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# Key Company Secretarial matters

to note for the annual preparation of your financial statements

## Statutory Financial Statements

When considering the preparation of financial statements, directors of a company need to determine:

- (i) the type of statutory financial statements they are legally required to submit to their shareholders at its Annual General Meeting;
- (ii) whether those statutory financial statements can be abridged for filing in the Companies Registration Office (CRO) and therefore reduce the amount of financial information filed on public record; and
- (iii) whether an audit is required.

Since the introduction of the Companies (Accounting) Act 2017 (CAA17) companies can avail of a new, less onerous statutory financial statements reporting regime. The first thing to note is that it is not mandatory: even if a company qualifies to avail of a less onerous regime, it can decide to prepare what are known as full financial statements.

If a company can avail of a less onerous statutory financial statements reporting regime (micro, small or medium company (see criteria below)) and elects to prepare its financial statements under that regime, then those financial statements become the statutory financial statements of the company. For example, a company that qualifies as a micro company can elect to prepare its statutory financial statements in compliance with the micro companies regime and one of the benefits is that it will not be required to disclose certain information, for example, details of directors' remuneration.

A company must meet two out of the three following relevant criteria in respect of both a relevant financial year and the immediately preceding financial year in order to be regarded as micro, small or medium (unless the financial year concerned is the company's first financial year):

Size Thresholds	Micro Company	Small Company	Medium Company
Net Turnover	≤ €700,000	≤ €12m (prev €8.8m)	≤ €40m (prev €20m)
Balance Sheet Total	≤ €350,000	≤ €6m (prev €4.4m)	≤ €20m (prev €10m)
Average Employees	≤ 10	≤ 50	≤ 250

Other relevant factors to be aware of include:

- The Annual Return now requires the company size (micro, small, medium or large) to be indicated. The size category of the company, regardless of the type of financial statements being filed with the Annual Return, should be indicated.
- Investment companies now have to file their statutory financial statements in the CRO with a statutory form FS1.
- Certain medium companies (i.e. balance sheet total exceeds €12.5m and turnover exceeds €25m) are now required to complete a Directors' Compliance Statement.
- A company with subsidiaries meets the criteria for a small holding company if the group it heads qualifies as a small group. Such companies are exempt from the requirement to prepare consolidated financial statements.
- All holding companies (except micro and small) must prepare and file consolidated financial statements unless, subject to conditions, the holding company is itself a subsidiary of a company that prepares consolidated financial statements.

## Abridged Financial Statements

- Companies exceeding the thresholds for a small company are required to file full financial statements.
- In other words, small company thresholds must be met to qualify to file abridged financial statements.

## Audit Exemption

Small company thresholds apply when deciding whether certain companies can avail of the audit exemption. A company with subsidiaries only qualifies for the audit exemption if the largest group of which it is a member qualifies as a small group. The thresholds must be met when all Irish and non-Irish holding companies and sister companies in the group are included.

## Filing of Financial Statements

Financial statements cannot be filed on their own. They must be electronically filed when submitting an Annual Return to the CRO. Care must be taken to ensure that the Annual Return and all other documents that form part of the Annual Return Submission are filed correctly.

Since 1 April 2018, Annual Returns will now automatically be rejected by the CRO where the submission contains obvious errors and/or omissions. Previously, the Registrar of Companies could use her discretion under Section 898 of the 2014 Act and allow 14 days for an amendment to be made and for a revised submission. Now, when rejected, the process of submitting the Annual Return must be done again: the Annual Return must be submitted, financial statements must be uploaded and the relevant signature pages must be delivered to the CRO. As such, this submission could result in late filing. Examples of instances where the '14 day rule' will not apply include where the Annual Return is not signed or only includes 1 signature or where the financial statements are not uploaded to the CRO before the relevant signature pages are delivered to the CRO.

We are aware of cases where signature pages were not signed and delivered to the CRO or where financial statements were not uploaded to the CRO on time.

We are also aware of cases where incorrect financial statements have been uploaded, for example, full financial statements rather than abridged or financial statements which include notes that are not part of the statutory financial statements. In the latter case, an application to the High Court to remove the filing from CRO records would be necessary.

## Filing Deadlines

The Annual Return filing deadlines of some of the more popular financial year ends are set out below, based on the assumption that a company has extended its Annual Return Date to the maximum time permitted:-

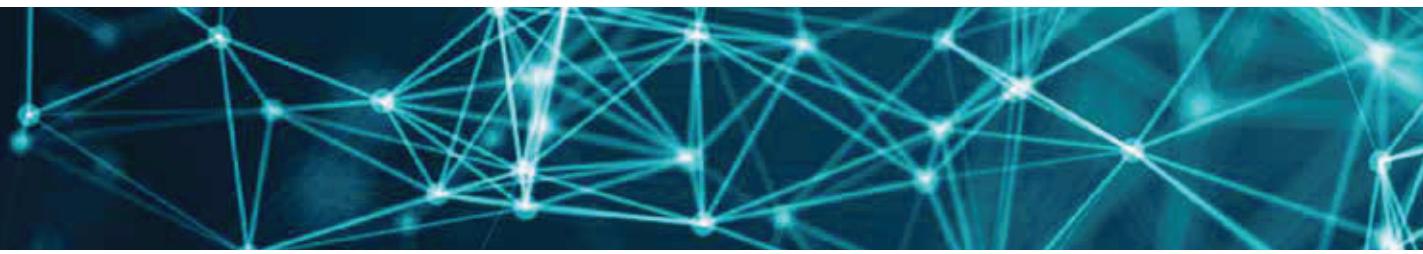
Year End	Must be filed prior to
31 December	28 October of the following year
31 March	28 January of the following year
30 June	28 April of the following year
30 September	28 July of the following year

The CRO permits a further 28 days from the Annual Return filing deadline to file the financial statements. The Companies (Amendment) Bill 2019 proposes to simplify the process for filing Annual Returns and envisages that companies would have 56 days from the Annual Return Date to file **both** the Annual Return and the financial statements at the one time.

## Annual General Meetings

Additionally, be aware that every company is obliged by law to submit its statutory financial statements to an Annual General Meeting (AGM) within 9 months of its financial year end and this deadline must be borne in mind when considering the timeframes for the completion and filing of financial statements in the CRO.

The shareholders of a company may wish to consider the statutory financial statements prior to their submission to the CRO. Accordingly, the timing aspects of convening the AGM and the obligation to file should be considered.



## **Parent Company Guarantee**

An Irish subsidiary of a parent company incorporated in the EEA may, provided certain criteria are satisfied, be exempt from filing its own statutory financial statements in the CRO and instead file the consolidated financial statements of its EEA parent.

To avail of this exemption from filing its own statutory financial statements, the EEA parent must provide an irrevocable guarantee in respect of all of the commitments entered into by subsidiary, including amounts shown as liabilities in the statutory financial statements, for the financial year in question.

The guarantee, details of which must be disclosed in the consolidated financial statements of the EEA parent, must be put in place prior to the filing of the Annual Return of the Irish subsidiary.

The Companies Act 2014 (2014 Act) and the CAA17 extended the original definition of the parent company guarantee contained in the Companies (Amendment) Act, 1986 from all 'liabilities' of the subsidiary to all 'commitments of the subsidiary, including amounts shown as liabilities in the financial statements' and the wording of the guarantee must reflect this change. The broadened scope of the parent company guarantee is open to interpretation. 'Commitments' are not defined in the 2014 Act and that term could include commitments which accrue beyond the financial year in question. The directors of a parent company that is considering giving a guarantee to a subsidiary should give full consideration to the financial obligations of its subsidiary before agreeing to give the guarantee.

This filing exemption is only available where the parent is incorporated in an EEA country and obviously could not be relied upon in a post Brexit environment.

## **Group Financial Statements - 'Exempted Parent'**

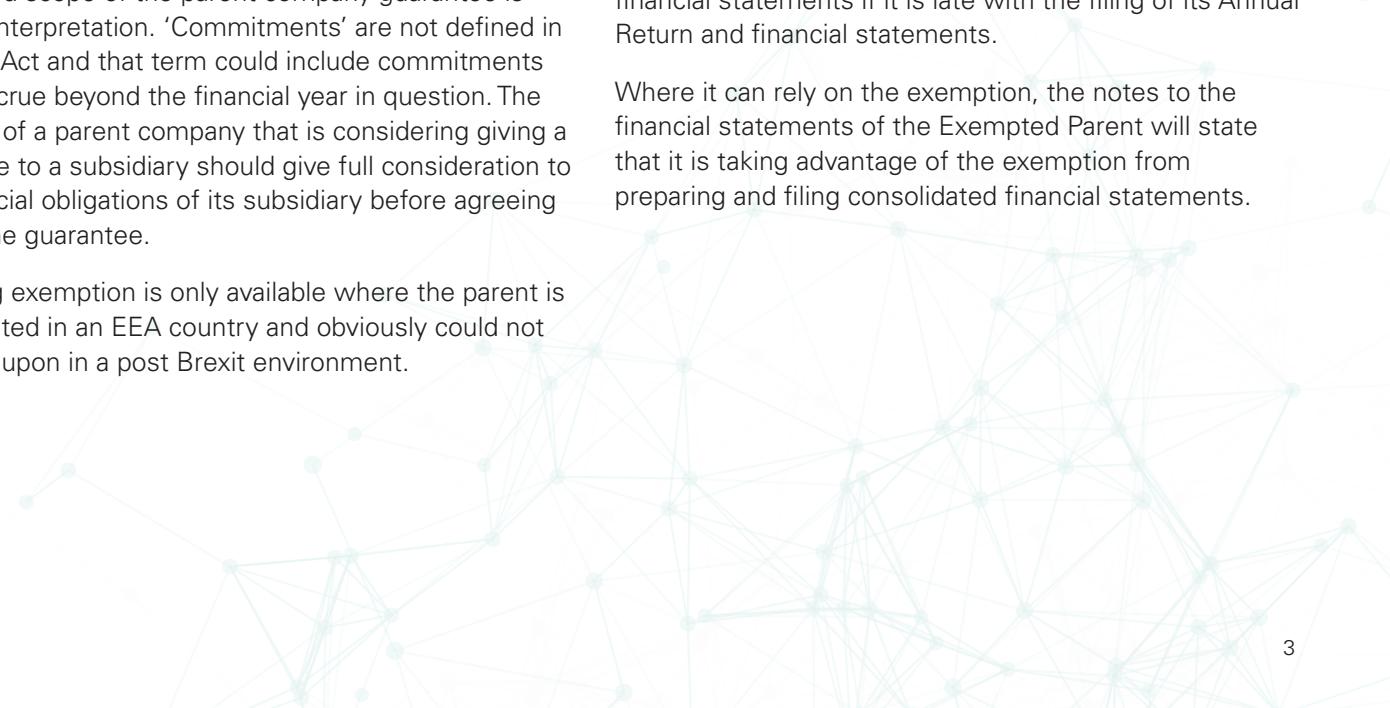
An Irish holding company (Exempted Parent) that has subsidiary companies and which is itself a subsidiary of a holding company may be exempt from preparing and filing its own consolidated financial statements in the CRO.

In such situations, provided certain criteria are met, the Exempted Parent may file the following financial statements in the CRO with its Annual Return:-

- (i) its own individual statutory financial statements; and
- (ii) the consolidated financial statements of the holding company which include the results of Exempted Parent.

The 2014 Act provides that one of the conditions to be satisfied is that the financial statements to be filed at the CRO with the Exempted Parent's Annual Return must be filed 'within the period allowed for delivering its entity financial statements'. While this term is not defined, it is accepted to mean the deadline for filing the Exempted Parent's individual entity financial statements with an Annual Return at the CRO. Consequently, it would appear that the Exempted Parent would not be able to avail of the exemption from the preparation of consolidated financial statements if it is late with the filing of its Annual Return and financial statements.

Where it can rely on the exemption, the notes to the financial statements of the Exempted Parent will state that it is taking advantage of the exemption from preparing and filing consolidated financial statements.



## Dormant Company Audit Exemption

Section 365 of the 2014 Act introduced a new exemption from audit for dormant companies.

If the directors of a company, other than a plc and an investment company, are satisfied that it meets the conditions and that decision is recorded by the directors in the minutes of a meeting of directors, then the statutory financial statements of the company do not have to be audited.

The conditions which must be met during the year in question to qualify as dormant are:-

- (i) the company must have no significant accounting transaction; and
- (ii) its assets and liabilities must comprise only permitted assets and liabilities.

Permitted assets and liabilities are investments in shares of, and amounts due to or from, other group undertakings.

In deciding whether or not a company is dormant, a company may disregard any transaction arising from:-

- the taking of shares in a company by a subscriber to the constitution of the company;
- the payment of fees to the CRO on a change of name, its re-registration or the filing of its Annual Return.

The dormant company audit exemption is not subject to any size criteria. Therefore, while a company might not qualify for audit exemption because it is part of a group, it could still qualify for the dormant company audit exemption.

It is important to note that the Annual Return and the financial statements of a company must be filed on time in both the year in question and also the preceding year in order to avail of the dormant company audit exemption.

## Loss of Audit Exemption

Following the enactment of the Companies (Statutory Audits) Act 2018, a company that is late in filing its Annual Return with which the audit exempt financial statements will be filed, will be required to carry out an audit for the two subsequent financial years. Previously, an audit would have been required for the financial statements being filed with the late Annual Return and for the subsequent financial year.

## Financial Statement Filing Obligations of Unlimited Companies

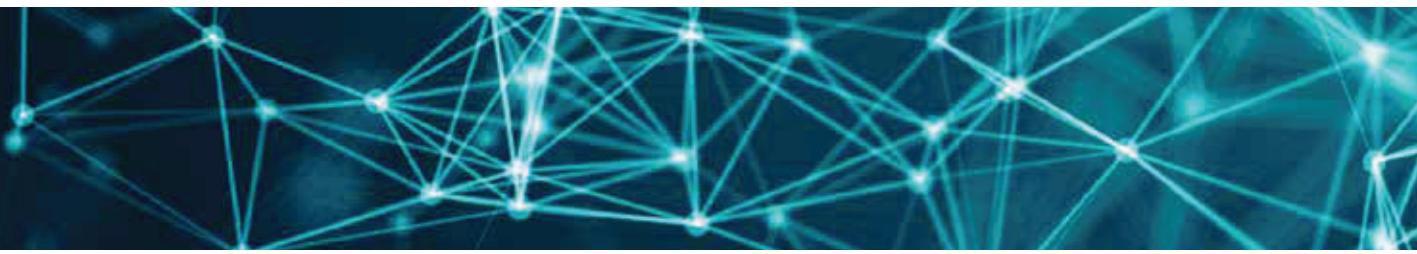
A significant change introduced by the CAA17 relates to the financial statement filing obligations of unlimited companies (ULCs), the ultimate beneficial owners of which enjoy limited liability protection. The CAA17 amends Section 1274 of the 2014 Act to broaden the definition of "designated ULCs" which will be obliged to file financial statements going forward.

The new filing obligations will apply to a ULC which:

- is a subsidiary or a holding company of a limited undertaking;
- is a holding company for certain financial institutions such as banks and insurance companies or is itself a credit institution or an insurance undertaking; or
- whether directly or indirectly, the ultimate beneficial owners of the ULC enjoy the protection of limited liability.

The new filing rules for ULCs apply to financial periods starting on or after 1 January 2017, with the exception of unlimited holding companies with limited liability subsidiaries that are not otherwise required to file, who will only be obliged to file for financial years commencing on or after 1 January 2022.

It is important therefore that the Directors of all unlimited companies review their group structures to understand fully the implications of the new rules and their impact on the financial information to be filed in the CRO.



## Change in Financial Year End

Under the 2014 Act, a company may change its financial year end once in every five years. Any proposed change must not result in a financial period in excess of 18 months.

When considering whether or not to change a financial year end, it should be noted that any notice of a change in the financial year end of a company must be filed in the CRO prior to the date that the financial statements of a company should have been filed in the CRO had no change taken place.

The 2014 Act permits a company which, for example, has a financial year end of 31 December to change its year end by plus or minus 7 days each year and such a change will not constitute a change in financial year end for the purposes of the legislation.

This means that, in practice, a company could use the last Friday in December of each calendar year as its financial year end without changing its year end date each year.

## Change in Financial Reporting Framework

Once every five years a company can change its financial reporting framework from financial statements prepared in accordance the accounting requirements of company law to financial statements prepared in accordance with International Financial Reporting Standards without the previous requirement of there being a 'relevant change in circumstances'.

However, the company must now explain in its statutory financial statements the reason for, and any impact of, a change in accounting policy.

## Criminal Prosecutions and Enforcement Measures

The CRO have recently completed prosecutions under the 2014 Act against companies for the late filing or non-filing of Annual Returns.

The Registrar of Companies has indicated that where criminal proceedings have commenced, that office will object to any application for more time to file the Annual Return.

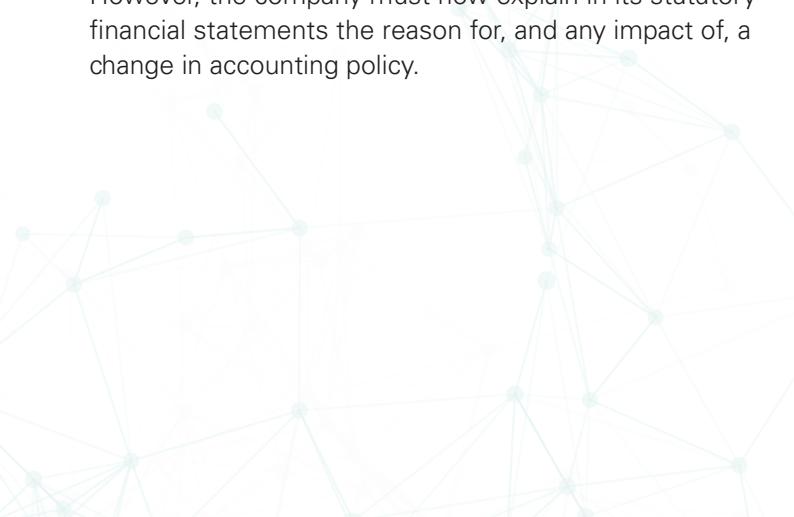
The CRO has continued to take enforcement action against companies in default of their Annual Return filing obligations. In 2017, 5,420 companies were involuntarily struck off the Register of Companies, a significant decrease compared to previous years.

The CRO have recently indicated that they will commence involuntary strike off action against companies that are 180 days late in filing their Annual Returns - strike off action had previously commenced after 300 days.

## Mandatory e-filing

Since 1 July 2017, the CRO have introduced mandatory e-filing in respect of Annual Returns (forms B1) and financial statements, changes in registered office (forms B2), extension of Annual Return Dates (forms B73) and changes in Directors/Secretaries or in their particulars (forms B10).

Notwithstanding that these forms can now only be filed electronically, a paper submission is still required to be made to the CRO where a director or secretary certification or consent is required, for example, the certificate that accompanies the financial statements to certify that they are true copies of those laid before the annual general meeting. In such cases, if the paper submission is not made to the CRO, notwithstanding that the electronic submission has been completed, the filing will be deemed never to have been made and, in the case of Annual Returns, could lead to late filing penalties, enforcement measures and/or loss of audit exemption.



# Further Information

To find out more about how we can help you, please contact Salvador Nash or your usual KPMG contact.



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