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| Q&A CNC 24/033 | <u>QUESTIONS / ANSWERS:</u> IMPACT OF A CHANGE IN THE CONSOLIDATION SCOPE OF A GROUP ON THE ASSESSMENT OF SIZE CRITERIA |
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Context:

Pursuant to Article 1711-4 LSC¹, in order to determine whether a group is a small group exempt from the obligation to prepare consolidated accounts and a consolidated management report, or a large group subject to the obligation to prepare consolidated accounts and a consolidated management report, the thresholds relating to the three size criteria (total balance sheet, net turnover and average number of employees) are assessed not on an individual basis (parent company) but on a consolidated basis (parent company and all direct and indirect subsidiaries that should be consolidated²).

Furthermore, to ensure that a one-off change in the thresholds relating to the size criteria does not result in the immediate re-categorisation of the group, Article 36 LRCS – applicable pursuant to Article 1711-4, paragraph 4 LSC – provides that exceeding or not exceeding the thresholds for at least two of the three size criteria only takes effect if it occurs in two consecutive financial years. This is referred to as the repetition criterion to designate the principle laid down in Article 36 LRCS. It should be noted that CNC has published Q&A CNC 19/019³ to interpret the practical implementation of the repetition criterion and that, in accordance with this doctrinal Q&A, the categorisation of a group during financial year N is determined by the size criteria relating to financial years N-1 and N-2. In other words, the consequences of exceeding or not exceeding the thresholds apply from the financial year following the financial year in which, for the second time, at least two of the three criteria were exceeded or were no longer exceeded.

While the accounting legislation and doctrine clarify the methods for calculating the numerical limits of the three size criteria for a group and the practical implementation of the repetition criterion, they are generally silent on the question of the impact of changes in the consolidation scope of the group⁴ on the application of the size criteria.

The question therefore arises as to whether a change in the consolidation scope of a group during financial year N – following the acquisition or disposal of a subsidiary – has an impact on the calculation of the size criteria.

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Question(s):

In the event of a change in the consolidation scope of a group during financial year N, should the size criteria for financial years N-1 and N-2 be modified retrospectively to include the subsidiary acquired during financial year N as if it had already been held at the end of financial years N-1 and N-2, or to exclude the subsidiary undertaking sold during financial year N as if it had already been sold at the end of financial years N-1 and N-2, thereby requiring a new fictitious consolidation exercise?

In other words, should the size criteria relating to the categorisation of a group be assessed on the basis of a comparable consolidation scope or not?

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¹ See also Q&A CNC 22/028 entitled “Implementation of the small group consolidation exemption (Article 1711-4 LSC): practicalities” and in particular point 4 entitled “What are the impacts of changes in the scope of consolidation?”

² In other words, subsidiaries that are exclusively controlled by the parent company and are fully consolidated in the group's consolidated accounts.

³ Q&A CNC 19/019 entitled “Categorisation of undertakings: interpretation of the repetition criterion referred to in Article 36 LRCS”

⁴ See footnote 1.

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Answer(s):

Firstly, CNC notes that accounting directive 2013/34/EU⁵ is silent on the issue of the effects of changes in the structure of a group on the methods for calculating size criteria. Thus, paragraphs 5, 6 and 7 of Article 3, entitled “*Categories of undertakings and groups*”, simply state that the criteria are assessed “*on a consolidated basis*”, while paragraph 10 establishes the principle of the repetition criterion by providing that exceeding or not exceeding the numerical limits of at least two of the three size criteria only has an effect if it “*occurs during two consecutive financial years*”. Consequently, the European text is silent on the possible impact of a change in a group’s consolidation scope on the assessment of the size criteria.

In the absence of any provisions in accounting directive 2013/34/EU, it is up to Member States, where necessary, to clarify at national level the practical arrangements for calculating the size criteria in situations where a group’s consolidation scope has changed (e.g. acquisition(s) or disposal(s) of subsidiaries) during financial year N.

In this regard, CNC notes that Title XVII of the LSC, entitled ‘*Consolidated accounts*’, is also silent on the impact of a change in a group’s consolidation scope on the assessment of size criteria and therefore considers that a doctrinal clarification of this issue may be useful to the Luxembourg accounting community.

- **Disposal of a subsidiary undertaking during financial year N: no retrospective change in the group’s consolidation scope**

In the event of the disposal of a subsidiary undertaking during financial year N (reduction in the group’s consolidation scope), CNC is of the opinion that there is no need to retrospectively change the group’s consolidation scope. The thresholds relating to the size criteria at the end of financial years N-1 and N-2 therefore remain based on the group’s consolidation scope at those dates. In other words, the subsidiary undertaking sold during financial year N remains included in the consolidation scope for financial years N-1 and N-2 as shown in the consolidated accounts for financial years N-1 and N-2. No fictitious consolidation exercise is therefore required.

- **Acquisition of a subsidiary undertaking during financial year N: no retrospective change in the group’s consolidation scope**

In the event of the acquisition of a subsidiary undertaking during financial year N (increase in the group’s consolidation scope), CNC is of the opinion that there is no need to retrospectively change the group’s consolidation scope. The thresholds relating to the size criteria at the end of financial years N-1 and N-2 therefore remain based on the group’s consolidation scope at those dates. In other words, the subsidiary undertaking acquired during financial year N remains excluded from the consolidation scope for financial years N-1 and N-2, as shown in the consolidated accounts for financial years N-1 and N-2. No fictitious consolidation exercise is therefore required.

- **Conclusion: objective of administrative simplification and need for legal certainty**

In the event of a change in the group’s consolidation scope during financial year N, CNC is of the opinion that parent undertakings at the head of a group should give preference to not making any retrospective changes to the consolidation scope for financial years N-1 and N-2. No fictitious consolidation exercise should therefore be carried out.

⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

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CNC considers that retrospective changes to the consolidation scope for financial years N-1 and N-2 – which would require a new fictitious consolidation exercise – would be contrary to the objective of reducing the administrative burden sought by the European legislator when adopting Directive 2013/34/EU.

Furthermore, CNC notes that, in view of the need for legal certainty, it seems preferable that the calculation of the thresholds relating to the size criteria of a group be based on consolidated accounts prepared by the management or administrative body, audited by an approved statutory auditor (“*Réviseur d’entreprises agréé*”) and approved by the general meeting of shareholders or members⁶ rather than on *pro forma* accounts prepared solely for the purpose of determining size criteria without being audited by an approved statutory auditor (“*Réviseur d’entreprises agréé*”) or approved by the general meeting.

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Disclaimer

This document – provided as a courtesy – is an unofficial translation of the French original document entitled Q&A CNC 24/033 “*Incidences du changement de périmètre de consolidation d’un groupe sur l’appréciation des critères de taille*”. In case of discrepancy in interpretation, the French version shall prevail.

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- are of a general nature and do not refer to the specific situation of any natural or legal person;
- are intended to contribute to the development of accounting doctrine in accordance with Article 73(b) of the amended Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings;
- only represent the opinion of the GIE CNC on a number of doctrinal and interpretative issues;
- do not prejudice the tax implications that may arise from the accounting treatments mentioned.

The administrative or management bodies of undertakings remain responsible in accordance with general law for any decisions taken based on this document.

⁶ See also Q&A CNC 19/017 entitled “*Deadline for filing consolidated accounts prepared for statutory purposes with the RCS*”.