
SAICA FREQUENTLY ASKED QUESTIONS

Application of the owner-managed exemption

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Introduction and background

The Companies Act, 2008 includes an exemption from independent review and audit of financial statements. Section 30(2A) states:

"If, with respect to a particular company, every person who is a holder of, or has a beneficial interest in, any securities issued by that company is also a director of the company, that company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed, but this exemption-

- (a) does not apply to the company if it falls into a class of company that is required to have its annual financial statement audited in terms of the regulations contemplated in subsection (7)(a); and*
- (b) does not relieve the company of any requirement to have its financial statements audited or reviewed in terms of another law, or in terms of any agreement to which the company is a party."*

Frequently asked question - Owner managed exemption

Can a company with a trust / holding company holding all of its shares and the trustees of the trust / directors of the holding company all being directors of the company qualify for the exemption of an audit or independent review?

Answer:

The owner managed exemption, whilst stating that it is applicable to audit and independent review is in actual fact only applicable to independent review of annual financial statements, as the section 30(2A)(a) specifically excludes companies that require an audit in terms of the regulations in subsection (7)(a) from applying the exemption. The exemption also does not relieve the company of any requirement to have its financial statements audited or reviewed in terms of another law, or in terms of any agreement to which the company is a party.

The exemption states that it applies in a situation where every person who is a holder or has a beneficial interest in any securities issued by that company is also a director of that company.

While the definition of person in Section 1 of the Companies Act, 2008 includes a juristic person, Section 69 clarifies that a juristic person is ineligible to be appointed as a director. For companies in which beneficial interest holders are juristic persons, for example in a group situation where the shares in a subsidiary company are held by its holding company, the holding company will be disqualified from being appointed as a director and as a result the subsidiary company will not qualify for the exemption from independent review. If a company's shares are held by another company or a trust, then the exemption stated in S30(2A) cannot apply, as the company or trust cannot be a director of the company as it is not a natural person. A trust is specifically included in the definition of "juristic person".

Therefore where a trust / holding company is the shareholder then the owner managed exemption cannot apply as section 30(2A) states that all shareholders must be directors and as the trust / holding company cannot be a director the exemption cannot apply.