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Locums - HMRC's Perspective
Are they Self-Employed?

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- Employment Status not a matter of choice.
- Depends on T&C's of the engagement
- Contract Of or Contract For Service?
- Must apply common law principles

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You are probably employed if you can answer YES to the following:

- Do you have to do the work yourself?
- Can you be told at any time what to do, where to work or when and how to do it?
- Can you work a set amount of hours?
- Can someone move you from task to task?
- Are you paid by the hour, week or month?
- Are you paid overtime or bonuses?

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You are probably self-employed if you can answer YES to the following:

- Can you hire someone to do your work or engage helpers at your expense?
- Do you risk your own money?
- Do you provide the main items of equipment to do your job?
- Do you do a job at a fixed price irrespective of how long it takes?

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- Can you decide what work to do, how and when to do it?
- Do you regularly work for a number of different people?
- Do you have to correct unsatisfactory work at your expense?

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Personal Service – Right of Substitution

- Are you required to provide your services personally?

Mutuality of Obligation

- Are you obliged to give personal service and is the engager obliged to provide work?

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Right of Control

- Is there a “right of control” – does the engager control how you perform your services, what tasks are to be performed, when and where?

Right of Substitution

- Do you have the right to provide or propose a replacement or engage a helper?

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Provision of Own Equipment

- Do you provide your own equipment or is it supplied for you?

Financial Risk

- Do you risk your own money – buying assets to do your job, training, required to rectify mistakes in own time for no additional reward, fixed prices for jobs.

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Opportunity to Profit

- Do you have the opportunity to profit by reducing overheads or organising your work more effectively.

Length of Engagement

- By itself, the length may have little importance but must be viewed in the light of all the other aspects of the work

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Part and Parcel of the Organisation

- Are you managing staff, attending work social events, contributing to the tea fund?
Are you “perceived” to be a member of staff?

Employee-type Benefits

- Do you receive paid leave, a parking space, canteen facilities, etc.

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Right to Terminate Contract

- Does your engager have the right to terminate your engagement for reasons other than serious breach by giving notice of a specific length?

Personal Factors

- What is your approach to obtaining new business?

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Mutual Intention

- Of use if the case is evenly balanced

More than One Job

- Because you are self-employed in one job doesn't mean you will automatically be in another. It is necessary to answer all these questions for each job!

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Case Law

- 1989 charges for sight tests introduced.
- Specialeyes (Optical Services) Ltd started paying test fees to opticians it engaged on a self-employed basis.
- The then Inland Revenue took their case to the Special Commissioners, contending that the "self-employed" opticians were employees of S(OS) Ltd.

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The Special Commissioners decided the locum opticians were in fact self-employed on the basis that:

1. They negotiated a fixed fee per test and were paid on the basis of a monthly claim supported by their own invoices.
2. S(OS) Ltd provided the major items of non-portable equipment but the locum's provided their own retinoscopes and ophthalmoscopes

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3. The locums attended the branches to perform sight tests only and undertook no other duties.
4. S(OS)Ltd was not obliged to offer locums work and the locums were free to refuse engagements without penalty and to stipulate their own hours.

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5. The Locums received none of the benefits enjoyed by employed opticians;
6. The locums insured themselves against malpractice claims.
7. Some of the locums had their own practices elsewhere.

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Summary

- It is generally accepted that Locum Opticians are self-employed but there is nothing from HMRC in writing.
- HMRC will look at each individual case and apply the facts to each.
- HMRC are likely to look beyond the arrangements.

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However...

- Locum Opticians are not typically pursued as they (typically) have low expenses and therefore the cost to the Treasury is low.
- There are more lucrative industries to target.
- An investigation into whether you are self-employed or employed is unlikely.....but not impossible!

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Contact Details

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