



By email

Mr. Ciarán McLoughlin
Company Law
Department of Jobs, Enterprise & Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2
D02 PWO1

14 September 2016

Dear Ciarán,

Consultation on the exemption in Section 279 of the Companies Act 2014 allowing certain companies to prepare and file financial statements in accordance with US GAAP

We are writing to you in response to the Department of Jobs, Enterprise & Innovation (“DJEI”) request as to whether the exemption currently allowed under Section 279 of the Companies Act 2014 should be extended or not and, if so, for how long. We welcome the opportunity you are giving stakeholders to contribute to this consultation process.

Background

As DJEI is aware the exemption originally granted in 2009 and subsequently extended in 2012, was provided as a temporary relief to certain Irish incorporated companies who are listed in the US and subject to reporting to the US Securities and Exchange Commission (“SEC”).

The exemption inherently recognised that the primary needs of the investors and other stakeholders in these companies is better served by issuing US GAAP financial statements consistent with their listed status in the US. In the absence of the exemption, these companies would have been required to prepare consolidated statutory financial statements according to both US GAAP and a financial reporting framework permissible under Irish law (IFRS as adopted by EU or Irish GAAP). This would have imposed significant cost and burden on these companies to produce a second set of financial statements which are of little relevance to the needs of stakeholders. That said, the exemption was appropriately made conditional on these companies ensuring that the US GAAP financial statements also complied with the relevant provisions of Irish Company Law applicable to financial statements of all Irish companies (as currently set out in Part 6 of the Companies Act 2014, ‘Financial Statements, Annual Return and Audit’).

The temporary nature of the exemption reflected that a project was being undertaken by the International Accounting Standards Board (“IASB”) and the Financial Accounting Standards Board

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(“FASB”) to converge US GAAP and IFRS with an understanding that the SEC would permit domestic US filers to prepare financial statements in accordance with IFRS. Had the convergence project progressed as originally planned the burden and cost on the companies to produce IFRS accounts would ultimately have reduced as the standards would have been aligned and IFRS itself would have become a set of standards widely understood in the US market. However, the convergence project has stalled with little prospect of anything progressing on this in the short term. The SEC has also deferred indefinitely any decision to permit the use of IFRS by domestic US filers.

PwC Ireland’s position

We believe the key underlying issue which existed in 2009 remains as convincing and persuasive today as it did then. To require the impacted companies to prepare financial statements under a GAAP framework other than US GAAP would be a matter of significant cost and undue burden. Moreover, it does not serve the needs of stakeholders which is a fundamental principle in financial reporting.

Accordingly, we strongly support an extension beyond 2020 for the exemption provided in Section 279. The affected companies, which are a narrow and well defined group of companies under the terms of the exemption, all have investor bases which are primarily influenced by US capital markets. US GAAP is widely acknowledged as a high quality, comprehensive and widely used accounting framework that provides comparability and transparency. This is essential for well-informed capital allocation decisions and market integrity.

We also note by way of comparison that Irish Law, Part 24- Section 1400 of the Companies Act 2014 and Section 116 of Irish Collective Asset Management Vehicles Act (ICAV) allows investment companies incorporated in Ireland and ICAVs to prepare their statutory financial statements in accordance with US GAAP. This unrelated but comparable legislation is informative in that it is also founded on the needs of the users of the financial statements.

Given that the current IFRS/ US GAAP convergence project has stalled we would recommend considering making the exemption permanent or subject to review (for example every 10 years) rather than having a fixed expiry or “sunset” date.

Conclusion

It is important to maintain the integrity of and confidence in Ireland’s well-respected accounting and financial reporting framework whilst avoiding placing unnecessary legislative burdens on business and maintaining Ireland’s competitiveness. Users of financial information need accurate and easily comparable financial information which address the needs of the stakeholders. Section 279 inherently recognises this in the existing exemption arrangements which allow the impacted companies prepare their financial statements under US GAAP. It is unclear what value would be created by requiring these companies to prepare another set of consolidated statutory financial statements under a different accounting framework. From an Irish perspective, extending these arrangements or making them permanent is cost neutral to the State. It is also consistent with similar exemptions extended to the Asset Management industry in Ireland and does not contravene any European Union requirements or practices.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Enda McDonagh', is written over a light blue horizontal line.

Enda McDonagh
Head of Assurance – PwC Ireland