to travel home on a regular basis. How often he travels home depends on how distant the home country is. In Europe there should be at least six trips home per year. To further destinations such as Australia, India or other long distance destinations, one trip home per year might be sufficient.
- Singles or employees bringing their families to Germany might have much bigger problems to prove that their centre of life remains abroad. However, these employees might be able to deduct the above mentioned travelling expenses for the first months of their stay in Germany.

Taxation of employer

Reimbursed expenses for double households are deductible as business expenses, regardless of the fact whether reimbursements have been tax exempt or not.

The employer has to prove that the legal requirements of a double household are met. He has to document this. Singles or married employees bringing their families to Germany should at least give written confirmation that they keep up a household in their home town or home country which is the centre of life.

Living-Away-From-Home Allowance (Australia)

A living-away-from-home allowance is an allowance you (the employer) pay to your employee to cover additional expenses incurred and any disadvantages suffered because their duties of employment require them to live away from their normal residence. The term 'additional expenses' does not include expenses the employee would be entitled to claim as an income tax deduction.

Living-away-from-home benefit

You are providing a living-away-from-home benefit when you directly provide accommodation or food or drink to your employee, or you reimburse your employee for these expenses, instead of providing them with a cash allowance.

Normal residence

Table 1: Meaning of normal residence

If your employee's usual place of residence...	Then your employee's normal residence is...
is in Australia	their usual place of residence.
is not in Australia	either: <ul style="list-style-type: none"> ○ the place in Australia where they usually reside while in Australia ○ their usual place of residence.

Living-away-from-home allowances

Access to the tax concessions for living-away-from-home allowances will generally be limited to a period of 12 months for an employee at a particular work location, and to cases where your employee does all of the following:

- maintains a home in Australia at which they usually reside that is available for their immediate use and enjoyment during that period
- can substantiate all expenses incurred on accommodation and food or drink (if the food or drink expenses are more than the Commissioner's reasonable amounts)
- provides you with a declaration relating to living away from home.

Living-away-from-home benefits

Access to the tax concessions for living-away-from-home benefits will generally be limited to a period of 12 months for an employee at a particular work location, and to cases where your

employee meets both the following conditions:

- maintains a home in Australia at which they usually reside that is available for their immediate use and enjoyment during that period
- provides you with a declaration relating to living away from home.

Maintaining a home

Access to the tax concessions for living-away-from-home allowances and benefits will generally be limited to employees who maintain a home in Australia for their immediate use and enjoyment at all times.

To maintain a home in Australia, all of the following must apply:

- your employee or their spouse must have an ownership interest in a home
- that home must be available for their immediate use and enjoyment at all times while they are living away from it
- it is reasonable to expect that the employee will resume living at that home when they are no longer living away from home for the purposes of their employment.

Ownership interest

Ownership interest includes a home an employee owns or rents. An adult child living with their parents generally does not have an ownership interest in the home. If this is the case, the concessions would not apply if the adult child is required to live away from home for work.

Available for immediate use and enjoyment at all times

For the home to be available for immediate use and enjoyment at all times, your employee:

- cannot rent out or sub-let the home while they are living away from it
- must incur the ongoing costs of maintaining the home, such as mortgage or rental payments
- must be able to return to the home at any time and live there immediately.

Taxable value of the living-away-from-home allowance

The taxable value of the living-away-from-home allowance fringe benefit depends on the circumstances of your employee.

Table 3: How to work out the taxable value based on your employee's circumstances

If your employee...	Then the taxable value...

<p>maintains a home in Australia at which they usually reside and</p> <ul style="list-style-type: none">○ the fringe benefits relates to the first 12 month period at a particular work	<p>is the amount of the living-away-from-home allowance paid, less any:</p> <ul style="list-style-type: none">○ exempt accommodation component
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location ○ they give you a <u>declaration</u> about living away from home	○ exempt food component.
works on a <u>fly-in fly-out or drive-in drive-out</u> basis and: ○ has residential accommodation at or near the usual place of employment ○ gives you a <u>declaration</u> about living away from home	is the amount of the living-away-from-home allowance paid, less any: ○ exempt accommodation component ○ exempt food component.
does not fall into either of the above situations	is the amount of the living-away-from-home allowance paid.

Exempt accommodation and food components

Exempt accommodation component

The accommodation component is the amount of the living-away-from-home allowance fringe benefit that is paid to compensate your employee for accommodation expenses for themselves and any of their eligible family members (such as a spouse or children) while they are living away from home.

The exempt accommodation component is the amount of the accommodation component that equals the accommodation expenses actually incurred by your employee during the period. If their family member incurs these expenses on behalf of the employee, your employee is still incurring the expenses as their family member is considered to be acting as an agent for the employee.

Your employee must be able to substantiate the full amount of the expenses for accommodation.

Example

Louise receives a living-away-from-home allowance from her employer, which includes an accommodation component of \$300 per week while she is seconded to Canberra for 12 months. Her usual place of residence is in Brisbane. Louise resides with her husband, Matt, and they rent a house in Canberra for 12 months at a cost of \$300 per week. The exempt accommodation component in this case is \$300, if Louise is able to prove the expense in accordance with the substantiation requirements.

Substantiation requirements

Access to the tax concessions for living-away-from-home allowances depends on your employee meeting substantiation requirements for their expenses.

Accommodation component

Your employee's accommodation expenses incurred must be substantiated in full, regardless of the amount.

To substantiate their accommodation expenses your employee must give you either:

- documentary evidence of the expense (lease agreements, credit card statements, bank statements, mortgage documents, receipts)
- a declaration about the expense in the approved form.

Food component

If your employee's food or drink expenses are more than the Commissioner's reasonable amount, then all of their food or drink expenses incurred must be substantiated in full.

To substantiate their food or drink expenses your employee must give you either:

- documentary evidence of the expense (receipts, tax invoices, credit card statements, bank statements)
- a declaration about the expense in the approved form.

If the food or drink expenses are less than the Commissioner's reasonable amount, your employee does not have to substantiate any of the expenses.

Example

Fred's employer pays him more than the Commissioner's reasonable amount for food or drink expenses as part of his living-away-from-home allowance. Fred incurs food or drink expenses to the full extent of the allowance provided. Fred must substantiate all his food or drink expenses incurred, not just the amount in excess of the Commissioner's reasonable amount.

Commissioner's reasonable amount for food or drink expenses

The Commissioner has issued draft Taxation Determination [TD 2012/D8](#) about the reasonable amount for food or drink expenses which will apply from 1 April 2013.

Employee declarations

To access the tax concessions for living-away-from-home allowances and benefits, your employee will need to give you a declaration about living-away-from-home. The declaration must be in the approved form and will vary depending on whether the:

- employee maintains a home in Australia at which they usually reside and the fringe benefit relates to the first 12 month period
- transitional rules apply and your employee either is not required to maintain a home in Australia and/or the 12 month period does not apply
- employee is working on a fly-in fly-out or drive-in drive-out basis.

If your employee's food or drink expenses are more than the Commissioner's reasonable amount and they have not provided you with documentary evidence of the expense, they must give you a declaration about the expenses in the approved form to access the tax concessions for living-away-from-home allowances.

Due date for declarations

You must obtain all employee declarations no later than the day on which your FBT return is due to be lodged with us or, if you don't have to lodge a FBT return, by 21 May.

You don't need to send employee declarations to us. However, you should keep them as part of your tax records. These declarations must be in a form approved by the Commissioner.

Record Keeping

By your employees

If your employee provides you with a declaration about their expenses for accommodation, food or drink (or a combination of these), your employee must keep the relevant documentary evidence of their expenses for five years from the date they must give you the declaration.

By the Employer

If your employee provides you with a declaration about living away from home, their expenses for accommodation and food or drink, you must keep the declaration for five years from the date they must give you the declaration.

If your employee provides you with documentary evidence of their expenses (such as receipts, a copy of credit card statements or bank statements), you must keep the documents for five years from the date they would otherwise be required to give you the declaration.

Fly-in fly-out and drive-in drive-out employees

Special rules apply to employees who are working on a fly-in fly-out (FIFO) and drive-in drive-out (DIDO) basis. These employees:

- do not have to maintain a home in Australia for their own use and enjoyment for the concessional tax treatment to apply for fringe benefits
- are not limited to a 12 month period for the concessional tax treatment.

However, your employee must:

- substantiate their expenses incurred on accommodation and food or drink (if the food or drink expenses are more than the Commissioner's reasonable amounts)
- provide you with a declaration relating to living away from home.

FIFO and DIDO requirements

For your employee to have FIFO or DIDO status all of the following must apply:

- Your employee works for a number of days on a regular and rotational basis and has a number of days off that are not the same days in consecutive weeks, such as a standard five day working week and weekend.
- Your employee returns to their normal residence during the days off.
- It is customary in the industry for employees performing similar duties to work on a rotational basis and return home during days off (for example, miners) and the work duties continue to be undertaken by other employees on a rotational basis while any particular employee is on their days off.
- It is unreasonable to expect your employee to travel to and from work and the normal residence on a daily basis given the locations of the employment and their home.
- It is reasonable to expect that your employee will resume living at the normal residence when the employment duties no longer require them to live away from home.

Appendix IV – UK

EIM32366 - Travel expenses: travel in the performance of the duties: travelling appointments (UK) Section 337 ITEPA 2003

An employee who holds a travelling appointment can deduct all of their business travelling expenses as travel in the performance of the duties of the employment, even where the journey starts from home.

There is little guidance in case law about what constitutes a travelling appointment but a commercial traveller can be said to be typical. A commercial traveller is travelling **on** his or her work, as distinct from travelling **to** it, from the moment of leaving home. Another example is a service engineer who moves about from place to place during the day carrying out repairs to domestic appliances at clients' premises. Such employees are often described as itinerant.

If an employee has to report to and work at a particular office at the start and end of the day, travel between there and home is not travel in the performance of the duties, unless the calls at that office are fortuitous or incidental.

Whether an employee is truly itinerant, or merely has two or more fixed places of work, is essentially a question of fact. There are bound to be marginal cases.

Many jobs require mobility, in the sense that an employee will have to work at a number of different places from week to week or month to month. But this does not mean that the duties themselves inherently involve travelling, merely that the employee will not always incur the same cost in getting to (or staying near) work. Clearly the frequency with which such changes take place is of major importance. There will be a strong presumption that anyone required to go to a number of different sites each day on an irregular basis will have a travelling appointment. Other factors, however, also need to be taken into account, such as the nature of the work itself and whether, for pay purposes, the employee is treated as starting work only on reaching each site.

It is important, therefore, when an employee considers that he or she has a travelling appointment, to obtain as much information as possible about work patterns. If necessary, ask for a record covering a typical period of weeks or months.

Even if the employee does not have a travelling appointment it is likely that for many such employees every place that they attend is a temporary workplace. So relief for their business travel is likely to be due under Section 338 ITEPA 2003, see [EIM32005](#).

UK Temporary Workplace Rules Section 339 (5) and (6) ITEPA 2003

As explained in [EIM32075](#), a workplace that an employee attends for the purpose of performing a task of limited duration or for some other temporary purpose is a temporary workplace. But there is a further rule that prevents a workplace from being a temporary workplace where an employee attends it in the course of a period of continuous work that lasts, or is likely to last, more than 24

months. Where this further rule applies the workplace will be a permanent workplace. This rule does not apply unless the workplace is capable of being a temporary workplace as defined by S339(3) ITEPA 2003.

A period of continuous work is defined by Section 339(6) ITEPA 2003 as a period over which the duties of the employment are performed to a significant extent at that place. To apply this rule you should treat duties as performed to a significant extent at any workplace if the employee spends 40% or more of his or her working time at that place. The effect of this rule is illustrated by examples beginning with example [EIM32086](#). The effect of this rule for part-time workers is illustrated by example [EIM32092](#). Breaks in attendance are considered at [EIM32105](#).

EIM34020 - Foreign travel rules: duties performed wholly abroad: employee's initial and terminal journeys - Section 341 ITEPA 2003

Summary

This page is concerned with the first and last journeys of an employee who works wholly abroad.

Conditions

All three of the following conditions must be met:

- the duties of the employment are performed wholly outside the United Kingdom (see [EIM34010](#) for the relevance of merely incidental duties)
- the employee is resident and ordinarily resident in the United Kingdom (see [EIM34010](#))
- where the employer is a foreign employer (see [EIM40031](#)), the employee is domiciled in the United Kingdom.

Nature of the deduction

Allow as a deduction from the earnings of the employment, the cost of the employee's:

- starting travel expenses - travel from any place in the United Kingdom to take up the employment and
- finishing travel expenses - travel to any place in the United Kingdom on the termination of the employment.

If the travel is partly for another purpose (for example, a holiday) limit the deduction to the amount properly attributable to the taking up or termination of the employment. Apportionment is a matter for agreement and will depend on the facts.

Interim return visits to the United Kingdom

The deduction for interim return visits to the United Kingdom for an employee in these

circumstances is provided by different legislation and has different conditions (see [EIM34025](#)).

EIM35030 - Travelling expenses: employees working but not domiciled in the United Kingdom: travel between the home country and the United Kingdom

Sections 373 to 375 ITEPA 2003

Provided all of the conditions below are satisfied, allow the cost of a non domiciled employee's journeys:

- from the country outside the United Kingdom in which the employee normally lives to any place in the United Kingdom where duties are performed (see below) and
- returning there after performing his or her duties in the United Kingdom.

The conditions are as follows:

- the employee who is not domiciled in the United Kingdom:
 - receives earnings from an employment for duties performed in the United Kingdom and
 - an amount is included in the earnings in respect of the provision of travel facilities for a journey made by the employee or the reimbursement of expenses incurred by the employee on such a journey
- the earnings are charged on receipt (deductions under Sections 373 to 375 cannot be given against earnings charged on remittance under either Section 22 ITEPA 2003 (see [EIM40102](#)) or Section 26 ITEPA 2003 (see [EIM40304](#)))
- the journey ends within five years of the employee's qualifying arrival in the United Kingdom (see [EIM35060](#)).

Unlimited number of journeys

There is no limit to the number of qualifying journeys that can be made. The employee's journey home can be made for any purpose provided it is made after performing the duties in the United Kingdom.

Journeys having dual purpose

An employee's journey to the United Kingdom may be made partly in order to perform the duties of the employment and partly for some other purpose. If so, limit the deduction to the amount properly attributable to the business purpose.

Journeys to or from a place in the United Kingdom

The requirement that the journey must be to a place in the United Kingdom in order to perform duties of the employment should be interpreted broadly. Travel to the place where the employee lives in the United Kingdom whilst performing the duties will qualify.

Appendix C – Support Letters and Submissions

(i) IBEC

Submission on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders: Additional Comments

14th October 2015



**Submission on the tax treatment
of expenses of travel and
subsistence for employees and
office holders: Additional
comments**

14 October 2015

By e-mail: taxpolicy@finance.gov.ie

14 October 2015

Additional comments:

Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders

To whom it may concern,

On August 21st, after extensive consultation with our members, Ibec made a detailed submission regarding the consultation on the tax treatment of expenses of travel and subsistence for employees and office holders. This submission focused on a number of key issues of importance following consultation with our members.

Since then a number of companies have raised further issues concerning the current, highly restrictive interpretation by the Revenue Commissioners of the “Normal Place of Work” concept, which is the defining factor in relation to determining the allow ability for tax purposes of various business expenses. Bearing in mind the submission deadline has close some time ago we would appreciate any further regard which could be given to the important issues raised below.

The current interpretation of ‘normal place of work’ has an application in relation to NEDs (Non-Executive Directors), and to the highly skilled professional contractors who provide their professional services through their own limited company. This note focuses on the negative impact on the latter group. The specific sectors most impacted by the approach currently taken by Revenue are Pharmaceutical, Engineering, IT and project driven sectors in general, where specialised professional contractors provide their expertise on a project by project basis to different companies. Many of these projects are capital projects arising directly from FDI projects by multinational companies. By definition the professional contractors need to travel from their home base to provide their services as part of a given project team. When one project finishes they will need to travel to a different site to provide their services to the new project.

The current interpretation of the Normal Place of Work by Revenue is disallowing professional contractors, their business travel and accommodation expenses for tax purposes. This is being done even though the expenses are incurred wholly and exclusively in undertaking their work. These professionals provide their professional services as a key element in the flexible mobile workforce which has been so beneficial in attracting FDI. At present these sectors mentioned above are experiencing considerable difficulties in attracting professional service providers under contract to undertake projects. This is causing both delays and cost escalations in certain projects. Recent feedback from our members suggests that the way in which the Normal Place of Work is presently being interpreted is exacerbating this issue; creating considerable damage to the ability to attract investment. Given the importance of both certainty and skills availability for investment decisions a growing reputation for delays in project delivery or unnecessary cost escalation may be damaging to our international reputation in the longer-term.

This issue is a further example of the anomalies (see ‘travelling appointment’ issues) which are currently caused by the strict interpretation of ‘place of work’ currently. In many cases businesses are unable to fully reimburse genuine expenses to contract workers who are based far from what revenue regard as their ‘normal place of work’. For example, where a specialist contract worker is based in Dublin but is working on a site in Westport the overnight costs and travel cost which are genuine business expenses are subject to tax. This is due to the fact that their ‘normal place of work’ defaults to the site on which they are working.

Legislation should be altered to provide that in such situations where an expense is incurred wholly, necessarily and exclusively in the proper performance of an contract workers duties; it is permissible for an employer to reimburse that worker free of tax. Again it may be reasonable to limit this to vouched expenses in order to satisfy revenue as to the bone-fides of claims.

Yours sincerely,

Gerard Brady

Senior Economist, Ibec

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Appendix C

(ii) IOD Submission

**Income tax exemption in
respect of certain expense
payments for relevant
Directors - Finance Bill 2015**

2nd December 2015



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IN IRELAND

Institute of Directors in Ireland

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Minister Michael Noonan T.D.
Minister for Finance
Department of Finance
Government Buildings

Upper Merrion Street
Dublin 2

2nd November 2015

Chief Executive: Maura Quinn. Company Secretary: L Daniel

Directors: D Lamont (President), E Coughlan, L Daniel, G D'Arcv, I Gibnev.

A company limited by guarantee, registered in Ireland number 197643

Re: Income tax exemption in respect of certain expense payments for relevant directors - Finance Bill 2015

Dear Minister,

On behalf of the Institute of Directors in Ireland (IoD), the representative body for over 2,300 directors and senior executives within the private, public and not-for-profit sectors, I am writing to you regarding the provision included in the Finance Bill 2015 for income tax exemption in respect of certain expense payments for relevant directors.

The IoD participated in the consultation process relating to travel expenses in August 2015, and we very much welcome the inclusion of this provision in the Finance Bill 2015 as it signifies a positive step towards acknowledging the critically important role that non-executive directors and boards play in the leadership and governance of businesses in Ireland. However, the restrictive nature of the measure, in applying to non-resident non-executive directors only, is most disappointing and in our view, deeply inequitable.

While the inclusion of foreign-based non-executive directors on the boards of Irish companies positively contributes to board diversity and brings particular skills and expertise to these boards, the role that Irish resident non-executive directors play is equally commensurate in encouraging effective governance practices and providing leadership to a range of Irish businesses. We are particularly concerned about the inequalities and inequities created by the restrictiveness of this measure and moreover, the serious anomalies it presents to the detriment of indigenous Irish business.

We do not believe that there is any merit to applying a distinction between resident and non-resident non-executive directors in the reimbursement of travel expenses in attending board meetings when there is no distinction between the roles that foreign or locally based non-executive directors perform from a governance perspective, nor in terms of their fiduciary duties and responsibilities under the Companies Act 2014.

Furthermore, such a provision provides large companies, who are more likely to avail of the services of non-resident directors, with an unfair advantage over small Irish businesses, who may greatly benefit from the contributions of a non-executive director.

The amendment in the Bill is a welcome first step in recognising how the role of the non-executive director has evolved in recent years, with substantive duties now being undertaken by non-executive directors outside of the setting of the boardroom. However, this is equally as true for Irish resident non-executive directors as it is for non-resident directors. Their roles are their same and therefore their tax treatment should be the same, based on the fundamental tax policy principle of equity.

It is also our contention that the definition of the “normal place of work” of a non-executive director, whether resident or non-resident, as being the location where board meetings take place is outmoded and does not reflect the reality of the role. This is a broader issue that can only be dealt

Part of the IoD International Network

Chief Executive: Maura Quinn. Company Secretary: L Daniel

Directors: D Lamont (President), E Coughlan, L Daniel, G D’Arcy, I Gibney,

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with in the context of an overall review of the travel expenses tax regime, which we believe now needs to be carried out as a matter of urgency.

The impact on Irish business

We strongly believe that effective governance practices, underpinned by a clear and supportive tax environment, should be actively encouraged for all businesses in Ireland, regardless of size. It should not be promoted just for those with overseas directors on their boards, which in reality only account for a minority of Irish boards. We recognise that foreign direct investment has of course played a significant role in contributing to Ireland's economic recovery and growth, however this measure appears to position such a contribution above that made by indigenous Irish businesses, which employ a significant majority of Ireland's workforce and have also substantially driven our recovery. More needs to be done to support Ireland's entrepreneurial culture and the formative and small businesses in Ireland which would greatly benefit from the expertise of a non-executive director in realising their potential.

This is especially important for high-potential start-up companies which may seek the services of a non-executive director on a small or no fee basis in the early stages. Feedback we have received from IoD members indicates that such start-up companies, operating with limited resources, are often restricted in securing the services of non-executive directors based outside of the immediate locality in which the company is located, due to the frequency of board meetings during the formative stages, and the travel that would be required of non-executive directors to attend such meetings. This considerably narrows the pool from which the expertise of non-executive directors can be drawn. From a non-executive director's perspective, the added cost of taxation on the reimbursement of travel expenses in attending such meetings is prohibitive and may act as a disincentive, given the high likelihood that their services are provided on a small or no fee basis.

Many large Irish companies have overseas operations and it is common for such companies to routinely hold certain board meetings in such locations. From a governance perspective, this is to be encouraged, as it is essential that board members have the opportunity to visit operations and key markets outside of Ireland to ensure they are familiar with same. However, as the measure currently stands, Irish resident non-executive directors will face taxation on the reimbursement of travel expenses to attend these meetings.

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Such a disparity may contribute to organisations limiting the number of meetings that are held overseas, or to upwardly inflating the fees paid to non-executive directors as organisations seek to compensate for this cost. Neither outcome contributes to developing or supporting Irish business.

The IoD would strongly argue that the presence of Irish expertise abroad in progressing operations of large Irish companies in overseas markets is equally as important as the contribution of foreign expertise on the boards of businesses based in Ireland.

The extent of anomalies

Again, while in no way diminishing the value of the measure that has been taken in the Finance Bill for non-resident non-executive directors, it is important to outline a number of examples of the anomalies created for Irish resident non-executive directors and indigenous Irish businesses. These examples are true representations of non-executive directorships held by a number of members of the Institute of Directors in Ireland.

Director A is a professional, Dublin based non-executive director, holding eleven non-executive directorships and attending board meetings in two locations, Dublin and Kerry. Director A sits on the boards of two charitable organisations based in Dublin and the board of one start-up company based in Killarney, all on a pro-bono basis. Director A is entitled to the full reimbursement of costs incurred in respect of travel, without taxation liability, in attending an average of ten board meetings on behalf of both charitable organisations in Dublin, but is liable to taxation on the refund of costs incurred in respect of travel to attend an average of ten board meetings for the start-up company in Killarney, despite receiving no remuneration for this role. The start-up company where Director A serves as a non-executive director currently employs five people, with annual revenue of €0.3 million. Within three years, the company aims to be employing twenty people and increase revenue to €2 million.

Director B is based in Dublin and holds four non-executive directorships and attends board meetings in two locations, Dublin and Belfast. Director B sits on the board of a regulated entity which holds board meetings in both Dublin and Belfast. Director B is liable for taxation on the refund of travel expenses in respect of travel to attend an average of four board meetings in Belfast each year, while conversely, the Belfast based members of the same board will be entitled to the full reimbursement of travel expenses, without taxation liability, in respect of attending approximately four board meetings in Dublin each year. There is no distinction between the role and responsibilities of either non-executive director and this measure creates such a distinction.

Director C is based in Wicklow and holds five non-executive directorships and attends board meetings in four locations, Dublin, Laois, London and the US. These organisations have a combined revenue of approximately €400m and employ approximately 550 people in Ireland. Director C sits on the board of a large private Irish company with significant operations in Ireland and the US. The board comprises both Irish resident and three non-resident directors and board meetings are held in both Dublin and the US. Director C travels to at least two board meetings in the US per year and is liable to taxation on the refund of travel and subsistence expenses in attending these meetings. The three non-resident directors sitting on the same board will be entitled to the full reimbursement of travel expenses, without taxation liability, in respect of attending the board meetings held in Dublin.

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Director D has been approached to sit on the board of a private Irish company with operations in Dublin and the US. The position will require attendance at six board meetings, four in Dublin and two in the US. The board has two non-resident non-executive directors. As Director D is based in Dublin, he is concerned about the costs involved with accepting this position given the liability for taxation on the reimbursement of travel and subsistence expenses involved in attending the two US based board meetings each year. The two non-resident directors sitting on the same board will be entitled to avail of the full reimbursement of travel expenses, without taxation liability, in respect of attending board meetings in Dublin.

Director E is based in Dublin and holds five non-executive directorships and attends meetings in three locations in Dublin, Cork and London. In total, Director E attends approximately forty board / board sub-committee meetings per year, twenty of which involve travel. Director E is liable to taxation on the reimbursement of travel expenses to approximately twelve board meetings and board sub-committees held in Cork, while a non-resident non-executive director travelling from London who serves on the same board will be able to avail of the full reimbursement, without taxation liability, in respect of attending these board meetings in Cork. Director E is also liable to taxation on the reimbursement of travel expenses in attending approximately eight board meetings held in London.

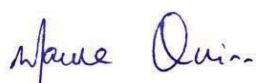
The above examples highlight the depth of inequity and wide range of anomalies arising from this measure.

The IoD would strongly argue that income tax exemption for certain expense payments for directors should be extended to all non-executive directors in Ireland in respect of fully vouched travel expenses incurred in attending board meetings.

In addition to our discussions with IoD members who will be directly impacted by the inclusion of this restrictive measure within the Finance Bill 2015, we have also consulted with the Irish Tax Institute in preparing this submission. We understand that they will also be making a submission to you highlighting the urgent need to address the outdated tax regime for travel expenses for all taxpayers based on the fundamental principles of certainty, simplicity and equitable treatment for all.

We hope that the Department of Finance will take into account our concerns and give due consideration to the impact that the restricted provision as currently drafted will have on indigenous Irish businesses and Irish resident non-executive directors.

Yours sincerely



Maura Quinn
Chief Executive

Appendix C

(iii) Irish Tax Institute

**Letter to Minister Noonan -
Tax treatment of expenses of
travel and subsistence**

2nd November 2015



**Irish Tax
Institute**

Leaders in Tax

Minister Michael Noonan TD
Minister for Finance
Department of Finance
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2 November 2015

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Tax treatment of expenses of travel and subsistence

Dear Minister

We refer to the consultation undertaken by your Department in August on the above matter.

The current tax regime is giving rise to a huge amount of uncertainty and inconsistency in the treatment of travel and subsistence expenses. The Institute made a detailed submission (copy enclosed) in response to your consultation, in which we set out a range of examples where problems arise and suggestions for legislative change that could address them.

The amendment that has been included in Section 6, Finance Bill 2015 "*Exemption in respect of certain expense payments for relevant directors*" is a welcome step in dealing with the issue of travel expenses for non resident non executive directors (NEDs). The onerous tax treatment facing these individuals was becoming a real barrier to attracting international talent to Irish boards – so crucial in bringing experience and supporting good corporate governance.

However, the burdensome tax treatment that has now been addressed for these particular individuals was not unique to them. For example, it continues to apply to Irish resident NEDs travelling to carry out the same important functions on company boards of significant Irish businesses and SMEs and we understand from discussions with the Institute of Directors, that this will pose significant problems for many of their 2,300 members.

It also continues to apply to many other Irish taxpayers whose specific working patterns require them to travel as part of their duties (for example, those travelling from home based offices and those travelling to temporary places of work). We suggested in our submission an alternative approach to the taxation of travel expenses which should help alleviate many of these issues - allowing expenses to be reimbursed without deduction of tax when incurred by an employee/director, while representing the interest of their employer and where the expense is incurred wholly and exclusively for the purpose of the business.

For as long as the fundamental principles of taxing travel expenses remain out of line with modern working practices, there will continue to be unnecessary cost and uncertainty arising for thousands of Irish taxpayers. To reflect this urgency, we are asking that the matter be addressed at Committee

Mary Honohan – President, Mark Barrett, Marie Bradley, Colm Brown, Dermot Byrne, Sandra Clarke, Ciaran Desmond, David Fennell, Karen Frawley, Ronan Furlong, Johnny Hanna, Jim Kelly, Aoife Lavan, Jackie Masterson, Frank Mitchell, Tom Reynolds, Frank Ryan, Kieran Twomey, Shane Wallace, Martin Lambe (Chief Executive), Immediate Past President – Andrew Gallagher

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Continuation Sheet

Stage to the Finance Bill. Our submission referred to above contains suggestions on legislative change that could be adopted and which might assist your officials in this process.

If it is not possible to rectify these issues at the Committee Stage it would be helpful if clarity could be provided on how your officials propose dealing with these outstanding issues.

Yours truly


Mary Honohan
President
Irish Tax Institute

Appendix D

The Role of Freelancers in the British Innovation Driven Economy

Executive Summary

Author

Professor Andrew Burke

EXECUTIVE SUMMARY



THE ROLE OF FREELANCERS IN THE BRITISH INNOVATION-DRIVEN ECONOMY

Professor Andrew Burke

DIRECTOR OF THE BETTANY CENTRE
FOR ENTREPRENEURSHIP AT CRANFIELD
SCHOOL OF MANAGEMENT



The voice of freelancing



Financial and Insurance Activities



Information and Communication



Manufacturing



Professional, Scientific and Technical Activities



Electricity, Gas, Steam and Air Conditioning Supply



Wholesale and Retail Trade



Executive Summary

Freelancers play a pivotal role in Britain's 21st century innovation-driven economy:

They are sources and conduits for innovation in both corporations and SMEs

They liberate businesses from the limits of their internal resource base and enable the use of exceptional talent that would otherwise not be economically feasible to hire on employee contracts

They reduce the amount of finance required for innovation and business start-ups

They promote efficiency driven economic performance

They create jobs by increasing the level of innovation and efficiency in the economy

They enable businesses to manage, in fact reduce, entrepreneurial risk and so promote innovation and enterprise

Freelancers also enabling de-risking of some of the uncertainties of the market so that firms can reduce the risk of growing

They reduce barriers to market entry and reduce minimum efficient scale

They enable businesses to maximise performance across peaks and troughs in demand

Freelancers usually generate these benefits through a working partnership with employees. This symbiotic relationship between employees and freelancers has unfortunately been overshadowed by their competitive interaction.

Despite these important economic functions, freelancers are still largely unexplored and unheralded economic agents in the modern British economy. The main reason for this is that their new pivotal role has only really come to the fore with the emergence of the innovation-driven economy over the last three decades.

In this setting businesses benefit from being:

Innovative

Able to manage entrepreneurial risk

Flexible

Capable of prospering despite greater market uncertainty

Agile

??????????????

Freelancers enable businesses to do all these things and hence have become a key driver for economic performance in the economy. There is a need to identify the defining and unique features which distinguish them as unique economic agents in their own right.

In this report we analyse the use of freelancers in 24 firms comprising a mix of Corporations and SMEs at varying ages from recent start-ups to more mature organisations. These businesses are drawn from some of the major industries driving the British economy including manufacturing, information and communications, financial services, and professional, scientific and technical activities. We examine the roles and functions that freelancers serve in these industries and assess how effective they are in adding value.

We find that freelancers serve a different function to employees in terms of their role in the innovation-driven economy.

In terms of corporations and large firms we find that freelancers fulfil managerial and technical roles at every stage of the innovation development process from:

Innovation creation

Commercialisation of innovation

Integration of innovation into the core of the organisation

Throughout all the stages of innovation development freelancers add value by:

Providing entrepreneurial management expertise not available in-house and without distracting executives from core business

Enabling the use of specialised human capital not available in-house and without distracting executives from core business

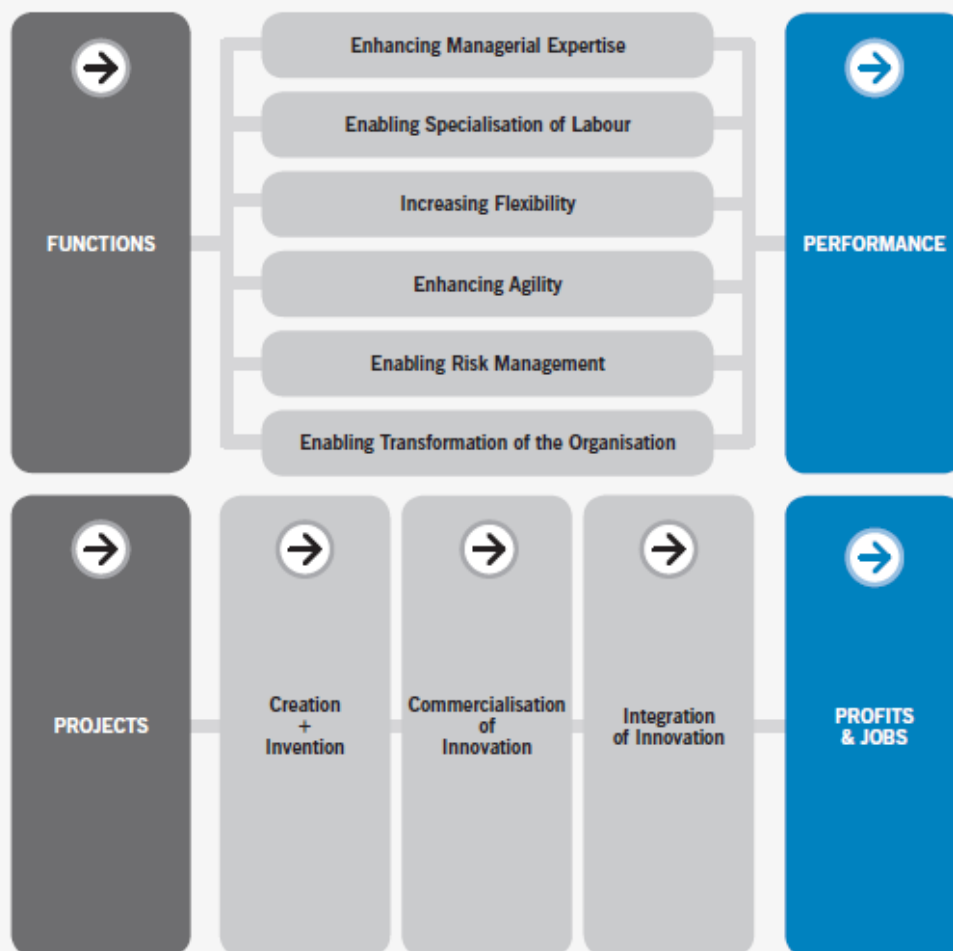
Enhancing the flexibility and agility of businesses

Making large organisations more capable of transformation

Lowering the cost and risk of innovation

The Freelance Innovation Value Chain

These effects increase the scale and effectiveness of innovation undertaken by British business. They are summarised in the Freelance Innovation Value Chain below. The bottom panel shows that the projects undertaken by freelancers involve three stages of innovation development. The top panel shows the value added provided by the various roles of freelancers across each of these three stages. The front arrow of the diagram illustrates that the combined impact of these roles across all three stages enhances business performance – increasing profits and creating jobs



Freelancers also promote innovation-driven economic performance through entrepreneurship. We observe freelancers being used at every stage of a new venture's development from start-up, to early stage survival and through to business growth. These freelancers fulfil managerial, technical and professional tasks.

Across all stages of new venture development freelancers help businesses to perform by allowing them:

Access to external specialised and entrepreneurial talent on a 'pay as you grow' basis

Reduce finance constraints

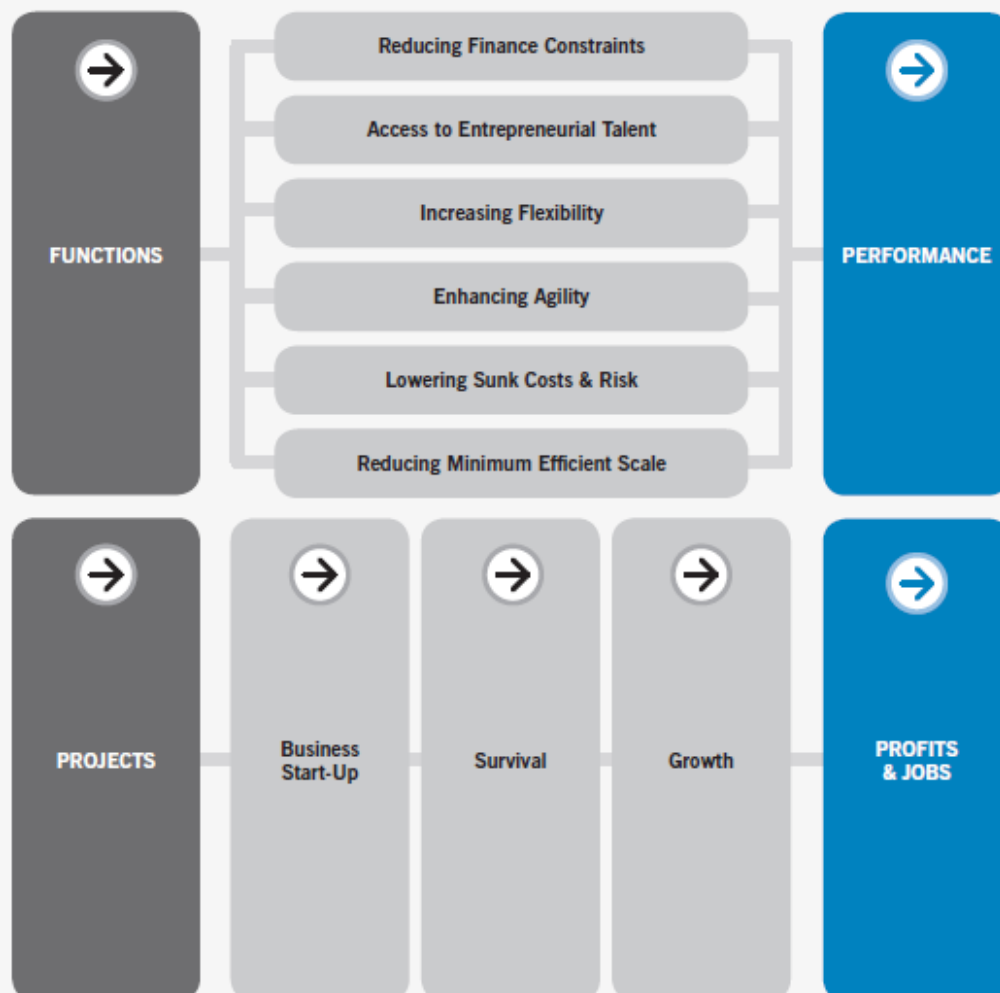
Reduce sunk costs and risk

Greater flexibility and agility

Increased ability to compete against large firms by reducing minimum efficient scale

The Freelance Entrepreneurship Value Chain

The value created in new ventures by freelancers is summarised in the Freelance Entrepreneurship Value Chain below. The lower panel illustrates that freelancers are involved in projects in the start-up, early stage survival and business growth phases of new venture development. The upper panel illustrates the roles in which freelancers add value. The combined effect of these roles across all three phases is illustrated at the front arrow in terms of enhanced profits and job creation in new ventures.



Freelancers Promoting Efficiency-Driven Economic Performance

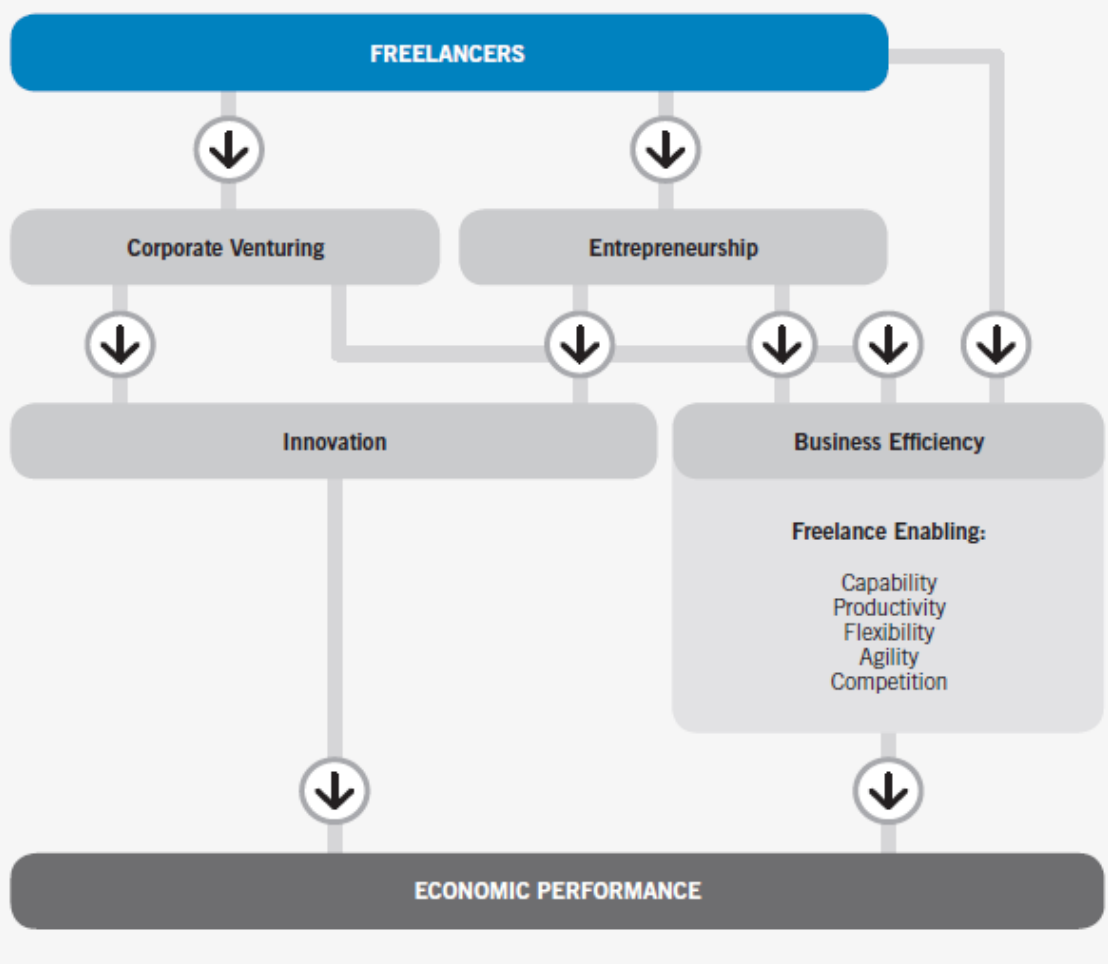
In the research we also observe that freelancers play a key role in promoting efficiency-driven economic performance which of course is both important in its own right but also key to ensuring that the maximum economic value added is generated from innovation. The ability of businesses to draw on freelance talent enables their capability, productivity and competitiveness while simultaneously boosting efficiency by enabling better management of risks for businesses operating in markets under uncertainty. Through these routes businesses can enhance their efficiency and hence performance. The availability of freelancers also reduces barriers to entry and minimum efficient scale thereby increasing competition and hence economic efficiency. We provide a visual summary of the effects in the diagram below.



Freelance Drivers of Economic Performance

The total effect of freelancers on economic performance is then a combination of the corporate venturing and entrepreneurship effects, working to promote innovation-driven economic performance, combined with enhanced efficiency-driven economic performance promoted by the input of freelancers. The total effect of freelancers on economic performance is depicted in the figure below. It underscores the importance of freelancers to the British economy.

The analysis that supports this highlights that the common view that freelancers are just a shadow workforce for employees is a misconception. The research finds that they mainly serve a different economic function – particularly in driving innovation and helping firms overcome the challenges faced by risk and uncertainty – and in doing so they help create and sustain employment.



It is clear that the businesses in this study would create less economic value without freelancers and that a significant proportion of their employee base rely on the prior activity of freelancers to create their jobs. In carrying out this function freelancers serve a unique business function which distinguishes them as unique economic agents in their own right.

Based on this analysis we offer a new definition which can help identify freelancers so that public policy – particularly relating to fiscal matters, industry, enterprise and the labour market – can recognise this important resource to ensure Britain has a sufficient supply of high quality freelancers to promote economic prosperity.

Freelancers are workers who hire their services on a contingent project or limited duration basis where remuneration is either output based or if input based is of limited duration. The cost and risk of their own labour downtime within the project and economic inactivity between projects are borne entirely by the freelancer.

The lack of an up-to-date definition of freelancers which recognises them as a distinct economic agent in their own right limits the optimisation of their use in the economy and by consequence stunts economic performance. Choosing to become a freelancer should not involve financial risk (particularly in relating to fiscal matters) as well as barriers to trade for people just because this unique activity is not properly recognised.

The same holds true for businesses that want to use freelancers and can be deterred from doing so as a result of the financial and reputational risk stemming from regulation that justifies the legitimacy of freelancers using older economy classifications associated with employees and business owners. For instance, it is clear from the definition above based on the distinct and important function of freelancers in the modern British economy, that being a business owner is neither a necessary nor sufficient condition to qualify as a freelancer. Yet, fiscal guidelines such as IR35 incentivise freelancers to mimic a business owner in order to establish their legitimacy.

Likewise, industry associations and unions frequently put pressure on businesses to use employees instead of freelancers hence completely missing the key finding in this study that in the modern economy these workers are typically complements rather than substitutes for employees - many employees rely on prior work of freelancers to create their jobs. We need a fresh perspective across industry and public policy.

The important and unique economic role of freelancers in the modern economy needs to be:

Recognised: As unique economic agents providing an important and distinct economic function to employees and business owners

Protected: The unique economic value added provided by freelancers is part of the core of the modern British economy and hence needs to be allowed to thrive

Nurtured: It is good policy to ensure that British business always has access to a sufficient supply of high quality freelancers in order to optimise the potential of these businesses.

Appendix E

The Economic Role of Freelance Workers in the Construction Industry.

**Author
Professor Andrew Burke**

THE ECONOMIC ROLE OF

FREELANCE
WORKERS IN THE
CONSTRUCTION
INDUSTRY

(Second Edition)

PROFESSOR ANDREW BURKE

CRANFIELD SCHOOL OF MANAGEMENT



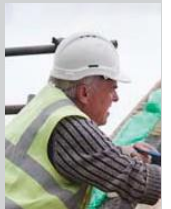
THE INDUSTRY'S BUSINESS
MODEL DEPENDS ON
FREELANCE BUILDERS



GENUINE FREELANCE
BUILDERS PLAY A PIVOTAL
ENTERPRISE-ENABLING ROLE



LEGITIMATE FREELANCE
BUILDERS ARE NOT
FALSELY SELF-EMPLOYED



ABOUT THE AUTHOR

PROFESSOR ANDREW BURKE IS THE FOUNDING DIRECTOR OF THE BETTANY CENTRE FOR ENTREPRENEUR AT CRANFIELD SCHOOL

OF MANAGEMENT, UK. HE IS ALSO ON THE BOARD OF CRANFIELD VENTURES LTD – CRANFIELD UNIVERSITY'S TECH-TRANSFER DIVISION.

He is widely published in top ranked international journals including the Harvard Business Review, Journal of Management Studies, Regional Studies, International Journal of Industrial Organization, the Oxford Bulletin of Economics and Statistics, and Small Business Economics. His work has been presented at the EU Commission, World Trade Organization, HM's Treasury, UK Houses of Commons and Lords as well as through media such as BBC Breakfast Television and the Working Lunch.



Andrew is a founding editor of the *International Review of Entrepreneurship* and has acted as a guest editor of the *International Journal of Industrial Organization*.

He has acted as a consultant for the European Commission, Businesslink UK, GESAC (EU), Forbairt (IDA), Hudson Contract, Schlumberger, Selex-Galileo, May Gurney, Bank of Ireland International Banking, the Irish Music Rights Organisation, and the UK Professional Contractors Group (PCG).

EXECUTIVE SUMMARY

Remarkably, there has been little research investigating the economic importance of freelance workers in their own right. Instead, freelancers tend to make cameo appearances in research on industrial relations and entrepreneurship where they are usually cast in a negative light as exploited workers or underperforming entrepreneurs. In this research paper freelancers are the prime focus of attention. We examine their economic role in the context of the construction industry. Freelancers in the construction industry are normally referred to as 'labour-only subbies' or 'pricework subbies'. We find that freelancers serve a unique and hitherto ignored positive function in the economy. They create economic value added by enabling greater enterprise. Indeed, since this value added creates a source of income which is unique to freelancers, we argue it is their defining feature. It distinguishes them from entrepreneurs and employees.

We find that freelancers create economic value in the construction industry through 6 channels:

1. Freelancers enable greater de-risking of business ventures which limits the downside risk and enhances the expected return on investment.

Freelancers offer firms a 'pay as you go' model which saves them the risk of sunk costs inherent in employment contracts. This facilitates the staging of finance and the associated de-risking techniques so crucial to business venturing.

2. By enabling de-risking strategies, freelancers enhance entrepreneurial capability by reducing finance constraints and enabling greater flexibility to alter strategy and tactics.

Freelancers reduce barriers to entry to the construction industry by reducing the need to raise large amounts of finance per building project. By enabling the staged construction of building units freelancers reduce the amount of finance needed for the high-risk/early-stage of a project.

If the project proves viable then
follow on stages of finance are
less risky and hence cheaper and

more readily available. If the project proves to be unviable then the use of staged finance minimises financial loss and increases the ability to embark on alternative ventures.

3. Freelancers enable ventures to utilise performance related pay schemes which can raise productivity and pass off risk.

In the construction industry the use of piece rate remuneration practices is almost exclusively restricted to freelance workers. This implies that the more productive and/or less risk averse workers self select into freelance work.

4. The construction industry has a high degree of specialisation of labour with a concomitant significant amount of downtime (with an average range of between 53 to 82 per cent in our case studies) per trade per project. Freelancers reduce these costs as they entail no downtime costs. But freelancers also reduce the need for firms to have a large portfolio of projects in order to reduce extensive spare capacity costs. So by reducing minimum efficient scale they promote lower concentration in the construction industry.

We found that firms in the construction industry were emphatic in their appreciation of this efficiency enabling feature of freelancers. Every firm we interviewed indicated a severe contraction of

operations (more usually closure) if they had to absorb the downtime costs saved through the use of freelancers. Without freelancers, the higher costs would lead to higher prices which would in turn cause a contraction in the industry.

One 'sting in the tail' for freelancers is that this increased competitiveness

5. Freelancers enable firms to reduce the cost and risks associated with uncertainty over fluctuations in consumer demand.

Here the spare capacity results, not from the specialisation of labour techniques used in the industry, but from an economic downturn. We found that freelancers absorb much of this risk for firms and hence reduce the scale of bankruptcy. By contrast we found that in boom periods freelancers have played a key role in ensuring that firms were not constrained by lack of capacity. Both effects imply lower costs and building prices for consumers at every stage of the business cycle.

6. Freelancing reduces monopolistic power and promotes competition.

We found that freelancers reduce sunk cost barriers to entry, increase the ability to raise venture finance, reduce risk in entrepreneurship and reduce industry concentration. In sum, they increase the level of competition in the industry which is a major benefit to the British economy.

EXECUTIVE SUMMARY

reduces their ability to benefit from the value added that they create. Strong competition means that much of the value added is passed onto consumers.

The construction industry's business model is enabled and underpinned by the availability of legitimate freelancers. Without genuine freelancers the construction industry would be smaller in

size and hire fewer workers. It would be less entrepreneurial and more inefficient. Consumers (i.e. households, industry and Government) would pay higher prices to a more highly concentrated and less competitive industry. The empirical evidence

in this report supports this view. In the case studies we observe industry executives explaining that

the industry business model relies on the ability to use freelancers. We test this further by doing two intensive 'ground-up' estimates of the use of freelancers on a homebuilding and a state funded school building project. The research only finds

a legitimate use of freelancers consistent with definition outlined in Burke (2012) which captures the unique value added provided by genuine freelancers in the modern economy. Our results indicate that an average of 51 per cent of headcount and 57 per cent of work days on these construction projects were accounted for by freelancers. In other words, freelancers dominate

employees in the trades-manual workforce of the construction industry.

Genuine freelancers play a pivotal enterprise enabling role in promoting economic performance in the construction industry. They are not entrepreneurs but enable entrepreneurship. Their unique contribution needs to be recognised and valued. Their frequent misclassification as lesser forms of employee or entrepreneurs runs the risk of encouraging policies aimed at eliminating this vital input

Appendix F

PCSO Contractor Assessment

Contractors Name:

Limited Company Name

Number of Years Contracting

Sector

Role Description

Client Company

Contract Duration

Contractor Assessment – Mandatory (Part A)

- i. I am an Independent Professional Contractor
- ii. I provide my Professional Services through a Limited Company as Required and I understand, the legal, taxation & social welfare obligations of providing my services in this manner
- iii. I became an Independent Professional Contractor- and remain so of my own free will.
- iv. The Limited Company that I operate through is paid a fee for my time & input. The invoice is paid for completed work, however daily & hourly rates may be used as a convenient basis for the purpose of invoicing.
- v. The Limited Company engages in Contractors for a specified duration and this is undertaken on a Project by Project basis. The duration of these contracts vary and are often open to extensions. I acknowledge and accept the terms of the contract between my company and the other party in which a Contract for Service is entered into.
- vi. I acknowledge that no part of the financial consideration of the contracts I enter into has been withheld for holiday pay, sick leave or any other statutory employment related provision

I declare that I operate as a Professional Contractor as per the declaration points above and I will operate my Limited Company Contract in a Tax Compliant manner. I will ensure that I will remain tax compliant by getting advice and assistance from a Qualified Accountant with experience in this sector

Signed _____

Date: _____

Professional Contractor Assessment – Normal Course of Business Declaration (Part B)

- a)** I am a specialist Independent Professional Contractor, and it is my long term objective to develop a career in this sectors
- b)** I intend to develop a long term business as Professional Contractor
- c)** I advertise my professional services as required and generate contracts for Service, that enables the company to provide services to the sector
- d)** I understand that to continue providing my professional services I need to keep my experience and education in this sector up to date, and I ensure this is undertaken
- e)** I fully understand the obligations of operating as a self-employed company director and the obligations this places on me personally.
- f)** I understand the risks involved in operating through a Personal Limited company, and that this may entail financial losses as well as rewards depending on how I operate my Contracting business and how often I can obtain Contracts for Service.
- g)** I have the discretion and flexibility on how I provide my professional services including start and finish times, but having consideration of any team, or colleagues with which I engage.
- h)** My Limited Company has all the appropriate Insurances as required to carry out operating as a Professional Contractor

I declare that I am operating my Limited Company in the normal course of business rather than just a specific Contract for Service..

Signed _____

Appendix G

European Forum for Independent Contractors Manifesto

Unlocking the Potential of Europe's iPros



EFIP MANIFESTO

European Forum of Independent Professionals

2014

Unlocking the potential of Europe's iPros





Foreword

from EFIP Patron, John Niland

EFIP believes that the next European Parliament has a great opportunity to take bold steps to enhance independent working as a vital and vibrant part of Europe's economic landscape.

Independent Professionals, or iPros, often referred to as freelancers, are knowledge workers who provide specialist skills to their clients. In the last decade, the numbers of iPros have dramatically grown, yet successive European Parliaments, along with the other EU institutions, have failed to recognise this growth. The next Parliament can and must move forward from this situation and should act to ensure that iPros are given the credit and support they deserve.

The European Forum of Independent Professionals (EFIP) was founded in 2010 and is a collaboration of national associations. EFIP represents iPros at EU level through targeted research and advocacy. In this document, EFIP's first manifesto, we are calling for:

- Recognition of the growth in independent working
- Recognition of the value of iPros to the European economy

This recognition can be demonstrated in the following ways:

- Improved access to training and services
- Visibility in official statistics and data
- Better regulation that specifically considers the unique needs of iPros
- The appointment of an iPro envoy to champion the benefits of independent working
- Help for iPros to help businesses thrive

iPros are a flexible and innovative resource that bring substantial benefits to European businesses and the economy as a whole. EFIP expect the next Parliament to hold the Commission to account to ensure iPros are supported and cherished as a vital part of the European labour market. EU institutions must recognise that independent working is a sustainable career and lifestyle choice which, despite the personal risk, is an increasingly popular way of working in the 21st Century.

Introduction

Over the last decade, the EU has seen a dramatic change in its labour market: the rise of the independent professionals or iPros. Their rise represents a major shift in the nature of work and ways of working. No longer can work be defined simply in terms of working for a big corporation, public sector employer or an SME. iPros, with their different approaches to work and distinct philosophy, have the ability to be flexible and innovative, and provide added value to businesses and economies.

iPros are highly skilled self-employed individuals who work for themselves but do not employ others. They range from engineers and analysts to ICT specialists and consultants. iPros represent a significant segment of professional working generally, making up 25% of all those working in professional, scientific and technical work and 22% of all those in arts and entertainment.

The growth in iPros in the EU since 2004 has been remarkable. Numbers have increased by 45% from just under 6.2 million to 8.9 million in 2013¹, making them the fastest growing group in the EU labour market.

There is no such thing as a 'typical iPro'. iPros are an extremely diverse group, working across the business world, in fact anyone who is working independently in a knowledge-based industry.



¹Future Working - The Rise of Europe's Independent Professionals by Prof. Patricia Leighton (2013)

Who are the iPros

- iPros are highly skilled knowledge workers
- They supply services to a range or succession of clients
- iPros are neither employers nor employees
- They have commercial ('self-employed') relationships with their clients
- iPros work for a fee, not a salary

Many different terms are used to describe iPros, including 'freelancer', 'independent worker', 'contractor', 'nano-business', 'interim', 'portfolio worker', 'consultant', and 'own account worker'.



About EFIP

Founded in 2010, the European Forum of Independent Professionals (EFIP) is a collaboration of national associations which represent independent professionals at EU level through targeted research and advocacy.

EFIP is a not-for-profit organisation that is not affiliated to any political party. Our mission is to promote the value of iPros to the European and national economies and to ensure that independent working is respected as a legitimate alternative to employment.

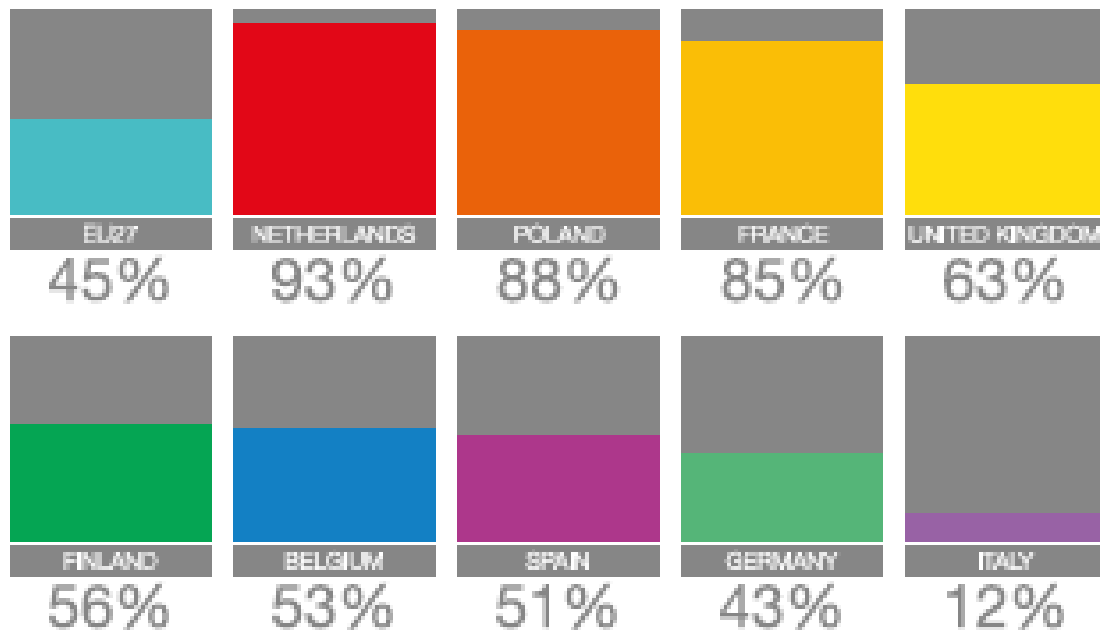
EFIP strives for the European business environment to become more conducive to the independent way of working.



iPros in numbers

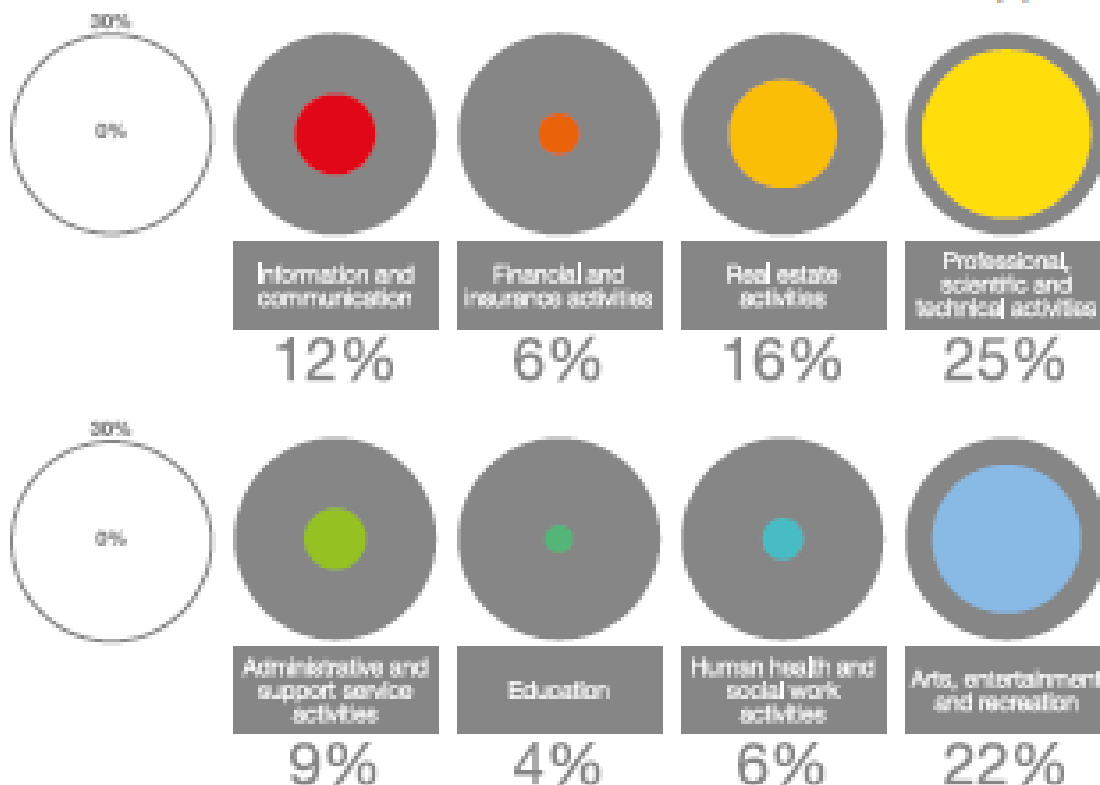
- The EU27 iPro population grew from fewer than 6.2 million professionals to nearly 9 million, a 45% increase between 2004 and 2013.
- The number of iPros in the Netherlands, Poland and France have almost doubled over this period.

Percentage growth in the number of iPros 2004-2013



- iPros make up a quarter of all those working in professional, scientific and technical sectors in the EU27 and 22% of all those working in arts, entertainment and recreation services.

No. of iPros as % of sector, Q1 2013



- While professional employment has grown by 5% between 2008 and 2012, iPros working in professional sectors has grown by 16%.

Key Messages

Freelancers and independent professionals are a growing and vital part of the European labour market. In the wake of Resolution 2013/2111 adopted by the European Parliament on 14/01/2014 and ahead of the 2014 European Parliamentary elections, EFIP call on all members of the European Parliament to:

Recognise iPros

Give us official status at all levels of government and bureaucracy. Realise that we're not the same as small and medium enterprises or other activity categories.

Give us access

Make sure freelancers can access all government services, bid for official contracts, access training programmes and qualify for funding.

Count us

Include us in all official statistics, and study our demographic. Don't put us together with other small business categories.

Remember us

When you create policy about employment and industry, think about how it will specifically affect iPros.

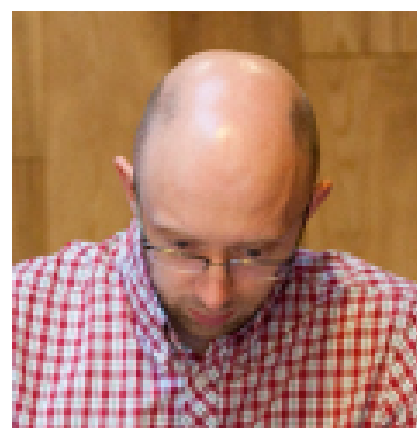
Give us a voice

Talk to our representative organisations, give us a seat at the table and appoint an iPro envoy to champion independent working.

Treat us fairly

Pay us on time. Write contracts that treat us ethically.

*These recommendations are summarised from the 2013 report *Future Working - The Rise of Europe's Independent Professionals* by Prof. Patricia Leighton. Available for download at www.efip.org*



Recognise iPros

Independent working is a force for economic growth



European institutions must recognise the growth and value of iPros across the EU. iPros are a unique sub-set of self-employed workers. Their business model rests on supplying their expertise to clients without necessarily seeking to grow and take on permanent staff. They are the very smallest businesses in the EU. Therefore they should be recognised as a legitimate business model and be included in the small business agenda, rather than the employment and social agenda.

Crucially though, iPros are distinct from SMEs. They are unique economic agents providing an important and distinct economic function to employees and business owners. Policy makers must recognise the contribution of iPros and ensure that iPros's characteristics and needs are specifically recognised in policy development.

Give us access

iPros need improved access to training and services



Make sure freelancers can access business support services, bid for official contracts, access training programmes and qualify for funding.

The only way iPros can grow their business and keep on meeting the needs of other European businesses is through continuously improving their skills. Training should be encouraged in this fast moving environment to allow iPros to compete in a globalised economy.

Count us

iPros must be specifically recognised in official statistics and data



Because iPros don't fit into the framework of employers and employees, they are not a major focus of ongoing statistics or survey research across the EU. Yet they are the fastest growing sector of the labour market.

The EU's iPro workforce has grown consistently for the past decade; across the years and across the different member states. From 2004 to 2013, the EU27 iPro population grew from fewer than 6.2 million professionals to nearly 9 million, a 45% increase. In each of the nine countries selected for a recent study by Professor Patricia Leighton, there has been growth over that period, ranging from 12% in Italy to a near doubling in the Netherlands (93%) and France (85%).

Despite this rapid growth, there are no official statistics that relate to iPros. The EU must collect data on iPros to ensure they are expressly considered where policy issues with particular relevance (e.g. late payment, access to public procurement contracts, enhancing employability) are being addressed for SMEs.

Remember us

Regulation must specifically consider the unique needs of iPros



As the smallest of small businesses, it is vitally important for iPros that regulation is clear, accessible and not unduly burdensome. The EU must give special consideration to how proposals will affect iPros.

Specifically the EU must:

- Consult with iPro groups before introducing regulation and legislation.
- Carry out post-implementation impact assessments of all legislation and regulations.
- Create a central portal, within which all regulations are visible.
- Insert sunset clauses in all new regulations so that the desirability of any single regulation has to be examined afresh.
- Ensure regulations, such as the Agency Worker's Directive, do not impact upon genuine freelancers in business on their own account.

Give us a voice

Appoint an iPro envoy to champion the benefits of independent working



EFIP is made up of associations that represent iPros at national level. With members from France, Germany, Italy, the UK, the Netherlands, Belgium and Ireland, EFIP is well placed to understand the concerns of iPros across Europe. Policy makers should consult EFIP before making policy that could affect them inadvertently.

For too long policy makers have focussed on SMEs without asking what impact policies might have on iPros. In order to address this, a specific official for iPros should be appointed, not dissimilar to the current SME envoy. The iPro envoy would have responsibility for the flourishing freelance community, to act as a champion and ambassador of the independent way of working.

Treat us fairly

Help iPros help businesses thrive



The EU must ensure that iPros are not forced into accepting unreasonable contract clauses and terms of payment by larger companies. iPros are self-sufficient and resilient, but as the smallest businesses they can have an unequal relationship with their larger clients. The EU must ensure that a sensible regulatory framework is in place that will support iPros to do business.

In particular, it is vital that issues such as late payment and access to public procurement contracts, which are disproportionately burdensome for iPros, should be considered from an iPro perspective.

The future of independent working

It is EFIP's fundamental belief that a flexible labour market which enables iPros to thrive is key to ensuring Europe's future economic success.

The next European Parliament should encourage freelancing as a flexible, innovative and entrepreneurial way of working that enables businesses to perform more cost-effectively, especially when recovering from the recession.

- Independent working should be promoted and incentivised.

A flexible labour market facilitates a dynamic and competitive economy able to thrive in the future. The Parliament should promote independent working as a viable option for those individuals who actively choose this enterprising path.

- Jobseekers who choose to work independently should be supported to explore this option.

Freelancing could represent an attractive choice for many entering the labour market, including graduates. This is evidenced by the spectacular growth in co-working spaces around Europe. The EU should inform and support freelancing in strategic sectors such as the creative and high-tech industries.

- **EU institutions should recognise that freelancing is an active and sustainable career and lifestyle choice, and is here to stay.**

The way in which people work is changing. The EU must adapt and change with it. In modern society, where traditional, routine 9 to 5 employment is no longer the only suitable option, independent working represents a sustainable forward-looking alternative.



The online campaign

To gain widespread support and awareness for the manifesto, EFIP is launching the European Freelancers Campaign 2014. This campaign will inform iPros across Europe about the manifesto, and encourage them to show their support for it by signing up at:

www.freelancers-europe.org

Social media platforms such as Twitter and Facebook will be used to disseminate information about the campaign and direct iPros to the website. The European Freelancers Campaign 2014 will be launched in Brussels on March 5, and will run until the end of May.

Contact us



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Appendix H

Future Working: The Rise of Europes Independent Professionals (iPros)

Author: Patricia Leighton

FUTURE WORKING:

THE RISE OF EUROPE'S INDEPENDENT PROFESSIONALS (IPROS)

Patricia Leighton

*Professor of European Social Law
at the IPAG Business School, France.*

with

Duncan Brown



“ iPros are virtually
invisible in academic
literature ”

EFIP

European Forum of Independent Professionals



SUMMARY

“Traditional hierarchical organisations are struggling. People are increasingly rejecting traditional employment with its lack of personal control and repression of creativity. New ways of working are emerging, new forms of collaboration, new structures, new alliances and new opportunities. iPros are at the heart of this.”¹

Who are the iPros?



By the beginning of 2013, five years since the onset of the recession, there had been a loss of around seven million jobs across the European Union. On average, one in ten people were left without work, with countries such as Spain and Greece facing much higher unemployment rates. Yet one part of the labour market bucked this trend.

The EU has seen a new phenomenon - the rise of the independent professional, or iPro, often referred to as freelancers. Their rise represents a major shift in the nature of work and ways of working. No longer can work be defined simply in terms of working for a big corporation, public sector employer or an SME. iPros, with their different approaches to work and distinct philosophy, have the ability to be flexible and innovative, and provide value-added to businesses and economies.

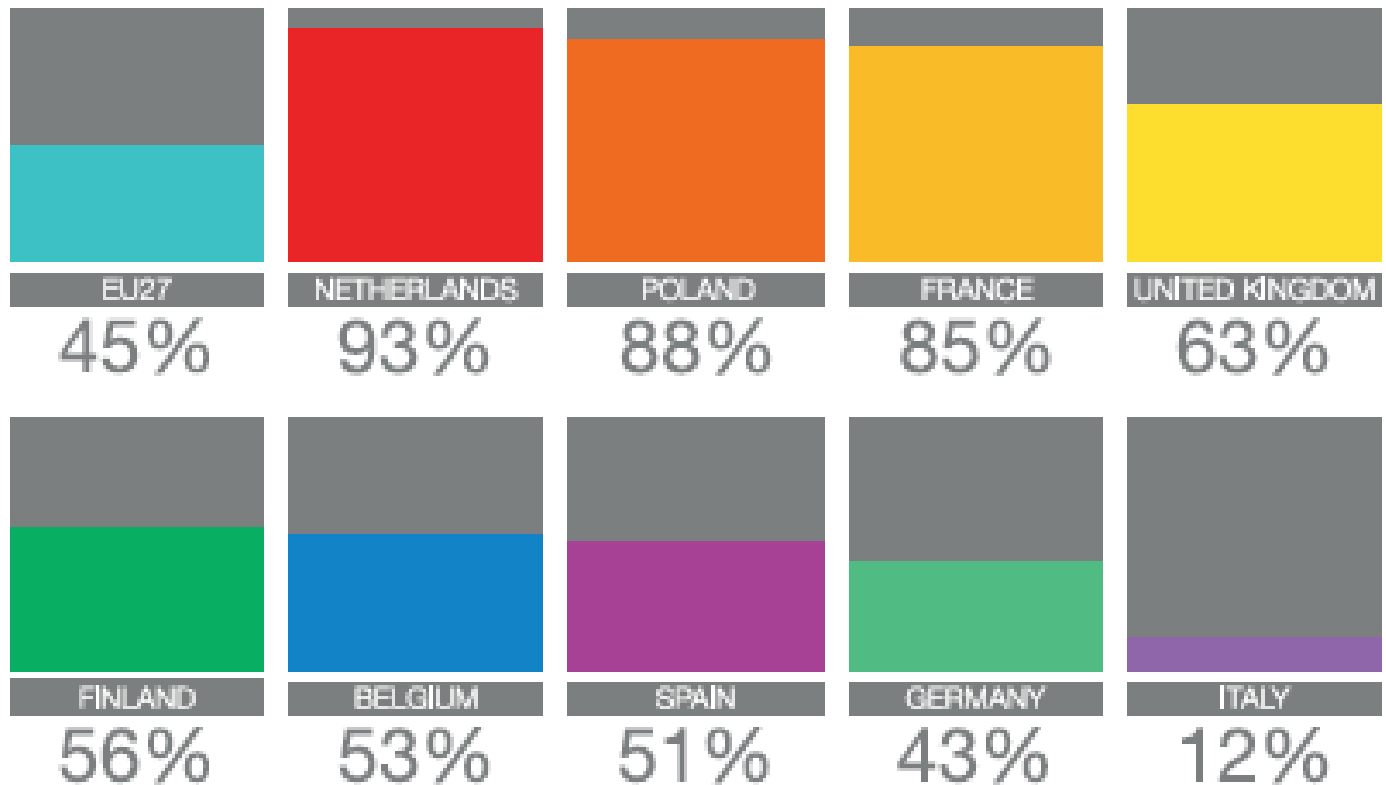
iPros are highly skilled self-employed individuals who work for themselves but do not employ others. They range from journalists and designers to ICT specialists and consultants. iPros represent a significant segment of professional working generally, making up 25% of all those working in professional, scientific and technical work and 22% of all those in arts and entertainment. The growth in iPros in the EU since 2004 has been remarkable. Numbers have increased by 45% from just under 6.2 million to 8.9 million in 2013, making them the fastest growing group in the EU labour market.

The growth in iPros has not been consistent across EU states, but in the Netherlands, Poland and France it has been especially marked. The EU still faces unprecedented levels of unemployment and without this growth in iPro working, the picture would be much gloomier.

What do we know about iPros?

In spite of this growth little is known about iPros, the way they work and the barriers they face. Who are they? Why do they choose to work this way and how do they cope with uncertainty and risk?

Percentage growth in iPros 2004-2013



iPros are virtually invisible in academic literature, and in official statistics they are subsumed in either self-employment or SME data. Yet they provide a responsive, competitive supply of expertise to cater for constantly changing client needs and contribute to economic growth. At a time of rapid change and increased competition, it is critical that European policy makers and the business community understand iPros, the skills and innovation they provide, and ways in which their contribution to the economy can be nurtured.

Finding out more about iPros

This research aimed to find out more about iPros and understand the reality of their working lives, the regulatory framework they work within, and the wider context of their work. The research was carried out in two phases between June 2012 and May 2013. The first phase involved the analysis of existing data and trends in iPro working across the EU with a focus on nine states². Phase two consisted of 87 face-to-face or telephone interviews with three groups: iPros drawn from three representative professions³, leading academics, and leaders of professional bodies and trade unions, administrators and politicians familiar with the issues around iPro working.

What did the research find?

The research confirmed there is a major change in the way work is performed - a shift from having a job to working for clients. A new and exciting radical agenda based on collaboration rather than competition has emerged as a response to perceived failures in existing business and management strategies. However, there are also many barriers to being an iPro and working in this way is complex. It demands policy makers and client organisations to devise customised initiatives to support iPro working.

Attitudes towards iPros

The importance of iPro working is increasingly being recognised as having legitimacy. However, iPros do face constant accusations of 'sham' self-employment, where employees are forced or voluntarily become self-employed to minimise tax and other liabilities. They feel they are treated with suspicion and hostility by fiscal authorities, ignored by politicians developing initiatives to support new enterprises, and marginalised by the wider business community.

Becoming an iPro

iPros find this way of working fulfilling. Many choosing to work in this way have rejected standard employment, which they feel requires conformity and represses creativity. Survey data indicates that many EU citizens (37%) share these views and wish to work independently but are deterred by fear of failure, a lack of finance and skills, and red tape.

There is a scarcity of support for those starting out as an iPro. The perceived unavailability

of relevant and affordable information and advice has resulted in iPros being concerned with their lack of business skills.

iPro working

The rise of iPro working marks a distinctive shift to a more collaborative way of working. iPros value autonomy and freedom, yet to be effective they need the appropriate support. As their specific needs are not recognised, iPros have developed their own supportive environments in the form of co-working spaces and professional hubs. The current regulatory and support frameworks within which iPros work require adjustment.

There is a major change in the way work is performed - a shift from having a job to working for clients.

Professional bodies & training

iPros in regulated professions regard professional bodies highly, including for training purposes. However, others generally reject the need for such organisations and look to less formal and contemporary forms of professional support such as online training, social clubs/networks, and interdisciplinary facilities. iPros operate in fast moving knowledge areas and the lack of continuing professional development amongst them emerges as a critical issue.

Policy implications

Placing iPros in SME or entrepreneur categories is considered misconceived. This emphasises the definitional and categorisation problems relating to iPros. Government policy favours traditional employment patterns and iPros feel this is because they are difficult for policy makers. Policy makers tend to focus on job creation rather than work creation, an area where iPros actively contribute. They neglect the indirect job creating potential of iPros who help businesses to cut costs and become more efficient.

Recommendations

The findings of the research has led to a series of recommendations targeted at policy makers, professional bodies, clients of iPros and iPros themselves. If implemented, these recommendations will enable iPros' contribution to businesses and economies to be nurtured, and iPro workers in the EU will grow at an even faster rate.

The recommendations relate to:

- Awareness, recognition and the contribution of iPro working.
- Finding a voice for iPros.
- Training and development.
- Providing support for iPros.

Policy makers and public officials should:

- Ensure that iPros are properly researched and identified in national and EU data.
- Recognise that iPros are a distinct group: they are neither SMEs or entrepreneurs and are not 'sham' self-employed either.
- Recognise the contribution of iPros to economies and ensure that iPros' characteristics and needs are specifically recognised in policy development.
- Ensure that iPros are expressly considered where policy issues with particular relevance (e.g. late payment, access to public procurement contracts, enhancing employability) are being addressed for SMEs.
- Ensure that policy and legal developments

do not negatively impact iPros and that iPros are not disproportionately penalised through fiscal and other regimes.

- Ensure that there is an emphasis on work creation in publicly funded schemes to support the creation of jobs so that iPros are not excluded or disadvantaged.
- Recognise that iPro working is a legitimate and realistic career option, and encourage this way of working by funding those transitioning from traditional forms of employment into iPro working.
- Facilitate iPros in gaining a voice to express views and concerns, and ensure they have adequate representation at EU level through committee and consultative body membership, and seats on advisory boards so they can be consulted when change is proposed.
- Develop new models of work support with greater flexibility and creativity in order to explore different ways of responding to iPros' needs.
- Encourage iPros to engage in continued professional development by considering their specific training needs and providing funding through the form of tax concessions, subsidies or vouchers.

Professional bodies should:

- Clearly identify and take into account the distinctive needs of iPros as well as employee members.
- Recognise that the growth in iPro working presents new opportunities and take an innovative approach to recruiting iPros.
- Consider how best to provide iPros with support, particularly in terms of useful training and offering a wider range of relevant services.

If implemented, these recommendations will enable iPros' contribution to businesses and economies to be nurtured, and iPro workers in the EU will grow at an even faster rate.



- Ensure the delivery of training is practical and attractive to iPros through increased use of online and other flexible forms of training.
- Ensure that iPros are represented on relevant committees so they have a voice.
- Collaborate more effectively with other bodies and associations, and form alliances to strengthen the support for iPros.

iPros should:

- Consider the most effective ways of achieving a voice and identify avenues to express unifying views and promote iPro working.
- Identify specific issues and concerns relating to iPro working and develop a policy agenda to highlight these.
- Continue to develop and gain support for innovative support structures.
- Take responsibility for career development in a more active and coherent way.
- Recognise that collaboration does not undermine independence and find the right balance between working in isolation and with others.

Clients of iPros should:

- Clearly identify and take into account the distinctive needs of iPros.
- Recognise that the growth in iPro working presents challenges to traditional management practices and develop new models of working in response to this.
- Review existing contractual and other issues that may inhibit the way in which iPros work.
- Recognise the implications of late payment and other practical concerns that iPros often encounter.



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About EFIP

Founded in 2010, the European Forum of Independent Professionals (EFIP) is a collaboration of national associations which represent independent professionals at EU level through targeted research and advocacy. EFIP is a not-for-profit organisation that is not affiliated to any political party. Our mission is to promote the value of independents to the European and national economies and to ensure that independent working is respected as a legitimate alternative to employment.

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About PCG

PCG, the voice of freelancing, is the cross sector association for freelancers, contractors and consultants in the UK, providing its members with knowledge, representation, community and insurance. With around 21,000 members, PCG is the largest association of independent professionals in the EU. It is PCG's fundamental belief that flexibility in the labour market is the key to ensuring Britain's future economic success.

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