



Isle of Man
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PRACTICE NOTE

PN 163/10

Date: 12 July 2010

TAXATION OF NON-EXECUTIVE DIRECTORS' FEES (SUPPLEMENTAL)

1. Following the publication of Practice Note 162/10, the Assessor has been asked for further clarification of the income tax and national insurance position of non-executive directors who receive fees from companies in certain circumstances: specifically where their services would constitute regulated activities under Class 4 (6) of the Regulated Activities Order 2009 (made under section 3 of the Financial Services Act 2008), regardless of whether a licence is required to carry on that regulated activity or whether an exemption from the licence requirement is provided by the Financial Services (Exemptions) Regulations 2009.
2. The Assessor can confirm that, in the circumstances mentioned above, where a person holding an office as a non-executive director has a "contract for services" rather than a "contract of service", fees paid on the basis of the contract will not be treated as remuneration subject to income tax instalment payments (ITIP), and the person will not be treated as an employed earner for national insurance contributions (NICs) purposes. For the avoidance of doubt, this means that the fees will be treated as arising from self-employment.

Obtaining Certainty

3. If any non-executive director considers that the supplemental guidance in this note applies to their circumstances, they should in the first instance write to the Assessor at the above address in order to request clearance that their fees will be covered by the treatment set out in paragraph 2. A copy of the relevant contract for services should accompany the request.

ITIP and NICs

4. Where clearance under paragraph 3 has been given, the company paying the non-executive director's fees will not be required to deduct ITIP or employee Class 1 NICs from those payments; nor will the company be liable to employer's Class 1 NICs in respect of those payments.

5. Non-executive directors in receipt of self-employment earnings should declare them as such on their annual tax return. Self-employment earnings are subject to Class 2 and Class 4 NICs.

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Assessor of Income Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.