

Company Directors - Taxation Issues

There are many duties and responsibilities of company directors for tax purposes.

Below is a brief summary of some of the issues that you, as a company director, need to consider. Of course this is a complex area so please be aware that this is not intended to be a comprehensive guide.

Chargeable person

Section 950 TCA 1997 tells us that, in general, a director is a 'chargeable person' for income tax purposes.

As a result, a director is obliged to submit an Irish Income Tax Return each year, even though all of their income may have been taxed at source under the PAYE system.

There are, however, some exceptions. For example, non-proprietary directors are usually excluded from the obligation to submit an Income Tax Return. (A proprietary director is, in simple terms, a director who controls 15% or more of the company).

Incidentally, the Employee Tax Credit granted to employees is not available in respect of any salary paid by the company to a proprietary director (or, subject to certain exceptions, to salaries paid to any member of his family).

You should note that the usual late surcharge provisions apply if the director's Income Tax Return isn't submitted by the due date.

This late filing surcharge will be either 5% or 10% of the director's income tax liability for that year. And that's before any deduction for PAYE deducted from his salary from the company. So it's not uncommon for a director to be presented with a late filing surcharge even though no income tax would have been payable on filing that return.

Directors' PRSI

Unfortunately, there are no provisions under the Social Welfare Acts dealing specifically with the insurability of company directors. Consequently, the PRSI treatment of directors has been established through practice over the years. What can be noted is that there are no special rules for directors regarding levies. The standard rules are applied to everyone.

For PRSI purposes, there's a difference between 'director's fees' and 'director's remuneration'. Director's fees are paid to a director for duties performed by him solely in his capacity as a director of the company. Director's fees will always be insurable under the S1 rate (in effect the fees will always be treated as self-employed income in the hands of the director).

If a director is an employee of the company (i.e. if he has a 'contract of service' with the company) then their remuneration (salary) will normally be insurable under Class 'A' and so the director will be treated as 'an employed contributor'.

But, where the director has a 'controlling interest' in the company he cannot be treated as 'an employed contributor' for PRSI purposes on any amounts he receives from the company. This is true even if he receives a salary. And means that all amounts paid to the director will be insurable under Class 'S', i.e. he will be treated as 'a self employed contributor'.

As there are no provisions dealing specifically with directors in the Social Welfare Acts, there is no definition of what constitutes a 'controlling interest'. Clearly, a director controlling more than 50% of the voting shares of the company would be treated as having a controlling interest in the company. But, each situation must be looked at individually and judged on its own merits.

Proprietary directors controlling less than 50% may nevertheless be insurable under class S. Such instances are determined on a case by case basis.

A person is deemed to have a controlling interest in the company if, in effect, that person makes the decisions for the company as to what work it will carry out and the method it will use to carry out this work. For example, in a situation where the company is owned between a father, a mother and two children, each owning 25%, all four could be deemed to have a controlling interest in the company.

Contrast this with the situation where a company is owned by two unconnected parties, Director X - 49% and Director Y - 51%. As a 51% shareholder, Y will be treated as 'a self-employed contributor' and insurable under Class S. However X does not have a controlling interest and therefore will be insurable under Class A as 'an employed contributor'.

Where the director is treated as a self-employed contributor and insurable under Class S, Employers' PRSI is not applicable to his salary.

As you can see, establishing the correct PRSI class can be tricky and, if in doubt, it is advisable to apply to the 'Scope Section' of the Department of Social, Community & Family Affairs for clarification. Before making a decision, an officer from this section will review the circumstances thoroughly and may visit the company's premises.

Duties and responsibilities

Directors have many duties and obligations, especially where a director is also performing the duties of the company secretary. While this is primarily a company law issue, tax law also imposes various responsibilities and penalties can be charged where these duties are not met.

In particular, penalties can be imposed on the company secretary (as an individual) where the company fails to submit appropriate returns or submits a fraudulent or incorrect return. These penalties are in addition to any interest or penalties that might be charged on the company.

Details to be provided by new companies

Section 882 TCA 1997 requires the company secretary of a new company to supply certain information to the Revenue Commissioners. Failure to comply can lead to the company being struck off and/or penalties can be imposed both on the company and the company secretary.

In general, this information must be submitted within 30 days of the company commencing to trade. However, sometimes the Revenue Commissioners will request this information (e.g. by issuing a Form 11F CRO). In addition, the Revenue Commissioners must be informed of any major change in the information previously provided within 30 days of such a change.

The information that must be provided includes the following:

- Name of the company.
- Address of both the company's registered office and, if different, its trading address.
- Name and address of company secretary.
- Date of commencement of the company's trade, profession or business.
- The nature of this trade, profession or business.
- The date to which accounts will be made up.

In addition to the above, further information may be requested by the Revenue Commissioners. It should also be noted that additional information must be provided by non-resident companies, including for example confirmation of where the company is tax resident.

In practice, the above information is provided by the company in a Form TR2 when registering for tax purposes. Occasionally, the Revenue Commissioners will issue a request for the above details in the form of a Form 11F CRO. This usually occurs where there is a period of time between the incorporation of a new company and the commencement of its trade because the Revenue Commissioners will have a record of the new company but will not have received the TR2.

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