

# Significant amendments in annual reporting

The Dutch legislation pertaining to accounting law (Title 9, Book 2 of the Dutch Civil Code) has been amended. The amendments have significant consequences for annual reporting of Dutch companies. It is therefore important for directors, controllers and all parties who prepare annual accounts of a company to be aware of the amendments. In this publication we inform you of the most significant amendments. The new provisions apply to the financial years starting on or after January 1st, 2016.

## 1 Term for preparation and publication

The maximum term for preparation, adoption and filing of the annual accounts has been reduced by one month. From now on, preparation of the annual accounts must be completed no later than ten months after the end of the financial year. The ultimate term for filing of the annual accounts with the Trade Register has also been reduced by one month. Therefore, the annual accounts must now be filed no later than on December 31st of the year  $t+1$ , if the financial year ( $t$ ) coincides with a calendar year.

If all shareholders are also directors, the signature of all directors on the annual accounts shall also serve to adopt the annual accounts. This means that due to the reduction of the term, the annual accounts must be filed in the Trade Register no later than on November 8th of the year  $t+1$  (previously on December 8th), if the financial year ( $t$ ) coincides with the calendar year.

### Attention:

In planning the work activities to prepare the annual accounts 2016 in 2017, bear in mind

that there is a reduced term for preparation (October 31st, 2017), in order to avoid running out of time.

## 2 Amendments in size criteria

Companies that come within the scope of Title 9, Book 2 of the Dutch Civil Code, are distinguished according to different size categories. Depending on the size of the company there will be more or less reporting requirements. The smaller the size of the company, the greater the exemptions and simplifications. In the amended Title 9, Book 2 of the Dutch Civil Code, the threshold amounts for small and medium-sized companies have been increased, as a result of which a company is sooner considered to be a small or medium-sized company. Also, a new category of micro companies has been added. This last category will be addressed in further detail in paragraph 3.

The new threshold amounts have been included in table 1:

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Table 1: New threshold amounts

|                             | Micro       | Small          | Medium-sized   |
|-----------------------------|-------------|----------------|----------------|
| Balance sheet total         | ≤ € 350,000 | ≤ € 6,000,000  | ≤ € 20,000,000 |
| Net turnover                | ≤ € 700,000 | ≤ € 12,000,000 | ≤ € 40,000,000 |
| Average number of employees | < 10        | < 50           | < 250          |

The size of the company is determined on a consolidated basis, also when the company is exempted from preparing consolidated annual accounts. If the company complies with two or three of the three criteria on two consecutive balance sheet dates, the company will qualify for the category in question.

On the establishment of a new company, its size will be determined on the balance sheet date of the first financial year. For example, if the company is medium-sized as per the first balance sheet date, the regime 'medium-sized' will apply to the first annual accounts.

Attention:

Since the new threshold amounts are considerably higher than the old threshold amounts, it is recommended to investigate if your company is still within the same size category. If you have multiple companies, this will apply for both the parent company and the participating interests. It is possible that due to the designation in a different size category, one or more of your companies may be entitled to more exemptions.

### 3 New category micro companies

A new category of micro companies has been introduced in Title 9, Book 2 of the Dutch Civil Code.

A company is considered a micro company if it complies with two or three of the following three criteria during two consecutive balance sheet dates:

- The value of the assets on a historical cost basis is no more than € 350,000;
- The net turnover is no more than € 700,000;
- The average number of employees during the financial year consists of fewer than ten employees.

In order to determine whether a company qualifies as a micro company, the criteria will be applied on a consolidated basis. This means that the value of the assets, the net turnover and the average number of employees for the financial year of the group companies that the company would consolidate if it were to prepare consolidated annual accounts must be included.

Micro companies form part of the category of small companies. The exemptions for small companies therefore also apply for micro companies.

The main simplifications and exemptions that apply specifically to micro companies have been included in table 2.

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Table 2: Main simplifications and exemptions for micro companies.

| Topic                                  | New requirements   |
|--|--|
| Balance sheet                          | The balance sheet in any case includes the items fixed assets, current assets, shareholder's equity, provisions and liabilities.   |
| Profit and loss account                | The profit and loss account in any case consists of the items net turnover, other operating income, salaries, cost of raw materials and consumables, depreciations and impairments, other operating costs, taxes and result after taxes.   |
| Notes to the financial statements      | The micro company is exempted from including notes to the financial statements. Among other things, this means that no accounting policies will be included.   |
| Fair value                             | On application of the accounting principle current cost, the micro company may not value at fair value. As such, financial instruments, investment properties and securities may not be included in the balance sheet at fair value. When the micro company wishes to use fair value as yet, it will be required to apply the regime for the 'small company'.<br><br><u>Attention:</u> in the application of the accounting principle historical cost, a decrease in value to a lower fair value may be at issue. This lower fair value on application of the accounting principle historical cost does not qualify as a valuation against fair value. |
| Accrued income and liabilities         | The micro company is not required to include accrued income and liabilities pertaining to other operational costs (for example: rent) in its annual accounts.  |
| Own shares                             | A public limited company (N.V.) must include (at the bottom of the balance sheet) information about the acquisition and disposal of own shares.  |
| Filing and publication annual accounts | The micro company will be required to file only the balance sheet with the Trade Register.   |
| Tax principles                         | In applying the tax principles, the micro company will be required to mention below the balance sheet that it has prepared the annual accounts based on tax principles.  |

## 4 Amendments specifically for small companies

The existing provisions for small companies are maintained:

- exemption from preparing a directors' report;
- exemption from audit;
- preparation of a short-form balance sheet, profit and loss statement with notes to the financial statements;

- publication of a short-form balance sheet and notes to the financial statements;
- exemption from obligation to consolidate;
- granting the application of tax principles in the annual accounts.

Far-reaching simplifications have been implemented for small companies in Title 9, Book 2 of the Dutch Civil Code. The old and new provisions have been included in table 3:

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Table 3: Amendments pertaining to small companies.

| Topic   | What are the old provisions?  | What are the new provisions?   |
|---|---|--|
| Issued capital  | The company must state the quantity and the value of the issued shares in the notes to the financial statements.  | This provision has been removed.   |
| Issued capital in foreign currency                      | If the shares are issued in foreign currency, the company must state the conversion rate and the amount in foreign currency in the notes to the financial statements.   | This provision has been removed.   |
| List of capital interests                               | The company must state the name, the place of business, the procured portion of the issued capital, and, subject to conditions, the equity capital and the result from participating interests in the notes to the financial statements. The company must also state the name and place of business of the group head in the notes to the financial statements. | The company must only state the name and place of business of the first consolidating parent company in the notes to the financial statements.   |
| Interest rate on debts                                  | The company states the interest rate on debts in the notes to the financial statements.   | This provision has been removed.   |
| Proportional figure net turnover                        | The company states the proportional figure <i>to what extent the net turnover has increased or decreased compared to the previous year</i> in the notes to the financial statements.  | This provision has been removed.   |
| Employees   | The company states the average number of employees employed by the company during the financial year, classified in a manner that is in line with the structure of the company, in the notes to the financial statements. The company also reports on the number of staff employed outside the Netherlands.   | The information to be included about employees is restricted to the average number of employees employed during the financial year (segmentation is no longer required).   |
| Other information and notes to the financial statements | The small company includes other information in the annual accounts, however not in the annual accounts for filing purposes.  | The small company is exempted from including other information regarding both the annual accounts and the annual accounts for filing purposes.<br><br>The small company must state in the notes to the financial statements, the events following the balance sheet date with significant financial implications for the company. This concerns events not processed in the balance sheet or profit and loss account.<br>This information does not need to be included in the annual accounts for filing purposes. |
| Revaluations  | None  | The small company must state the sum of the revaluations of each of the items of the fixed assets (immaterial fixed assets, material fixed assets and financial fixed assets) that pertain to the assets present on the balance sheet date.  |

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## 5 Amendments pertaining to the accounting policies

Table 4 contains the amendments in Title 9, Book 2 of the Dutch Civil Code pertaining to the recognition and measurement. These amendments apply to all companies, regardless of their size.

Table 4: Amendments in recognition and measurement.

| Topic                                   | What are the old provisions?  | What are the new provisions?   |
|---|---|--|
| Recognition and measurement of goodwill | Goodwill obtained from third parties may be processed in three ways: <ul style="list-style-type: none"> <li>– capitalisation and depreciation of the expected useful life;</li> <li>– charged to the equity capital in one go;</li> <li>– charged to the result in one go.</li> </ul> | Goodwill obtained from third parties must be capitalised and depreciated for the expected useful life. It is no longer permitted to charge goodwill to the equity capital or the result in one go.             |
|   | Capitalised goodwill is depreciated for the expected useful life. The term of depreciation may be more than five years, however only if the goodwill may be apportioned to a substantially longer period.   | Capitalised goodwill is depreciated for the expected useful life. If, in an exceptional case, the use of goodwill may be determined as unreliable, the goodwill will be depreciated in no more than ten years. |
|   | If the period of depreciation of goodwill is more than five years, the company must state the reason for this in the notes to the financial statements.   | If the term of depreciation cannot be estimated in a reliable manner, the company must state the reason for the chosen term of depreciation in the notes to the financial statements.                          |
|   | An impairment of goodwill may be reversed.  | An impairment of goodwill may no longer be reversed.   |

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| Topic   | What are the old provisions?  | What are the new provisions?   |
|---|---|--|
| Current value (im)material fixed assets not being investment property | <p>In applying the current value, material and immaterial fixed assets, not being investment property, are valued at replacement cost or lower value in use.</p> <p>The replacement value is the amount that would be necessary to – instead of the asset - acquire or create another asset, which for business operations has similar meaning from an economic point of view, subject to deduction of depreciations.</p> <p>The company must explain in the notes to the financial statements how the replacement value has been determined.</p> | <p>In applying the current value, replacement value is no longer a permitted valuation principle. From now on, material and immaterial current assets, not being investment property, must be valued against the current cost.</p> <p>The current cost is the price against which the asset in question could be purchased or created on the balance sheet date, including the additional costs, subject to deduction of depreciations.</p> <p>The company must explain in the notes to the financial statements how the current cost has been determined.</p> |
|   | <p>If the company has resolved to sell a(n) (im)material fixed asset, the company will value the asset in question against net realizable value.</p>  | <p>If the net realizable value of (im)material fixed assets is lower than the current cost, the company will value the assets in question against the lower realizable value. The realizable value is the highest of the value in use and the net realizable value.</p>  |
| Current value inventories not being agricultural assets               | In applying the current value, inventories will be valued against replacement value.  | Inventories is valued against cost. The valuation principle current value no longer applies for inventories.   |
| Current value agricultural assets                                     | In applying the current value, agricultural assets will be valued against net realizable value.   | The valuation of agricultural assets has not changed.  |

## 6 Amendments pertaining to the presentation and the notes to the financial statements

Table 5 contains the amendments in Title 9, Book 2 of the Dutch Civil Code pertaining to the presentation and the notes to the financial statements. The new provisions pertain to small, medium-

sized and large companies, unless otherwise stated. Since micro companies are not required to include notes to the financial statements in their annual accounts, these provisions do not apply to micro companies.

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Table 5: Amendments pertaining to presentation and the notes to the financial statements

| Topic  | What are the old provisions?   | What are the new provisions?  |
|--|--|---|
| General information                                  | None   | The company must include the following general information in the notes to the financial statements: <ul style="list-style-type: none"> <li>– name of the company;</li> <li>– legal form of the company;</li> <li>– legal seat of the company;</li> <li>– the registration number of the company in the Trade Register.</li> </ul>  |
| Sequence in notes to the financial statements        | None   | The notes to the financial statements must follow the sequence of the items in the balance sheet and profit and loss account.   |
| Notes on remaining term debts                        | For each type of debt as referred to in Book 2, Section 375 sub 1 of the Dutch Civil Code it must be specified: <ul style="list-style-type: none"> <li>– up to which amount the term exceeds one year;</li> <li>– up to which amount the term exceeds five years;</li> <li>– the interest rate.</li> </ul>   | For each type of debt as referred to in Book 2, Section 375 sub 1 of the Dutch Civil Code it must be specified: <ul style="list-style-type: none"> <li>– up to which amount the term exceeds one year;</li> <li>– the interest rate.</li> </ul> Under the new Title 9, Book 2 of the Dutch Civil Code, the amount of the debts with a term in excess of five years may be specified on an overall level of the debts.<br><br>PS: Small and micro companies are not required to specify the interest rate. |
| Notes on guarantees granted                          | For each type of debt as referred to in Book 2, Section 375 sub 1 of the Dutch Civil Code, the guarantees granted must be specified.   | It is no longer required to specify the granted collateral securities per type of debt. Specifying the securities granted on the overall level of the debts will suffice.   |
| Loans to directors and supervisory directors         | With regard to loans granted to directors and supervisory directors the company must specify in the notes to the financial statements: <ul style="list-style-type: none"> <li>– the amounts outstanding;</li> <li>– the interest rate;</li> <li>– the most important other provisions;</li> <li>– the repayments during the financial year.</li> </ul> | Under the new Title 9, Book 2 of the Dutch Civil Code, the company must additionally specify: <ul style="list-style-type: none"> <li>– the amounts impaired and</li> <li>– the amounts waived.</li> </ul>   |
| Extraordinary and exceptional income and expenditure | The models for the profit and loss statements contain the items extraordinary income and expenditure and taxes on extraordinary income and expenditure.  | It is no longer permitted to include extraordinary income and expenditure in the annual accounts. The models for the profit and loss account have been amended accordingly.   |
|  | None   | The company must specify the amount and the nature of the items that are of exceptional size or that appear to an exceptional extent in the notes to the financial statements.  |
| Models of profit and loss statement                  | The profit and loss account may be presented in a horizontal and a vertical layout.  | The models G and H of the profit and loss account with a horizontal layout in which the expenditure becomes debit and the income becomes credit, have been removed.   |

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| Topic  | What are the old provisions?   | What are the new provisions?  |
|--|--|---|
| Specifying contingent assets and obligations                   | None   | <p>The new Title 9, Book 2 of the Dutch Civil Code requires the company to specify in the notes to the financial statements:</p> <ul style="list-style-type: none"> <li>- contingent assets (for example claim against a third party submitted by the company itself);</li> <li>- conditional obligations (for example a commitment to customers that they will receive a fixed amount subject to the condition that the customers purchase a certain net turnover);</li> <li>- unrecognised obligations (for example a claim submitted against the company by a third party, of which the commitment is highly unlikely).</li> </ul> <p>These statements concern assets and obligations not yet included in the balance sheet. If assets and obligations have already been recognised in the balance sheet, this provision does not apply.</p> |
| From other information to thenotes to the financial statements | <p>The other information includes:</p> <ol style="list-style-type: none"> <li>a. the events not included in the balance sheet or profit and loss statement after the balance sheet date with key financial consequences for the company and its consolidated companies, specifying the extent of these consequences;</li> <li>b. specification of the profit appropriation or the treatment of the loss or, as long as this has not yet been determined, the proposal to that effect;</li> <li>c. The specification of the number of profit sharing certificates and similar rights, specifying the authorisations they convey;</li> <li>d. the regulation under the articles of association pertaining to profit appropriation;</li> <li>e. the regulation under the articles of association pertaining to the contribution to a shortage of a cooperation or mutual insurance association, in so far as this deviates from the legal provisions;</li> <li>f. the list of names of those to whom a special right under the articles of association pertaining to control over the company accrues, with a description of the nature of that right;</li> <li>g. specification of the number of shares with no voting rights and the number of shares with no right, or merely a limited right to sharing in the profit or reserves of the company, specifying the authorisations they convey;</li> <li>h. specification of the existence of branche establishments, the countries where these are located and their trade name if this deviates from the name of the company.</li> </ol> | <p>The company no longer includes the information under a. up to and including c. in the other information, but in the notes to the financial statements.</p> <p>The company includes the information under d. up to and including h. in the other information.</p> <p>PS. Small companies only specify the information included under a. in the notes to the financial statements. Small companies do not include other information.</p>   |

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Under the new Title 9, Book 2 of the Dutch Civil Code medium-sized companies are unconditionally exempted from specifying auditor's fees in the notes to the financial statements. Previously, medium-sized companies were exempted from including this information in the notes to the financial statements, however, subject to the provision that the information in question was submitted to the Netherlands Authority for the Financial Markets. That conditions have now been removed.

## **7 Other amendments: director's report**

In the new Title 9, Book 2 of the Dutch Civil Code it is included that the auditor must verify if the director's report, given the knowledge and understanding regarding the company and its environment acquired during the audit of the annual accounts, contains material errors. If the director's report contains material errors, the auditor must report on the nature of the errors in the auditor's report.

Please contact your advisor/consultant at Baker Tilly Berk, should you have any questions.

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