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Tax Insights

General purpose financial statements: current state of play

Snapshot

In December 2015, changes were made to Australian tax laws that require certain companies, which are not presently lodging general purpose financial Statements (GPFS) with the Australian Securities Investments Commission (ASIC), to lodge GPFS with the Australian Taxation Office (ATO). The measure grew out of concerns expressed by the Senate Inquiry into corporate tax avoidance about the level of tax related transparency via the financial reporting process.

The measure has been passed as enacted law and applies to income years commencing on or after 1 July 2016. However, the legislation is open to a number of potential interpretations and this means there are practical and technical issues that need to be resolved. The ATO released a Consultation Paper in August 2016 which identified many, but not all, of the ambiguities in the GPFS legislation. Various submissions were lodged with the ATO by the end of September in response to the Consultation Paper.

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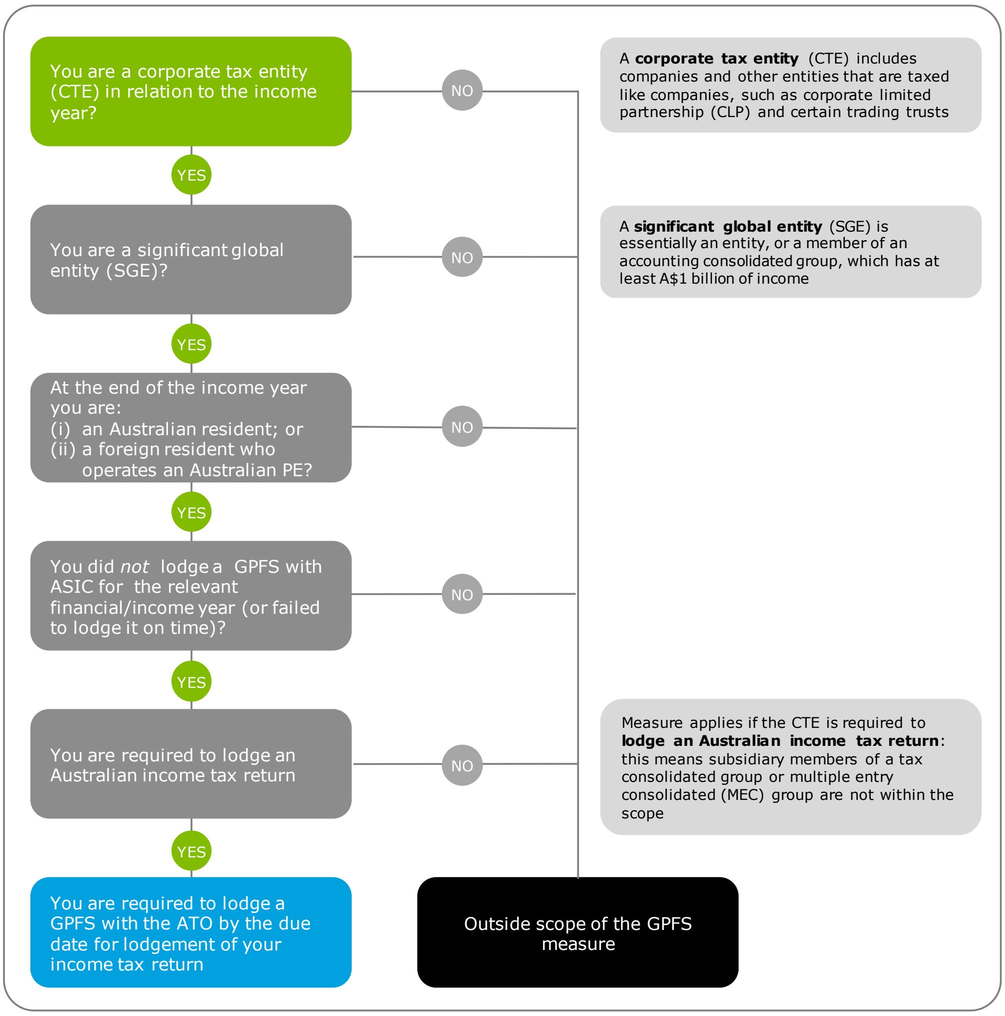
An overview

A flowchart for navigation of the gateway tests for the GPFS measure is below:



The nuts and bolts

Where all of the above gateway tests are satisfied, the relevant entity must provide the ATO with a set of GPFS, on or before the day the entity's income tax return in respect of the relevant income year is due for lodgment. The ATO is required to provide a copy of the GPFS to ASIC.

There is no legislative requirement for the GPFS filed with the ATO to be separately audited.

Which entities?

Indications are that the measure is expected to be wide-reaching. In a media release announcing the ATO's Consultation Paper, the Hon Kelly O'Dwyer MP said *"There are up to 2,000 multinational companies operating in Australia with annual global income of more than $1 billion"*.

Importantly, this measure is not limited to multinational groups; it can apply to a single Australian company. Further, there is no requirement for such an entity to have any foreign operations or even any international dealings.

The affected entities will therefore include:

- Australian subsidiaries of multinational groups that currently lodge special purpose financial statements with ASIC
- companies exempted from lodging accounts with ASIC under the 'grandfathered' large proprietary company exemption
- corporate tax entities (CTE), other than companies, not subject to Australia's Corporations Law, such as corporate limited partnerships (CLP) and certain trading trusts.

GPFS

The measure allows GPFS to be prepared in respect of a single entity (the relevant entity), or in respect of an accounting group of which the relevant entity is a member. The Consultation Paper points out that this permits an Australian subsidiary member of a global accounting consolidated group to provide accounts prepared by its foreign parent.

The ATO Consultation Paper, however, highlighted a question: "must such global accounts comply with Australian Accounting Standards or is it sufficient if the accounts comply with the commercially accepted accounting principles prevailing in the jurisdiction of the parent company?" This is one of the key interpretational issues that will need to be resolved in the short term, so that entities are given adequate time to commence preparations for compliance with this measure.

Types of GPFS

In Australia, GPFS are taken to mean financial statements "intended to meet the needs of users who are not in a position to require an entity to prepare reports tailored to their particular information needs". The following types of financial statements may be considered GPFS that could meet the requirements of the measure:

The ATO intends to work with stakeholders to resolve the interpretational issues and streamline the administrative processes in respect of this measure over the remainder of 2016.

Financial Statements	Brief Description
Consolidated	Consolidated financial statements ("financials") include financials for all of the entities that are controlled by an entity in accordance with AASB 10.
Separate	In separate financials, investments in subsidiaries, joint ventures and associates are measured at cost rather than being consolidated or equity accounted. Separate financial statements are prepared in addition to consolidated financial statements under AASB 127.
Individual	Individual financials are applicable for entities that do not have subsidiaries, but which may equity account for any investments in associates or joint ventures in accordance with AASB 128.
Combined	Combined financials would incorporate the results and financial position of the Australian entities that are under common foreign ownership. For example, combined financials could be used where a foreign parent has multiple entry points into Australia, such as occurs with a MEC group or a potential MEC group.

Next steps

The ATO intends to work with stakeholders to resolve the interpretational issues and streamline the administrative processes in respect of this measure over the remainder of 2016. Following this, the next step for the ATO would be to issue 'guidance' on the undefined and controversial terms embodied in the GPFS provisions.

In the meantime, potentially affected groups need to consider whether the GPFS measure may apply to them. If so, there are typically a number of choices open to the group as to how they will respond to the measure, with that analysis involving a sound understanding of both the relevant tax law and the accounting standards applicable to the group here or overseas (if applicable).

A risk facing large and medium enterprises is that if there is insufficient take up of the TTC, the code may become a mandatory one and potentially more prescriptive.

Deloitte perspective

The GPFS measure was intended to be a transparency measure, but given its construction, it is hard to see the measure shining further light on the tax affairs, supply chains, or revenue streams of large multinationals operating in Australia. Instead, the measure has the potential to increase the compliance cost of doing business in Australia, with little discernible benefit, and runs counter to the longstanding policy decision regarding grandfathered large proprietary companies in an indirect manner.

In our view, concerns about the financial reporting process should be addressed by the Corporations Act in conjunction with Australian Accounting Standards Board, rather than through tax legislation.

In contrast to the GPFS measure, the voluntary Tax Transparency Code (TTC) developed by the Board of Taxation, has the potential to significantly increase tax transparency in Australia. It provides a framework designed by having regard to the information needs of its target audience, which includes general users, shareholders, media, analysts and social justice groups.

Despite the concern in some quarters about the TTC being voluntary, the Board sees the voluntary aspect as a "plus" for transparency. The Board believes that a mandatory code would be treated as a compliance activity and delegated to lower levels within the organisation. Under a voluntary code, the Board fully expects that the board of directors and /or senior management will be actively involved in both the decision to adopt the TTC and the level of disclosure made by their organisation.

Tax transparency is here to stay. Business can respond to the tax debate by embracing the TTC whilst it is still a voluntary code; one that has a flexible design. A risk facing large and medium enterprises is that if there is insufficient take up of the TTC, the code may become a mandatory one and potentially more prescriptive.

Finally we note that the ATO is required to publish limited tax information for corporate tax entities with total income of A$100 million or more for an income year (as disclosed on their income tax return); unless the entity is an Australian resident private company. Such private companies are only reported if they have total income of A$200 million or more. This report is expected to be published in mid-December 2016. The TTC provides a framework for corporates to put context around the information reported by the ATO, and to explain their unique tax story and broader economic contribution, in a consistent and reliable way.

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