Technical tax update

- Various issues covered
- FRS 102 tax matters
- Practical matters re Pay and file tax deadline 2014
- Research and development tax credits

+ FRS 102 Tax matters

- The technical side
- Chapter 29 FRS 102 entitled Income Tax
- Just 7 pages long and easy to read
- Effective for Accounting periods beginning on or after 1/1/15
- So will mainly impact initially on Dec 2015 year ends
- BUT note that prior year figures will need restating to FRS 102 compliance

+ FRS 102 Tax Matters

- Start with the Basics
- Tax follows Accounting treatment
- Same both before and after adoption of FRS 102
- Section 81 TCA 1997 – probably most widely applied section in Tax Acts
- Effectively enshrines the notion that a deduction available for expense incurred “wholly and exclusively “ in the course of a trade/profession
- Addback personal items, capital = no deduction but may get capital allowances if functional

+ FRS 102 Tax Matters

- Same application afterwards
- Items like capitalised R and D as intangible asset - same rule as to deductibility will apply under Section 81
- General accruals/provisions all as before
- Nothing in FRS 102 that will change treatment
- Section 29 FRS 102
- Entity must recognise " current and future tax consequences of transactions and events" recognised in financial statements

+ FRS 102 Tax Matters

- Current tax – tax payable in relation to profit or loss for current or past periods
- Of primary interest to Revenue
- Return to specifics later
- Deferred tax – future tax consequences of transactions and events recognised in the current or prior financial statements
- Deferred tax – applies to all timing differences at a balance sheet date

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FRS 102 – Tax Matters

- Timing difference – This is a difference between taxable profits and what is included in Comprehensive Income as included in financial statements
- So, when there is difference in TIME between when income/expenses recognised for tax and for Accounts this is a timing difference
- Income in Accounts BEFORE being taxed = timing difference giving rise to a deferred tax liability
- Expense/Loss in Accounts BEFORE giving rise to current tax charge = timing difference giving rise to deferred tax asset

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FRS 102 Tax Matters

- Example of deferred tax asset – Losses forward or in current year which can not be used up at that time.
- Section 396 TCA 1997
- Carried forward against future profits of same trade or profession as determined by criteria or products/services customers and markets
- Loss realised/recognised in the Accounts but cant get value for tax at that time
- Deferred tax asset would be that loss at 12.5% rate

FRS 102 Tax Matters

- Recognise that asset only to the extent that it is probable it will crystallise
- Look at matters such as future profit projections – is income and profits likely to arise to the extent that losses forward will be used up at some stage ?
- If not then no deferred tax asset as we are then looking at a permanent difference
- Most likely issue - capital allowances v depreciation
- Deferred tax asset if tax wdv > nbv of asset
- Deferred tax liability if tax wdv < nbv asset

FRS 102 Tax Matters

- Deferred tax liability
- Asset revaluation in Accounts
- This is "Income" recognition
- No REAL tax payable of course until asset sold
- FRS 102 states that if tax bill would arise on this future sale recognise deferred tax liability on difference in timing between

(i) Income in Accounts now and

(ii) Tax liability when sold in future

FRS 102 Tax Matters

- What rates
- FRS 102 states that you use the rate at which liability will arise
- 12.5% for trading
- 33% capital gains
- Passive income – 25% rate
- Can also apply to undistributed profit in subsidiaries

FRS 102 Tax Matters

- Deferred tax can assist in planning matters as highlights matters to discuss with clients
- Be careful how disclosed when filing via XBRL or on CT1 Extract from Accounts
- Revenue expect that ALL current tax charges in Accounts as included on CT1 etc will be paid
- Don't mix them up !
- Aspect queries can arise as a result of straightforward errors or mix ups on Returns to Revenue

FRS 102 Tax Matters

- Current tax charge = what you pay Revenue
- Migration to FRS 102
- Difference in timing under Irish GAAP/FRS 102 in how and when certain items of income and expense are treated
- Potential for income/Expense to be included TWICE OR perhaps not at all because of change from one reporting set of standards to another
- So, Golden rule of tax follows Accounts subject to a "common sense" exception
- Exception – Subject to adjustment as permitted by law

FRS 102 Tax Matters

- The exception
- Section 76A and Schedule 17A TCA 1997
- Introduced in 2005
- Applied to date really to larger companies transitioning from Irish GAAP to IFRS
- Designed to ensure income/expense are taxed/allowed once and once only
- Accommodates discrepancies that can arise on transition
- Finance Act 2014 confirms application to FRS 102 transition

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FRS 102 Tax Matters

- Transitional rules under S 76A apply to adjustments under FRS 102
- Applies to items that are either deductible or taxable in the first instance
- Two definitions
- (i) Deductible amount –

- Income taxed pre FRS 102 under old rules AND then taxed afterwards again under FRS 102
- Expense deductible that were NOT recognised in accounts and thus not claimed pre FRS 102 and not in Income statements afterwards either

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FRS102 Tax Matters

(ii) Taxable amount

- Income of company not taxed pre FRS 102 transition and not taxed afterwards either
- Expense deductible and claimed as such pre FRS 102 changeover and then under new FRS 102 standards deductible afterwards too

- Taxable > deductible = trading receipt in year 1 but taxed over 5 years
- Taxable < deductible = trading expense in year 1 but allowed over 5 years

FRS 102 Tax Matters

- Best illustrated by example
- Rent expense and accounting for rent free period
- Different under Irish GAAP and FRS 102
- Co A enters 8 year lease on 1/1/10 which runs to 31/12/17
- Year 1 Rent free so in total pay 7 *100k = €700k
- Irish GAAP – recognise benefit over 5 years
- FRS 102 says recognise over lease term of 8 years

FRS 102 Tax Matters

- In practice Company pays €400k in years 2010 to €2014
- Accounting/tax treatment is to allow €400k/5 = €80 k in accounts in each of those 5 years – ie full benefit of rent free period
- Conversion to FRS 102 1/1/15
- Look at full 8 year period 2010 to 2017
- Divide €700k/8 = €87,500 thus recognising rent free period over period of lease
- Allow 3 * €87,500 = €262,500 in 2015 to 2017

FRS 102 Tax Matters

- Look at situation when doing 2015 Accounts
- Accounting rules show allowance of €400k plus €262,500 = €662,500
- BUT actually pay €700k so shortfall in tax claim of €37,500
- Deductible amount = €37,500 in 2015 and allow 1/5 per annum 2015 to 2019
- Similar record keeping to a capital allowances claim

FRS 102 Tax matters

- Bad debts – old rules specific and general
- Only specific were tax deductible
- FRS 102 states here must be an objective evidence of an impairment before allowing provision
- So all specific for tax going forward
- Holiday pay – a provision/accrual not generally recognised to date
- Many Employers have rules for employees to minimise carry forward in any case – minimal application ?
- Provision specific and allowable

+ FRS 102 Tax Matters

- Goodwill
- Tax deduction only available for certain intangible assets and associated goodwill used for purpose of a trade
- Generally deductible over period of amortisation in Accounts or over 15 years if election year expenditure incurred
- Under Irish GAAP amortisation period was 20 years generally
- FRS 102 – 5 years if useful economic life can not be ascertained

+ FRS 102 Tax Matters

- Faster amortisation of goodwill may give rise to faster tax claim
- Read general applicable tax legislation carefully
- Pensions – allowed on paid basis
- Same now as before and nothing changes
- SUMMARY – Big emphasis on Fair value throughout FRS 102 and this accords generally with tax treatment of expense and income generally
- Tax will not be biggest consideration on transition to FRS 102

Pay and file 2014

- The basics revisited
- What is new and what is topical
- Planning and the pitfalls
- Plan early

Pay and file 2014 – Basics revisited

- 31October 2015 is deadline date for:

(i) Submission of 2014 Tax Return

(ii) Paying balance of tax due for 2014

(iii) Paying preliminary tax for 2015

- Speculation in recent years that this may change to June or September due to change in Govt Budgetary cycle
- However no change in the foreseeable future
- Extended pay AND file date probably circa 12/11/15 – watch ebriefs

+ Pay and file 2014 – The basics

- What preliminary tax do I pay ?
- The lower of:
- 90% of current year estimated liability OR
- 100% of prior year liability
- If using 100% year rule exclude claims you may have made for Film schemes/EII scheme in that year

+ Pay and file 2014 – The basics

- Practical matters
- Extended pay AND file deadline means exactly that – you MUST pay the tax aswell
- Early filers can put a future payment date on ROS if filing early
- Be aware of SEPA issues especially if a Bank Account is being used for first time
- Delays in 2014 regarding 2013 pay and file of up to 10 days

Pay and file 2014 – The basics

- Who has to do a Tax Return ?
- A "chargeable person" is a person who is chargeable to tax on income – see Revenue Tax and Duty manuals chapter 41 A
- So, starts with every taxpayer and then grants exclusions:

(i) An individual who is in receipt of PAYE source income only

(ii) An individual with some non PAYE income (max €3,174) and coded in to be taxed at source

(iii) Ignore deductions that may apply when arriving at the €3,174

- Directors must do a Tax Return also with some exceptions

Pay and file 2014 – The basics

- Full self assessment
- Applies from 2013 onwards
- Taxpayer (or their agent) must complete a self assessment section on Tax Return to calculate Tax
- Revenue calculation giving indicative calculation and you can then agree or amend
- Fail safe on ROS as will not let you file without completing this section
- Penalty of €250 if you fail to complete

+ Pay and file – new and topical

- Plan early
- Tax is very significant outflow for any sole trade/partnership business
- Be aware of all available claims from the basics such as medical expenses to advising on EII schemes /pensions etc
- More on this later !
- Are home expenses included as appropriate ?
- Is there justification for spouse/child to claim a share of income from the business ?

+ Pay and file – new and topical

- Any claim to maximise use of married tax credits etc must be backed up with substance, contracts of employment, "cash" trail etc
- Watch for changes in tax legislation in 2014 compared to prior years
- 1. ***Int on loan to invest in a partnership*** – Section 253 TCA 1997
- No tax relief on interest on new loans after 15/10/13
- 75% of existing interest allowed in 2014
- Interest on loans to invest in companies already phased out

+ Pay and file – new and topical

- **2. One parent family credit**
- From 2014 onwards generally only one parent can claim
- Primary carer – guided by Social welfare payments
- Highlight issue now especially to non PAYE client base
- 3. ***Incentives – back to work scheme***
- Long term (> 12 months) unemployed starting new business
- Max tax exemption on profits up to 40k per annum

+ Pay and file – new and topical

- Use of losses
- Generally can be offset in 2014 against all other income.
- "Non active" partners or passive investors are restricted in use of losses against other income
- Max available €31,750 per annum
- Revenue have been active in reviewing claims over recent years so great care required

Pay and file – new and topical

- Debt forgiveness
- Land dealing section – 381A TCA 1997
- Effective for debt releases on or after 13/2/13
- The release of debt is treated as a trading receipt if loan related to:

(i) A specified trade of land dealing

(ii) A specified debt incurred on monies used to purchase or develop land held as trading stock

Pay and file – new and topical

- The debt released could be taxed at 55% even though initial loss value may have been at a time when tax rates were lower - pre USC.
- ALSO in same section going forward consequences :
- 3 year rule – current and two prior to see if > 50% income from dealing in or developing land
- If test not met then:

(i) Interest on loan not allowed unless paid, and,

(ii) Trading loss can not be claimed unless related to land value decrease realised through sale

+ Pay and file – new and topical

- Capital gains tax
- Restriction on use of losses
- Applies to debt releases on or after 1/1/14
- Base cost financed by a loan and part of loan forgiven
- Then base cost is reduced by the lesser of

(i) The debt released OR

(ii) The amount of the allowable loss

- Can have retrospective application to 2013 disposals

+ Pay and file – other potential matters

- Accelerated property reliefs such as Town based schemes etc
- Guillotined at 31/12/14 for passive investors if tax life expired
- If gross income exceeds €100k and these reliefs claimed 5% USC surcharge may apply
- USC generally – current year losses and normal capital allowances available for deduction in calculating deduction for USC.
- BUT USC on other income excludes claim for S381 losses "sideways " in that year

Pay and file – Use of High earners restriction

- Ensures High Earners pay a minimum rate of tax notwithstanding the legitimate claim to specified reliefs in a particular year
- Introduced in 2007
- Bad publicity at the time that a small number of High Net worth individuals claimed so many tax reliefs that minimal tax paid
- In 2014 applies where income exceeds €125k and specific reliefs exceed €80k
- Ensures effective tax rate of 30%

Pay and file - Use of High Earners restriction

- What are specific reliefs ?
- Includes :

(i) Film scheme

(ii) Area specific reliefs ie urban renewal/park and ride etc

(iii) Accelerated reliefs such as Hotels etc

(iv) Artists exemption/interest claims to invest in partnerships etc

- Does NOT include pensions OR in 2014 EII (BES) relief

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Pay and file – High Earners restriction

- ROS facilitates calculations but can be tricky
- Step 1 – Identify taxable income “T”
- Step 2 – Identify specified reliefs claimed “S”
- Step 3 – Add “T” plus “S” and deduct ring fenced income “R”
- If total (T +S-R) exceeds €125, 000 apply restriction
- Restriction limits claim to specified reliefs to GREATER of (i) €80k OR (ii) 20% of the Total above
- Balance restricted carried forward- it is NOT lost

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Pay and file -Planning in advance

- Preliminary tax 2015 a significant issue too
- Need to know various changes in 2015
- Example – new rules on loss restrictions – need to be active in business to claim relief
- Average 10 hours per week
- Artiste Exemption – increase from €40k to €50k
- Foreign Earnings Deduction – FED – extended to 2017
- Extra countries included/qualifying period down from 60 to 40 days

Pay and file – planning in advance

- Other changes in 2015
- Rent a room scheme income exempt increase from €10k to €12k
- Watch Revenue guidelines – n/a to Air B and B type income
- Exemption on leasing farmland increased to as high as €40k in some cases
- Windfall CGT tax of 80% reduced to 33%

Pay and file and planning

- Pensions
- An economic decision first and foremost
- Make a pension contribution before 2014 pay and file deadline
- Claim tax relief in 2014
- Allowed at marginal rate of 41% 2014 but no relief for PRSI and USC
- Allows prelim tax 2015 based on 100% prior year rule to be reduced also
- So cash flow saving of 81% in October 2015

Pay and file and planning

- Be aware of “deemed” income limits
- Unchanged at €115k – significant issue for High earners in self employed category
- Percentage of income varies with age – max is 40% of deemed income limit when taxpayer aged 60 or over
- Has been a factor in incorporation of sole trade/partnership business in recent years
- Type of pension ? – Leave this to the financial advisors

Pay and file and planning

- EII scheme – again primarily an economic decision
- Not a specified relief in 2015
- Investment period is now 4 years
- Max invest is €125k per annum
- Tax relief at 30% in Year 1 and balance of 10% on exit in Year 4
- Drawback is that it applies to share investment only NOT to loan capital
- Can be risky but there are Funds set up from time to time which shares the risk

Pay and file – miscellaneous

- Local property tax
- Implications of not paying
- Surcharge up to 10% on tax liability
- Difficulties in getting tax clearance cert
- Will impact on Full self assessment declaration on ROS Returns
- Form 1 Firms – File them to avoid nasty reminder letters
- ROS registration – make sure clients are “live” under Income tax heading n good time

Pay and file - Summary

- Start NOW in April
- Keep up to date with all changes and make sure clients aware of same
- Assists in value added pro active advice to clients
- Leads to other more lucrative assignments hopefully
- Remember tax = cash = one of the biggest worries for any business
- Nothing like personal empathy when helping clients !

+ Research and development tax credits

- A quick overview of topical matters
- Cash refund of PAYE/PRSI to a business
- 25% of qualifying spend in any one year
- Qualifying must be on a specific project of research OR development
- Designed to advance science generally OR reduce scientific uncertainty
- Document everything and establish clear paramaters as to when project starts and ends

+ Research and development tax credits

- The 25% tax credit applies to all qualifying spend
- No need now to look at base year 2003 spend
- Offset against CT/carry forward or claim 1/3 each year on CT1
- Must be matching payroll tax cost in that plus preceding year
- Quantify expenses accurately and be careful as to non qual spend such as Directors salaries etc
- Revenue can hire own expertise on an audit

Research and development tax credits

- Tax audits take account of the fact that usually cash scarce companies with large start up labour costs that carry our R and D
- Accountants are NOT experts on the science aspect of R and D
- Particular difficulties with software development – must be advancing science generally not just an APP
- Refunds will NOT be made before 23 day of Month 9 after year end – so no point filing early

Summary

- Keep up to date on all relevant tax matters
- Revenue website regular e briefs
- Plan early for year end
- Bear in mind tax matters associated with FRS 102

Thank you

- Any questions ?

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