TO: All Members of the Irish Dental Association
FROM: Fintan Hourihan, Chief Executive
RE: Tax Classification of Associates and Hygienists
DATE: 18th April 2012

Dear Doctor,

As you will be aware, the Revenue Commissioners have been considering the tax status of dental practice staff and in particular those such as Associates and Hygienists who have not traditionally been engaged on a contract of employment.

The Association and its tax advisers, Grant Thornton, have had a series of meetings with the Revenue Commissioners over the past fifteen months and we prepared a detailed submission on the status of Associates last November. Our submission highlighted the unique features of the dental model, the main features of the basis on which Associates are engaged, the implications of any tax treatment changes for the viability of dental practices and the dental health of the nation as well as recent case law. A copy of our submission is attached.

The Association has now been advised by the Revenue Commissioners to the effect that “generally speaking associates and hygienists engaged by dental practices are engaged under a contract of service (i.e. they are employees)” and that January 1st 2012 is the date from when this should take effect. It is important to clarify that this has not been agreed with the Association and we are now seeking that in the event that Revenue confirms this decision that no changes will be brought in until January, 2013.

Revenue allow for the possibility of dentists making a case to local Revenue officials where the terms of engagement “differ from the norm” and Revenue will examine these on a case-by-case basis. “Revenue will consider each case on its own merits and in case of doubt a submission, outlining the terms and conditions of the engagement should be submitted by the dentist or the hygienist to their local Revenue District for consideration.”
It is notable however that Revenue have not decided on a simple decision suggesting that all dentists other than practice owners or partners are to be treated as employees and implicit in their proposal to review submissions where dentists believe they “differ from the norm” is the possibility that Associates / Hygienists can be confirmed as self-employed contractors. Furthermore, we understand that Revenue have confirmed to tax advisers, accountants and solicitors that there will be no interest payments or penalties sought from dentists prior to the commencement date of any new change.

This matter was discussed at a meeting of general practitioner representatives in IDA House yesterday where we decided to respond in a robust manner to Revenue explaining that this policy is completely unreasonable, unacceptable and unfair and that we continue to insist that any changes must be introduced prospectively and not retrospectively. The meeting considered that the recent Revenue correspondence raises more questions than answers and this is simply not acceptable. Yesterday’s meeting in IDA House was addressed by our tax advisers Grant Thornton and also by Mr. David McCaffrey of the specialist MedAccount practice.

We will also be raising our concerns with the Taoiseach, the Minister for Jobs, Enterprise and Innovation and the Minister for Health. We will be emphasising that these changes run contrary to the Taoiseach’s recent statement acknowledging that Government policy must be job-proofed and that the changes envisaged by Revenue will cause huge damage to the viability of dental practices.

We will also be highlighting significant practical chaos which would ensue in dental practices in regard to professional withholding tax already deducted since last January, the possibility that practice indemnity may now have to be arranged, the fact that practice-owners and associates may choose to exercise notice periods of at least three months in revising their engagement arrangements plus the huge HR and administrative changes which would be required within practices.

The implications in terms of revisiting allowances being availed of by associates, the application of the USC, calculation of PAYE credits and many other administrative difficulties will also be emphasised.

We will also be highlighting the inconsistency between this approach and the ban on incorporation in dentistry and how this decision runs contrary to some very recent case law.

The Association will also be highlighting the fact that by its own admission Revenue accepts there remains a high level of tax compliance by associates and dental practice staff.

The consequences of any changes for the viability of dental practices adjoining or close to the border with Northern Ireland are also to be emphasized.
Finally, we will be emphasising the likely reduction in overall tax revenue arising from such changes as well as the cost to the state in meeting the cost of welfare benefits which will now be available to anyone now to be regarded as an employee.

On the basis that it seems certain that the status quo will not continue unchanged, our legal and tax advisers have been working on revised pro-forma contracts for issue to IDA members which will comprise new contracts of employment, modified associate contracts, partnership agreements and other new models of engagement.

Detailed advice on the options available to members in private practice is being prepared by our professional advisers and we will circulate to members in the very near future.

While we engage in further correspondence with Revenue and make representations to the Government, we would caution members against any precipitate changes and to ensure that no changes are effected without appropriate professional advice.

The Association will continue to brief its members on developments. As you will be aware, we have already scheduled a presentation at the annual conference on *Legal Matters for the Associate* which I will deliver on Saturday, May 19th at 12.30pm in the Mangerton Suite of the Malton Hotel, Killarney.

Obviously an update on the above matters will be offered in this presentation which will be open to practice owners, principals and associates so please register quickly for the conference if you wish to attend.

We wish to thank members for their ongoing and continued support for our efforts thus far and to reassure you that this matter remains the top priority for the Association in representing its members.

Yours sincerely

FINTAN HOURIHAN
Chief Executive