
ATO guidance on lodgment of GPFS

28 September 2017

In brief

From June 2017, so-called ‘significant global entities’ (SGEs) that are required to file an income tax return in Australia must lodge general purpose financial statements (GPFS) with the Australian Taxation Office (ATO) when they lodge their tax return, unless these entities already lodge GPFS with the Australian Securities and Investments Commission (ASIC).

The legislation, introduced in December 2015 and applicable for years commencing on or after 1 July 2016, raised a number of queries around implementation issues. A key issue was whether Australian subsidiaries of multinational groups could provide the consolidated financial statements of an overseas parent entity to satisfy their obligations under the new tax legislation. After consulting with stakeholders since August 2016, the ATO has finally provided [web guidance and information](#) for 30 June 2017 year-ends and has asked for comments and feedback by 27 October 2017.

The ATO interpretation of these rules is expected to generate substantial additional compliance costs for many foreign multinational groups operating in Australia. In recognition of this last minute and unexpected interpretation, the ATO is providing a one year amnesty for most affected companies as well as a lodgment extension until 31 March 2018 (30 June 2017 year ends).

In detail

Who will be most affected?

The entities that will be most affected by the new legislation are the following members of groups with turnover of AUD1 billion or more:

- foreign owned companies that are currently lodging special purpose financial statements (SPFS) with ASIC, and
- grandfathered exempt proprietary companies not required to lodge any financial statements with ASIC.

Small foreign owned proprietary companies that are not currently required to lodge any financial reports with ASIC as they are not part of a large group in Australia may also be impacted. The ATO guidance is unclear but seems to imply that these entities are required to lodge consolidated GPFS that comply with

Australian accounting standards and that consolidated GPFS of a foreign parent entity prepared under a foreign accounting framework may not be acceptable.

The first GPFS under this measure should typically be due to the ATO on or after 15 January 2018 (i.e. for year ended 30 June 2017) but the ATO has announced a lodgment extension until 31 March 2018. There will be taxpayers impacted earlier than this where a tax year is less than 12 months (e.g. a newly formed company with substituted tax accounting period or a company acquired by a tax consolidated group) and there are taxpayers who have faced lodgment deadlines before the release of this ATO guidance. We will be recommending that the ATO lodgment concession be extended to cover these taxpayers.

The ATO has accepted that the legislation permits the lodgment of the consolidated financial statements of overseas parent entities. However, contrary to earlier indications, the ATO has concluded that such financial statements must comply with all the requirements of Australian accounting standards (Tier 2 reduced disclosure regime financial statements where this is appropriate under Australian accounting standards). This is likely to unfairly and adversely affect, in particular, US-based multinational companies because converting US GAAP parent company accounts to Australian accounting standards will, in most cases, be a significant exercise. It will be much easier where the 'home country' GAAP is IFRS-compliant and hence very similar, or even identical, to Australian accounting standards. Comments have been requested in respect of this aspect of the ATO guidance.

The ATO view of the relevant tax legislation is not free from doubt and does not, for example, address statements made by Government ministers during the passage of this legislation. We also note that the ATO has issued a 'web guidance and information' rather than a legally binding ruling.

Transitional administrative approach

The ATO has acknowledged the difficulties, additional costs and risk of substantial penalties taxpayers may face with the interpretation that they have decided to adopt. As a result, for the first year only, the ATO 'will not review whether a GPFS given to the Commissioner is a GPFS prepared in accordance with Australian accounting standards', as long as it is prepared consistently with another country's commercially accepted accounting principles. In effect, this is a one year optional amnesty for most taxpayers.

We've summarised how the tax legislation will apply to various types of entities in the following table.

SGE Corporate Tax Entity	Obligations under GPFS tax rules
1. You lodge a GPFS with ASIC within the stipulated time.	None.
2. You: <ul style="list-style-type: none"> • are required to lodge a GPFS with ASIC but do not; • lodge SPFS with ASIC; • are required to prepare, but not lodge financial reports with ASIC (i.e. grandfathered large proprietary companies); or • are otherwise relieved from preparing financial reports by ASIC for the reason that your parent lodges with ASIC consolidated financial statements prepared in accordance with Australian accounting standards incorporating your financial position and performance. 	You must give the ATO a GPFS prepared in accordance with Australian accounting standards. However, depending on the circumstances, this might be, for example, the consolidated financial statements of the ultimate overseas parent or an interposed company, or the financial statements of the Australian entity required to file a tax return (consolidated or, in some cases, stand-alone). Transitional administrative approach is available for the first year only.
3. You are an Australian resident for tax purposes, and you are: <ul style="list-style-type: none"> • not subject to the Corporations Act 2001 (i.e. corporate limited partnerships); • not subject to Part 2M.3 of that Act (i.e. certain small proprietary companies), or • otherwise relieved from preparing financial reports by ASIC for the reason that your foreign parent lodges with ASIC consolidated financial statements prepared in accordance with accounting standards applicable in your parent's home country. 	You must give the ATO a GPFS (stand-alone or consolidated) prepared in accordance with Australian accounting standards or other Commercially Acceptable Accounting Principles (CAAP). Note: Transitional administrative approach is not available for this category.
4. You are a foreign resident operating a permanent establishment (PE), and did not lodge a GPFS with ASIC (i.e. registered foreign companies).	In most circumstances you are required to give the ATO a GPFS prepared in accordance with Australian accounting standards or CAAP.

What adjustments may be necessary for overseas financial statements to comply with Australian accounting standards?

Disappointingly, the ATO has not provided any guidance on this critical issue, but has asked for 'comments as to how parent accounts prepared in accordance with home country accounting standards can also be Australian accounting standards compliant'.

Subject to further guidance from the ATO, our interpretation is set out below.

Where Australian accounting standards apply to the Australian taxpayer entity required to lodge GPFS, the ATO has (controversially) concluded that the entity must lodge GPFS with the ATO that comply with Australian accounting standards. While the entity could technically still lodge consolidated GPFS of a foreign parent entity, the financial statements would have to be adjusted for any differences between the overseas reporting framework and Australian accounting standards.

The extent of adjustment will depend on the type of framework adopted. If the overseas parent entity prepares consolidated GPFS that comply with IFRS, the adjustments will be generally limited to a few additional disclosures, i.e. in relation to audit remuneration and cash flow reconciliations. In certain circumstances entities may also find that an accounting policy choice adopted under IFRS may not be acceptable under Australian accounting standards because of additional guidance issued locally, i.e. for exploration companies or tax consolidation accounting.

Adjustments to reported amounts and results are likely to be more common for other reporting frameworks such as US GAAP, making the adaptation of the GPFS to Australian accounting standards a time consuming and costly process.

In any event, an alternative would be to prepare and lodge GPFS for the Australian entity required to file a tax return.

Penalties if GPFS not lodged with ATO by the relevant due date

Taxpayers need to be aware that compliance with the legislative requirement to lodge GPFS is mandatory.

For income years commencing on or after 1 July 2016, SGEs that are required to file a tax return in Australia, must lodge GPFS with the ATO on or before the day the entity is required to lodge its tax return with the ATO, unless these entities already lodge GPFS with ASIC. However, as noted above, a lodgment concession has been made available for 30 June 2017 year ends.

Under the new failure to lodge penalty regime for SGEs the maximum penalty for an SGE failing to lodge documents (including GPFS) with the ATO on time is currently \$525,000.

What are commercially accepted accounting principles (CAAP)?

If Australian accounting standards do not apply to an entity, for example limited partnerships or entities with permanent establishments, the GPFS must be prepared in accordance with 'commercially accepted principles relating to accounting' (CAAP). According to the ATO guidance, CAAP would include IFRS, accounting standards that are IFRS-compliant, such as Australian accounting standards and US GAAP.

According to the ATO, where other accounting principles are used, the financial statements must be assessed on a case-by-case basis and one consideration will be whether the financial statements provide a true and fair view.

Other aspects

The ATO guidance is extensive (16 pages), is not clear in a number of respects and encourages 'best practices' beyond what is required by law in a number of areas.

In addition, the ATO guidance:

- Confirms that the financial statements provided to the ATO do not need to be audited, and explains what evidence of compliance with relevant accounting standards the ATO expects taxpayers to keep.
- Explains what happens where companies leave and/or join a tax consolidated group.
- Clarifies that multiple entry consolidated (MEC) groups are only required to file GPFS for the company nominated to be the head entity for tax purposes and therefore may give a very limited perspective of your Australian operations.
- Confirms that the financial statements can be prepared under Tier 2 of the reduced disclosure regime, where permitted by the Australian accounting standards.
- Discusses under what circumstances stand-alone financial statements may be acceptable.
- Explains how to determine the financial year most closely corresponding with the income year.
- Provides guidance on the calculation of annual global income and clarifies that 'other comprehensive' income is excluded from this measure.

The takeaway

Companies that are likely to be affected by the legislation, based on the table above, should consider how they will satisfy the GPFS requirement in the first year (the transitional year concession may be available which may reduce the compliance burden) and subsequent periods where it may be necessary to collect additional information which is likely to involve significant additional time and cost.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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