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The new financial reporting law
Overview of the key aspects and challenges

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Contents

Foreword

Dear Readers,

The new financial reporting law came into force on 1 January 2013. Following a transitional phase, it must be applied for the 2015 financial year at the latest and for the 2016 financial year for consolidated financial statements.

The new regulations can be found in article 957 onwards of the Swiss Code of Obligations (OR). They are applicable for all corporate entities irrespective of their legal structure.

In spite of the numerous changes, the new financial reporting law should have a neutral effect on taxes. The financial statement in compliance with commercial law also serves as the basis for tax assessment. However, certain aspects require particular attention and present the user with new challenges.

With this brochure, Deloitte has put together a clear overview of the main changes to make it easier for you to apply the new financial reporting law and thus ensure your accounting and financial reporting complies with legal requirements.

1. Financial reporting under the new law

The new financial reporting law applies to all corporate entities, irrespective of their legal structure. The regulations therefore apply across all legal structures and to all individual sole proprietorships, partnerships and legal entities (Art. 957 OR). However, specific requirements differ depending on the size of the company: For small businesses, the new financial reporting law brings reduced requirements, whilst larger legal entities must fulfil additional, qualified requirements:

	Economic significance	Accounting and financial reporting requirements
Micro-enterprises (Art. 957 para. 2 OR)	Sole proprietorships and partnerships with revenues of less than CHF 500,000. Clubs and foundations that do not have to be entered in the commercial register. Foundations exempt from the requirement to appoint an auditor.	Income and expenditure accounts and financial positions.
	Sole proprietorships and partnerships with net proceeds from the sale of goods or services or financial income of less than CHF 100,000.	These companies may also dispense with accruals based on time, and instead make accruals based on expenditure and income (Art. 958b Abs. 2 OR).
Small and medium-sized enterprises (Art. 957 para. 1 OR)	Sole proprietorships and partnerships with revenues of at least CHF 500,000 in the previous financial year. Legal entities, which are *not* required to undergo ordinary audits. For ordinary audits (in accordance with Art. 727 OR), the following size criteria apply to two successive years:* Balance sheet total: CHF 20 million Revenue: CHF 40 million Full-time positions: 250 annual average * 2 out of 3 criteria must be exceeded.	Obligation to prepare accounts and financial statements in accordance with standards (Art. 957a – 960e OR). The annual accounts consist of • balance sheet; • profit and loss account; and • notes.
Larger enterprises (Art. 961 OR)	Undertakings that are required by law to have an ordinary audit in accordance with Art. 727 OR.	Obligation to prepare accounts and financial statements in accordance with standards (Art. 957a ff. OR and additional Art. 961-961d OR). The annual accounts consist of • Balance sheet, • Profit and loss account, • Notes, • Additional information in the notes to the annual accounts, • Cash flow statement, supplemented by a management report.
Larger enterprises (Art. 962 OR)	Companies with shares listed on the stock exchange, if this is required by the stock exchange. Cooperatives with at least 2,000 members. Foundations that are required by law to undergo an ordinary audit.	The annual accounts must be prepared according to a recognised standard. (Art. 962 f. OR).

	Economic significance	Accounting and financial reporting requirements
Groups (Art. 963 OR)	Legal entities, which control one or more companies with an obligation to prepare financial statements and not exempt from producing consolidated accounts (Art. 963 para. 1 OR).	Obligation to prepare consolidated accounts (Art. 963 para. 1, Art. 963b para. 3 OR).
Groups (Art. 963b para. 1 OR)	The following undertakings fall under Art. 963b para. 1 OR: • Companies whose equity securities are listed on a stock market, if the stock market so requires. • Cooperatives with a minimum of 2000 members. • Foundations that are required by law to have an ordinary audit.	Obligation to prepare consolidated accounts according to a recognised standard (Art. 963b OR).

As shown by the diagram, the requirements are considerably reduced for small and medium-sized individual enterprises and partnerships:

- Sole proprietorships and partnerships with revenues of less than CHF 500,000 need only to keep accounts based on income and expenditure and on their financial situation;
- Revenues and expenses are accounted for on an accrual basis only if revenues exceed CHF 100,000;
- Notes to the accounts are not required.

It is also noted that:

- SMEs benefit from reduced requirements, as they do not have to provide any additional information in the notes and they are exempt from producing a cash flow statement and management report;
- Publicly-traded companies, cooperatives with at least 2,000 members and foundations that are required by law to undergo an ordinary audit must use a recognised standard for their financial reporting;
- Larger companies, which are included in consolidated accounts in accordance with a recognised standard, are not required to produce a management report or cash flow statement. Additional information in the notes is not required.

In subsequent sections of this report, the most important aspects of the new financial reporting law will be explained in detail.

2. Guidelines for the structure of annual accounts

2.1 Minimum structure of the balance sheet

The balance sheet is divided into assets and liabilities, which are defined by the new law as follows:

Items must be entered on the balance sheet as **Assets** if they have each of the following characteristics (Art. 959 para. 2 OR):

- they are available to the enterprise due to past events,
- a cash inflow is probable, and
- their value can be reliably estimated.

This new definition relates mainly to start-up, capital increase and organisational costs, which may no longer be capitalised and written off over five years but are entered directly as expenses. In this way, the Code of Obligations has become closer to the international standard.

Liabilities must be entered on the balance sheet as borrowed capital if each of the following criteria are fulfilled (Art. 959 para. 5 OR):

- they have been caused by past events,
- a cash outflow is probable, and
- their value can be reliably estimated.

The new financial reporting law also requires a detailed minimum structure of the balance sheet, as shown in the following diagram:

ASSETS (Art. 959a para. 1 OR)	**LIABILITIES** (Art. 959a para. 2 OR)
Current assets (assets that are reasonably expected to be converted into cash within one year of the accounting date or within the normal course of business, Art. 959a para. 1 fig 1 OR): • Cash and cash equivalents and current assets with a stock exchange price • Trade receivables • Other current receivables • Inventories and non-invoiced services • Accrued income and prepaid expenses **Non-current assets** (assets that are acquired with a view to long-term use or for long-term retention, Art. 959a para. 1 fig 2 OR): • Financial assets • Shareholdings • Tangible fixed assets • Intangible fixed assets • Share capital not fully paid up	**Current borrowed capital** (liabilities that are reasonably expected to fall due within one year of the accounting date or within the normal course of business, Art. 959a para. 2 fig 1 OR): • Trade creditors • Current interest-bearing liabilities • Other current liabilities • Deferred income and accrued expenses **Long-term borrowed capital** (Art. 959a para. 2 fig 2 OR): • Long-term interest-bearing liabilities • Other long-term liabilities • Provisions and similar items required by law **Shareholders' equity** (Art. 959a para. 2 fig 3 OR): • Basic, shareholder or foundation capital, if applicable separately according to participation classes • Statutory capital reserves • Statutory retained earnings • Voluntary retained earnings or accumulated losses as negative items • Own shares

The order of presentation is governed by law and is based on the degree of liquidity or the maturity of the balance sheet items.

This minimum structure shows considerable **differences** compared with the old laws governing financial reporting:

1. There are special items for current assets with a stock exchange price and for non-invoiced services (Art. 959a para. 1 fig 1 points a and d OR).

2. In accordance with the law in force until now, own shares can be capitalised. According to the new financial reporting law, own capital shares must be shown as negative items in the shareholders' equity (Art. 959a para. 2 fig 3 point e OR); therefore a separate reserve for own capital shares on the liabilities side is no longer required.

3. According to the new financial reporting law, reserves should be classified according to their origin: Deposits and grants made by owners of shares are now assigned to capital reserves, whilst retained reserves come from retained profits (Art. 959 a, para. 2, fig 3 points b and e OR).

4. Another new feature is that receivables and liabilities vis-à-vis direct or indirect participants and bodies and vis-à-vis enterprises in which there is a direct or indirect participation must in each case be shown separately on the balance sheet or in the notes (Art. 959a para. 4 OR). The previous law required only receivables and liabilities vis-à-vis associated companies and shareholders to be shown.

5. Current and long-term interest-bearing liabilities must be accounted for separately.

Other items must be shown individually on the balance sheet or in the notes, wherever this is essential to allow third parties to assess the asset or financing position or is customary as a result of the activity of the enterprise (Art. 959a para. 3 OR).

2.2 Guidelines for the structure of the profit and loss account

The new financial reporting law differentiates explicitly between two forms of accounting (Art. 959b para. 1 OR): The **Nature of expense method (period-based accounting method)** and the **activity-based costing method (Cost of sales method)**:

PERIOD-BASED ACCOUNTING METHOD (Art. 959b para. 2 OR)	COST OF SALES METHOD (Art. 959b para. 3 OR)
1. Net proceeds from sales of goods and services	1. Net proceeds from sales of goods and services
2. Changes in inventories of unfinished and finished goods and in non-invoiced services	2. Acquisition or manufacturing costs of goods and services sold
3. Cost of materials	3. Administrative and distribution costs
4. Staff costs	4. Financial costs and financial income
5. Other operational costs	5. Non-operational costs and non-operational income
6. Depreciation and valuation adjustments on fixed asset items	6. Extraordinary, non-recurring or prior-period costs and income
7. Financial costs and financial income	7. Direct taxes
8. Non-operational costs and non-operational income	8. Annual profit or annual loss
9. Extraordinary, non-recurring or prior-period costs and income	If the cost of sales method is used: The notes must also show the staff costs and, as a single item, depreciation and valuation adjustments to fixed asset items (Art. 959b para. 4 OR).
10. Direct taxes	
11. Annual profit or annual loss	

This minimum structure leads to considerable differences compared with the old law:

1. The separation of non-recurring costs and income or that which falls outside the accounting period is new, as is the citing of direct taxes.

2. Showing income from the sale of fixed assets is no longer required; this must now be recorded under "extraordinary, non-recurring or prior period income".

3. The separation of financial costs and income.

2.3 Minimum information required in the notes to the annual accounts

The notes supplement and explain the other parts of the annual accounts. All enterprises required by law to prepare accounts must also produce notes (Art. 959c OR).

The following diagram shows the minimum information required in the notes, in accordance with the old and new financial reporting laws:

NOTES ACCORDING TO NEW OR	NOTES ACCORDING TO PREVIOUS OR
The notes contain (Art. 959c para. 1 OR)**:**	**The notes contain** (Art. 663b OR)**:**
1. Details of the principles applied in the annual accounts, where these are not specified by law	No information
2. Information, breakdowns and explanations relating to items on the balance sheet and in the profit and loss account	No information
3. The total amount of replacement reserves used and the additional hidden reserves, if these exceed the total amount of new reserves of the same type, where the result achieved thereby is considerably more favourable	The total amount of replacement reserves used and the additional hidden reserves, if these exceed the total amount of new reserves of the same type, where the result achieved thereby is considerably more favourable (Art. 663b fig 8 a OR)
4. Other information required by law	Other information specified by law (Art. 663b fig 14 OR)
The notes contain the following information, if this is not already visible in the balance sheet or Profit and loss account (Art. 959c para. 2 OR)**:**	**The notes contain** (Art. 663b OR)**:**
1. Business name or name and legal structure and registered office of the enterprise	No information
2. A declaration as to whether the average annual number of full-time positions is no more than 10, 50 or 250	No information
3. The business name, legal form and registered office of enterprises in which direct or substantial indirect shareholdings are held, stating the share of the capital and votes held	Every shareholding that is essential for the assessment of the asset and financial position (Art. 663b fig 7 OR)
4. The number of its own shares that the enterprise itself holds and that are held by enterprises in which it has shareholdings	The acquisition, sale (incl. terms) and number of own shares held, whether by the company itself or by another company in which it has a majority shareholding (Art. 663b fig 10 OR)
5. Acquisitions and sales of its own shares and the terms on which they were acquired or sold	See above

NOTES ACCORDING TO NEW OR	NOTES ACCORDING TO PREVIOUS OR
6. The residual amount of the liabilities from sale-like leasing transactions and other leasing obligations, unless these expire or may be terminated within twelve months of the accounting date	Total amount of leasing obligations that have not been recorded in the balance sheet (Art. 663b fig 3 OR)
7. Liabilities vis-à-vis pension schemes	Liabilities vis-à-vis pension schemes (Art. 663b fig 5 OR)
8. Total amount of collateral for third party liabilities	Total amount of sureties, guarantee obligations and pledges in favour of third parties (Art. 663b fig 1 OR)
9. The total amount of assets used to secure own liabilities and assets under reservation of ownership	The total amount of assets pledged or assigned to secure own liabilities and assets under reservation of ownership (Art. 663b fig 2 OR)
10. Legal or actual obligations for which a cash outflow either appears unlikely or is of an amount that cannot be reliably estimated (contingent liabilities)	No information
11. Number and value of shares or options on shares held by management or administrative bodies and by employees	No information
12. Explanations of extraordinary, non-recurring or prior-period items in the profit and loss account	No information
13. Significant events occurring after the balance sheet date	No information
14. In the event of the auditor's premature resignation: the reasons therefore	In the event of the auditor's premature resignation: the reasons therefore (Art. 663b fig 13 OR)

The following information where applicable:	
1. If the national currency is not used in the financial reporting: the exchange rate applied (Art. 958d para. 3 OR)	The inventory, income statement and balance sheet must be established in the national currency, Art. 960, para. 1 OR)
2. If the company owns assets with a stock exchange price or with another observable market price and values these at the stock exchange price or market price on the balance sheet date, the total value must be disclosed separately for securities and other assets with observable market prices (Art. 960b para. 1 OR)	Securities with a market value may only be valued at the average value in the month preceding the balance sheet date (Art. 667 para. 1 OR).
3. The total amount of fluctuation reserves must be shown if this is not already shown in the balance sheet (Art. 960b para. 2 OR)	No information
4. Amounts, interest rates, maturities and other terms of outstanding bonds (Art. 959c para. 4 OR)	Amounts, interest rates and maturities of issued bonds (Art. 663b item 6 OR)
5. Any deviations from the assumption of continued business operations and their influence on the economic position (Art. 958a para. 3 OR)	Deviations from the principle of continued business operation … should be included in the notes (Art. 662a para. 3 OR)
6. No longer required	Fire insurance values of tangible fixed assets (Art. 663b fig 4 OR)
7. Subject and amount of valuations (Art. 670 OR)	Subject and amount of valuations (Art. 670 OR)
8. No longer required	Amount of authorised and conditional capital increase (Art. 663b fig 11 OR)
9. Only larger enterprises are required to provide a breakdown of the implementation of a risk assessment (Art. 961c para. 2 fig 2 OR)	Information about the implementation of a risk assessment (Art. 663b fig 12 OR)

The following points should be observed:

1. The description of *carrying out a risk assessment* no longer appears in the notes, but is now part of the management report for larger enterprises (Art. 961c para. 2 fig 2 OR). There is no obligation to verify the implementation of a risk assessment.

2. The obligation to publish the subject and amount of *valuations* also exists in the new law. However, according to announced amendments to the Swiss Code of Obligations (company law and accounting legislation, as well as amendments to the legislation regarding limited liability companies, limited partnerships, cooperatives and commercial registry law), Art. 670 OR and others will be omitted. For transparency reasons, it is recommended that valuations are disclosed in the notes.

3. The number and value of *shareholder rights* or *options* on such rights must be shown for all management and administrative bodies, as well as for employees (Art. 959c para. 2 fig 11 OR).

4. The scope of *liabilities that must be reported* has been expanded: It is no longer just a question of securities, guarantee obligations and pledges, but more generally of “collateral for third party liabilities” (Art. 959c para. 2 fig 8 OR).

3. Valuation standards

3.1 General valuation principles

The Swiss Code of Obligations now sets out the following valuation principles (Art. 960 OR):

A. Individual and group valuation

Under the previous law, the absence of any specific regulation led to the right to choose between individual and group valuation. Under the new law, in line with international standards, assets and liabilities are normally valued individually, provided they are not normally consolidated as a group for valuation purposes due to their similarity (Art. 960 para.1 OR). Group valuation can, for example, reliably be used for inventories and receivables provided that such a similarity exists. General provisions in the form of a third of stocks or contingency reserves continue to be authorised.

B. Principle of prudence

The new financial reporting law has been brought further into line with the "true & fair view" principle, which is the recognised standard. However, it still basically adheres to the principle of prudence. This means that hidden reserves are still possible in accordance with regulations on depreciation, valuation adjustments and provisions (Art. 960a para. 4, Art. 960e para. 4 OR). The new financial reporting law still stipulates that certain minorities and members or shareholders with personal liability or a duty to pay in further capital may require that financial reporting be prepared in accordance with a recognised financial reporting standard, therefore providing increased transparency (Art. 962 para. 2 OR, Art. 963a para. 2 OR, Art. 963b para. 4 OR).

C. Checking for evidence of an overvaluation of assets or an undervaluation of provisions

The new law clearly stipulates that, if there is evidence that assets have been overvalued or that provisions are too low, the values must be reviewed and adjusted if necessary (Art. 960 para. 3 OR). The concept of reviewing values is still only broadly addressed by the new financial reporting law, unlike international standards, which explain in detail the potential internal and external evidence and the procedure to follow in connection with value assessments (impairment test).

3.2 Valuation of assets

A. First recording and subsequent valuation

The new law lays down provisions for the valuation of assets as follows:

FIRST RECORDING (Art. 960a para. 1 OR)	Each asset must be valued no higher than its acquisition or manufacturing cost.
SUBSEQUENT VALUATION (Art. 960a para. 2 and para. 3 OR)	The value of each asset must not exceed its acquisition or manufacturing cost. **Exception**: Assets with a stock exchange price or observable market price. Depreciation and value adjustments must be made in accordance with generally accepted business principles, in order to take into account losses in value due to usage, age and other types of losses in value. **Recording**: They must be deducted directly or indirectly from the relevant assets and charged to the profit and loss account and may not be shown under liabilities.

Subsequent valuation refers to any subsequent valuation after the assets' first recording.

For replacement purposes and to ensure the long-term prosperity of the enterprise, additional depreciation and valuation adjustments may be made. For the same purposes, the cancellation of depreciation and valuation adjustments that are no longer justified may be dispensed with (Art. 960a para. 4 OR).

B. Assets with observable market prices

In accordance with the new law, assets with observable market prices may be handled differently in the subsequent valuation. When they are first recorded, however, the general principles under Art. 960a para.1 OR apply.

ASSETS WITH OBSERVABLE MARKET PRICES (Art. 960b OR)	These may be valued at the listed or market price as of the balance sheet date (right to choose). If this law is applied: • The same type of valuation must be applied to all the assets in corresponding positions on the balance sheet; • A value adjustment, charged to the profit and loss account, may be made in order to take account of price fluctuations; this is not permitted, however, if it would result in both the acquisition value and the lower market value being undercut.

There is therefore no maximum valuation limit for these assets.

The law does not define what is meant by a listed price or market price. It is more a question of being brought into line with the IFRS "fair value" concept. This is based, amongst other things, on prices in active markets, such as stock exchange prices.

A **stock exchange** is characterised by the fact that buyers and sellers do not negotiate a price between themselves. Instead, prices are set anonymously and therefore guarantee fair competition. The following are the main features of a stock exchange:

Large number and regularity of transactions between buyers and sellers ("active market")

Almost full set of information, in particular visible prices and transparency with regard to how prices are set

Barely any restrictions on entry and exit

Homogeneous products

Low transaction costs

Principle of profit maximisation

The more pronounced these attributes are in a market, the more likely that the visible market price can be taken as a basis for market valuation in accordance with Art. 960b OR and the more likely the assumption of an "active market" or "stock exchange" can be acted upon.

In practice, a number of potential assets can be considered for valuation as assets with observable market prices. The following list is not exhaustive, but it does summarise the **assets** that often come up in practice and their requirements for valuation in accordance with Art. 960b OR:

- Listed securities: Always where liquid trading takes place on the stock exchange;
- Unlisted securities: Only where another type of liquid trading (e.g. OTC) takes place (such as through market making);
- Structured products: Only if a valuation using simple, generally recognised models based on observable market data, which itself fulfils the criteria, can be carried out;
- Inventories: Possible for goods, which are traded on an almost perfect market (e.g. commodities); for retailers, the market valuation method is very unlikely to be appropriate;
- Property: Only possible in very rare cases, in which the criteria of homogeneity and liquidity are to a large extent fulfilled;
- Shareholdings: Scarcely possible for unlisted holdings, since shareholdings are generally too heterogeneous and a market would be too illiquid.

3.3 Valuation of liabilities

According to the new law, liabilities must be entered at their nominal value (Art. 960e para. 1 OR).

If past events lead to the expectation of a cash outflow in future financial years and the amount of the cash flow can be reliably estimated, the provisions required must be made and charged to the profit and loss account. In addition, provisions may be made in the following cases (Art. 960e para. 3 OR):

- Regularly incurred expenses from guarantee commitments;
- Renovations to tangible fixed assets;
- Restructuring;
- Measures for securing the long-term prosperity of the enterprise.

Provisions that are no longer required need not be released (art. 960e para. 4 OR). This reflects the principle of prudence, which continues to apply.

4. Financial reporting for larger enterprises

4.1 Additional requirements for larger enterprises

Enterprises that are required by law to have an ordinary audit must provide additional information in their annual reports. This includes additional information in the notes, a cash flow statement and a management report (Art. 961 OR). The annual report must be approved within 6 months of the year end by the responsible management body or responsible persons and it must be signed by the Chairman of the Executive Board and the person responsible for financial reporting. (Art. 958 para. 3 OR).

The additional information may be dispensed with by a larger company if the enterprise itself or a legal entity that controls the enterprise prepares consolidated accounts in accordance with a recognised financial reporting standard (Art. 961d para. 1 OR). In the interests of protecting minorities, however, the law also stipulates that qualified minorities or certain entities may insist on this additional information in the annual report (Art. 961d para. 2 OR).

A. Additional information in the notes
The following *additional information* must be published in the notes (Art. 961a OR):

1. Long-term interest-bearing liabilities, arranged according to due date within one to five years or after five years;

2. Fees paid to the auditor, with separate items for audit services and other services.

Enterprises that are required by law to produce consolidated accounts are also required to publish the valuation rules in the notes to the consolidated accounts. This now applies to all legal entities that are required by law to have an ordinary audit. The additional disclosure requirements for publicly-traded companies in accordance with Art. 663b^{bis} and Art. 663c OR continue to apply.

B. Preparing a cash flow statement
Larger enterprises, which are required by law to have an ordinary audit, must also produce a cash flow statement as part of their annual accounts (Art. 961 fig 2 OR).

The cash flow statement must show changes in cash flow and the reasons for these changes. Investors, creditors and other receivers of financial statements are given a full insight into the financial situation of the enterprise thanks to the disclosure of payment flows in a cash flow statement. This is another way in which the law has been brought further into line with international standards.

The new law requires changes in cash from business operations, investment activities and financing activities to be presented separately (Art. 961b OR).

C. Preparing a management report
Larger enterprises, which are not consolidated according to a recognised standard and are required to have an ordinary audit, must also produce a management report (Art. 961 fig 3 OR). The management report presents the business performance and the economic position of the enterprise and of the corporate group where applicable. It replaces the annual report required by the previous law. The management report must not contradict the economic position presented in the annual accounts (Art. 961c para. 3 OR).

The auditor is not required by law to check the management report. However, any significant inconsistencies with the annual report must be pointed out.

The management report must provide information on (Art. 961c para. 3 OR):

- The average annual number of full-time positions;
- The implementation of a risk assessment;
- Orders and assignments;
- Research and development activities;
- Extraordinary events;
- Future prospects.

The distinctive features of the management report are that it is future-oriented and dynamic and therefore helps to balance out the drawback of other financial information, which is oriented towards the past. As a general rule, it covers a time frame of one to two years.

4.2 Additional financial statements according to a recognised standard

In addition to annual accounts, the following companies must also prepare financial statements in accordance with a recognised financial reporting standard (Art. 962 para. 1 OR):

- Companies whose equity securities are listed on a stock exchange, if the stock exchange so requires;
- Cooperatives with a minimum of 2,000 members;
- Foundations that are required by law to have an ordinary audit.

The Swiss Code of Obligations does not, however, provide for "dual reporting", which complies both with the requirements of the recognised rules and standards and with those of the Code of Obligations for preparing financial statements. This is because the financial statements governed by the Code of Obligations and reporting according to a recognised standard pursue different objectives: Financial reporting governed by the Code of Obligations is primarily oriented towards protecting creditors and forms the basis for taxation and, where applicable, dividend payments. As part of the business report, it must be presented to the relevant body for approval (Art. 958 para. 3 OR). Financial reporting according to a recognised standard, on the other hand, must provide a true and fair view/fair presentation. It is used above all as the basis for financial decision-making. If financial statements according to a recognised standard are required by law, these must be submitted to the supreme management body when the annual accounts are submitted for approval, although they themselves do not require approval (Art. 962a para. 4 OR). These financial statements do not need to be included in the business report.

The new financial reporting law provides particular **protection for minorities**: If one of the following minorities requests additional financial statements according to a recognised standard, these must be provided (Art. 962 para. 2 OR):

- Company members representing at least 20 per cent of the basic capital.
- 10% of cooperative members or 20% of the members of an association.
- Any company member or any member subject to personal liability or a duty to pay in further capital.

The enterprise can apply one of the **recognised standards** (Swiss GAAP FER, IFRS, IFRS for SME, US GAAP, IPSAS). The supreme management or administrative body is responsible for choosing the recognised standard, unless rules specific to the enterprise stipulate otherwise. If a parent company is required under Art. 963b OR to prepare consolidated accounts in accordance with a recognised standard, it no longer has to prepare annual accounts in accordance with the recognised standard. It is worth noting that IFRS according to EU guidelines is not a recognised standard in Switzerland. Swiss companies belonging to an affiliated group that prepares annual statements according to IFRS under EU law do not benefit from reduced requirements.

4.3 Consolidated accounts

The new financial reporting law requires that a legal entity controlling one or more enterprises that are required to file financial reports must prepare consolidated annual accounts (consolidated accounts). These must be prepared by applying the regulations in the Swiss Code of Obligations (Art. 963b para. 3 OR).

A. Consolidated accounts according to the new Code of Obligations

Under the previous law, a company had to provide consolidated accounts according to the management principle, i.e. when it controlled one or more enterprises under uniform management. The revised Code of Obligations, on the other hand, is geared towards the standard international control principle. A legal entity has to prepare consolidated accounts if it fulfils one of the following **criteria** (Art. 963 para. 2 OR):

- It directly or indirectly holds a majority of votes in the highest management body;
- It directly or indirectly has the right to appoint or remove a majority of the members of the supreme management or administrative body;
- It is able to exercise a controlling influence based on the articles of association, the foundation deed, a contract or comparable instruments.

If one or more of the above criteria is fulfilled, the legal entity has a legal or "factual" right to control one or more enterprises and must prepare consolidated annual accounts. Control/exercise of influence does not necessarily have to exist already, the possibility of exercising control alone is sufficient. Whether or not this exercise of control typically found in large companies is used is of no significance in this context.

A legal entity may, however, **dispense** with the need to prepare consolidated accounts in accordance with Art. 963a para. 1 OR if:

- Together with the controlled enterprises, it has not exceeded two of the following thresholds in two successive financial years:
  - a. balance sheet total of CHF 20 million;
  - b. revenues of CHF 40 million;
  - c. 250 full-time positions on annual average; or
- It is controlled by an enterprise whose consolidated accounts have been prepared and audited in accordance with Swiss or equivalent foreign regulations (Swiss GAAP FER, IFRS, IFRS for SME, US GAAP, IPSAS) and have been checked by auditors; or
- It is a foundation, association or cooperative, which has delegated the duty to prepare consolidated accounts to a controlled enterprise in accordance with Art. 963 para. 4 OR.

For **newly formed groups**, which have not yet been operating for more than two successive financial years, the requirement to prepare consolidated accounts generally applies from the first year. However, if the threshold for size in accordance with (Art. 963a para. 1 fig 1 OR) is not exceeded in the first year and is not likely to be exceeded in the second year, it will not have to prepare consolidated accounts in the second year either. Under these circumstances, the group is exempt from having to prepare consolidated accounts in the first year, provided that this is not necessary or required for other reasons. In the second year, the size thresholds according to Art. 963a para. 1 fig 1 OR should be assessed for both financial years.

If the group's financial year covers less or more than 12 months, in order to determine the "sales revenue" threshold, the consolidated sales revenue should be adjusted up or down proportionally to reflect a full year (12 months). Seasonal variations should be taken into account when annualising figures.

Irrespective of size thresholds, **consolidated accounts must always be prepared** if in accordance with Art. 963a para. 2 OR:

- this is necessary in order to make the most reliable assessment of the economic position; or
- a qualified minority, certain interested parties or the foundation supervisory authorities so require.

B. Consolidated accounts according to a recognised standard

The following companies are required to prepare consolidated accounts according to a recognised standard (Art. 963b para. 1 OR).

- If the stock exchange listing a company with equity securities so requires;
- Cooperatives with a minimum of 2000 members;
- Foundations that are required by law to have an ordinary audit.

All other companies that have to prepare consolidated accounts must do so in accordance with the principles of the financial reporting standards (for more details see Art. 963b para. 3 OR). The following can, however, ask for consolidated accounts to be prepared (Art. 963b para. 4 OR):

- Company members representing at least 20% of the basic capital or 10% of the members of a cooperative or 20% of the members of an association;
- A company member or an association member subject to personal liability or a duty to pay in further capital;
- The foundation supervisory authorities.

C. Methods of consolidation

“OR”

The Code of Obligations does not stipulate a method of consolidation, nor does it make individual provisions for consolidation techniques. According to the Code of Obligations (Art. 963b para. 3 OR), consolidated accounts must fulfil the basic principles of the recognised reporting standards and the valuation rules must also be disclosed in the notes to the consolidated accounts. This means that a group may produce its consolidated accounts according to its own valuation rules and may therefore maintain hidden reserves. The consolidation rules should be gearing towards existing rules, for example the legal valuation rules on individual financial statements.

Even though a group may prepare and apply its own valuation rules, it may not define these indiscriminately. The relevant rules are defined by the basic principles of the recognised reporting standards and by the obligation to present an insight into the financial, financing or profit situation of the group (Art. 963b para. 3 OR). For example, the principle of consistency in accordance with Art. 958c para. 1 fig 6 OR must be taken into account, as well as the ban on arbitrarily using different valuation concepts (e.g. lowest value and market value) for the same types of assets.

In general, consolidation accounts can be prepared based on individual financial statements without adjusting. However, if these do not follow the same rules as the consolidated accounts for some essential points, the principle of consistency is then violated. The Code of Obligations does, however, allow for accounting "at book value". Nevertheless, there are some criteria that must be fulfilled:

- Inconsistent valuations should be recorded as hidden reserves in the consolidated accounts and their net release must be disclosed in the notes;
- The presentation should be standardised in accordance with legal requirements;
- All individual accounts should fulfil the basic principles of recognised reporting standards, even if these do not concern a legal entity under Swiss law (Art. 963b para. 3 OR);
- The consolidation methods and the currency conversion of individual accounts should fulfil the basic principles of recognised reporting standards. Shareholdings offset against shareholders' equity (not necessarily according to the purchase method), receivables and liabilities, basic sales revenues and other revenues with corresponding expenses, dividend income and basic interim profits are to be offset or eliminated, if these result in the standard costs of procurement and manufacturing being exceeded;
- If standard financial reporting rules are not used, this should be disclosed in the notes in accordance with the rules of consolidation and valuation (Art 963b para. 3 OR).

D. Composition of consolidated accounts

Balance sheet and profit and loss account

The balance sheet and profit and loss account are fundamental components of the consolidated accounts and are therefore mandatory.

Cash flow statement

The requirements of the financial reporting law for larger enterprises (Art. 961 to Art. 961d OR) do not necessarily apply to consolidated accounts. This implies that a cash flow statement is not a compulsory component of consolidated accounts. It is, however, recommended that a cash flow statement be prepared, since this can explain a great deal about the company and its economic development.

Statement of shareholders' equity

A consolidated statement of shareholders' equity is not a requirement according to the Code of Obligations. In practice, however, it has proven to be extremely helpful from the point of view of those receiving the consolidated accounts, since it discloses the causes of any changes in consolidated shareholders' equity. Therefore a consolidated statement of shareholders' equity should be considered.

Notes

The notes are an integral part of the consolidated accounts. The notes contain specific information, which is required for the reliable assessment of the financial, financing or profit situation, to complement the figures in the balance sheet and profit and loss account, as well as in the cash flow statement and statement of shareholders' equity where applicable.

Management report

The Code of Obligations stipulates that larger enterprises must produce a management report (Art. 961c OR), which should explain the business performance and the economic position of the company, and of the corporate group where applicable, at the end of the financial year. This management report refers to the parent company. In order to present the business performance and economic situation of a group's parent company, this must also take into the account the relevant information from individual companies in order to produce a "consolidated" management report. A separate management report in addition to the management report produced for the parent company is not, however, required.

5. Tax implications of the new financial reporting law

5.1 Introduction

Creating a tax neutral solution for the revised financial reporting law was declared an objective both in the announcement on the amendments to the Swiss Code of Obligations and in parliamentary debate on the subject. The aim of achieving tax neutrality is also confirmed in the analysis of the new financial reporting law carried out by the Swiss Tax Conference (*Schweizerische Steuerkonferenz* [SSK]) on 12 February 2013. Under the new financial reporting law, the "authoritative principle" ("*Massgeblichkeitsprinzip*") continues to apply, as do other subsequent principles (such as the "conformity principle" or "*Konformitätsprinzip*" and the "booking principle" or "*Verbuchungsprinzip*") governing the interaction between the commercial and the tax balance sheet.

Three principles of Swiss tax law demonstrate the close correlation between financial reporting laws and tax laws: The principles of "authority", "conformity" and "booking".

The **principle of the authority of the commercial balance sheet ("*Massgeblichkeitsprinzip*")** makes the result determined according to commercial law the starting point for calculating the taxable income of legal and independent entities. Expenditure that is not entered in commercial accounting cannot be made valid for taxation purposes. The principle of authority does not, however, apply in absolute terms but only as a matter of principle. Offsetting and adjusting tax are possible, in that the financial reporting law in force in Switzerland allows for the development of hidden reserves.

According to the **conformity principle ("*Konformitätsprinzip*")**, data that does not comply with Swiss commercial law is not recognised for tax purposes. Unless specified otherwise, only annual accounts complying with the commercial law may form the basis for calculating taxable income.

Under the **booking principle ("*Verbuchungsprinzip*")**, values permitted for tax purposes will only be recognised in the tax statement if they have actually been entered in the balance sheet in financial statements that comply with Swiss commercial law. This is of particular importance when the tax laws provide for (standardised) "reduced requirements" (e.g. a third of stocks, contingency reserves or immediate write-offs). Under the booking principle, these must continue to be recorded in the financial statements that comply with Swiss commercial law with a view to "fair presentation".

5.2 Tax implications of the new financial reporting law

A. Financial reporting in foreign currencies

Until now, all financial reporting in Switzerland had to be carried out in Swiss francs. Accounts can now also be prepared in the currency required for business operations. If the national currency is not used for financial reporting, the values must also be shown in Swiss francs and the exchange rates applied must be published in the notes to the accounts (Art. 958d para. 3 OR). For enterprises with an international focus, this is much easier compared with frequently complex conversions of statutory accounts into the national currency; in practice, however, the implementation is not expected to be completely problem-free.

For example, the conversion of shareholders' equity into Swiss francs (required by the stipulations in the Code of Obligations governing capital protection) can lead to exchange rate differences, which in the case of exchange losses according to the imparity principle should be entered as having an effect on net income, whilst exchange profits cannot be recorded as deferred gains having an effect on net income and therefore cannot be paid out to shareholders. Accordingly, exchange rate fluctuations can have a significant effect on the tax expense of a company operating with a foreign currency.

B. Valuation and depreciation

The new financial reporting law essentially maintains the previous method of valuing assets at their acquisition or manufacturing costs. However, a distinction is now made between the first recording and the subsequent valuation. Assets with an observable market price can be recorded at this price even if it is above the nominal or acquisition value. For inventories and non-invoiced services, the lowest value principle is maintained.

For assets with an observable market price, a value adjustment may be made to the list or market price as a fluctuation reserve. For tax purposes, this represents an expense that is justified for business purposes.

The entering of the three "Swiss tax customs" – third of stocks, general contingency reserves and non-recurring write-offs – is, as before, still not explicitly defined in the revised financial reporting law. The entering of these three special cases in the accounts has until now been justified by the principle of prudence, since the entries were recognised as complying with commercial law and relevant for taxation. The fact that the financial reporting law has not been decisively altered in this area suggests that the "Swiss tax customs" will continue to apply.

C. Provision

Art. 960e OR states that liabilities must be entered at their nominal value. The Code of Obligations then defines the law in Art. 960e para. 2 OR with the accounting regulation: If past events lead to the expectation of a cash outflow in future financial years, provisions must be made. Para. 4 is particularly worth noting as it specifies that provisions that are no longer required need not be cancelled. This is in direct contrast to the tax balance sheet, in which existing provisions that are no longer justified must be cancelled for tax purposes (Art. 63 para. 2 DBG) and new provisions, which are permitted in commercial law but are not justified for business purposes, are not permitted (Art. 58 para. 1 lit. b DBG).

D. Own shares

Under the previous law, "own shares" were entered either as current or fixed assets and at the same time a reserve was entered on the liabilities side for own shares. The new financial reporting law stipulates that "own shares" must be now being entered as negative items in the shareholders' equity, in accordance with IFRS regulations.

The previous practice of recognising capital losses on own shares entered in commercial accounting in accordance with commercial law as a justifiable expense for tax purposes will continue.

6. Provisions for transition

The new financial reporting law came into force on 1 January 2013. It will be applied for the first time to the financial year starting two years after the changes in the law came into force, i.e. for financial years starting on or after 1 January 2015. The voluntary application of the new law before that date is permitted, provided that the new financial reporting law is applied in full. This concerns the preparation of accounts and financial statements and therefore the entire annual accounts and business report. There are certain reduced requirements that apply only to the previous year's figures.

The law defines enterprises that are required by law to have an ordinary audit as larger enterprises. The obligation to have an ordinary audit depends on size thresholds (balance sheet total of CHF 20 million, revenues of CHF 40 million, 250 full-time positions on annual average), two of which must have been fulfilled for the two preceding years. The two financial years preceding the change in law are the determining factor.

The regulations applying to the consolidated accounts shall be applied for the first time to the financial year beginning three years after the change in law came into force, i.e. for financial years beginning on or after 1 January 2016. Application in advance of this date is also possible in this case.

The two preceding financial years are the determining factor when it comes to exemption from the obligation to prepare consolidated accounts.

When the requirements of the financial reporting law are applied for the first time, figures for the preceding years may be omitted. For subsequent applications, the figures for the previous year, which are then in compliance with the stipulations of the new financial reporting law, must be provided. If figures are provided for the previous financial year, there is no need to ensure consistency of presentation and structure. This should be pointed out in the notes.

There are no special provisions for newly formed enterprises. Enterprises that were set up on or after 1 January 2013 can either apply the former regulations or start using the new rules straight away.

7. Specific questions on the application of the new financial reporting law

The law sets out in Art. 2 para. 4 provisions for transition stipulating that "when the requirements of the financial reporting law are applied for the first time, figures for the preceding years may be omitted. If figures are provided for the previous financial year, there is no need to ensure consistency of presentation and structure. This should be pointed out in the notes".

The new law must therefore be applied in full and those items permitted under the old law that are no longer provided for must be adapted.

7.1 Start-up and organisational costs

In accordance with the new law, start-up and organisational costs no longer comply with the requirements for entry on the assets side as stated in Art. 959 para. 2 OR and are therefore not permitted. Correspondingly, amounts already recognised as assets must be charged to the income statement either by the time the new financial reporting law is introduced or in the first year after its application.

7.2 Valuation of property and investments

The valuation options in accordance with Art. 670 OR of existing company law do not contradict the new financial reporting law. However, the Swiss Federal Council is planning a revision of company law, with Art. 670 OR being amongst those to be omitted. As long as this revision is not implemented, valuation reserves can continue to be made. According to the requirements of the new financial reporting law, these must then be shown separately as shareholders' equity within the legal retained earnings, so that the block on pay-outs remains clear.

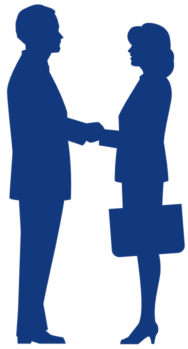
The new financial reporting law does not set out any requirement for providing additional information on valuations. It is, however, suggested that a note be provided to inform the reader about any valuations. This is implied in Art. 959c para. 1 fig 4 OR in "other information required by law".

7.3 Breakdown of reserves in shareholders' equity

Art. 671 to 674 OR of company law and Art. 959a OR of the new financial reporting law define reserves differently but do not contradict each other. The following table provides an overview of the items in company law and those taken into account in Art. 959a OR:

ITEMS IN THE NEW FINANCIAL REPORTING LAW	ITEMS IN COMPANY LAW
Statutory capital reserves • Reserves from (tax) capital contributions • Other capital reserves	General statutory reserves
Statutory retained earnings • General statutory retained earnings • Revaluation reserves where applicable	Revaluation reserves
Voluntary retained earnings or accumulated losses as negative items	Statutory reserves, free reserves
Balance sheet profit	Balance sheet profit/losses
Own shares (for own shares held by subsidiary companies)	Reserves for own shares

7.4 Information on shareholder rights and options for management and administrative bodies as well as for employees



The law requires that the notes to the annual accounts provide information about the number and value of shareholder rights and options on such rights for all management and administrative bodies, as well as for company employees (Art. 959c para. 2 fig 11 OR). This not only applies to companies listed on the stock exchange but to all enterprises for which shareholder rights and options are granted to management and administrative bodies and employees. For joint stock companies listed on the stock exchange, there are also additional disclosure requirements in accordance with company law (Art. 663c OR) and the ordinance against excessive compensation in stock exchange listed companies (CompO).

Concerning this matter, the notes should disclose only the number of shareholder rights or options on such rights allocated during the reporting year and their value and not all the instruments held by the relevant groups of people on the balance sheet date. This information must be presented separately for management and administrative bodies on the one hand and other employees on the other hand. If both shares and options are allocated, the disclosure should also separate these instruments. This information could, for example, be presented as follows in the notes:

	OWNERSHIP RIGHTS (SHARES)		OPTIONS	
2015	Number	CHF	Number	CHF
Issued to management or administrative bodies	100	400,000	20	30,000
Issued to employees	350	1,400,000	500	750,000
Total	**450**	**1,800,000**	**520**	**780,000**

7.5 Accounting and financial reporting in foreign currencies

Accounting and financial reporting may take place in the currency required for business operations (Art. 957a para. 4 OR; Art. 958d para. 3 OR); a specific currency is not however defined. Art. 958 para. 1 OR implies, however, that the currency used should present the economic position of the enterprise so that third parties can make a reliable assessment of the same. As a rule, this is the currency in which the enterprise operates, so the currency of the primary economic environment in which the enterprise operates and in which cash flows mainly take place. The law also allows accounting to take place in CHF, even if this is not the currency required for business operations. In contrast to the accounts, financial reporting must in all cases also be presented (converted) in the national currency (CHF) so that the reader does not have to convert the currency himself. This concerns all components of the annual accounts (balance sheet, profit and loss account, notes, cash flow statement where applicable) and should serve as a guide to orientation. This information could, for example, be presented as follows:

	REPORTING YEAR		PREVIOUS YEAR	
Balance sheet item	Foreign currency	CHF	Foreign currency	CHF

The law does not stipulate any definitive methods for converting a foreign currency into Swiss francs. In practice, the balance sheet date method and the modified balance sheet date method are viable and appropriate.

In this context, exchange rate differences can occur (e.g. from transactions or from subsequent valuations of items in a foreign currency), which should either be recorded as "exchange rate differences" in the shareholders' equity or must be separated into unrealised losses and unrealised profits. Taking the imparity principle into consideration, unrealised losses must then be charged to the income statement and unrealised profits recorded in the balance sheet as accruals.

If the financial reporting takes place in the currency required for business operations, the exchange rates applied to convert the figures into the national currency must be disclosed and if applicable explained in the notes (Art. 958d para. 3 OR). In addition to simply disclosing the exchange rates used, information on the exchange methods must also be provided in the notes.

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Notes

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