

Newsletter

Issue 3 Summer 2010

Welcome to CrowleysDFK



James O'Connor
Managing Partner

Welcome to the Summer 2010 edition of the Crowleys DFK Newsletter. In this issue we offer you a mix of news and ideas for running and developing your business.

In particular, one of our key articles outlines details of government funded grants that are available in Ireland. These mechanisms are helping small to medium businesses across the country. Please contact us if you think you are eligible for the support available.

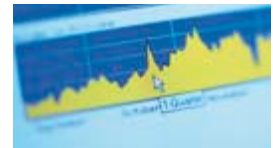
The firm is delighted to announce that it is joining forces with Cork-based accountancy practice Mortell Hegarty. Crowleys DFK welcomes the Mortell Hegarty team members to the Cork office. We look forward to meeting all clients and assure you that you will continue to have direct access to partners at all times.

“In this issue we offer you a mix of news and ideas for running and developing your business.”

Finally, we recently launched our new website www.crowleysdfk.ie. We encourage you to visit the site as it offers regular, up-to-date news on topics that are relevant to you and your business.

We hope you find this latest update of interest and as always my team and I are available to discuss any aspect of it with you if required.

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Denis O'Frighil
Tax Manager

**"...preparation
is the key when
dealing with
an audit."**

When the taxman comes calling

With the public finances in deficit, the Revenue Commissioners are under pressure to improve the tax yield. One of the most obvious methods, and probably the most feared, is the revenue audit process.

Revenue have invested heavily in new computer systems and software which has allowed them to move towards a more targeted process for selecting taxpayers for audit. The Revenue Commissioners still carry out random audits and desk audits. They have stated that their audit selection is aimed at targeting specific sectors and taxpayers.

There are various reasons for being selected, with a poor tax compliance record, profit ratios which are outside of the industry norm and living a lifestyle which could not be supported by the income returned on your tax return as just a few examples.

If you or your business is selected for an audit the key to ensuring that the entire process runs as smoothly as possible is preparation. You should immediately engage with your advisor in order to prepare for the audit.

The first step is to check what years are under review and also which particular taxes are being investigated. You should then carry out a pre-audit review of the books and records paying particular attention to the taxes outlined in the audit letter. Following this review you and your advisor should be in a position to focus in on the likely issues that will arise during the course of the audit. This will enable you to decide on the most appropriate course of action.

The options open to you are as follows:

- Do nothing – after a review of the books and records you may feel that your tax affairs are in order and that no additional declaration is necessary.
- Prepare a "qualifying disclosure" – this involves a payment of tax, interest and penalties should you discover an outstanding tax liability during your pre-audit review.

Some people may be of the opinion "Is it not Revenue's job to uncover these liabilities and therefore what are the benefits of making a voluntary disclosure?"

The answer to this query is quite simple, the benefits are significant:

- The penalties you will face will be greatly reduced should you make a qualifying disclosure.
- Your name will not be published on the Revenue list of tax defaulters should your disclosure be accepted.
- Revenue have stated that they will not seek to investigate a criminal prosecution where a qualifying disclosure is made.

Revenue Audits can be a costly, disruptive and time-consuming process. As previously mentioned preparation is the key when dealing with an audit. Early engagement with your tax advisor will more often than not result in the cost and disruption being kept to a minimum. An experienced tax advisor will have experience of Revenue audits and they will know how to deal with the most common queries that arise.

When preparing for a Revenue audit you should also ask your advisor to inform you of your rights as a taxpayer. The Revenue Customers Charter includes a summary of principles which Revenue is obliged to observe in your dealings with it, which includes a "presumption of honesty" when dealing with the taxpayer.

If you require any advice on revenue audits, please contact:

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Visit us on our new look website at:

www.crowleysdfk.ie

We are constantly updating our website with articles and news alerts which we believe will be of interest to our clients.

Why not add us to your favourites!



Mary Treacy
Tax Consultant

“You may qualify for.....grants and support available to businesses in Ireland.”

Grants and supports

Taking on new employees? Starting a new business? You may qualify for some of the following grants and supports available to businesses in Ireland.

Employment Grants and Incentives

1. **Employer Job (PRSI) Incentive Scheme.** To launch in early 2010, this provides an exemption from Employers PRSI (10.75%) for 12 months. The employee must have been on the Live Register for at least six months. The job must last for at least 6 months.
2. **Revenue Job Assist – double deduction.** This provides a double wage and employers PRSI deduction in your accounts for 3 years if you recruit a person who has been unemployed for 12 months or more.
3. **Employment Grant.** A contribution paid towards new staff's wages of up to 7,500 per employee. There are a number of ineligible projects e.g. construction, distribution, retail, professional services and property development.
4. **Recruitment of a Key Person.** Partial funding of the cost of recruiting a key person to contribute to “significant and measurable” improvements (funding up to €50,000). Enterprise Ireland provides this funding to manufacturing or internationally traded services, SME companies employing 10-249 people and new companies.

Start Ups/Early Stage Business Support

1. **Back to Work Enterprise Allowance.** This allows an entrepreneur to retain Jobseekers benefit (100% of benefit in year one and 75% in year two). You must be self employed but may qualify if you set up a new partnership/new company in which you work.
2. **Feasibility Study Grant.** A grant to cover 50% of the costs associated with materials and supplies, preparations of costings and financial projections, market research, personnel costs, overheads and consultancy.
3. **CORD Enterprise Platform Programme.** Administered by the Institutes of Technology, this is a one year rapid incubation programme to explore a business start-up idea that may involve grant payment if successful. Covers 50% of costs (up to €38,000) on salaries/wages, travel, overheads and prototype. The programme also provides hands-on support and management development.
4. **New Company Corporation Tax Exemption.** Exemption for a new company (incorporated on/after 14th October 2008) which commences to trade in 2009 or later. The exemption applies to profits from certain qualifying trades and to the disposal of assets used for the purposes of the trade. To avail of a complete exemption, the corporation tax liability for each of the first three years must be less than €40,000 p/a. The exemption will not apply to corporation tax on any investments the company may have (deposit interest, shares, rental income etc).

Expansion/Growth Grants

1. **Business Expansion Grant.** The grant can assist businesses (trading for more than 18 months) with business development expenditure including capital costs, marketing, consultancy and training (50% of costs up to €80,000).
2. **Capital and Refundable Grant.** Provided by various enterprise boards, this grant covers the cost of eligible fixed assets. 50% of costs up to €75,000 will be covered as follows: 35% paid grant and 15% interest free loan. You must prove that a market exists for the proposed product or service, employ no more than 10 people and operate in the manufacturing or internationally traded services sectors.
3. **Consultancy Grant.** The grant covers the cost of fees (€900 per day, for a maximum of 30 days) paid for specific strategic development consultancy connected with the development and implementation of initiatives that are of strategic significance to a company.

Marketing Grants

1. **Market Research.** This aims to develop the market development skills of companies by providing support towards internal costs which they may incur when researching new markets for products and services. Support of up to €65,000 to cover expenditure on salaries/wages, travel and subsistence.
2. **Trade Fair Participation.** Costs associated with a company's first-time participation or costs in visiting any recognised Trade Fair outside Ireland may be eligible for assistance. Grant aided costs include space or stand rental, fair entry fees, renting/buying and installing display equipment, economy airfares, subsistence – €400 per day.
3. **World Class Manufacturing (WCM) Support.** Supported by Enterprise Ireland, WCM integrates the modern management practices of Just In Time, Total Quality Management and Employee Involvement. Cost covered include consultancy of €650 per day (max of €25,400 towards the cost of hiring specialist WCM consultants).

Other

1. **Accelerated Capital Allowance.** Administered by The Sustainable Energy Authority of Ireland (SEAI), this scheme allows companies to claim accelerated capital allowances of 100% of the purchase cost of certain energy efficient equipment in the year of purchase. The claim is made on the company's corporation tax return. Among the items that qualify are electric and alternative energy vehicles, building energy management systems, certain enterprise servers and storage equipment and various HVAC control systems. Full details of all of the products that qualify for the accelerated capital allowances are given on the SEAI website www.seai.ie.

If you are interested in pursuing any of the above or need advice with the application process, please contact:

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Seamus McCarthy
Insolvency &
Restructuring Manager

“Directors have an obligation to place an insolvent company into liquidation.”

Closing down a limited company

Depending on the financial position of the company there are a number of options available when it comes to closing a limited company.

Solvent Companies

There are two options available to close a solvent Irish registered company: Voluntary Strike Off or Members' Voluntary Liquidation.

Voluntary Strike Off

If a company has no assets or liabilities, voluntary strike off is the easiest way to close a company. A formal request must be made to the Register of Companies. Prior to the request being made the following must be carried out:

- The company must have ceased trading and brought all its affairs up to date. This includes all creditors being paid in full, all outstanding tax returns being submitted to the Revenue Commissioners and discharged in full, all annual returns being up to date with the Companies Registration Office (CRO). The directors must then issue a statement that the company has ceased trading and has no assets or liabilities.
- A letter of no objection to the application for strike off must be obtained from the Revenue Commissioners.
- An advertisement of the intention to have the company voluntarily struck off must be placed in a daily newspaper in the Republic of Ireland.

The company will normally be struck off/dissolved three months later.

Members' Voluntary Liquidation

If a company has surplus assets, it may be more appropriate to consider a members voluntary winding up. This may be a more appropriate option than strike off as the shareholders can unlock capital in a tax efficient manner.

The procedure is as follows:

- The company must have sufficient funds to pay all its debts within 12 months of the commencement of the winding up process. A majority of the directors must make a statutory declaration that, having made a full enquiry into the affairs of the company, they are of the opinion that the company will be able to pay its debts in full within the 12 month period. A report of an independent person and a statement of assets and liabilities of the company must be included in the Declaration of Solvency.
- An extraordinary general meeting (EGM) of members must take place within 28 days of making the declaration of solvency where a special resolution is passed to wind up the company and appoint a liquidator.
- Once appointed, the liquidator deals with finalising the affairs of the company. This includes realising any assets, paying all classes of creditors, winding up the affairs of the company and distributing the company's net assets amongst the shareholders.

The company is deemed to be dissolved after 3 months following the registration of the final return with the CRO.

Insolvent Companies

When a company is insolvent and the business is no longer viable, the directors should take the necessary steps to place the company into an orderly Creditors Voluntary Liquidation.

Should the company continue trading and the liability to creditors increases further the directors may run the risk of reckless trading.

Creditors Voluntary Liquidation

To prepare the company for liquidation the directors should take the following steps:

- Notify staff that they will be made redundant.
- Ensure that all company assets are secured and safeguarded until a liquidator is appointed.
- Prepare an estimated statement of assets and liabilities of the company for presentation at the creditors meeting.
- Organise a meeting of members/shareholders in order to resolve that the company is insolvent and pass an Ordinary Resolution of members nominating a liquidator to be appointed at the creditors meeting. The liquidator is required to prepare a report to the Office of the Director of Corporate Enforcement under Section 56 of the Company Law Enforcement Act 2001.
- Arrange a creditors meeting and notify all company creditors of the meeting giving at least 10 days notice.

All too often the directors of an insolvent company are tempted to cease trading and avoid dealing with the issues surrounding their company. Should a company fail to lodge its annual returns with the CRO it will be involuntarily struck off the register pursuant to section 12 Companies (Amendment) Act 1982.

By allowing the company to be struck off involuntarily, some directors take the view they do not have to deal with the liabilities of the company. This is a serious misconception. The directors have an obligation to place an insolvent company into liquidation. Generally the director's fiduciary duties are owed to the company but where a company is threatened with insolvency this duty to act in good faith is then owed to the creditors.

The consequences of allowing an insolvent company to be struck off are as follows:

- If the company does not go into liquidation and is struck off the register by virtue of outstanding annual returns with CRO, the creditors may apply to the High Court to have the company restored and a liquidator appointed.
- The employees of an insolvent company which has been struck off cannot claim their entitlements (redundancy pay, arrears of wages, minimum notice or holiday pay) from the Department of Enterprise Trade and Innovation (DETI).
- The CRO may seek to prosecute the directors for failure to file returns.
- The Director of Corporate Enforcement has the power to bring an application to the High Court for an order pursuant to section 160 (2)(h) Companies Act 1990, disqualifying the company's directors from acting as a director or having involvement in the management of any company.

If you require advice on any of the points raised above, please contact:

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Brian McEnergy
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Restructuring Consultant

Retention of title

Suppliers should incorporate a retention of title clause in all sales contracts. This clause prevents ownership of goods which have been sold, passing to the customer until the supplier has been paid in full.

Retention of title is important as it allows a supplier to repossess goods if the company they have supplied cannot pay. Without such a clause in place the supplier is an unsecured creditor and ranks alongside all other unsecured creditors in liquidation. Secured and preferential creditors (Banks, Revenue and employees) will rank ahead of unsecured creditors if a distribution is made. Retention of title prevents this scenario as title fails to pass to the insolvent company.

“Retention of title
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The following information must be provided in order to be successful with a retention of title claim.

- Copies of unpaid invoices together with supplier statements.
- Confirmation that goods on specific unpaid invoices are clearly identifiable.
- Proof of delivery.
- Copy of supplier's conditions of sale incorporating a retention of title clause.
- Date when the conditions of sale were notified to the company.
- Evidence of acknowledgement of Terms and Conditions by the company and acceptance of same.
- Brief trading history with the insolvent company.

Once you are aware that the company is in financial difficulty you should seek to enforce your retention of title.

For further clarification on the points raised above, please contact:

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Service Area Spotlight

Company Secretarial

Company Law imposes a wide variety of statutory compliance obligations on all registered companies. Failure to meet these obligations can lead to criminal and financial penalties for both the company and its directors.

Our company secretarial team can provide you with a confidential, efficient and quality service. We ensure that you and your company remain in compliance with your statutory obligations and that you are getting accurate, reliable and timely advice on any regulatory changes that may affect you.

We can assist you with:

- Company incorporation
- Registration of business names
- Maintenance of statutory registers
- Maintenance of statutory books
- Filing of Annual Returns
- Share issues and transfers
- Changes of directors/secretary
- Change of Registered Office
- Filing of statutory returns
- Provision of Registered Office
- Dealing with company strike off

The responsibilities of a company secretary are onerous. We will ensure that you meet your obligations on time and avoid penalties.

Hot Topics

Update on the Charities Act 2009



Tom Russell
Senior Accountant

“The Act is widely viewed as a significant move towards full regulation of the charity sector.”

The Charities Act 2009, which came into effect on the 28th February 2009, introduced significant changes in the regulation and operation of charities. The detailed provisions of the Act are currently being phased in through Commencement Orders made by the Minister for Community, Rural and Gaeltacht Affairs.

The Act is widely viewed as a significant move towards full regulation of the charity sector. It reforms the law of charities considerably and aims to increase the accountability of those charged with their governance, while protecting charitable status from abuse and fraud and instilling public confidence.

The key changes introduced by the Act include the following:

- Statutory definitions of “charitable purposes” and “purposes for the benefit of the community” for the first time.
- The establishment of a new Charities Regulatory Authority to improve administration and legal compliance of charities and with which all charities must register.
- The requirement for proper books of account to be maintained by charities including the submission of annual activity reports and audited annual statements of accounts to the new Authority.
- The availability of all annual reports for public inspection.
- Increased regulation of fundraising practices including street collection, direct debit and similar non cash methods.
- The establishment of a Charity Appeals Tribunal and consultative panels to assist the Authority.

The Act significantly increases the annual financial and reporting requirements of charities and places greater responsibilities on trustees and members regarding their governance, financial and legal compliance requirements.

Our dedicated Not-For-Profit team can deal with the issues and challenges charitable organisations and their trustees now face in this new regulatory and legislative environment. Our services include:

- Ensuring trustees and members are aware of their new statutory duties, legal obligations and the implications of failure to comply with these.
- Updating Trustees, members and employees on the new legislative changes introduced including the new charity law offences that apply and for which punishments range from fines to imprisonment.
- Preparation and submission of annual activity reports describing the financial and operational activities of the charity.
- Compiling audited annual statements of account for charities.
- Organisation reviews to ensure compliance with the governance and legal requirements of the Act.
- Developing fundraising codes of practice that are in line with changes made to the fundraising laws.

If you require any further information or assistance on how this issue might affect you or your organisation please contact:

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This publication is intended only as a general guide and should not be used as a substitute for professional advice.



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