

# **Tax and Universal Social Charge treatment of income arising from having or exercising of the public office of director of an Irish incorporated company**

## **Part 42-04-61**

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## 1. Directors of Irish incorporated companies - charge to tax under Schedule E

It is a long-established principle of Irish tax law - supported by the Irish High Court tax case of **Tipping v Jeancard 2 ITR 68** - 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 arising from which is chargeable to income tax in the State under what is known as Schedule E. Such income is 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 (USC) under the USC system.

The relevant legislation is Section 19 of the Taxes Consolidation Act 1997.

### 1.1. Payments to Directors

Payments to office holders, in their capacity as office holders, are chargeable to tax under Schedule E and subject to deductions at source under the PAYE system.

Where a company makes a payment to a director and, at the time of the making of the payment, the company is unable to establish by way of documentary evidence at that time that the payment is something other than in the nature of remuneration arising from the directorship, then such a payment is paid to the director in his or her capacity as an office holder and is subject to deductions under the PAYE system.

**Note:** By virtue of section 987 of the Taxes Consolidation Act 1997, failure to comply with any employer obligation provided for in Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 and the related regulations, may result in liability for a fixed penalty of €4,000. The Company Secretary shall be liable for a separate penalty of €3,000.

#### Example

A director is in receipt of payments from a company amounting to €36,000 annually, paid monthly. The company state that the payments are “payments on account” to cover travel and subsistence, payments made by the director on behalf of the company, director’s loan payments and remuneration. They reconcile the director’s current account at the end of the year when preparing the annual accounts. As these payments are made to the director in his or her capacity as an office holder, deductions under the PAYE system must be made by the company on the making of the payments.

## 2. Non-resident directors of Irish incorporated companies

It is also a long-established principle of Irish tax law that the Schedule E charge to Irish income tax on the remuneration arising from the having or exercising of the **public office** of director of an Irish incorporated company applies irrespective of where the holder of that **public office** is tax resident or where the duties of that **public office** are exercised (USC also applies).

Therefore, where a non-resident individual holds the **public office** of director of an Irish incorporated company, his or her remuneration from that office is within the charge to Irish income tax under Schedule E. Such income is within the scope of deduction at source of income tax under the Pay As You Earn (PAYE) system and deduction at source of the USC under the USC system.

In some instances, such charge to Irish income tax may be relieved under the terms of a double taxation agreement. However, it is a matter for the relevant director to satisfy the Revenue Commissioners that relief under a relevant double taxation agreement is appropriate. The USC does not apply to income, or to that element of income, relieved from the charge to income tax under a double taxation agreement.

## 3. Distinction of Roles

Where an individual holds or exercises the **public office** of director of an Irish incorporated company, such **public office** (including the duties relating to and remuneration arising therefrom) is separate and distinct from any other office (public or otherwise), employment or occupation that he or she may also hold.

For example, where an employee of a firm (Firm A) also holds or exercises a **public office** as a director of an Irish incorporated company (Company B), the duties relating to, and remuneration arising from, having or exercising the **public office** of director of Company B can be distinguished as being separate and distinct from the duties relating to, and remuneration arising from, the individual's role as an employee of Firm A.

Where an individual holds or exercises the **public office** of director in several companies, each such **public office** (including the duties relating to and remuneration arising therefrom) is separate and distinct from each other.

For example, Mr. A is a shareholder and director of a consultancy company, XYZ Ltd. He holds **public offices** of director of 20 Irish incorporated companies (some as executive director and some as non-executive director). Each of those 20 directorships is a separate and distinct **public office** and is also separate and distinct from his role as shareholder and or public office holder as director of his consultancy company.

## 4. Mandating of remuneration to third parties

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 tax under Schedule E [see the Irish Supreme Court case of **J D Dolan (Inspector of Taxes) v "K"** (1 ITR 656)]; nor does it take such remuneration outside the scope of deductions at source under the PAYE and USC systems.

For example, Ms. B is a shareholder and director of a consultancy company, B Consultancy Ltd. She also holds or exercises the **public office** of director of 8 Irish incorporated companies and the **public office** of non-executive director of 7 other such companies. Ms. B has requested each of the 15 companies not to pay directly to her the remuneration arising from each of her **public offices** as director of each such company but instead to pay it gross (i.e. without PAYE or USC deductions) to her company, B Consultancy Ltd. However, such an arrangement **does not** release the 15 companies from their obligation to make the statutory deductions under the PAYE or USC systems in relation to Ms. B's remuneration as director. Neither does such an arrangement bring the taxation of such remuneration outside the scope of Ms. B's charge to Irish tax under Schedule E or outside the charge to the USC.

**Note:** – See Paragraph 9 below as regards the payment of tax by partners (of certain partnerships) on certain directors' remuneration.

## 5. Tenure of directorship contingent on payments to third parties

Where the tenure of an individual's public office of director of an Irish incorporated company (Co. A) is contingent, by written contract or otherwise, on the remuneration (or part thereof) arising to him or her from "having or exercising" such office being paid to a third party [e.g. a firm or company (Co. B)], Co. A is not released from its obligation to make the statutory deductions under the PAYE or USC systems on the payment of such remuneration. Neither does such an arrangement bring the taxation of such remuneration outside the scope of that director's charge to Irish tax under Schedule E or the charge to the USC.

## 6. Directors' remuneration by way of entitlement to shares

Directors' remuneration also includes remuneration by way of entitlement to shares. Revenue has published a consolidated share schemes manual which incorporates all previously published material. The consolidated share schemes manual is available [here](#).

## 7. Directors' remuneration by way of provision of benefits-in-kind

Directors' remuneration by way of provision of benefits-in-kind is within the charge to tax under Schedule E and (generally) within the scope of statutory deductions at source under the PAYE and USC systems. More detail is contained in Revenue's [BIK for Employers](#) on the Revenue website.

## 8. Payment of expenses

As regards the tax treatment of expenses of travel and subsistence, see Tax and Duty Manual [Part 05-01-06](#) Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees.

## 9. Directors' remuneration received by partners of certain partnerships

There is a longstanding practice whereby a partner (who is a solicitor or accountant) of a legal or accountancy firm 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 -

- (a) be paid into an account for the benefit of the partners; and
- (b) be divided amongst the partners with the partners paying income tax and USC on such income under the self-assessment system.

However, this practice -

- (i) operates **only** -
  - (I) on a Revenue "prior approval" basis; and
  - (II) in respect of partners liable to income tax in the State who are either solicitors or accountants of a legal or accountancy partnership in the State; and
- (ii) is for income tax and USC purposes only and does not seek to impose, or import, any derogation of a director's and/or a company's non-tax statutory and/or fiduciary duties and obligations.

To clarify, with effect from 1<sup>st</sup> January 2012, Revenue will generally accede to a written request from partners (who are either solicitors or accountants) of a legal or accountancy partnership, and from that partnership, to have remuneration arising from having or exercising by one or more of those partners of the **public office** of director of an Irish incorporated company paid into an account for the benefit of all the partners but only under the following conditions -

- (a) the partnership agreement provides for the division amongst all the partners of such directors' remuneration;
- (b) in comparison to the partnership income, such directors' remuneration is insignificant;
- (c) the relevant partner is not a shareholder of the relevant company;
- (d) the relevant partners -
  - (i) undertake to ensure that such directors' remuneration paid an account for the benefit of all the partners is paid out in full to each partner in accordance with the provision in the partnership agreement; and
  - (ii) accept that such remuneration is taxable in full in their hands (and liable to the USC) in the tax year in which the money was paid into the said account for the benefit of the partners without offset of any of the partnership's business expenses.

**Note** – Up to and including the 2011 tax year, where permission for the practice was granted by Revenue, whilst not explicit, the relevant directors' remuneration may have been treated as part of the partnership trade income attracting normal trade qualifying expenses – such years need not be amended to comply with paragraph (d) (ii) above.

Partnerships and partners seeking such treatment must obtain prior approval from the Revenue office dealing with the tax affairs of the partnership.

Where permission to apply such tax treatment is granted, Revenue will arrange to issue to the relevant company of which the partner is a director a **PAYE Exclusion Order** that enables the emoluments of the specific director named in that **Order** to be paid without deduction of tax to the partnership. Again, the same principles apply in the case of deduction at source of the USC. [Note - In the absence of such a **PAYE Exclusion Order**, the company paying the remuneration must apply the PAYE and USC systems as regards that remuneration].

Matters pertaining to PAYE Exclusion Orders and directors' remuneration are contained in Tax and Duty Manual [Part 42-04-01](#).