

# Financial Reporting and Accounting Guide

July 2021

## Financial Reporting Relief for Wholly-owned Companies

This publication provides a high-level summary of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785, which provides relief to wholly-owned companies from the annual financial reporting requirements of the *Corporations Act 2001*, subject to the conditions specified in the instrument being satisfied.

### **Is financial reporting relief available to all wholly-owned companies?**

No, financial reporting relief is not available to all wholly-owned companies. Financial reporting relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 is only available to:

- a non-listed public company<sup>(i)</sup>;
- a large proprietary company<sup>(i)(ii)</sup>; or
- a small proprietary company<sup>(i)</sup> to which paragraph 292(2)(b) of the *Corporations Act 2001* applies (commonly known as a 'foreign controlled small proprietary company')<sup>(ii)</sup>,

that is a wholly-owned company at the end of the financial year of a company (that is not a small proprietary company), a disclosing entity which is a body incorporated in Australia, or a registered foreign company.

(i) As defined by the *Corporations Act 2001*.

(ii) Financial reporting relief is not available to a wholly-owned company that is a disclosing entity, a borrower in relation to a debenture, the guarantor of such a borrower or a financial services licensee.

### **What are the key conditions that must be satisfied in order to obtain financial reporting relief?**

In order for a wholly-owned company to obtain financial reporting relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785, there are a number of conditions that must be satisfied, including:

#### **General conditions**

- The financial year of the holding entity and the wholly-owned company ends on the same date.
- The directors of the wholly-owned company have resolved that the wholly-owned company should obtain the benefit of the instrument.
- The holding entity and the wholly-owned company have executed a deed of cross guarantee (using ASIC pro-forma 24) before the end of the financial year.
- No party to the deed of cross guarantee is a body regulated by APRA.
- The directors of the holding entity and the wholly-owned company have made a statement, signed by at least one director, that immediately before the execution of the deed of cross guarantee there are reasonable grounds to believe that the holding entity and the wholly-owned company, respectively, will be able to pay its debts as and when they become due and payable.

### Conditions imposed on the holding entity

- The holding entity prepares consolidated financial statements (for each year of relief) that include the wholly-owned company and the information specified by the instrument, and those financial statements are lodged with ASIC by the deadline.
- The directors' declaration (in the consolidated financial statements, for each year of relief) includes a statement as to whether there are reasonable grounds to believe that the members of the 'extended closed group' will be able to meet any liabilities to which they are, or may become, subject because of the deed of cross guarantee.

### Conditions imposed on the wholly-owned company

- At or about the end of the financial year (for each year of relief), the directors of the wholly-owned company have considered the advantages and disadvantages of remaining a party to the deed of cross guarantee and taking advantage of the relief afforded by the instrument and the directors have resolved that the company should continue to remain a party to the deed of cross guarantee.
- The wholly-owned company continues to be wholly-owned by the holding entity at all times from the end of the financial year until the deadline for the lodgement of the consolidated financial statements (prepared by the holding entity).

### What is the deadline for notifying ASIC?

As a condition for obtaining financial reporting relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785:

- The holding entity must lodge the deed of cross guarantee (and a certificate in relation to the deed, prepared by a lawyer who holds a practising certificate) with ASIC before the end of the financial year.
- The wholly-owned company must lodge a notice with ASIC (using form 389), containing a statement that the company has taken advantage of the relief under the instrument. This 'opt in' notice must be lodged with ASIC within 4 months after the end of the financial year, in relation to the first year of relief.

### Further information and assistance

Contact Pitcher Partners for further information and assistance on the availability of financial reporting relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

### Contact us



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