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Could Non-Filing Structures Become a Thing of the Past?

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During the Celtic Tiger, some companies used non-filing structures because financial statements could reveal too much information on how profits were being generated and/or divulged sensitive market information to competitors. In recent recessionary times, companies also find it useful to avail of this non-filing structure to avoid divulging the extent of their losses.

Certain unlimited liability companies can avoid the annual requirement to file their accounts in the Companies Registration Office ("CRO") if *at least one member of the unlimited company is either an individual or an unlimited company which is not incorporated in the EEA*. However, this facility could be at risk as a result of a new EU Directive.

The New Directive

Directive 2013/34/EU seeks to create a single directive on the form and content of financial statements and will repeal the existing directive (Directive 90/605/EEC) and most likely remove this reporting exemption.

One of the stated aims of the new Directive is to "*ensure that it is not possible for an undertaking to exclude itself from the scope [of filing requirements] by creating a group structure containing multiple layers of undertakings inside or outside the Union*".

Unlimited companies are listed amongst the types of entities that fall within the scope of this Directive. Use of the non-filing structure was not limited to particular industry sectors, a wide spectrum of companies and many familiar business empires have availed of the filing exemption by implementing the required non-filing structure.

Attention - Action Required

This new directive is due to be implemented by Ireland in July, 2015. There is a significant risk that current non-filing structures will no longer be effective as a result of this new directive. Companies will need to examine their non-filing structures once the regulations implementing the new directive into Irish law are published and analyse what, if any, implications the new directive will have for their non-filing structures.

A typical non-filing structure

A typical non-filing structure is one where an Irish company would have two members; an unlimited company incorporated outside the EEA, for example, in the Isle of Man or Bermuda and a separate limited liability company, often from the same jurisdiction. This limited liability company would act as a "liability blocker" in the structure so that the ultimate shareholder of the parent was protected from the unlimited liability.

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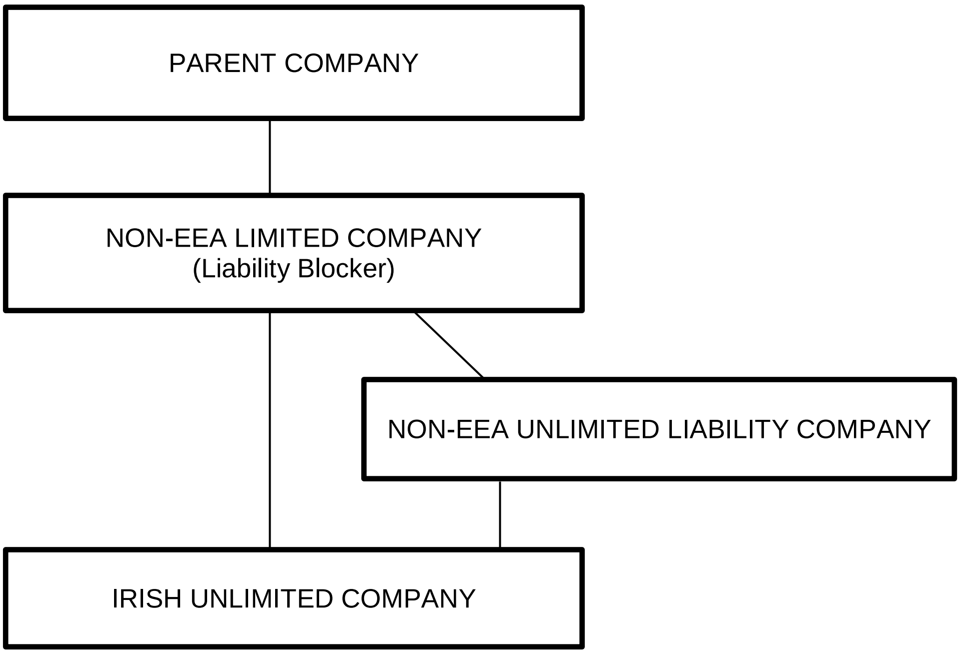

Audit Obligations

It is very important to remember that while this corporate structure allows the Irish company to avoid having to file its financial statements in the CRO, it does not avoid the obligation to have audited financial statements conducted or the requirement to make an annual return to the CRO.

This new Directive does not have any implications for tax to be paid in Ireland or elsewhere nor should it be confused with the recent coverage of the closure of the double Irish structure.

For further information on this topic please contact: Deborah Kelly, Partner, Corporate, E dkelly@efc.ie

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