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Tax and legal update

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- Irish corporate tax code; and
- VAT turnover method- apportionment for dual use costs; and
- Companies (Accounting) Bill 2016 – filing requirements for unlimited companies and new disclosure thresholds.

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Irish corporate tax code

During the Budget 2017 speech, Minister for Finance, Michael Noonan TD, announced the appointment of Seamus Coffey, University of College Cork Economics lecturer, to review the Irish corporate tax code in light of the current international tax environment and to ensure it does not provide preferential treatment to any taxpayer.

Coffey's recommendations are expected to be made to the Department of Finance by the end of June 2017.
In advance of this a public consultation was held inviting stakeholders to provide their views on the Irish corporation tax code and measures which could improve the current system.

Grant Thornton took the opportunity to submit a response to the public consultation in early April. The Irish Tax Institute also submitted a response.
Some of the key observations contained within the submissions were as follows:

- to maintain and enhance Ireland's tax competitiveness as an attractive location for multinationals; and
- develop a strategy to drive the growth of Irish indigenous companies. Ireland has been a world leader in adopting tax transparency measures and key measures from the Base Erosion and Profit Shifting (BEPS) report.

However, as we move further to implementing BEPS and the Anti-Tax Avoidance Directive (ATAD) measures, it is important that a considered and holistic approach is taken by legislators and Revenue to ensure we do not put ourselves at a competitive disadvantage.

Turnover method- apportionment for dual use costs

Finance Act 2016 amended Section 61 VATCA to provide for the turnover method as the primary method of apportionment for dual use costs (i.e. goods or services used for the purposes of both deductible supplies and non-deductible supplies) for VAT recovery purposes. The turnover method is calculated by examining the ratio of the amount of a person's tax-exclusive turnover from deductible supplies or activities, for a period against the amount of that person's tax-exclusive turnover, from total supplies and activities.

While the amendments provide that the turnover method is the primary method of the apportionment, where the turnover method does not correctly reflect the taxable use of dual use inputs or have due regard to the range of the person's activities, an alternative method of apportionment must be used.

Previously, it would have been common practice for businesses to apply the turnover method where it correctly reflected the extent of the use of the inputs for taxable and non-taxable activities. However, where the turnover method does not correctly reflect the extent to which the dual-use inputs are used and have due regard to the range of the overall supplies, the method may not be applied and a more suitable alternative method must be used.

The requirements in regulations relating to an annual review of the estimated apportionment and adjustment of the deductible amount, where necessary, will continue to apply. The annual VAT recovery rate adjustment on general costs is required by Revenue concession within six months after the accounting year end of the business. Therefore, a business which has a year end of 31 December will be required to carry out the annual review of its estimated apportionment by 30 June and have any VAT adjustment included in its May/June VAT return, due for submission by 23 July.

Companies (Accounting) Bill 2016 – filing requirements for unlimited companies and new disclosure thresholds

Published on 5 August 2016, the Companies (Accounting) Bill 2016 (the Bill) aims to transpose EU Directive 2013/34/EU into Irish law and also includes various other amendments to the Companies Act 2014
(the Act) including:

- the introduction of small and micro-company regimes which will benefit from further relaxation in disclosure requirements;
- reporting to the Office of the Director of Corporate Enforcement (ODCE);
- priority of charges;
- matters relating to IAASA and the prescribed accountancy bodies; and
- the corporate governance statement required in section 1373 of the Act.

The Bill passed through the report and final stages in Dáil Éireann on 22 March 2017 however, it has not as of yet been finalised, as it is scheduled for report stage in Seanad Éireann on 9 May 2017. It is anticipated that the Bill will be enacted speedily, partly due to the year-long delay in transposing the Directive into domestic law and also to give clarity on the legal requirements for the preparation of 2016 reports.

This update examines the new disclosure threshold requirements and a number of important amendments to part six of the Act ('financial statements, annual return and audit') that, when enacted, will result in a change to filing requirements for Unlimited Companies (ULCs). It should be remembered that the Bill has not yet been enacted and the content of this factsheet may alter if there are any significant changes to the Bill during the legislative process.

Filing financial statements

The Bill substantially changes financial reporting and financial disclosure obligations, in particular by narrowing the exemption for ULCs from filing audited financial statements on an annual basis.

Under the current provisions of the Act there is an exemption for ULCs from the requirement to file accounts with the Companies Registration Office (CRO). The exemption applies only to ULCs that are not 'designated ULCs' as defined by the Act.

As it stands and generally speaking designated ULCs are ULCs, all the members of which are Irish limited companies or foreign equivalents. Such companies do not qualify for the exemption and are required to file accounts annually. The reasoning behind the exclusion from the exemption for designated ULCs is to prevent corporate groups, whose ultimate shareholders benefit from limited liability, from availing of the filing exemption.

There are various structures that incorporate both limited and unlimited entities and EU and non-EU entities which fall outside the remit of the definition of a Designated ULC and therefore do not have to file accounts with the CRO. For example, a trading ULC with at least one member who is a ULC, formed under the rules of a non-EU jurisdiction, can avail of the exemption. Furthermore, inserting a limited company (typically non-EU) between the trading company and the ultimate shareholders will limit their liability.

The current Bill amends the filing exemption by significantly expanding the definition of designated ULCs. For example, a company will be a designated ULC if any of the direct or indirect members are limited. In addition, references to limited companies in the definition of designated ULCs are deemed to include foreign equivalent entities both in and outside the EU. The definition of subsidiary under section seven of the Act has also been amended, so that nominee holders or persons acting on behalf of the superior company, are ignored for the purposes of determining the shareholding interest of a superior company in the subsidiary and this may also have implications when looked at the definition of designated ULC.

The proposed amendments to the filing exemption appear to catch most, if not all combinations of companies, bodies corporate and partnerships, both foreign and domestic and effectively preclude the possibility of obtaining both the filing exemption and limited liability.

However, where a ULC only falls under the new definition of a Designated ULC as it is a holding company of a limited undertaking, the requirement to file accounts has been deferred to 1 January 2022 for any financial year which commences on or after that date.

Revised disclosure requirements

Despite expanding the requirement for ULCs to file financial statements, the disclosure requirements regarding the content of financial statements have been somewhat relaxed in relation to certain categories of companies.

The new Bill has raised the threshold for "small" and "medium" companies. In addition, a new category of 'micro-companies' has been introduced with further relaxed filing obligations.

The thresholds for these companies are outlined in the table below.

	Micro	Small	Medium
Net turnover	€700,000	€12,000,000	€40,000,000
Balance sheet total	€350,000	€6,000,000	€20,000,000
Average number of employees	10	50	250

A company will fall within one of the given categories if it does not exceed two of the three thresholds in that category.

Companies that fall within the new micro-company category will not be required to disclose directors' remuneration in their accounts and are also not required to prepare a directors' report.

Further benefits for micro and small companies include:

- ability to file abridged financial statements, the details of which are outlined in the Bill;
- eligibility for the audit exemption; and
- no requirement to prepare group financial statements.

As noted earlier in this update, it is not known when the Bill will be enacted, so we cannot say which financial years will be affected by the changes.

Whether the changes take effect for the 2016 or 2017 financial years, ULCs filing financial statements for the first time will be required to include comparative figures from the prior financial year. We would recommend that companies potentially affected by any of the above changes seek appropriate professional advice. In this regard, we are happy to assist in reviewing current group structures and filing obligations and addressing the impact that the Bill may have on your business going forward.

We will continue to provide updated advice on developments as the Bill progresses through the legislative process.

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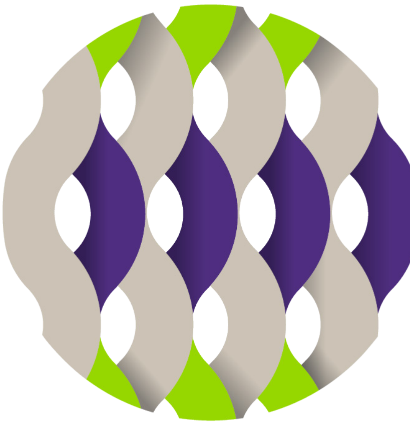

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