

Surcharge on late returns by directors

Part 47-06-03

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

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Introduction

This Tax and Duty Manual outlines return filing requirements for company directors and the application of a surcharge where the return is filed late.

Proprietary and non-proprietary directors

Company directors, and their spouses or civil partners if they are jointly assessed, are obliged to file a return of income under self-assessment (section 959B(1) Taxes Consolidation Act 1997 (TCA)).

A “proprietary director” of a company (as defined in section 472(1)(a) TCA) is a director who is the beneficial owner of, or is able to control, more than 15% of the ordinary share capital of the company, either directly or indirectly. A proprietary director is required to file a self-assessment return in their capacity as a director and is liable to pay a surcharge under section 1084 TCA if the return is filed late.

A non-proprietary director is a director other than a proprietary director. Such a director may be required to file a self-assessment return for reasons other than their directorship. See further details below under “Non-proprietary directors”.

Certain directors not obliged to file returns

The obligation to file a return does not apply to certain directors such as 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 31 December in the tax year –

- 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 in that capacity and do not need to file an annual return of income (section 959B(1) TCA), unless they are chargeable persons in another capacity.

For tax years prior to 2019 the relevant date for the assessment of the above criteria is 5 April in the tax year, rather than 31 December.

Non-proprietary directors

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

A non-proprietary director 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.

However, where a non-proprietary director-

- is a chargeable person otherwise than by reference to their directorship, and
- is therefore obliged to file a return of income, and
- the return is filed late

they are liable to the late filing surcharge.

A non-proprietary director such as an unpaid director or a director of voluntary bodies or charitable organisations, who is not otherwise a chargeable person, does not need to file a return

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, its directors. A non-proprietary director 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.

Surcharge on late returns by directors and tax paid under PAYE

Directors who are required to file a self-assessment return, as outlined above, 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 been paid by the director via PAYE (section 1084(3) TCA).

Where a couple is jointly assessed, and one spouse or civil partner is a director who has filed a late return, the late filing surcharge is calculated without credit for any tax deducted under the PAYE system from either spouse or civil partner's income (section 1084(3) TCA).

For further information on the late filing surcharge for Income Tax and Corporation Tax please see [TDM 47-06-08 Surcharge for late submission of income tax, corporation tax](#) returns

Please also see [TDM 47-06-01 Return Filing Dates – Forms 11 and CT1](#)