

Legislative changes to Part 9, Book 2 of the Netherlands Civil Code and related decrees due to implementation of EU Directive



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The legislative changes that caused the financial statement requirements in the Netherlands to be amended took effect in November 2015. These changes are the result of the Fourth and Seventh EC Directives being replaced by a new Accounting Directive, i.e. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. The principal aim of this Directive is to reduce the administrative burden for small businesses. That said, the Directive happens to impose additional requirements on public-interest entities (PIEs).

The legislative changes mainly pertain to Part 9, Book 2 of the Netherlands Civil Code (NCC). In addition, amendments have been made to the Financial Statements Formats Decree (Dutch acronym: Bmj), the Valuation at Current Cost Decree (Dutch acronym: Baw), and the Accounting Policies for Tax Purposes Decree (Dutch acronym: Bfw).

The most eye-catching aspects are the increase in limits and the introduction of the new micro-entities category. But the legislative changes also affect other financial statement aspects, both when it comes to determining an entity's capital and profit and the notes, and in terms of the more formal disclosure requirements. Some changes are merely editorial in nature or follow on from the existing Dutch Accounting Standards (Dutch acronym: RJ). They will not have a material impact on the accounting practice.

Effective date

Although the new provisions will apply to reporting periods starting on or after 1 January 2016, they can already be applied to the financial year 2015. Earlier adoption will be particularly attractive to small entities because of the additional exemptions and simplified regime.

Given the multitude of changes, the question may arise as to whether, in the event of early adoption, literally all new provisions need to be observed or whether a number of specific changes can be selected for early adoption. This question will arise if the new provisions have both an easing and an aggravating effect for an entity. This combination will usually involve an easing effect for small and micro-entities and an aggravating effect in that the filing deadline will be shortened from 13 to 12 months.

The legislature does not explicitly address the question of whether an entity can pick and choose which provisions to adopt early. The Dutch Institute of Chartered Accountants (NBA) holds the view that early adoption should entail application of all changes, including any changes with an aggravating effect.

Earlier (voluntary) adoption will appeal mostly to small entities (fewer disclosure requirements) or to entities that, based on the increased limits and/or the introduction of the micro-regime, have the choice to opt for a lighter regime. The easing effect for other entities is minimal; the effect for them is mostly aggravating here and there.

Increase in limits

Small and medium-sized entities qualify for exemptions where large entities do not. The size of an entity is based on three criteria, i.e.:

- Total assets, based on historical cost
- Revenue
- Average number of employees

Entities are governed by the small and/or medium-sized regime if they, including their group companies based on full consolidation, meet two of the three criteria on two successive reporting dates. The amounts are adjusted occasionally, e.g. for reasons of inflation. The amounts were increased in the context of this legislative change as well. The increase that marks an entity's classification as small or medium-sized is relatively large in particular. This stems from the wish to reduce the administrative burden, so that more entities can make use of the exemption governing small entities. Table 1 shows both the old and increased new amounts (in euros).

Table 1: Increase in limits

	Small		Medium-sized	
	New	Old	New	Old
Revenue	12 million	8.8 million	40 million	35 million
Total assets	6 million	4.4 million	20 million	17.5 million
No. of employees	50	50	250	250

Although the increased amounts apply to reporting periods starting on or after 1 January 2016 in principle, they can also be applied to the financial year 2015. To assess whether, for the financial year 2015, the criteria have been met at two successive reporting dates, the increased amounts can also be applied to the preceding reporting period (i.e. 2014). In other words, an entity that qualified as medium-sized for the financial year 2014 may well, based on the increased amounts, stay below the limit governing medium-sized entities in terms of the figures for 2015 and 2014. This means that it would be able to opt for the small entities regime as early as from the financial year 2015.

PIEs governed by large entities regime

PIEs include listed companies, banks and insurance companies. What is more, other entities can also be decreed by a general order in council to be excluded from some exemptions by virtue of their size or their role in society (Section 398(7)(d), Book 2 NCC). It has been rumoured that there are plans to qualify certain housing associations as PIEs as well.

PIEs are not eligible for the exemptions governing micro-, small and medium-sized entities (Section 398(3) and (7), Book 2 NCC). PIEs can no longer avail themselves of the simplified regime of Section 402, Book 2 NCC either. This section offers the option of significantly condensing the statement of profit or loss in the separate financial statements.

PIEs are also excluded from the exemption for group companies (Section 403, Book 2 NCC), meaning that group companies carrying on a public-interest business (including issuing listed bonds) themselves will always have to file financial statements.

Investment companies within the meaning of Section 401(1), Book 2 NCC do not automatically qualify as PIEs, but they are always required to prepare their financial statements in accordance with the large entities regime (Section 398(3), Book 2 NCC).

Shorter preparation and filing deadlines

At present, the law stipulates that a legal entity is required to publish its financial statements no later than 13 months after the close of the financial year (Section 394(3), Book 2 NCC). This period has been shortened to 12 months. In practice, it is not uncommon for entities to wait to file their financial statements with the Chamber of Commerce until the end of January of the second year after the reporting date. Under the new law, this deadline has been moved up to the month of December of the year following the financial year. As a result, the period for which the Annual General Meeting of Shareholders can grant extension has been reduced by a month. For public and private limited liability companies, the maximum extension will be five months (Sections 101(1) and 210(1), Book 2 NCC). This period will be reduced from five to four months for associations, cooperatives and mutual insurance societies (Sections 49(1), 58(1) and 300(1), Book 2 NCC). The initial period for preparing the financial statements will not change for public and private limited liability companies (five months) and for the other aforementioned legal forms (six months).

Micro-entities

Besides small, medium-sized and large entities, a new category has been created: that of micro-entities. This new category is mainly provided for in a new Section 395a, Book 2 NCC, which has been included in Section 11 of Part 9.

The criteria are the same as those governing the other categories. The relevant amounts are:

- Total assets, based on historical cost: < € 350,000
- Revenue: < € 700,000
- Average number of employees: < 10

At first glance, this mainly seems to concern extremely small businesses. But this category also includes personal holding companies, as well as shell companies that were incorporated at one point, but do not carry on any actual operations. Intermediate holding companies in large groups can also qualify as micro-entities, particularly if they avail themselves of the consolidation exemption of Section 408, Book 2 NCC as Section 395a(2), Book 2 NCC stipulates that the measurement used in applying this exemption is not performed on a consolidated basis. Given that an intermediate holding company usually does not generate its own revenue nor has any staff, it will qualify as a micro-entity. The legislature expects that nearly 95% of all legal entities in the Netherlands governed by Part 9, Book 2 NCC will qualify as micro-entities.

Irrespective of their size, certain entities are excluded from the micro-regime. These are investment companies (as referred to in Section 401, Book 2 NCC), private equity companies¹ and PIEs.

Similar to the increase in the other limits, these criteria can already be applied to the financial year 2015 as well. In other words, if an entity stays below these limits in 2014 and 2015, it can opt to apply the micro-regime to the financial year 2015 right away.

Format of the statement of financial position and statement of profit or loss of a micro-entity

Under Section 395a(4), Book 2 NCC, the statement of financial position can be condensed to the following items:

- Non-current assets
- Current assets
- Equity
- Provisions
- Liabilities

Under non-current assets, any capitalised incorporation costs and costs incurred for the issue of shares are in fact required to be presented as separate items (Section 365(1), Book 2 NCC). Based on the current accounting standards, the items are hardly ever capitalised in practice. Under current assets, any receivables associated with called up capital contributions are required to be presented as separate items.

It is the Financial Statements Formats Decree rather than Part 9 NCC that generally provides for the breakdown of liabilities into current and non-current liabilities. That said, the amended Decree explicitly stipulates that it does not govern micro-entities. In other words, micro-entities are not required to break down liabilities into current and non-current liabilities.

The fact that equity is not broken down begs the question as to whether statutory reserves might be relevant to micro-entities. Apart from the non-application of fair value (but rather the application of current cost), all conceivable circumstances and principles leading to statutory reserves in other regimes are possible here in principle too. Section 395a, Book 2 NCC does offer an explicit exemption from the sections that result in statutory reserves. That is why we believe, for the time being, that micro-entities can also have statutory reserves, although these reserves are not presented in a set of micro-financial statements that provide a minimum of disclosures. In that case, the statutory reserves will have to be kept outside the books, so that the scope for distribution can be determined in the event of planned capital distributions (or purchases of treasury shares)².

Section 395a(5), Book 2 NCC addresses the format of the statement of profit or loss. This section is not particularly clear because of its multiple references to other sections and exceptions. We believe this section requires the following items to be disclosed:

- Revenue
- Other income
- Cost of raw materials and consumables
- Employee benefits expense
- Changes in value
- Other expenses
- Income tax expense
- Profit/(loss)

Professionals have already made various critical comments about this provision earlier. The item 'share of profit/(loss) of associates' seems to be missing, for instance. In addition, the classification of expenses by function that trading companies tend to use (with items such as 'cost of sales', 'selling expenses' and 'general and administrative expenses') seems to have been tacitly ruled out. What is more, small entities are exempt from having to disclose their revenue (Section 396(4), Book 2 NCC). Given that micro-entities are small too, we believe that, despite Section 395a(5), Book 2 NCC, they are never under the obligation to disclose their revenue³.

The filings with the Trade Register of the Chamber of Commerce are limited to the statement of financial position (including any information at the foot of the statement of financial position).

No notes required

Micro-entities are exempt from including notes in their financial statements. That is to say, Section 5 and the disclosure requirements of Section 6 do not apply. Section 2 also contains disclosure requirements, however:

- Section 362(4), Book 2 NCC: if derogated from the statutory provisions;
- Section 362(10), Book 2 NCC: reference to the standards used in preparing the financial statements;
- Section 363(4), Book 2 NCC: if the format of the statement of financial position or statement of profit or loss is different from last year;
- Section 363(5), Book 2 NCC: if the comparative figures have been restated.

Taken literally, the exemption from including notes does not apply to the prepared financial statements. Most of these issues will be rare in practice, however, although reference to the standards used will always be a factor.

In other words, the financial statements are comprised of the statement of financial position and the statement of profit or loss alone. No reference needs to be made to the accounting policies, rationale concerning the entity's ability to continue as a going concern, breakdowns and statements of changes in items. Micro-entities that qualify as public limited liability companies do have to present some information at the foot of the statement of financial position. This presentation form is new to Dutch law. Here, a micro-entity that qualifies a public limited liability company is required to disclose each purchase or sale for its own account of treasury shares and of depositary receipts for such shares, specifying the reasons for the purchase or sale, the number, the nominal amount and the agreed price of shares and depositary receipts involved in each transaction, and the share of the capital they represent (Section 378(3), second sentence, Book 2 NCC).

In other words, the financial statements are comprised mostly of the statement of financial position and the statement of profit or loss alone. The question is whether such a set of financial statements meets the information requirements of the shareholders and any other users. Similar to small entities, additional information can be added on a voluntary basis. Where required, the format of and notes to the financial statements can continue to be based on to the existing practice for small entities. Formally, however, they can be classified as micro-financial statements, so that the disclosure is still limited to the statement of financial position. The only effective change is then that the disclosure is more limited than before.

Accruals not required for other operating expenses

Micro-entities are exempt from recognising accruals for other operating expenses (Section 395(3), Book 2 NCC). This means, for instance, that prepaid insurance costs can be expensed as soon as they are paid. They do not need to be allocated to the relevant period. This exemption is apparently designed to reduce the administrative burden. The question is, however, whether this meets a practical need. The exemption only applies to other operating expenses; interest expense, income tax or revenue are not covered. Moreover, the use of this exemption could result in a departure from the determination of profit for tax purposes, thereby creating additional tax deferrals.

No fair value

If the micro-regime is applied, assets cannot be recognised at fair value (Section 5a Baw)^{4 5}. In practice, recognition at fair value is most common for investments in listed securities and occasionally for property. Given the relatively low limits, most micro-entities will not own property, but entities such as personal holding companies with investments will often qualify as micro-entities too. If an entity wants to avail itself of the exemptions for micro-entities, it can recognise investments at historical cost only (see also the section on accounting policies for tax purposes).

Accounting policies for tax purposes

The Accounting Policies for Tax Purposes Decree (Bfw) does away with the disclosures on the use of reinvestment reserves and discretionary write-downs for tax purposes (Section 3(2) and (3) Bfw). Entities still need to disclose for which items the use of accounting policies for tax purposes leads to a non-standard valuation.

Similar to small entities, micro-entities can also opt to use accounting policies for tax purposes provided that they are applied comprehensively (Section 395a(7), Book 2, NCC). The law then does require disclosure of these items in the notes. This ties in with the provision governing micro-entities that the standards used must be disclosed in the notes (Section 362(10), Book 2 NCC). The more detailed disclosures required by the Bfw (after the changes basically just the items whose valuation qualifies as non-standard) do not apply to micro-entities (Section 3(2) Bfw). Micro-entities do, however, have to present any reinvestment reserves separately within equity (Section 2(1) Bfw).

We would note that it is permitted for tax purposes to recognise listed securities at market value. If an entity insists on recognising these investments at market value in the financial statements, it can only do so in a set of financial statements for tax purposes. This avenue obviously does have tax implications given that it will involve tax being due on unrealised increases in value.

Vertical form of statement of profit or loss only

The Financial Statements Formats Decree dictates the design and format of the statement of financial position and the statement of profit or loss. There is a choice of various formats. There used to be two designs that could be used for the statement of profit or loss:

- the vertical form, presenting revenue followed by costs and resulting in a bottom line;
- the horizontal form, presenting a left column in which expenses are specified and a right column in which income is presented. Earnings are presented in either of the two columns depending on whether the entity has posted a profit (left column) or incurred a loss (right column).

The horizontal form is not very common in practice. Formats G and H have become obsolete with the legislative changes. The difference between the classification of expenses by nature and by function will continue to exist as before.

No extraordinary income and expense

The formats for the statement of profit or loss that were in effect until the introduction of the changes addressed in this document include the item 'extraordinary income and expense', which means that these amounts are excluded from the subtotal of operating profit. Years ago, the Dutch Accounting Standards restricted the use of this item to an extremely small number of cases. With the legislative changes, the item has now been done away with altogether (Section 377, Book 2 NCC and the various formats in Bmj). Other gains and losses that are not extraordinary, but do qualify as special, must be presented separately in accordance with Dutch Accounting Standard 270.404. These would include restructuring costs and substantial claims. The law has now enshrined this practice by referring to gains and losses that are exceptional in size or occur to an exceptional degree (Section 377(8), Book 2 NCC). The law does not provide any further explanation of the designation or classification of this item. It would seem logical to use an appropriate description for that item/those items as it arises/they arise. As a result, this change is not expected to lead to significant changes in the accounting practice.

Goodwill amortisation

Before the legislative changes, the law offered three options for recognising goodwill: capitalisation and amortisation, through profit or loss, or through equity. With the legislative changes, capitalisation and amortisation is the only option that is left (Section 389(7), Book 2 NCC). This ties in with today's practice, in which the other two methods were hardly used anymore.

To amortise goodwill, an amortisation period needs to be determined. Other intangible assets are usually amortised based on their estimated useful life. It tends to be difficult to determine the estimated useful life of goodwill, given that – by its nature – goodwill is a residual item of value elements that cannot be identified separately. The current law dictates that the amortisation period is capped at five years unless the goodwill can be allocated to a considerably longer period. If a longer period is used, the underlying reasons must be disclosed. That is why (?), in practice, goodwill is usually amortised over a five-year period.

The new statutory provision reads differently: In exceptional cases in which the useful life of development costs and goodwill cannot be reliably estimated, these costs are amortised over a period of up to ten years. In such cases, the notes disclose the reasons for the period of goodwill amortisation (Section 386(3), Book 2 NCC).

The fact that the useful life cannot be estimated reliably in exceptional cases only seems to pertain to development costs more than it does to goodwill. We expect that this provision will mostly govern goodwill. The ten-year period runs parallel to the corresponding maximum goodwill amortisation charge for tax purposes of 10%. This will help to prevent variances between the profit for tax purposes and the profit for financial statement purposes. This will apply only, for that matter, to goodwill that will be capitalised in the future.

Where existing goodwill is concerned, a change in amortisation period to ten years would entail a change in accounting estimates with prospective effect only. This would not qualify as a recalculation of the current carrying amount as would be involved in a change in accounting policies.

The legislature does not explain what the phrase at least ten years means exactly. Can an entity freely opt for a shorter period? And can different amortisation periods be chosen for different acquisitions? Typically, it will be impossible to substantiate a shorter period using estimated useful life given that this provision applies exactly in those instances where that useful life cannot be reliably estimated. A choice to amortise goodwill in one year's time would not seem to tie in with the idea no longer to permit recognising goodwill through profit or loss. We expect that, in practice, either the current 'tradition' to amortise goodwill over a five-year period will be continued or that entities will opt for ten years without offering up compelling reasons.

What is remarkable is that, based on the letter of the law, the amortisation period only needs to be motivated if the useful life cannot be reliably estimated. The motivation that a ten-year amortisation period is in line with the amortisation period for tax purposes would in fact seem realistic and acceptable. However, if the useful life were to be reliably estimated at 20 years, no explanation would be required, as it would under the current law.

The EU Directive seems to require an explanation of the useful life of goodwill in all cases. In general, however, the wording of the Dutch law is decisive.

Amortisation of development costs

Until 2005, the law capped the amortisation period of capitalised (research and) development costs at five years. After 2005, this cap was abandoned in favour of estimated useful life. The legislative changes now also address the situation in which this useful life cannot be reliably estimated. In exceptional cases in which the useful life of development costs and goodwill cannot be reliably estimated, these costs are amortised over a period of up to ten years. In such cases, the notes disclose the reasons for the period of amortisation goodwill (Section 386(3), Book 2 NCC).

For more details on this provision, see the section on goodwill amortisation. The useful life of capitalised development costs will probably be easier to reliably estimate, partly because capitalisation of these costs should be supported by expectations of future revenue.

Current cost and inventories

The Valuation at Current Cost Decree (Baw) now only refers to agricultural stocks when addressing inventories. It can be gathered from the Explanatory Memorandum that valuation at current cost is now permitted with respect to agricultural stocks only. All other inventories must be recognised at historical cost⁶. In practice, recognition of inventories at current cost seems to be limited to some entities with inventories of non-agricultural commodities, such as oil and metals. These entities will then be forced to implement a change in accounting policies and switch to historical cost.

Editorial changes

Until now, the Dutch term 'jaarverslag' (annual report) referred to an entity's business review of the reporting period. This term has now been replaced by 'bestuursverslag' (management report) (Section 391, Book 2 NCC). In other laws referring to this document, this term will be replaced accordingly.

The statement of financial position may contain research and development costs. This item concerns costs incurred for innovative projects (R&D). The Dutch Accounting Standards have dictated for years that development costs are capitalised only. Costs incurred for projects that are still in the research phase are directly expensed. The statutory wording has now been changed to 'development costs'.

Owing to the legislative changes, the term 'replacement value' has become obsolete. This has been replaced by the term 'current cost'. The definition seems to have similarities with that of replacement value: current acquisition price and attendant cost of an asset, net of amortisation and depreciation, or current acquisition price of raw materials and consumables and any other costs directly attributable to the manufacture of an asset, net of amortisation and depreciation. These costs may include a reasonable share of the indirect costs and the interest payable on debts in the period attributable to the manufacture of the asset. The rewording of a

definition will inevitably lead to a different effect in certain cases. That said, this mostly seems to be an editorial change for the time being.

In addition, a passage has been added to Section 363(1), Book 2 NCC to the effect that the notes must follow the order of the items. This seems to tie in with the current Dutch practice. The Dutch Accounting Standards have stipulated for some time that the different financial statement items should be correlated to the accompanying notes by referring to the note number. This reference to the note number is 'just' a recommendation.

Various other information moved to notes

The current Section 392, Book 2 NCC requires certain information to be included in the section 'Other information'. This serves as an appendix to the financial statements as it were rather than as part of the notes (Sections 380a to d, Book 2 NCC). Owing to the legislative changes, a number of disclosures have been moved to the notes. These are:

- events after the reporting date (that are not included in the financial statements);
- profit appropriation or proposed profit appropriation; and
- disclosure of the number of profit-sharing certificates and similar titles and a description of the rights they entitle the holders to.

As a result, the information that medium-sized and large entities still need to include in the section 'Other information' entails:

- the independent auditor's report or a statement as to why this report has not been included;
- disclosure of the provisions in the Articles of Association on profit appropriation;
- disclosure of the provisions in the Articles of Association on the contribution towards a deficit by a cooperation or mutual insurance society (...);
- a list of names of persons in whom, under the Articles of Association, a special right concerning control in the legal entity is vested (...);
- disclosure of the number of non-voting shares and the number of shares granting no or only a restricted right to share in the profit or reserves of the entity, specifying the powers they confer; and
- disclosure of the existence of branches (...).

The fact that disclosures have been moved does not seem to have any substantive effects. Where entities subject to a statutory audit are concerned, these disclosures – which are now part of the notes – would be auditable. In practice, however, these disclosures will already have been audited, if only because it needs to be established whether or not events after the reporting date must be disclosed in the financial statements. Small entities are exempt from publishing 'Other information'. By virtue of specific relevant exemptions offered by Section 396(7) and (8), Book 2 NCC, that exemption will effectively continue to be in force with respect to events after the reporting date and profit appropriation.

More exemptions for small entities

Small entities are already exempt from many disclosure requirements and a number have been added as a result of the legislative changes. That said, Section 368(2), Book 2 NCC, which addresses the notes to revaluations on an item-by-item basis, can be seen as an anomaly. Small entities used to be exempt from this requirement, but these disclosures will now become required owing to the legislative changes. Remarkably, medium-sized entities are in fact exempt from this disclosure requirement.

Disclosures on associates

Until now, Section 379, Book 2 NCC has stipulated that, for equity interests of 20% or more and other associates, reference be made to their name and domicile, as well as the percentage shareholding. If these associates are recognised at acquisition price, each of their equity and earnings must be disclosed as well. All these disclosures will be abandoned for small entities. Conversely, legal entities still do need to disclose by which company or companies they are being consolidated (Section 396(5), Book 2 NCC).

Not having to disclose equity interests can be appealing if the market does not know that entities are connected through their shareholders. This advantage will obviously only manifest itself in due course as new relationships develop, given that the current structures are bound to be known as a result of the legislation in force today.

The abandonment of the additional disclosure on measurement at acquisition price of associates may do away with an obstacle in applying accounting policies for tax purposes. For tax purposes, investments in associates are usually recognised at acquisition price. If the financial statements are based on accounting policies for tax purposes, each associate's equity and earnings must also be disclosed separately. Disclosing earnings may be a sensitive issue in particular, given that small entities are exempt from publishing their statement of profit or loss. Their earnings would become public knowledge after all if they were to recognise their associates at acquisition price. This has stirred up a professional debate about whether associates could be recognised at net asset value for tax accounting or using another valuation method permitted under Section 389, Book 2 NCC. After all, only if associates are recognised at net asset value in the tax return can this valuation method also be used in the financial statements for tax purposes. For the time being, the profession has not yet formulated a very firm and unambiguous position on this point. If the share of profit or associates no longer has to be disclosed in the notes, there is no more need to recognise associates at net asset value using accounting policies for tax purposes.

Breakdown of number of employees

Under Section 382, Book 2 NCC, reference must be made to an entity's average number of employees during the reporting period, broken down based on the structure of the organisation. The entity is also expected to disclose the number of employees working outside the Netherlands. Where small entities are concerned, this is limited to disclosure of the average number of employees, i.e. without breaking the number down further (Section 396(5), Book 2 NCC).

Percentage increase or decrease in revenue

Entities that are exempt from having to disclose their revenue have in fact so far been required by law to specify the percentage by which revenue has increased or decreased on the year before. This disclosure requirement has become obsolete as a result of the legislative changes.

Treasury shares

Under the old law, small entities were also required to disclose the number of issued shares and their amount by class, number and amount of shares issued in the reporting period as well as the shares and depositary receipts for those shares they or a subsidiary holds for their own account. This provision will be deleted from Section 396(5), Book 2 NCC.

Other information

Small entities are exempt from the provisions of Section 392, Book 2 NCC governing 'Other information'. A number of elements have been moved to the notes, however. Under the new law, the disclosures remaining for medium-sized and large entities will now effectively also be abandoned for the internal financial statements (see section entitled 'Various other information moved to notes').

Consolidation exemption for small entities

The consolidation exemption for small entities has not been included in Section 396, Book 2 NCC, which covers exemptions for small entities, but is rather addressed in Section 407(2), Book 2 NCC, which does not require consolidation to take place if the group stays within the limits of a small entity. That said, this exemption is currently subject to a qualification: a minority of at least 10% can file an objection to the non-preparation of consolidated financial statements. However, the EU Directive stipulates that this consolidation exemption must be unconditional. Rather than doing away with this qualification altogether, the law now states that the annual general meeting can file a written objection to the use of the consolidation exemption within six months of the start of the financial year (Section 407(2), Book 2 NCC). In other words, if the general meeting chooses not to consolidate in its capacity as a company body, this is a choice of the legal entity itself.

Additional disclosure requirements**Contingencies**

Section 381(1), Book 2 NCC requires disclosures to be made on material financial obligations not included in the statement of financial position to which the legal entity has committed itself for a number of years in the future, for instance under long-term contracts such as tenancy agreements. Now a legal entity is also required to disclose which contingent assets, contingent liabilities and unrecognised obligations it has committed itself to (see Dutch Accounting Standard 252, Provisions, Contingent Assets and Contingent Liabilities). These could include potential liabilities or receivables associated with legal proceedings pending on the reporting date or other-type liabilities for which no provision can be formed because they cannot be reliably estimated. Dutch Accounting Standard 252 already requires such information to be disclosed. This will not entail a material change in practical terms, although it does signify an additional requirement with respect to the financial statements for filing purposes of small entities.

Impairment of loans issued to executive and supervisory directors

In addition to making disclosures on the remuneration of executive and supervisory directors, information must be provided on any loans, advances and guarantees issued to them as well. These disclosures need to include outstanding amounts, the interest rate, key other conditions and repayments made during the reporting period (Section 383(2), Book 2 NCC). This provision has been broadened such that any amounts impaired and forgiven must now be disclosed.

This addition ties in with an existing IFRS provision (IAS 24.18(c) and (d)). Although listed companies are not governed by Section 383, Book 2 NCC, they are in fact subject to IAS 24 and by Section 383e, Book 2 NCC. Both provisions have the same effect, but Section 383e, Book 2 NCC requires this information to be broken down by individual executive or supervisory director. Remarkably, the new impairment provision has only been included in Section 383 and not in Section 383e, Book 2 NCC. Judging from the letter of the law, in other words, listed companies are not required, even after the legislative changes, to break down loan impairment losses by individual executive or supervisory director. That does not seem to match with the spirit of the law, given that executive remuneration as part of corporate governance is mainly a focal point for PIEs.

Fewer disclosures on liabilities

The law demands a breakdown of liabilities by categories, such as borrowings, intercompany loans, pension obligations, etc. At present, the law requires an entity to disclose for each category the amount for which the residual maturity is more than a year, with mention of the applicable interest rate and with separate mention of the amount for which the residual maturity is more than five years. The legislative changes simplify this provision. This information is provided only for the total of these liabilities (Section 375(2), Book 2 NCC).

Similarly, an entity is expected to disclose for the total of the different categories of liabilities (rather than for each category separately) which liabilities have been collateralised and how (Section 375(3), Book 2 NCC). Given that these breakdowns were not required for small entities anyway, this provision will not change the practice for them. What does constitute a reduction in the administrative burden for small entities is that the interest rate governing the liabilities no longer needs to be disclosed.

Auditor and management report

An audit focuses primarily on the financial statements. That said, an auditor will also verify, to the extent that they are able to assess, whether the management report has been prepared in accordance with the provisions of Part 9, Book 2 NCC and is compatible with the financial statements (Section 393(3), Book 2 NCC). The legislative proposal rewords this provision, as follows: an auditor will verify whether, in the light of the knowledge and understanding of the legal entity and its environment they have gained in the course of the audit of the financial statements, the management report contains any material misstatements.

On the one hand this seems to signify that the auditor audits the management report, whereas their verification is based only on the knowledge gained during the audit of the financial statements on

the other. This seems to restrict the audit of the management discussion and analysis. Although this verification does not seem to differ materially from the assessment of the compatibility, the legislature apparently wants the auditor to perform other (more?) procedures in this area. Clarity has not been provided on this issue at this point.

The Dutch Institute of Chartered Accountants NBA issued an exposure draft by the name of 'De accountant en het bestuursverslag' (The auditor and the management report) in November 2015; responses were invited until 10 January 2016. However, the NBA decided to abstain from publishing additional guidance.

- 1 *Undertakings the sole object of which is to acquire holdings in other undertakings and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, without prejudice to their rights as shareholders (Article 2(15) Directive 2013/34/EU).*
- 2 *This situation is somewhat comparable to that involving revenue generated by small entities: although it is not disclosed in the financial statements, it does need to be known, for instance in order to determine the size of the legal entity.*
- 3 *Section 396(1), Book 2 NCC literally reads <translated> "Without prejudice to Section 395a, subsections 3 to 9 apply (...)", which would imply that micro-entities are not permitted to use a short-form statement of profit or loss as small entities do. We do not believe that this was the intended effect; in our view, this provision is only meant to say that a micro-entity also qualifies as a small entity.*
- 4 *The reason being that the use of fair value would require additional disclosures, whereas micro-entities do not disclose notes in general.*
- 5 *The law does seem to leave scope for recognising certain assets at current cost.*
- 6 *The fact that Section 390(1), Book 2 NCC concerning the revaluation reserve still refers to non-agricultural stocks appears to be an omission in the legislative changes.*

More information

For more information, please contact your adviser at BDO Accountants & Belastingadviseurs.

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