

Accounting update

17 October 2017

ATO guidance on the provision of GPFS by SGEs

On 28 September 2017, the Australian Taxation Office (ATO) issued guidance on the December 2015 amendments to the tax law, which require significant global entities (SGEs) to lodge general purpose financial statements (GPFS) with the ATO. These will appear on ASIC's public register.

While the law was originally targeted at certain multi-nationals, it also captures private Australian groups which are SGEs.

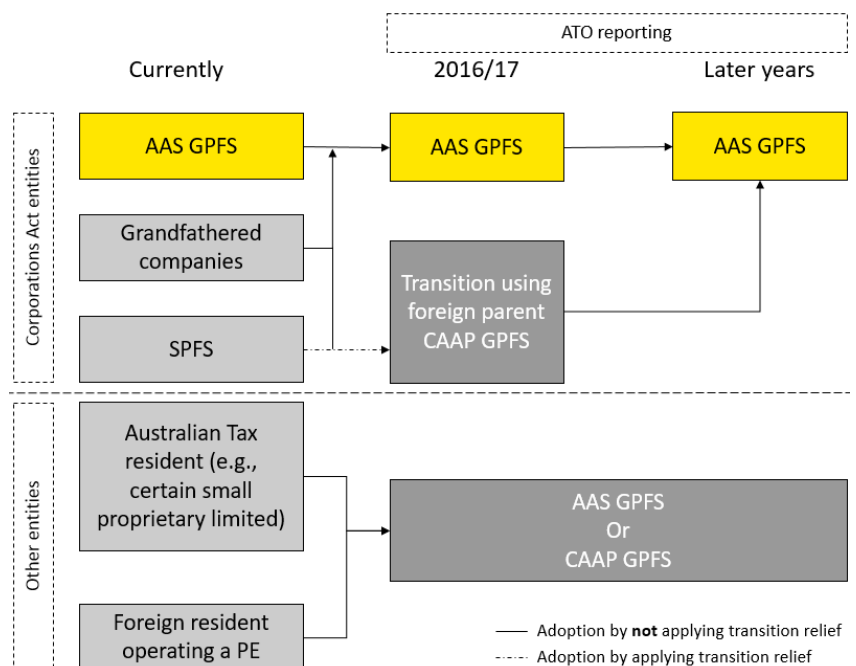
Scope

Any corporate tax entity (company, corporate limited partnership or public trading trust) that is an SGE (including, broadly, one that is consolidated in the financial reports of a group with annual global income above AUD 1 billion) is within the scope of the legislation. The entity is required to lodge a GPFS with the ATO for income years commencing on or after 1 July 2016 at the same time (except in the

transition year) as when the entity is due to lodge its Australian income tax return.

The guidance clarifies that the annual global income is:

- ▶ Annual income of the consolidated group's global parent
- ▶ Measured in AUD (amounts shown in currencies other than AUD must be translated into AUD at the average exchange rate for the financial statement's period)
- ▶ Measured in accordance with Australian Accounting Standards (AAS)
- ▶ Broader than revenue under AASB 118 *Revenue* / AASB 15 *Revenue from Contracts with Customers* - includes gains (e.g., on sale of assets)



Obligations

Corporations Act entities

As illustrated in the above diagram, Corporations Act entities that currently prepare and lodge GPFS with ASIC are not affected.

However other Corporations Act entities that are either exempted under the Corporations Act from lodging (but not exempt from preparing) financial statements (i.e. grandfathered large proprietary entities, "grandfathered entities"), or currently lodge special purpose financial statements (SPFS) with ASIC are now required to lodge a GPFS with the ATO¹, that are prepared in accordance with AAS. Such financial statements may be prepared based on the ultimate Australian parent's, or the ultimate foreign parent's, consolidated financial statements.

Our view

In relation to Corporations Act entities, after the transition year, we consider it unlikely foreign parented entities would use the option to lodge the ultimate foreign parent's consolidated financial statements (as opposed to the Corporations Act entity's financial statements) prepared in accordance with AAS, because:

- ▶ Where a foreign ultimate parent is using a GAAP other than IFRS (e.g. including a derivation of IFRS such as EU IFRS), there would be significant work in reconciling to AAS
- ▶ The Governing body of that foreign ultimate parent would need to obtain sufficient knowledge about AAS to assert the financial statements are true and fair in relation to AAS
- ▶ The foreign entity would also need to consider all situations where AAS has unique requirements. For example:
 - ▶ AASB 1054 *Australian Additional Disclosures*
 - ▶ Australian specific standards such as those for insurance (e.g., AASB 1023 *General Insurance Contracts* and AASB 1038 *Life Insurance Contracts*)
 - ▶ AASB Interpretations on matters such as definition of an income tax, and accounting for the goods and services tax.

Other entities

Australian tax residents not subject to the Corporations Act (e.g., corporate limited partnerships) or entities that are not

¹ Lodging a GPFS with the ATO does not require these other Corporations Act entities to change their current reporting under the Corporations Act - where currently SPFS - if they also lodge a GPFS with the ATO. Practically, entities are likely to prepare one set of financial statements (a GPFS) if it satisfies both requirements.

subject to Part 2M.3 of the Corporations Act (e.g., certain small proprietary companies) and foreign residents operating a permanent establishment (PE) have an option to lodge GPFS prepared in accordance with AAS or CAAP.

The ATO guidance indicates an ultimate foreign parent's consolidated financial statements may be lodged if prepared in accordance with AAS. We do not consider it likely that foreign entities will choose this option, which leaves the following course of action:

- ▶ Prepare and lodge financial statements for the Australian group per AAS or
- ▶ Consider whether the foreign parent's financial statements would be acceptable [see discussion below under heading "CAAP"]

The ATO are seeking input on whether a foreign parent would consider preparing and lodging its consolidated financial statements under AAS.

Commercially Accepted Accounting Principles (CAAP)

This new concept is generally applicable to other entities not required to prepare accounts under the Corporations Act. However, this could be applicable to Corporations Act entities (e.g., Proprietary Limited companies preparing SPFS) only under year 1 transition relief [see discussion below under heading "Transitional administrative approach"].

CAAP includes, but is not limited to, AAS, IFRS per IASB and US GAAP. For other GAAPs (e.g., Japanese GAAP) the guidance is silent, however effected entities should consider:

- ▶ The assertions to be made on financial statements (i.e. true and fair requirement from the ATO vs. in compliance with stated framework)
- ▶ Is the foreign GAAP available in English to allow the ATO or other Australian readers to get an understanding of the principles
- ▶ Is the English language primarily used in preparing financial statements?
- ▶ Whether its financial statements are a GPFS?

Our view

Entities should carefully consider the time and effort to establish whether the GAAP of the ultimate parent's financials are CAAP, considering the short time frame for the first lodgment.

Transitional administrative approach

Lodgment extension

Given late issuance of the guidance (after the end of the first year of application for entities with 30 June income tax years) the ATO have provided a concession to extend the deadline for lodgment of the GPFS. This concession applies only for the first year and only for 30 June 2017 income tax years. Those entities now have until 31 March 2018 for lodging their GPFS, but there is no change to the timing for lodging tax returns.

Corporations Act entities - foreign controlled

In addition, foreign controlled entities subject to the Corporations Act that currently lodge SPFS have a concession for the first income year commencing between 1 July 2016 and 30 June 2017. These entities are required to submit a GPFS but may prepare it in accordance with AAS or another CAAP. As a result, foreign controlled entities that currently lodge SPFS can for their first financial year under the new ATO reporting regime lodge their foreign parent's financial statements (if a CAAP GPFS) for ATO purposes. The ATO have indicated that they do not plan to review whether the GPFS lodged is prepared in accordance with AAS in the first year, as long they are prepared consistent with CAAP of the country to which the foreign parent belongs.

Our view

The administrative approach is not available to registered foreign companies operating branches in Australia, because they are not governed by the Corporations Act. They will now need to lodge and provide GPFS that comply with AAS or CAAP.

Other considerations

Reduced disclosure regime

The ATO's earlier draft guidance stated Tier 1 Australian Accounting Standards ("Tier 1") GPFS should be required, however EY provided feedback to the ATO that the AASB had also created the option to use Tier 2 Australian Accounting Standards - Reduced Disclosure Requirements ("Tier 2") also as a form of GPFS.

In the final guidance, the ATO have suggested entities should consider which option (Tier 1 or Tier 2) would be most helpful in making their Australian tax affairs transparent.

Our view

Individual entities should consider their choice of Tier 1 or Tier 2 (if available under AASB 1053 *Application of Tiers of Australian Accounting Standards*) in light of their approach to tax transparency, for example:

- ▶ Is the omitted disclosure information from Tier 2 GPFS otherwise provided in a tax transparency report?
- ▶ Could the entity more easily prepare Tier 2 GPFS with enhanced income tax, related party disclosures, etc., rather than Tier 1 GPFS?

Consideration will also need to be given to the transitional provisions of AASB 1053 with respect to the adoption of AASB 1 *First-Time Adoption of Australian Accounting Standards* the impact of which will vary depending on the basis of preparation in the historical financial statements (e.g. SPFS or CAAP).

Audit

While an audit of the GPFS is not required by legislation, the ATO recommends the GPFS be audited to provide "reliable evidence" that they are prepared in accordance with AAS or CAAP.

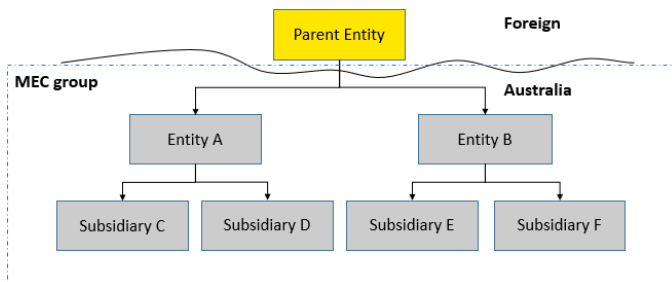
Our view

Practically, the lack of an audit requirement does not provide much relief to Corporations Act entities that would generally be required to have their financial statements audited. It may help if an ultimate foreign parent elects to prepare its GPFS based upon AAS, however as mentioned above, we consider this unlikely.

Multiple Entry Consolidated (MEC) Groups

Generally, subsidiary members of a tax consolidated group or MEC group (if members for the entire year) are not required to separately lodge a GPFS.

The guidance acknowledges that a MEC combined set of financial statements would not be compliant with AAS. It suggests under a heading "Best Practice" that the GPFS of the head company "may give a very limited perspective of [the] Australian operations". The placement of the comment under a best practice heading suggests it might be acceptable to prepare combined MEC financial statements, notwithstanding the fact they may not provide a "true and fair" view in accordance with AAS.



Entering/exiting a tax consolidated group

The guidance provides examples on this subject which assist in determining whether financial statements are to be lodged with tax returns.

Penalties

The ATO guidance confirms that if a SGE fails to give a GPFS to the ATO by the due date it will be liable to an administrative penalty. From 1 July 2017, administrative penalties for SGEs were significantly increased. Failure to lodge penalties for SGEs range from \$105,000 (up to 28 days late) to \$525,000 (more than 112 days late).

Our view

Initial indications of penalties in earlier drafts were low which led some entities to considering alternatives. This this has been addressed via significant increases to penalties.

How EY can help

EY can help entities determine whether they are impacted by the requirements and assist in the transition to GPFS.

To discuss further please contact your EY adviser or one of the IFRS contacts below:

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