

ICAEW REP 37/06

INTERPRETATION OF EQUIVALENCE

Memorandum of comment submitted in June 2006 by the Institute of Chartered Accountants in England and Wales, in response to Urgent Issues Task Force Information Sheet 79 concerning a proposed UITF Abstract 'The interpretation of equivalence for the purposes of section 228A of the Companies Act 1985'.

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales ('the Institute') welcomes the opportunity to comment on Urgent Issues Task Force (UITF) Information Sheet 79 concerning a proposed Abstract on 'The interpretation of equivalence for the purposes of section 228A of the Companies Act 1985', published for comment by the UITF in May 2006. We have reviewed the proposed Abstract and set out below our response to its proposals.

WHO WE ARE

2. The Institute is the largest accountancy body in Europe, with more than 127,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy.

SUPPORT FOR THE PROPOSAL

4. We support the proposed Abstract.

OTHER ISSUES

The Seventh Directive

5. Footnote 7 of the proposed Abstract states that the exemption under section 228A will not be available unless the higher parent's consolidated accounts include:
 - (i) all subsidiary undertakings of the UK parent as defined in UK law (as required by section 228A (2)(a)), and
 - (ii) all other undertakings of the higher parent that are required to be consolidated by the Seventh Directive.

We recommend that for prominence and additional clarity, this material should be elevated to the main text of the Abstract. However, paragraph (ii) as drafted can be read as being too restrictive and thus causing an apparent inconsistency with the final sentence of paragraph 15 of the proposed Abstract. We believe the main point at issue is that in the case of companies in the UK sub-group it is important that they are all included in the higher parent's consolidated accounts but that there is, perhaps, a lesser requirement relating to the consolidation of other entities in the higher parent's group.

Paragraph 15 indicates merely that the omission of a non-UK sub-group entity from the consolidation where the Seventh Directive would require its inclusion could lead to a lack of equivalence where the effect on the consolidated accounts is material. This leaves appropriate scope for the exercise of judgement.

6. The definition of subsidiary undertakings in the Seventh Directive is less onerous than in UK GAAP, because it includes Member State options that were taken up in the UK but may not have been taken up elsewhere in Europe. We suggest that the provisions of the Seventh Directive concerning undertakings required to be consolidated should be attached as an appendix to the Abstract for ease of reference.

Equivalence of the annual report

7. The exemption under section 228A is dependent on the equivalence of the accounts 'and, *where appropriate*, the group's annual report' (emphasis added). It is not clear whether this means that the higher parent is required to prepare an 'equivalent' annual report (ie, a directors' report in the UK) as well as 'equivalent' accounts in order to be able to take advantage of the exemption. It is possible to interpret the provision to mean that where such a report is prepared by the higher parent it would have to be 'equivalent' for the exemption to be available, but that in the absence of such a report the exemption would still be available.
8. We suspect that the UITF may not itself be in a position to resolve this point, which appears to hinge on the interpretation of the words 'where appropriate'. We nevertheless urge the UITF to provide a definitive ruling, as we fear that otherwise divergent practice will arise. Obtaining a definitive ruling is likely to involve consultation with the Department of Trade and Industry and/or the European Commission.

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