Directors' Compliance Statements

13th October 2015

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Chair

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Directors' Compliance Statements

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Which companies must give a Directors’ Compliance Statement?

- All PLCs
- Other limited companies that have:
  - a balance sheet total for the year that exceeds €12,500,000; and
  - turnover for the year that exceeds €25,000,000
When does it apply?

- Delayed commencement
- Applies to financial years commenced on or after 1 June 2015
- However, there are certain things that must be done before the commencement of the relevant financial period
When does it apply?

Timeline for a company with a 31 December year end:

- Commencement of Companies Act 2014: 1 June 2015
- Put in place Compliance Policy Statement: Before 31 December 2015
- Start of financial year: 1 January 2016
- Review of arrangements and structures: During 2016
- Publication of Directors’ Compliance Statement: By 30 April 2016
Content of a Directors’ Compliance Statement

A statement in the Directors’ Report for each year:

• acknowledging that the directors are responsible for securing the company's compliance with its “relevant obligations”; and

• confirming that certain actions have been taken (or an explanation for why they have not been taken).
“Relevant obligations” means the company’s obligations under:

(a) company law, where a failure to comply would be:
   (i) a category 1 offence or a category 2 offence; or
   (ii) a serious offence under securities law (i.e. under the market abuse, prospectus or transparency regulations);
   or

(b) an offence under tax law, without qualification.
Additional actions to be taken

(a) Compliance Policy Statement
(b) Arrangements and Structures
(c) Review
Additional actions to be taken

(a) **Compliance Policy Statement** – drawing up a Compliance Policy Statement setting out the company’s policies (that, in the directors’ opinion, are appropriate to the company) respecting compliance by the company with its relevant obligations

(b) **Arrangements and Structures**

(c) **Review**
Additional actions to be taken

(a) Compliance Policy Statement

(b) **Arrangements and Structures** – putting in place appropriate arrangements or structures that are, in the directors’ opinion, designed to secure material compliance with the company's relevant obligations

(c) Review
Additional actions to be taken

(a) Compliance Policy Statement
(b) Arrangements and Structures
(c) **Review** – conducting a review of such arrangements or structures
Compliance Policy Statement

Should describe both:

- the company's **policies** respecting compliance by the company with its relevant obligations; and

- the appropriate **arrangements or structures** that are designed to secure material compliance with its relevant obligations
Meaning of “designed to secure material compliance”:

- “if they provide a reasonable assurance of compliance in all material respects with those obligations”
Arrangements and structures

Meaning of “designed to secure material compliance”:

• “if they provide a reasonable assurance of compliance in all material respects with those obligations”

• may include “reliance on the advice of one or more than one person employed by the company or retained by it under a contract for services, being a person who appears to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations”
Drawing up a Compliance Policy Statement

- Annex
- Sections
- Policies
Drawing up a Compliance Policy Statement

- **Annex** – List all of the relevant company law and securities law obligations/offences in an Annex.
- **Sections**
- **Policies**
**Drawing up a Compliance Policy Statement**

- **Annex**
- **Sections** – Sections in the Statement should follow the list in the Annex – with section headings, such as:
  - Share Capital and Directors’ Loans
  - Financial Statements
  - Statutory Books and Records and Companies Registration Office Returns
  - Insider Dealing and Market Manipulation
  - etc.
- **Policies**
Drawing up a Compliance Policy Statement

• Annex
• Sections
• Policies – Address the relevant obligations/offences in each Section by either:
  – referring to an existing policy, arrangement or structure of the company – such as a Continuing Obligations Memorandum or a Share Dealing Code; or
  – stating the company’s policy in the area – such as a policy not to make loans to directors.
Compliance with tax law

- Requires a different approach
Review of policies, arrangements and structures

• To be conducted during the year covered by the relevant Directors’ Report.
Review of policies, arrangements and structures

- To be conducted during the year covered by the relevant Directors’ Report.
- May be conducted by the Audit Committee, with the assistance of relevant advisers, and covering each of the Sections in the Compliance Policy Statement.
**Additional – Statement on relevant audit information**

Directors must now state in the directors’ report that:

- there is no “relevant audit information” of which the company’s statutory auditors are unaware

- each director has taken all the steps in order:
  - to make himself or herself aware of any relevant audit information; and
  - to establish that the company’s statutory auditors are aware of that information.
Sanctions

- **Directors’ Compliance Statement** – Category 3 offence
- **Audit Statement** – Category 2 offence, where a director:
  
  (a) knew that the statement was false, or was reckless as to whether it was false; and

  (b) failed to take reasonable steps to prevent the report from being approved
Sanctions

• **Directors’ Compliance Statement** – Category 3 offence

• **Audit Statement** – Category 2 offence, where a director:
  
  (a) knew that the statement was false, or was reckless as to whether it was false; and 

  (b) failed to take reasonable steps to prevent the report from being approved

• **Category 3 offence** – summary conviction: imprisonment for up to six months or a fine of up to €5,000 (or both); and
Sanctions

- **Directors’ Compliance Statement** – Category 3 offence
- **Audit Statement** – Category 2 offence, where a director:
  (a) knew that the statement was false, or was reckless as to whether it was false; and
  (b) failed to take reasonable steps to prevent the report from being approved
- **Category 3 offence** – summary conviction: imprisonment for up to six months or a fine of up to €5,000 (or both); and
- **Category 2 offence:**
  - on indictment: imprisonment for up to five years or a fine of up to €50,000 or both; or
  - on summary conviction: imprisonment for up to 12 months or a fine of up to €5,000 (or both)
Tax Aspects of Compliance Statement

Maura Dineen
Partner, MHC
What does compliance mean?
Compliance with tax law

• Self-assessment system of taxation

• What taxes are covered?
“tax law” means—

(a) the Customs Acts;
(b) the statutes relating to the duties of excise and to the management of those duties;
(c) the Tax Acts;
(d) the Capital Gains Tax Acts;
(e) the Value-Added Tax Acts;
(f) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act;
(g) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act; and
(h) any instruments made under an enactment referred to in any of paragraphs (a) to (g) or made under any other enactment and relating to tax.
Compliance with tax law

• Self-assessment system of taxation

• What taxes are covered?
Compliance with tax law arrangements and structures

- Letter from tax agent tax affairs up to date and in order
  - Ability under law to rely on advice of employee or consultant who appear to have requisite knowledge and experience to advise the company on compliance.
Compliance with tax law - arrangements and structures

• Independent review
Compliance with tax law- arrangements and structures

- No acts in isolation in respect of tax matters

  - Tax committee
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