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The CSRD for
Intermediate Holdings

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Will your intermediate holding trigger CSRD requirements?

Corporate Sustainability Reporting Directive (CSRD)

The European Union has committed via the European Green Deal to transition to a climate-neutral economy for all the Member States by 2050. This was triggered by the Paris Agreement in 2015 and includes a wide range of policy initiatives, tax incentives as well as legislation which has consequences for annual reporting of companies. The overall goal of the EU is for the economy to be environmentally sustainable and socially responsible. It endeavors to improve the long-term resilience of the economy as well as the well-being and health of its citizens and future generations with access to fresh air, clean water, healthy soil and biodiversity, as well as affordable food.

The European Commission aims for a single reporting framework for (non-)financial data and will replace the Non-Financial Reporting Directive (NFRD) per financial year 2024 for the companies already subject to the NFRD with the Corporate Sustainability Reporting Directive (CSRD). Other legislation which has or will have consequences for annual reporting are the EU Taxonomy Regulation and for financial market participants the Sustainable Finance Disclosure Regulation (SFDR) and the EU Green Bond Standard.

The CSRD will substantially extend the scope of sustainability reporting requirements per financial year 2024 for companies currently subject to the NFRD and per financial year 2025 for large companies that are not presently subject to the NFRD.

The CSRD requires large companies to prepare a sustainability report (art 19a) and parent companies of large groups are required to prepare a consolidated sustainability report (art 29a). An assessment of when a company is considered 'large' or when a company is considered a 'parent of a large group' is therefore key to understand whether or not CSRD reporting is required.

When does a company meet the definition of a 'large' company or when is the company considered a parent undertaking of a 'large group' in accordance with the new CSRD requirements?

Under CSRD, a reference is made to Directive 2013/34/EU and the following criteria are used to determine whether a company or a group is considered 'large':*

- (a) balance sheet total: minimum EUR 25 000 000¹;
- (b) net turnover: minimum EUR 50 000 000;
- (c) average number of employees during the financial year: equal or more than 250².

Important note is that when two out of three of these criteria are met, a company is considered large. For assessing whether a group is large these criteria are compared to the consolidated numbers of the group, before taking into account any (reporting) exemptions.

* The size criteria need to be met for two consecutive years (i.e. when a company exceeds the size criteria for the first time)

¹ Recent changes to size criteria based on inflation: [Adjusting SME size criteria for inflation \(europa.eu\)](https://europa.eu/european-council/story/adjusting-smf-size-criteria-for-inflation). We expect these to be applicable in the Netherlands as per financial year 2024.

² Article 3 (7) of Directive 2013/34/EU



Reporting requirements under Dutch law

A parent undertaking of a large group is in principle required to prepare consolidated CSRD reporting. This impacts intermediate holdings that are heading large groups.

The CSRD will be applicable to individually large companies and parents of large groups. We first focus on what is considered a group under Dutch Law.

Dutch Law (hereafter "Dutch Civil Code" or "DCC") defines a 'group' as follows: *"A group is an economic unit in which legal entities and companies are organizationally linked. Group companies are legal entities and companies that are linked to each other in a group."*

Article 2:406-1 DCC requires that a company which is heading a group to prepare consolidated financial statements separately from its stand-alone financial statements.

This also applies to intermediate holdings that are themselves part of a larger group

(based on 2:406-2 DCC). It may therefore be the case that a company having subsidiaries may be a head of a subgroup. Under Dutch law there are two exemptions from preparing consolidated financial statements. Firstly, if the consolidated group as a whole meets the size criteria of Small or Micro³, the company heading that group is exempted from preparing consolidated financial statements.⁴

Secondly, as per 2:408 DCC, if the company is itself part of a larger group (so an intermediate holding) it may apply the '2:408-exemption' under certain circumstances.^{5 6}

Article 2:408(1c) DCC states that the consolidated statements and management report of the parent company of the entity that is applying for the exemption are prepared in accordance with EU regulation or in an equivalent manner.

Article 2:408 is a frequently used article for Dutch intermediate holdings to avoid preparing consolidated financial statements and hence the "408-exemption" is a well-known concept for Dutch intermediate holdings.

Legislative bill for CSRD transposition

In the Dutch proposed transposition of the CSRD⁷ the same thresholds as mentioned on the first page will be taken into account and the same definition of a group applies. In addition, the exemption for consolidated financial statements operates independently from the exemptions for sustainability reporting. This means that a parent company cannot make use of the '2:408 exemption'.

Therefore, if a company meets the definition of a parent undertaking of a 'large group', it is in principle required to prepare consolidated CSRD reporting.

There is only one exemption option for the consolidated CSRD reporting⁸, a company that is heading a group and is part of a larger group, can be exempted from the consolidated CSRD reporting if it is part of a larger group that prepares consolidated CSRD reporting. The intermediate holding that is required to prepare the CSRD consolidation would then only refer to the larger CSRD consolidation and states that its CSRD reporting is an integral part of the larger CSRD consolidation.



³ In terms of the EU Directive 2013/34/EU and article 2:396 DCC

⁴ Under current Dutch law (article 2:398-7 DCC) this exemption is not applicable for legal entities (including intermediate holdings) that fall into the scope of public interest entities (e.g. by listing securities on a EU-regulated market).

⁵ See article 2:408 DCC

⁶ According to current Dutch law (article 2:408-4 DCC) this exemption is not applicable to intermediate holdings with listed securities on a EU-regulated market.

⁷ <https://www.internetconsultatie.nl/implementatiewetduurzaamheidsrapportering/b1>

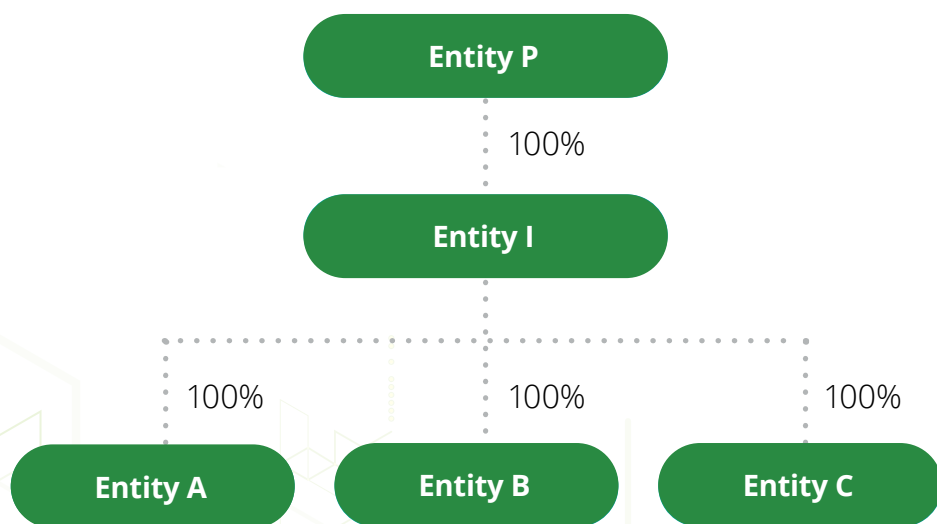
⁸ See CSRD article 29a sub 8

CSRD Reporting requirements and Intermediate holdings

Intermediate holdings in the Netherlands

In the Netherlands certain companies have intermediate holdings that are primarily holding companies aimed at simplifying tax structures. These entities could be owned by foreign (non-EU) parents and cannot use the CSRD consolidation exemption unless the foreign (non-EU) parent decides to prepare a consolidated sustainability report that is compliant with CSRD or equivalent reporting standards⁹. As a result, Dutch intermediate holdings, incorporated for the purposes of simplifying tax structures and (legally) heading a group of subsidiaries that form a large group based on the Directive 2013/34/EU, will be in scope of the CSRD. This is regardless of whether the Dutch intermediate holding company has subsidiaries (undertakings) inside or outside the EU.

Below, we have included a simplified structure of a non-EU ultimate Parent (Entity P), a Dutch intermediate holding (Entity I) and a large group of subsidiaries consisting of Entities A, B and C.



⁹Equivalence has not yet been determined by the European Commission (October 2023)

¹⁰PIE are (i) entities governed by the law of an European Union Member State whose transferable securities are admitted to trading on a regulated market of any Member State; (ii) credit institutions; (iii) insurance undertakings, or (iv) entities designated by Member States as public-interest entities

The figure is an example and helps in summarizing the CSRD reporting requirements for intermediate holdings:

- Entity I is the (Dutch) Intermediate holding that owns three subsidiaries and together form a large group.
- Entity I does not prepare consolidated financial statements, based on art 2:408 DCC and when measuring the stand-alone financial statements of Entity I, it would classify as a Small or Micro entity.
- Entity A is incorporated in the EU, and is considered a small entity;
- Entity B is incorporated outside of the EU, and considered a small entity;
- Entity C is incorporated outside of the EU, and it is a large entity;
- Entities A, B, and C combined are considered a large group, if consolidation had been fully performed;
- Entity P is incorporated outside of the EU and does not prepare CSRD or equivalent consolidated sustainability reporting; and
- None of the entities can be identified as EU Public Interest Entity¹⁰.

Based on the above, Entity I is required to prepare a consolidated CSRD sustainability report that includes sustainability information on Entities I, A, B and C, even when Entity I is exempt from financial consolidated reporting using the 408-exemption in the Netherlands.

This conclusion is in line with recital (26) of the CSRD which states that the CSRD exemption regime for consolidated sustainability reporting operates independently from the exemption to prepare consolidated financial statements and a consolidated management report.



Conclusion

For Dutch intermediate holding companies the "408-exemption" offers an exemption from consolidated financial reporting. When these intermediate holding companies, as parents of large groups, would be impacted by the CSRD reporting requirements, these intermediate holding companies could assume incorrectly that:

- The scope of the statutory financial reporting will be consistent with the reporting scope of the CSRD, meaning they could apply the size criteria to the individual legal holding entity; or
- The exemption from reporting for financial purposes would also be applicable to sustainability reporting.

As a result, **Dutch intermediate holding companies**, whether or not aimed at simplifying tax structures, that are exempt from consolidated financial reporting using Dutch law 2:408 DCC, would be **in scope for consolidated CSRD** reporting for the entire group of subsidiaries even when no economic activities of those subsidiaries are performed inside the EU.

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Disclaimer: The provided simplified fact patterns are provided to illustrate some of the factors that should be considered in evaluating whether CSRD applies and, if so, the applicable standards and timing of application. These examples do not consider the ability to prepare combined reports in limited instances, and to satisfy subsidiary reporting requirements by reporting at a higher level within the organization. The actual analysis is complex and companies should review the rules carefully and assess the need for early involvement of its legal team. Further, there may be exceptions to the effective dates in the examples below if the EU Member States make changes to these directives as part of their adoption process. Please note that the CSRD has to be incorporated into Dutch law to become effective. We assume that the contents of the CSRD will be incorporated timely and similarly by the Dutch government. If and when incorporated into Dutch law the references in this brochure will be updated to the applicable Dutch law sources.



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