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Department of Finance



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Department of
Employment Affairs and Social Protection

**The use of intermediary-type
structures and self-employment
arrangements:
Implications for Social Insurance
and Tax Revenues
January, 2018.**

Contents

Introduction	4
Section One: Employment arrangements.....	5
Section two: Public consultation	21
Section three: Developing a way forward	26
<i>Appendix A – Current Irish tax and social insurance systems for employed and self-employed.....</i>	<i>30</i>
<i>Appendix B – Treatment of Economically Dependent Workers in EU Countries which apply Specific Provisions.....</i>	<i>36</i>
<i>Appendix C – list of submissions to public consultation</i>	<i>40</i>
<i>Appendix D Report from the Construction Sub-Group.....</i>	<i>42</i>

Introduction

The purpose of this report is to identify and estimate any potential loss of tax¹ and Pay Related Social Insurance (PRSI) resulting from intermediate-type structures and certain self-employment arrangements. The report has been prepared by a working group comprising officials from the Department of Employment Affairs and Social Protection, the Department of Finance and the Revenue Commissioners. The report is informed by a public consultation² held in early 2016 to invite views on possible measures to address the potential loss of tax and PRSI under arrangements where i) an individual, who would otherwise be an employee, establishes a company to provide his or her services or ii) where an individual, who is dependent on and under the control of a single employer, is classified as a self-employed individual. Such arrangements may also result in fewer social protection rights for the employees concerned, such as illness benefit, jobseekers benefit or redundancy and insolvency payments. Twenty-four³ individuals and organisations made submissions to the public consultation which closed on 31st March. These submissions are summarised in Section Two of the report.

The report is intended to broaden and deepen the understanding of the impacts of what is often termed “disguised employment” for Exchequer revenues and the debate on the potential measures to address these impacts. “Disguised employment” in this context is defined as any relationship which creates an appearance that a person who is ‘de facto’ an employee of a business is self-employed. Alternatively, the individual may provide his/her services through a corporate structure. In both scenarios, the effect is to reduce employer and employee tax and social insurance liabilities. Disguising employment in this manner also enables employers to avoid some employment law obligations and can undermine the employment rights of the workers concerned.

The report is structured as follows.

Section 1, “Employment arrangements,” outlines the changing nature of the labour market and provides some data on recent trends in employment and self-employment.

Section 2, “Public consultation,” summarises the twenty-four submissions received in response to the public consultation. It presents the views of respondents about the nature and scale of the issues and the policy options available.

Section 3, “Developing a way forward,” sets out possible policy options.

¹ For the purposes of this report, “tax” means income tax and universal social charge (USC).

² The consultation paper is available at <http://www.finance.gov.ie/wp-content/uploads/2017/09/PSC-Consultation-Paper-final.pdf>

³ Twenty-three were received at the time; one further submission was received late but was also accepted.

Section One: Employment arrangements

1.1 THE CHANGING NATURE OF EMPLOYMENT

Trends in world labour markets show a move away from the binary concept that a worker, who is not unemployed, is either employed in a mutually dependent ‘contract *of* service’ relationship with an employer, or, is a self-employed free agent competing for business on a ‘contract *for* services’ basis, moving between clients as opportunities for work present themselves. Practices such as outsourcing labour activity and contracting-in services and the emergence of new forms of service relationships in the so-called ‘gig’ and ‘sharing’ economies have blurred the lines as to what constitutes contracts *of* service as opposed to contracts *for* services. This raises concerns that this blurring of the lines can be, and is being, taken advantage of both to reduce employment rights and responsibilities, and to avoid tax and social insurance liabilities.

Many workers are genuinely and contentedly operating in an autonomous self-employed capacity whether that is in the traditional form of self-employment or in one of the new platform-based companies which are part of the emerging ‘gig’ and ‘sharing’ economy. In some cases workers, although nominally self-employed under a contract for services, are in fact wholly dependent on, and subject to the control and supervision of, a single employer in manner which is tantamount to employment under a contract of service. Workers engaged under these types of terms are “economically dependent workers”⁴ and constitute what is now sometimes known as disguised employment.

Whether or not individual workers are content to be employed on this basis does not alter the fact that they are *de facto* employees of the contracting body/employer and that they and their employer should be subject to the laws and regulations, including taxation and social insurance regulations, proper to a contract of service employment relationship.

It should be acknowledged that there are differing views on the role of intermediary employment arrangements in the Irish economy. While many people are concerned at the impact on employment rights and the loss to the Exchequer, there is an alternative view which considers that structures such as those under review are of importance to the economy, and in attracting investment and, talent into Ireland. This is particularly true of higher value, specialised contractors in industries such as ICT, pharma and finance. In this view, the continued existence of these structures in their present forms

⁴ This term has been in use by both the International Labour Organisation and the European Union since at least the 1990s. The Taylor Review of Modern Working Practices, July 2017 examined this arrangement in a UK context. It suggested people who work for platform-based companies be classed as dependent contractors and that there should be a clear distinction made between dependent contractors and those who are legitimately self-employed.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

is seen as vital in attracting and retaining investment and in assisting indigenous companies scale up and become class leaders on a worldwide scale.

1.2 DISGUISED EMPLOYMENT

Disguised employment as outlined above relates to circumstances where a worker is classified as self-employed but whose terms of work and working conditions, and the reality of the relationship (in particular as they relate to factors such as, but not confined to, attendance, control and supervision, and inter-dependence with other workers) are such that s/he should more appropriately be classified as an employee.

The third report of the Advisory Group on Tax and Social Welfare on “Extending Social Insurance Coverage for the Self-employed”, commented that:

“The issue of ‘disguised employment’ remains a serious concern, particularly in the construction and food processing sectors. Employment trends over the last two decades towards greater flexibility and casualisation have resulted in low paid and precarious employment, with some workers being classified as self-employed even though they might not possess those characteristics of entrepreneurship and risk-taking often perceived as features of the self-employed.”⁵

Hiring a worker in a self-employed capacity, to carry out work also, or previously, carried out by paid employees under the same or very similar management controls and supervision is one example of disguised employment.

From an employer’s perspective such arrangements may minimise obligations and costs arising from employment law and reduce social insurance costs. From the worker’s perspective these types of arrangements can have a negative impact on employment rights and access to social insurance benefits but these negatives might, in some cases, be compensated by reduced tax and social insurance charges. Therefore depending on the nature of the work and the individual circumstances facing each worker, the worker might be a ‘victim’ or a ‘proponent’ of disguised employment arrangements⁶.

The fact that there are incentives on both sides of the employment relationship is reflected in a 2012 report entitled *Study of Precarious Work and Social Rights* which looked at the growth of non-standard forms of employment relationships in 12 EU countries.⁷ It described disguised employment or “false employments” as “a relationship of unequal power”. The report describes it as:

⁵ Page 10: *Third Report: Extending Social Insurance Coverage for the Self-employed*, Advisory Group on Tax and Social Welfare, May 2013.

⁶ Both views were represented in submissions received.

⁷ The countries surveyed were Bulgaria, France, Germany, Greece, **Ireland**, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and UK.

“A process where an individual seller is hired on the precondition that s/he declares that s/he is self-employed. Despite that the working relationship is in practice the same as for a worker under an employment contract, it is more convenient for the buyer, involves less administration and provides greater flexibility, while it is often accepted or sought after by the worker because it can provide short-term benefits through reduced tax or social insurance obligations.”⁸

1.3 INTERMEDIARY ARRANGEMENTS

The emergence of intermediary structures as the basis for engaging workers in some situations has given rise to concerns that these structures are being exploited for the purpose of disguising an employment relationship. There are two main forms of intermediary structure – Personal Service Companies (PSC) and Managed Service Companies (MSC).

Personal Service Companies

A personal service company is a limited company that typically has a sole director, the worker/contractor, who owns most or all of the shares in the company.

Under this arrangement a contract for services is not agreed directly between the worker and the employer but is agreed between the employer and an intermediate company owned/directed by the worker. The intermediary used in such circumstances is what is known as a personal service company (PSC). The employer pays the company for the services of the worker but does not deduct any tax or PRSI from such payments. The company pays the worker who as the owner/director of the business is regarded as self-employed for PRSI purposes. The worker can determine his/her own rate of pay and how much of the revenue will be consumed in wages (to him/herself) and how much will be declared as profit after other expenses. In this way the worker can optimise for their own benefit the amount of tax, PRSI and corporation tax that is paid. In some circumstances, such arrangements can amount to a mechanism to enable both the employer and the worker to avoid tax and PRSI that would otherwise be due.

The professional services commonly provided include IT, accounting and engineering skills. In many cases, the individuals involved are genuinely self-employed. Where there is only one end user of the services over a period of time, the relationship may be more akin to an employer/employee relationship.

Managed Service Companies

A variation on the PSC arrangement involves the use of what has become known as a “managed service company (MSC)”. In essence this involves setting up a company, which is generally structured with a number of worker shareholders who may or may

⁸ P6: “*Study of Precarious Work and Social Rights*” undertaken for the European Commission by the Working Lives Research Institute, Faculty of Social Sciences and Humanities, London Metropolitan University 2012.

not be involved in delivering similar services to the same employer. The MSC is typically facilitated by a third party agent who organises the legal and administrative affairs of the company. As with a PSC the workers can optimise for their own benefit the amount of tax, PRSI and corporation tax that is paid. As such intermediaries are not deemed to be employment agencies they avoid the social insurance provisions whereby an employment agency is deemed to be the “employer” of those whose services it provides to a third party.

The development of PSCs and MSCs creates a triangular employment relationship where the services of the worker are secured through a third entity thereby distancing the employer from direct engagement with the worker under either a contract of service or a contract for services. This creates complexities in establishing the rights and responsibilities of each of the parties with regard to tax, social insurance and employment rights. Some critics argue that the avoidance of tax and social insurance obligations is the primary motivation for the use of PSCs and MSCs and that workers are increasingly being directed by employers to supply their labour through these types of intermediaries.⁹ The fact that these arrangements can provide a method of channelling the money from the end user to the individual may mean that any corporation tax or close company surcharge on these companies is likely to be insignificant.

Professional high-demand/high-value services commonly provided through company structures include pharma, airlines, IT, accounting and engineering. In many cases, the individuals involved are legitimately self-employed people. Where there is only one end user of the services over a period of time, the relationship may be more akin to an employer/employee relationship. For example, people who work exclusively for a single business, who must wear the business uniform and work according to schedules or requirements established by the business, may be treated as self-employed workers and share-holders of intermediary companies that provide services to the business. In some cases, workers set up companies to provide their services back to their former employer - another example of disguised employment.

1.4 LABOUR MARKET TRENDS AND PROFILE OF SELF-EMPLOYED IN IRELAND

There are no quantitative data on the incidence of disguised employment in Ireland. However trends in the CSO Quarterly National Household Survey (QNHS) data for self-employment and temporary employment¹⁰ (and to a lesser extent part-time and under-

⁹ A number of responses to the consultation process raised this issue.

¹⁰ The QNHS is a survey of respondents’ self-perception. Accordingly reported levels of self-employment may understate the actual level of disguised self-employment if the respondent believes that they are in fact employed rather than self-employed. However it is likely, assuming a constant reporting error, that the trend in the reported numbers over time should accurately reflect any underlying change. In addition the measure of temporary employment should reveal any underlying change in employment contracts related to a shift from a contract of service to a contract for service relationship.

employment) can be applied to discern if there is any evidence of an increasing level of disguised employment.

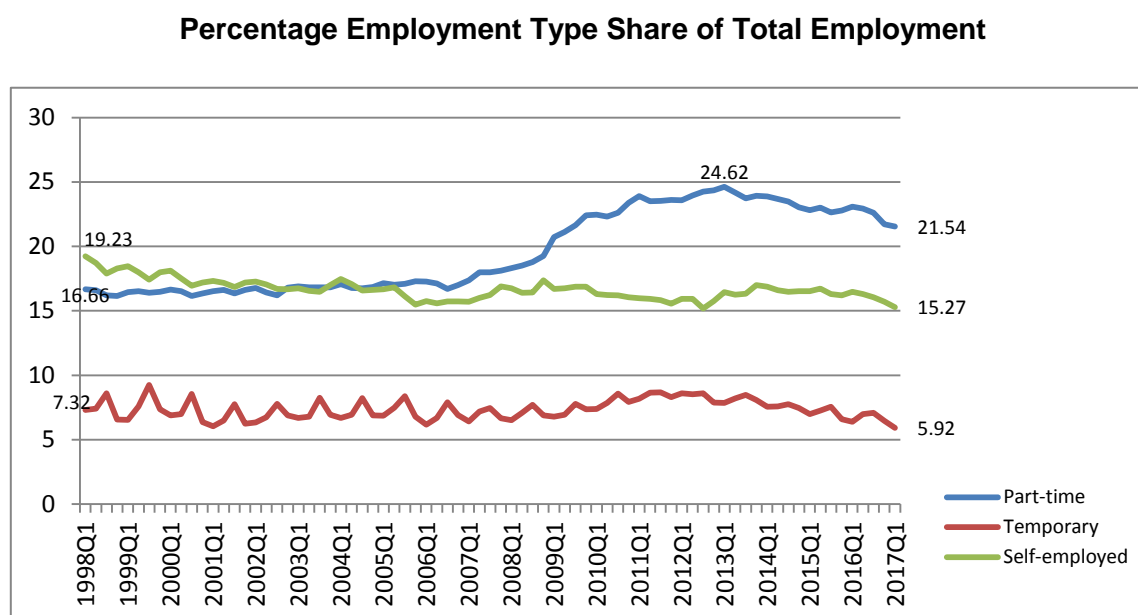


Figure 1: Trend in Employment Type Share of Total Employment, 1999-2017

Overall Trends

At an aggregate level (Figure 1) there is no evidence that there has been any significant change in the level of self-employment and temporary employment in the economy. In fact the data indicate that the share of total employment accounted for by self-employment and temporary employment has been very stable over the period since 1999, even during the recession of 2008 – 2012. If anything there has been a slight downward trend in the proportion of the labour force engaged in self-employment or on a temporary contract basis.

The change in the share of part-time employment is however much more marked with part-time employment increasing from about 16.5% of total employment at the turn of the century to almost 25% in 2013, before dropping to 21.5% at the start of 2017.

Types of Self-Employment

The QNHS distinguishes two types of self-employment: self-employed with employees and self-employed without employees, also known as ‘own-account’ workers.

In Q1 2017, the number of persons in employment was 2,045,100, of which self-employed workers were 312,300. This represents 15.3% of total employment. This is in line with the average rate of self-employment in the EU. There are significantly more own account self-employed workers than self-employed workers with employees: 220,800 compared with 91,500 but this distribution is again in line with EU averages. In terms of relative share of the employed labour force own account self-employed and

self-employed people with employees account for 10.8% and 4.5% respectively of all those in employment (Figure 2).

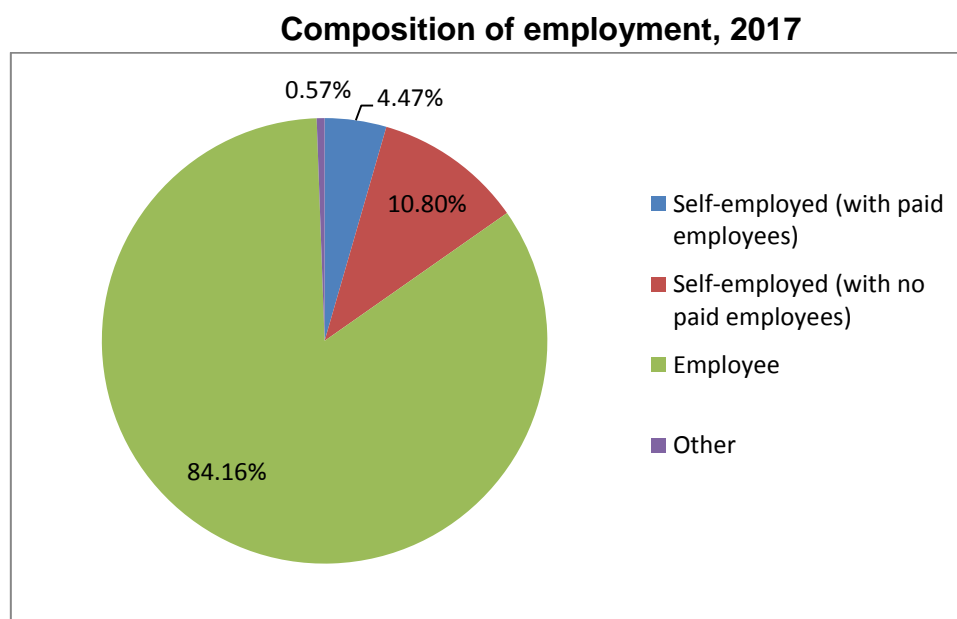


Figure 2: Self-Employment Share of Total Employment (Q1 2017)

Self-Employment by Sector

The agriculture and construction sectors between them account for about 45% of *own-account* self-employed people with no employees; the balance being relatively evenly distributed across the other main sectors. (Figure 3)

Looked at within sectors agriculture and construction also show the highest level of self-employment, and in particular *'own-account'* self-employment as a share of total employment within the sector. (Figure 4)

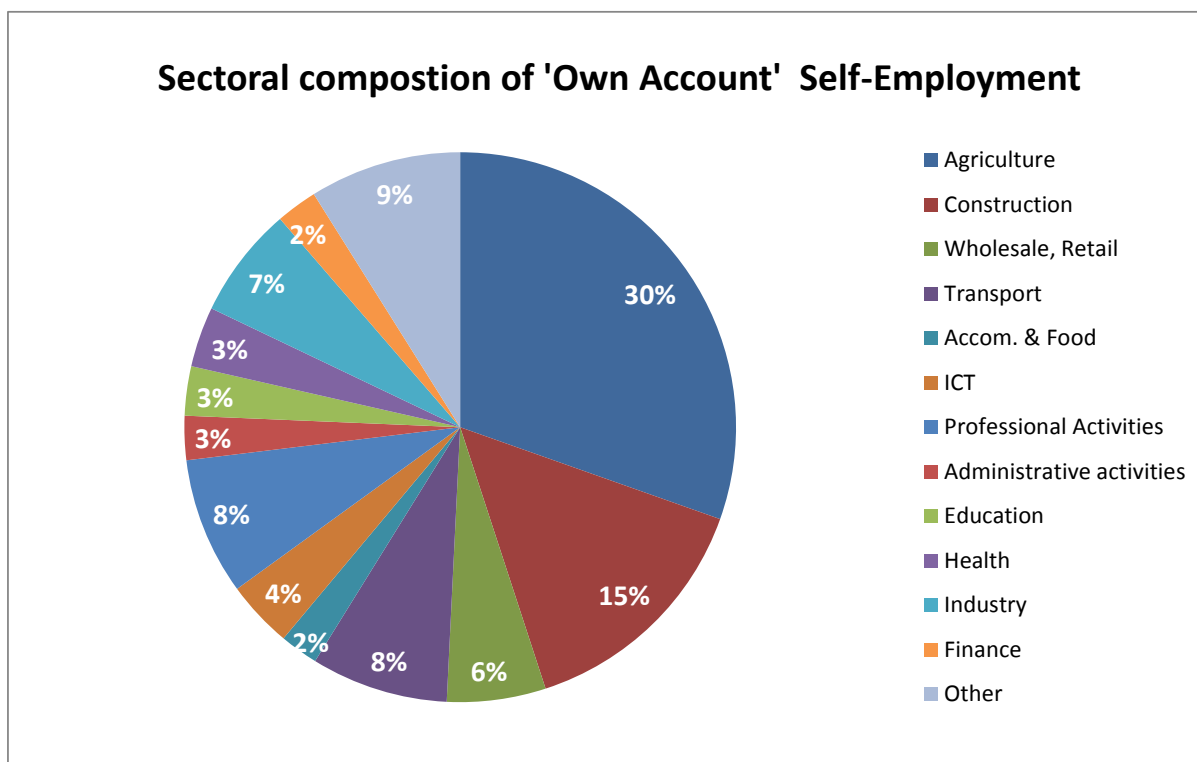


Figure 3: Sectoral Composition of 'Own Account' Self-Employment

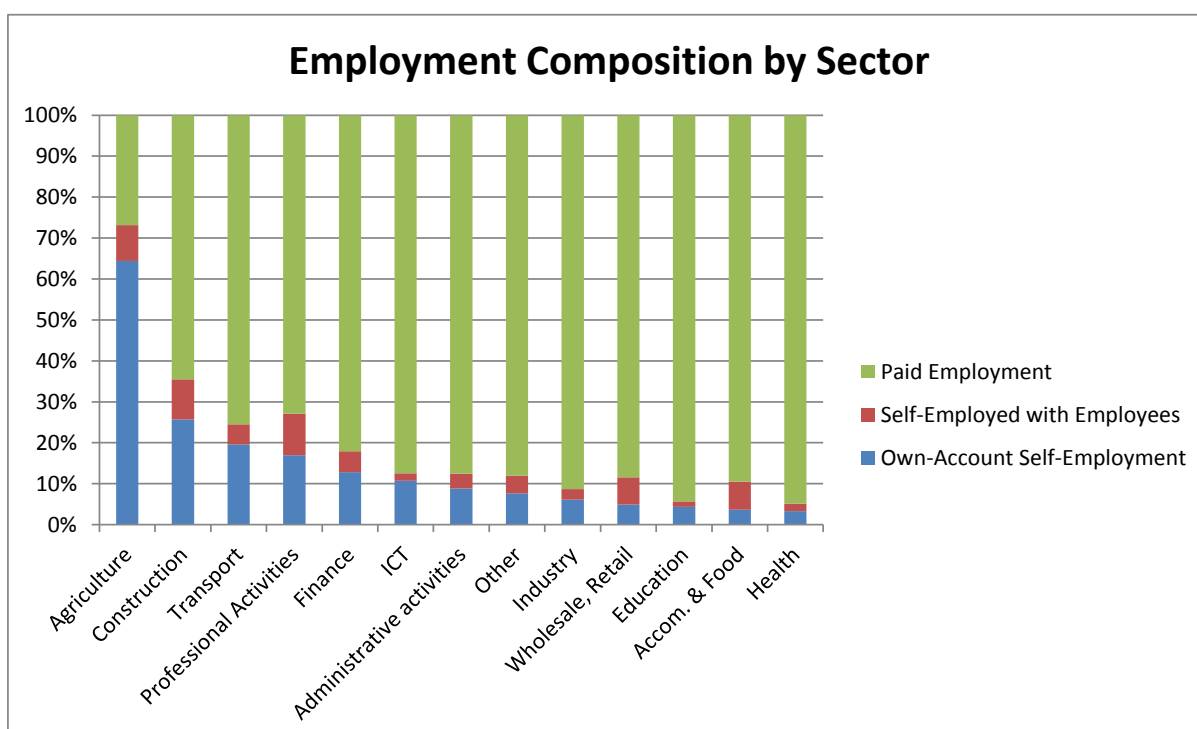


Figure 4: Employment Composition by Sector

Self-employment as percentage share of total employment by sector			
1999, 2007 and 2017			
	1999Q1	2007Q1	2017Q1
All NACE economic sectors	18.46	15.71	15.27
Agriculture, forestry and fishing (A)	73.71	76.04	71.87
Construction (F)	26.46	25.44	31.23
Wholesale and retail trade; repair of vehicles (G)	17.46	12.27	10.74
Transportation and storage (H)	22.22	24.97	20.34
Accommodation and food service activities (I)	16.43	10.09	8.08
Information and communication (J)	9.14	11.53	14.35
Professional, scientific and technical activities (M)	28.65	23.69	24.81
Administrative and support service activities (N)	10.81	11.55	12.74
Education (P)	4.38	3.44	4.68
Human health and social work activities (Q)	5.82	4.80	5.15
Industry (B to E)	7.06	7.69	8.19
Industry and Construction (B to F)	13.00	16.10	16.27
Financial, insurance and real estate activities (K, L)	6.55	6.58	6.18
Services (G to U)	13.29	11.00	11.02
Other NACE activities (R to U)	21.70	20.15	26.29
Number of sectors with self-employment increasing from 1999 to 2017			7
Number of sectors with self-employment increasing from 2007 to 2017			10

Table 1(a): Self-Employment Share of Employment by Sector, 1999-2017.

Self-employment as percentage share of total employment by sector					
2013-2017					
	2013 Q1	2014 Q1	2015 Q1	2016 Q1	2017 Q1
All NACE economic sectors	16.44	16.86	16.52	16.47	15.27
Agriculture, forestry and fishing (A)	72.25	72.85	74.30	73.28	71.87
Construction (F)	40.81	37.83	36.78	35.49	31.23
Wholesale and retail trade; repair of vehicles (G)	12.59	13.50	12.72	11.60	10.74
Transportation and storage (H)	23.87	25.03	24.81	24.53	20.34
Accommodation and food service activities (I)	9.98	10.46	9.98	10.53	8.08
Information and communication (J)	14.08	14.25	12.47	12.68	14.35
Professional, scientific and technical activities (M)	30.61	27.74	27.81	27.11	24.81
Administrative and support service activities (N)	14.96	13.92	10.14	12.17	12.74
Education (P)	5.69	5.46	5.19	5.39	4.68
Human health and social work activities (Q)	5.41	5.20	5.23	5.11	5.15

Industry (B to E)	8.87	8.73	8.12	8.68	8.19
Industry and Construction (B to F)	18.07	17.51	17.60	17.91	16.27
Financial, insurance and real estate activities (K, L)	7.82	6.95	8.60	8.04	6.18
Services (G to U)	12.27	12.41	11.95	11.95	11.02
Other NACE activities (R to U)	23.25	25.35	24.66	26.13	26.29
Number of sectors with self-employment increasing from 2013 to 2017					2

Table 1(b): Self-Employment Share of Employment by Sector, 2013-2017.

Trends by Sector

While the trend in the levels of self-employment at an aggregate level do not give rise to any significant concern (Figure 1) the trend at sectoral level does show some changes in the composition of employment within sectors that are worthy of note (Tables 1(a) and 1(b)) with seven out of the fourteen major sectors showing an increase in the share of self-employment from 1999 to 2017, and ten from 2007 to 2017. The overall trend masks a reduction in self-employment between 1999 and 2017 in some traditional high-employment sectors such as:

- Accommodation and food services (from 16.43% to 8.08%);
- Retail and wholesale sectors (from 17.46% to 10.74%).

The same period (1999 – 2017) saw an increase in sectors such as construction, ICT and “Other NACE activities” (which includes sport, the arts, gambling and computer repairs). It is worth noting, however, that in more recent years (Table 1b) the trend has been a decrease in self-employment in all sectors with the exception of ICT and “Other NACE activities”.

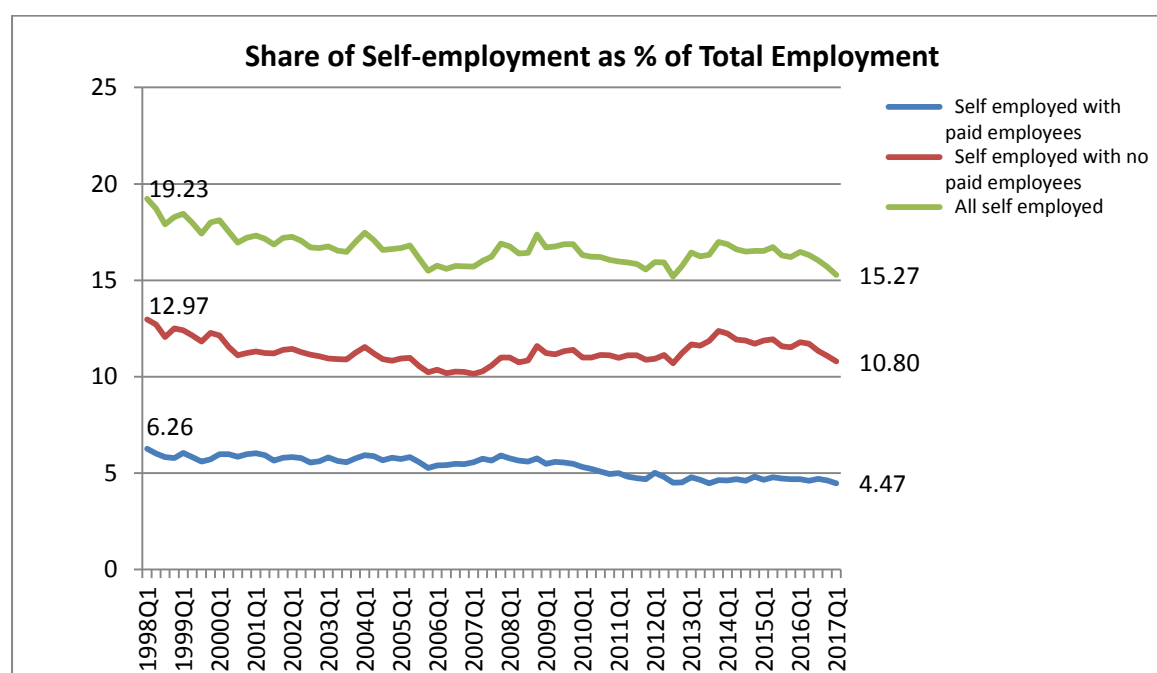


Figure 5: Trend in Self-Employment Share of Total Employment, 1998-2017

Trends by Type of Self-Employment

Similarly while the overall trend in self-employment share of total employment is stable, or somewhat downward, a slightly different picture appears when the trend is disaggregated by type of self-employment.

Figure 5, above, shows that the share of 'own account' self-employed workers was falling faster than the overall level of self-employment in the period up to 2007, but during the recession, the trend reversed and the share of workers reported as self-employed on their own account with no employees increased. The data indicate that the share of 'own account' self-employment initially fell from c 12.6% to 10.5% in the period from 1999 to 2007 but then increased to 12.4% in the period of the recession before falling back somewhat to 10.8% at the beginning of 2017

In contrast the share of self-employed people who had employees working with them fell from a stable level of c 6% throughout the 1999 to 2007 period to about 4.7% in 2016.

Can the changing nature in the composition of self-employment be taken to indicate that although the overall level of self-employment is falling there are more people now working as sole agents on their own account, potentially as dependent or disguised self-employed workers, rather than as self-employed entrepreneurs with businesses and employees? Caution needs to be exercised in interpreting the trends, for two main reasons:

First, the overall share of 'own account' self-employed is still at a relatively low level and is in fact lower than in 1999.

Second, the impact of the recession and the shifts in the composition of employment type that would have occurred during the recession and subsequently during the recovery period needs to be taken into account. It is likely that some self-employed entrepreneurs may have reduced the number of their employees during the recession resulting in a shift in share between 'self-employed own account employment' and 'self-employed with employees' employment. This would, at least partly, explain the fall in the number of people who report as self-employed with employees in the period after 2007.

Self-Employment in the Construction Sector.

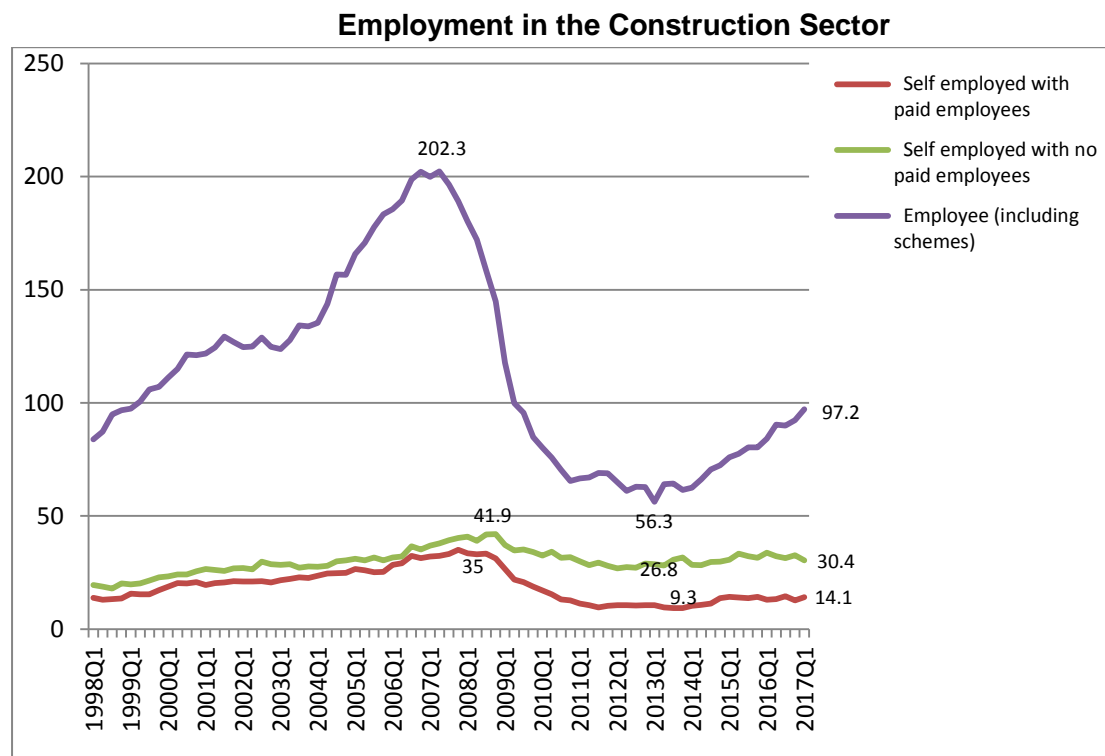


Figure 6: Employment Trends in the Construction Sector

The impact of the recession followed by recovery is most apparent in the construction sector (Figure 6). The construction industry is of interest because it is the second largest user of self-employment and accounts, after agriculture, for most of the growth in self-employment in recent years. It is also a sector identified by some commentators as being particularly prone to disguised employment practices.

As can be seen the number of employees in paid employment in the construction sector fell dramatically from a high of c. 202,000 people to about 56,000 people in 2013 – a fall of c. 73%. This reduction was mirrored by a fall, in percentage terms, in the number of people who reported that they were self-employed with paid employees on their payroll from c. 35,000 to c. 9,500, again a fall of about 73%. However the reduction in the number of ‘own account’ self-employed workers without staff fell by a lower figure 36%, i.e. about half the fall in employment in the construction sector generally.

While the overall level of self-employment in the economy has grown by 11% since 2012, construction self-employment has grown by c. 22%.

However these data have to be considered against the background that prior to the recession the construction sector accounted for c. 20% of all self-employment (second only to agriculture) but its share fell back to c. 13% in 2012 before recovering to c. 14.5% in 2016. In addition although construction sector self-employment has grown by

c. 22% in recent years, total construction employment has grown by a higher figure of 36% since its lowest point in the recession (Q1 2013).

Paid employment in the construction sector has increased by 50% during this period and within the self-employed category, growth in the number of people reporting that they are 'self-employed with employees' of 22% has been greater than that of '*own account* - self-employed no employees' (the sub-category most likely to give rise to disguised employment) of 17%.

Therefore, notwithstanding concern expressed regarding a shift towards disguised employment in the construction sector, the data indicate that self-employed people continued to engage in activity during the recession at a higher rate than other construction workers. As the sector recovers early indications are that the balance of employed and self-employed in the industry is moving in the direction it was before the recession.

Summary

To summarise,

- At an aggregate level the data are not indicative of a significant increase in the prevalence of self-employment in the economy over the past 16 years.
- Self-employment is however becoming more prevalent in some sectors – most notably the ICT sector.
- The increased share of self-employment in the construction sector during the recession appears to be unwinding as employment in the sector picks up.

1.5 LEGAL AND ADMINISTRATIVE TREATMENT OF WORKERS

The classification of a worker as either an employee or self-employed is significant in a number of legal and administrative domains:

- **Taxation:** Tax is required to be deducted by employers for all of their employees under the PAYE system and remitted on a monthly basis to the Revenue Commissioners. Self-employed people make an annual tax payment to the Revenue Commissioners under the self-assessed system of tax collection. Through the deduction of certain work-related expenses, self-employed people can have a smaller tax liability compared to an employed person. Also, they can adopt remuneration strategies which are more "tax efficient". On the other hand self-employed workers have a smaller Earned Income tax credit of up to €950¹¹

¹¹ Will increase to €1,150 with effect from 2018

compared to the employee PAYE tax credit, worth up to €1,650. In addition those on earnings of €100,000 or more pay a USC surcharge of 3%.

- **Social Insurance:** The total social insurance contribution paid in respect of employees amounts to 14.75% in most cases. In addition to the social insurance contributions payable by employees (generally 4%), employees benefit from contributions paid on their behalf by their employers. Employers are required to pay contributions of between 8.25% and 10.75% of the salary paid to their employees. This gives employees the right to the full range of short-term benefits (e.g. in respect of unemployment) and long-term benefits (e.g. invalidity and old-age pensions). The total contribution in respect of self-employment is limited to the contribution of 4%, paid by the self-employed person, on their self-employed earnings. There is no contribution equivalent to the employer contribution paid in respect of employees. A single annual social insurance payment can be made by a self-employed person subject to a minimum of €500 and this entitles the person to a full 52 weeks of contributions irrespective of the number of weeks actually worked. In the past the differential in social insurance payment rates was justified by reference to the reduced benefits available to self-employed people. The extension of Treatment Benefits, and in particular Invalidity Pension (from December 2017) benefits, to self-employed people significantly erodes this 'benefit gap' and may increase the incentive for people to agree to work arrangements which enable them to present as self-employed rather than employed.
- **Employment rights:** Employers are required to abide by a wide range of obligations in respect of people hired as employees on a contract of service basis. These relate to unfair dismissal, minimum wage, health and safety, collective redundancies, insolvency and the transfer of undertakings, consultation with workers, working hours, equal treatment and pay, as well as the right to parental leave and leave for family reasons. These obligations do not extend to people hired under a contract for services as 'self-employed' workers. Self-employed people have protection for their health and safety¹² and, in some cases, protection against discrimination.

Treatment of economically dependent workers in other countries

A 2010 report which examined the position of economically dependent workers in all EU members found that, of the EU27 plus Norway, 21 of the 28 countries treat such workers as self-employed for social protection purposes. The seven countries which treat them as a separate category in their own right, for either social protection or employment protection purposes were Austria, Belgium, Germany, Spain, Italy, Norway

¹² The Safety, Health and Welfare at Work Act 2005 sets out the main provisions for securing and improving the safety, health and welfare of people at work. The law applies to all places of work regardless of how many workers are employed and includes the self-employed.

and Portugal. An extract from the report detailing the treatment of economically dependent workers in these countries is provided in Appendix B.¹³

1.6 ESTIMATED LOSS TO THE EXCHEQUER

Comparison of outcomes – at individual level

As indicated above the use of intermediary-type structures and self-employment arrangements, in situations where a worker could otherwise be considered an employee, gives rise to tax and PRSI losses to the Exchequer.

Tables 2 (a) and 2(b) overleaf illustrate the potential for losses across a range of earning levels. It should be noted that these comparisons relate to a worker who is engaged as self-employed or through intermediary arrangements but who would otherwise be classed as an employee. The payment made by the end-user for their services, which is treated as revenue for a self-employed person, is compared with a salary paid in similar circumstances.

For the purpose of these comparisons, it has been assumed that expenses totalling 10% of receipts have been deducted for tax purposes in the non-employment scenarios below; further, it has been assumed that all after tax income is distributed to shareholders in the PSC/MSc scenarios and that class S PRSI is applied. These figures are illustrative and actual losses may differ depending on the particular circumstances of individual cases.

		Payment To Worker (€)			
		25,000	37,500	60,000	100,000
Employment	Tax Receipts	2,240	6,105	16,230	35,129
	Social Insurance Receipts	3,688	5,531	8,850	14,750
	Total Receipts	5,928	11,637	25,080	49,879
Self-Employment	Tax Receipts	2,315	5,128	14,230	30,430
	Social Insurance Receipts	900	1,350	2,160	3,600
	Total Receipts	3,215	6,478	16,390	34,030
Impact on Exchequer receipts	Loss to the Exchequer	2,713	5,159	8,690	15,849
	% Reduction in Revenue	46%	44%	35%	32%
	% Reduction attributable to reduced tax	-3%	19%	23%	30%
	% Reduction attributable to reduced social insurance	103%	81%	77%	70%

¹³ Table 4: *Self-employed Workers: industrial Relations and Working Conditions*, European Foundation for the Improvement of Living and Working Conditions, 2010.

Table 2(a) Comparison between Exchequer receipts under standard employment and self-employment situations.

		Payment To Worker (€)			
		25,000	37,500	60,000	100,000
Employment	Tax Receipts	2,240	6,105	16,230	35,129
	Social Insurance Receipts	3,688	5,531	8,850	14,750
	Total Receipts	5,928	11,637	25,080	49,879
PSC/MSC	Tax Receipts	2,590	5,540	15,305	31,929
	Social Insurance Receipts	800	1,200	2,000	3,200
	Total Receipts	3,390	6,740	17,305	35,129
Impact on Exchequer receipts	Loss to the Exchequer	2,538	4,896	7,775	14,750
	% Reduction in Revenue	43%	42%	31%	30%
	% Reduction attributable to reduced tax	-14%	12%	12%	22%
	% Reduction attributable to reduced social insurance	114%	88%	88%	78%

Table 2(b) Comparison between Exchequer receipts under standard employment and use of intermediary situations.

Although illustrative, these data do indicate that the potential loss to the Exchequer for a person engaged in work at a rate equivalent to the average industrial wage (€37,500) amounts to c €5,000 p.a. under both self-employment and PSC/MSC arrangements rising to c €8,000 p.a. at a payment level of €60,000 and c €15,000 at a salary of €100,000. These losses are in the range of c. 30 – 45% of tax/social insurance receipts under a standard employment arrangement indicating the strong fiscal incentives that exist for employers and workers to create the appearance of self-employment when, in reality, the relationship between the end user and the individual is effectively in the nature of a contract of service.

They also indicate that the bulk of the potential loss – 70% and upwards - is attributable to the differential in social insurance (PRSI) rates, suggesting that any reduction in the differential in PRSI rates charged between self-employed and employed people would help to reduce the revenue loss.

Intermediary arrangements

In the absence of specific quantitative data on the numbers of people engaged in disguised employment or the precise nature of the payment arrangements and the level of payments it is not possible to be definitive on the overall cost to the Exchequer of the use of such forms of employment. Estimates by Revenue suggest that the number of people employed under PSC and MSC arrangements is of the order of 15,000, with average annual receipts per contractor of €60,000. If the relationship between the end user and say 50% of the individuals involved is effectively in the nature of a contract of service, and if the PAYE system was applied by the end user, the estimated gain to the Exchequer would be of the order of €60 million per annum. If the figure was 25%, the estimated gain to the Exchequer would be of the order of €30 million per annum

Other forms of disguised employment

There is no straightforward basis for estimating the numbers of people reporting as self-employed but who are effectively under the control and direction of a single employer in the much the same way as an employee. Some respondents stated that they believe that in the construction sector a minimum of 25% of those reported as self-employed without employees are engaged in disguised employment. However, no definitive evidence was presented to support this claim, and as noted above, the percentage engaged in self-employment in construction in recent years has been falling, not rising. In terms of the potential loss to the Exchequer, assuming an average annual income of €37,500, the potential loss in respect of each individual case in this situation is approximately €5,000.

It should be noted that any loss to the Exchequer through disguised employment or the use of intermediary arrangements is off-set to some extent by the fact that the self-employed cannot avail of the full range of Social Welfare benefits, relying instead on means tested allowance payments. The Actuarial Review of the Social Insurance Fund, 2015 has some data on the cost of extending benefits for the self-employed which may be useful in this regard.¹⁴

¹⁴ <https://www.welfare.ie/en/downloads/actrev311215.pdf> See Chapter 12.13.

Section two: Public consultation

A public consultation was launched on 28th January 2016, seeking views from interested parties based on the consultation document, *Use of Intermediary-type Structures and Self-employment Arrangements*. The public consultation closed on 31st March, 2016 with a total of twenty-four responses being received¹⁵ (Appendix C). This section presents an overview of the responses received.

It is important to note that the views summarised in this section are those of the respondents to the consultation and should not be taken as the views of the working group.

2.1 FOCUS OF THE CONSULTATION

Interested parties were invited to make submissions in relation to the general issue of disguised employment with specific regard to four potential options for addressing tax and PRSI issues:

- Option 1: 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;
- Option 2: 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 E¹⁶. This option would not impact on workplace employment law;
- Option 3: where an intermediary-type structure is in place, apply a surcharge to undistributed income of the intermediary; or
- Option 4: 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.

The twenty-four respondents to the consultation can be grouped as follows:

- Representative organisations (employees/employers) (10)
- Professional bodies and practices (8)
- Government department (1)
- Individuals (5)

¹⁵ Twenty-three were received at the time; one further submission was received late but was also accepted.

¹⁶ Under the Taxes Consolidation Act 1997, employment income is charged under Schedule E (section 19). The PAYE system obliges an employer to deduct tax from employee pay (sections 985, 986).

2.2 SUMMARY OF THE SUBMISSIONS RECEIVED

The consultation process attracted a wide range of views on the use of intermediary arrangements, the motivations for such arrangements and the consequences for the Exchequer and employment in general. Many submissions did not directly address the questions asked and, for those that did, a cohort suggested that there was no significant issue to be addressed; there was no clear consensus from the others on the preferred solution.

In addition to more general responses, submissions were received from groups expressing views on or involved in particular sectors of work. Several of the submissions relate, or refer specifically, to the construction sector. In response, the Working Group set up a Construction Sub-Group to examine issues in that sector. Their report is at Appendix D. The reasons for giving a special focus to the sector are:

- (i) working arrangements within the construction sector was one of the main triggers for the public consultation;
- (ii) economic recovery is evident in the construction sector which is undergoing significant growth after a period of high unemployment during the recession. It is important that we learn from experiences in the sector.

Few respondents provided direct commentary on each option, but many provided combined comments on the proposal as a whole, addressing the issues raised in composite answers. Many of the submissions addressed issues outside the scope of the consultation, including broader issues to do with taxation, PRSI, workers' rights and the economy. A range of peripheral issues were raised which are not relevant to the Consultation (e.g. issues such as close company surcharge, professional services withholding tax (PSWT) and Departmental internal structural issues) and they do not feature in the Report.

Scale of Self-employment/Intermediary Employment Structures

There were mixed views among respondents about the significance of the use of self-employment/intermediary employment structures:

- Some respondents pointed to research and CSO data to argue that the use of such arrangements was increasing and that this increase was an indication of growth in disguised employment.
- Others questioned if there were any definitive data indicative of an increasing prevalence of self-employment/intermediary employment pointing out, for

example, that the share of employment taken up by self-employment is not increasing.

Motivations for the use of Self-employment/Intermediary Employment Structures

To the extent that there has been an increase in the absolute number of people categorised as self-employed there were also mixed views as to the reasons for this increase:

- For some this is simply a necessary evolution to cater for the flexibility required by both employers and workers in project oriented activities with a short to medium term life-span (e.g. the design and build phase of a new process, IT system or production line). These respondents expressed the view that businesses did not use self-employment/intermediary arrangements to minimise labour costs or reduce payments to the Exchequer.
- For some it is an attempt by employers, and in some cases workers, to avoid tax and social insurance liabilities through disguising employment.
- Among this second group it is also considered evidence of increased precariousness in the workplace and an attempt by employers to avoid employment law obligations and reduce wages.
- In a not dissimilar manner some respondents also argued that employers used self-employment/intermediate employment relationships as a basis to undercut the prices charged by 'legitimate' competitors in their industry/sector.

Options for Reducing Exchequer Loss

There was no clear consensus as to the merits of the options identified for addressing the revenue loss to the Exchequer arising from the use of such arrangements:

- Some respondents cautioned against any policy interventions that might have unforeseen consequences and might damage both Irish labour market competitiveness and the attractiveness of Ireland as a location for foreign investment.
- Some questioned the practicality of measures designed to levy social insurance and tax charges on the 'employer'/end-user of self-employed services (Options 1 and 2 in section 2.1 above) pointing out the difficulties with regard to identifying 'genuine' as opposed to 'artificial' use of self-employment/ intermediary arrangements and the transaction complexity and costs that would be likely to be associated with such measures.
- Some respondents argued that a basis for determining the appropriate taxation and social insurance charges already existed in the *Code of Practice for*

Determining the Employment of Self-employment Status of Individuals. It was suggested that if this code was established on a legislative basis and more rigorously applied there would be no need for changes to existing taxation/social insurance rates or collection methods.

- Some respondents pointed to existing provisions enabling the Revenue Commissioners to levy surcharges on undistributed income arguing, in effect, that Option 3 is already available to be used.
- Some respondents also argued that deeming all undistributed income in a business identified as an MSC/PSC as wages/salary (Option 4) would undermine the retention of income for the purpose of reinvestment.
- Some respondents argued that the fundamental problem giving rise to the use of self-employment/intermediary structures related to the differential in social insurance rates and that the social insurance rates for self-employed people and 'employed' people should be standardised. (Some argued for a voluntary higher rate for self-employed people).
- In a similar vein one respondent argued for a fundamental reform of the social insurance system and its establishment on a 'self-funded' basis with rates and benefits to be aligned on an actuarial basis.

Other points/issues raised in the Responses

In addition to issues identified in the consultation document a number of respondents took the opportunity to make some general points including:

- Any measures taken to limit Exchequer losses would have to have regard to the complexity in law of establishing the nature of contracts, whether *for* service or *of* service.
- Tax policy is not the way to deal with potential misuse of legitimate structures; employment status is separate from tax treatment and if the legal status of employment were clarified the tax issues could be addressed within existing tax legislation and framework.
- There should be clear evidence provided of substantial loss to the Exchequer before changes are made which could be potentially damaging. On the other hand, it was acknowledged that a substantial loss could present a risk to the social welfare system.
- Existing employment law tools should be used to address misuse of legitimate work arrangements.

- Workers are vulnerable to exploitation through self-employment/intermediary structure arrangements, lack resources to engage the appropriate professional advice and do not report such exploitation for fear of 'black-listing'. In the construction sector this vulnerability has allowed employers to use the eRCT system to incorrectly classify workers as self-employed contractors.
- Compliance would be improved if there was a single agency, working within a single framework that defines the distinction between employment and self-employment and policed adherence to its determinations.
- The consultation paper, in seeking just to examine potential losses to the Exchequer, did not go far enough: other potential impacts should have been investigated, e.g. market distortion.

Section three: developing a way forward

3.1 RESPONSE TO ISSUES RAISED IN SUBMISSIONS

A reminder of the options outlined in the consultation document:

- Option 1: 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;
- Option 2: 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;
- Option 3: where an intermediary-type structure is in place, apply a surcharge to undistributed income of the intermediary; or
- Option 4: 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.

As is clear from the summary of responses set out in section 2 there is no consensus from the responses received as to an appropriate course of action to address the loss to the Exchequer arising as a consequence of the use of intermediary/self-employment arrangements in the manner outlined.

It is clear that the type of intermediary type structures and self-employment arrangements identified in the consultation paper can result in a not insignificant tax leakage in the system and pose a risk to the income tax (PAYE) and PRSI base.

As stated earlier in the report, the more complex range of ‘employment’ relationships which has emerged poses challenges for current tax and social insurance models. There is a view at OECD and EU levels that the traditional distinction between “employed” or “self-employed” may not provide the framework necessary to address these challenges¹⁷.

The responses to the consultation have however informed the working group’s consideration of how losses to the Exchequer might best be mitigated.

¹⁷ See for example the report of the European Foundation for the Improvement of Living and Working Conditions (Eurofound) "Self-employed workers: industrial relations and working conditions". <http://www.eurofound.europa.eu/comparative/tn0801018s/index.htm>

- (i) While concerns have been expressed about an administrative burden which may be associated with implementation of options 1 and 2, the group acknowledges that these options provide a basis for addressing the potential losses of tax and PRSI referred to in the consultation paper especially with regard to intermediary-type structures.
- (ii) The group acknowledges the provisions already in place with regard to imposing a surcharge on retained earnings and notes that any changes to these provisions as proposed in options 3 and 4 may have an unintended impact on retaining earnings for investment purposes for some businesses.
- (iii) The group notes the acknowledgement by respondents that intermediary/self-employment arrangements do allow employers to avoid social insurance payments, and that, even if the avoidance of such payments is not a motivating factor behind such arrangements, it is the avoidance of such payments that gives rise to most of the Exchequer losses.
- (iv) The group notes that employers and workers can have recourse to the Scope insurability section of the Department of Employment Affairs and Social Protection for the purpose of securing a formal determination of their insurability status as either 'employed' or 'self-employed'. The group agrees that greater awareness of the remit of the Scope insurability section among workers and employers and more widespread application of the code of practice could help to reduce the prevalence of disguised employment.
- (v) The group notes the concerns expressed with regard to the vulnerability of workers and the impact of disguised self-employment on workers' rights and earnings. Although addressing this issue is not within the remit of the group, it is mindful that it would be useful if any proposal it may make could act as a disincentive to the use of disguised employment. The group notes the recent transfer of responsibility for employment rights policy and legislation to the renamed Department of Employment Affairs and Social Protection and considers that this may provide an opportunity for greater synergy in protecting vulnerable workers, including those in disguised employment.
- (vi) The group concurs with the views expressed to the effect that the available data do not indicate that self-employment with employees or 'own account' self-employment, are accounting for any significant increasing share of the labour force and accordingly the perception of an increasing prevalence of disguised employment may be overestimated. However the group notes that the data indicate an increasing use of self-employment arrangements in some sectors (notably finance and ICT) and also that the estimated cost to the Exchequer of disguised employment practices may not be insignificant.

3.2 Suggested Approach

Taking these considerations together with the analysis in section 1 that indicates that the major part of the Exchequer loss is attributable to the much lower social insurance contribution payable by self-employed people as compared with the total social insurance contribution paid by and in respect of employees, the group is of the view that:

1. The most effective step to take is to consider reducing the differential in social insurance rates. This will act to reduce the financial incentive to employers and employees to use self-employment arrangements and intermediary-type structures for the purposes of disguising employment. In addition to reducing the differential in social insurance rates, the 'dis-incentive' effect should have a second order impact of reducing income tax losses. The group is conscious of the broader economic implications of making changes to PRSI rates as the economy continues to recover, but notes that these changes will be limited to self-employed workers and that the range of social insurance benefits available to such workers is in the process of being expanded and that such workers have indicated a willingness to make higher contributions (see below).
2. The group acknowledges the need for clear public information to ensure that workers and employers are aware of the mechanisms available where there is a dispute as to employment status. The Department of Employment Affairs and Social Protection should consider undertaking an awareness campaign to promote the services of the Scope insurability section
3. Notwithstanding the administrative difficulties identified during the consultation process, it is recommended that options 1 and 2 should be further explored. Implementation of these options would reduce the scope for aggressive tax planning and the indefinite deferral of the payment of part or all of the remuneration and the consequential deferral of payment of the associated tax and PRSI.

In making these recommendations, the group is mindful that

- In addition to impacting Exchequer receipts the use of self-employment arrangements inevitably distorts the transparent and efficient operation of the labour market (and downstream service and product markets) and that a key principle of taxation/social insurance policy should be to minimise any unnecessary negative impact on labour market operation.
- Intermediary types of arrangements do provide flexibility, in many instances, for both businesses and workers, where they are freely chosen by both parties.

However the working group considers that much of the flexibility afforded companies by the use of intermediary arrangements would not be affected.

- Recent and forthcoming changes in social welfare have increased the range of benefits accessible to self-employed people such that they will, from December 2017, have access to benefits accounting for c 80% of social insurance expenditure. The rationale linking a reduced payment rate to a reduced benefit potential is therefore no longer as strong as it was previously.
- The results of a survey of over 20,000 self-employed people recently published by the Department of Employment Affairs and Social Protection indicated that self-employed people would, on average, be prepared to pay an additional contribution of 6% in return for increased access to benefits.
- The self-employed are treated in various ways in other EU countries. Appendix B compares treatment of self-employed across a number of countries.

Accordingly the group is of the view that there is a strong rationale for increased social insurance rates not just to reduce Exchequer revenue losses but to reduce distortive effects in the labour market, to reduce the incentive to construct disguised employment relationships that may undermine employment rights, to bring the Irish social insurance system into closer alignment with systems in other EU countries and to better reflect the increased range of benefits now available to self-employed people. The fact that there is an apparent willingness among self-employed people to pay higher rates of social insurance further supports the closure of the differential with payment rates for employed people as the most appropriate policy response to the issue of disguised employment.

The group notes the commitment given by the Minister for Finance and Public Expenditure and Reform in Budget 2018 to “establishing a working group to plan, over the coming year, the process of amalgamating USC and PRSI over the medium term.”

It is estimated that increasing self-employed PRSI rates by 0.5% would raise approximately €60 million per year.

Appendix A – Current Irish tax and social insurance systems for employed and self-employed

The manner in which a taxpayer pays tax and the class of PRSI contributions that are payable on his or her income is determined by whether the taxpayer is employed or self-employed. The class of PRSI contributions which a taxpayer pays affects his or her entitlements to certain benefits from the Department of Employment Affairs and Social Protection (DEASP) (e.g. Illness Benefit, Jobseeker's Benefit, State Pension (Contributory), etc.). It is important therefore, to know whether an individual is employed or self-employed.

Employees have tax and PRSI deducted at source under the PAYE system. Self-employed taxpayers make their own tax payments and PRSI contributions under the self-assessment system.

The PAYE System

The Irish income tax year is based on the calendar year. Tax is deducted by employers from payments made to employees¹⁸ under what is known as the PAYE system. In addition, employers must deduct PRSI where required. Revenue collects PRSI on behalf of DEASP.

The PAYE system is a tax deduction system, which must be operated by each employer who pays remuneration (i.e. wages or salaries) to employees. The employer must calculate any tax due and deduct it each time a payment of wages or salary is made.

PAYE is often referred to as a 'withholding tax' as employers are required to withhold the amount of tax due from the employee's wages and pay it over to Revenue on behalf of the employee. The PAYE system operates on a payments basis, which means that tax is deducted from wages as they are paid to employees, regardless of when the wages were earned.

The PAYE system was introduced in 1960 to assist employees in paying their tax. Prior to then, employees had to pay their tax on the same basis as self-employed taxpayers. The introduction of the PAYE system was viewed as a positive move for employees. Instead of paying tax in one instalment, the PAYE system divides the income tax year into 52 weekly, 26 fortnightly, 13 four-weekly or 12 monthly payments and deducts an employee's tax accordingly on a weekly, fortnightly, four-weekly or monthly basis, according to how the taxpayer is paid.

¹⁸ "employee" includes an office holder (e.g. a company director, a judge, etc.)

PAYE Online Services

The PAYE online service is a secure service, which allows PAYE taxpayers to manage their tax affairs electronically. With **PAYE Online Services**, a PAYE taxpayer can avail of a range of services including viewing information held on his or her Revenue record, claim tax credits, declare additional income and update their personal information.

PAYE Modernisation

Revenue is currently preparing for the introduction of a real-time PAYE system with effect from 1 January 2019. Under such a system, employers will report tax deductions to Revenue every time an employee is paid i.e. the payroll process and PAYE reporting process will be linked. Details of new employees and employees leaving employment will be reported to Revenue in real time also.

Under the current model, employers provide Revenue with PAYE details annually. However, this no longer reflects the changing nature of work where taxpayers move jobs more frequently and can hold multiple employments, resulting in the potential for underpayment or overpayment of tax.

The overall aim of PAYE Modernisation is to streamline the process for employers and remove inefficiencies from the current PAYE system.

The Self-Assessment System

While employees have tax and PRSI deducted at source under the PAYE system, self-employed taxpayers make their own tax returns under the self-assessment system. They pay their own tax and PRSI contributions directly to Revenue.

Self-assessment applies for tax purposes to self-employed taxpayers (i.e. people carrying on their own business) and taxpayers receiving income from sources where all of the tax is not collected under the PAYE system, for example:

- profits from rents,
- investment income,
- foreign income and foreign pensions,
- maintenance payments made to separated persons or where a civil partnership is dissolved,
- fees and other income not subject to the PAYE system, and
- profit arising on exercising Share Options.

Taxpayers register for self-assessment by advising their local Revenue office when a source of income (other than PAYE income) commences and completing the tax registration Form TR1. When a taxpayer registers for self-assessment with Revenue he or she will automatically become registered for PRSI purposes with the DEASP.

Revenue On-Line Service (ROS)

The most effective way for a self-assessed taxpayer to deal with his or her tax affairs is through Revenue On-Line Service (ROS) available at www.revenue.ie which enables taxpayers to file returns and make payments electronically.

Self-assessed taxpayers use the 'Pay and File system' which facilitates taxpayers on a single due date – 31 October¹⁹, to:

- pay any preliminary tax for the current year,
- file a tax return and self-assessment for the previous tax year, and
- pay any balance of tax due for the previous year.

The PRSI System

The Social Insurance system was first introduced in Ireland in 1911 while the current PRSI system was legislated for in the Social Welfare Act 1953.

PRSI is administered by the DEASP and collected by Revenue on DEASP's behalf. Individuals are required to pay PRSI based on the source and amount of their income. However, unlike tax, the payment of PRSI contributions may entitle the individual to various social insurance benefits, for example Illness Benefit, Maternity Benefit, State Pension (Contributory), etc. Such payments made by the DEASP are funded by PRSI contributions made by employees, employers, the self-employed and by the Exchequer.

The rate and amount of PRSI payable depends on the PRSI classification of a taxpayer's income. It is the income of a taxpayer which is classified for PRSI purposes and not, as is commonly believed, the taxpayer. It is therefore possible for a taxpayer who has two different sources of income to have two different PRSI classifications, applied respectively to each source of income.

PRSI for employees and employers

For PRSI purposes, an employee is defined (with some exceptions) as a worker who is engaged "under a contract of service". Exceptions include direct employment by a

¹⁹ By using ROS to both pay and file online, taxpayers benefit from an extended deadline to the second week of November each year.

spouse. Certain categories of workers are automatically regarded to be employees, such as agency workers.

Depending on the nature of the employment, different PRSI Classes apply. The PRSI classes applying to employees are: A, B, C, D, E, H, J, K and M. Class A applies to the vast majority of employments as it caters for industrial, commercial and service-type employments and civil and public servants recruited after April 1995. The PRSI class determines the rate of PRSI charged.

Generally there are 2 elements to the PRSI charge applied to employments – a charge payable by the employee and by the employer.

PRSI, along with tax, is deducted at source by the employer and remitted to Revenue under the PAYE system, together with the employer PRSI portion.

Out of the eleven different PRSI classes, most employees fall within Class A. The rate of PRSI under Class A for an employee is 4% of the employee's total reckonable earnings²⁰ where earnings exceed €352 per week, €704 per fortnight or €1,525 per month. An employee contribution is not payable where reckonable earnings do not exceed these amounts.

Employer PRSI of 10.75% is payable under Class A. However, where the reckonable earnings²¹ for employer PRSI purposes do not exceed €356 per week (€712 per fortnight or €1,543 per month), a reduced rate of employer PRSI of 8.5% applies.

Class A employees have access to the full range of both short and long term social insurance benefits. These benefits are State Pension (contributory) and Widow's, Widower's or Surviving Civil Partner's Pension (contributory), Guardian's Payment (Contributory), Maternity Benefit, Adoptive Benefit, Jobseeker's Benefit, Illness Benefit, Partial Capacity Benefit, Invalidity Pension, Health and Safety Benefit, Carer's Benefit, Treatment Benefit and Occupational Injuries Benefit including Disablement Benefit, as well as the new Paternity Benefit to be introduced later this year.

PRSI for the self-employed

Self-employed workers are, for PRSI purposes, those who work under a "contract for service" and include employment by a company where they are the beneficial owner of that company or own or control 50% or more of its share capital. There are a number of exceptions such as where annual income from all sources is less than €5,000 (before deducting any superannuation contributions or any allowances which are allowable for

²⁰ Employee PRSI is payable on an employee's reckonable earnings, which is an employee's gross pay including the notional value of any Benefit in Kind (BIK) which is taxable through payroll and certain forms of share-based remuneration (i.e. share awards, appropriation of shares from an Approved Profit Sharing Scheme (APSS) and any gain from a Save As You Earn (SAYE) scheme. Any salary or wages sacrificed under a Revenue approved salary sacrifice scheme (i.e. deductions from an approved travel pass, a bicycle under the cycle to work scheme or for shares under an APSS) can be deducted from gross pay to arrive at an employee's reckonable earnings.

²¹ For employer PRSI purposes, reckonable earnings is reduced by the amount of Pension Related Deduction (PRD) payable by Public Servants and the amount of any share remuneration received by an employee. This can result in employer PRSI being calculated on a lower earnings figure than the reckonable earnings used for the calculation of the employee PRSI.

income tax purposes) or “prescribed relatives” (other than a spouse) who are not a partner in the business.

PRSI Class S applies to all self-employed contributors. The self-employed pay their PRSI, along with their tax liability, under the self-assessed system of tax collection or, as in the case of directors who own or control their company, through the PAYE system of tax collection.

A self-employed contribution of 4% of reckonable income²² and/or reckonable emoluments²³ is payable under Class S, subject to a minimum contribution of €500 per year. There is no employer PRSI contribution payable under Class S.

Class S PRSI contributions entitle the self-employed to State Pension (contributory) and Widow’s, Widower’s or Surviving Civil Partner’s Pension (contributory), as well as Guardian’s Payment (contributory), Maternity Benefit and Adoptive Benefit. Self-employed contributors are also entitled to the new Paternity Benefit introduced in 2016.

Budget 2017 provided for increased benefits for the self-employed, with no additional PRSI contributions:

- Invalidity Pension (from December 2017);
- Treatment Benefit Scheme (from March 2017).

Determination of Status

The Scope Section of DEASP deals with employers and employees, or their representatives, who may apply to have an employment investigated to make sure that the correct class of PRSI is applied. Social Welfare Inspectors may also identify cases during the course of their inspection work which warrant investigation by Scope Section. Insurability cases may also arise during the course of claims processing.

Scope Section liaises with Revenue to ensure, as far as possible, consistency in decision making in both organisations in relation to the classification of employments.

The terms ‘employed’ and self-employed’ are not defined in law. Thus, the deciding officers must exercise a high degree of judgement in making their determinations. In doing so, Officers have regard to a range of indicators that has evolved over time from the case law of the Courts. In addition, Officers have regard to the *Code of Practice for Determining Employment and Self-Employment Status of Individuals*.

²² Reckonable income refers to income which is outside the scope of PAYE and on which tax is collected through the self-assessed system (e.g. income earned from a trade or profession, rental or investment income, etc.)

²³ Reckonable emoluments refer to income which is not derived from insurable employment but is taxed under the PAYE system (e.g. salary paid to working directors who directly or indirectly own 50% or more of the ordinary share capital of that company).

The Courts have found that the determination as to the appropriate insurability classification must be arrived at by looking at what a person actually does, the way in which it is done and the terms and conditions under which the person is engaged, be they written, verbal, or implied. It is clear from relevant case law that there is no one factor which may be taken as determinative of either contract of service (employee) or contract for service (self-employed).

Reflecting precedent from the Courts, the Code of Practice places an emphasis on the need to look at the job as a whole, including working conditions and the reality of the relationship, when considering the nature of an employment relationship. The Code of Practice states that the overriding test will always be whether the person performing the work does so 'as a person in business on their own account', known as the 'economic test'. It frames the question to be addressed in the following terms: is the person a free agent with an economic independence of the person engaging the service?

Appendix B – Treatment of Economically Dependent Workers in EU Countries which apply Specific Provisions

Country	Types and sectors of employment	Social security coverage	Working time, maternity/parental and sickness leave
Austria	<p>Traditional: Traders, craftspeople, 'liberal' professionals, farmers.</p> <p>Economically dependent workers: 'Free service contract' and the 'new self-employed' workers.</p>	Self-employed workers, free service contract and new self-employed workers are covered by the Social Insurance Act on Self-Employed Persons, which includes insurance against the risks of sickness, industrial injuries and old age.	<p>Working time: Both 'free service contract' and 'new self-employed' workers are free to schedule their own working time</p> <p>Maternity/parental leave: Free service contract workers benefit by statutory maternity leave during the statutory protection period. New self-employed workers are – under certain circumstances – eligible to receive maternity allowances. Both groups cannot claim parental leave, but are eligible to receive childcare benefits.</p> <p>Sickness leave: Both free service contract and new self-employed workers cannot claim sickness benefits or leave. New self-employed workers can opt for an additional health insurance package for sick benefits.</p>
Belgium	<p>Traditional: 'Liberal' professionals, artists, traders.</p> <p>Economically dependent workers: 'Assisting spouses' of self-</p>	Self-employed workers are responsible for all obligations towards social security. For these workers, the social contributions cover three sectors of the	<p>Working time: No specific rules.</p> <p>Maternity/parental and sickness leave: Assisting spouses are obliged to be affiliated to</p>

	employed people.	social security scheme: pension, family allowance and health insurance (sickness and disability).	the so-called 'maxi-status' – a special social security scheme that covers pension, family benefits, health care, disability, invalidity and maternity benefits.
Germany	<p>Traditional: Craftspeople, farmers, artists, journalists, 'liberal' professionals.</p> <p>Economically dependent workers: Using 5 employment criteria established in 1999, the social security administration can identify that a person is 'economically dependent' on one employer.</p>	After the reform of 1995, self-employed workers can join a health insurance scheme, either a private or the statutory one, on a voluntary basis. Since 2006, these workers (under certain conditions) can be included in the public unemployment insurance scheme. Some occupational categories of self-employed worker have special social security funds.	No specific rules.
Italy	<p>Traditional: 'Liberal' professions, traders, craftspeople, farmers.</p> <p>Economically dependent workers: 'Employer coordinated freelance workers' and 'project workers'.</p>	Several occupational categories of self-employed workers have special social security funds. Separate independent funds exist for free professionals – for instance, lawyers, architects and doctors. For self-employed workers in other, less regulated jobs, old-age protection is provided by public schemes financed by compulsory insurance or by basic pension schemes, as for subordinate employees. The National Social Security Institute manages social security coverage for craftworkers, traders, and farmers and sharecroppers. A	<p>Working time: No specific rules.</p> <p>Maternity/parental and sickness leave: Employer coordinated freelancer workers and project workers are entitled to protection for pregnancy, sickness and injury and an allowance for parental leave.</p>

		'special' social security coverage provides for certain categories of self-employed workers, such as the employer-coordinated freelance workers and project workers.	
Norway	<p>Traditional: 'Liberal' professionals, traders, craftspeople.</p> <p>Economically dependent workers: 'Not-employed employee' (or 'freelancer'), that is, a person who is not officially employed but acts as an employee.</p>	The social security system provides universal coverage for an extensive set of social risks.	<p>Working time: No specific rules.</p> <p>Maternity/parental leave: Self-employed workers have the same rights to maternity/parental leave as employees but at a lower rate. 'Freelancers' are entitled to maternity/parental leave only.</p> <p>Sickness leave: Self-employed workers and Freelancers are entitled to paid sick leave.</p>
Portugal	<p>Traditional: 'Liberal' professionals, artists, craftspeople, farmers.</p> <p>Economically dependent workers: 'Home workers' workers with a 'special regime labour and workers with 'service rendering contract'</p>	Self-employed workers are covered by a special social security regime which provides two contribution schemes: a basic mandatory scheme covering maternity, invalidity, old age and death, and a broader voluntary scheme providing further protections in the event of illness, occupational disease and family-related expenses.	<p>Working time: Service rendering contract workers and self-employed workers have the same regulations regarding working time and holidays.</p> <p>Maternity/parental leave: Service rendering contract workers are not entitled to maternity/paternity leave.</p> <p>Sickness leave: Service rendering contract workers are not entitled to sickness leave.</p>

Spain	<p>Traditional: Traders, farmers, craftspeople, artists, 'liberal' professionals.</p> <p>Economically dependent workers: 'Economically dependent self-employed workers'.</p>	<p>In 2007 measures were introduced to bring the social security entitlements of these workers closer to those granted to employees. by the general social security system. The main measures are: 1) benefits for the stoppage of activities and includes both paternity and maternity leave; 2) social protection for temporary sickness; 3) early retirement provision, which covers self-employed workers involved in toxic, dangerous or painful economic activities and provides for the same protections for employees.</p>	<p>Working time: Economically self-employed workers are entitled to 18 working days' annual leave.</p> <p>Maternity/parental leave: These workers are entitled to 'benefits for the stoppage of activities', including both paternity and maternity leave.</p> <p>Sickness leave: They also have entitlement to social protection for temporary sickness.</p>

Appendix C – list of submissions to public consultation

The Minister for Finance and the Minister for Employment Affairs and Social Protection are grateful to the following organisations and individuals who made submission to the public consultation:

- Representative organisations (employees/employers) (10)
- Professional bodies and practices (8)
- Government department (1)
- Individuals (5)

Names of those who made submissions

- Barry, Declan
- Cahill, Niall
- Congress - Irish Congress of Trade Unions
- Construction Workers Alliance
- Consultative Committee of Accountancy Bodies – Ireland (CCAB-I)
- Deloitte
- Department of Jobs, Enterprise and Innovation (DJEI)
- Derham, Niall
- Hosford, Pascal
- IALPA - Irish Air Line Pilots' Association (Branch of IMPACT)
- IBEC - Irish Business and Employers' Confederation
- IPCI - Independent Professional Contractors Ireland
- Irish Tax Institute
- ISME - Irish Small and Medium Enterprises Association
- Noone Casey, Chartered Accountants
- OSK Accountants
- Paramount HR Solutions

- PCSO - Professional Contractors Services Organisation
- Ryanair Pilot Group
- Scanlon, Patrick
- SFA – Small Firms Association
- TASC
- UNITE
- Wallace O'Donoghue Accountants

Appendix D Report from the Construction Sub-Group

1. Background

In addition to more general responses made as part of the public consultation, submissions were received from groups expressing views on or involved in particular sectors of work. Several of the submissions related, or referred specifically, to the construction sector. In response, the Working Group set up a Construction Sub-Group to examine issues in that sector.

The construction sector is an area of high risk internationally in terms of tax and social insurance evasion and Ireland's construction sector has a similar risk profile. The high-risk rating is due to many factors, including the mobile nature of the workforce and the complex nature of the sector due to the number of different contractors involved in many projects. The scale and value of activity carried out within the sector also contributes to its high-risk rating.

It is important to note that the Consultation Paper is concerned exclusively with one area of tax and social insurance risk, which is the use of intermediary-type structures and certain self-employment arrangements. Other risks within the construction sector include:-

- Non-adherence to the requirements of the Relevant Contracts Tax ("RCT") system;
- Non-operation of PAYE/PRSI when an employee is engaged;
- Incorrect operation of the VAT reverse-charge system;
- The use of bogus invoices;
- Unrecorded payments and 'missing traders' to evade tax; and
- Fraudulently claiming social welfare benefits while working.

A number of submissions to the Consultation aver that the practice of employers incorrectly treating employees as self-employed contractors is widespread in the construction sector. It is claimed that, in many cases, tradespeople do not have a choice with regard to whether they are engaged as an employee or self-employed worker and are being forced to take up self-employment rather than being engaged as an employee. The plastering and block-laying trades are specifically highlighted in this regard.

It is also suggested in several of the submissions to the Consultation that the electronic RCT ("eRCT") system partly facilitates the mischaracterisation of employees as self-employed contractors.

This Appendix seeks to address the issues raised in the submissions (as outlined above) and highlights the activities undertaken by the State bodies that administer the tax and PRSI systems to meet the evolving risk areas within the construction sector.

2. Construction Sector – DEASP/Revenue issues raised

As outlined in Section 1 above, a number of submissions claim that the eRCT system partly facilitates the mischaracterisation of employees as self-employed contractors. Section 2.1 below deals with this issue.

Section 2.2 below provides a summary of the compliance activities that the Department of Employment Affairs and Social Protection (“DEASP”) and Revenue carry out to ensure that tax and social insurance compliance is maintained within the construction sector. It is important to outline the strong focus that both Revenue and DEASP have on this sector in order to highlight the efforts that are being made by both bodies to tackle the myriad of tax and social welfare risks within the sector.

2.1 Relevant Contracts Tax (“RCT”)

RCT is a withholding tax that operates in the construction, forestry and meat processing sectors. It allows for tax to be withheld from payments to subcontractors depending on the tax compliance position of the subcontractor, and where withheld, this tax is then set against the tax liabilities of the subcontractor.

The RCT system is similar to the PAYE system, in that it is a tax deduction at source system. Neither the PAYE system nor the RCT system determines whether a person in the construction sector – or indeed, in any other sector – is an employee or a self-employed worker.

The construction sector is the same as every other sector in terms of how it should determine whether a worker should be classed as an employee or self-employed. Whether a person is engaged either under a contract of services (i.e. engaged as an employee and who pays tax under the PAYE system of tax deduction at source) or under a contract for service (i.e. as a self-employed contractor and who pays tax under the self-assessment system with a credit granted for tax paid by deduction at source under the RCT system) is determined by the facts and evidence of each case.

Guidance on that matter is provided in the *Code of Practice for Determining Employment or Self-Employment Status of Individuals* (“the Code of Practice”). The category that a worker falls into depends on what they actually do, the way they do it and the terms and conditions under which they are engaged, whether written, verbal or implied. It is not simply a matter of a principal contractor or a subcontractor calling the engagement ‘employment’ or ‘self-employment’ to suit themselves.

Under the RCT system, principal contractors in the construction, meat processing and forestry sectors are required to submit to Revenue the details of relevant contracts entered into by those principals and their sub-contractors.

Up to 1 January 2012, such details were submitted to Revenue on a paper form, known as a Form RCT1. From 1 January 2012, the RCT system was updated to an entirely electronic platform, known as the eRCT system.

A number of submissions to the Consultation point out that under the paper-based regime that existed pre 1 January 2012, the contractor and the sub-contractor jointly agreed and signed the Form RCT1 and claim that this prevented the sub-contractor being mischaracterised as self-employed rather than an employee. In addition, these submissions claim that the eRCT system partly facilitates the mischaracterisation of employees as self-employed contractors.

However, this claim is unfounded. There are safeguards built into the eRCT system for those workers who may have concerns that they are employees but are characterised incorrectly by the principal contractor as self-employed contractors.

For example, when Revenue receives the details of a relevant contract from the principal contractor in real time, Revenue immediately informs the relevant sub-contractor of those details. If a sub-contractor is of the view that any of the details supplied by the principal contractor are incorrect, including if the sub-contractor is incorrectly classified as self-employed, the sub-contractor can notify Revenue immediately. Revenue will then investigate the matter and make appropriate interventions, including engaging with the employer to encourage self-review and engaging with DEASP's Scope section to ensure the correct classification is in place.

Introduction of the eRCT system has resulted in very significant benefits for both the construction industry and Revenue:-

- It has significantly reduced the administrative burden on contractors and subcontractors through the use of electronic channels and elimination of all paper based forms and returns.
- It has reduced the obligations on principal contractors with regard to the submission of information, data and returns.
- Subcontractors are no longer required to claim credit for RCT deducted; based on information supplied by principal contractors, credit is automatically offset against outstanding tax liabilities.
- It has improved the cash-flow position of tax compliant subcontractors.
- It has reduced the administrative burden on Revenue, thus allowing for the concentration of resources on more effective compliance activities.
- It has reduced the opportunity for tax fraud.

2.2 DEASP/Revenue compliance initiatives focused on the construction sector

This section outlines the strong focus that DEASP and Revenue, separately and jointly, have on ensuring that tax and social insurance compliance is maintained within the construction sector.

DEASP and Revenue continually monitor developments to ensure that their compliance programmes, including joint initiatives, are tailored to meet evolving risk areas. In view of the size of the construction sector, both DEASP and Revenue take a risk-based approach to compliance interventions.

DEASP compliance initiatives

DEASP's focus is on tackling social welfare fraud, primarily where individuals are concurrently claiming social welfare benefits and working. The DEASP's Scope Section examines whether an individual worker is an employee or a self-employed contractor.

Any cases of concurrent working and claiming of benefits and tax non-compliance are pursued. Where individuals from other jurisdictions are interviewed on construction sites, details are referred to the relevant social security authorities for investigation regarding any potential live claims or overlaps in their jurisdictions.

In April 2014, DEASP launched its Compliance and Anti-Fraud Initiative (2014-2018). This provides an overall framework and outlines the actions to be undertaken to prevent, detect and deter social welfare fraud. Under the Strategy, there is a particular focus on inter-agency co-operation and an emphasis on undertaking joint projects and pooling of knowledge amongst State bodies.

DEASPs Special Investigation Unit ("SIU") also has a key role to play to combat social welfare fraud and evasion in the construction sector. The Unit comprises 91 officers and 19 members of An Garda Síochána whose exclusive function is to investigate and report on social welfare fraud and non-compliance.

Inspections are also being conducted by DEASP's SIU on once-off builds, using data from local authorities in relation to planning permissions and commencement notices.

Under the provisions of the Social Welfare Consolidation Act, there are specific offences in relation to employment contributions, their remittance and the maintenance of prescribed wages and employment records. On conviction, fines and or imprisonment can ultimately be imposed.

Revenue compliance initiatives

Revenue's focus is on protecting the various income streams to the Exchequer across all tax heads, including VAT, customs duties, income tax (including the operation of RCT) and corporation tax.

Revenue has always had a strong focus on maintaining tax compliance in the construction sector. Revenue conducts a full range of interventions to combat tax

evasion in the sector. This includes risk management interventions (informed by Revenue's Risk Evaluation Analysis and Profiling ("REAP") system), Revenue audits and investigations, in addition to site visits. This process is aided by the data Revenue receives through the eRCT system as well as other third party data sources.

Over the years, several initiatives have been introduced with a view to improving compliance while at the same time reducing the administrative burden on the sector, including:-

- In 2008, the VAT Reverse Charge mechanism was extended to construction services. This had the effect of moving VAT liabilities up the chain to a smaller number of principal contractors whose compliance could be managed more effectively.
- As detailed in Section 2.1 above, eRCT was introduced in 2012. It has removed all paper forms from the system and has reduced the administrative burden on contractors.
- In 2013, the Home Renovation Incentive came into effect. This measure has the twin objectives of incentivising homeowners to use tax compliant contractors when renovating or improving their homes and encouraging contractors who may have been operating in the shadow economy to regularise their tax affairs. To the end of 2016, nearly 10,000 contractors had carried out works on over 57,000 properties. The estimated value of these works is approximately €1.4bn.
- During 2015, in response to the upturn in the industry, Revenue set up a national programme to monitor risk in the construction sector. The programme is centrally controlled and co-ordinated, with each Revenue Region having a senior manager with specific responsibility for 'minding the risks' in construction for their Region. Full use is made of Revenue's suite of compliance interventions, ranging from aspect queries to address specific risks, to full audits or investigations to tackle more complex non-compliance. As the recovery has strengthened, visits to construction sites are a regular feature of Revenue's compliance activity.
- As part of its strategy to manage and improve compliance in the sector, Revenue is engaging with stakeholders to inform them of their obligations. Revenue has published guidance on their website and organised presentations to industry groups. It closely monitors emerging trends and tailors compliance programmes accordingly.

The outcome of Revenue's work to combat tax evasion in the sector includes recovering unpaid tax (including PAYE tax and PRSI contributions from employers who failed to operate the PAYE system on payments made), the payment of interest on late payment and the pursuit of penalties for failure to notify Revenue, through the eRCT system, of contracts entered into and payments made under these contracts.

In 2016, 1,065 Revenue audits were carried out on the sector with a yield of €27.3 million. Other Revenue interventions secured a further additional yield of €27.4 million in the sector.

Revenue and DEASP joint-compliance initiatives

Formal collaboration between Revenue and DEASP takes place through what is known as the Joint Investigation Unit ("JIU"). The Workplace Relations Commission also participates in the work of the JIU.

The JIU regularly undertakes high-visibility site visits and inspections on construction sites. The work involves the examination of contractors and employees engaged on such sites. A key objective is to ensure that all visits are properly planned, executed and reported on.

The JIU participated in 2,126 construction site visits in 2016. The JIU visits are generally un-announced but efforts are made to ensure that disruption to construction activity is minimal. They serve to support compliance by affording Revenue and other agencies an opportunity to engage with contractors, sub-contractors and employees present on a site to ensure that they are aware of their obligations and to detect, disrupt and deter non-compliance. This is achieved by interviewing those persons present on a site.

11,699 such interviews were conducted during 2016. In 2016 special emphasis was placed on challenging inappropriate classification of workers as self-employed contractors. Principal contractors engaging a large number of individual sub-contractors, and with several layers of sub-contractors below them, were selected for examination. This activity resulted in 848 individuals registering as PAYE employees, and the reclassification of 345 sub-contractors as employees.

Increasingly, the JIU places a particular emphasis on projects funded under the Public Capital Infrastructure Programme, including the Educating Programme which has been allocated €2 billion from 2016 to 2021. In the latter programme, the focus is towards larger projects and sites, based on details supplied by the Department of Education & Skills.

3. Conclusions

Due to the disguised nature of tax and social welfare evasion, it is difficult to quantify with respect to the construction sector the extent of the issues which have been highlighted in this report. Indeed, some of the submissions to the Consultation claim that, in the construction sector, sub-contractors are reluctant to report any instances of 'forced self-employment' for concern of losing their work. In many cases, the payment of a gross sum without tax and PRSI deductions is regarded by them as a benefit of the arrangement.

It is clear from the details of the compliance initiatives undertaken (outlined in Section 2.2 above) that Revenue and DEASP are actively pursuing non-compliance in this area of

the law and are successfully encouraging and enforcing compliance in the cases selected where non-compliance is an issue.

While the joint-work of Revenue and DEASP, through the JIU, is playing a key role in combating social welfare fraud and tax evasion in the construction sector, the scale and value of the activity carried out within the sector pose challenges in terms of resources for Revenue and DEASP (similar to their counterparts in other jurisdictions) in tackling these issues.