

**PAYE
&
Directorship
Fees**

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Directors of Irish Companies – Charge to Tax

On 23rd December 2011 the Revenue Commissioners issued a tax briefing (the “**Briefing**”) setting out their position on the tax treatment of the remuneration arising from the having or exercising by an individual of the office of director of an Irish incorporated company.

Regardless of historic practices (e.g. where invoices issued by professional services companies to financial institutions for the provision of directors were issued with VAT thus not going through the income tax (PAYE) process) the Briefing re-affirms Revenue’s strict interpretation of the law by providing that a director (including a non-executive director and / or a non-resident director) of an Irish incorporated company holds, for taxation purposes, an Irish *public office* the remuneration (including remuneration by way of benefits-in-kind) arising from which is chargeable to income tax in Ireland irrespective of where the holder of the public office is tax resident or where the duties of that public office are exercised. Such income is therefore within the scope of deduction at source of income tax under the Pay As You Earn (PAYE) system and deduction at source of the Universal Social Charge under the USC system. The obligation to apply PAYE lies with the party making the payment (“Payer”) and in the event that PAYE is not deducted, it is the Payer who will be held liable for any amounts of PAYE due but not deducted. The only time PAYE/USC may not apply is where a PAYE Exclusion Order is in place (see below).

The Briefing further provides that the mandating, allocating, directing, routing, etc. to a “third party” (e.g. to a firm or company), by written contract or otherwise, of remuneration arising from the “having or exercising” by an individual of an office or employment does not bring the taxation of such remuneration outside the scope of that individual’s charge to Irish income tax nor does it take such remuneration outside the scope of deductions at source under the PAYE and USC systems. The Briefing also confirms that simply labelling payments as “expenses” does not mean that the Revenue Commissioners accept that all such payments may be paid free of tax and referenced their Statement of Practice on the “*Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees*”.

For the avoidance of doubt, the fact that VAT (which may not be recoverable) may have been charged on directors’ fees does not remove the liability to account for tax on directors fees (unless a PAYE Exclusion Order is in place).

PAYE Exclusion Order

Practitioners will be aware of a practice whereby a partner (who is an accountant or solicitor) of an accountancy or legal firm (e.g. Dillon Eustace) may formally apply in writing to Revenue for permission that remuneration arising to him or her from the having or exercising

of a public office of director of an Irish incorporated company be paid into the partnership (of which he or she is a partner) for the benefit of all the partners and be divided amongst the partners with the partners paying income tax, USC, etc. on such income under the self-assessment system. The Revenue Commissioners have provided in the Briefing that this practice will in essence continue subject to a number of additional conditions being satisfied.

Central Bank of Ireland – Conduit Firms

In the context of directors of regulated collective investment schemes (CIS) or management companies (as appropriate) the timing of the Briefing was very apt as the Central Bank of Ireland (CB) issued a letter (the “Letter”) to the IFIA on the 21st December in relation to the director’s appointments via conduit firms. In the Letter the CB provided that the duties and responsibilities of a director and fitness and probity requirements are personal obligations placed on an individual who is appointed as a director and therefore in the CB view it is not appropriate to have the terms of a directors appointment documented in and governed by an agreement between a CIS or management company and a conduit firm or third party acting on behalf of or in relation to the director. Consequently, the terms of appointment should be documented in a letter of appointment issued by the CIS or management company directly to the director and the only parties to it should be the CIS or management company and the director.

The Letter further provided that in respect of taxation, the CB expects directors, CIS and management companies to comply with tax law including all guidance that may be issued by the Revenue Commissioners (thus the aforementioned briefing) relating to such tax law as regards the tax treatment of the remuneration of directors.

Summary

- Companies should now review their current arrangements with regard to directorship fees having regard to the aforementioned briefing and unless PAYE Exclusion Orders are in place for each director, the company should register for and operate income tax going forward until such time (if ever) as the Revenue Commissioners issue a PAYE Exclusion Order in respect of the relevant director.
- This applies in the case of both resident and non-resident directors, although a non-Irish resident director who is resident of a country with which Ireland has a Double Taxation Agreement (DTA) may be entitled to avail of relief in the home country under the terms of the DTA for any Irish income tax suffered on the directorship fees. We

would suggest that non-resident directors in receipt of fees from Irish companies should seek personal tax advice in this regard.

- Finally, CIS and other regulated entities should also review their arrangements in light of the CB's announcement and ensure that they are compliant with these announcements.

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