DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

The Companies (Accounting) Bill 2016

Background

The Companies (Accounting) Bill 2016 was passed through Dáil Eireann on 22 March 2017. The Bill, which was first published last August 2016, is intended to transpose EU Directive 2013/34/EU. ("the **Directive**"). The Directive was enacted to update EU accounting law, particularly reducing the administrative obligations of SMEs and allowing for easier comparison between company accounts across the EU.

The Companies (Accounting) Bill 2016 attempts to achieve these goals by adapting the accounting and filing regimes for different types of company. It will increase the criteria for entities to qualify as small or medium companies, allowing more to avail of these regimes, in addition to creating a new category, the micro company. The Bill will also expand the range of corporate structures which are required to file financial statements, with significant effects for non-filing unlimited companies.

The impact on Non-filing Structures

If enacted in its present form, the Bill will broaden the definition of a 'designated unlimited company', ("**ULC**"). This will expand the range of corporate structures which are required to file financial statements with the CRO and may render ineffective many 'non-filing ULC' structures.

The current provisions of the Act provide that ULCs which do not fall under the 'designated ULC' definition are not required to file, and make public, their financial statements. The present definition allows

For further information on any of the issues discussed in this article please contact:

Lorcan Tiernan
DD:+ 353 (0)1 673 1736
lorcan.tiernan@dilloneustace.ie

Adrian Benson
DD: + 353 (0)1 673 1705
adrian.benson@dilloneustace.ie

Catherine Hicks
DD: + 353 (0)1 674 1008
catherine.hicks@dilloneustace.ie

that ULCs with any members that are unlimited companies incorporated outside the EEA will not be considered 'designated ULCs' and therefore are exempt from this requirement. This allowed for the non-filing structures in use at present.

However, the current iteration of the Bill has significantly widened the definition of the 'designated ULC'. The Bill will remove the EEA limitation contained in the Act and will include ULCs which are holding companies for limited undertakings, credit institutions or insurance companies which are ULCs and any ULC whose ultimate owners enjoy limited protection. This is a considerably broader definition which will prevent many non-filing ULC structures from operating effectively. It is worthy of note that any previously exempt ULCs submitting financial statements for the first time will be required to include information from the previous financial year for comparison.

Company Thresholds

The Bill also alters the financial criteria for businesses to qualify as a "small" or "medium" company. By increasing the net turnover and balance sheet criteria, more businesses will qualify for each of these regimes. The third criteria in relation to average number of employees has not been changed. The Bill also introduces a new category of "micro" company below the "small" category. To qualify as a micro company a business must not exceed two of the three criteria, as with the small and medium categories.

Current and proposed thresholds:

Must not exceed 2 of the 3 criteria.	**Micro**		**Small**		**Medium**	
	2014 Act	**2016 Bill**	**2014 Act**	**2016 Bill**	**2014 Act**	**2016 Bill**
Net Turnover	-	€700,000	€8.8m	€12	€20m	€40m
Balance Sheet Total	-	€350,000	€4.4	€6	€10m	€20m
Average Number of Employees	-	10	50	50	250	250

Accounting and Filing Regimes

The changes in thresholds are accompanied by changes to the regimes for the filing of financial statements. The changes will reduce the filing regimes for smaller businesses while increasing the requirements for medium and large companies.

Medium companies will no longer be able to qualify for audit exemption and will be compelled to file group financial statements; the option for them to file abridged statements will be repealed. Small and micro companies will be exempt from this requirement but may still opt to file group statements.

A reduced filing system is available for the new category of micro companies including an exemption from including a director's report.

The Bill also introduces a new class of "ineligible entities" consisting of companies carrying out particular activities, which will be excluded from taking advantage of audit exemptions. Credit institutions, investment companies, insurance undertakings and 'public interest' entities are included in this class. In addition, any ineligible entities or large companies engaging in the mining, quarrying and logging industries will be required to file annual reports on any payments made to governments under the Bill.

When will the Bill come into effect?

The Bill has now moved on to Seanad Eireann and may be subject to further change before it becomes law. It is as yet unclear as to when it is likely to come into effect, particularly given the delay in transposing the Directive. The Directive was due to be transposed in Ireland by 20 July 2015 with a stipulation that the provisions would first apply to financial statements for financial years commencing on or after 1 January 2016.

In a recent development, the amended version of the Bill which passed Dáil Eireann states that the provision specifically requiring ULC holding companies of limited undertakings to file financial statements will not come into operation until a financial year starting on or after 1 January 2022. The Minister for Jobs, Enterprise and Innovation stated in Dáil Eireann that this amendment was proposed due to the concerns expressed by companies that will be affected by the change. The Minister voiced her understanding that many companies would require restructuring as a result and that a transition period was fair and appropriate.

Dillon Eustace
April 2017

DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.