

AUDIT COMMITTEE INSTITUTE IRELAND

# Audit Committee Institute Breakfast Seminar

14 May 2008

*Sponsored by KPMG*



**Welcome**

*Kevin O'Donovan*

*Chairman, Audit Committee Institute Ireland*



# **Tax Governance Considerations for Audit Committees**

*Liam Lynch*  
*Tax Partner, KPMG*

# Tax Policy

- ◆ **Who sets Tax Policy?**
  - **Must be the Board of Directors**
  - **Delegation to CFO/Head of Tax is not appropriate**
- ◆ **Tax Policy has reached the Boardroom**
- ◆ **Prominence of Group Tax Function**

# Role of the Board

- ◆ **Formulate group's attitude to tax risk**
- ◆ **Formulate Tax Risk Management Strategy**
  - **Not based on likelihood of Revenue audit**
  - **Based on likelihood of position taken being agreed**
  - **Responsibility to shareholders to add value – legally minimise tax obligations while meeting tax responsibilities**

# Role of the Board

- ◆ **Be cognisant of knock-on implications**
- ◆ **Decisions should be based on information from Tax/Finance Function**
- ◆ **Clear communication necessary to facilitate informed decisions**
- ◆ **Tax/Finance function implements Board policy**
- ◆ **Board may delegate some functions to Audit Committee**

# KPMG Tax Department Survey 2006

- ◆ **5 Tax Objectives on which most time spent by Tax/Finance Function:**
  1. **Accurate Timely Financial Reporting**
  2. **Tax Return Compliance**
  3. **Management of Effective Tax Rate**
  4. **Tax Risk Assessment**
  5. **Management of Tax Authority Audits**
  
- ◆ **All of above attract a different degree of risk and relevance in different organisations**
  
- ◆ **Possible disconnect between importance attached to different risks versus time spent on them and their value to the organisation**

# Key Components of Tax Risk

- ◆ Compliance
- ◆ Financial Reporting
- ◆ Transactional
- ◆ Operational
- ◆ Reputational risks and the new “moral agenda”
- ◆ Tax authority expectations also relevant

# **Audit Committee's Role in Tax Risk Management**

- ◆ **Possible delegation of Tax Risk Management decisions to Audit Committee by Board**
- ◆ **Role may be restricted to review of Tax Risk Policy and ensuring appropriate control framework is in place**
- ◆ **Ongoing monitoring of Reputational Risk may be part of role**
- ◆ **Natural home for oversight of tax risk strategy?**
- ◆ **Audit Committee needs to understand tax risk policy and associated management procedures**

# Audit Committee's Role in Tax Risk Management

- ◆ Direct Engagement between Tax Function and Audit Committee
- ◆ Not a micro-management role
- ◆ Ensure there is framework to
  - identify
  - escalate
  - manage and
  - controltax risk

# **Audit Committee's Role in Tax Risk Management**

- ◆ **Appropriate tax governance requires:**
  - **proper oversight**
  - **proper systems**
  - **integrity in management of tax risk**
  - **adequate and skilled tax department resources**
- ◆ **Arrangements re concerns raised by staff**
- ◆ **Audit committee communication with external and internal auditors on tax matters**
- ◆ **Responsibility for auditor independence**

# Possible areas to be examined by Audit Committee

- ◆ Review tax risk assessment process
- ◆ Review ongoing risk monitoring procedures
- ◆ Review risk management policies and segregation of responsibilities in relation to each component of risk outlined above
- ◆ Review Tax/Finance Function policies for communication of tax risk and collection and storage of critical tax relevant information
- ◆ Section 811A and reporting requirements

# Internal Controls and Regulations

- ◆ **UK – Combined Code of the Committee on Corporate Governance and “Turnbull Guidance”**
- ◆ **Ireland – follow Combined Code under ISE listing rules**
- ◆ **EU Eighth Company Law Directive**
- ◆ **US – Sarbanes-Oxley Act (“SOX”) applies to SEC listed groups**
- ◆ **SOX404 major catalyst for change in corporate tax function**
- ◆ **SOX exposed tax risk management problems in US companies**

# FASB Interpretation No. 48 (“FIN 48”) – Accounting for Uncertainty in Income Taxes

- ◆ Deals with accounting for “uncertain income tax” matters
- ◆ Disclosure as well as accounting
- ◆ Specific guidance on recognition of uncertain tax positions
- ◆ 4 step process:
  1. Is tax position uncertain or not?
  2. If uncertain, is it “more likely than not”(>50% likelihood) that position will be sustained?
  3. If “more likely than not”, measure amount of benefit that is >50% likely to be realised. If not “more likely than not” to be sustained, record full liability
  4. Monitor certain and uncertain tax positions in each period for changes
- ◆ Possible Auditor and Tax Professional conflict

# IFRS Approach

- ◆ **US versus IFRS approach re “Detection Risk”**
- ◆ **IAS 37**
  - Recognise uncertain tax position if “more likely than not” to crystallise
  - All or nothing approach
- ◆ **No specific IFRS guidance on accounting for tax uncertainties**
- ◆ **IASB & US GAAP convergence project**
- ◆ **FIN 48 – more relevant to Ireland than we think**

# Overall.....

- ◆ **Board involvement in formulating Tax Policy**
- ◆ **Tax Risk Management may be delegated to Audit Committee**
- ◆ **Scrutiny by Audit Committee**
- ◆ **Will further increase if European model moves closer to US**
- ◆ **Corresponding increase in Tax/Finance Function resource ?**

The background is a blue-tinted photograph of a stone building. On the left, there is a large, arched doorway with a decorative stone frame. To the right, there is a window with a decorative frame. The overall scene is a classic architectural setting.

# **Directors' Responsibilities**

*Paul Gardiner*  
*Barrister at Law*

A blue-tinted photograph of a stone building. On the left, there is an arched doorway with a decorative keystone. To the right, a window with a pointed arch is visible. The building's facade is made of large, rectangular stone blocks. The overall scene is dimly lit, with the blue tint giving it a somber or historical feel.

**Questions?**

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