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The Companies Act 2014

Group consolidated accounts

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In this Companies Act 2014 (the 'Act') publication, we set out an overview of the rules around the requirement to prepare group consolidated accounts.

Consolidation

Currently, a company that is a holding company is required under Irish company law to prepare consolidated financial statements subject to certain exemptions. The Act has preserved this requirement. The general rule in Part 6, Chapter 5, paragraph 293 of the Act (previously paragraph 150 of the Companies Act 1963) is:

"Where at the end of its financial year a company is a holding company, the directors of the company, as well as preparing entity financial statements for the financial year, shall prepare group financial statements for the holding company and all its subsidiary undertakings for that financial year"

Consolidation is also required under current Generally Accepted Accounting Practice (GAAP) and International Financial Reporting Standards (IFRS).

Exemptions apply under financial reporting standards and the exemptions as set out in the Act essentially mirror these exemptions. As has been well communicated at this stage, new Irish GAAP or FRS 102, which is mandatory for accounting periods commencing on or after 1 January 2015, will reform existing GAAP however, the rules contained therein for exemptions from consolidation will remain the same and mirror those in the Act.

We have outlined in the table overleaf a synopsis of the exemptions from preparing consolidated accounts as set out in the Act.

Mergers

The Act sets out, for the first time in Irish company law, a statutory mechanism for two Irish private companies to merge its assets and liabilities. A merger under the Act can mean a merger by:

1 acquisition;
2 absorption; or
3 formation of a new company.

Mergers under the Act can be effected by a court order or by using the new Summary Approval Procedure (SAP) introduced by the Act. The SAP is a new validation procedure introduced by the Act.

In terms of accounting for such transactions, up to this point there were barriers on the use of merger accounting under the 1963 Companies Act. The introduction of the 1992 Group Regulations provided for the use of merger accounting however the permission of its application in certain circumstances could be seen to be in contradiction of the 1963 Act. Thus an inconsistency has historically existed which the Act is now rectifying. The conditions for applying merger accounting as set out in the Act are no different to those set out in the 1992 Group Regulations.
It has also introduced the concept of 'merger relief' and 'group reconstruction relief' which corresponds with the UK. The salient points of each of these are set out in the below table:

Merger relief	Group reconstruction relief
Issuing company has secured at least 90% of the equity share capital in the acquired entity in exchange for issuing its own shares.	Issuing company is a wholly owned subsidiary and allots shares to its holding company or another wholly owned subsidiary in exchange for the assets of another group company.
Where such shares issued by the issuing company are done so at a premium, a share premium account shall not be set up and the premium on issuance will be transferred to a 'merger reserve'.	Where such shares issued by the issuing company are done so at a premium, an amount no greater than the 'minimum premium value' need be transferred to the share premium account. The 'minimum premium value' is the amount (if any) by which the value of the net assets transferred (or the 'base value of the consideration received' as it is termed) for the issued shares exceeds the nominal value of those shares.
Merger relief cannot be availed of if the issuance of shares takes place before the commencement of the Act.	In a group reconstruction, even if the conditions for merger relief are met, merger relief cannot be applied.

From an accounting perspective, new Irish GAAP (FRS 102) only allows merger accounting to be performed on group re-organisations or for charities so acquisition or purchase accounting must be employed when accounting for mergers in all other cases. IFRS does not permit the use of merger accounting.

Overview of the exemptions from the need to prepare consolidated accounts:

<table>
<tr><th>Exemption</th><th>Details</th><th>Changed</th></tr>
<tr><td>Group size exemption [s297]</td><td>Available where the holding company, together with its subsidiaries, satisfy two out of the following three criteria for the financial year and for the immediately preceding financial year:

<table>
<tr><th></th><th>s297 group size exemption</th><th>Current legislation GAR 92</th></tr>
<tr><td>Turnover (proportionately adjust if not 12 months)</td><td>€20,000,000</td><td>€15,236,856</td></tr>
<tr><td>Balance sheet total (fixed and current assets)</td><td>€10,000,000</td><td>€7,618,428</td></tr>
<tr><td>Average no. of employees</td><td>250</td><td>250</td></tr>
</table>

This exemption cannot apply where any of the subsidiaries hold instruments that are admitted to trading on regulated markets.
Certain disclosures will have to be made in the holding company’s individual financial statements.
The small group size exemption does not apply where financial statements are prepared under IFRS.</td><td>✓
size limits increased</td></tr>
<tr><td>[s299/s300] Ultimate parent is EEA/ non-EEA entity</td><td>A holding company that is a subsidiary undertaking of either:
• an undertaking registered in the EEA*; or
• an undertaking registered outside the EEA
is exempt from preparing consolidated financial statements where it is a 100% subsidiary of another holding company or more than a 50% subsidiary of another holding company and no request for consolidated accounts has been received in aggregate of:
a more than half of the remaining shares in the lower holding company; or
b 5% or more of the total shares in the lower holding company.

Certain requirements must be met in order to avail of either of these exemptions such as certain, specific disclosures in the lower holding company’s individual financial statements and that the consolidated financial statements of the higher holding company are delivered to the Registrar of Companies in Ireland.

In the case of groups where the ultimate parent entity is a non-EEA entity, the consolidated accounts are required to be audited by the laws of the member state under which they are drawn up.</td><td>✗</td></tr>
<tr><td>Excluded subsidiary exemption [s301]</td><td>Exemption from preparing consolidated accounts can be availed of by a holding company if all of its subsidiaries could be excluded from the consolidation. Subsidiaries can be excluded from consolidation under any of the following circumstances:
• their inclusion is not material in aggregate;
• severe long-term restrictions exist over the subsidiaries assets and activities;
• information necessary for the consolidation cannot be obtained without disproportionate expense or undue delay; or
• subsidiary is held with an exclusive view to a subsequent resale.</td><td>✗</td></tr>
<tr><td>IFRS permitted exemption [s302]</td><td>Where the holding company prepares IFRS financial statements, it is exempt from preparing consolidated financial statements as laid out in IFRSs. Therefore, IFRS 10 applies in this instance and it allows an exemption from the requirement to prepare consolidated financial statements where all of the below are met:
• the holding company is itself a subsidiary;
• it does not have financial instruments trading in a public market; and
• the ultimate parent of the group (or an intermediary parent) produces consolidated financial statements that are available to the public and comply with IFRS.

Furthermore, a holding company that is an investment company may account for its investments in a subsidiary at fair value through profit or loss rather than preparing consolidated accounts.</td><td>✗</td></tr>
</table>

* The European Economic Area (EEA)

Contact

If you require assistance or want to learn more about the Companies Act 2014, please refer to our other publications at www.grantthornton.ie or contact our Companies Act 2014 team at companiesact2014@ie.gt.com.

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