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Mr Ciarán McLoughlin
Company Law
Department of Jobs, Enterprise and Innovation
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16 September 2016

Dear Ciarán

Consultation on the exemption in section 279 of the Companies Act 2014 regarding the use of US GAAP

Chartered Accountants Ireland ('the Institute') welcomes the opportunity to contribute to the abovementioned consultation process by the Department of Jobs, Enterprise and Innovation ('DJEI').

The Companies (Miscellaneous Provisions) Act 2009 originally introduced this exemption into Irish company law. It was designed as a temporary relief to certain international companies incorporating in Ireland, with a listing on the NYSE and/or the NASDAQ, from having to prepare Companies Act (Irish GAAP) or IFRS financial statements under Irish law, whilst also being required to prepare US GAAP financial statements by virtue of their NYSE/NASDAQ listing. Availing of the exemption is conditional on the company ensuring that the US GAAP financial statements do not contravene the accounting requirements of Irish company law.

The exemption was originally granted in the context of:

- The IFRS/US GAAP convergence project which was being undertaken at the time by the International Accounting Standards Board ('IASB') and the Financial Accounting Standards Board ('FASB') in the US; and
- The expectation that the US Securities and Exchange Commission ('US SEC') would permit domestic US filers to prepare financial statements in accordance with IFRS.

The exemption provided for a time period for companies to transition from US GAAP to (most likely) IFRS, by which time that transition was not expected to be unduly costly given that IFRS and US GAAP were expected to be converged on key financial reporting issues such as accounting for financial instruments, revenue and leases.

The exemption was amended, including extending the time period in which the exemption is available to financial years ending not later than 31 December 2020, by the Companies (Amendment) Act 2012. This amended exemption was then included in section 279 of the Companies Act 2014 ('the section 279 exemption'). By the time of the 2012 extension, the IFRS/US GAAP convergence project had stalled and

the US SEC had deferred indefinitely any decision to permit the use of IFRS by domestic US filers. This remains the situation in 2016 and it seems unlikely that further progress will be made on either issue in the foreseeable future.

The Institute was supportive of the introduction of the original exemption and also of the 2012 extension. From a financial reporting perspective, there are a number of significant factors to consider, including that:

- US GAAP is an internationally recognised, high quality body of financial reporting requirements which has been deemed to be equivalent to IFRS by the European Commission under EU's *IFRS Equivalence Mechanism*; and
- The users of the financial statements of these companies (e.g. shareholders and potential shareholders, financial analysts and investor groups) are predominantly US based and are likely to expect to receive US GAAP based financial statements.

We consider that, particularly given the remaining differences that exist between IFRS and US GAAP, a requirement to prepare financial statements under both IFRS, for Irish company law purposes, and US GAAP, for US filing purposes, would result in the imposition of undue costs on these companies without creating particularly significant benefits for users of financial statements.

The Institute has met and discussed the exemption previously with the Coalition of Irish International Companies ('CIIC'), representing major international companies currently availing of the section 279 exemption. We acknowledge the economic arguments the CIIC makes in terms of the importance of supporting business, job creation and maintaining competitiveness.

On the basis of the above points, the Institute would support the continuance of this exemption beyond 2020. As regards the second consultation question posed by DJEI, the Institute considers that the rationale for a specific timeframe for the exemption, as existed in 2009 and to a certain extent also in 2012, has changed. DJEI may wish to consider, in extending the availability of the section 279 exemption, the introduction of a periodic review of the continuing imperative for the exemption, rather than a specific 'back-stop' date.

Please feel free to contact me at mark.kenny@charteredaccountants.ie or on 01-6377344 if you wish to further discuss the points raised above.

Yours sincerely



Mark Kenny
Director, Representation and Technical Policy