

Surcharge on late returns: Directors

Part 47-06-03

This document should be read in conjunction with sections 1084 and 959B of the Taxes Consolidation Act 1997

Document last reviewed July 2018



Introduction

Company directors, and their spouses or civil partners if they are jointly assessed, are obliged to file a return of income under self-assessment.

Because of the close association between a company and its directors, the effective auditing of the company requires full returns of all payments made to or expenses incurred for the benefit of the directors.

Surcharge on late returns by directors and tax paid under PAYE

Directors who are required to file a self-assessment return are liable to pay a surcharge if the return is not filed on time. That surcharge will be based on their income tax liability before credit for tax paid under the PAYE system, even if significant tax has already been paid by the director via PAYE (section 1084(3) Taxes Consolidation Act 1997 (TCA)).

Certain directors not obliged to file returns

The obligation to file a return does not apply to certain directors: for example, directors of shelf companies, directors of genuinely dormant companies and others who take up temporary directorships in the period prior to a company commencing activity.

Directors of a company which during the three years ending on 5 April in the year of assessment –

- was not entitled to any assets other than cash on hands, or a sum of money on deposit not exceeding €130,
- did not carry on a trade, business or other activity including the making of investments, and
- did not pay charges on income within the meaning of section 243 TCA,

are not chargeable persons and do not need to file an annual return of income (section 959B (1) TCA).

Non-proprietary directors

In addition to these statutory exclusions, Revenue accepts that the returns of certain non-proprietary directors are not critical to the audit of the company.

A “proprietary director” is a director of a company who is the beneficial owner of, or is able to control, more than 15% of the ordinary share capital of that company,

either directly or indirectly. A non-proprietary director is a director other than a proprietary director.

Non-proprietary directors need not automatically file a return of income each year, and the surcharge for late filing will not apply, if

- all their income, including fees, benefits, distributions, etc., is taxed under PAYE and
- they would not be “chargeable persons” under self-assessment apart from being directors.

Other non-proprietary directors – including unpaid directors and directors of voluntary bodies or charitable organisations – who are not chargeable persons do not need to file a return.

However, where applicable, non-proprietary directors must supply Revenue with up-to-date details of benefits, distributions, etc., so that any tax due can be collected by the restriction of tax credits, by reference to reasonable estimates of the benefits, distributions, etc.