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# MODERNISATION OF ACCOUNTING LAW

October 2015

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## Introduction

On 1 November 2015 the Directive on Annual Accounts Implementation Act (hereinafter: Implementation Act) enters into force. This act amends book 2 of the Dutch Civil Code and several other acts.

The Implementation Act implements directive 2013/34/EU on the annual accounts (hereinafter: Directive).

The Directive aims at modernising, simplifying and harmonising accounting law and reducing the administrative burden. In addition, the Directive provides for a new regulation on the disclosure of payments to governments by undertakings active in the extractive industry or logging of primary forests.

The most significant consequences resulting from the Implementation Act are set out below.

## Changes regarding the structure of the annual accounts

The rules governing write-offs will be amended. Intangible assets will no longer include costs of research. Furthermore, the maximum period over which development costs and goodwill are to be written off will be set at ten years. Goodwill may no longer be written off against equity or written off at once against results.

## Annual report will be named management report

The annual report is referred to in the Directive as management report. The term management report is more commonly used in practice. The term annual report shall be replaced by the term management report.

The auditor’s examination of the management report will be expanded. The auditor will need to verify whether the management report, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, contains material misstatements. Neither the Directive nor the Implementation Act clarifies the meaning of ‘material misstatements’.

## Reduction of time limits for publication of annual accounts by one month

Presently, annual accounts are to be published within thirteen months after the end of the financial year. This period will be reduced to twelve months.

The management boards of NV’s and BV’s must prepare annual accounts and make these available for inspection within five months of the end of the financial year. Presently, this period may be extended by not more than six months. The extended period will be reduced to five months.

The management boards of foundations, associations, cooperatives and mutual insurance companies must prepare annual accounts and make these available for inspection within six months of the end of the financial year. Presently, this period may be extended by not more than five months. The extended period will be reduced to four months.

Listed companies will remain subject to a reduced term for publication of four months.

## Exemptions

The obligations with respect to the annual accounts, the management report, the additional information and the audit apply to each NV, BV, commercial foundation and association, cooperative and mutual insurance company, save to the so-called 'small' and 'medium-sized' legal person.

A light reporting regime will be introduced for micro-undertakings and the thresholds for qualification as a 'small' or medium-sized' legal person will be increased. The categories and requirements are set out below.

*Micro-undertaking*

A legal person qualifies as a micro-undertaking if it meets two or three of the following requirements:

- the value of the assets according to the balance sheet and explanatory notes amounts to not more than EUR 350,000;
- the net turnover over the financial year amounts to not more than EUR 700,000;
- the average number of employees during the financial year is less than ten.

A micro-undertaking is exempt from, inter alia, the obligation to prepare an extensive balance sheet, extensive profit and loss accounts, an explanation of the balance sheet, a management report and from the obligation to have the annual accounts audited by an auditor. A micro-undertaking has to publish an abridged balance sheet only.

*Small legal person*

A legal person qualifies as a small legal person if it meets two or three of the following requirements:

- the value of the assets according to the balance sheet and explanatory notes amounts to not more than EUR 6,000,000 (currently EUR 4,400.000);
- the net turnover over the financial year amounts to not more than EUR 12,000,000 (currently EUR 8,800,000);

- the average number of employees during the financial year is less than fifty.

The exemptions remain unchanged.

*Medium-sized legal person*

A legal person qualifies as a medium-sized legal person if it meets two or three of the following requirements:

- the value of the assets according to the balance sheet and explanatory notes amounts to not more than EUR 20,000,000 (currently EUR 17,500,000);

- the net turnover over the financial year amounts to not more than EUR 40,000,000 (currently EUR 35,000,000);

- the average number of employees during the financial year is less than fifty.

The exemptions remain unchanged.

*Large legal person*

A legal person qualifies as a large legal person if it meets two or three of the following requirements:

- the value of the assets according to the balance sheet and explanatory notes amounts to at least EUR 20,000,000 (currently EUR 17,500,000);

- the net turnover over the financial year amounts to at least EUR 40,000,000 (currently EUR 35,000,000);

- the average number of employees during the financial year is at least fifty.

Increase of the thresholds for qualification as a large legal person affects the restrictions that apply to the number of supervisory offices that may be held by managing directors and supervisory directors of NV's, BV's and foundations that qualify as large legal persons. As such legal persons less likely qualify as large legal persons, there will be more room for additional positions.

## Disclosure of payments to governments

In order to provide for enhanced transparency of payments made to governments, large undertakings and public-interest entities which are active in the extractive industry or logging of primary forests will be obliged to prepare and publish a report or a consolidated report on payments made by them to governments in countries in which they operate (*country-by-country reporting*). Such payments include, inter alia, payments for production entitlements, taxes and royalty's. It is a report separate from the annual accounts and the management report. However, the report is to be published in the same manner as the annual accounts, i.e. within twelve months after the end of the financial year and by deposit at the offices of the trade register.

## Public-interest entities

Exemptions for legal persons which qualify as micro-undertaking, small legal persons or medium-sized legal persons will no longer be available for public interest entities, such as security-issuing institutions, banks and insurers. The same applies to the exemption for group companies from the obligation to prepare extensive annual accounts if the principal holding company has assumed liability for debts of the group company.

Principal holding companies which prepare consolidated annual accounts may, by making use of an exemption for the individual annual accounts, reduce the profit and loss accounts to results from participating interests. This exemption will not be available for public interest entities.

The exemptions from the obligation to consolidate for small groups will be restricted. This exemption will no longer be available for insurers and banks.

## Changes to apply to the financial years commencing on or after 1 January 2016

The terms of the Implementation Act will apply to annual accounts and management reports over the financial years which commence on or after 1 January 2016. However, such terms may be applied to annual accounts and management reports over the financial years which commenced prior to 1 January 2016.

As a consequence hereof, annual accounts over financial years which commenced prior to 1 January 2016 must be published no later than thirteen months of the end of the financial year. Annual accounts over financial years which commenced on or after 1 January 2016 will be subject to the reduced period of twelve months, regardless of whether or not the articles of association refer to the current period of thirteen months.

## Information

For more detailed information, please consult your contact person at CMS or:


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