# 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

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.

## Proprietary and non-proprietary directors

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 the company, either directly or indirectly. A proprietary director will be required to file a self-assessment return in her or his capacity as a director.

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 the directorship. See further details below under "Non-proprietary 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 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 and do not need to file an annual return of income (section 959B(1) TCA).

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

## 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.

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.

However, where non-proprietary directors -

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

they are liable to the late filing surcharge, calculated on their income tax liability before credit for tax paid under the PAYE system.

Similarly, where an individual is jointly assessed, and her or his spouse or civil partner is a director, the late filing surcharge is calculated without credit for any tax deducted under the PAYE system.

Non-proprietary directors who are not chargeable persons do not need to file a return. This could include, for example, unpaid directors and directors of voluntary bodies or charitable organisations.

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.