

Availing of the Audit Exemption

CPA Guidance

AVAILING OF THE AUDIT EXEMPTION

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AVAILING OF THE AUDIT EXEMPTION

Introduction

The Companies (Amendment) (No.2) Act 1999 introduced the concept of the audit exemption for companies. This was later amended by the Companies (Auditing and Accounting) Act 2003 and subsequently amended following enactment of Section 9, Investments Funds, Companies and Miscellaneous Provisions Act 2006.

The full text of the relevant legislation can be read on the CPA website at www.cpaireland.ie

Conditions

The 2006 Act became effective for accounting periods commencing on or after 24th December 2006. The revised conditions also apply to financial years which commenced prior to 24 December 2006 and ending on or after 24 February 2007.

The Act sets down a number of conditions that a company must fulfil before the exemption can be availed of. **All conditions must be met (for the year and the preceeding year).**

The conditions are as follows;

1. The company is a company to which the Companies (Amendment) Act 1986 applies (a company limited by guarantee may not avail of the exemption).
2. The amount of the turnover of the company does not exceed €7,300,000 per annum.
3. The balance sheet total of the company does not exceed €3,650,000.
4. The average number of persons employed by the company does not exceed 50.
5. The company is not a bank or insurance company.
6. The company is not part of a group of companies.
7. The company is up to date with its filing requirements.
8. The company is not one of the following:-
 - A stock broking company
 - An investment business company

- A company that is engaged in the business of accepting deposits or other repayable funds or granting credit for its own account
- A company that is an associated body of a building society within the meaning of the Building Societies Act 1989
- A company that is an associated enterprise of a credit institution within the meaning of the European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 396 of 1992)
- An investment company within the meaning of Part XIII of the Companies Act, 1990
- A company that is a management company or trustee within the meaning of Part XIII of the Companies Act, 1990
- A company that is an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989)
- A company that is a management company or trustee of an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989)
- A company that is a management company within the meaning of the Unit Trust Act, 1990.
- A company that is a general partner or custodian of an investment limited partnership within the meaning of the Investment Limited Partnerships Act, 1994.
- A company that is an undertaking with close links with a financial undertaking within the meaning of the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations, 1996 (S. I. No. 267 of 1996)
- Any other company, the carrying on of a business by which is required by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.
- An insurance company
- An insurance intermediary company
- A company that is an accepted body within the meaning of the Trade Union Acts, 1871 to 1990.

Deciding to avail of the audit exemption

Once the directors are satisfied that the company meets all criteria then they may move ahead to avail of the exemption.

The decision to avail of the exemption must be recorded in the minutes of the directors.

The directors should ensure that the company is not required by its Memorandum and Articles of Association to have an annual audit. The directors should also consider whether any third party reporting requirements exist which require them to have an audit.

Appendix 1 contains sample wording for the minutes of the directors' meeting.

Members right to block the exemption

Section 33 of the Act allows members who hold ten per cent or more of the total voting rights to block the decision to avail of the exemption.

A notice by these members to block the decision to avail of the audit exemption must be served in writing on the company in the year preceding the financial year concerned or during the financial year to which the notice relates, but not later than one month before the end of that year.

Termination of appointment of the auditor

Once the directors have made the decision to avail of the audit exemption they must terminate the appointment of the auditor.

They must serve a notice on the auditor outlining their decision and the termination of their appointment.

Within a period of 21 days beginning on the date of being notified, the auditor must serve a notice on the company containing a statement stating whether or not any circumstances exist that should be brought to the attention of the creditors or shareholders.

As soon as this notice is served on the company the auditor must write within 14 days to the CRO together with a copy of the notice.

Examples of these letters can be found in Appendix 2.

If there are circumstances, in connection with the termination of the auditors' appointment, which should be brought to the attention of the shareholders or creditors, then the company must send, within 14 days, a copy of the notice to every person who is entitled to receive the accounts of the company.

Annual Accounts

For audit exempt companies, annual accounts must still be prepared in accordance with the Companies Acts 1963 – 2006 and accounting standards.

A statement must be included at the bottom of the company's balance sheet which reads as follows:-

The company is availing itself of the exemption provided for by Part III of the Companies (Amendment) (No. 2) Act, 1999 on the grounds that it complies with the requirements of section 32 of that Act. The directors confirm that they have not received a notice requesting an audit in accordance with section 33(1) of the Act. As set out on page X, the

directors acknowledge the obligations of the company to keep proper books of account, prepare financial statements which give a true and fair view and otherwise comply with the provisions of the Companies Acts 1963 – 2006 and all Regulations to be construed as one with those Acts.

A statement of the directors' responsibilities must be included in the financial statements and is set out in Appendix 3.

Filing Abridged Annual Accounts

There are no changes to the regime for filing accounts with the CRO. The client must still prepare accounts which give a true and fair view. An annual return together with accounts must be filed in the normal manner.

However, an audit report will not be filed with the accounts and neither will the special auditors report.

The directors' responsibility statement does not need to be included in the directors' report. The directors have to make a statement on the balance sheet, that the accounts give a true and fair view. The statement of the directors' responsibilities are outlined in Appendix 3.

It is not mandatory to file a copy of the Accountants Report.

A sample set of abridged accounts for an audit exempt company can be found on the website for the Companies Registration Office at the following address www.cro.ie.

Preparation of the Financial Statements

Where the appointment of auditor has been terminated but the services of the accountant have been retained to prepare accounts or provide additional services all accounts must be prepared in accordance with Miscellaneous Technical Statement 14- Compiling Accounts not Subject to Audit. Members should refer to their Handbook for full details.

A sample Accountants' Report can be found in appendix 4.

Engagement Letters

A new engagement letter should be issued reflecting the change in the accountant's appointment.

It should be clear to the client that audit services are no longer being provided. The accountant should ensure that all correspondence to the client makes this point clear e.g. fee notes to client should not state audit services etc.

A sample engagement letter can be found at Appendix 5.

APPENDIX 1

MINUTES OF MEETING OF THE DIRECTORS

Held at

On

Present

Section 32 Companies (Amendment) (No.2) Act 1999

The Chairman advised that the meeting had been convened in order to comply with the provisions of Section 32 of the Companies (Amendment) (No.2) Act 1999.

The meeting fully reviewed the financial statements of the Company for the twelve month period ended XXXXXX and having reviewed the provisions of Section 32, the Directors were satisfied that the company will fulfil the conditions specified in subsection (3) of that section and it was resolved that the company should avail of the audit exemption in respect of the year commencing on XXXXX.

Resignation of Auditor

The Company Secretary was instructed to write to the auditors of the company and to advise them that the company has decided to avail of an exemption under section 32 and to request them to serve a notice on the company in accordance with Section 34 (2).

This concluded the business of the meeting

Date

Chairman

APPENDIX 2

SAMPLE LETTERS OF RESIGNATION FOR THE AUDITOR

Letter 1 - Proforma Resignation notice under Section 34(1)(i) of the Companies (Amendment) (No.2) Act, 1999

The Directors,
XYZ Limited,
Registered Office

Date

We, ABC & Co., of (Address), hereby serve notice, pursuant to Section 34(1)(i) of the Companies (Amendment) (No.2) Act, 1999, that, having been requested to do so by the directors, we are resigning from the office of auditor of XYZ Limited as and from XXXXX.

We confirm that there are no circumstances in connection with our resignation that we consider should be brought to the notice of the members or creditors of the company.

Pursuant to Section 34(3)(a) of the aforementioned Act we will be forwarding a copy of this notice to the Registrar of Companies.

Yours faithfully,

Letter 2 – Letter to the Registrar of Companies

The Registrar of Companies

Date

Re: XYZ Limited (Registered No.)

Dear Sir,
Pursuant to Section 34(3)(a) of the Companies (Amendment) (No.2) Act, 1999 we are sending you a copy of our notice of resignation from the office of auditor of the above named company.

Yours faithfully,

ABC & Co.

APPENDIX 3

STATEMENT OF DIRECTOR'S RESPONSIBILITIES AND DECLARATION ON UNAUDITED FINANCIAL STATEMENTS

General responsibilities

Company law requires the directors to prepare financial statements for each financial period which give a true and fair view of the state of affairs of the company and of the profit or loss of that company for that period.

The directors are responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts, 1963 to 2006 and all Regulations to be construed as one with those Acts. They are also responsible for ensuring that the company otherwise complies with the provisions of those Acts relating to financial statements in so far as they are applicable to the company. They have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and hence to prevent and detect fraud and other irregularities.

Directors' declaration on unaudited financial statements

In relation to the financial statements as set out on pages X to X.

- The directors approve these financial statements and confirm that they are responsible for them, including selecting the appropriate accounting policies, applying them consistently and making, on a reasonable and prudent basis, the judgements underlying them. They have been prepared on the going concern basis on the grounds that the company will continue in business.
- The directors confirm that they have made available to ABC & Co Certified Public Accountants, the company's accounting records and provided all the information necessary for the compilation of the financial statements.
- The directors confirm that to the best of their knowledge and belief, the accounting records reflect all the transactions of the company for the year ended [balance sheet date].

On behalf of the board

A. Smith
Director

B. Murphy
Director

Date

APPENDIX 4 – SAMPLE ACCOUNTANTS’ REPORT

ACCOUNTANTS’ REPORT TO THE DIRECTORS ON THE UNAUDITED FINANCIAL STATEMENTS OF (EXEMPT CO.) LIMITED

We have compiled the financial statements set out on pages X to X of (Exempt Co.) Limited for the year ended [balance sheet date].

Respective responsibilities of directors and accountants

As described on page X the company’s directors are responsible for the financial statements. It is our responsibility to compile the financial statements of (Exempt Co.) Limited from the accounting records, information and explanations supplied to us by the directors.

Scope of work

We compiled the financial statements in accordance with the guidance contained in M14 *Compiling and reporting on financial statements not subject to audit* from the accounting records and information and explanations supplied to us by the directors.

We have not audited or otherwise attempted to verify the accuracy or completeness of such records, information and explanations and, accordingly, express no opinion on the financial statements.

ABC & Co
Certified Public Accountants

Date:

APPENDIX 5

SAMPLE ENGAGEMENT LETTER FOR EXEMPT CO. LIMITED (A COMPANY AVAILING OF AUDIT EXEMPTION IN ROI)

Dear (Name of Client)

Thank you for appointing us as your accountants. (Use alternative wording if this is a renewal of an existing professional appointment).

As discussed with (name) at our meeting on (date) and in accordance with the recommendations of the Institute of Certified Public Accountants in Ireland, this letter sets out our understanding of the terms of our engagement:

- to compile, as your agents, the financial statements to be laid before the members at an annual general meeting and filed with the registrar of companies in accordance with the requirements of the Companies Acts, 1963 to 2005; and
- to provide other professional services to the company.

This letter explains the scope of our work. It sets out the respective responsibilities of the directors and ourselves.

Partners A (insert name) will be personally in charge of the work we perform for you. He will ensure that the service you receive from us is of the highest quality.

Responsibilities of the Directors

1. As directors of (Exempt Co. Limited) you are responsible for maintaining proper books of account and for preparing financial statements which give a true and fair view and which have been prepared in accordance with the Companies Acts 1963-2005 and all regulations to be construed as one with those acts.
2. You are responsible for determining whether, in respect of the year, the company meets the conditions for exemption from an audit of the financial statements set out in section 32 of the Companies (Amendment) Act, 1999 and whether the exemption is not available for the reasons set out in section 33 of that Act.
3. In respect of any year, the availability of the exemption from an audit of the financial statements is conditional upon your forwarding an annual return, with accompanying financial statements, to the registrar of companies. You are responsible for ensuring that such return is forwarded within the appropriate time scale.
4. You are also responsible for making available to us, as and when required, all of the company's accounting records and all other relevant records and information that are necessary for the compilation of financial statements. You are responsible for both the accuracy and

completeness of the information supplied to us and are responsible to users for the financial statements compiled by us.

Responsibilities of Accountants

5. We shall plan our work on the basis that you require, as your agent, to compile financial statements based on the accounting records maintained by yourself and on the basis of the information you supply to us, unless you inform us in writing that the company requires an audit of the financial statements.
6. Should you instruct us to carry out an audit, then a separate letter of engagement will be required.
7. As accountants, we are not auditors of your business and therefore we shall not carry out an audit of the financial statements and consequently no opinion will be expressed. We expect to report on the financial statements of (Exempt Co. Limited) as set out in appendix 1.

Scope of the Reporting Accountants' Work

8. Our work will be carried out in accordance with the Miscellaneous Technical Statement No. 14 *Compiling and Reporting in Financial Statements not subject to audit*. Our procedures will consist of compiling the financial statements from the accounting records kept by the company and the information and explanations supplied to us and making such limited enquiries of the officers of the company as we consider necessary for the purposes of our report.
9. Our work as accountants will not be an audit conducted in accordance with Auditing Standards. Accordingly, we will not seek any independent evidence to support the entries in the accounting records, the existence, ownership or value of the assets, or the completeness of income, liabilities or disclosures in the financial statements. Nor will we make any assessment of the estimates and judgements made by you in your preparation of the financial statements. Consequently, our work as accountants will not provide any assurance that the accounting records or financial statements are free from material misstatement, whether caused by fraud, other irregularities or error. However, we will inform you of any such matters that come to our attention.
10. We have a professional responsibility not to allow our name to be associated with financial statements which we consider may be misleading. Therefore, although we are not required to search for such matters, should we become aware, for any reason, that the financial statements may be misleading, and the matter cannot adequately be dealt with by means of disclosure within our report (or by other appropriate modification of the report), we will not issue any report, will withdraw from the engagement and will notify you in writing of the reasons. Should this situation occur our fees for the work performed so far will be payable on presentation of our fee note.

11. As part of our normal procedures, at the time that the financial statements are signed we may ask you to provide written confirmation of any information or explanations given by you orally during the course of our work.
12. We shall discuss the financial statements with you prior to their finalisation and, after any adjustments arising from those discussions are made, we shall ask you to approve the financial statements. The financial statements will contain a declaration for your signature that you approve them and have made available all relevant records and information for their preparation.

Tax Compliance Work

13. We have agreed to prepare, in respect of each accounting period, a computation of the company's profit's, adjusted with the provisions of the Taxes Acts. Subject to your approval, this will be submitted to the Inspector of Taxes with the company's formal return. We shall advise you each year before the due date of the amount of Corporation Tax payable.
14. You will be responsible, unless otherwise agreed, for all other returns, including returns relating to employee taxes under PAYE/PRSI and returns of employee expenses and benefits and VAT returns.
15. We shall also be pleased to advise you on other matters relating to taxation, such as the implications of particular business transactions and on other taxation matters, which you refer to us.

Additional Legal Responsibilities Regarding Taxation

16. We must report material relevant offences, as defined in Section 1079 of the Taxes Consolidation Act 1997, to the directors of the company in writing, requesting them to rectify the matter or notify an appropriate officer of the Revenue Commissioners of the offence within 6 months. In the event that our request is not complied with, we must cease to act as advisor to the company or to assist the company in any taxation matter. We must also send a copy of our notice of resignation to an appropriate officer of the Revenue Commissioners within 14 days.

Other Legal Responsibilities

17. Where a document or information indicates to us that an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 has been committed such as theft, unlawful use of computer, or false accounting, we must report this fact to a member of the Garda Siochana.
18. We have responsibilities under the Criminal Justice (Terrorist Offences) Act 2005, to report suspicions of the financing of

terrorism. We are also obliged to adopt measures to prevent and detect the commission of an offence of financing terrorism and are obliged to train employees for the purpose of enabling them to identify transactions which may relate to the commission of an offence of financing terrorism.

Company Secretarial

19. You have authorised us, as your agent, to deal with the company's secretarial matters as follows: -
 - (a) to prepare for your approval the company's Annual Return
 - (b) to deal with any other routine secretarial matters that may arise
20. To allow us to carry out these services all books, records and explanations requested by us must be submitted to us on a timely basis. To allow us to assist you in preparing returns for the Registrar of Companies it is necessary that the directors of the company have taken the steps to ensure that abridged accounts will be available to be annexed to the relevant statutory return within nine months of the financial year-end.
21. The directors are requested to note that the company will incur additional late filing penalties if the relevant financial statements are not made available for submission to the companies registration on time.
22. It is agreed that the directors of the company are primarily responsible to ensure that the company complies with the provisions of the ten individual Companies Acts 1963 to 2005 and will if necessary seek proper legal advice and record all decisions of the directors and members in minute books maintained for that purpose.

Other Services

23. We shall be pleased to provide, if requested, other services such as:
 - (a) General advice on financial matters including pension and investment planning (a separate engagement letter will deal with this area as the need arises)
 - (b) Reports in support of returns or claims e.g. for Government grants, consequential loss insurance declaration, etc.
 - (c) Reports in support of returns or claims e.g. for raising finance, for acquisitions of other businesses or investigation into some specific aspects of the business
 - (d) Advice on computers and computer bureau services
 - (e) Recruitment of staff
 - (f) Formation of limited companies

24. Consequently, in providing the financial statements of your business, any working papers, including the nominal ledger, which we bring into existence for this purpose, shall remain the property of this firm.

Fees

25. Our fees are based upon the skill involved and the time occupied on the work and will be charged for each class of work. They will be billed at appropriate intervals during the course of the year and will be due on presentation.
26. Should you so require, we will forward an estimate of fees in advance of any assignment.
27. We should also be pleased to give you any help you may require with problems which arose during the year and would plan to keep in touch with you throughout the year to discuss any matters affecting your business.
28. Please do not hesitate to contact Partner A whenever you feel he can be of assistance.

Applicable Law

29. This engagement letter shall be governed by, and construed in accordance with the laws of the Republic of Ireland. The Courts of the Republic of Ireland shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

Anti-Money Laundering Legislation

The Criminal Justice Act 1994 (Section 32) Regulations 2003 designate accountants, auditors and tax advisors for the purposes of the anti-money laundering provisions of the Criminal Justice Act 1994. These provisions include requirements to establish certain procedures and impose reporting obligations in respect of suspicions regarding offences under the money laundering legislation.

Accountants, auditors and tax advisors are required to, among other things;

- To verify the identity of new clients;
- Retain records of identification for at least five years from the date of last doing business with the client;
- Retain original documentation relating to transactions for a period of at least five years following the execution of the transaction;
- Establish measures to prevent and detect money laundering;
- Report suspicions of money laundering to the Garda Siochana and the Revenue Commissioners;
- Establish procedures to ensure all transactions connected with certain designated states and territorial units are reported;
- Ensure adequate control over client monies.

Agreement of Terms

Once it has been agreed this letter will remain effective until it is replaced. Please confirm your agreement with the terms of this letter by signing this copy and returning it to us.

If this is not in accordance with your understanding of the terms of our appointment, please let us know and we will be happy to give you any further information you require.

Yours sincerely,

ABC & Co.

Acknowledged by: _____ *Date:* _____

On behalf of the board of Exempt Co. Limited.

February 2007

