

# LEGAL AND TAX MEMO

## Netherlands legal alert April 2016 (Annual Accounts)

March 29, 2016

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### Legal Alert

#### The implementation of European Directive 2013/34/EU concerning the introduction of the so-called 'micro-company'.

#### 1. INTRODUCTION

As of 1 November, 2015 the 'Implementation Act Directive Annual Accounts' (*Uitvoeringswet Richtlijn Jaarrekening*) came into force, implementing Directive 2013/34/EU concerning the annual accounts, consolidated financial accounts and related reports of certain forms of legal entities.

The most important amendment is the introduction of a new legal entity, the so-called 'micro-company'. This micro-company entails a completely new article, namely article 2:395a of the Dutch Civil Code (DCC), which introduces a simplification of the set of rules concerning the annual accounts. The new rules shall apply mandatorily to the annual accounts drawn up over the financial year of 2016, and can be voluntarily applied to annual accounts regarding the financial year 2015.

This legal update sheds a light on the most significant changes implemented by the Implementation Act.

#### 2. CHANGES RELATED TO THE DRAWING UP AND FILING

The drawing up and filing of annual accounts is subject to certain rules, in order to ensure transparency of companies' financial information. There are different time limits for the board of directors to draw up the annual accounts and deposit these at the office of the legal entity, and for the filing with the Chamber of Commerce, as will be explained in the following paragraphs. The drawing up is subject to legally set time limits, whereas the initial time limits remain unchanged after the Implementation Act, but the period of maximum extension (in special circumstances) has been shortened.

- Concerning the Dutch public company (*naamloze vennootschap*) and the Dutch limited company (*besloten vennootschap*): within five months after the end of the financial year, subject to an extension of this period by a maximum of five months by the General Meeting on the grounds of special circumstances, the board of directors must draw up the annual accounts and deposit these for inspection at the office of the company. The period of maximum extension has been altered as it used to be six months.
- Concerning associations, cooperations and mutual insurance associations: within six months after the end of the financial year, subject to an extension of this period by a maximum of four months by the General Meeting on the grounds of special circumstances, the board of directors must draw up the annual accounts and deposit these for inspection at the office of the association, cooperation or mutual insurance association. The period of maximum extension has been altered as it used to be five months.

- Concerning foundations: within six months after the end of the financial year, subject to an extension of this period by a maximum of four months by the supervisory body on the grounds of special circumstances, the board of directors must draw up the annual accounts and deposit these for inspection at the office of the foundation. The period of maximum extension has been altered as it used to be five months.

The foregoing time schedules relate to the drawing up of the accounts, however the obligation to file the accounts at the Chamber of Commerce, and especially the time legally permitted to do so, is also affected by the shortened periods of maximum extension. The filing shall take place within two months after the draw up of the accounts, resulting in a maximum of twelve months of the end of the financial year, which used to be thirteen.

### **3. NEW IMPLEMENTED ARTICLES IN THE DCC**

Articles are inserted in the 9<sup>th</sup> Title of the DCC, consisting of rules concerning the explanatory notes to the account of profits and losses. Briefly, the articles state that events giving rise to important financial consequences have to be noted, under the announcement of the scope of the consequences. Also, the name of the legal entity, the legal form, the seat and the number of the legal entity under which it is registered at the Chamber of Commerce have to be noted. Furthermore, the legal entity will note the purpose of the profits or losses, or as long as that is still unclear, the proposal thereto. Lastly, the legal entity will note the number of profit-sharing certificates and similar rights, with record of the powers they entail.

- A new feature codified is that, besides the notation of the legal entity's future important financial obligations, also the notation of conditional assets, conditional obligations and non-processed obligations is mandatory.

- Also, it is new that the board will include in the annual accounts a statement containing the number of non-voting shares and the number of shares that have limited profit rights or have no profit rights at all, with an indication of the powers they entail.

### **4. SIZE-RELATED EXEMPTIONS**

The rules applicable to annual accounts are related to the size of the company; the larger the company, the more information the company needs to disclose. Before the Implementation Act came into force, companies were divided into three categories: small, medium and large. After the Implementation Act, a new category is introduced: the micro company. By introducing this category and by increasing the minimal amounts for the small and medium companies, companies will less quickly be subject to extended publication obligations.

- Article 396 of the DCC governs the rules on the small companies, and now article 395a of the DCC introduces the rules governing the micro-companies. In order to qualify as such, at least two of the following three conditions have to be met: the total asset worth according to the balance sheet amounts no more than 350.000 euros, the net turnover over the financial year amounts no more than 700.000 euros and/or the average number of employees over the financial year is less than 10. If a company meets two out of three conditions, the rules regarding the annual accounts are way less strict than those applicable to small companies; a very concise balance sheet and income statement will be sufficient.

- Also, the conditions for small companies have been altered: the total asset worth according to the balance sheet amounts no more than 6.000.000 euros, the net turnover amounts no more than 12.000.000 euros and/or the average number of employees over the financial year is less than 50. In order to ensure

that there is no overlap between the micro company and the small company, the scope of article 396 has been widened by increasing the maximum amounts.

- Last but not least, the rules on medium companies have been subject to alteration as well: the total asset worth according to the balance sheet amounts no more than 20.000.000 euros, the net turnover over the financial year amounts no more than 40.000.000 and/or the average number of employees over the financial year is less than 250.

The exemptions based on the above mentioned conditions do not apply to legal entities that, as an organization of common interest, own securities that have been permitted to trading on a regulated market or are credit institutions, insurance companies or which have been appointed by order in council as a consequence of their size or function in society.

## **5. SUMMARY**

The rules concerning the drawing up and filing of annual accounts has been changed. Another significant change concerns the size of small and medium businesses. The minimal amounts to qualify for these categories have been altered. Finally there is the addition of a new category: the micro-company. These micro-companies only need to draw up a concise annual account.

## **QUESTIONS OR FURTHER INFORMATION**

If you have any questions or appreciate receiving more information on this Legal alert, please contact your regular contact at WLP-Law or any of the undersigned:

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April 2016

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