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Certain Exemptions from Consolidation of Financial Statements

Irish companies are required, pursuant to the Companies Act 2014 (the “**Act**”), to prepare and file financial statements at the Irish Companies Registration Office (“**CRO**”) on an annual basis. In a group scenario, certain Irish holding companies are also required to prepare consolidated financial statements.

This article considers how those Irish holding companies can avail of an exemption to prepare consolidated financial statements where their own financial statements are in turn consolidated into the financial statements of their holding undertaking (the “**Consolidation Exemption**”) in accordance with section 299 of the Act (“**section 299**”) or section 300 of the Act (“**section 300**”).

In summary, the Consolidation Exemption relieves certain Irish holding companies of the burden of having to prepare consolidated financial statements in circumstances where their own financial statements are consolidated into the financial statements of their holding undertaking.

The Consolidation Exemption Explained

The Consolidation Exemption may be relied upon, under section 299 or section 300, where the Irish holding company is itself a subsidiary undertaking and its holding undertaking is (i) in respect of section 299 a holding undertaking established under the laws of an EEA state or (ii) in respect of section 300 a holding undertaking established outside the laws of an EEA state and (iii) in each case one or other of the following cases apply:

- (a) the Irish holding company is a wholly owned subsidiary of that other holding undertaking;
- (b) that other holding undertaking holds more than 90 per cent of the shares in the Irish holding company and the remaining shareholders in, or members of, the Irish holding company have approved the exemption; and
- (c) that other holding undertaking holds more than 50 per cent but not more than 90 per cent of the shares in the Irish holding company and notice requesting the preparation of group financial statements has not been served on the Irish holding company by shareholders holding in aggregate –
 - (i) more than half of the remaining shares in the Irish holding company, or
 - (ii) 5 per cent or more of the total shares in the Irish holding company.

In addition to satisfying the above-mentioned criteria, the following conditions must also be met before the Consolidation Exemption may be availed of, where applicable, by an Irish holding company:

- (a) the Irish holding company and all of its subsidiary undertakings must be included in the consolidated accounts of the holding undertaking, which must be drawn up to the same date, or to an earlier date in the same financial year, by the holding undertaking;
- (b) the consolidated accounts of the holding undertaking must be audited by person(s) authorised under the laws under which the accounts are drawn up;
- (c) the Irish holding company in its notes to its own entity financial statements must disclose that it is exempt from the obligation to prepare and deliver consolidated accounts;
- (d) the Irish holding company's financial statements must disclose the name of the holding undertaking which draws up the consolidated accounts, its registered office address, its place of registration or the address of its principal place of business;
- (e) the Irish holding company must deliver copies of the consolidated accounts, consolidated directors' report (and the auditor's report thereon) of the holding undertaking, to CRO; and
- (f) the holding undertaking's accounts and consolidated annual report must be prepared and audited:
 - (i) in accordance with the Accounting Directive (Directive 2013/34/EU);
 - (ii) in a manner equivalent to consolidated accounts and consolidated reports so drawn up;
 - (iii) in accordance with International Financial Reporting Standards ("IFRS"); or
 - (iv) in accordance with the accounting standards of third countries determined as equivalent to the IFRS.

Importantly, the Consolidation Exemption is also conditional upon the holding undertaking's accounts (together with the Irish holding company's individual accounts) being filed with the CRO within 56 days of the Irish holding company's annual return date. If such filings are not completed within the requisite period, the Consolidation Exemption may not be relied upon.

Availability of the Consolidation Exemption

The Consolidation Exemption is available to: (i) private companies limited by shares; (ii) unlimited companies; (iii) designated activity companies ("**DACs**") (that are not traded DACs); (iv) companies limited by guarantee ("**CLGs**") (that are not listed CLGs); and (v) non-listed public limited companies. Listed public limited companies, traded CLGs, and traded DACs cannot avail of the Consolidation Exemption.

Delivery to the CRO

Where a company proposes to avail of the Consolidation Exemption, the company is required to file (i) the Irish holding company's individual accounts; and (ii) the holding undertaking's accounts, at the CRO.

Conclusion

Given that the Consolidation Exemption reduces the financial and administrative burden of preparing multiple sets of consolidated financial statements, it is certainly one for Irish holding companies to consider and, where applicable, avail of in a group scenario.

For further information please contact Pat English or another member of our [International Business Group](#).

Contacts



Pat English

Partner

T 01 232 2330

E pat.english@matheson.com



Ross Cashell

Senior Associate

T +353 1 232 2622

E ross.cashell@matheson.com



Catherine Carrigy

Associate

T +353 1 232 2072

E catherine.carrigy@matheson.com



Monika Sauksciute

Trainee

T +353 1 232 2954

E monika.sauksciute@matheson.com

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DUBLIN

70 Sir John Rogerson’s Quay,
Dublin 2
Ireland

T: +353 1 232 2000
E: dublin@matheson.com

CORK

Penrose One,
Renrose Dock,
Cork, T23KW81

T: +353 21 465 8200
E: cork@matheson.com

LONDON

Octagon Point,
5 Cheapside,
London EC2V 6AA

T: +44 20 7614 5670
E: london@matheson.com

NEW YORK

200 Park Avenue
New York, NY 10166
United States

T: +1 646 354 6582
E: newyork@matheson.com

PALO ALTO

530 Lytton Avenue
Palo Alto, CA 94301
United States

T: +1 650 617 3351
E: paloalto@matheson.com

SAN FRANCISCO

156 2nd Street
San Francisco CA 94105
United States

T: +1 650 617 3351
E: sf@matheson.com