

Quick Guide: Overview on New Consolidation Requirements and the impact on golden shares

Overview

The Companies (Accounting) Act 2017 deletes the existing Section 297 CA 2014 which refers to the size exemption from consolidation and instead replaces this with a lower threshold in Section 293 of CA 2014. This will have a significant impact and will result in more groups having to prepare consolidated financial statements.

What is new?

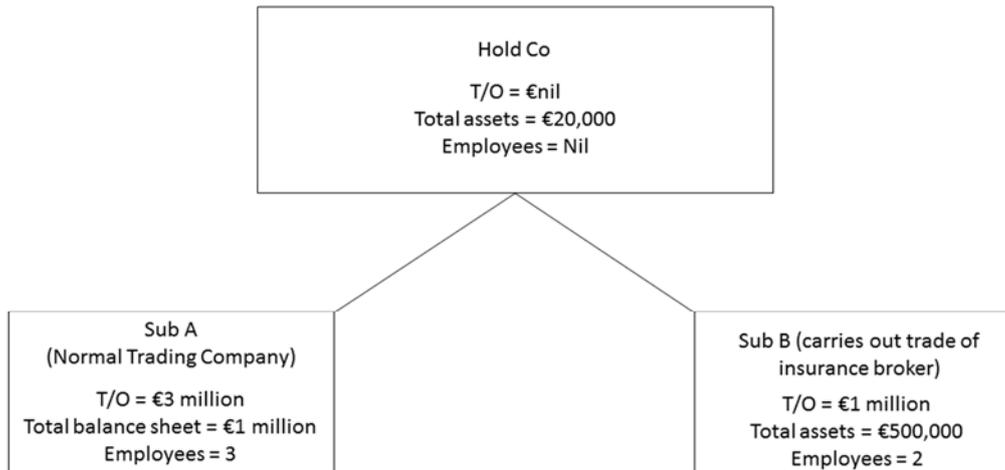
As Section 297 of CA 2014 is deleted/repealed for all periods commencing on or after 1 January 2017 (and earlier if the Companies (Accounting) Act 2017 is early adopted), groups can only apply the size provisions where the holding company of that group meets the conditions for applying the small companies regime as stated in Section 293(1A) of CA 2014 as inserted by Section 19 of the 2017 Act. Not only have the thresholds reduced but in addition even if the thresholds are met the group may still be required to prepare consolidated financial statements where the holding company does not meet the small company regime conditions as there are ineligible companies within the group. This was not the case under Section 297 – once the group met the three conditions below they could automatically claim the exemption.

Table: Comparison of existing consolidation size rules to new proposed rules (at least 2 of the 3 qualifying conditions must be met)

	Small Group (when assessing if holding co. meets requirements of Small Companies Regime – S.280B of CA 2014)*	Size thresholds under old Section 297 CA 2014
Turnover of holding company and subsidiaries	≤ €12 million-net ≤ €14.4 million-gross	≤ €20 million
Balance Sheet Total Assets of holding company and subsidiaries	≤ €6 million net ≤ €7.2 million-gross	≤ €10 million
Employees of holding company and subsidiaries	≤ 50	≤ 250

***Note 1:** See Appendix 1 for the full conditions to be met in addition to the above thresholds as certain groups/holding companies are deemed ineligible for the small companies regime even where the thresholds above have been met.

***Note 2:** For the Holding company the starting point is to use the gross figure regardless of whether there is intra group transactions or not. If these thresholds gross thresholds are not met, then you move to the net thresholds (after elimination of interco sales/debtors etc.). You cannot mix and match the gross and net thresholds.



Overall within thresholds but cannot claim small company exemption as there is an excepted company within the group. Therefore relief from consolidation under S.293(1A) CA 2014 cannot be claimed. Consolidated financial statements must be prepared. In addition Hold Co cannot file small company abridged financial statements.

In the above example, FRS 105 accounts cannot be prepared as consolidated financial statements exclude such a group from using FRS 105.

Note Section 299/300 of CA 2014 still apply in relation to the exemption from preparing consolidated accounts where the intermediate parent or ultimate parent (whether registered in EEA countries or outside the EEA countries) prepares consolidated financial statements which incorporates the results of the company and its subsidiaries.

What is the impact?

More groups will be required to prepare consolidated financial statements.

Where a company holds a golden shares in another company that holding company is deemed to hold a subsidiary under Section 7(2) of Companies Act 2014. The golden share is a share that gives the company the ability to control the composition of the board (ability to appoint and remove persons from the board of directors) of the other company which gives the holding company control.

As this is a subsidiary in this case then a group exists and the results of the subsidiary company must be considered when determining whether consolidated financial statements need to be prepared.

A golden share is usually implemented to allow funds to flow freely between companies without any company law implications (loans to directors and connected parties).

This may have an impact on construction companies where the trend is to set up a special purpose company for each project and to create a golden share arrangement to allow funds to flow from the cash rich parent company.

Key points to keep in mind when assessing what entities to consolidate

Where a golden share arrangement exists the following procedures should be performed:

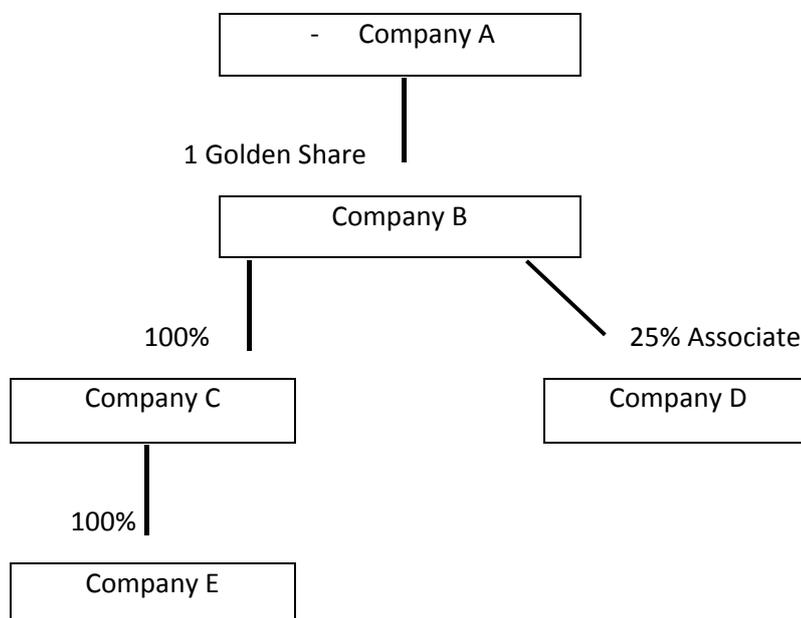
- Recognise the full results of the company with which the golden share is held in the consolidated profit and loss account/OCI and balance sheet;

- On face of consolidated profit and loss account and in the statement of comprehensive income at the end show the split of the results between:
 - o Profits/total comprehensive income attributable to the owners of the parent; and
 - o Profits/total comprehensive income attributable to Non-Controlling Interests - 100% of the results of the company that issued the golden share should be attributed to the non-controlling interest*.
- On the balance sheet show all of the ordinary share capital, reserves etc. of the company that issued the golden share as being attributable to the non-controlling interest at the bottom of the balance sheet (under line 'Equity attributable to owners of parent)*.

* The above assumes that the holding company only holds a share which gives that company the ability to control the composition of the board. If that holding company also holds another type of share which gives the company the same rights to the other shareholders in that company then the amount of profit etc. attributable to the non-controlling interest would be reduced.

If the company that issued the golden share also has:

- a 100% subsidiary or a subsidiary of less than 100% but it has control- then the results of the 100% subsidiary would need to be included in the consolidated financial statements of the holding company with those results being all attributable to the non-controlling interest. This is applicable to all subsidiaries etc. not just companies that hold a golden share.
- An associate/joint venture then these will have to be equity accounted in the holding company's consolidated financial statements with those results being all attributable to the non-controlling interest. This is applicable to all subsidiaries etc. not just companies that hold a golden share.
- Apply the usual consolidation rules – elimination of intercompany balances/ transactions /profits/ dividends etc.



*Assuming S.280C CA 2014 requirements are not met (this includes a situation where there is an ineligible company in the group even where the thresholds are met), consolidated financial statements are required to be prepared by Company A.

The consolidated financial statements of Company A will include the full results of Company A, B, C and E with usual consolidation adjustments (adding P&L and Balance Sheet of all entities and eliminating intercompany balances).

The results of 25% of Company D will be accounted for under equity method in the consolidated financial statements of Company A with results shown as one line item in consolidated P&L "share of associates profits" and the corresponding amount recognised as an investment on the balance sheet.

Would some groups be better off not early adopting CAA 2017; if so why and how can the negative impact be delayed?

Yes; the following entities should consider whether it is in their best interest to early adopt:

- A group which is currently below the current consolidation thresholds on the basis of size under Section 297 of Companies Act 2014 (i.e. T/O ≤ €20m; Total Assets ≤ €10m; Employees ≤ 250) and the group does not qualify as a small group (due to the thresholds being exceeded or an excluded company being included within the group) in new Section 280A-280C as inserted by Companies (Accounting) Act 2017 and defined in the table below.
 - o If early adopted such a group cannot claim exemption from consolidation as Section 297 has been repealed under Companies (Accounting) Act 2017.
- A holding company of a group which meets the conditions for small company abridged financial statements under current company law (but the group overall does not meet the definition of a small group and Section 297 consolidation size threshold is not exceeded).
 - o If adopted early, then such a company cannot avail of the small company abridgement option as Section 280B only permits abridgement for a holding company where the group as a whole is considered a small group.

How can the negative impact be delayed?

- The company/group change its year end date to a date just prior to 31 December 2016 (e.g. 30 December) as the new Act is only mandatorily applicable for all periods commencing on or after 1 January 2017. This gives the company another year before it will need to apply the new rules (e.g. instead of applying the New Act for year ended 31 December 2017 assuming a 31 December year end, it would mean that it would only apply for the year ended 30 December 2018 – another 12 months deferral).

Bear in mind a company can change its year end within 7 days either side of its existing year end every year. However, where the change is done outside this range, then under Section 288 of CA 2014, it can only change its year end date once every five years and it cannot be for a period of greater than 18 months. Note if a change in year end is made, the company needs to ensure that the company's annual return date is adjusted (can only be adjusted once every 5 years).

Consolidation points not specific to golden share arrangements

Where this reduced threshold results in consolidated financial statements being required to be prepared for the first time, an exercise will need to be performed to:

- Assess the goodwill to be recognised at the date of initial acquisition of control of each entity if applicable (where investment acquired on incorporation there is no goodwill).
- Determine the fair value of all assets and liabilities at the date of original acquisition of control and split out the intangible assets separately from goodwill.
- Ascertain the useful life of goodwill and amortise – determine the carrying amount of this goodwill at the start of comparative year assuming the acquisition was made prior to that date.

- Where fair value adjustments to be made on date of acquisition ensure carrying amount at start of comparative period is determined and the difference recognised in the consolidated P&L reserves.
- If acquired before date of transition to FRS 102 then possible to claim exemption and apply old business combination rules up to that date.
- If there is a disposal of an interest in a subsidiary/associate etc. in the current or comparative year determine the profit/loss on disposal to be recognised in the consolidated financial statements. If the disposal does not result in a change in control recognise net amount in equity.
- Where an associate or joint venture exists an analysis will have to be performed to assess:
 - o What goodwill arose on the acquisition at the acquisition date if applicable (as this goodwill is written off over the useful life and recognised in the consolidated financial statements as part as the income from the associate/joint venture). NB this goodwill is included within the investment in the associate/joint venture cost under the equity method of accounting and not disclosed separately.
 - o Need to determine the amount to be recognised as an investment on the balance sheet under the equity method of accounting –
 - can be done on high level basis by comparing the net assets at date of acquisition to net assets at the date of preparing the accounts (start of comparative period if acquired before that date). This will inform you of the amount of profits made since acquisition. You should then multiply the percent of shares held to determine the element relating to the group. The element relating to periods before the current year should be recognised in group profit and loss reserves brought forward.
 - should also consider any adjustments for intercompany profits, amortisation of goodwill which would not be included in the individual entity accounts of the associate/joint venture.

What do accountants need to do?

Review their existing portfolio of clients to identify groups which did not previously have to prepare consolidated financial statements due to the exemption contained in Section 297 CA 2014 to assess whether those groups now exceed the thresholds in Section 280C above and as part of this to assess whether the holding company meets the requirements of the small companies regime.

Review their client portfolio to assess entities that hold golden shares in other companies to determine if those companies when taken together will need to be consolidated.

Draw out a detailed group structure for each group including the activities performed by each to assess whether consolidation is required.

If following the detailed review of the client portfolio, consolidated financial statements are required to be prepared for the first time as a result of the new legislation, complete the following:

- o inform the client of the requirement and the additional work required
- o request that the client determine the fair value of assets/liabilities at the date of acquisition in line with the requirements of Section 19 of FRS 102 (only applicable where investment acquired after the date of incorporation of the relevant company) so that goodwill can be calculated. As part of this:
 - separate any intangibles out from the goodwill figure if it meets the requirements for separate recognition in Section 18 of FRS 102.

- request that the client consider the useful life of any goodwill to be recognised.

Before issuing golden shares, assess whether it is likely that by issuing those shares it will result in consolidated financial statements being required to be prepared. Advise the client accordingly.

If the creation of a golden share will result in a requirement to prepare consolidated financial statements, assess whether it would be more beneficial to perform a summary approval procedure under Section 203 of CA 2014 to approve a loan to connected companies.

Appendix 1 – Detail Small Companies Regime Conditions

A company qualifies for the small companies regime if it fulfils at least two of the three qualifying conditions listed below:

- In relation to its first financial year; or
- In relation to its current financial year and the preceding financial year; or
- In relation to its current financial year and it qualified as a small/medium company in the preceding financial year; or
- In relation to the preceding financial year and it qualified as a small/medium company in the preceding financial year

	Small Co	Holding company for Small Group
Turnover	≤€12 million	≤€12 million-net ≤€14.4 million-gross
Balance Sheet Total	≤€6 million	≤€6 million net ≤€7.2 million-gross
Employees	≤50	≤50

Note 1: Exception even where the above thresholds are met:

S.280B(5) of CA 2014 excludes the following companies from applying the SCR:

1. a company falling within any provision of Schedule 5 of the Act (e.g. Authorised investment firm, insurance intermediary of any other company carrying on of business by which is required to be authorised by the Central Bank); or
2. a company that is a credit institution or insurance undertaking; or
3. a company with securities regulated on a regulated market; or
4. a holding company of a small group even where the group meets the thresholds where any of the entities in the group come within points 1, 2 and 3 above (this only effects the holding company and not the other companies within the group (other than a company that comes within the remit of points 1-3 above)).