



BUSINESS FEATURE: Directors and salaries. By Nichola Ross Martin

There have been a number of queries this week on this topic in the Any Answers forum. This article gathers them up in one place to form an FAQ on director's remuneration.

Do director's need to pay themselves a salary and if so, what about the national minimum wage?

If there is no written employment contract or other evidence of an intention to create an employer/worker relationship between a director and his company, then the DTI (and HMRC, as agents for the DTI) contend that there is no employment relationship. The NMW will not apply and there is no obligation to pay a wage/salary or other form of remuneration.

A director may be remunerated solely for his services in respect of his office as a director, in which case there will be either a written or implied contract for those specific services. The income of an office holder is treated as employment income under ITEPA 2003 but the DTI's guidance (above) overrides this for NMW purposes.

Can a director also act as a self-employed consultant to his own company?

Yes, he can, and this frequently happens when a director runs his own consultancy business or is a partner in a partnership in parallel to the company. In this case the individual may have trading income from his profession, employment income from his company, and quite possibly dividends from the same source.

Practically, this can be open to challenge where both company and consultancy share principle activities and where the director is directing the company's staff in a role that would imply he is a fellow employee or employer. These cases can only be resolved on their individual facts. My Top Tip in these cases is for the director in his consultancy capacity to have a written consultancy agreement as self-employed consultant, and also a written employment contract as an employee for his own company, if that also applies. Once these are in place, review the arrangements each and every year.

What about non-executive directors' fees?

Fees can be paid to non-executive directors in a variety of ways, and this reflects the agreed or implied contracts between the non-executive director and the company. A non-executive director is an office holder, and he should always have a written contract for his services.

On the face of it the role as an officer of the company requires him to be an employee for tax purposes, and specifically in terms of employment status tests, when all his acts in specified and accordance with direction from the board. In practice though, many non-exec directors are appointed for their unique abilities as consultants, and so many will be contracted for in their capacity as independent consultants, and paid as self-employed individuals.

Can HMRC claim that dividends paid to director/shareholders are actually remuneration?

Dividends in these situations are paid to a director because he is a shareholder and as a consequence it is not possible to claim that they are paid in respect of services as an office holder or employee.

A very useful tax case in this area is *Eyres v Finnieston Engineering Co Ltd* [1916] 7TC74, (see HMRC's Business Income Manual at para.37705). In that case the company tried to claim a deduction against taxable profits for dividends, claiming that they were part of the remuneration package. No deduction was allowed by the courts, even though the company's Memorandum and Articles said that dividends were part of the "remuneration package".

Should a director pay himself a market value salary for tax purposes?

There is no such thing according to the Taxes Acts, and directors are free to vote themselves remuneration as the board of the company sees fit.

Directors should be aware though that excessive salaries and benefits in kind may be challenged on the basis that they are not wholly and exclusively paid for the purpose of the trade. To determine whether a rate of pay or benefits is excessive HMRC will apply a "market rate" test, again there is nothing to verify what the criteria are for market rate in the Taxes Acts on this point either, so in these cases it is a matter of judgment.

Associated article: [Any Answers: Owner-managers and 'market rate' pay](#)

Links to the Any Answers queries mentioned in this article:

[Do directors have to pay themselves the minimum wage?](#)

[Must an owner/manager take a salary?](#)

[Non-execs: Payments to directors](#)

Nichola Ross Martin

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