

Advice Notes

Classification and liability of persons who hold Non-Executive Directorships

These notes refer to people under pension age. A person over pension age pays a contribution at the over pension rate based on all income.

If a person holds one Non-Executive Directorship only

In order to simplify the classification of Non-Executive Directors the Committee introduced a test with effect from 2015, based upon the level of earnings, to apply to cases where there is a single directorship. This limit is four times the value of the Lower Earnings Limit. Lower Earnings Limit is a figure which changes annually. The 2023 figure is £8,475.96

Details of Contribution rates and limits are on the States of Guernsey website and can be accessed via the following link:

<https://www.gov.gg/article/119722/Social-security-contributions>

A Non-Executive Director who satisfies this test is classified as a self-employed person.

A Non-Executive Director who holds one Directorship and does not satisfy this test is classified as a non-employed person.

Example one:

A person holds one Non-Executive Directorship and receives £35,000 annually for this work in 2023. This amount is over four times the Lower Earnings Limit. The person has no other sources of earned income although they have other income such as property rental, pensions and bank interest. This person is classified as self-employed and pays contributions based on earnings from the Directorship only.

Example two:

A person holds one Non-Executive Directorship and receives £20,000 annually for this work in 2023. This amount is below four times the Lower Earnings Limit. The person has no other sources of earned income although they have other income such as property rental, pensions and bank interest. This person is classified as non-employed and pays contributions based on all of their income.

If a person holds more than one Non-Executive Directorship and/or receives other remuneration

A non-employed person pays contributions based on all income.

Employed and self-employed persons have Non-Executive Director fees included in Social Security liability when the fees are treated as earnings from gainful occupation in employment.

The test of being gainfully occupied is in two parts; the first being to decide if the enterprise is gainful and the second if it is an employment.

The acquisition of gain does not in itself identify an enterprise as an employment. For the gainful occupation test to be satisfied the person must be pursuing some form of activity.

However, there are situations where there is some activity, which could be considered evidence of employment, but it is so small that it would be disregarded as being inconsiderable. The test we use in cases such as this is based upon the quantum of activity.

If the level of activity in the Non-Executive Director roles is significant, when taken together with any monies paid from these offices, then the tests for gainful occupation are satisfied, an employment is indicated and the director fees are included in the definition of earnings.

Example three:

A person holds three Non-Executive Directorships which pay remuneration but only requires a limited amount of work. This does not satisfy the gainful occupation test. The person is classified as non-employed and is liable to pay contributions based on all income.

Example four:

The same person as in example three gets a job and is paid £50,000 per annum. They are now classified as an employed person and are liable to pay contributions based on these earnings only. The remuneration from the 3 Non-Executive Directorships held continues to be not treated as earnings for Social Security purposes and consequently is now not liable.

Example five:

A person holds several Non-Executive Directorships receiving from them £70,000 per annum. On average a large proportion of the week is spent dealing with responsibilities derived from these posts. There is other investment income but no remuneration from other roles. This person is clearly gainfully occupied, is classified as a self-employed person and pays based upon earnings.

Example six:

The same person as in example five begins part time work for a local fiduciary that pays wages that are above the Lower Earnings Limit. This person is classified as both employed, for the fiduciary work, and self-employed for the Non-Executive Directorships. Both the earned income from the fiduciary work and the held offices are liable at the employed and self-employed rates respectively. These combined earnings are capped at the Upper Earnings Limit.

Example seven:

This person reaches pension age and is now classified as a non-employed person paying contributions based on all income at the over pension age rate. (see website link above).