

Financial Statements (Sec 129) [Part-2]

(Continued from Geeta Saar 81)

6. Preparation of consolidated financial statement

The sub-section (3) mandates preparation of consolidated financial statements of the company and all subsidiaries including its associate company and joint venture. In legislative background, the rationale behind the same is quoted. It should be noted that the terms “subsidiary” and “associate company” have been defined in the clause (87) and (6) respectively of section 2. However, the term “joint venture” is not defined in the Act. Further, while defining “associate company”, the term used is “joint venture company” and not “joint venture”. In Schedule III, in general instructions for note on noncurrent investments, the term “joint venture” is used to include body corporates. Hence, further reference of Accounting Standard is necessary to understand which entities can be included here. ICAI has clarified the matter further in its FAQs on preparation of Consolidated Financial Statements-(24-06-2016) that consolidation of LLP or partnership firm is necessary. The extracts are as follows:

“It is noted that relevant Indian Accounting Standard i.e., Ind AS 110, Consolidated Financial Statements provides that where an entity has control on one or more other entities, the controlling entity is required to consolidate all the controlled entities. Since, the word ‘entity’ includes a company as well as any other form of entity, therefore, LLPs and partnership firms are required to be consolidated. Similarly, under Accounting Standard (AS) 21, as per the definition of subsidiary, an enterprise controlled by the parent is required to be consolidated. The term ‘enterprise’ includes a company and any enterprise other than a company. Therefore, under AS also, LLPs and partnership firms are required to be consolidated. ... If LLP or a partnership firm is an associate or joint venture of H Ltd, even then the LLP and the partnership firm need to be consolidated in accordance with the requirements of applicable Accounting Standards. ... though H Ltd does not have any subsidiary, it is required to prepare consolidated financial statements for its associate and joint venture in accordance with the applicable Accounting Standards, viz, AS 23, Accounting for Investments in Associates in Consolidated Financial Statements and AS 27, Financial Reporting of Interests in Joint Ventures, respectively.”

Such preparation of consolidated financial statements shall be in the same manner and form as the company which is preparing such statement. As provided under rule 6, such consolidation of financial statements shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. As per General Circular 39/2014 dated 14.10.2014, the company would need to give all disclosures relevant for consolidated financial statements only and need not merely repeat the disclosures made by it under stand-alone accounts.

Further, as provided in sub-section (4), the provisions for preparation, adoption and audit shall become applicable for consolidated financial statements. However, form AOC-4 has no facility to file consolidated financial statement with non company entity.

The Companies (Amendment) Bill, 2016 proposes to substitute the sub-section (3) of section 129 with the following sub-section:

“(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.”

The proposed amendment brings clarity into operation of the sub-section. The conundrum of “joint venture” is also solved by the proposed amendment by excluding it.

7. When consolidation not required as per accounting standard

When a company which is required to prepare consolidated financial statements under the provisions of sub-section (3) of section 129 however, is not required to prepare consolidated financial statements under the Accounting Standards in such cases, proviso to rule 6 provides that it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

8. When consolidation not required

Rule 6 further provides certain exemptions from the provisions of consolidation. While one exemption is of permanent nature, others are time bound. The exemption of permanent nature seeks to provide that an intermediate wholly owned subsidiary need not consolidate the financial statements. However, this exemption is not allowed for a wholly owned subsidiary whose immediate parent is a company incorporated outside India. To illustrate, when A Limited has a wholly owned subsidiary B Limited which, in turn, has a wholly owned subsidiary C Limited, B Limited need not consolidate the financial statements of C Limited in its financial statements. A Limited will consolidate the financial statements of both B Limited

and C Limited in its own. However, if A Limited in the above example is A Inc (incorporated outside India), the exemption to B Limited is not available. Here, the consideration whether the holding/ subsidiary company is private/ public is immaterial.

One further example is: there are four companies A Limited, B Limited, C Limited and D Limited which are situated in India, wherein B Limited is wholly owned subsidiary of A Limited, C Limited is wholly owned subsidiary of B Limited and D Limited is a wholly owned subsidiary of C Limited. In this case, consolidation is exempted for B Limited & C Limited. In the above example if companies A Limited, C Limited and D Limited are situated in India, whereas B Inc is incorporated outside India, there is no exemption from consolidation for C Limited.

One of the time bound exemptions is that the provisions of consolidation shall not apply for the financial year commencing from the 01.04.2014 and ending on the 31.03.2015 in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both. Hence, for a company which is not a holding company but has associate companies or joint ventures or both, the consolidation of financial statement in respect of such companies is exempt for the first year of operation of the Act. However, this exemption is 'subject to any other law or regulations' i.e. if consolidation is mandated under the provisions of any other legislation/ regulation, this relaxation is not available. Further, it is unclear whether this exemption is available for a company whose financial year is different from the year mentioned above. Such company may be in the process of aligning its financial year.

The other time bound exemption provided is that the provisions of consolidation shall not apply to a company which has subsidiary or subsidiaries incorporated outside India only for the financial year commencing or after 01.04.2014. One school of thought states that where the company has foreign subsidiary or subsidiaries, consolidation is not applicable even if the company has Indian subsidiaries (including associate companies and joint ventures). This interpretation is based on ascribing the word 'only' to financial year. Another school of thought ascribes the word 'only' to subsidiaries and interprets that consolidation of only foreign subsidiaries for financial year starting after 01.04.2014 i.e. consolidation provisions are applicable for Indian subsidiaries (including associate companies and joint ventures). However, the intention of legislature is apparently to grant exemption only for one financial year which can be availed by all companies.

For all other scenarios, the provisions of consolidation are applicable.

9. Separate statement containing particulars of subsidiary

There is an additional disclosure enjoined on a company having subsidiaries (including associate companies and joint ventures) as per the proviso to sub-section (3) of section 129. Such company shall attach along with a financial statement a separate statement containing salient features of the financial

statement of its subsidiary or subsidiaries (including associate companies and joint ventures) in form AOC-1. This form needs to be certified in the same manner as the balance sheet.

10. Deviation from accounting standards

In case of any deviation in complying with the accounting standards, the same should be disclosed in the financial statements along with reasons of the said deviations along with the financial effects, if any, arising out of such deviation as provided in sub-section (5). This ensures that the investor gets an accurate estimation of financial position of the company.

11. Central Government's power for exemption

Under sub-section (6), Central government has power to exempt certain class of companies by way of notification from complying with any of the requirements of this section or the rules made thereunder which may be granted either unconditionally or with certain conditions. Such exemption can be granted *suomotu* or on application by class or classes of companies. The precondition for granting this exemption is it should be considered necessary to grant such exemption in the public interest.

12. Punishment and Compoundability

On contravention of the provisions of this section by a company, the Managing Director, the Whole-Time Director in charge of finance, the Chief Financial Officer or any other person charged by the board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors of the company are liable for punishment with imprisonment for a term of up to one year or with a minimum fine of Rs 50,000/- which may extend to Rs 5,00,000/- or both. Such offences are compoundable with the permission of the special court as provided in clause (a) of sub-section (6) of section 441.

(Concluded)

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.