

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

1. Background

Arising from certain matters that have come to Revenue's attention, set out below is the Revenue position on the tax and USC treatment of the remuneration arising from the having or exercising by an individual of the office of director of an Irish incorporated company.

2. 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 USC under the USC system.

3. 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. (The USC also applies in this instance).

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.

4. 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 *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 Irish incorporated 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 office* of director of 20 Irish incorporated companies (some as executive director and some as non-executive director). Each of those 20

directorships are separate and distinct *public offices* and are also separate and distinct from his role as shareholder and / or public office holder as director of his consultancy company.

5. 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 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 / 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/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 10 below as regards the payment of tax by partners of certain partnerships on certain directors' remuneration.

6. 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/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.

7. Directors' remuneration by way of entitlement to shares

Directors' remuneration also includes remuneration by way of entitlement to shares. There are a number of Revenue publications (available on Revenue's website) on the tax treatment of entitlement to shares including -

-  Guide to Profit Sharing Scheme (Leaflet **IT 62** (PDF, 402KB);
- Tax treatment of shares acquired by employees and directors under
-  Unapproved Share Option Schemes (Leaflet **IT 72** (PDF, 188KB);
- Tax Treatment Of Restricted Shares acquired By Directors And Employees
-  (Leaflet **IT 73**)(PDF, 237KB);
-  **Guide to Savings Related Share Option Schemes;** (PDF, 166KB)
-  **Tax treatment of convertible securities;** (PDF, 69KB)



- Statement of Practice **SP - IT/1/07** (PDF, 141KB) Tax Treatment of Share Options granted in respect of Employments and Directorships – International Aspects.

8. 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 **Employers Guide to Operating PAYE & PRSI for Certain Benefits**

9. Payment of expenses

Simply labelling payments as "expenses" does not mean that Revenue accept that all such payments may be paid free of tax. As regards the tax treatment of expenses of



travel and subsistence, see Revenue's Statement of Practice **SP - IT/2/07** (PDF, 157KB) Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employee.

10. Directors' remuneration received by partners of certain partnerships

Practitioners may be aware of a 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 the partnership (of which he or she is a partner) for the benefit of all the partners; and
- (b) be divided amongst the partners with the partners paying income tax, USC, etc. 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 and USC in the State who are either solicitors or accountants and partners 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 1st 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 attributable to one or more partner;
- (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 into 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 was paid into the said account for the benefit of the partners and without offset of any of the partnership's business expenses.

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].