

[47.6.3] PAYE tax paid and Surcharge on late Returns by Directors

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Practitioners will be aware that the 1992 Finance Act brought company directors and, where joint assessment applies, spouses¹ of company directors within the Self Assessment provisions.

The obligation to make a Return of Income under the Self Assessment system was enacted for directors to complement the return filing requirement for companies and to ensure the effectiveness of company audits.

Revenue accept that the returns of certain non-proprietary directors are not critical to the audit process. A “proprietary director” is a director of a company who is the beneficial owner of, or is able either directly or indirectly to control, more than 15% of the ordinary share capital of the company. A non-proprietary director is a director other than a proprietary director. In **Statement of Practice SP - IT/1/93** (copy attached) the Revenue Commissioners accepted that in the case of directors –

- who are non-proprietary directors, **and**
- who would not be “chargeable persons” for Self Assessment purposes apart from being directors, **and**
- all of whose income including fees, benefits, distributions, etc. is subject to tax directly or indirectly under PAYE.

A Return of Income need not be filed automatically each year.

While the return filing requirement for directors is in place for some time, the provisions of Section 245 Finance Act 1992 (**now Section 1084(3) TCA 1997**) are still not fully recognised by some practitioners. Practitioners are reminded that, to render the surcharge an effective deterrent to late filing by directors, the surcharge is based on the income tax liability of a director before any credit for PAYE tax paid by the director.

¹ and civil partners for the tax year 2011 and later tax years.

47.6.3

If your client is a director who is obliged to automatically submit a return by reference to the Self Assessment legislation contained in Finance Act 1988, as amended, and the practice set out in SP-IT/1/93, significant PAYE tax payments will not obviate the surcharge. Timely filing of directors' returns is essential if a surcharge based on income tax liability before credit for PAYE tax paid is to be avoided.

Copies of Statement of Practice SP-IT/1/93 are available from local tax offices and the ***Revenue Forms & Leaflets Service*** at 1890 306 706 (ROI only) or 00 353 1 7023050.

Statement of Practice
SP - IT/1/93
Finance Act, 1992 and Directors

1. INTRODUCTION

1.1 The 1992 Finance Act brought company directors and, where joint assessment applies, spouses¹ of company directors within the Self Assessment provisions. Prior to the 1992 Act these persons did not come within the Self Assessment provisions if all of the director's income was taxable under the PAYE-system.

1.2 The new provisions were introduced to ensure the effectiveness of Self Assessment audits of companies. 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.

1.3 The 1992 Act excludes certain categories of directors from the necessity to make returns and these are set out at para. 3. In administering the new provisions the Revenue Commissioners will adhere to the procedures set out in para. 4 in relation to certain other categories of directors whose returns are not critical to the audit process.

2. OBLIGATIONS IMPOSED BY FINANCE ACT, 1992

The new provisions come into effect for the year 1992/93. Directors or spouses² of directors will, therefore, be obliged to file returns of income for that year by 31 January, 1994. Failure to do so will render the person concerned liable to the surcharge. The surcharge will be calculated on the basis of the person's gross income tax without any credit being given for tax deducted under PAYE. This provision is necessary if the surcharge is to be effective in ensuring compliance even in the case of directors who have paid their tax under PAYE.

3. EXCLUSIONS IN THE 1992 ACT

3.1 The 1992 Act excludes certain types of directors from the new provisions, 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.

¹ and civil partners for the tax year 2011 and later tax years.

² and civil partners for the tax year 2011 and later tax years.

3.2 These examples are covered by the exceptions listed in the Act. The exceptions are directors of a body corporate 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 within the meaning of Section 230 Finance Act, 1992, not exceeding £100/€127, and
- 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 10 of the Corporation Tax Act, 1976.

4. SPECIAL PROVISIONS IN RELATION TO CERTAIN NON-PROPRIETARY DIRECTORS

4.1 The Revenue Commissioners also accept that the returns of certain nonproprietary directors including unpaid directors, directors of voluntary bodies or charitable organisations are not critical to the audit process and would not give rise to the detection of any additional tax liability. Accordingly, in administering the new provisions they have decided that, until further notice, returns need not be filed automatically and the surcharge will not, therefore, apply in the case of non-proprietary directors –

- (i) **who are not otherwise chargeable persons**, and
- (ii) all of whose income including fees, benefits, distributions etc. has been subject to tax directly or indirectly under PAYE.

4.2 In the case of benefits, distributions etc., it is sufficient for this purpose that such directors supply up-to-date details to the Inspector of Taxes so that the tax is collected by the restriction of tax-free allowances, by reference to reasonable estimates of the benefits, distributions etc. Details of benefits, distributions etc. can be supplied either in the form inserted with the annual Notice of Determination of Tax-Free Allowances, in a letter or in a tax return, as appropriate.

4.3 The term “proprietary director” means a director of a company who is the beneficial owner of or is able either directly or indirectly to control more than 15% of the ordinary share capital of the company.

Revenue Commissioners April, 1993