

Question:

I want to extend a client Company's financial year-end from 31st December 2008 to 31st March 2009 in order to avail of higher audit exemption limits. Can I do this and then time-apportion the sales?

Answer:

(i) Availing of Audit Exemption – the criteria:

The Companies (Amendment) (No. 2) Act 1999 allows a “private company” (being a limited company or an unlimited company or partnership which is obliged to file accounts under the European Communities (Accounts) Regulations 1993) not to have to audit its accounts or to appoint/retain an auditor.

*The directors must be of the opinion that the company will satisfy the specified conditions in respect of a financial year (**and** unless it is the first financial year be satisfied the company met the conditions in the previous financial year) and decide to avail of the exemption. The directors' decision to avail of the exemption must be recorded in Minutes of a Board Meeting.*

The exemption is lost if during the financial year one or more of the conditions are not satisfied.

The 1999 Act stipulated that, a company can avail of the exemption if:

- *it is a company to which the Companies (Amendment) Act, 1986 applies (namely most private companies and certain unlimited companies). The 1986 Act does not apply to a limited company which is not trading for the acquisition of gain by the members. Also, guarantee companies (not having a share capital) are public companies and thus must continue to have their accounts audited (many of those companies are charities and thus must audit accounts in any event);*

its turnover does not exceed € 1.5m;

- *its balance sheet total does not exceed €1,905,000;*
- *the average number of persons employed does not exceed 50;*
- *the Act does not expressly prohibit the company from availing of such an exemption e.g. companies whose businesses are regulated by the Central Bank or companies with subsidiaries; and*

it is empowered by its Articles of Association to avail of the audit exemption.

*The **Investment Funds, Companies and Miscellaneous Provisions Act, 2006** further significantly extended the relevant financial thresholds to €7.3m for Turnover and €3.65m for Balance Sheet Total to bring Ireland into line with the European standard. These new thresholds were applied to financial years then in progress with no less than 2 months to run and to all financial years commencing after 24th December 2006.*

Even where a company meets each of the above qualifying criteria in respect of its current financial year (and where the company had a previous financial year, the company also met the criteria in respect of that year), the company will be unable to file unaudited accounts with its Annual Return unless it files that Annual Return on time in the CRO AND the Annual Return for the previous year was also filed on time.

(ii) Changing a Company's financial year-end – the issues:

When embarking on a change to a Company's financial year-end one of the considerations to be borne in mind is the Company's ability to meet its statutory obligations.

The 1963 Act (Section 148) stipulates that every company is required to prepare and lay accounts before its shareholder at an Annual General Meeting (AGM) – within 18 months of its incorporation and at least once in every subsequent calendar year. The date to which the accounts are made up must not pre-date the meeting by more than 9 months.

Therefore, any proposed change in accounting reference date must allow for full compliance with these provisions.

EXAMPLE:

Company XYZ Limited – current financial year-end is 31st December 2008 – 2008 Annual General Meeting (AGM) held on 1st July 2008 to receive 2007 accounts – current Annual Return Date (ARD) is 30th September each year.

The Directors of XYZ Limited want to extend the Company's financial year-end from 31st December 2008 to 30th June 2009 (18 months). Let us assume that the accounts are not finalized until April 2010. This would mean:

- *the Company would not be able to hold an AGM in 2009;*
- *would not have accounts available for filing with its 2009 Annual Return;*
- *April 2010 would be 10 months after the new year-end date and therefore the 2010 AGM would be held outside the statutory nine-month period; and*
- *more than 15 months would have elapsed between AGMs.*

(iii) A financial period of more than 1 year – time apportion the sales?

“Financial year” is defined in the 1963 Act as “...the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not.” The Companies (Amendment) (No.2) Act, 1999 defines it simply as “the financial year of the company concerned”.

*The 1999 Act further states that when applying the above criteria to a company's financial year which is in fact not a year, the financial criteria should be **proportionally adjusted** (Section 32 (6)).*

Commentaries on provisions of legislation are not intended to be a legal or comprehensive interpretation. Professional advice should be sought in specific circumstances. For further information on statutory requirements, or any provision of the Companies Acts, 1963 to 2009, please contact our Company Secretarial Department on:

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