



Australia alert ATO publishes general purpose financial statement guidance

On 28 September 2017, the Australian Taxation Office (ATO) released its long-awaited guidance in relation to the obligation on certain multinationals with Australian operations to file general purpose financial statements (GPFS) for each income year starting on or after 1 July 2016 (unless the multinational already does so with the Australian Securities and Investments Commission (ASIC), the corporate regulator).

This obligation falls on multinationals that are “significant global entities” (SGEs) with an Australian presence, i.e. essentially those with global revenue exceeding AUD 1 billion (the same threshold for the multinational anti-avoidance law, diverted profits tax and CbC reporting obligations).

As described below, two transitional measures have been announced:

- Businesses with a 30 June 2017 year end (the first year for which GPFS reporting is required) have a blanket extension to file by 31 March 2018 (they otherwise would be due at the time the tax return is filed); and
- For the income year that commenced between 1 July 2016 and 30 June 2017, the ATO will not review whether a GPFS has been prepared in accordance with Australian Accounting Standards (AAS) (which otherwise would be required), as long as it is prepared consistently with another country's commercially accepted accounting principles (CAAP).

The guidance is welcome since the law, as currently drafted, is open to a number of potential interpretations. The guidance will be subject to a further consultation period until 27 October 2017.

Background

Legislation passed in late 2015, requires certain companies to file GPFS with the ATO if the company:

- Is an SGE (group income exceeding AUD 1 billion);
- Is an Australian resident, or a foreign resident that operates an Australian permanent establishment;
- Files an Australian income tax return; and
- Does *not* file GPFS with ASIC.

Where all of the gateway tests are satisfied, the relevant entity must provide GPFS to the ATO for the "financial year most closely corresponding to the income year." This measure applies to income years commencing on or after 1 July 2016.

SGE determination when joining or leaving consolidated group

SGEs are defined in accordance with section 960-555 of the *Income Tax Assessment Act 1997*. The guidance confirms that entities that join or leave a group that is consolidated for accounting purposes part way through the year can determine their SGE status at the end of the income year. Accordingly, they will be an SGE if either they:

- Remain outside the group and their total annual income for the income year as shown in their global financial statements is AUD 1 billion or more; or
- Are part of a group consolidated for accounting purposes as a single group and the annual global income for the income year for the group prepared by the global parent entity they have joined is AUD 1 billion or more.

Financial year most closely corresponding to income year

The ATO guidance confirms that GPFS is for the "financial year most closely corresponding to the income year" if it is prepared for the financial year most recently concluded on or before the end of the income year (income year being a tax term).

For entities that are subject to Chapter 2M of the Corporations Act, "financial year" in section 3CA means the financial year as defined in section 323D of that act. This is usually a period of 12 months, not necessarily starting on 1 July. For all other corporate tax entities, the annual accounting period for the purposes of the preparation of the financial statements is the financial year for section 3CA purposes.

Audit requirements

Section 3CA does not require a GPFS to be audited, but it is recommended that reliable evidence be kept to demonstrate the GPFS is properly prepared in accordance with AAS or CAAP as applicable.

Who must file

SEC corporate tax entity	Obligation under section 3CA	Comments
Entities that file a GPFS with ASIC within stipulated time	No obligation	ATO will provide administrative relief if notified of late filing with ASIC where this is before due date for filing income tax return
Entities that (i) are required to file a GPFS with ASIC but do not; (ii) file special purpose financial statements with ASIC; (iii) are required to prepare but not file financial reports with ASIC (grandfathered large proprietary companies); or (iv) are otherwise relieved from filing with ASIC because the parent files consolidated financial statements prepared in accordance with AAS	Provide GPFS in accordance with AAS	<p>Entities must provide GPFS using Tier 1 if they are "publicly accountable"</p> <p>Other entities may prepare Tier 2 reduced disclosure requirements</p> <p>A transitional approach is available for one year</p>
Entities that are Australian residents for tax purposes and are: (i) not subject to the Corporations Act (such as corporate limited partnerships); (ii) not subject to Part 2M.3 of the Corporations Act (e.g. certain small proprietary companies); or (iii) otherwise relieved from preparing financial statements because their foreign parent files consolidated financial statements with ASIC prepared in the parent's home country accounting standards	Provide GPFS (standalone or consolidated) prepared in accordance with AAS or other CAAP guidance applies	IFRS or accounting standards that are IFRS compliant, such as AAS and US GAAP are globally recognized CAAP
A foreign resident operating a permanent establishment and did not file GPFS with ASIC (such as registered foreign companies)	In most circumstances, the foreign resident is required to provide a GPFS prepared in accordance with AAS or CAAP	<p>The GPFS cannot be a stand-alone GPFS for an Australian PE, but the ATO encourages separate disclosure of the PE in the GPFS</p> <p>GPFS denominated in foreign currency does not need to be re-denominated in AUD</p>

Members of a tax-consolidated group or multiple entry consolidated group

Subsidiaries of tax-consolidated groups or multiple entry consolidated (MEC) group will not be required to provide GPFS to the Commissioner unless they join or leave a group part way through an income year and they:

- Satisfy the conditions for section 3CA to apply to them; and
- Have an obligation to lodge an income tax return because they were not a member of a tax consolidated or MEC group for the entire year.

Transitional administrative approach / filing concession

The ATO will allow entities experiencing difficulties in preparing GPFS in accordance with AAS in respect of income years commencing from 1 July 2016 and 30 June 2017 to use a transitional administrative approach. This approach is limited to entities as set out in line 2 of the table above (e.g. grandfathered large proprietary companies or certain members of tax-consolidated groups). Under the concession, where:

- Such entities choose not to give a stand-alone GPFS or GPFS consolidating just the Australian members of the consolidated group; and
- Instead seek to lodge a financial statement that relates to them that is prepared under other commercially accepted principles relating to accounting;

the Commissioner will not review whether the GPFS is prepared in accordance with AAS, provided it is prepared consistently with another countries CAAP.

A filing concession also will be available for the income year ended 30 June 2017. In this case, taxpayers will have until 31 March 2018 to file their GPFS.

Application of administrative penalties

Since the obligation to file GPFS is imposed under tax law, it is considered a taxation document and a failure to file on time or in the approved form can result in an administrative tax penalty. Moreover, these penalties may apply irrespective of any penalty imposed under the Corporations Act. This is important because, for SGEs, the base penalty amount for failure to file a taxation document on time is multiplied by 500 for any taxation document that was due for filing on or after 1 July 2017 as set out below:

Penalty for an SGE					
Days late	28 or less	29 to 56	57 to 84	85 to 112	More than 112
SGE penalties (AUD)	105,000	210,000	315,000	420,000	525,000

Contacts

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