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Unlimited Liability Companies

Quick Guide

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**The Ultimate Companies Act 2014 Toolkit
for Accountants & Professional Advisors**

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Unlimited Liability Companies (ULC's) and filing of financial statements

The Companies (Accounting) Act 2017 was finally commenced on 9 June 2017. This Act transposes the EU Accounting directive 2013/34 into Irish Law. Section 78 of this Act has significantly changed the definition of what is defined as a 'Designated Unlimited Liability Company' and will result in more ULC's filing financial statements with the CRO.

What is new and different?

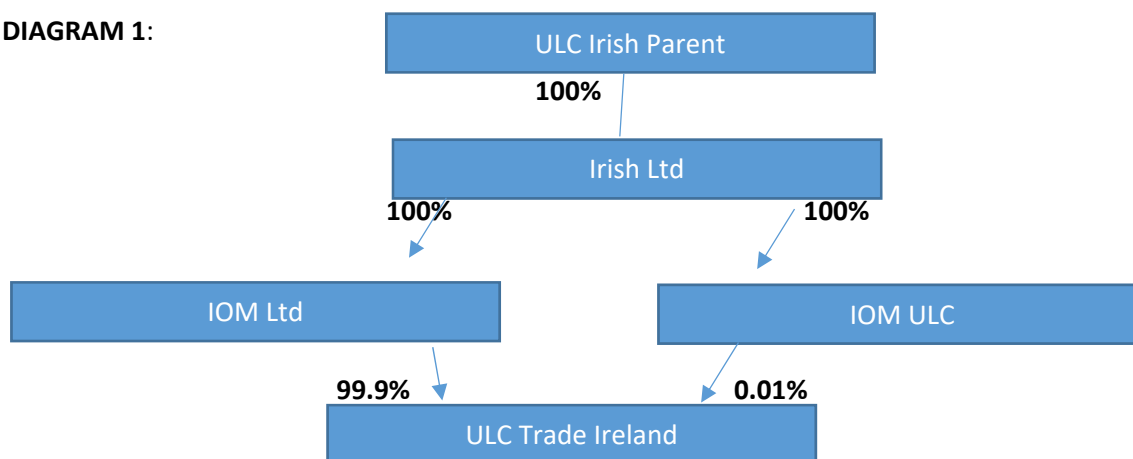
Section 1274 of Companies Act 2014 states that for a ULC other than a designated ULC, the financial statements of the ULC do not need to be filed with the CRO. Within Section 1274 is a definition of a designated ULC.

Section 78 of Companies (Accounting) Act 2017 has amended and broadened the existing definition in Section 1274 which has effectively brought certain entities which previously escaped the requirement to file financial statements into the filing requirements. See Appendix I for the full definition of a Designated ULC.

In simple terms what this means is that the where any members of a ULC either above it or below it has limited liability **at any time** during the period for which the financial statements were prepared, then the financial statements of the ULC must be filed with the CRO. When looking at this one also needs to consider potential rights which are exercisable even if not exercised.

Prior to this change it was possible for certain non-filing structures as detailed in diagram 1 below to be set up which meant that the Irish ULC did not have to file the financial statements as it did not come within the remit of the definition of a designated ULC (the IOM (isle of Man) ULC was not an EU ULC – existing definition only referred to EU country) but still the ultimate parent company (ULC Irish Parent) and the Irish ULC (ULC Trade Ireland) enjoyed the protection of limited liability as there was an Irish Limited company inserted between the Isle of Man/non-EU companies and the ULC Irish Parent.

DIAGRAM 1:



Before change in definition

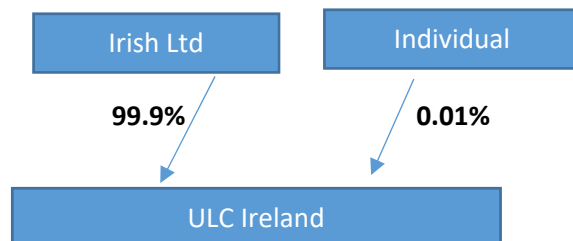
ULC Trade Ireland did not have to file its financial statements as at least one member of it (i.e. IOM ULC) had unlimited liability and it was a company which was not resident in the EU.

After change in definition

ULC Trade Ireland and ULC Irish Parent must file financial statements

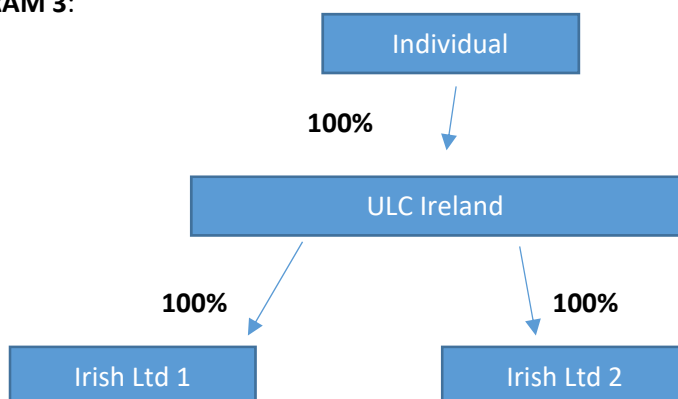
Another structure which is popular which will now no longer be permitted from the commencement date is a structure whereby a small percentage of a ULC was owned by an individual with the balance owned by a company. See Diagram 2 for an illustration. As one member was an individual this was not considered to be a designated ULC. Under the new definition as ULC Ireland is a subsidiary of an Irish limited company, it is considered to be a designated ULC.

DIAGRAM 2:



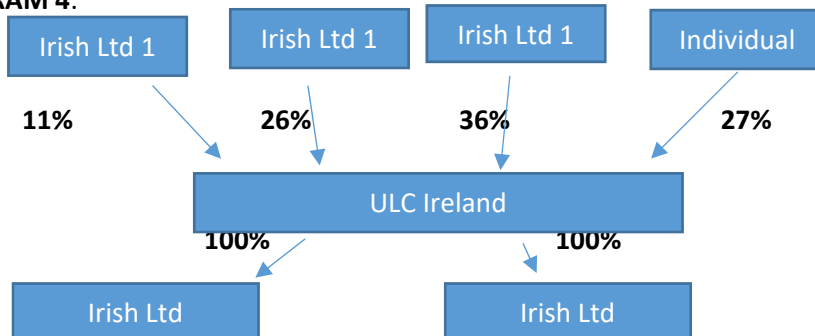
If we take the above example and this time assume that Irish Limited only owned 50% of ULC Ireland but it had a right to force the individual to sell a certain portion of his/her shares. In this instance, as Irish Ltd has rights exercisable which would result in ULC Ireland becoming a subsidiary if exercised, this is then considered a designated ULC and ULC Ireland must file financial statements.

DIAGRAM 3:



In this example, ULC Ireland will have to file financial statements with the CRO for periods commencing on or after 1 January 2022 as it is a holding company of limited subsidiaries.

DIAGRAM 4:



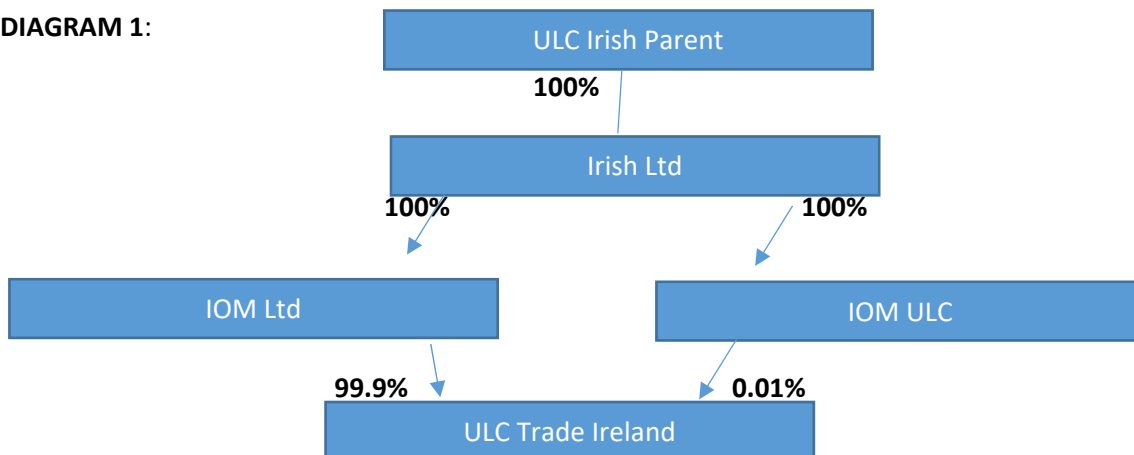
In this example, ULC Ireland will have to file financial statements with the CRO for periods commencing on or after 1 January 2017 as some of the ULC 's beneficial owners enjoy the protection of limited liability (although it is a ULC holding company it is also a ULC some of whose beneficial owners enjoy the protection of limited liability and therefore within the remit of S.1274(2)).

When does this change come into effect?

The new definition of a designated ULC comes into effect mandatorily for all periods commencing on or after 1 January 2017 with one exception. That one exception comes into effect for all periods commencing on or after 1 January 2022.

The one exception relates to structures whereby the ULC is a holding company of limited subsidiaries/undertakings (i.e. ULC Irish Parent in diagram 1 which has been replicated below).

DIAGRAM 1:



Applying the above dates to Diagram 1 above, ULC Trade Ireland Company will need to file its financial statements with the CRO for all periods commencing on or after 1 January 2017 and ULC Irish Parent will have to file financial statements for all periods beginning on or after 1 January 2022.

Further examples:

If an ULC early adopts the Companies (Accounting) Act 2017, does the change in the definition of a designated ULC come into effect earlier?

It is possible for an ULC to early adopt Companies (Accounting) Act 2017 without the new definition of a designated ULC being brought forward. The reason for this is that Section 14 of the Act permits early adoption of certain parts of the Act and this change to the designated ULC does not permit or require early adoption. A ULC may want to early adopt in order to allow the ULC prepare its financial statements under Section 1A of FRS 102/Small companies regime or FRS 105/micro companies regime.

What steps can be taken to delay the impact of this change in definition and push back the date designated ULC's will need to file financial statements?

The company/group should change its year end date to a date just prior to 31 December 2016 (e.g. 30 December) as the new definition only becomes 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 with financial statements not needing to be filed until October 2019 assuming a September annual return date).

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 it can only change its year end date once every five years. As a reminder where this change is made, an accounting period 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 done once every 5 years) or the existing annual return date (ARD) is not more than 9 months from the period end.

Is there any alternative structure that would prevent the need for filing the financial statements?

Given the broadness of the definition of a designated ULC, the days of not filing financial statements for these types of entities has effectively gone. While it may be possible for larger companies to move the trade to a company in another country, where the disclosures are not as strict or as detailed as required in Ireland, and then, run the trade through a branch in Ireland; regardless, a balance sheet will have to be filed with the CRO as the accounts filed in that new country will have to be filed with the CRO (and there is not many, if any country where a balance sheet at a minimum is not required to be filed).

What do accountants need to do?

Advise clients who have an existing non-filing structure of the impending requirement to file financial statements.

In order to delay the introduction, advise clients to change the period end date to a date prior to 31 December 2016, if possible.

Advise clients that have a ULC with subsidiaries or a ULC where any member of it has limited liability of the impending requirement to file the financial statements.

APPENDIX I

DEFINITION OF A DESIGNATED ULC

Extract from Section 1274 as amended by Section 78 of Companies (Accounting) Act 2017:

(1) Other than in the case of a designated ULC, sections 347 and 348 (which require documents to be annexed to annual returns) shall not apply to an ULC.

(2) In this section 'designated ULC' means—

(a) an ULC that at any time during the relevant financial year—

(i) has been a subsidiary undertaking of an undertaking which was at that time limited,

(ii) has had rights exercisable in respect of it by or on behalf of 2 or more undertakings which were at that time limited, being rights which if exercisable by one of the undertakings would have made the ULC a subsidiary undertaking of it, or

(iii) has been a holding company of an undertaking which was at that time limited,

(b) an ULC which is a credit institution or an insurance undertaking or the holding company of a credit institution or an insurance undertaking,

(c) an ULC, all of the members of which are—

(i) companies limited by shares or by guarantee,

(ii) unlimited companies, each of whose members is a limited company,

(iii) partnerships which are not limited partnerships, each of whose members is a limited company,

(iv) limited partnerships, each of whose general partners (within the meaning of the Limited Partnerships Act 1907) is a limited company, or

(v) any combination of the types of bodies referred to in the preceding subparagraphs of this paragraph and paragraph (a), **OR**

(d) an ULC, the direct or indirect members of which comprise any combination of ULCs and bodies referred to in paragraph (c) such that the ultimate beneficial owners enjoy the protection of limited liability.

(3) References in subsection (2) to a limited company, an unlimited company, a partnership or a limited partnership shall include references to a body which is not governed by the law of the State but which is comparable to such a limited company, an unlimited company, a partnership or a limited partnership, as may be appropriate.

(4) References in subsection (2)(a) to an undertaking being limited at a particular time are references to an undertaking (under whatever law established), the liability of whose members at that time is limited.

(5) In this section—

'general partner' has the same meaning as it has in the Limited Partnerships Act 1907;

'limited partnership' means a partnership to which the Limited Partnerships Act 1907 applies;

‘partnership’ has the same meaning as it has in the Partnership Act 1890.”.

(2) Subsection (1), in so far as it relates to subsection (2)(a)(iii) of section 1274 of the Principal Act, shall come into operation on 1 January 2022 for any financial year which commences on or after that date.