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Mr Ciarán McLoughlin
Company Law
Department of Jobs, Enterprise and Innovation
Earlsfort Centre
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Our ref ER/MG

15 September 2016

Dear Mr McLoughlin

Consultation on the exemption in section 279 of the Companies Act 2014 allowing the preparation of financial statements under Accounting Principles Generally Accepted in the United States ("US GAAP")

We are writing to you in response to your request for comments on the above, and welcome the opportunity to contribute to the abovementioned consultation process by the Department of Jobs, Enterprise and Innovation ("DJEI").

Background

As DJEI is aware, the Companies (Miscellaneous Provisions) Act 2009 originally introduced this exemption into Irish company law, and it was further extended in 2012 to financial years ending not later than 31 December 2020. It was designed as a temporary relief for US public companies from having to prepare consolidated Companies Act (Irish GAAP) or IFRS financial statements under Irish law, while also being required to prepare US GAAP financial statements by virtue of their US public status.

Recent amendments to Section 7874 of the U.S. Internal Revenue Code increased the relative size requirements of a U.S. acquirer and a foreign target entity. Before that, these so-called "inversions" were often effected by simply exchanging shares in a U.S. listed company for shares in a newly-created Irish company, the shares of which then continued to trade on U.S. markets. As a result, many American public companies doing so-called inversions into Ireland retained a largely identical U.S. shareholder base, and were therefore deemed to be domestic, rather than foreign, registrants under U.S. securities law. In consequence, they were, (and still are), required to continue to provide consolidated financial statements to shareholders prepared under US GAAP.

Without the exemption provided by Section 279, these companies would also have been required to prepare supplemental full consolidated financial statements for their worldwide operations under Irish GAAP or IFRS. The exemption was envisaged as a temporary arrangement, while the U.S. Securities and Exchange Commission (the "SEC"), the Financial Accounting Standards Board, and the International Accounting Standards Board converged thinking on accounting principles and practices where

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significant differences existed, following which it was anticipated that the SEC would allow all entities to file their financial statements under either US GAAP or IFRS.

The Global Financial Crisis brought significant changes on the thinking in these areas as regulatory efforts globally became diverted to domestic matters and the regulation of domestic financial intermediaries. Coupled with that, a broader sense developed that retaining local systems of reporting and oversight was philosophically preferable in the measurement of asset values, liabilities and ultimately, solvency. The resulting delay in the convergence of accounting thought in many important areas, in our view, has played a significant role in the deferral of the recognition of IFRS by the SEC.

Our position

Many U.S. entities focus on the (largely unpredictable) incremental cost and effort that could result from a requirement to prepare consolidated financial statements under two substantially different frameworks, and this is a very valid concern. Because of the requirement for comparative years, it could conceivably involve a significant and costly global project, many jurisdictions, and for some, recruiting and training accountants with IFRS skills in locations where these are hard to locate. This is a genuine concern for many, but cost and effort are unlikely to be concerns that trump those of public policy.

In our view, a more important consideration is that of the relevance of the IFRS consolidated financial information which would be required if Section 279 was not extended. Relevant financial information is capable of making a difference in the decision making of users. For the reasons we have outlined above, all (to our knowledge) of the inverter companies in Ireland have retained majority U.S. ownership in their shareholder base, and this means that for U.S. securities law purposes, they must continue to file as domestic issuers and cannot substitute IFRS financial statements for those prepared under US GAAP. Because the shareholder base is both U.S. centric, and will continue to receive their shareholder reports prepared under US GAAP, the supplemental IFRS consolidated financial statements that might be required if the exemption were not extended are likely to remain with a limited readership, if any, and result in a potentially vast production exercise that produces information of little relevance and value to decision making by any stakeholders.

In addition, KPMG audit clients have chosen to prepare IFRS parent-only financial statements as a supplement to the US GAAP consolidated statements, and also prepare IFRS or Companies Act financial statements for their Irish subsidiaries. It is these local IFRS or Companies Act financial statements and not the consolidated financial statements of the group on which Irish tax computations are based. Accordingly, extending the Section 279 exemption for these groups will be tax neutral to the Irish Exchequer.



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Conclusion

On the basis of the above points, we support the continuance of this exemption beyond 2020.

As regards the second consultation question posed by DJEI, we consider that the rationale for a specific timeframe for the exemption, as existed in 2009 and to a certain extent also in 2012, has changed. While global regulators and governments continue to contemplate the measurement and regulation of the entities that operate in their jurisdictions, we recommend a periodic review to revisit the appropriateness of the exemption, while giving some medium-term certainty to the U.S. entities that are availing of it. We would suggest that a period of say 10 years might provide a useful starting point.

Thank you again for the opportunity to comment on this important legislative proposal. Please feel free to contact me at 01 4102226 if you wish to further discuss the points raised above.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Eamonn Russell', written in a cursive style.

Eamonn Russell
Partner
Head of Department of Professional Practice