

Exemption from consolidation: holding company that is subsidiary undertaking of undertaking registered in EEA

299. (1) Subject to subsection (4), a holding company is exempt from the requirement to prepare group financial statements if that holding company (the “lower holding company”) is itself a subsidiary undertaking and its holding undertaking is established under the laws of an EEA state and one or other of the following cases applies.

(2) Those cases are—

(a) the lower holding company is a wholly owned subsidiary of that other holding undertaking,

(b) that other holding undertaking holds more than 50 per cent of the shares in the lower holding company and notice requesting the preparation of group financial statements has not been served on the lower holding company by shareholders holding in aggregate—

(i) more than half of the remaining shares in the lower holding company, or

(ii) 5 per cent or more of the total shares in the lower holding company.

(3) The notice referred to in subsection (2)(b) shall be served on the lower holding company not later than 6 months after the end of the financial year before that to which it relates.

(4) Subsection (1) shall not apply unless the following conditions are satisfied—

(a) the lower holding company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a holding undertaking established under the laws of an EEA state,

(b) those accounts are drawn up and audited and the group's consolidated annual report is drawn up in accordance with—

(i) the provisions of the Seventh Directive (where applicable, as modified by Council Directive 86/635/EEC of 8 December 1986 or Council Directive 91/674/EEC of 23 December 1991), or

(ii) international financial reporting standards,

(c) the lower holding company discloses in its entity financial statements that it is exempt from the obligation to prepare and deliver group financial statements,

(d) the lower holding company states in its entity financial statements the name of the holding undertaking which draws up the consolidated accounts referred to in paragraph (a) and—

(i) if the holding undertaking is incorporated outside the State, the country in which it is

incorporated, or

(ii) if the holding undertaking is unincorporated, the address of its principal place of business,

and

(e) the lower holding company delivers to the Registrar, within the period allowed for delivering its entity financial statements, copies of—

(i) the holding undertaking's consolidated accounts, and

(ii) the consolidated annual report,

together with the auditors' report on them.

(5) Shares held by directors of the lower holding company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subsection (2)(a) whether the company is a wholly owned subsidiary of another.

(6) For the purposes of paragraph (b) of subsection (2), shares held by a wholly owned subsidiary of the first-mentioned undertaking in that paragraph, or held on behalf of that undertaking or its wholly owned subsidiary, shall be attributed to that undertaking.

(7) Without prejudice to the construction provided in subsection (8) for the expression “consolidated annual report”, references in this section to—

(a) an undertaking established under the laws of an EEA State,

(b) consolidated accounts prepared by such an undertaking, and

(c) other relevant matters in that regard,

shall, in a case where the undertaking is a company registered under this Act or an existing company, be read, respectively, as references to—

(i) the company so registered or the existing company, as the case may be,

(ii) group financial statements prepared by the company, and

(iii) the matters provided by, or referred to in, this Part or any other enactment that correspond to those relevant matters.

(8) In this section—

“consolidated annual report” means the report prepared by management of the group in accordance with the

Seventh Directive and is equivalent to the expression “directors' report” as used in this Part;

“Seventh Directive” means the Seventh Council Directive 83/349/EEC of 13 June 1983.