



The Irish Accounting & Tax Summit 2020

Session 13

KnowledgeHUB - Most Common Technical Queries of 2020



Presenter:

KnowledgeHUB Team & Des O'Neill - OmniPro

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Core Technical Online CPD for Irish Accountants
Tax, Audit, Financial Reporting, Insolvency, Company Law, Regulation,
Management Accounting & Business Skills



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KnowledgeHUB - Most Common Technical Queries of 2020

- Welcome to Your Webevent
- Introducing the Webevent Team
- Your Downloads and Material
- Your Questions

KnowledgeHUB - Most Common Technical Queries of 2020

- Webevent Timing - 11:00 – 12:00
- Teaching Space – 50 Minutes
- Questions and Answers – 10 Minutes

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Entities Regulated by Central Bank of Ireland

Colm Owens

KnowledgeHub – common queries

Types of Entities (typically encountered)

- Investment & Insurance Intermediaries - Entities authorised under Investment Intermediaries Act 1995 (IIA)
- Insurance / re-insurance Intermediaries – Entities authorised under European Union (Insurance Distribution) Regulations 2018

 **Banc Ceannais na hÉireann**
Central Bank of Ireland

Eurosystem

Financial Service Provider Search

This page allows you to search all Central Bank of Ireland registers for a particular financial service provider. To search you simply type in the name or partial name of the financial service provider you are looking for. If you know the business area of the financial service provider or wish to limit the number of results you receive, you can restrict the search using the filters provided.

If you are concerned about the activities of a financial service provider or suspect they may be offering investments without authorisation, check to see if we have issued a warning notice against the financial service provider by clicking on the following link: [Warning Notices](#)

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KnowledgeHub – common queries

Common queries

- Can they avail of audit-exemption?
- Can they file abridged financial statements?
- Can they prepare financial statements in accordance with FRS 102 S1A or FRs 105?
- What are my (as auditor) reporting requirements to CBI?
- What audit work do I need to do on these regulated entities?

KnowledgeHub – common queries

Companies authorised / regulated by CBI;

- Section 350, CA 2014 refers to Schedule 5 companies;
- Schedule 5 refers to;
 - Any other company the carrying on of business by which is required, by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.

KnowledgeHub – common queries

Companies authorised / regulated by CBI;

S.350.11 Dis-applies size criteria for certain types of entities (i.e. Schedule 5 companies)

- Deemed 'Large' companies (cannot avail of audit-exemption and cannot file abridged accounts);
- Must use FRS 102 (additional disclosures including auditors remuneration);
- As a 'large' company cannot avail of provisions of ES-PAASE (must apply safeguards where firm provides non-audit services to client).

KnowledgeHub – common queries

Reporting requirements;

Insurance Intermediaries – Entities authorised under European Union (Insurance Distribution) Regulations 2018;

- Entities with a sole authorisation under the European Union (Insurance Distribution) Regulations 2018 are not required to submit Statutory Duty confirmation (section 27B report) and 27C reports (copy of mgmt letter or 'nil' statement to the Central Bank.
- Therefore, auditors of 'Insurance, Reinsurance or Ancillary Insurance' intermediaries are not subject to this requirement.

KnowledgeHub – common queries

Insurance Intermediaries – Entities authorised under European Union (Insurance Distribution) Regulations 2018;

Audit work surrounding;

- Solvency;
- Holding an adequate policy of professional indemnity insurance;
- Submission of Annual Returns;
- Client Premium accounts (refer to CBI Handbook).

KnowledgeHub – common queries

Reporting requirements;

Investment & Insurance Intermediaries - Entities authorised under Investment Intermediaries Act 1995 (IIA);

- There is an obligation on auditors of entities authorised under the Investment Intermediaries Act 1995 (IIA) to submit to the CBI;
 - Statutory Duty confirmation (section 27B report); and
 - Section 27C report (copy of mgmt letter or 'nil' statement).
- Entities who have more than one authorisation, which includes authorisation under the IIA, are also subject to this requirement.

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Investment & Insurance Intermediaries - Entities authorised under Investment Intermediaries Act 1995 (IIA);

Audit work based around;

- Assessing compliance with Section 33, IIA, 1995;
 - Non-compliance is reported via Statutory Duty confirmation & Section 27C Report (copy of mgmt letter);
- Client Premium accounts (refer to CBI Handbook).

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Director's Loan Issues

KnowledgeHub – common queries

Query 1 – Directors' loan given by company;

Director's loan balance at the year ended 31st Dec 2019 breached the 10% of relevant assets.

Loan has been repaid to the company in full post year end.

What if loan repayment treated as outstanding lodgement?

- What are the disclosure requirements?
- What are the reporting requirement?

KnowledgeHub – common queries

Disclosure;

- Sections 307 to 308, CA 2014 requires disclosure of amounts owed from directors, including connected persons to the company, giving movement in the year by director to also include any provision made against these loans.
- Disclosure is also required under S.307(8), CA 2014 of the percentage the loans represents of the net assets at the beginning and end of each year. In addition, where loan amount increased over 10% of the net of assets of the company in the year this percentage should also be stated.
- Based on the above, even if the company were to treat the repayment as an outstanding lodgement thus eliminating the balance at year end, the fact that the loan was in excess of 10% of relevant assets during the year would still be disclosed.

KnowledgeHub – common queries

Reporting Obligations;

- Section 239, CA 2014, prohibits a company from making a loan to its director or connected person except in certain circumstances. Therefore, if a company enters into a transaction or arrangement that contravenes section 239, any officer of it who is in default shall be guilty of a category 2 offence.
- Section 393(1), CA 2014 sets out the auditors' duty to report as follows:
- “Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the statutory auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a category 1 or 2 offence, the statutory auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with particulars of the grounds on which they have formed that opinion.”

KnowledgeHub – common queries

Reporting Obligations;

- On that basis, as the loan was in excess of 10% of the relevant assets sometime during the year, the auditor would have a reporting requirement to the ODCE.

KnowledgeHub – common queries

Issue 2 – Director's loan given to a company & director's remuneration;

Loan given by director to company

- Do I need to disclose the interest rate applicable on a directors loan given to a company?
- Do I need to disclose the interest payments made during the year to a director for a loan he has given to the company?
- If a director is also a chairman do I need to disclose the fees accrued for chairmanship separately?

KnowledgeHub – common queries

Disclosure;

Section 309, CA 2014, requires disclosures for the current and preceding year of material transactions between the company or its subsidiaries and a director of a company in which the director is interested in (subject to certain exceptions).

A point to note is that the directors other than the directors who has the interest should assess whether it is material.

KnowledgeHub – common queries

Disclosure;

Disclosure of the following is required in the financial statements:

- (a) the particulars of the principal terms of the arrangement or transaction,
- (b) the name of the director or other person with the material interest
- (c) the nature of the interest.

Based on the above disclosure of both the rate of interest and interest amount would be required.

KnowledgeHub – common queries

Director Remuneration

- Section 305 (1), CA 2014, states that the notes to the statutory financial statements of a company shall disclose both for the current and the preceding financial year the following amounts in relation to directors of the company (and that expression includes the one or more persons who, at any time during the financial year concerned, were directors of it)—
- (a) the aggregate amount of emoluments paid to or receivable by directors in respect of qualifying services;

KnowledgeHub – common queries

Director Remuneration

- In terms of what defines section 305 (3), CA 2014 notes that ‘qualifying services’, in relation to any person, means his or her services as a director of the company and his or her services, while director of the company, as director of any of its subsidiary undertakings or otherwise in connection with the management of the affairs of the company or any of its subsidiary undertakings.
- In terms of what defines emoluments, section 305 (4), CA 2014 notes that for the purpose of section 1 (a) (see above), “emoluments”, in relation to a director, includes salaries, fees and percentages, bonuses, any sums paid by way of expenses allowance in so far as those sums are chargeable to income tax.
- From the above, in this case that you don’t need to be disclosed separately.

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Case Study – Winding Down

John Murphy

Case Study – winding down

- The tax considerations –
 - DWT
 - Implication if written off
 - Taxability of dividend
 - Surcharge?
- Company law
 - Distributable reserves;
 - SAP 204 – reduction in share capital;
 - Section 118 – Consider (SAP 205 if not)
 - Co. Sec requirements;
 - Write off or strike off

Change in accounting policy – Investment property

- Section 16 FRS 102 – the triennial review change
- Retrospective adjustment;
- The impact from a tax perspective – Close Co. Surcharge issues & interaction with Co. law
- Fair value movement not relevant but depreciation has impact

Defective Financial Statements

- The CRO story;
- Section 368 CA – what the CRO determine as a ‘prominent position’
- The layout they require.

Possible Insolvency

- Importance of documentation & continuous meetings to protect directors in CVL.
- ODCE guidance - issues look at when deciding whether to restrict;
- Decisions made in good faith & honestly unlikely to result in restriction;
- When assessing restriction they look to:
 - Adequacy of ongoing monitoring of Co. position;
 - If financial advice sought
 - Basis for view that would trade out of difficulty
 - Length of time continued trade when insolvency was apparent
 - Extent Co. position continued to deteriorate & accrue liabilities
 - Steps taken to reduce costs
 - If tax liabilities – when arose? And compliance with revenue rules - warehousing
- Not consider restriction
 - if insolvency arose ‘events outside control of director’
 - ‘Due regard on impact of pandemic in causing insolvency’

Flowering/Growth Share

- What is it?
- How can it be used to incentivise employees?
- The tax implications?
- The Company Law implications?

Conclusion

- Many topics.
- Hopefully something to take away

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Mike O'Halloran

I have recently taken on a new audit client. I wrote to the previous auditor for professional clearance several times but they have not replied.

Can I accept appointment?

- Consider the code of ethics of relevant institute (CAI, ACCA, CPA).
- Having been asked to accept appointment, the accountant shall seek confirmation that there are no professional reasons why the engagement cannot be accepted.

- Client's permission should be obtained before writing to the predecessor accountant.
- Be mindful of any AML issues (if any).
- Where professional clearance is not answered the accountant should write to the predecessor accountant again by recorded delivery.

- Should state an intention to accept the appointment in the absence of a reply within a specific and reasonable period.
- Firm is entitled to assume that the silence in responding implies that there was no adverse comment to be made.
- This does not absolve a firm from carrying out professional clearance as normal.

- I have a company who bought shares at say €100,000. These are valued at €30,000 at the year end and carried at same in the financial statements.
- Should I recognise a deferred tax asset at €70,000*33%?

- Need to look at section 29.7 of FRS 102 which states;
- “Unrelieved tax losses and other deferred tax assets shall be recognised only to the extent that it is **probable** that they will be recovered against the reversal of deferred tax liabilities or other future taxable profits (the very existence of unrelieved tax losses is strong evidence that there may not be other future taxable profits against which the losses will be relieved).”

- In this situation we have tax losses and therefore a potential deferred tax asset arises.
- Consider whether it is “probable” that the losses will be recovered.
 - future projections
 - how much losses are incurred & whether the value has recovered since the year end.
 - Do losses expire at some point in future?

- **If I am auditing a set of financial statements where the prior year is unaudited are there any additional paragraphs to include in my audit report?**

- Need to consider ISA 710 (14).
- Need to carry out audit procedures on the opening balances (ISA 510).
- No specific guidance in ISA 710 on how the “other matters” paragraph should be worded.

Example paragraph to include in audit report

Other matter

The prior year financial statements were not subject to audit and consequently the comparative figures are unaudited.

- **I have a client who holds an asset which cannot be easily valued (sporting venue). COVID-19 has presented an impairment indicator and I am trying to carry out an impairment review. How can I assess “fair value” in this instance?**

- First thing to consider is section 27 of FRS 102.
- Impairment review- Carrying value vs. Recoverable amount.
- Recoverable amount is the higher of **Value in Use** and **Recoverable Amount**.

- **Value in use** will be derived from considering the future cashflows and also following the rules set out in section 27.15 to 27.20 of FRS 102.

- **Fair Value** more difficult to establish in this instance
- need to refer to the appendix to section 2 of FRS 102 and consider the hierarchy set out in this to establish "fair value";

- The best evidence of fair value is a quoted price for an identical asset (or similar asset) in an active market.
- Next a binding agreement or recent transaction for an identical asset.

- Next a “valuation technique” should be considered to see if fair value can be determined.
 - Valuation technique should be commonly used by market participants & technique should demonstrably provide reliable estimates of prices obtained.
 - Should make use of market determined inputs and not entity determined inputs.

- Valuation technique can only be used if;
 - It reasonably reflects how the market could be expected to price the asset, and
 - The inputs to the valuation technique reasonably represent market expectations and measures of the risk return factors inherent in the asset.

- If the range of reasonable fair value estimates is significant and the probabilities of the various estimates cannot be reasonably assessed, an entity is precluded from measuring the asset at fair value as it cannot be determined.
- If this is the case then when assessing for impairment, the value in use should be used to determine the recoverable amount. If the recoverable amount < carrying amount then an impairment is required.

Why OmniPro

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Case Study:

An Irish Company (Co. A) is owned by 100% by a Spanish parent company. Co. A. owns 100% of another Irish Company (Co. B). Co. B ceased trading a number of years ago but is owed €1,000,000 from Co. A – this balance arose from trading (i.e. the sale of goods/services by Co. B to Co. A). Co. A has just ceased trading. Co. A is owed €2,100,000 from its German parent Company - this balance arose from trading (i.e. the sale of goods/services by Co. B to the German Parent). The German Parent has advised that if Co. A were to write off the balance owed it would have significant tax consequences for the German company so their preference is not to have Co. A write off the balance (they would be ok with a write off of a small balance). The German Parent has asked for advise on how best Co. A can clear its balance with Co. B and how Co. B could get to a situation where the amount owed by the Parent can be cleared.

Details of the capital and reserves Section of Co. A and Co. B are as follows:

	Co. A	Co. B
Ordinary share capital	300,000	€200,000
Profit and loss/Distributable reserves	€1,000,000	€800,000

The client has informed you that the ultimate goal here is for the Co. B is to be dissolved as they are no longer trading. Co. A has other assets so it will continue in existence.

You have been asked to provide advice on the best options here, this includes providing details of any Company law procedures that should be performed to allow any option to be implemented (or before any option is implemented) or certain company law procedures that could be utilised. You have also been requested to advise on the tax implications of the course of action suggested including the returns to be filed and tax to be considered where a dividend is the proposed course of action.



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

Covid-19 and the insolvency-related functions of the ODCE

Directors of companies that have recently become unable to pay their debts as they fall due, or that are at risk of becoming so unable in the near term, are understood to have concerns regarding the operation of certain company law provisions - in particular, regarding the perceived risk of having a declaration of restriction made against them in circumstances where they have acted in good faith and the company's inability to pay debts as they fall due is as a consequence of the Covid-19 pandemic ("the pandemic").

Where the inability to pay company debts as they fall due has arisen as a consequence of the pandemic, the Office of the Director of Corporate Enforcement ("ODCE") notes a number of key considerations that are relevant to the ODCE's determination as to whether directors of such companies will be able to demonstrate that they have acted honestly and responsibly, and, if not, whether they should be offered restriction undertakings or otherwise face restriction applications before the High Court. The aforementioned considerations include, but are not limited to, the following:

1. Liquidators of companies in insolvent liquidation are obliged to submit an initial statutory report to the ODCE within 6 months of their appointment.
2. Liquidators of such companies are obliged to apply to the High Court for the restriction of the relevant directors unless relieved of that obligation by the ODCE (and unless the relevant director(s) have been offered, and have accepted, a restriction undertaking).
3. The ODCE will generally grant relief to liquidators from their obligation to make a restriction application in any case where the available evidence clearly demonstrates that a company director has acted honestly and responsibly in the conduct of a company's affairs.
4. Consistent with the fact that a majority of company insolvencies arise as a result of legitimate business failure, the ODCE grants such relief in the large majority of cases. Only a small minority of directors of insolvent companies are offered restriction undertakings or otherwise face the prospect of being restricted by the Courts.
5. The ODCE considers each company's case on its own merits, taking into account both the report(s) submitted by the liquidator and any other relevant information which may have been obtained independently of the liquidator.

6. The ODCE would generally not consider directors to have acted dishonestly or irresponsibly in circumstances where the company has become insolvent as a consequence of events largely, and genuinely, outside the directors' control. This has been the position adopted throughout the period of almost 20 years that the ODCE has been adjudicating upon liquidators' reports. It is the actions taken, or not taken, by the directors in response to financial difficulties being faced by the company that will inform the assessment as to whether directors should face a restriction application (or undertaking as the case may be).
7. Directors may currently, or may shortly, find themselves in the position where they believe that companies of which they are directors are unable to pay their debts as they fall due and, as such, may be concerned as to the implications of any decision to continue trading in such circumstances.
8. Whilst continuing to trade while insolvent would generally give rise to a significant risk that the directors concerned could face restriction proceedings (and possibly other consequences depending upon the relevant facts and circumstances), the ODCE notes that the Courts have demonstrated a willingness to afford some latitude for a continuation of trading for a short period in certain circumstances. The extension of any such latitude by the Courts would generally be contingent upon (i) there having been a reasonable prospect that the company would be able to trade out of its difficulties in a relatively short timeframe; and (ii) the directors having acted in good faith and having acted honestly and responsibly in all other respects.
9. In the case of those companies that do enter insolvent liquidation over the coming months, the ODCE will have due regard to the impacts of the pandemic as it carries out its functions of examining, and adjudicating upon, liquidators' reports. In that context, issues that the ODCE will expect liquidators to have examined, and which the ODCE will itself have regard to, will include:
 - a) the adequacy of the directors' processes and procedures for monitoring the company's financial position on an ongoing basis;
 - b) whether, and if so at what point, directors sought professional advice relating to the insolvency/impending insolvency;
 - c) the basis upon which the company's directors formed the view that the company would be able to trade out of its difficulties within a reasonable timeframe (which might include, for example, the potential impact of access to Government grants, loans and other supports, both already announced and in prospect);

- d) the length of time that trading continued after it had become apparent, or should have been apparent, that the company was insolvent;
- e) the extent to which the company's financial position continued to deteriorate, as well as the nature of any additional liabilities that accrued, during the period during which the directors knew, or ought to have known, that the company was insolvent;
- f) in cases where there are material tax liabilities involved, the extent to which such liabilities arose prior to, or during, the pandemic and, where they arose during the pandemic period, the extent to which the company availed of, and complied with, the Revenue Commissioners' requirements for deferred payment and warehousing of liabilities;
- g) the steps taken to reduce costs and/or to restructure the business.

10. In the context of the subject matter of this statement, the ODCE notes the Revenue Commissioners' stated position that a declaration made as part of an application for the COVID-19 Temporary Wage Subsidy Scheme is not a declaration of insolvency.

11. The ODCE is independent in the discharge of its statutory functions and must have regard to the facts and circumstances in each individual case and, as such, cannot be prescriptive in a general sense as to how it might discharge its functions in respect of future cases. However, provided that directors' decisions and judgements were:

- a) made on the basis of objectively verifiable evidence;
- b) based on assessments and assumptions that were reasonable in the context of the circumstances pertaining at the relevant times;
- c) made in good faith and the directors otherwise acted honestly and responsibly,

it is unlikely that the ODCE will consider that the company directors concerned should be restricted.

OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

4 JUNE 2020