



The Irish Accounting & Tax Summit 2020

Session 6 Tax Planning in a Downturn



Presenter:
Padraig Daly – Mazars
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OmniPro Education & Training
Main Street, Ferns, Enniscorthy, Co. Wexford
053 9100000
www.omnipro.ie info@omnipro.ie



Padraig Daly

Tax Planning in a Downturn

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The role of tax in cashflow management



- There are many tax issues to be considered when trying to control cash in a more economically constrained environment.
- Careful tax planning can result in better budgeting, better controls and better cash flows.
- These tax tips will help SMEs improve their cashflows and in some cases, reduce their tax bills.



VAT Tips

- Revenue suspended debt collection and the charging of interest on late payment for the January/February and March/April VAT periods and February, March and April PAYE (Employer) liabilities. These arrangements are further extended to include May/June VAT and May and June PAYE (Employer) liabilities.
- Establish whether administration costs can be reduced by changing from the normal two-monthly VAT payment and filing deadlines to a system where VAT only has to be filed and paid on a four-monthly, six monthly or even on an annual basis.
- Obviously only of interest to SMEs in a constant VAT payable position.
- Determine whether the SME is entitled to use the “cash receipts” basis for VAT purposes. This system, which allows traders to pay VAT to Revenue in connection with cash actually received rather than in connection with invoices raised, is extremely attractive from a cashflow perspective. No VAT has to be paid to Revenue until the customer has actually paid.
- This basis is only available to traders who derive more than 90% of their turnover from supplies to non-VAT registered people and to traders whose annual turnover does not exceed €1m.

VAT Tips continued



- Traders who cannot avail of the “cash receipts” basis should monitor their bad debts carefully. As VAT will have been paid to Revenue in respect of invoices raised, VAT will be overpaid where the sales turn out to be bad debts. A VAT refund can be claimed where there is doubt that a debt is bad.
- Hotels and restaurants should be particularly careful to monitor any deposits received where the customer cancels. No VAT need be paid to Revenue in respect of these deposits and any such VAT paid to Revenue during the past four years can be reclaimed.
- In all cases, remember to promptly give non-Irish based suppliers the VAT registration number to ensure no foreign VAT is incorrectly charged, resulting in long, potentially expensive, refund claims.

Professional Services Withholding Tax Tips



- Revenue allow a refund (an “interim refund”) of this tax before the year end and before the income or corporation tax return is filed if the PSWT paid to date exceeds the total expected liability for the person that year and if all tax returns for the previous year were filed and the tax paid.
- Care should be taken to claim interim refunds where possible.

Corporation Tax Tips



- The application of a surcharge for late CT1 Corporation Tax returns for accounting periods ending June 2019 onwards (i.e. due by March 23, 2020 onwards) is suspended.
- If the tax bill for the previous year was €200,000 or less, the company qualifies as a “small company”. This means that the company can choose to pay 100% of last year’s tax liability as this year’s preliminary tax instead of estimating 90% of the current year’s tax. The 90% test may give a much lower and more realistic figure.
- Keep track of all costs incurred for the three years prior to commencement of the trade. The costs can be added together and treated as a trading loss incurred on the first day of trading assuming the costs are revenue and not capital in nature and would have been deductible, if the trade had already commenced when they were incurred.

Corporation Tax Tips continued



- Don't lose entitlement to R&D tax credits. They must be claimed within 12 months of the end of the relevant accounting period.
- Companies that are about to trigger a capital gain should consider moving the asset to a group company which has a capital loss and letting this company dispose of the asset. Groups cannot offset capital losses in one company against gains in another.

Corporation Tax Tips - Losses



Consider the following:

- Review use of losses to ensure they are maximised and that any prior year refunds are claimed in a timely manner.
- Remember that charges (e.g. interest relief in a holding company) may become trapped and carried forward only if not surrendered on a current year basis.
- Payments for loss relief (on a euro for euro basis) has no tax impact and does not improve cash-flow as such; however it can be useful in terms of the balance sheet position and the level of distributable reserves (for close company surcharge purposes).
- Review management charges in group scenarios.
- Review the need for provisions in relation to group transactions
- Trading losses may give an opportunity to extract assets from corporate into personal ownership, if required.

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Corporation Tax Tips continued



- *Directors' Current Accounts:* Overdrawn directors' current accounts are becoming increasingly common. The implications in terms of: ODCE reporting, 20% withholding tax and BIK considerations are quite onerous. There is no simple solution except repaying the loan by the return filing deadline but the following could be considered where this is not possible:
 - o A different year-end may defer payment.
 - o Where it relates to a normal trading transaction, there may be scope to argue that extended credit terms are normal in the course of business in today's climate.
- Transfer an asset to the company to satisfy the debt – obviously, the CGT/stamp duty costs need to be factored in.

Changing the accounting year end



	Taxable Profit	CT Liability
Jan –Dec 2019	2,000,000	250,000
Jan –June 2020	<u>750,000</u>	<u>93,750</u>
	2,750,000	343,750

- Where the accounts are extended by 6 months, the CT liability owing at 23 September 2020 will be 12/18th of €343,750 –being €229,167.
- This provides a cashflow saving of €20,833 (€250,000 vs €229,167).
- Preliminary tax payments will need to be considered for each company in light of the potential cashflow benefits here.

Profits falling out of assessment when changing a sole trade or partnership year end



Example

31 March 2018 - €100,000

31 March 2019 - €120,000

31 March 2020 - €120,000

31 March 2021 - €60,000

Total taxable €400,000

Profits falling out of assessment when changing a sole trade or partnership year end



Change to 31 December 2020

31 March 2018 - €100,000

31 March 2019 - €120,000

31 Dec 2020 - €75,000 ($€60,000 / 12 * 9 + €120,000 / 12 * 3$)

Total taxable €295,000

Note: 2019 only has to be adjusted upwards if the Jan – Dec 2019 figures exceed the 31 March 2019 figures. As they are the same, the 31 March 2019 period is unchanged

Asset protection



Incorporation

- Where a person incorporates his business into a limited liability company, he is protecting his personal assets from being attacked in the case of any insolvency of the business.
- The company becomes a separate legal entity from its members/shareholders so that creditors of that company cannot attack the assets of the owner of the company to recover debts owed to them to the extent that the shareholder has fully paid up the shares in the company.
- Incorporation is highly recommended for businesses that may be subjected to claims against them in respect of the products of that company or by its own employees e.g. construction companies are vulnerable to claims against them by purchasers of houses in respect of a fault in the building of its houses and by its employees in the event of accidents on the worksite.

Incorporation limitations



There are however limitations to the benefit of incorporation such as the following:

- In cases where the company takes out borrowings for the business, usually the bank may require a personal guarantee from the directors/shareholders of the company thus defeating the benefit of the limited liability status in respect of those borrowings.
- If the owner has funded the company by way of an unsecured loan, it is unlikely that loan will be recovered on a liquidation of the company as it will rank lower than secured creditors.
- As mentioned above, many professional trades are not permitted by virtue of their governing bodies to incorporate in a limited liability fashion, e.g. in the case of solicitors, doctors, architects, accountants.

Incorporation taxation



- Incorporation Relief under S. 600 TCA
- Stamp Duty will arise on the transfer of assets other than those that can pass by delivery or by oral agreement.
- VAT Transfer of a Business Relief may apply

Asset protection Trusts



Bare Trusts

- Where a trust is created so that the person who owns the assets (the 'settlor') transfers the assets to another person (the 'trustee') for the trustee to hold the assets solely for the benefit of the settlor, a bare trust or nominee ship is created.
- Despite the fact that the legal ownership of the assets are transferred out of the settlor's name, creditors of the settlor could still look to these assets as they are held by the trustee beneficially for the settlor. Therefore the transfer of the assets is not an effective method of asset protection.
- As there is no change in the beneficial ownership of the assets passing from the client to the trustee/nominee of the bare trust, no taxes (CAT, CGT or SD) arise.

Life Interest Trust



- Where a trust is created so that the person who owns the assets (the 'settlor') transfers the assets to another person (the 'trustee') for the trustee to hold the assets solely for the benefit of the settlor for his lifetime and for the assets to pass on the settlor's death a certain way (e.g. to the spouse or children of the settlor), a life interest trust is created.
- The effect of such trusts is that the beneficiary of the interest in possession has the right to receive the income of the trust. Therefore, if such beneficiary were to become bankrupt, his creditors could require the trustees of the trust to pay that income to them to meet the debts incurred by the beneficiary.
- Therefore the transfer of a client's assets into a life interest trust will not give any protection to the income arising out of such assets and will not protect the assets from being converted into income producing assets, which income can be taken by the client's creditors to meet debts.
- there is a deemed disposal for CGT, CAT and SD purposes at the open market value of the assets transferring.

Discretionary trust



- A discretionary trust provides that trustees hold the trust fund on discretionary trusts for a class of beneficiaries including the 'intended' beneficiary, his spouse and children and other extended family members if so desired.
- The trustees are usually guided by a letter of wishes written by the settlor regarding how they might exercise their discretion. This letter is not legally binding on the trustees.
- The discretionary trust could continue for the lifetime of the 'intended' beneficiary and if required could automatically cease on the death of that beneficiary. There is a deemed disposal for CGT, CAT and SD purposes at the open market value of the assets transferring.
- Often discretionary trusts are made more 'awkward' to attack by locating such trusts offshore.



Offshore trust

- A typical asset protection trust is usually made totally offshore so that the trustees, the governing law and the situs of the assets are all out of the jurisdiction where the settlor carries on or has carried on his business. It is not necessary for this to happen, however the offshore element is usually included so as to provide obstacles to creditors and others in attacking the trust.
- The offshore asset protection trust is designed to side step the insolvency law, the succession law and the matrimonial law of the jurisdiction local to the settlor. However it is not usually designed to be tax efficient.
- Another typical feature of an offshore trust is that the settlor remains very much the principal beneficiary, if not the only beneficiary, during his lifetime. There is a deemed disposal for CGT, CAT and SD purposes at the open market value of the assets transferring.
- Other tax avoidance rules on transferring assts abroad in Sections 806, 807A, 579, 579AA etc.

Transfer to a husband or wife



- The simplest and most tax effective way of protecting assets is to transfer them to a spouse. The complexities arising from this approach would be:
- What types of assets are most suitable for transferring? It would be sensible to transfer only assets that have no borrowings secured against them;
- Would the spouse also be vulnerable to being made a bankrupt?
- What about future divorce or separation?
- On the transfer of assets from an individual client to his spouse, any CGT, CAT or Stamp Duty that would normally arise will be exempt.



Transfer to children

- Another simple way to protect assets is to transfer them to a child or children (or in trust for them if they are under age 18). The complexities arising from this approach would be:
- The transfer of assets from an individual client to a child (or to a trust for the absolute benefit of a minor child), there is a deemed disposal for CGT, CAT and SD purposes. The disposal is deemed to have occurred at the open market value of the assets transferring.
- What types of assets are most suitable for transferring? It would be sensible to transfer only assets that have no borrowings secured against them;
- If assets that are currently free of borrowings are transferred to the child, will these need to be used by the child in a risky fashion to get their value worth and, if so, will the child have to enter into borrowings in his own right?
- Is the child capable of managing the asset?



Exiting the TWSS

- If the employer no longer wishes to avail of the scheme or if the employer's circumstances change and the employer no longer meets the employer eligibility criteria, then the employer should stop making any further J9 payroll submissions to Revenue. The employer must also ensure that the PRSI class on all of its employees is returned to the correct PRSI class and used for all future payroll submissions.
- The employer must retain records in relation to the operation of the scheme including all subsidy payments made to employees.
- During the scheme reconciliation, further guidance will be provided so that the employer can reconcile payments made and refunds received and address any outstanding subsidy refunds or repayments necessary.



Exiting the TWSS

- In the interim, to assist in their future reconciliation, employers should continue to retain records of subsidy payments made to employees, records of subsidy refunds and tax refunds received from Revenue and hold any excess of the subsidy payments received for offset against future subsidy payments or for future repayment to Revenue.
- As regards employers who want to exit the scheme, Revenue's response is that the employer must keep all of the relevant documentation, showing the proof why they thought originally that they satisfied the criteria and don't send Revenue any more J9 submissions and put people back on their normal class.
- When it comes to the reconciliation phase, Revenue will start engaging with the relevant employers in relation to the money that may be due back to Revenue. Revenue has not caught up with all of this yet in terms of its systems to be able to deal with the reconciliation phase yet.
- When Revenue are ready, they will start engaging with employers on a case by case basis.

Thank you!

Padraig Daly
Tax Partner, Mazars
pdaly@mazars.ie
(01) 449 4469

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