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[www.NonExecDirector.co.uk](http://www.NonExecutiveDirector.co.uk)

**Taxman targets Non-Executive Directors pay and personal service companies – 11/11/13**

In its on-going battle to close the ‘tax gap’ HMRC has tightened the rules and its guidance on the taxation of executive and Non-Executive pay. In particular the tax treatment of Non-Executive Directors may prove to be a problematic one for businesses.

In recent years it has become increasingly common practice for Non-Executive Directors to invoice their director’s fees via a Personal Service Company (PSC). While this practice can be administratively useful, if they have a number of directorships, it also tax driven, as profits are taxed at lower corporate rates and then withdrawn as dividends.

According to HMRC’s payment rules businesses should note that an individual who is a board member is classed as an “office holder” and is therefore liable to PAYE/NIC on remuneration for that role.

Even individuals who act as Non-Executive Directors are “office holders” and cannot therefore provide their services in a self-employed capacity.

Additionally any income a PSC receives from the holding of an office will fall under IR35 – potentially resulting in additional tax and NIC payable by the PSC.

Businesses are therefore advised to examine their remuneration processes for Non-Executive Directors and the use of PSCs.

**Partners in a professional practice**

It is also a common misconception that fees paid to Non-Executive Directors who are accountants and lawyers are not, in principle, within the PAYE & NICs provisions. The default position is that they are within the scope to PAYE.

There is however a ‘get out of jail card’, in the form of an extra statutory concession, where a partner in a professional practice acts as a Non-Executive Director, his directors fees can be paid gross provided:

• it is part of the firm's normal business to provide the services of its partners as Directors

• the fees are small in relation to the profits and

• the fees form part of the total profits of the partnership and are pooled among all partners.

Even in these circumstances it is advisable that companies wishing to pay fees gross to their Non-Executive Directors should first seek authorisation from their tax office.

**Also in the news**

The use of PCP’s by some of the BBC’s major presenters, such as Fiona Bruce & Jeremy Paxman, is also back in the news. The BBC is reacting to mounting criticism of its payment arrangements, by taking steps to try and tax more freelancers at source rather than by making gross payments to their PCPs. Currently about 800 BBC contractors are paid through their personal service companies. The BBC has therefore just announced a review of current contracts as they come up for renewal, and testing how much editorial control it has over an individual's activities. Anyone for whom this is a "significant" amount will be asked to join the payroll, instead of being paid through a PSC. Some of the BBC's biggest freelance stars could therefore be asked to join the payroll or leave the corporation………

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